



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## REPORT

**by Nils Muižnieks**  
**Commissioner for Human Rights of the Council of Europe**

Following his visit to Greece  
from 28 January to 1 February 2013

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## **Summary**

Commissioner Nils Muižnieks and his delegation visited Greece from 28 January to 1 February 2013. In the course of this visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. The present report focuses on the following human rights issues:

### **I. Intolerance and hate crimes in Greece - the need for urgent action**

The Commissioner is seriously concerned by the increase in racist and other hate crimes in Greece, which primarily targets migrants and poses a serious threat to the rule of law and democracy. A number of the reported attacks have been linked to members or supporters, including MPs, of the neo-Nazi political party “Golden Dawn” which won seats in parliament in June 2012. Whilst welcoming the fact that the Greek authorities have adopted new measures to combat racist violence, the Commissioner regrets that rhetoric stigmatising migrants has been widely used in Greek politics and that immigration control measures have led to the further stigmatisation of migrants. The Commissioner calls on the authorities to condemn firmly and unequivocally all instances of hate speech and hate crime. Political parties and the parliament in particular need to adopt self-regulatory measures to effectively counter and sanction intolerance and hate speech on the part of politicians. Far-reaching and systematic anti-racism and human rights awareness-raising campaigns should also be implemented, targeting particularly young people and schools. The completion and execution of a national human rights action plan that is envisaged by the authorities may play a catalytic role in this context. The authorities are invited to design and implement measures to improve migrants’ integration as well as intercultural dialogue, drawing upon successful existing structures such as the Athens City Council for Migrants’ Integration. In this context, the construction of a mosque and a Muslim cemetery in Athens is noted as long overdue. Lastly, the Commissioner expresses his concern at the envisaged restrictive change in the law concerning the naturalisation of long-term resident migrant children and the political participation of long-term resident migrants at local level, and calls on Greece to accede to the 1997 European Convention on Nationality and the 1992 European Convention on the Participation of Foreigners in Public Life at Local Level and draw on its human rights standards.

### **II. Combating the impunity of perpetrators of hate crimes; victims’ access to justice and protection**

The Commissioner calls on the Greek authorities to be highly vigilant and use all available means to combat all forms of hate speech and hate crime and to end impunity for these crimes. International law, especially the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Human Rights, which are ratified and have a supra-statutory force in Greece, make possible the imposition of dissuasive, criminal and other sanctions and restrictions on the activities of individuals who advocate for and are involved in instances of racist and other hate crimes. The same holds true for such activities of political organisations, including parties such as the neo-Nazi “Golden Dawn”, on which it should be possible to impose effective penalties or prohibition, if necessary. Greek law, although insufficiently or completely unused so far, has the potential to curb and prevent manifestations of racial and other forms of discrimination by individuals and political organisations. The Commissioner urges the authorities to accelerate the modernisation of domestic anti-racism legislation and to carry out systematic, continuous training and awareness-raising in anti-discrimination law and practice for all police and coast guard officials, prosecutors and judges. As regards victims’ access to justice and effective remedies, the authorities are urged to remedy the long-standing serious shortcomings concerning excessively lengthy judicial proceedings, notably by enhancing the human and material resources available to prosecutors and judges. The newly established post of the anti-racism prosecutor in Athens needs particular reinforcement and

expansion to other Greek regions so that anti-racism law is effectively applied throughout the country. Lastly, the state authorities are called on to reach out to victims of racist and other hate crimes and establish advice centres near the areas where they live, to clearly exempt them from criminal complaint fees, and to provide them with adequate legal aid, if necessary, as well as assistance.

### **III. The role of law enforcement authorities in combating racist and other hate crimes**

The Commissioner is deeply concerned by persistent reports of ill-treatment, including torture, committed by law enforcement officials notably against migrants and Roma. The Commissioner calls on the authorities to ensure that the definition of torture contained in the criminal code is fully aligned with the definition in the UN Convention against Torture and that allegations of torture are effectively investigated and sanctioned. Ethnic profiling by the Greek police is also an issue of serious concern. In addition to strongly and publicly condemning all instances of abuse or misconduct by law enforcement officials, the Commissioner urges the Greek authorities to eliminate the institutional culture of impunity and establish an independent and well-functioning complaints mechanism covering all law enforcement officials, usefully drawing on the experiences of other Council of Europe member states. Law enforcement officials who are motivated by racism or act against democratic principles should be sanctioned and removed from their posts. Additionally, the Commissioner stresses the need to reinforce the capacity of the police to respond adequately to incidents of racist and other hate crime, particularly to examine and record all evidence related to hate crime motivation. The 70 newly established anti-racist units and the hotline for reporting racist incidents are a welcome step forward. However, these units need to be adequately resourced and their staff, which should include persons with knowledge of languages spoken by the complainants, needs to be systematically and adequately trained in human rights and anti-discrimination. Moreover, the authorities are called on to expand the mandate of these units in order to include all forms of hate crime.

### **IV. Asylum and immigration law and practice – certain major shortcomings that need to be addressed**

The Commissioner welcomes the steps taken by the authorities since 2011 aimed at rebuilding the national asylum system. Nonetheless, the Commissioner remains seriously concerned by persisting gaps in law and practice which adversely affect the human rights of migrants, including asylum seekers and refugees, and increase their vulnerability notably to racist crimes. Among these gaps, he points out the highly insufficient asylum seeker reception capacity of Greece, the particularly dysfunctional system for lodging asylum applications in the Athens aliens police directorate, and the policy of systematic and prolonged detention of irregular migrants, often in substandard conditions. He urges the authorities to discontinue the costly and largely ineffective policy of migrant detention and to provide for possible alternatives in law and practice, drawing on the experience of other European countries. At the same time, the need is stressed for Greece to make sure that all migrant detainees have adequate access to health care. Expert NGOs may play a valuable role in this context. The Commissioner also calls on the authorities to provide effective protection to unaccompanied minor migrants, who are often left without any support and who are extremely vulnerable to racist violence and various forms of exploitation. Access to an effective system of guardianship and to adequate child protection mechanisms should be made available as a matter of priority.

The report contains the Commissioner's conclusions and recommendations to the Greek authorities and is published on the Commissioner's website along with the authorities' comments.

## Introduction

1. The present report follows a visit to Greece by the Council of Europe Commissioner for Human Rights (hereinafter “the Commissioner”) from 28 January to 1 February 2013.<sup>1</sup> The visit focused on the protection of human rights in the context of a steep increase in manifestations of intolerance and racist and other hate crimes in the country, at which the Commissioner had publicly expressed his grave concern.<sup>2</sup>
2. During his visit to Greece, the Commissioner held discussions with the national authorities, including the Minister of Public Order and Citizen Protection, Mr Nikolaos Dendias, the Minister of Justice, Mr Antonios Roupakiotis, the Deputy Minister of Foreign Affairs, Mr Konstantinos Tsiaras, the Deputy Chief of the Hellenic Police, Mr Adamandios Stamatakis and other representatives of the police and the coast guard. He also held discussions with Greek MPs in the parliament, the Prosecutor General of the Court of Cassation, Mr Ioannis Tentes, and the Deputy Prosecutor General, Mr Dimitrios Dasoulas, as well as with the Deputy Public Prosecutor of the First Instance Court of Athens in charge of racist crime, Mr Nikolaos Ornerakis and the President, Mrs Vasiliki Thanou-Christofilou, and members of the National Association of Judges and Prosecutors. Additionally, the Commissioner met with the Mayor of Athens, Mr Yorgos Kaminis, and members of the Athens City Council for Migrants’ Integration, as well as with the Ombudsman, Mrs Calliope Spanou, the President of the National Commission for Human Rights, Mr Kostis Papaioannou, along with other members of the Commission, staff members of the UNHCR Office in Athens and non-governmental organisations.
3. In the context of his visit, the Commissioner also took part in the Holocaust commemoration event entitled “Does history give lessons?” which was organised by the Athens Jewish Community on 28 January. In his speech the Commissioner noted the particular significance of commemorating the Holocaust in a country whose people have gravely suffered from Nazism and which is now faced with the surge of neo-Nazism and the rise of intolerance and racism, and stressed the need for resolute action by the state and civil society.
4. The Commissioner also visited the police station of Aghios Panteleimonas, Athens and the central park “Pedion tou Areos” where he met and held discussions with a number of homeless migrants. In addition, he had the opportunity to visit the polyclinic of the “Doctors of the World”, in central Athens, and to talk with its staff members as well as with five migrants, who had been provided with medical care and support by the above NGO after having suffered racist attacks.
5. The Commissioner wishes to sincerely thank the Greek authorities in Strasbourg and in Athens for their assistance in organising the visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views. In his capacity as an independent and impartial institution of the Council of Europe, he wishes to continue his sincere and constructive dialogue with the Greek authorities and to assist them in their efforts to further enhance the effective protection of the human rights standards of the Council of Europe.
6. The Commissioner is aware that the current increase in manifestations of intolerance and racist violence takes place in Greece in a context marked by an acute economic and social crisis, ongoing since 2009. Severe fiscal austerity plans have adversely affected living standards and social welfare in the country. In October 2012 unemployment reached 26,8% and youth unemployment culminated at 57,6%, the highest rates in the EU.<sup>3</sup> This situation

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<sup>1</sup> During his visit the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Nikolaos Sitaropoulos and his Adviser, Ms Françoise Kempf.

<sup>2</sup> See, *inter alia*, the Commissioner’s interview in To Vima, 15 July 2012 (in Greek).

<sup>3</sup> See Eurostat, Press release 19/2013, 1 February 2013.

appears to act as a strong magnifier of an already existing problem of intolerance and racism in the country.

7. The Commissioner acknowledges that besides the current financial crisis, for a number of years Greece has been facing large inflows of migrants, including asylum seekers. In fact in the second quarter of 2012, 56% of all detected irregular border crossings in the EU were found to take place at the land border between Greece and Turkey.<sup>4</sup> The collapse of the Greek asylum system has led to the suspension by a number of European states of returns of asylum seekers to Greece under the “Dublin Regulation”, in particular following the 2011 judgment of the European Court of Human Rights (hereinafter “the Court”) in the case of *M.S.S. v. Belgium and Greece*.
8. Migrants, including refugees and asylum seekers, have borne the brunt of intolerance and racist violence so far. The Commissioner considers that the treatment afforded by Council of Europe member states to migrants and other similarly vulnerable social groups constitutes a litmus test for the effective observance of and respect for fundamental human rights principles. Effective protection of the human rights of these social groups requires a state’s particular vigilance and the concerted and resolute action of all competent authorities.
9. The present report focuses on the following specific issues: intolerance and hate crimes in Greece and the need for urgent action (section I); combating the impunity of perpetrators of hate crimes, and victims’ access to justice and protection (section II); the role of law enforcement officials in combating racist and other hate crimes (section III); and certain major shortcomings of Greek asylum and immigration law and practice which need to be addressed (section IV).

## **I. Intolerance and hate crimes in Greece - the need for urgent action**

### **1. The increase in intolerance and in racist and other hate crimes<sup>5</sup>**

10. The Greek National Commission for Human Rights recorded already in 2001 a number of alarming, violent xenophobic manifestations targeting migrants in Greece that stressed the need for the Greek state to enhance anti-racism law and practice.<sup>6</sup> The problem’s dimensions have changed dramatically since then. During his visit the Commissioner was informed that between October 2011 and December 2012, more than 200 incidents of racist violence, mainly against migrants, including refugees and asylum seekers, were recorded by the Racist Violence Recording Network headed by the UNHCR and the National Commission for Human Rights. Most of these incidents recorded between October 2011 and September 2012 corresponded to assaults and (grievous) bodily harm.<sup>7</sup> The Commissioner met with five migrant victims of racist violence on the premises of “Doctors of the World”, in Athens. All of them had suffered (grievous) bodily harm in Athens and were particularly traumatised by the violence they had endured.
11. Most of the Commissioner’s interlocutors noted that the above recorded numbers are only the “tip of the iceberg”, given that a large number of victims are actually irregular migrants,

<sup>4</sup> FRONTEX, “FRAN Quarterly”, April-June 2012, p.12.

