



Communication from the Racist Violence Recording Network, pursuant to Rule 9.2 of the Rules of the Committee of Ministers of the Council of Europe for the supervision of the execution of judgments and the terms of friendly settlements, relating to the case of Sakir v. Greece (Application No. 48475/09)

Case description

Application	Case	Judgment of	Final on	Indicator for the classification
48475/09	SAKIR	24/03/2016	24/06/2016	Complex problem

This case concerns the breach by the authorities of their obligation under the Convention to conduct an effective investigation into a violent assault on a migrant which resulted in injury. In particular, the European Court on Human Rights found that the authorities failed to investigate possible racist motives for this assault.

The Court noted that the police had not sought to determine whether the medical condition of the applicant, following his assault by unidentified persons in Athens in 2009 and his hospitalization, was compatible with detention pending deportation (substantive violation of Article 3). The Court also found that there was no effective remedy for the applicant to complain about conditions of detention (violation of Article 13). It also identified shortcomings in the conduct of the investigation into his assault, notably as regards the collection and assessment by the authorities of relevant evidence. It further noted that although the assault had the characteristics of racial bias, the police and the judicial authorities treated the case as an isolated one, notwithstanding that international NGOs and national human rights bodies had warned of the phenomenon of racist violence, in particular in Athens, by extremist groups often linked to the political party “Golden Dawn” (procedural violation of Article 3).

In June 2017, the Greek authorities presented an action report, introducing the individual and general measures that had been taken for the execution of the judgement, asking for the closure of the Committee of Ministers’ supervision procedure. Although the Committee welcomed the measures taken, it invited the authorities to provide further information about the implementation of the new legislation, in particular whether racist motivation is examined in the early stages of criminal proceedings. Additionally, in order to gain an accurate picture of the impact of these measures, it invited the authorities to provide information and data about the number of reports of hate motivated crimes in relation to the number of cases in which criminal charges were brought against the perpetrators and the number of cases in which the perpetrators were punished. In the meeting that was held in December 2019, the Committee invited again the authorities to submit more detailed and updated statistical data concerning racist violence, including information on the results achieved in this area and decided to continue the supervision of the case under the standard procedure. To the best of our knowledge, till today, the Greek Government has not responded to the Committee’s request.



The Racist Violence Recording Network (RVRN)

In 2011, the Racist Violence Recording Network (RVRN) was set up at the initiative of the National Commission for Human Rights (NCHR) and the Office of the UN High Commission for Refugees in Greece (UNHCR), and with the participation of non-governmental organisations and bodies.

At the time of the establishment, two important findings resulted in the creation of the said network: a) the absence of a formal and effective racist violence incidents' recording system, and b) the need to bring together all entities, which, on their own initiative, record racist incidents against individuals that seek their services. RVRN includes today 47 civil society organisations that record hate crimes and provide support services to victims. To date, despite the developments on establishing a national system for recording racist violence, the recording of such incidents by RVRN continues to be deemed necessary as the data is complementary to the official recording as well as captures a clear picture of the quantitative and qualitative trends of racist violence in Greece.

Measures taken in recent years to tackle racism and racist crime in Greece:

In response to the European Court's judgements regarding the inadequate investigation of cases with racist motive, taking also into account the increase in racist attacks and violence throughout the country, Greek authorities made significant steps in improving the relevant legislation, an initiative fully welcomed and encouraged by RVRN. The most important among them are the following:

- Establishment and operation of the National Council against Racism and Intolerance, an advisory inter-ministerial body tasked with developing policies against racism and promoting initiatives aimed at protecting individuals and groups against hate crime, in which representatives from the Administration and Civil Society shall participate. (Law 4356/2015). More information regarding the current operation of the National Council against Racism and Intolerance are listed in page 10.
- Law 4443/2016 on Equal Treatment, which introduced significant changes to the relevant institutional framework, including inter alia the Ombudsman's competence to monitor and promote the implementation of equal treatment in both the public and private sectors.
- Law 4478/2017, which transposed the EU Directive 2012/29/EU on the Protection of Victims of Crime, including Victims of Racist Crime, established minimum standards on the rights, support and protection of victims of crime.
- Strengthening of anti-racism legislation: A) Amendment of Article 81A of the Criminal Code (now 82A), by removing the concept of hatred and replacing it with the concept of victim's targeting based on its characteristics, so as to facilitate the application of the provision. B) Introduction of a new criminal offense (Article 361b of the Criminal Code) which penalizes the exclusion of persons for contempt on account of their characteristics from the supply of goods or the provision of services to the public. However, this article has been abolished by the new Criminal Code, as codified by Law 4619/2019, based on the argument that the racist motive of any criminal act is covered by the provision of Article 82A of the new Criminal Code (Law 4619/2019). In addition, the aggravating circumstances in the case that the criminal act is carried out in public is also covered by Articles 361, 362 and 363 of the new Criminal Code (Law 4619/2019).



- Appointment of Special Prosecutors for Racist Crime: Initially it concerned five (5) Public Prosecutors in the whole districts of Greece. Recently, an enhancement of the institution took place, with the appointment of 24 Special Prosecutors, in total, for racist crime.
- Prosecutor's Office of Athens: Classification of the case files related to racist crimes with the label "RC" to facilitate their identification. There was also a recommendation, through a circular, that the abovementioned practice be extended to the other prosecutor's offices as well.
- Training of judges and prosecutors on racist violence.
- Establishment of two (2) Divisions and sixty-eight (68) Offices Against Racist Violence in the Hellenic Police.
- Victims and witnesses of racist violence who are not citizens of EU Member States may be granted a residence permit on humanitarian grounds under Article 19A of Law 4251/2014, as in force.

