



**Jean Monnet Center of Excellence**  
**Research on Crucial Issues of European**  
**Integration**

University of Macedonia  
Thessaloniki  
Greece

**Notebook on the Role of the EU in Combating,  
Manifestations of Racism and Xenophobia**

Submitted by: Marianna Anastasopoulou & Erilda Goga

Supervision: Associate Professor Despina Anagnostopoulou



Co-funded by the  
Erasmus+ Programme  
of the European Union

The European Commission's support for the production of this publication does not constitute an endorsement of the contents, which reflect the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

## *Cases of the European Court of Human Rights*

### *Marianna Anastasopoulou*

#### *East African Asians v. the United Kingdom*

06/03/1978 decision of the European Commission of Human Rights

Application No 4626/70 and others

#### **A. Facts**

- ❖ 35 East African and Asian citizens and passport holders of the United Kingdom(UK) and Colonies-residents in Kenya, Uganda, Tanzania without being citizens of those countries-previously British dependencies.
- ❖ Because of their Asian origin it was difficult, and in some cases illegal, for them continuing living in those countries so they sought to settle in the UK.
- ❖ BUT under the *Commonwealth Immigrants Act of 1968*, they were either not granted admission or were refused permission to remain there permanently.

#### **B. Proceedings before the Commission**

- ❖ Applications were communicated to the UK government.
- ❖ The Commission voted that applications had been communicated to the Committee of Ministers of the Council of Europe.

#### **C. Resolution DH (77) 2 of the Committee**

- ❖ No violation of Article 3 of the Convention.
- ❖ No violation of Article 5 of the Convention.
- ❖ No violation of Article 5 and 14 of the Convention taken together.

#### **D. Applicants' Complaints**

- ❖ Applicants complained that the British authorities, acting under the Commonwealth Immigrants Act of 1968, refused to admit them to the UK or to allow them remain there permanently while being citizens, holders of UK passport and having nowhere else to go.
- ❖ They invoked Articles 3,5,14 and in some cases Article 8 of the Convention.
- ❖ Complaints that by refusal of admission they had been treated as "second-class" citizens and that they had been subjected to racial discrimination.

#### **E. Commission's Report under Article 31**

- ❖ Article 3 violated in 25 cases.
- ❖ Article 5 not violated.
- ❖ Articles 5 and 14 taken together not violated.
- ❖ Articles 8 and 14 taken together violated in 3 cases.

## **F. The Commission's Decision**

### **THE COMMISSION**

1. **Decides that no further action** is called with regard to the applicants' complaints under Articles 3,8,14.
2. **Declares inadmissible** the applicants' complaints under Article 5.

***Conclusion:*** The Commission did not find necessary to take further action since the applicants had been admitted to the UK. ***Furthermore, the Commission observed that discrimination based on race could in some cases lead to degrading treatment.***

### ***Cyprus v. Turkey***

Grand Chamber Application no. 25781/94

## **A. Procedural Steps**

- ❖ *30/08/1999:* The case was referred to the Court.
- ❖ *10/05/2001:* The Court found numerous violations of the Convention by Turkey during the Turkish military operations in northern Cyprus in summer 1974. Regarding just satisfaction, the Court held unanimously that possible application of Article 41 of the Convention was not ready for decision and adjourned consideration thereof.
- ❖ *11/03/2010:* The applicant government submitted their claims for just satisfaction concerning missing persons in respect of whom the Court had found a violation of Articles 2, 3, 5 of the Convention.
- ❖ *18/06/2012:* The applicant government amended their original claims under Article 41 regarding missing persons and rose new just satisfaction claims for the enslaved Greek-Cypriot population of the Karpas peninsula.
- ❖ *26/10/2012:* The respondent government submitted their observations on these Claims.

## **B. The applicant government's claims for just satisfaction**

### *a. Admissibility*

1. To the question whether the applicant government's just satisfaction claims are out of time:

*The Cypriot government claims that:*

- ❖ Inaction between 2001 and 2010 was fully justified.
- ❖ Individual's applications overlapping with the inter-state case and priority had to be given to individual's applications.
- ❖ There is no such principle of the international law that justifies a case dismissal based on time considerations.
- ❖ Passage of time had not caused disadvantages to the Turkish government.

*The Turkish government claims that:*

- ❖ The applicant government's claims for just satisfaction are delayed.
- ❖ Application of Article 41 is considered unjustified. UN Committee of Missing Persons has evolved since the delivery of the principal judgement regarding its progress in locating and identifying the victim's remains.

*The Court's assessment*

- ❖ Development between the years 2001-2010 considered relevant when assessing the substance of the Cypriot government's claim for just satisfaction.
- ❖ Applicant government's claims for just satisfaction not belated. **Turkish government's objection was dismissed.**

### **C. Applicability of Article 41 of the Convention to the present case**

*Both governments appealed their submissions.*

*The court's assessment*

'The Cypriot government has submitted just satisfaction claims in respect of the Convention rights of two sufficiently precise and objectively identifiable groups of people, that is, 1456 missing persons and the enslaved Greek Cypriot residents of Karpas peninsula.'

***Just satisfaction is sought for benefiting the individual victims, and not the state. The applicant government is entitled to make a claim under article 41.***

### **D. Just satisfaction claims of the Cypriot government**

#### **- Claims concerning missing persons:**

*The Cypriot government:*

- ❖ Some individuals should be excluded from the case (individual cases).
- ❖ Request for 12000 euros per missing person.
- ❖ The Court should grant the government with the total amount of money, and the government should distribute it to the individual victims.

*The Turkish government*

- ❖ 'The Court had not made any specific finding as to the number of missing persons in the judgment on the merits.'
- ❖ 'The Cypriot government was not justified to make hypothetical claims on behalf of unidentified beneficiaries.'

#### **- Claims concerning residents of Karpas peninsula**

*The Cypriot government:*

- ❖ Claimed just satisfaction for Human Right's violation of the residents of that area, had been found by the Grand Chamber.
- ❖ Requested new claims concerning violations of Articles: 3,8,9,10,13 of the Convention and of Article 2 of Protocol No 1.
- ❖ Requested: £50000 for each of those residents. *'The number of those residents would be agreed between the parties within 6 months of the Court's order'*. If the parties

cannot reach an agreement then the number would be resolved by the President of the Court.

*The Turkish government:*

- ❖ Supports that the living conditions have been improved in the Karpas peninsula.
- ❖ Supports that there is a functioning court system in the ‘Turkish Republic of Northern Cyprus’ open to the Greek Cypriot residents.
- ❖ Considered that ‘The Court should decide that the finding of violation of human rights in the judgment on the merits offers a sufficient satisfaction.’

*The Court’s assessment*

- ❖ Reiterated its general statement made in *Varnava and others v. Turkey case*, which is relevant to any award of damages in an inter-state case.
- ❖ The Court will award the Cypriot government with aggregate sums of €30.000.000 for ‘non-pecuniary damage suffered by the surviving relatives of the missing persons.’
- ❖ The Court will award the Cypriot government with aggregate sums of €60.000.000 for ‘non-pecuniary damage suffered by the residents of Karpas peninsula’.

## THE COURT

1. Holds by 16 votes to 1 that ‘the passage of time since the delivery of the principal judgment of 10/05/2001 has not reduced the applicant government’s just satisfaction claims inadmissible.’
2. Holds by 16 votes to 1 that ‘Article 41 applies to the present case insofar as the missing persons are concerned’.
3. Holds by 15 votes to 2 that Turkey should pay Cyprus, in 3 months’ time, the amount of 30.000.000 (plus taxes) for non-pecuniary damage suffered by the relatives of the missing persons.
4. Holds by 15 votes to 2 that Turkey should pay Cyprus, in 3 months’ time, 60.000.000 euros (plus taxes) for non-pecuniary damage suffered by the Karpas peninsula residents.

**Separate opinions were annexed to the Judgment.**

### *J.Glimmerveen and J.Hagenbeek v. the Netherlands*

Applications Nos. 8348/78 & 8406/78

Decision of 11 October 1979 on the admissibility of the applications

#### **A. The facts**

- ❖ Both applicants are of Dutch nationality
- ❖ *Part A (submitted only by J. Hagenbeek)*

- ✓ In 1974, he became the president of the Dutch political party ‘Nederlandse Volks Unie’. Its basic principles are ‘a world conception which grants each nation a proper state, as well as the belief that the general interest of a state is best served by an ethnical homogenous population and not by racial mixing’.

- ✓ In 1977, he was convicted by the Regional Court of Rotterdam for having possessed, with a view to distribute them, leaflets that the court found to be inciting to racial discrimination.
- ✓ The applicant appealed against his conviction.
- ✓ The court of Appeal of Hague confirmed in 1977 the applicant's conviction.
- ✓ *The applicant lodged a plea of nullity with the Supreme Court in Hague.*
- ✓ The Supreme Court rejected the plea.

❖ *Part B (submitted by both applicants)*

- In 1978, the Central Voting Boards for the municipal council election of Amsterdam and Hague received a list of candidates on which both applicants appeared as candidates.
- The Central Voting Board for the elections of the municipal council of Amsterdam declared the list invalid because the applicants had not dissociated themselves from opinions of the 'Nederlandske Volks Unie' regarding race, color, origin, national and ethnic provenance.
- The list has to be seen as a list of candidates of the 'Nederlandske Volks Unie', which was a prohibited association.
- The Central Voting Board of Hague equally declared the list invalid.

## B. Complaints

- ❖ 'The applicants consider that their right to freedom of thought, freedom of expression in general and freedom of expression in the context of elections in particular have been jeopardized. They thus consider Article 9 and Article 10 of the convention to be violated. Moreover, they submit that Article 3 of Protocol No. 1 has been violated by reason of the above facts'.
- ❖ Regarding the second part of the application, the applicants made the following additional complaints: 'The decision of the Provincial Boards of Northern Holland and Southern Holland have in fact deprived them of their right to stand for elections. According to article 90 and article 152 of the Dutch Constitution this decision may only be taken by a magistrate which the said Boards were not'.
- ❖ 'They ask the Commission to intervene in order to guarantee them the full employment of the above fundamental rights'.

