REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT 2011

GREECE

ATHANASIOS THEODORIDIS

State of affairs up to 1st January 2012

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the website of the European network of legal experts in the non-discrimination field:
http://www.non-discrimination.net/law/national-legislation/country-reports-measures-combat-discrimination

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INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

Legislative Bodies and Procedure

Greece is a parliamentary republic.[1] Popular sovereignty is the foundation of government, whereas all powers derive from the People and exist for the People and the Nation.[2]

Pursuant to the relevant constitutional provisions,[3] the main legislative bodies in the Greek legal system are: the Parliament (η Βουλή των Ελλήνων), the President of the Republic (ο Πρόεδρος της Δημοκρατίας) acting on a governmental proposal, the Government (η Κυβέρνηση]), the social partners (οι Κοινωνικοί Εταίροι) (entitled to conclude collective labour agreements in employment matters), and (in specific matters) the bodies known as 'Independent Authorities' (Ανεξάρτητες Αρχές). According to the Greek Constitution, legislative powers are exercised jointly by the Parliament and the President of the Republic.

The right to introduce bills (Νομοθετική Πρωτοβουλία [right of initiative]) belongs to the Parliament and the Government.[4]

The provisions of law emanating from the legislative process exist in the form of a hierarchy. The Constitution forms the basis of the legal system and all secondary legislation must be in compliance with it. Legislative acts are either substantive or formal, depending on whether one examines their content or their form. Substantive law defines the requirements for the creation of a legal relation or situation. Of course, both kinds of law, substantive and formal, should be in conformity with the Constitution and are actually examined *ex officio* by the Greek courts, namely for their compliance with the Constitution. Substantive statutes emanate not only from Parliament but also from other authorities, especially from the President of the Republic in the form of decrees, and from cabinet ministers in the form of decisions taken by virtue of authorisation by Parliament.

[1] Constitution, Article 1(1) Greece is not a federal state.
[2] Constitution, Article 1(2), 1(3).
[3] The 1975 Constitution (the first democratic constitution after the fall of the military dictatorship) was revised in 1986 and lately in 2001.
[4] Constitution, Article 73(1). Individual Members of Parliament have the right to introduce a bill, but this occurs only rarely.

Only substantive statutes may constitute sources of law, in the sense that they form a legal relation or situation, and only their violation is subject to review by the Supreme Court on final appeal (Article 559 of the Code of Civil Procedure).

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

The Parliament

Every bill (Νομοσχέδιο), accompanied by an explanatory report (εισηγητική έκθεση),[5] is introduced for debate and if accepted (passed) by Parliament, the President of the Republic then promulgates and publishes it as a law (Νόμος) (or act of Parliament).[6]

The explanatory reports and the minutes of parliamentary debates are quite often referred to as a valuable aid for the interpretation and application of laws.

Prior to their introduction to the Parliament, bills are in most cases referred to a Scientific Research Service to the Parliament (επιστημονική υπηρεσία της Βουλής), which is established under the Constitution to assist Parliament in its legislative work.[7]

Moreover, bills of major importance in the area of industrial relations, social security and the Government's overall economic and social policy, are referred to a special Economic and Social Committee, which gives non-binding comprehensive opinions on the content of such bills.[8]

The President of the Republic acting on the proposal of a Minister

The President promulgates and publishes the statutes and issues the decrees necessary for their execution.[9]

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[5] Constitution, Article 74.
[6] Statutes are then published in the Official Gazette.
[7] Constitution, Article 65(5).
[8] Constitution, Article 82(3): 'Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country and especially for the orientations of the economic and social policy, as well as the formulation of opinions on Bills and law proposals referred to it, shall be specified by law.' The law in force is Law 2232/1994. (It was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognised and upgraded the Committee's competences).
[9] Constitution, Article 42.

If specially delegated by a statute and upon the motion of the competent minister,[10] the President can issue general regulatory decrees (κανονιστικά διατάγματα).[11]

These decrees ('presidential decrees', as they are termed in practice) have the force of a statute.[12] The President may only issue decrees containing legal rules on the basis of (a) a statutory (specific) delegation, which must state its subject, aim and limits, or (b) a (newly introduced) framework law.

0Delegation is permitted except where the Constitution requires a 'formal law', that is to say an act of parliament, instead of a 'law', which may also be any statutory instrument. The President has to sign a decree, whether he agrees or disagrees with it, provided that it is based on specific statutory delegation and issued on a ministerial proposal. The Government uses this 'delegated presidential competence' quite often, as they can pass new legislation in a speedier and simpler way compared to the passing of a statute by Parliament, which involves complex procedures and debates.[13]

The Government

All ministers have the right to issue regulatory acts (usually termed ministerial decisions (υπουργικές αποφάσεις)) by virtue of a statutory delegation in cases concerning regulation of specific matters or matters of local interest or of a technical and detailed nature.[14]

Ministers, including the Employment and Social Affairs Ministers,[15] make wide use of this right. These ministerial decisions are legally binding.

The Social Partners

Specific employment matters, to a certain extent social security matters, and general employment standards are widely regulated autonomously by collective labour agreements (CLAs), concluded by trade unions and employers' organisations (or individual major employers).[16] The social partners act at national level (nationwide CLAs bind all employers and workers, regardless of whether they are unionised or not), at branch level (e.g. in the banking sector), at occupational level (e.g. accountants) and at company level.

[10] 'No act of the President shall be valid nor be executed unless countersigned by the competent Minister …' (Constitution, Article 35).
[11] Constitution, Article 43(2).
[12] Prior to their entry into force all decrees of a regulatory nature must be elaborated by the Supreme Administrative Court [Συμβούλιο της Επικρατείας]. Constitution, Article 95(1)(d).
[13] International conventions require ratification by a statutory act of Parliament, as foreseen in Article 28(1) of the Constitution.
[14] Constitution, Article 43(2).
[15] The Labour Department is now (since March 2004) called the Ministry for Employment and Social Solidarity.
[16] Constitution, Article 22(2) and Law 1876/1990 on free collective bargaining.

The Independent Authority for the Protection of Personal Data

Pursuant to Article 9A of the Constitution, all persons have the right to be protected from the collection, processing and use of their personal data, as specified by law (currently Law 2472/1997). This protection is ensured by an independent authority, the Hellenic Data Protection Authority (Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα), which is established and operates under the said Law 2472/1997.[17]

This authority, as delegated by the law, is entitled to issue regulative acts on special and technical matters related to the protection of personal data.

The Law Enforcement Bodies

Under the Constitution, the courts enforce the law[18] and nobody can be deprived against his will of the judge assigned to him by law.[19]

Judicial committees or extraordinary courts, under any name whatsoever, cannot be constituted. Therefore, as a matter of principle, law enforcement bodies other than courts may not be established.

In the Greek legal system, the courts are entrusted with protecting constitutional provisions in the sense that they are in no case obliged to comply with provisions, whose content – as assessed by the judge — infringes the Constitution.[20]

However, in respect of employment issues, three public authorities play a considerable part in the law enforcement environment:[21]

The Labour Inspectorate (Επιθεώρηση Εργασίας) (a central service to the Ministry of Employment and a monitoring body) performs inspection and control at workplaces to ensure the proper implementation of legislation, with powers to institute criminal proceedings or in some cases impose fines against employers. However, its resources are very limited and its staff are mostly poorly trained and lack expertise.

A recently established service, the Ombudsman (ο Συνήγορος του Πολίτη), which is an independent authority operating under Article 103 of the Constitution and Law 2477/1997, has proved to be much more effective. Since 1997 (when the law reached the Statute Book), citizens have invoked the Ombudsman in hundreds of

[17] Pursuant to Article 101A of the Constitution, members of the independent authorities shall enjoy personal and operational independence.
[18] Constitution, Article 87(1): 'Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence.'
[19] Constitution, Article 8(1).
[20] Constitution, Article 87(2).
[21] In gender discrimination issues, there is a quasi-enforcement body, the Secretariat of Equality (Γραμματεία Ισότητας), operating under the direct control of the Prime Minister.

cases; in many of these cases, he has compelled state agencies to respect citizens' rights.

Under the anti-discrimination law, the Ombudsman is competent in regard to the promotion of children's rights, as well as the implementation of the principle of equal treatment, regardless of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation, in the public sector, drafting reports and investigating complaints on violations of this principle (in any field; not only in occupation and employment). (For more details concerning the task of the Greek Ombudsman you can see the chapter 7b below)

Finally, it should be highlithted that the current situation in Greece does not allow for further developments in the field of anti-discrimination law, since most of the legislative provisions concern - almost exclusively - economic issues. On the other hand, although the topic of migration remains at the top of the social, legal and political agenda, no one seems to deal with its special dimension of "discrimination".

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.
This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.
Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

Regarding the implementation of Directives 2000/78/EC and 2000/43/EC, the Greek Parliament passed anti-discrimination legislation, Law 3304/2005, which literally transposes these two Directives into Greek national law. This law fills a conspicuous lacuna in the Greek legal system, where there was previously no specific anti-discrimination legislation in force. This new statute, entitled 'On the application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age, or sexual orientation', protects all persons in both the public

and private sectors, and covers the fields of access to employment and occupation (but not to self-employment), vocational training and education, social protection, including social security and healthcare, education, and access to goods and services including housing.

Concerning the points where Greek national law is in breach of the Directives, it must be noted that Article 28 of the anti-discrimination law (Law 3304/2005) implementing these Directives specifically states:

> On entry into force, this Law repeals any legislation or rule and abrogates any clause included in personal or collective contracts, general dealing terms, internal enterprise regulations, charters of profit or non-profit organisations, independent professional associations and employee or employer trade unions opposed to the equal treatment principle defined in this Law.

In addition, Law 3304/2005 commences with the 'purpose' of the legislation, which is modelled on Article 1 of both Directives:

> The purpose of this Law is to lay down a general regulatory framework for combating discrimination on the grounds of racial or ethnic origin, as well as combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, in accordance with the Council Directives 2000/43/EC and 2000/78/EC, with a view to putting into effect the principle of equal treatment.

It is evident that the Greek legislature did not intend to provide specific regulations with regard to the implementation of the principle of equal treatment, but a general framework. This is not within the spirit of the Directive, which establishes the general framework for the member states to make specific regulations and take concrete implementation measures.

In regard to the equality bodies established by Law 3304/2005, it is important to note that, after a reasoned opinion on unsatisfactory transposition (in 2007), the European Commission finally closed procedures against Greece in 2008.[22]

Also included in national law are exceptions relating to employment in the police, prison or emergency services, under the condition of relevance to service. Article 8(4) of Law 3304/2005 provides that:

"The provisions of this chapter [Note: Equal treatment in employment and occupation], in so far as it relates to different treatment on the grounds of age or disability, relevant to service, shall not apply to the armed forces and the security

[22] Commission Decision No 2005/2356 of 18 September 2008. See FRA, *Annual Report 2009*, footnote 6.

bodies" (consequently also to the police, prison or emergency services, e.g. fire department).

There are no relevant Greek provisions or concepts or case-law in regard to discrimination based on perceptions or assumption of what a person is (see 2.1.2.a. below). The Greek non-discrimination law does not prohibit direct discrimination and harassment by association as required by the CJEU judgment in Coleman (Case C-303/06)

Lastly, contract work, self-employment, military service and holding statutory office are not covered.

0.3 Case-law

Provide a list of any important case law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

Name of the court
Date of decision
Name of the parties
Reference number (or place where the case is reported).
Address of the webpage (if the decision is available electronically)
Brief summary of the key points of law and of the actual facts (no more than several sentences).
➔Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives.

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

A. Case-Law of penal courts

Name of the court: Kefallonia First Instance Prosecutor
Date of decision: 03 June 2008 and 18 July 2008
Name of the parties: Greek Helsinki Monitor v. State Agents in Kefallonia
Reference number: Decree nos. 1/3.6.2008 & 2/18.7.2008
Address of the webpage: http://www2.ohchr.org/english/bodies/cerd/cerds75.htm
Brief summary: When the Greek Helsinki Monitor (GHM), a Greek NGO, invoked Law 3304/2005 (provision on discrimination in housing) before the prosecutor in Kefallonia to challenge Roma evictions, the prosecutor rejected representation by GHM of the Roma victim invoked on the basis of that law. The Appeal Prosecutor of Patras ruled that the specific judicial appeal had been submitted after the deadline

defined by law and therefore it rejected the request for procedural reasons without examination of the substance of the case.

Name of the court: First Five-Member Athens' Court of Appeals
Date of decision: 27 March 2009
Name of the parties: Greece vs Costas Plevris
Reference number: 913/27.3.2009
Address of the webpage: not available electronically
Brief summary: A recent Athens' Appeals Court decision overturned a 2007 conviction and acquitted Kostas Plevris, the author of the book "Jews – The whole truth" from charges of inciting racial hatred.

The First Instance Court of Athens in its December 2007 ruling convicted the author, who denies the Holocaust and promotes the Nazi ideology in his writings, of inciting racial hatred through his book and sentenced him to 14-month suspended imprisonment (Penal Law 927/1979). The author filed an appeal and the Appeals Court found him not guilty on 27 March 2009 (the judgment and minutes have not been written yet). On 1st July 2009 the Prosecutor of the Court of Cassation appealed on issues of law ("anairesi") the Court of Appeals' decision. The Prosecutor argued, among others, that the Court of Appeals interpreted wrongly the Convention on the Elimination of Racial Discrimination and the relevant Greek law 927/1979. With this decision (913/27.3.2009) the Court did not accept the Prosecutor's arguments.

Name of the court: Third Three-Member Misdemeanors Court of Athens
Date of decision: 7 January 2009
Name of the parties: GHM vs newspaper "Alpha Ena"
Reference number: 185/2009
Address of the webpage: not available electronically
Brief summary: The former editor and the current editor of the weekly newspaper "Alpha Ena" of the extreme right-wing party LAOS were tried for the dissemination of false information (Art. 191 & 1a of the Criminal Code) and the expression of insulting ideas through the press against a group of people on the grounds of their ethnic origin (Art. 2 of anti-racist Law 927/79) in an anti-Semitic article published in 28 July 2007. The trial was initiated by the Greek Helsinki Monitor (GHM). According to the complaint, the article uses anti-Semitic stereotypes, raises incitement to racial hatred against the Jews and presents them as organising vicious plans against other people; in this way, it insults their personality and dignity due to their ethnic origin. With its Judgment 185/2009, on 7 January 2009, the Third Three-Member Misdemeanors Court of Athens acquitted the defendants of a violation of Article 2 od Law 927/79. GHM formally asked the Head of the Athens First Instance Prosecutor's Office to file an appeal against the acquittal, but the request (registered with protocol number 2049/13-1-09) was rejected. . It must be noted that GHM's Andrea Gilbert was confirmed as civil claimant in that trial. It was the third time that a Three-Member Misdemeanors Court of Athens confirmed civil claimants in trials with the anti-racism law. GHM is now considering filing an application on behalf of Andrea Gilbert to the

European Court of Human Rights (ECtHR) or the UN Human Rights Committee (UN HRC).

Name of the court : Third Three-Member Misdeameanors Court of Athens
Date of decision : 29 January 2010
Name of the parties : Greek State vs Ioannis Haralambopoulos (editor of magazine "Apollonio Fos")
Reference number : Number 8806/2010
Address of the webpage : not available electronically
Brief summary : On 29 January 2010 the Third Three-Member Misdeameanors Court of Athens, in its decision with the number 8806/2010, convicted the publisher of the magazine "Apollonio Fos" Ioannis Haralambopoulos. The latter was found guilty of having violated Article 2 (under the title "interdiction of racial discrimination") of the anti-racism Law 927/1979, since in 2007 he had distributed in public anti-Semitic pamphlets that among others were justifying all persecutions of Jews in history, in an attempt to express his moral and political support for Constantine Plevris, who was being prosecuted at that time for his famous anti-Semitic book "Jews, the whole truth". Moreover, the specific pamphlets cited that all Jews in the world (including Greek Jews) are to blame collectively for the acts of the State of Israel, whereas it clearly referred to Jews as enemies of the Greek nation. Ioannis Haralambopoulos was sentenced to seven months imprisonment with a three years suspension, and the sentence was suspended until the trial of a possible appeal.

Name of the court : Greek Supreme Court' s Criminal Section ("Areios Pagos")
Date of decision : 15 April 2010
Name of the parties : Greek State vs Kostas Plevris
Reference number Judgment 3 /2010
Address of the webpage
http://www.areiospagos.gr/nomologia/apofaseis_DISPLAY.asp?cd=H9946F7BRL9LVHZJYRVYLEKBG78DDI&apof=3_2010
Brief summary : The Greek Supreme Court's Criminal Section, sitting in plenary, dismissed the appeal in cassation "in the interests of law", filed by the Prosecutor of the Supreme Court against judgment 913/2009 of the Five Members Appeals Court of Athens. With the above judgment self-professed neo-Nazi writer Costas Plevris had been acquitted of charges of violation of anti-racist law 927/1979 with his book "The Jews : the whole truth". In specific, the Court decided that Mr. Plevris does not offend the human value of Jewish persons (due to their ethnic or racial origin) because he is attacking "Zionist Jews" and not Jews in general. Therefore, "Zionist Jews" do not constitute a group that is related with ethnic or racial origin and they do not fall within the scope of a relevant legal protection. Moreover, the Court stated that his criticism has a scientific character and that the writer "did not have the intention to urge the readers to proceed in acts that could possibly result in discrimination, hatred or violence against Jewish". However, according to the minority opinion of the Court, Mr. Plevris' criticism is offensive and racist and it refers to all Jews since the distinction between Jews and Zionists has been used as a pretext.

Name of the court : 3rd Three-Member Appeals Court of Athens
Date of decision : 31 October 2011
Name of the parties : Andrea Gilbert vs Costas Plevris
Reference number : 9685/2011 decision
Address of the webpage : http://cm.greekhelsinki.gr/index.php?sec=192&cid=3765
Brief summary : The 3rd Three-Member Appeals Court of Athens, with its decision 9685/2011, convicted attorney Kostas Plevris for homophobic speech against the civil plaintiff Andrea Gilbert, spokesperson for "Athens Pride" and an officer of Greek Helsinki Monitor. The above speech concerned a case where, on 16 July 2008, as the defendant in another lawsuit, Kostas Plevris had served an extrajudicial *"declaration to the Misdemeanors Prosecutor of Athens"*, stating that Andrea Gilbert was *"an antisocial element {who} boasts of representing homosexual women, meaning that she is a psychologically defective, sexually perverted person who, as she does not respect her female nature, does not respect the truth either".* Although the defendant sought to rely on the freedom of expression, the court convicted Kostas Plevris to six (6) months imprisonment with a three-year suspension, while the prosecutor had recommended seven (7) months. The prosecutor highlighted that homosexuals should be treated as equal citizens and therefore the negative terms that had been used by the defendant ("irregular" / "anomalous" persons) could be regarded as offensive falling within the scope of the penal crime of "libel / slander". He also mentioned the Law 3304/2005 that transposed the EU Directives against discrimination and he referred to the decision 3490/2006 of the Council of State (Supreme Administrative Court of Greece) saying that erotic relations between persons of the same sex are *"an existing social reality"* and consequently their choices should be respected.

The court adopted the arguments of the prosecutor and the civil plaintiffs[23].

