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Greece

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Country report

Gender equality

How are EU rules transposed into national law?

Greece

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Reporting period 1 January 2020 – 01 January 2021

2021 Directorate-General for Justice and Consumers

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1 Introduction

1.1 Basic structure of the national legal system

Greece is a parliamentary republic. The Greek legal order has a strict hierarchical structure provided by the Constitution,[1] which is written and rigid[2] and prevails over statutes. According to Article 28(1) of the Constitution, international treaties introduced into the Greek legal order by statute and subsequently ratified prevail over statutes. Greek courts acknowledge the primacy of EU law over the Constitution. They often apply EU law and they interpret and apply the Constitution in light of EU law, in particular in gender equality cases. All courts review the conformity of statutes with the standards of the Constitution, EU law and ratified treaties and either interpret the statutes in conformity with these standards or disapply those that they consider to be contrary thereto (Articles 93(4), 87(2) and 28 of the Constitution). There are three branches of the judiciary: (i) administrative, (ii) civil and penal and (iii) the Court of Audit. The administrative courts hear claims against the state, local authorities and other legal persons governed by public law, including claims by their personnel and social security claims against compulsory social security schemes, as the entities that run them are legal persons governed by public law, except for pension claims by civil servants which are heard by the Court of Audit. The civil courts hear cases between private persons and the penal courts hear criminal cases (Articles 94-98 of the Constitution).

All courts incidentally review the conformity of administrative acts with the Constitution, EU law, ratified treaties and statutes and disapply those which conflict therewith. An administrative act of general applicability (*'acte réglementaire'*), e.g. a decree or a ministerial decision, which is contrary to the Constitution, EU law, a ratified treaty or a statute, will be annulled, in whole or in part, by the competent administrative court. An individual administrative act or omission will also be annulled on the same grounds. A statutory provision cannot be directly challenged for annulment. It may be declared inapplicable in a particular case because it is contrary to the Constitution, EU law or a ratified treaty. However, when two of the three supreme courts (the Supreme Civil and Penal Court (SCPC), the Council of State (the Supreme Administrative Court; CS), or the Court of Audit) express conflicting opinions on the constitutionality of a statutory provision, the Special Supreme Court may declare it invalid (Article 100 of the Constitution).

The annulment of an administrative act has, in principle, a retroactive *erga omnes* effect: the act or its provision that has been annulled is deemed never to have been enacted. However, in exceptional circumstances, the CS, taking into account the situations created through the application of the impugned act, in particular in favour of persons of good faith, and the public interest, may decide that these effects must start at a later date, in any event prior to the date of the judgment.[3] The CS considers that this applies not only to actions for annulment, but to all claims before administrative courts, such as claims for pay or social security benefits. The CS has used this discretion in judgments regarding pension cuts. It has held that the statutory provisions on the basis of which the claimants' pensions were cut for the seventh time within two years disregarded the requirement to respect and protect the value of the human being and the principles of solidarity, equality in public charges and proportionality enshrined in the Constitution, so that the essence of the right to social security, i.e. the granting of benefits allowing a decent standard of living,

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1 In 1975, after the fall of the seven-year military dictatorship, a new Constitution containing many provisions on human rights, including rights pertaining to gender equality and family protection, was adopted, while in 2001 a provision requiring positive action, in particular in favour of women, was added (see below in Section 2.1. of this report). The text of the Constitution, as amended in 1986, 2001 and 2008, is available in Greek, English, French and German on the Parliament's website: https://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/.

2 This is because in Greece the amendment of the constitutional provisions can take place only under very strict conditions and some constitutional provisions must not be amended, as the Constitution itself provides.

3 Article 22(1) Act 4274/2014, OJ A 147/14.7.2014.

had been violated. Therefore, the impugned provisions were inapplicable because they were contrary to the Constitution and Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR). Yet, taking into account the public interest, and in view of the exacerbated financial crisis, it held that the non-applicability of these provisions cannot be invoked in support of claims for periods predating the judgments, except by the claimants and other pensioners having already lodged an action.[4] Although these were not gender equality cases, the CS also invoked in support of the non-retroactive effect of its judgments the CJEU *Defrenne* and *Barber* cases.[5] Moreover, these cases show the constantly deteriorating socio-economic context within which the implementation of EU law is taking place (see also, for example, under Section 12 below).

1.2 List of main legislation transposing and implementing the directives

The main legislation transposing and implementing the EU directives on gender equality:[6]

- **Act 4604/2019**, 'On the promotion of substantive gender equality etc.', OJ A 50/26.3.2019, which, *inter alia*, replaced the definitions of 'direct' and 'indirect discrimination' and 'sexual harassment', included in Article 2 Act 3896/2010 transposing Directive 2006/54/EC creating a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece, all the more so as it does not make any reference to the Directive, which is in clear violation of its implementation requirements. Thus, it creates lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the directives (see 3.1.2 below).
- **Act 4443/2016**, '1) Transposition of Directive 2000/43/EC on the implementation of the principle of equal treatment between persons irrespective of racial or ethnic origin, of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and of Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (…)', OJ A 232/9.12.2016 [replacing Act 3304/2005 which had initially transposed Directives 2000/43/EC and 2000/78/EC], OJ A 16/27.1.2005].
- **Act 4097/2012**, 'Implementation of the Principle of Equal Treatment of Men and Women Engaged in an Activity in a Self-Employed Capacity – Harmonisation of the legislation with Directive 2010/41/EU of the European Parliament and the Council', OJ A 235/3.12.2012 (Directive 86/613/EEC had not been transposed).
- **Act 4075/2012**, Articles 48-54, 'Incorporation into Greek Law of Directive 2010/18/EU of the Council of the EU Implementing the Revised Framework Agreement on Parental Leave Concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and Repealing Directive 96/34/EC', OJ A 89/11.4.2012.
- **Presidential Decree 80/2012**, 'Granting of Parental Leave and Leave of Absence to Workers under a Contract of Maritime Work on Vessels Bearing the Greek Flag, in accordance with Directive 2010/18/EU', OJ 138/14.6.2012.
- **Act 1756/1988**, Code on the Status of Judges, OJ A 35/2.2.1988.
- **Act 3896/2010**, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council', OJ A 207/8.12.2010.
- **Act 3769/2009**, 'Implementation of the Principle of Equal Treatment of Men and Women Regarding Access to Goods and Services and Their Supply', transposing Directive 2004/113/EC, OJ A 105/1.7.2009, as amended by Article 162 of Act 4099/2012 implementing the CJEU Test-Achats judgment, OJ A 250/20.11.2012.

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4 CS Nos 2287-2290/2015 (Plen.).

5 Court of Justice of the European Union (CJEU), Case 43-75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena,* 08 April 1976; CJEU, Case C-262/88, *Douglas Harvey Barber v Guardian Royal Exchange Assurance Group*, 17 May 1990.

6 After the cut-off date of this Report (1 January 2021), Act 4808/2021, OJ A 101/19.06.2021, *inter alia*, ratified the ILO Convention 190 on Violence and Harassment with its sanctioning law and transposed Directive 2019/1158.

- **Act 3488/2006**, 'Implementation of the Principle of Equal Treatment of Men and Women Regarding Access to Employment, Professional Training and Evolution and Terms and Conditions of Work', transposing Directive 2002/73/EC, OJ A 191/11.2006.
- **Presidential Decree 105/2003**, 'Adaptation of Domestic Law to Directive 97/80/EC on the Burden of Proof in Cases of Sex Discrimination,' OJ A 96/23.4.2003; repealed by Article 30(5) of Act 3896/2010 transposing Directive 2006/54/EC.
- **Presidential Decree 87/2002**, 'Implementation of the Principle of Equal Treatment of Men and Women in Occupational Social Security Schemes in Compliance with Directives 96/97/EC and 86/378/EEC'; repealed by Article 30(5) of Act 3896/2010 transposing Directive 2006/54/EC.
- **Presidential Decree 176/1997**, 'Measures for the Improvement of the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or are Breastfeeding in Compliance with Directive 92/85/EEC', OJ A 150/15.7.1997, as amended by Decree 41/2003, OJ A 44/21.2.2003.
- **Act 1483/1984**, 'Protection and Facilitation of Workers with Family Responsibilities', as amended by Article 25 of Act 2639/1998, OJ A 205/2.9.1998 implementing Directive 96/34/EC and by Article 46 of Act 4488/2017,[7] and Article 54(1) of Act 4075/2012 transposing Directive 2010/18/EU.
- **Act 1414/1984**, 'Implementation of the Principle of Equal Treatment of the Sexes in Employment Relationships', transposing Directives 75/117/EEC and 76/207/EEC, OJ A 10/2.1984.
- **Presidential Decree 1362/1981**, 'Replacement of Paragraph 1 of Article 33 of Act 1846/1951 "on Social Security" in compliance with Directive 79/7/EEC', OJ A 339/30.12.1981.
- **National General Collective Agreements (NGCAs)**.

Relevant national legislation:
- **Act 4531/2018** (OJ A 62/5.4.2018) ratifying the Istanbul Convention (IC) on preventing and combating violence against women and domestic violence of the Council of Europe, signed by Greece on May 2011.
- **Act 4491/2017**, 'Legal recognition of gender identity… etc.', OJ A 152/13.10.2017.
- **Act 927/1979**, OJ A 139/28.6.1979, implementing the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), as amended by Act 4285/2014, OJ A 191/10.9.2014 and Act 4491/2017, OJ A 152/13.10.2017.

1.3 Sources of law

Gender equality law sources comprise:

i) 'State sources': Constitution, EU law, ratified international treaties, statutes, judge-made general principles of law and administrative acts of general applicability; and
ii) 'Autonomous' or 'professional sources': mainly collective agreements/arbitration decisions and internal rules. Their legality (including conformity to EU law) is reviewed by all courts.

More specifically, according to Article 28(1) of the Constitution, international treaties introduced into the Greek legal order by statute and ratified prevail over statutes. Greece has signed and ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) by Act 1342/1983.[8] Thus the CEDAW is part of the national legal order and can be invoked directly before the courts. Greek courts apply the Constitution in the light of or in parallel with international human rights treaties, including the CEDAW.[9]

[7] Act 4488/2017, OJ A 13/13.9.2017.
[8] Act 1342/1983, OJ A 39/1.4.1983.
[9] CS Nos 3189/2003 and 1414/2018: application of Article 116(2) of the Greek Constitution in parallel with and in the light of the CEDAW.

Moreover, as mentioned above (see 1.1), Greek courts acknowledge the primacy of EU law over the Constitution. They often apply EU law and they interpret and apply the Constitution in light of EU law, in particular in gender equality cases.

Both the CEDAW and EU law have been a source of inspiration for the introduction and wording of the constitutional provision of Article 116(2) on positive action (see 2.1.2 below).

The Istanbul Convention (IC) on preventing and combating violence against women and domestic violence, of the Council of Europe, signed by Greece on May 2011, was ratified by the Greek Parliament by virtue of Article 1 Act 4531/2018 (OJ A 62/5.4.2018). Article 2 Act 4531/2018 made the amendments to the Penal Code (PC) which were necessary for its alignment with the IC. Later on, the new Greek PC was ratified by Law 4619/2019 and came into force on 1 July 2019, replacing the previous PC of the year 1950. In its Articles 312 and 336, it reformed, *inter alia*, the legal framework on domestic violence and on rape, bringing the Greek legislation in line with the IC.[10]

Judicial precedents are not binding; each case is decided on its own merits. In practice, however, lower courts often follow the opinion of supreme courts.

Opinions of equality bodies and authoritative scholarly interpretations are not considered a source of law. Opinions of equality bodies are not binding for the courts or the administrative authorities. However, in the event of such an opinion finding discrimination, the Labour Inspectorate (LI) has to impose an administrative fine, otherwise the LI's non-imposition of such a fine has to be fully justified.

[10] After the cut-off date of this report (1 January 2021), as a response to the Greek #MeToo movement, on 21 January 2021 the ILO Convention 190 on Violence and Harassment was ratified by Act 4808/2021, OJ A 101/19.06.2021. See also European network of legal experts in gender equality and non-discrimination (EELN) Flash Report (Greece) of 12 March 2021 'ILO Convention 190 to be ratified by Greece in the near future', https://www.equalitylaw.eu/downloads/5369-greece-ilo-convention-190-to-be-ratified-by-greece-in-the-near-future-120-kb.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

Article 4(2) of the Greek Constitution ('Greek men and women have equal rights and obligations') requires (substantive)[11] sex equality in all areas; it implicitly prohibits sex discrimination. Article 22(1)(b) of the Greek Constitution ('all workers, irrespective of sex or other distinctions, have a right to equal pay for work of equal value') exceeds the scope of Article 157 TFEU, as it covers any ground whatsoever and is not limited to sex.

2.1.2 Other constitutional protection of equality between men and women

Article 116(2) of the Constitution states that, 'Positive measures aiming at promoting equality between men and women do not constitute discrimination on grounds of sex. The State shall take measures to eliminate inequalities existing in practice, in particular those detrimental to women'. While Article 4(2) of the Constitution refers to 'Greek men and women,' Article 116(2) refers to 'men and women'. Therefore, the personal scope of the constitutional gender equality norm must be considered to also cover foreign nationals. According to its letter and to well-established CS case law, the material scope of this provision includes all the areas covered by the gender equality directives, as well as any other area whatsoever,[12] even outside the scope of EU law. Article 116(2) requires that the legislature and all other state authorities take any positive measures which are necessary and pertinent in promoting gender equality in all areas.[13] It thus exceeds the requirements of EU law, as it explicitly makes positive action obligatory. In accordance with the hierarchical structure of the Greek legal order, all national provisions relating to positive action must be read and applied in the light of this constitutional norm.[14]

It should be noted that Article 116(2) in its present wording, requiring positive action, was adopted almost unanimously by the Greek Parliament in the context of the constitutional revision of 2001, replacing the former provision of the same Article, which allowed derogations from the gender equality principle.[15] This development was inspired by Community law (Articles 2 and 3(2) EC Treaty and Declaration No. 28 annexed to the Treaty), international human rights treaties (in particular Article 4(1) of the CEDAW), the Constitutions of other Members States (Germany, Austria and Portugal) and Greek case law. It was also the result of the efforts and intense lobbying of Greek women's NGOs and of prominent feminists, in particular Professor Alice Yotopoulos-Marangopoulos and Sophia Koukoulis-Spiliotopoulos.[16] In fact, the Greek Parliament endorsed almost *verbatim* the proposal put forward by the Greek League for Women's Rights and supported by many other NGOs.

Article 21(1) of the Constitution requires the protection of marriage, the family, motherhood and childhood. This requirement seems to be similar to that of Article 33(1) of the EU Charter. Greek case law relies on this provision, alone or in conjunction with Article 4(2) of the Constitution, in order to uphold claims to maternity and parenthood protection.

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[11] CS No. 1933/1998 (Plen.).
[12] CS No. 3189/2003.
[13] CS Nos 2832-2833/2003, 192/2004.
[14] On the hierarchical structure of the Greek legal order, see 1.1 above.
[15] Article 116(2) Constitution (1976), in its original version, provided that: 'Derogations from the provision of Article 4(2) are allowed only for sufficiently justified reasons, in cases specifically provided by statute.'
[16] Koukoulis-Spiliotopoulos, S. (2003), 'Greece: From formal to substantive gender equality – The leading role of the jurisprudence and the contribution of women's NGOs', in *Essays in honour of Alice Yotopoulos-Marangopoulos*, Volume A, Athens Nomiki Bibliothiki, Brussels Bruylant, 2003; Koukoulis-Spiliotopoulos, S., contribution to the Bulletin *Legal Issues in Equality* of the Commission's Network of Legal Experts on the application of Community law on gender equality, 2/2000, Greece.

All the above constitutional provisions produce horizontal effects according to Article 25(1) of the Constitution which stipulates that constitutional rights also apply to relations between individuals.

2.2 Equal treatment legislation

Greece has specific equal treatment legislation, mainly the legislation transposing the gender equality directives (see above, 1.2) and Act 4443/2016 (OJ A 232/9.12.2016) re-transposing Directives 2000/43/EC and 2000/78/EC. Act 4604/2019[17] replaced the definitions of 'direct' and 'indirect discrimination' and 'sexual harassment' which were included in Article 2 Act 3896/2010 transposing Directive 2006/54/EC. As a result, there has been a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece, all the more so as no reference is made to the Directive, which is in clear violation of its implementation requirements. Thus, it created lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the directives (see 3.1.2 below). Apart from that, Act 4604/2019 contains some important provisions on positive measures (see 3.6 'Positive action' below) and gender mainstreaming (see 3.11 'Remaining issues' below).

The Greek equal treatment legislation prohibits direct and indirect sex discrimination.

The Greek equal treatment legislation also covers the discrimination grounds covered by Directives 2000/43/EC and 2000/78/EC, plus certain new grounds added by Act 4443/2016 (see 3.5.1 below), as well as the grounds covered by Act 927/1979 on the (of its own motion criminal) punishment of acts aimed at racial discrimination (OJ A 139/28.6.1979, as amended by: (i) Act 4285/2014 (OJ A 191/10.9.2014) implementing the CERD and Framework Decision 2008/913/JHA and (ii) Act 4491/2017 (OJ A 152/13.10.2017). The grounds covered by the latter Act are: race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, gender characteristics[18] or disability. Hate speech on the grounds of gender is covered neither by Act 927/1979 nor by Article 184 of the PC, criminalising hate speech on the other grounds, nor by Article 82A of the PC, which makes the commitment of a crime against a victim chosen on the rest of the grounds an aggravating circumstance.[19]

All the transposing legislation applies to the private and public sector and it stipulates that it lays down minimum standards and does not affect more favourable provisions.

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[17] Act 4604/2019 'on the promotion of substantive gender equality, prevention and fight against gender-based violence – Provisions on the award of nationality – Provisions on the elections for local authorities', OJ A 50/26.3.2019. According to its explanatory report, the new Act 4604/2019, which entered into force on 26 March 2019, aims to establish substantive equality given that 'in societies with a long patriarchic tradition, such as the Greek one, the female sex has been undervalued and put in the margin in comparison to the male sex which evidently has greater economic and political power in the public and the private life'.

[18] The words 'gender characteristics' were added by Act 4491/2017, OJ A 152/13.10.2017.

[19] After the cut-off date of this report (1 January 2021), Act 4779/2021, OJ 27 A/20.02.2021, transposing Directive (EU) 2010/13 on the provision of audio-visual media services, in its Article 8 (Article 6 Directive) prohibits any incitement to violence or hatred on all the other grounds but sex, falling short of the wording of Article 6 of Directive 2010/13, but also of the gender equality provisions of the treaties. EELN Flash Report (Greece) of 9 April 2021, 'Transposition of Directive (EU) 2010/13 on the provision of audio-visual media services', https://www.equalitylaw.eu/downloads/5380-greece-transposition-of-directive-eu-2010-13-on-the-provision-of-audio-visual-media-services-which-includes-television-internet-music-songs-etc-128-kb.