Despite the above positive developments, many structural problems and shortcomings have been identified to date, with regards to the implementation of legislative interventions, like Law 4478/2017 (for more information regarding the challenges on the implementation of the Law 4478/2017, please see pages 9-11) as well as of the recording of the racist-related cases and the provision of services to the hate crime victims. At the same time, convictions by national courts in such remain limited.

RVRN provides the below specific data to support that there are still several shortcomings as regards the unhindered and proper implementation of general measures mentioned in the action report provided by the Greek State.

On the principal measures of general character described in paragraph 21, we would like to share the following remarks:

The most significant measure taken by the Greek Government is described in paragraph 21c and concerns the modification of Article 81A of the Criminal Code on "racist crime" by Law 4356/2015. In particular, the said modification replaced the subjective notion of "hatred" with the objective notion of "the targeting of the victim" on the grounds of his/her racial, ethnic, religious, etc. background. Undoubtedly, the establishment of a general aggravating circumstance for crimes with bias motivation under the aforementioned Article 81A is a clear and positive message to organized groups of racist violence perpetrators.

However, the actual impact of Article 81A on pending criminal cases was quite limited. This was the result of the absence of a specific transitional provision that would explicitly provide for the replacement of the Article previously in force (Article 79 para. 3d) by Article 81A. More specifically, although national courts could not apply the general aggravating circumstance regulated in Article 81A in pending cases since this would inevitably constitute a deterioration of the defendants' position (which is not allowed inter alia by the Greek Criminal Code, Greek Constitution, ECHR and ICCPR), if such transitional provision was in place, the racist motive could be taken into account at earlier stages and not just in the sentencing one, i.e. after the guilt of the offender has been established. That way, the relevant court decisions and hence the relevant caselaw would be more extensive, including a more extended and systematic analysis of the crucial aspects of racist crimes.



Racist
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The Government highlights as an example of compliance with the rules of Sakir's judgment the introduction of Art. 81A, paragraphs 31 and 32 of Law 4285/2014 and its implementation in the case of the murder of Pakistani citizen S. L. (crime date: 17 January 2013, defendants: Ch. S., D. L.). In practice, in this case Art. 79 par.3 was used in the first instance (court decision 398/15-4-2014 of the Athens' Mixed Juror Court) and Art. 81A should be used in the second instance court, following the repeal of article 79 par. 3. However, the second instance court, although it described the homicide as a "racist crime", explicitly did not use the Art. 81A clause, as this could be considered a deterioration of the defendants' position (which, as mentioned above, is not allowed inter alia by the Greek Criminal Code, Greek Constitution, ECHR and ICCPR) as well as due to the fact that the repeal of Art. 79 has not an explicit reference to continuing persecution with Art. 81A. (court decision 286/6-5-2019 by the Athens' Mixed Juror Court of Appeal).

Similarly, in the case of the grievous bodily injury of Egyptian citizen W. T. (date: 3 November 2012, defendants: S. G., etc), Article 81A was not used by the Piraeus' Three Member Court of Appeal for Felonies with the same explanation given earlier (court decision 203, 265, 294, 404, 482, 486/2015) on the grounds that Law.4285/2014 abolished Article 79 par. 3d and that the use of the Article 81A could constitute a deterioration of the defendants' position.

In other high-profile cases of racist crime, Greek courts acknowledged the racist motive of the crime, but avoided using the specific articles of the Criminal Code, either in its old form (Article 79 para.3d) or in the new one (Article 81A, now Article 82A). Indicatively:

In the case of the attempted murder, arson, robbery, etc. against Pakistani citizens R. Al., M. Ak., etc. (crime dates: 10 September 2012 and 22 September 2012, defendant: K. K.), although the Athens Mixed Juror Court (court decision: 325, 326/28-3-2014) ruled that the defendant had expressed "his desire that all the Pakistanis should be ousted", "they smell", and, as he explicitly told a witness, that "we killed him because he was a Pakistani", it did not make use of the clause provided for in Article 79 para. 3(d). Similarly, the 2nd Athens' Mixed Juror Court of Appeal (471/9-11-2017) although it repeated in its description the racist motivation of the crimes, did not make use of the 81A clause.

In the case of the dangerous bodily injury of Pakistani citizens L. Al., M. Iq. and M. H. in Ierapetra, Crete (crime date: 13 February 2013, defendants: P. G., D. Ar., etc.), although the Three Member Misdemeanor Court of Lasithi ruled (court decision 1079/13-11-2014) that the perpetrators were "motivated by xenophobic and racist feelings", it did not make use of the 81A clause.

In the case of the dangerous bodily injury of Afghani citizens Al. R. and R. M. (crime date: 16 November 2011, defendants: Sk. Th., L. I., M. G.), although both the 1st One-Member Misdemeanor Court of Athens (74344/10-7-2017, expedited process) and the 8th Three-Member Misdemeanor Court of Athens (3181/26-9-2018) described comprehensively the attack suffered by the victims after being asked by a group of perpetrators unknown to them about their "country of origin", it did not make use of the 81A clause.

