

Athens and Brussels, 8 January 2015

For the attention of:

Mr Frans Timmermans, First Vice-President of the European Commission, Better Regulation, Inter-institutional Relations, the Rule of Law and the Charter of Fundamental Rights

Mr. Dimitris Avramopoulos, Commissioner for Migration and Home Affairs

Ms. Věra Jourová, Commissioner for Justice, Consumers and Gender Equality

Ms. Myria Vassiliadou, EU Anti-Trafficking Coordinator

cc. Ms Diane Schmitt, Head of Cabinet, Commissioner for Migration and Home Affairs

cc. Mr. Matthias Ruete, Director-General, Home Affairs

**RE: Infringement of EU law (Council Framework Decision 2002/629/JHA and Directive 2011/36/EU) and of rule of law principles as part of the trial before the Greek Mixed Jury Court of Patras in the case of Manolada, Greece.**

We are contacting you concerning the case of 155 Bangladeshi migrant workers who were shot at on 17 April 2013, during a pay dispute on a strawberry plantation in Nea Manolada, Greece. Thirty-five of the 155 workers were seriously wounded and were taken to the hospital with critical injuries. According to reports, the workers lived in slave-like conditions and the incident is another example of an increasing number of reported acts of racist violence against migrants in Greece.<sup>1</sup> The shootings took place only eleven days after the transposition deadline of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

On 6 June 2014, the first hearing of the case of 35 migrant workers involved in the shooting in Manolada was held in the Greek Mixed Jury Court of Patras. The charges against the employers and owners of the strawberry plantation were human trafficking (art. 323 A of Greek Penal Code), dangerous bodily harms, illegal use of weapons and employment of irregular migrants. The 35

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<sup>1</sup> For more information see: PICUM, "Recommendations to the European Union to Urgently Address Criminalisation and Violence Against Migrants in Greece", March 2014, available at: [http://picum.org/picum.org/uploads/publication/Recommendations%20to%20address%20criminalisation%20and%20violence%20against%20migrants%20in%20Greece\\_March%202014.pdf](http://picum.org/picum.org/uploads/publication/Recommendations%20to%20address%20criminalisation%20and%20violence%20against%20migrants%20in%20Greece_March%202014.pdf). See also: GCR, "Manolada: The Chronicle of a Judicial Failure", August 2014, <http://www.gcr.gr/index.php/en/news/press-releases-announcements/item/414-manwlada-dikastiki-aptuxia>.

seriously injured victims have been granted a temporary residence status and have been recognised as victims of trafficking for labour exploitation. Nonetheless, following a judgment dated 30 July 2014, the accused were acquitted as regards the most serious charge of human trafficking, nor were any sanctions given for the charge of employing undocumented migrant workers. Two of the perpetrators were sentenced for multiple dangerous bodily harms and illegal use of firearms to 14 years and 7 months and 8 years and 7 months in jail, respectively. Yet the penalties were immediately converted into money fines and the appeals have had suspensive effect. Therefore, both the Greek Council for Refugees and the Hellenic League for Human Rights requested the Prosecutor of the Supreme Court to declare the trial invalid and to ask for a new, fair trial to be conducted. The Prosecutor, after examining the request, concluded that the trial was fair and that the abovementioned verdict would be final.<sup>2</sup>

Concerning the other 120 victims, the majority remain undocumented in Greece, with no access to justice, while a few (7 in total) have been either detained or removed: as of 9 December 2014, one had been deported, one was being held in the Korinthos detention centre, and two were being detained in police stations in the Attica region under deportation procedures; on 11 December 2014, three more victims were arrested, of which two are currently facing deportation orders (see Annex I) and one was returned on 5 January 2015. The local police authorities failed to investigate the status of the victims who had not been injured, but who were present during the assault. Consequently, the latter have not yet been granted access to justice *proprio motu* and to victim protection, and are still waiting for a decision from the national courts, following an appeal lodged by the representing lawyers, members of Greek Council for Refugees and Hellenic League for Human Rights.

**We are writing to publicly express our concern and to draw your attention to a large number of violations of both EU law and rule of law principles by Greek judicial authorities in the context of the hearings concerning the case of migrant workers in Manolada. We submit that these violations include gross violations of the principles enshrined within the EU Charter of Fundamental Rights, which, in its Article 47, affirms the right to an effective remedy before a court, in case of violation of rights and freedoms under EU law. In committing these violations, Greece is backtracking on important commitments made in the constitutional, legislative, and institutional frameworks stemming both from EU and national laws.**

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<sup>2</sup> See GCR Press Release in footnote 1 above and also the relevant Hellenic League for Human Rights Press Release dated 31 October 2014 <http://www.hlhr.gr/index.php?PageLang=english>

In particular, we would like to draw your attention to the following violations of EU law and rule of law principles:

### **1. Witness intimidation**

As reported by the Prosecution Lawyer, Attorney-At Law in Supreme Court, Mr Vassilis Kerasiotis, witnesses and victims called to take part in the trial have been subject to serious cases of witness intimidation, despite the implementation of art. 226 B of Greek Criminal Code of Conduct, which transposes the abovementioned Directive into the Greek legal order:

*«Witnesses victims of human trafficking»*

1. *During the examination, as a witness of the victim of an offense referred to in Articles 323A and 351 of the Penal Code, shall be appointed and shall attend, as an expert, psychologist or psychiatrist, without applying the remainder of the provisions of Articles 204-208.*
2. *The psychologist or psychiatrist prepares victim for examination, thereby working with questioning officials and the judiciary. For this purpose, using appropriate diagnostic methods, decides the perceptual ability and mental state of the victim and delivers his findings in a written report, as an integral element in the file. The psychiatrist or psychologist is present during the hearing and the victim may be accompanied by his legal representative, unless the investigator prohibits the presence of that person in a reasoned decision, especially in case of conflict of interest or involvement of that person in surveyed practice.*
3. *The testimony of the victim shall be written and recorded in electronic audiovisual equipment, when possible. The online viewing of deposit of the victim replaces the physical presence of the next stages of the process.*
4. *The written statement of the victim is always read to the audience.*

Despite the abovementioned procedural guarantees established within Greek law transposing legal safeguards provided in the Trafficking Directive, Greek authorities, both in the pre-trial stage, as well as in trial proceedings, failed to hire any psychologist in order to support the victims of trafficking who were recognised as such by them. According to the minutes of the trial proceedings (Judgments No. 75, 76, 77, 78, 79, 80, 81, 85, 86, 87, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128/2014), experts were not called upon by the competent authorities to be part of this trial.

