

## REPORT ON MEASURES TO COMBAT DISCRIMINATION

**Directives 2000/43/EC and 2000/78/EC**

**COUNTRY REPORT/UPDATE 2005**

**Greece**

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**State of affairs up to 8 January 2007**

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:

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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 between different levels of government.*

#### 0.1.1. Law Making Bodies and Procedure.

Greece is a parliamentary Republic<sup>1</sup>. Popular Sovereignty is the foundation of government, whereas all powers derive from the People and exist for the People and the Nation<sup>2</sup>.

Pursuant to the relevant constitutional provisions,<sup>3</sup> the main Law making Bodies in the Greek Legal Order 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 the so called “Independent Authorities” [Ανεξάρτητες Αρχές] (in specific matters). According to the Constitution, the 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 Government.<sup>4</sup>

The provisions of law emanating from the legislative process exist in the form of hierarchy. The Constitution forms the basis of the legal order and all the secondary legislation must be in compliance with it. The 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 from other authorities as well, especially from the President of the Republic, taking the form of decrees and from cabinet ministers in the form of decisions taken by virtue of authorization by Parliament. 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 (art. 559 of the Code of Civil Procedure).

The Greek Constitution declares in Art. 28 that the “generally accepted” rules of international law as well as international treaties ratified by Greece, by the time they come into force constitute an integral part of Greek law and they prevail over any contrary statutory provisions. However, the rules of international law and international treaties shall be applied to aliens only on the condition of reciprocity. Moreover, as a result of Greek accession to the European Communities, EC law has become part of the legal system. Beside the rules of primary sources of Community

<sup>1</sup> Constitution, Article 1.1. Greece is not a Federal State.

<sup>2</sup> Constitution, Article 1.2, 1.3.

<sup>3</sup> The 1975 Constitution (the first democratic constitution after the fall of the military dictatorship), was revised in 1986 and lately in 2001.

<sup>4</sup> Article 73.1. of the Constitution. Individual Members of the Parliament have the right to introduce a Bill, but this only rarely occurs.

law, which prevail over domestic law, secondary Community legislation, especially regulations, is directly applicable in Greece.

#### **0.1.1.1. The Parliament.**

Every Bill [Νομοσχέδιο], accompanied by an *explanatory report*<sup>5</sup> [εισηγητική έκθεση], is introduced for debate and if accepted (passed), by Parliament, the President of the Republic shall *promulgate* and *publish* it as a statute<sup>6</sup> [Νόμος] (or act of Parliament)

The explanatory reports and the minutes of the Parliamentary debates are quite often referred to as a valuable assistance for the interpretation and application of the law.

In most cases, bills are, prior to their introduction to the Parliament, referred to a *Scientific Research Service to the Parliament* [επιστημονική υπηρεσία της Βουλής], which has been established under the Constitution<sup>7</sup>, to assist Parliament in its legislative work.

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 a non-binding comprehensive opinion on the content of the bill<sup>8</sup>.

#### **0.1.1.2. 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<sup>9</sup>.

If specially delegated by a statute and upon the motion of the competent minister<sup>10</sup>, the President can issue *general regulatory decrees* [κανονιστικά διατάγματα].<sup>11</sup> These decrees (*Presidential Decrees*, as they are termed in practice) have the force of a statute.<sup>12</sup> 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) loi cadre. Delegation is permitted except where the Constitution requires a “formal law”, that is, an act of parliament, instead of a “law”, which may also be any statutory instrument. The President has to sign the Decree, either he agrees or disagrees with it, given the fact 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, involving complex procedures and debates<sup>13</sup>.

<sup>5</sup> Constitution, Article 74

<sup>6</sup> Statutes are then published in the Official Gazette.

<sup>7</sup> Article 65.5.

<sup>8</sup> Article 82.3 of the Constitution: “. 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 recognized and upgraded the Committee's competences).

<sup>9</sup> Constitution, Article 42.

<sup>10</sup> No Act of the President shall be valid nor be executed unless countersigned by the competent Minister (Constitution, Article 35)

<sup>11</sup> Constitution, Article 43.2.

<sup>12</sup> All decrees of a regulatory nature must be, prior to their entry into force, elaborated by the Supreme Administrative Court [Συμβούλιο της Επικρατείας] (Constitution, article 95.1.d).

<sup>13</sup> International Conventions, require ratification by a statutory act of Parliament, as foreseen in Article 28.1 of the Constitution.

### 0.1.1.3. 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 technical and detailed nature<sup>14</sup>.

Ministers (including the Employment and Social Affairs Ministers<sup>15</sup>) are making wide use of this right. These Ministerial Decisions are legally binding.

### 0.1.1.4. The Social partners.

Specific employment and to an extent, social security matters, or general employment standards, are widely regulated autonomously by Collective Labour Agreements, concluded by trade unions and Employers' organizations (or individual big employers).<sup>16</sup> The Social Partners act at National Level (Nationwide CLAs bind all employers and workers, regardless of whether they are unionized or not), at the branch level (e.g. in the Bank Sector), at occupational level (e.g. Accountants) and at the company level.

### 0.1.1.5. 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* [Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα], which is established and operates under the said Law 2472/1997<sup>17</sup>.

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.

### 0.1.2. The Law Enforcement Bodies.

Under the Constitution, the Courts enforce the law<sup>18</sup> and nobody can be deprived of the judge assigned to him by law, unless he has agreed to the opposite<sup>19</sup>. Judicial committees or extraordinary courts, under any name, cannot be constituted. As a matter of principle therefore law enforcement bodies other than Courts may not be established.

In the Greek legal system, the courts are entrusted with constitutional revision in the sense that they are in no case obliged to comply with provisions, whose content – as assessed by the judge - infringes the constitution<sup>20</sup>.

However, in respect of employment issues, three public authorities play a considerable part in the law enforcement environment:<sup>21</sup>

The Labour Inspectorate [Επιθεώρηση Εργασίας] (a central service to the Ministry of Employment and a monitoring body) performs inspection and control at the workplaces to ensure the proper implementation of legislation, with powers to

<sup>14</sup> Constitution article 43.2.

<sup>15</sup> The Labour Department is now (March 2004) called *The Ministry for Employment and Social Solidarity*.

<sup>16</sup> Constitution, article 22.2 and Law 1876/1990 on free *collective negotiations*.

<sup>17</sup> Pursuant to article 101 A of the Constitution, the members of the independent Authorities shall enjoy personal and operational independence.

<sup>18</sup> Article 87.1: "Justice shall be administered by courts composed of regular judges who shall enjoy functional and personal independence"

<sup>19</sup> Constitution, Article 8.1

<sup>20</sup> Article 87.2

<sup>21</sup> 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.

institute criminal proceedings or impose fines against employers in some cases. However, its resources are very limited and its staff is mostly poorly trained and they lack expertise.

Much more effective has proved to be a newly established Service, i.e. the Ombudsman (ο Συνήγορος του Πολίτη), which is an Independent Authority, operating under Article 103 of the Constitution and Law 2477/1997. Citizens in hundreds of cases have invoked the Ombudsman since 1997 (when the law reached the Statute Book) and in many cases, he<sup>22</sup> has made the state agencies respect citizens' rights. It should be noted though, that disabled people who have lodged a complaint with this authority are seeking to ensure social security or welfare benefits, rather than combat discrimination practices affecting them.

Finally, the Independent Authority for the Protection of Personal Data [Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα] has considerable powers regarding revision and implementation of the legal regulations concerning protection of individuals against revealing or illegally processing personal data.<sup>23</sup>

## 0.2 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.*

*Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?*

Regarding the implementation of Directives 2000/78/EC and 2000/43/EC, the Greek Parliament has passed the Anti-discrimination Law 3304/2005 which fully implements the two Directives into Greek Law. This Law fills a conspicuous lacuna in Greek legal system, where there previously was no specific anti-discrimination legislation in force. This new statute “*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 both in public and private sector and covers the fields of access to employment and occupation, vocational training and education, social protection, including social security and healthcare, education, access to goods and services including housing.

Concerning the points where Greek national law is in breach of the Directives, it must be noticed that in its 28<sup>th</sup> Article, the Anti-discrimination Law implementing them specifically reads that “*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*”.

Greece has not taken advantage of the option to defer implementation of Directive 2000/78/EC to 2 December 2006 in relation to age and disability. These grounds have been included in the Anti-discrimination Law implementing both the EC Directives.

In addition, the new non-discrimination Law n. 3304/2005 commences with the “Purpose” of the legislation, which is modelled on Article 1 of the Directive:

*“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*

<sup>22</sup> Currently a man.

<sup>23</sup> Article 19 of Law 2472/1997.

*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 legislator 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.

This Law, also, specifies in Article 9 (2), taking the wording of Article 4(2) of Directive 2000/78, that it does not affect existing provisions or policies related to occupational activities of churches or other organisations or associations the deontology of which is based on religious or other beliefs. (Indeed, it seems that the Greek Government simply copied the Directives without particularising the way they might be best implemented. In this sense, it could be remarked that the Government did not properly incorporate the Directives into the Greek legal system).

### **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:*

- a. Name of the court
- b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
- c. Name of the parties
- d. Brief summary of the key points of law (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 2 Directives, 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)

Up until now there has not been a judicial decision of the Greek courts on the application or interpretation of the Anti-discrimination Law. It is really too soon to talk about any specific attraction of actionable rights derived from the new Greek Anti-discrimination Law. It remains to be seen how the rights protected by the Anti-discrimination Law and their relevant infringements are going to be brought and argued before Greek courts, and also the way the courts will interpret and apply the provisions of the Law. In addition, there have been no cases invoking the vertical direct effect of the Directives' provisions against the State or legal entities of the public sector before transposition into the Greek legal system.

In order to understand the importance and the role of Greek judicial decisions, it should be noted at this point that they are not considered a source of law and the courts are not bound by judicial precedent, unlike the Anglo – American legal systems. However, lower courts, although not technically bound by the decisions of higher courts, usually conform to them. In this respect, the judicial precedents, especially those of the Supreme Court, play an important role and may also create customary law.

The Ombudsman (ο Συνήγορος του Πολίτη), which is an Independent Authority, operating under Article 103 of the Constitution and the pertinent Law 2477/1997 has carried out a lot of research and in concreto investigations as to whether there have been infringements of human rights and especially violations as regards the disability or sex or racial discrimination and also carry out excellent studies which illustrate the extent of general discriminatory practices. The Ombudsman has recently performed a study after accusations against a well-known Greek airline company for not taking specific and reasonable measures for disabled persons'. The Ombudsman addressed the finding 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, to access and travel with 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<sup>24</sup>. Citizens in hundreds of cases have invoked the Ombudsman since 1997 and in many cases, he has made the state agencies respect citizens' rights. It should be noted though, that most disabled people who have lodged a complaint 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 hiring a person because of its disability). However, the Ombudsman has no authority to penalize or to prosecute discriminatory practices, but only to activate the governmental bodies to help eliminate the causes and the practice of discrimination.

As we underline later, Article 25 of the Greek Constitution is very important because it implies that private employers also must respect the constitutional rights of their employees (e.g. the rights of equality and non-discrimination). This article 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. The Court of First Instance of Thessalonica in its Decision n. 5251/2004 declared that Article 25 of the Greek Constitution entitles foreigners to equal treatment, as that right is recognised for nationals in the field of human rights, explaining that the phrase "human rights" includes not only nationals but also foreigners who reside in Greece. These rights include not only the respect of human dignity and the free development of personality, but also the right to work and equal pay, as well as welfare benefits, namely all the rights that the nationals enjoy. The same decision envisaged that reciprocity in matters related to principle of equality and human rights could not be applied.

In the employment field, the Courts have traditionally prohibited any discrimination<sup>25</sup> by employers against employees in general. They have based this prohibition on the Civil Code's open-ended clause of *good faith* and *good usages*.<sup>26</sup> Recently, the Courts also invoked the General Principle of Equality enshrined in Article 4.1. of the Constitution<sup>27</sup>. Therefore, employers are obligated to treat their

<sup>24</sup> The Greek Ombudsman, *2004 Annual Report*, [http://www.synigoros.gr/foreign/en\\_2004\\_Annual\\_Report\\_Summary.pdf](http://www.synigoros.gr/foreign/en_2004_Annual_Report_Summary.pdf), p. 19.