Similarly, in most recent cases especially on the islands of north Aegean, the possible racist motivation of the attacks was not investigated in practice. Local police authorities seem to have disregarded the obligations of internal circular 7100-25-146/7-11/2014 and Public prosecutors routinely don't seem to include the hate crime element, despite the modus operandi of the perpetrators, meaning elements showing that the perpetrators may have acted in an extreme, xenophobic and organised



manner¹. In addition, especially on the islands of Samos and Lesbos, critical challenges are observed regarding the investigation of racist crimes: in the case of Bangladeshi citizen E. Ud. in Lesbos (baton attack without provocation outside supermarket Lidl near Kara Tepe refugee camp), initially, the defendant has been prosecuted only for dangerous bodily harm without racist motivation. In a second stage, the prosecution was upgraded to the offense of the grave bodily harm, but still the racist motivation was not included. The court was postponed indefinitely due to the COVID19 restriction measures. With the new form of the article, racist motivation should be added in the early stage of criminal proceedings, by the local competent public prosecutor in order to become an issue during the ensuing court hearing. Under the version previously in force (Article 79 para.3), the racist motivation as an aggravating circumstance for penalty enhancement, could be revealed in a later stage of the procedure and particularly only at the time of sentencing. This could result in the loss of important elements for proving, during the court procedure, the bias motivation, since the racist motivation was not taken into consideration during the early stages of the criminal proceedings.

On Law 927/1979 referred to in the paragraph 22a and 28, we would like to share the following remarks:

The Law 927/1979 (widely known as the “anti-racist law”) is an old part of the Greek legal framework but has seen little use or implementation. Law 927/1979 was amended by Law 4285/2014 predominantly in the following areas: a) the criminalization of “urging actions able to provoke hate” was narrowed and now reads “in a way that endangers public order or threatens life, freedom or bodily safety” (Article 1), and b) the criminalization of “offensive ideas against a person or a group on the sole basis of racial or ethnic background or religion” was replaced by penalization of exclusively the “approval or denial of genocides, war crimes, crimes against humanity, the Holocaust and crimes of Nazism” (Article 2). However, either in its wider or in its narrower limbs, Law 927/1979 was rarely implemented – it is noted that one of those cases is highlighted in paragraph 28 of the Greek Government's Action Report.

Greek authorities have failed to implement Law 927/1979 against apparent cases of its violation by high-profile political figures, namely MPs of the political party “Golden Dawn”, who have been implicated in racist rhetoric and violent activity and who are now under trial as members of a criminal organisation. In the case of a raid on a market in Mesologgi against immigrant stallholders by Golden Dawn members under the command of the local member of parliament, K.B. on 8 September 2012, a file was established, and the defendants were prosecuted, inter alia, under Law 927/1979. The ruling of the One-Member Court of Misdemeanor in Mesologgi (1619/14-11-2014) shows that the judge failed to differentiate between the criminalization of “urging actions to provoke hate” and acts of bodily injury or damaging another’s property as he ruled that “the defendants should be found innocent... because no violence was actually committed and the foreigners had left the market before the defendants reached there.”

¹ Racist Violence Recording Network, 2013 Annual Report (April 2013), page 7-8. Available at: http://rvrn.org/wp-content/uploads/2014/04/Report2013_EN.pdf



On the numbers of racist incidents given by the Greek Government in paragraph 24, we would like to share the following remarks:

As far as the incidents with a racist motive per year are concerned, there is no differentiation between acts prosecuted under Article 81A and racist rhetoric prosecuted under Law 927/1979. Generally, in practice, there is no systematic procedure for classifying the files of the cases in order to ensure the effectiveness of the monitoring of the criminal proceedings, e.g there is no differentiation between criminal complaints filed by civilians, often by the victims themselves, and files created by state prosecutions. At the same time, the numbers of convictions are remarkably low in relation to the recorded incidents.

Additionally, the absence of a systematic and commonly accepted procedure for collecting of substantiated and detailed evidence is not in line with the content of the circular on 12/12/2018 by the Supreme Court's Deputy Prosecutor Mr. Konstantinos Paraskevaïdis, which instructs precisely the bi-annual collection of files on racist crimes. (The Greek Government correctly reports on that important circular in par.22(c). The circular orders the collection of evidence to take place every June and December, featuring the following: a) files created by state authorities or criminal complaints filed by civilians, b) initials of perpetrators, c) offences and clauses used for prosecutions in court, d) court decisions at first and second instance.

Being provided with the clear differentiation of the crimes (81A or 927/1979) and the kind of prosecution (proprio motu prosecution or prosecution pursuant to a criminal complaint) would allow the Council to reach a safe conclusion about the Greek Government's actions to address hate crimes. Thus, the evidence of these bi-annual reports should be provided to the Council.

As regards recordings by civil society, according to RVRN data the following is noted:

Although incidents of organized violence have decreased since 2013, RVRN continues to record a significant number of attacks showing signs of structured organizations or committed by organized groups targeting asylum-seekers, refugees and migrants. Attacks by organized groups against these foreigners take place, not only in major urban centres but also in the regional areas, especially where accommodation sites or reception centres for asylum-seekers or unaccompanied children are located. In addition to the attacks by organized groups that are driven by extreme far-right beliefs, RVRN finds an increasing trend in incidents of everyday racist violence. The term "everyday" aims to describe the expression of racist behaviours or racist violence, usually of low intensity, which is expressed by individuals in the context of everyday life: in public transport, at school, at work, in public services. Those recordings highlight the repugnance that a certain part of Greek society shows towards diversity, which is largely linked to the serious lack of a respective culture and policies of actual integration and acceptance of otherness. Racist rhetoric expressed at a central and local political level, also plays a key role in the development of such behaviours, and significantly contributes to the "normalization" of xenophobia and intolerance. In this context, another element that is evident in the behaviour of the perpetrators, stemming from the testimonies of the victims (they carry out attacks in public spaces, with other citizens witnessing, in some cases police officers as well), is their indifference to the possible legal consequences of their actions. At the same time, it is observed that to a large extent the victims of such attacks have come to "accept" their victimization as a "normal" feature of their daily lives. In short, the perpetrators seem to be attacking with the expectation that their act will go unpunished, while the victims seem to incorporate targeted aggression as an integral part in their everyday lives. This painful context for communities affected by racist violence on