B. Case –Law of civil courts

Name of the court: Court of First Instance of Rhodes
Date of decision: 30 April 2009
Name of the parties: Prosecutor of Rhodes G. Oikonomou vs Evaggelia Vlami, A. Aliferis (Mayor of Tilos island) and Ol. K
Reference number 114/30.4.2009
Address of the webpage: http://elawyer.blogspot.com/2009/05/blog-post_10.html
Brief summary: The Court of First Instance of Rhodes annulled in April 2009 the first same-sex (civil) marriage in Greece conducted in June 2008 in the island of Tilos.

[23] This decision constitutes a landmark first ever conviction for homophobia in Greece. However, it should be pointed out that there is no special penal crime concerning homophobic speech, because Law 927/79 (interdiction of racial discrimination) as amended by Law 1419/84 (sanctions against racial & religious discrimination) does not include discrimination based on sexual orientation as a ground for imposition of penal sanctions. *This explains why the defendant was convicted for the "general" crime of "libel / slander", which protects the "honour" and the "reputation" of a person (Article 361 of the Greek Penal Code).*

The Court of Rhodes held that the Civil Code includes no provisions for same-sex marriages. Moreover, the Court held that neither article 12 of the ECHR, nor article 23 of the ICCPR guarantee such a right. The Court, which has jurisdiction over all the Dodecanese islands, issued its ruling in response to an appeal lodged by a local prosecutor against the two couples, two men and two women, and against the Mayor of Tilos. According to the Court, the national legislation, however, does not permit the marriage of same-sex couples, as the difference of sex is regarding as a necessary precondition for the existence of marriage, as is comprehended by the Greek legislator. In addition, the will of the legislator for the treatment of such situation was recently expressed in Law 3719/2008 on "legal cohabitation", which explicitly states in Art. 1 that it concerns only heterosexual couples. The Court rejected the argument that a possible prohibition of same-sex marriages would constitute a violation of the principle of equal treatment. The prosecutor had asked for both unions to be declared null and void. The two couples have already appealed before the Court of Appeal and the European Court of Human Rights.

Name of the court: Appeal Court of Dodecanese
Date of decision : 23 March 2011
Name of the parties: Evaggelia Vlami, A. Aliferis (Mayor of Tilos island) and Ol. K vs Prosecutor of Rhodes G. Oikonomou
Reference number : 83/14.4.2011
Address of the webpage :
http://www.olke.org/portal/index.php?option=com_content&view=article&id=103:2011-04-15-08-10-08&catid=38:press&Itemid=18
Brief summary : The Appeal Court of Dodecanese , which has jurisdicion over all the Dodecanese islands, unanimously upheld the initial decisions of the Court of First Instance of Rhodes that had annuled in April 2009 the first same- sex (civil) marriage in Greece (conducted in June 2008 on the island of Tilos). The Appeal Court held that the Civil Code did not provide provisions for same-sex marriages. Moreover, the Court held that neither Article 12 of the ECHR, nor Article 23 of the ICCPR guarantee such a right. According to the Appeal Court, the national legislation does not permit the marriage of same-sex couples, as the difference of sex is regarded as a necessary precondition for the existence of marriage. The Court rejected the argument that a possible prohibition of same-sex marriages would constitute a violation of the principle of equal treatment. The prosecutor asked for both unions to be declared null and void. For uknown technical reasons, the part of the case concerning the second union was officially issued a few months later containing the same legal argumentation.

C. Case-Law of labour courts

Name of the court: Athens Court of First Instance
Date of decision: 04 December 2008
Name of the parties: X v. Bank Y
Reference number: 2048/2008
Address of the webpage: http://lawdb.intrasoftnet.com

Brief summary: The applicant, a bank officer and person with disabilities, contested her transfer to another branch of the bank, far from her house. The Court investigated if there were other employees with the same qualifications available to work in that branch of the bank. When the Court verified this, it concluded that the transfer of the applicant was excessive in terms of Law 3304/2005 (direct discrimination). It did not consider the issue of reasonable accommodation as an independent legal provision but it has merged it into the notion of direct discrimination.

D. Equality bodies decisions

a. An opinion of the Ombudsman on the non-recognition of same-sex couples in comparison with the EU law

In response to a citizens' complaint regarding the potential violation by Greece of the European legislation that prohibits discrimination on the grounds of sexual orientation, through the provisions of the Law 3719/2008 that foresees legal cohabitation only for heterosexual couples, the Ombudsman replied that the Directive 2000/78/EC prohibits discrimination on the grounds of sexual orientation only in the field of employment and occupation and not with regard to family situation, which remains a competence of the national legislator. Therefore, the provisions of the said law do not violate in principle the aforementioned Directive.

In detail, the Ombudsman held that the non-recognition of same-sex couples by the Greek law does not violate the European legislation, despite the fact that Directive 2004/38/EC cannot be applied to de facto partners of Greek citizens when residing in another EU Member State. The Ombudsman reasoned that the application of the European legislation is dependent on the prior recognition, according to the national legislation of the Member State of origin, of a right that follows the beneficiary in case of his/her residence in another EU Member State (case 20914/2008)[24].

b. The characterization of an illiterate Roma citizen as incapable of signing his ID card is considered unlawful

After the intervention of the Greek Ombudsman[25], a Roma citizen was awarded a national identification card signed by him, in replacement of the previous one which stated "incapable to sign". In detail, the citizen appealed to the Ombudsman after the denial of the police department to allow him to sign the identification card, if he did not submit a state proof of education; in case he failed to provide the required proof the ID card would state "incapable to sign".

During the relevant investigation of the Ombudsman, the police authorities declared that this proof of education is requested from all citizens in order to have their ID

[24] http://www.synigoros.gr/diakriseis/pdfs/7379_1_perilipsi_sumfono_simviosis_7.1.pdf.
[25] http://www.synigoros.gr/diakriseis/pdfs/7388_2_tsig.pdf.

cards replaced; the Ombudsman argued that this practice is not based in law and if the police deems necessary to continue it, then the incapability to sign should be stated in cases where the citizens declare that they are incapable to sign and should not be linked to their education level. The police finally accepted to replace the ID card and allow the Roma citizen to sign. However, this was a single case, and it does not happen in general with Roma. Since the police authorities falsely argued that this practice is requested from all citizens, there is strong evidence that it is linked to ethnic /racial discrimination. The reason why the Ombudsman did not focus on this dimension is because it generally shares the view that most of the areas of administrative activity pertain to the authoritative rather than the public service jurisdiction of the State, and therefore they do not fall within the scope of Directives.

There are no trends, patterns of figures concerning Roma cases in relation with the implementation of Directives. In general, as it is stressed in its Annual Report 2008 (the latest published on line)[26], the Greek Ombudsman emphasises on the fact that *"what remains unabatedly alarming is the ongoing discrimination practice against citizens of Roma origin. The problem boils down to the deliberate marginalization of the issues raised by this situation which calls for a concerted official initiative in order to appease the angered reactions of local residents".* The serious problems of subsisting in intolerable living conditions in conjunction with the various forms of exclusion experienced by a large number of Greek Roma on a daily basis in regards to their participation in the social, economic and political aspects of social life have been made reference to in all its Annual Reports on Equal Treatment. The experience gained from its investigation of cases demonstrates that the perplexed attitude of administration and the reluctance to take immediate effective measures to a long standing social problem not only perpetuates this problem but it also nourishes the tension and the social opposition amongst the Roma who live in makeshift settlements and the citizens who reside adjacent to these camps. As a result, the systematic inaction from the part of state officials to solve the chronic problem instead of creating a climate of compassionate understanding of the plight of Roma people to their neighbors and an interest to assist them in improving their living conditions, are causing their frustration, driving them to persistently demand the relocation of the Roma settlers, as a way of evading the problems they encounter. Even when things appear to have reached a critical point, the central and regional administration officials appear hesitant to adopt drastic or to decisively coordinate the actions to be assumed by each of the public agencies involved. Local government frequently transfers the blame for its inaction to the central administration, on the grounds that the problem needs to be holistically and centrally confronted, thus absolving itself of any shared responsibility or competence.

To this perplexing stand of the central and local public administration should be added the ambivalent attitude of the police authorities which also seem to be reluctant to effectively control the delinquent behaviour displayed by some members

[26] http://www.synigoros.gr/diakriseis/pdfs_01/8293_1_2008_Annual_Report_on_Discrimination_Law_3304.2005.pdf.

of the Roma community, thus accentuating the general feeling of insecurity and tension.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?

The Constitution has always contained a general provision requiring equality for all Greeks before the law (Article 4(1)). In 1975, a new Constitution came into force, an important feature of which was the strengthening of human rights. On that occasion, a specific gender equality provision was introduced into the Constitution, as a result of a big campaign by women's NGOs. The provision states: 'Greek men and women have equal rights and obligations' (Article 4(2)).

In the area of constitutional provisions, in its first part the Greek Constitution assigns to the State the primary obligation to respect and protect the value of the human being. The Greek Constitution also contains a specific and general non-discrimination provision that explicitly protects all people, national citizens and aliens, men and women, old and young. In specific, Article 5, par.1. stipulates : " All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages.2. All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law."[27]

Therefore, we could mention the principles of human dignity[28] and free development of personality;[29] the principle of general equality;[30] the right to protection of health;[31] the freedom of religion; the freedom of opinion and of the press; the freedom of art, science, research and teaching; the right to judicial protection; the right to be protected against misuse of personal data;[32] the right to receive free education on all levels at state educational institutions;[33] the right to a family,[34] the protection of marriage, motherhood, childhood, families with many children [35]; the right to work and to receive equal pay for work of equal value;[36] the right for respect of human and

[27] http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma.
[28] Constitution, Article 2(1).
[29] Constitution, Article 5(1).
[30] Constitution, Article 4(1).
[31] Constitution, Article 5(5).
[32] Constitution, Article 9A.
[33] Constitution, Article 16(4).
[34] Constitution, Article 21(1).
[35] Constitution, Article 21(1–2).
[36] Constitution, Article 22(1)(b).

social rights;[37] and the right to enjoy affirmative measures to counterbalance real inequality.[38]

All these rights and principles conceptually cover all anti-discrimination grounds and material fields mentioned in Directives 2000/43 and 2000/78. Theoretically, therefore, nothing would stand in the way of victims of discrimination, regardless of their racial or national origin, religious or other beliefs, disability, age or sexual orientation, invoking these provisions and attempting to initiate a discussion towards promoting social integration and inclusion and combating discrimination.[39] It is obvious that as general principles such constitutional provisions cover every aspect of human life and personal development, and as such they offer a resource for people who are not protected under other provisions of national law. However, it would be extremely difficult to derive specific enforceable rights from these general clauses, given that such general clauses are no substitute for more specific legislation which adds clarity and enforceability to the rights of persons.

b) Are constitutional anti-discrimination provisions directly applicable?

Article 5 of the Constitution is considered as the constitutional basis of all Greek non-discrimination law.

Unfortunately, despite the efforts of gay activists, 'sexual orientation' was not included in Article 5(2) during the constitutional amendment of 2001, when Article 5(2) remained unchanged.[40] Nevertheless, it has been argued that these general provisions (the combination of paragraphs 1 and 2) may be used in cases of sexual orientation discrimination, i.e. discrimination on grounds of a person's refusal to answer, or answering inaccurately, a question about his/her sexual orientation. The Greek Ombudsman usually accepts them, but this is not the case as far as courts are concerned.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

Article 25 of the Constitution is of great importance:

1. The rights of man as an individual and as a member of the society and the principle of the constitutional welfare state are guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. These principles also apply to relations between the private individuals to which they pertain. Restrictions of any kind which, according to

[37] Constitution, Article 25(1).
[38] Constitution, Article 116(2).
[39] Especially after the constitutional amendment of Article 25, by virtue of which 'the rights of man' also apply to relations between private individuals to which they pertain.
[40] Constitutional amendments require an interval of at least 10 years between amendments and a strong majority in Parliament.

the Constitution, may be imposed upon these rights should be provided either directly by the Constitution or by the law, in case a reservation exists in the latter's favour, and should respect the principle of proportionality.

2. The recognition and protection of the fundamental and inalienable rights of man by the State aims at the achievement of social progress in freedom and justice.
3. The abusive exercise of rights is not permitted.
4. The State has the right to claim of all citizens to fulfil the duty of social and national solidarity.

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

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

The explicitly prohibited grounds of discrimination in the anti-discrimination legislation, Law 3304/2005, are race, ethnic origin, language, religion, political or other beliefs, sex, disability, age and sexual orientation.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?*
Is there a definition of disability at the national level and how does it compare with the concept adopted by the European Court of Justice in Case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

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

Definitions of racial or ethnic origin, religion or belief, age or sexual orientation are lacking in Greek legislation in general.

As far as the ground of disability is concerned, on 27 January 2011 the National Commission of Human Rights (NCHR) issued a consultative / non binding Opinion on issues of protection of rights of persons who have AIDS / HIV[41]. Discrimination on the ground of disability was one of the issues that had been examined, discussed and finally included in the Opinion of the NCHR. The Opinion analyses thoroughly all issues concerning the existence of extreme prejudice against persons who have AIDS / HIV. The Commission admits that sickness from AIDS /HIV is not explicitly regarded as a ground of discrimination in any international or European legal text, and that the Greek Law 3304/2005 on discrimination does not refer to this specific condition. However, it points out that , according to Resolutions of the U.N. Commission on Human Rights , the term "condition", to which several legal conventions refer, should be interpreted in a way that it could include the health condition of a person (and therefore its condition as an AIDS / HIV patient). Furthermore, the U.N. Commission on Economic, Social and Cultural Rights has already interpreted the term "other condition", that is included in the Article 2 of the

[41] http://www.nchr.gr/document.php?category_id=164&document_id=1342.

Covenant, as related to a person 's situation of health, and uses sickness from AIDS /HIV as an example.

According to the NCHR, since the notion of "disability" is not explicitly and clearly described in the Greek legal framework, it is legally possible to interprete this term in a broad way that could include "sickness from AIDS /HIV" as well. This form of interpretation could be based on the Article 111 of the Convention of I.L.O. (International Labour Organisation), according to which the legal protection of the Convention could be extended to "any other discrimination , exclusion or preference resulting in abolition or differentiation of equality of chances and treatment in the field of employment". Furthermore, the NCHR refers to the International Recommendation on Labour No 200/2010 regarding AIDS /HIV, which also emphasises that according to Article 111 of I.L.O Convention the interpretation of the term "discrimination" should be broad. The above Recommendation clearly mentions that "real or possible sickness from AIDS /HIV cannot constitute a reasonable basis for discrimination that would deter such real or possible patients from being hired or continuing their working life". According to this specific Opinion approved by the NCHR on 27.01.2011[42], the definition of "disability" as described in the text of the U.N. Convention on the Rights of Persons with Disabilities (Article 1, par.2) includes "all diseases of long duration of time". However, this conclusion is not in line with the CRPD/ Art. 1 (2). Finally, the NCHR highlights the Ministerial Decision Φ21/2361 (ΦΕΚ B' 819/1993) strictly stipulating that AIDS/HIV patients fall within the category of disabled persons.

The above Opinion of the NCHR is quite important, because it raised for the first time in Greece the issue of discrimination against AIDS / HIV patients by substantiating with legal arguments its subjection into the category of "discrimination on ground of disability". Its suggestion for an inclusion of AIDS / HIV cases in the notion of "disability" is clear, concrete and constructive and ensures the protection of AIDS/HIV patients that could become victims of possible discrimination

b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

In comparison with the concept adopted by the European Court of Justice (CJEU) in case C-13/05, Chacón Navas, paragraph 43 ('the concept of "disability" must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'), there is a important difference: the definition in the

[42] "Matters of protection of rights of persons who have AIDS" (Opinion of NCHR issued on 27.01.2011).

Greek law 1556/85 provides a criterion of severity (50%) and the requirement to be registered in a special register, which is absent from the concept adopted by the CJEU. In any case, the two definitions are not really comparable in the sense that they serve different ends: the definition of the jurisprudence of the CJEU serves the principle of non-discrimination but the definition of Greek law serves the quota policy.

Law 1556/1985 on the ratification of the International Labour Organisation Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) of 1983 gives a definition of a disabled person based on the medical model.

Law 3251/1955 on the ratification of International Labour Organisation Social Security (Minimum Standards) Convention, 1952 (No. 102) states that the State is obliged to supply health care benefits in cases of work accidents and occupational disease or illness such as serious illness, inability to work due to serious illness, or malfunction or reduction of a person's bodily functions, or the loss of means of subsistence because of the supporting family member's death, giving a definition of the notion of a disabled person.

Law 1136/1981 on the ratification of the European Code of Social Security declares that the State is obliged to supply health care benefits in cases of work accidents and 'occupational diseases such as serious illness, inability to work due to serious illness or malfunction or reduction of a person' s bodily functions or the loss of means of subsistence because of the supporting family member's death', in this way defining the notion of disability in close relation to occupation and employment.

Law 2643/1998 on quotas provides a very restrictive definition of disability, mainly based on the medical model. This law is the main legislation on the employment of disabled persons, despite not being an anti-discrimination law.

A disabled person is defined as 'a person with limited possibilities of finding work due to a chronic bodily, mental or psychological disease or impairment (persons with special needs), provided that his/her disability reaches a severity of 50% and is registered with the Manpower Employment Organisation (OAED) in a special register for unemployed people with disabilities.'[43]

In regard to the above definition:

[43] In the 1980s, emphasis in the terminology shifted from a person's disability (άτομα με αναπηρίες) to a person's special needs (άτομα με ειδικές ανάγκες). This term was first used in Law 1648/1986 and further adopted by Law 2643/1998 (currently in force). Registration with the Manpower Employment Organisation (OAED) in a special register does not constitute a prerequisite within the scope of Article 8 of Law 3174/2003, regulating contracts of definite duration and part-time work in the public sector or public entities.

- the disability must both reach a threshold of severity and limit a person's normal range of life activities before it counts under the law;[44]
- therefore, the definition views disability as the function of an interaction between the person and his/her environment;
- reversible and temporary impairments are not included;
- past or future disabilities are not included;
- perceived disability is not included;
- as regards social security, the definition of disability differs in the sense that the focus is placed mainly on the inability of the person to pursue his or her normal range of life activities;
- persons with disabilities who receive social security benefits that reach a certain threshold are not entitled to the protection of Law 2643/1998.

The anti-discrimination law, Law 3304/2005, on the application of the principle of equal treatment regardless of the grounds stated in the Framework Directives, is silent as to a definition of disability.

This is positive compared with Law 2643/1998 on quotas, which provides a very restrictive definition of disability, mainly based on the medical model. But it is also negative, as past, future, or imputed disability or disfigurements are not covered.

Persons associated with persons with disabilities are not covered.

It is characteristic that Roma who live in the north-east of Greece are regarded only as a part of the Muslim community. In contrast, Roma who live in the rest of the country are not regarded as a distinct racial or ethnic group but only as a vulnerable social group.

However, these terms have been quasi-defined in some cases, as for example in Article 13 of the Greek Constitution, which reads, 'All known religions shall be free'. There is no specific definition of religion either in the Greek Constitution or in other sources of the Greek legal order. Greek legal scholars argue that the Greek Constitution only protects publicly known religions but not mystical and secret practices or dogmas. It is to be noted that in the cases of Valsamis[45] and Efstratiou[46], the European Court of Human Rights did not investigate the applicants' 'pacifist' convictions. It considered them to be convincing, serious, coherent and important but also well-founded, because they emanated from the religious convictions of the applicants, who were Christian Jehovah's Witnesses. This specific religious community enjoys constitutional protection as a 'known religion' in the Greek legal system, and it was therefore considered unnecessary that the Court conduct an investigation of their widely known convictions.