<sup>5</sup> Drawing upon the Council of Europe Committee of Ministers [Recommendation No. R \(97\) 20](#) on “hate speech”, the term hate crime may be understood as corresponding to criminal offences that emanate from racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

<sup>6</sup> National Commission for Human Rights, “Major issues of racial discrimination in Greece”, Report 2001, p.201 (in Greek).

<sup>7</sup> See findings made public by the Network at: <http://www.unhcr.gr/1againstracism/category/racist-violence-recording-network>.

asylum seekers and refugees who often abstain from contacting state authorities. In fact, staff members of “Doctors of the World” in Athens informed the Commissioner that they receive one to six victims of racist violence for medical treatment every week. Although efforts have recently been made by the authorities to collect data on racist crimes (see sections II and III), at present there are no comprehensive national statistics.

12. In addition to migrants, other social groups have also been targeted by hate speech and violence, namely Roma, members of the Muslim minority of Turkish ethnic origin, LGBT persons and human rights defenders.
13. A significant share of the reported attacks against migrants take place in public places, especially in areas where large numbers of migrants live. They are reportedly often perpetrated by “patrols” of motorcyclists, dressed in black and with their faces covered. In addition to attacks on individuals, attacks on houses occupied by migrants have been reported, as well as attacks on religious and cultural centres and the premises of migrant organisations. The Commissioner is particularly worried by the fact that among the perpetrators of racist violence, a large number of young people, including minors, are to be found. For instance, on 25 January 2013 it was reported that eight students (seven of them aged between 16 and 17) attacked a shop in the town of Larissa and seriously injured the Pakistani shop owners while shouting racist slogans.<sup>8</sup>
14. The Commissioner notes that a number of the reported racially-motivated offences have been attributed by victims to members or supporters of “Golden Dawn”, a neo-Nazi political party that won 6,92% of the vote in the national elections of June 2012 and 18 seats in the Greek Parliament. During the electoral campaign of 2012, this party made extensive use of anti-migrant messages and leaders of the party have frequently used racist, antisemitic or homophobic rhetoric, including inside the Greek Parliament.
15. In September 2012 the Commissioner received a petition from Greece signed by more than 18 000 individuals who, alarmed by the rise of racist violence, requested the Commissioner’s intervention and the effective investigation of all racist attacks, especially those linked to “Golden Dawn”.
16. The actual origins of “Golden Dawn” date back to December 1980 and the publication of a magazine entitled “Golden Dawn”, managed by Nikolaos Michaloliakos (the current head of the party) who used to have ties with the leadership of the 1967-1974 military regime and who was convicted for involvement in terrorist bomb explosions in Athens in 1978. Some copies of that magazine bore the subtitle “National-socialist periodical” and contained abounding references to and articles on Adolf Hitler and his associates.<sup>9</sup> Ideological documents on the party’s current website make clear the overtly racist underpinnings of “Golden Dawn”, similar to those of Nazism and fascism.<sup>10</sup>
17. 17 violent incidents, mainly against migrants, involving members of “Golden Dawn”, including MPs of this party, were recorded by the police between early June and October 2012.<sup>11</sup> A few days before the Commissioner’s arrival in Greece a Pakistani migrant worker in Athens had been stabbed to death by two persons, one of whom was later proved to be linked to “Golden Dawn”. The Commissioner has noted with dismay that one of the migrant victims of racist violence that he met in Athens had his whole back scarred by the assailants with the initials “XA” which correspond to the Greek initials of “Golden Dawn”.

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<sup>8</sup> *Migration News Sheet*, February 2013, p. 25.

<sup>9</sup> See Dimitris Psarras, *The Black Bible of the Golden Dawn*, Athens, Polis publishers, 2012 (in Greek), pp. 35-36.

<sup>10</sup> See, e.g. “The misinterpretation and distortion of ideas as the system’s weapon”, 23 October 2012, on the party’s website – ideological documents (in Greek).

<sup>11</sup> Ta Nea, article of 31 October 2012 (in Greek).

18. “Golden Dawn” members have also targeted Roma. For instance the Commissioner was informed during his visit that in September 2012, “Golden Dawn” members actively supported demonstrations by parents from the majority population against the registration of 30 Roma pupils in the school of the town of Lamia. Members of the Muslim minority of Turkish ethnic origin in Thrace have also reported hate speech and threats by members and supporters of “Golden Dawn” and in one case even an attack against a person belonging to this minority (see section II).
19. In October 2012 the Greek Parliament decided to lift the parliamentary immunity of two MPs of “Golden Dawn”, Panayotis Iliopoulos and Georgios Yermenis, due to their alleged involvement in violent attacks against migrant street vendors that occurred in Rafina, near Athens, in September 2012. The parliament also lifted the parliamentary immunity of the party’s spokesperson, Elias Kasidiaris, charged with participation in a robbery and causing bodily harm in 2007. In October 2012 the parliament lifted the parliamentary immunity of another “Golden Dawn” MP, Konstantinos Barbaroussis, who had participated in violent attacks against migrant street vendors in Mesolongi earlier that year. This MP was reportedly charged in particular with offences under the anti-racism Law 927/1979.<sup>12</sup>
20. What is also particularly worrying is that from statements made by the party’s leadership and ideological documents available on its official website it is clear that “Golden Dawn” is a party that is against parliamentary democracy, and treats it with contempt. For instance, the party’s spokesperson, Elias Kasidiaris, was reported to have stated in November 2012 the following: “We do not like the petty MP posts, we do not want them at all. Of course we take advantage of some privileges of this membership, we also have now a permit for a firearm, there is no possibility for an immediate arrest upon the commission of a criminal offence and it is a bit easier for us to move around”.<sup>13</sup> During his visit to the Greek Parliament the Commissioner was concerned by information received from MPs that he met, according to which certain MPs of “Golden Dawn” are allowed to enter and attend sessions of the parliament while carrying licensed firearms.

## **2. The role and responsibilities of political institutions**

21. The serious risks posed to democracy by intolerance and racism and by the political forces that foster these trends have been acknowledged at the highest political level in Greece. The President of the Republic, Karolos Papoulias, in his message on the occasion of the 38<sup>th</sup> anniversary of the restoration of democracy in Greece in July 2012, noted that Greek democracy today “faces serious dangers from the ideology of hate and fascism”.<sup>14</sup> He reiterated his serious concern in the New Year statement that he made on 31 December 2012.
22. The Commissioner strongly believes that in order to put an end to intolerance and racist and other hate crimes, it is crucial that political leaders condemn firmly and unequivocally all such manifestations. He also finds it essential for political leaders to refrain from using rhetoric that stigmatises specific social groups, such as migrants and Roma, as this only reinforces the influence of racist parties such as “Golden Dawn”, triggers further intolerance and leads to the trivialisation of racism in society. The Commissioner regrets that rhetoric stigmatising migrants has often been used in Greek politics, including by high-level politicians.

<sup>12</sup> Ta Nea, articles published on 18 October 2012, 23 October 2012 and 15 November 2012 (in Greek).

<sup>13</sup> Cited in TVXS, 2 December 2012, [tvxs.gr/news/ellada/o-kasidiaris-antigrafei-ton-gkempels?utm\\_source=divr.it&utm\\_medium=twitter&utm\\_campaign=tvxs](http://tvxs.gr/news/ellada/o-kasidiaris-antigrafei-ton-gkempels?utm_source=divr.it&utm_medium=twitter&utm_campaign=tvxs); see also “The misinterpretation and distortion of ideas as the system’s weapon”, 23 October 2012, on the party’s website – ideological documents (in Greek).

<sup>14</sup> Message available at: <http://www.presidency.gr> (in Greek).

23. For instance, in November 2012 the Prime Minister spoke publicly of an on-going “recuperation” by the Greek authorities of city centres from irregular migrants who had “occupied” them and subjected them to their “illegal activities”.<sup>15</sup> Earlier, in September 2012, it was widely reported that upon the Prime Minister’s initiative there would be a new law recognising irregular immigration status as an aggravating circumstance in the commission of criminal offences. The Commissioner notes that, if enacted, this would be an obviously discriminatory provision in violation of international and national human rights standards.
24. In August 2012 the Minister of Public Order and Citizen Protection stated that because of irregular migration “the country perishes. Ever since the Dorians’ invasion 4 000 years ago, never before has the country been subjected to an invasion of these dimensions...this is a bomb on the foundations of the society and the state”.<sup>16</sup> These statements were made in the context of the “Xenios Zeus” operation, which started in July 2012 and included racial profiling<sup>17</sup>-based checks of the legal status of migrants by police on the streets.<sup>18</sup>
25. The term “bomb” was also used publicly in July 2012 by the same Minister when referring to the centre of Athens where many irregular migrants and asylum seekers often rent and live in overcrowded apartments characterised by substandard living conditions, deprived of any public social welfare services.<sup>19</sup> Two days later on its website “Golden Dawn” referred to Minister Dendias’ statement as a “vindication of the positions” of the party.<sup>20</sup>
26. It is also regrettable that the Greek Parliament’s reaction to hate speech has been weak. On 18 October 2012, during a meeting of the parliament’s plenary, the “Golden Dawn” MP, Eleni Zaroulia, referred to migrants in Greece as “sub-humans who have invaded our country, with all kinds of diseases”.<sup>21</sup> There was no strong reaction by the parliament or a prosecutor to this extreme hate speech, which was widely reported in the Greek media.
27. The Commissioner stresses that the effects that this kind of political discourse has on public opinion and on a country’s social cohesion are particularly negative and corrosive. He recalls the European Commission against Racism and Intolerance’s [Declaration on the use of racist, antisemitic and xenophobic elements in political discourse](#) (2005) and stresses the need for Greek political parties and the parliament to adopt effective self-regulatory measures in order to counter and sanction deleterious, xenophobic and racist rhetoric by politicians.

### ***3. The need for comprehensive action to counter intolerance and racism and to promote migrants’ integration***

28. The Commissioner welcomes the efforts made by the Greek authorities in recent months in order to strengthen the legal framework and practice against racism and hate speech (see section II). In addition to these efforts, the Commissioner believes that comprehensive and concrete measures should systematically be taken to combat intolerance and racism and to advance the respect of human rights principles throughout Greek society.
29. The Commissioner welcomes the initiative taken by the Ministry of Justice in 2012 to proceed with the establishment, for the first time, of a national human rights action plan aiming to record and bridge the existing human rights gaps in Greek law and practice. The Ministry’s

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<sup>15</sup> Prime Minister’s speech to the parliamentary group of Nea Dimokratia, 4 November 2012, available at: <http://www.primeminister.gr> (in Greek).

<sup>16</sup> To Vima, article of 6 August 2012 (in Greek).

<sup>17</sup> See Liz Fekete, [“Which way forward on racial profiling?”](#), 6 December 2012, available at: [www.unhcr.gr/1againstracism](http://www.unhcr.gr/1againstracism).

<sup>19</sup> Ta Nea, article of 12 July 2012 (in Greek).

<sup>19</sup> Ta Nea, article of 12 July 2012 (in Greek).

<sup>20</sup> On the party’s website published on 14 July 2012 (in Greek).

<sup>21</sup> Greek Parliament, minutes of the plenary meeting of 18 October 2012 (in Greek), available at: <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20121018.pdf>.

Secretary General, Georgios Sourlas, informed the Commissioner that the drafting of the action plan is scheduled to be completed in approximately six months. The Commissioner believes that this exercise presents a great opportunity for Greece to also adopt comprehensive and concrete measures in order to combat intolerance and racism. In this regard, the authorities may usefully draw upon the Commissioner's 2009 [Recommendation on systematic work for implementing human rights at national level](#), as well as upon the Council of Europe's expertise in this domain.

