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# Country report

## Non-discrimination

Greece  
2015

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# **Country report**

# **Non-discrimination**

# **Greece**

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## EXECUTIVE SUMMARY

### 1. Introduction

Greece is a parliamentary republic. Popular sovereignty is the foundation of government and all powers derive from the people and exist for the people and the nation. The national legislative authority rests jointly with Parliament and the Government. Greece follows a civil law system (continental) with fields of law separated into specific bodies (civil law, public/administrative law, criminal law, commercial law, labour law etc.). Greece does not have a Constitutional Court, yet all courts of all degrees have an inherent obligation to interpret rules and laws in conformity with the Greek Constitution. Greece has three supreme courts: the Council of State (Συμβούλιο της Επικρατείας) (public law), the Supreme Court (Άρειος Πάγος) (private law) and the Chamber of Accounts (Ειδικό Ελεγκτικό Συνέδριο) (limited jurisdiction administrative court).

The Greek Constitution contains fundamental rules on the elimination of all forms of discrimination and the promotion of equality, most of which are contained in Part II, 'Civil and Social Rights'. These rights are, namely, the principle of human dignity, the free development of one's personality and participation in the financial, social and political life of the country, the principle of equality, the right to health and gender identity, religious freedom, freedom of speech and the press, the right to legal protection, the protection of personal data, free education, protection of family, marriage and children, protection of people with disabilities, the right to work and equal remuneration. In addition, the State is obliged to eliminate any existing discrimination. These fundamental rules are applicable to all national fields of law and should always be adhered to. However, special laws have been adopted for each field.

### 2. Main legislation

In Greek Law, there is explicit anti-discrimination legislation. Law no. 3304/2005<sup>1</sup> 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.

In addition, at the normative level (legal rules of the Greek legal system), there are many constitutional provisions (mainly setting out general principles) enshrining human rights, which directly or indirectly address discrimination. Nevertheless, it should be added that it is extremely difficult to derive specific enforceable rights from these general principles. Article 25 of the Greek Constitution is immensely important, because it clearly states that private employers must also 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 which could be invoked by people who have experienced discrimination and are seeking equal treatment and non-discrimination in their working life. However, in practice, such claims are rarely made, except 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 prohibiting discrimination on grounds of racial or ethnic origin which, however, are never applied in practice.

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<sup>1</sup> Greece, Law 3304 /2005 On the application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation. Abbreviation: Anti-discrimination Law (OJ 16 A /27.07.2005).

The sole expressly anti-racism statute in Greece remains Law 927/1979,<sup>2</sup> as amended by Law 1419/1984<sup>3</sup> and Law 4285/2014.<sup>4</sup>

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 1414/1984 on the implementation of the principle of sexual equality in employment relations restricts discrimination, though it applies only to people 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 dismissals of pregnant women or related to the race or ethnic origin of the employee.

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

On 11 April 2012 Greece ratified the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol with Law 4074/2012 (OG A' 88/11.4.2012). According to Article 3 of this Law, the focal point and the coordination mechanism provided for by Article 33 of the Convention will be designated by decision of the Prime Minister. Moreover, according to Article 2 of this Law, the provisions of Article 27 para. 1 of the Convention do not apply to the armed forces and law enforcement agencies with regard to differential treatment due to disability as provided for in Article 8 para. 4 of Law 3304/2005 on the implementation of equal treatment pursuant to Articles 3 para. 4 and 4 of Directive 2000/78/EC.

Finally, on January 2010 the National Commission of Human Rights (NCHR),<sup>5</sup> an advisory body to the Greek Government, expressed the opinion that legal amendments to Law 3304/2005 are necessary. In terms of the substantive content of the law, it proposed that discrimination on multiple grounds should be made explicitly unlawful. Importantly, the NCHR proposed that the Ombudsman should be allowed by Law 3304/2005 to intervene on behalf of the complainant 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 NCHR proposed that a single equality body (the Ombudsman) should monitor the implementation of Law 3304/2005 with regard to the provisions of Directive 2000/43/EC.

### **3. Main principles and definitions**

The Anti-discrimination Law 3304/2005 describes the 'purpose' of the legislation, including all the discriminatory grounds of the Directives.

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<sup>2</sup> Greece, Law 927/1979 on punishing acts or activities aiming at racial discrimination. Abbreviation: Anti-racist penal Law 927/1979 (OJ 22 A/26.06.1979).

<sup>3</sup> Greece, Law 1414/1984 on the application of the principle of gender equality in labour relations and other provisions (OJ 10 A/02.02.1984).

<sup>4</sup> Greece, Law 4285/2014 on the amendment of 927/1979 and its adjustment to the decision-framework 2008/913/JHA of 28 November 2009, for combating certain forms and manifestations of racism and xenophobia through criminal law and other provisions. Abbreviation: Anti-Racism Law (OJ 191 A/10.09.2014).

<sup>5</sup> NCHR (2010), *Παρατηρήσεις σχετικά με το Ν. 3304/2005* (Observations on Law 3304/2005), available in Greek at: [http://www.nchr.gr/images/pdf/apofaseis/protaseis\\_epi\\_nomoth\\_keimenwn/n\\_3304.pdf](http://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/n_3304.pdf), last accessed on 10.10.2015.



Law 3304/2005 lacks any specific definition of anti-discrimination grounds such as racial or ethnic origin, religion or belief, age and sexual orientation. It enshrines both definitions of direct discrimination from the Racial Equality Directive and the Employment Equality Directive in Articles 3 and 7. The definition is the same for all the grounds mentioned in the Directives (ethnic or racial origin, religious or other beliefs, disability, age or sexual orientation). The Law permits justification of direct discrimination, allowing exemptions to the non-discrimination principle in relation to all grounds in Articles 9 (2) and 5.

Moreover, indirect discrimination is defined in Articles 3 and 7. Justification for indirect discrimination is defined in Article 7(1)(b).

In Greece national law (including case law) does not prohibit discrimination based on association with people with particular characteristics. Law 3304/2005 is the first statute in the Greek legal order to provide a definition of harassment following that provided in the 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 this 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, with regard to both the public and private sectors in relation to the eight points (a-h) of Article 3 of Council Directive 2000/43/EC.

Article 2 of Law 3304/2005 on discrimination prohibits instructions to discriminate. The same law transfers the precise wording of Article 5 of the Employment Equality Directive in the field of reasonable accommodation (Article 10).

National law does not explicitly disallow the use of 'situational testing' but, at the same time, it does not make provision for it. No relevant jurisprudence exists, because 'situational testing' has not so far been used in practice by NGOs in any case (not only in discrimination cases). There are no relevant provisions or concepts of assumed and associated discrimination in Greek law (or specifically in Law n. 3304/2005), nor are there any rules on multiple discrimination or plans for the adoption of such rules or case law dealing with situations of multiple discrimination.

In Greece national legislation provides for an exception for genuine and determining occupational requirements. Exemptions concern various contexts as far as professional requirements are concerned. Law 3304/2005 (Articles 5, 9 and 11) provides that a difference of treatment based on a characteristic related to racial or ethnic origin, religious or other beliefs, age or sexual orientation (disability is not covered) 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. When it comes to religious or other beliefs, Law 3304/2005 stipulates that these beliefs should also be 'a genuine, legitimate and justified occupational requirement'.

Finally, in Greece the duty to provide reasonable accommodation is included in the law. It is not, however, defined, nor is there a definition of disability for the purposes of claiming reasonable accommodation. Article 10 of Law 3304/2005 provides that, 'in order to guarantee compliance with the principle of equal treatment towards people with disabilities, 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'. Nevertheless, disability is covered by the same protection as the other grounds included in the Anti-discrimination Law.

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

With regard to the material scope of Greek legislation covering the relevant grounds, the recent Greek Anti-discrimination Law no. 3304/2005 adopts, quasi literally, Article 3 of the Employment Equality Directive. The principle of equal treatment shall apply to all persons in 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 covered by the Racial Equality Directive 2000/43/EC. Self-employment is not included in the Anti-discrimination Law.

#### **5. Enforcing the law**

The legal protection and defence of people wronged by any violation of Anti-discrimination Law 3304/2005 will, in accordance with Article 13, enjoy protection not only from the courts, but also from administrative bodies or through NGOs or trade unions. Article 13 para. 3 on the defence of rights states 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'. 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 their consent to the organisation stating that they want and agree to be represented by it.

The burden of proof in cases of violation of anti-discrimination law is dealt with in Article 14 of the new Anti-discrimination Law 3304/2005, which reverses the burden of proof from the victim to the perpetrator. 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, must pay to the State and not to the victim. Specifically, Article 16 of the new law imposes sanctions in the form of imprisonment of six months to three years and a fine of between EUR 1 000 and EUR 5 000.

A court decision<sup>6</sup> concerning discrimination was issued in 2014 and concerned an incident which took place on 10 April 2013 where a bus driver with the private Urban Transport Organisation of the City of Thessaloniki (OASTH), acting in a provocative manner, compelled two passengers of African descent to leave the vehicle. The court decision was issued on 24 February 2014 by the Single-member Misdemeanour Court of Thessaloniki which imposed a suspended prison term of 10 months and a fine of EUR 1 000 on the driver.

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<sup>6</sup> Reference number of court decision: 4232/2014.

Finally, it is important to highlight the introduction of Law 4285/2014 (O.J. 09/10.09.2014) which amends the previous Anti-racism Law 927/79 by specifically including all the grounds of discrimination, except age. More specifically, according to Article 10 of the new law, Article 81A is introduced to the Criminal Code which increases the minimum penalties for offences committed due to bias motivation.

## **6. Equality bodies**

Articles 19 and 20 of Law 3304/2005 establish the three equality bodies. These are the Greek Ombudsman, the Labour Inspectorate and the Equal Treatment Commission.

### *The Ombudsman*

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 principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation in the public services. It drafts reports and undertakes investigations following complaints of violations 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 make recommendations concerning discrimination.

### *The Equal Treatment Committee*

The Equal Treatment Committee is supervised by the Minister of Justice. Its competence extends to any field with the exception of the public sector, but it does not cover employment and occupation. Therefore, it examines complaints of violations of the principle of equal treatment in its field of competence and seeks to mediate between the conflicting parties. The Committee has no authority to impose sanctions of any kind, but it does have the right to hear witnesses and to request information from the accused or a third party (public authority or individual).

### *Labour Inspectorate*

The Labour Inspectorate is a government body which is active only in the private sector and in the field of employment and occupation. The Inspectorate acts as mediator between employer and employee and it can also impose fines (payable to the State and not to the employee) in cases where it finds a violation of the principle of equal treatment. The Inspectorate has the right to hear witnesses and to request information from the accused or a third party (public authority or individual).

All three equality bodies cover all the five grounds included in the two directives (which means not only race and ethnicity but also religion or other beliefs, disability, age and sexual orientation), but the Ombudsman, in particular, covers other grounds (children's rights, gender and Roma) and investigates human rights cases related to: violations of personal freedom; freedom of religious belief and worship; discrimination on grounds of nationality or ethnic origin; violations of the rights of immigrants; equal access to public education; violations of the principle of meritocracy in selection procedures for public sector positions; protection of professional rights; infringements of the right to appeal to the administrative authorities and the effectiveness of judicial protection caused by court rulings that are not implemented by the public administration). Only the Ombudsman, through a complaints system, can mediate between the public administration and citizens, in order to help citizens to exercise their rights more effectively. The Ombudsman is the only equality body which can produce independent reports and carry out independent surveys.

Finally, none of these bodies constitute a quasi-judicial institution.

Even though the Economic and Social Council is not one of the specialised equality bodies, under Article 18 of Anti-discrimination Law 3304/2005 it is entrusted with tasks such as: drafting an annual report on 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.

## **7. Key issues**

The key issues for Greece in the anti-discrimination field can be summarised as follows:

- 1) Extension of the competence of the Ombudsman (which is a well-organised, effective and independent body) to include the private sector as well. This would mean that any public authority receiving complaints or information regarding the violation of the equal treatment principle, including the Labour Inspectorate, should communicate them to the Ombudsman for investigation and mediation. The respective competences of the Labour Inspectorate and the Commission for Equal Treatment of the Ministry of Justice should, therefore, be removed.
  - 2) Provision of independent and specialist assistance by the Ombudsman to victims of discrimination. Furthermore, the Codes of Procedure should be amended in order to provide for the *locus standi* of the Ombudsman as a third party before civil or administrative courts or as a civil party before criminal courts.
  - 3) Extension of the *ratione temporis* 'jurisdiction' of the Ombudsman over cases which have been filed in the courts until the first hearing of the case or the issuing of interim measures. Given that a complaint submitted to the Ombudsman does not suspend the deadlines for judicial remedies, if the mediation of the Ombudsman is not fruitful, the discrimination victim could be deprived of their right to judicial protection. This extension might encourage discrimination victims to have recourse to the Ombudsman and limit the number of potential cases before the courts, a procedure which is more time-consuming and costly.
  - 4) Systematic monitoring by the Ombudsman, in cooperation with the Labour Inspectorate, the Department for Equal Opportunities of the Ministry of Labour and the Organisation for Mediation and Arbitration (*Οργανισμός Μεσολάβησης και Διαιτησίας, ΟΜΕΔ*) of developments in employment and occupation, collective agreements, codes of ethics and practices regarding combating discrimination.
  - 5) Creation, within the Economic and Social Council, of a permanent consultative body, composed of representatives of NGOs and organisations in general, with the participation of the Ombudsman, tasked with carrying out, together with the plenary body of the Economic and Social Council, a social dialogue on equal treatment.
  - 6) Finally, it is obvious that, as a result of the recommended extension of the Ombudsman's competences, its budget and staff should be increased accordingly.
- In addition, legislative amendments should be introduced in order to resolve the following issues:

- The requirements for the legal standing of NGOs before the courts should become less strict.
- Modifications must be made to the administrative Code of Procedure relating to the burden of proof.

- Provision should be made for penalties of imprisonment for all the areas of discrimination protected by the anti-discrimination law.
- Amendment of Article 8 (4) on the extension of this exception to the police, prison and emergency services which is incompatible with the Directive, which limits the scope for an exception only to the armed forces.

## RÉSUMÉ

### 1. Introduction

La Grèce est une république parlementaire. La souveraineté populaire constitue le fondement du régime politique, et tous les pouvoirs émanent du peuple et existent pour lui et la nation. Le pouvoir législatif est conjointement détenu par le parlement et le gouvernement. La Grèce applique un système de droit civil (continental) avec répartition des différents domaines du droit en législations spécifiques (droit civil, droit public/administratif, droit pénal, droit commercial, droit du travail, etc.). La Grèce ne s'est pas dotée d'une Cour constitutionnelle, mais les cours et tribunaux sont tenus, à tous les niveaux de juridiction, d'interpréter les règles et les lois conformément à la Constitution hellénique. La Grèce dispose de trois instances suprêmes: le Conseil d'État (Συμβούλιο της Επικρατείας) (droit public), la Cour de cassation (Άρειος Πάγος) (droit privé) et la Cour des comptes (Ειδικό Ελεγκτικό Συνέδριο) (cour administrative de juridiction limitée).

La Constitution hellénique contient les règles fondamentales en matière d'élimination de toutes les formes de discrimination et en matière de promotion de l'égalité, lesquelles règles figurent pour la plupart dans la Deuxième partie «Libertés publiques et droits sociaux». Ces droits civils et sociaux sont plus précisément le principe de la dignité humaine, le droit de développer librement sa personnalité et le droit de participer à la vie financière, politique et sociale du pays, le principe d'égalité, le droit à la protection de la santé et de l'identité génétique, la liberté religieuse, la liberté de parole et de presse, le droit à la protection légale par les tribunaux, la protection des données personnelles, l'instruction gratuite, la protection de la famille, du mariage et des enfants, la protection des personnes handicapées, le droit au travail et l'égalité de rémunération. L'État est tenu de surcroît d'éliminer toute discrimination existante. Ces règles fondamentales s'appliquent à tous les domaines nationaux du droit et devraient toujours être respectées. Des lois spéciales ont néanmoins été adoptées dans chacun des domaines.

### 2. Législation principale

On trouve en droit hellénique une législation luttant explicitement contre la discrimination: il s'agit de la loi 3304/2005,<sup>7</sup> qui transpose les directives 2000/43/CE et 2000/78/CE et couvre donc les cinq motifs visés par celles-ci.

Il existe en outre, au niveau normatif (règles légales de l'ordre juridique hellénique), de nombreuses dispositions constitutionnelles (définissant pour la plupart des principes généraux) qui consacrent les droits de l'homme et traitent ainsi directement ou indirectement de la discrimination. Il convient toutefois de préciser qu'il est extrêmement difficile de faire découler des droits exécutoires spécifiques de ces principes généraux. L'article 25 de la Constitution hellénique revêt énormément d'importance car il établit clairement que les employeurs du secteur privé doivent eux aussi respecter les droits constitutionnels de leurs travailleurs (comme les droits à l'égalité et à la non-discrimination, par exemple). Le code civil (droit civil) contient également certaines clauses *non limitatives* qui pourraient être invoquées par des personnes victimes de discrimination réclamant une égalité de traitement et une non-discrimination dans leur vie professionnelle. De tels recours restent cependant rares en pratique, hormis dans le domaine de l'emploi, où le principe de l'égalité de traitement est souvent invoqué, mais uniquement en ce qui concerne l'égalité de rémunération sans se fonder sur les cinq motifs de discrimination.

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<sup>7</sup> Grèce, loi 3304 /2005 relative à l'application du principe de l'égalité de traitement indépendamment de l'origine raciale ou ethnique, des convictions religieuses ou autres, du handicap, de l'âge ou de l'orientation sexuelle. Désignation abrégée: loi antidiscrimination (JO 16 A du 27 juillet 2005).

Du côté du droit pénal, aucune disposition ne bannit la pratique discriminatoire générale; il existe toutefois des lois pénales interdisant la discrimination fondée sur l'origine raciale ou ethnique, mais elles ne sont jamais appliquées dans la pratique.

La seule loi explicitement adoptée contre le racisme en Grèce est la loi 927/1979,<sup>8</sup> telle que modifiée par la loi 1419/1984<sup>9</sup> et la loi 4285/2014.<sup>10</sup>

Le droit du travail s'articule en une série de lois qui, en sus de la loi 3304/2005 portant explicitement sur la lutte contre la discrimination, visent à combattre la discrimination dans l'emploi, principalement fondée sur le sexe et l'origine raciale ou ethnique. La loi 1414/1984 relative à l'application du principe de l'égalité des sexes dans les relations du travail, par exemple, réduit la discrimination bien qu'elle s'applique uniquement aux personnes occupées dans le secteur privé. Certaines autres lois définissent un cadre de protection qui oblige les employeurs à respecter les dispositions protectrices et à éliminer les pratiques discriminatoires (licenciements de femmes enceintes ou d'un salarié en rapport avec son origine raciale ou ethnique, par exemple).

La Grèce a ratifié tous les grands traités des droits de l'homme (le Pacte international relatif aux droits civils et politiques, le Pacte international relatif aux droits économiques, sociaux et culturels, la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes, la Convention relative aux droits de l'enfant, la Convention de sauvegarde des droits de l'homme et des libertés fondamentales et la Convention n° 111 sur la discrimination de l'OIT), mais elle n'a pas ratifié le Protocole n° 12 de la CEDH, la Charte sociale révisée et la Convention-cadre du Conseil de l'Europe pour la protection des minorités nationales.

La Grèce a ratifié le 11 avril 2012 la Convention des Nations unies relative aux droits des personnes handicapées et son protocole facultatif au travers de la loi 4074/2012 (OG A' 88 du 11.4.2012). L'article 3 de cette loi dispose que le point de contact et le dispositif de coordination visés à l'article 33 de la Convention seront désignés par décision du Premier ministre. L'article 2 de la loi établit en outre que les dispositions de l'article 27, paragraphe 1, de la Convention ne s'appliquent pas aux forces armées et aux organismes responsables du maintien de l'ordre en ce qui concerne la différence de traitement liée au handicap comme le prévoit l'article 8, paragraphe 4, de la loi n° 3304/2005 relative à la mise en œuvre de l'égalité de traitement conformément aux articles 3, paragraphe 4, et 4 de la directive 2000/78/CE.

Enfin, en janvier 2010, la Commission nationale pour les droits de l'homme (CNDH),<sup>11</sup> organe consultatif auprès du gouvernement hellénique, a émis un avis selon lequel des modifications juridiques à la loi 3304/2005 s'avèrent nécessaires. Sur le plan du contenu de fond de la loi, la CNDH a proposé que la discrimination fondée sur des motifs multiples soit rendue expressément illégale. Elle a fait une autre proposition importante, à savoir que la loi 3304/2005 habilite le Médiateur à intervenir au nom du plaignant dans des affaires qui, impliquant des allégations de discrimination, sont portées en justice après avoir été examinées par ses propres services. Enfin, en ce qui concerne le suivi, la CNDH

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<sup>8</sup> Grèce, loi 927/1979 sur la répression des actes ou activités tendant à la discrimination raciale. Désignation abrégée: loi pénale antiraciste 927/1979 (JO 22 A du 26 juin 1979).

<sup>9</sup> Grèce, loi 1414/1984 relative à l'application du principe de l'égalité des sexes dans les relations du travail et autres dispositions (JO 10 A du 2 février 1984).

<sup>10</sup> Grèce, loi 4285/2014 relative à l'amendement de la loi 927/1979 et son adaptation à la décision-cadre 2008/913/JHA du 28 novembre 2009 sur la lutte contre certaines formes et manifestations de racisme et de xénophobie au moyen du droit pénal et d'autres dispositions. Désignation abrégée: loi antiracisme (JO 191 A du 10 septembre 2014).

<sup>11</sup> CNDH (2010), *Παρατηρήσεις σχετικά με το Ν. 3304/2005* (Observations concernant la loi 3304/2005), disponible (en grec) sur: [http://www.nchr.gr/images/pdf/apofaseis/protaseis\\_epi\\_nomoth\\_keimenwn/n\\_3304.pdf](http://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/n_3304.pdf), consulté en dernier lieu le 10 octobre 2015.

a proposé qu'un organisme unique de promotion de l'égalité (le Médiateur) contrôle l'application de la loi 3304/2005 par rapport aux dispositions de la directive 2000/43/CE.

### **3. Principes généraux et définitions**

La loi antidiscrimination 3304/2005 décrit la «finalité» de la législation, en ce compris tous les motifs discriminatoires visés par les directives.

Cette loi 3304/2005 manque d'une définition spécifique de motifs protégés de discrimination tels que l'origine raciale ou ethnique, la religion ou les convictions, l'âge et l'orientation sexuelle. Elle consacre en ses articles 3 et 7 les deux définitions de la discrimination directe respectivement contenues dans la directive sur l'égalité raciale et dans la directive sur l'égalité dans l'emploi. La définition est la même pour tous les motifs cités dans les directives (origine ethnique ou raciale, convictions religieuses ou autres, handicap, âge ou orientation sexuelle). La loi permet en ses articles 9, paragraphe 2, et 5 la justification d'une discrimination directe, autorisant des dérogations au principe de non-discrimination pour tous les motifs.

La discrimination indirecte est définie pour sa part aux articles 3 et 7, et la justification la concernant est définie à l'article 7, paragraphe 1 sous b).

Le droit national hellénique (y compris la jurisprudence) n'interdit pas la discrimination fondée sur l'association avec des personnes présentant des caractéristiques particulières. La loi 3304/2005 est la première de l'ordre juridique hellénique à contenir une définition du harcèlement qui suit celle figurant dans les directives. Le droit pénal hellénique ne prévoit pas de délit spécifiquement lié au harcèlement. On pourrait toutefois faire valoir que certains aspects du harcèlement sexuel peuvent relever du champ d'application de certaines dispositions du code pénal. À ce titre, la protection contre les rétorsions comprend les mesures nécessaires pour protéger les salariés contre un licenciement ou autre traitement défavorable de la part de l'employeur en réaction à une plainte (formulée à l'intérieur de l'entreprise) ou à toute action en justice visant à faire respecter le principe de l'égalité de traitement (article 15). De manière plus particulière, s'il s'agit d'un traitement défavorable ou d'une conséquence défavorable en réaction à une plainte ou une action en justice visant à faire respecter le principe de l'égalité de traitement dans le domaine de la discrimination ethnique ou raciale, le champ d'application dépasse le domaine de l'emploi et du travail et couvre toutes les personnes, tant pour le secteur public que pour le secteur privé, en ce qui concerne les huit points (a-h) énumérés à l'article 3 de la directive n° 2000/43/CE du Conseil.

La loi antidiscrimination 3304/2005 interdit en son article 2 les injonctions de discriminer. Elle reproduit par ailleurs en son article 10 le libellé exact de l'article 5 de la directive relative à l'égalité dans l'emploi pour ce qui concerne l'aménagement raisonnable.

La législation nationale n'interdit pas expressément l'utilisation du «test de situation» tout en ne le prévoyant pas non plus. Il n'existe aucune jurisprudence en la matière du fait qu'aucune ONG n'a encore recouru à ce test dans aucune affaire (qu'il s'agisse ou non de discrimination). Enfin, le droit hellénique (ou plus exactement la loi 3304/2005) ne contient aucune disposition ou concept en rapport avec une discrimination présumée ou associée, ni aucune règle, projet de règle ou jurisprudence en matière de discrimination multiple.

La législation hellénique prévoit une dérogation pour exigences professionnelles véritables et déterminantes, qui s'applique dans divers contextes. La loi 3304/2005 (articles 5, 9 et 11) dispose que la différence de traitement basée sur une caractéristique liée à l'origine ethnique ou raciale, à des convictions religieuses ou autres, à l'âge ou à l'orientation sexuelle ne constitue pas une discrimination lorsque, en raison de la nature même des activités professionnelles concernées ou du contexte dans lequel elles s'exercent, la caractéristique en question constitue une exigence professionnelle véritable et



déterminante, et pour autant que le but soit légitime et l'exigence proportionnée. Lorsqu'il s'agit de convictions religieuses ou autres, la loi précise que ces convictions doivent également constituer «une exigence professionnelle véritable, légitime et justifiée».

Enfin, l'obligation d'aménagement raisonnable est prévue par la législation hellénique. Elle n'y est cependant pas définie, et une définition du handicap aux fins de réclamer un aménagement raisonnable fait également défaut. La loi 3304/2005 dispose en son article 10 que, dans le but de garantir le respect du principe de l'égalité de traitement à l'égard des personnes handicapées, les employeurs sont tenus de prendre toutes les mesures appropriées, lorsqu'elles s'avèrent nécessaires dans un cas particulier, pour permettre à une personne handicapée d'accéder à un emploi, de l'exercer ou d'y progresser, ou pour qu'une formation lui soit dispensée, sauf si ces mesures imposent à l'employeur une charge disproportionnée. Ceci dit, le handicap bénéficie de la même protection que les autres motifs inclus dans la loi antidiscrimination.

#### **4. Champ d'application matériel**

En ce qui concerne le champ d'application matériel de la législation hellénique visant les motifs concernés, la récente loi antidiscrimination 3304/2005 adopte quasi-littéralement l'article 3 de la directive relative à l'égalité dans l'emploi. Le principe de l'égalité de traitement s'applique à toutes les personnes, tant dans le secteur public que dans le secteur privé, en ce qui concerne a) les conditions d'accès à l'emploi et au travail en général, b) l'accès à tous les types et à tous les niveaux d'orientation professionnelle, de formation professionnelle, de perfectionnement et de formation de reconversion, y compris l'acquisition d'une expérience pratique, c) les conditions d'emploi et de travail et d) l'affiliation et la participation à une organisation de travailleurs ou d'employeurs, ou toute organisation dont les membres exercent une profession donnée. L'article 4 de la même loi 3304/2005 complète, mais en rapport avec la discrimination fondée sur l'origine raciale ou ethnique seulement, le champ d'application matériel couvert par la directive 2000/43/CE sur l'égalité raciale. Le travail indépendant n'est pas inclus dans la loi antidiscrimination.

#### **5. Mise en application de la loi**

La protection et la défense juridique des personnes lésées par une violation de la loi antidiscrimination 3304/2005 sont assurées, en vertu de l'article 13, non seulement par les tribunaux, mais également par des organes administratifs ou l'intervention d'ONG ou de syndicats. L'article 13, paragraphe 3, relatif à la défense des droits souligne que les entités juridiques ayant un intérêt légitime à s'assurer que le principe de l'égalité de traitement est appliqué sans distinction d'origine ethnique ou raciale, de convictions religieuses ou autres, de handicap, d'âge ou d'orientation sexuelle peuvent représenter la personne lésée devant toute juridiction et toute autorité administrative avec le consentement écrit de la personne lésée. Ces entités juridiques sont généralement des ONG et des syndicats, lesquels peuvent donc agir au nom et à l'appui des victimes devant les tribunaux et devant les organes administratifs, mais uniquement à deux conditions:

- 3) que lesdites ONG ou lesdits syndicats aient un intérêt légitime à assurer l'application du principe de l'égalité de traitement;
- 4) que la victime ait donné son consentement à l'organisation, déclarant qu'elle souhaite et accepte d'être représentée par celle-ci.

La charge de la preuve en cas de non-respect de la législation antidiscrimination est abordée à l'article 14 de la nouvelle loi antidiscrimination 3304/2005, qui fait passer cette charge de la victime à l'auteur des faits. Aucune véritable sanction n'est prévue en cas de violation du principe de l'égalité de traitement et de non-discrimination dans la mesure où la seule sanction applicable est une amende que l'employeur qui n'aurait pas respecté ce principe est tenu de payer à l'État et non à la victime, et uniquement s'il s'agit d'une discrimination fondée sur l'origine ethnique ou raciale ou la religion qui intervient dans le cadre de la fourniture de services et de biens au public. De manière plus spécifique,

l'article 16 de la nouvelle loi impose des sanctions sous la forme d'une peine d'emprisonnement allant de six mois à trois ans et d'une amende de 1 000 à 5 000 euros.

Une décision judiciaire<sup>12</sup> a été prononcée en 2014 en matière de discrimination: elle concerne un incident survenu le 10 avril 2013 lorsqu'un chauffeur de bus de la société privée de transport urbain de la ville de Thessalonique (OASTH), agissant de façon provocatrice, a obligé deux passagers d'ascendance africaine à quitter le véhicule. L'arrêt a été rendu le 24 février 2014 par le tribunal correctionnel à juge unique de Thessalonique: il condamne le chauffeur à une peine de prison de dix mois avec sursis et à une amende de 1 000 euros.

Enfin, il est important de souligner l'introduction de la loi 4285/2014 (JO 09 du 10 septembre 2014), qui modifie la loi antiracisme antérieure (927/79) en incluant spécifiquement tous les motifs de discrimination, hormis l'âge. Plus spécialement, en vertu de l'article 10 de la nouvelle loi, un article 81A est ajouté au code pénal pour augmenter les sanctions minimales en cas de délits commis avec une motivation discriminatoire.

## **6. Organisme de promotion de l'égalité de traitement**

Les articles 19 et 20 de la loi 3304/2005 instituent les trois organismes nationaux pour l'égalité, à savoir le Médiateur, la Commission pour l'égalité de traitement et l'Inspection du travail.

### *Le Médiateur*

Le Médiateur est une autorité indépendante reconnue par la révision constitutionnelle de 2001 que la loi antidiscrimination charge de mettre en œuvre le principe de l'égalité de traitement indépendamment de l'origine raciale ou ethnique, des convictions religieuses ou autres, de l'âge, d'un handicap ou de l'orientation sexuelle dans les services publics. Il rédige des rapports et mène des enquêtes sur des plaintes pour non-respect de ce principe (dans tout domaine et pas uniquement dans celui de l'emploi et du travail). Il peut également réaliser des études indépendantes, publier des rapports indépendants et formuler des recommandations concernant la problématique de la discrimination.

### *La Commission pour l'égalité de traitement*

La Commission pour l'égalité de traitement est placée sous la tutelle du ministre de la Justice. Sa compétence s'étend à tout domaine hormis le secteur public, mais elle ne couvre pas l'emploi et le travail. Elle examine donc les plaintes alléguant une violation du principe de l'égalité de traitement relevant de son champ de compétence et tente une médiation entre les parties en conflit. La Commission n'est habilitée à imposer aucune forme de sanction, mais elle est en droit d'entendre des témoins et de réclamer des informations de la part de la partie inculpée ou d'un tiers (pouvoir public ou particulier).

### *L'Inspection du travail*

L'Inspection du travail est un organisme gouvernemental qui exerce exclusivement son activité dans le secteur privé et dans le domaine de l'emploi et du travail. Elle agit en qualité de médiatrice entre l'employeur et le travailleur, et peut également imposer des amendes (payables à l'État et non au travailleur) lorsqu'elle constate une violation du principe de l'égalité de traitement. L'Inspection du travail est habilitée à entendre des témoins et à réclamer des informations de la part de la partie inculpée ou d'un tiers (pouvoir public ou particulier).

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<sup>12</sup> Référence de l'arrêt: 4232/2014.

Les trois organismes pour l'égalité couvrent l'ensemble des cinq motifs visés par les deux directives (autrement dit non seulement la race et l'origine ethnique, mais également la religion et autres convictions, le handicap, l'âge et l'orientation sexuelle), mais le Médiateur en particulier traite d'autres motifs (droits de l'enfant, genre et Roms) et examine des affaires relevant des droits de l'homme en rapport avec le non-respect de la liberté personnelle; le non-respect de la liberté religieuse et de culte; la discrimination fondée sur la nationalité ou l'origine ethnique; la violation des droits des immigrants; l'égalité d'accès à l'instruction publique; la violation du principe de la méritocratie dans les procédures de sélection pour des postes dans le secteur public; la protection des droits professionnels; la non-application du droit d'appel aux autorités administratives et l'efficacité de la protection judiciaire du fait que l'administration publique n'exécute pas les décisions judiciaires. Seul le Médiateur peut, via un système de plaintes, procéder à une médiation entre l'administration publique et les citoyens en vue d'aider ces derniers à exercer plus efficacement leurs droits. Le Médiateur est le seul organisme pour l'égalité habilité à produire des rapports indépendants et à mener des études indépendantes.

Enfin, aucun de ces trois organismes n'est une institution quasi-judiciaire.

