

Criminal policy developments against racism in Greece

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Introduction

Dimitrios Evrigenis¹ in the report 'on the findings of the Inquiry into the Rise of Fascism and Racism in Europe' noted that in Greece *the native population's attitude towards ethnic or religious minorities is tolerant, xenophilic and generally free of racial prejudice.*² The mass arrival and settlement of immigrants in Greece after the collapse of the socialism in Eastern and Southeastern Europe in the 1990's, led to the emergence of racism and xenophobia in society, as the state had not been properly ready to face such a phenomenon. The worsening of economic disparities, the fear of unemployment and insecurity created a negative perception³ for the immigrants in parts of the population, nonetheless, did

¹ Dimitrios Evrigenis was a professor in the Law School of the Aristotle University of Thessaloniki. He was elected as a judge in the European Court of Human Rights and also served in the United Nations Committee of the Elimination of Racial Discrimination.

² European Parliament, *Committee of Inquiry into the Rise of Fascism and Racism in Europe, Report on the Findings of the Inquiry* (Draftsman: D. Evrigenis), December 1985, p. 44.

³ Antonopoulou, A. & Pitsela, A. 'Foreign nationals as a minority group in the criminal justice system of Greece: from offending to victimization of non-Greek population'. *Eur. J. Crim. Policy Res.* (2014) 20: 277. doi:10.1007/s10610-013-9219-1;

not cause alarming expressions of violence against them.⁴

However, in the latest (published in 2015) monitoring report on Greece the European Commission against Racism and Intolerance (ECRI)⁵ of the Council of Europe noted a *dramatic increase* of the racist violence. The previous assessment of the extent of the phenomenon in the country, based on the former reports, included indeed significantly lower numbers of racist violence. Nonetheless, it should also be noted that in the meantime the record of incidents has been improved due to the activity of Non-Governmental Organizations and the establishment of the Racist Violence Recording Network.⁶ Despite the still existing shortcomings in the official statistical records, the data accruing from the Greek Ombudsman⁷ and the Racist Violence Recording Network reveal annual increase in the racist motivated attacks in the period 2009-2013. The recorded attacks were in their majority against mi-

Pitsela, A. (2010). 'Foreigners and crime in Greece'. In Aristotle University of Thessaloniki, *NOMOC, Tribute to Professor Kalliopi Koufa*, Thessaloniki (in Greek), pp. 277, 278.

⁴ Council of Europe, *European Commission against Racism and Intolerance. Third Report on Greece*. December 2003, p. 5, and Council of Europe, *European Commission against Racism and Intolerance. Second Report on Greece*. December 1999. Retrieved from: http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/Greece_CBC_en.asp

See also Z. Papadimitriou (2000), *The European Racism*. Athens: Ellinika Grammata, p. 298 ff. (in Greek).

⁵ ECRI is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, anti-Semitism, intolerance and discrimination on grounds such as race, national/ethnic origin, color, citizenship, religion and language; it prepares reports and issues recommendations to member States (http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp). In the terms of its activities ECRI conducts country-by-country monitoring work in 5 year cycles.

⁶ The Racist Violence Recording Network was set up by the Greek National Human Rights Commission and 35 Non-Governmental Organizations in 2011.

⁷ Greek Ombudsman (2013), 'The phenomenon of racist violence in Greece and its confrontation' (in Greek), retrieved 15.08.2016 from: <http://www.synigoros.gr/resources/eidikiekthesiratsistikivia--2.pdf>

grants, refugees, Roma, Jews, Muslims and members of the LGBT communities, while the fear of the victims to report the incidents and their distrust to the effectiveness of the competent authorities was also confirmed.⁸

As influencing factors the ECRI specifically indicated the role of the neo-Nazi party, Golden Dawn, and the alarming existence of incitement to racial hatred in the public discourse⁹. Apart from the economic crisis and the recession of the welfare state that favored the spread and growth of the extremist rhetoric, the incomplete institutional distinction between the church and the state has also been pointed out as a contributing to discrimination factor.¹⁰

Moreover, in the latest Written Information by the Greek National Human Rights Commission concerning the implementation of the UN International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in July 2016, the severe economic crisis that Greece has been facing during the last seven years is held as a cause of the increased discrimination against vulnerable groups such as migrants, refugees, asylum seekers, Roma, and LGBT communities.¹¹

⁸ Council of Europe, *ECRI Report on Greece*, (fifth monitoring cycle), adopted on 10 December 2014, published on 24 February 2015, p. 9. Retrieved 15.08.2016 from: <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Greece/GRC-CbC-V-2015-001-ENG.pdf>, p. 23.