[44] Although the latter is understood in the sense that a disabled person with a 50% severity level of disability suffers limitations in the free labour market.
[45] European Court of Human Rights, ECHR/2187/93 (18.12.1996), para. 26.
[46] European Court of Human Rights, ECHR/24095/94 (18.12.1996), para. 27.

Concerning the term 'national origin', Article 4 of the Greek Constitution reads: 'All persons possessing the qualifications for citizenship as specified by law are Greek citizens.'[47]

There has not been any case-law giving a definition of racial or ethnic origin.

However, according to decisions of the Supreme Administrative Court, namely 957/2003, 3057/1999, 3832/1992 and 3603/1991, the term 'racial or ethnic origin' could be considered as being interpreted, as the Court made reference to relevant applicable law, e.g. the Civil Law TA/1856 or Law 4310/1929, and in particular Law 2910/2001 on the entry and residence of aliens in Greece. It seems that the Court interpreted the term 'racial or ethnic origin' on the basis of nationality and citizenship, without clarifying definitions of these.

As regards the status of aliens,[48] an alien is entitled to the same rights as a national under the applicable law, pursuant to the Greek choice of law rules. Many bilateral treaties entered into by Greece also call for national or most favoured nation treatment of aliens.

Recital 17 of Directive 2000/78/EC is not reflected in the national legislation against discrimination.

c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

As far as the **'**age**'** ground is concerned, there are many provisions in various laws related to a wide range of issues covering legal capacity, employment and occupation. Specifically, in the anti-discrimination law, Law 3304/2005, it has been stipulated that there is no discrimination on the ground of age in cases where there is a different treatment below a minimum age (which is not defined) or above a maximum age (also not defined) in regard to access to employment and occupation, vocational training and education. Presidential Decree 62/1998 'Measures for the protection of young people at work in compliance with the Directive 94/33/EC' gives definitions of minority, childhood, and adolescence.[49]

[47] There are at least six methods to acquire Greek nationality: 1. At birth; 2. By legitimation before age 18, through marriage of a Greek father to the mother and otherwise or by recognition as legitimate by a Greek father; 3. By adoption before age 18, by a Greek parent; 4. By naturalisation, which requires, among other prerequisites, a declaration before the municipal authorities and an application to the Ministry of Interior; 5. By enlistment in the Greek armed forces for persons of Greek origin; 6. Through special laws.

[48] The most publicised unfavourable treatment of aliens under Greek civil law relates to their inability to acquire title and certain other rights to land situated in the broadly defined border regions, which cannot be avoided by forming a Greek corporation if the controlling interest is in foreign hands.

[49] See also Annex 1: Table of Key National Anti-discrimination Legislation, which refers to explicit or implicit discriminatory grounds related to Directives 2000/43 and 2000/78.

d) Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination.
Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?

There is no case law in the field of anti-discrimination which deal with situations of multiple discrimination.

As far as legal rules are concerned, on 5 August 2011 a law concerning a general reform of the Labour Inspectorate Body and other provisions on Social Insurance was passed in the Greek Parliament [50]. This new legislation describes thoroughly the competence and the mission of this Body as an auditor in the field of protection of workers and employees rights. This is the first time a legislative instrument explicitly refers to multiple discrimination, as well as to people living with HIV/AIDS concerning discrimination (as a special category of disabled persons). Although the Greek legislation regarding equal treatment (Laws 3304/2005 and 3896/2010) do not refer to multiple discrimination, Law 3996/2011 "on the reform of the Labour Inspection Body" in its article 2 par. 1 (h) states clearly that : [The Labour Inspectorate Body] supervises the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation, taking into consideration instances of multiple discrimination in accordance with article 19 of Law 3304/2005. Moreover, on the basis of article 10 of Law 3304.2010 supervises the compliance with the principle of equal treatment with regard to persons with disabilities, including people living with HIV/AIDS.

There is no information available from the equality bodies regarding their jurisprudence for the year 2011 to assist in assessing the way they are tackling cross-grounds or multiple grounds discrimination.

It seems that national or European legislation dealing with multiple discrimination could be necessary in order to facilitate the adjudication of such cases.

e) How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?

There is no relevant case-law from the Greek courts.

[50] Law 3996/2011 (voted on 5/8/2011 and came into force on 13/8/2011 with its publication in the Government' s Gazette with No FEK 170).

2.1.2 Assumed and associated discrimination

a) Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).

There are no relevant Greek provisions or concepts or case-law on discrimination based on perceptions or assumption of what a person is.

b) Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?

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

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

a) How is direct discrimination defined in national law?

There are two definitions of discrimination in Law 3304/2005, one relating to the Racial Equality Directive and one relating to the Employment Equality Directive.

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

b) Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).

According to the definitions in Law 3304/2005, any discriminatory statement or discriminatory job vacancies announcement, such as the one in Case C-54/07 Firma Feryn, constitutes direct discrimination.

c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

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

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

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

The test that must be satisfied to justify direct discrimination is as follows: a difference of treatment, which is based on a characteristic related to any of the grounds, shall be justified if, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, and the requirement is proportionate.

d) *In relation to age discrimination, if the definition is based on 'less favourable treatment' does the law specify how a comparison is to be made?*

The definition for discrimination related to age is based on 'less favourable treatment', but Article 11 of Law 3304/2005 provides that

differences of treatment on grounds of age shall not constitute discrimination if, within the context of national law, they are justified by employment policy, labour market and vocational training objectives, and the means of achieving those aims are appropriate and necessary.

2.2.1 Situation Testing

a) Does national law clearly permit or prohibit the use of 'situation testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.

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

The law is silent.

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

b) Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc).

There is no precedent.

c) Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

Greek national law does not explicitly prohibit the use of situational testing. Nevertheless, there is no precedent for the use of situational testing in the Greek courts. Evolution in other European countries has not influenced the Greek legislature so far.

d) Outline <u>important</u> case law within the national legal system on this issue.

There is no case-law on this topic.

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

a) How is indirect discrimination defined in national law?

Law 3304/2005 defines indirect discrimination as follows:

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

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

b) What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?

There is no relevant jurisprudence or practice in these matters.

c) Is this compatible with the Directives?

It is compatible with the Directives.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

Not specifically. Article 11 of Law 3304/2005 provides that differences of treatment on grounds of age shall not constitute discrimination if within the context of national law they are justified by employment policy, labour market and vocational training objectives and the means of achieving that aim are appropriate and necessary.

e) Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?

No, they have not.

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?

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

b) Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?

The use of statistical evidence is not widespread.

The only reluctance to use statistical data as evidence arises from legislation relating to the collection of data.

Concerning the question about influence on Greek law from evolution in other countries, the answer is negative; there is no such influence.

c) Please illustrate the most <u>important</u> case law in this area.

There are no cases in this area.

d) Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?

According to Article 7 of Law 2472/1997 regulating data collection:

1) The collection and processing of sensitive data is prohibited.

2) Exceptionally, the collection and processing of sensitive data, as well as the establishment and operation of the relevant file, will be permitted by the Authority, when one or more of the following conditions occur:

   - Processing relates to data made public by the data subject or is necessary for the recognition, exercise or defence of rights in a court of justice or before a disciplinary body.
   - Processing is carried out exclusively for research and scientific purposes provided that anonymity is maintained and all necessary measures for the protection of the persons involved are taken.

According to Article 2 of Law 2472/1997:

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

Article 5(1) of the same law then provides that 'processing of personal data will be permitted only when the data subject has given his/her consent'.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

According to Article 2(2) of Law 3304/2005, as amended by Law 3625/2007, harassment shall occur when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

b) Is harassment prohibited as a form of discrimination?

Yes, it is prohibited as a form of discrimination.

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

Some aspects of sexual harassment may come under the scope of certain provisions of the Penal Code, such as that of Article 337 (insult to a person's sexual dignity), which stipulates that 'whoever with indecent gestures or proposals violates someone's sexual dignity is punished by imprisonment or fine'.

This provision applies in cases of harassment in conjunction with the offence in Article 343 of the Penal Code (sexual crime with the abuse of one's power). Furthermore, Article 361 of the Penal Code, which provides that whoever offends someone's honour by words or actions or in any way is punished by imprisonment or fine, will obviously apply in some but not all cases of sexual harassment. Harassing behaviour could also fall within the scope of Article 385 of the Penal Code (the crime of extortion or blackmail), depending on the specific circumstances of each case. Likewise, the provision of Article 353 of the Penal Code could be relevant in cases of sexual harassment, if a scandal with the use of sexually inappropriate actions can be substantiated.

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

Law 3304/2005 on anti-discrimination prohibits instructions to discriminate. (Article 2 provides that 'an instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination'.) Nevertheless, it does not contain any specific provisions regarding the liability of legal persons for such actions.

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

a) How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty

applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?
Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.

Article 10 of Law 3304/2005 provides that:

> In order to guarantee compliance with the principle of equal treatment towards persons with disabilities, employers shall take all appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy.

Concerning the definition of disability, there is a judicial precedent. An applicant before the Athens Court of First Instance, a bank officer and person with disabilities, contested her transfer to another bank branch which was far from her home. The Court investigated if there were other employees with the same qualifications available to work at that bank branch. When the Court verified such availability, it ruled against the bank (Judgement 2048/2008). However, the Court did not provide a clear definition in a direct way.

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

b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of "disproportionate burden" in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

Law 3304/2005 makes no provision for this duty. There is no relevant case law.

c) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

According to Judgement 2048/2008 of the Athens Court of First Instance, failure to meet the duty of reasonable accommodation counts as direct discrimination. What really happened is that the court did not consider "reasonable accommodation" as a separate notion or provision but it regarded it as a form of direct discrimination.

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

d) Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?

No, national law has not implemented the duty to provide reasonable accommodation in respect of any of the other grounds.

e) Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?

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

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

f) Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

National law (Law 2831/2000, Article 28) requires buildings and infrastructure to be designed in a disability-accessible way. The provision is very extensive: it establishes detailed technical accessibility standards and permission for any new building is conditional on its compliance with these standards. In practice, this law is generally complied with.

g) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

No, Greek national law makes no provision for a general duty to provide accessibility for people with disabilities by anticipation.

h) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

Even before the new law transposing the Directives, Greek employers had a limited legal obligation to provide reasonable accommodation for people with disabilities. This duty derives from the general clause of Article 662 of the Civil Code ('duty of care').[51]

Many provisions of Law 1568/1985 on health and safety at work could also support this.[52] However, the relevant provisions of this law have not as yet been activated, mainly due to failure of enterprises to employ occupational health doctors and safety technicians.

In practice, much importance is attached to Article 8 of Law 2643/1998, which makes provision for subsidies to employers to help them accommodate compulsorily placed workers with disabilities (paragraph 2) and obliges employers to provide six additional days holiday for workers with disabilities (paragraph 4).

Compulsory placement is made by the State and is obligatory for the employer with effect from the issue of the decision by the competent health authority. Compulsory placement creates a work relationship between employer and employee and a compulsorily placed employee is entitled to all the rights (e.g. rights to pay, leave), which all employees enjoy.

This category of employee enjoys preferential and privileged treatment compared to other employees who are not compulsorily placed, especially as regards termination of the contract of employment; employers cannot object to placements (they have to accept such employees even if they do not know what to do with him/her). However, it should be emphasised that this provision cannot be invoked by individual persons with disabilities on their own behalf. In addition, it covers a very small section of disabled workers, as it applies only to those compulsorily placed, not to those recruited freely in the labour market.[53] Moreover, accommodation in the above context means no more than ergonomic adjustments in the workplace. No legal provision defines the concept of 'accommodation'.

[51] The 'duty of care' is not disability-specific. It covers all employees employed by the same employer, but not job applicants.
[52] Mainly Articles 9(e), 10(b), 17, 18, 19, 20 and 21.
[53] It is estimated (accurate statistical data is not available) that numbers of compulsorily placed employees do not exceed 1% of all disabled workers.

The notions of reasonable or disproportionate burden are absent from the legal debate. The duty to provide accommodation on the basis of the Civil Code clause ('duty of care') does not go beyond the essential functions of the job.
From information available, the subject of provision by the employer of reasonable accommodation to disabled workers is not on the agenda of trade unions.

2.7 Sheltered or semi-sheltered accommodation/employment

a) To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?

According to Article 21(4) of the Greek Constitution, the acquisition of a home by the homeless or those inadequately sheltered shall constitute an object of special State care.

b) Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?

This form of employment (sheltered or semi-sheltered) does not exist in Greece – regardless of purposes.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

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

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

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

It has already been noted that as regards the status of aliens, an alien is entitled to the same rights as a Greek national under the applicable law, pursuant to the Greek choice of law rules. Many bilateral treaties signed by the Greek State also call for national or most-favoured nation treatment of aliens. According to Law 1975/1991 on entry, departure, stay, employment and deportation of aliens, an 'alien is every person who does not have Greek nationality or a person who is not indigenous'.[54]

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

[54] However, since 1997 the Greek Manpower Employment Organisation (OAED) has put into effect a long-term 'Operational Programme to Combat Exclusion from the Labour Market' that covers 'immigrants from third countries, refugees, persons repatriated from Western European countries, persons repatriated from countries other than Western European countries, Pomaks and Roma'. Beneficiaries of this project are to be 'unemployed persons or persons with no steady employment'. The project aims at providing vocational training and facilitating access for the above groups to the labour market.

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

From this general legal principle it has been concluded in Greek law that aliens legally employed or working in Greece are subject to Greek labour law under the same conditions as Greek nationals (Article 3(1)(a) and (c) of the Directive). Law 1876/1990 on free collective bargaining covers every person employed in the private sector[55]. However, Greek labour law contains provisions discriminatory for alien immigrant workers, such as those regarding compensation in cases of accidents at work. According to the Decree of 24 July/25 August 1920 (amended), compensation due to alien workers is dependent on various conditions such as their residence in Greece.[56] According to the same law, alien workers are entitled to the same treatment as nationals on condition that there is reciprocity between Greece and the respective countries of origin of such aliens by virtue of a relevant inter-state agreements. These provisions raise serious questions of compatibility between the above Greek legislation and international social rights standards established, *inter alia,* by the International Covenant on Economic, Social and Cultural Rights.

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

Law 3304/2005 does not distinguish between natural and legal persons as far as the protection provided is concerned. However, it is logical that the grounds of anti-discrimination provisions such racial or ethnic origin, age, disability and sexual orientation suggest that the protection based on them is applied essentially to natural persons, since they alone have characteristics related to such grounds. On the other hand, it can be argued that the protection of the anti-discrimination law, if applicable, can include foreign legal persons operating in Greece, or organisations the scope of which is based on religious or other beliefs, as explicitly provided for in Article 9(2) of this law.It is obvious that both natural and legal persons are liable when discrimination derives from them.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin)

[55] G. Lixouriotis (1998) *The Legal Status of the Immigrant Worker in Greece,* Athens: Ant. N Sakkoulas, pp. 425–426 (in Greek).
[56] G. Lixouriotis (1998) *The Legal Status of the Immigrant Worker in Greece,* Athens: Ant N Sakkoulas pp. 435-437 (in Greek). See also Council of State judgments 2599/1982, 2637/1982, 1318/1990, affirming the above, reported in UNHCR *Yearbook of Refugee and Aliens Law 1999,* pp. 160–166 (GYRAL) (in Greek). See also Auditors' Court judgment 1617/1998, affirming the right of the alien widow of a Greek citizen, a former public servant, to receive the pension of her deceased husband, reported in GYRAL, p. 182.

service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

The liability for discriminatory practices in general on the grounds described by the anti-discrimination legislation in Law 3304/2005 can be civil, penal or administrative.

In civil law, apart from liability based on violation of contractual obligations (συμβατική ευθύνη), the Civil Code establishes the liability of every person committing unlawful acts (αδικοπρακτική ευθύνη). The civil liability of natural and legal persons for violations committed by third persons acting on their behalf is set out in Articles 334 and 922 of the Civil Code (Article 922: tortious liability). As regards the responsibility of employers and of service-providers, Article 334 of the Greek Civil Code provides that a party at fault is also responsible for the fault of a person whom he/she employs in performing his/her obligation to the same extent as his/her own fault. However, such responsibility may in principle be limited or contractually excluded in advance, subject to the exception of responsibility for wilful misconduct or for gross negligence (Article 332 of the Civil Code). Any agreement to the contrary is void. Any agreements excluding in advance a party at fault's responsibility even for slight negligence, if the injured party is his/her employee, or if the responsibility arises from the conduct of an enterprise for which prior concession by the appropriate authority was granted to the party at fault are also void. According to civil law, a legal person can be held liable for acts or omissions of persons acting on its behalf and these latter persons can be jointly liable with the legal person, while the injured party can have recourse to either of them (Article 71 of the Civil Code).

Under the Civil Code, as far as tortious liability is concerned, whoever 'unlawfully and culpably' or 'intentionally in a manner which violates the commands of morality' causes damage to another is bound to provide reparation to the other for any damage caused. The Civil Code introduces strict liability in the case of liability for employees. Accordingly, Article 922 of the Civil Code stipulates that a person who appoints another to perform a function is bound to make reparations to a third party for the damage caused by an unlawful and culpable act or omission committed by that other person in the execution of this task. Moreover, if several persons unlawfully and culpably cause damage, or if several persons are responsible for the damage, they are all liable jointly and severally (Article 926). These rules also apply to liability for non-material damages (Article 932) and to commercial relations. This latter provision, of course, covers cases of harassment.

As far as penal liability is concerned, only natural persons can be accused of criminal offences related to anti-discrimination provisions.

As the conduct must be personal, an offence cannot be committed by or attributed to a legal entity such as a corporation. In criminal law, the 'principle of imputability' or

'principle of guilt' is important. This is based on Article 2(1) of the Constitution, which obliges the state to respect and protect human dignity. According to this principle, no penalty may be imposed for a criminal offence unless the offender can be blamed for such offence. Therefore, criminal law does not recognise any cases of strict or absolute liability.

On the contrary, employers or or service-providers cannot be held liable for actions of third parties. Trade unions or other trade or professional associations also cannot be held liable for actions of third parties, as this is not covered by civil law provisions and is contrary to freedom of association under Article 12 of the Greek Constitution. Individual harassers or discriminators can be held liable under the provisions of Article 914 of the Civil Code.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

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

1. Without prejudice to paragraphs 2, 3, and 4 of this article, and to Article 9,[57] the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

    (a) conditions for access to employment and occupation in general,[58] including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, as well as the terms of professional growth including promotion;
    (b) access to all types and to all levels of vocational guidance, vocational training, and retraining, vocational reguidance including practical work experience;
    (c) employment and working conditions, including dismissals and pay;
    (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
    (e) This Law does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the

[57] On professional requirements.
[58] Self-employment is not strictly included in the law.However, the specific provision could be interpreted in a way that would allow "self employment" to be included.

territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

2. This Law does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.
3. This Law, in so far as it relates to discrimination on the grounds of special needs and age, [59] shall not apply to the armed forces.

The anti-discrimination law also allows the following exemptions (defences):

The Democratic Society exemption

This Law shall be without prejudice to measures which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the protection of health and for the protection of the rights and freedoms of others.

Professional requirements

Notwithstanding Articles 2(1) and 7(1), a difference of treatment which is based on a characteristic related to any of the grounds referred to above,[60] shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided the objective is legitimate and the requirement is proportionate[61].

The Health and Safety Defence

With regard to disabled persons, the principle of equal treatment shall be without prejudice to the establishment or maintenance of measures on the protection of health and safety at work.