#### *Le Conseil économique et social*

Sans faire partie des organismes spécialisés pour l'égalité, le Conseil économique et social est chargé en vertu de l'article 18 de la loi antidiscrimination 3304/2005 de tâches telles que la rédaction d'un rapport annuel sur les développements en matière d'application du principe de l'égalité de traitement; la formulation de suggestions à l'intention du gouvernement et des partenaires sociaux concernant la promotion de l'égalité de traitement et la non-discrimination; et l'encouragement du dialogue avec des ONG et des syndicats représentatifs ayant un intérêt légitime dans la lutte contre la discrimination fondée sur l'origine ethnique ou raciale, la religion ou les convictions, l'orientation sexuelle et le handicap.

### **7. Points essentiels**

Les points essentiels à signaler dans le domaine de la lutte contre la discrimination en Grèce peuvent être récapitulés comme suit:

- 7) Élargissement de la compétence du Médiateur (organisme bien organisé, efficace et indépendant) afin d'y inclure également le secteur privé – ce qui impliquerait que toute autorité publique recevant une plainte ou une information concernant un non-respect du principe de l'égalité de traitement, y compris l'Inspection du travail, devrait la faire parvenir au Médiateur à des fins d'examen et de médiation. Les compétences en la matière de l'Inspection du travail et de la Commission pour l'égalité de traitement du ministère de la Justice devraient dès lors être supprimées.
- 8) L'apport par le Médiateur d'une aide indépendante et spécialisée aux victimes de discrimination. Il conviendrait en outre de modifier les codes de procédure afin d'habiliter le Médiateur à ester en justice en qualité de tiers devant une juridiction civile ou administrative ou en tant que partie civile devant une juridiction pénale.
- 9) L'extension de la compétence *ratione temporis* du Médiateur aux affaires introduites en justice jusqu'à la première audience ou à l'adoption de mesures temporaires. Étant donné que le dépôt d'une plainte auprès du Médiateur ne suspend pas le délai de recours judiciaire, la victime de discrimination pourrait se voir privée de son droit à une protection judiciaire au cas où le Médiateur échoue dans son intervention. L'extension proposée pourrait encourager les victimes de discrimination à faire appel au Médiateur et limiter le nombre d'affaires potentielles portées en justice, une procédure à la fois plus longue et plus onéreuse.

- 10) Un suivi systématique par le Médiateur, en collaboration avec l'Inspection du travail, le département de l'égalité des chances au sein du ministère du Travail et l'Organisation de médiation et d'arbitrage (*Οργανισμός Μεσολάβησης και Διαιτησίας, ΟΜΕΔ*) des développements qui, en matière d'emploi et de travail, de conventions collectives, de codes d'éthique et de pratiques, concernent la lutte contre la discrimination.
- 11) Création, au sein du Conseil économique et social, d'une instance consultative permanente qui, composée de représentants d'ONG et d'organisations en général, et avec la participation du Médiateur, serait chargée de procéder, en concertation avec l'instance plénière du Conseil, à un dialogue social sur l'égalité de traitement.
- 12) Enfin, il va de soi que la recommandation quant à l'élargissement des compétences du Médiateur devrait donner lieu à une augmentation de son budget et de ses effectifs en conséquence.

Des amendements législatifs devraient en outre être adoptés pour résoudre les problèmes suivants:

- Les exigences imposées à la capacité des ONG d'ester en justice devraient être assouplies.
- Des modifications au code de procédure administrative s'imposent pour ce qui concerne la charge de la preuve.
- Des peines d'emprisonnement devraient être prévues dans tous les domaines de discrimination bénéficiant de la protection de la loi antidiscrimination.
- Un amendement de l'article 8, paragraphe 4, relatif à l'extension de la dérogation aux services de police, pénitentiaires et d'urgence s'impose car cette extension est incompatible avec la directive, qui limite le champ d'application de l'exception aux forces armées exclusivement.

## ZUSAMMENFASSUNG

### 1. Einleitung

Griechenland ist eine parlamentarische Demokratie. Die Souveränität des Volkes ist die Grundlage der Regierung und alle Macht geht vom Volke aus und wird für das Volk und die Nation ausgeübt. Die Gesetzgebung liegt bei Parlament und Regierung gemeinsam. Griechenland folgt dem kontinentaleuropäischen Rechtssystem, bei dem das Recht in einzelne Bereiche (Zivilrecht, öffentliches bzw. Verwaltungsrecht, Strafrecht, Wirtschaftsrecht, Arbeitsrecht usw.) unterteilt ist. Griechenland hat kein Verfassungsgericht, jedoch sind alle Gerichte in gewissem Maße verpflichtet, Vorschriften und Gesetze gemäß der griechischen Verfassung auszulegen. Griechenland hat drei höchste Instanzen: den Staatsrat (*Συμβούλιο της Επικρατείας*) (*öffentliches Recht*), den obersten Gerichtshof (*Άρειος Πάγος*) (Zivilrecht) und die Rechenkammer (*Ειδικό Ελεγκτικό Συνέδριο*) (*Verwaltungsgericht mit beschränkter Gerichtsbarkeit*).

Die griechische Verfassung enthält grundlegende Regeln zur Beseitigung jeder Form von Diskriminierung und zur Förderung der Gleichstellung, von denen die meisten in Teil II der Verfassung mit dem Titel „Bürgerliche und soziale Rechte“ enthalten sind. Diese Rechte sind im Einzelnen der Grundsatz der Menschenwürde, die freie Entwicklung der Persönlichkeit und die Teilhabe am wirtschaftlichen, sozialen und politischen Leben des Landes, der Gleichheitsgrundsatz, das Recht auf Gesundheit und Geschlechtsidentität, Religionsfreiheit, Meinungs- und Pressefreiheit, Recht auf Rechtsschutz, Datenschutz, freie Bildung, Schutz von Familie, Ehe und Kindern, Schutz von Menschen mit Behinderungen sowie das Recht auf Arbeit und gleichen Lohn. Außerdem ist der Staat verpflichtet, jede Form der Diskriminierung zu beseitigen. Diese grundlegenden Regeln gelten für alle Rechtsgebiete und müssen immer angewandt werden. Für die einzelnen Gebiete wurden jedoch auch spezielle Gesetze verabschiedet.

### 2. Wichtigste Gesetze

Im griechischen Recht gibt es ein spezielles Antidiskriminierungsgesetz. Das Gesetz Nr. 3304/2005<sup>13</sup> über die Anwendung des Gleichbehandlungsgrundsatzes ungeachtet von Rasse oder ethnischer Zugehörigkeit, Religion oder Weltanschauung, Behinderung, Alter oder sexueller Ausrichtung setzt die Richtlinien 2000/43/EG und 2000/78/EG um und deckt somit alle fünf Diskriminierungsgründe der genannten Richtlinien ab.

Außerdem gibt es auf normativer Ebene (Rechtsnormen des griechischen Rechtssystems) zahlreiche verfassungsrechtliche Bestimmungen (die vor allem allgemeine Grundsätze festlegen), die die Menschenrechte schützen und damit unmittelbar oder mittelbar das Thema Diskriminierung betreffen. Allerdings ist es extrem schwierig, aus diesen allgemeinen Grundsätzen konkrete durchsetzbare Rechte abzuleiten. Artikel 25 der griechischen Verfassung ist enorm wichtig, weil er private Arbeitgeber verpflichtet, die verfassungsmäßigen Rechte ihrer Arbeitnehmer zu wahren (z. B. das Recht auf Gleichstellung und Gleichbehandlung). Im Zivilgesetzbuch (Zivilrecht) gibt es eine *nicht abschließende* Aufzählung von Bestimmungen, auf die sich Opfer von Diskriminierung berufen können, die ihr Recht auf Gleichstellung und Gleichbehandlung im Arbeitsleben durchsetzen möchten. Außer im Bereich Beschäftigung gibt es jedoch in der Praxis kaum entsprechende Klagen und dort auch nur zur Durchsetzung des Grundsatzes der gleichen Entlohnung für gleiche Arbeit und nicht aufgrund der fünf geschützten Diskriminierungsgründe.

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<sup>13</sup> Griechenland, Gesetz 3304 /2005 über die Anwendung des Gleichbehandlungsgrundsatzes ungeachtet von Rasse oder ethnischer Herkunft, Religion oder Weltanschauung, Behinderung, Alter oder sexueller Ausrichtung. Abkürzung: Antidiskriminierungsgesetz (ABl. 16 A /27.07.2005).

Im Strafrecht gibt es kein allgemeines Verbot von Diskriminierung, jedoch einzelne strafrechtliche Bestimmungen, die Diskriminierung aufgrund der Rasse oder ethnischen Zugehörigkeit verbieten; diese werden allerdings in der Praxis nie angewandt.

Das einzige ausdrückliche Antidiskriminierungsgesetz in Griechenland bleibt somit das Gesetz 927/1979,<sup>14</sup> geändert durch das Gesetz 1419/1984<sup>15</sup> und das Gesetz 4285/2014.<sup>16</sup>

Das Arbeitsrecht besteht neben dem ausdrücklichen Antidiskriminierungsgesetz Nr. 3304/2005, das Diskriminierung im Arbeitsleben vor allem aufgrund des Geschlechts und der Rasse oder ethnischen Zugehörigkeit verbietet, aus zahlreichen weiteren Gesetzen. So schränkt beispielsweise das Gesetz 1414/1984 über die Umsetzung des Grundsatzes der Geschlechtergleichstellung in Beschäftigungsverhältnissen Diskriminierung ein, gilt jedoch nur für Beschäftigungsverhältnisse in der Privatwirtschaft. Andere Gesetze bilden einen schützenden Rechtsrahmen, nach dem Arbeitgeber verpflichtet sind, Schutzvorschriften einzuhalten und diskriminierende Verfahren, wie Kündigungen aufgrund einer Schwangerschaft oder aufgrund der Rasse oder ethnischen Zugehörigkeit des Arbeitnehmers, zu beseitigen.

Griechenland hat alle wichtigen Menschenrechtsabkommen ratifiziert (den Internationalen Pakt über bürgerliche und politische Rechte, den Internationalen Pakt über wirtschaftliche, soziale und kulturelle Rechte, das Internationale Übereinkommen zur Beseitigung jeder Form von Rassendiskriminierung, das Übereinkommen zur Beseitigung jeder Form von Diskriminierung der Frau, die UN-Kinderrechtskonvention, die Europäische Menschenrechtskonvention und das Übereinkommen Nr. 111 der Internationalen Arbeitsorganisation), jedoch nicht das 12. Protokoll der Europäischen Menschenrechtskonvention, die revidierte Sozialcharta und das Rahmenübereinkommen zum Schutz nationaler Minderheiten.

Am 11. April 2012 ratifizierte Griechenland mit dem Gesetz 4074/2012 (OG A' 88/11.4.2012) das Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen und dessen Zusatzprotokoll. Nach Artikel 3 des Gesetzes entscheidet der Ministerpräsident über die in Artikel 33 des Übereinkommens geforderte staatliche Anlaufstelle und den Koordinationsmechanismus. Außerdem gelten nach Artikel 2 dieses Gesetzes die Bestimmungen von Artikel 27 Abs. 1 des Übereinkommens nicht für die Streifkräfte und Strafverfolgungsbehörden, in dem Maße, in dem Artikel 8 Abs. 4 des Gesetzes 3304/2005 zur Umsetzung des Gleichbehandlungsgrundsatzes Ungleichbehandlung aufgrund von Behinderung gemäß Artikel 3 Abs. 4 und Artikel 4 der Richtlinie 2000/78/EG erlaubt.

Im Januar 2010 erklärte die Nationale Kommission für Menschenrechte (NCHR),<sup>17</sup> ein Beratungsgremium für die griechische Regierung, in einem Gutachten, dass das Gesetz 3304/2005 reformiert werden muss. Als inhaltliche Änderung schlug die Kommission vor, ein ausdrückliches Verbot von Mehrfachdiskriminierung einzuführen. Außerdem schlug die NCHR vor, dem Ombudsmann durch das Gesetz 3304/2005 das Recht einzuräumen, sich im Namen des Klägers an Verfahren zu beteiligen, in denen Diskriminierungsbeschwerden, die der Ombudsmann bereits untersucht hat, später vor Gericht verhandelt werden.

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<sup>14</sup> Griechenland, Gesetz 927/1979 über die Bestrafung von Handlungen oder Verfahren zum Zweck der Rassendiskriminierung. Abbreviation: Anti-Rassismus-Strafgesetz 927/1979 (ABl. 22 A/26.06.1979).

<sup>15</sup> Griechenland, Gesetz 1414/1984 über die Anwendung des Grundsatzes der Geschlechtergleichstellung in Beschäftigungsverhältnissen und andere Bestimmungen (ABl. 10 A/02.02.1984).

<sup>16</sup> Griechenland, Gesetz 4285/2014 zur Änderung von Gesetz 927/1979 und dessen Anpassung an das Rahmenurteil 2008/913/JI vom 28. November 2009 zur Bekämpfung bestimmter Formen und Ausdrucksformen von Rassismus und Fremdenfeindlichkeit durch das Strafrecht und andere Bestimmungen. Abbreviation: Antirassismusgesetz (ABl. 191 A/10.09.2014).

<sup>17</sup> NCHR (2010), *Παρατηρήσεις σχετικά με το Ν. 3304/2005* (Gutachten zum Gesetz 3304/2005), in griechischer Sprache verfügbar unter: [http://www.nchr.gr/images/pdf/apofaseis/protaseis\\_epi\\_nomoth\\_keimenwn/n\\_3304.pdf](http://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/n_3304.pdf), letzter Zugriff am 10.10.2015.

Schließlich schlug die NCHR vor, dass eine einheitliche Gleichbehandlungsstelle (der Ombudsmann) die Umsetzung des Gesetzes 3304/2005 in Bezug auf die Bestimmungen der Richtlinie 2000/43/EG überwachen soll.

### **3. Wichtigste Grundsätze und Begriffe**

Das Antidiskriminierungsgesetz 3304/2005 beschreibt den „Zweck“ des Gesetzes, einschließlich aller in den Richtlinien genannten Diskriminierungsgründe.

Das Gesetz 3304/2005 enthält keine Definition der verbotenen Diskriminierungsgründe, wie Rasse oder ethnische Zugehörigkeit, Religion oder Weltanschauung, Alter und sexuelle Ausrichtung. Es verankert in Artikel 3 und 7 die Definitionen von unmittelbarer Diskriminierung, die in der Antirassismusrichtlinie und der Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung genannt sind. Die Definition ist für alle von den Richtlinien abgedeckten Diskriminierungsgründe (Rasse oder ethnische Zugehörigkeit, Religion oder Weltanschauung, Behinderung, Alter oder sexuelle Ausrichtung) gleich. Das Gesetz erlaubt in Artikel 9 Abs. 2 und Artikel 5 eine Rechtfertigung für unmittelbare Diskriminierung und sieht Ausnahmen vom Gleichbehandlungsgrundsatz vor.

Mittelbare Diskriminierung wird in Artikel 3 und 7 des Gesetzes definiert. Ausnahmeregelungen vom Verbot der mittelbaren Diskriminierung sind in Artikel 7 Abs. 1(b) festgelegt.

Weder das griechische Recht (noch die Rechtsprechung) verbietet Diskriminierung wegen der Assoziierung mit Menschen mit bestimmten Eigenschaften. Das Gesetz 3304/2005 ist die erste Rechtsvorschrift im griechischen Rechtssystem, deren Bestimmung des Begriffs „Belästigung“ den Richtlinien entspricht. Im griechischen Strafrecht ist Belästigung kein Straftatbestand. Allerdings fallen bestimmte Aspekte der sexuellen Belästigung möglicherweise unter einschlägige Bestimmungen des Strafgesetzbuches. Im Sinne des Gesetzes (Artikel 15) gehören zum Schutz vor Viktimisierung alle Maßnahmen, mit denen Arbeitnehmer vor einer Kündigung oder Benachteiligung durch den Arbeitgeber als Reaktion auf eine Beschwerde (intern im Unternehmen) oder eine Klage vor Gericht zum Zweck der Durchsetzung des Gleichbehandlungsgrundsatzes geschützt werden. Sofern die Benachteiligung oder nachteilige Folge die Reaktion auf eine Beschwerde oder eine Klage zum Zweck der Durchsetzung des Gleichbehandlungsgrundsatzes im Hinblick auf Rasse oder ethnische Zugehörigkeit darstellt, gilt dieser Schutz über den Bereich der Beschäftigungs- und Arbeitsbedingungen hinaus in allen öffentlichen und privaten Bereichen, die in den acht Buchstaben (a-h) des Artikels 3 der Richtlinie 2000/43/EG genannt sind.

Artikel 2 des Gesetzes 3304/2005 verbietet die Anweisung zur Diskriminierung. Zum Thema angemessene Vorkehrungen wiederholt das Gesetz den genauen Wortlaut von Artikel 5 der Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung (Artikel 10).

Das griechische Recht verbietet Situationstests zwar nicht ausdrücklich, sieht sie aber auch nicht vor. Es gibt keine einschlägige Rechtsprechung, weil keine NRO bisher in einem konkreten Fall (weder in Diskriminierungsfällen noch sonst) den Situationstest genutzt hat. Das griechische Recht (und insbesondere Gesetz Nr. 3304/2005) enthält keine Bestimmungen oder Definitionen zur Diskriminierung aufgrund mutmaßlicher oder assoziierter Eigenschaften und es gibt auch keine Vorschriften zu Mehrfachdiskriminierung, keine Pläne zur Einführung entsprechender Bestimmungen und keine Rechtsprechung, in denen es um Mehrfachdiskriminierung geht.

Das griechische Recht sieht Ausnahmeregelungen für wesentliche und entscheidende berufliche Anforderungen vor. Sofern es um berufliche Anforderungen geht, sind Ausnahmen in verschiedenen Bereichen möglich. Nach dem Gesetz 3304/2005 (Artikel 5, 9 und 11) stellt eine Ungleichbehandlung wegen eines Merkmals, das im Zusammenhang

mit der Rasse oder ethnischen Zugehörigkeit, Religion oder Weltanschauung, dem Alter oder der sexuellen Ausrichtung steht (Behinderung ist nicht abgedeckt), keine Diskriminierung dar, wenn das betreffende Merkmal aufgrund der Art einer bestimmten beruflichen Tätigkeit oder der Bedingungen ihrer Ausübung eine wesentliche und entscheidende berufliche Anforderung darstellt, sofern es sich um einen rechtmäßigen Zweck und eine angemessene Anforderung handelt. Auch im Bezug auf Religion oder Weltanschauung schreibt Gesetz 3304/2005 vor, dass diese eine „wesentliche, rechtmäßige und gerechtfertigte berufliche Anforderung“ darstellen müssen.

Schließlich sieht das griechische Gesetz eine Pflicht zu angemessenen Vorkehrungen vor. Das Gesetz enthält jedoch weder eine Definition von „angemessenen Vorkehrungen“ noch davon, welche „Behinderung“ einen Anspruch auf angemessene Vorkehrungen begründet. Nach Artikel 10 des Gesetzes 3304/2005 „müssen Arbeitgeber, um die Anwendung des Gleichbehandlungsgrundsatzes auf Menschen mit Behinderung zu gewährleisten, alle im konkreten Fall erforderlichen Maßnahmen ergreifen, um Menschen mit Behinderung den Zugang zur Beschäftigung, die Ausübung eines Berufes, den beruflichen Aufstieg und die Teilnahme an Aus- und Weiterbildungsmaßnahmen zu ermöglichen, es sei denn, diese Maßnahmen würden den Arbeitgeber unverhältnismäßig belasten“. Dennoch gilt für Behinderung dasselbe Schutzniveau wie für die anderen Diskriminierungsgründe, die durch das Antidiskriminierungsgesetz abgedeckt sind.

#### **4. Sachlicher Anwendungsbereich**

In Bezug auf den sachlichen Anwendungsbereich des griechischen Rechts über die einschlägigen Diskriminierungsgründe setzt das geltende griechische Antidiskriminierungsgesetz Nr. 3304/2005 praktisch wörtlich Artikel 3 der Richtlinie zur Gleichbehandlung im Bereich der Beschäftigung um. Der Grundsatz der Gleichbehandlung gilt für alle Personen in öffentlichen und privaten Bereichen in Bezug auf a) die Bedingungen für den Zugang zu Beschäftigung und Erwerbstätigkeit allgemein, b) den Zugang zu allen Formen und allen Ebenen der Berufsberatung, der Berufsausbildung, der beruflichen Weiterbildung und der Umschulung, einschließlich der praktischen Berufserfahrung, c) die Beschäftigungs- und Arbeitsbedingungen und d) die Mitgliedschaft und Mitwirkung in einer Arbeitnehmer- oder Arbeitgeberorganisation oder einer Organisation, deren Mitglieder einer bestimmten Berufsgruppe angehören. Artikel 4 des gleichen Gesetzes Nr. 3304/2005 fügt für Diskriminierung aufgrund der Rasse oder ethnischen Zugehörigkeit den sachlichen Anwendungsbereich der Antirassismusrichtlinie 2000/43/EG hinzu. Selbständige Erwerbstätigkeit fällt nicht unter das Antidiskriminierungsgesetz.

#### **5. Rechtsdurchsetzung**

Personen, die Opfer eines Verstoßes gegen das Antidiskriminierungsgesetz 3304/2005 sind, genießen gemäß dessen Artikel 13 nicht nur Rechtsschutz und Vertretung durch Gerichte, sondern auch durch Verwaltungsstellen, NRO und Gewerkschaften. Nach Artikel 13 Abs. 3 über die Durchsetzung von Rechten „können juristische Personen, die ein rechtmäßiges Interesse daran haben, für die Einhaltung des Gleichbehandlungsgrundsatzes ungeachtet von Rasse oder ethnischer Zugehörigkeit, Religion oder Weltanschauung, Behinderung, Alter oder sexueller Ausrichtung zu sorgen, die benachteiligte Person vor Gericht oder bei einer behördlichen Stelle mit deren schriftlicher Einwilligung vertreten“. Diese juristischen Personen sind meist NRO und Gewerkschaften. Das heißt, NRO und Gewerkschaften können sich im Namen und zur Unterstützung von Opfern an Verfahren vor Gericht oder behördlichen Stellen beteiligen, jedoch nur unter zwei Bedingungen:

- 5) die NRO und/oder Gewerkschaft hat ein rechtmäßiges Interesse an der Durchsetzung des Gleichbehandlungsgrundsatzes,
- 6) das Opfer hat seine Zustimmung erteilt, dass die Organisation es vertritt und erklärt, dass es der Vertretung zustimmt.



Artikel 14 des neuen Antidiskriminierungsgesetzes 3304/2005 betrifft die Beweislast bei Verstößen gegen das Diskriminierungsverbot und sieht eine Umkehr der Beweislast vom Opfer zum Täter vor. Für Verletzungen des Gleichbehandlungsgrundsatzes und des Diskriminierungsverbots gibt es keine echten Sanktionen. Die einzig mögliche Sanktion ist eine Geldbuße, die Arbeitgeber, die gegen das Gleichbehandlungsgebot verstoßen, und Anbieter von öffentlichen Gütern und Dienstleistungen, die Personen aufgrund der Rasse oder ethnischen Zugehörigkeit oder der Religion diskriminieren, an den Staat und nicht an das Opfer zu zahlen haben. Jedoch sieht Artikel 16 des neuen Gesetzes Sanktionen in Form einer Haftstrafe von sechs Monaten bis drei Jahren und eine Geldstrafe zwischen 1000 und 5000 Euro vor.

Im Jahr 2014 erging ein Gerichtsurteil<sup>18</sup> zu einem Fall vom 10. April 2013, bei dem ein Busfahrer der privaten Verkehrsgesellschaft der Stadt Thessaloniki (OASTH) zwei Fahrgäste afrikanischer Herkunft provoziert und zum Verlassen des Fahrzeugs gezwungen hat. In dem Urteil des Sicherheitsgerichts von Thessaloniki, das am 24. Februar 2014 erfolgte, wurde der Fahrer zu einer Haftstrafe von 10 Monaten auf Bewährung und einer Geldstrafe von 1000 Euro verurteilt.

Außerdem muss hier auf die Verabschiedung des Gesetzes 4285/2014 (ABl. 09/10.09.2014) hingewiesen werden, das das bisherige Antirassismugesetz 927/79 um alle einschlägigen Diskriminierungsgründe außer Alter erweitert. Insbesondere führt Artikel 10 des neuen Gesetzes in das Strafgesetzbuch den Artikel 81A ein, der die Mindeststrafe für Straftaten, die aufgrund von Vorurteilen begangen werden, erhöht.

## **6. Gleichbehandlungsstellen**

Mit Artikel 19 und 20 des Gesetzes 3304/2005 werden drei Gleichbehandlungsstellen eingerichtet. Dies sind der griechische Ombudsmann, die Arbeitsaufsichtsbehörde und die Gleichbehandlungskommission.

### *Der Ombudsmann*

Der Ombudsmann ist eine unabhängige Stelle, die seit der Verfassungsreform von 2001 auch von der Verfassung anerkannt wird. Der Ombudsmann ist nach dem Antidiskriminierungsgesetz für die Durchsetzung des Gleichbehandlungsgrundsatzes ungeachtet von Rasse oder ethnischer Zugehörigkeit, Religion oder Weltanschauung, Alter, Behinderung oder sexueller Ausrichtung im öffentlichen Dienst zuständig. Er verfasst Berichte und untersucht Beschwerden aufgrund von Verstößen gegen diesen Grundsatz (in jedem Bereich, nicht nur im Bereich Beschäftigung). Außerdem kann er unabhängige Studien über Diskriminierung durchführen, unabhängige Berichte veröffentlichen und Empfehlungen dazu abgeben.

### *Der Gleichbehandlungsausschuss*

Der Gleichbehandlungsausschuss untersteht dem Justizminister. Er ist für alle Bereiche außer dem öffentlichen Sektor zuständig, jedoch nicht für Arbeits- und Beschäftigungsverhältnisse. Er untersucht Beschwerden aufgrund von Verstößen gegen den Gleichbehandlungsgrundsatz in seinem Zuständigkeitsbereich und führt Schlichtungsverfahren zwischen den Streitparteien durch. Der Ausschuss kann keine Sanktionen verhängen, er darf jedoch Zeugen anhören und vom Beklagten und Dritten (öffentliche Behörden oder Einzelpersonen) Informationen anfordern.

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<sup>18</sup> Aktenzeichen des Urteils: 4232/2014.

## *Arbeitsaufsichtsbehörde*

Die Arbeitsaufsichtsbehörde ist eine staatliche Stelle, die nur im privaten Bereich und für Arbeits- und Beschäftigungsverhältnisse zuständig ist. Die Aufsichtsbehörde vermittelt als Schlichtungsstelle zwischen Arbeitgeber und Arbeitnehmer und kann in Fällen, in denen gegen den Gleichbehandlungsgrundsatz verstoßen wurde, auch Geldbußen verhängen (zu zahlen an den Staat und nicht an den Arbeitnehmer). Die Aufsichtsbehörde kann Zeugen hören und vom Beklagten und Dritten (öffentlichen Behörden oder Einzelpersonen) Informationen anfordern.

Alle drei Gleichbehandlungsstellen decken die fünf Diskriminierungsgründe der beiden Richtlinien ab (das heißt nicht nur Rasse und ethnische Zugehörigkeit, sondern auch Religion und Weltanschauung, Behinderung, Alter und sexuelle Ausrichtung). Jedoch deckt insbesondere der Ombudsmann weitere Rechte ab (Kinderrechte, Geschlecht und Roma) und untersucht die folgenden Fälle, in denen Menschenrechte verletzt wurden: Verletzung der persönlichen Freiheit, der Religions- und Glaubensfreiheit, Diskriminierung aufgrund der nationalen oder ethnischen Zugehörigkeit, Verletzung der Rechte von Einwanderern, gleichberechtigter Zugang zur staatlichen Bildung, Verletzung des Grundsatzes der Meritokratie bei der Besetzung von Stellen im öffentlichen Dienst, Schutz beruflicher Rechte, Verletzung des Rechts auf Beschwerde bei einer öffentlichen Stelle und des Rechts auf wirksamen Rechtsschutz in Form der Umsetzung von Gerichtsurteilen durch öffentliche Stellen. Nur der Ombudsmann kann durch ein Beschwerdesystem zwischen der öffentlichen Verwaltung und Bürgern vermitteln, um Bürger bei der wirksamen Durchsetzung ihrer Rechte zu unterstützen. Der Ombudsmann ist auch die einzige Gleichbehandlungsstelle, die unabhängige Berichte herausgeben und unabhängige Studien durchführen kann.

Keine der drei Stellen übt eine quasi-gerichtliche Funktion aus.

## *Wirtschafts- und Sozialrat*

Obwohl der Wirtschafts- und Sozialrat keine spezialisierte Gleichbehandlungsstelle ist, hat er nach Artikel 18 des Antidiskriminierungsgesetzes 3304/2005 ähnliche Befugnisse: Erstellung eines Jahresberichts zu Entwicklungen bei der Anwendung des Gleichbehandlungsgrundsatzes, Empfehlungen für Regierung und Sozialpartner zur Förderung der Gleichbehandlung und Antidiskriminierung und Förderung des Dialogs mit NRO und Gewerkschaften, die ein rechtmäßiges Interesse an der Bekämpfung von Diskriminierung aufgrund von ethnischer Zugehörigkeit oder Rasse, Religion oder Weltanschauung, sexueller Ausrichtung und Behinderung haben.

## **7. Wichtige Punkte**

Die wichtigen Punkte im griechischen Diskriminierungsrecht lassen sich wie folgt zusammenfassen:

- 13) Ausweitung des Zuständigkeitsbereichs des Ombudsmanns (einer gut organisierten, effizienten und unabhängigen Stelle) auf die Privatwirtschaft. Das würde bedeuten, dass öffentliche Stellen, einschließlich der Arbeitsaufsichtsbehörde, die Beschwerden oder Informationen über Verstöße gegen den Gleichbehandlungsgrundsatz erhalten, diese an den Ombudsmann zur Untersuchung und Schlichtung weiterleiten. Die entsprechenden Zuständigkeiten der Arbeitsaufsichtsbehörde und der Kommission für Gleichbehandlung des Justizministeriums sollten daher gestrichen werden.
- 14) Unabhängige und spezialisierte Unterstützung für Opfer von Diskriminierung durch den Ombudsmann. Außerdem sollte die Prozessordnung so geändert werden, dass der Ombudsmann als dritte Partei vor Zivil- und Verwaltungsgerichten oder als zivile Partei vor Strafgerichten *parteifähig* wird.

- 15) Ausweitung der *zeitlichen Gültigkeit* bei der Zuständigkeit des Ombudsmanns auf Fälle, bei denen bereits Klage eingereicht wurde bis zum ersten Verhandlungstermin oder bis zur Anordnung einer einstweiligen Verfügung. Da eine Beschwerde vor dem Ombudsmann die Verjährungsfrist nicht verlängert, könnten Opfer ihr Recht auf Gerichtsschutz verlieren, wenn die Schlichtung vor dem Ombudsmann nicht gelingt. Diese Ausweitung könnte Diskriminierungsopfer ermutigen, die Hilfe des Ombudsmanns zu suchen und dadurch die Anzahl potentieller Gerichtsverfahren senken, die länger dauern und teurer sind.
- 16) Systematische Überwachung von Entwicklungen in Arbeits- und Beschäftigungsverhältnissen, Tarifverträgen, Verhaltenskodizes und -richtlinien zum Kampf gegen Diskriminierung durch den Ombudsmann in Zusammenarbeit mit der Arbeitsaufsichtsbehörde, der Abteilung für Chancengleichheit des Ministeriums für Arbeit und der Organisation für Mediation und Schlichtung (*Οργανισμός Μεσολάβησης και Διαιτησίας, ΟΜΕΔ*).
- 17) Schaffung eines dauerhaften Beratungsorgans innerhalb des Wirtschafts- und Sozialrats, in dem Vertreter von NRO und anderen Organisationen vertreten sind, dessen Exekutivausschuss gemeinsam mit dem Ombudsmann für die Förderung des sozialen Dialogs zur Gleichbehandlung verantwortlich ist.
- 18) Schließlich sollten als Ergebnis der empfohlenen Ausweitung der Zuständigkeit des Ombuds auch dessen personelle und finanzielle Mittel entsprechend erhöht werden.

Ferner sollten folgende Probleme durch entsprechende Gesetzesänderungen gelöst werden:

- Die Bedingungen für eine Beteiligung von NRO an Gerichtsverfahren sollten gelockert werden.
- In der Verwaltungsverfahrensordnung sollte eine Umkehr der Beweislast eingeführt werden.
- Für alle durch das Antidiskriminierungsgesetz geschützten Diskriminierungsbereiche sollte die Möglichkeit von Haftstrafen eingeführt werden.
- Änderung von Artikel 8 Abs. 4, mit dem die Polizei, Gefängnisse und Rettungsdienste vom Diskriminierungsverbot ausgenommen werden. Dies verstößt gegen die Richtlinie, die Ausnahmen nur für die Streitkräfte vorsieht.

## INTRODUCTION

### The national legal system

Greece is a parliamentary republic.<sup>19</sup> Popular sovereignty is the foundation of government and all powers derive from the people and exist for the people and the nation.<sup>20</sup> The national legislative authority rests jointly with Parliament and the Government. Greece follows a civil law system (continental) with fields of law separated into specific bodies (civil law, public/administrative law, criminal law, commercial law, labour law etc.). Greece does not have a Constitutional Court, yet all courts of all degrees have an inherent obligation to interpret rules and laws in conformity with the Greek Constitution. Greece has three supreme courts: the Council of State (*Συμβούλιο της Επικρατείας*) (public law), the Supreme Court (*Άρειος Πάγος*) (private law) and the Chamber of Accounts (*Ειδικό Ελεγκτικό Συνέδριο*) (limited jurisdiction administrative court).

The Greek Constitution contains fundamental rules on the elimination of all forms of discrimination and the promotion of equality, most of which are contained in Part II, 'Civil and Social Rights'. These rights are, namely, the principle of human dignity, the free development of one's personality and participation in the financial, social and political life of the country, the principle of equality, the right to health and gender identity, religious freedom, freedom of speech and the press, the right to legal protection, the protection of personal data, free education, protection of family, marriage and children, protection of people with disabilities, the right to work and equal remuneration. In addition, the State is obliged to eliminate any existing discrimination. These fundamental rules are applicable to all national fields of law and should always be adhered to. However, special laws have been adopted for each field.