## C. The Law

- ❖ Applicants' complaint: the Dutch authorities considered them to be inciting to racial discrimination and disregarded their basic and fundamental rights set forth in the Convention.
- ❖ The Commission considers that these complaints concern Article 10 of the Convention and Article 3 of Protocol No. 1.

### *Regarding Article 10 of the Convention*

- ❖ The various measures challenged were interferences in the exercise of their freedom of expression.

The Commission **recalls** former cases and **holds** that:

- ❖ Freedom of expression constitutes one of the essential foundations of a democratic society and it is not only applicable to information or ideas that are favourably received as inoffensive but to those that are offensive, shocking or disturbing for the state or for any sector and the population.
- ❖ The Court also established that 'whoever exercises his freedom of expression undertakes duties and responsibilities which scope depends on his situation and the technical means he uses'.
- ❖ BUT according to Article 17 of the Convention, any right should be interpreted as 'to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention'.
- ❖ General purpose of Article 17: to prevent totalitarian groups from exploiting in their own interest the principles of the Convention.
- ❖ 'The policy advocated by the applicant is inspired by the overall aim to remove all non-white people from the Netherlands, in complete disregard of their nationality, time of residence, family ties, economic, humanitarian or other consideration. ***The Commission considers that this policy is containing elements of racial discrimination***'.
- ❖ The Commission has held that racial discrimination could, under certain circumstances, amount as such to degrading treatment within the meaning of Article 3 of the Convention.
- ❖ The applicants are seeking to use Article 10 of the Convention to provide a basis for a right to engage in these activities that are contrary to the spirit of the Convention and their right would contribute to rights and freedoms' destruction referred to the abovementioned article.
- ❖ ***'The Commission finds that the applicants cannot, by reason of the provision of Article 15, rely on Article 10'***.

*Regarding Article 3 of the first Protocol*

- ❖ The applicants did not intend to take part in the above elections on behalf of Nederlandse Volks Unie. BUT the Commission observes that the Amsterdam Regional Court had established that the applicants had declared their wish to pursue their aims and objectives even if it were not formally on behalf of that association.
- ❖ The Commission notices that the Central Voting Board of Hague assumed that the political aims behind the list presented by the applicants were identical to those of the Nederlandse Volks Unie.
- ❖ 'The Commission considers that even assuming Article 3 applies, the applicants cannot avail themselves of the right protected under that provision, having regard to Article 17'.

#### **D. Conclusion**

- ❖ 'The Commission finds that the applicants cannot by reason of the provision of Article 17 of the Convention, rely either on Article 10 of the Convention or Article 3 of the first Protocol'.
- ❖ It follows that the applications are incompatible with the provisions of the Convention within the meaning of Article 27 paragraph 2. For these reasons, the Commission ***DECLARES THESE APPLICATIONS INADMISSIBLE.***



***Abdulaziz, Cabales and Balkandali v. the UK***

Application Nos. 9214/80; 9473/81; 9474/81

**A. Procedural Steps**

- ❖ This case was referred to the Court by the European Commission of Human Rights
- ❖ When the applicants filled their applications: Mrs. Abdulaziz was stateless or a citizen of Malawi, Mrs. Cabales was a citizen of Philippines and Mrs. Balkandali was a citizen of the UK and colonies.

**B. Facts**

- ❖ 'The applicants are lawfully and permanently settled to the UK'.
- ❖ They were also refused permission to remain with or join them in that country as their husbands.
- ❖ They maintained that had been victims of a practice of discrimination on the grounds of race, sex and -in the case of Mrs. Balkandali- place of birth and that there had been violations of Article 3 of the Convention and of Article 8 alone or in conjunction with Article 14.
- ❖ They alleged that contrary to Article 13, 'no effective domestic remedy existed for the aforesaid claims'.

**C. Domestic law and practice**

- A. History and background
- B. The Immigration Act 1971
- C. The Immigration Rules
- D. Position at the time of the events giving rise to the present case

## 1). Introduction

The rules in force at the time of the events were contained in the 'statement of changes in Immigration Rules'. The provisions of the 1980s Rules: whether someone is considered to have settled in the UK, what is an entry clearance, whether a(n) (intended) marriage is 'non-qualifying', whether there is 'potential evasion of the rules', what is the 'financial requirement'.

- 2). 'Non-patrials' seeking to join a(n) (intended) spouse settled in the UK
- 3). 'Non-patrials' seeking to remain in the UK with a spouse settled there
- 4). General consideration regarding leave to remain

**E. Subsequent Developments**

## 1). Introduction

- 2). The 1982 Immigration Rules
- 3). The 1983 Immigration Rules

- F. Sanctions
- G. Appeals
- H. Statistics

#### D. THE PARTICULAR CIRCUMSTANCES OF THE CASE

##### A. Mrs. Abdulaziz

She is permanently and lawfully resident in the UK with the right to remain indefinitely. She and her parents were born and raised in Malawi. But being of Indian origin she was deprived of that citizenship and she is now stateless. She holds a Malawian travel document.

Mr. Abdulaziz is a Portuguese national, who was born in India, in a former Portuguese territory. He was admitted as a 'non-patrial' to the UK for 6 months as a visitor. He met the applicant and they got married. Then Mrs. Abdulaziz applied for leave for her husband to remain permanently in the UK. The Joint Council for the Welfare of Immigrants also applied for 12 months' leave.

After an interview her application was refused because she was not a citizen of the UK and colonies, who or one of whose parents, had been born in the UK.

Mrs. Abdulaziz appealed but it was refused.

Mr. Abdulaziz remains in the UK without leave, he is employed but she is not. They have a son.

“Representations through Members of the Parliament to the Home Office have been rejected, because the couple could live together in Portugal and the circumstances were not such as to warrant exceptional treatment”.

Mr. Abdulaziz was said to depart. She applied for naturalization. He said that his wife could not be expected to live in Portugal because she has always been close to her family, especially her sick father, her health was under stress because of her husband's settlement problems and she did not speak the language.

“The government maintained that there is no obstacle whatever to her going with her husband to live in Portugal.”

##### B. Mrs. Cabales

She is permanently and lawfully resident in the UK with the right to remain indefinitely. She was born in Philippines (like her parents) and had the Philippine nationality until 1984. She entered the UK with a work permit for employment and she was admitted as a 'non-patrial' for a year. Then she was allowed to remain indefinitely.

Mr. Cabales is a citizen of Philippines. He met the applicant in Manila in 1977, later they became engaged and in the 1980 they got married in the Philippines. Then the applicant returned to the UK and she informed the Home Office of the marriage and applied for leave for her husband to enter the UK. He applied, as a 'non-patrial' to the British embassy in Manila for a visa to join his wife for settlement in the UK. His application was refused because she

was not a citizen of the UK and colonies who or one of whose parents had been born in the UK.

The Joint Council for the welfare of Immigrants sought a review of the decision, which was refused too.

Mr. Cabales lodged an appeal with an adjudicator.

Mrs. Cabales naturalized as British, she lost the Philippine nationality.

Mr. Cabales applied for entry clearance for permanent settlement as the husband of a British citizen, but he was refused. Then he applied and was granted for a visa for three months for the purpose of marriage; they married in the UK.

He was granted leave to remain as a husband for a year, then he could be able to apply for indefinite leave.

The Government questioned the validity of their Philippine marriage and eventually it was considered void.

Mr. Cabales was refused leave but was regarded as eligible for leave to enter the UK temporarily as the fiancé of a British citizen.

She submitted that there would have been real obstacles to her returning to live in Philippines: she was too old, her qualifications were not recognized there and by working in the UK she could support her family.

The Government contested these claims.

#### C. Mrs. Balkandali

She is permanently and lawfully resident in the UK with the right to remain indefinitely. She was born in Egypt (her parents were Egyptians too). Firstly, she went to the UK as a 'non-patrial' to enter as a visitor for one month. She was granted with several further leaves as a visitor-student (she has high level of university education).

Mrs. Balkandali married Mr. Corbett, a citizen of the UK and colonies and was given indefinite leave to remain in the UK, by virtue of her marriage.

Then she obtained registration as a citizen of the UK and colonies. By the time she became 'patrial', she was already separated.

Mr. Balkandali is a Turkish national who was granted leave as a 'non-patrial' to enter the UK as a visitor for one month. Then he obtained leave to remain as a student. His application for extension was refused and he was advised to leave the country.

The couple had been living together and they had a son, who has the right of abode in the UK.

The Joint Council for the Welfare of Immigrants applied for him to remain in the country until he married his fiancé. The marriage took place; from that time 'the application was treated as one to remain as the husband of a woman settled in the UK'.

Leave was refused because she was not a citizen of the UK and colonies, who or one of whose parents had been born in the UK.

‘Representations through a Member of Parliament to the Home Office were rejected, basically on the ground that the not sufficient compelling compassionate circumstances to warrant exceptional treatment outside the immigration rules’.

Mr. Balkandali was given 12 months’ leave to remain in the country as the husband of a British citizen. Then he applied for indefinite leave and it was granted.

Mrs. Balkandali had submitted that there would have been real obstacles to her going with her husband to live in Turkey; she had strong ties to the UK, she was an educated woman and the mother of an illegitimate child and as a result she would have been treated as a social outcast.

The Government maintain that there were no real obstacles.

#### PROCEEDINGS BEFORE THE COMMISSION

The applicants claimed that they had been victims of a practice authorized by Parliament and was contained in the 1980 Rules, which practice was incompatible with the Convention and alleged violation of Article 3, Article 7 (alone and in conjunction with Article 14) and Article 13.