⁹ Council of Europe, *ECRI Report on Greece* (fifth monitoring cycle), adopted on 10 December 2014, published on 24 February 2015, p. 9.

¹⁰ A. Gazakis, D. Syrri & A. Takis (2014). *Racism and Discrimination in Greece Today*. Thessaloniki: Heinrich Böll Stiftung Greece. Retrieved 15.08.2016 from: https://heimatkunde.boell.de/sites/default/files/report_en.pdf, pp. 21, 44.

¹¹ In fact the National Commission for Human Rights aligns with the statement of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Mutuma Ruteere, following his visit to Greece in May 2015. Greek National Commission for Human Rights, (2016), Written Information submitted by the Greek National Commission for Human Rights (GNCHR) in relation to the implementation of the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) in Greece, p. 8. Retrieved 15.08.2016 from: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GRC/INT_CERD_IFN_GRC_24494_E.pdf

Undoubtedly, the unprecedented wave of migration, Greece has been facing lately, was added in an already challenging period for both the state mechanism and the society. Consistent with the arguments of the first European Parliament Report, drafted by D. Evrigenis, on the findings of the *Inquiry into the Rise of Fascism and Racism in Europe*¹², the absence of a systemic cooperative policy and the ineffective treatment have, thus, worsen inevitably the racist phenomena. Notwithstanding the increase of hate crimes and incidents, what is more alarming is the ineffective official treatment that could lead to a misinterpreted socially accepted tolerance.¹³

In fact, the superficial investigation of racist crime cases resulting in impunity for the offenders of racist violent attacks, especially among the police force,¹⁴ had not only been addressed by the Greek Ombudsman since 2013, but also recently emerged after the decision in 2016 by the European Court of Human Rights (ECHR) in the case of *Sakir v. Greece*¹⁵. The case concerned the assault against an Afghan national, R. Sakir, in the center of Athens. The Court noted deficiencies and omissions in the official police investigation and failure to connect the case with similar incidents constituting a broader context of racist violence.

¹² According to the European Parliament, *Committee of Inquiry into the Rise of Fascism and Racism in Europe. Report on the findings of the inquiry*, December 1985, p. 68: the problem of racism is exacerbated by the large scale of international population movements.

¹³ N. Paraskevopoulos (2007). *Analyzing the Facts: Domestic incidents of xenophobia and racism. Refoulements and hate preaching*. (in Greek). Retrieved 17.08.2016 from: http://cm.greekhelsinki.gr/uploads/2007_files/ghm937_ratsismos_xenofobia_antisimitismos_dikaiosyni_greek.doc. p. 2.

¹⁴ Nevertheless, according to relevant empirical research in the police force, the attributed label of 'racist' is arbitrary and unsubstantiated. See in further detail in E. Vagena-Palaiologou (2006). *Racism and Xenophobia. Research in the Justice and the Police*, Athens: Nomiki Bibliothiki. (in Greek), p. 115 ff.

¹⁵ ECHR (2016), Case of *Sakir v. Greece*: <http://hudoc.echr.coe.int/eng?i=001-161795>. The case concerned also violation of the Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy) due to the conditions of the applicant's detention.

Thus, the Court concluded in violation of the Article 3 of the Convention under its procedural aspect as the authorities did not address the case in a sufficiently effective manner. Indeed, apart from that, the jurisprudence implementing the anti-racism laws is characterized as actually scarce.¹⁶

According to the ECRI's conclusions the situation in Greece regarding racist incidents urges for effective treatment, however, several national legislative and policy initiatives were welcomed as positive developments in the effort to address issues of racism. In fact, apart from the introduction of the new anti-racist legislation in 2014 by the Law No. 4285/2014, presented in detail in the following paragraphs, previously in 2010 the Law No. 3852/2010 (Article 78) provided the framework for the establishment of local Integration Councils for Immigrants. These councils operate in each municipality in order to record and investigate problems faced by immigrants residing in the region and the development of local actions supporting their integration in the local community. In addition, since 1999 competent concerning actions against racism and intolerance have been also the Local Councils for the Prevention of Criminality¹⁷ established by the Law No. 2713/1999, as modified and renamed to Local Councils for the Prevention of Delinquency by the Law No. 3387/2005.

Moreover, in 2012 special police units¹⁸ for the in-depth investigation of racist attacks were established by the Ministry of Public Order and Citizen Protection. There are two Departments for the Confrontation of the Racist Violence in the largest cities in Attica and Thessaloniki, and totally sixty eight relevant bureaus across the country. There

¹⁶ M. Kaiafa-Gbandi, 'The criminal treatment of racist rhetoric, racist crimes and racist discrimination: towards an effective protection of human dignity', *Criminal Justice* 2/2016, (in Greek), p. 102.