It is important, moreover, to highlight that the Greek Constitution declares in Article 28 that the 'generally recognised' rules of international law as well as international conventions constitute an integral part of Greek law which come into force as of the time they are ratified by statute in Greece, and that they prevail over any contrary statutory provisions. However, 'the rules of international law and international conventions shall be applied to aliens only under the condition of reciprocity'. Moreover, as a result of Greek accession to the European Communities, EU law has become part of the legal system. Beside the rules of primary sources of EU law, which prevail over domestic law, secondary EU legislation, especially regulations, is directly applicable in Greece.

Under the Anti-discrimination Law 3304/2005,<sup>21</sup> three specialised bodies are responsible for the promotion of equal treatment: the Greek Ombudsman, the Labour Inspectorate and the Equal Treatment Commission.

### List of main legislation transposing and implementing the directives

- Anti-discrimination Law 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 (transposes EU Directives 2000/43/EC and 2000/78/EC)  
Adopted: 16 January 2005 by the Greek Parliament  
Entered into force: 27 January 2005

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<sup>19</sup> Constitution, Article 1(1) Greece is not a federal state. The text of the Greek Constitution is available in English at: [www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma](http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma), last accessed on 10.10.2015.

<sup>20</sup> Constitution, Article 1(2), 1(3).

<sup>21</sup> Greece, Law 3304 /2005 On the application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation (Νόμος 3304/2005 «Εφαρμογή της αρχής της ίσης μεταχείρισης ανεξαρτήτως φυλετικής ή εθνοτικής καταγωγής, θρησκευτικών ή άλλων πεποιθήσεων, αναπηρίας, ηλικίας ή γενετήσιου προσανατολισμού»). Abbreviation: Anti-discrimination Law (OJ 16 A /27.07.2005).

- Protected grounds: racial or ethnic origin, religious or other beliefs, disability, age, or sexual orientation
- Material scope: all persons in both the public and private sectors; the fields of access to employment and occupation (but not self-employment), vocational training and education, social protection, including social security and healthcare, education, and access to goods and services, including housing

*Additional anti-discrimination legislation:*

- Anti-racism Law 4285/2014<sup>22</sup> on the amendment of Law 927/1979 (A' 139) and adjustment to the Framework Decision 2008/913/JHA of 28 November 2008, to combat certain forms and acts of racism and xenophobia through Criminal Law (L 383) and others  
Adopted: 9 September 2014  
Entered into force: 10 September 2014  
Protected grounds: race, colour, religion, descent, national or ethnic origin, disability, sexual orientation, gender identity  
Material scope: all persons in both the public and private sectors; violations of the Criminal Code (criminal offences)
- Law 3896/2010<sup>23</sup> on the implementation of equal opportunities and equal treatment of men and women in situations regarding occupation and employment – harmonisation of current legislation with European Parliament and Council Directive 2006/54/EC of 5 July 2006  
Adopted: 8 December 2010  
Entered into force: 8 December 2010  
Protected grounds: gender  
Material scope: public and private sector on all issues related to occupation and employment
- Presidential Decree 131/2003<sup>24</sup> on the adjustment to Directive 2000/31/EC of the EP and EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market, Article 2, para. 2 and para. 4  
Adopted: 16 May 2003  
Entered into force: 17 January 2002  
Protected grounds: race, sex, religion and nationality  
Material scope: radio and television news and political broadcasts. Prohibits broadcasting of racist and xenophobic and intolerant views, in particular concerning ethnic or religious minorities and other vulnerable population groups

<sup>22</sup> Law 4285/2014 on the Amendment of Law 927/1979 (A' 139) and adjustment to the Framework Decision 2008/913/JHA of November 28, 2008, for combating certain forms and acts of racism and xenophobia through Criminal Law (L 383) and other (Νόμος 4285/2014 «Τροποποίηση του ν. 927/1979 (Α' 139) και προσαρμογή του στην απόφαση - πλαίσιο 2008/913/ΔΕΥ της 28ης Νοεμβρίου 2008, για την καταπολέμηση ορισμένων μορφών και εκδηλώσεων ρατσισμού και ξενοφοβίας μέσω του ποινικού δικαίου (L 328) και άλλες διατάξεις»). Abbreviation: Antiracist Law (OJ 191 A/10.09.2014).

<sup>23</sup> Law 3896/2010 on the implementation of equal opportunities and equal treatment of men and women in situations regarding occupation and employment – harmonisation of current legislation with European Parliament and Council Directive 2006/54/EC of 5 July 2006 (Νόμος 3896/2010 « Εφαρμογή της αρχής των ίσων ευκαιριών και της ίσης μεταχείρισης ανδρών και γυναικών σε θέματα εργασίας και απασχόλησης Εναρμόνιση της κείμενης νομοθεσίας με την Οδηγία 2006/54/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 5ης Ιουλίου 2006 και άλλες συναφείς διατάξεις»). Abbreviation: Gender Equality Law (OJ 207 A/08.12.2010).

<sup>24</sup> Presidential Decree 131/2003 on the adjustment to Directive 2000/31/EC of the EP and EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market (ΠΔ 131/2003 «Προσαρμογή στην Οδηγία 2000/31 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου σχετικά με ορισμένες νομικές πτυχές των υπηρεσιών της κοινωνίας της πληροφορίας, ιδίως του ηλεκτρονικού εμπορίου, στην εσωτερική αγορά – Οδηγία για το ηλεκτρονικό εμπόριο»). Abbreviation: Presidential Decree adopting the Electronic Commerce Directive (OJ 116 A/16.05.2003).

- Presidential Decree 109/2010<sup>25</sup> on the harmonisation of Greek radio and television legislation with the provisions of Directive 2010/13/EC of the EP and EC, Article 7  
 Adopted: 5 November 2010  
 Entered into force: 19 December 2009  
 Protected grounds: race, gender, religion, beliefs, nationality, disability, age and sexual orientation  
 Material scope: all audio-visual service providers. Obligation to ensure that audio-visual programmes do not cause hate due to race, sex, religion, beliefs, nationality, disability, age and sexual orientation, and they must also not take advantage of people's superstitions and prejudices

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<sup>25</sup> Presidential Decree 109/2010, on the Harmonisation of the Greek radio-television legislation to the provisions of Directive 2010/13 of the EP and EC *et al* (ΠΔ 109/2010 «Εναρμόνιση της ελληνικής ραδιοτηλεοπτικής νομοθεσίας στις διατάξεις της Οδηγίας 2010/13/ΕΕ (ΕΕ L 95 της 15.4.2010) του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, με την οποία κωδικοποιήθηκαν οι διατάξεις της Οδηγίας 89/552/ΕΟΚ (ΕΕ L 298 της 17.10.1989) του Συμβουλίου, όπως ίσχυε μετά την τελευταία τροποποίησή της από την Οδηγία 2007/65/ΕΚ (ΕΕ L 332 της 18.12.2007) του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου για το συντονισμό ορισμένων νομοθετικών, κανονιστικών και διοικητικών διατάξεων των κρατών μελών σχετικά με την παροχή υπηρεσιών οπτικοακουστικών μέσων»). Abbreviation: Presidential Decree adopting the Media Services Directive (OJ 190 A/05.03.2010).

## 1 GENERAL LEGAL FRAMEWORK

### Constitutional provisions on protection against discrimination and the promotion of equality

The Greek Constitution includes the following articles dealing with non-discrimination: Article 4(1), Article 4(2), Article 5 (1-2), Article 2 (1), Article 9A, Article 16 (4), Article 21 (1), Article 22 (1-2) (b), Article 25 (1), Article 116 (2).

The Constitution has always contained a general provision requiring equality for all Greeks before the law (Article 4(1)). In 1975, when the Constitution came into force, one of its important features was the strengthening of human rights.

In the area of constitutional provisions, in its first part the Greek Constitution assigns to the State the primary obligation to respect and protect the value of the human being. The Greek Constitution also contains a specific and general non-discrimination provision that explicitly protects all people, Greek citizens and foreign nationals, men and women, old and young. In particular, Article 5, para. 1 stipulates: 'All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages [the principles of morality]. 2. All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.'<sup>26</sup> Therefore, Article 5 of the Constitution is considered as the constitutional basis of all Greek non-discrimination law.

The Constitution includes the principles of human dignity<sup>27</sup> and free development of personality;<sup>28</sup> the principle of general equality;<sup>29</sup> the right to protection of health;<sup>30</sup> freedom of religion; freedom of opinion and of the press; freedom of art, science, research and teaching; the right to judicial protection; the right to be protected against misuse of personal data;<sup>31</sup> the right to receive free education on all levels at state educational institutions;<sup>32</sup> the right to a family,<sup>33</sup> the protection of marriage, motherhood, childhood and families with many children;<sup>34</sup> the right to work and to receive equal pay for work of equal value;<sup>35</sup> the right to respect of human and social rights;<sup>36</sup> and the right to enjoy affirmative measures to counterbalance real inequality.<sup>37</sup>

These rights and principles conceptually cover all the anti-discrimination grounds and material fields mentioned in Directives 2000/43/EC and 2000/78/EC. Theoretically, therefore, nothing would stand in the way of victims of discrimination, regardless of their racial or national origin, religious or other beliefs (disability, age or sexual orientation are also included, though not specifically mentioned), invoking these provisions and attempting to initiate a discussion towards promoting social integration and inclusion and combating

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<sup>26</sup> The above excerpt has been taken from the official English version of the Greek Constitution, as it is displayed on the Greek Parliament's official website. The term "good usages" refers to the Greek term «χρηστά ήθη». A more precise translation of this term would be "principles of morality".

<sup>27</sup> Constitution, Article 2(1).

<sup>28</sup> Constitution, Article 5(1).

<sup>29</sup> Constitution, Article 4(1).

<sup>30</sup> Constitution, Article 5(5).

<sup>31</sup> Constitution, Article 9A.

<sup>32</sup> Constitution, Article 16(4).

<sup>33</sup> Constitution, Article 21(1).

<sup>34</sup> Constitution, Article 21(1-2).

<sup>35</sup> Constitution, Article 22(1)(b).

<sup>36</sup> Constitution, Article 25(1).

<sup>37</sup> Constitution, Article 116(2).

discrimination through general human rights protection.<sup>38</sup> As general principles, such constitutional provisions clearly cover every aspect of human life and personal development, and as such they offer a resource for people who are not protected under other provisions of national law. Even though constitutional anti-discrimination provisions are directly applicable, it would be extremely difficult to derive specific enforceable rights from these general clauses, given that such general clauses are no substitute for more specific legislation which adds clarity and enforceability to individual rights.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional equality clauses can be enforced against private actors (as opposed to the State). Article 25 of the Greek Constitution is immensely important because it clearly indicates that private employers must also respect the constitutional rights of their employees (e.g. the rights of equality and non-discrimination). It was added during the last constitutional amendment of 2001 and it should be used against the previously predominant doctrine that constitutional provisions protect citizens against unequal treatment or discrimination by state entities only and not by employers in the private sector.

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<sup>38</sup> Especially after the constitutional amendment of Article 25, by virtue of which "[human rights] also apply to the relations between [private] individuals to which they are appropriate" (excerpt taken from the English version of the Greek Constitution).



## **2 THE DEFINITION OF DISCRIMINATION**

### **2.1 Grounds of unlawful discrimination explicitly covered**

The following grounds of discrimination are explicitly protected against discrimination in national law: race, ethnic origin, language, religion, political or other beliefs, sex, disability, age and sexual orientation.

#### **2.1.1 Definition of the grounds of unlawful discrimination within the directives**

**Note:** *Law 3304/2005 lacks any specific definition of anti-discrimination grounds such as racial or ethnic origin, religion or belief, age and sexual orientation.*

##### **Race**

According to Act 474/1990 (Article 1, para. 1), which ratified the International Convention on the Elimination of All Forms of Discrimination (ICERD), 'racial discrimination means any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.'

##### **Disability**

After the adoption of Law 4074 /2012<sup>39</sup> by the Greek Parliament (on 11 April 2012), the definition<sup>40</sup> of disability that is included in the UN Convention on the Rights of Persons with Disabilities (UNCPRD) can be regarded as having been officially transposed into Greek law. Thus, in this indirect way, the definition can be regarded as compatible with the concept adopted by the Court of Justice of the European Union in Joined Cases C-335/11 and C-337/11 *Skouboe Werge and Ring*, Paragraph 38.

##### **Religion**

There is no legal definition of religion or religious belief in the Greek legal system.

##### **Age**

There is no legal definition of the protected ground of age in the Greek legal system.

##### **Sexual orientation**

There is no legal definition of sexual orientation in the Greek legal system.

#### **2.1.2 Multiple discrimination**

In Greece prohibition of multiple discrimination is not included in the general Anti-discrimination Law 3304/2005.

However, on 5 August 2011, Law 3996/2011<sup>41</sup> concerning a general reform of the Labour Inspectorate 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 the protection of workers' and employees' rights. This is the first time a legislative instrument explicitly refers to multiple discrimination, as well as to discrimination concerning people living with HIV/AIDS (as a special category of disabled people). Namely, Law 3996/2011 'on the reform of the Labour Inspectorate', in Article 2(1) (h), states clearly that: '... [the Labour Inspectorate] supervises the implementation of the

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<sup>39</sup> Greece, Law 4074/2012 (OJ 88 A/11.04.2012).

<sup>40</sup> 'Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others' (UN Convention on the Rights of Persons with Disabilities, Article 1, para.2).

<sup>41</sup> Greece, Law 3996/2011 (OJ 170 A/13.08.2011).

principle of equal treatment irrespective of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation, taking into consideration instances of multiple discrimination in accordance with Article 19 of Law 3304/2005 [...].'

In Greece there is no case law dealing with multiple discrimination.

Moreover, there is no information available from the equality bodies regarding their jurisprudence in 2014 to assist in assessing the way they are tackling intersectional discrimination<sup>42</sup> or discrimination on multiple grounds.

### **2.1.3 Assumed and associated discrimination**

#### **a) Discrimination by assumption**

In Greece national law (including case law) does not prohibit discrimination based on perception or assumption of what a person is.

There is no case-law on discrimination based on perceptions or assumption of what a person is.

#### **b) Discrimination by association**

In Greece national law (including case law) does not prohibit discrimination based on association with people with particular characteristics.

According to Greek law, only people who, in a comparable situation to that of others, are treated less favourably or are placed in a disadvantageous situation because of characteristics which are particular to them can rely on Greek anti-discrimination law. Therefore, Greek law is not in line with the judgment in Case C-303/06 *Coleman v Attridge Law and Steve Law*.

## **2.2 Direct discrimination (Article 2(2) (a))**

#### **a) Prohibition and definition of direct discrimination**

In Greece direct discrimination is prohibited in national law and is defined.

Law 3304/2005 enshrines the definitions of direct discrimination from both the Racial Equality Directive and the Employment Equality Directive.

- Regarding discrimination on the grounds of racial or national origin, (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation (Article 3(a)).
- Regarding discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation (Article 7(1) (a)).

#### **b) Justification of direct discrimination**

Anti-discrimination Law 3304/2005 permits justification of direct discrimination in relation to all grounds. More specifically, this law stipulates that:

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<sup>42</sup> Intersectional discrimination refers to discrimination on more than one grounds, where the influence of those grounds cannot be disentangled. For more information: Schiek, D. and Lawson, A. (2013), Introduction, in Schiek, D. and Lawson, A. (Eds.), *European Union Discrimination Law and Intersectionality*, Ashgate Publications, pp.1-10, at p. 3.

- A difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, and the requirement is proportionate (Article 5).
- A difference of treatment which is based on a characteristic related to religious or other beliefs, disability 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, and the requirement is proportionate (Article 9(1)).

Moreover, Article 9(2) of the Anti-Discrimination Law stipulates that the religious or other beliefs referred to in Article 9(1), should also be 'a genuine, legitimate and justified occupational requirement'.

The test that must be satisfied to justify direct discrimination is as follows: a difference of treatment, which is based on a characteristic related to any of the grounds, shall be justified if, 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, and the requirement is proportionate.

### **2.2.1 Situation testing**

#### **a) Legal framework**

In Greece national law does not explicitly disallow the use of situational testing but at the same time makes no provision for it.

According to the Greek Code of Civil Procedure (Article 342), there are only seven 'means of evidence' and situation testing is not included among them. However, Article 347 stipulates that in cases where the probability of facts is considered 'by law' (in general) to be an 'adequate factor' to establish evidence, the court has discretionary power to take into consideration any suitable means in order to substantiate 'probability' and form its opinion about the truth of the facts. As a result, it is a matter of jurisprudence to interpret whether or not 'situation testing' refers to the issue of 'probability of discrimination', as defined in Article 14 of the Anti-discrimination Law 3304/2005 ('Burden of proof'), and therefore whether or not it falls within the scope of the legal provision of Article 347 of the Code which allows other means of evidence.

#### **b) Practice**

In Greece situation testing is not used in practice.

No relevant jurisprudence exists, because situational testing has not yet been used in practice by NGOs in any category of case (not only in discrimination cases). In any case, the Constitution prohibits the use of evidence which has been acquired in violation of the rights of privacy of correspondence (Article 19), of domicile (Article 9) and of protection of personal data (Article 9A).

### **2.3 Indirect discrimination (Article 2(2) (b))**

#### **a) Prohibition and definition of indirect discrimination**

In Greece indirect discrimination is prohibited in national law and is defined. Law 3304/2005 defines indirect discrimination as follows:

- Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular racial or national origin at a particular disadvantage compared with other persons (Article 3(b)).
- Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons (Article 7(1) (b)).

b) Justification test for indirect discrimination

There is no relevant jurisprudence or practice in these matters. The justification test applied to direct discrimination is also applied to indirect discrimination (Article 7(1) (b)).

c) Comparison in relation to age discrimination

The Law does not specify how a comparison is to be made. Article 11 of Law 3304/2005 provides that differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are justified by employment policy, labour market and vocational training objectives, and the means of achieving that aim are appropriate and necessary.

### 2.3.1 Statistical evidence

a) Legal framework

In Greece there are national rules permitting data collection.

According to Article 7 of Law 2472/1997<sup>43</sup> regulating data collection:

- 1) The collection and processing of sensitive data is prohibited.
- 2) Exceptionally, the collection and processing of sensitive data, as well as the establishment and operation of the relevant file, will be permitted by the Personal Data Protection Authority, when one or more of the following conditions occur:
  - Processing relates to data made public by the data subject or is necessary for the recognition, exercise or defence of rights in a court of justice or before a disciplinary body.
  - Processing is carried out exclusively for research and scientific purposes provided that anonymity is maintained and all necessary measures for the protection of the persons involved are taken.

According to Article 2 of Law 2472/1997:

‘Sensitive data’ shall mean data referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership of a society, association or trade union, health, social welfare and sexual life as well as criminal charges or convictions.

Statistical data are not used to design positive action measures.

With regard to data processing, Article 5(1) of the same law provides that ‘processing of personal data will be permitted only when the data subject has given his/her consent’.

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<sup>43</sup> Law 2472/1997 on the Protection of Individuals in relation to Personal Data Processing (OJ 133 A/10.04.1997).

In Greece statistical evidence is permitted by national law in order to establish indirect discrimination.

In particular, national law does not explicitly prohibit the use of statistical evidence, but at the same time does not expressly allow it. No relevant jurisprudence exists.

b) Practice

In Greece statistical evidence in order to establish indirect discrimination is not used in practice. The use of statistical evidence is not widespread. The only reluctance to use statistical data as evidence arises from legislation relating to the collection of data. There is no influence from other countries.

There is no relevant case law in this area.

## **2.4 Harassment (Article 2(3))**

a) Prohibition and definition of harassment

In Greece, harassment is prohibited in national law and is defined.

According to Article 2(2) of Law 3304/2005, harassment occurs when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating dignity and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Article 2(2) in combination with Article 1 prohibits harassment.

In Greece harassment does explicitly constitute a form of discrimination as stipulated in Article 2(2) of Law 3304/2005 ('harassment falls within the scope of discrimination').

b) Scope of liability for harassment

Where harassment is perpetrated by an employee in Greece, liability is as follows.

The scope of liability is narrow. There are no provisions concerning the extension of liability with regard to the actions of employees, third parties, co-workers or clients, members of trade unions or other trade/ professional associations. However, under the general civil law (Article 922 of the Civil Code), employers are liable for the actions of their employees.

There is no relevant case law.

## **2.5 Instructions to discriminate (Article 2(4))**

a) Prohibition of instructions to discriminate

In Greece instructions to discriminate are prohibited in national law and are defined.

Law 3304/2005 on anti-discrimination prohibits instructions to discriminate.

Article 2(3) of Law 3304/2005 provides that, 'an order to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination'.

National law does not go beyond the requirements of the directives. In Greece instructions do explicitly constitute a form of discrimination, according to Article 2 (3) of Law 3304/2005.

b) Scope of liability for instructions to discriminate

In Greece, the instructor is liable. The discriminator is not liable.

The scope of liability is narrow. There are no provisions concerning the extension of liability with regard to actions of employees, third parties, co-workers or clients and members of trade unions or other trade/ professional associations. As for employees, there is vicarious liability and therefore the individual who commits a discriminatory act because they receive an instruction to do so cannot be held liable. This means that employers are liable for discrimination flowing from instructions.

There is no relevant case law.

**2.6 Reasonable accommodation duties (Article 2(2) (b) (ii) and Article 5 Directive 2000/78)**

a) Implementation of the duty to provide reasonable accommodation in the field of employment

In Greece the duty to provide reasonable accommodation is included in the law but is not defined.

In Greek non-discrimination law there is no definition of disability for the purposes of claiming reasonable accommodation.

Article 10 of Law 3304/2005 provides that, 'in order to guarantee compliance with the principle of equal treatment of persons with disabilities, 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'.

However, after the adoption of the aforementioned Law 4074/2012 by the Greek Parliament (on 11 April 2012), which ratified the UN Convention on the Rights of Persons with Disabilities, the right of persons with disabilities to enjoy, 'a work environment that is open, inclusive and accessible' to them, as defined in Article 27, para. 1 of the Convention is guaranteed, and therefore a claim for reasonable accommodation on their behalf is protected by the Greek legal order.

Moreover, concerning the definition of disability for the purposes of claiming reasonable accommodation, there is a judicial precedent. An applicant before the Athens Court of First Instance, a bank employee with disabilities, contested her transfer to another bank branch which was a long way from her home. The Court investigated whether there were other employees with the same qualifications available to work at that bank branch. When the Court verified such availability, it ruled against the bank (Judgment 2048/2008<sup>44</sup>). However, it is noteworthy that the Court did not take the opportunity provided by this case in order to provide a clear definition.

Furthermore, Judgment 2048/2008 confused the duty to provide reasonable accommodation with the general rule of non-discrimination, in the sense that, even if there were no other employees with the same qualifications available to work at the particular bank branch, the duty to provide reasonable accommodation is very strict and favours persons with disabilities.

Law 3304/2005 contains a provision for this duty under Article 10.

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<sup>44</sup> Single-Member First Instance Court of Athens, Case 2048/2008, *EEpΔ 2008*, 1514 (hereinafter Judgment 2048/2008).

There is relevant case-law: Judgment 2048/2008.

The ratified UNCRPD can, by virtue of Article 28 of the Greek Constitution, be regarded as a legal basis for more possibilities in the field of reasonable accommodation (e.g. education, health etc.) but its relevance to the issue remains unclear until there is case law.

b) Practice

Article 10 of Law 3304/2005 provides that this burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of disability policy.

There is no specific definition of 'reasonable' or 'disproportionate burden'.

As for the availability of financial assistance from the State as a factor to be taken into account in assessing whether there is a disproportionate burden, Article 10 of the Law provides that in such cases (where financial assistance is provided by the State) accommodation cannot be regarded as a disproportionate burden.

c) Definition of disability and non-discrimination protection

In Greek non-discrimination law there is no definition of disability specifically as a protected ground. However, disability is covered by the same protection as the other grounds included in non-discrimination law.

d) Duties to provide reasonable accommodation outside the field of employment

In Greece there is no duty to provide reasonable accommodation for people with disabilities outside the employment field.

Fields other than employment are not included in the relevant Article 10 of Law 3304/2005.

There is no case law.

e) Failure to meet the duty of reasonable accommodation

In Greece, failure to meet the duty of reasonable accommodation constitutes direct discrimination.

In particular, according to Judgment 2048/2008 of the Athens Court of First Instance, failure to meet the duty of reasonable accommodation counts as direct discrimination. What really happened is that the court did not consider 'reasonable accommodation' as a separate notion or provision but regarded it as a form of direct discrimination, which means that the claim of the applicant to be entitled to reasonable accommodation was not accepted.

For this type of discrimination there is no defence of justification other than on grounds of disproportionate burden.

Therefore, there is no specific separate sanction for failure to meet the duty of reasonable accommodation. The general sanction for a direct form of discrimination, according to the Anti-discrimination Law 3304/2005, is provided by Law 2639/1998 (Article 16) and concerns administrative sanctions for employers that include a fine ranging from EUR 150 to EUR 10 000 and a temporary suspension of its business for three days.

Law 3304/2005 clearly provides for the shift of the burden of proof when claiming the right to reasonable accommodation. Article 14(1) of Law 3304/2005 stipulates the following:

'When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.'

f) Duties to provide reasonable accommodation in respect of other grounds

In Greece there is no duty to provide reasonable accommodation in respect of any other grounds (race or ethnic origin, religion or belief, age or sexual orientation) in the public or private sectors.

g) Accessibility of services, buildings and infrastructure

In Greece national law requires services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way.

More specifically, Law 2831/2000, under Article 28<sup>45</sup> requires disability-accessible buildings and infrastructure. The provision is very extensive: it establishes detailed technical accessibility standards and permission for any new building is conditional on its compliance with these standards. In practice, this law is generally complied with, since the provision of building permits is highly dependent on adherence to the rules of Law 2831/2000.<sup>46</sup>

There is no relevant case law.

In Greece national law does not contain a general duty to provide accessibility by anticipation for people with disabilities.

h) Accessibility of public documents

National law does not require public services to translate some or all of their documents into Braille. No sign language interpreting is provided.

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<sup>45</sup> Greece, Law 2831/2000 on the amendment of the provisions of Law 1577/85 on general building regulations and other provisions ( OJ 140 A/13.01.2000).

<sup>46</sup> Τατιάνη, Μ. και Μπούτη-Λεμπέση, Ε. (2006) *Νομικό Πλαίσιο Έκδοσης Οικοδομικών Αδειών* (Tatiani, M. and Bouti-Lempesi, E., *Legal framework for issuing building permits*), available at: [www.teelar.gr/images/Seminaria/Diakasias\\_Ekdosis\\_Adeion.pdf](http://www.teelar.gr/images/Seminaria/Diakasias_Ekdosis_Adeion.pdf), last accessed on 10.10.2015.



### **3 PERSONAL AND MATERIAL SCOPE**

#### **3.1 Personal scope**

##### **3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)**

In Greece the following residence, citizenship and nationality requirements are applied for protection under the relevant national laws transposing the directives.

There is only one uniform law (Law 3304/2005) transposing the directives; its provisions apply to everyone in both the public and private sectors. This law does not provide for any restriction related to residence. However, in Articles 4(2) and 8(2) it provides a restriction related to citizenship/nationality requirements, since it stipulates that it does not cover differences of treatment based on nationality, for example in the exercise of the general interest of public authorities or the State (Law 2431/1996 on appointment or employment of EU nationals in the public administration),<sup>47</sup> and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals or stateless persons on Greek territory and to any treatment which arises from the legal status of third-country nationals and stateless persons. Furthermore, Law 2431/1996 provides that the precondition of Greek nationality is not included within the other prerequisites for the employment of EU nationals. According to Article 1, the only exemption allowed requires that nationals of other Member States are employed in positions where the duties and competences do not result in direct or indirect participation in the exercise of the general interest of public authorities, the State or other public sector interests.

It has already been noted that, as regards the status of foreign nationals, they are entitled to the same rights as Greek nationals under the applicable law, pursuant to rules which allow foreign nationals to choose whether Greek law applies or not. Many bilateral treaties signed by the Greek State also call for national or most-favoured-nation treatment of foreign nationals. According to Law 1975/1991 on the entry, departure, stay, employment and deportation of aliens, an 'alien is any person who does not have Greek nationality or a person who is not indigenous'.<sup>48</sup>

Presidential Decrees 358/1997 and 359/1997<sup>49</sup> confer equal employment rights on Greek citizens and all foreign nationals legally working in Greece, with no discrimination, racial or otherwise. Section 19 of the Nationality Code, under which Greek nationals who leave the country with no intention of returning could be deprived of their nationality, was repealed by Law 2623/1998.<sup>50</sup>

Furthermore, Article 4 of the Civil Code stipulates that foreign nationals enjoy the same civil law rights as Greek nationals.

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<sup>47</sup> Greece, Law 2431/1996 on the appointment and hiring of EU citizens in the public sector (OJ 175 A/30.07.1996).

<sup>48</sup> Greece, Law 1975/1991 on the entrance, exit, stay, employment and deportation of aliens, the procedure for the recognition of refugees and other provisions (OJ 184 A/04.12.1991). However, since 1997 the Greek Manpower Employment Organisation (OAED) has put into effect a long-term 'Operational Programme to Combat Exclusion from the Labour Market' that covers 'immigrants from third countries, refugees, persons repatriated from Western European countries, persons repatriated from countries other than Western European countries, Pomaks and Roma'. Beneficiaries of this project are 'unemployed persons or persons with no steady employment'. The project aims to provide vocational training and to facilitate access by the above groups to the labour market.

<sup>49</sup> Presidential Decrees 358/1997 and 359/1997 on the registration and legalisation of aliens (OJ 240 A/01.03.1997).

<sup>50</sup> Greece, Law 2623/1998 on the reorganisation of voting registers, organisation and exercise of voting rights of non-county voters, modernisation of the voting process and other provisions (OJ 139 A/18.11.1998).

From this general legal principle it has been concluded in Greek law that foreign nationals legally employed or working in Greece are subject to Greek labour law under the same conditions as Greek nationals (Article 3(1)(a) and (c) of the Directive). Law 1876/1990<sup>51</sup> on free collective bargaining covers everyone employed in the private sector.<sup>52</sup> However, Greek labour law contains provisions which are discriminatory to migrant workers, such as those regarding compensation in cases of accidents at work. According to the Decree of 24 July/25 August 1920 (amended), compensation due to foreign workers is dependent on various conditions such as their residence in Greece.<sup>53</sup> According to the same law, foreign workers are entitled to the same treatment as nationals on condition that there is reciprocity between Greece and their respective countries of origin by virtue of relevant inter-state agreements. These provisions raise serious questions of compatibility between the above Greek legislation and international social rights standards established, *inter alia*, by the International Covenant on Economic, Social and Cultural Rights.

### **3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)**

#### **a) Natural and legal persons**

In Greece the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination.

The relevant provisions are Articles 4, 8 and 9(2) of Law 3304/2005.

More specifically, Law 3304/2005 does not distinguish between natural and legal persons as far as the protection provided is concerned. In fact it only refers to 'persons'. However, given that the grounds of anti-discrimination provisions, such as racial or ethnic origin, age, disability and sexual orientation, constitute personal protected characteristics, it could be argued that protection thereof could be applied only to natural persons. On the other hand, it also can be argued that the protection of the anti-discrimination law, if applicable, can include foreign legal persons operating in Greece, or organisations the scope of which is based on religious or other beliefs, as explicitly provided for in Article 9(2) of this law. Therefore, the national provisions seem to comply with the directive.

There is no relevant case law.

In Greece the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

Law 3304/2005 does not distinguish between natural and legal persons as far as liability is concerned. There is no special reference in the law. It is obvious that both natural and legal persons are liable when discrimination derives from them.

There is no relevant case law.

#### **b) Private and public sector including public bodies**

In Greece the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

The relevant provisions are Articles 4 and 8 of Law 3304/2005.

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<sup>51</sup> Greece, Law 1876/1990 on free collective negotiations and other provisions (OJ 27 A /08.03.1990).

<sup>52</sup> Ληξουριώτης, Ι. (1998) *Το νομικό καθεστώς του μετανάστη μισθωτού στην Ελλάδα*, Αντ. Ν. Σακκουλας 1998 (Lixouriotis, G. *The legal status of the immigrant worker in Greece*).

<sup>53</sup> Ληξουριώτης, Ι. (1998) *Το νομικό καθεστώς του μετανάστη μισθωτού στην Ελλάδα*, Αντ. Ν. Σακκουλας 1998 (Lixouriotis, G. *The legal status of the immigrant worker in Greece*). See also Council of State judgments 2599/1982, 2637/1982, 1318/1990, affirming the above, reported in UNHCR *Yearbook of refugee and aliens law* 1999, pp. 160–166 (GYRAL) (Υπατη Αρμοστέια Ηνωμένων Εθνών για τους Πρόσφυγες, *Επετηρίδα Δικαίου Προσφύγων και Αλλοδαπών* 1999). See also Auditors' Court judgment 1617/1998, affirming the right of the alien widow of a Greek citizen, a former public servant, to receive the pension of her deceased husband, reported in GYRAL, p. 182.

The national provisions comply with the directive.

There is no special reference in the law.

There is no relevant case law.

## **3.2 Material scope**

### **3.2.1 Employment, self-employment and occupation**

In Greece national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, military service and holding statutory office, for the five grounds.

As to its scope, Law 3304/2005 mirrors Article 3 of the Racial Equality Directive and Employment Equality Directive:

1. Without prejudice to paragraphs 2, 3, and 4 of this article, and to Article 9,<sup>54</sup> the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
  - (a) conditions for access to employment and occupation in general,<sup>55</sup> including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, as well as the terms of professional growth including promotion;
  - (b) access to all types and to all levels of vocational guidance, vocational training, and retraining, vocational reorientation including practical work experience;
  - (c) employment and working conditions, including dismissals and pay;
  - (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
  - (e) this Law does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.
2. This Law does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.
3. This Law, in so far as it relates to discrimination on the grounds of special needs and age,<sup>56</sup> shall not apply to the armed forces.