### **2. Lack of independent interpreters**

One of the interpreters appointed to assist the victims as part of the pre-trial, is also acting as one of the defendant's witnesses, in clear violation of basic rule of law principles (see enclosed

documents: p. 12 of Mixed Jury Court of Patras Judgment, “Defence Witness No. 20, Mr. F.B.”: Annex II, also see Mr. F.B.’s testimony during the pre-trial criminal investigation: Annex III). We also draw your attention to p. 18 of Court of Patras Judgment (Annex IV), where Mr. F.B. has been called upon by the Board of First Instance Judges of Patras in order to perform the task of interpreter, which had previously been avoided following an objection from the prosecution lawyers in order not to lead in the absolute nullity of trial proceedings.

### **3. Lack of access to victim and witness protection programmes**

By not according appropriate protection for the victims, including access to witness protection programmes, the Court of Patras is currently acting in breach of Article 12 of Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (replacing Council Framework Decision 2002/629/JHA). The Court of Patras has refused to apply Art. 12 par.1 Law 3064/2002, which implements the Council Framework Decision 2002/629/JHA and Article 12 par. 4 of Directive 2011/36/EU, which has not been yet transposed into the Greek legal system. Namely, the Court of Patras argued that the above provisions are not compatible with Greek criminal procedure law (see pages 144 to 150 and 160 to 166 of the enclosed Judgment: Annex V). In the meantime, between the first and second application made by the prosecution lawyers for the witness protection scheme, an attack took place by unknown individuals in Nea Manolada against Mr T.C, one of the main witnesses of the trial (see the enclosed Complaint of Mr T.C: Annex VI).

### **4. Violation of the rule of law**

The refusal of the Court of Patras to implement basic rule of law principles and the safeguards provided as part of Directive 2011/36/EU, constitutes a clear and direct violation of EU law and founding principles and main values of the EU, including of the EU Charter of Fundamental Rights, which affirms the right to an effective remedy before a court, in case of violation of rights and freedoms under EU law. We submit that these serious violations shall urgently be addressed by the European Commission.

As recalled by Article 2 of the Treaty on European Union (TEU), as well as by the Preambles to the Treaty and to the Charter of Fundamental Rights of the EU, the rule of law is one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU and one of the main values upon which the Union is based. Under Article 49 TEU, respect for the rule of law is a precondition for EU membership. Both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) confirmed that the principles enshrined

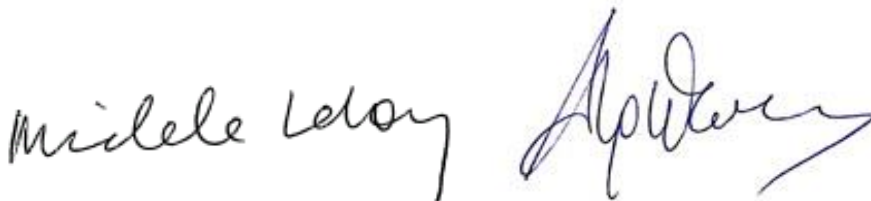
in the rule of law are not purely formal and procedural requirements. They are the vehicle for ensuring compliance with and respect for democracy and human rights.<sup>3</sup>

We ask you to note that fundamental rights are effective only if they are justiciable. Democracy is only protected if the fundamental role of the judiciary can ensure impartiality, equality before the law and respect for fundamental rights. A clear commitment towards the strengthening of the rule of law principles in the European Union has been reiterated by the European Commission in its Communication of March 2014 on “*A new EU Framework to strengthen the Rule of Law*” and mentioned by the Council in its Conclusions of June 2013 and June 2014.

**In light of the above, we submit that in order to fulfil its role as guardian of the Treaties, the European Commission bears the obligation to take urgent measures to effectively monitor and address the well-documented serious violations of the rule of law as part of the trial which took place before the Greek Mixed Jury Court of Patras in the case of Manolada.**

We sincerely trust that the European Commission will act swiftly on these requests and we thank you in advance for your attention to this matter.

Sincerely,

The image shows two handwritten signatures in black ink. The signature on the left is 'Michele LeVoy' and the signature on the right is 'Sandy Protogerou'. Both are written in a cursive, flowing style.

Michele LeVoy  
Director  
Platform for International Cooperation on  
Undocumented Migrants (PICUM)

Sandy Protogerou  
Legal Advisor to the board - GCR Director  
Greek Council for Refugees (GCR)

Encls.

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<sup>3</sup> The CJEU specified that a "Union based on the rule of law" means that the EU institutions are subject to judicial review of the compatibility of their acts not only with the Treaty but "with the general principles of law which include fundamental rights" (Case C-50/00 P, *Unión de Pequeños Agricultores* [2002] ECR I-06677, para 38 and 39; Joined Cases C-402/05 P and C-415/05 P, *Kadi*, [2008], ECR I-06351, para 316). This has been also confirmed by the ECtHR (*ECtHR Stafford v United Kingdom*, 28 May 2001, para 63).