¹⁷ See further the key competences of the Local Councils targeting at the improvement of the feelings of insecurity in S. Alexiadis (2011). *Criminology*. Athens/Thessaloniki: Sakkoula publ. (in Greek), p. 327 f.

¹⁸ http://www.astynomia.gr/index.php?option=ozo_content&lang=%27..%27&perform=view&id=23730&Itemid=1027&lang=

is also a special hotline (11414) operating in 24 hours for the denunciation of racist violence incidents.

In 2013 a public prosecutor for the prosecution of racist violence acts was appointed, thus, revealing on a symbolic basis the importance attributed by the state to the repression of racism. Finally, the control of racism has been also included in the Human Rights National Action Plan 2014-2016 of the Ministry of Justice, Transparency and Human Rights.

Theoretical Approach

In the terms of the UN International Convention on the Elimination of All Forms of Racial Discrimination of 1965¹⁹ as 'racial discrimination' is defined *any distinction, exclusion, restriction, or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life* (Article 1). In general, racism as a doctrine of superiority is recognized as scientifically false, morally condemnable, socially unjust and dangerous.

According to UNESCO, racism consists of "antisocial beliefs and acts which are based on the fallacy that discriminatory intergroup relations are justifiable on biological grounds' and 'includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality".²⁰

In a similar direction ECRI in the General Policy Recommendation No. 7 'on national legislation to combat racism and racial discrimination of 2002' defines racism as "the belief that, on the ground of race, color, language, religion, nationality or national or ethnic origin, justi-

¹⁹ UN International Convention on the Elimination of All Forms of Racial Discrimination, Retrieved 15.08.2016 from: <http://www.ohchr.org/Documents/ProfessionalInterest/cerd.pdf>. Greece has ratified the Convention by the Legislative Decree No 494/1979.

²⁰ European Parliament, *Committee of Inquiry into the Rise of Fascism and Racism in Europe, Report on the Findings of the Inquiry*, December 1985, p. 21.

fies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons".²¹

It is rather obvious that the definitions of racism by international intergovernmental organizations include similar descriptions and, thus, converge. Simultaneously, it is also true that the characteristics upon the discrimination occurs vary; race, ethnicity, color, language, religion, gender sexual orientation, disability; resulting to wider or narrower definitions. The Council of Europe recently in the Resolution 2069 (2015) 'Recognizing and preventing neo-racism'²² underlined that in addition to the conventional definition of racism, there is also a "race-less racism" equally damaging because it tends to justify discrimination against certain groups and individuals. Relevantly, the Council of Europe has adopted the widest/most complete definition recognizing in the Article 1 of the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, more grounds of discrimination, namely the *sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status*.²³

As the phenomenon of racism is complex and multifaceted, the difficulties accruing in its approach and establishment are both conceptual and methodological. To this end, the broader context of definition is preferred for its understanding and effective treatment.²⁴

²¹ ECRI General Policy Recommendation No. 7 'on national legislation to combat racism and racial discrimination' of 2002, Retrieved 15.08.2016 from: http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N7/ecri03-8%20recommendation%20nr%207.pdf

²² Council of Europe, Resolution 2069 (2015) 'Recognizing and preventing neo-racism'. Retrieved 17.08.2016 from: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21973&lang=en>

²³ Council of Europe, *Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, Retrieved 15.08.2016 from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680080622>

²⁴ M. Fitz Gerald (1993). "'Racism': establishing the phenomenon'. In: D. Cook & B. Hudson (eds.), *Racism and Criminology*. London/Thousand Oaks, CA/New

Practices totally inconsistent with the principles of democracy, respect of human rights and the rule of law are the tangible results of relations of domination and subordination between the 'legitimate self' and the 'hateful, even sub-human other' that lie behind racism. The fact that the actual scientific proof of the false racist perceptions does not suffice leading alone to its elimination; reveals more incentives of social and systemic nature. In the past racism has been connected to colonialism and slavery, however, economic imperatives and dominance rather than obscurantism seems to favor modern also racist manifestations.²⁵

These rooted racist prejudices expressed through violence against the targeted person or group form the category of *hate or bias crimes*²⁶. Hate or bias crimes occurs against vulnerable victims and are rarely recorded due to the fear or the distrust of the victim towards the authorities.²⁷ Additionally, the correct classification of such crimes is also often misled due to the poor investigation of the offender's motive. These attacks are painful and cause significant intimidation to the victims and the individuals that bear the same characteristics, as they convey a clear message of repulsion against them.

