

**THE IMPLEMENTATION OF ANTI-DISCRIMINATION DIRECTIVES IN
GREECE**

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Introduction: The implementation process in Greece

Greece implemented the 2 anti-discrimination directives, 2000/43/EC and 2000/78/EC in January 2005 by an Act of Parliament. There was an initial bill drafted by the former center-left Government that was not introduced to the Parliament on time¹, and after the national elections, in March 2004, the new Government considered other options but concluded in introducing a bill the provisions of which were almost identical to those of the draft prepared by their parliamentary opponents. The result was a considerable delay in implementing the aforementioned directives² but also an apparently broad political consensus as to the implementation provisions.

The implementation legislation

The implementation Law (3304/27-1-2005) presents the following main features:

1. A combined transposition of the 2 directives
2. A tri-partite system of monitoring bodies
3. A literal transposition of the basic definitions
4. A minimal transposition, i.e. not using the optional powers conferred to the member-states in extending the anti-discrimination protection

(feature No1) The combined transposition of the two directives- the first, 2000/43/EC, known as Race Directive, the second, 2000/78/EC, usually referred to as the Framework or Employment Directive- in the same piece of legislation, offered the

¹ It was re-introduced as a parliamentary minority bill after the national elections

² A delay of 18 months for the 2000/43/EC directive and 13 months for the 2000/78/EC directive

advantage of creating a coherent anti-discrimination legal instrument, aligning the protection both in the substantial provisions and in those containing procedural guarantees. A unified text also contributes in the goal of mainstreaming the fight against discrimination and protecting personal dignity as a whole rather than addressing different grounds of discrimination as attacks to different fragments of society.

However, the Greek Implementation Law did not offer a unified protection to all grounds of discrimination, since the legislator chose to implement not more than the minimal protection he was obliged to under the EU law (feature No 4). Thus, the Framework directive offered protection on the grounds of religion or belief, disability, age or sexual orientation only in the field of work and employment and the implementation law offered the option to the executive³ to extend at a later stage this protection to other fields of social life. Thus, it is not yet possible to impose sanctions for discriminatory behavior in other fields⁴, for instance when the victim is a Muslim to whom renting of a flat is denied by the owner referring directly to his religion, since this discriminatory behavior is not covered by the law 3304/05.

However, the search for auxiliary protection would be required in this case since our domestic law already prohibits discrimination on any ground⁵, mainly on the basis of the Constitution (art.2 para. 1 and 5 para.1) and the ECHR (art.14). The extra protection afforded by the 2 directives is crucial in terms of sanctioning discriminatory behavior⁶ and of introducing some new legal concepts which are tools for stating beyond any doubt whether discrimination has occurred⁷:

³ authorization for presidential decree, art. 27 of Law 3304/05

⁴ despite the broad wording of art. 16 of Law 3304/05 referring to penal sanctions on every discrimination ground, the constitutional principle *nulla poena sine lege* disallows for sanctions without a previous prohibition rule

⁵ There was no explicit reference to sexual orientation until the transposition of the directive 2000/78/EC. Discrimination on this ground could however be considered an infringement of human dignity and a violation of the right to the free development of personality. The explicit reference to sexual orientation left no margin for contra interpretation by the Courts or any other state body interpreting social morals. Discrimination on the ground of age was a new concept to our domestic law brought in by the directive 2000/78/EC.

⁶ the pre-existing Law 927/1979 bringing penal sanctions on intolerant behavior for racial, ethnic origin and, since 1984, religious belief, was rarely applied.

⁷ In that respect, the definitions have a wider scope than the field already protected by the 2 directives. For instance, adequate adjustments for persons with disabilities is a principle against discrimination even outside the field of work and employment covered by the mandatory minimum of the Directive 2000/78/EC.

Literal transposition in the wording of the basic⁸ definitions (feature 3) of the 2 directives has proved to be a good legal means for achieving the required by EU law results, since the definitions of direct and indirect discrimination, harassment and positive action include the main principles arising from the EUCourt rulings, and the object is to transpose these legal concepts into our domestic law with accuracy and adopting them in detail as *acquis de droit*.

A major point in combined transposition of the 2 directives is the common mandate of the promoting/monitoring body (or bodies). Art.13 of Dir. 2000/43/EC provides for “body or bodies” designated to promote equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. That was considered a crucial instrument for the effectiveness of the anti-discrimination provisions of the first, the Race Directive, in contrast with the second, the Framework Directive, the provisions of which, do not compel the member-states to designate such a body, with the consequence of possible lesser protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation. This was not the case in Greece where bodies were designated to promote the actual implementation of both directives. There was a tripartite system of designated bodies however, by reference to the field of discrimination: a) broad public sector, b) private employment and c) the rest of private relations.

