

HUMAN RIGHTS WATCH

Neue Promenade 5
10178 Berlin
Tel: +49 30 259 30 610
Fax: +49 30 722 399 588

Minister Nikos Dendias

Ministry of Public Order and Citizen Protection

4 P. Kanellopoulou St.

GR-101 77, Athens

Greece

via Fax: +30 210 691 7944

November 13, 2012

Dear Minister Dendias,

We write to provide our support for your initiative to create special police units to address racist violence. We are encouraged that you submitted a draft presidential decree on October 29, 2012, establishing departments for addressing racist violence within the General Police Directorates of Attica and Thessaloniki and offices for addressing racist violence within police stations with a mission to prevent and investigate such crimes. We take this opportunity to share our observations on the draft decree and to recommend the crucial steps we believe are necessary to ensure these units are effective in curbing the alarming phenomenon of xenophobic violence in Greece.

Human Rights Watch published in July 2012 the report *Hate on the Streets: Xenophobic Violence in Greece*, documenting vigilante-style attacks on migrants and asylum seekers, particularly in the center of Athens.¹ Our research identified serious deficiencies in the response of the Hellenic Police to these attacks. These deficiencies include discouraging complaints, the failure to adequately identify, prevent, record, and effectively investigate potential hate crimes, and the lack of specialized training.

Mandate and scope of units

We note that Article 1 of the draft presidential decree defines the mission of the new police units as “the prevention and investigation of offenses that are committed against people or groups of people exclusively and only because of their racial or ethnic origin or their religion.” This wording

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would appear to limit the mandate of the police units to crimes where racial, ethnic, or religious hatred is the sole identifiable motive in the commission of an offense. This limitation could lead to a failure to appropriately identify and investigate complex crimes where the perpetrator(s) had mixed motives, including but not limited to racist or xenophobic sentiment. The Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), which has developed a significant body of expertise on bias crimes, strongly recommends a legal framework and policing approach that acknowledges the reality of mixed motives in the commission of such crimes.ⁱⁱ

We urge you to amend the language in the presidential decree to ensure that the police units are tasked explicitly with investigating all crimes that appear to have been committed “in whole or in part” due to bias.

We also note that Article 1 of the draft presidential decree limits the mandate of the police units to offenses committed against individuals on the basis of their racial or ethnic origin or religion. However, the Greek Criminal Code protects individuals against hate crimes based also on sexual orientation. Although not the subject of our research, Human Rights Watch is concerned about reports of threats and attacks on lesbians, gays, bisexual, and transgender persons in Greece. We therefore urge you to ensure that the police units have a clear mandate to identify and investigate crimes committed against individuals on the basis of their perceived or actual sexual orientation and gender identity.

Organization, Staffing, and Training

Proper organization, appropriate staffing, clear procedural guidelines, and adequate training are critical to ensuring the effectiveness of the new units. Human Rights Watch is concerned that the draft presidential decree does not provide sufficient clarity on any of these points.

The draft decree creates two departments within the General Police Directorates of Attica and Thessaloniki with, among other tasks, the responsibility for coordinating with “Offices for Racist Violence” in police stations. It is unclear whether such offices will be created in all police stations in the regions of Attica and Thessaloniki, or if only in some police stations in these regions, or in other regions of Greece and on what basis the selection will be determined. We urge you to clarify this matter in the decree and provide a clear timetable for when the departments and offices will be established.

We regret that the draft decree also does not specify how many officers will staff the departments and offices, how these officers will be selected, and what kind of training they will receive. We urge you to establish clear guidelines and standards for the selection of the staff to be seconded to the new structures. All staff assigned to these units should receive advanced specialized training on dealing with victims of hate crimes and on detecting, responding to, and investigating possible hate crimes, including but not limited to racist and xenophobic violence.

We also urge you to explicitly include in the decree a provision establishing the obligation to develop and adopt clear procedural guidelines for the investigation of hate crimes. These guidelines should be distributed to the officers who will staff the departments and offices.

Ensuring Access to Justice

Human Rights Watch notes with approval that the units will have the responsibility to “immediately inform” the prosecutor about complaints, and to intervene ex officio or upon any complaint, whether formal or informal, to investigate hate crimes. Our research revealed that victims of xenophobic violence faced significant obstacles in reporting crimes and activating police investigations. In particular, we found that the police only act if the victim files an official complaint, yet the police also routinely discourage victims from doing so. We urge you to ensure, where appropriate in coordination with the Ministry of Justice, that measures are adopted to minimize or eliminate the following obstacles:

Fear of detention and deportation for undocumented migrants. We heard repeatedly from victims of xenophobic violence that the police told them they faced detention and deportation proceedings if they persisted in seeking to have a criminal investigation opened. Many others also cited this fear as the principal reason why they were reluctant to seek assistance from the police in the aftermath of an attack or to report the crime in any way. Human Rights Watch did not document any cases in which victims were in fact subject to immigration detention or deportation from Greece after filing a complaint about a xenophobic attack. We are nonetheless convinced that steps need to be taken in law and in practice to ensure that all victims of hate crimes, regardless of their legal status in Greece, have access to justice.