The Commission expressed the opinion:

- there had been a violation of Article 14 in conjunction with Article 8, on the ground of sexual discrimination
- no violation of the same, on the ground of racial discrimination
- the application of Mrs. Balkandali constituted discrimination on the ground of birth, contrary to Article 14 in conjunction with Article 8
- the absence of effective domestic remedies for the application claims under Articles 3,8,14 constituted a violation of Article 13
- it was not necessary to pursue a further examination of the matter under Articles 3 and 8.

#### FINAL SUBMISSION MADE TO THE COURT BY THE GOVERNMENT AND BY THE APPLICANTS

The Government submitted that Mrs. Cabales’ application was inadmissible *ratione material*.

They had requested the Court: "(1) With regard to Articles 8 and 14 (art. 8, art. 14)

(a) to decide and declare that matters of immigration control lie outside the scope of Article 8 (art. 8), so that no complaints based on the application of immigration control can succeed under Article 8 (art. 8), or under Article 14 taken together with Article 8 (art. 14+8);

(b) to decide and declare that upon an examination of the facts of these cases, the matters complained of lie outside the scope of Article 8 (art. 8), with the consequence mentioned above;

(c) to decide and declare, if necessary, that any discrimination under Article 14 (art. 14) is objectively and reasonably justified and not disproportionate to the aims of the measures in question;

(d) to decide and declare, if necessary, that if there has been any interference with the exercise of rights arising under Article 8 (art. 8) in these applications, it is in accordance with the law and necessary in a democratic society in the interests of the economic well-being of the country, the prevention of disorder, and the protection of the rights and freedoms of others;

(2) With regard to Article 3 (art. 3), to decide and declare that the facts of these cases are not capable of amounting, alternatively do not amount, to inhuman or degrading treatment under that Article (art. 3);

(3) To decide and declare that Article 13 (art. 13) has no application to these cases, since the complaints fall outside the scope of Articles 3, 8 and 14 (art. 3, art. 8, art. 14); in any event to hold that as regards the immigration rules there is no obligation to provide a domestic remedy under that Article (art. 13); alternatively to hold that insofar as Article 13 (art. 13) does impose, on the facts, any obligation to provide a domestic remedy in relation to any of the matters complained of, that obligation is fulfilled."

The applicants, for their part, maintained in substance the submissions set out in their memorial of 30 March 1984, whereby they had requested the Court to decide and declare:

"1. that the applicants are victims of a practice in violation of their right to respect for family life, contrary to Article 8 (art. 8) of the Convention;

2. that they are further victims of a practice of discrimination in the securement of their said right

(a) in respect of all three applicants, on the grounds of sex and race; and

(b) in respect of Mrs. Balkandali, on the ground of birth, contrary to Article 14 in conjunction with Article 8 (art. 14+8) of the Convention;

3. that such discrimination constituted degrading treatment contrary to Article 3 (art. 3) of the Convention;

4. that the absence of effective remedies for the applicants' claims under Articles 3, 8 and 14 (art. 3, art. 8, art. 14) constituted a violation of Article 13 (art. 13) of the Convention;

5. that the United Kingdom Government should pay appropriate compensation, including costs, to the applicants by way of just satisfaction."

## AS TO THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8

The applicants claimed to be victims of a practice in violation of their right to respect for family life.

#### A. Applicability of Article 8

‘Each of the applicants had to a sufficient degree entered upon “family” life for the purpose of Article 8; that provision is therefore applicable in the present case’

#### B. Compliance with Article 8

‘There was accordingly no “luck of respect” for family life and, hence, no breach of Article 8 taken alone.’

- II. ALLEGED VIOLATION OF ARTICLE 14 TAKEN TOGETHER WITH ARTICLE 8
- A. Introduction  
‘The applicants claimed that, as a result of unjustified differences of treatment in securing the right to respect for their family life, based on sex, race and also in the case of Mrs. Balkandali birth, they had been victims of a violation of Article 14 taken together with Article 8.....The court considers that it must examine in turn the three grounds on which it was alleged that a discriminatory difference of treatment was based.’
- B. Alleged discrimination on the ground of sex  
‘The Court concludes that the applicants have been victims on the ground of sex, in violation of Article 14 taken together with Article 8.’
- C. Alleged discrimination on the ground of race  
‘The Court accordingly holds that the applicants have not been victims of discrimination on the ground of race’.
- D. Alleged discrimination on the ground of birth  
‘The Court holds that Mrs. Balkandali was not the victim of discrimination on the ground of birth.’
- III. ALLEGED VIOLATION OF ARTICLE 3  
‘The applicants claimed to have been subjected to degrading treatment, in violation of Article 3’.  
The Court holds that there was no violation of Article 3.
- IV. ALLEGED VIOLATION OF ARTICLE 13  
‘The applicants alleged that they had no effective remedy for their complaint under Articles 3,8,14 and that there had accordingly been a breach of Article 13.....The Court concludes that there has been a violation of Article 13.’
- V. APPLICATION OF ARTICLE 50  
Applicants claimed for ‘moral damage’ and for costs and expenses (just satisfaction)  
‘All the applicants have been victims of a breach of Article 14 taken together with Article 8, with the result that Article 50 is applicable as regards each of them.’
- A. Damage  
‘The applicants’ claim for monetary compensation cannot therefore be accepted.’
- B. Costs and expenses  
‘FOR THESE REASONS THE COURT UNANIMOUSLY:
1. Holds that Article 8 was applicable in the present case but that, taken alone, it has not been violated.
  2. Holds that Article 14 was applicable in the present case.
  3. Holds that Article 14 taken together with Article 8 has been violated by reason of discrimination against each one of the applicants on the ground of sex.

4. Holds that there has been no other violation of Article 14 taken together with Article 8 (art. 14+8);
5. Holds that there has been no breach of Article 3 (art. 3);
6. Holds that there has been a violation of Article 13 (art. 13) in regard to the complaint of discrimination on the ground of sex;
7. Holds that the United Kingdom is to pay to the applicants jointly, for costs and expenses, the sums resulting from the calculations to be made in accordance with paragraph 100 of the judgment.'

[http://hudoc.echr.coe.int/eng#{"dmdocnumber":\["695293"\],"itemid":\["001-57416"\]}](http://hudoc.echr.coe.int/eng#{)

***Nachova and others v. Bulgaria***

Application No. 43577/98

***The Court held unanimously that:***

- ❖ There is a violation of Article 2 in respect of the deaths of Kuncho Angelov and Kiril Petkov.
- ❖ There is a violation of Article 2 based on the fact that the Bulgarian authorities failed to properly investigate the deaths of Mr. Angelov and Mr. Petkov.
- ❖ There is a violation of Article 14 taken together with Article 2 on the basis of the fact 'that the authorities failed to investigate possible racist motives behind the events that had led to the deaths of Mr. Angelov and Mr. Petkov'.
- ❖ 'No separate issue arose under Article 13'.

***The Court held by 11 votes to 6 that:***

no violation of Article 14 taken together with Article 2 existed 'in respect of the allegation that the events leading to the deaths of Mr. Angelov and Mr. Petkov constituted an act of racial violence.'

***The Court awarded:***

- ❖ Under Article 41 'Anelia Nachova and Aksiniya Hristova 25000 euros jointly for pecuniary and non-pecuniary damage and Todorka Rangelova and Rangel Rangelov 22000 euros jointly'.
- ❖ The Court also awarded the applicants with the amount of 11000 euros for their costs and expenses.

**A. Principal facts**

- ❖ The applicants are Anelia Nachova, her mother Aksiniya Hristova, Todork Rangelova and Rangel Rangelov, all of whom are Bulgarian nationals of Roma origin.

- ❖ The case concerns the killing of the applicants' relatives on *19.07.1996*, namely Kuncho Angelov (father of Mrs. Nachova) and Kiril Petkov (son of Mr. Rangelov and Mrs. Rangelova), by a military policeman who was trying to arrest them.
- ❖ Both victims were conscripts in army. Early in 1996 they had been arrested for repeated absences without leave. On *May*, they were sentenced to 9 months and 5 months of imprisonment respectively for Mr. Angelov and Mr. Petkov. They both had previous convictions for theft.
- ❖ On *15.07.1996* they escaped from a construction site where they were working and went to the home of Mr. Angelov's grandmother. They were not armed.
- ❖ On *19.07.1996* the commanding officer in the Vratsa Military-Police Unit, Colonel D., pursuant to command by Major G, sent four military officers to arrest the two men.
- ❖ 'At least two of the officers knew one or both of the men'.
- ❖ Colonel D. told them that according to the rules, they should carry their handguns and automatic rifles and wear bullet-proof vests. He also informed the officers that Mr. Angelov and Mr. Petkov were 'criminally active'- an expression used for people with previous convictions or for people who are suspected of committing offences- and that they had escaped from detention. The officers were told to use all necessary means to arrest them.
- ❖ When the police arrived they tried to escape. A warning of potential shooting in case of non-surrender was communicated to them; then Major G. shot them down using his automatic rifle. They were taken to the hospital, where they were pronounced dead.
- ❖ An eyewitness claimed that he asked Major G. for permission to approach and remove his grandson from danger and he pointed him with his gun, saying 'You damn gypsies!'
- ❖ On the same day, a criminal investigation into the two deaths was opened. The autopsy report found that they had both died from gunfire wounds which were fired from an automatic rifle from a distance. The investigation concluded that Major G. had followed *Regulation 45 of the Military Police Regulations*; he had warned them several times and fired shots in the air. He had shot them only because they had not surrendered, and there was a danger that they would escape and he tried to avoid injuries. Moreover no one else had been hurt. As a result the authorities refused to prosecute the military police officers.
- ❖ The applicants appealed unsuccessfully.