30. The Commissioner was also pleased to learn that the Ministry of Education has created a monitoring centre of bullying and violence, which aims at monitoring incidents of racist violence as well. He also understands that civil society organisations have launched initiatives to raise awareness of racism among children and youths. He finds it essential that such initiatives are supported by the state and replicated throughout the country and that school authorities and teachers are given adequate support to tackle intolerance and racism at school.
31. As regards migrants' integration, in 2012 Greece figured below or at the end of the majority of the OECD list of "key indicators on immigrant integration", concerning, *inter alia*, housing, income, education, skill-matching and naturalisation.<sup>22</sup> Greece has not managed to date to establish a comprehensive policy to promote migrant integration and improve community relations and intercultural dialogue.
32. Several representatives of civil society organisations and migrant communities that met with the Commissioner deplored the lack of channels of dialogue with the authorities and urged the need for more interaction at all levels. Integration measures are instrumental in preventing further tensions and in strengthening social cohesion, especially in the current context of economic crisis. Measures should target long-term migrants residing in Greece, especially children born and/or educated in Greece. The Athens City Council for the Integration of Migrants with whom the Commissioner met during his visit is a very useful integration tool as it provides a platform for dialogue between migrant communities and the authorities and fosters the participation of migrants' representatives in public affairs. The Commissioner welcomes Minister Dendias' willingness to meet with this Council and initiate an open dialogue with its migrant members.
33. In this context, the Commissioner notes that Athens still lacks an official mosque, as well as a Muslim cemetery, even though it is a city where several thousand Muslims of foreign origin live. At present these worshippers meet in clearly unsuitable places such as flats, basements, garages and other private premises. These issues had been raised already in the 2002 report on Greece by the then Council of Europe Commissioner for Human Rights. Despite the initial positive response of the Greek authorities, no mosque or Muslim cemetery exists to date in Athens.
34. The Commissioner also wishes to underline that naturalisation is a major means of migrant integration, especially of migrant children who are born, raised and/or educated in Greece. He therefore deplores the announced amendments to Law 3838/2010 concerning migrant children's naturalisation and the participation of long-term resident migrants in local elections.
35. Law 3838/2010 has been a step forward for the integration of migrants since it provided for access to Greek nationality for migrant children who are born in Greece of migrant parents, both of whom have been regular residents in the country for at least five consecutive years, and for migrant children who have successfully attended at least six classes of a Greek school and reside permanently and legally in Greece. This law was also very positive in that it

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<sup>22</sup> OECD, Key indicators of integration by country, Greece, at: <http://www.oecd.org/migration/integrationindicators/keyindicatorsbycountry/name.218331.en.htm>.

provided regular, long-term resident migrants with the right to vote and stand for election in local elections, in line with the standards contained in the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (1992) to which Greece has not as yet acceded.

36. Thus, the Commissioner noted with concern that the Plenary of the Greek Council of State, in a judgment of 4 February (460/2013), found certain provisions of this law to be unconstitutional, by resorting to a clearly restrictive interpretation. The Commissioner would like to receive more information from the authorities on the way in which they intend to proceed following the judgment by the Council of State.

#### *Conclusions and recommendations*

37. The Commissioner shares the grave concern expressed by the European Commission against Racism and Intolerance, through its statement of 10 December 2012, at racist and xenophobic political activities in Greece, particularly those of “Golden Dawn”, a neo-Nazi, racist and xenophobic political party that is now represented in parliament. It is regrettable that this party has created a negative climate within Greek society and has imposed fear upon communities of migrants and other vulnerable social groups. This situation needs to be reversed by sustained and concerted efforts of all competent authorities.
38. The Commissioner urges the Greek authorities and political leaders to abstain from using rhetoric that stigmatises migrants and to condemn firmly and unequivocally all instances of hate speech, in line with the Council of Europe Committee of Ministers [Recommendation No. R \(97\) 20 on “hate speech”](#), as well as all forms of hate crime. This would send a strong signal to Greek society that hate speech and hate crime have no place in a democratic society.
39. Greek political parties and the national parliament are called on to adopt self-regulatory measures to effectively counter and sanction intolerant, xenophobic and racist speech used by politicians. It would be useful to include these grounds in the disciplinary measures that may be imposed on MPs under Article 77 of the Greek Parliament’s Standing Orders. The signature and implementation by Greek political parties of the [Charter of European Political Parties for a Non-Racist Society](#) (1998), which encourages a responsible attitude towards problems of racism, whether it concerns the actual organisation of the parties, or their activities in the political arena, would also be a very positive measure in this context.
40. The completion and implementation of a national human rights action plan which is envisaged by the Ministry of Justice may play a catalytic role in the efforts needed in order to act against intolerance and racism in a comprehensive and systematic manner. The Commissioner strongly encourages the authorities to proceed resolutely in this direction and draw upon the valuable expertise of the Council of Europe in this domain.
41. The Commissioner calls on the authorities to develop further and implement initiatives aimed at combating racism and extremism in all sections of society. Priority should be given to actions which aim to raise awareness of the dangers of intolerance and racism and enhance human rights education in schools. The authorities are invited to draw on the guidelines contained in ECRI’s [General Policy Recommendation N° 10](#) on combating racism and racial discrimination in and through school education.
42. The Commissioner urges the authorities to develop structures for regular and open dialogue with representatives of migrants residing in Greece, drawing on the model of the Athens City Council for Migrants’ Integration, in order to discuss issues pertaining to their social integration and political participation. In this context, the authorities are urged to proceed to the long overdue construction of a mosque and a Muslim cemetery in Athens which are of

great importance for the lives and human rights of the Muslims who reside in the capital of Greece.

43. Comprehensive policies to promote migrant integration in Greek society should also be developed, in close co-operation with representatives of migrant groups. In this regard, the authorities' attention is drawn to the standards and guidelines on migrant integration elaborated by the Council of Europe, in particular the Committee of Ministers [Recommendation \(2008\) 4](#) on strengthening the integration of children of migrants and of immigrant background and [Recommendation \(2011\) 1](#) on interactions between migrants and receiving societies.<sup>23</sup> He also considers that the joint Council of Europe - European Commission initiative on "intercultural cities", in which the town of Patras is involved, can offer examples of good practice and models of intercultural policies that can be adopted and implemented in other Greek towns as well.<sup>24</sup>
44. Lastly, the Commissioner calls on the Greek authorities to reflect seriously on the consequences that any restrictive legislative amendment concerning the naturalisation of children of long-term migrants may have on the lives of these children and their families, especially when these children have been born and/or educated in Greece and for whom this is the only country they are familiar with and attached to. Full integration through naturalisation must remain a real possibility for these children in law and practice. In this context, Greece is also called on to ratify the 1997 European Convention on Nationality (signed in 1997). The participation of regular, long-term migrants in local elections is also a major means of migrant integration and is in line with the standards of the 1992 European Convention on the Participation of Foreigners in Public Life at Local Level, a treaty upon which Greece may draw and which it would be useful to accede to.

## **II. Combating impunity of perpetrators of hate crimes; victims' access to justice and protection**

45. Racial discrimination and racist and other hate crimes constitute an affront to human dignity and a threat to social cohesion that calls for particular sensitivity and a proactive approach from states. For this, as the Court has noted, "the authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of society in which diversity is not perceived as a threat but as a source of its enrichment".<sup>25</sup> The Commissioner believes that the same vigilance and proactive approach from a state bound by European human rights standards, such as Greece, is also necessary towards intolerance and violence that originate in discriminatory ideas pertaining to one's religion, nationality or sexual orientation.
46. The Commissioner has followed with interest the public debates in Greece on the question of the possible imposition of sanctions and restrictions on "Golden Dawn", including its prohibition, due to its racist, xenophobic and anti-democratic views and a number of its members' clear involvement in incitement to racial hatred and discrimination as well as in acts of racist violence (see section I).
47. One of the major public debates has been the one which was initiated last December by the president of the Greek socialist party (PASOK), Evangelos Venizelos, who stressed publicly the need to deal effectively with "Golden Dawn", which he described as "unconstitutional", and the rise of xenophobia and racism in the country. The adoption of the following major

<sup>23</sup> See also Andrew Orton, "[Building Migrants' Belonging Through Positive Interactions](#)", Council of Europe, 2012.

<sup>24</sup> See Intercultural cities: governance and policies for diverse communities, at: [http://www.coe.int/t/dg4/cultureheritage/culture/Cities/Default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/culture/Cities/Default_en.asp).

<sup>25</sup> *Bekos and Koutropoulos v. Greece*, judgment of 13 December 2005, paragraph 63.

measures was proposed: amendment of the criminal code so that racist and xenophobic offences are characterised as felonies and also have as a consequence stripping offenders of their political rights; and strict implementation of the parliament's internal regulations so that the parliament reacts in a resolute manner to intolerant and racist manifestations by a political party of the nature of "Golden Dawn".

48. During his visit the Commissioner noted that the above positions are shared by the majority of Greek politicians and lawyers that he met. While, however, there is certainly a trend to make use of and improve primarily domestic criminal law in order to prosecute members and supporters of "Golden Dawn", and thus isolate this neo-Nazi and violent political party, the public discussions in Greece to date appear to ignore, or not to take duly into account, a number of relevant international and European human rights standards which legally bind Greece and are reviewed below.

**1. The sanctioning of individuals and political organisations involved in racist and other hate crimes under international and European human rights law**

49. In 1970 Greece ratified by Legislative Decree 494 the [1966 International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD). The ratification was not accompanied by any reservation or declaration. It is noted that under Article 28, paragraph 1 of the Greek Constitution, treaties, once ratified, form an integral part of domestic law and prevail over any contrary provision of the law.
50. ICERD contains a core provision, Article 4, which plays a critical role in the efforts to fight and prevent racial discrimination. This provision is of a "mandatory character" and in order to satisfy the obligations contained therein states parties "have not only to enact appropriate legislation but also to ensure that it is effectively enforced."<sup>26</sup>
51. Under Article 4(a) ICERD, states parties undertake "to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof."
52. Under Article 4(b) ICERD, states parties are required to "declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law."
53. The UN Committee on the Elimination of Racial Discrimination (UN CERD), in its [General Recommendation N°15](#) on organized violence based on ethnic origin (Art. 4) (1993), has made the following comment:<sup>27</sup> "Some States have maintained that in their legal order it is inappropriate to declare illegal an organization before its members have promoted or incited racial discrimination. The Committee is of the opinion that article 4 (b) places a greater burden upon such States to be vigilant in proceeding against such organizations at the earliest moment. These organizations, as well as organized and other propaganda activities, have to be declared illegal and prohibited. Participation in these organizations is, of itself, to be punished."
54. This position was echoed by UN CERD in its concluding observations on Greece in 2009 when it had already diagnosed the serious threats posed to human rights by neo-Nazi organisations in the country and stated: "The Committee is concerned about reports on the

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<sup>26</sup> See UN Committee on the Elimination of Racial Discrimination, General Recommendations No. 07 (1985) and No. 15 (1993), available at: <http://www2.ohchr.org/english/bodies/cerd/comments.htm>.

<sup>27</sup> Paragraph 6.

propagation by certain organizations and media outlets of racist stereotypes and hate comments against persons belonging to different ethnic and racial groups. The Committee recommends that the State party take effective measures to penalize organizations and media outlets that are guilty of such acts. It further recommends that the State party concretely ban Neo-Nazi groups from its territory and take more effective measures to promote tolerance towards persons of different ethnic origins”.<sup>28</sup>

55. As regards the European Convention on Human Rights (“ECHR”) and the Court’s case law, despite the recognised, primordial importance of political parties for the functioning of democracy, the Court has spelled out two fundamental principles by which political parties and their members are bound: firstly, a political party should not use violence to achieve its goals - the means used should be legal and democratic; secondly, a political party should not aim to destroy democracy and deny the rights and freedoms implied by democracy, such as freedom of thought, conscience and religion and the principle of non-discrimination.<sup>29</sup>
56. Consequently, states can impose restrictions on political parties and their members or supporters under certain conditions which are to be strictly construed. Under Article 11 ECHR (freedom of assembly and association), states can impose on political parties the duty to respect and guarantee the rights and freedoms protected by the ECHR as well as the obligation not to propose political programmes which contradict the fundamental principles of democracy. In order to determine whether a political party presents a danger to democracy, it is important to compare the actions of the party leaders and the positions they defend, as political programmes may conceal objectives different from the ones they proclaim. Lastly, the state may act preventively once an imminent danger for democracy has been established, after rigorous scrutiny. Indeed, a state cannot be required to wait, before banning or dissolving a party, until the party has seized power and starts implementing policies that undermine the goals of the ECHR.
57. Another provision of the ECHR, Article 17 (prohibition of abuse of rights) also allows a state to impose restraints on, among others, a political party and its members or supporters. It provides the following: “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”
58. As regards in particular freedom of expression (Article 10 ECHR), the Court has stressed that although the freedom of expression of politicians and political parties deserves a high degree of protection, they cannot advocate for racial discrimination and fuel racism as this goes against the very fundamental principles of democracy.<sup>30</sup>
59. In view of the above, the imposition of effective and proportionate sanctions on individuals and the prohibition, if necessary, of political parties such as “Golden Dawn”, for which abundant evidence demonstrates that they advocate for and are involved in acts of violence, incite hatred and oppose some of the basic principles of democracy and the rule of law, could be considered compatible with the principles contained in Article 4 ICERD and Articles 10, 11 and 17 of the ECHR.
60. In this context, it is also worth mentioning the position of the European Commission for Democracy Through Law (Venice Commission). According to the explanatory report (paragraph 10) to the [1999 Guidelines of the Venice Commission on the prohibition and dissolution of political parties](#): “prohibition or dissolution of political parties can be envisaged

<sup>28</sup> UN CERD, [Concluding Observations on Greece](#), 14 September 2009, paragraph 11.