Law 3488/2006 on the implementation of the principle of sex equality in employment relations and other provisions combating sex discrimination in occupation and employment, vocational training, access to occupation, is restricted in its application to persons who work in the private sector.

Furthermore, Law 1483/1984 on the protection and guarantee of facilities for employees with family responsibilities, which prohibits dismissal of female employees

[59] The phrase 'special needs' refers to disability. (In Greece, people with disabilities are usually referred to as 'persons with special needs').
[60] That is, racial or ethnic origin, religion or beliefs, sexual orientation, age or disability.
[61] The provison: 'that the objective is legitimate' of the Framework Directive has been omitted in the text of this Law.

during pregnancy and one year thereafter, does not apply to the public sector, public entities, local authority organisations.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?

Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion are protected against discrimination.

Law 3304/2005 allows exemptions to the application of the principle of equal treatment as far as professional requirements in various contexts are concerned.

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

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

In regard to scope, Law 3304/2005 adopts almost literally Article 3 of Directive 2000/78/EC:

1. Without prejudice to paragraphs 2, 3, 4 of this article, and to Article 9,[62] the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
   a. conditions for access to employment and occupation in general, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, as well as the terms of professional growth including promotion;
   b. employment and working conditions, including dismissals and pay.

[62] On professional requirements.

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

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

According to Article 3(2) of Presidential Decree 358/1997 on preconditions and procedure for the legal stay and employment of aliens in Greece who are not natives of the Member States of the EU, an employer who omits to declare the employment of a non-native of another EU Member State has infringed the regulations of the Social Insurance Funds and all occupational and social security obligations, as if the work were supplied within a legal contract of employment.

Presidential Decree 359/1997/ 'Granting a residence permit for a limited period to foreigners' provides that a foreign employee who has been granted a temporary residence permit acquires the same occupational rights and obligations as a Greek employee as regards pay, working terms and conditions, and the insurance rights and contributions of the employer. Presidential Decrees 358/1997 and 359/1997 that had introduced a specific category of permits have been repealed according to the article 65 (par.2) of the Law 2910/2001 but they are considered to be important since they firstly inaugurated equal rights and the core of such provisions has been successfully transferred to the Law 2910/2001 (article 39). Finally, Law 1556/1985 on ratification of the International Labour Organisation Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) of 1983 declares the principle of equal opportunities between disabled employees and employees in general and between male and female employees. In addition, under the provisions of Law 2639/1998, employers in breach of the non-discrimination legislation are liable to administrative fines and may be brought to court.

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

Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning courses?

According to article 4(1)(b):

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

There is no indication for the extent of the application of the Law 3304/2005 in regard to technical schools, universities, adult life-long learning courses etc.

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

This law (1414/1984) and most of its provisions, including restriction of scope to the private sector, seem to have been replaced by Law 3488/2006 on the 'Implementation of the principle of equal treatment of men and women regarding access to employment, vocational training and promotion, terms and conditions of work'.[63] The Law 3488/2006 on the implementation of the principle of sex equality in employment relations and other provisions combating sex discrimination in occupation and employment, vocational training, access to occupation, restricts the scope of these laws to persons who work in the private sector.

Law 2956/2001 on Restructuring the Manpower Organisation (OAED) provides for the vocational training of disabled persons.

Articles 9 and 10 of Law 2224/1994, ensures access by nationals of other Contracting Parties to all vocational guidance and training programmes run by OAED.

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

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

[63] See CoE 2008 report on Law 3488/2006 at http://www.coe.int/t/DGHL/MONITORING/SOCIALCHARTER/Reporting/StateReports/Greece4AP_fr.pdf

In regard to its scope, Law 3304/2005 adopts almost literally Article 3 of The Framework Directive:

> 1. Without prejudice to paragraphs 2, 3, and 4 of this article, and to Article 9, the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:
>
> (d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

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

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

The restrictive nature of this antiquated provision was supported by case-law,[64] but this is no longer true.

Modern case-law interprets the provision in conjunction with Article 11 of the European Convention on Human Rights (freedom of association) and Article 14 of the same Convention (non-discrimination clause).

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

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

Article 4 of Law 3304/2005 again literally adopts the Racial Equality Directive wording here, and only in relation to racial or ethnic origin discrimination — 'social protection including social security and healthcare, social advantages, education, access to and supply of goods and services which are available to the public, including housing.'

We must emphasise that regular insurance risks are considered to be sickness, maternity, disability, industrial injury or disease, old age, death of a family protector,

[64] Athens Court of First Instance judgment 4311/1984, Nomiko Vima (NV) (1985), p. 1222.

lack of housing, and the destruction of agricultural production. With regard to healthcare, the Greek Constitution, as amended in April 2001, provides that 'all persons' have the right to health protection (Article 5(5)).

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

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

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

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

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

The category of 'social advantages' is not often explicitly addressed in Greek law and when it is, it is generally and broadly defined; Law 139/1975 on the status quo of persons without nationality, for example, explicitly addresses the term of 'social advantages'. In this context this term covers housing, the supply of goods with coupons, as well as public education and care, and even the entirety of labour law protection and social security.

Reduced-rate train travel or reduced bus fares for large families are granted to all persons (multi-member families), regardless of all the grounds protected by the Directives, on the legal basis of Law 3304/2005, as well as on the general constitutional principles of equal treatment and non-discrimination.

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

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases

and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.
Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

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

The right of alien residents to education was also enshrined for the first time in Article 40 of Law 2910/2001 on entry and residence of aliens in Greek territory. According to this provision, minor aliens residing in Greece are subject to the same compulsory (primary and secondary) education of nine years as Greek nationals are (Article 16(3) of the Constitution).

Article 40(4) provides for the promulgation of interministerial decisions to regulate the 'optional teaching' in schools of 'mother tongue and culture' to minor students, if there is a sufficient number of these. To date, no such interministerial decision has been signed.

However, the total exclusion by Greek law of non-Orthodox teachers from single-post state schools is in flagrant contravention of Article 13(1) of the Greek Constitution, a fact that was expressly recognised by Greek jurisprudence in 2002.[65] The Greek Council of State has rightly stressed that the appointment of a Greek citizen to a state post, such as that of a state schoolteacher, is a political right that is to be enjoyed without any discrimination based on religious belief.

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

This law mandates the education of these individuals in public schools, in special schools and in vocational schools at elementary and secondary level. Education in public schools can be offered in at least four settings:

1) In inclusive classes within public schools. In this environment, children with disabilities have to be evaluated before their entrance by a group of specialists (elementary school teacher, secondary school teacher, psychologist, medical doctor).
2) In special classes within public schools.

[65] Council of State proceedings no. 347/2002, 28.06.2002.

3) In special classes within hospitals/institutions.
4) At the home of the student with special needs

In Greece there are separate public schools for certain categories of persons with disabilities. These are elementary and secondary schools for deaf children, elementary and secondary schools for the blind, elementary and secondary school for blind children with cerebral palsy.

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

The above legal framework has been completed with the new Law 3699/2008 on *"Special Education of individuals with disability or special educational needs".*

The aim of the Law consists in guaranteeing to all children with disability their right to education and social and professional integration, along with equal opportunities for full participation and contribution in the society. Special education is defined as an integrated part of the overall public free education at every level (pre-school, primary school, high school). The stage of diagnosis is strictly included in the system of special education. The special educational needs of disabled children are "located", searched and verified by public bodies called "Centres of Special Committees for Evaluation and Diagnosis", subjected to the Ministry of Education and consisted of a variety of specialised scientists who play a key role in the accommodation (article 4). These Centres are authorised to suggest individualised projects for pedagogical and psychological support of the children and to recommend in which exact school units they have to register. They also provide advisory support to the staff of the schools if necessary, they supervise the school work of the pupils and they designate their skills, they define the specific educational and technical equipment that is required for the educational needs of the children, they take care of possibly constant medical support for children who need it during the school hours, they propose suitable methods of teaching and evaluation of the pupils by taking into consideration their different kinds of disability and they write reports for each person.

There are no statistics available on education for children with disabilities.
In addition, according to its latest report (29.3.2006),[66] the Commissioner for Human Rights of the Council of Europe:

> took special interest in the efforts made by the Greek authorities regarding the education of Roma children, including pre-school education designed to make up language and other handicaps of young Roma children as compared to other

[66] Council of Europe Commissioner for Human Rights (2006) *Follow-up Report on the Hellenic Republic (2002-2005)*, available at: https://wcd.coe.int/ViewDoc.jsp?id=984125&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679.

children. It learned of a wide range of measures taken for the benefit of Roma children under the authority of the Ministry of Education. One of the aims pursued is to avoid the segregation of Roma children from other children by assigning them to special classes or to special schools. It was explained, however, that for a host of reasons, including parents' resistance not only on the non-Roma but also sometimes on the Roma side, such separation could not always be avoided.

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

Despite efforts there have been incidents of Roma exclusion from education, while the State has taken no action against such racist attitudes and exclusion of children from education, often incited or tolerated by local administration officials.

A typical case of inertia on the part of the state educational authorities in guaranteeing the access of Roma children to schools is a case reported by the Greek Ombudsman.

In this case, the intervention of the Ombudsman, in coordination with the university project manager, was necessary in order for a third public body (the Earthquake Support Service of the Ministry for the Environment, Physical Planning and Public Works) to provide prefabricated classrooms to an elementary school in the Peloponnese. Until then, Roma children were excluded from the school on the grounds that the building facilities were insufficient.[67]

On 25 March 2011 the European Court of Human Rights (EctHR) found in principle admissible and communicated to Greece the application *Ioanna Sampani and Others v. Greece*, filed by 140 Roma (98 children and 42 parents) through the NGO human rights organisation Greek Helsinki Monitor (GHM)[68]. The application concerns the continuing racist educational segregation of Roma children to a Roma-only ghetto school, namely the 12th Elementary School of Aspropyrgos. This segregation takes place despite the 5 June 2008 judgment in the Case of Sampanis and Others v. Greece, when the EctHR found Greece in violation of the Convention regarding the initial school exclusion of Roma children living in the Psari settlement of Aspropyrgos and subsequently their segregation to a ghetto school (an annex of the 1oth Elementary School of Aspropyrgos). Following the EctHR judgment, the Ministry of Education renamed the 10th Elementary School of Aspropyrgos annex as 12th Elementary School of Aspropyrgos so that Greece could claim before international fora that no school segregation takes place anymore.

[67] The Greek Ombudsman (2003) *Annual Report*, p. 186 (in Greek), available in an abridged English version at: http://www.synigoros.gr/annual03_en/annual_2003_en.pdf, pp. 61–62.
[68] http://cm.greekhelsinki.gr/index.php?sec=192&cid=3743.

On 22th February 2011 the Deputy Prosecutor of the Greek Supreme Court, after having received a letter (16 February 2011) on behalf of the *"Coordinated Organisations and Communities for Roma Human Rights in Greece" (*SOKADRE) asking him to investigate thoroughly its cases of educational exclusion of marginalisation of Roma children in "school –ghettos" it has repeatedly and substantially denounced, alleging with a violation of the law as well as of several previous circulars and other clear instructions from the Prosecution Office of the Supreme Court itself, had issued a relevant "Urgent Written Order" (with Protocol Number 720 /22-02-2011) addressed to all local prosecutors of Greece[69]. According to his above Order, the Deputy Prosecutor of the Greek Supreme Court officially asked from all local prosecutors of Greece to *"take care of striking the phenomenon of exclusion of Roma from the public educational system of Greece, in a way that any phobic attitude towards Roma children should be eliminated and that their unhindered equal - without exclusion and discrimination - integration to all structures of the State should be ensured".*

Therefore, it is noteworthy that although the above document ("Order") of the Prosecution does not refer strictly to the specific provisions of the Greek anti-discrimination legislation, there is no doubt that at least this concrete judicial authority has fully realised the tremendous importance of the enforcement of the existing legal framework against discrimination.

On 25th March 2011, at the occasion of the public celebration of the national holiday of the 25th of March (anniversary of Greece's independence), the Principal and the gym teacher of the 25th Primary School of Larissa were reported in the media to have deprived a student with Down syndrome of his right to parade (a right enshrined in the Constitutional provision as referred to below) , and they did not change their decision even when the boy started crying as he felt excluded[70]. In particular, before the march they asked his parents to submit an official medical certificate stating that the disabled boy had the capacity to walk in line with the other students. The parents refused to submit such a document, claiming that there was no need to do so since the gym teacher would be all the time next to the students' group during the parade. However, the Principal and the gym teacher insisted on their initial decision by arguing that if the boy paraded he would suffer high emotional stress, which would be harmful for him. In the expert's opinion, although there is no specific law regulating the particular issue of access of disabled persons to educational activities such as school parades, the above practice of the specific school contradicts Article 21, par. 6 of the Greek Constitution, which stipulates that "people with disabilities have the right to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life".

The incident revealed the existence of a discriminatory attitude of some teachers towards disabled children and therefore it was heavily criticised by the vast majority

[69] http://cm.greekhelsinki.gr/index.php?sec=192&cid=3741.
[70] http://news.disabled.gr/?p=39302#more-39302.

of Greek media and public opinion. Nevertheless, such discrimination constitutes a rather rare case within Greek society because discrimination against disabled people in Greece seems to occur less often than against other vulnerable groups such as migrants, etc, although in the past there was a lack of reporting compared to the present, as far as cases of disability are concerned. There are no statistics but this conclusion arises from the fact that there are not many reports concerning such cases. In the author' s opinion, if such incidents happened more often they would be publicised.

In May 2011 the Deputy Minister of Education excluded from the special categories of candidates for higher education aliens and aliens of non-Greek origin attending Greek schools in Greece[71]. The Greek Ombudsman by letter addressed to the Minister argued that "the sudden abrogation of regulations concerning the inclusion of some candidates in a special category, - which allows for a broader choice of educational institutions, overturns the basis upon which the entire planning of specific candidates was premised (such as the choice of subjects in February 2011 on which they will be examined), thus undermining their right to access higher education in accordance with article 16 of the Greek Constitution"[72]. He requested that the Ministerial Decision becomes effective for the exams of 2012. The request was not accepted by the Ministry.

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

a) Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

Article 4 of Law 3304/2005 includes the field of discrimination in 'access to and supply of goods and services which are available to the public, including housing', but only in respect of race and ethnic origin, as required by the Racial Equality Directive. It adopted the same wording as the Racial Equality Directive.

b) Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?

According to Article 11(2) of the anti-discrimination law, Law 3304/2005:

[71] Decision F151/41977/B6 OG B' 832/12.05.2011.
[72] http://new.synigoros.gr/resources/epistoli-pros-ypoyrgeio-gia-allodapous-apofoitous.pdf.

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

Nevertheless, the law does not impose any limitation.

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

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

Article 4 of Law 3304/2005 includes the field of 'access to and supply of goods and services which are available to the public, including housing', but only in respect of race and ethnic origin, as required by the Racial Equality Directive.

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

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

The National Strategy Report on Social Protection and Social Inclusion 2006–2008[73] seeks to avoid territorial segregation between immigrants (and other groups with cultural/religious particularities) and the rest of the population through preventive measures, such as improving living conditions in urban areas where these groups are mainly concentrated, resolving housing problems and facilitating their dispersal within the territory.[74] However, an evaluation of the National Strategy Plan observes

[73] Ministry of Employment and Social Protection (2006) *National Strategy Report on Social Protection and Social Inclusion 2006-2008*.
[74] Ministry of Employment and Social Protection (2006) *National Strategy Report on Social Protection and Social Inclusion 2006-2008*, p.38. The Integrated Action Programme for Roma Housing, implemented under supervision of an interministerial committee coordinated by the Minister of Interior,

that 'given the scarcity of evaluations of the impact of the implemented measures, and knowing that in reality a lot remains to be done to adequately address the issue of
improving the situation of Greek Roma, to consider this specific intervention a good practice seems debatable'.[75]

Concerning housing segregation and discrimination against Roma, a new legislative provision amending the Municipal and Communal Code provides for the duty of the municipal authorities to plan and realise integration schemes for Roma people.[76] Besides that, the only cases and patterns come from the Greek Ombudsman (one of the three Greek equality bodies).

When the issue of the potential compulsory relocation of Roma from the settlement of Votanikos area (Athens) arose in the mass media and within organisations engaged with these matter, the Greek Ombudsman visited the settlement and proceeded with a series of actions in order to mobilise the competent services.[77]
The Ombudsman recommended that:

> …special care should be taken and a suitable plot of land with appropriate living conditions should be indicated for the possible relocation of the Roma. Then, the competent Region General Secretary should take a relevant decision in collaboration with the competent Directorate of the Ministry of the Interior (complaint no. 13986/2006).[78]

Public Administration and Decentralisation, is also provided for by the National Plan for Social Inclusion.

[75] Commission of the European Communities SEC(2007) 272/22.02.2007, *COMMISSION STAFF WORKING DOCUMENT Joint Report on Social Protection and Social Inclusion COUNTRY PROFILES – Greece,* p.74.

[76] Law 3463/2006, Article 75(1)(e)(5); Official Gazette A 114/08.06.2006; entered into force 01.01.2007.

[77] 'The aim of these actions was to ensure adequate living conditions for this vulnerable population, and to prevent the possibility of compulsory eviction from this plot of land without the guarantees stemming from the Constitution and the legislation in force. Special care was taken so that no sanctions would be imposed for violation of the sanitary regulations as was suggested by the Prefecture of Athens and Piraeus, Directory for the Protection of the Environment. The reason for such a move was twofold: these sanctions would have been unsuitable and ineffective, and by neglecting to take into consideration the particularities of this population and the special conditions under which they live, they would have constituted negligence to handle dissimilar cases individually, contradicting the principle of equal treatment.' The response of the Municipality of Athens was still pending when the Ombudsman's annual report was published.
The Greek Ombudsman (2006) *2nd Annual Report as National Equality Body*, available at: http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf. In 2008 the General Directorate of the District of Attica sent a letter to the Municipality of Athens asking from the latter to study the whole issue of Roma of Votanikos area and submit proposals concerning possible "suitable places" for their transfer. Nevertheless, the problem has not been solved so far and the Ombudsman concluded that the competent authorities were unwilling to provide a proper solution.
http://www.synigoros.gr/diakriseis/pdfs_01/8660_1_ISH_METAXEIRISH_2008_Greek.pdf.

[78] The Greek Ombudsman (2006) *2nd Annual Report as National Equality Body*, available at: http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf.

In two cases,[79] the Greek Ombudsman (GO) had the opportunity to examine the reactions of neighbours to Roma settlements in Lefkada. In the first case, Roma settled permanently in their 'houses' on a plot of land owned by a Roma relative and lacking in basic facilities such as toilets, drainage, and electricity supply.[80]

The GO addressed the Municipality and the competent departments of the Prefecture of Lefkada, stressing the compelling need for improvement of the living conditions of Roma in accordance with the legislation in force 'for the settlement of wandering people'.[81]

In the second case, residents of the hamlet of Apolpaina in Lefkada filed a complaint (in reaction to the first case to the GO on:[82]

> the settlement of Roma in makeshift shacks and other structures (tents, toilets built with cement blocks) within the restricted-build area of the Holy Temple of Panaghia Hodegetria, a listed historical monument itself, and for the poor sanitary conditions on this plot.[83]
>
> The GO undertook the role of the mediator with a double aim: to preserve the area of the historical monument, and to ensure that the local authorities offer to the Roma special support as a group facing social exclusion. To this effect the GO claimed specifically the positive action option that the new Municipal and Communal Code provides for.[84]

Another complaint concerning Roma before the Greek Ombudsman was filed by a female citizen about the long delay by the competent department of the municipality of Zephyri in issuing a payment receipt for real estate tax paid in order to use it in

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[79] Complaints nos 13770/2006 and 2864/2006.