Negative qualities are attributed to the victims, thus, neutralizing the harmful behavior against them. Besides, the attitude especially towards immigrants that combines them with higher levels of criminality is widespread.²⁸ The actually vulnerable victim is often mainly per-

Delhi: Sage, pp. 54, 55.

²⁵ Fredman, S. (2001). *Combating Racism with Human Rights: The Right to Equality*. In: S. Fredman (ed.), *Discrimination and Human Rights. The Case of Racism*. New York: Oxford University Press, p. 10.

²⁶ Ch. Dimopoulos (2008). *Papers on Criminology*. Athens: Nomiki Bibliothiki. (in Greek), p. 748; G. Voulgaris. 'Hate crimes and their treatment in Greece'. *Criminal Justice* 3/2015. (in Greek), p. 275; G. Voulgaris. 'Hate crimes'. *Criminal Justice* 6/2010. (in Greek), p. 711.

²⁷ Ch. Dimopoulos. (2006). *Introduction to Victimology*. Athens: Nomiki Bibliothiki. (in Greek), p. 276 f.

²⁸ A. Antonopoulou. & A. Pitsela (2014), p. 277; Pitsela (2010), p. 285; V. Karydis (2004). *The Undetected Criminality. National Crime Victim Survey*. Athens – Komotini:

ceived as offender not only among the citizens but also among the police and the judges.²⁹ Therefore the mobilization of the criminal justice system in matters of racism brings about challenges in every stage of criminal policy; in the criminalization on legislative level, the police investigation of alleged incidents, and the judicial implementation of the law.

The Current Regulatory Framework

Against any racist or intolerant behavior the *Greek Constitution* provides for the protection of human value and dignity (Article 2), the freedom of indiscriminate development of personality (Article 5), freedom of religious consciousness (Article 13) and the freedom of expression/speech (Article 14). Moreover, the general protective framework of higher legal rank is enriched by international policy instruments.³⁰ The European Convention on Human Rights and Fundamental Freedoms (Legislative Decree No 53/1974), the UN International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (LD No 494/1979), the European Social Charter (LD No. 1426/1984), the International Covenant on Civil and Political Rights (LD No. 2462/1997) and the International Covenant on Economic, Social and Cultural Rights (LD No. 1532/1985) have been ratified and incorporated into the Greek legal order.

In addition, towards a more complete framework for the protection of human rights against racism and discriminations, the ECRI in the 2015 Report has strongly suggested³¹ to the Greek authorities the ratification of the Protocol No. 12 to the European Convention of Human Rights and Fundamental Freedoms providing general prohibition of discriminations³². In the same direction, the UN Committee on the

A. N. Sakkoula, (in Greek), p. 73 f., 163, 205.

²⁹ Vagena-Palaiologou (2006), p. 127 ff.

³⁰ Based on the Article 28 of the Greek Constitution the ratified international conventions prevail over any contrary national law provision.

³¹ Council of Europe, 'ECRI Report on Greece', p. 10.

³² COE Protocol No. 12 to the Convention for the Protection of Human Rights

Elimination of Racial Discrimination, in the 2016 concluding observations report on Greece³³ recommends also the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1. *Criminal law provisions*

The need of legislative intervention in the legislation against racism had already been expressed³⁴ targeting at the modernization of the legislation towards the international and European standards. Nevertheless, the latest legislative modification caused numerous reactions and intense dialogue regarding its scope, extent and content.³⁵ At the center of the discussion has been the risk of compromising the freedom of expression favoring some social groups, and also criminal law doctrinal issues on the protective legal interest regarding the human dignity in relation to the public order.

More specifically, the *Law No. 927/1979* 'on the punishment of acts aiming at racial discriminations' had long been criminally addressing racist events based on the race or ethnicity. Particularly, acts of incitement of violence, public expression of offensive ideas and refusal of providing goods or services against individuals or groups due to their race or ethnicity were penalized in a misdemeanor³⁶ degree. Beside

and Fundamental Freedoms.

³³ UN Committee on the Elimination of Racial Discrimination, (2016), Concluding observations on the twentieth to twenty-second periodic reports of Greece. Retrieved 15.08.2016 from: http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GRC/CERD_C_GRC_CO_20-22_24986_E.pdf, pp. 7, 8.

³⁴ G. Apostolakis, 'The penal treatment of the racial, ethnic and religious discriminations'. *Criminal Justice* 11/2002 (in Greek), p. 1188; N. Fragakis. 'Racism issues'. *Criminal Justice* 5/2000, (in Greek), p. 569; Voulgaris (2016), p. 714.