grounds of nationality, ethnic origin, colour and / or religion is deteriorating when it is further aggravated by institutional racism, expressed either through policies that restrict access to basic rights, or through the inappropriate behaviour of civil servants resulting in the exclusion of individuals of different ethnic, cultural, religious or linguistic backgrounds from services and goods. Particularly for the police, based on the RVRN data, during 2018 a significant increase is recorded in incidents where law enforcement officials are either the perpetrators or just involved. In 22 recorded incidents, the perpetrators were law enforcement officials, in comparison to the 10 incidents recorded in 2017. In these attacks the victims were mainly migrants and refugees. Specifically, the victims were undocumented refugees and migrants (11 incidents), unaccompanied minors (3 incidents), asylum-seekers (6 incidents), a refugee (1 incident), a Greek transgender woman (1 incident). As regards the characteristic features of these attacks, they all involved disagreeable behaviour demonstrated by law enforcement officials during routine or non-routine police control operations. In the vast majority of these incidents (19 incidents), the victims reported that they sustained physical violence in public spaces or inside police departments in Athens. During 2019, according to the RVRN data, the recorded incidents in which police violence is linked to racist violence, continues being high (17 recorded incidents, while the total of the 2019 recorded incidents were 100, meaning the 1/5 of the recorded incidents by RVRN). The victims of these attacks were once again mainly asylum-seekers, refugees and migrants, (14 incidents). As regards the characteristic features of these attacks, the trends identified during 2018 were confirmed once again.

Generally, based on the RVRN 2019 data, the recorded incidents against asylum-seekers, refugees and migrants on grounds of ethnic origin, religion or colour, are as follows:

Victims: 43 incidents against men (in 16 incidents the victims were 13-20 years old), 7 incidents against women (23-32 years old), 2 incidents against offices or NGO facilities that provide services to the said groups. In the incidents recorded in 2019 the victims were from Afghanistan (18), Syria (5), Cameroon (3), Congo (3), Turkey (3), Pakistan (3), Palestine (2), Egypt (1), Ivory Coast (1), Georgia (1), Gambia (1), Ghana (1), Iran (1), Central African Republic (1), Mali (1), Morocco (1), Burkina Faso (1), Nigeria (1). Compared to previous years, in 2019 the majority of the targets were people of African origin.

Legal status of the victims: 35 incidents against asylum-seekers, 2 against legal residents and 9 against refugees, 1 against undocumented third country nationals.

Perpetrators: According to victims, the perpetrators were mainly Greek citizens (42 incidents) and men (36 incidents). In 6 incidents the perpetrators were women, while in 3 incidents the group of perpetrators were foreigners. In 13 incidents the perpetrators were 17-30 years old, in 5 incidents 31-40 years old and in 6 incidents 41-60 years old.

As mentioned above, RVRN finds that, during 2019, the activities of extreme, informal and formal xenophobic groups, both in Athens and in the regional area, has been confirmed once more. RVRN has recorded attacks that either have features of structured organizations or are committed by organized groups. These groups proudly state that they are infused with extreme xenophobic ideologies, they adopt the respective vocabulary, dress code and practices and they behave as if on a mission.

The perpetrators usually surprise the victims, while they attack in an organised manner. Most of the time they start with verbal attacks and then the attacks escalate by causing serious injuries to the face and prominent parts of the body, so that the wounds work as an intimidation for members of



the victim's community. Racist violence and the ensuing fear work as a message imposed by these groups not only on the victims and the communities to which they belong, but also on society as a whole.

This category includes a case against an Afghan, who was attacked while going to the grocery store in his neighbourhood, by a group of people wearing black clothes. The witnesses recognised the perpetrators as members of Golden Dawn. Also, another incident concerning a Gambian citizen and recorded by RVRN shows features of xenophobic organised attacks. The victim while returning home from work, "sat at the bus stop waiting. A young man showed up and abruptly told him to get up so that he could sit down. The victim denied. Then the young man called someone on the phone. After a while, a group of 6-7 people showed up and attacked the victim. They surprised him [...], stopped him and started punching him in the face [...], kicking him in the head and body [...] The victim does not remember when they left. He remembers that they were young Greek men, with short hair, most of them in black clothing and they were all wearing military boots...". At the same time, in other incidents, which occurred in Athens and were recorded by RVRN, the above-mentioned attack pattern is repeated with larger groups of perpetrators, reaching up to 20-30 people.

However, as mentioned above, in 2019, violent attacks by organized groups against migrants, asylum-seekers and refugees occurred not only in large cities but also in the regional areas, especially in areas where there are reception / accommodation sites for asylum-seekers or unaccompanied children. There are specific incidents of refugee children in 2 cities of western Greece, who were the victims of such attacks while playing with their peers at a football field near the area they live.

"The victim reported that [...] he used to go to the football field almost every day to play with his peers. One night, while he was there with his friends, a group of men who were wearing hoods and were holding bats, attacked them."

"... at the football field [...] at night, while seven children were playing [...], a group of 4-7 people dressed in black and wearing hoods [...] holding bats, attacked the refugee children".

In both incidents there is a recurring pattern of unprovoked and organized attacks. The perpetrators wear hoods, carry makeshift weapons and strike the victims on purpose. The construal of such an incident is exacerbated by the fact that the attack affects the normalcy of a local community as well as the process of substantial integration of the refugee children, as it takes place during their daily and enjoyable activity.

