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Совет по правам человека

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**Поощрение и защита всех прав человека,
гражданских, политических, экономических,
социальных и культурных прав,
включая право на развитие**

Письменное представление Национальной комиссии по правам человека Греции*

Записка секретариата

Секретариат Совета по правам человека настоящим препровождает сообщение, представленное Национальной комиссией по правам человека Греции** и воспроизводимое ниже в соответствии с правилом 7 b) правил процедуры, содержащихся в приложении к резолюции 5/1 Совета, согласно которому участие национальных правозащитных учреждений основывается на процедурах и практике, согласованных Комиссией по правам человека, включая резолюцию 2005/74 от 20 апреля 2005 года.

* Национальное правозащитное учреждение с аккредитационным статусом категории «А», присвоенным Международным координационным комитетом национальных учреждений, занимающихся поощрением и защитой прав человека.

** Воспроизводится в приложении в полученном виде только на том языке, на котором оно было представлено.

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Просьба отправить на вторичную переработку



Annex

[English only]

Submission by the Greece: National Commission for Human Rights

Written submission by the Greek National Commission for Human Rights Article 11 of the Convention on the Rights of Persons with Disabilities on situations of risk and humanitarian emergencies

I. Humanitarian emergencies in Greece

1. The present submission by the Greek National Commission for Human Rights (hereinafter GNCHR) comes at a time when Greece remains plagued by a financial and external debt crisis and the continuous adoption of austerity measures. Since 2010 the GNCHR through various reports and recommendations¹ has consistently and constantly expressed its concern regarding the severe impact on human rights by the prolonged implementation of austerity measures of permanent character, which may eventually evolve to a situation of a humanitarian emergency that leads to the degradation of the protection of the rights of persons with disabilities².
2. Furthermore, Greece faces an unprecedented influx of refugees and migrants. The numbers are staggering: almost a quarter of a million people arrived in 2015, an increase of 1017,42% over the previous year. Congestion in the islands has further increased with 211,663 people arriving only in October 2015 and already 68,023 in 2016³.
3. Under these circumstances, the GNCHR is particularly concerned about the implementation of Article 11 of the United Nations Convention on the Rights of Persons with Disabilities (hereinafter CRPD).

¹ GNCHR recalls that already in 2010 it conveyed to the State the “need for constant respect of human rights during the implementation of the fiscal and social exit strategy from the debt crisis”, whilst 18 months later it issued a Recommendation “on the imperative need to reverse the sharp decline in civil liberties and social rights”. In June 2013, the Plenary of the GNCHR recalled in its Report entitled “Recommendation and decisions of international bodies on the conformity of austerity measures to international human rights standards” its concerns about the rapid deterioration of living standards coupled with the dismantling of the welfare state. Most recently, in July 2015 the Plenary adopted the “GNCHR Statement on the impact on human rights in Greece of the continuing austerity measures”. The aforementioned GNCHR reports are available from: <http://www.nchr.gr/index.php/en/2013-04-03-10-23-48/2013-04-03-10-41-02>.

² GNCHR, “Protection of the rights of older persons”, 20.11.2014, available from: http://www.nchr.gr/images/English_Site/GNCHR_older_persons.pdf; GNCHR, “International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation”, 9.10.2014, available from: http://www.nchr.gr/images/English_Site/Problems_%20Ratification_Implementation_ICRPD.pdf; “ICC: First Meeting between the CRPD Committee and NHRIs: Greek National Commission for Human Rights Oral statement”, 23.9.2014, available from: http://www.nchr.gr/images/English_Site/oral%20statement%20CRPD.pdf; GNCHR, “Recommendations on the Bill on Special Education”, 10.7.2014, available from: http://www.nchr.gr/images/English_Site/PAIDIA/GNCHR_special_education.pdf.

³ UNHCR, Greece, Refugees/Migrants Emergency Response - Mediterranean, February 2015, available from: <http://data.unhcr.org/mediterranean/country.php?id=83>.

II. The implementation of Article 11 CRPD in Greece

4. The CRPD and its Optional Protocol (hereinafter Protocol), sanctioned on 31 May 2012 by Law 4074/2012, entered into force with respect to Greece on 31 June 2012, in accordance with Article 45(2) CRPD and Article 13(2) of its Protocol⁴.

5. Under Article 11 of the CRPD “*States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters*”.

6. The GNCHR, considering the importance of the aforementioned provision, reiterates the need to resolve structural deficiencies in Greece regarding the implementation of the CRPD (A) also under the context of the current refugee crisis in Greece which must be urgently addressed (B).

A. Structural deficiencies as a basic impediment for the implementation of Article 11 CRPD

7. The GNCHR considers the ratification by Greece of the CRPD and its Protocol an important step towards protecting fundamental human rights in our country.