3 Implementation of central concepts

3.1 General (legal) context

3.1.1 Surveys on the definition, implementation and limits of central concepts of gender equality law

A survey of the year 2019[20] criticised the Act 4604/2019, OJ A 50/26.3.2019 on the promotion of substantive gender equality (at the time still a bill) regarding its definitions of key concepts. It is deplored that the definitions of direct and indirect discrimination create legal uncertainty: instead of copying the relevant definitions of EU law, the legislator chose to draft new definitions that are legislatively imperfect and legally dangerous. Moreover, according to the survey, substantive equality is defined in such a complicated way that it is doubtful whether the legislator was aware of the actual meaning of the concept: the redrafting of the definition is necessary. On the other hand, the survey welcomed other novelties of Act 4604/2019, such as gender mainstreaming, equality marks and equality plans. However, it pointed out the use of several 'may clauses' which risk rendering the relevant provisions to mere wishes.

3.1.2 Other issues

The legal definitions of central concepts of gender equality law used to copy those of Directive 2006/54/EC, with the exception of positive measures, the concept of which is more positive and stronger at national level than in EU law, in that it explicitly provides that positive measures are not only allowed, but they are obligatory and that they do not constitute discrimination.

However, Act 4604/2019, OJ A 50/26.3.2019, in its Article 22 amended the definitions of direct and indirect discrimination and sexual harassment on the grounds of sex (and gender identity), which were previously provided by Act 3896/2010,[21] implementing Directive 2006/54/EC (Recast).[22] It also provided new definitions for positive measures and positive action. The new definitions on 'direct discrimination' (see 3.3.1 below), 'indirect discrimination' (see 3.4.1 below), 'sexual harassment' (see 3.7.3 below) and 'positive measures' (see 3.6.1 below) constitute a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece. On the other hand, Act 4604/2019 did not make any reference to the Directive 2006/54, which is in clear violation of its implementation requirements. Moreover, it creates lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the directives. The definition of 'multiple discrimination' is also problematic (see 3.5.1 below).

3.1.3 General overview of national acts

See above under Sections 1.2 (List of main legislation transposing and implementing directives), 2.1 (Constitution) and 2.2 (Gender equality legislation).

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[20] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (*The legal treatment of gender-based discrimination in Greece*), Heinrich Böll Stiftung, Greece, p. 35.

[21] Greece, Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council of 5 July 2006 and other provisions' *(Εφαρμογή της αρχής των ίσων ευκαιριών και της ίσης μεταχείρισης ανδρών και γυναικών σε θέματα εργασίας και απασχόλησης – Εναρμόνιση της κείμενης νομοθεσίας με την Οδηγία 2006/54/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου, της 5ης Ιουλίου 2006 και άλλες συναφείς διατάξεις)*, OJ A 207/8.12.2010, entered into force as of 8.12.2010.

[22] Directive 2006/54/EC of the European Parliament and of the Council, 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

3.1.4 Political and societal debate and pending legislative proposals

In the period 6 March 2018 to 20 March 2018 the bill 'On the promotion of substantive gender equality and on the fight against gendered violence'[23] was uploaded to the open governance website for consultation.[24] Among others, the women's NGO (confederation), National Council of Women, observed that the time limit for consultation was too short for such an important bill. Moreover, it warned that the provisions containing definitions of the bill would cause problems, in particular with a view to the existing legislation transposing the relevant directives. Moreover Article 2 on definitions of central concepts of gender equality law, as worded in the relevant bill, was strongly criticised by the long-established women's NGO, League for Women's Rights, which demanded the withdrawal of all provisions relating to matters already regulated by legislation implementing directives or the Constitution.[25] This article was also criticised by the Scientific Service of Parliament (which checks the conformity of bills with the Constitution, ratified international treaties and EU law) and by several MPs during the parliamentary debate. In spite of the quite harsh comments of the women's NGO League for Women's Rights and the Parliament's Scientific Service and in spite of the critical comments by MPs who also invoked the League's paper, the bill was not improved. Moreover, the final text of the Act, as published in the OJ, proved to be worse than the bill as concerns fundamental issues, in particular regarding the definitions of 'direct discrimination' (see 3.3.1 below), 'indirect discrimination' (see 3.4.1 below), 'sexual harassment' (see 3.7.3 below), 'positive measures' (see 3.6.1 below) and 'multiple discrimination' (see 3.5.1 below). Finally, the bill passed in March 2019, as Act 4604/2019, OJ A 50/26.3.2019.

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

The terms gender/sex are not defined in Greek legislation.

3.2.2 Protection of transgender, intersex and non-binary persons

Discrimination due to gender reassignment is explicitly prohibited by Article 3(2)(b) of Act 3896/2010 transposing Directive 2006/54/EC. This provision does not include discrimination on the ground of gender identity. Act 4604/2019 added the ground of 'gender identity' to the prohibition of (direct and indirect) discrimination provided by Act 3896/2010, implementing Directive 2006/54/EC. Moreover, Act 4046/2019 in its Article 2(9) defined for the first time *'gendered discrimination'* as physical, psychological or verbal conduct, through which persons are degraded, *inter alia*, on the grounds of gender identity. There is no explicit anti-discrimination provision concerning intersex and non-binary people. Article 1 of Act 4443/2016 which re-transposed Directives 2000/43/EC and 2000/78/EC, prohibits any direct or indirect discrimination, *inter alia*, on the ground of 'gender identity or characteristics' (see 3.5.1 below).

Moreover, Article 1 of Act 927/1979, OJ A 139/28.6.1979, implementing the CERD, as amended by Act 4285/2014, OJ A 191/10.9.2014 and Act 4491/2017, OJ A 152/13.10.2017, prohibits any act that may entail discrimination, hate or violence against people or groups of people on the basis of, *inter alia*, 'gender identity' and 'gender characteristics', making it a criminal offence prosecuted by its own motion (see 2.2 above). Moreover, Article 184 of the PC criminalises hate speech on the grounds of, *inter alia*,

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[23] Bill 'On the promotion of substantive gender equality and on the fight against the gendered violence', www.opengov.gr/ypes/?p=5597.

[24] In the context of electronic deliberation, almost every piece of draft legislation or even policy initiative by the government is posted on a blog-like platform prior to submission to parliament. Citizens and organisations can post their comments, suggestions and criticisms article-by-article.

[25] League for Women's Rights protest, http://leagueforwomenrights.gr/images/03032ü019/OUSIASTIKI-ISOTITA.pdf, in Greek.

'gender identity' and 'gender characteristics'; Article 82A of the PC makes the commitment of a crime against a victim chosen on these grounds an aggravating circumstance.[26]

The new Criminal Code in Greece, which was introduced by Law 4619/2019, OJ A 95/11.6.2019 and came into force on 1 July 2019 by replacing the previous Code of the year 1950, abolished Article 361B that concerned punishment of the exclusion from the provision of goods and services in based on grounds of discrimination. Article 361B had been introduced in the previous Criminal Code by Article 29 of Act 4356/2015, OJ A 181/24.12.2015. Specifically, Chapter 21 of the current Greek Criminal Code abrogates Article 361B of the previous Code which stated that whoever supplies goods or offers services or announces through a public call the supply of goods or provision of services by excluding out of disdain individuals based on characteristics of, *inter alia*, gender identity or gender characteristics, is to be punished with imprisonment of a minimum of three months and a fine of at least EUR 1 500. However, it should be highlighted that this repeal does not affect the general interdiction of discrimination regarding access to goods and services enshrined in Act 4443/2016. In particular, Article 11 of Law 4443/2016, OJ A 232/9.12.2016, still stipulates that whoever refuses to provide goods and services on grounds of, *inter alia*, gender identity and sex characteristics is punished with an imprisonment ranging from three months to five years and a fine ranging from EUR 1 000 to EUR 5 000.

The Ombudsman had repeatedly asked for the legal recognition of gender identity.[27] A survey of the year 2019 describes analytically the first case law and the progress to the Ombudsman's proposal and further to the adoption of the relevant bill and its *travaux préparatoires.*[28] Finally, gender identity has been legally recognised for the first time by Act 4491/2017 'Legal recognition of gender identity… etc.', OJ A 152/13.10.2017 (Articles 1 to 7), which aims to ensure the rights of a person on the basis of his/her gender identity and gender characteristics in all fields. The most important provisions of Act 4491/2017 are the following. According to Article 1, 'a person is entitled to the recognition of his/her gender identity as an element of his/her personality', as well as 'to respect for his/her personality according to his/her gender features'. Article 2 defines 'gender identity' as '[T]he inner and personal way in which someone feels his/her gender, irrespective of the sex registered at birth according to his/her biological features. Gender identity includes the personal feeling of one's body as well as the outer expression of gender which correspond to the person's will. The personal feeling of one's body may be linked to changes due to medical treatment or operations freely chosen. Gender features are understood as the chromosomes, the genes and the anatomic features, including primary features, such as the reproductive organs, and secondary features, such as muscle mass, breast or hair development.' For the 'correction' of someone's 'registered sex' from male to female and vice versa [there is no possibility not to choose a gender (an agender) or to choose a 'third gender'] in accordance with the individual's will and personal feeling linked to their body and external appearance. For the judicial recognition for the first time of a non-binary person see under 3.2.3 below.

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[26] After the cut-off date of this report (1 January 2021), Act 4779/2021, OJ 27 A/20.02.2021, transposing Directive (EU) 2010/13 on the provision of audio-visual media services, in its Article 8 (Article 6 Directive) prohibits any incitement to violence or hatred on the grounds of, *inter alia*, 'gender identity' and 'gender characteristics'. See EELN Flash Report (Greece) of 9 April 2021, 'Transposition of Directive (EU) 2010/13 on the provision of audio-visual media services (which includes television, internet, music songs, etc.)', https://www.equalitylaw.eu/downloads/5380-greece-transposition-of-directive-eu-2010-13-on-the-provision-of-audio-visual-media-services-which-includes-television-internet-music-songs-etc-128-kb.

[27] Greek Ombudsman (2016) 'Δελτίο τύπου - Την κατοχύρωση των δικαιωμάτων των παιδιών σε περιπτώσεις συμβίωσης ομόφυλων και τη νομική αναγνώριση της ταυτότητας φύλου ζητά ο Συνήγορος του Πολίτη' (Press release – The Ombudsman asks for the consolidation of the rights of children in the case of a same-sex partnership and for the legal recognition of gender identity), available at: https://www.synigoros.gr/resources/docs/20160516-dt--4.pdf.

[28] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (The legal treatment of gender-based discrimination in Greece), Heinrich Böll Stiftung, Greece, pp. 60-66.

Article 3(2) Act 4491/2017 requires full legal capacity. However, minors having reached the age of 17 may apply for sex correction, provided that the person(s) exercising parental care over them agree; for minors having reached the age of 15 a positive opinion from an interdisciplinary Committee is also required. This Committee has been established by a joint decision of the Minister of Justice, Transparency and Human Rights and the Minister of Health for a two-year term. It is composed of a child psychiatrist, a psychiatrist, an endocrinologist, a child surgeon with a paediatrician as the Chair, all of them specialised in this particular area. Originally the bill did not provide the above exceptions regarding the age; it was only provided that before the age of 18 years, no such 'correction' could be asked for. As a result, the proposed bill was stricter than the previous legal framework[29] under which minors could be legally represented by their parents. This was strongly deplored by academics and trans NGOs. In view of the above, the possibility of 'correction' at the age of 17 years with the consent of the parents was added to the bill. This amendment was not found satisfactory as teenagers were still excluded, although they are mature enough for such a change and often socially more vulnerable in the school environment. Thus, a second exception for minors who have reached the age of 15 years (but only upon a positive opinion of the said Committee) was added to the bill. Although progress in comparison to the initial draft, this amendment was also criticised as a regression in comparison to the previous legal framework which set no age limits, given that adolescence begins before the age of 15 years.[30]

According to Article 3(3) Act 4491/2017 married people cannot request sex correction. This provision was strongly criticised as: (a) contrary to the fundamental rights of the free development of the personality and of the private life (Article 9(1)(b) in combination with Article 5(1) of the Greek Constitution); (b) discriminatory to the detriment of married persons on the grounds of family situation; (c) hypocritical in that it was aimed to 'safeguard' marriages between heterosexual persons, although marriage after gender correction is not prohibited.[31]

Article 3(4) Act 4491/2017 also stipulates that for the gender reassignment procedure, no medical examination or treatment related to the bodily or mental health of the applicant is required. This provision was welcomed by the legal world and the trans society as being in line with the national and the European case law. Actually, it aimed to ensure that the relevant case law would not be changed in the future. This provision is without prejudice to the transgender persons' right to undergo medical treatment if they so wish. However, it is deplored that in Greece there is no such social security coverage despite the relevant ECHR jurisprudence,[32] according to which the Contracting States have to cover the cost of such medical treatment, including a full surgical gender reassignment.[33]

According to Article 4 Act 4491/2017, sex correction is taken by virtue of a judicial decision. The applicant must appear in person before the court, but not at a public hearing. The decision is registered with the public registry which must draft the birth record in such a way that the confidentiality of the change and of the original birth entry is *erga omnes* ensured. Public services that draft other documents which mention the person's identity or from which the person derives rights, and services that make new entries in registries or lists, such as voting lists, must issue new documents or make the entries under the corrected sex, name and family name. Any mention that a correction has been made is prohibited. A new change is allowed only once, according to the same procedure and subject to the same conditions. Article 5 states that the sex correction by a judicial decision

[29] Act 344/1976, OJ A 143/11.6.1976.

[30] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (*The legal treatment of gender-based discrimination in Greece*), Heinrich Böll Stiftung, Greece, pp. 68-69.

[31] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (*The legal treatment of gender-based discrimination in Greece*), Heinrich Böll Stiftung, Greece, p. 70.

[32] ECtHR *Van Kück v Germany*, No. 35968/97, 12 June 2003, Paragraphs 47, 73 and 82; ECtHR *L. v Lithuania*, No. 27527/03, 11 September 2007, Paragraphs 59, 74.

[33] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (*The legal treatment of gender-based discrimination in Greece*), Heinrich Böll Stiftung, Greece, p. 72.

applies *erga omnes*; the Registrar must notify it to the Public Prosecutor or to the Ministry of Justice for people born abroad. Rights and obligations predating the sex correction and tax and social security registration numbers of the person are maintained. If he/she has children, their birth registration is not changed and parental care rights and obligations are not affected. According to Article 6, Public Registry employees and any other people professionally involved in sex correction or having learnt about this in the course of their tasks are subject to a duty of confidentiality. Only the person concerned and those that he/she authorises in writing have access to the above judicial decision and to any data or document showing the sex correction kept by the competent public registry or by any other authority. Third parties are allowed to have access if they justify a specific legal interest that cannot be otherwise satisfied, following permission by the Agency for the Protection of Personal Data, an independent authority established by Act 2472/1976 (OJ A 50/10.4.1997), as amended.

In its opinion on the bill, the Scientific Service of Parliament (SSP),[34] which monitors the compatibility of bills with the Constitution, EU law and international conventions, welcomed, *inter alia*, the non-requirement of gender reassignment (Article 3 of the Act, above), quoting the European Court of Human Rights (ECtHR), which held that this conflicts with Articles 8 and 3 ECHR.[35] The SSP also recalled that, according to the same judgment, a prior psychological diagnosis is required by the great majority of Council of Europe Member States. This does not affect a person's physical integrity; it aims to safeguard the interests of the person concerned by preventing an erroneous engagement in a procedure for the recognition of gender identity modification. In this respect, the interests of these people coincide with the general interest and the ECHR is not violated.[36]

In general, Act 4491/2017 constitutes an important step towards ensuring the rights of transgender people. However, the author agrees with the ECtHR regarding the risks stemming from the non-requirement of a psychological diagnosis and considers that such a requirement ought to be included in the Act, with a view to safeguarding the interests of transgender people. The legislator has been criticised for not providing the recognition of other categories of gender identity or gender characteristics (non-binary, genderqueer, agender, genderfluid) as it was asked by European and national NGOs during the consultation period of the Act. However, in the Greek Registries there is no third choice, such as the non-registration of sex or the registration of a 'third sex'; the whole system is structured on the basis of the binary male-female. Thus, the legislator opted for slow progress in order to ensure a greater social consensus and acceptance of the new provisions. It was also a way to avoid practical problems, given that in Greece there are no integrated and interlinked electronic systems that would allow the change of a big number of documents in the event of a third choice. There is only one case in this regard: after the adoption of Act 4491/2017, a non-binary person asked for the judicial deletion of the registered sex from the registration act and its replacement by void with the symbol of the dash ('–'); it was argued that the applicant could not be classified either as a male or a female person. In its judgment 67/2018, the Amaroussion Justice of the Peace rejected the claim. According to the Court, Act 4491/2017 does not allow non-binary persons who are not self-determined as a man or a woman to be registered under a third choice.[37]

Article 2(9) Act 4604/2019 defines *'gendered discrimination'* as physical, psychological or verbal conduct, through which persons are degraded on the grounds of sex, sexual orientation and gender identity.

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[34] The SSP opinion as well as the final text of the Act 4604/2019 are available on the Parliament website (in Greek): https://www.hellenicparliament.gr/Nomothetiko-Ergo/Katatethenta-Nomosxedia?law_id=75d1ff53-879c-4dcb-bfff-a7f20108f665.

[35] ECtHR, *A.P., Garçon and Nicot v France*, No. 79885/12, 52471/13 and 52596/13, 6 April 2017.

[36] ECtHR, *A.P., Garçon and Nicot v France*, No. 79885/12, 52471/13 and 52596/13, 6 April 2017, Paragraphs 139-141.

[37] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (*The legal treatment of gender-based discrimination in Greece*), Heinrich Böll Stiftung, Greece, pp. 66-67.

Article 2(10) Act 4604/2019, OJ A 50/26.3.2019, repeats the definition of 'harassment' contained in Article 2(c) of Act 3896/2010, adding to sex the grounds of sexual orientation and gender identity.

Article 3(2) of Act 4604/2019, OJ A 50/26.3.2019 provides that, when 'positive measures' are adopted in accordance with Article 2(2) Act 4604/2019:

> 'the physical features and the situations related to sex, sexual orientation and gender identity, in favour of which the positive measures are taken, as well as their eventual concurrence with other areas of discrimination, such as, in particular, ethnic or social origin, age, family status, disability, religious, political or other belief, shall be taken into consideration'.

Article 24(2),(3),(4) Act 4604/2019 provides that the National Council for Radio and Television (NCRTV)[38] adopts guidelines for the mainstreaming of gender equality and the prohibition of discrimination on the grounds of gender, gender identity and sexual orientation in the broadcasts and imposes fines in the case of a breach of their obligations under the new law. According to the new law, in its Annual Report the NCRTV dedicates a section to the monitoring of the application of the provisions of the new law by the broadcasters and the issue of relevant guidelines and recommendations.[39]

3.2.3 Specific requirements

In Greece no specific requirements have to be fulfilled in order to benefit from legal non-discrimination protection. More specifically, transgender people are not required to undergo gender confirmation or sterilisation surgery before they are protected by non-discrimination law, nor are they required to change their legal gender before they are protected by non-discrimination law. In this regard, even before the adoption of Act 4491/2017, Judgment No. 418/2016 of the Athens Justice of the Peace was a leading case; it upheld the petition of a woman who sought the confirmation of her male sex and the modification of the female name under which she was registered in the public registry into a male name.[40] A sexologist and a psychiatrist testified that she had undergone hormone therapy and a double mastectomy; that her whole appearance was that of a male; and that she lives successfully as a man, while the prospect that she will change her mind is limited. The court held that the absence of gender reassignment surgery was no problem regarding the modification of the applicant's sex and name in the public registry. The requirement to undergo such surgery in order to have the change of sex recognised would be excessive and would violate Article 8 of the ECHR, which guarantees the right to respect for personal and family life, as well as Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) prohibiting discrimination on any ground, including sex. The court concluded that, in the applicant's case, the male sex was predominant and, moreover, as the male sex and the male name are fundamental features of the applicant's personality, the existing entry should be modified accordingly.