³⁵ P. Alikakos. 'The bias or hate incident as a punishable act'. *Criminal Justice* 1/2016, (in Greek), 36 ff.; Kaiafa-Gbandi, (2016), p. 97 ff., Symeonidou – Kastanidou, E. The penal treatment of racism and xenophobia in Greece. *Penal Chronicles* 2015, (in Greek), p. 729 ff.; G. Voulgaris. 'Hate crimes'. *Criminal Justice* 6/2010, (in Greek), p. 711 ff.

³⁶ In general in the Greek sanction system crimes are divided in felonies, mis-

race and ethnicity the religion was also added as a cause of discrimination after the amendment made by the Law No. 1419/1984. The forementioned crimes were prosecuted only by indictment until 2001. The provision of the Article 72, Law No. 2910/2001 introduced the ex officio prosecution.

As far as the jurisprudence is concerned, the implementation of the law had been extremely rare.³⁷ Relevantly, the Supreme Civil and Criminal Court (Areios Pagos) in the decision No. 3/2010³⁸ concluded that the author of a book containing anti-Semitic arguments did not violate the law, as he did not intend to induce the readers to acts of violence against the Jews. The court in this case pointed out to the freedom of the historian scientist to interpret and evaluate the historical events and assess the role of the person involved. Nevertheless, this decision has been strongly criticized.³⁹

In 2005, the Article 3 of the Law No. 927/1979 on the provision of goods and services was abolished and substituted by the *Article 16 para. 2 of the Law No. 3304/2005* entitled 'Implementation of the principle of equal treatment regardless of racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Thus, the discrimination on the forementioned grounds in providing goods or services to the public is punishable by imprisonment of six months to three years and fine of 1.000 to 5.000 euros.

The most significant and systematic amendment of the anti-racism legislation in Greece was conducted in 2014. The *Law No. 4285/2014* 'Modification of the Law No. 927/1979 and adjustment to the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, and other provisions', modernized the national legisla-

demeanors and contraventions. The misdemeanors are punishable by imprisonment of 10 days to five years or fine of 150 to 15.000 euros.

³⁷ A. Gazakis, D. Syrri & A. Takis (2014), p. 47.

³⁸ <http://www.areiospagos.gr>. The decisions of the court are available in the Greek language.

³⁹ Kaiafa-Gbandi, (2016), p. 102.

tion against racial phenomena in fulfillment of undertaken European obligations. In compliance with the European legislation, the provisions of the fore-mentioned Council Framework Decision⁴⁰ were incorporated in the Greek legal system.

According to the 2008/913/JHA racism and xenophobia directly violate fundamental freedoms, principles of liberty, democracy, respect of human rights and the rule of law. The EU member states were called to adopt offences and establish aggravating cases concerning racism and xenophobia. To this end, the former Law No. 927/1979 was extensively modified; while necessary amendments in the Greek Criminal Code were made as well.

More specifically, according to the Article 1 para. 1 of the Law No. 4284/2014 the *intentional public incitement* orally, using the press or the internet or in any other way, to acts that may result in discrimination, hatred or violence against individuals or groups based on their *racial, national or ethnic origin, color, religion, sexual orientation, gender identity or disability*, is punishable by imprisonment of three months to three years and fine of five to twenty thousand euros. According to the provision, the incitement should expose the public order to danger, or threat the life of physical integrity of the individuals.

The endangerment caused by the act against the public order, as restriction of the criminal character, has been a matter of debate and criticized as undue and inconsistent with the adopted European Council Framework Decision.⁴¹ Specifically, the Council Framework Decision provides for the possibility to restrict the punishment in cases that

⁴⁰ Council Framework, 'Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law', Retrieved 15.8.2016 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:en:PDF>

⁴¹ The text of the Council Framework Decision provides for a way of conduct *likely* to cause disturbance of the public order and not actual danger. Moreover, the way of conduct is provided to be threatening, abusive or insulting with no further reference to threat against life, freedom or physical integrity. See Kaiafa-Gbandi (2016), p. 104.

the way of conduct is *likely* to cause disturbance of the public order and not actual danger. Moreover, the way of conduct is provided to be threatening, abusive or insulting with no further reference to threat against life, freedom or physical integrity. Furthermore, the offensive character of the racist rhetoric lies in the publicly expressed denial of the human dignity; however, the actual endangerment of the public order, as element of the crime, constitutes a different criminally protective interest than the human dignity that should be protected.⁴²

To the contrary, by interpreting the law the exposure to danger indicates the possibility of endangerment and not an actual danger. In any case, the possibility of disturbing the public order is a necessary condition for the criminal treatment of an act that actual violates the terms of the peaceful social coexistence.⁴³ In the same direction, in the explanatory statement of the Law No. 4284/2014 the appropriateness of the indictment to generate a direct and imminent danger to the public order or the interest of the victims is essential in order to confine through the criminal provision the freedom of expression.⁴⁴

The *incitement to damage property* used by the discriminated against individuals in a dangerous for the public order way is punishable by the same penalties (Article 1 para. 2). In case the act of incitement results in the commission of a crime the punishment is imprisonment of at least six months to five years and fine of fifteen to thirty thousand euros (Article 1 para. 3).