<sup>25</sup> Mostly with regard to remuneration.

<sup>26</sup> See above Article 288 of the Greek Civil Code.

<sup>27</sup> Art. 4 reads: 1. All Greeks are equal before the law. 2. Greek men and women have equal rights and equal obligations. 3. All persons possessing the qualifications for citizenship as specified by law are Greek citizens. Withdrawal of Greek citizenship shall be permitted only in case of voluntary acquisition of another citizenship or of undertaking service contrary to national interests in a foreign country, under the conditions and procedures more

employees equally and avoid any *arbitrary discrimination* (principle of equal treatment).

Although the Principle of Equal Treatment conceptually covers disabled people, no case has been reported, where a disabled person has invoked this principle to claim equal treatment and non-discrimination. Thus, we do not know whether the Courts will uphold indirect anti-discrimination practices from employers against disabled individuals.

In general, the issues which have been brought before Greek courts – but not explicitly on the legal basis of the two Directives – related to sex discrimination<sup>28</sup> and the principle of equal treatment regardless of sex and also (in terms of “harassment” denoted in the new Greek Law n. 3304/2005) sexual harassment in the field of occupation and employment. Greek courts have not dealt with numerous cases of sexual harassment due to reservations and fear of the employees (usually females) to invoke it. The n. 3623/1997 Decision of the First Instance Court of Athens declared the termination of the contract by the employer on the grounds of his sexual (abusive) conduct null and void. The n. 5789/1998 Decision of the Court of Appeal of Athens, followed the same meaning of abuse and declared the dismissal by the employer abusive, whereas the Court of First Instance of Athens (n. 743/1999 Decision) in a case of sexual harassment held that the guilty employer should pay 6.000 Euros for the non-pecuniary (moral) damage of the victim. This happens because the termination (= dismissal) of a contract of an indefinite term (*καταγγελία συμβάσεως αορίστου χρόνου*) is subject to judicial control on the basis of the principle of the abuse of right enshrined in Article 281<sup>29</sup> of the Greek Civil Code (*κατάχρηση δικαιώματος*).<sup>30</sup> The Court in this last case referred to the definition of sexual harassment established in n. 92/131/EEC Recommendation of the European Commission in 1991, underlining that the sexual harassment contravenes the *bonos mores* and the *public order*, because it constitutes an insult to human dignity and especially the honour and freedom of the victim and involves moral or non-pecuniary damage and the relevant entitlement to remedy it. Accordingly, the Supreme Court in its n. 1655/1999 Decision reaffirmed this case law principle concerning dismissal on

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specifically provided by law. 4. Only Greek citizens shall be eligible for public service, except as otherwise provided by special laws. 5. Greek citizens contribute without distinction to public charges in proportion to their means. 6. Every Greek capable of bearing arms is obliged to contribute to the defence of the Fatherland as provided by law. 7. Titles of nobility or distinction are neither conferred upon nor recognized in Greek citizens. \*\* Interpretative clause :The provision of paragraph 6 does not preclude the law to provide mandatory provision of other services, within or outside the armed forces (alternative service), by those having substantiated conscientious objection to performing armed or military duties in general.”

<sup>28</sup> The Supreme Court in its n. 1785/2001 Decision (see also the relevant n. 593/1996 Decision of the Supreme Court) estimated that the provision of Law n. 3198/1955 is contrary to Greek Constitution’s declaration of the principle of equality and the art. 15 of Law n. 1414/1984, because it permits the termination of women’s employment contract and their professional career against their will, based on different terms compared to those which exist for men on the grounds of sex, and especially in a younger retirement age than men.

<sup>29</sup> According to established judicial practice, the scope of article 281 encompasses all private rights, whether they are derived from juridical acts or from rules of public order, and extends into areas outside the civil law. It should be stressed that Article 281 of the Civil Code is itself a rule of public order that cannot be derogated from by contrary agreement. Nevertheless, the abusive exercise of a right is not merely “not sanctioned”, but it is “prohibited”.

<sup>30</sup> The legal framework of the dismissal should be briefly noticed in order to understand the role of the fair use of the right: As for the judicial control of the right to dismiss, two categories of reasons have been accepted as not involving an abuse of right: a. reasons relating to the employee, i.e. inadequacy, breach of his duties and b. reasons referring to the needs and interests of the firm, i.e. economic difficulties, diminishing activity, introduction of new working methods or new technology, changes in organization. A dismissal is valid when the three conditions of written notice, offer of compensation and fair use of the right expressed in Article 281 of the Civil Code, have been met. If a dismissal is rescinded in the courts, the employer is bound to take back and actually employ the dismissed employee.

the ground of abuse of right, even if the employee and the victim of sexual harassment has social and family relationships with the employer. The important thing that all the relevant judicial decisions underline is that sexual harassment constitutes an insult of the personality and dignity of the person subjected to it. Finally, the Court of Appeal of Thessaloniki, in its n. 957/2001 Decision judged that the constant sexual harassment of a female employee by her employer constituted a non-permissive unilateral alteration of the contractually established employment's terms. The recent n. 1962/2003 Decision of the Court of First Instance of Athens recognized the liability of "METRO" enterprise (employer) based on the illegal act (sexual harassment) of one employee whom this enterprise employed.

Greek courts have confronted cases of sex discrimination in occupation and access to occupation and employment and they subsequently recognized the entitlement of both sexes to equal treatment and remuneration. With regard to equality in employment, the Greek Supreme Civil and Criminal Court (Άρειος Πάγος) in its judgment 550/2001 reiterated its jurisprudential thesis according to which, following the wording of Article 22.1.b of the Greek Constitution, "all persons working [in Greece], irrespective of sex *or any other distinction*, are entitled to equal pay for work of equal value that they have provided". The Supreme Court expressly stated, in the same judgment, that payment in these cases includes family benefits such as marriage or children benefits. Some exceptions to the principle of equal treatment concerned the prohibition of females to access to certain professions, which demanded requirements related to biological characteristics of males.

The "religion or other belief ground" has come up in the case of a draft Presidential Decree on teachers who are EU nationals in state primary schools, according to which they would be allowed to work on condition that they are Christian Orthodox. The E' (fifth) Department of the Court Council of the State (Supreme Administrative Court, Συμβούλιο της Επικρατείας composed of 4 members, acting as a preliminary control on the constitutionality of the draft Presidential Decree and exercising its authority of elaborating the regulatory Presidential Decrees according to Article 95.1.d of the Constitution), regarded this draft legislative provision as unconstitutional and not in conformity with Article 13 of the Greek Constitution on freedom of religious conscience, by which, in the Supreme Administrative Court's words, "*the personal innate belief in the divine is protected against any state intervention*", and on religious equality, that is, "*equal treatment, irrespective of religious beliefs, in the enjoyment not only of civil but also of political rights*". The elaboration of Presidential Decrees is the most important of the administrative competences of the Court and is developed in the framework of the substantive administrative law. This function is only consultative and advisory and not binding (and the Court examines the draft decree's legality and drafting accuracy), which means that the Legislative Power is not bound by the negative Opinion of the Court. The President's authority is symbolic only.

The Draft Presidential Decree on teachers who are EU nationals in state primary schools is not an applicable law and it seems the Legislative Power was discouraged to proceed with it, given the Court's Opinion. The Courts in general, supposing that a case concerning the implementation of a decree, where the Supreme Court has expressed its negative Opinion is brought before them, are not bound by the latest negative Opinion. In its Decision n. 2601/1998 (a case of refusal to satisfy the right of a person to be exempted from the obligation of giving a religious oath), the Supreme Court has stressed that "religious conscience", in the context of the Constitution, is

identified with an individual's "principles of the religion in which one believes, in any manner one may interpret them".

Religious conscience, as rightly recognized by the Court, may correspond to atheism or non-belief in any religion. Furthermore, Greek case law and subsequent practice of the Ministry of Education have recognized the right of pupils (normally through their parents) to be excluded from the religious education in Greek state primary and secondary schools, exercising their right to religious freedom enshrined in Article 13 of the Constitution. With regard to Article 4.1 of the Framework Directive, a major issue has been that of the appointment of teachers "of different dogmas or religions" (non-Orthodox) to state kindergartens and primary schools. According to Article 16 of Law 1771/1988 in these cases teachers may be appointed to state kindergartens and primary schools which have more than one teaching post. The subject of religion may be taught by these teachers only to pupils of the same dogma or religion (article 2 of above Law), while the teachers may be appointed to single-post state kindergartens or primary schools only on condition that the pupils in these schools are of the same dogma or religion (article 3 of above Law). The total exclusion by Greek law of non-Orthodox teachers from single-post state schools is in flagrant contradiction of Article 13.1 of the Greek Constitution, a fact that was expressly recognized by Greek jurisprudence as late as 2002, as well as by the letter and spirit of the Framework Directive.<sup>31</sup>

Article 192 of the Penal Code was applied by the Greek Supreme Civil and Criminal Court (Άρειος Πάγος) in its judgment 208/1991<sup>32</sup>. This Article provides for a maximum penalty of two years imprisonment, if a more severe penalty is applicable, of anyone who publicly, no matter how, incites citizens to act violently against one other, or incites them to mutual discord (intolerance) and, as a consequence, (s)he destroys public peace.

In another case, the Court upheld the judgment of the Court of Appeal that found against the appellants, two parliamentary candidates in Thrace, on the ground that during their election campaign they distributed leaflets where the terms "Turks" or "Muslim Turks" were used along with "Muslim Greeks" in Thrace, aiming at the "instillation of hatred towards Greek Christians". The above campaign was actually regarded by the Court as having resulted in violence between Christians and Muslims at Komotini, Thrace, and disruption of the peaceful co-existence of "Christian Greeks" with "Muslim Greeks"<sup>33</sup>. The case was brought before the European Commission of Human Rights, which found that the above Greek case law was against Article 10 of ECHR (right of expression). The Commission did not examine the merits of the case on the ground of non-exhaustion of domestic remedies<sup>34</sup>. This case provides evidence of the dangers inherent in criminal provisions of the kind of Article 192 of the Penal Code. This provision has been rather abused in Greece through prosecutions against ethnic minorities and their organizations<sup>35</sup>.

<sup>31</sup> Nicholas Sitaropoulos, Interim Report, "Transposition of Directive 2000/78/EC, Establishing a general framework for equal treatment in employment and occupation for discrimination based on religion and belief", May 2003, pg. 11.

<sup>32</sup> Reported in *Yperaspisi* (1991), pg. 827 (in Greek).

<sup>33</sup> See relevant note in European Parliament, *Report of the Committee of Inquiry into Racism and Xenophobia* (by Glyn Ford), Luxembourg, EEC, 1991, 59.

<sup>34</sup> Appl no 18877/91, *Ahmed Sadik* case, see Ch Giakoumopoulos, "The minority issue in Greece and ECHR", in K Tsitselikis, D Christopoulos (eds), *The Minority Issue in Greece*, Athens, Kritiki Publishers, 1997, 23 at 53-55 (in Greek).

<sup>35</sup> See the Greek report of October 2002 by Nicholas Sitaropoulos, Greek Helsinki Monitor, Minority Rights Group-Greece (eds), *Greece against its Macedonian Minority - The "Rainbow" Trial*, Athens, Etepe Publishers, 1998 (in Greek and in English) concerning the case of prosecution by the public prosecutor in Florina (N Greece)

As far as sexual orientation is concerned, there has not been any case-law in Greece before the new Anti-discrimination Law.

## 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?

b) Are constitutional anti-discrimination provisions directly applicable?

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

In the Constitutional area, in its first part the Greek Constitution assigns to the State the primary obligation to respect and protect the value of the human being. We could mention the principles of human dignity<sup>36</sup> and free development of personality<sup>37</sup>, the principle of general equality<sup>38</sup>, the right to protection of health<sup>39</sup>, 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<sup>40</sup>, the right to receive free education on all levels at State educational institutions,<sup>41</sup> the right to a family,<sup>42</sup> the protection of marriage, motherhood, childhood, families with many children<sup>43</sup> [Art. 21 of the Constitution], the right to work and to receive equal pay for work of equal value,<sup>44</sup> the right for respect of human and social rights,<sup>45</sup> the right to enjoy affirmative measures to counterbalance real inequality<sup>46</sup>.