## B. Procedure of the Court

- ❖ 'The applications were lodged with the European Commission of Human Rights on *15 May 1998* and were transmitted to the Court on *1 November 1998*. They were joined on *22 March 2001* and declared partly admissible on *28 February 2002*'.
- ❖ The Court held unanimously, in its chamber judgment (*26/2/04*), that there had been violations of Article 2 on the account of shooting these two men and the failure of conducting an effective investigation into their deaths.
- ❖ Violations of Article 14 taken together with Article 2 were also found on account of both the shooting and the failure to investigate whether they had been racially motivated.
- ❖ The Bulgarian Government, on *21 May 2004* requested the case to be referred to the Grand Chamber.

## C. Summary of the judgment

### *Complaints*



- ❖ ‘The applicants alleged that their relatives had been killed in violation of Article 2, as a result of deficient law and practice which permitted the use of lethal force without absolute necessity’.
- ❖ Moreover, they complained that the authorities had not conducted an effective investigation into the deaths, in violation of Articles 2 and 13.
- ❖ The relatives also alleged that prejudice towards Roma people had played a key role in the events that had taken place. They relied on Article 14 in conjunction with Article 2.

### *Decision of the Court*

- ❖ Article 2
- ✓ The Court noted that the regulations for using firearms by the military police ‘effectively permitted lethal force to be used when arresting a number of the armed forces for even the most minor offence’.
- ✓ Nevertheless, the regulations were not published and they did not contain clear safeguards aiming to prevent the arbitrary deprivation of life.
- ✓ The legal framework was deficient and fell short of the level of protection ‘by law’ of the right to life which was required by the Convention.
- ✓ The Court found that Bulgaria failed to comply with its obligation under Article 2 to secure right to life. The authorities also failed to minimize the risk of loss of life, since the instructed officers had been told to use all necessary means.
- ✓ Concerning the actions of the arresting officers, the Court considered that any resort to potentially lethal force was prohibited by Article 2, regardless of any risk that the victims might escape.

### *Whether the investigation was effective*

- ✓ ‘The Grand Chamber agreed with the Chamber that the fact that the investigation had validated the use of force in the circumstances of the case only served to confirm the fundamentally defective nature of the regulations and their disregard of the right to life. The investigating authorities’ failure to examine relevant matters in the file meant that there had not been any strict scrutiny of all the material circumstances.’

***The Court held that Bulgaria violated Article 2 because of its obligation to investigate the deprivation of life effectively.***

- ❖ Article 13

‘The Grand Chamber found that no separate issue arose under Article 13’.

- ❖ Article 14

### *Whether the killings were racially motivated*

- ✓ The Court did not find convincing the applicants’ arguments that the killings had been racially motivated.
- ✓ ‘The Grand Chamber did not consider that the authorities’ alleged failure to carry out an effective investigation into the alleged racist motive for the killing should shift the burden of proof to the respondent Government with regard to the alleged violation of Article 14 taken in conjunction with the substantive aspect of Article 2 of the Convention.’

***The Court did not consider that racist attitudes had a role in the victims' deaths. No violation of Article 14 taken together with Article 2 in its substantive aspect.***

*Whether the respondent state complied with its obligation to investigate possible racist motives*

- ✓ The Court found that the authorities had failed their duty according Article 14 taken together with Article 2 to do everything in their power to investigate whether or not discrimination have played a role in the events.

***There was a violation of Article 14 taken together with Article 2 in its procedural aspect.***

### ***Osman v. Bulgaria***

Application No. 43233/98

#### **The Court held unanimously that:**

- ❖ Article 3 of the Convention was violated on account of the ill-treatment to which the applicants had been subjected and on account of the lack of an effective investigation.
- ❖ Article 14 of the Convention was not violated “with regard to the lack of an effective investigation into a possible racist motive for the alleged ill-treatment”.
- ❖ Article 1 of Protocol No 1 (protection of property) was violated.

#### **The Court held by 5 votes to 2**

[that] it “was not necessary to examine separately the complaint submitted under Article 14 with regard to the lack of an effective investigation into a possible racist motive for the alleged ill-treatment”.

**Under Article 14 (just satisfaction) the applicants were awarded jointly €6000 for non-pecuniary damage and €2340 for costs and expenses.**

#### **A. Facts**

- ❖ The applicants, Mohamed Ahmed Osman and his wife Ilmie Hasan Osman, are Bulgarian nationals belonging to the Turkish ethnic minority.
- ❖ They had been living in a building belonging to an agricultural cooperative and they could also use the adjacent land.
- ❖ At the beginning of the 90's, due to the application of new laws on restitution, the land where the house was located was restored to the individuals that owned it before collectivization.
- ❖ They wished to recover possession to bring proceedings against the applicants for a patently unlawful action.
- ❖ The prosecutor refused.
- ❖ Members of the local authorities and police officers went to the applicants' house for the eviction and, according to Mr. and Mrs. Osman, they assaulted them owing to the fact that they refused to leave the house.

- ❖ The Bulgarian government supported that Mr. Osman threw clods of earth against the policemen and that Mrs. Osman was accidentally injured.
- ❖ The applicants filed several complaints.
- ❖ At that time, proceedings were initiated against the applicants and they were convicted of disturbing public order.

## B. Procedure

“The application was lodged with the European Commission of Human Rights on 2 June 1998 and transferred to the European Court of Human Rights on 1 November 1998. The application was declared partly admissible on 6 May 2004”.

## C. Summary of the judgment

### ❖ *Complaints*

Complaints were made about the ill-treatment and the lack of an investigation into their allegations and about the breach of their right to peaceful enjoyment of their possessions. They claimed to be victims of discrimination on account of their ethnic origin. They relied on Articles 3, 14 of the Convention and on Article 1 of Protocol No.1.

### ❖ *Decision of the Court*

#### **Regarding Article 3**

##### *‘[a]s to the allegations of ill-treatment’*

- ❖ The Court had difficulty in establishing the origin of some of the injuries.
- ❖ The Court could not conclude whether the injuries had been a result of the excessive use of force on the part of the authorities.
- ❖ Moreover, ‘the Court voted that the attempt to evict the applicants had not been lawful under domestic law’
- ❖ ‘In the Court’s opinion, the authorities’ actions could have caused the applicants to experience feelings of fear and humiliation beyond those inherent in an eviction, even if it was accompanied by resistance on their part. Accordingly, the Court considered that the circumstances of the operation on 12 May 1995, taken as a whole, had amounted to degrading treatment. It therefore concluded that there had been a violation of Article 3’.

##### *‘As to the effectiveness of the operation’*

#### **Because of these facts:**

- ❖ The Bulgarian prosecutor did not have substantial evidence as to conclude that the applicants disturbed public order.
- ❖ The finding that the police officers did not exceed their powers was not supported properly.
- ❖ “The authorities had done nothing to substantiate the applicants’ statements about the insults to which they had allegedly been subjected”.
- ❖ The applicants did not receive any response to their appeal and there was no case that their appeal would be answered.

***The Court concluded that there had been a violation of Article 3 on this point too.***

***Regarding Article 14***

The Court could not conclude that the acts of violence had been motivated by racial prejudice. ***No violation of Article 14 taken together with Article 3 was found in its substantive aspect.*** Moreover, the Court held that it was not necessary to examine this complaint separately under Article 14 taken together with Article 3 in its substantive aspect due to the absence of a general context of discrimination towards the Turkish minority in Bulgaria.

***Regarding Article 1 of Protocol No 1***

The evidence did not show “that the destruction of the applicants’ property had been carried out in application of an administrative act or judicial decision adopted in conformity with the relevant legislation. In consequence, the interference with the applicants’ right to peaceful enjoyment of their possessions appeared to have been illegal under Bulgarian law and thus incompatible with the requirements of Article 1 of Protocol No. 1.

***The Court held that there had been a violation of Article 1 of Protocol No 1.***

***Cakir v. Belgium***

Application No. 44256/06

***The Court held unanimously***

[that] there had been violations of Articles 3 and 3 taken together with 14.

- ❖ Article 3 had been violated on the account of the ill-treatment inflicted on the applicant by the police and on the account of the investigations ineffectiveness regarding the incident.
- ❖ Article 3 in conjunction with Article 14 had been violated on the account of the ineffective investigation, conducted by the Belgian police, whether the police officers’ conduct had been discriminating.

***Under Article 41, the applicant was awarded €15,000 in respect of non-pecuniary damage and €6,681.1 for costs and expenses.***

**A. Facts**

- ❖ The applicant, Turan Cakir, is a Belgian citizen of Turkish origin.
- ❖ He claimed that he was ill-treated on the basis of racist prejudice during his arrest and his custody by the police.
- ❖ On the *March of 1996* a quarrel erupted during the arrest of the applicant’s brother.
- ❖ The applicant claimed that he had suffered physical injuries after having been hit by the police officers.
- ❖ The Belgian government claimed that the policemen had been required to use pepper spray and to knock him down to the ground in order to control him.
- ❖ Mr. Cakir appeared to be under the influence of drugs and fought violently, so placing handcuffs on him was impossible. Furthermore, they had been surrounded by people who started to strike and to insult them. The applicant had been also kicked by those people.

- ❖ He was hospitalized for 10 days because of his injuries and a police officer was declared unfit to work for 1 day, as a result of the fight.
- ❖ Later on March, “the applicant lodged a criminal complaint together with an application to join the proceedings as a civil party”. The Belgian courts decided that there was no case to answer in 2000. In addition, in 2006, “the Indictments Division issued a judgment ruling that any prosecution was time-barred.”

## **B. Summary of the judgment**

### ❖ *Complaints*

Mr. Cakir’s complaints were made under Articles 3 and 6 §§1 and 13.

- ❖ He alleged that he was ill-treated during his arrest and his custody and that the Belgian authorities didn’t investigate properly his allegations.
- ❖ Furthermore, he alleged that his ill-treatment was based on racial prejudice.