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[38] The National Council for Radio and Television (NCRTV) is a Greek independent administrative authority that supervises and regulates the radio/television market, founded in 1989 by virtue of Act 1866/1989, ΟΞ A 322/6.10.1989, as amended by Act 2863/2000, OJ A 262/29.11.2000 and Act 3051/2002, OJ A 220/30.9.2002. The National Council for Radio and Television exercises its competencies as a collective administrative authority. The Council has been assigned to secure that all broadcasts comply with the provisions laid down by the law of the Greek state from which they emanate as well as by the Directive 'Television without Frontiers' of the European Commission. It is competent to control, where practicable and by appropriate means, the broadcasters' operation with reference to their informational, educational, cultural and entertainment responsibilities to the public. NCRTV is the appropriate authority to ensure fundamental benefits such as the freedom of expression, political and cultural pluralism and the broadcasting of reliable, fair and balanced information. The Council is the only responsible body with regard to the control of media companies and the imposition of fines. Furthermore, it is the competent authority for allocating licences and to take any decision of non-regulatory character.

[39] Since the adoption of Act 4604/2019, the NCRTV has still not issued its annual report, so this provision has not yet been implemented in practice.

[40] Athens Justice of the Peace No. 418/2016, http://dikastis.blogspot.com/2016/08/4182016.html.

In the same line, a standard jurisprudence has been formed by, *inter alia*, Judgments Nos 572/2017, 604/2017 and 195/2020 of the Athens Justice of the Peace; No. 1479/2017 of the Thessaloniki Justice of the Peace; No. 3/2018 of the Florina Justice of the Peace; No. 65/2019 of the Patras Justice of the Peace; Judgment No. 444/2018 of the Thessaloniki Justice of the Peace, which is the first case law dealing with the gender correction of a refugee. In none of the above cases did the court refer to EU law, nor did it invoke the gender equality principle. Some judgments, by invoking Articles 2 and 26 ICCPR, implied that a refusal to confirm the applicant's transsexuality would violate his/her right to non-discrimination. Moreover, as they relied on the applicant's feeling of transsexuality, they implicitly adopted the CJEU definition of a 'transsexual'. Indeed, the CJEU has held, in agreement with the ECtHR, that the term 'transsexual' is usually applied to those who, 'whilst belonging physically to one sex, feel convinced that they belong to the other'.[41] The CJEU has also held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or the other sex.[42] In view of its purpose and the nature of the rights that it seeks to safeguard, it also applies to discrimination arising from an individual's gender reassignment. The decisions are therefore in accordance with EU law and CJEU case law.

In the author's view, in accordance with the CJEU definition of a 'transsexual' quoted above, the requirement of gender reassignment surgery may also be considered contrary to the Charter (Article 1: respect and protection of human dignity; Article 7: respect for private and family life). Furthermore, since the refusal to modify the sex and name can concern transsexuals alone, it would constitute direct sex discrimination.[43] As it would cause serious inconvenience to the applicant at administrative, professional and private levels, it would also be reflected in matters of employment and occupation and so create discrimination that would fall within the scope of Directive 2006/54/EC. Fortunately, such conflicts with EU law were avoided thanks to the Justice of the Peace's decision.

For the first time in Greece, Judgment No. 153/2020 of the Justice of the Peace of Kallithea[44] has totally upheld the petition of a non-binary person for the recognition of gender identity and the change of the surname. In the given case, the petitioner was registered as female at birth and asked for the change of the name from a female name to a neutral name and of the existing surname, which in Greek had a female ending, to one with a male ending.

By its Judgment No. 153/2020, the Justice of the Peace of Kallithea found the petition to be legally founded on the provision of Article 5(1) of the Greek Constitution on the protection of the free development of the personality,[45] which comprises, *inter alia*, the individual right to self-determination of a person's identity, the individual right to the name and the surname, as fundamental aspects of a person's identity, the individual freedom to appear in public as one wishes and the right to freedom of sexual orientation and sexual relations (safeguarded also by Article 8(1) of the ECHR). According to the Court, the concept of 'good usages' in Article 5(1) of the Constitution, refers to the prevailing social perceptions and the socially acceptable standards of right and good behaviour; therefore, it varies according to the historic context, allowing the legislator and, next, the competent judicial authority the possibility to estimate to which extent the limitation of the individual autonomy is constitutionally legitimate. The Court also found the petition to be legally

[41] CJEU, Case C-13/94, *P v S and Cornwall County Council*, 30 April 1996, Paragraph 16.

[42] See e.g. CJEU, Case C-423/04, *Richards v Secretary of State for Work and Pensions*, 27 April 2006, Paragraph 24; CJEU, Case C-13/94, *P v S and Cornwall County Council*, 30 April 1996, Paragraphs 19-21.

[43] Cf. by analogy CJEU, Case C-177/88, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*, 8 November Paragraph 12; CJEU, Case C-421/92, *Gabriele Habermann-Beltermann v Arbeiterwohlfahrt*, 5 May 1994, Paragraph 15.

[44] EELN flash report (Greece) of 24 November 2020, 'First Greek judgment on the recognition of a non-binary person', https://www.equalitylaw.eu/downloads/5311-greece-first-greek-judgment-on-the-recognition-of-a-non-binary-person-108-kb.

[45] Article 5(1) of the Greek Constitution stipulates that '1. All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usages'.

founded on Article 14(1) Act 344/1976 on the certificates of registration[46] and on Act 4491/2017, OJ A 152/13.10.2017, on the legal recognition of gender identity.

In this context, the Court found that the petitioner, registered at birth as a woman, since adolescence was attracted to persons of both genders without wishing to experience such relationships as a bisexual woman but rather as a man and a woman at the same time, i.e. as a non-binary person. Thus, by a stable and specific choice, the petitioner since 2017 has asked her friends, family and social environment to address her with the name '…' and the surname '…'. This has become an indispensable and stable characteristic of the petitioner's personality by which exclusively the petitioner is known and addressed by the family and the social environment. At the same time, it facilitates the petitioner's social relations and is in line with the petitioner's psyche and the free development of the personality of the petitioner. It also ensures security in the petitioner's transactions with the state and with individuals. According to the Court, eventual rejection of the said claim would create undesirable consequences for the petitioner in reference to their personal and social situation and image.

To date, two prior relevant cases have been brought to the Justice of the Peace of Amaroussion. The first one was brought by a human rights activist and a candidate councillor for the prefecture of Athens in the elections of 2019 who identifies as neither a man nor a woman, neither male nor female, but non-binary and specifically as genderqueer and was the first person to ask for official recognition as a non-binary person in Greece. In November 2017, the activist took legal steps to ask to legally be referred to as gender neutral, with gender erased from the ID. That came one month after a bill was passed from the Parliament to allow people to change the gender on their identity cards. However, the activist wanted gender to be erased entirely. In February 2018, the court ruled in favour of allowing the activist to identify as a non-binary person on identity cards and to add the female name Antigone (from the mythic heroine) next to the baptismal male first name Jason, but not to totally erase gender from the cards. Dane has brought an appeal before the First Instance Court of Athens, where the case has been heard but the judgment is still pending. There is also a second judgment of the Amaroussion Justice of the Peace which has rejected the petition of a non-binary person to have gender totally erased from the cards. An appeal is still pending before the First Instance Court of Athens.

The Ombudsman has dealt with complaints by transgender persons on two occasions. The first complaint was brought in 2012 by two minor trans female pupils aged 14 and 15 years, together with their parents, concerning harassment at school on the grounds of their gender identity. They wanted to be called by the names of their own choice and to be treated with respect and acceptance on an equal footing with their other co-pupils. The Ombudsman organised several meetings with the teachers. They were informed on the legal framework for the protection of transgender persons, the medical, societal and psychological dimensions of the issue and the importance of the timely recognition and acceptance of transgender persons for their future psychosocial development. The Ombudsman found that the complainants should be called by their teachers and co-pupils by the name of their own choice; they should also be free to dress according to their preferences and use the toilet corresponding to their gender identity in which they felt safe. The teachers involved were willing to support the complainants but deplored the lack of any relevant guidance by the competent Ministry of Education.[47]

[46] Article 14(1) Act 344/1976, OJ A 143/11.06.1976, as amended by Article 7(1) Act 4491/2017, OJ A 152/13.10.2017, stipulates that 'Modifications related to the situation of a natural person due to … change of name, surname … or due to the correction of the registered gender are registered in the field 'Modifications' of the information system of Article 8A within one month since they took place, upon submission of … a certificate of irrevocability of the relevant judicial judgment… Especially in the case of the correction of the registered gender, the judicial judgment may be final'.

[47] Greek Ombudsman (2013), 'Διαμεσολάβηση του Συνηγόρου του Πολίτη για τη στήριξη της φοίτησης διεμφυλικού προσώπου σε δημόσιο σχολείο' (Mediation of the Ombudsman for the support of a transgender person attending a public school), available at: https://www.synigoros.gr/resources/docs/synopsi-diamesolavisis--2.pdf.

On another occasion, in 2018, transgender persons lodged complaints to the Ombudsman because they had been excluded as candidates for the Police schools on the grounds of gender identity. The Chief of the Greek Police invoked that the 'disorder of gender identity' is still provided as a ground of incapacity in the legally binding *List of illness, disease and impairment*, applied by the Greek Army and the Greek Police. In the Special Report on Equal Treatment for the year 2019, the Greek Ombudsman states his intention to reopen this issue.[48]

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

Direct sex discrimination is explicitly prohibited in Greek legislation. More specifically, Act 3896/2010 transposing Directive 2006/54/EC, as amended by Article 22(2) Act 4046/2012 'On the promotion of substantive gender equality etcetera', OJ A 50/26.3.2019 and Act 4097/2012 transposing Directive 2010/41/EU prohibit direct and indirect discrimination on grounds of sex *and family status*:

i) Act 3896/2010: a general prohibition in all the areas covered by the Act (Article 3(1)); a prohibition 'in access to salaried or non-salaried [i.e. not subordinate] employment and professional life in general, including the criteria for selection and conditions of hiring in all sectors of activity and levels of professional hierarchy' (Article 11(1)); 'in publications, advertisements, calls for candidacies, circulars and internal regulations regarding the selection of persons for filling work vacancies, for professional education or training or for professional licences' (Article 11(2)); in terms and conditions of employment and occupation, promotion as well as the designing of systems for personnel evaluation (Article 12); and in professional orientation, training and retraining (Article 13).
ii) Act 4097/2012: a prohibition in the areas listed in Article 4(1) of Directive 2010/41/EU (Article 4(1)).

Furthermore, Article 4(1) of Act 3769/2009 copies Article 4(1) of Directive 2004/113/EC. Article 52(3) of Act 4075/2012 transposing Directive 2010/18/EU prohibits the dismissal (stipulating that it is invalid) and any unfavourable treatment of a worker due to an application for or the taking of parental leave, as does Article 5(1) and (7) of Presidential Decree (PD) 80/2012 transposing Directive 2010/18/EU for workers under a contract of maritime employment. These provisions comply with Directive 2010/18/EU.

The definition 'where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation' was provided by Article 2(a) of Act 3896/2010 transposing Directive 2006/54/EC before its amendment by Act 4604/2019 (see next paragraph); it is still provided by Article 3(a) of Act 4097/2012 transposing Directive 2010/41/EU and by Article 2(a) of Act 3769/2009 transposing Directive 2004/113/EC. The definition is copied from the Directives.

Article 22(2)(a) Act 4604/2019 amended the definition of 'direct discrimination' of Article 2(a) Act 3896/2010 transposing Directive 2006/54/EC as follows:

> '"direct discrimination": any act or omission that excludes or places in an evidently inferior position persons because of sex, sexual orientation and gender identity; moreover, any instruction, instigation or systematic encouragement of persons to discriminate in an unfavourable or unequal way against other persons on the grounds of sex'.

[48] Greek Ombudsman (2019), 'Ίση μεταχείριση – Ειδική έκθεση 2019' (Equal treatment – Special report 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

In the author's opinion, the use of the word 'because' is more restrictive than 'on grounds of sex' as it seems to require a direct causal link, thus risking the exclusion of discrimination by association. On the other hand, the use of the wording 'evidently inferior position' also seems to be a stronger requirement than 'less favourable treatment', whereas the requirement of 'evidently' less favourable treatment is restrictive in comparison to the wording of Directive 2006/54/EC, which does not use such a word. Moreover, the definition of direct discrimination adopted by Act 4604/2019 uses only the present tense ('excludes or places in an inferior position'), omitting the present perfect tense and the conditional tense ('is, has been or would be treated in a comparable situation') used by the Directive and its implementing Law 3896/2010; thus, no comparison to a past or hypothetical comparator is allowed (see also 3.4.1 below on indirect discrimination, 3.5.1 below on multiple discrimination, 3.6.1 below on positive action and 3.7.3 below on sexual harassment). A survey of the year 2019[49] deplores that the definition of direct discrimination in Article 22(2)(a) Act 4604/2019 creates legal uncertainty: instead of copying the relevant definitions of EU law, the legislator chose to draft a new definition that is legislatively imperfect and legally dangerous.

Article 2(9) Act 4604/2019 defined for the first time *'gendered discrimination'* as physical, psychological or verbal conduct, through which persons are degraded, *inter alia*, on the grounds of sex.

3.3.2 Prohibition of pregnancy and maternity discrimination

Pregnancy and maternity discrimination are explicitly prohibited in Greek legislation as forms of direct sex discrimination in: Article 3(4) of Act 3896/2010 transposing Directive 2006/54/EC; Article 3(a) of Act 4097/2012 transposing Directive 2010/41/EU; Article 4(1)(a) of Act 3769/2009 transposing Directive 2003/113/EC. The legislator copied the prohibitions contained in the Directives.[50] Article 18 of Act 3896/2010 also prohibits less favourable treatment of parents due to parental leave, adoption or fostering of a child as a form of discrimination (see 5.5.15 below).[51]

These provisions comply with Article 2(2)(c) of Directive 2006/54/EC.

3.3.3 Specific difficulties

In Greece, there have been no specific difficulties in applying the concept of direct sex discrimination. However, the rephrasing of the relevant definition by Article 22 Act 4604/2019 resulted in a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece. Moreover, it created lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the directives.

Case law has for a long time condemned direct sex discrimination in access to and the conditions of employment in the private and public sector, in particular concerning blanket

[49] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (*The legal treatment of gender-based discrimination in Greece*), Heinrich Böll Stiftung, Greece, p. 35.

[50] The Supreme Civil and Penal Court (SCPC) (Civil Section) No. 37/2004 relying on the Act transposing Directive 76/207/EEC, Article 4(2) of the Constitution and Article 141(1) TEC (now 157 TFEU) held that a prejudicial modification of working conditions after maternity leave constituted discrimination on the ground of sex.

[51] The Athens Court of Appeal (CA), No. 3693/2018, dealt with the non-recognition of the time of unpaid parental leave of the claimant as working time for the purpose of the calculation of the pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme due to the payment of both the employer's and the employee's contribution by the employee. Although it did not explicitly identify it as direct gender discrimination, the Court of Appeal found that this practice was contrary to Act 3896/2010 and Article 21(1) of the Constitution requiring the protection of maternity.

exclusions[52] or maximum quotas for women[53] and discriminatory dismissals until they were abolished by the legislator. This case law relied on Article 4(2) of the Constitution, Directive 76/207/EEC and the Act transposing it.[54]

However, in a recent case the First Instance Civil Court of Athens[55] subjected the finding of discrimination to the requirement of fault, which is contrary to the CJEU case law in the cases *Dekker*[56] and *Draehmpaehl.*[57]

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition

Indirect sex discrimination is explicitly prohibited in Greek legislation. Act 3896/2010 transposing Directive 2006/54/EC and Act 4097/2012 transposing Directive 2010/41/EU prohibit direct and indirect discrimination on grounds of sex and family status:

i) Act 3896/2010: a general prohibition in all the areas covered by the Act (Article 3(1)); a prohibition 'in access to salaried or non-salaried [i.e. not subordinate] employment and professional life in general, including the criteria for selection and conditions of hiring in all sectors of activity and levels of professional hierarchy' (Article 11(1)); 'in publications, advertisements, calls for candidacies, circulars and internal regulations regarding the selection of persons for filling work vacancies, for professional education or training or for professional licences' (Article 11(2)); in terms and conditions of employment and occupation, promotion as well as the designing of systems for personnel evaluation (Article 12); and in professional orientation, training and retraining (Article 13).
ii) Act 4097/2012: a prohibition in the areas listed in Article 4(1) of Directive 2010/41/EU (Article 4(1)).

The definition: 'where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary' used to be provided in Article 2(b) of Act 3896/2010 transposing Directive 2006/54/EC (recast), before its amendment by Article 22 Act 4046/2019; it is still provided in Article 3(b) of Act 4097/2012 transposing Directive 2010/41/EU, and Article 2(b) of Act 3769/2009 transposing Directive 2004/113/EC: The definition is copied from Article 2(2)(c) of Directive 2006/54/EC.

Article 22(2)(b) Act 4604/2019 amended the definition of 'indirect discrimination' included in Article 2 Act 3896/2010 transposing Directive 2006/54/EC as follows:

> '"indirect discrimination": any act or omission that places in an inferior position persons on the grounds of sex, sexual orientation and gender identity by means of

[52] CS Judgments Nos 1323/2016 and 1324/2016 (Full Section) found that the provisions of Article 1(2) Act 2936/2001, OJ A 166/25.7.2001, which provided the blanket exclusion of women from all the operational and technical work posts of professional soldiers ('Επαγγελματίες Οπλίτες' - ΕΠ.ΟΠ.), were in breach of the constitutional provisions on gender equality and Directive 76/207/EC. In the same line, CS 685/2017, 597/2017, 1571/2016, 162/2015 and 163/2015 (the latter two referred the case to the CS Full Section). See also CS 3018/2014 (Full Section), which found unlawful the provisions of Article 9 Act 2734/1999, OJ A 161/05.08.1999, which provided the blanket exclusion of women from the corps of Special Guards ('Ειδικοί Φρουροί').

[53] Quotas for access: SCPC (Civil Section) No. 1360/1992 (private banks); CS No. 1917/1998 (Plen.) (Police Academies); CS 2124/2015, 1265/2014 (Municipal Police); CS 1986/2005 (Full Section) (Border Guards – 'Συνοριακοί Φύλακες').

[54] Nullity of dismissal: SCPC (Civil Section) Nos 85/1995, 593/2006, 496/2011 (private sector).

[55] Athens FICC No. 2323/2018 (Labour Disputes Procedure).

[56] CJEU, Case C-177/88, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*, 8 November 1990.

[57] CJEU, Case C-180/95, *Draehmpaehl v Urania Immobilienservice* 22 April 1997.

an apparently neutral provision, criterion or practice, unless this provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'.

In the author's opinion, the use of the wording 'evidently inferior position' seems to be a stronger requirement than 'less favourable treatment'. Moreover, the use only of the present tense ('excludes or places in an inferior position') falls short of the wording of the Directive ('would put [...] at a particular disadvantage'), which also covers the possibility of creating a particular disadvantage. A survey of the year 2019[58] deplores that the definition of indirect discrimination in Article 22(2)(b) Act 4604/2019 creates legal uncertainty: instead of copying the relevant definitions of EU law, the legislator chose to draft a new definition that is legislatively imperfect and legally dangerous.