All these rights and principles conceptually cover all anti-discrimination grounds mentioned in Directives 2000/43 and 2000/78 and therefore, theoretically, 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 start up a discussion towards promoting social integration and inclusion and combating discrimination<sup>47</sup>. It is obvious that such constitutional provisions as general principles cover every aspect of human life and

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of the “Rainbow” minority party, using article 192 of the Penal Code, on the ground of inciting “disharmony among citizens...with the argument...that...the use of the [Macedonian] language causes disharmony”, *ibid* at 14; see also Y Kourtovik, “Justice and Minorities” in K Tsitselikis, D Christopoulos (eds), *op cit*, 245, 249 ff (in Greek). The issue of self-description, or “self-determination”, of the “Muslim” minority in Thrace as Turkish continues to produce serious friction and litigation in Greece and to lead to Greek court judgments that result in dissolution of Muslim/Turkish associations: see Three-Member Court of Appeal of Thrace, judgment 31/2002, 25.01.2002 (the Greek text of the judgment is accessible through the Greek version of [www.greekhelsinki.gr](http://www.greekhelsinki.gr)) and K Ch Chrisogonos, *The Incorporation of ECHR in the National Legal Order*, Athens, Ant N Sakkoulas Publishers, 2001 (in Greek), 311-312.

<sup>36</sup> Article 2.1.

<sup>37</sup> Article 5.1.

<sup>38</sup> Article 4.1.

<sup>39</sup> Article 5.5.

<sup>40</sup> Article 9A.

<sup>41</sup> Article 16.4.

<sup>42</sup> Article 21.1.

<sup>43</sup> Article 21.1,2.

<sup>44</sup> Article 22.1.b

<sup>45</sup> Article 25.1.

<sup>46</sup> Article 116.2.

<sup>47</sup> 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.

personal development, and as such they offer a resource for people who are not protected under other provisions of national law. It would however be extremely difficult to derive specific enforceable rights out of 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.

There are also specific constitutional provisions directly addressing disabled persons: above all, the significant new (2001 Revision) stipulation of Article 21.6 reads: *“People with disabilities are entitled to benefit from measures ensuring their self-sufficiency, professional integration and participation in the social, economic and political life of the Country”*. It remains to be seen whether this extremely important and social rights oriented clause (however still a general clause), will ever become a key reference point for combating discrimination against disabled people and for raising their awareness towards claiming real equality, non-discrimination and social fairness and inclusion.

Article 21(2) and (3) specify that “families with many children, disabled war and peace-time veterans, war victims, widows and orphans, as well as persons suffering from incurable bodily or mental ailments are entitled to the special care of the State” and that “The State shall care for the health of citizens and shall adopt special measures for the protection of youth, old age, disability and for the relief of the needy”. These paragraphs constitute – according to case law – the cornerstone of legislation, advancing affirmative action for the benefit of disabled persons, i.e. special welfare and social security benefits, price reductions, wage subsidies, compulsory placement and employment quotas.

As regards the “religion or other belief” ground, according to Article 13(1), *“Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs”*. It should be noticed that the Article 13 II 3 of Greek Constitution prohibits Proselytism in general. At the same time the wording of Art. 3 I of the Constitution that “the prevailing religion in Greece is that of the Eastern Orthodox Church of Christ” is understood not to imply predominance over other religions or churches. In this sense no high public official need to be a member of the Orthodox Church. Aside from stating that nearly all Greeks belong to the Orthodox Church (95%), the term “prevailing religion in Greece” reflects the tradition under which the Constitution guarantees the dogmatic unity of the Greek Orthodox Church with the Oecumenical Patriarchate in Constantinople and its autocephalous character. Professor Manesis has put forward a definition of “religious conscience”. According to him, “religious conscience” means the “man’s innate belief pertaining to the physical or metaphysical viewing of cosmos, especially with reference to the “divine”. The content of the so-called religious conscience in general may be, in regard to the ‘divine’, either positive (affirmative) – entrenched or not in a specific religion- or negative”<sup>48</sup>.

Although the Greek Constitution places the human being in the centre, it rejects any individualistic orientation. Article 25(1) and (2) speak of the “rights of man as an individual and as a member of society” Article 106 reflects the same rejection of individualism. Under this provision, “private economic initiative shall not be permitted to develop at the expense of freedom and human dignity or to the detriment of the national economy”.

Article 5 of the Constitution is considered as the constitutional basis of all Greek non-discrimination law. Unfortunately and despite the efforts of gay activists, “sexual

<sup>48</sup> A Manesis, *Constitutional Rights – A – Civil Liberties*, Thessaloniki, Sakkoulas Publishers, 1982, 250-251 (in Greek). See also “Religion report of May 2003” by Nicholas Sitaropoulos.

orientation” was not included in Article 5(2), during the constitutional amendment of 2001, when Article 5(2) remained unchanged<sup>49</sup>. 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. However, the latter form of discrimination would have been unlawful even before the Directive 2000/78 and its transposition into the Greek legal environment as such personal information is considered as “sensitive personal data” under Article 2(b) of the Data Protection law<sup>50</sup>. The practical meaning of this rests on the fact that it is unlawful to ask such a question, so a refusal to answer or an inaccurate answer should have no consequences.

Greek courts have the power to review the constitutionality of laws, as well as the constitutionality and legality of secondary legislation and statutory instruments. The administrative courts may annul and declare void individual administrative acts issued by administrative authorities on the ground of “violation of law”. The latter includes also the infringement of the Constitution. Acts of parliament may not be challenged directly, but their unconstitutionality may be asserted before the courts and may lead to their non-application. This emanates from the set out in Article 93 of the Constitution stipulates that “the courts are obligated not to apply a law the contents of which are contrary to the Constitution”. However, the courts may not annul such law, but they are obliged to refrain from its application. Only the Supreme Special Court can annul an act of parliament on the ground of unconstitutionality. A statutory provision declared to be unconstitutional by this court is null and void from the point of pronouncement of the judgment from the time stated in the judgment. This judgment is binding erga omnes.

Of great importance is Article 25:

*“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 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 all citizens fulfil the duty of social and national solidarity.”*

Article 25 of Greek Constitution is immensely important, because it clearly states that private employers also must respect the constitutional rights of their employees (e.g. the rights of equality and non-discrimination). 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 of the private sector.

<sup>49</sup> Constitutional amendments require a space of at least ten years between each other and a strong majority in the Parliament. See also “Sexual orientation report of July 2004” by Matthaïos A. Peponas.

<sup>50</sup> Law n. 2472/1997.

Current Greek statutory (criminal) legislation expressly combating racism may be regarded as covering solely direct discrimination, harassment and (indirectly) instruction to discriminate. The sole expressly anti-racism statute in Greece remains that of Law n. 927/1979, as amended by Law n. 1419/1984<sup>51</sup> and Aliens Law n. 2910/2001<sup>52</sup>. Law 927/1979 is a criminal law statute entitled “on punishment of acts or activities aiming at racial discrimination”. The substantive provisions of this Law consist of three articles, which refer to different but interrelated subject-matters: Article 1 of Law n. 927/1979 provides for the penalty of imprisonment for a maximum of two years and/or pecuniary penalty of anyone who publicly, orally, 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. The penalties are the same in cases where someone establishes or participates in organizations that aim at organizing propaganda or activities of any form whatsoever, leading to racial discrimination. The term discrimination included in this provision may be interpreted to include a wide range of acts or activities, as the legislator has not defined them. According to some Greek doctrine discrimination of Article 1 of Law n. 927/1979 is limited to the acts proscribed by its Article 3<sup>53</sup>. However, the letter and spirit of Article 1 of Law 927/1979 has a catch-all character and should be interpreted in a wide, teleological manner, as it is in effect a human rights provision that should provide effective protection. At the same time, however, Article 1 of the Law is restrictive, in the sense that it intends to punish racial discrimination if that is the sole ground for the relevant action or activity. The Law nonetheless would be more effective in practice if it provided for the punishment of racist acts or activities whose ground (sole *or in conjunction with other grounds*) is racial discrimination.

The purpose of the above provision is to safeguard “public order”. It is directly related to general criminal provision, Article 192 of the Greek Penal Code. Article 192 provides for the maximum penalty of two years imprisonment, if any other more severe penalty is not provided for by another provision, of anyone who publicly provokes or incites, in any manner whatsoever, citizens to act violently against each other, or mutual discord (intolerance) and, as a consequence, (s)he disturbs public peace. The aim of this generic criminal provision is to prevent the creation of a climate of intolerance that would break the fabric of domestic society. Greek legal doctrine has clarified that “citizens” means “groups of citizens whose bond is either a religious or political conviction or professional occupation or common interests or...even race or some conviction or conception other than religion or political ideology”<sup>54</sup>. The term citizen is not restricted in this case to Greek nationals, but relates to an “indefinite number of persons who live peacefully in a certain social space”<sup>55</sup>.

<sup>51</sup> Law 1419/1984 added religion to the grounds of racist activity.

<sup>52</sup> According to article 39.4 of Law 2910/2001 prosecution of any of the proscribed acts or activities of Law 927/1979 may now be initiated ex officio. Until 2001 prosecution could be initiated only upon lodging of a relevant complaint. See also Race report of October 2002 by Nicholas Sitaropoulos.

<sup>53</sup> Ch. Th. Anthopoulos, *Protection against Racism and Freedom of Information*, Athens, Papazisis Publishers, 2000, 130-131 (in Greek).

<sup>54</sup> AG Mangakis, “The crime to incitement of citizens to intolerance under article 192 PC”, *Pinika Chronika* (1963), 385 at 389 (in Greek).

<sup>55</sup> I Manoledakis, *Endangerment of Public Order*, Thessaloniki, Sakkoulas Publishers, 1994 (2<sup>nd</sup> ed), 186-187 (in Greek).

## 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 Law n. 3304/2005 are nationality, 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 on 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"?*

*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')?*

*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)?*

*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.*

The national law on anti-discrimination (Law n. 3304/2005) lacks any specific definition of the anti-discrimination grounds such as racial or ethnic origin, religion or belief, age, sexual orientation.

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

The only definitions for the term of disability are provided for by Quota Law n. 2643/1998, the Law n. 1556/1985 for the ratification of n. 159/1983 International Labour Convention on the professional re-adjustment and occupation of disabled and impaired persons and the Law n. 1136/1981 for the ratification of the European Code of Social Security.

More specifically, Quota Law n. 2643/1998 provides a very restrictive definition of disability, mainly based on the medical test. This Law is the main legislation on the employment of disabled persons, despite not being an anti-discrimination Law. A disabled person is: *"A person with limited possibilities to find 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 Organization (OAED) in a special register for unemployed disabled people.”<sup>56</sup>*

In view of the above definition:

- 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<sup>57</sup>.
- 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.
- Under social security, the definition of disability differs in the sense, that the focus is placed mainly on the inability of the person to follow his or her normal range of life.
- Persons with disabilities, who receive social security benefits that reach a certain threshold, are not entitled to the protection of Law n. 2643/1998.

The new Law n. 3304/2005 on the application of the principle of equal treatment regardless of the stated grounds in the Framework Directive is silent as to a definition of Disability.

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

Persons associated with persons with disabilities are not covered.

In comparison with the concept adopted by the European Court of Justice 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 an important difference: The definition of the Greek law 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 ECJ. 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 ECJ serves the principle of the non-discrimination but the definition of Greek law serves the quota policy.

Law no. 1556/1985 for the ratification of n. 159/1983 International Labour Convention on the professional re-adjustment and occupation of disabled and impaired persons, gives a definition of the impaired person based on the medical model.

Law no. 3251/1955 for the ratification of n. 102 International Convention concerning the minimum limits of social security denotes that the State is obliged to supply benefits of health care in case of labour accident and professional disorders 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, to define the notion of a disabled person.

Law no. 1136/1981 for the ratification of the European Code of Social Security declares that the State is obliged to supply benefits of health care in case of labour

<sup>56</sup> In the eighties, 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). The registration with the Manpower Organization in a special register does not constitute a prerequisite within the scope of the art. 8 of the Law n. 3174/2003, where contracts of definite duration and part time work are regulated in the public sector or public entities.