The Greek Implementation Law entrusted the Greek Ombudsman, a pre-existing independent authority, with the additional task of promoting equal treatment on the grounds of both Directives, vis-à-vis the broad public sector only⁹. Combating discrimination in the private sector is entrusted to 2 other separate and parallel bodies, the Labor Inspectors, operating under the Minister of Labor, having already a broad power of inspection over private work and employment and a –new- Equality Committee within the Government, that is a 5 members committee presided by the Secretary of the Justice Department of Government, to cover discrimination in the rest of the private sector dealings, outside employment.

As advantages of this monitoring system (feature No 2) could be considered:

⁸ However, other definitions, such as the representation of the victims by NGO's were not accurate. The implementation law requires a formal power of attorney and not a mere consent, as stated in the 2 directives, with the consequence of not facilitating the representation of the victims of discrimination.

⁹ public authorities, local authorities, utility companies depending administratively or financially by the state.

-the horizontal implementation, i.e the fact that each designated body covers all the grounds of both the aforementioned Directives, facilitating thus the assistance to victims of discrimination on multiple grounds or even within minority groups, and, in general adopting a more holistic approach to discrimination as an attack to human dignity.

-the building on the experience of pre-existing to the anti-discrimination legislation monitoring mechanisms in investigating victims' complaints, that is the case of the Greek Ombudsman and of the Labor Inspectors. The third body, the Ministry of Justice Committee was not established in practice until very recently.

The disadvantages:

-the tri-partite division of the specialised bodies may not give coherent application of the directives. There should be close contacts and a common will for coordination and that may not always be the case.

-the lack of operational independence of the two other than the Ombudsman specialized bodies is also severely criticised by lawyers since it falls short from the requirements of art.13 of Dir. 2000/43/EC.

The description of the necessary competences of a body under art.13 of the Race Directive (providing independent assistance to victims, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations) reveals the persistent use of the word "independent" that appears 3 times in this paragraph (para.2 art.13). Operational independence is the main feature of the designated body and that is the essence of the procedural guarantee under art.13 against incidents of discrimination.

The Greek Ombudsman as a Specialized Body promoting Equal Treatment

Concentrating on the Ombudsman, let me clarify that operational independence is the decisive characteristic of "independent authorities", and the Ombudsman institutions are conceived as non accountable to Government, i.e. independent, mechanisms of protection of rights, fight against maladministration and application of legality by way of mediation between the people and the state.

The Greek Ombudsman is appointed by way of election by the parliament and enjoys operational independence provided for by the Greek Constitution¹⁰. The Ombudsman's Office is only accountable to Parliament and not to the Government.¹¹ We are vested with broad investigating powers, we can make on site inspections and inspect any document. The classification of such documents as official secrets cannot be invoked against us. All public officials are under a legal obligation to cooperate with us, and the denial of cooperation constitutes a disciplinary offence for the relevant public servant, as well as, since last year's revision of our law, a criminal¹² offence.

Having said that, I must emphasise that we cannot impose sanctions and our recommendations to the public administration are not binding¹³. So we intervene by way of mediation, we recommend a legal and fair solution to a person's dispute with the state, and if the relevant public administration does not respect people's rights, we may inform the Parliament and the Media about it. The whole idea is that we intervene with persuasion and our long-term goal is to introduce an administrative culture which will be rights minded, law respecting, fair and respectful to all individuals. Since the beginning of our operation, in 1998, we managed to gain gradually the confidence of people discriminated against who would be willing to pursue a complaint of discrimination.

There are several examples of the Greek Ombudsman's work that can be directly associated with the existing stereotypes within the Greek society, that can amount to discriminatory treatment: xenophobic treatment of persons of different ethnic origin, racial discrimination against the Roma bearing a very different way of life, and problems of religious minorities due mainly to the actual power¹⁴ of a

¹⁰ (art.101 A of the Greek Constitution).

¹¹ Operating since 1998, we work in 5 departments within the Office: Human Rights, Quality of Life, that is environmental and planning issues, Citizen and State Relations, that is the everyday dealings of administrative organs with the citizen, Social Protection, that is Health authorities, insurance and pensions, and Children's rights. Each department has a Deputy Ombudsman and the staff consists in 150 experts, mainly lawyers, engineers, psychologists, etc. who work as investigators.

We can act on our own initiative but we rarely engage in this kind of ex officio investigation. We receive more than 10.000 complaints per year. Our investigation is initiated by a written complaint, sent even by telefax to us, of any person directly concerned, that is alleging that his or her rights or legal interests have been violated by the acts, omissions or material actions of public officials, including the broad public sector. Only when children's rights are violated we can interfere also to private enterprises or individuals.

¹² Law 3094/03, see www.synigoros.gr Addition of penal sanction by Law 3242/04 .

¹³ On that the Greek Ombudsman, as well as most of the Ombudsmen in other countries, followed the model of the Danish Ombudsman.