<sup>29</sup> See, *inter alia*, *Case of United Communist Party of Turkey and others v. Turkey*, judgment of 30 January 1998.

<sup>30</sup> See, *inter alia*, *Féret v. Belgium*, judgment of 16 July 2009.

only if it is necessary in a democratic society and if there is concrete evidence that a party is engaged in activities threatening democracy and fundamental freedoms. This could include any party that advocates violence in all forms as part of its political programme or any party aiming to overthrow the existing constitutional order through armed struggle, terrorism or the organisation of any subversive activity.”

61. Lastly, it is noted that the Parliamentary Assembly of the Council of Europe (PACE) has also taken a position on “the threat posed to democracy by extremist parties and movements in Europe” in its [Recommendation 1438\(2000\)](#) and [Resolution 1344\(2003\)](#). In this Resolution PACE has usefully noted a number of measures that governments may take against extremist parties and movements that pose a threat to democracy, ranging from “effective penalties”, to withdrawal of funding for such parties and, “in the case of a threat to a country’s constitutional order”, dissolution.

**2. The sanctioning of individuals and political organisations involved in racist and other hate crimes under Greek law and in practice**

62. The Commissioner stresses that racist and other forms of hate crimes constitute serious human rights violations that call for the imposition on the perpetrators of sentences that are effective, proportionate and appropriate to the offence committed.<sup>31</sup> Greek law contains a number of provisions that have the capacity to effectively sanction individuals and political organisations that incite or promote hatred and intolerance on grounds related to race, religion or sexual orientation. Greece ratified ICERD in 1970 by Legislative Decree 494 without any reservation or declaration. Law 927 of 1979 (as subsequently amended) on the punishment of acts or activities aiming at racial discrimination aimed to give effect to ICERD.
63. The above statute has penalised the following: (a) to wilfully and publicly, either orally or by the press or by written texts or through depictions or any other means, incite to acts or activities which may result to discrimination, hatred or violence against individuals or groups of individuals on the sole grounds of the latter’s racial or national origin or religion; (b) to form or participate in organisations which intend to organise propaganda or any kind of activities tending to racial discrimination; (c) to express publicly, either orally or by the press or by written texts or through depictions or any other means offensive ideas against any individual or group of individuals on the grounds of the latter’s racial or national origin or religion.
64. The criminal sanctions provided for under (a) and (b) are imprisonment of up to two years and/or a pecuniary sanction while those provided under (c) are imprisonment of up to one year and/or a pecuniary sanction. It is noted that under Article 61 of the criminal code, the imposition of the penalty of imprisonment of at least one year may be accompanied by deprivation of the convict’s political rights if the criminal act demonstrates, notably through its grounds, its nature and the method used, the “moral perversion” of the convict’s character.
65. What Greek law has failed to do so far is to criminalise, as prescribed by Article 4 (a) ICERD, *individual acts* of racist violence, which in practice may be combined with other grounds, such as the victim’s religion and sexual orientation. The Commissioner was informed by various interlocutors during his visit that a legislative amendment aimed at creating a special criminal offence (*ιδιώσυμο*) of acts of racist violence has been under consideration by competent authorities. Legal practitioners have indicated that such a provision would facilitate the prosecution of racist violence and the inclusion of racist motivation in the early stages of criminal proceedings, including the indictment, instead of in the last phase of assessment of the criminal penalty by the court, as it is now possible under Article 79, paragraph 3, of the criminal code (see below).

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<sup>31</sup> See Council of Europe Committee of Ministers, [Guidelines on eradicating impunity for serious human rights violations](#), 30 March 2011, Guideline X.

66. It is to be noted that as from 2001 (Law 2910/2001) the racist acts provided for by Law 927/1979 may be prosecuted *ex officio*. Also, under Article 79, paragraph 3, of the criminal code (as amended in 2008), during the assessment of a penalty courts must evaluate the defendant's personality and consider as an aggravating circumstance the fact that the criminal act at issue has been committed on grounds related to ethnic, racial or religious hatred or hatred due to the victim's sexual orientation.
67. The Commissioner, whilst recognising the importance of the abovementioned criminal code provision, notes with grave concern that it has never been applied by courts in Greece so far, leading to the imposition of excessively lenient, non-dissuasive penalties. For example, in September 2012 the Xanthi Magistrates Court imposed a suspended sentence of eight months and a pecuniary fine of €200 on a person reportedly linked to "Golden Dawn" who had violently attacked a member of the Muslim minority of Turkish ethnic origin.<sup>32</sup>
68. As well as the non-application of Article 79, paragraph 3 of the criminal code, the Commissioner is also concerned at the rare application of Law 927/1979 itself, a law that is not without shortcomings but is certainly potentially effective. The Greek Minister of Justice, Antonios Roupakiotis, confirmed in October 2012 that "few prosecutions for crimes regulated by Law 927/1979 have been initiated in recent years, at least on the basis of data that are sent from prosecutors' offices to the Ministry, while the relevant statistical data never record criminal offences carried out on racist grounds."<sup>33</sup> The Commissioner has noted in particular that Greek courts did not manage to effectively apply Law 927/1979 in a major, widely publicised, case concerning the publication in 2006 of a book by Kostas Plevris, a politician of an openly Nazi ideology, which was manifestly antisemitic and incited to hatred and violence against Jews. Despite the *ex officio* prosecution and the author's first instance conviction in 2007 on the basis of Law 927/1979, the Athens Appeal Court in 2009 and the Court of Cassation in 2010 finally acquitted the defendant.
69. During the Commissioner's visit and discussions with competent authorities, it became clear that the problem of non-application of the aggravating circumstance provision originates in the non-inclusion in the file or non-examination by the police, prosecutors or courts, of evidence related to the racist or other motivation of a criminal offence. Despite the issuance of a number of circulars on the issue by the police and the Court of Cassation prosecutor, the lack of systematic, continuous training of police officials, prosecutors and judges appears to lie behind the ineffective application, or non-application, of the existing anti-racism legislation.
70. Indeed in the course of his visit the Commissioner became aware of the fact that there is a serious gap in training and awareness-raising concerning anti-racism legislation and practice for police, prosecutors and judges. The competent legal professionals' lack of adequate, systematic training in anti-racism law and practice was noted by the Minister of Justice, Antonios Roupakiotis, and by the Athens prosecutor in charge of racist crime, Nikolaos Ornerakis, during their meetings with the Commissioner. The Commissioner notes that this is a serious issue that needs to be urgently addressed by the authorities who may also draw upon the strong training expertise available in the Council of Europe.
71. In this context, it is particularly important to establish a comprehensive, efficient and effective system at national level for recording, analysing and bringing to courts all instances of racist and other hate crime. The recently established systems of recording instances of racist violence at the Ministry of Justice and in the police need to be linked and draw upon, or if possible be merged with the older, functioning recording system dating back to 2011 that is co-ordinated by UNHCR and the National Commission for Human Rights. Additionally, for a comprehensive recording system to function properly, safeguards should be put in place that

<sup>32</sup> Reported in Ethnos.gr, 25 September 2012 (in Greek).

<sup>33</sup> Minister Roupakiotis' written reply to parliamentary question 1476/10-09-2012, 2 October 2012 (in Greek, on file with the Commissioner's Office).

would guarantee all victim complainants' effective access to this system and their full protection (see also following sub-section).

72. Another piece of legislation that may well enhance law and practice in Greece is the European Council Framework Decision 2008/913/JHA of 28 November 2008 "on combating certain forms and expressions of racism and xenophobia by means of criminal law" which has not as yet been transposed into Greek law, although the deadline was 28 November 2010. A bill intended to transpose this Framework Decision, and to replace Law 927/1979, has been pending for discussion in parliament since 2011.
73. The bill "on the combat of certain forms and manifestations of racism and xenophobia through criminal law"<sup>34</sup> contains a number of important criminal law provisions that may well permit stepping up the efforts to stem and prevent racism and xenophobia such as the following: it proscribes and punishes provocation of or incitement to violence or "animosity" (a term broader than hate) on racial, ethnic, religious or sexual orientation grounds; proscribes and punishes the constitution of and participation in an "organization" that carries out activities of the above-mentioned nature; proscribes and punishes public (including through the Internet) denial or praise of crimes of genocide, crimes against humanity and war crimes; and provides for the possibility of civil party participation in relevant criminal proceedings of Greek NGOs that have a consultative status with the UN ECOSOC. The Commissioner notes that the maximum imprisonment foreseen by the bill is three years while Article 3 of the above-mentioned Framework Decision allows for heavier sentences. The Commissioner believes that the Greek legislator should provide for the heaviest possible sentences, so that they are effective and dissuasive.
74. The Minister of Justice informed the Commissioner during their meeting that another bill pending in the parliament provides for the non-suspension and non-conversion of sentences imposed on persons convicted for racially motivated crimes. Whilst the Commissioner welcomes these positive legislative initiatives, he stresses the need for the authorities to ensure by all appropriate measures the effective application of all existing and forthcoming anti-racism legislation by prosecutors and courts, which regrettably has not been the case to date.
75. Also, it is to be noted that Greece signed Protocol No 12 to the ECHR in 2000 but has not yet ratified it. The same applies to the Council of Europe Convention on Cybercrime (2001) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003).
76. As regards the question of imposition of restrictions on political parties, Article 29, paragraph 1 of the Greek Constitution provides that "Greek citizens possessing the right to vote may freely found and join political parties, the organization and activity of which must serve the free functioning of democratic governance". Additionally, Article 29 of Law 3023/2002 (as amended) on the financing of political parties contains certain conditions under which a political party can operate, including the submission to the Prosecutor of the Court of Cassation a founding statement mentioning, *inter alia*, that the political party's "organisation and actions serve the free operation of the democratic system". The Prosecutor of the Court of Cassation, Ioannis Tentas, confirmed during his meeting with the Commissioner that the Court of Cassation at that stage does not proceed to verify the lawfulness of the party concerned but acts in effect as a protocol book registering the applicant party.
77. According to the established case law of the Court of Cassation, no party can forcibly be dissolved by law or by a court decision.<sup>35</sup> Nonetheless, the Commissioner has noted that the

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<sup>34</sup> Available in Greek at: <http://www.ministryofjustice.gr> (as of 15 January 2013).

<sup>35</sup> See Court of Cassation judgment 590/2009, available at: <http://www.kostasbeys.gr/articles.php?s=4&mid=1479&mnu=3&id=25525> (in Greek).

Court of Cassation can and does review the lawfulness of the lists of political parties engaged in elections. For example, in April 2012 it prevented a political party under the name of “*Tyrannoktonoi*” (Tyrannicides) from taking part in the May 2012 elections on the ground that such a name showed an intention to “commit a reprehensible act.”<sup>36</sup> The party was allowed to take part in the elections under a different name. Against this background, it could be argued that if the Court of Cassation can vet a political party, and prevent its participation in elections, because its name indicates that it intends to commit violence, *a fortiori*, it could, and should, also take a position against a political party for which ample evidence indicates that it advocates and practises racial hatred and violence.