<sup>57</sup> Although the latter is understood in the sense that a disabled person at a 50% severity level suffers limitations in the free labour market.

accident and *professional disorders 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*, defining in this way the notion of disability in close relation to the occupation and employment.

Definitions of racial or ethnic origin, religion or belief, age or sexual orientation is lacking in Greek legislation. However, these terms have been quasi-defined in some cases, as for example in Article 13 of the Greek Constitution, which reads, "Every *known* religion is free". Greek legal scholars argue that the Greek Constitution only protects publicly known religions but not mystical and secret practices or dogmas.

Concerning the national origin term, Article 4 of the Greek Constitution, reads: "*All persons possessing the qualifications for citizenship as specified by law are Greek citizens*".<sup>58</sup> There has not been any case law giving a definition of the racial or ethnic origin. However, according to decisions of the Supreme Administrative Court, namely n. 957/2003, 3057/1999, 3832/1992, 3603/1991, the "racial or ethnic origin" term could be considered as being interpreted, as the Court made reference to the relevant applicable law, e.g. the Civil Law TA/1856 or Law n. 4310/1929 and especially the Law n. 2910/2001 for the entrance and residence of foreigners in Greece. It seems that the Court interpreted the term "racial or ethnic origin" on the basis of the nationality and citizenship, without clarifying the definition of them.

As regards the status of aliens<sup>59</sup>, 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 of Greece also call for national or most favoured nation treatment of aliens. The sole expressly anti-racism statute in Greece remains that of Law n. 927/1979, as amended by Law n. 1419/1984 and Aliens Law n. 2910/2001. Law n. 927/1979 is a criminal law statute entitled "*on punishment of acts or activities aiming at racial discrimination*". As we have already remarked, the substantive provisions of this Law consist of three articles, which refer to different but interrelated subject-matters. The aforementioned anti-racism Law has been a statute containing four short articles of a purely criminal law character, aiming at the punishment of 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, establishment or participation in organizations that aim at organizing propaganda or activities of any form whatsoever, leading to racial discrimination). Article 1<sup>60</sup> provides for the maximum penalty of two years imprisonment and/or pecuniary penalty. As regards the recognition of equal rights, according to Presidential Decree n. 359/1997 "Granting the card of residence of a limited period to foreigners", the foreign employee who has a card of temporary license has all the occupational rights and obligations a Greek employee has as regards pay, the working terms and conditions and also the insurance rights and contributions of the employer.

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

<sup>58</sup> There are at least 6 methods of acquisition of 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 naturalization which demands among other prerequisites, a declaration before the municipal authorities and an application to the Ministry of Interior, 5. By joining the Greek Army for ethnic Greeks, 6. Through special Laws.

<sup>59</sup> 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 border regions broadly defined, which cannot be avoided by forming a Greek corporation if the controlling interests are in foreign hands.

<sup>60</sup> Race Report of October 2002 by Nicholas Sitaropoulos.

occupation. Specifically in the new anti-discrimination Law n. 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 after a maximum age (also not defined) concerning access to employment and occupation, vocational training and education. Presidential Decree n. 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<sup>61</sup>.

The Greek Constitution is actually under amendment. The socialist party (parliamentary opposition) proposes to revise the article 5(2) of the Constitution in a way to prohibit any discrimination against not only the Greeks citizens but against any individual under the Greek jurisdiction.

There are no legal rules (or case-law) in the field of anti-discrimination which deal with situations of multiple discrimination.

### 2.1.2 Assumed and associated discrimination

a) *Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.*

b) *Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?*

There are no relevant provisions or concepts of assumed and associated discrimination in Greek Law. In addition, given the definitions of direct discrimination in Greek law, there is no room for incorporating discrimination by association.

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

a) *How is direct discrimination defined in national law?*

b) *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).*

c) *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 new non-discrimination Law n. 3304/2005 commences with the “Purpose” of the legislation, which is modelled on Article 1 of the Directive:

*“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 legislator 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

<sup>61</sup> See also the Table of the Greek Legislation at the end of the Greek Template, which refers to explicit or implicit discriminatory grounds related to the two Directives 2000/43 and 2000/78.

framework for the member states to make specific regulations and take concrete implementation measures.

The Law defines the concept of *equal treatment* and *discrimination*, in Articles 2 and 7, more or less in the same terms as the Directive: *For the purposes of this Law, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1*".

Law n. 3304/2005 on anti-discrimination provides a specific definition of direct discrimination in Articles 3 and 7. The definition is the same for all the grounds mentioned in the Directives

Article 3 (1) (a) reads: "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 7 (1) (a) reads: "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*". The Bill included in the definition of the direct discrimination the phrase "in an unjustified manner". This was deleted in the final text of the Law, on the ground that a discriminatory practice is always unjustified.

Law n. 3304/2005 permits justification of direct discrimination in relation to all grounds. More specifically, the Law transposing the Directives stipulates that *a difference of treatment which is based on a characteristic related to racial or ethnic origin, 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*"(Articles 5 and 9 (1)). Specifically on religious or other beliefs Article 9 (2) stipulates that these beliefs should also be *a genuine, legitimate and justified occupational requirement*.

This Law also specifies in Article 9 (2), taking the wording of Article 4(2) of Directive 2000/78, that it does not affect existing provisions or policies related to occupational activities of churches or other organisations or associations the deontology of which is based on religious or other beliefs. (Indeed, it seems that the Greek Government simply copied the Directives without particularising the way they might be best implemented. In this sense, it could be remarked that the Government did not properly incorporate the Directives into the Greek legal system).

This difference of treatment is based on general principles of EC Law and cannot justify a discrimination based on other reasons. The right of churches or other public or private organisations, the deontology of which is based on religious or other beliefs to demand that the persons working for them behave with good faith and according to their deontology is also not affected. The provision of Article 9 (2) is almost only copying and pasting the Directive's corresponding provision. What it really means in the Greek legal context, is either of very small practical importance, if at any, or the Greek legislator was not conscious of the meaning he wanted to attribute. Anyway, the scope of the exception cannot be broader than Directives.

The definition of direct discrimination on the ground of age is not differentiated in Greek Law. Direct discrimination on the ground of age "*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*". However, Article 11 of the Law specifies 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.

Article 1 of Law n. 927/1979 provides for the maximum penalty of two years imprisonment and/or pecuniary penalty for *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.*

Finally, Article 3 of Law n. 927/1979 proscribes the refusal by (private) professionals to provide their services or goods to persons, or relating the supply conditions to grounds of racial or ethnic origin or religion. The penalty provided for in these cases is a maximum of one year imprisonment and/or pecuniary penalty. This provision is actually a specific, limited type of direct discrimination to that provided for by Article 2.2(a) in conjunction with Article 3.1(h) of the Directive.

### 2.2.1 Situation Testing

- a) *Does national law permit the use of 'situational testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.*
- b) *Is there any reluctance to use situational 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)?*
- c) *Outline important case-law within the national legal system on this issue.*
- d) *Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

The national law does not explicitly disallow the use of “situational testing” but, in the same time, it does not provide it.

No relevant jurisprudence exists, because the “situational testing” is not, until now, used in practice by the NGOs in any case (not only in discrimination's cases). In any case, the Constitution prohibited the use of evidence which was adopted in violation of the rights to correspondence (art. 19), to domicile (art. 9) and of the protection of personal data (art. 9A).

The evolution in other European countries hasn't influence the greek legislator or judge.

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

- a) *How is indirect discrimination defined in national law?*
- b) *What test must be satisfied to justify indirect discrimination?*
- c) *Is this compatible with the Directives?*
- d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

Law n. 3304/2005 defines indirect discrimination on the grounds of the Directives in Articles 3 (b) and 7 (1) (b): *“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 or persons having a particular religion or belief,*

*a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons”.*

However, indirect discrimination is justified if *“that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary or as regards persons with a particular disability and appropriate measures concerning them according Article 10 of the Law and Article 21 par. 6 of the Greek Constitution.”* (Articles 3 b and 7 b of the Greek Law providing the defences allowed). It is obvious that the aforementioned Greek Law has copied the Directives without ensuring their application in a more concrete and effective way.

A more specific provision for indirect discrimination on the ground of age is the same as the provision for direct discrimination provided by the Greek Law in Article 11. So, *“differences of treatment on grounds of age shall not constitute discrimination if within the context of national law they are justified by employment policy, labour market and vocational training objectives and the means of achieving that aim are appropriate and necessary.”*

### **2.3.1 Statistical Evidence**

- a) *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.*
- b) *Is the use of such evidence commonly used? 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?*
- c) *Please illustrate the most important case law in this area.*
- d) *Are there national rules which permit data collection? Please answer in respect of all 5 grounds.*

- a) No, the national law does not explicitly disallow the use of “statistical data” but, in the same time, it does not provide it. No relevant jurisprudence exists.
- b) The evolution in other European countries hasn’t influence the Greek legislator or judge. There is no reluctance to use statistical data as evidence.
- d) The Law regulating the data collections is the 2472/1997 as amended. The Law transposes the Directive 95/46/EC.

According to article 7 of the Law 2472/1997:

“(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 the Law 24/72/1997 *““Sensitive data” shall mean the data referring to racial or ethnic origin, political opinions, religious or philosophical beliefs, membership to a society, association or trade-union, health, social welfare and sexual life as well as criminal charges or convictions”.*

According to article 5 of the Law 2472/1997 “1. 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.*
- b) *Is harassment prohibited as a form of discrimination?*
- c) *Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

Law n. 3304/2005 is the first statute in the Greek Legal Order to provide a definition of harassment. It follows the one in these Directives. Thus, according to Article 2 of this Law, 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.*” The Greek Law adds to the definition of harassment that “*the concept of harassment shall be defined in accordance with the good and trade usages.*” This is a general (open-ended) clause, which means that the interpretation will have to consider the socially acceptable standards and criteria. This kind of conduct is concretely defined as a form of discrimination under this new Law.

In Criminal Law there is no specific offence related to harassment. However, it could be argued that some aspects of sexual harassment may come under the scope of certain provisions of the penal code, such as that in Article 337 (insult of 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 of 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 into the scope of Article 385 of the Penal Code (the crime of extortion or blackmailing) depending each time 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.

We have to emphasise that the legally protected interest in cases of sexual harassment in employment is the dignity of one person and the natural feelings of shame or dishonour. As the conduct of harassment must be personal, an offence cannot be committed by or attributed to a legal entity such as a corporation. In this sense, in Greek criminal law, the “principle of imputability” or “principle of guilt” is of great importance. It is based on Article 2 I of the Constitution, which obligates 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, Greek criminal law does not recognise any cases of strict or absolute criminal liability.

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

*Does national law prohibit instructions to discriminate?*

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

There is no relevant jurisprudence until now.

## 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 disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. → 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?*

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

*c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?*

*d) Does national law require 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?*

a) Even before the new Law transposing the Directives, Greek Employers, had a limited legal obligation to provide reasonable accommodation for disabled people. This duty derives from the general (open-ended) clause of Article 662 of the Civil Code (so-called duty to care<sup>62</sup>).

Many provisions of Law n. 1568/1985 on Health and Safety at Work could also support it<sup>63</sup>. However, this law has not been activated as yet in its relevant provisions, mainly due to failure of the enterprises to hire work doctors and safety technicians.

In practice, much importance is attached to Article 8.2 of Law n. 2643/1998, which subsidises employers to help them accommodate compulsorily placed disabled workers. The compulsory placement is based on the social model, is made by the State and by the time of the competent Health Committee’s Decision is obligatory for the employer. The compulsory placement creates the work relationship between the employer and employee and the compulsorily placed employee is entitled to all the rights (e.g. right to pay, leave etc.), which all employees enjoy. This category of employees enjoy preferential and privileged treatment compared to other employees who are not compulsorily placed especially as regards the termination of the contract of employment; employers cannot object to placement (they have to accept the employee even if they do not know what to do with him/her). It should be emphasised though, that this provision can not be invoked by the disabled themselves and also

<sup>62</sup> The *duty to care* is not disability specific. It covers all employees employed by the same employer but not the job applicants.

<sup>63</sup> Mainly articles 9e, 10b, 17, 18, 19, 20 and 21.

that it covers a very small section of disabled workers, as it applies only to those compulsorily placed<sup>64</sup> not to those recruited freely in the labour market. Moreover, accommodation in the above context means no more than ergonomic adjustments in the workplace. No legal provision defines the concept of “accommodation”.