Additionally, the formation or participation in an organization or

⁴² The human dignity is harmed even though no other legal interest is affected. However, according to another opinion, human dignity is considered not a criminally protective interest but a fundamental principle for the restraint of any state or private intervention against the individual. See the discourse and more references in Kaiafa-Gbandi (2016), p. 108.

⁴³ Symeonidou & Kastanidou (2015), 733.

⁴⁴ Ministry of Justice, 'Transparency and human rights', (2014), 'Explanatory statement of the Law No. 4285/2014'. (in Greek). Retrieved 15.08.2015 from:

<http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=ousC5dlrSgk%3d&tabid=132>, p. 1.

group of any kind that systematically aims at the commission of the fore-mentioned acts is punishable by the same penalties, unless such an act could be punished more severe by another provision (Article 1 para. 4). Finally in para. 5 the status of the perpetrator as public officer or civil servant is provided as an aggravated case.

The *act of condoning, trivializing or maliciously denying genocide, crimes against humanity, war crimes, the Holocaust or crimes of the Nazi* recognized by international court decisions or the Greek Parliament is penalized in the Article 2 para. 1 of the Law No. 4284/2014 on the condition that this behavior is against an individual or a group defined by their racial, national or ethnic origin, color, religion, sexual orientation, gender identity or disability, and is expressed in an offensive or threatening way or could instigate violence. The provided punishment is imprisonment of three months to three years and fine of five to twenty thousand euros, while the professional status of the offender as public officer or civil servant increases the penalty frame. In this provision the criminal treatment depends upon the possible threat against public order as well, otherwise it would mean the penalization of the expression of opinion.⁴⁵

Although the criminal liability of legal persons is not recognized in the Greek legal system, the imposition of administrative penalties against legal entities in case a relevant offense is committed on their behalf, is provided in the Article 4. Finally, despite the fact that the fore-mentioned crimes are prosecuted in officio, the victim is also relieved from the obligation to pay the necessary indictment fee⁴⁶ to the state (Article 5).

Furthermore, according to the provisions of the Law No. 4285/2014

⁴⁵ This provision is also in line with the relevant jurisprudence of the European Court of Human Rights. Symeonidou & Kastanidou (2015), pp. 735, 736. See also Kaiafa-Gbandi (2016), p. 104.

⁴⁶ In Greece according to the Ministerial Decision No. 123827/2010 "Readjustment of the indictment fee, fee for the participation of the civil claimant and court costs of the criminal proceedings' the victims of prosecuted by indictment misdemeanors are obligated to pay a fee of 100 euros in order to file the indictment.

(Article 10) the Article 81A 'racist crime' was added in the Greek Criminal Code introducing the autonomous punishment of racial motivation.⁴⁷ Since 2008, the element of racial motivation was generally taken into consideration in the terms of the judicial determination of the penalty in the Article 79 grCC. At first, the *Law No. 3719/2008* modified the Article 79 grCC by adding the commission of an act out of hatred due to the race, religion, national or ethnic origin, different sexual orientation or gender identity of the victim as a general aggravating case. The *Law No. 4139/2013* also amended the Article 79 providing that the sentence could not be suspended.

Nevertheless, in 2014 the relevant provision of the Article 79 was abolished by the *Law No. 4285* and replaced by the introduction of a new article in the Greek Criminal Code. Specifically, the Article 81A provided for stricter sentencing frame, namely, aggravating the lowest penalty that could be imposed for hate motivated crimes due to the racial, national or ethnic origin, color, religion, sexual orientation, gender identity or disability of the victim. The prohibition of suspending the case remained also in the Article 81A grCC. Lately, the Article 21 of the *Law No. 4356/2015* amended the Article 81A by providing for also stricter maximum penalty in cases of misdemeanors, abolishing the prohibition of suspending the sentence, and also abolishing hatred as a necessary mens rea element. The selection of the victim due to their special characteristics suffices to induce punishment.⁴⁸ The internal psychological state of hate is no longer required, since it had caused significant difficulties in the empirical evidence and contributed in the rare application of the provision.⁴⁹ Finally, the conviction based on the Article 81A for a racist crime results also in deprivation of political

⁴⁷ A. Pitsela, 'Kriminalpolitik in Griechenland'. *Neue Kriminalpolitik*, 27, 2/2015, p. 203.