### ❖ *Decision of the Court*

#### ***Regarding Article 13***

- ❖ It is true that the applicant had sustained injuries during his arrest by the police. The three policemen involved never denied striking the applicant. Additionally, the crowds present at that day and time had struck several blows towards the applicant and the police officers.
  - ❖ Mr. Cakir had suffered severe injuries that day with their after effects following him up to 2006.
- ‘The Court considered that it had not been shown that the use of force by the police officers had been made strictly necessary by the applicant’s conduct and concluded that there had been a violation of Article 3’.***
- ❖ The Belgian authorities had wasted time over the applicant’s appeal.
- The investigation that took place was considered ineffective by the Court, which held that there has been a violation of Article 3.***

#### ***Regarding Article 14***

- ❖ Mr. Cakir had mentioned racist remarks against him by the police officers.
- ‘In his submissions inviting the *chambre du conseil* to find that there was no case to answer, the Crown Prosecutor did not express an opinion on this part of the complaint, considering that the actions which could be categorized as offences under the law of 30 July 1981 were equivalent to those covered by the other charges. On 17 October 2000 the *chambre du conseil* endorsed the prosecutor’s submissions and on 26 April 2006 the Indictments Division found that the prosecution was time-barred, a fact which had led the Court in the earlier part of its judgment to find that there had been a violation of Article 3.’***
- A violation of Article 3 had taken place, according to the Court, since “the Belgian authorities had not taken all the necessary measures to ascertain whether discriminatory conduct could have played a role in the events in question.”***

#### ***Regarding Article 6 paragraph 1 and Article 13:***

The Court held that it was unnecessary to examine separate the complaints under Article 6 §1 and Article 13.

***Fedorchenko and Lozenko v. Ukraine***Application No. 387/03Judgment Strasbourg 20/9/2012 FINAL 20/12/2012**A. Facts**

- ❖ The applicants, who are of Roma origin, live in the Ukrainian cities Novi Sanzghary and Zolotnoska.
- ❖ The first applicant claimed that while leaving his house on 28.10.2001 between 08.00 and 08.30 he run into one policeman, Major I., and two strangers. He claimed that they threatened, hit and pushed him inside his home, set the house of fire and barred it.
- ❖ Later, the applicant and four members of his family were admitted to the hospital with burns and gas intoxication. Three of them died in the hospital, while two other had already been found dead in the house.
- ❖ The applicant informed the police about the arson attack carried out by Major I.
- ❖ He believed that it was a punishment attack because one of his relatives had failed to pay a 200 Ukrainian hryvnias (UAH) monthly bribe to the police. Major I. had visited his house before and had extorted money from one of the applicant's relatives, for not instituting criminal proceedings against her for drug trafficking. The applicant also claimed that Major I. had threatened before to set his house on fire.
- ❖ These claims had been supported by a local newspaper article.
- ❖ On 28.10.2001 the Prosecutor instituted criminal proceedings for the murder of the members of the first applicant's family.
- ❖ On 06.11.2001 the Regional Prosecutor's office instituted criminal proceeding for the arson attack.
- ❖ Later, these two cases were joined.
- ❖ On 14.11.2001, N., who was suspected of burning down the first applicant's house, was charged with murder and destruction of property.
- ❖ Further criminal proceedings were instituted against more individuals for arson and murder.
- ❖ In May 2002, the applicants' representative requested the investigator to establish criminal responsibility for Major I. regarding the arson. The applicant's claim was rejected, while Major I. denied all accusations.
- ❖ In February 2002 the criminal case against N. was submitted to the Court.
- ❖ In December 2002 the Poltava Regional Court of Appeal considered the case against N. and remitted for further investigation.
- ❖ In March 2003, the Supreme Court of Ukraine upheld the decision of December.
- ❖ In June the Krenenchung Prosecutor's Office refused to institute criminal proceedings against Major I. It was claimed, without any further specification, that checks had been performed and that the non-involvement of Major I in the arson attack was established.
- ❖ In July 2004, the criminal proceedings were stayed, because other perpetrators could not be found.
- ❖ In September 2004 the criminal proceeding in respect of N. arose again.
- ❖ In January 2005 the Krenenchung Court found N. guilty of destruction of property which led to significant pecuniary damage and sentenced him to 5 years of imprisonment. The Court found that N. with two others had arrived at the applicant's house for destroying it.
- ❖ The Court awarded Mr. Fedorchenko 13820 UAH for destruction of property but rejected entirely his civil claim for damages caused by his relative's death and by his injuries, because N. had not caused them.

- ❖ The applicants and the Prosecutor appealed for a too lenient sentence.
- ❖ In *May*, the Poltava Regional Court of Appeal quashed the judgment of January because of procedural defects of the trial in the first-instance court.
- ❖ In June, N. died, so the criminal proceedings against him were terminated.
- ❖ In *December 2008*, the decision of July 2004 to stay the proceeding was quashed by a prosecutor.
- ❖ **The applicants were represented by the European Roma Rights Centre.**

## B. The Law

### *Regarding Article 2*

#### *Applicants' submissions I*

- ❖ The applicants claimed that their relatives died as a result of an arson attack, in which a state agent had participated.
- ❖ They also claimed that the state authorities had failed to conduct a thorough and effective investigation to make clearer the circumstances of their relatives' death and of the involvement of Major I.
- ❖ They relied on Article 2 of the Convention.

#### *The issue of admissibility*

- ❖ The Government argued that the applicants had not challenged the refusal 'of the Prosecutor [of June 2003] to institute criminal proceedings against Major I. with the higher Prosecutor of the Court'.
- ❖ The applicants disagreed, supporting that there was no evidence that the State authorities would reach a different conclusion if faced with another complaint taking into consideration that they had already rejected the applicant's claims twice. They had acted the best way they could.
- ❖ The Court notes that the Government's objection is closely linked to the applicants' complaint under the procedural limb of Article 2. As a result, 'it joins the objection to the merits of the applicant's complaint'.
- ❖ **The Court declared these complaints admissible.**

#### *Merits*

### **1. Procedural obligations under Article 2 of the Convention**

#### a. The parties' submissions

- ❖ The **applicants** noted that the investigation was insufficient and ineffective. The conclusion was reached without interviewing key witnesses.
- ❖ The **Government** noted that the investigation was more than sufficient. The responsible ones had been identified. Numerous actions had taken place.

#### b. The Court's assessment

- ❖ The Court notes that 'State authorities limited the investigation to some basic procedural steps.' The absence of a case-file only shows that the investigation was unclear.
- ❖ It is **also noted** that the guilty ones are not yet found and the Government has taken no actions towards it.

### **2. The alleged violations of the right to life of the applicants' relatives**



- ❖ The court notes that it is undisputed that Major I. knew the applicants, had been to Mr. Fedorchenko's house before and had been involved in police operations against one of his relatives. *All these are actions outside his jurisdiction.*
  - ❖ The Court also notes that Major I. had not a convincing alibi. However, besides the first applicant the Court has no other witnesses confirming that Major I. was one of the arsonists. As a result, the Court **cannot draw** a conclusion beyond reasonable doubt as to whether Major I. was one of the arsonists.
- It cannot conclude if there has been a violation of the substantive limb of Article 2 of the Convention.***

### ***Regarding Article 14 in conjunction with the procedural part of Article 2***

#### *Admissibility*

The Court holds that this complaint is linked to the one examined above, so it must be declared admissible too.

#### *Merits*

##### a. The parties' submissions

- ❖ The **applicants** claimed that they had be victims of racist behavior during the attack. Additionally, they claimed that there had been no evidence that the State examined these allegations, even though it was obliged by law to do so.
- ❖ The **Government** claimed that Article 14 of the Convention applied only when the alleged violation had been committed by the State agents. In this case, private persons were charged.

##### b. The Court's assessment

The Court finds that there are no evidences that proper investigation for racist motives had taken place. Also the time that has passed since the events (11 years) was more than enough for starting such an investigation.

***As a result, it is considered that Article 14 taken together with the procedural aspect of Article 2 has been violated.***

#### *Applicants' submissions II*

- ❖ The applicants claimed that they and their dead relatives had suffered inhuman and degrading treatment because of their Roma ethnicity, and that there had been no effective investigation about that (Article 3).
  - ❖ They also cited Article 8 and Article 13 of the Convention and Article 1 of Protocol 1.
  - ❖ They considered that there had been a violation of Article 14 taken together with the above Articles and with Article 2 under its substantive limb.
  - ❖ The second applicant claimed €100,000 in respect of non-pecuniary damage inflicted by her relatives' deaths, damage caused to her son's health and not proper investigation of the events. The first one did not make claims in this respect.
  - ❖ The applicants also claimed €9,075 for costs and expenses incurred before the Court.
- The Court holds that these complaints are linked to those examined above and must be declared admissible.**



### C. The Court's decision

#### *The Courts unanimously:*

1. Declares the application admissible;
2. Holds that there has been a violation of the procedural limb of Article 2 of the Convention;
3. Holds that there has been no violation of the substantive limb of Article 2 of the Convention;
4. Holds that there has been a violation of Article 14 of the Convention taken in conjunction with Article 2 in respect of its procedural limb;
5. Holds that there is no need to examine separately the remainder of the complaints;
6. Holds
  - (a) that the respondent State is to pay the second applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, €20,000, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into UAH at the rate applicable at the date of settlement;
  - (b) that the respondent State is to pay to the bank account of the European Roma Rights Centre, the applicants' representative in the proceedings before the Court, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, €8,000 in costs and expenses plus any tax that may be chargeable to the applicants;
  - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. Dismisses the remainder of the applicants' claim for just satisfaction.