In this regard, we note that the European Council recently adopted a Directive establishing minimum standards on the rights, support, and protection of victims of crime.ⁱⁱⁱ Article 1 of the Directive explicitly stipulates the rights therein “shall apply to victims in a non-discriminatory manner, including with respect to their residence status.” The Directive also

requires individual assessments, at the earliest opportunity, to identify victims who may be at particular risk of repeated victimization and retaliation; these assessments should take into account personal characteristics of the victim, such as residence status, as well as the nature of the crime, “such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive” (Article 22 in conjunction with preamble, points 55 and 56).

Human Rights Watch regrets that the draft presidential decree does not include any provisions with respect to undocumented migrants. We note that you have indicated in public statements that victims of racially motivated crimes would be able to lodge complaints anonymously by calling the hotline created by the decree. Anonymous complaints may be useful in helping the police track the general phenomenon of hate crimes and inform prevention strategies. However, it is difficult to see how anonymous complaints could lead to proper police investigations or meaningful access to justice and remedy for the victim.

Human Rights Watch believes that all actions arising from the undocumented status of a victim of an alleged crime should be suspended pending a prima facie assessment by a prosecutor of the merits of the complaint. We further believe that all undocumented victims of an alleged crime subject to an investigation, following this prima facie review by the prosecutor, should have access to a special protection regime for the purposes of justice to ensure they can remain in the country lawfully until the conclusion of any investigation and legal proceedings. Pending any necessary legal changes or prosecutorial guidelines, we strongly urge you to include in the presidential decree an explicit requirement that all police officers, including police officers not assigned to specialized police departments and offices, must prioritize the registering and investigation of complaints of hate crimes over any actions arising from the undocumented status of the victim.

The high cost of filing a complaint. Human Rights Watch is deeply concerned that victims of hate crimes may be told they must pay a 100 Euro fee in order to file an official complaint. We documented three cases in which victims of a xenophobic attack were informed they could not register their complaint until they paid the fee. The 100 Euro fee was instituted in late 2010 to discourage frivolous complaints and there appears to be significant confusion about when it should be applied.

Human Rights Watch believes that any offense that may be categorized as a hate crime should be subject to mandatory state action, including investigation by the police and prosecution, without the requirement that victims pay any kind of fee. Pending necessary

clarification either in law or binding circulars, we urge you to include in the presidential decree an explicit requirement that all police officers register and forward to prosecutors all complaints of alleged hate crimes without any obligation imposed on the victim to pay a fee.

Language barriers. Many victims of xenophobic violence, in particular, do not speak Greek at all or well enough to communicate effectively. We note that the draft presidential decree stipulates the presence of an interpreter “if requested or necessary” (Article 1 (j)). We urge you to make the presence and assistance of a properly-trained interpreter mandatory for the purposes of registering a complaint.

Improving Recording

Human Rights Watch welcomes the attention given in the draft presidential decree to the critical issue of recording, collecting, and analyzing data regarding hate crimes. To date, government statistics have been unreliable due to failures of the police and the criminal justice system to adequately respond to, identify, investigate, and prosecute hate crimes. Underreporting by victims, particularly undocumented migrants, is also a significant problem.

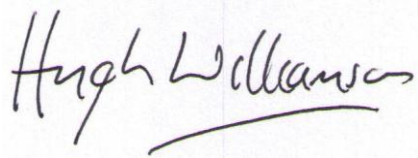
Systematic collection of data on racist and xenophobic violence, and hate crimes generally, is critical to analyzing trends and ensuring an appropriate response. We urge you to specify in the presidential decree the means for recording complaints of hate crimes, as well as the kind of information police should record for the purposes of generating data useful for the tracking of individual cases as well as the analysis of broader trends. The system should allow for data to be disaggregated, at a minimum, by type of crime, victim group, and location of the crime.

We further urge you to amend the presidential decree to require that the annual report to the Head of the Hellenic Police on hate crimes be submitted also to the Parliament and made public to ensure democratic oversight and transparency.

In closing, I would like to reiterate that Human Rights Watch is encouraged by your acknowledgement that xenophobic violence is a serious problem in Greece and the initiative to create specialized units within the Greek police. However, a comprehensive approach is necessary to ensure effective police response and genuine access to justice for victims of hate crimes. Such an approach requires a clear mandate, adequate staffing and training, the removal of disincentives to reporting hate crimes, systematic recording of incidents of hate crimes, and accountability.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Hugh Williamson". The signature is written in a cursive style with a long horizontal flourish underneath the name.

Hugh Williamson
Director
Europe and Central Asia Division
Human Rights Watch

ⁱ Human Rights Watch, *Hate on the Streets: Xenophobic Violence in Greece*, July 2012, <http://www.hrw.org/reports/2012/07/10/hate-streets>.

ⁱⁱ Office for Democratic Institutions and Human Rights, "Hate Crime Laws: A Practical Guide," 2009, pp.53-56.

ⁱⁱⁱ Directive of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, <http://register.consilium.europa.eu/pdf/en/12/pe00/pe00037.en12.pdf> (accessed November 9, 2012).