In the incidents of organized attacks are included attacks in which the perpetrators, while riding a vehicle, target the victim who is moving around areas near reception / accommodation sites. Such was an attack recorded by RVRN on an Aegean island hosting a Reception and Identification Centre. Particularly, two asylum seekers while were returning to the Reception and Identification Centre of Leros, during the night, a car appeared in front of them, heading to the same direction. The car then performed a U-turn, approached them and then passed them - repeating the same circle about 3 times. When, the car approached once again the victims, the passenger seated next to the driver punched the one victim on his neck and back while the passenger seated behind him grabbed his jockey cap, both acting without having exited the vehicle. The passengers also started provoking the victims by addressing verbal insults. It is noteworthy that the victims stated that they had seen the car parked in town close to the RIC shortly before the attack, as if the perpetrators appeared on purpose, after having spotted the victims leaving the town, in order to attack them. RVRN recalls that



the surprise factor and the premediated attacks by groups against refugees has already been identified and recorded in its Annual Reports since the beginning of its operation. Hence, it appears that this is a recurring practice that continues during 2019, has features of organised attacks, with xenophobic and racist motivation, committed by groups and should raise particular concern.

As mentioned above, in addition to organized violence by groups infused with far-right beliefs, RVRN has recorded aggression against refugees in other aspects of everyday life as well. By analysing the incidents, we can distinguish the following main trends: In all incidents the perpetrator is an individual engaging in an activity or arrangement of a victim's issue in the context of managing everyday life matters. In the context of this activity or arrangement, the victim is sometimes attacked by an unknown person and sometimes by a person from their wider social circle. For the above, we can distinguish the incidents in those involving the perpetrator being neighbours or property owners of the homes where refugees live and those where the perpetrators are unknown to the victims who are attacked in public spaces such as squares, playgrounds, open markets and in the means of public transportation. Each of the following instances, is an incident that occurred under different circumstances, but eloquently depicts the breadth of stereotypes against refugees and migrants as well as the serious lack of a culture of substantial integration and acceptance of migrants and refugees:

- "... Around 6.00 p.m. the lady was sitting on a bench in Victoria Square. Then a Greek kicked her, threw her off the bench, insulted her, telling her to go back to Afghanistan. The lady sat back on the bench again, without standing up."
- "Week after week, whenever he saw us outside, myself and my girlfriends, he was harassing us [...] we could understand that he was insulting us in Greek [...] before going into the apartment building, he saw me at the entrance and pushed me back violently [...] to one of my girlfriends he pulled her headscarf to take it off [...] while I was waiting at the bus stop, he suddenly hit me on the head and told me "Muslim no good".

In fact, the latest testimony shows that an external feature of the victim associated with religious identity (e.g. the headscarf) is the element that allows the perpetrator to locate the victim and attack, both because of the different ethnic origin and religion. In its annual report for 2019, the European Commission against Racism and Intolerance points out that xenophobic nationalism is still expressed through various forms of Islamophobia, often depicting Islam as a religion which is foreign to national culture and the identity of many Member States. This rhetoric is often only the first step towards the exclusion [...] of Muslims and is in stark contrast to the universality of human rights. It also contributes in rendering Muslims with apparent signs of their religion, particularly vulnerable to intolerance, hate speech and even violence driven by hatred².

Finally, the following testimony as well as the below mentioned qualitative trends based on the RVRN data of the last years are indicative for the need for training and guidance, on a systematic way, for the entire personnel of the Hellenic Police and other involved authorities (e.g. medical staff and social services in the hospitals) regarding their obligation to assist the hate crime victims, to intervene for their rescue and to make sure that the victims are referred to the competent services.

"The victim was in the open market with his wife and their minor child [...] to do the shopping. A male Greek national approached the victim, speaking Greek and doing gestures for them to leave [...]. From the perpetrator's behaviour, (the victim) he understood that there was a racist motive. The perpetrator hit the victim on

²European Commission against Racism and Intolerance (ECRI), Annual Report on ECRI's Activities covering the period from 1 January to 31 December 2019, (March 2020). Available at: <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/annual-reports>



the head. Three police officers and citizens witnessed the incident. Three citizens started shouting at the perpetrator - the victim realized it was in his defence. The police officers didn't try to prevent the incident and didn't arrest anyone. On the contrary, after checking the victim's documents, they said that the incident was over and that he should leave."

In general and apart from the obligation of the law enforcement officials to intervene and protect the victim, according to the RVRN's recordings of incidents involving foreigners who were assaulted and hospitalised following the incident, it seems that firstly, law enforcement and prosecution authorities usually consider victims as part of the penal procedure, mainly as a source of information about the case or in a manner consistent with the involvement of each victim in the penal proceedings, but they do not focus on the fact that hate crime victims may need support in a more holistic way. Especially for the law enforcement authorities that usually are the first who meet the victim, they should be familiar with the procedures for supporting the victim in order to provide relevant information or referral. Another element based on the RVRN quantitative data concerns the medical staff that interacts with the victims strictly on a medical basis, solely addressing the victims' medical issues, while to our best knowledge no other form of support is provided or offered to these persons (e.g. psychological/social support). At the same time, the medical staff of hospitals and other healthcare providers seems to be totally disconnected from the penal procedure (e.g. no information is provided to the victims regarding the possibility of reporting an incident), while to our best knowledge, no or very limited support is provided to the hate crime victims by the social services in the hospitals, in which the victims are hospitalised. However, according to the Law 4478/2017, it is imperative that all authorities involved in this process be thoroughly familiar with, and bound by, certain basic instructions, depending on the phase of the procedure: a) first contact with the competent authority (victim identification, individual needs assessment, referral); b) reporting of the incident to the authorities; c) criminal investigation; d) penal procedure; e) post-trial phase of the penal procedure. For that purpose, the competent authorities must be clearly designated and informed of their duty to implement the law, so as to be able to lay down proper internal procedures (e.g. designate compliance officers and implement compliance protocols).

