



*HELLENIC REPUBLIC*

**GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS**

Neofytou Vamva 6 (3<sup>rd</sup> floor), GR 106 74 Athens, Greece, Tel: +30 210 7233221-2; fax: +30 210 7233217; e-mail: [info@nchr.gr](mailto:info@nchr.gr), website: [www.nchr.gr](http://www.nchr.gr)

**Recommendations of the National Commission for Human Rights (NCHR) for  
Childhood Protection: «Health and Welfare»**

**8 May 2014**

## **Recommendations of the National Commission for Human Rights (NCHR) for Childhood Protection: «Health and Welfare»\***

*“1. Children shall have the right to such protection and care as is necessary for their well-being. Children may express their views freely [...].*

*2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration [...].”*

Article 24 of the EU's Charter of Fundamental Rights

### **I. Introductory Observations**

Considering and guaranteeing the child's best interests as top priority along with each State's obligation to secure childhood protection and care reflects the letter and the spirit of numerous Constitutional provisions as well as of European and international texts relating to human rights protection<sup>1</sup>.

One of the most important texts of international human rights law - cornerstone of the internationally recognised need for special protection and promotion of children's rights - is the International Convention on the Rights of the Child (hereinafter the ICRC). By guaranteeing civil and political as well as economic, social and cultural rights, it successfully unites all States Parties around a common idea: the wish to guarantee the most complete protection for the children, recognising them as subjects of rights.

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\* The text has been unanimously adopted by the NCHR Plenum during the session of May 8 2014. Rapporteurs: K. Papaioannou, NCHR President, A. Chrissochoidou-Argyropoulou, NCHR's First Vice-President, E. Varchalama, NCHR's Second Vice-President, G. Sotirelis, NCHR Member, A. Tsampi, NCHR Legal Research Officer and R. Fragou, NCHR Legal Research Officer. It is also noted that the present Recommendations have been developed in collaboration with the Deputy Ombudsman in charge of children's rights, G. Moschos, assisted by his scientific staff.

<sup>1</sup> See for example Article 24(1), of the **International Covenant on Civil and Political Rights**, which acknowledges the need for taking measures to protect each child regardless of race, colour, sex, language, religion, national or social origin, property or birth, Article 10(3), of the **International Covenant on Economic, Social and Cultural Rights**, which provides that special protection and assistance measures for all the children and adolescents are taken, Article 7 of the **European Social Charter** which defines the children and young persons' right to protection and Article 24 of the **EU Charter of Fundamental Rights** which attributes primary consideration to the child's best interests.

In the framework of its institutional role as an advisory body to the State for the protection of Human Rights, the Greek National Commission for Human Rights (GNCHR) has previously been extensively concerned with the necessity to provide institutional and effective protection to this particularly vulnerable social group, formulating, thus, proposals and recommendations<sup>2</sup>.

Given the tremendous financial and social impact of the financial crisis on the fundamental children's rights, the GNCHR, taking into account the valuable experience and the reports of the Ombudsman for Children's Rights along with the quantitative and qualitative dimension of the already known problems which constitute violations of the children's rights, decides to address Recommendations to the State, aiming at the essential and actual restoration of the regulatory priority of measures and actions capable of contributing to the more effective protection and promotion of the fundamental children's rights.

Even though more restricted in meaning than the "rights of the child"<sup>3</sup>, the "protection of childhood"<sup>4</sup> covers a **wide thematic spectrum**. The examination of the problematic of "Childhood Protection" is mostly served by grouping the relevant issues.

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<sup>2</sup> GNCHR, "Observations on the Draft Initial Report of Greece concerning the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography", 2011 Report, "Observations on the Draft Initial Report of Greece concerning the implementation of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict", 2009 Report, "Proposals for the implementation of Law 3699/2008 *Special Education and Education of people with disability or special educational needs*, 2009 Report, "Report and Proposals of the NCHR relating to the criminal record of juveniles and young adults", 2008 Report, "Observations on the 3rd Periodic Report relating to the implementation of the UN Convention on the rights of the child (CRC)", 2008 Report, "Proposals relating to the issue of unaccompanied minors", 2006 Report, "Observations on the draft bill for *Addressing Domestic Violence*", 2005 Report, "Observations and proposals on the draft bill for the *Reform of Juvenile Criminal Law*", 2003 Report. The Annual Reports of the NCHR are available at its webpage: <http://www.nchr.gr/index.php/el/2013-04-03-11-07-36/115-etisies>.

<sup>3</sup> The rights of the child include all the children's rights that compose the three general categories of rights, as they are defined by the ICRC and have been mentioned above (e.g. **provisions**: the right to appropriate standards of living, to education, to health, to welfare, to entertainment, etc, **protection**: the right to life, prohibition of discrimination, exploitation or abuse and **participation**: the right to freedom of speech, to information, to freetime, etc.)

<sup>4</sup> In accordance with the provisions of the CRC's first article, a child means "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Relating to the definition given to the child by the Greek legislator, it is noted that the positive outcome of the reform of the article 121 PC (Penal Code) (Article 1(2), Law 3189/2003) according to the provisions of which "minors are defined those persons who are between eight and eighteen years of age completed at the time of the commission of the offence".

For this reason, the GNCHR's sub-commission in a session held on 14 February 2014, with the participation of the Ombudsman for Children's Rights and its legal research officers, decided to extensively deal with the "Mechanisms of childhood protection" in the long run<sup>5</sup>, inaugurating, to this purpose, with the present Report, a series of special thematic reports concerning the promotion of the rights of the child. In order for the possible central points of the present report to be discussed and for a first compilation of the issues which should have priority to be made, two more workshops took place between the GNCHR's Rapporteurs and the Ombudsman for Children's Rights on 13 January 2014 and on the 4 April 2014.

