

Executive Summary on race equality directive
State of play in GREECE
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Introduction

The traditional large racial/ethnic minority groups in Greece (total population: 11 million) have been those of Turkish origin, Pomaks and Roma. The Turkish minority has been identified and recognised by the Greek state as the “Muslim minority” of western Thrace (north-eastern Greece), protected by the 1923 Lausanne Peace Treaty. Smaller racial/ethnic groups consist of citizens who identify themselves as “Vlachs”, “Arvanites” (central and northern Greece) and “Slavomacedonians” (north-western Greece). Roma are found in western Thrace but are also scattered all over the country. Official records exist only with regard to the “Muslim minority” which is estimated at 100,000. Unofficial estimates of Roma refer to a number of 250,000. However Greece has become a de facto multiracial society since the late 1980s with the inflow of large numbers of (legal and illegal) alien immigrants particularly from neighbouring Balkan and eastern European countries. Estimates of these immigrants range from 800,000 to 1 million, more than 50% of whom are of Albanian nationality.

In 1998-1999 the complaints submitted by alien immigrants, especially those subject to regularisation or detention, to the Human Rights Department of the Greek Ombudsman constituted 25% of the total number of complaints. In 2000-2002 the proportion exceeded 31%. The European Parliament in its 2000 Report on Human Rights expressed its particular concern at incidents of racist violence directed especially against alien immigrants and Roma in many EU states, including Greece. Similar concern was expressed by the Commissioner for Human Rights of the Council of Europe in his visit report on Greece (June 2002). Recent polls carried out by Greek organisations and by the EU have actually demonstrated a serious trend of xenophobia, a rate of racial discrimination exceeding the EU average, and the existence of strong anti-immigrant sentiments among the Greek population. Roma have always been a marginalised ethnic group in Greece, whose fundamental needs (e.g. education, housing) and interests were not a preoccupation of the State until the late 1990s when the first measures of positive action in favour of Roma were adopted by Greece in the areas of education, employment and housing. Limited positive measures, especially in the areas of education and employment, have also been taken by Greece in favour of the Muslim (Turkish) minority in Thrace and third country immigrants and refugees. Revised article 116 para. 2 of the Greek Constitution (2001) expressly provides for State positive action “for the elimination of inequalities”.

However, throughout the 20th century the existence of racial/ethnic minorities was viewed by the young (1832) Greek State as a taboo subject with “dangerous implications for its ethnic and territorial integrity”. As a consequence, no serious public debate on these matters has ever been initiated by any Greek political party, or any NGO, the former being rather fearful of a strong reaction from Greek politicians and their voters. It is also characteristic that the Greek government has been preparing the transposition of the Race Directive, since the late 2002, without initiating consultations with competent governmental or non-governmental organisations.

1. Main legislation

There is a large number of international human rights treaties by virtue of which the Greek legal order is bound to effectively respect the principle of non-discrimination on, *inter alia*, racial or ethnic grounds. However, only two of these treaties have so far exerted major influence on the application of Greek human rights law: the European Convention on Human Rights and the International Covenant on Civil and Political Rights. But even these international instruments have only recently (1990s) started to be effectively applied by Greek courts. The actual application of most of the human rights treaties may not be regarded as successful. The main reason for this failure is the very limited human rights law education in Greek Law Schools, in the Bars and in the School of Judges, as well as the lack of or insufficient human rights education in Greek schools and in the curricula of training schools for public servants and law enforcement personnel.

Respect and protection of the “value of the human being” is one of the fundamental principles and a “primary obligation” of the Greek State, according to article 2.1 of the Greek Constitution. Accordingly, article 4.1 of the Constitution has laid down all Greek citizens’ “equality before the law”, as a primary constitutional principle.

The Greek Constitution has expressly prohibited racial discrimination through article 5.2.a, which reads as follows: “*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 for by international law*”.

This provision was interpreted in the early 1970s to protect some of the fundamental civil rights of aliens whilst on Greek territory. Race, *inter alia*, has been viewed by Greek law as an arbitrary (unlawful) ground for differentiation. The above-mentioned principle of “equality before the law” acts in a complementary manner with regard to the prohibition of racial discrimination. They are in fact two interrelated and interpenetrating principles of Greek law.