8. The Ministry of Labour, Social Security and Welfare was designated⁵ as focal point for the monitoring of the implementation of the CRPD, and as coordinating mechanism for facilitating relevant activities, in accordance with Article 33(1) of the CRPD. However, due to the inadequacy of the enabling statute⁶, independent mechanisms, which shall promote, protect and monitor the implementation of the CRPD as required by Article 33(2) thereof, have not been yet established. The GNCHR has already expressed its concern regarding the inadequate legislative compliance with the CRPD⁷.

9. Furthermore, the GNCHR has emphasized the need of interoperability between all competent State authorities for the effective monitoring of the rights of persons with disabilities across the board, which still remains an open question in Greece.

⁴ Therefore, since 31 June 2012 Greece is subject to the monitoring of the Convention conducted by the Committee for the Rights of Persons with Disabilities (Committee), which was established under Article 34 of the CRPD. Furthermore, ever since 31 June 2012, the Committee's competence to receive and consider “communications” on behalf of individuals or groups of individuals subject to the Greek State's jurisdiction, claiming that they are victims of a violation of the CRPD (Article 1 of the Protocol) has entered into force with regard to Greece.

⁵ Prime Minister's decision No. 426/2.20.2014 “Designation of a focal point for monitoring the implementation of the United Nations Convention on the rights of persons with disabilities (Law 4074/2012, GG A 88) along with a coordination mechanism for facilitating related action” (GG B 523/02.28.2014).

⁶ Article 3 of the ratification law (Law 4074/2012, GG A 88/11.4.2012) reads as follows: “By decision of the Prime Minister, in accordance with Article 33(1) of the United Nations Convention on the Rights of Persons with Disabilities, a focal point is designated in the Government for monitoring the implementation of the Convention along with a coordination mechanism for facilitating related action.” This provision constitutes inadequate compliance with the obligations undertaken by the Greek State upon ratification of the Convention, since it enables the Prime Minister to only implement Article 33(1) of the Convention and not the remaining paragraphs thereof.

⁷ GNCHR, “International Convention on the Rights of Persons with Disabilities: Problems regarding its implementation”, 9.10.2014, available from: http://www.nchr.gr/images/English_Site/Problems_%20Ratification_Implementation_ICRPD.pdf.

B. Addressing the current Refugees Crisis in Greece under Article 11 CRPD

10. The identification of migrants, refugees and asylum seekers with disabilities is *per se* considered to be a major problem⁸. Under these circumstances the GNCHR reiterates that the Greek State should take all necessary measures to identify migrants, refugees and asylum seekers with disabilities, an indispensable prerequisite for their subsequent protection as required by the CRPD.

11. The Greek general legal framework on Asylum Service and a First Reception Service⁹ includes provisions for the protection of migrants, refugees and asylum seekers with disabilities but their implementation is rather inefficient¹⁰. The GNCHR considers that such a protective legislative framework is of importance but the protection of refugees with disabilities in practice remains a big challenge. This is mainly due to the fact that crucial structures such as the First Reception Service and the new Asylum System are of great need of human, economic and material resources. Such deficiencies are further exacerbated in multiple crisis conditions and the onslaught of mass migration.

12. It should be also noted that regarding the new Asylum System the need to address the aforementioned deficiencies and to establish all Regional Asylum Offices is urgent considering that a considerable number of those who want to seek asylum, including persons with disabilities, are unable to register in a proper manner.

13. The GNCHR notes that the deficiencies regarding the access to social protection and social assistance are of crucial importance also for refugees and asylum-seekers with disabilities. Furthermore, under the unprecedented refugee emergency with record arrival numbers, the already insufficient structures in the Greek territory cannot provide persons with disabilities the care to which they are entitled and it is often civil society organizations which assist towards this direction.

⁸ UNHCR, Preliminary Questionnaire Findings, 8 December 2015, available from: <https://www.unhcr.gr/nea/artikel/9e4aeb6a68f2778d3ba6f81536ee57f5/ya-foitites-i-pleio.html>.

⁹ Law 3907/2011 On the establishment of an Asylum Service and a First Reception Service, transposition into Greek legislation of the provisions of Directive 2008/115/EC “on common standards and procedures in Member States for returning illegally staying third-country nationals” and other provisions.

¹⁰ It should be stressed, however, that the relevant law is under review at the moment. Very recently, the Government submitted to public consultation a Draft Law (Modification of Law 3907/2011 (GG A 7)10, modifications of Law 4251/2014 (GG A 80), adaptation of Greek legislation: <http://www.opengov.gr/types/?p=3471>) which *inter alia* tends to respond to the systemic problems of the new Asylum System and provides for the establishment of extra Regional Asylum Offices. Furthermore, the Draft Law provides for the creation of a Reception and Identification Service mandated for the monitoring of Reception and Identification Centers and Temporary Reception and Accommodation Structures (Article 9 of the Draft Law which replaces Article 6 of Law 3907/2011). Specific provisions on persons with specific needs, including persons with disabilities, are also included. The new Service shall identify between third-country nationals those who belong to vulnerable groups so that they are given the proper care provided for in all relevant structures (new Articles 6(2), 7(1), 12(2), 12(5) and 12(8)). The Draft Law provides that in all relevant centers and structures separate wings appropriately accommodated are established for third-country nationals or stateless persons belonging to vulnerable groups (new Article 8(6)).