There is relevant case law, especially on the introduction of age limits, which found that such restrictions in the armed forces, the fire service, judges' placements etc. constituted discrimination based on age.<sup>57</sup>

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<sup>54</sup> On professional requirements.

<sup>55</sup> Self-employment is not strictly included in the law. However, the specific provision could be interpreted in a way that would allow 'self-employment' to be included.

<sup>56</sup> The phrase 'special needs' refers to disability. (In Greece, people with disabilities are usually referred to as 'persons with special needs').

<sup>57</sup> See, for instance, Decisions before the Council of State: 1421/2005, 413/1993 (Plenary), 1844/1994, 3354/1996, 2325/2002 255/2003, 594/2003, 3133/2004, 3444/2004, 3786/2007, 1319/2008, 1146/2010 and 2365/2010, available at: [www.ste.gr/portal/page/portal/StE](http://www.ste.gr/portal/page/portal/StE), last accessed on 10.10.2015.

### **3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1) (a))**

In Greece national legislation includes conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both the private and public sectors, as described in the directives.

The relevant provisions are Articles 4 (1) and 8 (1) (a) of Law 3304/2005.

With regard to case law, please refer to the section above.<sup>58</sup>

### **3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1) (c))**

In Greece national legislation includes working conditions, including pay and dismissals, for all five grounds and for both private and public employment.

The relevant Article is Article 8 (1) (c) of Law 3304/2005.

Moreover, according to Article 3(2) of Presidential Decree 358/1997 on preconditions and procedures for the legal stay and employment of foreign nationals in Greece who are not EU nationals, an employer who omits to declare the employment of a third-country national has infringed the regulations of the Social Insurance Funds and all occupational and social security obligations, even if the work is carried out within a legal contract.

Presidential Decree 359/1997/ 'granting a residence permit for a limited period to foreign nationals' provides that a foreign employee who has been granted a temporary residence permit acquires the same occupational rights and obligations as a Greek employee with regard to pay, working terms and conditions, and the insurance rights and contributions of the employer. Presidential Decrees 358/1997 and 359/1997, which introduced a specific category of permits, have since been repealed according to Article 65 (para. 2) of Law 2910/2001. However, they are considered to be important, as they first inaugurated equal rights and the substance of these provisions has been successfully transferred to Law 2910/2001 (Article 39). Finally, Law 1556/1985,<sup>59</sup> on the ratification of the International Labour Organisation Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) of 1983, declares the principle of equal opportunities for disabled employees and employees in general and for male and female employees. In addition, under the provisions of Law 2639/1998, employers in breach of the non-discrimination legislation are liable to administrative fines and may be taken to court.

There is no relevant case law.

- Occupational pensions constituting part of pay

Articles 4(1) and 8(1) (a) of Law 3304/2005 mirror the text of Article 3 of Directive 2000/78/EC:

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<sup>58</sup> See, for instance, Decisions before the Council of State: 1421/2005, 413/1993 (Plenary), 1844/1994, 3354/1996, 2325/2002 255/2003, 594/2003, 3133/2004, 3444/2004, 3786/2007, 1319/2008, 1146/2010 and 2365/2010, available at: [www.ste.gr/portal/page/portal/StE](http://www.ste.gr/portal/page/portal/StE), last accessed on 10.10.2015.

<sup>59</sup> Greece, Law 1556/1985 on the ratification of ILO convention 159/83 on vocational rehabilitation and employment (disabled persons) (OJ 167 A/30.09.1985).

'Without prejudice to paragraphs 2, 3, 4 of this Article, and to Article 9,<sup>60</sup> the principle of equal treatment, as established in this Law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: conditions for access to employment and occupation in general, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, as well as the terms of professional growth including promotion; employment and working conditions, including dismissals and pay'.

In the author's view, by adopting this definition the national law ensures the prohibition of discrimination even in respect of occupational pensions because they are directly, or even indirectly, related to 'employment and working conditions, including ... pay'. As yet, there is no jurisprudence related to this provision of Law 3304/2005.

Even after Case C-267/06 *Maruko*, which confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC, there is no related jurisprudence.

### **3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1) (b))**

In Greece national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses. All grounds are covered.

According to Article 4(1) (b) of Law 3304/2005:

- '1. Without prejudice to paragraphs 2, 3, and 4 of this article, and to Article 9, the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:  
(...)
- (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience.'

There is no indication of the extent of the application of Law 3304/2005 with regard to technical schools, universities, adult lifelong learning courses etc.

Nevertheless, the anti-discrimination law must be interpreted in the light of EU law and the Greek Constitution. In addition, under Article 16(7) of the Greek Constitution, technical schools, universities and adult lifelong learning courses are under the protection of the State.

Law 1414/1984<sup>61</sup> and most of its provisions, including restriction of scope to the private sector, seem to have been replaced by Law 3488/2006<sup>62</sup> on the 'Implementation of the principle of equal treatment of men and women regarding access to employment, vocational training and promotion, terms and conditions of work'.<sup>63</sup>

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<sup>60</sup> On professional requirements.

<sup>61</sup> Greece, Law 1414/1984 on the application of the principle of gender equality in labour relations and other provisions (OJ 10 A/02.02.1984).

<sup>62</sup> Greece, Law 3488/2006 on the application of the principle of equal treatment of men and women concerning access to employment, vocational training and promotion, labour terms and conditions and other provisions (OJ 191 A/11.09.2006).

<sup>63</sup> See CoE, *Fourth report on the implementation of the Additional Protocol to the European Social Charter*, Add Prot/GR/IV2008, available at: [http://www.coe.int/t/DGHL/MONITORING/SOCIALCHARTER/Reporting/StateReports/Greece4AP\\_fr.pdf](http://www.coe.int/t/DGHL/MONITORING/SOCIALCHARTER/Reporting/StateReports/Greece4AP_fr.pdf) last accessed on 10.10.2015, which refers to Law 3488/2006.

Law 2956/2001<sup>64</sup> on Restructuring the Manpower Employment Organisation (OAED – *Οργανισμός Απασχόλησης Εργατικού Δυναμικού*) provides for the vocational training of disabled people.

Articles 9 and 10 of Law 2224/1994<sup>65</sup> ensures access by nationals of other contracting parties to all vocational guidance and training programmes run by OAED.

There is no relevant case law.

### **3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1) (d))**

In Greece national legislation includes membership of, and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

Article 8(1) (d) of Law 3304/2005 repeats the text of Article 3 of the Employment Equality Directive:

'1. Without prejudice to paragraphs 2, 3, and 4 of this article, and to Article 9, the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.'

Moreover, Article 4(1) stipulates that the public and private sectors, including public bodies, are also covered:

'1. Without prejudice to paragraphs 2, 3, and 4 of this article, and to Article 9, the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:[...].'

In addition to Law 3304/2005, Law 1426/1984<sup>66</sup> on the ratification of the European Social Charter recognises and prohibits any discrimination on the grounds of membership of and activity in trade unions or employers' or employees' organisations.

Article 7(1) of Law 1264/1982<sup>67</sup> provides for the right of foreign nationals legally employed in Greece to be members of professional associations of any kind. Until recently, problems had been experienced with the right of foreign workers to establish themselves and join professional associations. According to Article 107 of the Introductory Law of the Civil Code, executive board members of non-profit associations ('*somateia*') must be Greek nationals.

The restrictive nature of this antiquated provision has been supported by case law.<sup>68</sup>

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<sup>64</sup> Greece, Law 2956/2001 on the restructuring of OAED and other provisions (OJ 258 A/06.11.2001).

<sup>65</sup> Greece, Law 2224/1994 on the regulation of employment, union rights, worker's health and safety and the organisation of the Labour Ministry and the legal bodies it supervises and other provisions (OJ 84 A/02.06.2010).

<sup>66</sup> Greece, Law 1426/1984 on the ratification of the European Social Charter (OJ 32 A/21.03.1984).

<sup>67</sup> Greece, Law 1264/1982 on the democratisation of the union movement and the establishment of workers' union rights (OJ 71/01.07.1982).

<sup>68</sup> Athens Court of First Instance judgment 4311/1984, *Nomiko Vima* (NV) (1985), p. 1222.

### **3.2.6 Social protection, including social security and healthcare (Article 3(1) (e) Directive 2000/43)**

In Greece national legislation includes social protection, including social security and healthcare, as formulated in the Racial Equality Directive. Therefore, only the grounds of race and ethnic origin are covered.

Article 4 (1) (e) of Law 3304/2005 follows the wording of the Racial Equality Directive, and only in relation to racial or ethnic origin discrimination: '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'.

It should be noted that regular insurance risks are considered to be sickness, maternity, disability, industrial injury or disease, old age, death of a family provider, lack of housing and the destruction of agricultural production. With regard to healthcare, the Greek Constitution, as amended in April 2001, provides that 'all persons' have the right to health protection (Article 5(5)).

Social care is the subject of Law 2646/1998<sup>69</sup> on the development of the national system of social care. According to this law, social care means 'protection provided to persons or groups through programmes of prevention and rehabilitation and aims to create the conditions for equal participation by these persons in economic and social life and safeguards a decent standard of living for them'.

According to Article 1(2) of Law 2646/1998, 'social care' involves state responsibility and anyone legally residing in Greece who is in an emergency situation is entitled to social care from the institutions of the national system.

Article 3(3) of the same law expressly provides that social care services are provided without any distinction, according to the particular personal, family, economic and social needs of the beneficiaries.

It is noteworthy that in early 2013 civil society organisations regarded as discriminatory a measure introduced by the Greek Government concerning the imposition of double charges at Greek public hospitals for all non-Greeks. In particular, through a common Ministerial Act which entered into force on 23 November 2012,<sup>70</sup> all foreign, non-permanent residents, both from the EU and from third countries, had to pay 2.09 times more than Greek patients. This has caused many problems, particularly for migrant women giving birth. In one instance a woman of Albanian ethnicity gave birth at a public hospital and, since she was unable to pay, she had to find a relative to sign a guarantee. What is more, doctors were required to report any undocumented migrants to the relevant authorities. There have also been reports of raids at hospitals by Golden Dawn members, targeted against patients and staff from migrant backgrounds.

Consequently, in January 2013 the Greek Forum of Migrants, the Greek Council for Refugees, and the Union of Hospital Doctors of Athens and Piraeus, together with 15 doctors, brought an action for annulment to the Council of State, which is the Supreme Administrative Court in Greece, challenging the cancellation of the Ministerial Decision which stipulates that medical services for citizens who are not permanent residents in Greece, such as tourists (including EU citizens) may be charged double compared to Greek citizens. According to the applicants, provision of health services is differentiated in contravention of Articles 2, 5, 21, 25 and 43 of the Greek Constitution, Article 14 of the European Convention of Human Rights and Article 21 of the Charter of Fundamental Rights. The case is still pending, since it has been repeatedly postponed.

<sup>69</sup> Greece, Law 2646/1998 on the development of a national care system and other provisions (OJ 236 A/20.10.1998).

<sup>70</sup> [Amendment of Circular Y4a/oik.18051/27.3.2012](#), OJ 3096 B/23.11.2013.

- Article 3.3 exception

Article 8(4) of Law 3304/2005 law relies on the exception in Article 3.3 of the Employment Equality Directive in relation to religion or belief, age, disability and sexual orientation, but there has been no case law so far.

### **3.2.7 Social advantages (Article 3(1) (f) Directive 2000/43)**

In Greece national legislation includes social advantages as formulated in the Racial Equality Directive, which only covers race and ethnic origin.

The relevant article is Article 4 (1) (e) and (f) of Law 3304/2005.

The category of 'social advantages' is not often explicitly addressed in Greek law and, when it is, it is generally and broadly defined. Law 139/1975<sup>71</sup> on the status of stateless persons, for example, explicitly addresses 'social advantages'. In this context this term covers housing, the supply of goods with coupons, as well as public education and care, and even the entirety of labour law protection and social security.

In Greece the lack of a definition of social advantages does not create problems. For instance, reduced-rate train travel or reduced bus fares for large families are granted to all (large families), regardless of their racial or ethnic origin, on the legal basis of Law 3304/2005, as well as on the general constitutional principles of equal treatment and non-discrimination.

### **3.2.8 Education (Article 3(1) (g) Directive 2000/43)**

In Greece national legislation includes education as formulated in the Racial Equality Directive, which only covers the grounds of race and ethnic origin.

Article 4 (1) (g) of Law 3304/2005 includes the field of education, but only in respect of race and ethnic origin, as required by the Racial Equality Directive. There is no explicit provision prohibiting discrimination in the field of access to education on the grounds of religion or other belief, age, disability or sexual orientation.

- Pupils with disabilities

Law 2817/2000, relating to education for children with disabilities, mandates the free education of children with special needs in kindergartens and primary and secondary level schools and educational institutions with different curriculum models. The structure of education for individuals with disabilities in Greece, as well as the legal definition of adapted physical education, is included in this law.

This law mandates the education of children with disabilities in state schools, special schools and vocational schools at primary and secondary level. Education in State schools can be offered in at least four settings:

in inclusive classes within state schools: in this environment, children with disabilities must be assessed before admission by a group of specialists (comprising a primary school teacher, secondary school teacher, psychologist and medical doctor); in special classes within state schools; in special classes within hospitals/institutions; or in their own homes.

In Greece there are separate state schools for certain categories of people with disabilities. These are primary and secondary schools for deaf children, primary and secondary schools for blind children and primary and secondary schools for blind children with cerebral palsy.

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<sup>71</sup> Greece, Law 139/1975 on the ratification of the UN Convention relating to the Status of Stateless Persons (OJ 176 A/25.08.1975).



According to the aforementioned Law 2817/2000 on education for children with disabilities, the rule (the preference) for these groups of pupils is mainstream education and the exception (in very special cases) is segregated education. The latter is not regarded as discriminatory.

The above legal framework was complemented by the new Law 3699/2008 on 'Special education for people with disabilities or special educational needs'.

The aim of the Law is to guarantee to all children with disabilities their right to education and social and professional integration, along with equal opportunities for full participation in and contribution to society. Special education is defined as an integrated part of universal free, state education at every level (pre-school, primary school and secondary school). The diagnosis process is an essential element of the system of special education. The special educational needs of disabled children are 'identified', investigated and verified by public bodies called 'Centres of special committees for evaluation and diagnosis', under the auspices of the Ministry of Education. They comprise a variety of specialists who play a key role in the accommodation of the needs of disabled children (Article 4). The Centres are authorised to propose individually tailored programmes of educational and psychological support for the children and to recommend the specific school units to which they should be admitted. The remit of the Centres also includes providing advisory support to school staff where necessary; supervising the children's school work and identifying their skills; defining specific educational and technical equipment required to meet the children's educational needs; organising potentially constant medical support for children who need it during school hours; proposing suitable methods for teaching and assessing the pupils, taking into consideration their different disabilities; and producing reports for each individual child.

With regard to enrolment at universities, there are no uniform rules governing admissions procedures for people with disabilities. Law 3794 / 2009 (Article 35) does state that 5 % of the top achievers with disabilities may apply for a course of their choice without sitting examinations, but the decision about whether to accept them rests with the individual university department.

In Greece the general approach to education for pupils with disabilities does raise issues.

The Greek Ombudsman, in its 2014 special report on discrimination,<sup>72</sup> dealt with discrimination on the ground of disability in post-secondary education. More specifically, the Ombudsman intervened to request the transfer of an individual who suffered from a very serious medical condition (case No 186218/2014). She had been admitted by the Faculty of Biology at the University of Patra for the academic year 2013-2014, according to the special category of people who suffer from serious medical conditions. Subsequently, she applied for a transfer to the University of Athens. However, the Faculty declined her application because, according to Ministerial Decision F151/123835/B6/2013, the admission of students suffering from this kind of disease is not accepted by the Faculty of Biology. Moreover, there was concern because of the lack of the necessary infrastructure to support students with such conditions.

Another example was an advertisement by the public Greek Manpower Employment Organisation (OAED) for admission for the academic year 2014-2015 to the School of Professional Education for disabled people which excluded people with mental health problems. After a complaint was made by the National Confederation of Disabled People (*Εθνική Συνομοσπονδία Ατόμων με Ειδικές Ανάγκες*), the Ombudsman promptly intervened (case No 193395/2014) and pointed out that the advertisement, apart from violating Law

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<sup>72</sup> Greek Ombudsman, *Special report on Discrimination*, 2014, (Συνήγορος του Πολίτη, *Καταπολέμηση των διακρίσεων, Ειδική Έκθεση 2014*) available (in Greek) at: [www.synigoros.gr/?i=kdet.el.ehtisies\\_ektheseis\\_documents.267014](http://www.synigoros.gr/?i=kdet.el.ehtisies_ektheseis_documents.267014) last accessed on 10.10.2015, p. 11. Abbreviation: Greek Ombudsman 2014 Report on Discrimination.

3304/2005, constitutes a violation of provisions of the UN Convention on the Rights of Persons with Disabilities, especially Articles 12 (equal treatment before the law) and 27, according to which Greece as a party must secure and promote the right to employment and take the necessary measures in order for disabled people to have effective access to careers services, professional education and lifelong learning. In a public document addressed to the Ombudsman, the OAED administration made a commitment never to repeat such exclusion and said that all necessary efforts would be undertaken so that disabled people could occupy positions that correspond to their special skills.

In general, in the above-mentioned report, the Greek Ombudsman highlighted the fact that the International Convention on the Rights of the Child and the International Convention on the Rights of Persons with Disabilities include an obligation to ensure through law the vested rights for all children, and their realisation without discrimination. In this context, the State should institute and implement special measures for cases of people with disabilities and eliminate discrimination against them. The State's inertia constitutes discrimination, which is monitored by the Ombudsman.

The Ombudsman's conclusions pointed out the widespread character of the educational problems of disabled children and the discrimination they face with exercising their rights. The legally established special measures for the education of the disabled, such as personalised and parallel support, as well as the establishment of offices for the integration thereof, are not implemented in all cases of disabled children, and particularly not for those in secondary schools or those living in isolated areas, such as the islands. In one case, the special support for a pupil was stopped in the middle of the school year, in order for it to be provided to another school, with no legal justification.

Further problems which affect the quality of education for disabled children compared with non-disabled children include a lack of specialist staff, a delayed start to the school year for the special schools and special needs being covered by substitute teachers, who are employed in the middle of the school year.

Finally, according to the Ombudsman's Special Report, for the school year 2013-2014 the Ministry of Education did not provide the necessary funding for special education. The hiring of 4 008 substitute teachers for special education was covered by funding from European Territorial Cooperation programmes. This reveals the intention of the competent authorities to cover the needs of the special education, however, it does not secure the future of the education of disabled children and children with other special educational needs. It is also indicative of the perception of special education as being distinct from mainstream education, with it being removed from the public budget.

On 25 March 2011, on the occasion of the public celebration of Greek Independence Day, the principal and gym teacher from the 25<sup>th</sup> Primary School in Larissa were reported in the media as having deprived a student with Down syndrome of his right to parade (a right enshrined in the Constitutional provision of Article 21(6)) and not changing their decision even when the boy started crying as he felt excluded.<sup>73</sup> The incident revealed the existence of a discriminatory attitude on the part of some teachers towards disabled children and was heavily criticised by the vast majority of Greek media and public opinion. However, such discrimination constitutes a rather rare case within Greek society because discrimination against disabled people in Greece seems to occur less often than against other vulnerable groups, such as migrants.

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<sup>73</sup> *Child with Down syndrome excluded from parade in Larissa* (in Greek), News247, 31.03.2011, available at: <http://news247.gr/eidiseis/den-to-afhsan-na-parelasei-logw-syndromo-down.821566.html>, last accessed on 10.10.2015.

On 3 August 2012 the National Confederation of Disabled People (NCDP) sent a letter to the Minister of Education regarding the exclusion of a student with a disability from a university department.<sup>74</sup> Ms K referred to Article 35 of Law 3794/2009<sup>75</sup> on regulations concerning the university and higher education technology sector and other provisions, according to which candidates with specific disabilities included in the list in paragraph 1 are admitted to higher educational institutions without taking an exam. Students with disabilities are accepted at a rate of 5% of all available places in any university course under this provision. She informed the NCDP that she could not enrol in the Department of Foreign Languages, Translation and Interpreting (specialising in Spanish Language and Culture) of the Ionian University as she wished to, because students with physical disabilities were not accepted, since the premises were not accessible for them. Currently, there is no information regarding the next steps or any possible legal claim. The Ministry has not responded so far and no measures have been taken to resolve the problem.

In September 2014, Article 7 of Law 4283/2014<sup>76</sup> introduced a quota of 5% of places at universities and public technological institutes for students with a disability which is classed as equal to or greater than 67%.

#### - Trends and patterns regarding Roma pupils

In Greece there are specific patterns in education regarding Roma pupils, such as segregation.

In its fifth report<sup>77</sup> published in February 2015, the ECRI notes with concern that Roma remain at a great disadvantage with regard to education. There are still cases of schools refusing to enrol Roma children, in some instances due to pressure from some non-Roma parents. There are also cases of Roma children being separated from other children within the same school or in the vicinity thereof. The absence of disaggregated data on the situation of Roma pupils makes any in-depth assessment of their situation and the possibility of devising specific programmes targeting this group difficult. The ECRI urged the Greek authorities to strengthen measures taken to address problems faced by Roma children in education including exclusion, discrimination and under-performance, in full compliance with the judgments from the European Court of Human Rights (see below) as well as the ECRI's General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education. The ECRI further recommended that the authorities take a comprehensive approach to addressing these problems, including through the Inter-Ministerial Committee dealing with Roma issues.

In general, the persistent housing, employment and social protection problems of the Roma appear to constitute the most crucial factors for improving the situation in education.

A typical case of inertia on the part of the state educational authorities in guaranteeing the access of Roma children to schools is a case reported by the Greek Ombudsman. The intervention of the Ombudsman, in coordination with a university project manager, was necessary in order for a third public body (the Earthquake Support Service of the Ministry for the Environment, Physical Planning and Public Works) to provide prefabricated

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<sup>74</sup> The announcement by the National Confederation of Disabled People is available at: [www.esaea.gr/index.php?module=announce&ANN\\_id=4032&ANN\\_user\\_op=view&ns\\_news=1&MMN\\_position=20:20](http://www.esaea.gr/index.php?module=announce&ANN_id=4032&ANN_user_op=view&ns_news=1&MMN_position=20:20), last accessed on 10.10.2015.

<sup>75</sup> On Regulations concerning the university and higher education technology sector and other provisions (OG A' 156 A/4.9.2009).

<sup>76</sup> Greece, Law 4283/2014 on the establishment and organisation of a national policy council for education and other provisions (OJ 189 A/10.09.2014).

<sup>77</sup> ECRI (2015), *Report on Greece (Fifth Monitoring Cycle)*, CRI(2015)1, available at: [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf), last accessed on 10.10.2015.

classrooms for an elementary school in the Peloponnese. Until then, Roma children had been excluded from the school on the grounds that the building facilities were insufficient.<sup>78</sup>

In the 2012 case of *Ioanna Sampani and Others v. Greece*,<sup>79</sup> filed by 140 Roma (98 children and 42 parents), the European Court of Human Rights ruled that there was evidence of a practice of discrimination under Article 14 of the European Convention on Human Rights in conjunction with Article 2 of Protocol No. 1. Specifically, the Court found that the continuing racist educational segregation of Roma children in a Roma-only ghetto school, namely the 12th Elementary School of Aspropyrgos, constituted a violation of the above articles. What is more, the segregation occurred in spite of the 5 June 2008 judgment in the Case of *Sampanis and Others v. Greece*,<sup>80</sup> adjudicated prior to the *Ioanna Sampani* case mentioned earlier, (when the ECtHR found a violation by Greece through the initial exclusion from school of Roma children living in the Psari settlement of Aspropyrgos and their subsequent segregation in a ghetto school (an annex of the 10th Elementary School of Aspropyrgos). Following the ECtHR judgment, the Ministry of Education renamed the 10th Elementary School of Aspropyrgos annex the 12th Elementary School of Aspropyrgos. This, however, did not resolve the issue of segregation.

Finally, the *Lavida and others v. Greece* judgment issued in May 2013 yet again confirmed the segregation in 2013 of all Roma pupils in Sofades in a ghetto school, with the non-Roma pupils attending two other schools. The applicants asked for the desegregation of the Sofades (Thessaly) school system but the authorities refused. Several questions have been tabled to Parliament by opposition MPs on the implementation of these judgments.

It is noteworthy that this was the third European Court of Human Rights ruling on segregation involving Greek schools, which means that despite three separate relevant ECtHR rulings up to the end of 2013, Greece has failed to change its ongoing discrimination against Roma schoolchildren and the flagrant violation of their right to education.

In general, Roma pupils attend mainstream schools but with a high drop-out rate. Two government reports on Western Greece and on Eastern Macedonia and Thrace<sup>81</sup> have provided data on this. In 2011, the Deputy Prosecutor of the Greek Supreme Court actually issued an 'Urgent Written Order' (Protocol Number 720/22-02-2011) addressed to all local prosecutors in Greece,<sup>82</sup> instructing them to 'work to eradicate the phenomenon of exclusion of Roma from the state education system in Greece, in a way that any xenophobic attitude towards Roma children should be eliminated and that their unhindered equal integration - without exclusion and discrimination - into all structures of the State should be ensured'. This demonstrates that the judicial authorities have fully realised the tremendous importance of enforcing the existing legal framework against discrimination.

In its 2014 special report on discrimination,<sup>83</sup> the Greek Ombudsman emphasised that education constitutes a field of vital importance in countering the social exclusion of Roma. It visited the Agia Sofia settlement of Municipality Delta, Thessaloniki and found serious problems, *inter alia*, with the kindergarten and communication with the education authorities on enrolment of older children at a desegregated school. According to its 2015

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<sup>78</sup> Greek Ombudsman (2003) *Annual report*, available (in Greek) (*Ετήσια Έκθεση του Συνηγόρου 2003*, available at: [www.synigoros.gr/?i=stp.el.annreports.38592](http://www.synigoros.gr/?i=stp.el.annreports.38592), last accessed on 10.10.2015), p. 186.

<sup>79</sup> ECtHR *Ioanna Sampani and Others v. Greece*, ECtHR, App. No. 59608/09, 11 December 2012, available at: <http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#%7B%22itemid%22%3A%5B%22001-115169%22%5D%7D> last accessed on 10.10.2015.

<sup>80</sup> Press release by Greek Helsinki Monitor (21.03.2011), available at: <http://cm.greekhelsinki.gr>, last accessed on 10.10.2015.

<sup>81</sup> The reports are available on the Western Greece Regional Office website at: [www.pde.gov.gr/gr/diafaneia/apofaseis-ps/item/download/4439.html](http://www.pde.gov.gr/gr/diafaneia/apofaseis-ps/item/download/4439.html), last accessed 10.10.2015.

<sup>82</sup> Greek Helsinki Press Release (21.03.2011), op. cit.

<sup>83</sup> Greek Ombudsman 2014 Report on Discrimination, op. cit.

Report,<sup>84</sup> the ECRI delegation visited the same school and found that it was still only attended by Roma children. Attempts to enrol these children at the primary school closest to their settlement, which in the meantime had been moved on the orders of the local authorities, had failed. Parents of non-Roma pupils and local residents threatened with violence any attempts and the headmaster, supported by local officials, refused to enrol them. The children remain in a segregated school, so as to 'ensure their safety'.

### **3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1) (h) Directive 2000/43)**

In Greece national legislation includes access to and supply of goods and services as formulated in the Racial Equality Directive.

Article 4 (1) (h) of Law 3304/2005 includes the field of discrimination in 'access to and supply of goods and services which are available for the public, including housing', but only in respect of race and ethnic origin, as required by the Racial Equality Directive. It adopted the same wording as the Racial Equality Directive. Therefore, age, disability, religion or belief and sexual orientation are not covered.

- Distinction between goods and services available publicly or privately

In Greece national legislation does not distinguish between goods and services available to the public (e.g. in shops, restaurants and banks).<sup>85</sup>

It is noteworthy that on 10 April 2013 a bus driver from the private Urban Transport Organisation of the city of Thessaloniki (OASTH), acting in a provocative manner, compelled two passengers of African descent to leave the vehicle.<sup>86</sup> The two passengers had just boarded the bus and were obviously about to buy a ticket. When other passengers started talking about the incident, criticising the driver's behaviour, he stopped the vehicle and addressed them in an intense tone, declaring unambiguously that he was a neo-Nazi Golden Dawn party supporter. The Prosecution Office of Thessaloniki pressed charges (ex officio) after complaints from a passenger and activists from the anti-racism NGO, NAFTHA (Nazi-Free Thessaloniki Assembly). The court decision (ref. 4232/2014) was issued on 24 February 2014 by the Single-member Misdemeanour Court of Thessaloniki which imposed a suspended prison term of 10 months and a fine of EUR 1 000 on the driver for violation of Article 1 of anti-discrimination Law 3304/2005.

Similarly, a suspended prison term of 16 months and a fine of EUR 2 500 were imposed on 7 March 2014 by the Single-Member Misdemeanour Court of Thessaloniki (ref. 9039/2014) on a 57-year-old doctor who had been arrested on 22 February for placing a sign saying 'Jews are not welcome' at a surgery allocated to him in Nea Mixaniona by the municipality of Thermaikos. The Prosecution Office of Thessaloniki pressed charges (ex officio) after complaints from a patient and activists from NAFTHA. The neurologist, from the National Organisation for the Provision of Healthcare Services, was found guilty of 'inciting racial discrimination' (Article 1 of the anti-racism Law 927 /1979), as well as of 'possessing a weapon', due to the fact that knives were found at his residence. He was also found guilty of a violation of Article 1 of anti-discrimination Law 3304/2005.

### **3.2.10. Housing (Article 3(1) (h) Directive 2000/43)**

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<sup>84</sup> ECRI (2015), *Report on Greece (Fifth Monitoring Cycle)*, CRI(2015)1, available at: [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf), last accessed on 10.10.2015, p. 32.

<sup>85</sup> Article 4 (1), Law 3304/2005 clarifies that both the public and the private sector are covered.

<sup>86</sup> See news report at: [www.unhcr.gr/1againstracism/golden-dawner-bus-driver-kicks-immigrants-out-of-the-bus/](http://www.unhcr.gr/1againstracism/golden-dawner-bus-driver-kicks-immigrants-out-of-the-bus/), last accessed on 10.10.2015.



In Greece national legislation includes housing as formulated in the Racial Equality Directive.

Article 4(1)(h) of Law 3304/2005 includes the field of 'access to and supply of goods and services which are available to the public, including housing',<sup>87</sup> but only in respect of race and ethnic origin, as required by the Racial Equality Directive. Therefore, age, disability, religion or belief and sexual orientation are not covered.

According to Article 21(4) of the Greek Constitution, 'the acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care'. Also, Article 9 of the Greek Constitution provides, without making any differentiation on reasons of racial or ethnic origin or other grounds, that:

1. Every person's home is a sanctuary. The private and family life of the individual is inviolable. No home search shall be made, except when and as specified by law and always in the presence of representatives of the judicial power.
2. Violators of the preceding provision shall be punished for violating the home's asylum and for abuse of power, and shall be liable for full damages to the sufferer, as specified by law.

- Trends and patterns regarding housing segregation for Roma

In Greece there are patterns of housing segregation and discrimination against the Roma.

It is noteworthy that a legislative provision amending the Municipal and Communal Code provides for the duty of the municipal authorities to plan and realise integration schemes for Roma people.<sup>88</sup>

With regard to the results of the enforcement of this provision, its positive impacts mostly concern the area of awareness-raising among Roma people. Furthermore, as far as housing segregation and discrimination against Roma is concerned, according to research conducted by EU-MIDI, Greece was the EU country where Roma people's awareness of the legal provisions forbidding discrimination during the leasing or purchase of an apartment was lowest (13%). In addition, 34% of the Roma indicated that they have experienced discrimination in the past five years.<sup>89</sup>

Most cases and patterns come from the Greek Ombudsman. More specifically, when the issue of the potential compulsory relocation of Roma from the settlement in the area of Votanikos (Athens) was publicised in the media and within organisations engaged with these matters, the Greek Ombudsman visited the settlement and proceeded with a series of actions in order to mobilise the competent services.<sup>90</sup>

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<sup>87</sup> Article 4 (1), Law 3304/2005 states that both the private as well as the public sector are covered.

<sup>88</sup> Greece, Law 3463/2006, Article 75(1)(e)(5); OJ A 114/08.06.2006; entered into force 01.01.2007.

<sup>89</sup> RAXEN NFP Greece, KEMO-HLHR (2009) *Thematic study on the housing conditions of Roma and Travellers*, p. 10, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/582-RAXEN-Roma%20Housing-Greece\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/582-RAXEN-Roma%20Housing-Greece_en.pdf), last accessed on 10.10.2015; FRA (2009), *EU-MIDIS, Data in Focus Report: The Roma*, available at: [http://fra.europa.eu/sites/default/files/fra\\_uploads/413-EU-MIDIS\\_ROMA\\_EN.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf), last accessed on 10.10.2015.

<sup>90</sup> 'The aim of these actions was to ensure adequate living conditions for this vulnerable population, and to prevent the possibility of compulsory eviction from this plot of land without the guarantees stemming from the Constitution and the legislation in force. Special care was taken so that no sanctions would be imposed for violation of the sanitary regulations as was suggested by the Prefecture of Athens and Piraeus, Directorate for the Protection of the Environment. The reason for such a move was twofold: these sanctions would have been unsuitable and ineffective, and by neglecting to take into consideration the particularities of this population and the special conditions under which they live, they would have constituted negligence to handle dissimilar cases individually, contradicting the principle of equal treatment.' The response of the Municipality of Athens was still pending when the Ombudsman's annual report was published.