In the light of the aforementioned observations, the present text of Recommendations introduces the GNCHR's special examination of the issue of "Childhood Protection" as a whole. Accordingly, a more focused approach is pursued in the context of issues related to Health and Welfare, which raises double interest, both theoretical and practical. As such it highlights the most important challenges today's society has to face relating to children's rights and protection. In this framework, knowledge of the current situation is of particular interest both regarding the authorities which are institutionally charged with child protection in issues relating to access to health and reinforcement of welfare mechanisms, and the evaluation of their effectiveness and their work. Such an evaluation inevitably leads to the formulation of Recommendations regarding the appropriate and effective measures which must be adopted in order to address the problems and the inefficiencies which have been detected.

## **II. The international protection of the child's right to health and welfare through the prism of the financial crisis**

Firstly, it is noted that the ICRC, as along with other international instruments relating to children, recognise them as subjects of rights, and not only as objects of protection. The ICRC and the EU Charter of Fundamental Rights (hereinafter the CFR) guarantees every child's right to adequate standards of living (Articles 27(2) ICRC and 24(1) CFR.) The ICRC recalls that parents are legally responsible for securing its protection and care (Articles 9(1) and 3(2)). An exception to this rule is provided by the ICRC, defining, in Article 9(1), that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. When, in other words, parental care is deemed inadequate or inappropriate, replacing it with another, alternative care is imperative.

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<sup>5</sup> A **mechanism** means the combination of agencies and non-governmental organisations which allows for the smooth functioning of these bodies and their most reliable and effective action.

In any case, however, the State continues to be responsible for supporting the family, which is charged with custody of minors and for monitoring the structures of alternative care to which the necessary protection and care for the minors' well-being is assigned, given that the State's top priority is protecting and promoting of the child's rights. The primary responsibility, therefore, in order to secure the child's appropriate standards of living is assigned to parents or to those responsible for the child's development (Articles 27(2) ICRC and 24(3) CFR), with the State being charged with the obligation to meaningfully contribute to their mission by creating the appropriate conditions for the implementation of the aforementioned right.

Besides, the right to health, as every human's universal and inalienable right, is guaranteed both on a national and on a European and international level by numerous instruments. Even more so, when the subject of this right is a particularly vulnerable social group: the children. Both the ICRC and the CFR guarantees every child's right to the enjoyment of the highest attainable standard of health (Articles 24(1) ICRC and 24(1) CFR), to the necessary protection and care for his or her well-being (Articles 3(2)ICRC and 24(1) CFR) and to adequate standard of living (Articles 27(1), ICRC and 24(1), CFR), setting at the same time "the best interests of the child" as a primary consideration in every action relating to childhood (Articles 3(1) ICRC and 24(2) CFR.)

The same goal is pursued by Article 25 of the UN Convention on the Rights of Persons with Disabilities as well, which guarantees the right of persons with disabilities to health, providing *inter alia* that persons with disabilities enjoy this right without discrimination. States shall take all appropriate measures so as to ensure access for persons with disabilities to health services with the same range, quality and standard of free or affordable health care and programmes as provided to other persons and to provide those health services needed by persons with disabilities specifically because of their disabilities, so as to *inter alia* prevent further disabilities. Moreover, health professionals are required to offer same quality care, with consideration to issues relating to dignity, autonomy and human rights of persons with disabilities. More specifically, Article 7 of the UN Convention on the Rights of Persons with Disabilities provides that States should ensure full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

Since Article 24 of the ICRC does not provide an exact definition of "*the highest attainable standard of health*", this term is to be clarified *inter alia* in light of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in Paragraph 2 numbers a series of specific measures for the realisation of the right like, indicatively, measures for the reduction of infant mortality as well as for the healthy development of the child (Article 12(2)(a) ICESCR)<sup>6</sup>. Even further specialisation is provided by the provisions of both Article 25 ICRC, which guarantees every child's right, who has been placed by the competent authorities for the purposes of care/protection of his or her health, to periodic review of the treatment provided<sup>7</sup>, and Article 23(2) ICRC, which guarantees the right of the disabled child to special care and assistance which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child<sup>8</sup>.

Furthermore, the aforementioned provisions relating to every child's right to enjoy the highest attainable standard of health, securing of a decent standard of living and the search for its best interests are complemented by Article 26 of the ICRC, which recognises "*for every child the right to benefit from social security, including social insurance*". The child's social protection is, after all, specifically guaranteed in many international texts, like in Article 25(2) of the Universal Declaration of Human Rights, Article 10(2) of the ICESCR, Article 17 of the European Social Charter (ESC) and Article 24(1) of the CFR.

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<sup>6</sup> See also Stergiou A., "Article 24 [The right to health and medical services]", *The International Convention on the Rights of the Child and the internal legal order: interpretation by article*, Eds. Naskou-Perraki, P., Chrysogonos, K., Anthopoulos, C. Center of International and European Economic Law: Sakkoulas, Ant. N., 2002. 255 *et seq.*

<sup>7</sup> *Idem*, p. 270 and Papasteriadiou, N. "Article 23 [Protection of the child with special needs]" Eds. Naskou-Perraki, P., Chrysogonos, K., Anthopoulos, C., *op.cit.*, p. 238 *et seq.*

<sup>8</sup> The General Comments of the UN Committee on the Rights of the Child are also of great importance, like General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health, General Comment No. 3 on HIV/AIDS and the rights of the children, General Comment No. 7 on implementing child rights in early childhood and General Comment No. 9 on the rights of children with disabilities.

In its recent report about the application of the 102 ILC by Greece (minimum level of social security)<sup>9</sup>, the Committee of Experts of the International Labour Organisation (ILO) calls for Greece to take measures to successfully reverse the increasing impoverisation of the population, specially mentioning the fact that many of the austerity measures have failed to hinder the rise in child poverty. Taking into account that the European Commission is one of the members of the Troika, the Committee of Experts calls Greece to a “*post factum* examination of the impact of those reforms and the policies of continuous austerity on the rise of poverty and in particular child poverty”, highlighting that this evaluation will undoubtedly offer “a unique source of lessons to be learned, not only by the European Commission and other members of the Troika, but by all European countries and the international community at large in order to prevent, in future, the creation of widespread poverty”<sup>10</sup>.