3.4.2 Statistical evidence

Statistical evidence has been used in order to establish a presumption of indirect sex discrimination regarding the minimum height of men and women for access to military and semi-military corps.

i) The CJEU *Kalliri* case and its follow-up: Common minimum height requirement (MHR) to the detriment of women for access to the Police Academy entails indirect gender discrimination

After the repeal of maximum quotas for accepting women to Police academies, the minimum height requirement, which was previously 1.70 m for men and 1.65 m for women, was raised to 1.70 m for both men and women.[59] Candidates who do not fulfil this condition are automatically excluded from any further assessment. The Athens Administrative Court of Appeal (ACA) held that the common minimum height requirement for men and women candidates (1.70 m) 'is arbitrarily equalising men and women, in spite of their biological difference, since the average height of Greek men is 1.67 m, while the average height of Greek women is 1.55 m'. The ACA moreover held that it does not result from relevant provisions or other data, in conjunction with common experience, that this minimum height is a genuine occupational qualification.[60]

The CS, while accepting that 'according to common experience, the average height of Greek men is taller than that of Greek women', considered the requirement to be compatible with the Constitution and Directive 76/207/EEC, because it was justified by reasons of public interest related to Police duties. More particularly, it held that this is a necessary and appropriate condition for effectively discharging Police duties, which require specific physical qualifications, such as 'dealing with violence during public gatherings, violent and terrorist acts and the transfer of detained persons. These duties, the character of the Police as a militarily organised armed corps and the conditions under which they exercise their activities constitute specific and appropriate criteria which, according to common experience justify indirect discrimination against women, since women must have the same physical qualifications as men in order to be able to discharge the main Police duties as successfully as men'. However, the CS did not specify in which respect the 1.70 m height requirement was a necessary and appropriate qualification. Those 'mere

[58] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (*The legal treatment of gender-based discrimination in Greece*), Heinrich Böll Stiftung, Greece, p. 35.

[59] Article 1(1) of PD 90/2003, OJ A 82/10.4.2003.

[60] Athens Administrative Court of Appeal (ACA) Nos 734/2008, 737/2008, 738/2008, 571/2008, 1256/2007, 1255/2007,761/2007, 762/2007, 763/2007, 75/2007, 1066/2004, 988/2004, 441/2004, 440/2004; *contra* CS No. 1247/2008, Athens ACA Nos 164/2009, 911/2008, 608/2004, 697/2004, 1617/2004, 1683/2004, 2642/2004, 2953/2004, 2955/2004, 249/2006, 2790/2006, 382/2007, 1425/2007.

generalisations' could not exclude indirect discrimination, according to the CJEU.[61] Therefore, in the author's view, this CS case law is not in line with EU law.

In a similar case (the *Kalliri* case), the five-member chamber was split as to the existence of indirect discrimination and so referred the matter to a seven-member chamber,[62] which made a preliminary reference to the CJEU.[63]

In the *Kalliri* case, the CJEU held that, 'the provisions of Council Directive 76/207/EEC, as amended by Directive 2002/73/EC, must be interpreted as precluding a law of a Member State […] which makes candidates' admission to the competition for entry to the Police school of that Member State subject, whatever their sex, to a requirement that they are of a physical height of at least 1.70 m, since that law works to the disadvantage of a far greater number of women compared with men and that law does not appear to be either appropriate or necessary to achieve the legitimate objective that it pursues'.[64]

The Greek Ombudsman welcomed the CJEU *Kalliri* case by a press release.[65] The Ombudsman recalled his previous repeated findings that common MHR and common athletic requirements for both male and female candidates constitute prohibited indirect gender discrimination. More specifically, the Ombudsman, as the competent equality body, had twice raised this issue in the past: (i) in 2010, the Ombudsman[66] showed the disproportionately detrimental effect of the above requirements on female candidates in a very elaborate way and with recourse to statistical data provided by the Police itself for the years 2003-2009, research and expertise; (ii) in 2017, the Ombudsman asked the Chief of the Greek Police and the Chief of the Fire Brigade[67] to submit data on the necessity and appropriateness of MHR, in particular with regard to specifications for the use of special equipment or machines, existing evaluation of the service adequacy of employed firefighters with a height lower than 1.70 m, comparative data on MHR in other countries. The author is not aware of any response of the competent authorities to date.

Following the CJEU *Kalliri* judgment, the case was introduced before the seven-member section of the CS which issued Judgment No. 2055/2019. By a majority of five out of seven votes, the CS found that the impugned provision of Article 2(1) PD 4/1995 constitutes indirect discrimination on the grounds of gender.[68] However, the case was referred to the

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[61] See e.g. CJEU, C-167/97, *Regina v Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez*, 9 February 1999; CJEU, C-77/02, *Erika Steinicke v Bundesanstalt für Arbeit,* 11 September 2003.

[62] CS No. 18/2014.

[63] CS No. 1420/2016.

[64] CJEU, C-409/16 *Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v Maria-Eleni Kalliri*, 18 October 2017.

[65] Greek Ombudsman, press release on the CJEU *Kalliri* case, https://www.synigoros.gr/resources/20171120-dt-kim.pdf.

[66] Greek Ombudsman, finding No. 15919/2009/17.5.2010, https://www.synigoros.gr/resources/20171120-porisma-kim.pdf.

[67] Greek Ombudsman, letter No. 214965/22936/2017/29.5.2017 to the Chief of the Greek Police and to the Chief of the Greek Fire Brigade, https://www.synigoros.gr/resources/docs/20171120-eggrafo-stp-kim.pdf.

[68] CS judgment No. 2055/2019 makes reference to the history of women's access to Police schools and its previous case law, which had found earlier restrictions on women's enrolment in Police schools to constitute direct gender discrimination: an original 15 % quota to the detriment of women, provided by Article 1(2a) Act 2226/1994, OJ A 122/21.7.1994, as amended by Article 12(1) Act 2713/1999, OJ A 89/30.4.1999, after having been found to constitute direct gender discrimination by the CS judgment No. 1917/1998, was abolished by Article 20(3) Act 3103/2003, OJ A 23/29.1.2003, which provided common physical requirements and athletic and psychotechnical tests for both sexes. PD 4/1995 originally provided a minimum height of 1.70 m for male candidates and 1.65m height for female candidates for the Police schools. For reasons of conformity with the above provision of Article 20(3) Act 3103/2003, Article 2(1) PD 4/1995 was amended by Article 1(1) of PD 90/2003, providing a common height requirement of 1.70 m for both sexes.
Moreover, it cites various research documents concerning the average height of men and women in Greece, including the 2011 study on 'Minimum body height requirements for Police officers – an international comparison', invoked by the European Commission in its remarks to the CJEU in the *Kalliri* case. The CS found that in the period 2001-2011: (a) the minimum height requirement (MHR) of 1.70 m is 7-8 cm lower than the average height (AH) of men aged 18-24 years, whereas it is 6-7 cm higher than the AH of women

CS Full Section due to the importance of the issues raised regarding the compatibility of the impugned provisions with the Greek Constitution and with EU law.[69] The same was decided by CS Judgments Nos 2056-2060/2019 with regard to five other similar cases.

Although the issue was referred to the CS Full Section, which will have the last word, the CS Judgment No. 2055/2019 is of major importance for two reasons:

(a) by highlighting the historic development of women's access to the Police schools (initial blanket exclusion of women, subsequent 15 % quota to the detriment of women), it has shown that the legislator has not been neutral in the past. Moreover, by justifying in a very systematic and elaborate way the necessity of setting different MHR for men and women in conformity with the average height of each sex with extended references to the findings of the CJEU *Kalliri* judgment and the European Commission's comparative data, it has cleared the ground for the CS Full Section.
(b) the CS has very successfully applied the notion of indirect discrimination, rejecting the allegations of the defendant Greek State regarding the necessity of the specific MHR for the effective functioning of the Police force as general, vague and unproved. Thus, the lack of an objective justification was considered to be part of the definition of indirect discrimination.

i) Higher minimum height for male candidates to the Fire Brigade does not entail gender discrimination

Article 1(5) PD 5/1995 (OJ A 2/10.01.1995) requires a minimum physical height of 1.70 m for male candidates to the Fire Brigade and of 1.65 m for female candidates. In 2006, a male candidate was rejected on the basis of his height (1.66 m). The documents supporting his candidature were returned to him and he was not allowed to participate in the relevant selection procedure. He lodged a petition for annulment, arguing *inter alia* that the differentiation of the minimum height between male and female candidates is contrary to EU law as well as national law. Following the rejection of his petition by Judgment No. 1483/2009 of the ACA of Athens, the male candidate appealed before the

of the same age group; (b) 80 % of the male population are of this height compared to only 19 % of the female population. Thus, it is evident that the percentage of female potential candidates (aged 18-26 years, according to the impugned provision) who are excluded for being shorter than 1.70 m is disproportionately larger than that of male potential candidates, who are excluded for the same reason. In view of the above, the CS found by a majority of five out of seven members that the common MHR of 1.70 m for both sexes does not constitute a genuine occupational requirement and that it is not necessary and suitable to ensure the operational capacity and proper functioning of the Police services. Endorsing the phrasing of the CJEU in *Kalliri*, the CS found that even if all the functions carried out by the Greek Police required a particular physical aptitude, it would not appear that such an aptitude is necessarily connected with being of a certain minimum height or that shorter persons naturally lack that aptitude. In any event, the aim pursued by the law at issue can be achieved by the preselection of candidates based on specific tests allowing their physical ability to be assessed. In this respect, the CS noted that two more common athletic tests have been added to those originally provided (running 100 m in 16 seconds and throwing a shot weighing 7.275 kg, which is used by male athletes). Moreover, all candidates (both male and female) have to accomplish the minimum score provided for each athletic test (common athletic requirement), which in the case of certain sports was even raised above the minimum score required for male candidates in the past. The CS made explicit reference to the remarks of the European Commission to the CJEU in the *Kalliri* case concerning the international requirements of the physical aptitude of the Police force, which showed (a) that a large number of European states have abolished MHR for access to the Police force, with a few exceptions regarding special corps or specific managerial posts; (b) that at the international level there is a tendency to substitute MHR by body mass index, differentiated by gender; (c) that in the majority (51 %) of EU Member States, MHR exist, but they are set in conformity with the average height of each sex, with registered differences between MHR set for male and MHR for female candidates ranging from 2 to 10 cm (most commonly 5 cm); (d) that a common MHR is an exception among EU Member States, and in most cases it is set lower than the average height of the population, so that the number of excluded candidates is limited; (e) in other European countries (except Greece), MHR for female candidates, either common, or differentiated by sex, range from 1.52 m to 1.65 m and only in Greece is there a MHR for female candidates set at 1.70 m.

[69] According to Article 14(2)(b) of PD 18/1989 (OJ A 8/09.01.1989), the CS Full Section is competent for issues or cases referred to it by judgments of the five-member or seven-member section due to their major importance. The judgment of referral is the report to be developed before the CS Full Section by the Judge Rapporteur, who is appointed by the same judgment.

CS in 2009. The issue of his appeal being considered of major importance, the case was referred to the seven-member section of the CS, which by its Judgment No. 8/2005 adjourned its decision until the publication of the CJEU judgment in the *Kalliri* case.[70] The appeal was eventually heard on 1 November 2018.

In CS Judgment No. 2099/2019, the case was referred to the Full Section of the CS[71] due to the importance of the issues raised regarding the compatibility of the impugned provision with the Greek Constitution and EU law and the relevance of the case to the *Kalliri* case (CS Judgment No. 2055/2019) which has also been referred to the CS Full Section by its seven-member section (together with Judgments Nos 2056-2060/2019 in five cases similar to the *Kalliri* case*)*.[72]

Although the issue was referred to the CS Full Section, which will have the last word, the CS Judgment No. 2099/2019 is of major importance for two reasons:

(a) by outlining the historic development of women's access to the Fire Brigade (initial blanket exclusion of women therefrom, subsequent 10 % quota to the detriment of women), the Court has shown that the legislator has not been gender neutral in the past. Moreover, it has cleared the ground for the judgment of the CS Full Section, by justifying in a very systematic and elaborate way the necessity of setting different MHRs for men and women and the elements to be taken into account in line with CS Judgment No. 2055/2020 (the follow-up to the CJEU *Kalliri* case) and CS Judgments Nos 2056-2060/2020 (in five other cases similar to the *Kalliri* case) which have also been referred to the CS Full Section and are still pending.

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[70] CJEU, C-409/16, *Kalliri*, 18 October 2017, EU:C:2017:767.

[71] According to Article 14(2)(b) of PD 18/1989 (OJ A 8/9.1.1989), the CS Full Section is competent for issues or cases referred to it by judgments of the five-member or seven-member section due to their major importance. The judgment of referral is the report to be developed before the CS Full Section by the Judge Rapporteur, who is appointed by the same judgment.

[72] According to the Court, women were first granted access to the Greek Fire Brigade by PD 5/1995, as requested by the CS in the exercise of its competence of elaboration of the above presidential decree. Originally, the minimum height was set at 1.70 m for male candidates and at 1.60m for female candidates, but the latter was raised to 1.65 m by PD 397/1998 (OJ A 276/8.12.1998). The above minimum heights (1.70 male, 1.65 female) are still contained in the Regulation at issue (PD 19/2006 OJ A 16/07.02.2006), which also provides other entry criteria, such as common athletic requirements for both sexes (already found to be objectively justified as genuine occupational requirements by CS Judgments Nos 978-980/2016), written exams, interviews and psychotechnical tests. A quota of 10 % to the detriment of women introduced by Article 12(2) Act 2713/1999 (OJ A 89/30.4.1999) was subsequently abolished by Article 12(3) Act 3387/2005 (OJ A 224/12.9.2005) in light of the relevant CS jurisprudence (CS 1917/1998 Full Section) concerning women's access to the Police Academy. By construing the applicable national law in light of the CJEU's *Kalliri* case, the CS found that when fixing a minimum height requirement for access to special corps like the Fire Brigade, the national legislator has to sufficiently justify that this is necessary, appropriate and in conformity with the principle of proportionality. Moreover, such a requirement should not largely deviate from the average height of the population according to up-to-date scientific research, in order to avoid excluding an exceptionally large number of potential candidates. On the other hand, the biological difference between men and women regarding height should also be taken into account in order to avoid an *a priori* exclusion of a disproportionately bigger percentage of female candidates as compared to male candidates of the same age. In view of the above, the Court stated that the legislator may opt (a) for a different minimum height requirement for male and female candidates following the average height differential between sexes according to common knowledge and relevant scientific research or (b) for a common minimum height requirement for both sexes, which, however, should not exclude a disproportionately higher percentage of female potential applicants than that of male potential applicants on the basis of this requirement. Otherwise, this would constitute indirect discrimination in accordance with the findings of the CJEU in the *Kalliri* case. In the context of the current case, the Court found that the impugned provision providing a shorter minimum height requirement for female candidates is not in breach of the constitutional provision on gender equality but *a contrario* seeks to restore real gender equality regarding access to employment by the Fire Brigade in conformity with EU law and the Greek Constitution (Art. 4(2) and 116(2) of the Greek Constitution), given that the average height of Greek men aged 18 years is 1.77 m compared to 1.63 m for women of the same age. This was stated in the CS Judgment 1420/2016, which submitted the preliminary reference to the CJEU in the *Kalliri* case. In this regard, the CS also made explicit reference to the judgment of the *Cour Administrative d' appel de Paris* of 11 May 2006, which found that the relevant French provision setting a minimum height requirement for access to the Police of 1.68 m for male candidates and 1.60m for female candidates does not constitute gender discrimination to the detriment of men.

(b) it applied *ipso jure* the relevant provisions of EU law (Directives 76/207, 2002/73 and 2006/54 applicable at the time) given that the applicant had only invoked 'the EC law' in general.

ii) Successive increase and decrease of minimum height requirement for female candidates to the Port Police makes it doubtful whether the set height of 1.65 m is a genuine occupational requirement.

Article 2(d) of the Ministerial Decision 1211.2/18/07/25.9.2007 (OJ B 1958/04.10.2007) of the Minister of Maritime Affairs and Insular Policy provides a minimum physical height of 1.70 m for male candidates and of 1.65 m for female candidates to the Port Police. In 2008, a female candidate was rejected because of her height (1.63 m). The documents supporting her candidature were returned to her and she was not allowed to participate in the relevant selection procedure. She lodged a petition for annulment, arguing *inter alia* that the minimum height requirement (hereinafter MHR) for female candidates (1.65 m) set at least 2 cm higher than the average height of women in Greece (1.63 m), whereas the MHR for male candidates (1.70 m) was considerably lower than the average height of men in Greece (1.78 m), was in breach of EU law as well as national law. She also argued that in other competitions (both in previous years and in the years to follow) the MHR for female candidates to the Port Police was 1.60 m and that its successive increase and decrease puts in doubt whether it is a necessary and appropriate means to ensure the pursued aim.

Following the rejection of her petition by Judgment No. 598/2009 of the ACA of Piraeus, the female candidate appealed before the CS in 2010. The issue of her appeal being considered of major importance, the case was referred to the seven-member section of the CS, which by its Judgment No. 1426/2016 adjourned its decision until the publication of the CJEU judgment in the *Kalliri* case.[73] The appeal was eventually heard on 1 November 2018.

In CS Judgment No. 2353/2019, the case was referred to the Full Section of the CS[74] due to the importance of the issues raised regarding the compatibility of the impugned provision with the Greek Constitution and EU law and the relevance of the case to the CS's *Kalliri* case, which by CS Judgment No. 2055/2019 had also been referred to the CS Full Section. CS Judgments Nos 2056-2060/2019, in five cases similar to the *Kalliri* case, and CS Judgment No. 2099/2019, concerning higher minimum height for male candidates to the Fire Brigade, had also been referred to the CS Full Section for the same reason. According to the majority opinion of the Court (six out of seven members), the MHR for male (1.70 m) and female (1.65 m) candidates to the Port Police does not entail direct or indirect discrimination on the grounds of gender.[75] However, a very interesting and

[73] CJEU, C-409/16, *Kalliri*, 18 October 2017, EU:C:2017:767.

[74] According to Article 14(2)(b) of PD 18/1989 (OJ A 8/9.1.1989), the CS Full Section is competent for issues or cases referred to it by judgments of the five-member or seven-member section due to their major importance. The judgment of referral is the report to be developed before the CS Full Section by the Judge Rapporteur, who is appointed by the same judgment.