78. Even though the constitution does not provide for the imposition of restrictions, including prohibition, on political parties, Article 29, paragraph 1 could be interpreted according to the principle of *effet utile*, in a way that would give a practical meaning to the above constitutional provision. Indeed, a constitution, especially its human rights-related parts, is a living instrument that should be able to respond effectively to the exigencies of evolving societies and liberal democracies. This could be done by envisaging the enactment of appropriate legislation, or the development of domestic case law, that would give effect to the wording and meaning of Article 29, paragraph 1 and restrict or prohibit, if necessary, a party for which ample evidence demonstrates that it does not serve “the free functioning of democratic governance”. Such legislation or case law would also be fully in line with the aforementioned Article 4(b) ICERD and Articles 11 and 17 ECHR by which Greece is bound.
79. In any event, as mentioned earlier, under current legislation (Article 1, paragraph 2 of Law 927/1979) members of organisations, which may be interpreted as including political parties, which organised propaganda or any kind of activities tending towards racial discrimination may be criminally sanctioned. Such sanctions may be accompanied by the convicts’ loss of political rights, under Article 61 of the criminal code, for one to five years. Even though such sanctions have not as yet been imposed by Greek courts, the recent criminal proceedings initiated against a number of MPs and members of “Golden Dawn” who have been involved in acts of racist violence may act as test cases able to enhance the efforts to effectively combat organised racist and other forms of hate crime.<sup>37</sup>

### **3. Effective access to justice and protection for victims of racist and other hate crimes**

80. The obligation of states to provide effective protection and remedies to victims of racial discrimination, through the competent national tribunals and other state institutions is expressly provided for by Article 6 ICERD. Under the same provision, states parties are prescribed to provide victims with just and adequate reparation for any damage suffered as a result of racial discrimination.
81. The above measures are extremely important for victims of racist and other hate crimes, given that they belong as a rule to particularly vulnerable social groups such as irregular migrants, asylum seekers and refugees. Members of such groups actually constituted the vast majority (126 out of 150) of racist violence victims recorded by the network headed by UNHCR and the Greek National Commission for Human Rights from November 2011 to September 2012. Characteristic of the difficulty for these persons to gain access to justice is that in the first nine months of 2012, out of the 87 victims of racist violence recorded by the

<sup>36</sup> Decision 4/2012 of 25 April 2012, available at:

[http://www.minpress.gr/minpress/areios\\_pagos\\_anakirixi\\_syndyasmwn\\_2012.pdf](http://www.minpress.gr/minpress/areios_pagos_anakirixi_syndyasmwn_2012.pdf) (in Greek).

<sup>37</sup> A number of Greek lawyers have also expressed the opinion that members of the “Golden Dawn” involved in racist violence may be prosecuted under Article 187 of the criminal code concerning “criminal organisations”, which provides for imprisonment ranging from five to ten years and entails loss of political rights from two to ten years.

network headed by UNHCR and the National Commission for Human Rights, only 11 addressed the competent authorities to file a criminal complaint.<sup>38</sup>

82. In order to provide effective protection and remedies, the Greek authorities need to reach out to the victims and the areas where they live and make free legal help and advice centres available to them.<sup>39</sup> Authorities may also usefully co-operate with existing, successful local institutions, like the Athens City Council for Migrants' Integration, that have already established relations of trust with migrant communities.
83. As regards access to courts, the Greek judicial system suffers from serious, chronic shortcomings concerning in particular excessively lengthy proceedings and lack of an effective remedy, which results in denial of justice. The Commissioner has noted in particular three cases, concerning the ill-treatment of migrants by law enforcement officials or racist attacks, where domestic criminal proceedings have been particularly lengthy despite the gravity of the criminal offences concerned and the serious threat they posed to the rule of law.
84. The first case relates to the ill-treatment of a group of Afghan migrants, including minors, notably in the police station of Aghios Panteleimonas, Athens, in 2004. The proceedings ended in 2012 in the Athens Appeal Court. The second case concerns alleged serious ill-treatment of migrants by members of the coast guard aboard a vessel near Chios in 2007. The first hearing in the Admiralty Court of Athens was scheduled to take place in January 2013 and was subsequently postponed until June 2013. The third case relates to a violent racist attack in 2011 in Athens against three Afghans (case of *Ali Rahimi and others*) that as of January 2013 had reportedly been postponed eight times.
85. It is to be noted that out of the 662 judgments delivered against Greece by the European Court of Human Rights up until the end of 2012, 438 concerned excessive length of judicial proceedings.<sup>40</sup> As of January 2013 more than 250 applications for excessive length of proceedings in Greece were pending before the Court, of which over 50 concerned criminal proceedings, 70 concerned civil cases and the rest were administrative cases.<sup>41</sup>
86. On 3 April 2012 the European Court of Human Rights delivered a pilot judgment against Greece in the case of *Michelioudakis*. The Court found a structural problem concerning excessive length of criminal proceedings and invited Greece, within one year from the date on which this judgment became final (i.e. by 3 July 2013), to introduce an effective domestic remedy, or a set of remedies, capable of affording adequate and sufficient redress in the event of the exceeding of the reasonable time requirement and decided, during that same period, to adjourn the proceedings in all the similar applications. On 30 October 2012 the Court delivered another similar pilot judgment concerning excessively lengthy proceedings in civil courts (case of *Glykantzi*) while on 21 December 2010 another pilot judgment had been issued concerning excessively lengthy proceedings in administrative courts (case of *Vassilios Athanasiou and others*). To date the execution by Greece of these pilot judgments remains under the supervision of the Council of Europe Committee of Ministers.
87. During his visit the Commissioner discussed these issues with representatives of the Greek Union of Judges and Prosecutors who highlighted certain specific shortcomings that require the authorities' particular attention: (a) the persistence of a large number of vacancies for judges/court employees; (b) improper infrastructure (including incomplete computerisation)

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<sup>38</sup> Racist Violence Recording Network, Findings 1.1.2012-30.09.2012, available at: <http://www.unhcr.gr/1againstracism/category/racist-violence-recording-network>.

<sup>39</sup> See UN CERD, [General Recommendation XXXI](#) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 2005, paragraphs 6-9.

<sup>40</sup> See Court's "Annual Report 2011" p. 160 and "Annual Report 2012" p. 152.

<sup>41</sup> See Court's "press country profile" on Greece, January 2013 p. 2.

and working conditions that hinder the efficiency of judges and courts; (c) undue delays, permitted by current procedural law and practice, in the initiation of judicial proceedings; (d) incomplete development of mediation among litigant parties that would prevent them from resorting to courts.

88. Similar serious problems also apply to prosecutors, especially in the area of Athens. The Court of Cassation Prosecutor noted during his discussion with the Commissioner that the prosecutors' offices in Athens receive approximately 300 000 criminal complaints and there are 110 posts, which means that each prosecutor has to examine the excessively high number of approximately 3 000 complaints annually. In this context, the Commissioner notes with particular concern that the special anti-racism prosecutor covering the area of Athens, Nikolaos Ornerakis, albeit appointed to that post as from November 2012, works on racist crime cases only on a part-time basis without any assistance.
89. During his meeting with the Commissioner, the Minister of Justice acknowledged that despite successive legislative measures the situation has not improved so far. However, the Minister assured the Commissioner that more efforts would be made to remedy the problem of excessive length of proceedings, including the adoption of a domestic remedy and the completion of the court computerisation project by 2015. The Commissioner welcomes the Minister's determination to effectively tackle this serious issue and would appreciate receiving updated information on the measures envisaged or taken for the redress of this situation.
90. Another fact that impedes access to justice for victims of racist and other forms of hate crimes is that under Article 46 of the Code of Criminal Procedure a fee of €100 is required in order to file a criminal complaint in cases which are not prosecuted *ex officio*. Victims of racially-motivated attacks should not have to pay this fee since all such offences are prosecuted *ex officio*. However, a number of interlocutors indicated to the Commissioner during his visit that upon attempts to lodge such a complaint victims have been required by the police to pay this fee, which is excessively high for almost all social groups that are affected by this form of crime. The Commissioner discussed the issue with the Prosecutor of the Court of Cassation who indicated that a legislative measure that would clearly exempt victims of racist violence from fees may be envisaged in the context of a possible review of the law concerning legal aid. The Commissioner would like to receive more information on such possible legislative developments aimed at making exemption from the above fee crystal clear and enforceable.
91. Effective access to justice for victims of racist violence is also *de facto* conditioned upon the provision to complainants, especially migrants with low or no incomes, of legal aid. Legal aid in Greece is regulated by Law 3226/2004 (as amended) on provision of legal aid to low income citizens. Under this statute beneficiaries of legal aid in criminal, civil and commercial cases are in principle low income EU citizens, as well as third country nationals and stateless persons on condition that they are legally resident or have their habitual residence in the EU. The law also foresees the provision of legal aid to certain particularly vulnerable victims of crime, such as forced labour and trafficking victims, but not to victims of racist or other forms of hate crimes, irrespective of the regularity of their immigration status.<sup>42</sup> The Commissioner believes that a legislative amendment to remedy this is necessary.
92. Lastly, given that a very large number of victims are irregular migrants, the Commissioner underlines that in order for access to justice to be possible for them, Greek law and practice should also make sure that complainants are exempt from forced removal and granted a residence permit, at least for as long as the criminal proceedings are pending. The Commissioner was informed by the Ministry of Justice that such protection is possible under the "Fourth Article" of Law 3875/2010 (amending Article 44 of immigration law 3386/2005). This provision (and the implementing Ministerial Decision 21897/11) provides that a

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<sup>42</sup> See also European Court of Human Rights, *Anakomba Yula v. Belgium*, judgment of 10 March 2009.

residence permit may be granted to victims of criminal offences provided for by Law 927/1979, on condition that a prosecution has been initiated. The residence permit may be valid until the delivery of a court's decision on the case or until the termination of the victim's medical treatment if applicable.

93. The Commissioner noted that most of his interlocutors, including expert NGOs, were unaware of this provision. In any event, it requires amendment in order to provide effective protection to all racist and other hate crime complainants from the moment of the lodging of the complaint and not as from the commencement of the prosecution, which usually requires a long period of time given the overburdened prosecutorial services, especially in Athens. The law should also provide for all necessary assistance to these victims, such as medical treatment, counselling, and interpretation and translation services.

*Conclusions and recommendations*

94. The Commissioner calls on the Greek authorities to be much more vigilant and proactive and use all available means to end impunity and to combat all kinds of discrimination, especially when they take on the extreme forms of hate speech and violence that destabilise social cohesion and erode the fundamental human rights principles on which Greece, as a member state of the Council of Europe, is based.
95. The Commissioner recalls that under the Greek Constitution, treaties ratified by Greece are not only binding but have supra-statutory force, thus obliging the Greek state to give full effect to their provisions through domestic law and practice. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the European Convention on Human Rights, both ratified by Greece, make possible the imposition of criminal and other sanctions and restrictions on the activities of individuals and political organisations, including political parties, such as "Golden Dawn", where evidence demonstrates that they advocate for and are involved directly or indirectly in acts of racist violence, incite racial hatred and oppose some of the basic principles of democracy and the rule of law. Such political parties must be banned, as prescribed by ICERD, and excluded from all state subsidies which are usually provided to political parties.
96. As regards Greek constitutional and statutory legislation, despite its flaws, it has the as-yet untapped potential to curb and prevent the operation of undemocratic, racist organisations and manifestations of racial and other forms of discrimination. The extremely limited application so far by police, prosecutors and courts of anti-racism Law 927/1979, as well as the non-application of the provision of the criminal code pertaining to racist and other forms of violence which are aggravating circumstances of a crime, is regrettable and results in effective impunity. This is a very worrying situation. The competent authorities need to realise the risks and human rights and democratic values that are at stake and act appropriately in order to give effect to existing legislation.
97. Thus the Commissioner urges the Ministry of Public Order and Citizen Protection, the Ministry of Shipping and of the Aegean, and the Ministry of Justice to establish and enhance systematic programmes of continuous training and awareness-raising in anti-discrimination law and practice, including anti-racism, that would target all police, coast guard officials, prosecutors and judges. The Greek authorities are called upon to usefully draw on the relevant valuable expertise of the Council of Europe Justice and Legal Co-operation Department whose major mission is the provision of concrete assistance to national authorities and relevant institutions and bodies in the fields of independence and efficiency of justice, human rights, and criminal justice reform.
98. The Commissioner welcomes the Justice Ministry's attempts to modernise anti-racism legislation and render it more effective. He urges the authorities to accelerate the adoption of the bill concerning racism and xenophobia through criminal law, pending since 2011, and

ensure that it provides for the heaviest possible criminal penalties for racist and xenophobic offences, in accordance with the EU Council Framework Decision 2008/913/JHA. Greece is also urged to ratify Protocol No 12 to the ECHR containing a general prohibition of discrimination, as well as the Council of Europe Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