The Ombudsman, *inter alia*, recommended that: '...special care should be taken and a suitable plot of land with appropriate living conditions should be indicated for the possible relocation of the Roma. Then, the competent Regional General Secretary should take a relevant decision in collaboration with the competent Directorate of the Ministry of the Interior (complaint no. 13986/2006)'.<sup>91</sup>

There is no doubt that the large Roma settlement in the industrial area of Votanikos in Athens has been an emblematic case of the inability to act on the part of the state. This location hosted a fluctuating population of around 800-1 000 individuals according to the Ombudsman's estimates<sup>92</sup> or 550-2 000 Roma from Albania according to various press reports.<sup>93</sup>

On 17 August 2012 the settlement was dismantled by the municipality of Athens, after being partly destroyed by a fire. Additional pressure forced the remaining Roma living there to totally abandon the area and following the detainment of 85 residents in order to check the legality of their residence status.<sup>94</sup>

Furthermore, the Greek Ombudsman<sup>95</sup> examined the reactions of neighbours to Roma settlements in Lefkada. In the first case, Roma had settled permanently in their 'houses' on a plot of land owned by a Roma relative and lacking in basic facilities such as toilets, drainage and electricity supply.<sup>96</sup> It called for compliance with the legislation in force 'for the settlement of travelling people'.<sup>97</sup> In the second case, residents of the hamlet of Apolpaina in Lefkada filed a complaint<sup>98</sup> concerning the settlement of Roma in makeshift shacks and other structures (tents, toilets built from cement blocks) within the restricted-build area of the Holy Temple of Panaghia Hodegetria, a listed historical monument, and because of the poor sanitary conditions on this site.<sup>99</sup> The Ombudsman called for a positive action option to be included in the new Municipal and Communal Code.<sup>100</sup>

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The Greek Ombudsman (2006) *Second annual report as national equality body*, available at:

<http://www.synigoros.gr/resources/eediakrisewn2006eng.pdf>, last accessed on 10.10.2015..

In 2008 the General Directorate of the District of Attica sent a letter to the Municipality of Athens asking the latter to study the whole issue of Roma in the Votanikos area and to submit proposals concerning possible 'suitable places' for their relocation. Nevertheless, the problem has not yet been solved and the Ombudsman concluded that the competent authorities were unwilling to provide a proper solution.

[www.synigoros.gr/diakriseis/pdfs\\_01/8660\\_1\\_ISH\\_METAXEIRISH\\_2008\\_Greek.pdf](http://www.synigoros.gr/diakriseis/pdfs_01/8660_1_ISH_METAXEIRISH_2008_Greek.pdf), last accessed on 10.10.2015.

<sup>91</sup> The Greek Ombudsman (2006) *Second annual report as national equality body*, available at:

[www.synigoros.gr/diakriseis/pdfs/12\\_10\\_EqualTreatmentReport2006.pdf](http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf), last accessed on 10.10.2015.

<sup>92</sup> April 2009, Greek Ombudsman Findings Report for case numbers 13986/2006, 12136/2007, 3017/2008, 7611/2009).

<sup>93</sup> A population of '550 Albanians', according to the *Ethnos* daily, on 7 February 2010. The group numbered 2 000 persons, according to the *Adesmeftos* daily on 17 October 2011 and 3 November 2011, and 1 000 individuals according to the *Athens voice* weekly on 15 June 2012.

<sup>94</sup> *Kathimerini* daily, 17 August 2012.

<sup>95</sup> Complaints nos. 13770/2006 and 2864/2006.

<sup>96</sup> 'This caused inappropriate health conditions and infections, affecting the settlers as well as their neighbours. In addition, due to the lack of electricity supply, the Roma were obliged to use a generator for long hours causing noise that disturbed their neighbours. The Health Division of the Prefecture of Lefkada visited and examined the settlement and made recommendations to the Roma living in the area without, however, having made any progress ever since.' The Greek Ombudsman (2006) *Second annual report as national equality body*, p. 12. Available at: <http://www.synigoros.gr/resources/eediakrisewn2006eng.pdf>, last accessed on 10.10.2015.

<sup>97</sup> Ministerial Decision B- 973/2003, amending Sanitary Regulation A5/696/83.

<sup>98</sup> The Greek Ombudsman (2006) *Second annual report as national equality body*, available at:

<http://www.synigoros.gr/resources/eediakrisewn2006eng.pdf>, last accessed on 10.10.2015.

<sup>99</sup> 'The competent Ephorate of Byzantine Antiquities of the Ministry of Culture, following an on-site investigation, recommended to the Mayor of Lefkada to remove the Roma from the site and to relocate them on a plot that is not in the vicinity of sites or buildings of archaeological interest. The Mayor of Lefkada refused to evacuate the site, referring to the permanent nature of the settlement as well as the fact that the plot is owned by Roma.' The Greek Ombudsman (2006) *Second annual report as national equality body*, available at: <http://www.synigoros.gr/resources/eediakrisewn2006eng.pdf>, last accessed on 10.10.2015.

<sup>100</sup> The Greek Ombudsman (2006) *Second annual report as national equality body*, available at: <http://www.synigoros.gr/resources/eediakrisewn2006eng.pdf>, last accessed on 10.10.2015. Article 185(3)

In March 2008,<sup>101</sup> the Ombudsman announced the launch of a series of initiatives aimed at motivating and coordinating the competent authorities so as to ensure appropriate living conditions for Roma and at the same time to prevent their forced removal from occupied land without the guarantees provided for by the Constitution and relevant legislation. In particular, it asked the General Directorate for Development Programmes of the Ministry of Interior to undertake the role of coordinator within the framework of the "National Action Plan for the Social Integration of Greek Roma", so that the competent authorities can take specific measures to improve the living conditions of this vulnerable population group.

As far as specific cases are concerned,<sup>102</sup> the Ombudsman has received numerous complaints from inhabitants of Alexandroupoli regarding the delay in the inclusion of the settlement camp on Avantos street in the city's urban plan (case 6174/2007); the Drossero Women's Association in Xanthi (case 4639/2007); the Community of Aspopyrgos for improving their living conditions such as refuse collection, water and electricity supply in combination with transitional inclusion programmes such as vocational training and relocation incentives (cases 15891/2007, 16048/2006, 14062/2006, 1919/2006, 13301/2001, 14902/2001, 13399/2001 and 11128/2000); and many more.

At the same time, in response to two written questions from Members of the European Parliament about the situation of Roma in Greece,<sup>103</sup> the Commissioner, Mr Špidla, said that the Commission had already started a preliminary examination under the provisions of Directive 2000/43/EC (answer, 6 September 2005).

The Council of Europe European Committee of Social Rights has examined one collective complaint concerning the situation of Roma in Greece. This complaint (No. 15/2003) was brought by the European Roma Rights Centre. It decided that in Greece 'Roma have insufficient supply of appropriate camping sites' and that the criteria for eviction of Roma by the Greek authorities 'must not be unduly wide'.<sup>104</sup> Another relevant complaint was brought by the International Centre for the Legal Protection of Human Rights — INTERIGHTS (No. 49/2008).<sup>105</sup> On 25 May 2010, the European Committee of Social Rights, for the second time in five years, condemned Greece for continued serious and widespread discrimination against Roma in respect of housing rights (Collective Complaint No. 49/2008).<sup>106</sup>

Furthermore, in a View publicised on 16 October 2010 (and issued on 14 September 2010),<sup>107</sup> the UN Human Rights Committee considered a Roma family's allegations, also corroborated by photographic evidence, claiming arbitrary and unlawful eviction and demolition of their home. The Committee concluded that the demolition of the Roma

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of the new Municipal and Communal Code expressly provides that the Municipality can assign a municipal area to Roma people for a maximum of 20 years.

<sup>101</sup> The Greek Ombudsman (2007) *Third annual report as national equality body*, available at: [www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf](http://www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf), last accessed on 10.10.2015.

<sup>102</sup> The Greek Ombudsman (2007) *Third annual report as national equality body*, available at: [www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf](http://www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf), last accessed on 10.10.2015.

<sup>103</sup> Written questions E-2416/05EL and E-2453/05EL, available at: [www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2005-2416&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2005-2416&language=EN), last accessed on 10.10.2015.

<sup>104</sup> CoE, European Committee of Social Rights, *European Roma Rights Centre v. Greece*, Decision on the merits, 08.12.2004, Complaint No. 15/2003, available at: [www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC15Merits\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC15Merits_en.pdf), last accessed on 10.10.2015.

<sup>105</sup> CoE, European Committee of Social Rights, *INTERIGHTS v. Greece*, Text of the Complaint No. 49/2008, available at: [www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC49CaseDoc1\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC49CaseDoc1_en.pdf), last accessed on 10.10.2015.

<sup>106</sup> CoE, European Committee of Social Rights, *INTERIGHTS v. Greece*, Decision on the Merits, 25.05.2010, Complaint No. 49/2008, available at: [http://www.coe.int/t/dghl/monitoring/socialcharter/NewsCOEPortal/CC49Merits25052010\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/NewsCOEPortal/CC49Merits25052010_en.asp) last accessed on 10.10.2015.

<sup>107</sup> UNHRC., *Views on Communication No. 1799/2008*, CCPR/C/99/D/1799/2008, available at: <http://cm.greekhelsinki.gr>, last accessed on 10.10.2015.



family's shed and the prevention of the construction of a new home in the Roma Riganokampos settlement amounted to a violation of Articles 17, 23 and 27 read alone and in conjunction with Article 2, paragraph 3, of the International Covenant on Civil and Political Rights.

In September 2013 the Second Periodic Review of the Hellenic Republic regarding the International Covenant on Civil and Political Rights made extensive references to the National Action Plan for the Social Integration of Greek Roma. In December 2013, the National Commission for Human Rights (NCHR) (*Εθνική Επιτροπή για τα Δικαιώματα του Ανθρώπου, ΕΕΔΑ*), in its remarks<sup>108</sup> regarding the implementation of the above Covenant noted that, by default, the Action Plan lacked robust legal safeguards for eliminating undermining factors, since, as the Greek Ombudsman has also aptly observed, there is no integrated institutional and regulatory framework in Greece which could effectively ensure Roma participation in community life. This deficit is felt by Roma themselves, as well by those members of the country's political and administrative leadership who are interested in the social empowerment of Roma.

According to the NCHR, it is a fact that among all the housing measures announced, the loan programme was the one that went further and was even described as good practice by the Council of Europe's Committee of Experts on Roma issues. However, the report of the European Commission against Racism and Intolerance (ECRI), published in 2009, stated that 'the housing loan project did not always benefit the target groups'.

In its 2014 special report on discrimination,<sup>109</sup> the Greek Ombudsman emphasised that in practice most of the relocation efforts concerning Roma seem to be connected with the intention of removing the current Roma settlements from urban areas and installing them in isolated places, which is unlikely to ensure, on one hand, decent living conditions and, on the other, planning and connection of the specific settlements with easy access to education, health services and employment.

Finally, according to ECRI's 2015 report,<sup>110</sup> the living conditions in many Roma settlements in Greece continue to be a cause of concern. Some settlements are completely isolated from the rest of the population, without running water or electricity, with no heating in winter and leaking roofs in some cases, and without a sewage system or access to public transport. Furthermore, many forced evictions of Roma took place (during 2009-2014) without specifying suitable places to establish safe and legal settlements and without adequate access to legal remedies.

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<sup>108</sup> NCHR, *Observations on the Second Periodic Review of the Hellenic Republic on the ICCPR*, 2013, available, in Greek, at: [www.nchr.gr/images/pdf/apofaseis/ellinikes\\_ektheseis\\_en\\_ell\\_org/OHE/Parathrhseis\\_EEDA\\_prosYPEKS\\_DS\\_APD.pdf](http://www.nchr.gr/images/pdf/apofaseis/ellinikes_ektheseis_en_ell_org/OHE/Parathrhseis_EEDA_prosYPEKS_DS_APD.pdf), last accessed on 10.10.2015.

<sup>109</sup> Greek Ombudsman 2014 Report on Discrimination, op. cit., p. 6.

<sup>110</sup> ECRI (2015), *Report on Greece (Fifth Monitoring Cycle)*, CRI(2015)1, available at: [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf), last accessed on 10.10.2015, p. 33.

## **4 EXCEPTIONS**

### **4.1 Genuine and determining occupational requirements (Article 4)**

In Greece national legislation provides for an exception for genuine and determining occupational requirements.

Exemptions concern various contexts as far as professional requirements are concerned. More specifically, Articles 5, 9 and 11 of Law 3304/2005 provide that a difference of treatment based on a characteristic related to racial or ethnic origin, religious or other beliefs, age or sexual orientation (disability is not covered) 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'.

There is no known case-law related to this issue.

### **4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)**

- Exception for employers with an ethos based on religion or belief

In Greece national law provides for an exception for employers with an ethos based on religion or belief.

As far as occupational requirements are concerned, in Articles 9 and 11 of the Greek non-discrimination legislation in Law 3304/2005, there are special provisions for professions related to churches, religious institutions and public or private organisations. According to these provisions, the law does not affect the right of public or private organisations, the ethos of which is based on religious or other beliefs, to demand that people working for them act in compliance with this ethos. In these cases, religion or belief compatible with such an ethos constitutes a genuine, legitimate and justified occupational requirement.

In Article 9(2), Law 3304/2005 specifies that it does not affect provisions or policies already in existence which relate to the occupational activities of churches or other organisations or associations, the ethics of which is based on religious or other beliefs. This difference in treatment is based on general principles of EU law and cannot justify discrimination based on other protected grounds.

- Religious institutions affecting employment in state funded entities

In Greece religious institutions are not permitted to select people (on the basis of their religion) to hire them or to dismiss them from a job when that job is in a state entity, or in an entity financed by the State.

According to Article 9(2) of Law 3304/2005, unequal treatment is not regarded as discrimination only when, due to the nature of the required activities of an entity, the convictions of a person constitute a legitimate professional requirement of the employer/employing entity (such as the church, religious organisations and unions, the ethics of which are premised on their religious or other beliefs).

Moreover, according to well-established jurisprudence from the Greek Council of State,<sup>111</sup> as a state entity of public law (Article 1(4) of Law 590/1977<sup>112</sup>), the Orthodox Church of Greece is obliged to respect the fundamental constitutional provisions which provide, among others, for non-discrimination (on religious grounds) of Greek citizens in their access to employment in a church entity. In other words, religious beliefs do not constitute criteria for public sector recruitment, even if this recruitment concerns Orthodox institutions.

Furthermore, according to the Greek Council of State, the State or the Orthodox Church have no right to enquire into the religion of teachers of courses on religion in schools, because such courses concern people with any form of belief, including atheists.

The negative reaction of the previous Greek Orthodox Archbishop Christodoulos to the appointment of atheist teachers of courses on religion in schools did not change the situation. There was no judicial act, on behalf of the Church, to react against those appointments.

However, apart from Muslim minority teachers,<sup>113</sup> who systematically teach in Turkish in the minority schools in Thrace, no other cases of migrant or minority teachers teaching foreign languages and/or culture, or even working as assistants in Greek state schools were found.

There is no known case law on this issue.

#### **4.3 Armed forces and other specific occupations (Article 3(4) and Recital 18 Directive 2000/78)**

In Greece national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78/EC).

Article 8(4) of Law 3304/2005 provides that:

'The provisions of this chapter [Equal treatment in employment and occupation], in so far as it relates to different treatment on the grounds of age or disability, relevant to service, shall not apply to the armed forces and the security services' (consequently also the police, prison or emergency services, e.g. fire service).

On 11 April 2012 Greece ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol with Law 4074/2012.<sup>114</sup> According to Article 2 of this Law, the provisions of Article 27 para. 1 of the Convention do not apply to the armed forces and law enforcement agencies with regard to differential treatment due to disability as provided for in Article 8 para. 4 of Law 3304/2005 on the implementation of equal treatment pursuant to Articles 3 para. 4 and 4 of Directive 2000/78/EC.

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<sup>111</sup> The Council of State judged that local origin and religious beliefs do not constitute criteria for public sector recruitment, countering the draft Presidential Decree that concerns recruitment of staff for the Panhellenic Sacred Foundation of Evaggelistria of Tinos. See *Eleftherotipia* (Ελευθεροτυπία) (17.08.2007), available in Greek at: [www.enet.gr/online/online\\_text/c=112,dt=17.08.2007,id=26095400](http://www.enet.gr/online/online_text/c=112,dt=17.08.2007,id=26095400), last accessed on 10.10.2015

<sup>112</sup> Law 590/1977 on the Statute of the Greek Church (OJ 146 A/31.05.1977).

<sup>113</sup> Mavrommatis, G. and Tsitselikis, K. (2003) *Turkish. The Turkish language in education in Greece*, Leeuwarden: Mercator-Education, [http://www.mercator-research.eu/fileadmin/mercator/dossiers\\_pdf/turkish\\_in\\_greece.pdf](http://www.mercator-research.eu/fileadmin/mercator/dossiers_pdf/turkish_in_greece.pdf), ISSN: 1570 – 1239. [www1.faknaw.nl/mercator/regionale\\_dossiers/PDFs/turkish\\_in\\_greece.pdf](http://www1.faknaw.nl/mercator/regionale_dossiers/PDFs/turkish_in_greece.pdf) last accessed on 10.10.2015.

<sup>114</sup> Law ratifying the Convention on the Rights of Persons with Disabilities and its Optional Protocol, OJ 88 A/11.4.2012.

#### **4.4 Nationality discrimination (Article 3(2))**

a) Discrimination on the ground of nationality

In Greece national law includes exceptions relating to difference of treatment based on nationality.

Adopting the wording of Article 3(2) of the two directives, Article 4(2) of Law 3304/2005 incorporates all the exceptions allowed by the directives, including nationality and stateless status. Interpreting this provision, the Council of State confirmed that Article 4(2) of Law 3304/2005 stipulates that it does not cover differences of treatment based on nationality.<sup>115</sup>

In Greece nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

Moreover, Article 8(2) of Law 3304/2005 stipulates that the anti-discrimination legal provisions do not cover difference of treatment based on nationality and are without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

There is no relevant case law.

b) Relationship between nationality and 'race or ethnic origin'

According to the Greek legal system, there is little difference between 'nationality' and 'race or ethnic origin'. Nationality is perceived as citizenship. In recent decades, only people of Greek origin could obtain Greek nationality. Recently, the legislature has provided that Greek nationality can be obtained by people of non-Greek origin.

#### **4.5 Work-related family benefits (Recital 22 Directive 2000/78)**

a) Benefits for married employees

In Greece it would not constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married.

Article 8(3) of Law 3304/2005 reads as follows:

'The principle of equal treatment, irrespective of religion or belief, disability, age or sexual orientation, is not applied to any benefits which are offered by the public systems or their equivalents, including the public systems of social security and assistance.'

Therefore, the above provision of Law 3304/2005 seems to permit an employer (in the public or private sectors) to provide (social) benefits, including health benefits, that are limited to those who are married.

There is no relevant case law.

b) Benefits for employees with opposite-sex partners

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<sup>115</sup> See Council of State judgments 1380/2008, 1381/2008 and 1382/2008.

In Greece it would not constitute unlawful discrimination in national law if an employer only provides benefits to those employees with opposite-sex partners.

In particular, Article 8(3) of Law 3304/2005 allows an employer (in the public or private sectors) to provide (social) benefits, including health benefits, that are limited only to those with opposite-sex partners.

However, on 7 November 2013 the European Court of Human Rights, in the *Vallianatos* case<sup>116</sup> ruled that exclusion of same-sex couples from 'civil unions' in the Greek legal order breaches the European Convention of Human Rights. Recently, the Ministry of Justice published a draft which will be introduced to Parliament which will allow civil unions for same-sex couples.<sup>117</sup>

#### **4.6 Health and safety (Article 7(2) Directive 2000/78)**

##### **a) Exceptions in relation to disability and health/safety**

In Greece there are exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78/EC).

Article 10 of Law 3304/2005 provides that:

'With regard to disabled persons, the principle of equal treatment shall be without prejudice to measures aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment.'

There are no other exceptions relating to health and safety law in relation to rules on ethnic origin or religion, where there may be issues of dress or personal appearance.

There is no relevant case law.

#### **4.7 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)**

##### **4.7.1 Direct discrimination**

In Greece national law provides an exception for direct discrimination on the ground of age.

Article 11(1) of Law 3304/2005 allows – in a direct form – the following exemption (defences) as far as the criterion of age is concerned, repeating the text of Article 6 of the Employment Equality Directive:

'... Such differences of treatment may include, among others:

1. the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
2. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

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<sup>116</sup> ECtHR, *Case of Vallianatos and others v. Greece*, Applications nos. 29381/09 and 32684/09, 7 November 2013, available at: <http://hudoc.echr.coe.int/web/services/content/docx/001-128294?TID=dnsqpczeqo>, last accessed on 10.10.2015.

<sup>117</sup> Press release from the Ministry of Justice, 10.06.2015, available in Greek at: [www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97/tabid/64/itemid/2390/amid/797/.aspx](http://www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97/tabid/64/itemid/2390/amid/797/.aspx), last accessed on 10.10.2015.

3. the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.'

Article 11 (2) adds:

'Notwithstanding Article 7, the fixing for occupational social security schemes of ages for admission or entitlement to retirement or invalidity benefits, including the fixing under those schemes of different ages for employees or groups or categories of employees, and the use, in the context of such schemes, of age criteria in actuarial calculations, does not constitute discrimination on the grounds of age, provided this does not result in discrimination on the grounds of sex'.

There is no relevant case law.

- Justification of direct discrimination on the ground of age

In Greece it is possible, generally, or in specific circumstances, to justify direct discrimination on the ground of age.

The relevant Article is Article 11(1) of Law 3304/2005

There is currently no debate developing in Greece about the implementation of the requirements of the directive with regard to direct discrimination and, therefore, there is no way to verify if the test is compliant with the test in Article 6, Directive 2000/78/EC, account being taken of the Court of Justice of the European Union in the Case C-144/04, *Mangold* and Case C-555/07 *Kücükdeveci*.

- a) Permitted differences of treatment based on age

In Greece national law does not permit differences of treatment based on age for any activities within the material scope of Directive 2000/78/EC, except as detailed in the remainder of this section (see above).

- b) Occupational pension schemes' fixed ages for admission or entitlements

In Greece national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

Article 11(2) of Law 3304/2005 allows occupational pension schemes to fix ages for admission to the scheme and entitlement to benefits.

There is no relevant case law.

#### **4.7.2 Special conditions for young people, older workers and persons with caring responsibilities**

In Greece there are special conditions set by law for older or younger workers in order to promote their vocational integration or for people with caring responsibilities to ensure their protection.

Article 10 of Law 3304/2005 transposes Article 5 of Directive 2000/78/EC verbatim.

In May 2012, according to an advisory opinion from the Legal State Council (268/11.5.2012), a body which is competent to provide the Government with legal advice, public servants or employees in the public sector on a private law contract of indefinite duration, whose spouse is 100% disabled and whom they support, may have their working

hours reduced by one hour on a daily basis without any wage reduction, even where their working hours are already reduced due to the nature of their employment,<sup>118</sup> such as because their work belongs to a special category (harder conditions etc).

#### 4.7.3 Minimum and maximum age requirements

In Greece there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

However, under the provision of Laws 3051/2002, 3144/2003 and 3174/2003, maximum age limits have been abolished for both 'ordinary' personnel and compulsorily placed persons (disabled persons, subject to provisions of Law 2643/1998) in relation to access or appointment to the public sector, public entities, local administration organisations (at levels a and b), and legal entities established under private law operating in the public sector.

Despite the fact that the insurance and social security issues of bank employees are currently being raised and have caused considerable social impact (strikes), there has not been any formal discussion of whether the minimum and maximum age requirements which are applied in this context are compliant with Directive 2000/78/EC and Law 3304/2005.

Age is set as condition for participating in the competition for court clerks, fire fighters, armed and security corps and for the appointment of mediators and referees.<sup>119</sup> Young and older people usually face restrictions and disincentives upon accepting a position or maintaining it.<sup>120</sup>

In general, the jurisprudence of the Greek courts has proved that, in the employment sector, discrimination based on age (through the introduction of age limits) violates the right to professional freedom enshrined in Article 5, para. 1 of the Greek Constitution.<sup>121</sup>

In its judgment 851/2011 (17.03.2011)<sup>122</sup> the Supreme Administrative Court held that the upper age limit of 35 years to take the exams for probationer fourth grade court magistrate is not contrary to the provisions of Directive 2000/78/EC and the Constitution, because according to the Court the maximum age ensures that judges can have a career in which there is enough time to specialise in a particular branch. Furthermore, it held that it was correct for the time spent on military service not to be taken into account for the calculation of the age limit, because otherwise that would violate the principle of gender equality. According to Article 1 para. 1 of Act No. 6 of the Ministers' Council of Article 1 para. 6 of Law 4046/2012,<sup>123</sup> the minimum wage provided for by the National General Collective Employment Agreement was reduced by 22% from 14 February 2012 until the completion of the fiscal adjustment programme. For employees under the age of 25 this reduction is 32%.

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<sup>118</sup> Legal Council of State (*Νομικό Συμβούλιο του Κράτους*), Legal Opinion 268/2012, available at: [ΑΝΑΖΗΤΗΣΗ ΓΝΩΜΟΔΟΤΗΣΕΩΝ - Νομικό Συμβούλιο του Κράτους](http://www.synigoros.gr/resources/docs/stp_ethsia_2012.pdf), last accessed on 10.10.2015.

<sup>119</sup> Information in this section was taken from The Greek Ombudsman (2012) *Annual report*, available in Greek at: [www.synigoros.gr/resources/docs/stp\\_ethsia\\_2012.pdf](http://www.synigoros.gr/resources/docs/stp_ethsia_2012.pdf), last accessed on 10.10.2015. In 2012, the Ombudsman received seven complaints on discrimination on the ground of age.

<sup>120</sup> National Centre for Social Research (2012), *Combating discrimination in Greece: State of the art, challenges and policy interventions*, p. 56, available at [http://ekke.gr/oecd/wp-content/uploads/2014/01/EKKE\\_discrimination\\_book\\_en.pdf](http://ekke.gr/oecd/wp-content/uploads/2014/01/EKKE_discrimination_book_en.pdf), last accessed on 10.10.2015.

<sup>121</sup> See for instance Decisions before the Council of State: 1421/2005, 413/1993 (Plenary), 1844/1994, 3354/1996, 2325/2002 255/2003, 594/2003, 3133/2004, 3444/2004, 3786/2007, 1319/2008, 1146/2010 and 2365/2010. The decisions are all available (in Greek) through the Council of State Portal at: <http://www.ste.gr/portal/page/portal/StE>, last accessed on 10.10.2015.

<sup>122</sup> Judgment 851/2011, published in Law Database Nomos (with publication number 544292).

<sup>123</sup> OJ 38 A/28.2.2012.

In March 2012, the Legal State Council (not to be confused with the Council of State, which is the supreme administrative court), a body competent to provide the Government with non-binding legal advice, issued an Advisory Opinion (in its 6<sup>th</sup> Session) concerning the compatibility of some provisions of the organisational law of the Ministry of Foreign Affairs with Directive 2000/78/EC.<sup>124</sup> According to these provisions, unless the employees of the Ministry have completed 35 years of service they may continue to work until the age of 67. The Legal State Council in its Opinion held that only the possible existence of another more specialised law that would deal with specific categories of employees of this Ministry would allow someone to invoke the enforcement of the directive in this particular case, and that therefore Law 3304/2005, which is the general legal provision regarding anti-discrimination in Greece, is not sufficient to fulfil this role.

The new National Action Plan on Human Rights (established in 2013) contains information on various policies and places them in specific human rights categories. Policies concerning age discrimination are not mentioned explicitly; however, certain age groups are mentioned in the categories concerning workers' rights and social security and the protection of vulnerable groups, namely the elderly. The first category makes reference to employment and insurance schemes for people under 25 and people over 55.<sup>125</sup> The category concerning vulnerable groups lists ongoing policies focused on healthcare offered to older people, pension schemes for those uninsured, including housing (i.e. insurance schemes which will also cover the expenses of living in retirement homes).<sup>126</sup> Programmes for the improvement of the standing of older people in Greek society are also included.

#### **4.7.4 Retirement**

##### **a) State pension age**

In Greece there is a state pension age (at which individuals must begin to collect their state pensions) only for civil servants (see below). Therefore, according to Article 1 of Law 4093/2012, in the private sector individuals may work longer if they wish.

There is no legal provision allowing people to collect their pension and still work, therefore, only when people retire may they collect pension benefits.

Before a number of new legislative provisions were introduced in 2010 (see below), the old-age pension was granted after a certain age limit had been reached (55–65 years of age), which varied in relation to each insurance regime and period of work completed (usually between 25 and 35 years of work).

It is usual for banks to define certain age limits for pension purposes which differ between men and women.

On 26 March 2009 the European Court of Justice, in the case C-559/07 (*Commission of the European Communities v Hellenic Republic*)<sup>127</sup> declared that, by maintaining in force provisions which provide for differences between male and female workers with regard to retirement age and minimum required service under the Greek Civil and Military Pensions Code instituted by Presidential Decree No 166/2000 of 3 July 2000, in the version applicable to the present case, the Hellenic Republic had failed to fulfil its obligations under Article 141 EC.

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<sup>124</sup> Legal State Council (6<sup>th</sup> Session) Advisory Opinion 159/2012 (13.03.2012).

<sup>125</sup> Greek Ministry of Justice, *The National Action Plan on Human Rights*, pp. 103-115, available in Greek at: <http://www.opengov.gr/ministryofjustice/wp-content/uploads/downloads/2013/12/Dikaionomata.pdf>, last accessed on 10.10.2015. Abbreviation: The National Action Plan on Human Rights.

<sup>126</sup> The National Action Plan on Human Rights, pp. 180-182.

<sup>127</sup> The decision is available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62007CJ0559>, last accessed on 10.10.2015.



As a result, Law 3845/2010 was introduced in July 2010, equalising the retirement ages for men and women and the calculation of pensions.

Since 2010, significant changes have been made for mothers of minor children. The retirement age for them increases by 15 years and the required years of work ensure their retirement jumps from 17.5 to 25 years of service. Under the new legislation now in force, pensions will not be awarded before the age of 60 years. Even reduced pensions are adjusted to this age limit and the difference in retirement age for the parents of more than three children is no longer valid.

There is a mandatory retirement age for civil servants (67 years of age after the completion of 40 years of service for a full pension or 62 years of age after the completion of 15 years of service for a reduced pension).<sup>128</sup>

The above provisions also apply to employees in the private sector as far as the establishment of their right to pension is concerned, but there is no mandatory retirement for them.

In practice, people in older age groups often choose to retire early in order to avoid being subject to negative treatment or feelings of educational inferiority and limited occupational adaptability. This is due to the fact that older people face stereotyping regarding their age (e.g. lack of strength, poorer health, lack of physical agility and endurance, outdated education etc.).

The advanced age of certain workers has in the past constituted a reason for being dismissed. There are cases where workers have reached full pension age and have been dismissed on this basis.<sup>129</sup> This puts workers in a worse position than those who have reached a full pension age, but are nonetheless dismissed on other grounds (allowing them to claim compensation in addition to their pension). Older people are also forced to overcome other difficulties concerning their access to or reintegration into the job market, either because they have been unemployed for a long time, they were dismissed a few years before reaching retirement age or because of the lack of adequate infrastructure for the care of vulnerable groups.<sup>130</sup>

#### b) Occupational pension schemes

In Greece there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

According to Article 1 of Law 4093/2012, in the private sector individuals may work longer if they wish.

There is no legal provision allowing a person to collect a pension and still work.

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<sup>128</sup> Article 1, para. IA.4 of Law 4093/2012 (OJ 222 A/12.11.2012).

<sup>129</sup> Decision 33/2006 of the Authority for Personal Data Protection. In this case, an employer requested information from his workers in order to distinguish those who were of pensionable age. The Authority stated that this was clearly discriminatory on the ground of age. Available in Greek at: [http://www.dpa.gr/portal/page?\\_pageid=33%2C15453&\\_dad=portal&\\_schema=PORTAL&\\_piref33\\_15473\\_3\\_15453\\_15453.etos=2006&\\_piref33\\_15473\\_33\\_15453\\_15453.arithmosApofasis=33&\\_piref33\\_15473\\_33\\_15453\\_15453.thematikiEnotita=-1&\\_piref33\\_15473\\_33\\_15453\\_15453.ananeosi=%25](http://www.dpa.gr/portal/page?_pageid=33%2C15453&_dad=portal&_schema=PORTAL&_piref33_15473_3_15453_15453.etos=2006&_piref33_15473_33_15453_15453.arithmosApofasis=33&_piref33_15473_33_15453_15453.thematikiEnotita=-1&_piref33_15473_33_15453_15453.ananeosi=%25), last accessed on 10.10.2015.

<sup>130</sup> Information in this section was taken from: *50+, Position paper on active and healthy aging* (2013) ( *50και Ελλάς: Θέσεις και προτάσεις για την ενεργό και υγιή γήρανση στην Ελλάδα*), available at: [http://www.50plus.gr/images/files/50kaiHellas\\_Position\\_Paper\\_on\\_Active\\_and\\_Healthy\\_Ageing.pdf](http://www.50plus.gr/images/files/50kaiHellas_Position_Paper_on_Active_and_Healthy_Ageing.pdf), last accessed on 10.10.2015.

In the past, the normal age used to be 60 years for all sectors and was the same for men and women.

However, Law 4093/2012<sup>131</sup> established 62nd years of age and the completion of 40 years of employment as a necessary condition for retirement for all men and women who are entitled to pensions from 1 January 2013. In addition, it established 67 years of age as the retirement age if the number of years of employment amount to 15.

c) State imposed mandatory retirement ages

In Greece there is a mandatory retirement age of 67 years but it is not generally applicable. It concerns certain public servants, both men and women.

Article 16(6) of the Greek Constitution provides that university professors may not exceed the age of 67.

Article 118(1) of the Greek Constitution provides that judges may not exceed the age of 67.

There have been no recent changes in this respect and none are planned in the near future.

d) Retirement ages imposed by employers

In Greece national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract and/or collective bargaining and/or unilaterally.

There are still company operating manuals or corporate charters (mainly of banks and state enterprises) which provide for different retirement ages based on gender (women having to retire at a lower age). However, these provisions, by virtue of Article 26 of Law 3304/2005, can no longer be applied. On the other hand, under the terms of collective labour agreements, other binding regulatory provisions still exist (mainly the aforementioned bank corporate charters), which permit employers to require employees to retire because they have reached a certain age. Nevertheless, in terms of Law 3304/2005 (Article 26) these provisions are considered null and void, as not being in conformity with its requirements. In this respect, the law on protection against dismissal could apply to all workers, irrespective of age, although – as has been stressed before – these issues have not yet been properly and seriously examined.

e) Employment rights applicable to all workers irrespective of age

The national law on protection against dismissal (Law 2112/1920<sup>132</sup> and Law 3198/1955<sup>133</sup>) applies to all workers, irrespective of age. Therefore, these rights are not lost on attaining pensionable age or another age

f) Compliance of national law with CJEU case law

In Greece national legislation is in line with the CJEU case law on age regarding compulsory retirement.