[75] Article 4 Act 1009/1980 (OJ A 25/29.1.1980) granted women access to the Port Police for the first time, albeit limited to certain work posts. This provision was abolished by Article 18(1) Act 2329/1995 (OJ A 172/22.8.1995). The Code of Personnel of the Port Police, in its Article 5(1), as amended by Article 2(3) Act 3569/2007 (OJ A 122/8.6.2007), provides that requirements for access to the Port Police are defined by Ministerial Decision. Thus, Ministerial Decision 1211.2/18/07/25.9.2007 (OJ B 1958/4.10.2007) of the Minister of Maritime Affairs and Insular Policy set the MHR at 1.70 m for male candidates and at 1.65 m for female candidates to the Port Police. This MHR was required in the competition of the year 2008, together with other entry criteria, such as common athletic requirements for both sexes (already found to be objectively justified as genuine occupational requirements by CS Judgments Nos 978-980/2016), written exams and health checks. According to the majority opinion of the Court (six out of seven members), the MHR for male (1.70 m) and female (1.65 m) candidates to the Port Police does not entail direct or indirect discrimination on the grounds of gender in that: (a) the difference of 5 cm of the MHR for male and female candidates is in line with the biological difference between men and women whereas the legislator is not obliged to set the MHR in total correspondence to the average height of each sex; (b) the MHR for female candidates was rather low in that it exceeded the average height of women (1.63 m) by only 2 cm, without

pertinent dissenting opinion was expressed by one member (out of seven) of the Court regarding whether the MHR of 1.63 m for female candidates constituted a genuine occupational requirement.[76] The dissenting judge recalled the CJEU case law according to which 'national legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a concern to attain it in a consistent and systematic manner' (see cited CJEU judgments C-169/07, *Hartlauer*,[77] Paragraph 55; C-168/14, *Grupo Itevelesa and Others*,[78] Paragraph 76; C-157/15, *G4S Secure Solutions*,[79] Paragraph 40; C-634/15, *Sokoll-Seebacher and Others*,[80] Paragraph 27). In line with the above reasoning of the CJEU, the dissenting opinion of CS Judgment No. 2353/2019 very pertinently shows that the lack of consistency and cohesion in the manner national legislation sets requirements which limit access to employment of candidates of one sex, makes it doubtful whether the conditions for a genuine and determining occupational requirement according to Article 14(2) of Directive 2006/54 are met. To the author's knowledge, this is the first judgment raising this issue regarding genuine occupational requirements. Of course, the CS Full Section will have the last word.

3.4.3 Application of the objective justification test

Despite the successful application of the objective justification test in the above-mentioned recent CS judgments, its application has been problematic in the following two issues.

i) Common minimum athletic requirements (MAR) for access to the Police school and semi-military corps

Historically, women's access to the Police schools has always been restricted in Greece. An initial blanket exclusion of women was followed by a 15 % quota to the detriment of women which was found to be in breach of the constitutional gender equality principle.[81] Upon abolishment of the quota, Article 1 PD 90/2003 provided for the first time MHR[82] and MAR[83] common to both sexes. Common MHR were found by the CJEU in the *Kalliri* case[84] to be indirectly discriminatory to the detriment of female candidates. The post-*Kalliri* CS Judgment No. 2055/2019 referred the case to the CS Full Section, where it is still pending.

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excluding a far larger percentage of women than men as it did in the *Kalliri* case (1.70 m for both sexes). According to the data provided by the Greek State, in the competition at issue 3 223 female and 4 048 male candidates did satisfy the impugned MHR, out of whom 316 female and 292 male candidates were successful.

[76] The dissenting judge noted that over a short period of time, the MHR for female candidates to the Port Police had undergone an unjustified increase and decrease by various other ministerial decisions: originally, in 1996, it was set at 1.63 m (for men at 1.70 m); in the years between 1997 and 2001, it was raised to 1.65 m (for men it remained at 1.70 m); in the year 2003 it was decreased to 1.60 m (for men it was decreased to 1.65 m), and in the year at issue, 2007, it was again raised to 1.65 m (for men it was raised to 1.70 m). Finally, in the years 2011, 2014 and 2015, the MHR for female candidates was decreased again to 1.60 m (for men it remained at 1.70 m). The dissenting judge argued that this shows a total lack of cohesion and raises doubts whether the MHR for female candidates at issue (1.65 m) constitutes an appropriate means for the accomplishment of the aim pursued. In this regard, it should be recalled that in the *Kalliri* judgment, which concerned a common MHR of 1.70 m for both sexes for access to Police schools, the CJEU took into account, among other elements, the fact that until 2003 the MHR required for admission to the same schools was 1.65 m for female candidates (1.70 m for male candidates); this led to the finding that the impugned law did not appear to be either appropriate or necessary to achieve the legitimate objective that it pursued, which is for the national court to determine.

[77] CJEU (Grand Chamber) Case C-169/07 *Hartlauer* [2009] ECLI:EU:C:2009:141, Paragraph 55.

[78] CJEU C-168/14 *Grupo Itevelesa and Others* [2015] ECLI:EU:C:2015:685, Paragraph 76.

[79] CJEU (Grand Chamber) Case C-157/15 *G4S Secure Solutions* [2017] ECLI:EU:C:2017:203, Paragraph 40.

[80] CJEU Case C-634/15 *Sokoll-Seebacher and Others* [2016] ECLI:EU:C:2017:203, Paragraph 27.

[81] CS Judgment No. 1917/1998.

[82] PD 4/1995, OJ A 1/10.1.1995, used to provide MHR of 1.65 m for female candidates which was raised to 1.70 m (equal to MHR for male candidates) by PD 90/2003.

[83] Article 1 PD 90/2003, as amended by Article 1 PD 76/2006, provides the following common minimum athletic requirements: a) running 100 m in 16 seconds (one effort); b) running 1 km in 4 minutes 20 seconds (one effort); c) running high jump 1.05 m (three efforts); d) running long jump 3.60 m (three efforts); e) throwing a shot weighing 7.275 kg a distance of minimum 4.5 m with the right and left hand (three efforts with each hand).

[84] CJEU, C-409/16 *Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v Maria-Eleni Kalliri*, 18 October 2017.

Since 2010, the Ombudsman (the equality body) has found that common MAR for access to the Police schools and the Fire Brigade[85] and to military academies[86] introduce indirect discrimination to the detriment of female candidates. Not only were common MAR raised above the pre-existing MAR for female candidates but, in certain sports, they were raised even above the pre-existing MAR for male candidates; MAR were added in two more sports as well.

In its pre-*Kalliri* case law, the CS had found common MAR to be lawful for access to the municipal Police forces[87] and to the Fire Brigade.[88] In the author's opinion, this jurisprudence which had been strongly criticised as contrary to EU law,[89] should have been revisited in the light of the CJEU *Kalliri* case. In its crux reasoning in *Kalliri*, the CJEU held that: (a) not all of the Police forces' functions could be said to use physical force (e.g. providing assistance to citizens or traffic control) (paragraph 38); (b) even if all the functions carried out by the Greek Police required a particular physical aptitude: (i) it should be taken into account that until 2003 the Greek law required different MHR (and MAR) for men and women (paragraphs 39-40); (ii) the legitimate aim of the effective accomplishment of the task of the Greek Police could be achieved by measures less disadvantageous to women, such as physical ability testing (paragraph 42); however, in paragraph 42 the CJEU did not deal with common MAR, which were not at stake as Mrs Kalliri had been excluded from athletic competitions due to insufficient height.

In its recent Judgment No. 1484/2020,[90] the CS found that common MAR do not entail indirect discrimination against female candidates in that they are objectively justified by a legitimate aim (the effective accomplishment of the task of the Greek Police) and are considered a necessary and appropriate means to achieve this aim, as Police officers are expected to perform activities which mainly require a very good physical aptitude and stamina.

In the author's opinion, the CS should have: (a) considered the Ombudsman's findings on the disproportionate disadvantage of common MAR against female candidates; (b) examined whether the current common MAR (as opposed to the pre-existing MAR different for each sex) are necessary and appropriate in line with the principles of consistency and cohesion established by the CJEU case law, according to which 'national legislation is appropriate for ensuring attainment of the objective pursued only if it genuinely reflects a

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[85] In its finding No. 15919/2009/17.5.2010, the Ombudsman, systematically and elaborately with recourse to statistical data, expertise and research, showed the disproportionately detrimental effect that common athletic requirements (in combination with MHRs) have had on female candidates. *Inter alia*, reference is made to the expert opinions of the Hellenic Association of Amateur Athletics (SEGAS) and of the Greek Olympic Committee. The latter confirmed that competitions in athletics have always been held separately for men and women and found that although the specific common MAR could be easily achieved by healthy male applicants, they were considerably more difficult to achieve for female candidates (in particular, the sport of shot put is to be performed with equipment used by male athletes).

[86] Greek Ombudsman, 'Μέτρα για την ισότητα των φύλων στις ένοπλες δυνάμεις μετά την παρέμβαση του Συνηγόρου του Πολίτη' (Gender equality measures in military corps after the intervention of the Ombudsman), available at: https://www.synigoros.gr/resources/docs/203940.pdf.

[87] ACA Nos 2458/2015, 41, 131 and 1191/2012; CS Nos 465/2017, 826/2016 (albeit a dissenting judge found common MAR indirectly discriminatory against women), 141/2016, 4674-8/2015 (7-member section), 4655/2015, 4300-2/2015 (7-member section).

[88] CS Nos 978/2016, 979/2016, 980/2016, 141/2016.

[89] Goulas, D. (2018), 'Ελάχιστο ανάστημα των υποψηφίων ασχέτως φύλου για τη συμμετοχή σε διαγωνισμό εισαγωγής σε αστυνομική σχολή' (Minimum height of candidates irrespective of sex for participation in the contest for access to the Police academy), *Επιθεώρησις Ευρωπαϊκού Δικαίου (ΕΕυρΔ)* (*European Law Review*), 1:2018, pp. 104-112.

[90] CS 1484/2020: A female candidate for the Police school for Police Officers and Policemen failed to reach one of the (common for both sexes) MARs (running 1 km in 4 minutes 20 seconds) (Article 5(5) PD 4/1995, as amended by Article 1(3) PD 90/2003, OJ A 82/10.4.2003, and further amended by Article 1 PD 76/2006, OJ A 77/11.4.2006). EELN Flash Report (Greece) of 14 April 2021 'Common athletic requirements for access to the Police Academy', https://www.equalitylaw.eu/downloads/5391-greece-common-athletic-requirements-for-access-to-the-police-academy-123-kb.

concern to attain it in a consistent and systematic manner';[91] (c) abstained from the vague and general justification that according to 'the lessons of common experience' the specific common MAR are not particularly high to exclude women, without any recourse to statistical data and/or expertise.

In any case, the CS should have referred the case to the CS Full Section, where the *Kalliri* case is still pending.[92] Alternatively, given that the issue of compatibility of common MARs with EU gender equality law had been raised before it, the CS (being the Supreme Administrative Court against whose decisions there is no judicial remedy under the Greek law) had the positive obligation to address a preliminary reference to the CJEU under Article 267(b) TFEU, as all the three criteria set out in the CJEU *Cilfit*[93] were not met. From the text of the CS Judgment No. 1484/2020 it is not clear whether the claimant had asked for a preliminary ruling and her application was tacitly rejected. In such a case, a breach of Article 6(1) of the European Convention of Human Rights would be substantiated: according to the well-established case law of the Strasbourg Court,[94] supreme courts have to give reasons when they reject an application for a preliminary ruling by one of the parties to the proceedings.

ii) Award of bonus points to candidates who have served in the army or in other corps to which women have no access or have limited access

In the context of indirect discrimination, another issue has been raised regarding the award of bonus points to candidates who have served in the army or in other corps to which women have no access or have limited access.

Article 1(21) PD 38/2020, OJ A 73/26.03.2020, (hereinafter 'the new provision') amended Article 8(1)(a) of PD 36/2019, OJ A 62/22.04.2019, concerning access to the posts of seasonal firefighters.[95] According to the new provision, 50 bonus points are awarded to candidates who have served as volunteer soldiers for a five-year term ('*εθελοντές πενταετούς υποχρέωσης*'), as professional soldiers in the Greek Army ('*επαγγελματίες οπλίτες - ΕΠ.ΟΠ.*'),[96] as reserve officers ('*έφεδροι αξιωματικοί*'), or in the Special Forces of the Greek Army[97] ('*Ειδικές Δυνάμεις*') or the Presidential Guard ('*Προεδρική Φρουρά*').[98] On 30 March 2020, the Chief of the Fire Brigade[99] issued a call for 1 300 seasonal

[91] CJEU (Grand Chamber) Case C-169/07 *Hartlauer* [2009] ECLI:EU:C:2009:141, paragraph 55; CJEU C-168/14 Grupo *Itevelesa and Others* [2015] ECLI:EU:C:2015:685, paragraph 76; CJEU (Grand Chamber) Case C-157/15 *G4S Secure Solutions* [2017] ECLI:EU:C:2017:203, paragraph 40; CJEU Case C-634/15 *Sokoll-Seebacher and Others* [2016] ECLI:EU:C:2017:203, paragraph 27. See also the dissenting opinion of one member (out of seven) of the CS Judgment No. 2353/2019.

[92] CS Judgment No. 2055/2019.

[93] CJEU, 6 October 1982, C-283/81, *Cilfit*: '…a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court of Justice or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community'.

[94] ECHR, *Sanofi Pasteur v France* (13.02.2020), on the need for domestic courts which, under Article 267 TFEU, are in principle obliged to make a reference to the CJEU for a preliminary ruling, to give reasons when they reject an application to that effect by one of the parties to the proceedings. In the *Sanofi Pasteur* case, the ECHR found that the French Court of cassation had breached Article 6 of the Convention by limiting its reasoning to finding that there was no need to call the CJEU.

[95] In Greece, the firefighting season lasts from 1 May to 31 October each year.

[96] For many years there has been a blanket exclusion of women from all the operational and technical work posts of professional soldiers ('*Επαγγελματίες Οπλίτες*' - *ΕΠ.ΟΠ.*). CS Judgments Nos 1323/2016 and 1324/2016 (Full Section) found that the provisions of Article 1(2) Act 2936/2001, OJ A 166/25.7.2001, which provided such a blanket exclusion, were in breach of the constitutional provisions on gender equality and Directive 76/207/EC.

[97] In Greece compulsory military service is limited to men.

[98] Women do not have access to the Presidential Guard, which is staffed by soldiers of the Army selected on the basis of certain criteria, *inter alia*, a minimum height requirement of 1.88m.

[99] Decision of the Chief of the Fire Brigade No. 17980 *F* 211.5/30.3.2020 [ΑΔΑ:ΩΜΩΒ46ΜΤΛΒ-Π4Ρ].

firefighters under a fixed-term employment contract, which is renewable for up to five consecutive firefighting seasons. The call replicates the new provision on the award of bonus points.

On this occasion, 29 members of the Greek Parliament (of SYRIZA, the political party of the opposition) submitted a question[100] to the competent Minister of Citizen Protection.[101] The MPs argued that this provision places female candidates at a significant disadvantage. This is due to the fact that (a) an overwhelming majority of those serving in the Special Forces ('*Ειδικές Δυνάμεις*') of the Greek Army are men, as a result of the qualification and access criteria thereto and (b) access to the Presidential Guard ('Προεδρική Φρουρά') is limited to men as it is staffed by selected soldiers serving their military service. This constitutes indirect discrimination against female candidates in breach of Article 11(1), (2) Act 3896/2010 implementing Directive 2006/54,[102] which will be perpetuated in the future given that the fixed-term contracts of the successful candidates are renewable for up to five consecutive firefighting seasons.

Regarding access to the Port Police school for Officers, the relevant call[103] was open to both genders, albeit bonus points were provided to candidates who had served in the Greek Army as reserve officers and warrant officers (2 000 bonus points), sergeant-majors and sergeants (1 000 bonus points) and corporals (500 points). In its Judgment No. 1016/2015, the CS found that female candidates were put at a significant disadvantage, as women do not serve military service in Greece. However, this disadvantage was objectively justified due to the nature of the job, as Port Police officers are military staff, governed by the same provisions applicable to their colleagues in the Navy. In its reasoning, the CS recalled two relevant CJEU judgments: *Dory*[104] and *Schnorbus*,[105] finding that the impugned provision did not introduce indirect discrimination to the detriment of women.[106]

[100] According to Articles 126-128B of the Regulation of the Greek Parliament, Members of the Parliament can address written questions to Ministers for any public issue with the aim to inform the Parliament thereof. The Ministers have to answer in writing to the MPs within 25 days.

[101] See publication in the Greek newspaper 'AVGI', available at: http://www.avgi.gr/article/10842/10918125/bouleutes-syriza-diakriseis-se-baros-gynaikon-ston-kanonismo-proslepses-ste-pyrosbestike#.

[102] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, pp. 23-36.

[103] Decision No. 1212.3/12/06/21.11.2006 of the Chief of the Port Police.

[104] CJEU, C-186/01, *Alexander Dory v Bundesrepublik Deutschland,* 11 March 2003, para. 40. The Court found that limitation of compulsory military service to men will generally entail a delay in the progress of the careers of those concerned, even if military service allows some of them to acquire further vocational training or subsequently to take up a military career.

[105] CJEU, C-79/99, *Julia Schnorbus v Land Hessen,* 7 December 2000, ECLI:EU:C:2000:676. In this case, a selection procedure accorded preference to applicants who had completed compulsory military or civilian service, which could be done only by men, thus disadvantaging female candidates. The Court found that such provisions are not precluded by Directive 76/207, in so far as such provisions are justified by objective reasons and prompted solely by a desire to counterbalance to some extent the delay resulting from the completion of compulsory military or civilian service.

[106] According to the CS, the impugned provision did not introduce indirect discrimination to the detriment of women because (a) it was objectively justified by the legitimate aim of public security and the need to select candidates of a high qualification pertinent to the duties of Port Police and (b) it counterbalanced the delay to the career of male candidates of the categories who are awarded the bonus points. According to the CS, the 500, 1 000 or 2 000 bonus points awarded could be easily counterbalanced either by scoring half a mark, one mark or two marks higher, respectively, than male candidates in the certificate of Greek secondary education or, where relevant, by having knowledge of a foreign language. The Court implicitly considered that female candidates excel in these qualifications. Consequently, the impugned provision was found to be appropriate and necessary to achieve the legitimate aim. With the same reasoning, the CS confirmed the legality of the impugned provision, which reserved 4 out of 33 posts in total to candidates who had served in the 'Special Forces' of the Greek Army, i.e. exclusively male candidates.

The second case concerned access to 1 200 posts of the Special Guards ('*Ειδικοί Φρουροί*'), a special corps of the Greek Police. The impugned provision[107] provided, *inter alia*, the award of 500 bonus points to candidates who had served in the Greek Army as reserve officers or in the Special Forces ('*Ειδικές Δυνάμεις*'). The Administrative Court of Athens, in its Judgment No. 2455/2015, made explicit reference to CS Judgment No. 1016/2015 (above) and adopted the same reasoning, merely rephrasing it. It consequently held that the impugned provision did not introduce indirect discrimination to the detriment of women.

In the author's view, the mere invocation of public security does not suffice for the objective justification of the discriminatory provision in question. In any case, even if the award of bonus points to candidates who have served in the army or in other corps to which women have no or only limited access may be objectively justified regarding access to the Port Police and Police (see above case law), it cannot be justified in relation to the specific nature of the posts of seasonal firefighters or in the particular context in which the activities in question are carried out. In the aftermath of the CJEU *Kalliri* case,[108] the CS has successfully dealt with the objective justification of indirect gender discrimination, signalling a turn from its previous case law. It remains to be seen whether the above-mentioned case law on the issue in question will be revisited in light of this new approach.

The issue in question has a significant social dimension as well. The impugned measure may have the effect of barring women from 1 300 posts of seasonal firefighters, which are not affected by negative trends in the economy or on the market.[109] This will be even more important for a small country like Greece in the meta-COVID-19 era, with the unemployment rate expected to reach 23 %. Such negative effects will be perpetuated in the future as well: the fixed-term contracts of the successive candidates can be consecutively renewed for five years; and service as a seasonal firefighter is taken into account in relation to access to posts of five-year term firefighters or permanent firefighters by the Fire Brigade and other posts, thus a vicious circle of the exclusion of women from the labour market is formed.