[80] 'This caused inappropriate health conditions and infections, affecting the settlers as well as their neighbours. In addition, due to the lack of electricity supply, the Roma were obliged to use a generator for long hours causing noise that disturbed their neighbours. The Health Division of the Prefecture of Lefkada visited and examined the settlement and made recommendations to the Roma living in the area without, however, having made any progress ever since.' The Greek.
Ombudsman (2006) *2nd Annual Report as National Equality Body*, p. 12. Available at:
http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf.

[81] Ministerial Decision B- 973/2003, amending Sanitary Regulation A5/696/83.

[82] The Greek Ombudsman (2006) *2nd Annual Report as National Equality Body*, available at:
http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf.

[83] 'The competent Ephorate of Byzantine Antiquities of the Ministry of Culture, following an on the spot investigation, recommended to the Mayor of Lefkada to remove the Roma from the site and to relocate them on a plot that is not in the vicinity of sites or buildings of archaeological interest. The Mayor of Lefkada refused to evacuate the site, referring to the permanent nature of the settlement as well as the fact that the plot is owned by Roma.' The Greek Ombudsman (2006) *2nd Annual Report as National Equality Body*, available at:
http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf.

[84] Article 185(3) of the new Municipal and Communal Code expressly provides that the Municipality can assign a municipal area to Roma people for a maximum twenty years. The Greek Ombudsman (2006) *2nd Annual Report as National Equality Body*, available at:
http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf.

drafting a real estate sales contract where the buyer concerned was Roma. A similar complaint was also filed at the GO about a delay in issuing a real estate tax receipt by the municipality of Ano Liossia, which also included the accusation that this constituted common dilatory tactics on the part of the municipality, in order to discourage owners from selling their properties to Roma. [85]

Finally, the payment receipts were issued following intervention by the GO; however, due to the regular occurrence of similar complaints, the GO is examining the possibility of intervening on this issue in a comprehensive way.[86]

As it was published in March 2008[87], in its latest report published on line, the GO has launched a series of initiatives aimed at motivating and coordinating the competent authorities so as to ensure appropriate living conditions for this vulnerable population group and at the same time to prevent their forced removal from this occupied land without the guarantees provided for by the Constitution and relevant legislation. In particular, the GO asked the General Directorate for Development Programmes of the Ministry of Interior to undertake the role of coordinator within the framework of the ''Integrated Action Plan for the social inclusion of Greek Roma'', so that the competent authorities can take specific measures to improve the living conditions of this vulnerable population group. A worrying incident was the unexpected removal of Roma families from a land property in the area of Votanikos (on Aghiou Polykarpou street), which seems to have been carried out at the expense of a third party businessman.

Following this event, the GO stressed the compelling need to find a long term solution for the housing issue of Roma people of this area remarking that a possible "purchase" of their relocation tolerated by the municipal authorities or by means of initiatives of other parties acting on the Municipality's behalf constitutes violation of the Municipality's duty to take all necessary measures for the relocation of this population group since in such a way the existing problem would merely be postponed.

The GO suggested that the committee provided for in the Joint Ministerial Decision GP/2 3641/2003, article 2 be immediately established on the initiative of the General Secretary of the Region of Attica so as to track down the appropriate location and the relocation process for the wandering Roma group. Following the establishment of this committee, the GO asked for expediency and requested from the Municipality of Athens an immediate report on this issue. Furthermore the GO requested the intervention of the Minister of Interior so that a viable solution is found regarding the delimitation of the relocation area of the Roma population groups living in Attica

[85] Complaints 1956/2006 and 11255/2006.
[86] The Greek Ombudsman (2006) *2nd Annual Report as National Equality Body*, available at: http://www.synigoros.gr/diakriseis/pdfs/12_10_EqualTreatmentReport2006.pdf.
[87] The Greek Ombudsman (2007) 3*nd Annual Report as National Equality Body*, available at: http://www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf.

(case 13986/2006). Nevertheless, public authorities and the Municipality of Athens in particular are still displaying unjustified inertness or indolence.
As far as specific cases are concerned[88], the GO received a complaint from inhabitants of Alexandroupoli regarding the delay in the inclusion of the settlement camp on Avantos street in the city's urban plan. This delay caused various other problems related to the settlement's infrastructure and the operation of regular and nursery schools as well as the health and social services centre of the settlement.

The GO contacted the local authorities and gathered information on the time schedule for the settlement's inclusion in the city's urban plan and the implementation of the respective urban planning study.
Moreover, it received an update on the overall approach to the issue of educating the children living in the settlement as well as on ways of optimizing the operation of the social and health services centre. The GO is closely monitoring the progress of integrating the settlement in the social network (case 6174/2007).

Moreover, the Drossero Women's Association in Xanthi had filed a complaint with the GO commenting on the lack of infrastructure (e.g. water supply, sewage, drainage, asphalt paving), the ownership status of the Roma settlement as well as on the operation of regular and nursery schools and the social and health services centre in the area.

The GO contacted the competent services of the Municipality of Xanthi and during an on site investigation found out that the difficulty in solving the aforementioned problems is linked to the fact that Drossero is not a recognized settlement but consists of illegal constructions.

Nonetheless, the Municipality of Xanthi has allegedly carried out a series of works and has submitted a proposal for the inclusion of this area in the General Urban Plan and the recognition of the settlement. The GO has suggested alternative ways in order to expedite the process of including the area in the General Urban Plan, to promote the construction of schools as well as to ensure the proper operation of nursery schools and the health centre as a link between the settlement and the wider social context. The GO is keeping track of the developments in this case (case 4639/2007).

Finally, it is worthwhile to mention that since the beginning of its operation the GO has intervened in many ways in order to seek solutions for the improvement of the living conditions for the Roma population in the area of Aspropyros (including the areas of Nea Zoi, Psari, Neoktista Aspropyrgou, etc.) given the amplitude of complaints among which many have been received from a) property owners whose properties have been trespassed or exposed to the negative consequences of their neighbouring with the Sinti settlements, b) Sinti complaining about their living

[88] The Greek Ombudsman (2007) 3*nd Annual Report as National Equality Body*, available at: http://www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf.

conditions, c) Associations of Sinti or non Sinti citizens who aim at improving the living conditions of all inhabitants and the protection of the environment, d) the Municipality of Aspropyrgos, e) Non-Governmental Organizations and f) human rights international organizations.

During the course of its investigations the GO has carried out onsite inspections in the area and has issued a relevant fact-finding report calling for the public prosecutor's intervention.

In addition, the GO has attended a meeting of the municipal council of Aspropyrgos and has supported all positive efforts aiming at improving the living conditions of the settlement inhabitants, establishing peace among the various social groups and providing education to Roma children without, however, having any remarkable results.

The GO, understanding the importance and complexity of the housing rehabilitation and social inclusion of Roma population in the area has suggested to the competent services that the most appropriate solution is to launch a long term comprehensive project with a detailed intervention plan which, as the GO remarks, has been impermissibly delayed. In early 2008 the GO shall inform the authorities involved on the content of these specific actions. This project should be implemented along with provisional measures for improving their living conditions such as garbage collection, water and electricity supply in combination with transitional inclusion programmes such as vocational training, relocation incentives (cases 15891/2007,16048/2006, 14062/2006, 1919/2006, 13301/2001, 14902/2001, 13399/2001, 11128/2000).

Since the lack of enrolment of a vast number of Roma in municipality registry has a negative impact on the exercise of their housing rights (e.g. the possibility to obtain a housing loan), in August 2009 the GO published a Report concerning the enrolment of Roma in Municipality records[89]. The GO recommended three versions of a proposal for a program of secure, fast and effective enrolment of all Roma : a) acquisition of a municipality status through a previous definition of their existing citizenship or through a birth certificate for those who are stateless (a solution that would not require a previous introduction of a Law), b) acquisition of a municipality status through a special invitation for a massive registration of all Roma in municipality records based on birth certificate or on a court decision if such a certificate does not exist (a solution that would require a previous introduction of a Law) , c) acquisition of a municipality status massive registration of Roma in municipality records, without any condition at all (e.g. previous definition of citizenship, birth certificate, court decision), which would require a legislative reform as well.

[89] http://www.synigoros.gr/pdf_01/8289_2_Dimotologisi_Roma_Perilipsi.pdf.

In response to two written questions from Members of the European Parliament about the situation of Roma in Greece,[90] the Commissioner, Mr Špidla, said that the Commission had already started a preliminary examination under the provisions of Directive 2000/43 (answer, 6.9.2005).

The Council of Europe European Committee of Social Rights has examined one collective complaint concerning the situation of Roma in Greece; this complaint (No. 15/2003) was brought by the European Roma Rights Centre.

The Committee decided that in Greece 'Roma have insufficient supply of appropriate camping sites' and that the criteria for eviction of Roma by the Greek authorities 'must not be unduly wide'.[91]

One more relevant complaint is still pending before the Committee (it declared the complaint admissible on 23 September 2008). It was brought by the International Centre for the Legal Protection of Human Rights — INTERIGHTS (No. 49/2008).[92] On 25 May 2010, the European Committee of Social Rights, for the second time in five years, has condemned Greece for continued serious and widespread discrimination against Roma in respect of housing rights (Collective Complaint No. 49/2008)[93].

Greek law, including the anti-discrimination law, does not provide for the availability of housing which is accessible to older people and people with disabilities.

In a View publicized on 16 October 2010 (and issued on 14 September 2010)[94], the U.N. Human Rights Committee considered a Roma family 's allegations, also corroborated by photographic evidence, claiming that arbitrary and unlawful eviction and demolition of their home with significant impact on the Roma family life and infringement on their rights to enjoy their way of life as a minority, had been sufficiently established. For these reasons, the Committee concluded that the demolition of the Roma family's shed and the prevention of construction of a new home in the Roma Riganokampos settlement amounted to a violation of articles 17, 23 and 27 read alone and in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights. However, in the light of the Committee's findings, it did not deem it necessary to examine the Roma family 's allegation of a violation under articles 7 and 26 alone (on interdiction of

[90] Written questions E-2416/05EL and E-2453/05EL. http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2005-2416&language=EN and http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+WQ+E-2005-2453+0+DOC+XML+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y.

[91] Council of Europe European Committee of Social Rights *Decision on the merits, 8.12.2004, European Roma Rights Center v. Greece, Complaint No. 15/2003*, available at: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC15Merits_en.pdf.

[92] http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/CC49CaseDoc1_en.pdf.

[93] http://www.coe.int/t/dghl/monitoring/socialcharter/NewsCOEPortal/CC49Merits25052010_en.asp.

[94] http://cm.greekhelsinki.gr/uploads/2010_files/georgopoulos_v_greece_views_2010.pdf.

discrimination) and read in conjunction with Afticle 2 (on effective access to judicial means without discrimination), paragraphs 1, 2 and 3 of the Covenant.

In particular[95], during July and August 2006, Antonios Georgopoulos ,Chrysafo Georgopoulou and their seven children, born and raised in the Roma settlement of Riganokampos in the city of Patras, left Patras for the city of Agrinio for seasonal employment and to visit relatives. On 25 August 2006, a crew of the Municipality of Patras visited the Roma settlement of Riganokampos and demolished all the sheds of the inhabitants who were not present at that time. Upon return, the Roma family visited the Welfare Department of the municipality of Patras to complain. There, they were told that they should start looking for an apartment to rent and that the Municipality would undertake to provide them with rental subsidies. They were then given a sum of approximately 200 euros for the destruction of their home and some of their belongings. The Georgopoulos family claim that their forced relocation and demolition of their shed were acts which had not been authorised by any judicial or other decision and thus could not be subject of judicial review. Their forced relocation and demolition of their shed were termed as “cleaning operations”.

While looking for an apartment, they lived in the shed of a relative in Riganokampos, one of the three that had not been demolished. Due to overcrowding, the Roma family decided to erect a new shed in the settlement.

On 26 September 2006, a police patrol car and a bulldozer were dispatched, and they were told to stop erecting their shed otherwise they would be arrested. Faced with the threat of arrest, they decided not to oppose the demolition of their shed. On 22 June 2007 the Roma family brought the case in front of the U.N. Human Rights Committee which is competent for the enforcement of the I.C.C.P.R. According to the Roma family, the authorities are not willing to let them, and other Roma residents of the Riganokampos settlement, implement improvement measures at their own initiative. They also claimed that numerous prosecutors had not only failed to launch criminal investigations in relation to the failure of local authorities to deal with Roma’ s housing problem for the last 10 years, but they also employed blatantly racist arguments in reaching their decisions, which remained unsanctioned. Finally, among others, they argued that the destruction of their houses twice and their unfulfilled expectation with regard to their non-eviction pending relocation, amounts to cruel, inhuman and degrading treatment in violation of afticle 7 of the I.C.C.P.R.

The Greek State argued in the past that since a relevant domestic criminal investigation had been completed with Patras Appeals Prosecutor Decrees 44/2009 and 56/2009 rejecting the allegations on the Georgopoulos family (and other Roma’ s) unlawful eviction, it had complied with the requirement for the provision of an effective remedy. The State argued that this was an obligation of means and not of a result. It is noteworthy that the Georgopoulos case is procedurally identical to the *Zeliof* and *Petropoulou-Tsakiris* cases, submitted by the NGO “Greek Helsinki

[95] http://cm.greekhelsinki.gr/index.php?sec=192&cid=3709.

Monitor" (GHM) as well. In the *Petropoulou- Tsakiris* case, a re-examination was ordered but the Supreme Court Prosecutor who considered the EctHR judgment as *"new information that justify the re-examination of the case"* in application of Articles 43.3 and 47 of the Code of Criminal Procedure. Likewise, the merits of the *Georgopoulos* case were never examined by a court, but the case was archived as unfounded by two prosecutors. Hence, according to the EctHR, the State should have asked the Supreme Court Prosecutor to order the re-examination in this case as well, but failed to take such action.

On 26 April 2011, GHM filed with the Supreme Court Prosecutor a request for a re-examination, referring to the Petropoulou-Tsakiris case. On 29 April 2011, the Supreme Court Prosecutor ordered the Patras Appeals Prosecutor to carry out a re-examination.[96] On 6 June 2011, with Decree 64/2011, the Patras Appeals Prosecutor decided that a re-examination should be carried out and ordered the Patras First Instance Prosecutor to carry out an urgent supplementary preliminary examination, because of imminent prescription of the alleged crimes, by summoning for explanatory statements the accused, including the then Mayor of Patras. On 17 June 2011, with Decree 71/2011, the Patras Appeals Prosecutor decided to partly overturn his previous Decrees 44/2009 and 56/2009, to accept GHM 's applications for review 6/2009 and 22/2009 as partly well-founded, and to order the Patras First Instance Prosecutor to indict the then Mayor and two Deputy Mayors of Patras, as well as their unknown accomplices (the crews who carried out the evictions) for continuous breach of duty between 27 July and 15 September 2006, for the demolition of the homes of eight Roma families, seven Greek- including Georgopoulos – and one Albanian).

Discrimination of Roma in the field of housing seems to be a crucial problem in Greece. For instance, the ECSR[97] has condemned Greece for continued serious and widespread discrimination against Roma in respect of housing rights. In an unprecedented re-examination under the collective complaints system, the ECSR unanimously upheld all of the main substantive allegations in a collective complaint filed in March 2008 by Interights in partnership with GHM[98]. It also highlighted the systematic discrimination experienced by the Roma and the failure of the government to provide adequate safeguards and remedies for this vulnerable community[99].The previous ECSR decision against Greece[100] found that not only had Greece made insufficient progress in implementing recommendations from the previous decision but it had also committed significant new breaches of its housing obligations.

[96] Copies of Decrees 64/2011 and 71/2011 of the Patras Appeals Prosecutor (17 June 2011) kindly submitted to Attorney at Law Athanasios Theodoridis by the Greek Helsinki Monitor.
[97] European Committee of Social Rights (11 December 2009).
[98] The complaint detailed the Greek government' s continuing failure to provide adequate housing and related infrastructure for the Roma as well as its involvment in over 20 forced evictions since 2004.
[99] There are approximately 300.ooo individuals of Roma origin living in Greece and due to the absence of suitable housing, many dwelling in 52 improvised and dangerous encampents.
[100] following an ERRC-GHM complaint, and taken on 8 December 2004.

According to the Greek Ombudsman there has been an increase of complaints for Roma cases falling under Law 3304/2005. This is due – to a large extent – to the Ombudsman' s networking with organisations and agencies involved in protecting the rights of this racial group, and due to the fact that Roma's integration in housing programs, where the Administration acts to provide, allows for intervention in accordance with the provisions and the scope of Law 3304/2005 (article 4 par. 1 (h))[101]. In its Annual Report 2010 published in 2011, the Greek Ombudsman refers to the complaints that it received in 2010 from Roma and local unions that represent them requesting its intervention in order to halt the forced seizure of their property – obtained via the Housing Program – due to failure to fulfil their contractual obligations (repay the loans) and to amend the terms of the loan agreements, to facilitate the fulfilment of their obligations. It is worth comparing the debts for which forced seizure of property was imposed ranged from 1,500 to 3,500 euros to the loan provided 60,000 euros or the total value of the building (commercial and objective), which often exceeds considerably this amount. The Greek Ombudsman addressed recommendations to the competent Ministries for addressing the problem bearing in mind the public interest and the materialisation of the aims of the Housing Program. So far no change has been noted[102].

According to the Ombudsman 's Report 2010 (which was published in 2011), in the year 2010 there was no significant improvement at central or regional planning regarding the improvement of Roma' s living conditions or other problems encountered by this vulnerable group. Partly encouraging was Authority 's intervention for the prevention of Roma expulsions from places in which arbitrarily have been established (cases of Atalanti, Xaraugi and Nea Alikarnassos). However, overall, despite the clear, repeated and persistent administration, to take immediate action to address the problems, no initiative for central coordination towards that direction or even sub-regional plans emerged this year. It is expected that during the last months of 2012 the Greek Ombudsman will publish a report on activities regarding the year 2011.

[101] The Greek Ombudsman, *Promoting Equal Treatment: The Greek Ombudsman as national equality body 2010* (Athens, October 2011), p. 2.
[102] The Greek Ombudsman, *Promoting Equal Treatment: The Greek Ombudsman as national equality body 2010* (Athens, October 2011), p. 8-9.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

Law 3304/2005 allows exemptions to the application of the principle of equal treatment in various contexts as far as professional requirements are concerned. More specifically, Articles 5, 9 and 11 of this law provide that a difference of treatment based on a characteristic related to racial or ethnic origin, religious or other beliefs, age or sexual orientation (disability is not covered) shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement proportionate. Specifically on religious or other beliefs Article 9(2) stipulates that these beliefs should also be 'a genuine, legitimate and justified occupational requirement'.

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

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

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

b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

There are no specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination (e.g. sexual orientation).

c) *Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?*

According to well-established jurisprudence of the Greek Council of State,[103] as a state entity of public law (Article 1(4) of Law 590/1977), the Orthodox Church of Greece is obliged to respect the fundamental constitutional provisions which provide, among others, for non-discrimination (on religious grounds) of Greek citizens in their access to employment in a Church entity. In other words, religious beliefs do not constitute criteria for public sector recruitment, even if this recruitment concerns Orthodox institutions.