In particular, Article 11 of Law 3304/2005 is in line with Cases C-229/08 *Wolf*, C-499/08 *Andersen*, C-144/04 *Mangold* and C-555/07 *Kücükdeveci* C-87/06 *Pascual García* [2006], and cases C-411/05 *Palacios de la Villa* [2007], C-488/05 *The Incorporated Trustees of the National Council on Ageing (Age Concern England) v. Secretary of State for Business*,

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<sup>131</sup> Article 1, para. IA.4 of Law 4093/2012, (OJ 222 A/12.11.2012).

<sup>132</sup> Law 2112/1920 on the mandatory breach of contract (OJ 67 A/18.03.1920).

<sup>133</sup> Law 3198/1955 on the amendment of the mandatory breach of contract (OJ 98 A/23.04.1955).

*Enterprise and Regulatory Reform* [2009], C-45/09 *Rosenbladt* [2010], C-250/09 *Georgiev*, C-159/10 *Fuchs* and C-447/09 *Prigge* [2011]) regarding compulsory retirement.

#### **4.7.5 Redundancy**

a) Age and seniority taken into account for redundancy selection

In Greece national law permits age or seniority to be taken into account in selecting workers for redundancy.

The relevant article is Article 11(1)(a).

Age and seniority criteria were established by the Greek Supreme Court in a way which now appears not to be compliant with the directive. According to this jurisprudence (Supreme Court Judgments no. 668/2000, 279/1996 and 744/1992), for a redundancy not to be generally considered to be discriminatory, age and seniority must be taken into account by the employer when they make an employee redundant.

b) Age taken into account for redundancy compensation

As far as compensation for redundancy is concerned, this is affected by the number of years the employee has worked for one employer. (It could be said that, in this way, compensation is indirectly affected by the age of the worker.)

In Greece national law provides compensation for redundancy since there is no specific exception for this kind of compensation in the relevant Laws 2112/1920 and 3198/1955 that concern the private sector. Therefore, it is affected by the age of the worker.

Moreover, as far as the public sector is concerned, Law 4093/2012 (para. Z2) introduced the system of 'availability', which forces a public employee to be transferred within the public sector, whereas if this is not possible they could be fired without compensation. However, this process is not related to age.

There is no relevant case law.

#### **4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)**

In Greece national law includes exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

Migrant workers may be expelled if their presence in Greece poses a threat to public order or if they are in breach of Law 2910/2001 on entry and residence of foreign nationals on Greek territory. The exceptions concern public security, public order, criminal offences and protection of health.

#### **4.9 Any other exceptions**

In Greece, other exceptions to the prohibition of discrimination (on any ground) provided in national law are the following.

On the subject of the interpretation of disability discrimination, Greek law, as previously stated, is silent. It is therefore evident that concepts such as indirect discrimination, failure to provide reasonable accommodation, genuine and determining occupational requirements and the like are not discussed, questioned or claimed.

## **5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)**

### **a) Scope for positive action measures**

In Greece positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is provided for in national law.

The adoption of positive measures for promoting equality is an obligation imposed upon the State by virtue of Article 116(2) of the revised Greek Constitution.

This provision, in conjunction with Articles 21(3) and 21(6) of the Constitution, is perceived as guaranteeing the principle of 'proportional equality' and assisting in the 'elimination of existing inequalities'.

Even though the main preoccupation of the Greek Constitution of 2001 is obviously the promotion and protection of women's rights, the wording of the new Article 116(2) is all-inclusive, laying down a state obligation to act through positive measures for the elimination of all kinds of 'inequalities', a term that undoubtedly pertains to discrimination on racial or ethnic grounds as well.

As far as positive action and special measures are concerned, Law 3304/2005 transposes the directives in Articles 6 and 12, which provide that adopting or maintaining special measures to prevent or compensate for disadvantages linked to racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation will not be considered to be discrimination.

Greek case law, especially that of the Greek Council of State, even before the above novel provision of the Constitution, accepted and established the legitimacy of legislative or administrative measures of positive action aimed at the advancement of gender equality in Greece. The majority opinion of the Greek Council of State in its judgment 1917/1998<sup>134</sup> explicitly recognised that there may be cases which show that in practice a certain category of individuals has been discriminated against 'due to social prejudice', leading to only nominal equality. Concomitantly, this court stated that the spirit of Articles 4(1) and 4(2) of the Greek Constitution (the latter provision stating that 'Greek men and women have equal rights and obligations') in principle allows the State to take appropriate and necessary 'positive action' for a certain period of time, until the existing situation of inequality has ceased. The Greek Council of State concluded that, in principle, it would certainly be legitimate for the Greek State to adopt 'positive measures' for women, in so far as these measures aim at 'accelerating the restoration of *de facto* equality between men and women'.

This jurisprudence was affirmed by the same court's Judgment 1933/1998,<sup>135</sup> where 'positive action' in favour of women by the State was regarded as justified and founded not only on the Greek Constitution, but also on Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Article 2(4)), as well as on Article 4(1) of the UN Convention on the Elimination of All Forms of Discrimination Against Women 1979 (ratified by Greece). The wording of the Greek Supreme Administrative Court judgments is almost identical to that of the UN Convention provision. This significant case law, along with the new constitutional provision of Article

<sup>134</sup> Greek Council of State judgment 1917/1998 (Plenary). *Επιθεωρήσεις δημοσίου δικαίου και διοικητικού δικαίου* 1998 vol. 42 (Review of public and administrative law), p. 577 (in Greek). Article 6 of Law 2839/2000 has also established in principle a quota of 1/3 in favour of women with regard to posts on boards of public and private law organisations.

<sup>135</sup> *Επιθεωρήσεις δημοσίου δικαίου και διοικητικού δικαίου* (1998), vol. 42 (Review of public and administrative law) p. 585 (in Greek). On the right to equality see also Greek Council of State judgments 1156/2000, 2096/2000, *To Syntagma* Vol. 26 (2000) p. 927 and p. 1288 respectively (in Greek).

116(2), should certainly be regarded as a basis for the establishment of positive action by Greece in favour of racial and ethnic groups, as well as other grounds upon which discrimination occurs *de facto* and/or *de jure*.

b) Main positive action measures in place on national level

### **First positive action**

The 'Integrated action plan for the unimpeded integration of third-country nationals legally residing throughout the Greek territory—ESTIA' is financed by the European Fund for the Integration of Third-Country Nationals 2007-2013. These social groups are targeted by Ministerial Decision 308/2001 (OJHR B 784) which provides for the development of special labour inclusion projects by the Greek Manpower Organisation (OAED). The same groups are in fact covered by another similar Ministerial Decision (112852/2002. OJHR B 786), aiming at the protection and advancement of unemployed or under-employed members of the above social groups in the labour markets in the Greek regions. Article 5(1) of this decision makes express reference to 'special cultural groups (e.g. Roma – Thrace Pomaks)'.

### **Second positive action**

With Article 44 of Law 3943/2011<sup>136</sup> the National Confederation of Disabled People became a member of the Economic and Social Council of Greece.<sup>137</sup> On 1 January 2011 the Centre for Disability Certification was established within the Social Insurance Institute (IKA) (*Ίδρυμα Κοινωνικών Ασφαλίσεων*). The Centre comes under the Directorate for Disability and Labour Healthcare (*Διεύθυνση Αναπηρίας και Ιατρικής της Εργασίας*) of the Social Insurance Institute and aims to ensure uniformity in determining the extent of disability for each person.<sup>138</sup> Previously, no such uniform system existed.

### **Third positive action**

One of the revolutionary developments within the realm of minority education is the introduction of the quota system. The Ministerial Decision F.152, 11/B3/790/28.2.1996<sup>139</sup> provides for a special quota of 0.5% for the admission of students from the Muslim minority of Thrace to Greek higher education institutions. The new system was put into place for the first time in the academic year 1996-97 and it facilitated the admission of minority students to Greek universities. All Greek universities started to set aside places for minority students. By the introduction of the quota system, admission to Greek universities became much easier for minority students than before as they started to compete only among themselves, rather than with all the other Greek university applicants. Even though this quota has been applied ever since its introduction, unfortunately, no statistical assessment of its implementation has been carried out.

### **Fourth positive action**

On 4 May 2012 the new Uniform Table on Disability Percentages was issued.<sup>140</sup> According to the National Confederation of Disabled People, there are important positive changes in the percentages of disability in some categories of permanent disability.<sup>141</sup> Due to these

<sup>136</sup> Law 3943/2011 on combating tax evasion *et al.* (OJ A' 66/31.03.2011).

<sup>137</sup> Article 82, paragraph 3 of the Constitution provides that, 'The law determines the issues related to the formation, operation and competencies of the Economic and Social Council, whose mission is to conduct social dialogue on the country's general policy and in particular on economic and social policy guidelines, as well as to formulate opinions on government bills or MPs' law proposals referred to it.' Law 2232/1994 (OG A 140).

<sup>138</sup> Article 6, para. 1 of Law 3863/2010 (OJ 115 A/15.07.2010). Article 6, para. 7 abolishes all Disability Certification Committees of the Prefectures and the public sector.

<sup>139</sup> OSCE-ODIHR, *Minority education in Greece*, HDIM.NGO/134/08, available at: [www.osce.org/odihr/33832?download=true](http://www.osce.org/odihr/33832?download=true), last accessed on 10.10.2015.

<sup>140</sup> Decision of Ministers of Finance and Employment and Social Security F.11321/oik. 10219/688 (OG B 1506/4.5.2012).

<sup>141</sup> Greece, National Confederation of People with Disabilities (*Εθνική Συνομοσπονδία Ατόμων με Αναπηρία*), *Σημαντικές θετικές αλλαγές στο νέο πινάκα προσδιορισμού αναπηρίας*, press release, 10 May 2012, available at:

changes the system of disability assessment has been improved since a new list of special diseases that had not been characterised as disabilities in the past was included and, also, because other forms of disability were 'upgraded' in order to reflect officially a greater 'degree of severity'. This constitutes a positive measure on the part of the government, because a wider variety of groups that were vulnerable but not protected is now entitled to rights such as the receipt of financial benefits that are related to the "degree of severity" of each disability.

Furthermore, with regard to the system of compulsory placement for people with disability (quotas), employers are given little leeway in avoiding the obligations imposed. They cannot refuse to employ compulsorily placed disabled people, unless they invoke and can prove exceptionally bad economic conditions prevailing in their enterprise over the previous two years.<sup>142</sup>

### **Fifth positive action**

The new National Action Plan on Human Rights includes a list of pending policies for combating racial discrimination:<sup>143</sup> the revision of the institutional framework for granting citizenship; simplifying the legislative framework for immigration; drafting a new National Plan for the Integration of Immigrants; action for the proper functioning of the Departments and bureaus against Racial Violence; systematic recording and processing of racial violence; updating and issuing circulars to deal with racist incidents; creating channels of cooperation between the Greek police and other agencies and special education programmes for staff in management practices in relation to racial phenomena; and organising educational seminars for judges and prosecutors.

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[www.esaea.gr/index.php?module=announce&ANN\\_id=3909&ANN\\_user\\_op=view&ns\\_news=1&MMN\\_position=20:20](http://www.esaea.gr/index.php?module=announce&ANN_id=3909&ANN_user_op=view&ns_news=1&MMN_position=20:20), last accessed on 10.10.2015.

<sup>142</sup> A Special State Committee decides these placements. Unwilling employers can lodge an appeal, but in the vast majority of cases these are decided in favour of the beneficiary/disabled person.

<sup>143</sup> The National Action Plan on Human Rights, op. cit., at pp. 167-178.

## 6 REMEDIES AND ENFORCEMENT

### 6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

#### a) Available procedures for enforcing the principle of equal treatment

The following procedures exist for enforcing the principle of equal treatment (judicial, administrative, or alternative dispute resolution such as mediation).

A victim of discrimination in the private sector, including the field of employment, can raise a complaint before the Greek civil courts (Articles 13-14 of the anti-discrimination law, Law 3304/2005) and criminal courts (Article 16 of Law 3304/2005).

A victim in the public sector, including the field of employment, can raise a complaint not only before the Greek civil and criminal courts but also before the administrative courts.

People with disabilities are entitled to request information to be supplied and/or trials be held using alternative formats, e.g. sign language, information in Braille. All the courts are physically accessible for people with disabilities (e.g. wheelchair users). There are administrative procedures which allow for the inspection of workplaces, schools and public buildings.<sup>144</sup>

According to Article 44 of Law 3386/2005<sup>145</sup> as amended by Article 42 of Law 3907/2011,<sup>146</sup> victims of criminal acts provided for by Articles 1 and 7 of the basic anti-racism Law 927/1979<sup>147</sup> and Article 16 of Law 3304/2005,<sup>148</sup> if a criminal prosecution has been initiated, may be granted a residence permit on humanitarian grounds until the judgment is issued. If the victims are undergoing medical treatment the duration of the permit is extended until the treatment is completed, regardless of its relation to the crime.

The above procedures are binding for both the private and the public sector.

#### b) Barriers and other deterrents faced by litigants seeking redress

The principal barrier that litigants face is the necessity to instruct a lawyer, because the fees are very high for the victim.

Moreover, the fact that since 30 January 2011, with Ministerial Decision KYA 123827//23-12-2010, the fee that has to be paid to the police in order to register a complaint has been increased by 900% (EUR 100 instead of EUR 10) seems to constitute a deterrent to seeking redress.

Time limits are very strict (there is a three-month period in which to file a complaint), regardless of sector.

On the other hand, an individual can bring a case after the employment relationship has ended (dismissal or resignation), in both the private and public sectors within a time period foreseen in the labour agreement.

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<sup>144</sup> Ministry of Interior (2007), *Οδηγός του Πολίτη με Αναπηρία* (Guide for disabled citizens), Chapter 2.8, available in Greek at: [www.gspa.gr/\(8905852873909290\)/documents/%CE%BF%CE%B4%CE%B7%CE%B3%CE%BF%CF%83.pdf](http://www.gspa.gr/(8905852873909290)/documents/%CE%BF%CE%B4%CE%B7%CE%B3%CE%BF%CF%83.pdf), last accessed on 10.10.2015.

<sup>145</sup> Law 3386/2005 on the entry, stay and social integration of third-country national in Greek territory (OJ 90 A /18.04.2013).

<sup>146</sup> Law 3907/2011 on the establishment and organisation of the Asylum Service *et al.* (OJ 7 A/ 26.01.2011).

<sup>147</sup> Law 927/1979 on penal sanctions for acts of discrimination based on race (OJ 139 A/28.6.1979).

<sup>148</sup> Law 3304/2005 on the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation (OJ 16 A/27.1.2005).

- c) Number of discrimination cases brought to justice

In Greece there are no available statistics on the number of cases related to discrimination which have been brought to justice.

- d) Registration of discrimination cases by national courts

In Greece discrimination cases are not registered as such by national courts.

## **6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)**

- a) Standing to act on behalf of victims of discrimination (representing them)

In Greece associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

The relevant legal provision is Article 13 (3) of Law 3304/2005 which provides 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’.

However, there were no instances in 2013 or in previous years of NGOs and trade unions providing legal support (acting on behalf of the victim) and representation to victims of discrimination.

The categories of legal entities authorised to defend victims of discrimination is very restricted, since it includes only those which have as a statutory aim the guarantee and protection of the principle of equal treatment (Article 13, para.3, Law 3304/2005). There has been no broad interpretation of this article so far in a way that any organisation involved in human rights issues could be legitimised. With regard to the types of legal entities, current legislation does not specify, and therefore all forms described in the Civil Code fall, in theory, within the scope of national law (associations, non-profit organisations, syndicates and union groups).

The criteria demanded within the framework of Law 3304/2005, in combination with the general requirements laid down by Greek procedural statutes (Article 62 of the Code of Civil Procedure), are: (a) that NGOs and /or trade unions have ‘a legitimate interest in ensuring the application of the principle of equal treatment’. This means that any intervening organisations should have as their objective the effective implementation of the principles laid down by the law and (b) that the victim has given their consent to the organisation, stating that they want and agree to be represented by that organisation. It goes without saying that, in conformity with the Greek Code of Civil Procedure, the NGO or trade union must act before the court through an accredited lawyer. The only permitted forms of authorisation are either an official notarised document or a private document with an officially authorised signature (Article 13, para. 3 of Law 3304/2005). There are no special provisions on victim consent in cases where obtaining formal authorisation is problematic.

Moreover, in order for the aims of the relevant provision to be fulfilled, it does not suffice for the aforementioned legal entities to be able to represent discrimination victims, they must also be able to act in their own name. In this way discrimination victims will be encouraged to report infringements of their rights without fear of retaliation by their



employers. In this area, the NCHR<sup>149</sup> has emphasised the needs for an explicit provision to the effect that a negative *res judicata* in a case that was filed by a legal entity in its own name will not be binding for the discrimination victim.

Action by all associations is discretionary.

Associations may engage in all types of proceedings (civil, administrative or criminal), according to Article 13, para. 3 of Law 3304/2005.

There are no special rules on shifting the burden of proof where associations are engaged in proceedings.

b) Standing to act in support of victims of discrimination

In Greece associations, organisations and trade unions are entitled to act in support of victims of discrimination.

They are entitled to act in support of victims by joining already existing proceedings, according to Article 82 of the Code of Civil Procedure which provides for the possibility of 'additional intervention' in a court process (but only under the strict general requirements laid down by Article 62 of the Code concerning 'legitimate interest', consent of victim to be represented, lawyer's authorisation etc).

With regard to the categories of legal entities, criteria and their legal standing to act on behalf of discrimination victims, please refer to 6.2.a.

Action by all associations is discretionary.

Associations may engage in all types of proceedings (civil, administrative or criminal), according to Article 13, para. 3 of Law 3304/2005.

There are no special rules on shifting the burden of proof where associations are engaged in proceedings.

c) Actio popularis

In Greece national law does not allow associations, organisations or trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

There is no legal provision for actio popularis.

d) Class action

In Greece national law does not allow associations, organisations or trade unions to act in the interest of more than one individual victim (*class action*) for claims arising from the same event.

There is no legal provision for class action.

### **6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)**

In Greece national law requires a shift of the burden of proof from the complainant to the respondent.

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<sup>149</sup> NCHR (2010), *Παρατηρήσεις σχετικά με το Ν. 3304/2005* (Observations on Law 3304/2005), available in Greek at: [www.nchr.gr/images/pdf/apofaseis/protaseis\\_epi\\_nomoth\\_keimenwn/n\\_3304.pdf](http://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/n_3304.pdf), last accessed on 10.10.2015.

The burden of proof in cases of violation of the anti-discrimination law appears in Article 14 of Law 3304/2005, which stipulates:

1. 'When persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment;
2. Paragraph 1 shall not apply to criminal procedures;
3. Paragraph 1 shall also apply in the case of Article 13, para.1.'

In cases of non-compliance with the principle of equal treatment within the framework of an administrative action, the victim has the protection — in addition to judicial protection — granted by Articles 24–27 of the Code of Administrative Procedure.

There was no provision for shift of the burden of proof before Law 3304/2005 was enacted.

There is no known relevant case law.

#### **6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)**

In Greece there are legal measures of protection against victimisation.

Protection against victimisation includes 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 workplace, or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 15 of Law 3304/2005). In cases of adverse treatment or an adverse consequence in 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 everyone, as regards both the public and private sectors, in relation to the eight areas covered by Article 3(1)(a-h) of the Racial Equality Directive 2000/43/EC.

Witnesses, since they play the most crucial role in supplying evidence under Article 14 of Law 3304/2005, could easily be considered as 'protected persons', as they fall within the definition of 'person' in Article 15, which provides that protection includes protection from dismissal or adverse treatment of a person as a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment.

According to the wording of Law 3304/2005, the reversal of the burden of proof also applies to victimisation.

Furthermore, it is important to mention the inclusion of gender identity as a protected ground in criminal law. Law 4139 /2013,<sup>150</sup> entitled 'Addictive substances and other provisions', amends Article 79(3), which now also forbids the suspension of the sentence in cases where bias motivation has been established as an aggravating circumstance, and therefore introduces more severe punishment of bias motivation for crimes against groups susceptible to discrimination.<sup>151</sup> After discussions with LGBT organisations, the new Law added, for the first time, the notion of '*gender identity*', in order to protect in more specific ways transgender people who often tend to be victims of violence.

#### **6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)**

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<sup>150</sup> Greece, Law 4139/2013 on addictive substances and other provisions (OJ 74 A/22.03.2013).

<sup>151</sup> The text of Law 4139/2013 is available in Greek at: [www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=ITYbJcYuEKI%3D&tabid=132](http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=ITYbJcYuEKI%3D&tabid=132), last accessed on 10.10.2015.

a) Applicable sanctions in cases of discrimination – in law and in practice

Law 3304/2005 in Articles 16 and 17 lists criminal sanctions (six months' to three years' imprisonment and a pecuniary fine of EUR 1 000 to EUR 5 000) and administrative sanctions (pecuniary fine of EUR 146 to EUR 805) respectively. The maximum fine imposed on the discriminator in criminal cases is EUR 5 000 (fine to be paid to the State). The maximum fine imposed on those responsible for discrimination in administrative cases is EUR 30 000 (fine to be paid to the State).

The victim can lodge an action for compensation before the civil courts for infringement of their personality rights in cases of 'unlawful harm' (Article 57 of the Civil Code). Compensation for moral damage can be awarded under Articles 920 and 932 (Restitution). Actions based on Civil Code violations and relevant restitution is available in administrative cases outside the field of employment through Articles 105-106 of the Introductory Law of the Civil Code (annexed to the Civil Code).

b) Ceiling and amount of compensation

The sanctions included in Law 3304/2005 list fines which must be paid to the State (for more information see the section above under a).

In civil cases, the victim can be compensated by the civil courts. In this case, there is no maximum amount of compensation.

There is no known case law concerning compensation to victims.

There is no information available on the average amount.

c) Assessment of the sanctions

There is no information available on the effectiveness of the sanctions. However, according to a written warning from the European Commission (no. 2005/2356), these sanctions raise questions about their lack of proportionality. No measures have been taken in response to this warning.

Greek law expressly provides for a criminal law means of defence and penalties in cases of discrimination on racial, ethnic or religious grounds solely within the framework of Law 927/1979 (see Sections 2(2) and 2(3) on direct and indirect discrimination).

Article 57 of the Greek Civil Code is a generic provision that provides for the protection of everyone's personality in cases of 'unlawful harm'. This provision entitles the victim to damages and to demand termination of the harm to their personality and its non-repetition in the future (see Scope of Liability section).

It also includes a court-imposed obligation to refrain from a certain act and/or to perform a certain act, such as to implement desegregation in the fields of housing and education.

In 2001, the Greek National Commission for Human Rights also proposed that Greek anti-racism legislation should expressly provide for vicarious liability in civil, administrative and criminal law.<sup>152</sup> Vicarious liability is currently provided for only by Article 922 of the Greek Civil Code, by virtue of which an employer is held liable for any damage incurred by a third party due to action by the employer's staff.

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<sup>152</sup> Greek National Commission for Human Rights (NCHR), Main aspects of racial discrimination in Greece - Proposals for the modernisation of Greek law and practice, 20.12.2001, in NCHR, Report 2001, available in Greek at: [http://www.nchr.gr/images/pdf/aithsies\\_ektheseis/2001/ekthesi2001\\_gr.pdf](http://www.nchr.gr/images/pdf/aithsies_ektheseis/2001/ekthesi2001_gr.pdf), last accessed 10.10.2015.

With regard to civil and administrative procedures, the NCHR also proposed that Greek law should provide, in addition to compensation, full restitution and reparation for moral harm. With reference to criminal procedures, the NCHR proposed the introduction of an alternative penalty consisting of the obligation to perform community service.

## **7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)**

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

### **National Commission for Human Rights**

Prior to the examination of the equality bodies included in Law 3304/2005, it is important to provide some information on the Greek National Commission for Human Rights (NCHR), which also plays an important role in the promotion of equal treatment. According to Law 2667/1998,<sup>153</sup> by which it was established, the NCHR, although it is not one of the three 'equality bodies' described in Law 3304/2005, has competence to examine the ways in which Greek legislation may be harmonised with the international law standards on human rights protection, and the subsequent submission of relevant non-binding opinions to competent State bodies.

### **Equality bodies**

Articles 19 and 20 of Law 3304/2005 establish the three equality bodies. These are: the Greek Ombudsman (*Συνήγορος του Πολίτη*), the Labour Inspectorate Body (*Σώμα Επιθεώρησης Εργασίας*) and the Equal Treatment Commission (*Επιτροπή Ίσης Μεταχείρισης*). The Ombudsman addresses cases of violations of the equality principle by public actors; the Labour Inspectorate, which operates in the field of employment, addresses cases of violations of the equal treatment principle by legal and natural entities in private law; and the Equal Treatment Commission addresses all cases not covered by the Ombudsman's or the Labour Inspectorate's jurisdiction. Even though the first body has dealt with a substantial workload over the last few years, the Equal Treatment Commission and the Labour Inspectorate have received only a limited number of complaints. The Commission, especially, has not been particularly productive.

Article 18 of Law 3304/2005 entrusts the Economic and Social Council<sup>154</sup> with tasks such as:

- drafting an annual report on developments with regard to the application of the principle of equal treatment;
- making suggestions to the Government and social partners on promoting equal treatment and non-discrimination;
- 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 law entrusts three specialised administrative bodies with the promotion of the principle of equal treatment. In February 2010 the National Commission for Human Rights suggested in an analytical report that, based on the experience of previous years, the competences of all the existing equality bodies should be merged into one (the Ombudsman).<sup>155</sup> The Ministry of Justice has not yet adopted this specific proposal of the NCHR, and for the moment there is no public debate on this issue.

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<sup>153</sup> Law 2667/1998 on the establishment of a National Commission for Human Rights (OJ 281 A/16.12.1998).

<sup>154</sup> Constitution, Article 82(3): 'The law determines the issues related to the formation, operation and competencies of the Economic and Social Council, whose mission is to conduct social dialogue on the country's general policy and in particular on economic and social policy guidelines, as well as to formulate opinions on government bills or MPs' law proposals referred to it.' The law in force is Law 2232/1994 (it was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognised and upgraded the Council's competences).

<sup>155</sup> NCHR (2011), *Annual report 2010*, available at: [www.nchr.gr/images/English\\_Site/Ektheseis/eng2010.pdf](http://www.nchr.gr/images/English_Site/Ektheseis/eng2010.pdf), last accessed on 10.10.2015, p. 32.

In addition, the contribution of the NCHR is important for general policy on the promotion of equal treatment, because through its unique structure – allowing representation in the decision-making processes of various stakeholders – it is able to advise the State on legislation and policy plans.

b) Status of the designated body/bodies – general independence

The equality bodies are:

1. The Ombudsman

This is an independent authority, recognised by the 2001 Constitutional Revision (Article 103 of the Greek Constitution).

The annual budget of the Ombudsman for 2014 was EUR 6 504 426.<sup>156</sup>

The Office of the Ombudsman has the following staff: one director (the Ombudsman, elected by a special parliamentary committee), five paid assistants to the Ombudsman, 72 paid staff members who are lawyers, 70 paid staff members who are other academics and 30 other paid staff members.

Citizens have invoked the Ombudsman hundreds of times since 1997 and in many cases State agencies have been compelled to respect citizens' rights. The Ombudsman has no authority to penalise or to prosecute discriminatory practices, only to activate governmental bodies to help eliminate the causes and practice of discrimination. For example, the Ombudsman carried out a study into a well-known Greek airline company and criticised it for not taking specific and reasonable measures for disabled people, pointing out that this particular case reflects a political position which does not respect the constitutional right of people with special needs to autonomous and equitable participation in the social and economic life of the country and, more particularly, the right to access to and travel by public transport. The Ministry of Transport 'accepted the position of the Ombudsman and requested in writing from Olympic Airlines SA and Olympic Airways, that they assure the transport of persons with special needs without demanding from them a medical opinion and escort'.

According to the anti-discrimination law, the Ombudsman is competent with regard to the promotion of children's rights, as well as the implementation of the principle of equal treatment, regardless of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation, in the public sector, drafting reports and investigating complaints about violations of this principle (in any field; not only in occupation and employment).

In its 2014 special Annual Report<sup>157</sup> on discrimination the Greek Ombudsman, as an equality body, presented a variety of cases regarding the non-enforcement of the principle of equal treatment.

As far as the Roma are concerned, the total number of complaints examined by the Ombudsman in 2014 was 75, 35 of which were filed in 2014, while 40 were from previous years. As far as cases where discrimination was found are concerned, there were nine incidents of discrimination in employment, seven in education and 60 in the supply of goods, services and housing.

2. The Committee for Equal Treatment

This committee was established in 2006 under the provisions of Law 3304/2005 and is supervised by the Minister of Justice.

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<sup>156</sup> Budget information for the Greek Ombudsman is available at: [www.synigoros.gr/?i=stp.el.stoixeia-proipologismou](http://www.synigoros.gr/?i=stp.el.stoixeia-proipologismou).

<sup>157</sup> Greek Ombudsman 2014 Report on Discrimination, op. cit., p. 5.

The Equal Treatment Commission addresses all cases not covered by the Ombudsman's or the Labour Inspectorate's jurisdiction. Therefore, it examines complaints on violation of the principle of equal treatment within its field of competence, and will try to mediate between the conflicting parties. It can also conduct independent surveys concerning discrimination and publish independent reports and make recommendations.

The Committee has no authority to impose sanctions of any kind. However, it does have the right to hear witnesses and to demand that information be supplied by the accused or by third parties (public authorities or individuals).<sup>158</sup>

There is no estimate of the annual budget of the Committee (it comes under the general budget of the Ministry of Justice). It has only one paid staff member, who is a lawyer. There is no information available about the number of complaints received by the Committee in 2014.

### 3. The Labour Inspectorate

This governmental body is only active in the private sector and in the field of employment and occupation, and is competent for any grounds of discrimination (racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation).

The Labour Inspectorate acts as mediator between employer and employee and can also impose fines (payable to the State and not to the employee) in cases where it finds a violation of the principle of equal treatment.<sup>159</sup>

It can also conduct independent surveys concerning discrimination and publish independent reports and make recommendations. The Inspectorate has the right to hear witnesses and the right to demand that information be supplied by the accused or third parties (public authorities or individuals).<sup>160</sup> There is no estimate of the annual budget of the Inspectorate (it comes under the general budget of the Ministry of Labour).

The Labour Inspectorate is a Special Secretariat of the Ministry of Employment and Social Protection and provides services all over the country. There are 16 directorates of the Labour Inspectorate, in which 512 labour inspectors serve, and there are seven centres for the prevention of occupational risks, in which 311 technicians and health and safety inspectors serve. Furthermore, the above-mentioned body has 62 staff members at its headquarters.

The head of the Labour Inspectorate is the Special Secretary.

As in previous years, there is no official information available about the number of complaints received in 2014, because there is no record of the complaints.

#### c) Grounds covered by the designated body/bodies

The three equality bodies established by Law 3304/2005 (Article 18) are competent in the application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age, or sexual orientation. The Ombudsman's competence also covers children's rights, gender and Roma and extends to all fields (it is not limited to that of occupation and employment).

#### d) Competences of the designated body/bodies – and their independent exercise

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<sup>158</sup> Law 3304/2005, Article 22(2).

<sup>159</sup> The fine can then be challenged before an administrative court. However, the litigation is not between employer and employee but between employer and the Government.

<sup>160</sup> Law 3304/2005, Article 19(3), combined with Article 22(2).

1. The Ombudsman provides independent legal aid, assistance and general advice to people who believe they have been victims of infringements of the law and discriminatory practices. It can also conduct independent surveys concerning discrimination and publish independent reports and make recommendations.
2. The Committee for Equal Treatment does not have the competence to provide assistance to victims or to conduct surveys. However, it does have the competence to publish reports and issue recommendations on discrimination issues.
3. The Labour Inspectorate does not provide legal assistance to victims and does not conduct independent surveys because, according to its statute, it is a public, non-independent service and not an independent authority. However, the Inspectorate has the competence to publish reports and issue recommendations on discrimination issues.

<p><b>discrimination by</b></p> <p><b><u>public sector bodies</u></b></p> <p>↓</p> <p><b>OMBUDSMAN</b> <b>[Article 19(1), Law 3304/2005]</b></p> <p>According to Article 3(1) of Law 3094/2003<sup>161</sup> ('The Ombudsman and other provisions'):</p> <p>'The Ombudsman has jurisdiction over issues involving services of: a) the public sector, b) local and regional authorities, c) other public bodies, state private law entities, public corporations, local government enterprises and undertakings whose management is directly or indirectly determined by the state by means of an administrative decision or as a shareholder. <u>Banks and the Athens Stock Exchange are exempted.</u>'</p>	<p><b>discrimination by</b></p> <p><b><u>non-public sector bodies</u></b></p> <hr style="border-top: 1px dashed black;"/> <div style="text-align: center;"> <p>↓                                  ↓</p> <p><b>in the field of employment</b></p> <p>↓</p> <p><b>and occupation</b></p> </div> <div style="text-align: center;"> <p>↓                                  ↓</p> <p><b>LABOUR INSPECTORATE</b> <b>[Article 19(3), Law 3304/2005]</b></p> <p>↓</p> <p><b>in any field other than employment and occupation</b></p> <p>↓</p> <p><b>COMMITTEE FOR EQUAL TREATMENT</b> <b>[Article 19(2), Law 3304/2005]</b></p> </div>
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1. The work of Ombudsman is undertaken independently. The Ombudsman is elected by a special parliamentary committee, in accordance with Article 101(3) of the Constitution.