Despite the negative case law, the same issue has recently been brought before the Greek Ombudsman by a female candidate for the corps of the Special Guards ('*Ειδικοί Φρουροί*') of the Greek Police. The case is still open.[110]

3.4.4 Specific difficulties

In Greece, the legislation used to be satisfactory before the amendment of the definitions of key concepts by Act 4604/2019. The latter amended the definitions of direct and indirect discrimination falling short of the wording of Directive 2006/54, which results in a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece (see 3.4.1 above).

The administrative courts and the CS (the latter not until the CJEU *Kalliri* judgment) have successfully implemented the concept of indirect discrimination regarding MHRs for access

[107] By virtue of Article 9(6) Act 2734/1999, OJ A 161/5.8.1999, Ministerial decision No. 7002/12/1-ι/26.3.2007, OJ B 419/2007 of the Minister of Public Order, as amended by Ministerial decisions Nos 7002/12/1-κε/2010, OJ B 764/2.6.2010 and 7002/12/1-κη/2011, OJ B 1619/15.7.2011.

[108] CJEU, C-409/16, *Kalliri*, 18 October 2017, EU:C:2017:767.

[109] See Advocate General's La Pergola reference to the European Commission's remarks in Paragraph 35 of his Opinion, delivered on 26 October 1999 in CJEU C-285/98, *Tanja Kreil v Bundesrepublik Deutschland*, ECLI:EU:C:1999:525.

[110] Greek Ombudsman (2019), *Ίση μεταχείριση – Ειδική Έκθεση 2019'* (Equal treatment – Special report 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf. The claimant argued that the award of bonus points to candidates who had served in the Greek Army as reserve officers or in the Special Forces ('Ειδικές Δυνάμεις') or as professional soldiers in the Greek Army ('επαγγελματίες οπλίτες - ΕΠ.ΟΠ.') or in the Presidential Guard ('Προεδρική Φρουρά') constituted indirect gender discrimination to the detriment of female candidates who do not serve in the Army. The Greek Ombudsman asked the Chief of the Greek Police to submit specific data.

to employment in the public sector (access to Police academies,[111] municipal Police and the Fire Brigade). In the aftermath of the CJEU *Kalliri* case it remains to be seen what the outcome of the cases referred to the CS Full Section will be (see 3.4.2 (i), 3.4.2 (ii) and 3.4.2 (iii) above). In contrast, the objective justification test in the context of indirect discrimination has not been successfully applied by the CS regarding common athletic requirements (see 3.4.3 (i) above). It remains to be seen whether in the future the relevant CS case law will be revisited in the light of the CJEU *Kalliri* case. Maybe another preliminary reference to the CJEU will be the way forward. The award of bonus points to candidates who have served in the army or in other corps to which women have no access or have limited access, as a form of indirect discrimination has not yet reached the administrative courts but it will surely do so in the future, as complaints have been lodged by the Ombudsman (see 3.4.3 (ii) above).

In contrast, the case law of labour (civil) courts in gender equality cases regarding employment in the private sector is scarce and the distinction between direct and indirect discrimination is not always clear, in spite of a preliminary CJEU ruling in the Greek case *Nikoloudi* which concerned, *inter alia*, indirect discrimination.[112] More specifically, the CJEU judgment *Nikoloudi* (C-196/02)[113] dealt with the exclusion of part-time cleaners of *Organismos Tilepikinonion Ellados* (*OTE*) from the possibility of appointment as permanent members of staff by a collective agreement provision which was ostensibly neutral as to the worker's sex. After the CJEU judgment, the Amaroussion Justice of the Peace, in Judgment No. 251/2006, found that Mrs Nikoloudi was the victim of sex discrimination in relation to pay and awarded her the pay differential she claimed. The employer, OTE, submitted an appeal, which has not been heard to date.[114] However, unlike the CJEU *Kalliri* case, which had a snowball effect on the jurisprudence of the CS, the CJEU *Nikoloudi* case was not given due publicity in the legal reviews and did not seem to have noteworthy repercussions in labour law (civil) cases regarding employment in the private sector, where the distinction between direct and indirect discrimination still remains unclear.

i) Lack of awareness of the general principle of the non-requirement of fault in discrimination cases

Judgment No. 2323/12.12.2018 of the First Instance Civil Court of Athens (FICCA) concerned the decision of a private bank to close down the cleaning department in order to outsource cleaning activities. This resulted in the redundancy of 64 cleaners, all of them women (with the exception of one male cleaner). Of these cleaners, 62 accepted the employer's offer to resign in order to be paid a bonus, which amounted to double or triple the legal redundancy compensation. The remaining four female cleaners who declined the offer were dismissed. One of them brought the case before the FICCA alleging, *inter alia*, that she was the victim of direct (or indirect) sex discrimination. According to the claimant, her employment in a largely female-dominated profession was terminated without any possibility of transfer to other jobs being provided, whereas people working in predominantly male departments, such as those of blue-collar workers or clerks, were given the possibility of transfer to other jobs within the bank.

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[111] CS Nos 1247/2008, 2367 and 2369/2010. See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2009), 'Greece', *European Gender Equality Law Review 1*, pp. 78-83, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights.

[112] CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE.*, 10 March 2005.

[113] CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE.*, 10 March 2005. The Court ruled that, to the extent that this exclusion affected a category of workers which, under national rules with the force of law, is composed exclusively of women, it constitutes direct discrimination on grounds of sex within the meaning of Directive 76/207/EEC. Should the premise that only part-time female cleaners have been denied the possibility of appointment as permanent members of staff prove incorrect, and if a much higher percentage of women than men has been affected by the provisions of the specific collective agreements, the exclusion, brought about by those agreements, of the appointment of part-time temporary staff as permanent staff constitutes indirect discrimination.

[114] In the author's view, this is probably because the litigant has received a pay-out and the employer does not want any more negative publicity.

In this judgment the FICCA found that the provision of the internal rules of the bank, as modified in June 2014, for the first time excluding the cleaners (the word in Greek is used in the female gender given that it is a predominantly female profession) from the possibility to be transferred to other jobs, whereas people working in predominantly male departments, such as those of blue-collar workers or clerks, were offered that possibility, constituted indirect sex discrimination in breach of Act 3846/2010,[115] which implemented Directive 2006/54/EC. However, the Court did not find that the termination of the employment contract per se constituted (direct or indirect) sex discrimination. The reasoning of the FICCA was as follows: the termination was due to the implementation of the business decision by the bank to close down the cleaning department and not to any other ground which would amount to or could be deemed sex discrimination. This wording shows that the Court was in search of a possible 'fault' on the part of the employer, which it did not find. Nonetheless, the termination was found null and void in breach of other national law provisions, which are not of interest under EU law and in the present context. To the author's knowledge, after the aforementioned CJEU preliminary ruling in *Nikoloudi* this is the only Greek judgment applying the notion of indirect discrimination on the grounds of sex in the private sector. Therefore, this judgment is of great importance. However, it is obvious that the Court subjected the finding of discrimination to the requirement of fault, which is contrary to the CJEU case law in the cases of *Draehmpaehl* and *Dekker*.[116] Although a significant step forward, this judgment shows the lack of awareness among judges of the concepts of EU anti-discrimination law, in particular the concepts of indirect discrimination and the non-requirement of fault. It also shows that the concept of indirect discrimination is still unclear, which explains the scarcity (almost non-existence) of relevant case law in employment in the private sector.[117]

In the case of another female cleaner of the same category, by its Judgment No. 1667/2020 the FICCA found that the termination of the employment contract *per se* did not constitute (direct or indirect) sex discrimination with the same reasoning as the FICCA Judgment No. 2323/2018. In this case, both parties appealed against the FICCA's judgment (the claimant invoking her legal interest to have her termination acknowledged by the Court as discriminatory on the grounds of sex as well). The appeals have not been heard by the CCA yet.

On indirect discrimination and equal pay see 4.2 below.

On grounds other than sex (age), by its recent Judgment No. 668/18.4.2019, the Supreme Civil Court ('*Areios Pagos*') made a preliminary reference to the CJEU (C-511/19) concerning indirect discrimination on the grounds of age.[118] It remains to be seen whether

[115] Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,' OJ A 207/8.12.2010.

[116] CJEU, Case C-180/95, *Draehmpaehl v Urania Immobilienservice,* 22 April 1997; CJEU, Case C-177/88, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*, 8 November 1990.

[117] After the cut-off date of this report (1 January 2021), the Athens Court of Appeal 188/2021 dismissed the appeals of both parties against the above FICCA judgment, ratifying the latter's operating part. By literally copying the FICCA's reasoning above, the CCA held that the termination of the employment contract *per se* did not constitute (direct or indirect) sex discrimination. However, in refraining from examining whether the exclusion of female cleaners from the possibility to be transferred to other jobs constituted indirect discrimination, the CCA judgment fell behind the FICCA No. 2323/2018 judgment. See EELN Flash Report of 13 April 2021 'Discrimination of female cleaners (part II)', https://www.equalitylaw.eu/downloads/5390-greece-discrimination-of-female-cleaners-part-ii-105-kb.

[118] The case C-519/19 pending before the CJEU concerns staff under a private-law contract of employment with the public bodies (the government, local authorities and public-law legal entities) and private-law legal entities in the broader public sector in general, who were put on reserve for a period not exceeding 24 months between 1.1.2012 and 31.12.2013 based solely on the criterion of the closest entitlement to retire on a full old-age pension corresponding to 35 years' insurance. The SCPC asked the CJEU whether the adoption of such a labour reserve system constituted indirect age discrimination and more specifically (a) whether it could be objectively and logically justified by the immediate need to cut public spending in order to achieve certain quantitative targets by the end of 2011, as referred to in the explanatory memorandum to the law and provided for in particular under the Medium-Term Fiscal Strategy Framework, and thus honour Greece's undertaking to its partner-lenders to address the very acute and prolonged fiscal and

the CJEU's judgment in this case will raise awareness of the concept of indirect discrimination among the various stakeholders in litigation.

3.5 Multiple discrimination and intersectional discrimination[119]

3.5.1 Definition and explicit prohibition

Multiple discrimination is explicitly addressed in Greek legislation. Article 2(7) Act 4604/2019, OJ A 50/26.3.2019, provides for the first time the definition of 'multiple discrimination' on the grounds, *inter alia*, of sex:

> 'any act or omission that places persons in an inferior position on the grounds of sex, sexual harassment and gender identity, in combination with one or more other characteristics, in particular national/ethnic or social origin, age, family status, disability, religious, political or other belief'.

However, the use of the wording 'inferior position' also seems to be a stronger requirement than 'less favourable treatment'. Moreover, the definition of multiple discrimination adopted by Act 4604/2019 uses only the present tense ('places in an inferior position'), omitting the present perfect tense and the conditional tense ('is, has been or would be treated in a comparable situation') used by the Directive and its implementing Law 3896/2010 regarding direct discrimination; thus, no comparison to a past or hypothetical comparator is allowed (see also 3.3.1 above on direct discrimination, 3.4.1 above on indirect discrimination, 3.6.1 below on positive action and 3.7.3 below on sexual harassment).

Article 3(2) Act 4604/2019 provides that, when 'positive measures' are adopted in accordance with Article 2(2) Act 4604/2019, 'the physical features and the situations related to sex, sexual orientation and gender identity, in favour of which the positive measures are taken, as well as their possible concurrence with other areas of discrimination, such as, in particular, ethnic or social origin, age, family status, disability, religious, political or other belief, shall be taken into consideration'.

Moreover, Article 2(2)(i) of Act 4443/2016 Part I, which re-transposes Directives 2000/43/EC and 2000/78/EC, prohibits 'any discrimination, exclusion or restriction to the detriment of a person, on more than one of the grounds [covered by the act]'. The grounds are those of Directives 2000/43/EC and 2000/78/EC, plus some new grounds: 'colour', 'genetic features', 'chronic illness', 'family or social status' and 'gender identity or characteristics'. The Act also prohibits 'discrimination due to relationship' and 'discrimination due to perceived characteristics', and it stipulates that 'refusal of reasonable accommodation for persons with a disability or chronic illness' constitutes discrimination. 'Sex' is not among the grounds and discrimination on the ground of sex is not prohibited by this Act. It must also be noted that, although Act 4443/2016 is also meant to transpose Directive 2014/54/EU 'On measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers', the transposition of this directive is inadequate, as 'EU citizenship', which is the ground protected by the directive, is omitted from the Act. Therefore, the prohibition of multiple discrimination does not cover this ground and women who are EU nationals are left unprotected from multiple discrimination.

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economic crisis gripping the country and, at the same time, to restructure and reduce the swollen public sector and (b) if so, whether it is an appropriate and necessary means of achieving the above aim. Available at: http://curia.europa.eu/juris/document/document.jsf?text=&docid=218068&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2994598.

[119] See for more information Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, EELN, available at www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb.

3.5.2 Case law and judicial recognition

There are no judicial decisions on multiple discrimination. However, some cases dealt with by the Ombudsman (the Greek Equality Body) have concerned multiple discrimination regarding access to employment,[120] [121] and employment conditions.[122] It appears that all cases ended at that stage, without further litigation before the courts.

In its policy documents 'Women and Disability: Multiple Identities, Multiple Challenges' (2019), the Greek Confederation of Disabled Persons (*ΕΣΑμΕΑ*) deplores that women with disabilities are often victims of multiple discrimination in all fields.[123]

It can be deduced from the above that multiple discrimination exists in practice although there has still been no relative litigation to date.

3.6 Positive action

3.6.1 Definition and explicit prohibition

Positive action is not merely explicitly allowed in Greek legislation but is moreover explicitly required by Article 116(2) of the Constitution (see 2.1.2 above). In accordance with the hierarchical structure of the Greek legal order (see 1.1 above), all national provisions relating to positive action must be read and applied in the light of this constitutional norm.

The relevant provisions are Article 19 of Act 3896/2010 transposing Directive 2006/54/EC and Article 5 of Act 3769/2009 transposing Directive 2004/113/EC. Article 19 of Act 3896/2010 transposing Directive 2006/54/EC reads:

> 'The adoption or maintenance of specific or positive measures aimed at abolishing eventual discrimination to the detriment of the under-represented sex or achieving substantive equality in the areas included in the scope of application of this law, does not constitute discrimination.'

Article 5 of Act 3769/2009 copies Article 6 of Directive 2004/113/EC which it transposes.

The definition of positive action in Article 19 of Act 3896/2010 covers the scope of Article 157(4) TFEU, but its wording is more positive and stronger. It does not merely stipulate, like Article 157(4) TFEU, that the equal treatment principle 'shall not prevent' positive action; and it explicitly provides that positive measures 'do not constitute discrimination'. It therefore reflects the stronger concept of positive action as enshrined

[120] Greek Ombudsman (2018), "Ίση μεταχείριση – Ειδική έκθεση 2018' (Equal treatment – Special report 2018), available at: https://www.synigoros.gr/resources/docs/ee_im_2018_el.pdf. In 2018, an orphanage advertised for a female psychologist aged 25-40 years. The Ombudsman explicitly found that this advertisement constituted multiple discrimination in relation to access to employment on the grounds of both gender and age; following the Ombudsman's request, the administrative council of the orphanage proceeded to issue a new call without the impugned characteristics (gender, age).

[121] Greek Ombudsman (2017), 'Σύνοψη διαμεσολάβησης - Αγγελία για πρόσληψη γραμματέα συλλόγου ανακλήθηκε λόγω πολλαπλής διάκρισης' (Summary of intervention - Job advertisement for the hiring of a secretary recalled due to multiple discrimination), available at: https://www.synigoros.gr/resources/docs/20170223-synopsi--2.pdf. In this case, a local union had placed a job advertisement in a local newspaper for a position as a secretary, requiring that she was female, under 35 years of age and of Greek nationality. The Ombudsman explicitly found that this offer constituted multiple discrimination on grounds of sex, age and nationality and asked the local union to revoke it, which it did.

[122] Greek Ombudsman (2019), "Ίση μεταχείριση – Ειδική έκθεση 2019' (Equal treatment – Special report 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf. In 2019, a female public servant raised a complaint before the Greek Ombudsman for multiple discrimination on the grounds of gender, family status and association to a disabled person (her child). The Ombudsman found the complaint to be unsubstantiated but addressed a severe recommendation to the public service asking for the adoption of the necessary facilitation measures to help the complainant cope with her increased family obligations as a mother of a disabled child.

[123] https://www.esamea.gr/publications/books-studies/4992-gynaikes-kai-anapiria.

in Article 116(2) of the Constitution, which makes positive action obligatory in all areas (see 2.1.2 above).

Article 2(2) Act 4604/2019, 'On the promotion of substantive gender equality, etc.', OJ A 50/26.3.2019 provides the following definition of 'positive measures':

> 'acts and decisions taken by the Administration, which aim to eliminate gender inequalities, according to Article 116(2) of the Constitution'.

Article 2(3) Act 4604/2019 gives the following definition of 'positive action':

> 'any initiative by the competent state or local authorities which aims to prevent gender inequalities and to sensitise society to them'.

Moreover Article 2(4) Act 4604/2019 defines '*substantive equality*' as:

> 'gender equality through which formal legal equality and the protective and corrective or amending dimension of gender equality is expanded and safeguarded in practice, equal opportunities are ensured in all aspects of private and public life, discrimination and inequalities of various forms are abolished and the living conditions of women or of citizens irrespective of sex, sexual orientation and gender identity are substantially improved.'

According to a survey in 2019,[124] the definition of substantive equality is so complicated that it is doubtful whether the legislator was aware of the actual meaning of the concept: the definition should be redrafted.

In the author's view, the new definitions of Act 4604/2019 on positive measures compared to the provisions of Article 19 Act 3896/2010 are narrower in that they do not stipulate in a straightforward way that positive measures do not constitute discrimination, as the general provisions of Article 116(2) Constitution and Article 19 Act 3896/2010 do. This is a serious regression with respect to the gender equality *acquis* in Greece.

Moreover, Article 3(2) Act 4604/2019 provides that, when 'positive measures' are adopted in accordance with Article 2(2) Act 4604/2019, 'the physical features and the situations related to sex, sexual orientation and gender identity, in favour of which the positive measures are taken, as well as their potential concurrence with other areas of discrimination, such as, in particular, ethnic or social origin, age, family status, disability, religious, political or other belief, shall be taken into consideration'.

Act 4097/2012 transposing Directive 2010/41/EU omits Article 5 of the Directive. However, in the author's opinion, Article 116(2) of the Constitution, by requiring positive action in all areas, also covers the area of Directive 2010/41/EU. There is no relevant case law.

3.6.2 Conceptual distinctions between 'equal opportunities' and 'positive action' in national law

Act 3896/2010, transposing Directive 2006/54/EC, is entitled 'Implementation of the Principle of Equal Opportunities and of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council'. Act 3896/2010 does not provide a definition of the concept of 'equality of opportunity' or 'equal opportunities'. It is, however, obvious that the EU-relevant concepts, as developed by CJEU case law, underlie this Act and condition its application. Moreover, the constitutional gender equality

[124] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα (The legal treatment of gender-based discrimination in Greece),* Heinrich Böll Stiftung, Greece, p. 35.

norm (Article 4(2) Constitution) (see 2.1.1 above) obviously encompasses the said concepts and it is applied by Greek courts in this sense. Therefore, the said concepts are free-standing legal concepts in Greek law, based on both EU law and the Greek Constitution, in light of which Greek legislation is applied.