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 to 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.

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

b) There is no indication until now that the failure to meet the duty to provide reasonable accommodation counts as discrimination.

c) The national law has not implemented the duty to provide reasonable accommodation in respect to any other ground than disability.

d) The national law (Law 2831/2000, article 28) requires buildings and infrastructure to be designed in a disability-accessible way.

## **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 disabled workers?*

b) *Would such activities be considered to constitute employment under national law?*

a) According to Art. 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) This form of employment (sheltered or semi-sheltered) doesn't exist in Greece.

## **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?*

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<sup>64</sup> It is estimated, (accurate statistical data fail), that the compulsorily placed do not exceed 1% of all disabled workers.

There is only one uniform Law transposing the Directives and its provisions apply to every person in both the public and private sectors. This Law doesn't provide any restriction related to residence. In contrary, it provides a restriction related to the citizenship/nationality requirements in Articles 4 (2) and 8 (2), since it stipulates that it does not cover differences of treatment based on nationality, for example the exercise of public authorities' or the exercise of the State's general interest (Law n. 2431/1996 on Appointment or Employment of EU nationals to Public Administration) and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals or stateless persons in Greek territory and to any treatment which arises from the legal status of third country nationals and stateless persons. Furthermore, Law n. 2431/1996 provides that the precondition of Greek nationality is not included within the other prerequisites for the employment of EC nationals. The only exemption allowed according to Article 1, demands that nationals of other member states are employed to positions whose duties and competences do not result in direct or indirect participation in the exercise of the public authorities' and the exercise of the state's general interest or other public sector interests.

It has already been noticed that as regards the status of aliens, 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 signed by the Greek State, also call for national or most favoured nation treatment of aliens. According to Law n. 1975/1991 "Entry, Departure, stay, employment and deportation of aliens" a "*foreigner is every person who does not have Greek nationality or a person who is not indigenous*".<sup>65</sup>

Presidential Decrees n. 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 n. 2623/1998.

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 on the same conditions as Greek nationals (Article 3.1.a and c of the Directive). Law 1876/1990 on free group labour negotiations covers every person employed in private sector<sup>66</sup>. However, Greek labour law contains provisions discriminatory for alien immigrant workers such as those regarding compensation in case of a work accident. According to (amended) Decree of 24 July/25 August 1920 compensation owed to alien workers is dependant on various conditions such as their residence in Greece<sup>67</sup>. According to the same Law, alien workers are entitled to national treatment on condition that there is reciprocity between Greece and the aliens' country of origin by virtue of a relevant inter-state agreement. These provisions raise serious questions of compatibility between the above Greek

<sup>65</sup> However, the Greek Labour Force Employment Organisation (OAED) has put into effect, since 1997, 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 ones, Pomaks and Roma's". Beneficiaries of this project are to be "unemployed persons or persons with no steady employment". The above project aims at providing vocational training and facilitating the above groups' access to labour market.

<sup>66</sup> I D Lixouriotis, *The Legal Status of Immigrant Employees in Greece*, Athens, Ant N Sakkoulas Publishers, 1998 (in Greek), 425-426.

<sup>67</sup> I D Lixouriotis, *ibid*, 435-437. See also Council of State judgments 2599/1982, 2637/1982, 1318/1990, affirming the above, reported in *Greek Yearbook of Refugee and Aliens Law 1999 (GYRAL)*, 160-166 (in Greek). See also Auditors' Court judgment 1617/1998 affirming the right of an alien widow of a Greek citizen, former public servant, to receive the pension of her deceased husband, *GYRAL*, 182.

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 n. 3304/2005 does not distinguish between natural and legal persons as far as the protection provided is concerned. However, it is logical that grounds of the anti-discrimination provisions like racial 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 it is explicitly provided in Article 9 (2) of the 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) 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 new non-discrimination Law n. 3304/2005 can be civil, penal or administrative.

In Civil Law, apart from liability based on the violation of the 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 [922: tortious liability]. As regards the responsibility of employers and of service-providers, Article 334 of the Greek Civil Code provides that a debtor is responsible for the fault of the person whom he employs in performing his obligation to the same extent as his own fault. However, such responsibility may in principle be limited or contractually excluded in advance, subject to the exception of responsibility for wilful misconduct for gross negligence (Article 332 of the Civil Code). Any agreement to the contrary is void. Void are also any agreements excluding in advance a debtor's responsibility even for slight negligence, if the creditor is an employee of the debtor, or if the responsibility arises from the conducting of an enterprise for which prior concession by the appropriate authority was granted to the debtor. According to Civil Law a legal person can be held liable for acts or omissions of persons acting on its behalf, while these latter persons can be jointly responsible with the person wronged can have recourse to either of them (Article 71 of the Civil Code).

As far as tortious liability is concerned under the Civil Code, 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 the other in the execution of this task. Moreover, if several persons unlawfully and culpably caused damage, or if several persons are responsible for the damage, they are all liable jointly and severally (Article 926). These rules apply also to liability for non-material damages (Article 932) and to commercial relations. This latter provision covers of course cases of harassment.

As far as penal liability is concerned, *only natural persons* can be accused of criminal offences related to provisions of discrimination. 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. It is based on Art. 2 I of the Constitution, by which the state is obliged 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 recognize any cases of strict or absolute liability.

In contrary, the employers or service-providers can’t be held liable for actions of third parts. The trade unions or other trade/professional associations can’t also be held liable for actions of their members, because isn’t covered by civil law provisions and it is contrary to freedom of association under article 12 of the Greek Constitution. Concerning the individual harasser or discriminator, they can be held liable under the provisions of article 914 of civil law.

## 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?*

*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.*

As to the scope, Law n. 3304/2005 adopts Article 3 of The Framework Directive:

*1. Without prejudice to paragraphs 2,3,4 of this article, and to Article 9<sup>68</sup>, the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:*

*(a) conditions for access to employment and occupation in general<sup>69</sup>, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, as well as the terms of professional growth including promotion;*

<sup>68</sup> On professional requirements.

<sup>69</sup> Self-employment is not included in The Law.

(b) access to all types and to all levels of vocational guidance, vocational training, and retraining, vocational guidance<sup>70</sup> 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.

2. This Law does not cover differences of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.

3. This Law does not apply to payments of any kind made by state schemes or similar, including state social security or social protection schemes.

4. This Law, in so far as it relates to discrimination on the grounds of special needs<sup>71</sup> and age, shall not apply to the armed forces.

The Law also allows the following exemptions (defences), modelled on the Framework Directive text:

#### 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<sup>72</sup>, 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 requirement is proportionate”<sup>73</sup>

#### 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”.

#### The Health and Safety Defence

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.

Law n. 1414/1984 for 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 their application only to persons who work in the private sector. Furthermore, Law n. 1483/1984 “Protection and facilitation of employees with family engagements” prohibiting the female dismissal during pregnancy and one year after does not apply to the public sector, public entities, local authority organisations.

<sup>70</sup> Sic (emphasis added).

<sup>71</sup> The phrase *special needs* refers to disability. (In Greece, disabled people are usually referred to as *persons with special needs*).

<sup>72</sup> That is, racial or ethnic origin, religion or beliefs, sexual orientation, age or disability

<sup>73</sup> The proviso: “that the objective is legitimate” of the Framework Directive, has been omitted in the text of The Law.

In conclusion, contract work, self employment, military service and holding statutory office are not covered.

**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 n. 3304/2005 allows exemptions to the application of the principle of equal treatment as far as professional requirements in various contexts are concerned. More specifically, it is mentioned in Articles 5, 9 and 11 of the Law that a differentiated treatment based on a characteristic related to racial or ethnic origin, religious or other beliefs, age or sexual orientation (disability is not mentioned) 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.

As far as the occupational requirements are concerned in Articles 9 and 11, there are special provisions for professions related to churches, religious institutions and public or private organisations. Having regard to the organisation's ethos, in these cases a person's religion or belief constitutes a genuine, legitimate and justified occupational requirement.

The Law allows the following exemptions (defences) as far as the criterion of age is concerned, adopting almost literally the text of the 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.”*

The public sector is not dealt with differently than the private sector.

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

a) 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.

b) In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 ?

Regarding scope, Law n. 3304/2005, adopts, almost literally, Article 3 of The Framework Directive:

1. Without prejudice to paragraphs 2,3,4 of this article, and to Article 9<sup>74</sup>, the principle of equal treatment, as established in this law, shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment and occupation in general<sup>75</sup>, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, as well as the terms of professional growth including promotion; and

.....

(c) employment and working conditions, including dismissals and pay;

In our view, by adopting this definition, the national law ensure 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”. Until now, there is no jurisprudence related to this provision of Law no. 3304/2005.

According to Article 3 (2) Presidential Decree n. 358/1997 “*Preconditions and procedure for the legal stay and employment of foreigners in Greece, who are not natives of the member states of the EU*”, the employer who omits to declare the employment of a non-native of another EU Member State has infringed 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 n. 359/1997 “Granting the card of residence of a limited period to foreigners” provides that the foreign employee who has been procured with the card of temporary license has got all the occupational rights and obligations compared to the Greek employee as regards the pay, the working terms and conditions and also the insurance rights and contributions of the employer. Finally, Law no. 1556/1985 for ratification of the 159/1983 International Labour Convention on the professional re-adjustment and occupation of disabled and impaired persons declares the principle of equal opportunities between the impaired employees and employees in general and between male and female employees. Also, under the Law n. 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*

<sup>74</sup> On professional requirements.

<sup>75</sup> Self-employment is not included in The Law.

*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 ?*

Under its Scope, Law n. 3304/2005, adopts, almost literally, Article 3 of The Framework Directive:

*1. Without prejudice to paragraphs 2,3,4 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, and retraining, vocational guidance including practical work experience;*

Law n.1414/1984 for 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 these laws' scope only to persons who work in the private sector.

Law n. 2956/2001 "Restructuring the Manpower Organisation (O.A.E.D) provides for the vocational training of disabled persons.

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

Finally, concerning the application of the Anti-discrimination law to vocational training outside the employment relationship, the answer is positive: the Anti-discrimination law can be interpreted, inter alia, under article 16 (7) of the Greek Constitution, which provides that technical schools or universities are under the protection of the State.

### **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.*

Under its Scope, Law n. 3304/2005, adopts, almost literally, Article 3 of The Framework Directive:

*1. Without prejudice to paragraphs 2,3,4 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 n. 3304/2005, Law n. 1426/1984 for the ratification of the European Social Charter recognises and prohibits any discrimination on the grounds of the membership and activity in trade unions or employers or employees organisations.

Article 7.1 of Law n. 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 alien workers' right 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<sup>76</sup> but is no longer. Modern case law interprets the provision in conjunction with Article 11 ECHR (freedom of association) and Article 14 ECHR (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 n. 3304/2005 adopts here again literally the Racial Equality Directive wording, and only in relation to racial or ethnic origin discrimination– - *the social protection including social security and healthcare, the social advantages, the education, the access to and supply of goods and services which are available to the public, including housing.*

We have to emphasize that regular insurance risks are considered to be sickness, maternity, disability, industrial injury or disease, old age, death of a family protector, lack of housing, and the destruction of agricultural production. With regard to healthcare, 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 n. 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 programs of prevention and rehabilitation and aims at creating the conditions for these persons equal participation in the economic and social life and safeguards their decent standard of living”. According to Article 1.2 of Law n. 2646/1998, “social care” involves 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.

### **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 granted to people because of their employment or residence status, for example, e.g. 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 n. 139/1975 for the status quo of persons without nationality, for example, explicitly addresses the term of “social advantages”. In this context this term covers the supplies of goods with coupons,

<sup>76</sup> Athens First Instance Court judgment 4311/1984, *Nomiko Vima (NV)* (1985), pg. 1222.

housing, 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 tickets 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 n. 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 of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.*

Article 4 of Law n. 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 Aliens Law n. 2910/2001. According to this provision, minor aliens residing in Greece are subject to compulsory (primary and secondary) education of nine years like Greek nationals (Article 16.3 of the Constitution). Article 40.4 provides for the promulgation of inter-ministerial decisions that will regulate the “optional teaching” in schools of “mother tongue and culture” to minor students, if there is a sufficient number of them.