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2. There are serious doubts about the independent character of the Committee for Equal Treatment: according to Law 3304/2005, the President of the Committee is the Secretary General of the Ministry of Justice. Unlike the Ombudsman, which is an independent authority according to the Greek Constitution and Greek legislation, the Committee for Equal Treatment is fully part of the structure of a government agency, the Ministry of Justice, since its head is strictly appointed by a Ministerial Decision of the Minister of Justice and functions within the substructure of the Department of Equal Treatment, which is an official department of the Ministry. It is the opinion of the Economic and Social Council of Greece, which is competent to supervise the anti-discrimination legislation and submit an annual report, that the Committee for Equal Treatment should become an independent authority with a status similar to that of the Ombudsman.<sup>162</sup> Therefore, although the Committee produces surveys and reports, they cannot be regarded as 'independent'.
3. There are also serious doubts about the independent nature of the Labour Inspectorate because its head is political, i.e. the Special Secretary of the Ministry of Social Affairs, who follows the policy of the party in government, and also because it constitutes an organic section of the Ministry to which it belongs. Therefore, although the Inspectorate produces surveys and reports, they cannot be regarded as 'independent'.

e) Legal standing of the designated body/bodies

In Greece the Labour Inspectorate has legal standing to bring discrimination complaints (on behalf or not of identified victim(s)) or to intervene in legal cases concerning discrimination.

More specifically:

1. The Ombudsman, according to Law 2477/1997<sup>163</sup> (Article 1), may, during the investigation of cases, request the assistance of the Public Administration Investigators-Inspectors Authority or other auditing bodies of the administration. The Ombudsman may request public services to provide any information, document or other evidence relating to the case, and may examine individuals, conduct on-site investigations and order expert reports. The Ombudsman cannot intervene in cases pending before the courts. During the examination of documents and other evidence which are at the disposal of public authorities, the fact that they have been classified as secret may not be invoked, unless they concern issues of national defence, state security and the country's international relations. All public services have an obligation to facilitate the investigation in every possible way.<sup>164</sup>
  2. The Committee for Equal Treatment, according to Article 19 (2) of Law 3304/2005, has no legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination.
  3. The Labour Inspectorate, according to Article 19 (3) of Law 2639/1998,<sup>165</sup> has legal standing to bring discrimination complaints but has not so far exercised this competence.
- f) Quasi-judicial competences

In Greece the Ombudsman (Article 19 (1) of Law 3304/2005), the Committee for Equal Treatment (Article 22 of Law 3304/2005 and the Labour Inspectorate (Article 19 (3) in combination with Article 22 of Law 3304/2005) are not quasi-judicial institutions.

<sup>162</sup> The official website of the Economic and Social Committee and its work on promoting equal treatment is available at: [www.oke.gr/oke\\_treat.html](http://www.oke.gr/oke_treat.html), last accessed on 10.10.2015.

<sup>163</sup> Law 2477/1997 on the Greek Ombudsman and the Labour Inspectorate (OJ 180 A/09.09.1999).

<sup>164</sup> Article 4(5) of Law 3094/2003 on the Ombudsman.

<sup>165</sup> Law 2639/1998 on Labour issues and the Labour Inspectorate (OJ 205 A/02.09.1998).

The opinions of the equality bodies are not legally binding, i.e. the respondent party is not compelled to comply with their findings. Even though the Greek Ombudsman is open to receive complaints from citizens, when it chooses to mediate it can only issue recommendations and proposals to the public administration. The Ombudsman does not impose sanctions or annul illegal actions by the public administration.

The independence of the Greek Ombudsman is declared in Article 103, para. 9 of the revised Greek Constitution, according to which the Ombudsman functions as an 'independent authority', and is described by Law 2477/1997, which stipulates (in Article 1, para 2) that the Ombudsman 'is not subjected to any other governmental body or administrative authority'. The two other bodies cannot be considered to be independent, because they constitute organic sections of the Ministries of which they are part: the Labour Inspectorate is a branch of the Ministry of Labour (separate ministry from that of Social Affairs) and the Committee for Equal Treatment is part of the Ministry of Justice, within the Department of Equal Treatment (this means that its members are appointed by the Minister), which is also a branch of the Ministry of Justice.

#### g) Registration by the body/bodies of complaints and decisions

In Greece only the Ombudsman registers the number of complaints and decisions by ground, field, type of discrimination etc. The information is included in its annual reports and they are available to the public.<sup>166</sup>

The relevant legal provision is Article 3 of Law 2477/1997.

During 2014, the Ombudsman investigated 216 cases of alleged discrimination against one or more persons. Of these, 77 were pending cases from previous years. Of the total number of cases, 38 were dismissed because they were found either to fall outside the Ombudsman's jurisdiction, or to be unfounded or because their investigation was discontinued as no evidence was brought forward by the interested parties. Out of the remaining 178 cases investigated, the Ombudsman closed 56. In 25 of these cases, the equality body found that discrimination had occurred and the State authorities then complied with the recommendation of the Ombudsman. In 20 other cases discrimination was found but the administration declined to comply, and in another 11 cases it was found that no discrimination has occurred. In the remaining 122 cases the Ombudsman found that discrimination had occurred but the administration has not yet decided whether to comply or not.

There are still 53 long-running cases, mainly regarding the issue of Roma housing. This backlog is due to the structural and systemic character that appears in this type of discrimination and due to the decision of the Ombudsman to intervene actively in these cases during every development and until a final resolution of the issue. If a case is pending it means that there has been no decision by the administration concerning the opinion of the Ombudsman, regardless of whether or not the equality body found discrimination had taken place.

In the following paragraphs the focus is on specific grounds.

Regarding discrimination based on race or origin (excluding cases brought by Roma), 25 complaints were investigated in 2014, 18 of which were filed in 2014, while seven were from previous years. Two of the 25 concerned incidents of discrimination in employment, eight in education and 15 in the supply of goods, services and housing.

With regard to discrimination based on disability, 50 complaints were investigated in 2014, of which 39 were filed in 2014, while 11 were from previous years. As far as the cases

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<sup>166</sup> The Ombudsman's reports are also available in English: [www.synigoros.gr/?i=stp.en.reports](http://www.synigoros.gr/?i=stp.en.reports), last accessed on 10.10.2015.

where discrimination was found are concerned, there were 14 incidents of discrimination in employment, 29 in education and seven in the supply of goods, services and housing.

Regarding discrimination based on age, the Ombudsman investigated 33 complaints in 2014, of which 16 were filed in 2014, while 17 were from previous years. As far as the cases where discrimination was found are concerned, 31 were incidents of discrimination in employment and two in education.

As far as discrimination based on sexual orientation is concerned, four complaints were investigated by the Ombudsman in 2014, three were filed in 2014 and one in previous years. Where discrimination was found to have taken place, there was one incident of discrimination in employment and three in the supply of goods, services and housing.

Finally, with regard to discrimination based on religious or other beliefs, 29 complaints were investigated in 2014, 28 were filed the same year and one in previous years. Of the cases where discrimination was found to have taken place, six of these incidents concerned discrimination in employment and 23 in the supply of goods, services and housing.

In total, the Ombudsman investigated 216 complaints in 2014, of which 139 were made in 2014, while 77 were from previous years. Overall, 62 concerned employment, 46 education and 108 the supply of goods, services and housing.

There is no information on the work either of the Committee for Equal Treatment or of the Labour Inspectorate.

#### h) Roma and Travellers

1. Since 2008,<sup>167</sup> the Greek Ombudsman has witnessed the national dimensions of the Roma issue as well as the compelling need to immediately implement multiple targeted programmes of rehabilitation and social support at a local and regional level. Such actions will prove successful only as long as they are mutually combined, coordinated and monitored by a national coordination centre. Moreover, in March 2009<sup>168</sup> the Ombudsman pointed out once again the failure of the central government to deal seriously with the problems experienced by Roma in the fields of education, housing and residence. It is also noteworthy that when the Ombudsman's 2012 annual report was released<sup>169</sup> a significantly high number of cases (32), mostly concerning housing issues experienced by Roma populations, were still pending. This was due to the structural and systemic character of continuing discrimination against Roma in the area of housing and to the Ombudsman's choice to maintain active intervention throughout the course of these cases until they have been dealt with conclusively. The Ombudsman supervises a constantly open pilot communication network with NGOs and other civil society institutions for the protection of Roma people. One of the main goals was to disseminate and collect information on the urgent problems faced by these population groups, as well as to coordinate the activities undertaken by the participating agencies which are active in the field of protecting rights and offering social support to Roma living in Greece. In its 2014 *Special report on discrimination*,<sup>170</sup> the Greek Ombudsman referred to the conditions of social exclusion experienced by the Roma and the need to deal with this

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<sup>167</sup> The Greek Ombudsman (2007), *Promoting Equal Treatment- The Greek Ombudsman as National Equality Body*, available at: [http://www.synigoros.gr/resources/docs/8294\\_1\\_ish\\_metax\\_engl\\_teliko\\_swsto2007.pdf](http://www.synigoros.gr/resources/docs/8294_1_ish_metax_engl_teliko_swsto2007.pdf), last accessed on 10.10.2015.

<sup>168</sup> The Greek Ombudsman (2008), *Promoting Equal Treatment- The Greek Ombudsman as National Equality Body*, available at: [http://www.synigoros.gr/resources/docs/9071\\_1\\_eng-ish\\_metaxeirish\\_final.pdf](http://www.synigoros.gr/resources/docs/9071_1_eng-ish_metaxeirish_final.pdf), last accessed on 10.10.2015.

<sup>169</sup> The Greek Ombudsman, *Special annual report 2012*, (Ειδική Έκθεση του Συνηγόρου για την Καταπολέμηση των Διακρίσεων, 2012, available in Greek at: <http://www.synigoros.gr/resources/docs/10eidikes-diakriseis--2.pdf>, last accessed on 10.10.2015).

<sup>170</sup> Greek Ombudsman 2014 Report on Discrimination, op. cit., p. 7.

issue. The current situation regarding residence, education, access to the job market and public services, as well as the general living conditions of the Roma in Greece does not allow progress to be made in this area. It is telling that the need for special, focused relief by the state for these citizens does not appear to be easily understood as an issue of restoring equality and combating discrimination. Special measures taken or planned in this context are seen by some citizens or even by the State authorities as preferential treatment towards this specific racial group at the expense of other citizens. This perception, apart from being wrong, undermines every effort to deal effectively with the issue.

According to the same report, the National Strategy for the Roma sets out four main axes for dealing with social exclusion: housing, education, employment and health. However, despite producing this Strategy and declaring the aforementioned goals, in practice, there is a significant deficit in putting the Strategy into practice to realise the goals.

2. The Committee for Equal Treatment has not yet examined any complaints from Roma and Travellers and in any case it does not treat this group as a priority issue.
3. The Labour Inspectorate has not yet examined any complaints from Roma and Travellers and in any case it does not treat this group as a priority issue.

## 8 IMPLEMENTATION ISSUES

### 8.1 Dissemination of information, dialogue with NGOs and between social partners

The most important body which provides information about legal protection against discrimination is the Ombudsman. It is an independent body which provides legal aid, assistance and general advice to people who consider that they have been victims of infringements of the law and discriminatory practices. The Labour Inspectorate also plays a distinctive role in the dissemination of information.

#### *Distribution of materials by the Ombudsman*

- In January 2012, the Greek Ombudsman issued a pamphlet aimed at informing vulnerable social groups and possible victims of discrimination about Law 3304/2005 transposing the EU directives into the Greek legal order and about its competence to receive complaints concerning all grounds of discrimination regarding the public sector.<sup>171</sup> The pamphlet, which also exists in an electronic version published on the website of the Greek Ombudsman, describes the principal mission of this independent body to mediate between the public administration and individuals, in order to help them to exercise their rights effectively. It also explains in detail how the Greek Ombudsman, as the equality body competent for cases of discrimination in the public sector, promotes equal treatment and fights against discrimination based on all grounds (race or ethnicity, religious or other conviction, disability, age or sexual orientation). It also informs possible victims of discrimination about how they can communicate in practice with the Ombudsman's Office, how complaints can be submitted, what each complaint should include and the different stages in the investigation of each case. The pamphlet has been distributed throughout Greece by a popular free newspaper (75 000 copies).
- In May 2012, the Greek Ombudsman, as the national equality body, issued a new leaflet on equal treatment, entitled '*Discrimination is illegal. Fight back*'.<sup>172</sup>
- During 2014, according to its 2014 *Special report on discrimination*<sup>173</sup>, the Ombudsman implemented a series of actions as part of the EU Progress programme, which funds PR activities to combat discrimination. These actions include the publication of a guide for public servants, which aims to provide information on specific groups of the population.
- During 2014, the Ombudsman contributed to a series of educational seminars which aimed to inform and raise awareness about anti-discrimination issues. Representatives of the Ombudsman participated as trainers in numerous educational seminars. It is interesting to note the Ombudsman's ongoing cooperation with the Greek police training college, as well as the National School of Public Administration, where it provides training on equal treatment and rights.

#### *Distribution of material through seminars by the General Secretariat for Youth*

- In 2012 the General Secretariat for Youth, in cooperation with the Ministry of Employment and other institutions, organised: a) two intensive two-week training seminars on discrimination, focusing in particular on young offenders, aimed at judges and prison officers, b) seven one-day seminars on combating discrimination on grounds of ethnic or racial origin, religious or other beliefs and sexual orientation in employment, which was aimed at employers, employers' unions, chambers of

<sup>171</sup> New brochures by the Greek Ombudsman on ending discrimination are available in Greek at: <http://new.synigoros.gr/?i=metaxeirisi.el.news.57823>, last accessed on 10.10.2015.

<sup>172</sup> The Greek Ombudsman's brochure on employment and ethnic origin is available in Greek at: [www.synigoros.gr/resources/el\\_postersfdad\\_neb\\_final.pdf](http://www.synigoros.gr/resources/el_postersfdad_neb_final.pdf), last accessed on 10.10.2015.

<sup>173</sup> Greek Ombudsman (2014), *Special report on discrimination*.

commerce, professional associations and others (NGOs, journalists and local authorities).<sup>174</sup> However, the accompanying materials were available only in Greek.

#### *Data recording on racism*

- A Racist Violence Recording Network was set up in October 2011 on the initiative of the NCHR and the Office of the UN High Commission for Refugees in Greece (UNHCR).<sup>175</sup> The initiative is supported by non-governmental organisations and bodies, such as Amnesty International, Aitima, Babel Day Centre, Doctors of the World, the Ecumenical Refugee Programme, the Greek Council for Refugees, the Greek Forum of Refugees, the Greek Helsinki Monitor, Group of Lawyers for the Rights of Refugees and Migrants, the Hellenic League for Human Rights, METAdrasi and PRAKSIS. For instance, during the period between January and December 2014, the Racist Violence Recording Network documented,<sup>176</sup> through interviews with victims, 84 incidents of racist violence, with more than 100 victims: 46 incidents involved immigrants or refugees, while 35 LGBT people have been targeted. In three cases of attacks on LGBT people, the victims were also targeted because of their colour. Finally, there were three incidents of desecration of religious sites and symbols (against the Holocaust monument in Athens and one against the Jewish cemetery in Larissa). Most of the information regarding attacks against refugees and migrants was provided by the NGOs, Praxis and Doctors of the World, which offer medical and social services to the victims, whereas most of the information about attacks against LGBT people came from the NGO Colour Youth – Community of LGBTQ Youth of Athens.
- In 2011, four civil society institutions established the Observatory on Combating Discrimination, in order to develop a methodological framework for the evaluation and assessment of indicators and policies on discrimination in Greece, compared with other EU countries. Specifically, the purpose of the project was to make use of the available data to produce a picture of the discrimination of vulnerable groups and to call for the collection of more reliable data, wherever it is found to be lacking. The overall objectives of the project were to eliminate discrimination and exclusion, to promote cohesion, to showcase good practice and to design concrete actions to combat discrimination. The programme was EU funded and ended in 2013. The establishment of the Observatory was a very important step for the monitoring and assessment of discrimination based on all grounds in the employment sector and it produced comprehensive reports that documented all forms of discrimination as well as the most vulnerable groups.

#### *Initiatives to combat racist violence*

- In March 2012, UNHCR launched the campaign 'One victim of racist violence is too many'.<sup>177</sup> It set up a website on which it posts news about racist violence, events organised by UNHCR and others, stories from victims, views on the subject from academics, journalists and writers, educational material for teachers etc. It has printed and distributed posters and leaflets. Its Facebook page is regularly updated with material from the campaign's platform.
- On 25 April 2012, the Ministry of Justice, Transparency and Human Rights addressed a letter to the Prosecutor of the Supreme Court (*Areios Pagos*) calling for the prosecuting authorities supervised by him to be on the alert for racist crimes and insisting that such incidents need to be investigated in depth and the perpetrators

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<sup>174</sup> Greece, General Secretariat for Youth, *Activities report 2010-2012*, pp. 23-24.

<sup>175</sup> The Racist Violence Recording website is available at: [www.rvrn.org](http://www.rvrn.org).

<sup>176</sup> According to data given to the author and legal expert, Athanasios Theodoridis, on 17.04. 2015 after a special request he made as Director of the organisation ANTIGONE – Information and Documentation Centre on Racism, which is a member of the Racist Violence Recording Network.

<sup>177</sup> For more information see: <http://1againstracism.gr/index.php/en/campaign>, last accessed on 10.10.2015.



prosecuted. It also requested the assistance of public prosecutors with the recording of racist crimes, since in recent years there has been a significant discrepancy between the number of incidents reported by the Greek authorities and the data provided by international and state institutions dealing with this issue, such as UNHCR and the Greek National Commission for Human Rights.<sup>178</sup>

- In September 2012, the Civil Supreme Court communicated a request to Parliament for the lifting of the parliamentary immunity of three Golden Dawn parliamentarians in order to prosecute them for usurping authority and destruction of property after they participated in the destruction of street stalls owned by foreign nationals at open-air funfairs and fruit markets and conducted personal documentation checks on the owners.<sup>179</sup> Parliament voted in favour of lifting their parliamentary immunity.<sup>180</sup> As a result, on 18 September 2012, the Supreme Court Prosecutor issued a circular addressed to the Prosecutors of the Appeals Courts stating that parliamentarians may be arrested without having to wait for their immunity to be lifted. This means that even when an MP commits a misdemeanour crime, his physical restraint is permitted, by resorting to the same measures which are applied by the law enforcement agents when arresting ordinary citizens (arrest and detention).<sup>181</sup>
- On 11 December 2012, Presidential Decree 132/2012<sup>182</sup> was issued, entitled 'Establishment of departments and bureaus for combating racist violence'. It provides for the establishment of two departments to combat racist violence within the sub-directorates of state security in Athens and Thessaloniki and bureaus to combat racist violence in all security sub-directorates and departments in Greece.<sup>183</sup>
- On 9 September 2014 the Greek Parliament passed the new anti-racism Law 4285/2014 (OJ 191 A /10.09.2014).<sup>184</sup> This Law amends the previous anti-racism Law 927/79 by specifically including all grounds of discrimination except age. More explicitly it states that: 'Whoever intentionally, in public, by word of mouth, or through the press or the internet, or through any other means or manner, incites, causes, induces or instigates acts or actions that may lead to discrimination, hatred or violence against a person or a group of persons who are identified on the basis of race, colour, religion, descent, national or ethnic origin or disability, sexual orientation or gender identity, so as to endanger the public order or pose a threat to the life, freedom or physical integrity of the above-mentioned persons, shall be punished with a sentence of three (3) months' to three (3) years' imprisonment and a fine of EUR 5 000-20 000'. It entered into force on 10 September 2014.

### *Discrimination in the media*

- With regard to discrimination in the media, the Code of Conduct of the Athens Journalists' Association contains provisions (Articles 1 and 2) which require

<sup>178</sup> News article from *In.gr News*, Σε εγρήγορση για ρατσιστικά εγκλήματα καλεί τις εισαγγελίες το υπουργείο Δικαιοσύνης (The Ministry of Justice calls upon all prosecution offices to remain alert of racist crimes), 25.04.2012, available at: <http://news.in.gr/greece/article/?aid=1231193033>, last accessed on 10.10.2015.

<sup>179</sup> See relevant news report in Greek at: [www.inewsgr.com/151/arsis-tis-asylias-dyo-akomi-vouleuton-tis-chrysis-avgis-zitei-o-areios-pagos.htm](http://www.inewsgr.com/151/arsis-tis-asylias-dyo-akomi-vouleuton-tis-chrysis-avgis-zitei-o-areios-pagos.htm), last accessed on 10.10.2015.

<sup>180</sup> See various news reports at the following links: [www.tanea.gr/ellada/article/?aid=4761092](http://www.tanea.gr/ellada/article/?aid=4761092); <http://www.skai.gr/news/politics/article/215574/arsis-vouleutikis-asulias-gia-tous-vouleutes-tis-ha-il-kasidiari-p-iliopoulo-kai-g-germeni/>, last accessed on 10.10.2015.

<sup>181</sup> News article from *In.gr News*, Πράσινο φως του Άρειου Πάγου για συλλήψεις βουλευτών που διαπράττουν κακούργημα (Green light from the Supreme Court to arrest MPs), 18.09.2012, available at: <http://news.in.gr/greece/article/?aid=1231213647>, last accessed on 10.10.2015.

<sup>182</sup> Greece, Presidential Decree 132/2012 on the establishment of Departments and Bureaus for the reporting of incidents of racist violence (OJ 239 A/11.12.2012).

<sup>183</sup> Greece, Ministry of Public Order and Citizen Protection (Υπουργείο Δημόσιας Τάξης και Προστασίας του Πολίτη), Press release, 29 October 2012, available at: [www.mopocp.gov.gr/index.php?option=ozo\\_content&lang=&perform=view&id=4398&Itemid=555](http://www.mopocp.gov.gr/index.php?option=ozo_content&lang=&perform=view&id=4398&Itemid=555), last accessed on 10.10.2015.

<sup>184</sup> The text of Law 4285/2014 is available in Greek at: [www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=Ik2xQr3jIkq%3D&tabid=132](http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=Ik2xQr3jIkq%3D&tabid=132), last accessed on 10.10.2015.

journalists to impart information without any prejudice related to their own political, social, religious, racial or cultural views or beliefs and to make no distinction on grounds of national origin, sex, race, religion, political beliefs, economic or social status.<sup>185</sup>

- Article 4 of Presidential Decree 77/2003<sup>186</sup> regulating radio and television news and political broadcasts prohibits the presentation of individuals in a way that, in specific conditions, could encourage their ridicule, social isolation or discrimination on grounds of racial or ethnic origin, nationality, religion and language, among others. It also prohibits the broadcasting of racist, xenophobic and intolerant views, in particular concerning ethnic or religious minorities and other vulnerable population groups.
- Presidential Decree 109/2010<sup>187</sup> transposing the Audiovisual Media Services Directive provides in Article 7 that audiovisual service providers must ensure that programmes do not give rise to hatred on the grounds of race, sex, religion, beliefs, nationality, disability, age and sexual orientation, and they must also not take advantage of people's superstitions and prejudices.

#### *Dialogue with NGOs*

- Article 18 of Law 3304/2005 entrusts the Economic and Social Council<sup>188</sup> with, *inter alia*, 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. However, there is no example of any such initiative on the part of the Economic and Social Council.
- In December 2013, the Greek Ombudsman established an open communication anti-discrimination network, consisting of civil society organisations. It is actually an attempt to establish an unofficial partnership between the various stakeholders in order to share information and knowledge and to work collectively for the promotion of equality and overall support for these groups of the population. Following the success of the pilot communication between and coordination of specific smaller networks which were set up in the past with regional civil society organisations active in the field of Roma and migrant protection and support, the Greek Ombudsman used its very positive experience by establishing similar networks in 2013 for each ground of discrimination and by unifying them under the umbrella of a single, multi-thematic network. This network aims to raise greater awareness of the role the Ombudsman can play in safeguarding equal treatment and also to familiarise participating bodies and organisations with the existing institutional tools and legislation for combating discrimination.

#### *Contribution of the NCHR*

- In January 2010 the National Commission for Human Rights,<sup>189</sup> advisory body to the Greek State, issued a non-binding consultative opinion with specific proposals for the improvement of the legal framework concerning discrimination in Greece. The NCHR

<sup>185</sup> The Journalists' Union of Athens Daily Newspapers have their own Code of Conduct known as the '[Media Code of Ethics](#)'.

<sup>186</sup> The Media Code of Ethics is included in Presidential Decree 77/2003, 'Codex of deontology of news and other media and political broadcasts' (Κώδικας Δεοντολογίας ειδησεογραφικών-δημοσιογραφικών-πολιτικών εκπομπών) (OJ 75 A/28.03.2003).

<sup>187</sup> Greece, Presidential Decree adopting the Media Services Directive (OJ 190 A/05.03.2010).

<sup>188</sup> Constitution, Article 82(3): 'Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country and especially for the orientation of economic and social policy, as well as the formulation of opinions on Bills and law proposals referred to it, shall be specified by law.' The law in force is Law 2232/1994. (It was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognised and upgraded the Committee's competences.)

<sup>189</sup> NCHR (2010), *Παρατηρήσεις σχετικά με το Ν. 3304/2005* (Observations on Law 3304/2005), available in Greek at: [www.nchr.gr/images/pdf/apofaseis/protaseis\\_epi\\_nomoth\\_keimenwn/n\\_3304.pdf](http://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/n_3304.pdf), last accessed on 10.10.2015.



expressed the opinion that there is a need for legal amendments to Law 3304/2005. In terms of substantive content of the law, the NCHR proposed that 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 different treatment of foreign nationals, with the exception of nationals of EU countries.

- In terms of procedure, the NCHR stressed that the procedural rules of Directives 2000/78/EC and 2000/43/EC regarding the reversal of the burden of proof have not been integrated into the Code of Civil Procedure. The national transposition law, however, explicitly mentions the reversal of the burden of proof and is applicable without a revision of the Code of Civil Procedure.
- The NCHR also criticised the law for excessively limiting the number of legal entities which 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 complainant in cases involving allegations of discrimination which have been investigated by the Ombudsman and are subsequently heard by the courts.
- In terms of monitoring, the NCHR proposed that a single equality body should monitor the implementation of Law 3304/2005 with regard to the provisions of Directive 2000/43/EC. 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.

#### Addressing the situation of Roma and Travellers.

Law 2667/1998 entrusts the National Commission for Human Rights with encouraging dialogue about human rights with NGOs, representatives of government ministries, representative unions and, among others, with the Roma community, which also has a seat on the Commission.

Since 2006 the Greek Ombudsman has been participating in the National Working Group of the project 'For Diversity. Against Discrimination', an initiative of the General Directorate of Employment and Equal Opportunities of the European Commission. The aim of the project is to coordinate the actions of national equality bodies and to encourage organisations representing vulnerable groups to become active in collecting information concerning legal developments and good practice. It also aims to raise awareness in the private and public sectors so that civil society stakeholders can more easily combat incidents of unequal treatment.

In 2012 the Greek Ombudsman issued a guide for the municipal authorities regarding the social integration of the Roma. The guide was designed to summarise the views of the Ombudsman and to answer potential questions from local authority employees vis-à-vis marginalised Roma groups.<sup>190</sup> The title of the guide is 'There are Travellers and socially excluded Gypsies/Roma in our municipality: what can we do?' and it contains 12 recommendations concerning: a) the need to record the actual situation locally (whether they are Greek citizens or not and where they come from); b) provision of immediate assistance to Travellers to prevent public health issues; c) ensuring that all children attend school; d) drafting plans for the housing, professional and educational integration of Roma in local communities; e) setting up organised facilities for temporary residence; f) registering Greek Roma in the municipal records; g) combating stereotypes and contributing to the creation of role models, e.g. by giving awards to good students; h) providing opportunities for vocational training.

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<sup>190</sup> Greece, Greek Ombudsman (Συνήγορος του Πολίτη) (2012), *Πρακτικός οδηγός για Δημοτικές Αρχές. Υπάρχουν σκηνίτες και κοινωνικά αποκλεισμένοι Τσιγγάνοι/Ρομά στο Δήμο μας Τι μπορούμε να κάνουμε* ('Practical guide for local authorities: There are Travellers and socially excluded Gypsies/Roma in our municipality: what can we do?'), available in Greek at: [www.synigoros.gr/resources/toolip/doc/2012/02/02/romaguide.pdf](http://www.synigoros.gr/resources/toolip/doc/2012/02/02/romaguide.pdf), last accessed on 10.10.2015.

There have been no other developments in the field of implementation during 2014.

## **8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)**

### **a) Mechanisms**

According to Article 26 of Law 3304/2005, the anti-discrimination law, the special rules of this law prevail over general or conflicting rules. According to Article 18 of Law 3304/2005 the Economic and Social Council is entrusted to (a) draft an annual report on developments with regard to the application of the principle of equal treatment and (b) make suggestions to the Government and to social partners on promoting equal treatment and non-discrimination.

### **b) Rules contrary to the principle of equality**

The Code of Lawyers (Legislative Decree 3026/1954) provides that only Greek nationals can exercise the profession of lawyer (direct discrimination on the basis of nationality). It also provides that only Greek-speaking lawyers up to a maximum of 35 years of age can become members of lawyers' associations. The question of whether the above provision is in conformity with anti-discrimination legislation has been raised by the Committee for Equal Treatment but, due to the problems with its functioning, the Committee was unable to provide a response within the time limit of this update.

With Circular No 15 from the Ministry of National Defence (12 April 2010),<sup>191</sup> the condition of 'Greek ethnic origin' was removed from the criteria for the admission of students to Greek military academies.<sup>192</sup> This requirement was never included in a legal provision but it used to be repeated in the annual document defining the criteria for the selection of candidates.

There have been no developments in the field of compliance during 2014.

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<sup>191</sup> Circular Number: Φ337.1/144425.

<sup>192</sup> See the call for applications at: [www.geetha.mil.gr/media/anakoinoseis/2010anakoinoseis/15-04orthiepanalipsi\\_EDYETHA/teliko\\_EDYEU\\_2010.pdf](http://www.geetha.mil.gr/media/anakoinoseis/2010anakoinoseis/15-04orthiepanalipsi_EDYETHA/teliko_EDYEU_2010.pdf), accessed on 10.10.2015.

## 9 COORDINATION AT NATIONAL LEVEL

### *Authorities responsible for coordinating issues regarding anti-discrimination*

- The Ministry of Justice oversees the Committee for Equal Treatment and the Labour Ministry oversees the Labour Inspectorate. The Greek Ombudsman is an independent body.
- The Greek Ombudsman is competent to conduct research and publish special reports on the enforcement of the principle of equal treatment on the grounds covered by this report (Article 20, para. 3 of Law 3304/2005).
- The Economic and Social Council (OKE), a consultative body which aims to promote social dialogue, especially between employers and employees, is competent to conduct social discourse on anti-discrimination issues, encourage contacts with NGOs and civil society in general and write annual reports with proposals for the improvement of the legal framework (Article 18 of Law 3304/2005).

### *Information regarding a National Action Plan on anti-racism or anti-discrimination*

There is no anti-racism or anti-discrimination National Action Plan *per se*. However, the Economic and Social Council (OKE), which is an advisory body, based on the tripartite organisation model, within the framework of its mandate to conduct social dialogue on social policy issues, draws up an annual report on developments regarding the implementation of Law 3304/2005, with special emphasis on the workplace. In addition, it submits proposals to the Government and social partners on the promotion of the principle of equal treatment and the adoption of anti-discriminatory measures, encourages dialogue with representative organisations, including relevant NGOs, and seeks to raise awareness and disseminate information on the applicable legislation and the measures taken in pursuance thereof.

Furthermore, in December 2013, the General Secretariat of Transparency and Human Rights of the Ministry of Justice presented a National Action Plan on Human Rights prepared with the assistance of experts from all the relevant ministries and agencies.<sup>193</sup> The Action Plan specifies the binding framework of priorities and actions of each Ministry and provides opportunities for comments, improvements and criticism from everyone, in order to ensure continual improvements. It also meets the requirements of international organisations. With the production of the National Action Plan on Human Rights, Greece finally presented a specific schedule of activities and initiatives for the protection of human rights. Relevant Government officials have undertaken more specific commitments and priorities for the implementation of the programme. Citizens can gain a full picture of the actions carried out or to be carried out; they can review the actions and omissions and express their opinions and suggestions for improvement.

The National Action Plan is mentioned here because it also includes a list of pending policies for combating racial discrimination:<sup>194</sup> the revision of the institutional framework for granting citizenship; simplifying the legislative framework for immigration; drafting a New National Plan for the Integration of Immigrants; action for the proper functioning of the Departments and Bureaus against Racial Violence; systematic recording and processing of racial violence; updating and issuing circulars to deal with racist incidents; creating channels of cooperation between the Greek police and other agencies and special education programmes for staff in management practices in relation to racial phenomena; and organising educational seminars for judges and prosecutors. However, the provisions of this general National Action Plan have been criticised as being abstract.

There have been no other developments in the field of coordination during 2014.

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<sup>193</sup> The National Action Plan on Human Rights, op. cit.

<sup>194</sup> The National Action Plan on Human Rights, op. cit., pp. 167-178.

## 10 CURRENT BEST PRACTICES

### *Best practices concerning Roma integration*

- Following the ECtHR judgments,<sup>195</sup> the Greek government made some efforts to abolish segregated schools through a national programme for the education of Roma children and through so-called Education Priority Zones. This initiative was taken by the Ministry of Education and Religious Affairs and the programme is co-funded by the EU.<sup>196</sup> It aims to ensure the equitable educational integration of students and, if possible, to remove social and economic barriers to their progress. However, Greece currently still continues to fail in securing access to desegregated, inclusive education for all students.
- There have so far been two state housing programmes (1997-2001 and 2002-2008) that set as a target, according to the State's planning schemes to eradicate the problem of homelessness for the Greek Roma. (a) During the period 1997-2001, the Ministry of Interior reported<sup>197</sup> that EUR 17.07 million were allocated by the state budget and 1 260 pre-fabricated houses were constructed. In the period 2002-2008 EUR 90.4 million were allocated for Roma housing projects, including the creation of urban infrastructures. In total 557 pre-fabricated houses were allocated in order to replace shacks, tents and other inadequate Roma dwellings. Furthermore, through the use of housing loans, a housing development was created in Metaxades (initially 27 houses, to be extended with 15 more) and in Kalamata, in the locality of Birbita (66 wooden houses). Today, the latter settlement is reportedly run down, with most of the houses destroyed by the tenants. (b) During the period 2002-2008, 9 000 housing loans of EUR 60 000 each were offered to Greek Roma living in inadequate housing conditions in settlements. According to the Ministry of Interior, by April 2009, 6 212 Roma had succeeded in utilising this option and made a property purchase. A report suggests that there were 33,000 loan applications.<sup>198</sup> Nevertheless, many of the Roma who constructed their own houses were unable to follow the urban planning regulations, making them an easy target for lawsuits from the urban planning and sanitation authorities.<sup>199</sup>
- The *National strategy report on social protection and social inclusion 2006-2008*<sup>200</sup> describes how the government sought to avoid territorial segregation between immigrants (and other groups with different cultural/religious characteristics) and the rest of the population through preventive measures, such as improving living conditions in urban areas where these groups are mainly concentrated, resolving housing problems and facilitating their dispersal within the country.<sup>201</sup> However, an evaluation of the National Strategy observed that, 'given the scarcity of evaluations of the impact of the implemented measures, and knowing that in reality a lot remains to be done to adequately address the issue of improving the situation of Greek Roma,

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<sup>195</sup> *Sampanis and Others v. Greece*, ECtHR, application no. 32526/05). See also: *Lavida and Others v. Greece* (application no. 7973/10).