Article 5.2.a of the Constitution has been complemented by article 25.1 of the Constitution (revised in 2001): “*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 private individuals to which they pertain...*”

However, the above significant deontological provisions of the Constitution may not be regarded as able in and of themselves to provide effective protection against racial discrimination. In practice, constitutional provisions alone may not provide protection if they have not been accompanied (given effect) by ordinary (statutory) legislation.

The only anti-racism legislation in force in Greece dates back to 1979. Law 927/1979 (as amended by Law 1419/1984 and Law 2910/2001) is a statute containing four short articles of a purely criminal law character, with the purpose of punishing overtly discriminatory practices on racial, ethnic or religious grounds (incitement of racially/religiously discriminatory activities, expression of racially/religiously offensive ideas, racial/religious discrimination in the provision of services or goods by private persons).

In February 2003 a Bill for the transposition of the Race Directive was prepared. Most of its provisions are an almost verbatim translation of the relevant provisions of the Directive. The Bill does not affect the validity of Law 927/1979, but rather aims to fill the serious lacunae of current Greek anti-discrimination legislation.

2. Main principles and definitions

From the above it may be concluded that the principle of racial equality in Greece has not acquired a fully-fledged legal character either on the constitutional or on the statutory level. In practice, wider protection may be provided by the proper application of international human rights treaties, such as the International Covenant on Civil and Political Rights or the International Convention on the Elimination of All Forms of Racial Discrimination, that, as ratified international treaties, have a supra-statutory value according to article 28 para. 1 of the Constitution.

Law 927/1979, the only specific anti-racism legislation, is not a comprehensive anti-discrimination statute, as it provides only for the criminal punishment of overtly racially/religiously discriminatory behaviour. The acts prohibited by Law 927/1979 may be categorised as direct discrimination (article 2.2.a of the Directive) and harassment in accordance with article 2.3 of the Directive. Law 927/1979 does not expressly cover the act of instruction to discriminate of article 2.4 of the Directive. This may though be covered by, articles 1 and 3 of the above Law, if appropriately interpreted. The Bill of February 2003 aims to fill the above gaps by transferring, almost verbatim, articles 2 (concept of discrimination) and 4 (genuine and determining occupational requirements) of the Directive into its own text.

3. Material scope of current Greek anti-racism law

Current Greek statutory anti-racism legislation does not expressly provide for racial or ethnic equality in the fields enumerated in article 3.1 of the Directive.

However, Greece has ratified, by Law 1424/1984, *ILO Convention no 111* concerning discrimination in respect of employment and occupation. By ratifying this ILO Convention, Greece has undertaken to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation (including vocational training), with a view to eliminating any discrimination in respect thereof. Discrimination grounds proscribed by this Convention are, *inter alia*, race, religion, national extraction or social origin (articles 1-2).

The principle of non-discrimination is also included in “National General Labour Collective Agreements” such as the one for 2000-2001 whose article 20 guarantees equality of treatment in the areas of health and safety at work, “protection from any form of discrimination in employment on grounds of gender, nationality, race or beliefs, minimum employment age, maternity protection, access to training or refresher training, respect for the right to organise and for collective action and facilitation of access to social security and education systems”. Also article 22 of the above Agreement provides that “the contracting parties agree that all efforts should be made to ensure respect for all workers, irrespective of race, nationality, culture or religious beliefs and to facilitate their adjustment to the working environment”.

With regard to healthcare, the Greek Constitution, as amended in April 2001, provides that “everyone” has 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 is “protection provided to persons or groups through programmes of prevention and rehabilitation and aims at creating the conditions for these persons equal participation in the economic and social life and safeguard their decent standard of living”. According to article 1.2 of Law 2646/1998, provision of “social care” is the state’s responsibility and every person legally residing in Greece who is in a state of emergency is entitled to social care by the institutions of the national system according to the above Law. Article 3.3 of the same Law expressly provides that services of social care are provided without any distinction, according to the particular personal, family, economic and social needs of the beneficiaries.