99. As regards victims' access to justice and adequate remedies, the Commissioner calls on the authorities to reach out to the victims and the areas where they live and to establish or reinforce existing local institutions, such as the Athens City Council for Migrants' Integration, in order to provide victims with information and advice, as well as services for conciliation and mediation.
100. The Greek authorities are called upon to effectively remedy the long-standing, serious shortcomings concerning excessively lengthy judicial proceedings that hinder every person's access to justice and effective protection of their human rights. This is particularly important for victims of racial discrimination and racist violence who, as a rule, belong to the most vulnerable social groups, such as irregular migrants, asylum seekers and refugees.
101. The Commissioner urges the authorities to give effect to all three pilot judgments of the European Court of Human Rights concerning excessively lengthy judicial proceedings and reinforce, where necessary, the human and material resources available to prosecutors and judges so that they work in proper conditions and are effective, especially in big cities like Athens, to which the bulk of national litigation corresponds. In this context, the Commissioner calls on the Ministry of Justice to pay particular attention and reinforce the post of the Athens anti-racism prosecutor who is particularly under-resourced, and to expand this institution to other regions of Greece in order for anti-racism law to be effectively applied throughout the country.
102. Lastly, the Commissioner calls on the authorities to take measures so that complainants concerning racist and other hate crimes are clearly and expressly exempt from the fee required for filing a criminal complaint. Legal aid law should also be amended so that legal aid is provided to victims of racist and other hate crimes if they need it, irrespective of their immigration or residence status. Lastly, the existing law that provides for the possibility of provision of residence permits to all racist violence complainants should be amended and become effective by providing such protection upon the lodging of the relevant complaint and not upon the initiation of prosecution. The law should also make possible the provision to victims of necessary assistance, such as emergency medical treatment, counselling, interpretation and translation services. Greece's vibrant civil society with expertise in this domain could play a very useful, supportive role.

### **III. The role of law enforcement authorities in combating racist and other hate crimes**

103. The public's trust in law enforcement authorities and effective action against perpetrators of racist violence are key for curbing the devastating social effects of racist and other hate crimes. During his visit the Commissioner felt that, in general, there is little trust in the work of the Greek police, in particular among victims of racist violence and persons belonging to the groups most at risk of such violence. He notes that this is due on the one hand to a significant number of reported cases of ill-treatment, particularly of migrants and Roma, by law enforcement officials without adequate sanctioning and on the other hand to the aforementioned ineffectiveness of investigations into cases of racist violence and the provision of inadequate protection to victims.

### 1. *Ill-treatment of migrants and Roma by law enforcement officials*

104. In its 2012 concluding observations on Greece, the UN Committee against Torture expressed “its serious concern at persistent allegations of torture and ill-treatment by law enforcement officials during arrest or detention.”<sup>43</sup> The European Committee for the Prevention of Torture (CPT) has also issued reports on ill-treatment, including torture, in police stations and in migrant detention facilities in Greece.<sup>44</sup> Cases of ill-treatment by law enforcement officials (of the police and of the coast guard) have in particular been reported in the town of Patras. Reports indicate regular and systematic threats and ill-treatment of migrants, irrespective of their legal status.<sup>45</sup>
105. The Commissioner is particularly worried by the fact that between October 2011 and September 2012, 33 cases of racially-motivated ill-treatment by members of the police and the coast guard were recorded by the Racist Violence Recording Network.<sup>46</sup> He also heard with concern from homeless migrants that he met during his visit to the Athens park “Pedion tou Areos” that a number of policemen who have come to check their papers during daytime have returned at night wearing “Golden Dawn” t-shirts and carried out acts of violence against them.
106. Instances of excessive use of force by law enforcement officials against Roma have also been reported to the Commissioner. To date, the European Court of Human Rights has found relevant violations by Greece of the European Convention on Human Rights in three Roma-related cases: *Bekos and Koutropoulos*, *Petropoulou-Tsakiris* and *Stefanou*.<sup>47</sup> Moreover, policemen reportedly often insult Roma on grounds of their ethnic origin and police press releases concerning investigative police operations frequently mention the ethnic origin of Roma suspects of criminal offences.<sup>48</sup>
107. Research has indicated that between 1998 and 2012 there had been 12 recorded cases concerning ill-treatment by law enforcement officials who have been indicted and referred to trial under Article 137A of the criminal code which prohibits “torture and other offences against human dignity”.<sup>49</sup> As of early 2012, one police official had been convicted of torture, in December 2011, since the introduction of Article 137A in the criminal code in 1984. The Commissioner notes with concern that the above convict’s sentence of six years for torture by electric shocks against two young men in 2002 was suspended pending appeal.<sup>50</sup> The Commissioner would like to receive more information from the authorities on the progress of this case.

<sup>43</sup> Paragraph 10, available at: <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/GRIndex.aspx>.

<sup>44</sup> See, *inter alia*, CPT, “[Report on the visit to Greece from 19 to 27 January 2011](#)”, January 2012.

<sup>45</sup> Greek Council for Refugees, Stiftung Pro-Asyl, “[‘I came here for peace’](#), the systematic ill-treatment of migrants and refugees by states agents in Patras”, June 2012, esp. pp. 25-48.

<sup>46</sup> Pilot phase conclusions (01/10/2011-31/12/2011), 21 March 2012, and Findings for the period 01/01/2012-30/09/2012, 23 October 2012, available at: <http://www.unhcr.gr/1againstracism/category/racist-violence-recording-network>.

<sup>47</sup> *Bekos and Koutropoulos v. Greece*, judgment of 13 March 2006; *Petropoulou-Tsakiris v. Greece*, judgment of 6 March 2008; *Stefanou v. Greece*, judgment of 1 July 2010. See also UN Human Rights Committee, *Katsaris v. Greece*, Communication No. 1558/2007, Views published on 20 August 2012.

<sup>48</sup> World Organisation against Torture, Greek Helsinki Monitor, Sokadre and Minority Rights Group Greece, “[Alternative report to the UN Committee against Torture](#)”, 20 April 2012; on police operations in Roma settlements and racial profiling see e.g. police press release of 10 January 2013 at:

[http://www.astynomia.gr/index.php?option=ozo\\_content&lang=%27..%27&perform=view&id=23772&Itemid=1041&lang](http://www.astynomia.gr/index.php?option=ozo_content&lang=%27..%27&perform=view&id=23772&Itemid=1041&lang) (in Greek).

<sup>49</sup> Amnesty International, “[Police violence in Greece, not just ‘isolated incidents’](#)”, 2012, pp. 26-29.

<sup>50</sup> World Organisation against Torture, Greek Helsinki Monitor, Sokadre and Minority Rights Group Greece, “[Alternative report to the UN Committee against Torture](#)”, 20 April 2012, p. 6.

108. The Commissioner notes that the problem emanates primarily from the wording of Article 137A, paragraph 2 of the criminal code. It does not provide for comprehensive protection since it excludes from its ambit torture inflicted at the instigation or with the consent or acquiescence of a public official or a person acting in an official capacity, which is part of the definition of torture in Article 1 of the 1984 UN Convention against Torture. Moreover, the above provision requires that torture be “methodical”. This requirement for a planned, systematic character of ill-treatment has often been invoked by courts and they have consequently not recognised an offence as torture. In 2012 during the consideration of the national report by the UN Committee against Torture the Greek delegation acknowledged the need to bring the criminal code into line with the UN Convention and indicated that a new criminal code is being drafted.<sup>51</sup> The Commissioner looks forward to receiving more information on the measures envisaged by the authorities to bring the criminal code fully into line with the UN Convention against Torture.
109. The problem is compounded by the fact that allegations of torture and other forms of ill-treatment by law enforcement officials do not seem to be thoroughly investigated by courts and that instances of such misconduct have as a rule remained unpunished or led to excessively mild penalties, both at administrative (disciplinary) and especially criminal law levels. Such sanctions are not sufficient to act as a deterrent. In 2006 the UN Human Rights Committee found a first violation by Greece of the International Covenant on Civil and Political Rights noting that the Court of Cassation, in a criminal case decided upon in 1998, did not take into account the applicant’s claims that his confession to the police was given under duress (alleged serious ill-treatment) during his interrogation in the Athens police headquarters.<sup>52</sup> From 2004 to 2012 the European Court of Human Rights has found Greece in violation of the European Convention on Human Right in 11 cases due, *inter alia*, to lack of effective investigations into allegations of excessive use of force or ill-treatment by law enforcement officials. Moreover, two of these cases referred to the failure of the authorities to investigate whether or not racist motives on the side of the police officials may have played a role in the Roma applicants’ ill-treatment.<sup>53</sup>
110. Certain major cases of ill-treatment in which law enforcement officials were convicted of lesser offences than torture (“other offences against human dignity”) epitomise the shortcomings in the legislation in force regarding torture and its application by domestic courts. In one of the cases which was later brought to the Strasbourg Court ([Zontul v. Greece](#), judgment of 17 January 2012), a rape with a truncheon committed in 2001 by a member of the coast guard on Crete against a male migrant was not considered as torture by the Greek navy appeal court, since it was not “methodical”, as provided for by Article 137A of the criminal code. It is noted that in 2006 the Greek navy appeal court in this case condemned the perpetrator to a suspended six months’ imprisonment which was converted into a fine of €792, a mild penalty that was considered by the Strasbourg Court as “manifestly disproportionate” for an act of torture.<sup>54</sup>
111. A second major case relates to the ill-treatment of a group of Afghan migrants, including minors, near and in the police station of Aghios Panteleimonas, Athens, in 2004. The Athens Mixed Jury Court found in 2011 that the requirement of “methodical” ill-treatment was not met since the accused police officials used random methods “such as punches, kicks, a wooden stick and a plastic hose” to ill-treat the victims.<sup>55</sup> This judgment was upheld in 2012 by the

<sup>51</sup> UN Committee against Torture, summary record of the 1065<sup>th</sup> meeting of 10 May 2012, 16 November 2012, paragraph 50.

<sup>52</sup> See UN Human Rights Committee, Views, *Kouidis v. Greece*, Communication No. 1070/2002, 26 April 2006. See also the Views in *Kalamiotis v. Greece*, Communication No. 1486/2006, 24 July 2008.

<sup>53</sup> Cases of *Bekos-Koutropoulos* and of *Petropoulou-Tsakiris*. See also Department for the Execution of the Judgments of the European Court of Human Rights, [Information document on the group of cases \*Makaratzis and Others v. Greece\*](#), Assessment of the general measures presented by Greece, 27 November 2012.

<sup>54</sup> *Zontul v. Greece*, judgment of 17 January 2012, paragraphs 107-108.

<sup>55</sup> Amnesty International, [“Police violence in Greece, not just ‘isolated incidents’”](#), 2012, pp. 28-29.

Athens Appeal Court. Both police officials were given final suspended sentences ranging from 20 to 25 months, while one of them reportedly remains in active service. The Commissioner has been informed that the case is now pending before the European Court of Human Rights.

112. Another case of alleged serious ill-treatment of migrants by members of the coast guard, including alleged torture, is now pending before the Admiralty Court of Athens (a hearing is planned for June 2013). The case concerns the alleged ill-treatment of migrants while on board a vessel and their transfer to the island of Chios in June 2007. According to information received by the Commissioner's Office, all of the members of the coast guard who were subjected to disciplinary proceedings were acquitted.<sup>56</sup>
113. Against this background, the Commissioner notes with concern that Greece has not yet ratified the Additional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and has not established a national preventive mechanism against torture and other forms of ill-treatment. He understands that the Greek Ombudsman is already partially fulfilling the role of a preventive mechanism against torture. In order for the Ombudsman to become a fully-fledged mechanism, additional human and financial resources would certainly be necessary in order to be able to carry out effectively this important but arduous task.