#### *Timishev v. Russia*

Application Nos. 55762/00 and 55974/00

#### *The Court held unanimously that there had been*

- ❖ A violation of Article 2 of Protocol No. 1 (right to education)
- ❖ A violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 of Protocol No. 4
- ❖ A violation of Article 2 of Protocol No.4 (freedom of movement) to the European Convention on Human Rights

- ❖ The Court awarded Mr. Timishev **€5000 for non-pecuniary damage** and **€950 for costs and expenses**, under Article 41 (just satisfaction).

#### A. Facts

- ❖ The applicant is a Russian national of Chechen ethnic origin. He was born in the Chechen Republic. Since 1996 he has been living in Nalchik, in the Kabardino-Balkaria Republic of Russia, as a forced migrant.
- ❖ In *June 1999*, the applicant and his driver were travelling by car from Nazran in the Ingushetia Republic back to Nalchik.
- ❖ The applicant supported that their car had been stopped at the checkpoint on the border between the two Russian Republics. Officers from the Kabardino-Balkaria State refused

to allow him to enter with the excuse of an oral instruction from the Minister of the Interior of Kabardino-Balkaria ordering them not to allow anyone of Chechen origin to enter the State.

- ❖ The Russian Government supported that Mr. Timishev attempted to jump the queue of cars waiting and then left after being refused priority treatment.
- ❖ The applicant complained to a Court and asked compensation for non-pecuniary damage.
- ❖ His claim was dismissed and he appealed unsuccessfully.
- ❖ Mr. Timishev also made complaints to the Russian Prosecutor General.
- ❖ In 2000, he was informed that the prosecutor's office had ordered the Ministry of the Interior of Kabardino-Balkaria to rectify the officer's actions and to take measures to avoid similar violations in the years to come.
- ❖ Later that year, the Minister of the Interior of the Kabardino-Balkaria Republic announced that this order could not be implemented because the Courts had found that no violation had occurred.
- ❖ In the same year, the applicant's children were refused admission to their school in Nalchik, which they had previously attended from 1998 to 2000, due to the inability of the applicant to produce his migrant card (document that confirms his residence in Nalchik and his status as a forced migrant from Chechnya).
- ❖ The headmaster admitted the children informally but informed them that they would be suspended if the education department discovered them.
- ❖ Mr. Timishev complained unsuccessfully about the refusal to admit his children to the school.

## B. Procedure

- ❖ The case originated in two applications lodged with the European Court of Human Rights in February and March 2000.
- ❖ On the 8<sup>th</sup> of July 2003, the applications were joined by the Court and were declared partially inadmissible.
- ❖ On the 30<sup>th</sup> of March 2004, the applications were declared partly admissible by the Court.

## C. Summary of the Judgment

### *Complaints*

- ❖ Mr. Timishev complained that he was refused permission to enter Kabardino-Balkaria because of his Chechen ethnic origin and about the refusal to admit his children to their school.
- ❖ He relied on Article 2 of Protocol No. 4, Article 14 and Article 2 of Protocol No. 1 to the Convention.

### *Decision of the Court*

#### ***Regarding Article 2 of Protocol No. 4***

- ❖ The applicant's version of events had been corroborated by independent inquiries carried out by the prosecution and police authorities.
- ❖ There had been a restriction on the applicant's right to liberty of movement within Russian territory.

❖ The oral order amounted to a violation of the constitutional right to liberty of movement enshrined in Article 27 of the Russian Constitution.  
***The Court held unanimously that there had been a violation of Article 2 of Protocol No.4, having found that the restriction of movement was not in accordance with the law.***

***Regarding article 14***

❖ The Russian ethnic document does not list a person's ethnic origin; therefore, the order barred the passage for those who were perceived as belonging to the Chechen ethnic group.  
 ❖ It was not clear if people from other ethnic groups have been through the same.  
 ❖ The Russian Government did not offer any justification for the difference in the treatment between people of Chechen and not Chechen ethnic origin.  
 ❖ 'since the applicant's right to liberty of movement was restricted solely on the ground of his ethnic origin, that difference in treatment constituted racial discrimination within the meaning of Article 14'.  
***Therefore, there had been a violation of Article 14 taken in conjunction with Article 2 of Protocol No. 4.***

***Regarding Article 2 of Protocol No.1***

❖ The Russian Government confirmed that Russian law did not allow children's right to an education to be made conditional on the registration of their parents' residence."  
 ❖ As a result, Mr. Timishev's children were denied the right to education provided for by domestic law.  
***There had been a violation of Article 2 of Protocol No.1.***

***Aziz v. Cyprus***

Application No.69949/01

**A. Procedure**

❖ Mr. Aziz complained under Article 3 of Protocol No. 1, taken alone or together with Article 14 of the Convention, on the grounds that he was prevented from exercising his voting rights because of his national (Turkish-Cypriot) origin and/or his association with a national minority.  
 ❖ In 2002 the Court decided to adjourn the examination of these complaints and declared part of the application inadmissible.  
 ❖ In 2003 the Court declared the remainder of the application admissible.  
 ❖ Both the applicant and the Government filed observations on the merits.

**B. The facts**

**I. The circumstances of the case**

❖ The applicant lives in Nicosia and he is a Turkish-Cypriot in terms of ethnic origin.  
 ❖ In *January 2001*, he applied to the Ministry of Interior, asking to be registered on the electoral roll, in order to be able to vote in the elections of 2001.  
 ❖ The Ministry refused to enroll him. It specified that members of the Turkish-Cypriot community could not be registered on the Greek-Cypriot electoral roll.

- ❖ In *April 2001*, Mr. Aziz lodged an application with the Supreme Court against the decision of the Ministry. He relied on Article 3 of Protocol No. 1 and submitted that the Government had failed to make two electoral lists for protecting the electoral rights of both communities.
- ❖ In *May 2001*, the Supreme Court dismissed the application.

## II. Relevant domestic law and practice

The **Constitution of Cyprus** includes the following provisions:

- ✓ every citizen has the right to vote under this Constitution (*Article 31*)
- ✓ 70% of the representatives shall be elected by the Greek community and 30% by the Turkish one (*Article 62*)
- ✓ Anyone who is older than 21 years old and has residential qualification as may be prescribed by the Electoral law [has the right to vote]. Members of the Greek community shall only be registered in the Greek electoral list and the members of the Turkish one shall only be registered in the Turkish electoral list. (*Article 63*)

## C. The Law

### *Regarding Article 3 of Protocol No. 1*

#### a. The parties' submissions

- ❖ The **applicant** (Mr. Aziz) complained that he had been prevented from exercising his voting rights in the elections of 2001, contrary to Article 3 of Protocol No. 1.
- ❖ He supported that the Supreme Court had treated him as a member of the Turkish community, despite the fact that this community does not longer exist in the government-controlled area. He also supported that only citizens of the Republic of Cyprus with diverse ethnic origins live in the southern part of the island.
- ❖ The Supreme Court had not applied the law of necessity in his case, as it had done in other cases.
- ❖ The **Government** claimed that according to the Constitution, citizens of the Republic had to belong to one of the two communities, Greek or Turkish.
- ❖ Members of each community could not vote for the candidates of the other community.
- ❖ The Turkish community, in which Mr. Aziz belonged, had withdrawn from the constitutional organs of the State after the occupation of the northern part of the island.
- ❖ Mr. Aziz was part of the small Turkish-Cypriot community having lived in the non-occupied part of the island.
- ❖ The Government alleged that it had not been the electoral system that prevented him from voting but the absence of the majority of the Turkish community.
- ❖ An exception “would have constituted a departure from a constitutional system devised for the purpose of granting special political right to the Turkish community and might have been misunderstood as an attempt to impose a new system to the disadvantage of that community, at a time when the whole political situation could have been described as delicate.”

#### b. The Court's assessment

- ❖ The Court holds that the Cypriot Constitution did not provided the Turkish community living in the free part of the island the right to vote in the election.

- ❖ The State should not exclude some people from participating in the political life of the country regardless of historical or political factors.
- ❖ The Court also holds that there is a lack of legislation resolving the ensuing problem.
- ❖ As a result the applicant was completely deprived of his political right.

*The Court considers that the applicant's right to vote, as guaranteed by Article 3 of Protocol No. 1, was impaired.*

### **Regarding Article 14**

#### a. The parties' submissions

- ❖ The **applicant** (Mr. Aziz) Aziz complained that he was prevented from exercising his voting rights because of his ethnic origin, contrary to Article 14.
- ❖ He supported that the Government had only passed laws upholding the Human Rights for the Greek-Cypriot citizens. No provisions having been adopted for the Turkish-Cypriot citizens.
- ❖ The **Government** submitted that no issue arose under Article 14 of the Convention, because the applicant was not in a comparable situation to voters who were members of the Greek community and voted in this capacity for the candidates from their community.

#### b. The Court's assessment

- ❖ The Court observed that the difference in treatment resulting from the fact that the applicant was from Turkish origin was in violation of the Convention.
- ❖ *"It emanated from the constitutional provisions regulating the voting rights between members of the Greek-Cypriot and Turkish-Cypriot communities that had become impossible to implement in practice."*
- ❖ The Government's arguments could not justify the difference on reasonable and objective grounds.
- ❖ *There had been a violation of Article 14 taken in conjunction with Article 3 of Protocol No. 1.*

### **Regarding Article 41**

#### *Damage*

#### a. The parties' submissions

- ❖ **Mr. Aziz** claimed 50,000 Cypriot Pounds (CYP) as a compensation for the psychological damage and the distress that he suffered because of a 40-year denial of his right to vote.
- ❖ The **Government** supported that the applicant's complaints before the Supreme Court concerned **only** his right to vote during the last elections.

#### b. The Court's assessment

- ❖ The Court notes that the Cypriot Government should implement measures that secure the right to vote in compliance with this judgment.
- ❖ Moreover, "it considers that this inevitable reform, combined with the findings in the present judgment, constitute sufficient just satisfaction."