As a matter of fact, the Committee of Experts in its report about the application of the ILC 138 by Greece (minimum age for admission to work)<sup>11</sup>, “[*notes once again with concern that [PD 62/1998] continues to permit the performance of hazardous work by persons as of the age of 15 years [...]. It strongly urges the Government to take the necessary measures to bring its national legislation into conformity with Article 3(3) of the Convention by providing that no person under 16 years of age may be authorized to perform hazardous work under any circumstance [...] and to ensure that section 2(c) of Presidential Decree No. 62/1998 is amended to define a “young person” as a person of at least 16 years of age*”<sup>12</sup>. In the present dramatic circumstances for children and considering the absence of assessment of the social impact of of austerity measures, the sharp increase and inadequate addressing of poverty, guaranteeing the effective children protection, by reinforcing the rules and monitoring their implementation, is more urgent than ever.

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<sup>9</sup> Sanctioned by Law 3251/1955.

<sup>10</sup> ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, ILC.103/III(1A), 2.5.2014, p. 518 ([http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_235054.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_235054.pdf)).

<sup>11</sup> Sanctioned by Law 1182/1981.

<sup>12</sup> ILC, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 102nd Session, 2013, ILC.102/III(1A), C. 138, p. 306 (highlighting of the Committee of Experts), available at: [http://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_205472.pdf](http://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_205472.pdf).

The UN Committee on the Rights of the Child, in its Concluding Observations on the Second and Third Periodical Report that Greece submitted with regard to the application of the ICRC<sup>13</sup>, expresses its deep concern at the effects of the current crisis and increasing child poverty rates and urges the Greek State to give priority to the battle against child poverty, so as to lower the risk of poverty from 23.6% to 18% by 2020, attaching weight to reinforcing social services and other welfare structures which shall assist the family<sup>14</sup>. The economic hardship many families are facing nowadays may lead to the removal of the child from the family environment and therefore to the accentuation of a tendency towards the institutionalisation of children. Providing support to the family can reverse this path<sup>15</sup>.

The UN Committee on the Rights of the Child observations seems to rather not be taken into account during the drawing up of policies regarding the allocation of social protection expenditure in Greece during the last few years, considering that for the time period from 2000 to 2010, the social protection benefits show a rising tendency (from 22.7% in 2000 to 28.15% in 2010), the corresponding benefits provided to families or children have remained, for the same time period, stable (from 1.68% in 2000 to 1.79% in 2010)<sup>16</sup>. It is indicative that recent legislation<sup>17</sup>, adopted in view of taking measures to decrease non-salary costs, repeals as from 1 July 2014 contributions and, subsequently, social security provisions in favour of family and children which were paid to employees under certain conditions within the framework of the also repealed special account; the Employees Family Benefits Distributing Account which had operated since 1958<sup>18</sup> within OAED (Manpower Employment Organisation).

### **III. Recommendation of the European Commission “Investing in children: Breaking the cycle of disadvantage”**

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<sup>13</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece*, CRC/C/GRC/CO/2-3, 13 August 2012, par. 6/58.

<sup>14</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece, op.cit.*, par. 58.

<sup>15</sup> *Idem*, par. 40-41.

<sup>16</sup> UNICEF, Hellenic National Committee for UNICEF, *The State of the Children in Greece*, 2013, p. 7 (<http://www.unicef.gr/pdfs/Children-in-Greece-2013.pdf>). For more information on social protection provisions, see: Hellenic Statistical Authority - EL.STAT. ([http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p\\_param=A2104](http://www.statistics.gr/portal/page/portal/ESYE/PAGE-themes?p_param=A2104)), Eurostat ([http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Social\\_protection\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Social_protection_statistics)) and International Labour Organization – ILO (<http://www.ilo.org/gimi/gess/ShowTheme.do?tid=10>).

<sup>17</sup> Article 1(IA,3)(a)(e) of Law 4254/2014 *Measures for the support and development of the Greek economy within the scope of application of Law 4046/2012 and other provisions* (OHJRA 85/4.7.2014).

<sup>18</sup> Legislative Decree 3868 of 10.25/29.1958 (A 178) *On the establishment of a Employees Family Benefits Distributing Account and other relevant provisions*.



Taking into consideration that children are particularly vulnerable to the hazard of poverty or social exclusion in combination with the serious impact the current fiscal and financial crisis has on children and their families and recognising the particular importance the application of policies improving the well-being of the children has for the positive outcome of addressing child poverty, the European Commission adopted a Recommendation entitled: *Investing in children: Breaking the cycle of disadvantage* on 2.20.2013. Through this text, Member States are recommended “to organise and implement policies to address child poverty and social exclusion, promoting children's well-being, through multi-dimensional strategies”. The Recommendation came as the result of the goals of the Strategy “*Europe 2020*” and was based on observations of the Commission in particular of the fact that “the current financial and economic crisis is having a serious impact on children and families, with a rise in the proportion of those living in poverty and social exclusion in a number of countries”<sup>19</sup>.

The Recommendation proposes the development of integrated strategies in Member States on the basis of three key pillars:

- **Access to adequate resources**

It recommends support parents’ participation in the labour market and providing for adequate living standards through a combination of benefits, including fiscal incentives, family/child/housing benefits, minimum income schemes, in-kind benefits related to nutrition, child care, education, health, housing, transport and access to sports or socio-cultural activities.

- **Access to affordable quality services**

It recommends reducing inequality at a young age by investing in early childhood education and care, improving education systems’ impact on equal opportunities, improving the responsiveness of health systems to address the needs of disadvantaged children, providing children with a safe, adequate housing and living environment as well as enhancing family support and the quality of alternative care settings.