⁴⁸ Kaiafa-Gbandi (2016), p. 103.

⁴⁹ Ministry of Justice, 'Transparency and human rights, (2015), 'Explanatory statement of the Law No. 4356/2015' (in Greek). Retrieved 15.08.2016 from: http://www.ministryofjustice.gr/site/Portals/0/uploaded_files/uploaded_15/N_4356-AITIOLOGIKI-EKTHESI.pdf, p. 14.

rights for one to five years (Article 61 GrCC).

Summing up, the racist motivation for any crime constitutes an aggravating case following the international and European standards.

Finally, the Article 29 of the Law No. 4356/2015 introduced the Article 361B grCP, according to which, whoever supplies goods or provides services or publicly announces such provision or supply excluding individuals out of contempt because of their race, color, national or ethnic origin, descent, religion, disability, sexual orientation, gender identity or characteristics is punished by imprisonment of at least three months (to five years) and fine of 1,500 to 15,000 euros. The participation of two or more persons in the act constitutes an aggravating case and is punishable by imprisonment of at least six months (to five years) and fine of 5,000 to 25,000 euros. In fact this new provision is held to bear an *educational meaning* conveying to the society the message of *cultural maturity and universal cooperation*, thus, targeting at the general deterrence.⁵⁰

The *Law No. 4356/2015* has also established the 'National Council against Racism and Intolerance' as a consultative body of the Ministry of Justice, Transparency and Human Rights (articles 15 – 19). The Council is officially active since the 20th of April 2016.⁵¹ The General Secretary of Transparency and Human Rights serves as President. Additionally, in every meeting of the Council is also provided the participation of a representative from the Greek Ombudsman without voting right. However, the Greek Ombudsman has the right to become a full member after a final declaration to the President of the Council at any time (Article 16 para. 4). In the terms of promoting the social dialogue the Council may also invite non-governmental organizations and other actors of civil society in consultation, if deemed necessary in its discretion (Article 19 para. 2).

Under the competences of the Council fall the policy planning for

⁵⁰ Alikakos (2016), p. 41.

⁵¹ <http://www.kathimerini.gr/857491/article/epikairothta/ellada/enar3h-ergasiwn-toy-e8nikoy-symvoylioy-kata-ratsismoy-kai-misallodo3ias>

the prevention and repression to racism and intolerance, the supervision of the implementation of the relevant legislation and the compliance with the international and European standards, the promotion and coordination of the actions undertaken by the involved agencies and the reinforcement of the cooperation in the society (Article 17 para. 1). The Law assigns to the Council several initiatives and activities such as drafting of studies on the subject of racism and making relevant suggestions, gathering and processing statistical data, training of judicial and prosecutorial officials, officers in the official security forces and other public servants. Especially, the Council should draft an annual report action and submit it to the President of the Parliament by the end of January (Article 17 para. 2).

Most recently, in August 2016 the *Law No. 4411/2016*' on the ratification of the Convention on Cybercrime by the Council of Europe and its Additional Protocol concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, and the incorporation in the Greek legal system of the Directive 2013/40/EU of the European Parliament and Council on attacks against information systems, replacing Council Framework Decision 2005/222/JHA' was introduced. Nonetheless, the use of the internet in committing racist crimes has been included in the relevant criminal provisions since 2014.

2. Administrative and civil legislation against discrimination

The *Law No. 3304/2005* entitled 'Implementation of the principle of equal treatment regardless of racial or ethnic origin, religion or belief, disability, age or sexual orientation' was adopted in compliance with the European Council Directives 2000/43/EC of 29 June 2000 "implementing the principle of equal treatment between persons irrespective of racial or ethnic origin"⁵² and 2000/78/EC of 27 November 2000 "es-

⁵² Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, 19/07/2000, P. 0022 – 0026, Retrieved 15.08.2016 from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

tablishing a general framework for equal treatment in employment and occupation".⁵³ The Law, as valid after amendment by the Law No. 3625/2007, provides for protection against discriminations based on race, ethnic origin, religion, political or other beliefs, sex, disability, age and sexual orientation in the terms of employment, education, social protection and access to goods and services, and extends to public and private sphere. Both the direct and indirect discriminations are prohibited, as well as the instructions to discriminate. The Law provides also for administrative sanctions in case of discrimination in the employment relationships.