¹⁴ Rather than the constitutional recognition

predominant Church in my country despite the equal freedom of cult proclaimed in the Constitution. For instance the Greek Ombudsman pointed out the following:

- The right to civil service as a conscientious objector to military service, including some religious dogmas (special report 1999).
- the rights of immigrants to be treated with dignity irrespective of their ethnic origin (dealing with the immigration authorities presented in many cases an amount of ordeal and behavior very close to humiliating treatment).
- the rights of Roma people against police misconduct. We even had to stress that a Roma tent is a house from the point of view of legal guarantees that are connected with search in domiciles.
- the fact that the Roma nomad way of life could not be used against them as an argument by the municipality to deny access to school for their kids as “residents” in the local community.
- the rights of the Jehova witnesses to be buried in the local cemeteries against the Christian Orthodox Church’s opposition to the burial. We managed to persuade the mayor of a small town that burrying them behind the wall, outside the boundaries of the cemetery would be discriminatory segregation.
- the right of spouses of members of the¹⁵ muslim minority of Thracae (in the North East of Greece) to get a visa from Istambul to come to Greece and to have their marriage officially registered¹⁶ despite the problem that Greek Law does not recognise marital consent given from a distance but only given in person. (Not a mere case of religious self-determination, due to the special legal status by the Treaty of Lausanne of the muslim minority of Thracae).
- the right of FYROMacedonian ethnic -non officially recognised- minority activists to get legal representation by the local Barristers’ Association to form a union.

Promoting equal treatment after the transposition of the 2 directives

Until the implementation of the 2 directives¹⁷, we relied on the constitutional provisions for respect of human dignity, free development of one’s personality, gender equality and protection of life, honor and liberty of all persons without discrimination before the law and non-discrimination on the grounds of nationality, race, language and religious or political convictions, as well as art.14 of the ECHR

¹⁵ The only one recognised by law by the Greek state as a minority

¹⁶ Complications in Germany for an officially listed in Greece marriage of a minor muslim revealed the protection of childhood as a good example for a line to be drawn to religious self-determination.

¹⁷ We did invoke the Directives even when their transposition was pending because after the deadlines of 19.07.2003 and 02.12.2003 respectively were missed, they could in many respects have a direct effect as prevailing community law.

expanding the non-discrimination principle to all the rights included in the Convention.

After the transposition of the 2 directives in domestic law at the end of January 2005, two new legal grounds were expressly added by the Implementation Law 3304/2005 to the so far existing bases of non –discrimination: age and sexual orientation. Our legal means to combat discrimination are the ones to be greatly altered, that is through the reversal of burden of proof in favor of the victim, harassment as a form of discrimination, a situation non conceived until now as even the unintentional creation of a humiliating work environment, positive measures that were used in domestic law only to protect gender. These concepts are yet to be tested in legal practice and they have not yet shown their full potential in Greek law.

We examined a total of 22 cases based on the new law¹⁸ and also 7 discrimination cases falling outside the scope of the 2 directives that were investigated on different legal basis, the analysis of which is included in a separate chapter in our annual report due to be submitted in March to the Parliament. An example of indirect discrimination we handled in 2005 in our department concerns an excessive fine for illegal building imposed to Roma people who had a provisional construction in the piece of land they had acquired as part of a Roma housing programme. The particularities of the case, that pending the payment of a building loan in the same programme, there was no other housing facility for Roma people in the area, that the construction was of a temporary nature anyway having regard to the materials used, and that the fine was excessive and wrongly calculated made us conclude that we were before a case amounting to indirect discrimination with the underlying target to push the Roma people out of the area (case No.12372/2005). On the total of cases examined by the Greek Ombudsman after transposition, I think that the reversal of proof is starting to have results even in the mentality of the alleged discriminating public officials that are finding out their duty to give reasons and not just dispensing easily with complaints.

We are aware of the importance of refining our own methods of work as a promoting equality body. In that respect we engaged in the following:

- We held a long internal workshop in order for our expert staff to discuss thoroughly the implications of the 2 directives in the legal practice.

¹⁸ In 9 cases the investigation is pending, 3 were outside the Ombudsman's jurisdiction, in 3 we found that no discrimination occurred and in 7 we were successful in redressing discrimination.

- We encouraged the participation of our expert staff to seminars on the matter organized by the EU Commission, other Equality authorities, the Trier Academy of European Law etc.
- We engaged in the Equinet programme¹⁹, a horizontal networking of the specialized bodies in EU in order to exchange communications and data for a coherent application of the 2 directives.
- We participated in the National Action Programme Against Discrimination

All these contacts are crucial for an introspection of our own methods as an equality authority. We also continue to work towards confidence building by individuals and NGOs in order to bring to the open cases of discrimination. Mainstreaming is another thing. For instance the homosexual community and some members of religious minorities in Greece do not share a feeling of common fight against discrimination despite the target of the framework directive 2000/78/EC. But then mainstreaming of the fight against discrimination as a fight for respect of the human dignity is a process rather than a target, a process that involves overcoming of social prejudices and cultural stereotypes of all of us.

¹⁹ Secretariat provided by the Migration Policy Group, more information on the Equinet programme in www.migpolgroup.com