- **Children's right to participate**

It recommends supporting the participation of all children in play, recreation, sport and cultural activities and putting in place mechanisms that promote children’s participation in decision making that affects their lives.

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<sup>19</sup> EU Recommendation, “Investing in children: Breaking the cycle of disadvantage”, (2013/112/EU), Introduction, point (8).

In the Recommendation, it is highlighted among others, that “While policies addressing child poverty are primarily the competence of Member States, a common European framework can strengthen synergies across relevant policy areas, help Member States review their policies and learn from each other’s experiences in improving policy efficiency and effectiveness through innovative approaches, whilst taking into account the different situations and needs at local, regional and national level”.

#### **IV. The state of services as well as health and welfare structures in Greece**

The right to health for all children without exception is being secured through preventive measures (preventive examinations, vaccinations) and the promotion of research on health issues as well as through measures securing access to quality health services<sup>20</sup> for addressing health problems (treatments, hospitalisation, medical care). This has become more imperative than ever in circumstances of constantly increasing child poverty which doubly affects children's right to health. The socio-economic crisis that afflicts many European countries, and especially our country, is doing more and more serious harm to social protection programs. The unconditional recognition of the child's right to health and access to health services and other protective welfare mechanisms, does not, therefore, seem to be adequate, when the effectiveness of exercising this right is subject to the diversity of institutional mechanisms and national legislations. This is the more so, at a time when society at large is going through a most deep social, cultural and financial crisis.

Indeed, the increase of child poverty in Greece is not a new phenomenon: the relevant index had started increasing slowly but steadily already since the late 1990s. This increase has become more dramatic in recent years. According to a research conducted by Athens University of Economics and Business, it is estimated that 20% of children (as opposed to 4% in 2009) live in families which are in no position to buy the necessary goods for securing the minimum level of decent living<sup>21</sup>.

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<sup>20</sup> See among others: European Commission, *Commission Recommendation: Investing in children: breaking the cycle of disadvantage*, 20.2.2013, C(2013) 778 final and Council of Europe, *Strategy for the Rights of the Child (2012-2015)*, 15.2.2012, CM(2011)171 final.

<sup>21</sup> See Athens University of Economics and Business, Policy Analysis Research Unit, *The Anatomy of Poverty in Greece of 2013*, Information Brochure 5/2013, (eds.) M. Matsaganis, C. Leventi, p. 5-7, available at: [http://www.paru.gr/files/newsletters/NewsLetter\\_05.pdf](http://www.paru.gr/files/newsletters/NewsLetter_05.pdf) and *The politics against poverty in Greece during the crisis*, Information Brochure 6/2013, (ed.) M. Matsaganis, p. 5, available at: [http://www.paru.gr/files/newsletters/NewsLetter\\_06.pdf](http://www.paru.gr/files/newsletters/NewsLetter_06.pdf).

More specifically, nowadays in Greece, more than 2.2 million people live under the poverty line; among them are 440,000 children. The constantly increasing unemployment rates and the difficulty of access to social services financed by the State combined with the important shrinking of state financing exacerbate the already hazardous living conditions for both children and their families and render necessary the evaluation of the results of the financial crisis in children and adolescents' life and development, while aiming at minimising the hazards in their life and development<sup>22</sup>. On the one hand, child poverty creates circumstances that aggravate child health, while on the other, it creates obstacles to the access of children to the necessary health services.

Poverty creates additional problems, e.g. the lowering of the education level, which impedes prevention and the timely coping with health problems and results in differentiations in morbidity among income groups. However, holistic health protection is more fully and efficiently achieved through state intervention in other fields as well, apart from securing the child's best possible mental and physical state.

According to a recent research on the state of health in Greece during the period of financial crisis, austerity measures have afflicted children's health due to decrease in family income and parents' unemployment<sup>23</sup>. As the same research mentions, the percentage of children on the borderline of poverty has increased from 28.2% in 2007 to 30.4% in 2011, while the number of children receiving inadequate nutrition is constantly increasing. In the meantime, between 2011 and 2012 children living below the income poverty line were increased by 12%, as opposed to 8% in the whole population of the poor<sup>24</sup>.

Considering the above, as well as data obtained from the analytic Report of the Ombudsman for Children's Rights included in a study of the European Network of Ombudspersons for Children (ENOC)<sup>25</sup>, the GNCHR observes with concern that securing the children's universal right to health encounters innumerable obstacles. The following are indicatively highlighted:

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<sup>22</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece, op. cit.*, par. 28-29 and Greek Ombudsman (Ombudsman for Children's Rights), *Recommendations about the content of a National Plan of Action for Children's Rights*, July 2013, par. 11.

<sup>23</sup> A. Kentikelenis, M. Karanikolos, A. Reeves, M. McKee, D. Stuckler, «Greece's health crisis: from austerity to denialism», *Lancet*, Vol. 383 - February 22, 2014, p. 750.

<sup>24</sup> UNICEF, Hellenic National Committee, *The State of the Children in Greece 2014. The consequences of the financial crisis on children*, p. 27, available at: <http://www.unicef.gr/pdfs/children-in-greece-2014.pdf>.

<sup>25</sup> Greek Ombudsman (Ombudsman for Children's Rights), *The rights of children living in institutions. Report on a study of the European Network of Ombudspersons for Children (ENOC)*, July 2011.

▪ The GNCHR observes that the number of children receiving insufficient nutrition is constantly increasing. Nutrition problems constitute a fundamental factor of child health degradation, both mental and physical. Poor children in Greece have more chances of being undernourished, even though children who do not belong to families living below the income poverty line can also experience circumstances of deprivation. According to *Eurostat*'s data, between 2010 and 2011 the percentage of households below the poverty line declaring incapable of securing nutrition containing meat, fish, chicken or vegetables of equal nutritive value every other day, has doubled. Equal incapability is also observed in non-poor households, something which intensifies social inequality<sup>26</sup>. Apart from inadequate nutrition, it is also incapability of securing sufficient heating in combination with housing problems, e.g. humidity conditions, lack of living space, insufficient lighting which significantly aggravate the state of children's health<sup>27</sup>.