3.6.3 Specific difficulties

The enshrinement of positive action, in particular, in favour of women, in the Greek Constitution (Article 116(2), see 2.1.2 above) has enhanced awareness of and familiarisation with this concept. As a result, no specific difficulties have been envisaged. However, the new definitions of Act 4604/2019 on positive measures compared to the provisions of Article 19 Act 3896/2010 are narrower in that they do not stipulate in a straightforward way that positive measures do not constitute discrimination, as the general provisions of Article 116(2) Constitution and Article 19 Act 3896/2010 do. This is a serious regression with respect to the gender equality *acquis* in Greece.

3.6.4 Measures to improve the gender balance on company boards

i) Gender quota of a minimum of 25 % of the total of the members of the Administrative Council of limited liability companies (SA) listed in Greece

Act 4706/2020, OJ A 136/17.07.2020, provides in its Article 3(1)(b) with the title 'Policy of suitability of the members of the Administrative Council' that:

> 'the Company shall have a policy of suitability of the members of the Administrative Council which is endorsed by the Administrative Council and includes at least the adequate representation by sex at a percentage of a minimum of 25 % of the total of the members of the Administrative Council; in case of a fraction, this percentage shall be rounded down to the nearest whole number'.

This provision is applicable to limited liability companies (SA) listed in Greece (Article 1(1) Act 4706/2020). The policy of suitability and any substantial amendment thereof, is to be submitted for endorsement to the General Assembly of the company and published on the company's website (Article 3(3) Act 4706/2020). Within two months of the enactment of the said Act (i.e. by 17 September 2020), the Hellenic Capital Market Commission[125] is to adopt guidelines for the implementation of the above provision (Article 3(1a) Act 4706/2020). To date no such guidelines have been published. In this framework, the gender quotas introduced by Article 3(1)(b) Act 4706/2020 are beyond dispute a significant step forward towards the breaking of the glass ceiling, although the percentage of a minimum of 25 % falls behind that of a minimum of 40 % set by the relevant 2012 proposal for a directive.[126]

ii) Gender quota of a minimum of one third for administrative councils of athletic unions

Article 2 Act 4726/2020, OJ A 181/18.09.2020, amending Article 5 Act 2725/1999, OJ A 121/17.06.1999, provides in its paragraph 2, regarding the election of the members of the administrative council of athletic unions and federations that the number of the candidates of each gender must be at least equal to one third of the number of the posts for which the election is held, including that of the President. If the calculation based on

[125] The Hellenic Capital Market Commission was established by Act 1969/1991 and organised by Act 2324/1995 with the aim to protect the investors and to ensure the smooth functioning of the Greek capital market. It is a member of the European Securities and Markets Authority (ESMA) and functions within its framework and under its auspices.

[126] Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM/2012/0614 final.

the said fraction results in a decimal number, this to be rounded up to the next whole number.

According to Article 30(1) Act 4726/2020, the athletic unions and the athletic federations should proceed to the alignment of their statutes, *inter alia*, to the new provision which still applies until that date.

iii) Quotas for the participation of the under-represented sex on service councils of the public sector and on research councils or committees

The CJEU in *Badeck*[127] upheld requirements relating to the equal composition of employees' representative bodies and administrative and supervisory bodies. In Greece, such quotas are provided by legally binding norms regarding the participation of the under-represented sex on service councils of the public sector and on research councils or committees.

According to Article 6(1)(a) of Act 2839/2000,[128] of the persons appointed by the state, legal persons governed by public law or local authorities as members of public sector service councils[129] of the services of the state, legal persons governed by public law and local authorities, at least one third must long to each sex. In principle, the members of the service councils are five; three out of the five are appointed by the Minister or the competent authority of the legal person concerned (who must observe the one-third quota); the other two members are representatives elected by the employees. The number of members of other bodies to which the quota applies, as well as the mode of their appointment, varies. Therefore, the quota does not concern the whole service council or other body but only the appointed members (not the elected ones).[130] The quota must be applied to the regular members of the council; it is not enough to apply it to the deputy members.[131]

The quota applies, provided that there is an adequate number of employees of each sex in the service concerned who have the necessary qualifications for appointment to the particular service council. Should the numbers be insufficient to fulfil the requirement, the inadequate number must be stated in the council decision, otherwise the decision can be annulled.[132]

According to Article 6(1)(b) of Act 2839/2000, at least one third of the (executive and non-executive) members of the boards of legal persons of the public sector who are appointed by the state, legal persons governed by public law or local authorities, must belong to each sex. The legal form of the legal persons concerned is irrelevant; they may be governed by public law or by private law; they may or may not be companies and, if they are companies, they do not necessarily have to be listed. It is not required for their whole capital to belong to the state, a legal person governed by public law or a local authority. They may own part of the capital (not necessarily even the majority thereof) and still be empowered by the provisions governing the particular legal person to appoint members of its board. The one-third quota applies in all cases. The state, legal persons governed by public law or local authorities appoint a certain number of the board members, as provided by the provisions governing each particular legal person. Therefore, the quota does not concern the whole board.

[127] CJEU Case C-158/97 *Badeck,* European Court reports 2000 Page I-01875, par. 64-66.
[128] Greece, Act 2839/2000 OJ A 196/12.9.2000.
[129] Service councils are administrative authorities whose task is laid down by Article 103(4) of the Constitution: 'Civil servants may not be transferred without an opinion or lowered in rank or dismissed without a decision of a service council consisting of at least two thirds of permanent civil servants. The decisions of these councils are subject to recourse before the Council of State.'
[130] Athens ACA No. 90/2010.
[131] CS No. 1414/2018.
[132] Athens ACA No. 811/2012.

Article 16 Act 4604/2019 added a new provision at the end of Article 6(1)(b) Act 2839/2000. It stipulates that, if the composition of the service council does not fulfil the above requirements, it is unlawful. An exception to this rule is provided if the members of the service councils are partially or totally designated *ex officio* or through a ballot or if they are designated by the Ministry of National Defence and the legal persons supervised by it due to a proven lack of a sufficient number of persons of the other sex. The scope of this exception is very broad and the rule for positive action is significantly weakened.

According to the standard case law of the administrative courts and of the CS: (i) if the act by which the state, a local authority or a legal person governed by public law appoints board members does not observe the quota, it is subject to annulment and (ii) the decisions of boards that are not composed in accordance with the provision on the quota are also subject to annulment.[133]

The above provision of Article 6(1) of Act 2839/2000 has been incorporated into Article 7(5) of the Code for Employees of Local Authorities (CELA).[134] The same measure has been included in Article 161 of the Civil Servants Code[135] (CSC), which also covers the personnel of legal persons governed by public law, in a more extended version provided by Article 2 of Act 4275/2014.[136] Consequently, Article 161 CSC, as it now stands, requires the one-third quota for service councils as well as for other bodies that are entrusted with the assessment and selection of the heads of the services of the state and legal persons governed by public law (Articles 157-160 CSC).

Within its competencies, the General Secretariat for Equality has designed an easy-to-use electronic application,[137] where the public administration should submit the data on the composition of the service councils so that their compliance with Article 6(1)(b) of Act 2839/2000 can be monitored. In the period 1 January 2017 to 1 October 2017, out of 97 public entities, eight did not comply, which corresponded to 12 service councils, i.e. a percentage of 11.43 %.[138] However, not all the public entities use this application given that there is no legal obligation and consequently no sanction. Thus, the above-mentioned data are not reliable.

Case law on positive action in employment is restricted to the issue of quotas for the participation of the under-represented sex in public sector service councils. Moreover, according to Article 57 of Act 3653/2008,[139] the number of scientists participating in any council or committee dealing with research, including those assessing candidacies for research projects, must be determined 'on the basis of scientific excellence and according to a quota of at least one third from each sex, in accordance with Article 116(2) of the Constitution, provided that they possess the necessary qualifications for the particular post'. There is no jurisprudence on this provision.

iv) Soft law: Corporate governance codes

Corporate governance codes impose specific obligations on companies to enhance the number of women on their boards, but only in the form of soft law of private regulation.

[133] CS No. 2977/2014: the composition of the service council was lawful, although it contained no women, because there were no women in the service concerned who possessed the required qualifications; therefore, its decisions were valid. Athens Administrative Court of Appeal 811/2012, 90/2010, 216/2007, 602/2007 and 890/2007 annulled decisions of service councils which were not composed in accordance with the above provision.

[134] CELA, Act 3584/2007, OJ A 143/28.6.2007.

[135] Art 161 of the Civil Servants Code Act 3528/2007, OJ A 26/9.2.2007, as amended by Article Second Act 3839/2010 OJ A 51/29.3.2010 and re-amended by Act 4275/2016 OJ A 149/15.7.2014.

[136] Act 4275/2014, OJ A 149/15.7.2014.

[137] See 'Ισότητα των φύλων στα διοικητικά και υπηρεσιακά συμβούλια των δημόσιων φορέων (Gender equality in administrative and service councils of public entities), available at: http://pososostosi.isotita.gr.

[138] 12th Informative Bulletin of the Equality Observatory of the General Secretariat for Equality entitled 'Γυναίκες σε θέσεις ευθύνης' (Women in managerial posts), available here.

[139] Article 57 Act 3653/2008, OJ A 49/21.3.2008.

More specifically, the Corporate Governance Code of Ethics of the Hellenic Corporate Governance Council (Ελληνικό Συμβούλιο Εταιρικής Διακυβέρνησης)[140] for listed companies provides under Article 5.4 (Nomination of board members) that the Board Nomination Committee should ensure that there is an effective and transparent procedure for the nomination of board members and that the responsibilities of the Nomination Committee should ensure, among other things, the proposal of a board diversity policy, including gender balance.[141] This is a general soft law provision applying only to the boards of listed companies. No quantitative objectives, no timelines, no defined procedures and no reporting duty are provided. There has been no research or quantitative data concerning the effectiveness of this Code of Ethics.

v) Policy measures: 'Equality marks' for the balanced participation of women and men in managerial positions

Regarding policy measures, Act 4604/2019 provided for the first time a new public policy for 'equality marks' awarded by the General Secretariat for Equality[142] to enterprises in the public and private sector who excel in the implementation of policies aiming for the equal treatment of and equal opportunities for working women and men (Article 2(12) and 21 Act 4604/2019). Among the criteria to be taken into account stated in a non-exhaustive manner is the balanced participation of women and men in managerial positions or in professional and scientific committees within the enterprise (see 3.6.5 (v) below).

3.6.5 Positive action measures to improve the gender balance in other areas

In areas other than administrative boards, Greece has adopted the following positive action measures to improve gender balance: quotas for parliamentary, local and European elections (see 3.6.5 (i) below), measures for the promotion of employment (see 3.6.5 (ii) below), social security measures in favour of mothers (see 3.6.5 (iii) below), provisions on gender mainstreaming (see 3.6.5 (iv) below), the National Mechanism for the realisation of substantive gender equality (see 3.6.5 (v) below), equality mark awards (see 3.6.5 (vi) below) and the adoption of equality plans (see 3.6.5 (vii) below).

i) Quotas for parliamentary, local and European elections

Article 15(1),(2) Act 4604/2019 (OJ A 50/26.3.2019) raised the quota in favour of the under-represented sex from 1/3 to 40 % for candidates at the parliamentary elections[143] and at the European elections. More specifically, Article 15(1) of Act 4604/2019 amended the provision of Article 34(6)(b) of the PD 26/2012 regarding 'Codification in a single document of the provisions of the legislation for parliamentary elections'

[140] The Hellenic Corporate Governance Council (HCGC) (Ελληνικό Συμβούλιο Εταιρικής Διακυβέρνησης – ΕΔΕΣ) has been established in 2012 as a non-profit company with the joint initiative of Athens Stock Exchange and the Hellenic Federation of Enterprises (SEV). Since October 2018, the Hellenic Banking Association has become a regular member of the HCGC. The purpose of the HCGC is to continuously enhance the credibility of the Greek market among domestic and international investors and to improve the competitiveness of Greek corporations. It functions as a specialised body for disseminating the principles of corporate governance and seeks to develop a culture of good governance in the Greek economy and society. Its overall action plan includes: formulating positions on the institutional framework; making proposals; taking part in consultations and working groups; organising educational and information activities; monitoring and evaluating corporate governance practices and implementing corporate governance codes; and providing support and rating tools for the performance of Greek corporations.

[141] The Hellenic Corporate Governance Code of the Hellenic Corporate Governance Council (HCGC) for listed companies (English version) is available at: www.helex.gr/documents/10180/2227810/HCGC_EN_OCT_2013_form.pdf/e53731a3-a972-4e21-bbf8-2644f6709e26.

[142] The General Secretariat for Equality was established by Article 27 Act 1558/1985 OJ A 137A as a public entity competent for the planning, the implementation and the control of the application of equality policies in all areas. By Article 4(2) of PD 81/2019 OJ A 119/8.7.2019 the GSGE was transferred from the Ministry of the Interior to the Ministry of Labour and Social Affairs. It was subsequently renamed 'General Secretariat of Family Policies and Gender Equality'.

[143] Article 34(6)(b) PD 96/2007, OJ A 116/5.6.2007 (as valid before its Amendment by Act 4604/2019) and Article 3 of Act 3636/2008, OJ A 11/1.2.2008.

(OJ A 57/15.3.2012), providing that the number of candidates of each sex presented in the parliamentary elections by each party must correspond to 40 % (instead of the previously provided quota of 1/3) of the total number of its candidates in the voting region (and not in the whole country, as was previously provided). This new provision was applied in the parliamentary elections of 7 July 2019. The candidates appear on a ballot paper on which the voter chooses his/her preferred candidate by placing a cross alongside the name of the relevant candidate. However, regarding parliamentary elections, a proportion of Parliament, comprising not more than 5 % of the total number of MPs (300 in total), are elected throughout the country in proportion to the total electoral performance of each party, according to their order on this list ('state MPs'). There is no case law on this measure. The provision of Article 15(1) Act 4604/2019 was subsequently abolished by Article 31(2) Act 4648/2019, OJ A 205/16.12.2019. The new provision of Article 31(1) Act 4648/2019 also provides that the number of candidates of each sex presented in the parliamentary elections by each party must correspond to 40 % of the total number of its candidates in the voting region whereas: (i) it excludes 'state MPs' from the application of the above quota; (ii) it provides that in any case the total number of candidates of each sex in the whole of the country (with the exception of 'state MPs') must correspond to 33 % of the total number of its candidates.

Moreover, Article 15(2) of Act 4604/2019 amended the provision of Article 3(3)(c) Act 4255/2014 OJ A 11/4.2014, providing that the number of candidates of each sex presented in the European elections by each party must correspond to 40 % (instead of the previously provided quota of 1/3) of the total number of its candidates. This new provision was applied in the regional and municipal elections of 26 May 2019 for the 21 seats for Greece at the European Parliament.

At the local and regional level, Article 18(4) Act 3852/2010, OJ A 87/7.6.2010, as amended by Article 14 Act 4555/2018, OJ A 133/19.7.2018, was further amended by Article 52(1) Act 4604/2019, which provides that the number of candidates of each sex presented in the municipal elections must correspond to 40 % of the total number of the candidates of the party. According to the Judgment No. 352/2020 of the CS, in the case of non-compliance with the quota of 40 % from the moment of the submission of the candidacy until the ratification of the results by the civil courts, the election of the party concerned is null and void. However, if after the elections a female candidate is found to be covered by the restrictions or grounds of ineligibility, only her election is null and void and she is succeeded by the next candidate.

In a survey of the year 2019[144] it is argued that gender quotas on the candidate ballots are a rather mild and not very effective measure towards substantive equality in that it does not guarantee the election of women. However, it contributes to the activation of women who are interested in politics but would not dare to participate in the elections due to social stereotypes. According to the survey, the legislator should have opted for a percentage of 50 % (instead of the actual 40 %) which would facilitate the election of women.

According to standard case law, this is a positive measure in favour of women, in line with Article 116(2) of the Constitution, which aims to achieve substantive gender equality.[145] Where the quota is not observed, the elections for the particular local authority are invalidated and must be repeated.[146]

[144] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα (The legal treatment of gender-based discrimination in Greece),* Heinrich Böll Stiftung, Greece, pp. 40-41.

[145] CS Nos 915/2015, 2388/2004, 192/2004, 2831/2003, 2832/2003, 2833/2003, 3027/2003, 3028/2003, 3185/2003, 3187/2003, 3188/2003 and 3189/2003.

[146] CS No. 2123/2011, invalidating local elections and ordering that they be repeated.

ii) Measures for the promotion of employment.

Employers who hire employees under an employment relationship of definite duration in order to replace employees on maternity leave are subsidised for the sum of social security contributions for the hired workers. Hired workers are not taken into account for the application of provisions regarding collective redundancies.[147]

Employers who hire unemployed mothers with at least two children are subsidised for the sum of social security contributions regarding these workers for one year for each child.[148] This provision applies under the condition that the employer has not proceeded to unjustified dismissals within the previous semester and does not proceed thereto during the employment of the hired mother.

Moreover, women farmers are exempted from the payment of social security contributions for one year following the birth of their second and each subsequent child.[149]

There seems to be no case law on these provisions.

iii) Social security measures in favour of mothers

According to Article 39(2) Act 3996/2011, OJ A 170/05.08.2011, the social security contributions paid by the employer for female workers insured by the social security schemes of the competence of the Ministry of Employment and Social Protection are reduced by 50 % for the 12 months following the month of the childbirth. In the case of self-employed persons, who are entitled to reduced contributions for another reason, the biggest percentage of reduction applies (no cumulation is allowed). In cases where the employee receives the maternity allowance during the post-confinement part of the maternity leave, the reduction of the contributions applies for 12 months after the end of the allowance.

iv) Provisions on gender mainstreaming (see under 11.1.4)

v) National Mechanism for the realisation of substantive gender equality

Articles 4, 5, 6, 7 and 8 Act 4604/2019 provide for a national mechanism for the realisation of the substantive gender equality at the national, the regional and the local level. A survey of the year 2019[150] questions its effectiveness: instead of replicating the existing structure of central-regional-local level, which in practice has failed, the legislator should have opted for the upgrading of the mechanism and the provision of alternative structures. Moreover, the National Plan of Equality, which falls under the competency of the General Secretariat for Equality, should be regularly revised according to the changing evolutions and needs and the method of its monitoring should be defined by law (e.g. through public reports). Article 9 Act 4604/2019 provides for the General Council for Gender Equality as a collective advisory organ under the General Secretariat for Equality.

[147] Article 2(1) of Act 3227/2004 (measures for combating unemployment), OJ A 31/9.2.2004.
[148] Article 2(2) of Act 3227/2004 (measures for combating unemployment), OJ A 31/9.2.2004.
[149] Article 2(7) of Act 3227/2004 (measures for combating unemployment), OJ A 31/9.2.2004.
[150] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα (The legal treatment of gender-based discrimination in Greece),* Heinrich Böll Stiftung, Greece, pp. 35-36.

vi) 'Equality mark'[151] awards.