## **2. Measures to combat impunity concerning human rights violations by law enforcement officials**

114. Public confidence in the law enforcement authorities is closely related to the latter's attitude and behaviour towards the public, in particular their respect for the human dignity and fundamental rights and freedoms of the individual as enshrined in the European Convention on Human Rights.<sup>57</sup> The Commissioner strongly believes that it is essential for the authorities to ensure that all instances of abuse of trust or ill-treatment by law enforcement officials are firmly condemned, adequately investigated and sanctioned by the competent authorities, in order to prevent recurrence and enhance the key role played by law enforcement authorities in safeguarding the rule of law.
115. The Commissioner notes with satisfaction that the disciplinary law of the police forces was amended by Presidential Decree 120/2008, which aimed to broaden the scope of acts considered as disciplinary offences and impose tougher sanctions in cases of torture and other forms of ill-treatment. He also notes the efforts made to raise awareness of police officials on human rights in policing.<sup>58</sup> However, he regrets that the impact of these measures on the recurrence of instances of police abuse appears to be limited in practice. The Greek police seems to believe that the above decree has contributed to an increase in proceedings against police officials allegedly involved in ill-treatment. According to figures made public by the Greek police, in the period 2009-2012 156 cases of ill-treatment by the police were disciplinarily checked. As of December 2012, in five of them disciplinary penalties were imposed and 54 cases were pending for examination. Criminal proceedings had been initiated in 35 cases.<sup>59</sup>

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<sup>56</sup>The incident is described by a witness in Pro Asyl et al., "[The truth may be bitter must it must be told](#)", Frankfurt a/M, October 2007, pp. 33-34.

<sup>57</sup> See Council of Europe Committee of Ministers [Recommendation Rec \(2001\) 10](#) on the European Code of Police Ethics.

<sup>58</sup> See Department for the Execution of the Judgments of the European Court of Human Rights, [Information document on the group of cases Makaratzis and Others v. Greece](#), Assessment of the general measures presented by Greece, 27 November 2012.

<sup>59</sup> Council of Europe Parliamentary Assembly, Committee on Legal Affairs and Human Rights, restricted document AS/Jur (2013) 06, 17 January 2013, paragraph 32.

116. Nonetheless, the Commissioner considers it disquieting that the code of criminal procedure was amended in March 2012<sup>60</sup> so as to exempt police, coast guard and fire brigade officials who commit offences “during the exercise of their duties and because of them” from being immediately arrested and referred to a judicial authority in cases where a criminal complaint is lodged against them. It is difficult to understand the *raison d’être* of this provision that exempts law enforcement officials from regular criminal law procedures. The Commissioner would like to receive more information on this issue from the Greek authorities.
117. The Commissioner stresses that the most important step to be taken to combat impunity of law enforcement officials is the setting up of an independent complaints mechanism, as underlined by the Commissioner’s predecessor in his [letter](#) to the Minister of Citizens’ Protection of March 2010. In this letter, the Commissioner supported the government in this important endeavour and drew the authorities’ attention to his [Opinion concerning Independent and Effective Determination of Complaints against the Police of 2009](#).
118. In 2011 a Law (3938/2011) and a Presidential Decree (78/2011) concerning “the establishment of an Office for addressing incidents of arbitrariness” entered into force. They foresee the establishment under the authority of the Ministry of Public Order and Citizen Protection of the above Office and of a three-member committee consisting of one high-ranking “honorary judge”, one “honorary prosecutor” and a legal adviser of the Ministry. This committee is in charge of recording and assessing complaints of abusive acts committed by law enforcement officials<sup>61</sup> and of forwarding the cases to the competent law enforcement authorities (of the police, the coast guard and fire brigade) for investigation. The Office may act *ex officio* or following a complaint. The above law provided that “serious incidents or complaints” (a term undefined in the law) may be forwarded by the Minister of Public Order and Citizen Protection and dealt with on their merits by a member of the committee. The committee may also deal with cases in which the Court has found violations of the European Convention on Human Rights due to deficiencies in the disciplinary proceedings or new evidence that had not been evaluated earlier by disciplinary bodies or courts. The committee may decide whether a new investigation into the case is warranted and if so, forward the case to the competent law enforcement authorities.
119. While this legislative development is a step forward, the Commissioner is concerned that the Office and its committee may not be considered to be an independent institution as they are set to operate under the direct control of the Ministry of Public Order and Citizen Protection and one of the committee members is a civil servant who works for this ministry. In addition, the Office as a rule (except for the above-mentioned “serious incidents or complaints”) is not empowered to carry out investigations which remain in the realm of the competent law enforcement authorities. Furthermore, the Commissioner has been informed that the committee is not yet operational.
120. The Commissioner is convinced that in order to boost public trust in law enforcement authorities, a well-functioning and independent complaints mechanism should become operational as a matter of priority. Therefore, while recognising that the very strict austerity measures in place render it more difficult to create new public bodies, the Commissioner is of the opinion that the authorities should consider alternative options to the current institutional set-up established by Law 3938/2011. The aim should be to create an independent body capable of carrying out effective investigations in a timely manner.

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<sup>60</sup> Article 19 of Law 4058/2012.

<sup>61</sup> Law 3938/2011 provides that the following reprehensible acts would be subject to examination by the Office: torture or other affronts to human dignity in the sense of Article 137A of the criminal code; unlawful affronts to life and limb, health, personal or sexual liberty; unlawful use of firearms; any other conduct that is an affront to one’s personality.

121. The Commissioner reiterates that the Council of Europe has experience in providing support to countries in establishing effective complaints mechanisms and can provide useful examples from other member states, be it a fully independent public body or a specialised team of prosecutors charged with investigations into actions of law enforcement officials, or a specific parliamentary committee. It is up to Greece to develop a model adapted to its own legal system and traditions, as long as it meets the criteria for effective investigation described in the above-mentioned Opinion by the former Commissioner.

**3. Efforts to enhance the fight against racist violence by the law enforcement authorities**

122. The increase of instances of racist attacks by “Golden Dawn” members, supporters or MPs has been accompanied by allegations of police ineffectiveness, inaction or even collusion with “Golden Dawn” members or supporters.<sup>62</sup> Of particular concern to the Commissioner is the fact that in polling stations in Athens where staff members of the Greek police voted, along with other Greek citizens during the June 2012 elections, “Golden Dawn” percentages were far above the national average, ranging from 17,2% to 23,04%. Estimates indicate alarmingly that more than 50% of the police officials in these polling stations voted for “Golden Dawn”.<sup>63</sup> In this context, the Commissioner believes that the Greek authorities should be particularly vigilant. Law enforcement officials who are motivated by racism or act against democratic principles should be sanctioned and removed from their posts.
123. Victims with whom the Commissioner met during his visit reported instances of insults and ill-treatment by police officials when looking for protection and reporting a racist attack against them. The racist violence recording network recorded 22 cases from January to September 2012 where the victims of racist attacks alleged that they tried to report the incidents to the police but were faced with unwillingness and in some cases, the actual refusal of the police authorities to respond.<sup>64</sup>
124. A circular of the Ministry of Public Order and Citizen Protection of May 2006 (7100/4/3) obliges police officials to investigate the racist motivation of alleged criminal offences, collect relevant information and record/report incidents through a specific form in the case of all acts against individuals perpetrated on grounds of national or ethnic origin, colour, religion, disability, sexual orientation and gender identity. However, the Commissioner is concerned by the reported lack of adequate investigation of possible racist motivations of attacks, evidenced by the fact that racist motivation has so far never been considered as an aggravating circumstance of an offence by Greek courts (see section II).
125. The Commissioner welcomes the establishment in January 2013 of 70 anti-racist police units throughout the country.<sup>65</sup> These units have been tasked with fighting against and preventing racist violence, by means of investigation of cases of racist violence ex officio or following the lodging of a complaint concerning offences related to discrimination and hatred against persons on the basis of their “race, colour, religion, genealogical origins and national or ethnic origin”. They also have to inform the prosecuting authorities of any ongoing investigation of racially-motivated offences, to provide information to victims and develop co-operation with civil society organisations and other state bodies on racist violence. A hotline (11414) was also established through which incidents of racist violence may be reported and information may be provided to victims by members of the anti-racist units. The Commissioner would like to be informed by the authorities if the above hotline is free of

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<sup>62</sup> See Human Rights Watch, “[Hate on the Streets](#), Xenophobic violence in Greece”, 2012, pp. 40-41.

<sup>63</sup> Article in To Vima, 19 June 2012 (in Greek).

<sup>64</sup> Findings 1.1.2012 – 30.09.2012, available at: <http://www.unhcr.gr/1againstracism/category/racist-violence-recording-network>.

<sup>65</sup> By virtue of Presidential Decree 132/2012 of December 2012.

charge and if the anti-racist police units are staffed by personnel able to speak with complainants in a language other than Greek, if necessary.

126. Each anti-racist unit is also tasked with collecting and recording all relevant data and information and producing a yearly report to be submitted to the headquarters of the Greek police. The Commissioner understands that information gathered through this system should feed into the mechanism of relevant data collection set up by the Ministry of Justice in 2012. Already in August 2012, police officials were informed through a circular that they should report all registered racist incidents to the Ministry of Justice. The Commissioner finds these measures concerning data collection useful and hopes that they will lead to the establishment of a comprehensive system of official and regular data collection on racist and other hate crimes.
127. The Commissioner was informed that, at the time of his visit to Greece, the 200 police officials of the anti-racist units took part in a two-day training course. While this is a welcome development, it is clear that further, long-term, systematic training will have to be undertaken to ensure adequate preparation of the police officials concerned to deal with racist violence.
128. It is also noted that the presidential decree setting up the anti-racist units fails to cover offences committed based on the perceived sexual orientation of victims, even though the number of homophobic offences is reportedly rising. The Commissioner finds it essential to broaden the mandate of the new units so as to enable them to deal with all forms of hate crime.

#### *Conclusions and recommendations*

129. The Commissioner draws the authorities' attention to the Council of Europe Committee of Ministers [Guidelines on eradicating impunity for serious human rights violations](#) (2011) and stresses the need to elaborate policies and practice to prevent and combat any *institutional culture* within law enforcement authorities which promotes impunity. This is especially important for the Greek police, a large number of whose members appear to be close to the Greek neo-Nazi party. Measures in this context should include a policy of zero-tolerance towards serious human rights violations, the introduction of anti-corruption policies and the establishment or reinforcement of appropriate training and control mechanisms.<sup>66</sup> The Commissioner stresses the need for particular vigilance on the part of the Greek authorities and to exclude from the ranks of law enforcement authorities any staff member committing racially motivated offences or who supports undemocratic manifestations of the Greek neo-Nazi party.
130. The Commissioner urges the Greek authorities to establish a human rights-compliant policy and practice towards all forms of non-respect of the principle of non-discrimination and of ill-treatment by law enforcement officials. In line with ECRI's [General Policy Recommendation N° 11](#) on combating racism and racial discrimination in policing, the Greek authorities are urged to place the law enforcement authorities under a statutory obligation to promote equality and prevent racial discrimination in carrying out their functions.
131. The Commissioner calls on the authorities to amend Article 137A of the criminal code so as to fully align the definition of torture provided therein with Article 1 of the UN Convention against Torture to which Greece is a party. Furthermore, Greece is urged to ratify the Additional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and formally designate the Greek Ombudsman as national preventive mechanism, providing the institution at the same time with appropriate resources necessary for this important, additional task.

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<sup>66</sup> Section III, paragraph 3.