On the other measures of general character, we would like to share the following remarks:

In several other cases, we witnessed unacceptable delays in the process, which hinder the victims' right to an effective remedy. The most prominent of these cases is the one of the racist attacks at Sappho Square (Mytilene, Lesvos- 22-23 April 2018): On 17 April 2018, a group of refugees, mostly from Afghanistan, gathered at Sappho square, Mytilene, Lesvos, to protest against their living conditions in Moria Reception and Identification Centre and the death of a fellow refugee. On Saturday 21 April, a far-right group made an open call to the residents of Lesvos to gather at the square on Sunday 22 April, after the military parade, "ready for everything". On Sunday 22 April, at about 8 PM, around 150 local residents started attacking the approximately 180 refugees with bottles, sticks, stones, pieces of marble, firecrackers, flares etc. Throughout the course of the night, they were joined by more "indignant citizens" (as the local residences who participated in the attacks used to call themselves) until they reached 300. The refugees remained peaceful throughout the attacks. Approximately 30 refugees were taken to the hospital, many with head injuries. The total number of injured persons was much higher. At approximately 5 AM, the police arrested the 120 refugees that still remained in the square, as well as two Greek students that had stayed behind in solidarity with them. The refugees were charged with "illegal occupation of public space", "riot" and "resistance against



the authorities". The refugees were eventually released, and the hearing was scheduled for 9 May 2019. None of the perpetrators of the attacks against the refugees was arrested. The casefile regarding the racist violence against the refugees was transmitted by the Police to the Prosecutor in November 2018 and identifies 26 persons as potential perpetrators of the attacks. The Public Prosecutor pressed charges in February 2019, invoking also Article 81A ("racist motive") and requested that a "main investigation" be carried out. The case has since been pending before the Office of the Investigating Judge. The defendants have not been called to provide their statements to date. The delays in the investigation of the aforementioned case have fostered a climate of impunity on the island of Lesbos, while many of the defendants in this case have already been identified as suspects of attacks against members of migrant-related Civil Society organizations. It is also important to note that some of the victims of the above attacks, who are also civil parties in the criminal proceedings, applied, already in summer 2018, for access to an individual assessment so that their specific protection needs and necessary special measures could be identified, as provided by Law 4478/2017, transposing Directive 2012/29/EU ("Victims Directive"). However, to date they have not heard back regarding the progress or outcome of this request.

Another such case is the one of recurring racist violence in Aspropyrgos; a racist gang has repeatedly targeted and attacked Pakistani citizens working in the area from August 2016 to May 2017. In a situation of inaction by the authorities, a criminal complaint was filed in the Supreme Court by human rights activists and organisations that are members of RVRN (no. 5395/19-6-2017) with crucial evidence (victims' names and testimonies, photos, videos, etc). An Investigating judge has been appointed to the case. Nearly four years after the crimes, no perpetrator has been brought to justice. In the meantime, the end of the five-year long trial of leaders and members of the organisation "Golden Dawn" is yet to come. One component of the indictment is the racist attack by Golden Dawn members on Egyptian citizens in the area of Perama (crime date: 12/6/2012, victim of attempted murder: Ab. Em.). The result of the trial will send a strong message as to whether the Greek authorities plan to combat racist crime.

All these cases prove that, while there are racist crimes and anti-racist legislation in place, the Greek authorities fail to investigate the cases, prosecute and convict perpetrators with the use of available legal tools. At this point, RVRN notes, based on the implementation of the relevant legal framework, that the involved authorities should proceed with the ex-officio prosecution of any offense in which indicators of bias motivation are identified. Additionally, several cases handled by organisations, members of RVRN, corroborate³ that the bias element of a crime is frequently "filtered out" during police investigations. It could be argued that the Greek Government, after a prolonged state of denial, legislated on racist crime, but fails to implement such legislation in practice.

Furthermore, on several additional measures, the Government does not provide any information of implementation regarding the following issues:

- How many victims of racist crimes took advantage of the provisions of Law 3811/2009 (para. 21a)?
- What was the concrete work of the National Council (para.21b) or of the Mediator (para. 21h)?

³European Network Against Racism, Racist Crime & institutional Racism in Europe - ENAR Shadow Report 2014-2018. Available at: https://www.enar-eu.org/IMG/pdf/shadowreport2018_final.pdf



- How many residency cards were issued to victims and witnesses of racist crimes according to Article 19A of Law 4251/2014 (para. 21d)?

At this point, RVRN would like to emphasize on the recommendation that it consistently addresses to the Greek authorities to publicize the quantitative and qualitative analysis of the recorded incidents of racist violence, as well as their development, given that such a procedure not only highlights the trends that need to be considered in order to effectively combat the aspects of racist crime, but also enhances the transparency of procedures and the trust in an effective national mechanism for recording incidents of racist violence. As RVRN has highlighted on several occasions, establishing trust in a unified and effective national system for recording incidents of racist violence, as well as the protection and provision of assistance to the victims, remains a key aim, despite the already positive developments in this area.

In relation to the 24/7 11414 dedicated phone line for the reporting of racist crimes, it should be noted that the migrant communities, especially on the islands and in the camps, are unaware of this service and no information comes up on the Internet, unless the relevant keywords are entered in Greek. Additionally, according to the operators of the line, this number is only valid for Attica cases and the information should be provided in Greek.