However, the total exclusion by Greek law of non-Orthodox teachers from single-post state schools are in flagrant contravention of Article 13.1 of the Greek Constitution, a fact that was expressly recognized by Greek jurisprudence in 2002<sup>77</sup>. 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.

According to Law 2817/2000 for the education of disabled children, the rule (the preference) for these group of pupils is mainstream education and the exception (in very special cases) the segregated education. The last education is not regarded as a discriminate one.

In response to two written questions of Members of European Parliament<sup>78</sup> about the situation of Roma in Greece, the Commissioner Mr. Spidla said that the Commission has already started a preliminary examination, under the provisions of Directive 2000/43 (answer, 6.9.2005).

According, also, to its latest Report (29.3.2006)<sup>79</sup>, “The Commissioner 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

<sup>77</sup> Council of State proceedings no 347/2002, 28.06.2002.

<sup>78</sup> Written questions nos. E-2416/05EL & E-2453/05EL. <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+WQ+E-2005-2416+0+DOC+XML+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y> & <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>.

<sup>79</sup> Commissioner of Human Rights, *Follow-up Report on the Hellenic Republic (2002-2005)*, <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 persisting housing problem and employment and social protection problem 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 of 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 that a third public body (Service for the rehabilitation of earthquake victims) provide prefabricated classrooms to an elementary school in the Peloponnese. Until then, Roma children were excluded from the school with the argument that the building facilities were insufficient<sup>80</sup>.

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

*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 n. 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. It adopted the same wording as the Racial Equality Directive.

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

*To which aspects of housing does the law apply? Are there any exceptions?*

Article 4 of Law n. 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. It adopted the same wording as the Racial Equality Directive.

According to Art. 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 the other grounds:

*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.*

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<sup>80</sup> (The Greek Ombudsman, Annual Report, 2003, p. 186)

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.*

#### **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 n. 3304/2005 allows exemptions to the application of the principle of equal treatment as far as professional requirements in various contexts are concerned. More specifically, Articles 5, 9 and 11 of the Law provide that a differentiated 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**

*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?*

*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?*

As far as the occupational requirements are concerned in Articles 9 and 11 of the Greek non-discrimination Law n. 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 the persons working for them act in compliance with this ethos. In these cases, such ethos constitutes a genuine, legitimate and justified occupational requirement.

The Law specifies in Article 9 (2) 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 a discrimination based on other reasons.

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.

### 4.3 Armed forces and other specific occupations

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

National law provides an exception for the armed forces in relation to age or disability discrimination.

There are, also, included to the national law exceptions relating to employment in the police, prison or emergency services.

Article 8.4 of Law n. 3304/2005, which is relative to both above exceptions, 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 and, the police, prison or emergency services, e.g. fire department).*

### 4.4 Nationality discrimination

*Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).*

- a) How does national law treat nationality discrimination?
- b) Are there exceptions in anti-discrimination law that seek to rely on Art 3(2)?
- a) Law n. 3304/2005 seems to incorporate the exceptions allowed by Article 3(2) of the Directive, i.e. by permitting differences of treatment based on nationality, provisions and conditions relating to the entry and residence of third country nationals and stateless persons etc.
- b) There are no exceptions in anti-discrimination law that seek to rely on article 3 (2).

### 4.5 Work-related family benefits

*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 employee and their partner. Certain employers limit these benefits to the married partners 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) Does national law permit an employer to provide benefits that are limited to those employees who are married?
- (b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

- a) The Law 3304/2005 (article 8.3) permits an employer (of public or private sector) to provide (social) benefits, including health benefits, that are limited to those who are married.
- b) The Law 3304/2005 (article 8.3) permits an employer (of public or private sector) to provide (social) benefits, including health benefits, that are limited to those with opposite-sex partners.

#### 4.6 Health and safety

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

*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)?*

Law n. 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*”.

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 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

##### 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 ?*

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

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

Law n. 3304/2005 allows the following exemption (defences) as far as the criterion of age is concerned, adopting almost literally the text of the 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. ”.*

No debate is actually developing in Greece about the implementation of the direct discrimination.

The national legislation allows occupational pension schemes to fix ages for admission to the scheme.

#### **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, i.e. students, employed students, women during pregnancy, women when feed-breasting their children, and employees with family responsibilities to which prohibition of dismissals during the aforementioned status attaches.<sup>81</sup>

#### **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?*

Yes, there are. According to Laws n. 3051/2002, 3144/2003 and 3174/2003, the *maximum age limits* in relation to access or appointment to the public sector, public entities, organisations of local administration (a and b level), private law legal entities of public sector including “ordinary” personnel and compulsorily placed persons (disabled of Law n. 2643/1998) are abolished.

Despite the fact that the insurance and social security issues of bank employees are currently being raised and had caused a lot of social impact (strikes), there has not been a formal discussion of whether the minimum and maximum age requirements are compliant with Directive 2000/78 and Law n. 3304/2005.

#### **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 retire from*

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<sup>81</sup> See the Table of Greek Legislation in the end of the Template.

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).

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 for longer, or can an individual collect a pension and still work?*

b) *Is there a normal age when individuals 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 for longer, or can an individual collect a pension and still work?*

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

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?*

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)?*

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

The old-age pension is granted after a certain age limit has been reached (55-65 years), which varies in relation to each insurance regime and period of work which has been completed (usually between 25 up to 35 years).

Usually Banks define certain age limits which differ between men and women. The Supreme Court in its n. 1785/2001 Judgment (see also n. 593/1996 Judgment of the Supreme Court) estimated that the provision of Law n. 3198/1955 is contrary to The Greek Constitution's declaration of the principle of equality and the Article 15 of Law n. 1414/1984, because it permits the termination of women's employment contract and their professional career against their will, based on different terms to those for men on the grounds of sex.

There are actually manuals of operation of enterprises or corporation 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 n. 3304/2005 and generally, no such discriminating clauses are currently being stipulated. On the other hand, terms of collective labour agreements of other regulatory binding provisions still exist (mainly the afore-mentioned bank corporation charters), which permit employers to require employees to retire because they have reached a certain age limit. Nevertheless, these provisions after the new Law (Article 26) 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 it has been stressed before – these issues have not properly and seriously examined yet.

#### **4.7.5 Redundancy**

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

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

The criteria of age and seniority were established by the Greek Supreme Civil and Criminal Court (Άρειος Πάγος) in decisions n. 668/2000, 279/1996, 744/1992, according to which in order that a redundancy maintains its legitimate character and not be considered abusive, the age and seniority must be taken into account by the employer when he makes an employee redundant.

As far as the compensation for redundancy is concerned, it is affected by the number of years one employee worked under one employer (it could be said that in this way, the 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 Framework Employment 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 the Immigration Policy Act n. 2910/2001.

#### **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 take on the compulsorily placed disabled persons, unless they invoke and prove an exceptionally bad economic situation prevailing in their enterprise over the last two years.<sup>82</sup>

<sup>82</sup> A special state committee decides the 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.*

b) *Do measures of positive action exist in your country? Which are the most important?*

*Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma.*

Sections 2 and 3 of Article 21 of the Greek Constitution constitute – according to case law – the cornerstone of legislation advancing affirmative action for the benefit of disabled persons, i.e. special welfare and social security benefits, price reductions, wage subsidies, compulsory placement and employment quotas.

As far as Positive Action and Special Measures are concerned, Law n. 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. With regard to disabled persons, measures aimed at creating or maintaining legal provisions on the protection of safety and health in the working environment or for the promotion and the safeguard of their integration into occupation and employment do not constitute discrimination.<sup>83</sup>

In the context of discrimination, Article 5.2 of Law n. 2348/1998, on the *Compulsory Employment of Disabled People* (Quota System) is relevant. It stipulates that all compulsorily placed employees should be treated in an equal manner to other workers of the company and should not be discriminated against. There is no case law so far applying this provision.

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.

The provision, in conjunction with Article 21.3 and 21.6 of the Constitution, is perceived as guaranteeing the principle of *proportional equality* (*αρχή της αναλογικής ισότητας*) and assisting to the elimination of inequalities actually existing.

In the employment field, the principle of positive action is set out in Law n. 2643/1998 on the *Compulsory Placement of Special Groups of Workers*<sup>84</sup>. This Law obligates employers employing 50 workers or more<sup>85</sup>, to take on disabled workers placed by the Public Authority<sup>86</sup>. The law gives disabled people first priority over all other protected special groups (chiefly persons with– 4 or more children) in the public

<sup>83</sup> “The principle of equal treatment shall not prevent from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to above”.

“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”.

<sup>84</sup> This law is new. It was introduced and enacted in 1998, but the first appointments started in the beginning of 2000. This Law replaced Law n. 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 n. 3096/1991 and amended in 1994.

<sup>85</sup> Such enterprises are considered very big in Greece and there are few of them (mainly public enterprises, such as electricity or water supply enterprises and the like). 80% of the Greek enterprises employ less than 10 workers.

<sup>86</sup> The Law is certainly not an anti-discrimination law, but it is widely understood as a re-integration law.

sector<sup>87</sup> 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 disabled people are placed following the above procedure<sup>88</sup>. The Manpower Organisation (OAED), based on a ministerial decision issued annually<sup>89</sup>, is implementing a program, 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 disabled people<sup>90</sup> over a maximum period of three years, which is a substantial length of time. This program is considered to have been successful. No doubt, it offers incentives to employers to hire disabled individuals; however the subsidized posts are limited compared to the total numbers of disabled seeking jobs, or willing to enter or re-enter the labour market.<sup>91</sup>

Even though the main preoccupation of the Greek Constitution 2001 is obviously the promotion and protection of women's rights, the above wording of 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.

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<sup>92</sup> explicitly recognised that there may be cases which show that in practice a certain category of individuals has been discriminated against "due to social prejudice", leading to just nominal equality. Concomitantly, the Court stated that the spirit of Articles 4.1 and 4.2 of the Greek Constitution (the latter provision regards Greek men and women's equality "of rights and obligations") allows, in principle, state "affirmative action" which is appropriate and necessary, for a certain period of time, until the existing situation of inequality has ceased. The Greek Council of State concluded that, in principle, it would certainly be legitimate for the Greek state to adopt "positive measures" for women, in so far as these measures aim at "accelerating the restoration of de facto equality between men and women".

This jurisprudence was affirmed by the same Court's judgment 1933/1998<sup>93</sup> where pro-women "affirmative action" by the state was regarded as justified and founded not only on Greek Constitution, but also on EU Council Directive 76/707 regarding equal professional and employment treatment of men and women (Article 2.4), as well as on the UN Convention on the Elimination of All Forms of Discrimination Against Women 1979 (Article 4.1 (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

<sup>87</sup> In the public sector and local authorities, a considerable proportion of vacancies (up to 80%), are reserved for disabled individuals in special occupations, such as messengers, night watchmen, cleaners and receptionists.

<sup>88</sup> It is estimated, (accurate statistical data fail, mainly due to strong reactions from disability organizations, trying to avoid the stigma, associated with disability), that the compulsorily placed do not exceed 1% of all disabled workers, the total number of which certainly exceeds 10% (Greece has a very high rate of road accidents).

<sup>89</sup> Currently No 30339/22. April 2002, of the Minister of Labour and Social Affairs

<sup>90</sup> Regardless of their age, or income. But they must prove a disability at a severity of 50% or more.

<sup>91</sup> The system mainly applies to disabled individuals willing to work in inferior jobs at a very low remuneration.

See also the Religion report of May 2003 by Nicholas Sitaropoulos.

<sup>92</sup> Greek Council of State judgment 1917/1998 (Plenary), *Review of Public and Administrative Law (RPAL)* (1998) 577 (in Greek). Article 6 of Law 2839/2000 has also established, in principle, the quota of 1/3 in favour of women with regard to posts of boards of public and private law organisations.

<sup>93</sup> *RPAL* (1998) 585 (in Greek). On the right to equality see also Greek Council of State judgments 1156/2000, 2096/2000, *To Syntagma* (2000) 927 and 1288 respectively (in Greek).

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 de facto and/or de iure discriminated against.

The Greek state has actually followed the practice of positive action in favour of the “Muslim 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 1923 Lausanne Peace Treaty<sup>94</sup>. 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 provides in fact 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 the respect by both countries of their minorities' civil and political rights<sup>95</sup>.