Article 3 of anti-racism Law 927/1979 expressly covers the private sector-related aspects of article 3.1(a) and (h) of the Directive. With regard to services provided by public servants, article 27.3 of Law 2683/1999 (Greek Public Servants’ Code) lays down that public servants, when on duty, “are not allowed to discriminate in favour or against citizens on the ground of the latter’s political, philosophical or religious beliefs”. The term ‘citizens’ in this provision covers every individual on or out of Greek territory dealing with Greek public servants. A violation of article 27.3 has as a consequence the imposition of “disciplinary penalties” on public servants (articles 106 et seq of Law 2683/1999). The above provision is however defective since it does not provide for cases of racial/ethnic discrimination as required by the Directive. A relevant provision is also that of article 7.1 of Law 2690/1999 (Code of Administrative Procedures), a generic provision that enshrines the principle of “impartiality of administrative organs”.

Article 3 of the Bill of February 2003, which aims to transpose the Race Directive, attempts to cover the existing lacunae of current Greek anti-racism legislation, transferring, almost verbatim, article 3 of the Directive into its own text.

4. Equality bodies

Currently the only equality body in Greece is KETHI, a state organisation dealing solely with gender equality. Article 11.1 of the Bill of February 2003 has provided that the Greek Ombudsman, through an amendment of the Law establishing the Greek Ombudsman’s Office, will be tasked with the promotion of the principle of equal treatment without discrimination on the grounds of racial or ethnic origin.

Article 11.2 of the same Bill aims to amend the Law establishing the Greek Ombudsman so that his Office deals with issues arising out of cases involving private and legal persons and violation of the principle of equal treatment. Finally, article 11.3 of the above Bill provides that the Greek Ombudsman will draw up and publish special reports on the application and promotion of equal treatment without discrimination on grounds of racial or ethnic origin. The Bill should also expressly provide for the conducting by the Greek Ombudsman of independent surveys concerning discrimination, as provided for by article 13.2 of the Race Directive. Since 1997 the Greek Ombudsman has been an “Independent Administrative Authority” which has been sufficiently backed by the Greek state and has thus far carried out overall successful work especially in the domain of private complaints regarding Greek

maladministration. If appropriately resourced, the Greek Ombudsman would certainly be in a position to effectively transpose article 13 of the Directive.

However, since May 2003 the above Bill has been stalled following the negative reaction of the Greek Ombudsman to its article 11 by virtue of which the Ombudsman would be the body for the promotion of equal treatment in Greece (article 13 of the Racial Equality Directive). The Ombudsman had not been consulted during the drafting of the Bill. Moreover his office is allegedly not able, at this moment at least, to extend its competence beyond the control of Greek maladministration, which has also been complemented recently by the competence to deal with the protection of the rights of the child in Greece. In early September 2003, a new transposition delay was reported due to the decision of the Greek government to finally transpose the Race and the Framework Directives through a single piece of legislation, which is expected to be published in October 2003.

5. Enforcing the law

In practice victims may lodge complaints of racial discrimination in Greece either with the Greek Ombudsman (currently he deals only with relations between the state and individuals and his opinions are not legally enforceable) or with criminal courts (Law 927/1979). No shift or easing of the burden of proof in these cases is provided for by Greek statutory legislation. Greek courts have never effectively applied anti-racism Law 927/1979. A series of recent criminal proceedings targeting the publication of anti-Semitic, xenophobic/racist texts in the press, brought before Greek criminal courts by an NGO (Greek Helsinki Monitor), have not had any effect, mainly due to misinterpretation by Greek courts of the above statute. In September 2003 the above NGO and the International Federation for Human Rights launched a special report and publicised a letter to the Greek Justice Minister expressing their grave concern at this practice of Greek courts, which has in effect thwarted any attempts to implement the anti-racism legislation by judicial fora. The Bill of February 2003 transposing the Race Directive (expected to be in force by the end of 2003) may reasonably be hoped to alter this situation since it transposes effectively articles 7, 8 and 15 of the above Directive.