The Racist Violence Recording Network welcomed the establishment of the National Council against Racism and Intolerance (Law 4356/2015) and participates in its proceedings. It notes however the serious challenges in the operation of the NCRI in providing targeted and effective responses addressing worrying developments in this field. NCRI should operate on a steadier and more frequent basis, conduct decisive interventions aimed at the supervision of the implementation of legislation against racism and intolerance, especially in cases of its violation with the involvement of public officials. In parallel, the Racist Violence Recording Network consistently supports the work of the National Action Plan against Racism on the basis of consultation of the members of the National Council against Racism and Intolerance and other special bodies or experts. In this framework, RVRN submitted recommendations to the competent authorities as well as proposals for specific actions to be included in the National Action Plan against Racism. Finally, RVRN highlights once again the need to complete the National Action Plan against Racism, because of the institutional, political, and social impact its implementation would entail.

Regarding the implementation of Law 4478/2017 ("Victims Directive") it is worth to be added that undocumented migrants are often victims of racist attacks. However, the amendment of Article 41 Law 3907/2011 by Law 4332/2015 that a return decision shall not be issued against undocumented persons when they report alleged hate crimes till the public prosecutor's final decision on the hate motivation, is not yet fully implemented and disseminated amongst the migrant communities. The risk of arrest still exists and thus demotivates victims from reporting incidents of hate crime.

Also, the appeal against an initial rejection of such complaints before the Appeals court's Public prosecutor still needs a fee of 250 euros to be paid for all crimes, including those related to antiracist legislation (Law 927/1979, Law 3306/2005 and Article 82A criminal code), according to Article 52 para. 2 of the code of criminal procedures.

Additionally, the abolition of Article 361 B of the Penal Code, defining the criminalization of the discriminatory offer of goods, may send the message that organizing practices with racist characteristics, such as distributing food "only to Greeks", is socially acceptable and compatible with the principles of a democratic society. Currently, in the framework of the RVRN submission in the Sakir case,



the Network requested from its members (currently 47) to fill a survey in order to identify in which cases that RVRN members managed, providing legal, medical, psychosocial or other support to victims of hate crime, either the Law 4478/2017 for the establishment of the minimum standards on rights, support and protection of victims of crime (“Victims Directive”) was applied or the court decided to grant compensation to the victim from the Hellenic Compensation Authority (Law 3811/2009). The RVRN members were also asked if they were aware of cases where victims and witnesses of racist crimes, who are not citizens of EU member states, were granted a residence permit for humanitarian reasons in accordance with Art. 19A of Law 4251/2014, as amended by Law 4332/2015. Based on the survey results, in one case only in 2014 a victim of racist attack, being a migrant with no legal document, was granted a residence permit for humanitarian reasons in accordance with Art. 19A of Law 4251/2014 (as amended by Law 4332/2015), while nor cases supported by Law 4478/2017 neither court decisions for compensation based on the Law 3811/2009 were identified by the RVRN members in the incidents/cases of racist violence recorded by them

Other important considerations

RVRN would like to express its deep concern about the recent frequent use of xenophobic rhetoric against migrants in the official political discourse, including by persons who hold public office, encouraging or legitimizing racist violence, and thereby undermining the significant efforts by Greece to improve the authorities’ response to hate crimes.

Namely, in August 2019, a member of parliament of the ruling party, commented during a TV show, “Do you see an economic and cultural threat to Europe from a demographic change through uncontrolled migrant flows?”⁴ In October 2019, the Minister of Development and Investment of the current Government, referring to instructions issued by the then Prosecutor of the Court of Cassation requesting the Prosecution Offices to cease the use of the term “lathrometanastis” (i.e. illegal, clandestine immigrant) on the basis that it is not an appropriate term, it is insulting and nowhere to be found in Greek legislation, as well as in order to “prevent phenomena of xenophobia and racist violence”⁵, stated that no Prosecutor could judge his Greek language skills, and he did not agree with the pseudo-political correctness”.⁶ In January 2020, the same Minister, while invited to speak on a TV-show, stated, in relation to a search and rescue operation of migrants in distress at sea “You may think how well prepared they are that they knew 112 [European emergency number] was working and they called (...) We have fallen victim to a group attempt to alter the country but the government will deal with it”⁷.

⁴K. Bogdanos: The refugee is a refugee and the illegal immigrant is illegal. Available at:

<https://www.youtube.com/watch?v=i-juQ9vxq04&feature=youtu.be&t=249>

⁵Stop using the term “lathrometanastis” by the Supreme Court, *Aplotaria* (September 2018). Available at:

<https://www.aplotaria.gr/lathrometanastis-stop/>

⁶Adonis Georgiadis: I did not stop using the term “lathrometanastis”, *Ethnos* (October 2019). Available at:

https://www.ethnos.gr/politiki/64357_adonis-georgiadis-den-epapsa-na-hrisimopoio-ton-oro-lathrometanastis

⁷Georgiadis' statement about “population deterioration” that provoked reactions, *Ta Nea* (January 2020). Available at:

<https://www.tanea.gr/2020/01/11/greece/i-dilosi-georgiadi-peri-alloiosis-tou-plithysmou-pou-prokalese-antidraseis/>



In November 2019, a member of parliament of New Democracy and Vice-President of the Parliament, spoke of a fear of alteration of the population on the island of Lesbos and mentioned that in 20 years 30% of the population will be Muslims⁸.

In January 2020, the Governor of the Northern Aegean Region, in his public speech in Mytilene, Lesbos, during public protests against the consequences of the migration issue for the island, spoke of a “population replacement plan”⁹.