#### *Costs and Expenses*

#### a. The parties' submissions

- ❖ **Mr. Aziz** claimed 4097,3 CYP “ inclusive of value-added tax (VAT) as reimbursement for the costs and expenses incurred before the Supreme Court (CYP 1,436.80) and in the proceedings before this Court (CYP 2,660.50).”
- ❖ The **Cypriot Government** left this matter to the Court’s assessment.

b. The Court’s assessment

The Court considers it reasonable to make a €3,500 award to the applicant (this amount should be converted into CYP at the day of settlement).

**D. The Court’s decision**

*The court unanimously:*

1. *Holds* that there had been a violation of Article 3 of Protocol No. 1 and Article 14 of the Convention taken in conjunction with Article 3 of Protocol No. 1.
2. *Holds* that the finding of these violations constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, €3,500 in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

## *Reports submitted by Greece on CERD Committee*

*Erida Goga*

### **2009-2016 Reports**

#### *Most important developments*

- ❖ **Law 3304/2005 on the “Implementation of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or sexual orientation”.**

It aims to lay down a general regulatory framework for combating discrimination in a wide variety of fields, to designate or establish bodies for protecting, promoting and monitoring compliance with the principle of anti-discrimination.

- ✓ By the word **discrimination** is meant the harassment with the purpose or effect of insulting the dignity of a person and of creating an intimidating, hostile, humiliating or offensive environment.

According to *Article 3 of this Law*, there is a distinction between:

- ✓ **Direct discrimination** which is defined as the fact that a person is treated less favorably than another in a comparable situation and
  - ✓ **Indirect discrimination**, where a *prima facie* neutral provision, criterion or practice would put persons of a particular racial or ethnic origin at a disadvantage compared to others.
- ❖ **Independent authorities**, such as the Greek Ombudsman, the Hellenic Data Protection Authority and the National Radio and National Television, were officially recorded in the Constitution.
  - ❖ The Greek Ombudsman has been designed as the specialized body for the promotion of the principle of equal treatment in the public sector. The Office of Ombudsman has dealt with various cases involving different forms of discrimination, as well as with alarming phenomenon of racist violence. The Ombudsman has been designated as the “national preventive mechanism” under the Optional Protocol to the Convention against Torture, which Greece ratified in 2014.
  - ❖ Positive results from the *Integrated Action Program for the integration of Greek Roma*.
  - ❖ Design of an *Integrated Action Plan for the integration of third-country nationals legally residing in the Hellenic territory*, which aims:
    - a) to register all integration activities for third-country nationals that are

currently taking place in the country, so as to identify best practices as well as areas in need of further intervention,

b) to reflect European realities and to benefit from European experiences and best practices and

c) to lay down to priorities of the national strategy and implement new actions and integration activities that meet the trends, challenges and prospects of the future.

- ❖ Fight against human trafficking and provide assistance to the victims.
- ❖ Acts or activities aiming at racial discrimination have been criminalized.
- ❖ The fight against racism and xenophobia has become a priority issue.
- ❖ Safeguards for the free exercise of religious freedom have been enhanced.
- ❖ Practical steps in order to promote the harmonious integration of foreign children in the educational system of the country and preventing prejudice and stereotypes.
- ❖ Due to economic and humanitarian crisis, *Law 4320* was adopted in March 2015. It aims to ensure basic goods and services to persons and families living under extreme poverty conditions, without discrimination, through the provision of free electricity, rent allowance and food stamps.

#### *Demographic information*

- Roma: 250,000 to 300,000
  - Muslim minority in Thrace: around 100,000
  - Third-country nationals legally residing: on 2007 were 481,501, from which
    - ❖ 303,225 (60%) Albanian citizens,
    - ❖ 19,005 Ukrainian citizens,
    - ❖ 12,990 Georgian citizens,
    - ❖ 12,126 Pakistani citizens,
    - ❖ 27,182 Bulgarian citizens
- and
- ❖ 15,884 Romanian citizens.

#### *A. Rights of persons belonging to the Muslim Minority in Thrace*



- ❖ Members of Muslim Minority are free to declare their origin, speak their language, exercise their religion and observe their particular customs and tradition.
- ❖ They are **not** free to a single ethnic identity for the entire Muslim Minority in Thrace, so as to subsume Pomak and Roma persons under a Turkish identity.
- ❖ Muslim citizens derive all the benefits of membership in the European Union – exactly like other Greek citizens.
- ❖ Accessibility to educational system without discrimination: existence of 210 primary minority schools in Thrace, 2 secondary minority schools in Xanthi and Komotini, 2 Koranic schools in Komotini and Echinós.
- ❖ Project “*Education of Muslim Children*”: aims **(a)** to train both Christian and Muslim teachers in the teaching of Greek as a second language and in the modern pedagogical methods and **(b)** to publish textbooks for the teaching of Greek language to students with different mother tongue.
- ❖ Special quota of 0,5% for the entrance of Muslim students in Higher Education.
- ❖ 10 grants of 500€/month were given to Muslim minority students for the academic year 2006-2007.
- ❖ Special scholarship has been designed for students from schools of the Muslim minority.
- ❖ Training and life-long learning programs providing them with qualifications for their integration into the labor market are being launched.
- ❖ Ability to follow their traditions and religious duties without any restriction.
- ❖ Ability to choose whether to use the Sharia, in family and inheritance law matters, or the Greek Civil Code, but the Sharia is implemented to the extent that its rules are not in conflict with fundamental values of the Greek society and the Greek legal and constitutional order.
- ❖ The number of minority students attending secondary school has increased according the Report of 2016: ¼ attend minority school and ¾ in public schools.
- ❖ *Law 4115/2013* made possible the teaching of Holy Koran in Greek public schools in Thrace.
- ❖ *Law 4310/2014* gave the possibility to teachers, members of the Muslim Minority in Thrace to reserve their exclusive right to teach within the minority program of the minority schools in Thrace, after having attended the respective courses of the Graduate School of Minority Program teachers.

### B. *The situation of Roma in Greece*

- ❖ Roma have been recognized by the State as a vulnerable social group, to the benefit of which special measures and actions have been adopted.
- ❖ Not a precise official number of Roma populations. Estimated by social actions and programs, to be approximately 250,000 to 300,000.

- ❖ Greek authorities are fully aware of the urgency of the integration of Roma into the society and have shown their political will to find appropriate and effective solutions.

#### ***Integrated Action Plan for the social integration of Greek Roma***

- ❖ Launched in 2002 by the Greek State.
- ❖ Greece submitted to the European Commission the National Strategy for the Social Inclusion of Roma 2012-2020, oriented to a holistic approach of the issue of Roma integration including the housing situation and the integration of Roma pupils into mainstream classes.
- ❖ Structured upon two priority axis aiming at the house rehabilitation of the Greek Roma and at the provision of services in the fields of education, health, employment, culture and sports, giving priority though to areas holding projects of organized town building.
- ❖ The 1<sup>st</sup> priority axis consists:
  - a) Housing loans programs for the Greek Roma.
  - b) Construction of integrated settlements or/and purchase of tracts of land for organized town building held by local government organization.

Result: Since 2002, the Ministry of Interior has allocated the amount of €79,869 million from the national budget on infrastructure work held by the local authorities.

- ❖ The mortgage program was further amended in 2011 in order to provide to Roma beneficiaries, inter alia, with financial incentives in relation to the repayment of the loans and the state grants, as well as with a more flexible timeframe in relations to the construction of houses and the disbursal of the loans.
- ❖ In 2012 a proposal titled “*Combating discrimination in the field with Entrepreneurship: Women and young Roma and Muslim migrants*” aims at exploring the phenomenon of multiple discrimination faced by our Roma and migrants, integrating gender mainstreaming.
- ❖ The 2<sup>nd</sup> priority axis consists of services upon:
  - a. **Education:** efforts to secure every child’s right to high quality, easily accessible education.
  - b. **Health:** implementation of preventive medicine and immunization programs for those living in settlements , as well as provision of basic health services, vaccinations, counseling, psychological support services, and facilitation of the access of the Greek Roma to the National Health System.
  - c. **Employment:** integration of Greek Roma in labor market and reduction of unemployment.
  - d. **Culture and sports:** promotion of the cultural heritage of Roma and promotion of their participation in mass sports *programs*.

#### ***C. Migrants’ rights and measures to promote their social integration.***

*Law 3386/2005 (amended by 3536/2007) ensures*

- ❖ The free exercise of all migrants' rights.
- ❖ The development of their personality and their full participation in the economic and social life.
- ❖ Simplification and rationalization of entry and residence procedures.
- ❖ The establishment of conditions facilitating family reunification and the granting of residence permits on humanitarian grants.

Regarding the principle of equal treatment of migrants:

- ❖ Civil, cultural, economic and social rights are guaranteed to both nationals and non-nationals according to Article 4 of Greek Civil Code.
- ❖ The service of public institutions is supplied to migrants legally residing in Greece.
- ❖ Access to the relevant social security system, health system and emergency care in hospitals regardless their legal status.

*Program ESTIA-HOME* is an Integrated Action Plan for the integration of third-country nationals legally residing in the Greek territory, which aims at the proportionally equal participation of migrants in the following fields:

- ❖ Information and consulting services.
- ❖ Employment.
- ❖ Education.
- ❖ Housing and health services.
- ❖ Culture.
- ❖ Prevention of delinquency and promotion of social rehabilitation.

*National Liaison Committee on the Integration of third-country nationals*, whose tasks are:

- ❖ To make proposals concerning integration
- ❖ To conduct social dialogue with the community of migrants and its representatives, as well as with the society in general
- ❖ To undertake initiatives in the context of the "ESTIA-HOME" Plan.