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

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

However, apart from the Turkish language being used in parallel with Greek in schools for Muslim minority children in Thrace,[104] no other native language of migrant or minority children is used in public education in Greece. Apart from Muslim minority teachers,[105] who systematically teach in Turkish in the minority schools in Thrace, no other cases of migrant or minority teachers teaching foreign languages and/or culture, or even working as assistants in Greek public schools were found.

[103] The Council of State judged that local origin and religious beliefs do not constitute criteria for public sector recruitment, countering the draft Presidential Decree that concerns recruiting persons for the Panhellenic Sacred Foundation of Evaggelistria of Tinos. See *Eleftherotipia* (17.08.2007), available at: http://www.enet.gr/online/online_text/c=112,dt=17.08.2007,id=26095400.

[104] Use based on Greek-Turkish educational agreements dating back to the beginning of the 20th century. N. Askouni (2006) *Η εκπαίδευση της μειονότητας στη Θράκη*, Athens: Alexandria Publications.

[105] G. Mavrommatis and K. Tsitselikis (2003) *Turkish. The Turkish Language in Education in Greece*, Leeuwarden: Mercator-Education, www.mercator-education.org. ISSN: 1570 – 1239. http://www1.fa.knaw.nl/mercator/regionale_dossiers/PDFs/turkish_in_greece.pdf.

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

National law provides an exception for the armed forces in relation to age or disability discrimination. Article 8(4) of Law 3304/2005 provides that:

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

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

Yes (see above in section 0.2)

4.4 Nationality discrimination (Art. 3(2)

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

a) How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?

Adopting the wording of Article 3(2) of the two Directives, Article 4(2) of Law 3304/2005 incorporates all the exceptions allowed by the Directives, including nationality and stateless status. Interpreting this provision, the Council of State confirmed that Article 4(2) of Law 3304/2005 stipulates that it does not cover differences of treatment based on nationality.[106]

According to the Greek legal system, there is little difference between 'nationality' and 'race or ethnic origin'. Over the last decades, only persons of Greek origin could obtain Greek nationality. Recently, the legislature has provided that Greek nationality can be obtained by persons of non-Greek origin.

[106] See Council of State judgments 1380/2008, 1381/2008 and 1382/2008.

The Greek Ombudsman proceeds thus: when discrimination is based on two grounds, on both nationality and racial or ethnic origin, it always prefers to investigate such complaints on the ground of nationality. This happens because the Ombudsman appears to wish to avoid references to the ethnic origin of persons claiming to be victims of discrimination.

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

Article 4(2) of Law 3304/2005 does not provide any exception

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

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

a) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?

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

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

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

b) Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?

In addition, the above provision of Law 3304/2005 seems to permit an employer (in the public or private sectors) to provide (social) benefits, including health benefits, that are limited to those with opposite-sex partners.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

a) Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Law 3304/2005 provides that:

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

b) Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc)?

The 'Health and Safety Defence' clause also is expressed as follows:

> With regard to disabled persons, the principle of equal treatment shall be without prejudice to the establishment or to maintaining measures on the protection of health and safety at work.

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

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold?

Law 3304/2005 allows the following exemption (defences) as far as the criterion of age is concerned, adopting almost literally the text of Article 6 of the Framework Directive:

> … Such differences of treatment may include, among others:
>
> a. the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

b. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
c. the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.

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

There is currently no debate developing in Greece about the implementation of the requirements of the Directive with regard to direct discrimination.

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

No, it does not.

c) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2)?

National legislation allows occupational pension schemes to fix ages for admission to the scheme and entitlement to benefits.

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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

There are certain protected categories to which prohibition of dismissal attaches, i.e. students, employed students, women during pregnancy, women when breast-feeding their children, and employees with family responsibilities.[107]

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

[107] See Annex 1 to this document — Table of Key National Anti-discrimination Legislation.

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

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

In its judgment 851/2011 (17.03.2011)[108] the Supreme Administrative Court held that the age limit of maximum 35 years for the participation in the exams for probationer magistrates of 4th grade, is not contrary to the provisions of Directive 2000/78/EC and the Constitution, because according to the Court the maximum age ensures that judges can have a career in which there is enough time to specialise in a particular branch. Furthermore, it held that it was correct for the time spent on military service not to be taken into account for the calculation of the age limit, because otherwise that would violate the principle of gender equality.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

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

[108] Judgment 851/2011, published in Law Database "Nomos" (with publication number 544292).

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

The Supreme Court, in its Judgment no. 1785/2001 (see also Supreme Court Judgment no. 593/1996), decided that the provision of Law 3198/1955 was contrary to the principle of equality declared in the Greek Constitution, and to Article 15 of Law 1414/1984, because it permitted the termination of women's employment contracts and their professional careers against their will, on terms different to those for men and based on grounds of sex.

On 26 March 2009 the European Court of Justice, in the case C-559/07 ("Commission of the European Communities v Hellenic Republic"[109]) declared that, by maintaining in force provisions which provide for differences between male and female workers with regard to retirement age and minimum required service under the Greek Civil and Military Pensions Code instituted by Presidential Decree No 166/2000 of 3 July 2000, in the version applicable to the present case, the Hellenic Republic has failed to fulfil its obligations under Article 141 EC;

As a result, Law 3845/2010 has been introduced in July 2010 equalizing the age limits for retirement of men and women and the calculation of pensions.

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

b) Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?

Yes, the normal age is 60 years for all sectors and is the same for men and women.

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?

There is a mandatory retirement age of 67 years for certain public servants, both men and women (e.g. university professors, judges).

[109] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:037:0021:0021:EN:PDF.

d) Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?

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

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?

The law on protection against dismissal applies to all workers, irrespective of age

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?

Criteria of age and seniority were established by the Greek Supreme Court (Άρειος Πάγος) in a way which now seems not to be compliant with the Directive. According to this jurisprudence (Supreme Court Judgments no. 668/2000, 279/1996 and 744/1992), for a redundancy not to be generally considered to be abusive, age and seniority must be taken into account by the employer when he makes an employee redundant.

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

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

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

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

Yes, national law includes exceptions which seek to rely on Article 2(5) of the Framework Employment Directive. Migrant workers may be expelled if their presence in Greece poses a threat to public order or if they are in breach of Law 2910/2001 on entry and stay of aliens in Greek territory

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

Exceptions to the equality norm are not defined in Greek legislation. The courts would accept exceptions only in cases where they find that discrimination is not arbitrary, or that the application of formal equality would cause substantial inequality (positive action, see below).

On the subject of the interpretation of disability discrimination, Greek law, as previously stated, is silent. It is therefore evident that concepts such as indirect discrimination, failure to provide reasonable accommodation, genuine and determining occupational requirements and the like are not discussed, questioned or claimed. With regard to the system of compulsory placement (quotas), employers are given little leeway in avoiding the obligations imposed. They cannot refuse to employ compulsorily placed disabled persons, unless they invoke and can prove exceptionally bad economic conditions prevailing in their enterprise over the previous two years.[110].

[110] A Special State Committee decides these placement. Unwilling employers can lodge an appeal, but in the vast majority of cases these are decided in favour of the beneficiary/disabled person.

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

a) What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.

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

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

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

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

Greek case-law, especially that of the Greek Council of State, even before the above novel provision of the Constitution, accepted and established the legitimacy of legislative or administrative measures of affirmative action aimed at the advancement of gender equality in Greece. The majority opinion of the Greek Council of State in its judgment 1917/1998[111] explicitly recognised that there may be cases which show that in practice a certain category of individuals has been discriminated against 'due to social prejudice', leading to only nominal equality. Concomitantly, this court stated that the spirit of Articles 4(1) and 4(2) of the Greek Constitution (the latter provision stating that 'Greek men and women have equal rights and obligations') in principle allows the state to take appropriate and necessary 'affirmative action' for a certain period of time, until the existing situation of inequality has ceased. The Greek Council of State concluded that, in principle, it would certainly be legitimate for the Greek state to adopt 'positive measures' for women, in so far as these measures aim at 'accelerating the restoration of *de facto* equality between men and women'.

[111] Greek Council of State judgment 1917/1998 (Plenary). *Epitheorisis Dimosiou Dikaiou kai Dioikitikou Dikaiou* 1998 vol. 42 [*Review of Public and Administrative Law],* p. 577 (in Greek). Article 6 of Law 2839/2000 has also established in principle a quota of 1/3 in favour of women with regard to posts on boards of public and private law organisations.

This jurisprudence was affirmed by the same court's Judgment 1933/1998,[112] where 'affirmative action' in favour of women by the State was regarded as justified and founded not only on the Greek Constitution, but also on Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Article 2(4)), as well as on Article 4(1) of the UN Convention on the Elimination of All Forms of Discrimination Against Women 1979 (ratified by Greece). The wording of the Greek Supreme Administrative Court judgments is almost identical to that of the UN Convention provision. This significant case-law, along with the new constitutional provision of Article 116(2), should certainly be regarded as a basis for the establishment of positive action by Greece in favour of racial and ethnic groups which are discriminated against *de facto* and/or *de iure*.

b) Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.

The Greek state has actually followed the practice of positive action in favour of the 'Moslem minority' (mainly of Turkish origin) in Thrace (NE Greece), a *sui generis* ethno-religious minority population whose status is regulated in principle by Section III (Protection of Minorities, Articles 37–45) of the Treaty of Lausanne (1923).[113]

The Lausanne Treaty has been a significant agreement aiming at the effective protection of the 'Moslem' minority in Greece and the 'non-Moslem' minority in Turkey. Despite the reference to a religious characteristic, the above treaty in fact provides for the protection of ethnic groups, that is of ethnic Greeks in Turkey and of ethnic Turks in Greece. Although the Lausanne Treaty belongs to the League of Nations Treaty category of the interwar period that ceased to apply after World War II, both Greece and Turkey have time and again declared their adherence to this instrument, since it provides for respect by both countries of the civil and political rights of their respective minorities.[114].

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[112] *Epitheorisis Dimosiou Dikaiou kai Dioikitikou Dikaiou* 1998, vol. 42 [*Review of Public and Administrative Law]* p. 585 (in Greek). On the right to equality see also Greek Council of State judgments 1156/2000, 2096/2000, *To Syntagma* Vol. 26 (2000) p. 927 and p. 1288 respectively (in Greek).

[113] Ratified by Greece by Legislative Decree of 25.08.1923, reproduced in Ph Constantopoulou (ed.) (1999) *The Foundation of the Modern Greek State. Major Treaties and Conventions (1830-1947),* Athens: Kastaniotis Editions, pp. 123-145. See also L Baltsiotis, K Tsitselikis (eds) (2001) *The Minority Education in Thrace,* Athens: Ant N Sakkoulas, pp. 33-37(in Greek). See also F Asimakopoulou 'The Muslim minority of Thrace', in: F Asimakopoulou, S Christidou-Lionaraki (2002) *The Muslim Minority in Thrace and Greco-Turkish Relations,* Athens: AA Livanis, p. 209 ff., (in Greek).

[114] See also use of Articles 37-45 of the Lausanne Treaty by the Greek Supreme Administrative Court (Council of State) in its judgment 1333/2001, *To Syntagma* Vol.27 (2001), p. 917 (in Greek).

Under the Lausanne Treaty and by virtue of a series of Greek statutory provisions the 'Moslem [Turkish] minority' in Thrace has special protected status in issues regarding education and religion. According to Greek state data there are currently 227 minority primary schools in Thrace, with 422 Muslim teachers.

There are also two minority secondary schools in the same area, while a 'special quota of 0.5% has been established for the admission of minority students to Greek higher education institutions'.[115]

A reform project of the Greek Ministry of Education (through the University of Athens), partially financed by the EU, regarding Turkish minority education in western Thrace has been under way since 1997.[116] According to the Greek Ministry of Education this positive action ('positive discrimination' in the words of the Ministry) has led to an increase of 70% in the rates of Muslim children in Greek state high schools, rising from 1 397 in 1997 to 2 395 in 2000.[117] At the same time, the Ministry of Education is reportedly attempting to recruit more Muslim teachers for minority schools, a development that may well contribute to the quality of the teaching services provided in these schools. Members of the Muslim minorities are entitled to the same protection of their human rights as that of the majority of the Greek population.[118] It should be stressed that the 'Muslim minority' is considered as a religious minority and not an ethnic one, despite the Lausanne Treaty.

Positive action measures have also been taken by the Greek State with a view to promoting the right to education of alien immigrants, refugees and immigrants of Greek origin in Greece. Law 2413/1996 introduced 'intercultural education' for the first time in Greece. As a consequence, in the academic year 2000–2001 there were 23 intercultural schools, 422 reception classes and 556 special education classes of any grade.

The Ministry of Education has applied a protective policy for children of the vulnerable social groups mentioned above, allowing registration in schools even in cases where children do not produce all necessary registration documents. In addition, special language classes for adult aliens have been organised by the Universities of Athens, Thessaloniki, Patras, Ioannina and Crete.[119]

Article 18 of Law 2646/1998 provides for the adoption by the Greek State of measures for the protection of vulnerable population groups 'in situations of

[115] Report by Greece to the United Nations Committee on the Elimination of Racial Discrimination, UN Doc CERD/C/363/Add.4, 30.05.2000 (Greek Report), paras 22–29.
[116] Information note by Professor Anna Frangoudaki, November 2002; see also www.ecd.uoa.gr/museduc.
[117] Report of the General Secretary for the Education of Aliens of Greek Origin and Intercultural Education, Ministry of Education to the Greek National Commission for Human Rights, 21.02.2001.
[118] Nicholas Sitaropoulos, interim report, May 2003, 'Transposition of Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation for discrimination based on religion and belief', p. 19.
[119] Ministry of Education, information note, 05.07.2001 (in Greek, on file with the author).

emergency', such as Roma, Convention refugees, humanitarian refugees and asylum seekers. A special 'social solidarity' programme that covers these groups was initiated by the Ministry of Labour in 2001.[120] No evaluation report has ever been prepared on this special 'social solidarity' programme.

On 7 September 2011 a draft law on the designation of a suitable location for the construction of a mosque in the Eleonas district in downtown Athens was passed in the Greek Parliament with an extended majority vote[121]. The Mosque, which will not feature minarets, is to be housed on a plot of land formerly belonging to the navy, west of central Athens. However, the prospect of a Mosque in Athens was vehemently opposed by nationalist groups, which have launched numerous attacks against groups of Muslims in recent months, especially in central Athens, where their vast majority lives. The Law also repeats the content of the Article 3 of the previous Law 3512/2006 which describes the establishment of a legal body of private law under the name "Administering Committee of Islamic Mosque of Athens" and its work will be the management of the Mosque. According to the law 3512/2006, the operation costs of the Mosque will be covered by the funding of the Ministry of Education but also from endowments, donations and every kind of offers of natural persons or legal entities.

The passing of the Law satisfies a longstanding demand for an official place of worship from the country' s growing Muslim population, whose needs to date have been accommodated by makeshift Mosques in apartments or disused warehouses. It also puts Athens – the only capital from among the original 15 member states of the European Union not to have a mosque – in line with its European partners. The non-existence of a Mosque was considered to reflect a *discriminatory attitude* towards Muslims on behalf of the Greek government during the previous years since according to unofficial data, there are about 500.000 Muslims in Attica, who had been carrying their religious rituals and celebrations in inappropriate places such as basements and garages because plans for Mosque had not been implemented while painters and builders were taking the role of imams. In addition the lack of a Mosque often led to tensions that had been escalating recently in some neighbourhoods of Athens between local Greeks and immigrants as Muslims praying in open areas such as Attica Square had been harassed. It is obvious that such harassing incidents contributed to the creation of a hostile discriminatory atmosphere against Muslims who could not enjoy fully their right to religious freedom and worship, since having numerous people praying peacefully in public spaces is not – and could not be - prohibited by any law (except if a specific crime is committed, e.g obstruction of circulation).

Sections 2 and 3 of Article 21 of the Greek Constitution constitute the cornerstone of legislation advancing affirmative action for the benefit of persons with disabilities, i.e.

[120] Ministry of Labour *Policy for Social Solidarity 2001-2004,* Athens, 05.04.2001 (mimeo, in Greek).
[121] http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/p-areta-pap.pdf.

special welfare and social security benefits, price reductions, wage subsidies, compulsory placement and employment quotas.

With regard to persons with disabilities, measures aimed at creating or maintaining legal provisions on the protection of health and safety in the working environment or for the promotion and the safeguard of their integration into occupation and employment do not constitute discrimination.

In the field of employment, the principle of positive action is set out in Law 2643/1998 on the compulsory placement of special groups of workers.[122] This law obliges employers employing 50 workers or more,[123] to take on disabled workers placed by the public authorities.[124]

The law gives people with disabilities first priority over all other protected special groups (chiefly persons with four or more children) in the public sector,[125] and second priority in the private sector. As demand exceeds the number of vacancies, specific tests are applied for selection and recruitment, mainly age, severity of disability, qualifications, personal status and economic conditions. An extremely limited number of people with disabilities are placed following the above procedure.[126]

The Manpower Employment Organisation (OAED), based on a ministerial decision issued annually ,[127] is implementing a programme, which may have a bigger impact in getting people with disabilities to work in private sector companies only.
It offers wage subsidies to employers hiring registered people with disabilities[128] over a maximum period of three years, which is a substantial length of time. This programme is considered to have been successful.

[122] This law is new. It was introduced and enacted in 1998, but the first appointments started at the beginning of 2000. This law replaced Law 1648/1986, which had revised quota arrangements and had extended the quota system to the private sector. Further, the quota system was revised by Law 3096/1991 and amended in 1994.
[123] Such enterprises are considered very large in Greece and there are few of them (mainly public enterprises, such as electricity or water supply enterprises and the like). Eighty per cent of Greek enterprises employ less than 10 workers.
[124] This law is certainly not an anti-discrimination law, but it is widely understood as a re-integration law.
[125] In the public sector and local authorities, a considerable proportion of vacancies (up to 80%) in special occupations, such as messengers, night watchmen, cleaners and receptionists, are reserved for disabled individuals.
[126] It is estimated, (accurate statistical data is lacking, mainly due to strong reactions from disability organisations trying to avoid the stigma associated with disability), that numbers of compulsorily placed workers do not exceed 1% of all disabled workers, the total number of which certainly exceeds 10% of the labour force (Greece has a very high rate of road accidents).
[127] Ministerial Decision 200/2007 of the Minister of Labour and Social Affairs.
[128] Regardless of their age or income. However, they must prove a disability of a severity level of 50% or more.

There is no doubt that it offers incentives to employers to hire disabled individuals; however the subsidised posts are limited compared to the total numbers of persons with disabilities seeking jobs, or wishing to enter or re-enter the labour market.[129]

In relation to Roma, in late 2001 the Greek National Commission for Human Rights pinpointed a series of issues relating to grave *de facto* discrimination against members of the Roma population in Greece in fields such as housing, health, education and civil status.[130]

In 15 January 2009[131] , the Greek National Commission for Human Rights (NCHR) submitted to the government a new consultative proposal concerning the combat against social exclusion of Roma. Firstly, it urged the government to inaugurate a reliable system of data collection so that all the existing social needs of Roma could be thoroughly registered. Secondly, according to the opinion of the NCHR, Police forces should accept the fact that social integration of Roma should be a priority. Thirdly, it was stated that participation of Roma themselves in governmental strategies regarding plans that refers to them is necessary. Fourthly, the gender dimension should be taken into account. Moreover, it was emphasised that independent external evaluation of the results of all projects concerning Roma is extremely important. Furthermore, NCHR suggested that more motives should be given to teachers in order to remain for longer periods in schools that have vast number of Roma, whereas authorities should register the exact number of Roma pupils in every area and any form of school segregation should be avoided. It was also pointed out that the successful measure of sociomedical centres that provide Roma with information on health care issues should be strengthened. Finally, NCHR called the government to define clearly all the competences between various public authorities involved in the issues of Roma, since there is confusion in this matter.