<sup>196</sup> The programme is being implemented by the Universities of Thessaloniki and Athens, under the supervision of the Ministry of Education and Religious Affairs, in 84 municipalities with large concentrations of Roma, focusing on regions where primary school integration indicators are low.

<sup>197</sup> Ministry of Interior document protocol no. 21253/10.4.09.

<sup>198</sup> RAXEN NFP Greece, KEMO-HLHR (2009) *Thematic study on the housing conditions of Roma and Travellers*, p. 31.

<sup>199</sup> A presentation explaining why the Roma could not benefit even from a generous housing programme can be found in RAXEN NFP Greece, KEMO-HLHR (2009), p. 20 and p. 46.

<sup>200</sup> Ministry of Employment and Social Protection (2006) *National strategy report on social protection and social inclusion 2006-2008*.

<sup>201</sup> Ministry of Employment and Social Protection (2006) *National strategy report on social protection and social inclusion 2006-2008*, p.38. The Integrated Action Programme for Roma Housing, implemented under the supervision of an interministerial committee coordinated by the Minister of Interior, Public Administration and Decentralisation, is also provided for by the National Plan for Social Inclusion.

- to consider this specific intervention a good practice seems debatable'.<sup>202</sup>
- In December 2011, taking into account the shortcomings of the preceding programming period, the Greek National Strategy for the Social Integration of Roma 2012-2020 has set the following objectives:<sup>203</sup> a systematic and comprehensive inventory and description of the current situation; a review of the rationality of the planning priorities, based on the results of the aforesaid inventory; a redefinition of the priorities in the short, medium and long term, based on the existing needs of the target group and the resources (human and financial) available; the establishment of an administrative mechanism for the integrated management of the national strategy. The primary objective of this Strategy is to end the social exclusion of the Roma and to create the necessary conditions for the social integration of Roma people, whether they are Greek or foreign nationals residing lawfully in Greece. The aforesaid strategic objective is to be served through the guaranteed provision of housing, in a way that the needs of the Roma target group for acceptable living conditions can be met. This objective is to be implemented on a short-term (2012-2016), medium-term (2016-2020) and long-term (2020 onwards) basis.
  - During 2013, three local strategic plans for action, in the framework of the above National Strategy, started being implemented on a pilot basis in the regions of Eastern Macedonia and Thrace, Thessalia and Western Greece.<sup>204</sup> Their aim was to provide basic infrastructure for Roma settlements.
  - During 2014, three more regions were included in the Strategy (Epirus, Peloponnesus and Southern Aegean).

*More good practices are needed for Roma integration*

Notwithstanding the above and according to the ECRI's 2015 report,<sup>205</sup> the National Strategy for the Social Integration of Roma 2012-2020 has the objective of ending the social exclusion of Roma and creating conditions for their integration. The previous Integrated Action Plan, with broadly similar objectives, largely failed. There was also insufficient participation of Roma representatives in its evaluation. The new strategy prioritises housing, education, employment and health. A significant problem is still the lack of coherence between national strategies, regional action plans and local-level implementation. At the moment, the effectiveness of the integration measures depends to a large extent on the cooperation of local authorities and institutions. Representatives of different ministries as well as NGOs confirmed that local resistance to Roma integration is often strong and difficult for the central authorities to overcome. Problems persist especially with regard to segregation in housing and education, often based on widespread prejudice against Roma within local communities. A majority of older Roma continue to be illiterate and, although school attendance is more common among younger Roma, their involvement in the educational process is still insufficient. The illiteracy and drop-out rates among Roma children are still high. Their position in the formal labour market is, in general, precarious or even non-existent. Many Roma met by the ECRI delegation explained that, due to a lack of formal education and reduced demand for unskilled workers, especially in the construction sector, as a result of the economic crisis, they now have to rely even more on informal economic activities, such as collecting scrap metal. Child benefits provided by the State are often the only stable source of income, thus perpetuating dependency and socio-economic marginalisation.

<sup>202</sup> Commission of the European Communities SEC(2007) 272/22.02.2007, *COMMISSION STAFF WORKING DOCUMENT Joint report on social protection and social inclusion COUNTRY PROFILES – Greece*, p. 74.

<sup>203</sup> The Greek National Strategic Framework for Roma is available at: [www.ec.europa.eu/justice/discrimination/files/roma\\_greece\\_strategy\\_en.pdf](http://www.ec.europa.eu/justice/discrimination/files/roma_greece_strategy_en.pdf).

<sup>204</sup> See, for instance, the relevant information, in Greek, provided during a Parliamentary Audit at: [www.hellenicparliament.gr/Koinovoulftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm\\_id=254fc12d-5e36-41af-a443-acdd066648bf](http://www.hellenicparliament.gr/Koinovoulftikos-Elenchos/Mesa-Koinovouleutikou-Elegxou?pcm_id=254fc12d-5e36-41af-a443-acdd066648bf), last accessed on 10.10.2015.

<sup>205</sup> ECRI (2015), *Report on Greece (Fifth Monitoring Cycle)*, CRI(2015)1, available at: [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf), last accessed on 10.10.2015, p. 31.

### *Recent developments concerning same-sex civil unions*

Finally, regarding the issue of same-sex civil unions and following the judgment of the ECtHR in the *Vallianatos* case,<sup>206</sup> the Ministry of Justice recently published a draft which will be introduced to Parliament to allow civil unions for same-sex couples.<sup>207</sup>

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<sup>206</sup> ECtHR, *Case of Vallianatos and others v. Greece*, Applications nos. 29381/09 and 32684/09, 7 November 2013, available at: [http://hudoc.echr.coe.int/eng?i=001-128294#{"itemid":\["001-128294"\]}](http://hudoc.echr.coe.int/eng?i=001-128294#{).

<sup>207</sup> Press Release of the Ministry of Justice, 10.06.2015, available at: [www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97/tabid/64/itemid/2390/amid/797/.aspx](http://www.ministryofjustice.gr/site/el/%CE%91%CE%A1%CE%A7%CE%99%CE%9A%CE%97/tabid/64/itemid/2390/amid/797/.aspx), last accessed on 10.10.2015.

## 11 SENSITIVE OR CONTROVERSIAL ISSUES

### 11.1 Potential breaches of the directives (if any)

Greece belongs to the majority of Member States which, prior to the adoption of the two directives, did not have a special legislative framework establishing equal treatment and prohibiting discrimination. However, Greece did not incorporate the two EU legislative instruments correctly.<sup>208</sup>

In Greece, national legislation provides for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78/EC).

Article 8(4) of Law 3304/2005 provides that:

‘The provisions of this chapter [Equal treatment in employment and occupation], in so far as it relates to different treatment on the grounds of age or disability, relevant to service, shall not apply to the armed forces and the security bodies’ (consequently also the police, prison or emergency services, e.g. fire service).

The extension of this exception to the police, prison and emergency services is incompatible with the directive, which limits the scope for an exception only to the armed forces.

Moreover, there is a deficiency in the transposition of Directive 2000/43/EC as far as Article 13 is concerned (establishment in every Member State of the EU, of an independent equality body). Although Directive 2000/43/EC does not require the equality bodies to be set up as independent authorities, the relevant features are ‘indirectly’ required, given the emphasis it places on the condition of independence.

At the same time, the procedural provisions of the two directives (*locus standi* of legal entities and burden of proof) have not been incorporated into the Code of Civil Procedure and the Code of Administrative Procedure. Consequently, since the wording of the Codes has not been modified, judges and other competent authorities, lawyers, employees and their organisations ignore these provisions and they are not applied in practice. Thus, very few cases have been filed in the courts.

### 11.2 Other issues of concern

Before proceeding to the issue of implementation, it is first important to highlight the lack of case law, which is a permanent problem in Greek legal order, since victims are not usually informed about their rights and civil society is weak compared with other EU Member States. With regard to barriers to justice, the fact that since 30 January 2011, with Ministerial Decision KYA 123827//23-12-2010, the fee which must be paid to the police in order to register a complaint has been increased by 900 % (EUR 100 instead of EUR 10) seems to constitute a deterrent to seeking redress. Moreover, there are no detailed statistics on the cases that reach the courts, since each court has to compile its own data, without standardised criteria. Dealing with this issue is crucial for evaluating the practical implementation of Law 3304/2005.

*Identified issues within the text of Law 3304/2005*

- Regarding specific protected grounds included in the directives, it is important to highlight that, at a national level, the existence of a coherent legal framework for

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<sup>208</sup> NCHR (2010), *Παρατηρήσεις σχετικά με το Ν. 3304/2005* (Observations on Law 3304/2005), available in Greek at: [www.nchr.gr/images/pdf/apofaseis/protaseis\\_epi\\_nomoth\\_keimenwn/n\\_3304.pdf](http://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/n_3304.pdf), last accessed on 10.10.2015.

protection against discrimination on the ground of age is of fundamental importance,<sup>209</sup> especially now that age has become the most common reason for discrimination in Europe.<sup>210</sup>

- There is, moreover, a need to amend several articles of the law concerning the scope of equal treatment, positive action, occupational requirements and differences of treatment on the ground of age, in order to make these provisions consistent with the letter of Directive 2000/78/EC.<sup>211</sup>
- Amendment of several articles of the law is necessary so as to facilitate the legitimisation of NGOs in judicial proceedings, the recognition of favourable judicial precedent and the legitimisation of NGOs to exercise an appeal to an administrative authority. It is in this broader context that the government should address the issue of discrimination against older people.
- The number of legal entities which have the right to defend discrimination victims, in accordance with Article 13 of Law 3304/2005, is very limited, since it includes only those which, according to their statutes, state safeguarding the equal treatment principle as one of their purposes. So far, the implementation of the Law does not indicate a broad interpretation of the relevant provision in order for every organisation defending human rights to have *locus standi*. Furthermore, the current requirements for legal entities to represent discrimination victims provided for in Article 13, para. 3 of Law 3304/2005 (prior consent from the discrimination victim provided before a notary or in writing, signed and with the authenticity of the signature certified) hinder the application of the provision. The directives require the victim's 'approval', which can be given later, and not their 'consent', which must be given in advance. Moreover, with the requirement of 'consent' there is the risk that the deadline for recourse to the court or to another competent authority will elapse.

#### *Identified issues relating to the effective application of Law 3304/2005*

- There is concern about the application of the principle of equal treatment in Greece, especially during the economic crisis, since many of the austerity measures adopted in Greece (mostly in relation to labour and social security) are age-related (such as the extension of the number of years in employment to reach a specific age limit). These measures involve unfavourable treatment based solely on age, since they reduce access by younger generations to employment, introducing direct, non-justifiable discrimination and thus violating Directive 2000/78/EC.<sup>212</sup> In some cases indirect gender discrimination and multiple indirect discrimination on the grounds of gender and age are possible, as for example, most pension beneficiaries under 55 years of age are women who have retired with fewer years of service, due to the fact that they had minor children, which is also noted by the ILO as being a situation of indirect discrimination.<sup>213</sup>
- Attention should be given to combating stereotypes and prejudice against older people which lead to discrimination against them (ageism). This phenomenon is associated with viewing older people as 'non-people' or not the same people as they

<sup>209</sup> See NCHR 2014 report on older people available at: [www.nchr.gr/images/pdf/apofaseis/Hlikiomena\\_atoma/EEDA\\_IlikiwmnoiF.pdf](http://www.nchr.gr/images/pdf/apofaseis/Hlikiomena_atoma/EEDA_IlikiwmnoiF.pdf), last accessed on 10.10.2015.

<sup>210</sup> Π. Στάγγος, Οι διακρίσεις λόγω ηλικίας και η πρόκληση της διαγενεακής αλληλεγγύης στο ελληνικό και το ευρωπαϊκό δίκαιο, *Ελληνική Επιθεώρηση Εργασίας*, 2014, Τεύχος 73, σελ. 977-996, (Stangkos, P., Discrimination on the ground of age and the challenge of solidarity between generations in Greek and European Law, in *Review of labour law 2014*), at p. 994.

<sup>211</sup> In its previous relevant Recommendations (2003 and 2010), the NCHR stressed that in order to incorporate Directive 2000/78/EC in a technically correct manner, the anti-discrimination Law 3304/2005 should repeat provisions included in Law 3051/2002, according to which a maximum age limit for employing people is abolished in both the public and private sectors (with exceptions).

<sup>212</sup> Σ. Κουκούλη-Σπηλιωτοπούλου, *Μέτρα λιτότητας στην Ελλάδα και ανθρώπινα δικαιώματα*, ΕΔΚΑ 2014, σελ. 194 και επ., (Spiliotopoulou, S. (2014) 'Austerity measures in Greece and human rights: judgments of international bodies, EU Law and examples of Greek jurisprudence', in *Review of social security law 2014*), at p. 173,181,182 and 189.

<sup>213</sup> ILO (2011), *Report on the High Level Mission to Greece (Athens, 19-23 September 2011)*, paragraphs 1-8.



were before, or as people in a separate and lower category, only because they have already passed through particular life stages. The negative impact of these stereotypes on older people's enjoyment of their fundamental rights should not be underestimated.

#### *Identified issues related to the equality bodies*

- As far as the lack of independence of the equality bodies is concerned, the Commission for Equal Treatment, founded by Law 3304/2005 as the Greek equality body with competence in the private sector, functions simply as an advisory body of the State – only for the interpretation of the law – and as mediator between the parties in cases of discrimination, although the directive does not make provision for such duties. Moreover, the independence of the Commission for Equal Treatment is debatable since its members are appointed by the Minister of Justice and it is chaired by the Secretary General of the Ministry. Therefore, it could not be given competence to provide independent assistance to victims of discrimination (Article 13 of Directive 2000/43/EC).
- The independence of the Labour Inspectorate – designated as an equality body for employment and occupation in the private sector – is also debatable, since this body is officially part of the administrative hierarchy of the Ministry of Labour.
- Furthermore, taking into account the need for the effective promotion and application of the principle of equal treatment and the problems of discrimination faced by some sections of the population because of their racial or ethnic origin, age, religion, disabilities or sexual orientation, as well as the delay on the part of the State in providing society with public institutions able to combat discrimination effectively, the key issues concerning the promotion and monitoring of the implementation of the equal treatment principle in Greece and the current deficiencies in the transposition of the directives are inextricably linked to adjustments of the competences of the designated equality bodies.

#### *Recommended steps for effective implementation of anti-discrimination*

Therefore, the key issues for Greece in the anti-discrimination field can be summarised as follows:

- 1) Extension of the competence of the Ombudsman (which is a well-organised, effective and independent body) to include the private sector as well. This would mean that any public authority receiving complaints or information regarding the violation of the equal treatment principle, including the Labour Inspectorate, should communicate them to the Ombudsman for investigation and mediation. The respective competences of the Labour Inspectorate and the Commission for Equal Treatment of the Ministry of Justice should, therefore, be removed.
- 2) Provision of independent and specialist assistance by the Ombudsman to victims of discrimination. Furthermore, the Codes of Procedure should be amended in order to provide for the *locus standi* of the Ombudsman as a third party before civil or administrative courts or as a civil party before criminal courts.
- 3) Extension of the *ratione temporis* 'jurisdiction' of the Ombudsman over cases which have been filed in the courts until the first hearing of the case or the issuing of interim measures. Given that a complaint submitted to the Ombudsman does not suspend the deadlines for judicial remedies, if the mediation of the Ombudsman is not fruitful, the discrimination victim could be deprived of their right to judicial protection. This extension might encourage discrimination victims to have recourse to the Ombudsman and limit the number of potential cases before the courts, a procedure which is more time-consuming and costly.

- 4) Systematic monitoring by the Ombudsman, in cooperation with the Labour Inspectorate, the Department for Equal Opportunities of the Ministry of Labour and the Organisation for Mediation and Arbitration (*Οργανισμός Μεσολάβησης και Διαιτησίας, ΟΜΕΔ*) of developments in employment and occupation, collective agreements, codes of ethics and practices regarding combating discrimination.
- 5) Creation, within the Economic and Social Council, of a permanent consultative body, composed of representatives of NGOs and organisations in general, with the participation of the Ombudsman, tasked with carrying out, together with the plenary body of the Economic and Social Council, a social dialogue on equal treatment.
- 6) Finally, it is obvious that, as a result of the recommended extension of the Ombudsman's competences, its budget and staff should be increased accordingly.

In addition, legislative amendments should be introduced in order to resolve the following issues:

- The requirements for the legal standing of NGOs before the courts should become less strict.
- Modifications must be made to the administrative Code of Procedure relating to the burden of proof.
- Provision should be made for penalties of imprisonment for all the areas of discrimination protected by the anti-discrimination law.

## 12 LATEST DEVELOPMENTS

### 12.1 Legislative amendments

- Inclusion of all grounds of discrimination (except age) in the new anti-racism Law 4285/2014<sup>214</sup> (OJ 191 A/10.09.2014) (see above, Section 8.1). This Law amends the previous anti-racism Law 927/79.
- Addition of transphobic motive to anti-racist provision amending previous criminal legislation by means of Article 10(a) of Law 4249/2014<sup>215</sup> (OJ 73 A/24.03.2014).

### 12.2 Case law

**Name of the court:** Single-member Misdemeanour Court of Thessaloniki

**Date of decision:** 24 February 2014

**Name of the parties:** Not revealed

**Reference number:** 4232/2014

**Address of the webpage:** Not available

**Brief summary:** On 10 April 2013 a bus driver with the private Urban Transport Organisation of the City of Thessaloniki (OASTH), acting in a provocative manner, compelled two passengers of African descent to leave the vehicle. The two passengers had just boarded the bus and were obviously about to buy a ticket. When other passengers started talking about the incident, criticising the driver's behaviour, he stopped the vehicle and addressed them in an intense tone, declaring unambiguously that he was a neo-Nazi Golden Dawn party supporter. The Prosecution Office of Thessaloniki pressed charges (ex officio) after complaints from a passenger and activists from the anti-racism NGO NAFTHA (Nazi-Free Thessaloniki Assembly). The court decision was issued on 24 February 2014 by the Single-member Misdemeanour Court of Thessaloniki which imposed a suspended prison term of 10 months and a fine of EUR 1 000 on the driver for violation of Article 1 of anti-discrimination Law 3304/2005, which forbids the refusal to provide goods and services on discriminatory grounds.

**Name of the court:** Single-member Misdemeanour Court of Thessaloniki

**Date of decision:** 7 March 2014

**Name of the parties:** Not revealed

**Reference number:** 9039/2014

**Address of the webpage:** Not available

**Brief summary:**

A suspended prison term of 16 months and a fine of EUR 2 500 were imposed on 7 March 2014 on a 57-year-old doctor who had been arrested on 22 February for placing a sign saying 'Jews are not welcome' at a surgery allocated to him in Nea Mixaniona by the municipality of Thermaikos. The Prosecution Office of Thessaloniki pressed charges (ex officio) after complaints from a patient and activists from the anti-racism NGO NAFTHA (Nazi-Free Thessaloniki Assembly). The neurologist, from the National Organisation for the Provision of Healthcare Services, was found guilty of 'inciting racial discrimination' (Article 1 of the anti-racism Law 927 /1979), as well as of 'possessing a weapon', due to the fact that knives were found at his residence. He was also found guilty of a violation of Article 1 of anti-discrimination Law 3304/2005, which forbids the refusal to provide goods and services on discriminatory grounds.

**Name of the body:** Greek Ombudsman

**Date of decision:** 13 October 2014

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<sup>214</sup> The text of Law 4285/2014 is available in Greek at: [www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=Ik2xQr3jIkq%3D&tabid=132](http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=Ik2xQr3jIkq%3D&tabid=132), last accessed on 10.10.2015.

<sup>215</sup> The text of the law on the restructuring of the police force *et al.*, is available at: [www.eekt.gr/LinkClick.aspx?fileticket=wKmkSb8jf3A%3D&tabid=109](http://www.eekt.gr/LinkClick.aspx?fileticket=wKmkSb8jf3A%3D&tabid=109), last accessed on 10.10.2015.

**Name of the parties:** Not revealed

**Reference number:** F 1400.2/41482/2014

**Address of the webpage:** [www.synigoros.gr/?i=metaxeirisi.el.image.217572](http://www.synigoros.gr/?i=metaxeirisi.el.image.217572)

**Brief summary:**

During 2014 the Greek Ombudsman was informed about the procedure of an official 'advertisement/invitation' issued by the Greek Naval Chamber (NEE) concerning the transfer of public sector administrative employees, which set an upper age limit (in this case 40 years old) as one of the criteria for filling the advertised positions. The Ombudsman intervened ex officio, as the agency promoting the equal treatment principle when this is violated by public services (Law 3304/2005) and addressed an advisory Opinion to the NEE. In particular, in its advisory Opinion of 11 August 2014, which was published on 9 October 2014, the Ombudsman pointed out that discriminating against people, inter alia, on the ground of age, is prohibited in the field of employment and work, in accordance with the principle of non-discrimination and that any possible discrimination due to age can be justified only if specific and stringent conditions are met. According to the Ombudsman, the above conditions were not met in this case. The NEE responded positively to the Ombudsman's Opinion and recalled the controversial advertisement, interrupting the relevant procedure. Consequently, the NEE issued a new advertisement in which no age restriction was included.

**Name of the body:** Greek Ombudsman

**Date of decision:** 29 December 2014

**Reference number:** 193395/2014

**Address of the webpage:** Not available

**Brief summary:**

According to a 2014 advertisement by the public Greek Manpower Employment Organisation (OAED) for admission for the academic year 2014-2015, to the School of Professional Education for disabled people people with mental health problems were excluded. After a complaint was made by the National Confederation of Disabled People, the Ombudsman promptly intervened and pointed out that the advertisement, apart from representing discriminatory treatment on the ground of disability prohibited by Law 3304/2005, constitutes a violation of provisions of the UN Convention on the Rights of Persons with Disabilities, especially Articles 12 (equal treatment before the law) and 27, according to which Greece as a party must secure and promote the right to employment and take the necessary measures in order for disabled people to have effective access to careers services, professional education and lifelong learning. In a public document addressed to the Ombudsman, the OAED administration made a commitment that such exclusion will not be repeated in the future and that all necessary efforts will be undertaken so that disabled people could occupy positions that correspond to their special skills.

### **Trends and patterns concerning Roma and Travellers**

According to the Ombudsman's 2014 special report on discrimination,<sup>216</sup> the Roma are far from being fully integrated into Greek society. More measures need to be taken in order to ensure effective access to education, housing, health and employment.

The following trends and patterns were identified for 2014.

#### *Relocation and further exclusion*

There have been a number of relocation schemes for Roma settlements, most of which in practice take place in order to remove existing Roma settlements from urban areas. Moreover, the settlements are relocated to isolated areas, which render nearly impossible

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<sup>216</sup> The special report on discrimination is included as a separate chapter within the Ombudsman's annual report for 2014, available at: [www.synigoros.gr/resources/docs/ee2014-00-stp.pdf](http://www.synigoros.gr/resources/docs/ee2014-00-stp.pdf), last accessed on 10.10.2015.

any enjoyment of dignified living conditions, on the one hand, and access to education, health services and employment, on the other.

#### *Access to goods and services*

The modernisation of procedures for the enjoyment of access to goods and services seeks to enhance and improve the manner in which services are supplied. Yet, these modernisation attempts fail to take into account the delicate position of vulnerable groups, such as the Roma, which are not familiar with modern internet services or which are generally illiterate. A supportive institution should be established which will cooperate with municipal services providers to provide services to vulnerable groups, including the Roma.

#### *Access to employment*

Given that, according to indisputable research, among a large portion of the Roma community there are high drop-out rates from school as well as illiteracy, this could lead indirectly to their exclusion from employment which does not require specialist skills other than a high-school education. Access to employment, therefore, can only be achieved through better access to education.

#### *Proportionality and administrative treatment: the case of building fines*

In 2014, the Ombudsman had to continue its intervention in the cases of hundreds of building fines which were issued for the arbitrary construction of make-shift houses in the area of Sofades. The owners of these houses were burdened with highly disproportionate fines, especially considering that the same fine which is issued for regular concrete buildings was issued for make-shift houses made of much cheaper materials (cardboard, thin metal sheets, etc.). The General Secretariat for Regional Planning and Urban Environment responded to say that a legislative measure will be taken to deal with these cases.

#### *Access to education*

Access to education still remains a prevailing issue for the Roma community. The education of Roma children does not seem to be given due consideration when planning solutions for the relocation of Roma settlements and ensuring easy access to the education process does not seem to constitute a strategic goal. Indicative of this is the case of the Agia Sofia settlement, near Thessaloniki. For children living in the settlement and enrolled at a primary school outside the settlement, it looked as though, despite the fact that their families had gone through the procedures to enrol them at school and their positive attitude, there were some problems. For example, for a long period of the school year 2013-2014 they did not attend school because the issue of their transportation to school was not resolved. In the end, the pupils were enrolled at other schools for which transportation had been arranged and provided. Unfortunately, at the beginning of the year 2014-2015, the same transportation issue re-emerged, affecting not only the pupils living in the settlement but a large number of other pupils who were in need of transport.

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

**Country:** Greece

**Date:** 1 January 2015

<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Law 3304 /2005 'On the application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation' (O.J. 16/27.01.2005)</p> <p>Abbreviation: Antidiscrimination Law</p> <p>Date of adoption: 16.01.2005</p> <p>Latest amendments:</p> <p>Entry into force: 27.01.2005</p> <p>Web link:  <a href="http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=DE1eX1PkWuw%3D&amp;tabid=132">http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=DE1eX1PkWuw%3D&amp;tabid=132</a>  (in Greek)</p> <p>Grounds covered: Racial or ethnic origin, religion or other beliefs, disability, age, sexual orientation</p> <p>Civil, administrative and criminal law</p> <p>Material scope: Public employment, private employment, access to goods or services (including housing), social protection, social advantages, education</p> <p>A) Public employment, private employment (as far as discrimination concerns grounds of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation) . B) Access to goods or services (including housing), social protection, social advantages, education (as far as discrimination concerns only grounds of ethnic or racial origin)</p> <p>Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body</p> <p>Explicit non-discrimination legislation concerning prohibition of direct and indirect discrimination, harassment, instruction to discriminate and creation of equality bodies for the enforcement of equal treatment</p>
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<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Law 927/1979 on punishing acts or activities aiming at racial discrimination.  Abbreviation: Anti-racist penal Law 927/1979  Date of adoption: 22.06.1979  Latest amendments: Law 1414/1984 and Law 4285/2014  Entry into force: 26.06.1979  Web link:  <a href="http://www.scribd.com/doc/99525792/%CE%9D-927-1979-%CE%A6%CE%95%CE%9A-139-1979-%CF%84%CE%B5%CF%8D%CF%87%CE%BF%CF%82-%CE%91-%CE%A0%CE%B5%CF%81%CE%B9-%CF%80%CF%81%CE%B1%CE%BE%CE%B5%CF%89%CE%BD-%CE%B7-%CE%B5%CE%BD%CE%B5%CF%81%CE%B3%CE%B5%CE%B9%CF%89%CE%BD-%CF%86%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%89%CE%BD-%CE%B4%CE%B9%CE%B1%CE%BA%CF%81%CE%B9%CF%83%CE%B5%CF%89%CE%BD">http://www.scribd.com/doc/99525792/%CE%9D-927-1979-%CE%A6%CE%95%CE%9A-139-1979-%CF%84%CE%B5%CF%8D%CF%87%CE%BF%CF%82-%CE%91-%CE%A0%CE%B5%CF%81%CE%B9-%CF%80%CF%81%CE%B1%CE%BE%CE%B5%CF%89%CE%BD-%CE%B7-%CE%B5%CE%BD%CE%B5%CF%81%CE%B3%CE%B5%CE%B9%CF%89%CE%BD-%CF%86%CF%85%CE%BB%CE%B5%CF%84%CE%B9%CE%BA%CF%89%CE%BD-%CE%B4%CE%B9%CE%B1%CE%BA%CF%81%CE%B9%CF%83%CE%B5%CF%89%CE%BD</a>  (in Greek)  Grounds covered: Race or ethnic origin, religion</p> <p>Criminal law</p> <p>Material scope: General material scope</p> <p>Principal content: Within the scope of this law, anyone who publicly, orally or in writing or through pictures or any other means, intentionally incites people to perform acts or carry out activities which may result in discrimination, hatred or violence against other persons or groups of persons on the sole ground of the latter's racial or ethnic origin or religion may be punished.</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Law 1414/1984 on the implementation of the principle of sex equality in employment relations and other provisions  Abbreviation: None  Date of adoption: 30.01.1984  Latest amendments: Law 4285/2014  Entry into force: 02.02.1984  Web link:  <a href="http://www.gsee.gr">http://www.gsee.gr</a>  (in Greek)  Grounds covered: Sex</p> <p>Civil law</p> <p>Material scope: Private employment</p> <p>Principal content: Combating sex discrimination in occupation and employment, vocational training, access to occupation. The scope of this law is restricted only to persons who work in the private sector. As regards family allowance, Art. 4(5) provides that it may be entirely granted to both spouses.</p>

<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: : Law 4139/2013, 'Narcotic Acts and other provisions'</p> <p>Abbreviation: None</p> <p>Date of adoption: 19.03.2013</p> <p>Latest amendments: None</p> <p>Entry into force: 20.03.2013</p> <p>Web link: <a href="http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=YTYbJcYuEkI%3D&amp;tabid=132">http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=YTYbJcYuEkI%3D&amp;tabid=132</a></p> <p>Grounds covered: Racial or ethnic origin, religion or other beliefs, disability, age sexual orientation, gender identity</p> <p>Criminal law</p> <p>Material scope: General material scope</p> <p>Principal content: The new Law 4139/2013 amends Article 79(3) of the Penal Code (stipulating that all grounds of discrimination are an aggravating circumstance in the commission of a crime and allowing judges to consider bias motivation, among other aggravating circumstances, for the purposes of sentencing upon a finding of guilt for the basic offense), and now it also forbids the suspension of the sentence in such cases, and therefore it introduces more severe punishment of bias motivation for crimes against groups susceptible to discrimination.</p>
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Law 4285/2014 on amendment of 927/1979 and its adjustment to the decision-framework 2008/913/JHA of 28<sup>th</sup> November 2009,for combating certain forms and manifestations of racism and xenophobia through criminal law and other provisions</p> <p>Abbreviation: Antiracist Law</p> <p>Date of adoption: 09.09.2014</p> <p>Latest amendments: None</p> <p>Entry into force:10.09.2014</p> <p>Web link: <a href="http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/%20t-l328-pap.pdf">http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/%20t-l328-pap.pdf</a></p> <p>Grounds covered: Racial or ethnic origin, religion or other beliefs, disability, sexual orientation</p> <p>Criminal law</p> <p>Material scope: General material scope</p> <p>Principal content: The new anti-violence Law amends the previous anti-racist Law 927/79 by specifically including all grounds of discrimination, except age. The acts are ex officio prosecuted and the victim, is excluded from paying the relevant fee to the State at the time of the complaint, as well as when he/she is present at the trial as plaintiff. The penalties for hate motivated crimes are increased compared to the penalties provided for by the previous law. More specifically, according to Article 10 of the new law, the last sentence of Paragraph 3 of Article 79 of the Penal Code, which stipulated that bias on the grounds mentioned in the text constitutes an aggravating factor, is deleted and substituted by the Article 81A which increases the minimum penalties for misdemeanors and felonies committed due to hatred bias.</p>



## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country: Greece**

**Date: 1 January 2015**

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd.mm. yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd.mm. yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	19.09.1974	20.09.1974	No	Yes	Yes
Protocol 12, ECHR	04.11.2000	No	No	No, because Greece has not ratified the relevant Protocol	No, because Greece has not ratified the relevant Protocol
Revised European Social Charter	03.05.1996	No	No	Ratified collective complaints protocol? Yes, the Protocol has been ratified.	No
International Covenant on Civil and Political Rights	16.12.1966	26.02.1997	Yes	Yes	Yes
Framework Convention for the Protection of National Minorities	22.09.1997	No	No	No, because Greece has not ratified the relevant Protocol	No
International Covenant on Economic, Social and Cultural Rights	19.12.1966	19.03.1985	No	No, because Greece has not ratified the relevant Protocol	Yes
Convention on the Elimination of All Forms of Racial Discrimination	07.03.1966	21.03.1970	No	No	Yes
Convention on the Elimination of Discrimination	02.03.1982	01.04.1983	No	Yes	No

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd.mm. yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd.mm. yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Against Women					
ILO Convention No. 111 on Discrimination	25.06.1958	14.03.1984	No	No	Yes
Convention on the Rights of the Child	16.01.1990	02.12.1992	No	No, because Greece has not ratified the relevant Protocol	Yes
Convention on the Rights of Persons with Disabilities	30.03.2007	11.04.2012	Yes <sup>217</sup> (armed forces and law enforcement agencies)	No	Yes

<sup>217</sup> According to Article 2 of this Law, the provisions of Article 27 para. 1 of the Convention do not apply to the armed forces and law enforcement agencies with regard to differential treatment due to disability as provided for in Article 8 para. 4 of Law 3304/2005 on the implementation of equal treatment pursuant to Articles 3 para. 4 and 4 of Directive 2000/78/EC.

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