Under the Lausanne Treaty and by virtue of a series of Greek statutory provisions the “Muslim [Turkish] minority” in Thrace has a special protective status in issues regarding its education and religion. According to Greek state data there are currently 227 primary minority 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”<sup>96</sup>. A reform project of the Greek Ministry of Education (through the University of Athens), partially financed by the EU, regarding the Turkish minority education in western Thrace has been under way since 1997<sup>97</sup>. According to the Greek Ministry of Education this positive action (“positive discrimination” in the words of the Ministry) has led to an increase by 70% of the rates of Muslim children in Greek state high schools: rising from 1,397 in 1997 to 2,395 in 2000<sup>98</sup>. At the same time, the Ministry of Education reportedly attempts to recruit more Muslim teachers for the 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.<sup>99</sup> It should be stressed that the “muslim minority” is considered as a religious minority and not an ethnic one, despite the Lausanne Treaty.

Another ethnic minority group in Greece whose status and situation needs special attention is that of Roma. The Greek National Commission for Human Rights in late

<sup>94</sup> Ratified by Greece by Legislative Decree of 25.08.1923, reproduced in Ph Constantopoulou (ed), *The Foundation of the Modern Greek State - Major Treaties and Conventions (1830-1947)*, Athens, Kastaniotis Publishers, 1999, 123-145. See also L Baltiotis, K Tsitselikis (eds), *The Minority Education in Thrace*, Athens, Ant N Sakkoulas Publishers, 2001 (in Greek), 33-37. See also F Asimakopoulou, “The Muslim minority of Thrace”, in F Asimakopoulou, S Christidou-Lionaraki, *The Muslim Minority in Thrace and Greco-Turkish Relations*, Athens, AA Livanis Publishers, 2002 (in Greek), 209 ff.

<sup>95</sup> 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* (2001), 917 (in Greek).

<sup>96</sup> 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.

<sup>97</sup> Information note of Professor Anna Frangoudaki, November 2002; see also [www.ecd.uoa.gr/museduc](http://www.ecd.uoa.gr/museduc).

<sup>98</sup> Report of the General Secretary in charge of the Education of Aliens of Greek Origin and of Intercultural Education, Ministry of Education to the Green National Commission for Human Rights, 21.02.2001.

<sup>99</sup> Nicholas Sitaropoulos, Interim Report, “Transposition of Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation for discrimination based on religion and belief”, May 2003, pg. 19.

2001 pinpointed a series of issues relating to grave *de facto discrimination* of members of the Roma population in Greece in fields like housing, health, education and civil status<sup>100</sup>. Even though the Greek state has initiated a special protection programme promoting Roma social integration since 1996, attaching particular emphasis to education,<sup>101</sup> this has not proved as yet to have had any significant positive effects on the quality of the 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:

- Ministerial (Culture) Decision of 25.01.1999 (OJHR B 55) by which a special inter-cultural office was established in the Ministry of Culture with a view to studying and protecting the culture of Roma in Greece.

- Prime Minister's Decision 18/2000 (OJHR B 24) by which an inter-ministerial committee was established for the "management of issues relating to Greek Roma". Article 2 of this Decision provides for the planning and co-ordination 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.

According, also, to the latest Report (29.3.2006)<sup>102</sup> of the Commissioner of Council of Europe "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.

Measures of positive action 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 "inter-cultural education" for the first time in Greece. As a consequence, in the academic year 2000-2001 there were 23 inter-cultural schools, 422 reception classes and 556 special education classes. The Ministry of Education has applied a protective policy for children of the above vulnerable social groups allowing registrations in schools even in cases where children do not produce all necessary registration documents. Also with regard to

<sup>100</sup> NCHR, report on the situation of Roma in Greece, *Report 2001*, op cit supra, 181-197 (in Greek).

<sup>101</sup> *Greek Report*, paras 35-44.

<sup>102</sup> Commissioner of Human Rights, *Follow-up Report on the Hellenic Republic (2002-2005)*,

<https://wcd.coe.int/ViewDoc.jsp?id=984125&BackColorInternet=99B5AD&BackColorIntranet=FABF45&BackColorLogged=FFC679>

mature aliens there have been special language classes organised by the Universities of Athens, Thessaloniki, Patra, Ioannina and Crete<sup>103</sup>.

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 emergency”, such as Roma, Convention refugees, humanitarian refugees and asylum seekers. A special programme of “social solidarity” that covers these groups was initiated by the Ministry of Labour in 2001<sup>104</sup>. No evaluation report has ever been prepared on the special programme of “social solidarity”.

In the context of the Third Community Support Framework and the European Social Fund the Ministries of Labour and of Finance are in the process of promoting measures against the exclusion from the labour market of unemployed members of “vulnerable social groups”, a term that includes immigrants, refugees, and “persons with specific religious or cultural characteristics (e.g. Roma)”. These social groups are targeted by Ministerial Decision 308/2001 (OJHR B 784) which provides for the elaboration of special labour inclusion projects by the Greek Labour Force 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)”.

## 6. REMEDIES AND ENFORCEMENT

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

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*
- b) *Are these binding or non-binding?*
- c) *Can a person bring a case after the employment relationship has ended?*

*In relation to each, 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)?*

a) Law n. 3304/2005 which is the only explicit antidiscrimination statute, which combats discrimination in the field of employment and occupation provides for: “*Non compliance with the principle of equal treatment constitutes an offence against one’s personality. The wronged party has the right to demand the cessation of the offence, its omission in the future, the restitution of any financial damage and the compensation of any moral damage according to the relative general and procedural provisions*”.

The legal protection and defence of persons wronged by any violation of this anti-discrimination Law according to the Article 13 of the Law will enjoy not only

<sup>103</sup> Ministry of Education, information note, 05.07.2001 (in Greek, on file with the author).

<sup>104</sup> Ministry of Labour, *Policy for Social Solidarity 2001-2004*, Athens, 05.04.2001 (mimeo, in Greek).

protection by the courts, but also by administrative bodies, or through NGOs or Trade Unions. An individual who suffers a discriminatory practice on the grounds protected by the present Law can bring a complaint of discrimination either to a civil court (e.g. the Labour Court), or to a Penal Court or even to the Administrative Courts. Article 13 (3) of the new Law on the Defence of rights contained in Law n. 3304/2005 points out that *“legal entities which have a legitimate interest in ensuring that the principle of equal treatment is applied regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation can represent the person wronged before any court and any administrative authority with the written consent of the person wronged.”* (Emphasis added). These legal entities are usually NGOs and Trade Unions. Thus, NGOs and Trade Unions can act on behalf and in support of victims before the Courts and before administrative bodies but only under the two conditions (referred under Article 6.2).

The disabled people are entitled to request information/trials be held using alternative formats, e.g. sign language, information in braille. All the courts are physically accessible to disabled people (e.g. wheelchair users).

b) The above procedures are binding.

c) A person can bring a case after the employment relationship has ended. No alternative dispute resolution methods exist.

## **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) *in support of a complainant*

b) *on behalf of one or more complaints (please indicate if class actions are possible)*

a) The criteria demanded in the framework of Law’s n. 3304/2005 requirements and in combination with the requirements laid down by the Greek procedural statutes, i.e. the Code of Civil Procedure are:

-That the NGOs and /or Trade Unions have *a legitimate interest in ensuring the application of the principle of equal treatment*. This means that the 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 the same. It goes without saying that in conformity with the Greek Civil Procedure Code, the NGO or Trade Union will act before the Court through an accredited lawyer.

b) Interest groups should also have the right to *initiate* a legal procedure, even without the written consent of the wronged party, which the new Law n. 3304/2005 fails to provide. In order to achieve this, further amendments of the Code of Civil Procedure, the Code of Administrative Procedure, and the Presidential decree 18/1989 of the Council of State, are in order.

The class action is 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).*

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

b) The Burden of Proof in case of violation of the anti-discrimination Law appears in Article 14 of Law n. 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<sup>1</sup>.*

3. *Paragraph 1 shall also apply in the case of Paragraph 1 of Article 13.”*

(in case of non compliance with the principle of equal treatment in the framework of an administrative action, the victim has the protection – apart from the judicial protection - granted by art. 24-27 of the Code of Administrative Procedure).

There is no provision of shift of the burden of proof before the new law 3304/2005.

#### **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 persons other than the complainant? (e.g. witnesses, or person that help the victim of discrimination to present a complaint)*

a) The 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 undertaking, or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment (Article 15). In the case that adverse treatment or an adverse consequence is a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment in the field of racial or ethnic discrimination, the scope is wider than employment and occupation and covers all persons, as regards both the public and private sectors in relation to the eight (8) points (a-h) of the Council Directive 2000/43/EC.

b) Witnesses as the most crucial role in supply of evidence under the Article 14 of Law n. 3304/2005 could easily be considered as “protected persons”, as they fall within the definition of the “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.

#### **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.*

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

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 is required by the Directives?*

a) The sanctions which are provided for infringements of the principle of equal treatment and non-discrimination are, in case of failure to apply the equal treatment principle and *only on the grounds of racial or ethnic origin or religion during the disposal of goods and the supply of services in the public*, imprisonment of between 6 months and 3 years and a fine of between €1.000 and €5.000 ((ceiling of the maximum amount), which the employer shall pay to the state and not to the victim. Article 17 of Law n. 3304/2005 considers the infringement of that article to be a violation of Greek Labour Law and therefore it provides a fine for this violation. In this case, the fine is imposed by the Work Inspectorate according to Article 16 of Law n 2639/1998. This fine is between EUR 500 and EUR 30.000 (ceiling of the maximum amount). In both cases there is not a provision for compensation to the victims.

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 n. 927/1979 (see sections 2.2 and 2.3 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 non-repetition in the future. (see Scope of Liability section).*

It also includes a court imposed obligation to refraining from a certain act or also to perform a certain act /such as desegregate in the field of housing and education.

The Greek National Commission for Human Rights (NCHR) also proposed in 2001 that Greek anti-racism legislation should expressly provide for vicarious liability in civil, administrative and criminal law<sup>105</sup>. *Vicarious liability is currently provided for only by Article 922 of the Greek Civil Code by virtue of which an employer is held liable for any damage incurred by a third person due to action by the employer's staff.*

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

It's very early to estimate the effectiveness, proportionality and dissuasion of the sanctions. The European Commission has already sent a first written warning about the proportionality of the sanctions (written warning-violation no. 2005/2356).

b) The ceiling on the maximum amount of compensation that can be awarded in penal cases is €5.000 (fine to be paid to the State). The ceiling on the maximum amount of compensation that can be awarded in administrative cases is €30.000 (fine to be paid to the State).

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<sup>105</sup> NCHR report on modernising Greek anti-racism legislation, NCHR, *Report 2001* op cit supra, 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), 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?*
- 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.*
- 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.*
- d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?*
- e) Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*
- f) Is the work undertaken independently?*

Article 18 of Law n. 3304/2005 entrusts the *Economic and Social Committee*<sup>106</sup> with tasks such as:

Drafting an annual report on the developments with regard to the application of the Principle of Equal Treatment,

Making suggestions to the Government and to Social Partners on promoting equal treatment and non-discrimination.

Encouraging dialogue with NGO's 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.

a) The Law entrusts Three Specialised Administrative Bodies with the promotion of the principle of equal treatment.