At the moment, the Law No. 3304/2005 is subjected to review. A new Draft Law⁵⁴ is under process by the Ministry of Justice, Transparency and Human Rights on the implementation of the principle of equal treatment, following the provisions of the Council Directives 2000/43/EC and 2000/78/EC and also incorporating the Directive 2014/54/EU of the European Parliament and Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.⁵⁵ The Draft Law includes also the extension of the Greek Ombudsman competences in similar cases as a responsible institution for the implementation and promotion of the principle of equal treatment against discrimination. The Greek Na-

⁵³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Official Journal L 303, 02/12/2000, P. 0016 – 0022, Retrieved 15.08.2016 from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078>

⁵⁴ The Draft Law was posted, prior to its submission to Parliament, in the Open Government platform. Ministry of Justice, 'Transparency and human rights', 2016, Draft Law, retrieved 15.8.2016 from: http://www.opengov.gr/ministryofjustice/wp-content/uploads/downloads/2016/06/2016_06_29_Sxedio_Nomoy_Min_Justice_Isi_Metaxeirisi-1.pdf

⁵⁵ Directive 2014/54/EU of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, Official Journal of the European Union L 128/8, 30/04/2014, P. 8, Retrieved 15.08.2016 from: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0054>

tional Commission for Human Rights in the terms of the fore-mentioned report⁵⁶ has also noted several suggestions and comments to the upcoming legislative amendment in line also with the relevant ECRI observations. The recommendations include the modification of that Law 3304/2005 in order to, among others, include the grounds of color, citizenship and language, provide a direct obligation of all public authorities to prevent discrimination when carrying out their functions, enable NGOs to bring cases to court without representing a specific victim, enable the Ombudsman to initiate court cases, participate and intervene in them, and also to receive complaints from the private sector concerning racial discrimination.⁵⁷

Perspective Policy Recommendations

Having examined the legal anti-racist framework points of improvement could then be indicated. In the crimes included in the anti-racism law (namely public incitement to violence and public condoning, trivializing or denying recognized international crimes) the status of the offender as a civil servant constitutes an aggravating case. However, there is no explicit provision for the punishment of the racial discrimination in the exercise of public service⁵⁸. The criminalization of this act, recommended also by ECRI,⁵⁹ would bear a significant message and tackle the institutionalization of intolerable racist behavior. All told, the criminal law provisions have been subjected to criticism as inadequate to address the phenomenon effectively,⁶⁰ while the implementation also of the relevant legislation is extremely rare.

Additionally, the criminal justice mechanism should further ensure the in-depth, complete investigation of such cases. To this end the existed education and specialized training of the police officers, the

⁵⁶ Greek National Human Rights Commission, (2016), pp. 11-13.

⁵⁷ Greek National Human Rights Commission, (2016), p. 12.

⁵⁸ Kaiafa-Gbandi (2016), p. 109.

⁵⁹ Council of Europe, 'ECRI Report on Greece' (2015), p. 43.

⁶⁰ Kaiafa-Gbandi (2016), p. 110.

prosecutors and judges is recommended to be further intensified,⁶¹ while it should also include the probation officers.

Apart from the criminal treatment of racism, the matter of prevention should not be underestimated. Indeed, the fore-mentioned Report by Evrigenis on the Rise of Fascism and Racism in Europe⁶² attached great importance to the preventive policy measures. Remarkable is the activation of non-governmental and civil society organizations taking initiatives and developing actions targeting at the elimination of racism and discrimination.⁶³ Undoubtedly, the establishment in 2011 of the Racist Violence Recording Network⁶⁴ initiated by the Greek National Human Rights Commission and the UN Refugee Agency has been also a significant step of progress facilitating the record of such crimes on national level.

Despite the severe economic crisis or even because of it, in the terms of a comprehensive policy against racism the measures of social character are essential, such as the provision of equal opportunities and the improvement of access to the labor market for the vulnerable groups. Moreover, the facilitation of the religious practices for the minorities is necessary.⁶⁵

Undoubtedly, the education and public awareness against any discrimination would ensure the sustainability of any policy against racism and the overall prevention of relevant phenomena in the future.

Nonetheless, at the moment the treatment of the problem of racism in Greece presupposes the cooperative and systematic resolve of the urgent migration issues.

⁶¹ A. Gazakis, D. Syrri & A. Takis (2014), p. 42.

⁶² European Parliament, 'Committee of inquiry into the rise of fascism and racism in Europe: report on the findings of the inquiry', p. 95 f.

⁶³ A. Gazakis, D. Syrri & A. Takis (2014), p. 50. 'Indicatively: local anti-racism initiatives in Athens and in Thessaloniki, Nazi Free Thessaloniki Assembly, etc.'

⁶⁴ For more information: <http://rvrn.org/>

⁶⁵ A. Gazakis, D. Syrri & A. Takis (2014), p. 56.

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