Additionally, the increasing use by members of the ruling party of the term “invader” when referring to migrants¹⁰ is particularly dangerous, as it draws on military combat terminology, encouraging the dangerous presumption that potential attacks against migrants qualify as legitimate defence. This rhetoric, which intensified during the February/March Greece-Turkey border crisis¹¹ has given rise to a barrage of vigilante-style attacks against migrants and human rights defenders across Greece¹².

In fact, very recently (e.g. February-March 2020) there have been many attacks mainly by local groups, both on newly arrived refugees and migrants as well as humanitarian workers in the Aegean islands and at the land border in Evros, Non-Governmental Organizations and civil society organizations, because of their work for the protection of refugees’ rights. Among other things, there were physical attacks on employees of refugee agencies, including arson in places intended for the accommodation of refugees and involving cars that belong to organizations, incidents of obstruction of movement or prevention of disembarkation of newcomers with a parallel expression of racist statements. However, up to now it seems that in many cases both the police and the prosecutor’s office have not initiated the necessary procedures to investigate the racist motive for these attacks.

Conclusions

In view of the above, it is considered essential that the Committee of Ministers includes the Sakir case under the enhanced procedure of supervision of the implementation. Additionally, it is

⁸Ch. Athanassiou: I am afraid that Lesbos will become a new Rhodope, *Lesvos News* (November 2019). Available at: <https://www.lesvosnews.net/articles/news-categories/politiki/h-athanasioy-fobamai-oti-i-lesbos-tha-ginei-mia-nea-rodopi>

⁹Massive protests in Mytilene, Chios, Samos and Leros on refugee-immigration issue, *AMNA* (January 2020). Available at: <https://www.amna.gr/ota/article/424464/Megales-sugkentroseis-diamarturias-se-Mutilini--Chio--Samo-kai-Lero-gia-to-prosfugiko-metanasteutikorn>

¹⁰New racist “case” on-air: Immigrants, “invaders” for Bogdanos, *To Kouti tis Pandoras* (September 2019). Available at: <https://www.koutipandoras.gr/article/neo-ratsistiko-kroysma-eisboleis-metanastes-mpogdanos-video> and <https://youtu.be/SS-ZWqWvNY8?t=925>

¹¹Evros: CNN Greece journalist Costas Pliakos describes the attack he suffered, *CNN Greece* (March 2020). Available at: <https://www.cnn.gr/news/ellada/story/209781/evros-o-dimosiografos-toy-cnn-greece-kostas-pliedios-perigrafeti-tin-epithesi-poy-dexthike>, Evros: “Everyone carries guns”-Die Linke’s complaint about a German neo-Nazi operation, *leidiseis* (March 2020). Available at: <https://www.ieidiseis.gr/ellada/item/37268-evros-oloi-kykloforoy-n-me-opla-paristanontas-tin-politofylaki>, and Video from Evros: Citizens “arrest” immigrants in fields, *Proto Thema* (March 2020). Available at: <https://www.protothema.gr/greece/article/980963/video-dokoumedo-apo-ton-evro-polites-sul-lamvanoun-metanastes-mesa-se-horafia/>

¹²Maik Fielitz, Far-right vigilantism at Europe’s borders: the Greek experience, *OpenDemocracy* (March 2020). Available at: <https://www.opendemocracy.net/en/countering-radical-right/far-right-vigilantism-at-europes-borders-the-greek-experience/>, <https://www.unhcr.org/gr/en/14137-unhcr-deplores-attacks-against-humanitarians-on-greek-islands-appeals-for-calm.html>, <https://www.nytimes.com/2020/03/07/world/europe/greece-turkey-migrants.html>



proposed that the Greek authorities be requested to develop and implement comprehensive and coherent actions as follows:

- Effective dissemination of information on the prohibition of expulsion or return of third country nationals who are either victims or key witnesses of racist crimes or hate speech (Law 927/1979) and express their intention of filing a complaint or reporting an incident to the competent police authorities (Article 41 Law 3907/2011).
- Speeding up the identification procedure of undocumented third-country nationals who are victims of racist violence or material witnesses, in order to minimise the detention period.
- Enhanced communication and cooperation between police departments nationwide, governmental and non-governmental organisations and migrant communities on the provision of medical, social and legal assistance, as well as interpretation services to facilitate the victims' access to the police according to Law 4478/2017, based on which appropriate information, support, and protection of the victims to participate in the criminal proceedings should be ensured.
- Provision of information on the coordination of supportive services for victims of racist violence according to Law 4478/2017.
- Continuous guidance to all police officers regarding their obligation to assist the victims, to intervene for their rescue and to make sure that the victims are referred to the competent services, based on their rights as described in the Law 4478/2017
- Reinforcement and proper staffing of the Hellenic Police Services against Racist Violence.
- Enhancement and extension of the appointment of Special Prosecutors for racist crime, for addressing hate crime more effectively.
- Organising continuous training, with the assistance of international and European organizations with expertise and experience in training law enforcement officials and judicial bodies, for the staff of the involved authorities.
- Provision of information to Prosecutors and Judges regarding the implementation of the Circular of the Supreme Court for data collection and racist crime management by the Prosecutors.
- Ensuring effective implementation of Article 82 of the Penal Code for crimes with racist characteristics, as a general aggravating circumstance and not only during the preliminary examination, but also at the pre-trial stage.
- Publication of qualitative and quantitative trends regarding incidents of racist violence, based on the findings of the national mechanism for recording of racist violence incidents.
- Establishment of a unified national system for monitoring the developments of the incidents from the level of the recording by the Police until the level of the prosecutors and the courts.