According to *2016 Report* the following **steps** have been taken:

- ❖ *Law 4251/2014: "Code of Immigration and Social Integration"* entered into force. It codifies the relevant legislative provisions, simplifies administrative procedures, introduces amendments on issues such as the renewal of residence permits and family reunifications, facilitates the acquisition of residence permits by second-generation migrants and promotes the long-term resident status under the relevant EU directives.
- ❖ *Law 4052/2012* sets minimum standards regarding the procedure for imposing sanctions against employers of third country nationals illegally residing in Greece
- ❖ Transposition into national law of *Directive 2009/50/EU* on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment by *Law 4071/2012*, incorporated into *Law 4251/2014*.
- ❖ *Art. 78 of Law 3852/2010* provides for the establishment of Migrant Integration Councils, which aim at identifying integration problems encountered by foreign nationals.

#### *D. Human trafficking*

- ❖ Greece is considered as a “**destination country**” of human trafficking.
- ❖ *Law 3064/2002: “Fight against trafficking in persons, crimes against sexual freedom, child pornography and generally the financial exploitation of sexual life and support of these acts”*. The **support and protection provided to victims** include the following:
  - ✓ Protection of life, personal and sexual freedom, in case of grave danger for as long as this may be required.
  - ✓ Food and shelter, medical and pharmaceutical treatment, psychological support and provision of a legal guardian and an interpreter.
  - ✓ Enrollment of minors in educational and vocational training programs.
  - ✓ People under 23 may receive technical and vocational education.
  - ✓ Deportation of victims who are foreigners illegally residing may be suspended until a definitive judgment has been issued against the persons held responsible (*Law 3064/2002, Art. 12*).
  - ✓ Victims who are foreigners illegally residing may, if they wish, be safely repatriated (*Law 3064/2002, Art. 13*).
- ❖ Establishment of a *special committee*, which in July 2004 completed an “*Integrated Action Plan against trafficking, entitled Actions against Trafficking in Human Beings*”, which was based on the coordination of all Ministries involved and covered the entire spectrum of actions related to trafficking.
- ❖ *Law 3386/2005*, which refers to social integration of third country nationals. *Articles 46-52* refer to the notion of “**victims of trafficking in human beings**” and regulate in a comprehensive manner the issue of protection of and assistance to victims of trafficking.
- **During the period 2003-2006:**
  - ✓ Greek police dealt with **224 cases of trafficking**,
  - ✓ 956 persons were arrested or prosecuted.
  - ✓ 498 victims of sexual or labor exploitation were identified.
  - ✓ 160 victims were given assistance and protection by state agencies and NGOs.
- ❖ In 2010, Greece ratified the “**Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime**” (*Law 3875/2010*).
- ❖ *Law 4198/2013*: establishment of the *Office of National Rapporteur (NRO)*, which has the mandate to cooperate with local points and IOM in the field of anti-trafficking.

- ❖ *NRO* has launched several ongoing **initiatives** and important **meetings** resulting into :
  - (a) the establishment of a *Permanent Consultation Forum* with civil society actors,
  - (b) a *permanent Coordination Mechanism* with public authorities,
  - (c) a *Memorandum of Cooperation* with the private sector aimed to focus on the demands of trafficked victims and implementing awareness-raising projects with businesses and consumers,
  - (d) a *systematic partnership with the Ministry of Education* to introduce Trafficking in Human Beings (THB) awareness raising lessons in the school courses of *Human Rights and Sexual Education* and
  - (e) *promoting partnerships* with the cultural sector to join forces against THB.

### E. *Gender equality*

- ❖ *Law 4097/2012*, which implements the equal treatment between men and women engaged in an activity in a self-employed capacity.
- ❖ *Law 4075/2012* on parental leave.
- ❖ *Law 3896/2010* on the implementation of the principle of equal opportunities of men and women in matters of employment and occupation
- ❖ *The Gender Equality Department of the Greek Ombudsman*, established in 2008, monitors the application of equal treatment for men and women, investigates cases of gender discrimination in the fields of private sector and self-employed men and women.

### F. **Protection of refugees and asylum seekers**

- ❖ Greece complies with the European legislation about the asylum seekers.
- ❖ Respects the principle of non-refoulement.
- ❖ For the individual cases all the criteria that were set out in the Convention of Geneva are taken into consideration.
- ❖ According to *Presidential Decree No. 189/1998* a refugee who is a holder of a residence permit, is granted a work permit.
- ❖ Free lessons of 3-month duration regarding teaching of the Greek language are provided in order to achieve the integration of asylum seekers.
- ❖ In order to achieve “**reception, social integration and voluntary repatriation**”, activities like the running of reception centers, free legal assistance to asylum seekers, interpretation services and linguistic assistance, individualized services to vulnerable group are implemented
- ❖ **Ability to file an appeal** if the request of asylum had been rejected.

- ❖ **Efforts** to simplify the procedure has been taken: specialization of the staff working in that field, special software program for the speedy handling of asylum applications, concerns of unaccompanied minors etc.
- ❖ *Presidential Decree No. 220/2007* entitled “*Minimum standards for the reception of asylum seekers*”.
- ❖ Efforts have been made so that the rights of minors and women among the asylum seekers and refugees groups are respected.
- ❖ Law 3907/2011 established the **First Reception Service**, the **Asylum Service** and the **Appeal Authority**.
- ❖ The new autonomous Asylum Service provides all necessary guarantees and requirements so that international protection is granted in a short period of time to all those who fulfill the criteria. In **June 2014**, the Service registered **8,945 applications** and **granted asylum status at first instance to 926** persons.
- ❖ Greece implements an improved and effective returns policy based on *IOM Voluntary Repatriation Programs with Reintegration Measures*. The total budget allotted to the program amounts to 13,000,000 €, co-funded by the EU (75%) and national budget (25%).
- ❖ The Hellenic Police is also implementing an additional returns program aiming at the repatriation of migrants who do not or no longer fulfill the condition for entry and/or stay in the country.

#### G. Criminalization of offences aiming at racial discrimination

- ❖ According to *Law 927/1979*, which was amended by *Law 4285/2014*, the following acts are penalized:
  - ✓ Acts or activities, which may result to discrimination.
  - ✓ To form or participate in organizations which aim to organized propaganda or any kind of activities tending to racial discrimination.
  - ✓ To express publicly offensive ideas against any individuals or group of individuals.
- ❖ *Art. 71(4) of Law 3386/2005*: authorities are able to press charges ex officio in the abovementioned cases.
- ❖ According to *2016 Report of the state*, a **number of measures** have been taken at the level of law enforcement, criminal legislation and the justice system:

- ✓ Establishment of **2 specialized departments** and **68 offices throughout the country** tasked with tackling racist violence and operation of hotline for complaints about racist violence.
- ✓ Creation of a **unified mechanism** and **database** for **registering** alleged incidents of racist and xenophobic violence.
- ✓ Obligation of police officers to ascertain whether a criminal act has been racially motivated.
- ✓ **Coordination** with **local organizations and NGOs** and **training of police officers.**
- ✓ In academic year 2012-2013 a special course on “**Racism-Xenophobia**” was added in the curriculum of Police Academy.
- ✓ *Article 66 of Law 4139/2013* provided that the commission of a criminal act motivated by hate on the grounds of racism constituted an aggravating circumstance and the sentence imposed could not be suspended.
- ✓ *Law 4332/2015*: the Minister of Interior may grant a residence permit on humanitarian grounds to 3<sup>rd</sup> country nationals who are victims or material witnesses of racist acts.
- ✓ All persons who commit the offence of usurpation of authority and conduct controls shall be arrested.

#### *H. Prohibition of hate speech*

- ❖ According to *Law 100/2000*, television stations may not broadcast programs which incite hatred between citizens on the grounds of their different race, religion, citizenship or gender.

#### *I. The right to security of person and protection by the state against violence and bodily harm*

- ❖ The Ministry of Interior **(1)** does not allow the development of xenophobic atmosphere within the Hellenic Police and **(2)** and control all illegal, antisocial or unethical behavior of police officers.
- ❖ Efforts to train the police officers in order to respect human rights and do not eradicate cultural prejudice.
- ❖ Judgment of ECHR found violation against Greek Police. After that the Greek legislation notes the respect of diversity by the Hellenic Police, establishes the duty of police authorities to investigate racist motives in penal and administrative cases.

- ❖ “Code of police officers” contains rules for the respect of human rights and the protection of vulnerable groups.
- ❖ A total of 238 cases against police officers for ill-treatment of persons have been investigated during the period 2003-2007.
- ❖ During these years, efforts have been made in the fields of the use of firearms by police officers, training in human rights of police personnel etc.
- ❖ Law 3938/2011 provides for the establishment of an Office responsible for handling alleged instances of arbitrary conduct by law enforcement personnel.

### *J. Political rights*

The existing minority groups in Greece participate in the public/political life of the country (Muslim Minority in Thrace, Greek Roma).

### *K. Other civil rights*

*Conditions of detention-foreigners awaiting expulsion:* a number of concerns have been raised by the ECHR, the Council of Europe. Some initiatives have been taken:

- ❖ Shortening of detention prior to expulsion or deportation.
- ❖ Establishing of new holding facilities.
- ❖ Improvement of conditions and terms of detention in the existing facilities with regard to safety and hygiene.
- ❖ The provision to every foreigner under detention, against receipt, with an informative bulletin in which their rights are explained.

### *L. Freedom of religion*

- ❖ No prosecution has been initiated or conviction imposed for proselytism.
- ❖ Article 35 of Law 3448/2006 permitted the cremation of foreigners or Greeks.
- ❖ Law 3512/2006 provides the construction of a mosque near the center of Athens.
- ❖ Establishment of a Muslim cemetery in the area of Schistos near Athens.
- ❖ Law 3086/2005 provides for the grant of a residence permit for ministers of all known religions.
- ❖ The rite of confession cannot be held in school premises.



❖ Ability not to attend in the subject of Religious Education by saying that they doesn't belong in the Greek Orthodox Church, without further information.