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<sup>26</sup> UNICEF, HELLENIC NATIONAL COMMITTEE, *THE STATE OF CHILDREN IN GREECE*, 2013, P. 47-48, AVAILABLE AT: [HTTP://WWW.UNICEF.GR/PDFS/CHILDREN-IN-GREECE-2013.PDF](http://www.unicef.gr/pdfs/children-in-greece-2013.pdf).

<sup>27</sup> *Idem*, p. 48-49.

▪ The state of child and adolescent mental health in Greece of the crisis is appalling. This is confirmed by a recent scientific study, in which it is highlighted *inter alia* that the number of new cases is increasing along with the need to provide reinforcing services within the community – due to the fact that social services are not functioning–, but also in schools – where psychiatric services are not provided<sup>28</sup>. Besides, a great number of patients abandon the private sector and seek public system services. A recent research compared statistical data, in a sample of public and private psychiatric institutions in Athens, Piraeus and Thessaloniki for 2007 and 2011 (two years before and two years after the implementation of the first austerity measures). This comparison shows that new cases in non-hospital services increased by 39.8% for children and by 25.5% for adults, while the corresponding percentages in the private sector decreased by 35.4%. As a result, the waiting list and the waiting time are longer<sup>29</sup>. Indeed, the evaluation of the application of the National Plan of Action *Psychargos* for the period 2000-2009 demonstrates that the development of psychiatric services for children is more inadequate than for adults, while only 30% of scheduled services have indeed been brought into effect. Moreover, the distribution of these services has been quite heterogeneous, given that they are mainly located in Attica. In other regions, the provision of psychiatric care to children is inexistent<sup>30</sup>. In fact, the situation is exacerbated due to the impact of the crisis on families and schools, which are no longer capable to fulfil their supporting role as before.

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<sup>28</sup> D. Anagnostopoulos, E. Soumaki, «Child and adolescent psychiatry in Greece during the crisis: a brief report», *ECAP Journal*, February 2013, available at: [http://www.escap.eu/policy/care-crisis-in-greece/brief-report-\(ecap\)](http://www.escap.eu/policy/care-crisis-in-greece/brief-report-(ecap)).

<sup>29</sup> *Ibidem*. In most centers, waiting time has tripled and it nowadays exceeds one month, while in special cases it can reach up to a year.

<sup>30</sup> G. Thomicroft, T. Craig, T. Power, «Ex post evaluation of the National Plan of ActionPlan of Action ‘Psychargos’ 2000–2009. Executive summary». *Hellenic Ministry of Health and Social Solidarity*, Athens 2010.

- With regard to the existing mental health services structures, they operate with reduced by 10-40% staff, which is not always remunerated on time and whose salary has been significantly cut. A great number of more specialised personnel had to retire<sup>31</sup>. Also, an important number of community centers, mental rehabilitation units and specialized centers no longer function. The impact of the crisis was exceptionally strong especially on units dealing with special categories of disorders and learning difficulties. This most serious impact of the financial crisis is not only limited to the already existing structures, since all plans to create mental health units for children, which had been originally drafted in the framework of the psychiatric reform since 2000, were abandoned<sup>32</sup>.
- Regarding services and structures for children with disabilities and chronic diseases, there is great concern that these structures typically assume asylum character in Greece. The State has not established recreation centers, nor has it provided for care and services in the community for children with serious or multiple disabilities. This causes great concern, given that in certain cases, these children are also neglected in the family which is not receiving adequate support from the State.
- Even more, it is noted that the social protection structures as well as family and child support at regional and local level are almost inexistent. Wherever supporting social services exist, they are neither efficient, nor do they dispose of personnel sufficiently trained in child protection. Their understaffing frequently results in social workers not being able to carry out home visits.
- The provision of early childhood care has also largely shrunk since 2010, due to cuts in budget and staff resulting in the creation of overcrowded classes. In operating municipal daycare services, problems of non-transparent selection process of the hosted children have been identified, e.g. municipal citizens are given preference over residents, problems of insufficient control by the supervising authority especially during the process of submitting additional contributions or even exceeding the lawful ratio of nursery teachers to children<sup>33</sup>.

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<sup>31</sup> D. Anagnostopoulos, E. Soumaki, «Child and adolescent psychiatry in Greece during the crisis: a brief report», *op. cit.*

<sup>32</sup> A. KENTIKELIS, M. KARANIKOLOS, A. REEVES, M. MCKEE, D. STUCKLER, «GREECE'S HEALTH CRISIS: FROM AUSTERITY TO DENIALISM», *OP. CIT.*, P. 749.

<sup>33</sup> See Greek Ombudsman (Ombudsman for Children's Rights), *Report to the UN Committee on the Rights of the Child. Findings and Recommendations of the Independent Authority on the implementation of Children's Rights in Greece. (July 2003 - December 2011)*, April 2012, p. 14-15.