III. The implementation of Article 11 CRPD : a shared responsibility between Greece and the EU

14. In this context, the implementation of Article 11 CRPD requires the commitment of all parties involved, the Greek State along with the UN, the EU, the EU member states and the European institutions.

15. Recently¹¹, the GNCHR recalled its previous statements on the refugee and migration crisis¹² and noted with great concern that the humanitarian crisis is now leaning towards getting out of control with grave and imminent dangers for the refugees as well as their reception countries. The GNCHR reminded for the umpteenth time that basic human rights of migrants and refugees are at risk as well as the rights of the Greek citizens, especially on the border islands that cannot, as first reception areas, manage the huge migration and refugee flows. There is an urgent need, now more than ever, for the EU, its member states as well as the United Nations, to think about the onus that lies upon them in such a critical juncture in human history and work together for the best possible management of the ever increasing migration flows, while ensuring the respect for human life and dignity, both in the EU as well as the countries of origin. The GNCHR has noted long ago that the EU migration policy, and especially the Dublin system, disregards the obligations to respect and protect human rights as well as the obligations of solidarity and fair burden sharing among the member states, as dictated and enforced by the EU Charter of Fundamental Rights and the EU Treaties¹³. These remarks were also made by the European Network of National Human Rights Institutions (ENNHRI)¹⁴.

16. As far as migrants, refugees and asylum seekers with disabilities are specifically concerned, the GNCHR considers that the EU should be mainstreaming disability in its migration and refugee policies, as recently proposed by the Committee on the Rights of Persons with Disabilities¹⁵. The CRPD, the first international human rights treaty ratified by the EU¹⁶ is a legally binding instrument for the latter. Deficiencies in migration and refugees policies may constitute violations of the CRPD and of its Article 11 when necessary measures to ensure the protection and safety of refugees with disabilities are not adopted. It should be not neglected that *“Article 11 is a unique provision that establishes a more robust forum for hearing complaints by victims of armed-conflict [...] that any other human rights treaty”*¹⁷.

¹¹ GNCHR, “Statement on the heinous attacks in Paris and appeal to the European Union to take all necessary measures for the protection of the rights of all those in its territory”, 23.11.2015, available from:
http://www.nchr.gr/images/English_Site/TROMOKRATIA/GNCHR_Statement_on_Paris%20Attack_s_eng.pdf.

¹² GNCHR, Statement, “The European Union has to urgently assume its responsibilities and redesign its migration policy”, 31.8.2015, available from:
http://www.nchr.gr/images/English_Site/NEWS/GNCHR_Release_on_Asylum_Policy.pdf.

¹³ Articles 1 of the Charter, 2 and 3 par. 3 EU Treaty and the TEU, as well as article 80 of the TFEU (border monitoring, asylum and migration policy).

¹⁴ ENNHRI, Statement on the continuing tragedies in the Mediterranean Sea, a human rights approach, April 2015, available from:
http://www.nchr.gr/images/English_Site/NEWS/ENNHRI_statement_Mediterranean_Sea_Tragedies.pdf.

¹⁵ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, 2 October 2015, CRPD/C/EU/CO/.

¹⁶ Act of formal confirmation: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&lang=en.

¹⁷ Mary Crock, Naomi Hart, and Ron McCallum, “War, law and disability: Ensuring equality in situations of crisis” in David Mitchell, Valerie Karr (Eds.), *Crises, Conflict and Disability: Ensuring Equality*, (pp. 9–18) 2014, Routledge-London, p. 10.

17. The GNCHR shares the concerns of the Committee on the Rights of Persons with Disabilities on the precarious situation of persons with disabilities in the current migrant crisis in the European Union. As far as their detention is concerned, the GNCHR is also concerned that refugees, migrants and asylum seekers with disabilities continue to be detained within the European Union in conditions which do not provide appropriate support and reasonable accommodation¹⁸.

¹⁸ Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of the European Union, op. cit., par. 34 and 35. The Committee also recommends that the European Union issue guidelines to its agencies and member States that restrictive detention of persons with disabilities in the context of migration and asylum seeking is not in line with the Convention. In general, the GNCHR has repeatedly called on the Greek authorities to comply with the recommendations of international bodies and guarantee that detention conditions are in line with the right to health and human dignity (GNCHR, “Detention Conditions in Police Stations and Detention Facilities for Aliens”, Annual Report 2010, p. 82; GNCHR, “Findings of the in situ visit undertaken by the GNCHR and the Greek Ombudsman in detention facilities for aliens in the Evros Region”, Annual Report 2011, p. 85; GNCHR, “Observations on the Draft of the Second Periodic Report of the Hellenic Republic for the International Covenant on Civil and Political Rights (ICCPR)”, 5.12.2013, available from: http://www.nchr.gr/images/English_Site/EllinikesEktheseis/English_Observations_on_Draft_Report.pdf.