Even though the Greek State has pursued a special protection programme promoting Roma social integration since 1996, attaching particular emphasis to education,[132] this has not proved as yet to have had any significant positive effects on the quality of life and human rights protection of Roma in Greece, who remain a rather marginalised ethnic group.

There have been major legislative initiatives of a positive action character taken by the Greek State for Roma, the most important of which are the following:

[129] The system mainly applies to disabled individuals willing to work in inferior status jobs for very low remuneration. See also Nicholas Sitaropoulos, interim report, May 2003, 'Transposition of Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation for discrimination based on religion and belief', p. 11.
[130] NCHR, report on the situation of Roma in Greece (I katastasi ton Tsigannon stin Ellada), *Report 2001,* pp. 181–197 (in Greek). http://www.nchr.gr/category.php?category_id=139.
[131] http://www.nchr.gr/category.php?category_id=139.
[132] *Greek Country Report,* paras 35–44.

- Ministerial (Culture) Decision of 25.01.1999 (OJHR B 55), by which a special intercultural office was established in the Ministry of Culture with a view to studying and protecting the culture of Roma in Greece.
- Prime Ministerial Decision 18/2000 (OJHR B 24) by which an interministerial committee was established for the 'management of issues relating to Greek Roma'. Article 2 of this decision provides for the planning and coordination by the above committee of special legislation and policy for the protection of health, housing, education, employment and 'cultural development' of Greek Roma.
- Ministerial Decision (Finance and Interior) 188/2002 (OJHR B 609) on granting 3 500 housing loans to Greek Roma.

Further, according to the latest report (29.3.2006) of the Council of Europe Commissioner for Human Rights:[133]

> The biggest single project of the IAP is the plan to give out 9,000 housing loans to Greek homeless Roma families under favourable terms, guaranteed by the Greek State. At the moment of the follow-up visit to Greece 3,708 loans had been drawn out of 5,708 approved applications. Much criticism has been reported to the Commissioner, alleging that an important percentage of the loans was misused for expenses others than housing, with the complicity of non-Roma, that the criteria for attribution were unknown or unclear to the Roma, that one could not see why most of the Action Plan was spent for the benefit of 9,000 out of an estimated 150,000 to 200,000 Roma living in Greece, that in most parts of Greece the sum of 60,000 Euros was insufficient to both purchase the land for a house and pay for the construction of it, etc. The Greek authorities point out that 9,000 loans will benefit some 54,000 individuals, as a Roma family in Greece is, on average, composed of six persons. They also underline that the criteria for attribution and the conditions of the loans have all been published in the official gazette which all Greek citizens have access to; they have also been communicated throughout the country to the institutions in charge of granting the loans.

Moreover, according to the latest ECRI report on Greece[134], ECRI recommended that the authorities act more vigorously to address the situation of Roma who live in settlements of inadequate standards by, among others, imparting on local authorities their obligations under international and national law, including the Municipal and Communal Law as amended, as concerns housing rights, including the right to non-discrimination. ECRI further recommended cooperation between national and local authorities to set up a coherent strategy to improve the situation concerning these

[133] Council of Europe Commissioner for Human Rights (2006) *Follow-up Report on the Hellenic Republic (2002-2005*), available at: https://wcd.coe.int/ViewDoc.jsp?id=984125&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679.

[134] http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-IV-2009-031-ENG.pdf.

settlements. In its third report, ECRI strongly encouraged the Greek authorities to implement the integrated action programme for Greek Roma in full, particularly by providing all the requisite financial resources. The Inter-Ministerial Committee for Roma is in charge of supervising the implementation of the Integrated Action Plan for Roma. Various programmes have been implemented within the framework of this Action Plan in areas such as education, employment, housing and health, with varying degrees of success.

ECRI noted that a more systematic, gradual and continuous monitoring and assessment of the implementation of the Integrated Action Plan for Roma is necessary as the results of this plan are not always easy to establish, especially at the local level. For example, as concerns the housing loan scheme created within the framework of the Integrated Action Plan for Roma, it appears that the intended beneficiaries have not always benefited from it. ECRI is further not aware of whether statistical data is collected on the situation of Roma for the purpose of evaluating the results of the Integrated Action Plan. This type of data is crucial to the success of any measures taken. The full participation of Roma at all the stages of the implementation of the Integrated Action Plan is equally important to its success. In this regard, ECRI notes that the Greek National Commission for Human Rights, having set up an ad hoc working group with national authorities and Roma participation, has made a number of recommendations on government policies, including on the Integrated Action Plan for Roma as concerns the discrimination and social exclusion faced by Roma. ECRI strongly recommended the creation of more systematic and long-term mechanisms for monitoring and evaluating the implementation of the Integrated Action Plan in order to assess results and make any necessary adjustments. ECRI recommended that Roma representatives be involved in this process. Finally, ECRI urged the Greek authorities to take further measures to improve the integration of vulnerable groups such as Roma, the Muslim minority in Western Thrace and immigrants into the labour market. It recommends that combating discrimination, strengthening measures taken to provide vocational training and language lessons, and reinforcing the role of the Labour Inspectorate form part of a comprehensive and long-term strategy to that end.

The “ESTIA” (“home” in Greek) project, which aspires to provide smooth integration of around 550,000 legal immigrants residing in Greece, was presented by Interior Minister Prokopis Pavlopoulos at an event on March 3 2009.

The “Integrated Action Plan for the unimpeded integration of third country nationals legally residing throughout the Greek territory—ESTIA” is financed by the European Fund for the Integration of Third-Country Nationals 2007-2013.

These social groups are targeted by Ministerial Decision 308/2001 (OJHR B 784) which provides for the development of special labour inclusion projects by the Greek Manpower Organisation (OAED).

The same groups are in fact covered by another similar Ministerial Decision (112852/2002. OJHR B 786), aiming at the protection and advancement of unemployed or under-employed members of the above social groups in the labour markets in Greek regions. Article 5(1) of this decision makes express reference to 'special cultural groups (e.g. Roma – Thrace Pomaks)'.

It is noteworthy that a Network for Recording Incidents of Racist Violence was set up in October 2011 at the initiative of the National Commission for Human Rights (NCHR), which is a statutory National Human Rights Institution having a consultative status with the Greek State, and the Office of the UN High Commission for Refugees in Greece (UNHCR)[135]. The initiative is supported by non-governmental organisations and bodies, such as Amnesty International, Aitima, "Babel" Day Centre, Doctors of the World, Ecumenical Refugee Programme, Greek Council for Refugees, Greek Forum of Refugees, Greek Helsinki Monitor, Group of Lawyers for the Rights of Refugees and Migrants, Hellenic League for Human Rights, METAdrasi, and PRAKSIS.

Two important findings resulted in the creation of the said network : a) the absence of a formal and effective racist violence incidents' recording system, and b) the need to bring together all entities, which, on their own initiative, recorded racist incidents against individuals that resort to their services. On 1st October 2011 the Network for Recording Incidents of Racist Violence launched a pilot program aimed at systematically recording racially motivated acts of violence. A common *"Racist Incident Record Form"* is used allowing thus to get a clear and complete view on the quantitative and qualitative trends of racist violence in Greece.

The Network has run on a pilot basis until 31 December 2011. It is open to all organisations and bodies, which come into contact with victims of racist violence because of their legal, medical, social or other support services. As announced in public, all organisations willing to participate in the Network are kindly invited to contact either the National Commission for Human Rights or the UN Refugee Agency in Greece.

By article 44 of Law 3943/2011[136] the Greek Federation of Persons with Disabilities became a member of the Economic and Social Council of Greece[137]. From 01.01.2011 the Centre for Disability Certification is established in the Social Insurance Institute (IKA). The Centre comes under the Directorate for Disability and

[135] http://www.nchr.gr/category.php?category_id=374.
[136] Law 3943/2011 (OG A' 66/31.03.2011).
[137] Article 82, paragraph 3 of the Constitution provides that "The law determines the issues related to the formation, operation and competencies of the Economic and Social Council, whose mission is to conduct the social dialogue on the country's general policy and in particular on economic and social policy guidelines, as well as to formulate opinions on government bills or MPs' law proposals referred to it." Law 2232/1994 (OG A 140).

Medicine Labour of the Social Insurance Institute and aims to ensure uniformity in determining the extent of disability for each person [138].

[138] Article 6, par. 1 of Law 3863/2010 (OG A 115/15.07.2010). Par. 7 of article 6 abolishes all Disability Certification Committees of the Prefectures and the Public Sector.

6 REMEDIES AND ENFORCEMENT

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

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.
In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).
Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

a) What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)?

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

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

The principal barrier that the litigants face is the necessity to instruct a lawyer, because the fees are very high for the victim. It is important to note that, although Article 13(3) of Law 3304/2005 provides that:

> legal entities which have a legitimate interest in ensuring that the principle of equal treatment is applied regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation can represent the person wronged before any court and any administrative authority with the written consent of the person wronged,

There are no instances in 2011 or in other previous years of NGOs and trade unions deciding to support victims of discrimination.

People with disabilities are entitled to request information to be supplied and/or trials be held using alternative formats, e.g. sign language, information in Braille. All the courts are physically accessible to people with disabilities (e.g. wheelchair users).

There are no available statistics on the number of cases related to discrimination brought to justice.

According to article 44 of Law 3386/2005 as amended by article 42 of Law 3907/2011 victims of criminal acts provided for by articles 1 and of the basic antiracist Law 927/1979[139] and article 16 of Law 3304/2005[140], in case criminal prosecution has been initiated, may be granted a residence permit for humanitarian grounds until the issue of the judgment. In case the victims are under medical treatment the duration of the permit is extended until the treatment is completed, regardless of its relation to the crime.

b) Are these binding or non-binding?

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

c) What is the time limit within which a procedure must be initiated?

Time limits are very strict (three months), regardless of sector.

d) Can a person bring a case after the employment relationship has ended?

Of course a person can bring a case after the employment relationship has ended, in both the private and public sectors.

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

Please list the ways in which associations may engage in judicial or other procedures

a) What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).

The number of categories of legal entities that are given the possibility to defend the victims of discrimination is very restricted, since it includes only the ones that have as statutory aim the guarantee and protection of the principle of equal treatment (art.13, par.3, Law 3304/2005). There has been no broad interpretation of this article so far in a way that any organisation involved in human rights issues could be legitimised. As for the kind of legal entities, current legislation does not specify, and therefore all forms described in the Civil Code fall, in theory, within the scope of national law (associations, non profit organisations, syndicates and unions of persons).

b) What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of

[139] Law 927/1979 (OG A 139/28.6.1979) titled "Penal sanction of acts aiming at discrimination based on race".
[140] Law 3304/2005 (OG A 16/27.1.2005) titled "Implementation of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation".

standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?

The criteria demanded within the framework of the requirements of Law 3304/2005, in combination with the general requirements laid down by Greek procedural statutes (Article 62 of the Code of Civil Procedure), are:

- that NGOs and /or trade unions have 'a legitimate interest in ensuring the application of the principle of equal treatment'. This means that any intervening organisations should have as their objective the effective implementation of the principles laid down by the law.

- that the victim has given his/her consent to the organisation, stating that he/she wants and agrees to be represented by that organisation. It goes without saying that in conformity with the Greek Code of Civil Procedure, the NGO or trade union will act before the court through an accredited lawyer

c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

The only form of authorization that is allowed is either an official notary document or a private document authorised for the original character of the signature (article 13, par 3 of the Law 3304/2005). There are no special provisions on victim consent in cases, where obtaining formal authorization is problematic.

d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

Action by all associations is discretionary.

e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

Associations may engage in all types of proceedings (civil, administrative, criminal), according to the article 13, par 3 of the Law 3304/2005.

f) What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.

A victim of discrimination in the private sector, including the field of employment, can raise a complaint before the Greek civil courts (Articles 13-14 of the anti-discrimination Law 3304/2005) and penal courts *in the case of refusal of provision of goods and services* (Article 16 of the Law 3304/2005). Administrative sanctions (Article 17 of the Law 3304/2005) are imposed on employers who discriminate on conditions related to occupation (including selection criteria, recruitment conditions and promotion, working life and firement) since they are considered to be a violation of the labour law in the sense of the Article 16 par1A of the Law 2639/1998 (imposition of a fine). A victim in the public sector, including the field of employment, can raise a complaint not only before the Greek civil and penal courts but also before the administrative courts.

g) Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?

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

*h) Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Actio popoularis is not allowed in the Greek legal system.

*i) Does national law allow associations to act in the interest of more than one individual victim (**class action**) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Class actions are not possible in Greece.

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

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

Greek national law permits a shift of the burden of proof from the complainant to the respondent.

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

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

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

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

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

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

Protection against victimisation includes such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the workplace, or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 15 of Law 3304/2005). In cases of adverse treatment or an adverse consequence in reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment in the field of racial or ethnic discrimination, the scope is wider than employment and occupation and covers all persons, as regards both the public and private sectors, in relation to the eight points given in Article 2(2)(a-h) of the Racial Equality Directive 2000/43/EC.

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

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

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

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.

According to Article 16 of Law 3304/2005, the violation of the principle of non-discrimination, no matter on which ground and in which field (inside or outside employment), incurs imprisonment of between 6 months and 3 years and a fine of between EUR 1 000 and EUR 5 000.

In addition, according to Article 17 of Law 3304/2005, violation of the principle of non-discrimination incurs a fine imposed by the Work Inspectorate in accordance with Article 16 of Law 2639/1998. This fine is between EUR 500 and EUR 30 000 (ceiling of the maximum amount).

The victim can lodge an action for compensation before the civil courts for infringement of his/her personality rights in cases of 'unlawful harm' (Article 57 of the Civil Code).

b) Is there any ceiling on the maximum amount of compensation that can be awarded?

The ceiling on the maximum amount of fine imposed on the discriminator in penal cases is EUR 5 000 (fine to be paid to the State). The ceiling on the maximum amount of fine imposed on those responsible for discrimination in administrative cases is EUR 30 000 (fine to be paid to the State).

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

c) Is there any information available concerning:
- *the average amount of compensation available to victims?*
- *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

There is no case-law concerning compensation to victims, therefore there is no information available for the average amount available or the effectiveness of the sanctions.

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

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

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

In 2001, the Greek National Commission for Human Rights (NCHR) also proposed that Greek anti-racism legislation should expressly provide for vicarious liability in civil, administrative and criminal law.[141] Vicarious liability is currently provided for only by Article 922 of the Greek Civil Code, by virtue of which an employer is held liable for any damage incurred by a third party due to action by that employer's staff.

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

[141] NCHR report on modernising Greek anti-racism legislation, NCHR *Report 2001*, p. 211.

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).

Article 18 of Law 3304/2005 entrusts the Economic and Social Committee[142] with tasks such as:

- drafting an annual report on developments with regard to the application of the principle of equal treatment;
- making suggestions to the Government and to Social Partners on promoting equal treatment and non-discrimination;
- encouraging dialogue with NGOs and representative unions which have a legitimate interest in combating discrimination on the grounds of ethnic or racial origin, religion or beliefs, sexual orientation and disability.

The law entrusts three specialised administrative bodies with the promotion of the principle of equal treatment. In February 2010 the National Commission of Human Rights in an analytical report suggested that, based on the experience of previous years, the competences of all existing equality bodies should be merged into one (Ombudsman)[143].

b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.

These bodies are:

A. <u>The Ombudsman</u>

[142] Constitution, Article 82(3): 'Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country and especially for the orientations of the economic and social policy, as well as the formulation of opinions on Bills and law proposals referred to it, shall be specified by law.' The law in force is Law 2232/1994 (it was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognised and upgraded the Committee's competences).

[143] http://www.nchr.gr/category.php?category_id=165.

An independent authority, recognised by the 2001 Constitutional Revision. The annual budget of the Ombudsman was EUR 5.8 million (2004), EUR 5.9 million (2005) and EUR 7.4 million (2006). No information is available for the years 2007, 2008 and 2009.

The Office of the Ombudsman has the following staff: 1 director (the Ombudsman, elected by a special committee of Parliament), 5 paid assistants to the Ombudsman, 72 paid staff members who are lawyers, 70 paid staff members who are other academics and 30 other paid staff members.

Citizens have invoked the Ombudsman in hundreds of cases since 1997, and in many cases, he has made the state agencies respect citizens' rights. It should be noted, however, that most people with disabilities who have lodged complaints with this authority seek to ensure social security or welfare benefits rather than denounce a discriminatory practice against them based on their disability (e.g. dismissal or not employing a person because of his/her disability). However, the Ombudsman has no authority to penalise or to prosecute discriminatory practices, but only to activate governmental bodies to help eliminate the causes and the practice of discrimination. The Ombudsman has recently carried out a study after accusations were made against a well-known Greek airline company for not taking specific and reasonable measures for disabled persons. The Ombudsman addressed the findings to the Minister of Transport, pointing out that this particular case reflects a political position which does not respect the constitutional right of persons with special needs to autonomous and equitable participation in the social and economic life of the country, and more particularly, the right to access to and travel by public transport. The ministry 'accepted the position of the Ombudsman and requested in writing from Olympic Airlines SA and Olympic Airways, that they assure the transport of persons with special needs without demanding from them a medical opinion and escort'.[144]

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

On 15 June 2010, within its mandate, the Ombudsman published the 2009 Special Report for the implementation of equal treatment legislation[145]. The Report pointed out the limited coverage of anti-discrimination law and the general lack of awareness against discrimination within Greek society and public administration. The Ombudsman repeated the necessity to amend the relevant legislation in order to

[144] The Greek Ombudsman, *Annual Report 2004*, p. 19. Available at: http://www.synigoros.gr/foreign/en_2004_Annual_Report_Summary.pdf.
[145] http://www.synigoros.gr/diakriseis/pdfs_01/8654_1_Ekthesi_Diakrisewn_2009_final.pdf.

extend the field of protection of Law 3304/2005 so as to cover all grounds of discrimination.

As it is cited in the Report, within 2009 the Ombudsman examined 54 discrimination complaints; most of them concerned discrimination on the grounds of racial origin (29) in access to goods and services and housing, and discrimination on the grounds of disability (13) and age (7) in the field of employment and occupation. The Report concluded, among others, that the general number of anti-discrimination complaints in 2009 was higher than this of 2008, however it was still low, without this meaning real absence of discrimination in Greece. Also, the complaints of discrimination on the grounds of disability have raised, mainly due to the submission of complaints to the Ombudsman by disability organisations, this showing the important role that civil society can play.

As it is revealed by its latest Report concerning 2010 but published in 2011, the number of complaints submitted to the Greek Ombudsman regarding discrimination on the basis of disability has increased during 2010. This is so because : a) associations representing persons with disabilities convey their complaints to the Ombudsman , b) associations of persons with disabilities instruct their members who have been discriminated against to file a complaint, which reflects a new approach for such associations [146].

In particular, the Ombudsman investigated fifty three (53) cases of alleged discriminatory treatment against persons falling within the scope of the anti-discrimination legislation[147]. Eleven (11) out of them were regarded as inadmissible either due to incompetence or because they were unfounded or their investigation had been suspended by the claimants themselves.