- Additionally, as far as the organization of mental health and social welfare services which handle cases of crisis in the family, abuse and neglect is concerned, the GNCHR observes that the services where a child or a family can seek consulting are limited and sometimes the waiting is rather long. There is total absence of services of family mediation and extrajudicial litigation on the implementation of judgements, parental custody and children's right to communicating with the parent they do not live with.
- Besides, Article 1511(3) of the Civil Code (CC) provides for the child's hearing before every decision regarding his/her interests, while the child's relevant right is guaranteed by supra-legislative provisions (Articles 2(1), 5(1) and 21(1) Const., Article 12 ICRC, Articles 3, 6 and 7 of the European Convention on the Exercise of Children's Rights (ECECR), 24(1) CFR and 8 ECHR). However, the CC's provision in question is rarely applied by lower courts, while the Supreme Court (Areios Pagos) does not review its application, considering that the child's maturity constitutes a real fact, the evaluation of which belongs to the lower court. According to the Supreme Court, this judgment does not require special motivation and is not subject to Supreme Court review<sup>34</sup>.
- Furthermore, when an adolescent minor wishes to express his/her opposing views on the application of court decisions regarding custody and communication with the parent he/she does not live with, he/she has not the possibility to directly appeal to another judicial authority or another public service which will act on his/her behalf, since he/she is obliged to act through the parent who is his/her legal representative. The possibility for a minor to appeal to social welfare and mental health public services without the parent's escort-consent constitutes a debatable issue and is not explicitly mentioned in the law.
- The insufficient organisation of services for handling cases of abuse and neglect is completed by the institutional absence of provision for family courts collaborating with social workers and mental health experts<sup>35</sup>.

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<sup>34</sup> Supreme Court 952/2007, with critical comments by K. Beis, in *Diki 2007*, 1213, Supreme Court 201/2010. See critic of the legislation by D. Kondili, in *Interpretation of the Code of Civil Procedure*, 2<sup>nd</sup> edition (under publication), K. Keramea, D. Kondili, N. Nika, "Appeal", under the reasons for appeal No 1 and 11 Article 559.

<sup>35</sup> See Greek Ombudsman, *Annual Report 2006*, p. 200.

▪ The GNCHR observes with great concern that the institutional deficiencies and organisational inadequacies do not only concern the support of the family; they also concern alternative care which replaces parental care, when it is deemed necessary to take it away from the biological family. In Greece, this alternative care is mostly based on the institutional welfare model. There is, in fact, the phenomenon of the gradual passing of the obligation for childhood protection from the State to the private sector, since children are often placed in guest houses or community houses belonging to non-profit private law legal entities or in church establishments.

▪ According to the analytic Report of the Ombudsman for Children's Rights, which was submitted to the European Network for Ombudspersons for Children (ENOC), on the grounds of a relevant research conducted in 2011<sup>36</sup>, the most important problems to face in both public and private law child protection institutions are to be summarised as follows:

- The legislation regarding child protection public institutions is quite obsolete and incomplete, while models and standards with respect to children's rights which must be met by child protection institutions, either public or private, have not been adopted. The process of certifying private law institutions may have been legally provided and is gradually being implemented by the National Centre of Social Solidarity, but the corresponding standards and quality control procedures have not been adopted yet. Additionally, public law institutions monitoring has been assigned to the Ministry of Health while private law institutions control has been assigned to the Regional Welfare Directorates, through the social counsellors appointed in the country's regions.

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<sup>36</sup> Greek Ombudsman (Ombudsman for Children's Rights), *The rights of children living in institutions. Report on a study of the European Network of Ombudspersons for Children (ENOC)*, July 2011.



- Nevertheless, the absence of a clear framework of standards which must be met by institutions often makes such monitoring inefficient and ineffective. In fact, due to this inadequate or rather ineffective monitoring of these welfare structures, in certain institutions, imposing extreme rules of behavior on hosted minors which deviate from the Greek society's generally acceptable standards is tolerated. Such rules are, for instance, prohibiting trousers to girls, imposing strict fast, prohibiting participation in school trips, limiting communication with parents etc. Moreover, children who are placed in institutions, very often remain there for a particularly long period of time. When it is internationally considered that a child shall remain in an institution no more than six (6) months, in Greece it is estimated that a child remains in an institution for more than six (6) years on average. The Ministry of Health and Social Solidarity - while it was competent on welfare issues - and nowadays the Ministry of Labour, Social Security and Welfare, has not transposed into national policy neither UN Guidelines on alternative care, nor the content of the Recommendations of the Council of Europe 2005(5) on the rights of children living in residential institutions and CM/Rec (2010) 2 on deinstitutionalisation and community living of children with disabilities.

- Many institutions for children with disabilities and chronic diseases continue to have character of asylum and to operate socially isolated, applying obsolete care systems with the hosted children receiving inadequate coverage of their medical, therapeutic and educational needs. Sometimes, in fact, they use, for preventive reasons, unacceptable methods for immobilizing and limiting children. Despite the introduction of the systematic institution monitoring and control competence of the Health and Welfare Services Inspection Body by Law 2920/2001, in reality, given the absence of a sanction and license revocation system, recommendations formulated by the Body for improving the conditions in the institutions in question are only being partially implemented by their administration boards. It has to be noted that HWSIB is no longer competent for these institutions, due to the transfer to the Ministry of Labour of the Welfare General Secretariat, to which they are subject. Private law institutions are, in fact, functioning in most cases without proper licences, since the legislative framework for their issue is incomplete.

- With respect to human resources, most institutions present serious deficiencies, especially in scientific and skilled personnel. Indeed, it is often the case that private law institutions operate without qualified scientific staff or are even staffed mainly by volunteers.

- The situation as described above has aggravated, according to the Report of the Ombudsman for Children's Rights towards the UN Committee on the Rights of the Child, during the time of the financial crisis affecting Greek society, especially as staff employment in public institutions suffers severe restrictions, while their resources are shrinking<sup>37</sup>.
- Finally, despite the widespread acceptance of the need to replace the institution-centered welfare system by other "open child protection" measures, like fosterage and hosting<sup>38</sup>, the GNCHR observes with great concern that these institutions, in spite of being not only more beneficial for children but also more economic in the long term, are not sufficiently institutionalized in Greece.
  - More specifically, with regard to the institution of fosterage<sup>39</sup>, it becomes clear that it is poorly implemented, mainly due to lack of social services and support system for the selection, education, monitoring and support of foster parents, but also due to the State's failure to provide adequate relevant resources. The logical and direct consequence of the country's chronic deficiencies in this field is, in the vast majority of cases, the introduction and long-term residential care for children who need to be removed from their biological families for reasons related to serious dysfunctions within them.