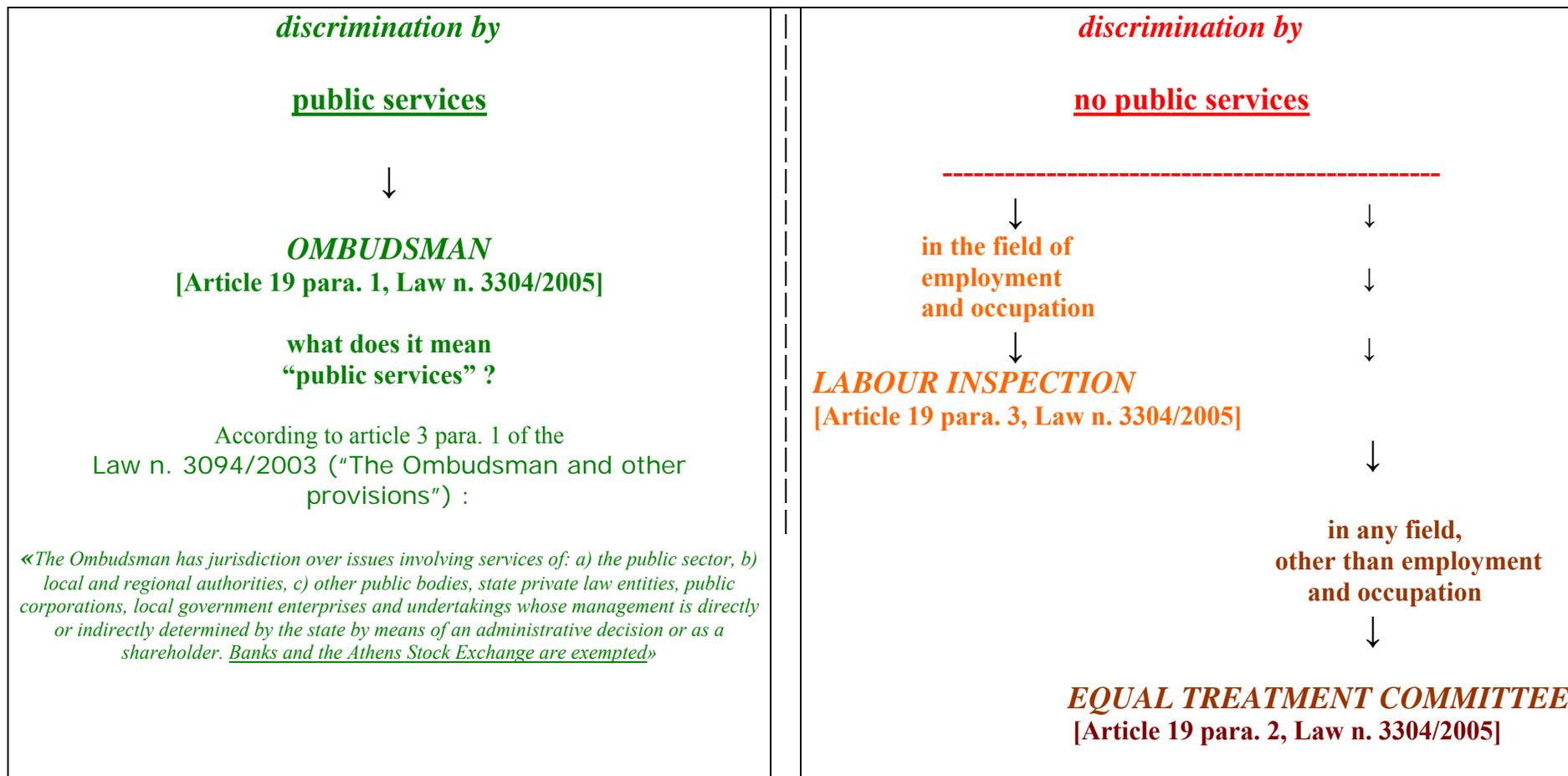
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<sup>106</sup> Article 82.3 of the Greek Constitution: "Matters relating to the establishment, operation and competences of the Economic and Social Committee, the mission of which is the conduct of social dialogue for the overall policy of the Country 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 recognized and upgraded the Committee's competences).

## COMPETENCE

*No matter which motif of discrimination*

(Law n. 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)



These bodies are:

***The “Ombudsman”***

b) An Independent Authority, recognised by the 2001 Constitutional Revision.

The annual budget of the Ombudsman is 5,8 million euro (2004), 5,9 million euro (2005) and 7,4 million euro (2006).

The Ombudsman has the following staff: 1 Director (the Ombudsman), 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 in hundreds of cases have invoked the Ombudsman since 1997 and in many cases, he has made the state agencies respect citizens' rights. It should be noted though, that most disabled people who have lodged a complaint 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 hiring a person because of its disability). However, the Ombudsman has no authority to penalize or to prosecute discriminatory practices, but only to activate the governmental bodies to help eliminate the causes and the practice of discrimination. The Ombudsman has recently performed a study after accusations against a well-known Greek airline company for not taking specific and reasonable measures for disabled persons'. The Ombudsman addressed the finding 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, to access and travel with 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<sup>107</sup>.

c) The Ombudsman becomes competent under the anti-discrimination Law, with regard to the promotion of children's rights, as well as the implementation of the Equal Treatment Principle regardless of racial or ethnic origin, religious or other beliefs, age, disability or sexual orientation *in the public sector*, drafting reports and making investigations upon complaints for violation of the principle (in any field; not only in occupation and employment).

d) It provides 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 making recommendations concerning discrimination.

e) The Ombudsman may, during the investigation of cases, request the assistance of the Public Administration's Body of Investigators-Inspectors 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 an expert's report. During the examination of documents and other evidence, which are at the disposal of public authorities, the fact that they have been classified as secret may not be invoked, unless they concern issues of national defence, state security and the country's international relations. All public services have an obligation to facilitate the investigation in every possible way<sup>108</sup>.

f) The work of Ombudsman is undertaken independently.

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<sup>107</sup> The Greek Ombudsman, *2004 Annual Report*, [http://www.synigoros.gr/foreign/en\\_2004\\_Annual\\_Report\\_Summary.pdf](http://www.synigoros.gr/foreign/en_2004_Annual_Report_Summary.pdf), p. 19.

<sup>108</sup> Article 4 para. 5 of the Law n. 3094/2003 on *the Ombudsman* (Law Gazette A' 10).

### **The Equal Treatment Committee**

b) This Committee is established under the Law and is supervised by the Minister of Justice.

c) Its competence *will cover any field with the exception of public sector but it does not cover employment and occupation*. Therefore, it will examine complaints for violation of the equal treatment principle in its field of competence and will try to conciliate the conflicting parties. It can, also, conduct independent surveys concerning discrimination and publish independent reports and making recommendations concerning discrimination. The Committee has no authority to inflict sanctions of any kind. In contrary, the Committee has the right to hear witnesses and the right to demand information to be supplied by the accused or third party (public authority or individual)<sup>109</sup>. There is no estimation for the annual budget of the Committee (general Budget of the Ministry of Justice). The Committee started work on 27 October 2005 which was the date that the Minister of Justice published his decision on the composition of the Committee<sup>110</sup>. It has only one paid staff member who is lawyer.

d) The Committee doesn't have the competence to provide assistance to victims, to conduct surveys. In contrary, the Committee has the competence to publish reports and issue recommendations on discrimination issues.

e) The Committee hasn't legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination.

f) There doubts about the independent character of the Committee: according to Law no. 3304/2005 the President of the Committee is the Secretary General of the Ministry of Justice.

### **The Work Inspectorate**

b) This governmental body is active *only in the private sector and in the field of employment and occupation*.

c) The Work Inspectorate will be acting as conciliator between employer and employee and it can also impose fines (payable to the State and not to the Employee), in case of a finding of violation of the equal treatment principle<sup>111</sup>. It can, also, conduct independent surveys concerning discrimination and publish independent reports and making recommendations concerning discrimination. The Inspectorate has the right to hear witnesses and the right to demand information to be supplied by the accused or third party (public authority or individual)<sup>112</sup>. There is no estimation for the annual budget of the Inspectorate (general Budget of the Ministry of Labour). The Inspectorate has one paid Director and 5 paid inspectors.

d) The Inspectorate doesn't have the competence to provide assistance to victims, to conduct surveys. In contrary, the Inspectorate has the competence to publish reports and issue recommendations on discrimination issues.

e) The Inspectorate has legal standing to bring discrimination complaints.

f) There doubts about the independent character of the Inspectorate: according to its statute, the Inspectorate is a public, no independent, service.

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<sup>109</sup> Article 22 para. 2 of the Law n. 3304/2005.

<sup>110</sup> Official Journal B, 1498

<sup>111</sup> 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.

<sup>112</sup> Article 19 para. 3 combined with article 22 para. 2 of the Law n. 3304/2005.

## 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)*

*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*

*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)*

a) 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 think they have been victims of infringements of the law and discriminatory practices. The Work Inspectorate also plays a distinctive disseminating of information role.

b) The only ministries that have initiated public contacts with alien immigrant associations in Greece are those of Interior and of Foreign Affairs. The Interior Minister held a public meeting with alien immigrant associations on 18.12.2001<sup>113</sup> and on 04.09.2002 with a view to exchanging information on the application of the new Aliens Law 2910/2001 (amended by Law 3013/2002) and especially of the new regularisation procedure which the former Law provides for. The Interior Ministry, by virtue of Law n. 2910/2001, is competent for issues relating to aliens' immigration. Before Law 2910/2001 all immigration issues were in the jurisdiction of the Ministry of Public Order (Police).

The Ministry of Foreign Affairs has also initiated contacts with alien immigrant associations in Greece, even though this Ministry has no substantive competence with regard to immigration<sup>114</sup>.

All these initiatives have not taken place in the context of any systematic, organised project of the Greek state in order to advance the fight against discrimination on grounds of racial or ethnic origin, as envisaged by the Directive. The Ministry of Labour needs to be urgently involved in all relevant social dialogue processes. No dialogue is organised until the first months of 2006.

c) Article 18 of Law n. 3304/2005 entrusts the *Economic and Social Committee*<sup>115</sup> with, inter alia, encouraging dialogue with NGO's 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.

### 8.2 Compliance (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*

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<sup>113</sup> Race report of October 2002 by Nicholas Sitaropoulos.

<sup>114</sup> See speech of the Greek Foreign Minister G Papandreou to immigrant NGOS, Greek Foreign Ministry, 26.02.2002, available through [www.mfa.gr](http://www.mfa.gr).

<sup>115</sup> Article 82.3 of the Greek Constitution: "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 recognized and upgraded the Committee's competences).

*specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

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

a) According to article 26 of Anti-discrimination Law, the special rules of this Law prevail over general or opposite rules. According to article Article 18 of Law n. 3304/2005 entrusts the *Economic and Social Committee* 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) The Code of Lawyers (Legislative Decree no. 3026/1954) provides direct discrimination on the basis of nationality & Indirect discrimination on the basis of ethnic origin, (language requirement), disability and age. The case is pending before the Equal Treatment Committee.

## **9. OVERVIEW**

The Anti-discrimination Law no. 3304/2005 has literally adopted the two Directives. This adoption raises important questions for the effective implementation of these Directives.

In addition, the two of the three specialised bodies who have the task to enforce the Directives have limited human resources and no independent character.

## **10. 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?*

The Ministries of Justice and Interior Affairs and Public Administration, as well as the Ministry of Labour and Social Protection are first of all responsible for co-ordinating the implementation of the non-discrimination Law n. 3304/2005.

### **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 24.2.2007

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
The Law n. 927/1979 on “Anti-racist Law against discrimination on the grounds of racial or ethnic origin or religion”.	28.6.1979	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 is punished.
The Law no. 1414/1984 on “The Implementation of the Principle of sex equality in employment relations and other provisions”.	2.2.1984	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 the family allowance, the Art. 4 par. 5 denotes that it is entirely granted to both spouses.
The Law no. 3304/2005 Implementation of the Principle of equal treatment regardless of racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation.	27.1.2005	Racial or ethnic origin, religion or other beliefs, disability, age or sexual orientation.	Civil, administrative and penal law.	Occupation and employment (in public and private sector).	Explicit non discrimination legislation in the field of occupation and employment

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country GREECE

Date 24.2.2007

Instrument	Signed (yes/no)	Ratified (yes/no)	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)	Yes	Yes	No	Yes	Yes
Protocol 12, ECHR	Yes	No	No	----	No
Revised European Social Charter	No	No	No	the Protocol has been ratified but the Revised European Charter hasn't.	No
International Covenant on Civil and Political Rights	Yes	Yes	Yes	Yes	Yes
Framework Convention for the Protection of National Minorities	Yes	No	No	----	No
International Convention on Economic, Social and Cultural Rights	yes	yes	No	---	yes
Convention on the Elimination of All Forms of Racial Discrimination	yes	yes	No	No	yes
Convention on the Elimination of Discrimination Against Women	yes	yes	No	yes	yes
ILO Convention No. 111 on Discrimination	yes	yes	No	--	yes
Convention on the Rights of the Child	yes	yes	No	yes	yes