Moreover, the investigation of twenty four (24) cases was completed either with a positive outcome for the claimant (13 cases) or with a refusal on behalf of the administration to adopt to the suggestions of the Ombudsman (6 cases), whereas in five (5) cases it was concluded that the administration had been acted in a lawful way. The rest eighteen (18) cases are still being investigated since the administration has not taken a final position yet. It is noteworthy that thirteen (13) out of the above pending cases concern housing rights of Roma to resettle themselves in other places after previous evictions.

As for figures regarding grounds of discrimination, 36 of the 53 investigated cases concerned racial origin, 2 cases concerned national origin, 14 concerned disability and 1 concerned age. Finally, the Greek Ombudsman found that discrimination took place in 36 cases related with provision of goods and services including housing, in 1

[146] The Greek Ombudsman, *Promoting Equal Treatment: The Greek Ombudsman as national equality body 2010* (Athens, October 2011), p. 2.
[147] http://new.synigoros.gr/resources/docs/eeeequality2010.pdf

case related with education, in 18 cases related with employment and in 1 case related with vocational training. [148]

B. The Committee for Equal Treatment

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

Its competence is to cover any field with the exception of the public sector, but it does not cover employment and occupation regardless of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation. Therefore, it examines complaints on violation of the principle of equal treatment within its field of competence, and will try to conciliate between the conflicting parties. It can also conduct independent surveys concerning discrimination, and publish independent reports and make recommendations concerning discrimination.

The Committee has no authority to impose sanctions of any kind. However, the Committee does have the right to hear witnesses and the right to demand that information be supplied by the accused or by third parties (public authorities or individuals).[149]

There is no estimate for the annual budget of the Committee (it is under the general budget of the Ministry of Justice). The Committee has only one paid staff member, who is a lawyer. There is no information available for the number of complaints received by the Committee in 2010.
The same applies for 2011

C. The Labour Inspectorate

This governmental body is active only in the private sector and in the field of employment and occupation regardless of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation.

The Labour Inspectorate will act as conciliator between employer and employee and can also impose fines (payable to the State and not to the employee), in cases of a finding of violation of the principle of equal treatment.[150]

It can also conduct independent surveys concerning discrimination, and publish independent reports and make recommendations concerning discrimination. The Inspectorate has the right to hear witnesses and the right to demand that information

[148] The Greek Ombudsman, *Promoting Equal Treatment: The Greek Ombudsman as national equality body 2010* (Athens, October 2011), p.6.
[149] Law 3304/2005, Article 22(2).
[150] The fine can then be challenged before an administrative court, but the litigation is not between employer and employee but between employer and the Government.

be supplied by the accused or third parties (public authorities or individuals).[151] There is no estimation for the annual budget of the Inspectorate (it is under the general budget of the Ministry of Labour).

The Labour Inspectorate is a Special Secretariat of the Ministry of Employment and Social Protection and it provides services all over the country. These are 16 directorates of the Social Labour Inspectorate, in which 512 social labour inspectors serve, and there are 7 centres for the prevention of occupational risks, in which 311 technicians and sanitary inspectors serve. Furthermore, the above-mentioned body has 62 members of staff.

The head of the Labour Inspectorate body is the Special Secretary.

Like previous years, there is no information available for the number of complaints received in 2011, because there is no record of the complaints.

c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

COMPETENCES

Regardless of grounds of discrimination

(Law 3304/2005 on the application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age, or sexual orientation)

discrimination by		***discrimination by***
<u>public sector bodies</u>		**<u>non-public sector bodies</u>**
↓		----------
OMBUDSMAN		↓ ↓
[Article 19(1), Law 3304/2005]		**in the field of employment**
what does 'public sector bodies' mean?		↓ **and occupation**
According to Article 3(1) of Law 3094/2003 ('The Ombudsman and other provisions') :		↓ ↓ ***LABOUR INSPECTORATE*** **[Article 19(3), Law 3304/2005]** ↓ **in any field other than employment**

[151] Law 3304/2005, Article 19(3), combined with Article 22(2).

'The Ombudsman has jurisdiction over issues involving services of: a) the public sector, b) local and regional authorities, c) other public bodies, state private law entities, public corporations, local government enterprises and undertakings whose management is directly or indirectly determined by the state by means of an administrative decision or as a shareholder. Banks and the Athens Stock Exchange are exempted' **NATIONAL COMMISSION FOR HUMAN RIGHTS** **[Article 1 , Chapter A (par. 6 i), Law 2667/1998]** According to Law 2667/1998, by which it was established, NCHR, although it does not belong to the three "equality bodies" described in the Law 3304/2005, has the competence to examine the ways in which Greek legislation may be harmonised with the international law standards on human rights protection, and the subsequent submission of relevant non binding opinions to competent State organs		**and occupation** ↓ ***COMMITTEE FOR EQUAL TREATMENT*** **[Article 19(2), Law 3304/2005]**

d) Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?

A. The Ombudsman provides independent legal aid, assistance and general advice to persons who think they have been victims of infringements of the law and discriminatory practices. It can also conduct independent surveys concerning discrimination and publish independent reports and make recommendations concerning discrimination.

B. The Committee for Equal Treatment does not have the competence to provide assistance to victims or to conduct surveys. However, it does have the competence to publish reports and issue recommendations on discrimination issues.

C. The Labour Inspectorate does not provide legal assistance to victims and does not conduct independent surveys because, according to its statute, the Inspectorate is a public, non-independent service and not an independent authority. However, the Inspectorate has the competence to publish reports and issue recommendations on discrimination issues.

e) Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).

A. The work of Ombudsman is undertaken independently. The Ombudsman is elected by a special Committee of the Parliament in accordance with Article 101(3) of the Constitution.

B. There are serious doubts about the independent character of the Committee for Equal Treatment: according to Law 3304/2005, the President of the Committee is the Secretary General of the Ministry of Justice. Unlike the Ombudsman, which is an independent authority according to the Greek Constitution and the Greek legislation, the Committee for Equal Treatment is fully subjected in the structure of a governmental agency such as the Ministry of Justice since its Head is strictly appointed by a Ministerial Decision of the Minister of Justice and functions within the substructure of the relevant Department of Equal Treatment, which is an official branch of the Ministry. This is also the opinion of the Economic and Social Committee of Greece, which is competent to supervise the anti-discrimination legislation and submit an annual report, the Committee for Equal Treatment should become an independent authority with a status similar to the one of Ombudsman[152].

C. There are also serious doubts about the independent character of the Labour Inspectorate because its head is a political person, i.e. the Special Secretary of the Ministry of Social Affairs, who follows the policy of the party in government, and also because it constitutes an organic section of the Ministry where it belongs.

f) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

[152] http://www.oke.gr/oke_treat.html.

A. The Ombudsman may, during the investigation of cases, request the assistance of the Public Administration Investigators-Inspectors Authority or other auditing bodies of the administration. The Ombudsman may request public services to provide him with any information, document or other evidence relating to the case, and may examine individuals, conduct on-site investigations and order expert reports. The Ombudsman cannot intervene in cases pending before the courts. During the examination of documents and other evidence which are at the disposal of public authorities, the fact that they have been classified as secret may not be invoked, unless they concern issues of national defence, state security and the country's international relations.
All public services have an obligation to facilitate the investigation in every possible way.[153]

B. The Committee for Equal Treatment has no legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination.

C. The Labour Inspectorate has legal standing to bring discrimination complaints but has not yet exercised this competence.

g) Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions).

No, these bodies are not quasi-judicial institutions. The findings of the equality bodies are not legally binding, i.e the respondent party is not compelled to comply with their decisions. (See below : h)

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

h) Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.

[153] Law 3094/2003 on the Ombudsman, Article 4(5) (Law Gazette A' 10).

A. In its annual report published on line (March 2008)[154], the Greek Ombudsman (GO) — the equality body dealing with cases involving Roma housing —beared witness to the national dimensions of the Roma issue as well as to the compelling need to immediately implement multiple targeted programmes of rehabilitation and social support at a local and regional level. Such actions will prove successful only as long as they are mutually combined, coordinated and monitored by a national coordination centre. Moreover, in its latest annual report published on line (March 2009)[155], the GO pointed out once again the indifference of the central government to deal seriously with problems of Roma in the fields of education, housing and settlement.

B. Given the shared responsibility of many ministries (primarily the Ministries of Interior, Environment, Health and Social Solidarity) and the practical inertness of the relevant interministerial committee on Roma issues, it seems necessary to institute a special public body (a special secretariat or an independent institution, for instance) to undertake planning implementation at a national level, and above all, the necessary coordination of regional state services and Local Government Organizations within a context of clear and targeted local partnerships indicatively aiming at

1. Creating conditions for permanent accommodation of Roma people in combination with altering the legal status of ownership and promoting the implementation of street plans;
2. Attaining a regulation so that Roma settlements are connected with the water and electricity supply and drainage networks as soon as the framework stipulated in Law3304/2005 on positive action has been precised.
3. Providing infrastructure in settlements for wandering population groups;
4. Securing access for all Roma minors to education;
5. Continuously providing health care services as well as the relevant information on disease prevention and public health dangers;
6. Averting illegal and detrimental income-earning activities by offering alternative ways of securing sustenance,
7. Guaranteeing that before any violent eviction or removal by other means of Roma people from their settlements a specific relocation destination has been suggested with the appropriate infrastructure ensuring a decent living.

The GO shares the aforementioned suggestions with the National Commission for Human Rights within the framework of a special group aiming at the cooperation between public authorities and those agencies that have undertaken the

[154] The Greek Ombudsman (2007) 3*nd Annual Report as National Equality Body*, available at: http://www.synigoros.gr/diakriseis/pdfs/isi-metax-engl-2007-teliko.pdf.
[155] The Greek Ombudsman (2008) 4th *Annual Report as National Equality Body*, available at http://www.synigoros.gr/annual09/dikaiwmata_anthrwpou.pdf.

responsibility for tackling with the problems and protecting the rights of Roma people and the representatives of the Roma organizations.

The GO supervises a constantly open pilot communication network with NGOs and other civil society institutions for the protection of Roma people. One of the main goals was to disseminate and draw information on vital problems faced by these population groups as well as to coordinate the activities undertaken by the participating agencies that are active in the field of protecting the rights and offering social support to Roma living in Greece.

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

B. The Labour Inspectorate has not yet examined any complaints from Roma and Travellers, and in any case it does not treat this group as a priority issue.

8 IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State

a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

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

b) to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and

Article 18 of Law 3304/2005 entrusts the Economic and Social Committee[156] with, *inter alia*, encouraging dialogue with NGOs and representative unions which have a legitimate interest in combating discrimination on the grounds of ethnic or racial origin, religion or beliefs, sexual orientation and disability. Nevertheless, there is no example of any such initiative on the part of the Economic and Social Committee.

On January 2010 the National Commission of Human Rights[157], advisory body of the Greek government, issued a non binding consultative opinion with specific proposals for the improvement of the legal framework concerning discrimination in Greece. The NCHR expressed the opinion that legal amendments in the Law 3304/2005 are necessary. The Commission stressed that its initial comments[158] on the draft law 3304/2005 had not been adopted by Parliament and expanded on these previous comments. In terms of substantive content of the law, the Commission proposed that the prohibition of discrimination on "multiple grounds" as such should be made explicityly unlawful. In addition, the Commission voiced its concerns due to differential treatment based on nationality. Greek legislation frequently allows the different treatment of aliens, with the exception of nationals of EU countries.

[156] Constitution, Article 82(3): 'Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country and especially for the orientations of the economic and social policy, as well as the formulation of opinions on Bills and law proposals referred to it, shall be specified by law.' The law in force is Law 2232/1994. (It was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognised and upgraded the Committee's competences.)

[157] http://www.nchr.gr/media/gnwmateuseis_eeda/diakriseis/n_3304.doc.

[158] http://www.nchr.gr/category.php?category_id=165&page=3.

The Commission considered that such differential treatment, which however may dissimulate one of the prohibited grounds of discrimination should also be made unlawful. In terms of procedure, the Commission stressed that the procedural rules of Directives 2000/78 and 2000/43 regarding the reversal of burden of proof have not been integrated in the Code of Civil Procedure. The national transposition law however explicitly mentions the reversal of the burden of proof and is applicable without a revision of the Code of Civil Procedure.

The Commission also criticised the law for excessively limiting the number of legal entities that may bring a discrimination lawsuit to court. Importantly, the Commission proposed that the Ombudsman should be allowed by Law 3304/2005 to intervene in favour of the plaintiff in cases involving allegations of discrimination, which have been investigated by the Ombudsman and are subsequently heard by the courts. Finally, in terms of monitoring, the Commission proposed that a single equality body should monitor the implementation of Law 3304/2005 with regards to the provisions of Directive 2000/43. This should be the Ombudsman for all cases except discrimination in the provision of goods and services, which should fall under the scope of the Consumer Ombudsman

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Article 18 of Law 3304/2005 entrusts the Economic and Social Committee[159] with, *inter alia*, encouraging dialogue with the social partners, which are also, among others, members of this Committee.

d) to specifically address the situation of Roma and Travellers.

Law 2667/1998 entrusts the National Commission for Human Rights with encouraging dialogue about human rights with NGOs, representatives of government ministries, representative unions and among others, with the Roma community, which also has a seat on the Commission.

Since 2006 the Greek Ombudsman participates in the National Working Group of the Project " For Diversity / against discrimination"[160] , an initiative initiated by the General Directorate of Employment and Equal Opportunities of the European Commission. The project aims at the coordination of actions of national equality bodies and at the encouragement of organisations representing vulnerable groups to

[159] Constitution, Article 82(3): 'Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country and especially for the orientations of the economic and social policy, as well as the formulation of opinions on Bills and law proposals referred to it, shall be specified by law.' The law in force is Law 2232/1994. (It was enacted prior to the 2001 Constitutional Revision, but the new Constitution recognised and upgraded the Committee's competences.)
[160] http://www.synigoros.gr/diakriseis/proothisi_arxis_04.htm.

activate themselves in the field of reception of information concerning legal developments and good practices. It also aims at the sensibilisation of the private and public sector so that stakeholders of civil society could combat more easily all possible phenomena of unequal treatment.

There have been no developments in the field of implementation during 2011.

8.2 8.2Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

According to Article 26 of Law 3304/2005, the anti-discrimination law, the special rules of this law prevail over general or conflicting rules. According to Article 18 of Law 3304/2005 the Economic and Social Committee is entrusted to (a) draft an annual report on the developments with regard to the application of the principle of equal treatment and (b) make suggestions to the Government and to social partners on promoting equal treatment and non-discrimination.

b) Are any laws, regulations or rules that are contrary to the principle of equality still in force?

The Code of Lawyers (Legislative Decree 3026/1954) provides that only Greek nationals can exercise the profession of lawyer (direct discrimination on the basis of nationality). It also provides that only Greek-speaking lawyers up to a maximum of 35 years of age can become members of the Lawyers Associations. The question of whether the above provision is in conformity with anti-discrimination has been raised in the Committee for Equal Treatment but the latter – due to its problematic function - could not provide the answer within the time limit of the current Update.

With the Circular No 15 of the Ministry of National Defense (12 April 2010)[161] the condition of “Greek ethnic origin” has been erased from the qualifications required for the admission of students in Greek military academies[162]. This requirement was never included in a legal provision but it used to be repeated in every annual proclamation that defined the criteria of selection of candidate students.

There have been no developments in the field of compliance during 2011.

[161] Φ337.1/144425.
[162] http://www.geetha.mil.gr/media/anakoinoseis/2010anakoinoseis/15-04orthiepanalipsi_EDYETHA/teliko_EDYEUA_2010.pdf.

9. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

The Greek Ombudsman is competent to conduct research and publicize special reports on the enforcement of the principle of equal treatment on the grounds covered by this report (article 20, par. 3 of the Law 3304/2005), whereas the Economic and Social Committee (OKE), a consultative body aiming to promote social dialogue especially between employers and employees, is competent to conduct social discourse on anti-discrimination issues, encourage contacts with NGOs and civil society in general and write annual reports with proposals for the improvement of the legal framework (article 18 of the Law 3304/2005).

There is no anti –racism or anti-discrimination National Action Plan. However, it is to be noted that the Economic and Social Committee of Greece (OKE), which is an advisory body based on the tripartite organisation model, within the framework of its mandate to conduct social dialogue on social policy issues, draws up an annual report on developments regarding the implementation of Law 3304/2005, with special emphasis to the workplace, submits proposals to the Government and social partners on the promotion of the principle of equal treatment and the adoption of anti-discriminatory measures, encourages dialogue with representative organisations, including relevant NGOs, and aims at raising awareness and disseminating information on the applicable legislation and the measures taken in pursuance thereof.

There have been no developments in the field of coordination during 2011.

ANNEX

1. **Table of key national anti-discrimination legislation**
2. **Table of international instruments**

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Greece Date: 1 January 2012

Title of Legislation (including amending legislation)	Date of adoption:	Date of entry in force from:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
Law 3304 /2005 "On the application of the principle of equal treatment irrespective of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation" (O.J. 16/27.01.2005) http://www.imepo.gr/ClientFiles/documents/217A.pdf (in Greek)	16 January 2005	27 January 2005	Racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation.	Civil, Administrative and Criminal Law	A) Public employment, private employment (as far as discrimination concerns grounds of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation) . B) Access to goods or services (including housing), social protection, social advantages, education (as far	Explicit non-discrimination legislation concerning prohibition of direct and indirect discrimination, harassment, instruction to discriminate and creation of equality bodies for the enforcement of equal treatment.

					as discrimination concerns only grounds of ethnic or racial origin)	
Law 927/1979 on punishing acts or activities aiming at racial discrimination.	25 June 1979	28 June 1979	Race or ethnic origin, religion	Criminal law	General material scope	Within the scope of this law, anyone who publicly, orally or in writing or through pictures or any other means, intentionally incites people to perform acts or carry out activities which may result in discrimination, hatred or violence against other persons or groups of persons on the sole ground of the latter's racial or ethnic origin or religion may be punished.

Law 1414/1984 on the implementation of the principle of sex equality in employment relations and other provisions.	30 Jan 1984	2 Feb. 1984	Sex	Civil law	Private employment	Combating sex discrimination in occupation and employment, vocational training, access to occupation. The scope of this law is restricted only to persons who work in the private sector. As regards family allowance, Art. 4(5) provides that it may be entirely granted to both spouses.

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Greece Date: 1 January 2012

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	19 Sep 1974	20 Sep 1974	No	Yes	Yes
Protocol 12, ECHR	4 Nov 2000	No	No	----	No
Revised European Social Charter	3 May 1996	No	No	Ratified collective complaints protocol? Yes, the Protocol has been ratified.	Yes
International Covenant on Civil and Political Rights	16 Dec 1966	26 Feb 1997	Yes	Yes	Yes
Framework Convention for the Protection of National Minorities	22 Sept 1997	No	No	-----	No

Instrument	Date of signature (if not signed please indicate))	Date of ratification (if not ratified please indicate)	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
International Convention on Economic, Social and Cultural Rights	19 Dec 1966	19 March 1985	No	-----	Yes
Convention on the Elimination of All Forms of Racial Discrimination	7 March 1966	21 March 1970	No	No	Yes
Convention on the Elimination of Discrimination Against Women	2 March 1982	1 April 1983	No	Yes	Yes
ILO Convention No. 111 on Discrimination	25 June 1958	14 March 1984	No	----	Yes
Convention on the Rights of the Child	26 Jan 1990	2 Dec 1992	No	Yes	Yes
Convention on the Rights of Persons with Disabilities	30 March 2007	No	---	---	---