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<sup>37</sup> Representatives of many private institutions have reported to the Ombudsman that they are even threatened with shutdown because of their reduced resources and increased taxation on both donations and their property. At the same time, the cases of children who must be removed from their biological families are increasing, as the extreme poverty acts as an additional factor which exacerbates the inability of some parents to adequately care for their children. See Greek Ombudsman (Ombudsman for Children's Rights), *Report to the UN Committee on the Rights of the Child, op. cit.*, p. 12.

<sup>38</sup> In the second case, the need to replace the institution-centred welfare system has become flagrant during the recent years.

<sup>39</sup> The legislative framework regarding the institution of fosterage in Greece was reorganized under Law 2447/1996, which introduces for the first time in the Civil Code a new special chapter in line with the Constitution and international Conventions. According to this legislative framework, fosterage is explicitly defined as **assigning essential care** of a child to a new family without altering its legal relationship with the biological family. It can occur either by private contract between the biological and the foster family or with a court decision when parents will not consent. It is crucial to understand that fosterage does not abolish the child's relation with the biological family, but it actually supports and aims at the child's return when the problems which led to the removal are resolved. Foster parents are responsible for housing and taking care of the child, while biological parents are updated and can contact the child depending, of course, on the problems they might be facing and the corresponding court regulation. See Greek Ombudsman (Ombudsman for Children's Rights), *Dialogue Meeting on Fosterage*, Report by G. Moschos, Deputy Ombudsman for Children's Rights, 11.20.2013, p.1.

Οι ανάδοχοι γονείς αναλαμβάνουν τη φιλοξενία και φροντίδα του παιδιού, ωστόσο οι φυσικοί γονείς ενημερώνονται και μπορούν να επικοινωνούν με το παιδί, ανάλογα βέβαια και με το πρόβλημα που τυχόν αντιμετωπίζουν και τη σχετική δικαστική ρύθμιση ως προς το ζήτημα αυτό. Βλ. Συνήγορος του Πολίτη (Συνήγορος του Παιδιού), *Συνάντηση Διαλόγου για την Αναδοχή*, Εισήγηση Γ. Μόσχου, Βοηθού Συνηγόρου του Πολίτη για τα Δικαιώματα του Παιδιού, 20.11.2013, σελ. 1.

- At last, even though the legal framework regarding adoption is not recent (Law 610/1970 and Law 2447/1996), in practice, the number of adoptions which take place in our country annually is very small. Among these, in fact, only one fifth concerns children hosted in institutions. More specifically, given the serious problems of delays the institution of adoption faces, children hosted in institutions are forced to remain there for a long period of time instead of timely being introduced to foster families.
- The lawfully provided possibility (Article 7(2) of Law 2447/1996, as it was replaced by Article 20 of Law 3719/2008, OJ A 241/11.26.2008), of assigning the child's care to candidate foster parents, after direct communication with the biological parents, without any prior social research for their suitability, has a faster outcome. However, the extra-institutional assigning of the child's care does not comply with the child protection requirements of the Constitution and international law, since, in many cases, it hides financial transactions and favours the development of infant and child trafficking. Consequently, this possibility must be abolished.
- Generally, the immediate reinforcement of social services dealing with children is imperative, while international adoption has not been sufficiently supported by an organised system of services yet, in accordance with the relevant law.

### **GNCHR Recommendations**

Considering the above, the GNCHR formulates the following recommendations:

#### **A. National Strategy for the Child**

The GNCHR highlights the need to protect, prioritise and implement children's rights. To this purpose, it recommends the **elaboration** of a national strategy with distinct components for childhood protection, securing the essential participation of the Ombudsman for Children's Rights as well.

Key pillars of such strategy could be the development of a child-centered fiscal policy in combination with the diffusion of the child dimension (child mainstreaming) in all fields and policy levels.

As far as child-centered fiscal policy is particularly concerned, it shall be reflected in "friendly" for child protection budgets and the creation of special credits within the National Budget for the funding of all state policies concerning the child<sup>40</sup> (child budgeting), monitored for their implementation with specific motivation of the State General Accounting Office.

Towards the same direction, the Ombudsman's for Children's Rights institutional reinforcement is deemed equally important, through legislative safeguarding the achievements made so far, which secure the Authority's function not only as a monitoring mechanism but also as a body promoting children's rights through initiatives.

## **B. Elaboration of a National Plan of Action for Children's Rights**

The GNCHR considers necessary the elaboration of a National Plan of Action for Children's Rights (hereinafter NPACR)<sup>41</sup>.

In the light of the observations made so far by the Ombudsman for Children's Rights regarding the best possible development of a mechanism for the elaboration and monitoring of a NPACR, the GNCHR recommends the creation of an interministerial body with a coordinating role and at the same time the legislative establishment of this interministerial collaboration.

Such a body composed by Ministry Secretary-Generals with relevant responsibilities, shall assume responsibility, operating as an Interministerial Committee for the Children, in developing, implementing and accounting for the NPACR.

It is also recommended that the Deputy Ombudsman for Children's Rights - in an advisory/consultative role - participate and that representatives from other public bodies or independent authorities be called to hearing, depending on the topics of each session.

Equally important is considered the appointment of a Scientific Committee on the Rights of the Child composed by personalities of acclaimed status and established knowledge in the field of children's rights, which will have responsibility for issuing directives on the NPACR's content and for submitting reports towards the interministerial body.

This Committee could be the one provided by the National Children Rights Observatory, on the condition that selecting and appointing its members will indeed be conducted on objective merit criteria.

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<sup>40</sup> UNICEF, Hellenic National Committee, *The State of the Children in Greece 2014. The repercussions of the economic crisis on children*, op. cit.