132. Allegations of abuse by law enforcement officials should be effectively investigated. Investigations should always look into the possible racist motivation of such acts. The Commissioner wishes to draw the Greek authorities' attention to the case law of the Court, which has affirmed on various occasions that state authorities have a positive obligation to carry out a meaningful investigation to uncover a possible racist motivation in cases of abusive use of force by law enforcement officials. Specific guidance and training on this topic should also be provided through initial and ongoing, systematic training of all law enforcement officials.
133. The Commissioner urges the authorities to put an end to the practice of ethnic profiling by the police, reportedly widely used concerning Roma and as part of the "Xenios Zeus" police operation under which the legal status of migrants is verified. Racial profiling is discriminatory and seriously undermines confidence in the police among the social groups targeted. Drawing on ECRI's [General Policy Recommendation N° 11](#) on combating racism and racial discrimination in policing, the authorities are invited to introduce in the law enforcement rules a "reasonable suspicion standard", whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion that is founded on objective criteria.
134. The Commissioner finds it crucial that the authorities establish as a priority a fully independent and well-functioning complaints mechanism covering all law enforcement officials. Such a body should be set up taking into account the five principles of effective complaints investigation: (a) *independence*: there should be no institutional or hierarchical connections between the investigators and the official complained against and there should be practical independence; (b) *adequacy*: the investigation should be capable of gathering evidence to determine whether the behaviour of the law enforcement body complained of was unlawful and to identify and punish those responsible; (c) *promptness*: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; (d) *public scrutiny*: procedures and decision-making should be open and transparent in order to ensure accountability; and (e) *victim involvement*: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests. Moreover, the Commissioner reiterates that the Council of Europe can provide useful examples from other member states and guidance in building up such a body, be it a fully independent public body or a specialised team of prosecutors charged with the investigations into actions of law enforcement officials, or a specific parliamentary committee.
135. The Commissioner stresses the need for the authorities to pursue their efforts to improve in particular the police response to racist and other hate crimes. The new anti-racist police units are to be staffed with personnel able to communicate with migrants in other languages in cases where Greek is not spoken by the latter. The staff of these units should also be provided with systematic, adequate training in human rights and anti-discrimination law and practice. This training would usefully include contributions by independent human rights institutions, such as the National Commission for Human Rights, as well as by well-established migrant or other expert non-governmental organisations.
136. The Commissioner calls on the authorities to ensure that the mandate of the new police anti-racist units is in practice sufficiently broad, so as to include all forms of hate crime, including homophobic crimes, and that the hotline established for reporting racist crime is free of charge and accessible not only in Greek but also in other languages spoken by migrants in the country.
137. Last but not least, the Greek police are urged to establish frameworks for systematic, open dialogue and co-operation with members of migrant and other vulnerable social groups all over the country, giving priority to big urban areas, such as Athens, that have so far witnessed the bulk of incidents of intolerance and hate crime.

#### IV. Asylum and immigration law and practice: certain major shortcomings that need to be addressed

138. Serious, long-standing shortcomings in Greek asylum and immigration law and practice often drive migrants to destitution and increase their vulnerability to racist and other hate crimes. The Commissioner welcomes the efforts made by the Greek authorities since 2011 in order to rebuild the national asylum system which had totally collapsed. A new Asylum Service and Appeals Authority as well as an Initial Reception Service, to be staffed by civil servants, were created by Law 3907/2011. This is a step forward and the Commissioner expects that these new services will be operational this year. The work of the transitional asylum appeal committees, established by Presidential Decree 114/2010, has also led to an increase in international protection granting rates, which in 2011 were between 1,65 and 2,05% in first instance and 28,2 and 40,62% on appeal.<sup>67</sup>
139. However, the asylum seeker reception capacity still remains largely insufficient. As of late 2012 Greece had approximately 1 000 asylum seeker accommodation places whereas in 2011 and 2010 alone asylum applicants in the country numbered 9 310 and 10 275 respectively.<sup>68</sup> This situation leaves a large number of asylum seekers homeless and destitute and renders them particularly vulnerable to manifestations of intolerance and racist violence.
140. Moreover, about 90% of asylum applications continue to be received by the aliens police directorate (Petrou Ralli street) in Athens. There is a dire lack of staff and technical equipment for registering asylum claims. Consequently, the above police directorate continues the practice of accepting approximately 50 asylum applications one day a week, a situation which results in the perpetuation of long queues of asylum applicants. These persons have to stay outside overnight and are reportedly exposed to abuses and arbitrariness by the police.<sup>69</sup> The Commissioner urges the authorities to take all appropriate measures in order to put an end to this practice that is degrading for the asylum applicants.
141. The Commissioner remains particularly worried by the systematic detention of irregular migrants including asylum seekers, which sometimes reaches a period of 18 months. However, many of these detainees cannot be deported to their countries of origin, for various reasons such as armed conflicts in the country of origin or lack of proper identification. For example, the Commissioner met with migrants detained in the police station of Aghios Panteleimonas, Athens, and found out that one of them was a Syrian national who cannot be returned to Syria due to the on-going armed conflict.
142. The detention of migrants, if return is not possible, serves no practical purpose and results in the serious financial burdening of the Greek state and the traumatising of migrants deprived of their liberty for long periods of time. If they are finally set free these migrants certainly constitute one of the most vulnerable groups of potential victims of exploitation and racist violence. Various reports notably by the CPT<sup>70</sup> and the Parliamentary Assembly of the Council of Europe,<sup>71</sup> have noted the often inhumane and degrading living conditions faced by migrant detainees. The Commissioner could see from his visit to the police station of Aghios Panteleimonas, Athens, that police stations in particular are far from adequate for long periods of detention.

<sup>67</sup> Information provided by the UNHCR office in Athens on 12 December 2012.

<sup>68</sup> See data in Eurostat news release 46/2012, 23 March 2012, and Eurostat "Data in focus" 5/2011, 21 March 2011.

<sup>69</sup> See Group of Lawyers for the Rights of Migrants and Refugees, "[Fact finding report of the campaign for the access to asylum in Greece](#)", 6 July 2012.

<sup>70</sup> CPT, "[Report on the visit to Greece carried out from 17 to 29 January 2011](#)", January 2012.

<sup>71</sup> Council of Europe Parliamentary Assembly, "[Resolution 1918 \(2013\)](#) on Migration and asylum: mounting tensions in the Eastern Mediterranean, 24 January 2013 and relevant [Report](#) of the Committee on Migration, Refugees and Displaced Persons, 21 January 2013.

143. The Commissioner also notes that the Court has delivered 11 judgments against Greece between 2009 and 2012 concerning, *inter alia*, violations of Article 3 of the European Convention on Human Rights due to the conditions of detention of the migrant (including asylum seeker) applicants in police stations or migrant detention centres. As of January 2013 the supervision of the execution by Greece of most of these judgments was pending before the Council of Europe Committee of Ministers.<sup>72</sup>
144. A particular issue that was brought to the attention of the Commissioner, both by migrant detainees and police officials, is the lack of access to regular and adequate health care in police-run detention facilities. The Ministry of Public Order seems to be well aware of this problem. However, it appears that a lack of funds hinders the implementation of any regular health care programme. The Commissioner raised the issue with Minister Dendias and called on him to look into this serious matter that affects the daily lives of migrant detainees and of law enforcement officials.
145. Against this background, the Commissioner welcomes the authorities' decision that was made public last January and according to which women, unaccompanied minors and persons with health problems shall no longer be detained, but placed in two open reception centres to be built in the near future. Nonetheless, he notes that the only way of redressing the situation in a sustainable manner is to put an end to the policy of systematic detention of all irregular migrants and to provide for alternatives to detention in Greek law and practice.
146. Additionally, the Commissioner is particularly concerned by the situation of unaccompanied minor migrants. He met with a group of young Afghan migrants in the Athens park "Pedion tou Areos", where they sleep rough in the absence of any alternative accommodation. In addition to being reportedly exposed to violence and abuse, notably by far-right extremists, the only assistance they receive comes from NGOs.
147. The Commissioner is concerned at the persistence of most of the problems raised by the previous Commissioner in 2009 and 2010 concerning unaccompanied migrant minors.<sup>73</sup> There is no adequate framework for the identification of unaccompanied and separated children and for their referral to appropriate child protection mechanisms including the necessary guardianship.<sup>74</sup> These lacunae render migrant children extremely vulnerable to trafficking, smuggling and racist violence.
148. The lack of an effective system of guardianship also seriously hampers access of unaccompanied migrant children to international protection procedures. The Commissioner welcomes the initiative taken by the prosecutor of the region of Rodopi (Evros), who sent a letter to all prosecutors of the region in 2012 requesting that they ensure that all unaccompanied minors are transferred to special reception centres and that they are not subject to criminal charges on grounds of irregular entry.<sup>75</sup>

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<sup>72</sup> *S.D.*, judgment of 11 September 2009, *Tabesh*, judgment of 26 November 2009, *A.A.*, judgment of 22 July 2010, *M.S.S.*, judgment of 21 January 2011, *R.U.*, judgment of 7 June 2011, *Efremidzi*, judgment of 21 June 2011, *Lica*, judgment of 17 July 2012, *Mahmundi and Others*, judgment of 31 July 2012, *Ahmade*, and *Bygylashvili*, judgments of 25 September 2012, *Lin*, judgment of 6 November 2012.

<sup>73</sup> See "[Report of the Commissioner for Human Rights, Thomas Hammarberg](#), following his visit to Greece, 8-10 December 2008", 4 February 2009. See also [Letter to Mr Haris Kastanidis](#), Minister of Justice Transparency and Human Rights of Greece, 8 March 2010.

<sup>74</sup> See, *inter alia*, [statement](#) by the UN Special Rapporteur on the Human Rights of Migrants after his visit to Greece, 3 December 2012.

<sup>75</sup> [M.S.S. v. Belgium and Greece: Assessment of the general measures presented in the Action Plans of Belgium and Greece](#), Memorandum prepared by the Department for the Execution of Judgments of the European Court of Human Rights, 29 May 2012.

*Conclusions and recommendations*

149. The Commissioner considers that Council of Europe member states and European intergovernmental organisations, especially the European Union, should continue to provide assistance to Greece in order to reduce migratory pressure and elaborate and implement an efficient asylum and immigration system. Nonetheless, the complex, international phenomenon of migration should be dealt with by Greece and all other Council of Europe member states concerned in a manner which is not only efficient but also effectively respects Council of Europe human rights standards and prevents the risks of destitution and violence that migrants now face in Greece.
150. The Commissioner welcomes the steps taken by the Greek authorities since 2011 to establish an effective asylum system in Greece. He urges them to ensure that the new asylum services become operational without any further delay and to substantially improve the asylum seeker reception capacity. Also, the asylum lodging practice in the Athens aliens police directorate in conditions that are degrading for asylum seekers must end. At least until then, all EU member states should make use of the “sovereignty clause” (Article 3(2)) of the “Dublin Regulation” and refrain from returning asylum seekers to Greece.
151. The Commissioner calls on the Greek authorities to review their current policy of systematic migrant detention and construction of more detention facilities and to consider possible alternative measures. He considers that the systematic and prolonged detention in substandard conditions not only traumatises migrants but is also too costly, especially for a country that is hard-hit by the economic crisis, and often ineffective, given that many of them are finally set free and left without assistance. He draws the Greek authorities’ attention to Resolutions [1637 \(2008\)](#) and [1707 \(2010\)](#) of the Council of Europe Parliamentary Assembly, by which member states are called on to progressively proscribe administrative detention of irregular migrants and asylum seekers, and to draw upon practices in a number of member states and provide for alternatives to migrant detention in law and practice.<sup>76</sup>
152. The Commissioner calls on the Greek authorities to ensure adequate access to health care in migrant detention facilities, given that shortcomings in this area threaten the daily lives of migrant detainees and the police officials employed in these facilities. In this regard, he recalls the recommendation made by CPT in 2011<sup>77</sup> that the Greek authorities establish a system of regular visits by doctors to police (and border guard) stations to screen new arrivals and enquire whether there are detainees with potential medical problems. The use by the state of the expertise of NGOs active in this field for many years in Greece may be invaluable in this context.
153. The authorities are urged to prioritise and implement their pledge to end the systematic detention of migrant women, unaccompanied minors and persons with health problems. Moreover, measures should urgently be taken to ensure that all unaccompanied minor migrants have their needs adequately assessed shortly after their arrival in Greece, that they have access to an effective system of guardianship and are referred to a child protection mechanism, in line with Greece’s obligations under the UN Convention on the Rights of the Child.
154. The Commissioner wishes to conclude by stressing that he will continue to closely follow developments concerning hate crime and migrant protection in Greece. He intends to take all necessary measures, in accordance with his mandate as an independent and impartial

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<sup>76</sup> Council of Europe Parliamentary Assembly Resolution 1637 (2008) on Europe’s boat people: mixed migration flows by sea into southern Europe and Resolution 1707 (2010) on Detention of asylum seekers and irregular migrants in Europe.

<sup>77</sup> CPT, [“Report on the visit to Greece carried out from 17 to 29 January 2011”](#), January 2012.

institution of the Council of Europe, in order to promote the effective implementation of the Council of Europe standards relating to human rights protection. The Commissioner stands ready to continue a sincere, constructive dialogue with and assist the Greek authorities in their efforts to remedy the shortcomings that were outlined in the present report.