<sup>41</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece*, CRC/C/GRC/CO/2-3, 13 August 2012, par. 28-29 and Greek Ombudsman (Ombudsman for Children's Rights), *Recommendations about the content of a National Plan of Action for Children's Rights*, July 2013

A special mechanism for the NPACR's development and monitoring is recommended. The elaborated plan will have to be put into public deliberation during its outset and at certain stages of its implementation; to have explicitly expressed goals, a specific timetable (a 5-year one is proposed) as well as development, monitoring, review and evaluation procedures; also, to provide for actions and clearly allocated responsibilities, both on a national and a regional level, with the participation of representatives from the local authorities, social services for children and NGOs.

### **C. Guaranteed level of decent living**

The GNCHR proposes the constitutional establishment of a guaranteed level of decent living for children.

The guaranteed level of decent living is a concept much wider than the guaranteed minimum income - which mostly invokes income reinforcement - since it aims at a more comprehensive, more efficient but also very flexible coverage of children's social needs, both in general, though targeted and socially controlled services and goods provision (e.g. for welfare, health, housing, heating etc.) and in particular in the field of education, through certain policies for the vocational guidance and the education of children from poor or disadvantaged families.

The constitutional recognition of a guaranteed level of decent living shall enhance the visibility of the compact regulatory core of social rights, as a major institutional guarantee for both the "social acquis" and the redistributory character of social policy, which the legislator can no longer perceive neither as an optional choice, nor as social charity.

At the same time, such a recommendation aims at assigning concrete meaning and content, asserting depth and institutional perspective to the principle of welfare state itself with regard to the child protection. To mark, hence, on the one hand, a different perception for the sociopolitical priorities of modern democracy - in which it's unthinkable not to include children's social protection - and, on the other hand, a new reading of the equality principle, a restoring equality, which aims, through the State's positive actions, at the root of social disparities in childhood, in other words at the elimination of the root causes of social inequality, even more so of social exclusion. However, until an explicit provision with the aforementioned content is incorporated into the Constitution, the existent constitutional provisions (and especially those of Articles 21 and 25(1)) can and must be interpreted and applied, in the light of international standards, so as to promote a more effective implementation of human rights.

### **D. Ratification by the Hellenic Republic of the third Optional Protocol to the UN Convention on the Rights of the Child on a communications procedure**

The GNCHR deems necessary the ratification of the ICRC's third Optional Protocol by Greece.

The Protocol in question recognizes the competence of the Committee on the Rights of the Child to examine communications submitted by individuals or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in the Convention on the Rights of the Child or in its two Optional Protocols. In fact, children whose rights have been violated are enabled to directly submit a communication.

The aforementioned Protocol was adopted in New York on 19 December 2011 and entered into international force on 14 April 2014, in accordance with Article 19(1) of the Protocol, which provides that "The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession". By 6 May 2014, ten (10) states had ratified the Protocol, while 45 states had signed it.

#### **E. Horizontal Coordination of Services**

Taking into account the data proving the lack of coordination and consistency between health and welfare services, the GNCHR deems necessary the collaboration of the competent services through:

- a. their consistent horizontal networking and coordination,
- b. the obligatory intersectoral collaboration for the timely adoption of the appropriate and necessary measures,
- c. the adoption of prevention policies and protocols for the right addressing of cases of abuse/neglect and the realisation of references, when necessary, to psychosocial services for the thorough examination of the cases and the adoption of measures for children's rights protection,
- d. the constant and annual monitoring (intermediary and final) of the course and the results of this synergy aiming at the prompt (re)adaptation of the measures and actions in favour of childhood protection.

#### **F. Structural changes and institutional measures in the sectors of Health and Welfare**

In view of the adoption and implementation of a National Plan of Action for Children's Rights, the GNCHR believes that emphasis must be placed on important structural changes and institutional measures that prioritise the Children's Rights protection in the sectors of Health and Welfare securing among others that:

- Access to health services (preventive medicine, examination, treatment, hospitalisation and rehabilitation) is guaranteed to all children without exception, irregardless of the social security regime they fall under.
- Children health services and particularly mental health ones are constantly developing on a regional level, covering the children's needs, with special provisions for groups of children which are threatened by social exclusion, like children with disabilities, Roma, minorities, immigrants, refugees and children living in isolated island/mountain areas.
- Social welfare services, especially the ones provided by Local Authorities (OTA) are adequately staffed and specialise in children protection issues, so as to be able to intervene, in collaboration with schools, nurseries and services of Justice where necessary, both in a preventive and a supportive way, in families with children afflicted by the financial crisis which suffer dysfunctions, abuse, neglect or exploitation of their members or which are particularly vulnerable, due to special circumstances (e.g. due to disability).
- Alternative care for children who need to be removed from their families is being modernised, through reinforcing fosterage and adoption, establishing modern standards for the functioning of child protection units and specialised hosting structures for children that need special care within the community, the certifying, supporting and frequently controlling all units as well as preventing children from staying there for a long period of time.

### **G. Collection of statistical data**

The UN Committee on the Rights of the Child in its Final Observations, places particular emphasis on the need for the competent Greek Authorities to collect sufficient statistical data, capable of allowing it to evaluate the progress achieved relating to the application of the Convention's provisions<sup>42</sup>. Therefore, taking also into account, among others, the UN Committee's aforementioned recommendation about reinforcing the data collection mechanisms regarding children, the GNCHR considers purposeful the creation of a national central database, in which, with the explicit responsibility of the competent state authorities, all data concerning the implementation of all the rights of the child shall be collected<sup>43</sup>.

Athens, 8 May 2014

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<sup>42</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Greece, op.cit.*, par. 19-20.

<sup>43</sup> See also UNICEF, Hellenic National Committee, *The State of the Children in Greece 2014 The repercussions of the economic crisis on children, op.cit.*