Article 21 of Act 4604/2019 provides for the first time a new public policy for equality mark awards. Equality marks are awarded by the General Secretariat for Equality[152] to companies in the public and private sector who excel in the implementation of policies aiming at the equal treatment of and equal opportunities for working women and men (Articles 2(12) and 21 of Act 4604/2019).[153] In a survey of the year 2019, it was argued that the motivation given to enterprises is not enough and that real incentives should be provided by the new law.[154] To date, the ministerial decision provided in Article 21(2) Act 4604/2019 has not been issued, hence the new policy of equality awards has not yet been applied.[155]

vii) 'Equality plans'

Article 2(5) Act 4604/2019 gives for the first time the definition of '*equality plans'*: a set of interventions, integrated and complementing each other, which are devised by public and private institutions and by undertakings of the public and the private sector. These interventions are applied following an analysis of the existing social reality. They set out certain aims, strategies and practices for the achievement of substantive equality. They include provisions for the adoption of effective systems for the follow-up and evaluation of the above aims. The above interventions are submitted to the General Secretariat for Gender Equality, which forwards them to the Equality Committee.

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

Harassment (together with sexual harassment) is explicitly prohibited in national legislation by: Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54/EC; Article 5 of Act 3769/2009 transposing Directive 2004/113/EC; and Article 4(2) of Act 4097/2012 transposing Directive 2010/41/EU.[156]

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[151] Article 2(12) Act 4604/2019 defines '*equality mark'* as a title awarded by the General Secretariat for Equality to undertakings of the public and private sector, as a reward for the implementation of policies of equal treatment of and equal opportunities for working women and men.

[152] The Greek General Secretariat for Equality was established by Article 27 of Act 1558/1985 OJ A 137A as a public entity competent for the planning, the implementation and the control of the application of equality policies in all areas. By Article 4(2) of PD 81/2019 OJ A 119/8.7.2019 the GSGE was transferred from the Ministry of Interior to the Ministry of Labour and Social Affairs. It was subsequently renamed 'General Secretariat of Family Policies and Gender Equality'.

[153] Among the criteria to be taken into account, which are stated in a non-exhaustive manner, are: equal pay for work of equal value, balanced participation of women and men in managerial positions or in professional and scientific committees within companies, equality in professional promotion, compliance to labour law provisions on maternity protection, adoption of equality plans or other innovative measures in order to enhance the substantive gender equality, use of advertisement for the promotion of the products or the services of a company in a way which contributes to the prevention of gender-based violence and discourages violence against women and sexism. The procedure, the conditions and the length of the validity of the equality mark are to be determined by decision of the Minister of Internal Affairs following a proposal of the General Secretariat for Equality. The companies to which the equality mark is awarded are obliged to submit an annual report on their actions taken to accomplish substantive gender equality. These companies are monitored and evaluated by the General Secretariat for Equality as to whether they continue to apply policies aimed at gender equality and equal opportunities between women and men; if not, the equality mark is taken away. The General Secretariat for Equality publishes each year the list of companies which have been awarded the equality mark and uploads it on its website.

[154] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα (The legal treatment of gender-based discrimination in Greece),* Heinrich Böll Stiftung, Greece, p. 43.

[155] After the cut-off date of this report (1 January 2021), Article 21 Act 4808/2021, OJ A 101/19.06.2021, amended Article 21 Act 4604/2019.

[156] After the cut-off date of this report (1 January 2021), Act 4808/2021, OJ A 101/19.06.2021 by its Article 1 ratified the ILO Convention 190 on Violence and Harassment and by its Articles 2-23 provided its sanction law.

Article 2(c) of Act 3896/2010 transposing Directive 2006/54/EC; Article 2(c) of Act 3769/2009 transposing Directive 2004/113/EC; and Article 3(c) of Act 4097/2012 transposing Directive 2010/41/EU copy the definition from the Directives and therefore comply with the Directives. Article 2(10) Act 4604/2019, OJ A 50/26.3.2019, repeats the definition of 'harassment' contained in Article 2(c) of Act 3896/2010, adding to sex the grounds of sexual orientation and gender identity. Moreover, Article 2(9) Act 4604/2019 defines *'gendered discrimination'* as physical, psychological or verbal conduct, through which persons are degraded on the grounds of sex, sexual orientation and gender identity.

Furthermore, by virtue of Article 23(3) of Act 3896/2010 transposing Directive 2006/54/EC, a paragraph was added to Article 107 of the CSC which lists the acts that constitute disciplinary offences by civil servants.[157] This new paragraph made 'the violation of the principle of equal treatment and equal opportunities of men and women in matters of employment and occupation, according to the legislation which transposed Directive 2006/54' (hence also harassment and sexual harassment) a disciplinary offence. The above paragraph was amended by Article 14 Act 4604/2019[158] and now defines as a disciplinary offence: 'the violation of the principle of equality, of equal opportunities and equal treatment of men and women in matters of employment and occupation, according to Act 3896/2010 and the use of language introducing gendered discrimination'. According to Article 2(9) Act 4604/2019, *'gendered discrimination'* is defined as physical, psychological or verbal conduct, through which persons are degraded on the grounds of sex, sexual orientation and gender identity.' Moreover, Article 2(8) Act 4604/2019 gives for the first time the definition of *'violence at work'* as 'aggressive behaviour, physical, psychological or verbal violence on the grounds of sex, sexual orientation and gender identity at the workplace during work or on the occasion of work.' For the penal treatment of harassment see under 'Sexual harassment' (3.8.1 below).

3.7.2 Scope of the prohibition of harassment

The prohibition of 'harassment' has a broader coverage than employment in some respects. Firstly, Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54/EC, which prohibits harassment and sexual harassment, applies to the whole scope of the Act, and therefore also to vocational training. Secondly, harassment and sexual harassment are prohibited by other pieces of legislation which, however, do not mention the terms 'harassment' or 'sexual harassment'. More particularly, although not constituting a specific criminal offence, harassment and sexual harassment may be punished as another offence under the PC or as a disciplinary offence under the CSC. Moreover, harassment and sexual harassment may be sanctioned as an offence to the 'personality', and therefore a violation of Article 57 of the Civil Code (CC). The scope of the relevant criminal, disciplinary and civil provisions is broader than the scope of the Directives (see 3.7.4 below).

3.7.3 Definition and explicit prohibition of sexual harassment

'Sexual harassment' (together with harassment) is explicitly prohibited in national legislation by: Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54/EC; Article 4(1)(b) of Act 3769/2009 transposing Directive 2004/113/EC; and Article 4(2) of Act 4097/2012 transposing Directive 2010/41/EU. Article 2(d) of Act 3896/2010 transposing Directive 2006/54/EC; Article 2(d) of Act 3769/2009 transposing Directive 2004/113/EC; and Article 3(d) of Act 4097/2012 transposing Directive 2010/41/EU copy the definition in the Directives, and thus comply therewith. Article 22(1) Act 4604/2019 amended Article 2(d) of Act 3896/2010 transposing Directive 2006/54/EC and replaced its definition of 'sexual harassment' by the following definition:

[157] CSC: Act 3528/2007, OJ A 26/9.2.2007.
[158] Act 4619/2019 'Ratification of the Penal Code' ('Κύρωση του Ποινικού Κώδικα'), OJ A 95/11.6.2019.

'any form of unwanted verbal, psychological or physical conduct of a sexual nature, with the effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment'.

The same definition is provided in Article 2(11) Act 4604/2019. This definition, compared to the definition of the Directive, is narrower in that it does not stipulate 'with the purpose or effect' as the Directive does but only 'with the effect' and in that it has replaced the term 'non-verbal' in the Directive with the term 'psychological', which is narrower in terms of material scope. This is a serious regression with respect to the EU gender equality *acquis*.

3.7.4 Scope of the prohibition of sexual harassment

As mentioned above (see 3.7.2), the prohibition of sexual harassment covers employment, occupation, self-employment and access to goods and services, as the Greek legislation transposing the relevant directives covers the whole scope of the directives (and, until the adoption of Act 4604/2019, copied the definitions included in the directives). Act 4531/2018, OJ A 62/5.4.2018, ratified the IC, which in Article 40 prohibits sexual harassment in all fields.[159]

There is no case law relating to harassment or sexual harassment relying on Act 4097/2012 which transposes Directive 2010/41/EU.

Judgment No. 1196/2020 of the Thessaloniki Court of Appeal is the first judgment to apply Act 3896/2010 transposing Directive 2006/54, in a sexual harassment case. The judgment makes reference to the provisions of the Directive 2006/54 and to the relevant provisions of the transposing Act on the definition of the concept, on the prohibition of sexual harassment as a form of discrimination, on the transfer of the burden of proof, on the protection against victimisation and on the sanctions entailed (see under 3.7.5 below).

Some lower courts have, however, relied on Act 3488/2006 transposing Directive 2002/73/EC, in conjunction with provisions of the CC, in order to uphold claims for moral damages.

For example, in a case where the claimant, a female civil servant, claimed moral damages against a colleague, a first instance court relied on the Directive, in conjunction with Article 57 CC, which prohibits offences to the personality, and Article 920 CC, which prohibits the dissemination of untrue information that may harm someone's honour, profession or future. Having found that the defendant was speaking to the claimant in vulgar language with sexual connotations, had tried to embrace her in her office against her will, was pressing her to date with him and was calumniating her in her working environment, the court considered that this behaviour constituted sexual harassment and consequently upheld the female civil servant's claim.[160]

In a case of sexual harassment in the workplace reported to the employer by the victim (a female employee), the perpetrator (a male colleague) was dismissed by the company as punishment for his offence. The perpetrator lodged a claim, arguing that his dismissal was contrary to the principle of proportionality. The Court of Appeal upheld his claim, finding that the alleged harassment was rather an act of humour and courtesy in a climate of intimacy between the parties, which did not constitute harassment of the applicant's colleague. As a result, the applicant had not violated his obligations as an employee.

[159] After the cut-off date of this report (1 January 2021), as a response to the Greek #MeToo movement, on 21 January 2021 the Greek Prime Minister Kyriakos Mitsotakis announced that in the near future Greece is going to ratify the ILO Convention 190 on Violence and Harassment, EELN Flash Report (Greece) of 12 March 2021 'ILO Convention 190 to be ratified by Greece in the near future', https://www.equalitylaw.eu/downloads/5369-greece-ilo-convention-190-to-be-ratified-by-greece-in-the-near-future-120-kb.

[160] See e.g. Larissa FICC No. 351/2014.

However, the SCPC quashed the judgment for conflicting reasons, given that the Court of Appeal had furthermore found that: a) the perpetrator unsuccessfully asked to be excused by the victim, which constituted a confession to his unlawful act and b) that the relations between the parties had been severely damaged.[161] The Court of Appeal's new judgment has not been published in law reviews or data banks.

There is some case law relating to goods and services; some of the judgments predate the transposition of Directive 2004/113/EC,[162] while others postdate it, but do not mention it or the transposing Act.[163] More generally, the existing scarce case law relies mostly on other legislation, the scope of which is broader than the scope of the Directives: the victim does not have to be working in the same firm or service as the perpetrator; the offence may not even be related to employment, occupation or self-employment or to access to or supply of goods or services.

From the penal point of view, sexual harassment does not constitute a specific criminal offence, but it may be punished as another offence under the PC, such as 'rape', which is a felony (Article 336 PC)[164] or other acts which are misdemeanours, such as 'offence to a person's sexual dignity' (Article 337 PC). More specifically, Article 23(4) of Act 3896/2010 (which repeats Article 16(4) of Act 3488/2006 transposing Directive 2002/73/EC) added to Article 337 of the PC a paragraph that concerns 'offences to sexual dignity'. This new paragraph (Article 337(5) PC) made an aggravating circumstance the perpetration of such offences 'through the exploitation of the situation of a person at work or seeking work'. The new Greek PC was ratified by Law 4619/2019, OJ A 95/11.6.2019 and came into force on 1 July 2019, replacing the previous PC of the year 1950. According to the new PC, the perpetration of such an offence is no more an aggravating circumstance but a penal deed *per se*. More specifically, Article 337(4) of the new PC stipulates that whoever makes gestures of sexual character[165] or proposes the commitment of sexual acts to a person who is employed by the perpetrator or by exploiting the need of a person to work, is punished with imprisonment of up to three years or a fine. The victim must press charges against the perpetrator. Sexual harassment may also be punished under Article 343(a) ('Abuse to a sexual act') of the new PC which stipulates: 'The following are punished with imprisonment of at least two years and a fine: (a) anyone who forces another person to engage in or tolerate an act of a sexual nature by abusing the relationship of employment dependency of any nature'. Moreover, sexual harassment may also be punished as an 'offence to a person's honour' (such as insult or slander (Articles 361-363 PC)[166] or bodily harm (Articles 308-312 PC)).[167]

Sexual harassment may also be punished as a disciplinary offence under Article 107 of the CSC. More specifically, by virtue of Article 23(3) of Act 3896/2010 transposing Directive 2006/54/EC, a paragraph was added to Article 107 of the CSC[168] which lists the acts that constitute disciplinary offences by civil servants. This new paragraph made 'the violation of the principle of equal treatment and equal opportunities of men and women in matters of employment and occupation, according to the legislation which transposed

[161] SCPC (Civil Section) No. 102/2017.
[162] SCPC (Penal Section) No. 2590/2008 ('offence against the sexual dignity' of a patient during a medical examination).
[163] CS No. 505/2010: confirmation of a disciplinary sanction for the dismissal of a public hospital doctor for 'indecent conduct', i.e. the harassment of a woman seeking information about a hospitalised relative.
[164] The new Greek Penal Code (hereinafter PC) was ratified by Law 4619/2019, OJ A 95/11.6.2019 and came into force on 1 July 2019, replacing the previous Penal Code of the year 1950. In its Article 336(5), it reformed, *inter alia*, the legal framework on rape on the basis of non-consent, bringing the Greek legislation in line with Article 36 of the IC.
[165] By 'gestures of sexual character' are meant deeds of lesser importance, which offend the sexual dignity, such as gestures, caresses or the palpation of the body, which do not go as far as sexual intercourse. (Decision No. 253/2019 of the First Instance Judges of Volos, SCPC (Penal Section) 1783/2008, 1546/2008, 1998/2006).
[166] SCPC (Penal Section) No. 1149/2011.
[167] SCPC (Penal Section) No. 148/2010.
[168] CSC: Act 3528/2007, OJ A 26/9.2.2007.

Directive 2006/54' (hence also harassment and sexual harassment) a disciplinary offence.[169] The above paragraph was amended by Article 14 Act 4604/2019[170] and now defines as a disciplinary offence: 'the violation of the principle of equality, of equal opportunities and equal treatment of men and women in matters of employment and occupation, according to Act 3896/2010 and the use of language introducing gendered discrimination'.

According to Article 2(9) Act 4604/2019 '*gendered discrimination*' is defined as physical, psychological or verbal conduct, through which persons are degraded on the grounds of sex, sexual orientation and gender identity. Moreover, Article 2(8) Act 4604/2019 gives for the first time the definition of '*violence at work*' as 'aggressive behaviour, physical, psychological or verbal violence on the grounds of sex, sexual orientation and gender identity at the workplace during work or on the occasion of work.' Moreover, harassment and sexual harassment may be considered an offence to the 'personality' which, under civil law, is broader than 'dignity' and means 'a complex of components of a person's being, such as his/her honour (i.e. moral value and reputation), mental health and emotional realm'.[171] This constitutes a violation of Article 57 of the CC which prohibits offences to the personality. The unfavourable treatment (such as dismissal or prejudicial modification of working conditions) of a worker who has rejected harassment or sexual harassment may be considered an abuse of the employer's rights which constitutes a violation of Article 281 CC prohibiting the abuse of rights.[172]

Provisions of Directives 2002/73/EC and 2006/54/EC were correctly transposed until the amendment of the definition of sexual harassment by Act 4604/2019. However, Greek case law mostly relies on either the PC or the CSC or on the provisions of the CC prohibiting an abuse of employers' rights or offences to a person's personality. However, in the context of civil law (which is applicable due to the lack of explicit provisions for moral damages in the event of sexual harassment), moral damages for the victims of sexual harassment are rarely adjudicated and when they are, the sum is very low.[173] In the author's view, it is evident that this is not a sanction with a deterrent effect.

3.7.5 Understanding of (sexual) harassment as discrimination

Greek legislation specifies that harassment and sexual harassment, as well as any less favourable treatment based on the person's rejection of or submission to such conduct, amounts to discrimination in the provisions that prohibit them (see 3.7.1 and 3.7.3 above). The courts will declare that dismissals due to a rejection of sexual harassment are null and void.[174] However, among the various stakeholders in litigation, especially lawyers and judges, there is limited awareness of sexual harassment as a form of gender discrimination. This is shown by the fact that most judgments are based on the general provisions of the CC on the protection against offences to a person's personality (Article 57 CC) and on the abuse of rights (Article 281 CC) and ignore gender equality law.

Judgment No. 1196/2020 of the Thessaloniki Civil Court of Appeal (CCA)[175] for the first time acknowledged sexual harassment at work as a form of gender discrimination and applied the rule of the reversal of the burden of proof. A female victim of sexual harassment at work lodged a claim with the First Instance Civil Court of Thessaloniki

[169] CS No. 505/2010.
[170] Act 4619/2019 'Ratification of the Penal Code' ('*Κύρωση του Ποινικού Κώδικα*'), OJ A 95/11.6.2019.
[171] SCPC (Civil Section) No. 418/2010 (harassment outside the scope of the Directives).
[172] SCPC (Civil Section) No. 84/2011; Athens CA No. 1139/2011.
[173] Athens FICC (three-member chamber) No. 796/2013, which compensated a female employee, who was victim of sexual harassment at work by her superior, with the sum of EUR 3 000 against the perpetrator.
[174] SCPC (Civil Section) No. 84/2011; Athens CA No. 1139/2011.
[175] Thessaloniki CCA Judgment No. 1196/2020, Armenopoulos, 1/2021, pp. 52-59 with comments by Goulas, D. EELN Flash Report (Greece) of 12 March 2021 'First Greek judgment to apply the reversal of the burden of proof', https://www.equalitylaw.eu/downloads/5370-greece-first-greek-judgment-to-apply-the-reversal-of-the-burden-of-proof-94-kb.

(hereinafter FICC) making use of legal aid. She alleged that she had suffered sexual harassment by her employer and asked for the adjudication of moral damages of EUR 50 000. The claim was not based on gender equality law (Act 3896/2010, OJ A 207/8.12.2010, transposing Directive 2006/54) but on the general provisions of Articles 57, 59 CC on the protection of the personality[176] in combination with Article 932 CC (right to moral damages in the case of a wilful and illegal act). In parallel, the claimant sued her employer before the competent criminal courts of Thessaloniki. The employer was found guilty of repeatedly committing the misdemeanour[177] of 'offence to sexual dignity' by exploiting the working position of the claimant and was sentenced to 20 months of imprisonment and a pecuniary sanction of EUR 6 000 by a final judgment. The FICC found that there had been sexual harassment and adjudicated to the claimant the sum of EUR 10 000 for moral damages. The employer lodged an appeal. By its Judgment No. 1196/2020 the CCA of Thessaloniki applied *ipso jure* Act 3896/2010: it acknowledged that sexual harassment constitutes a form of gender discrimination prohibited by the law and applied the rule on the reversal of the burden of proof enshrined in Article 24(1) Act 3896/2010[178] transposing Article 19 of Directive 2006/54. According to the findings of the Court, the circumstances of the case were as follows: The claimant was employed by a small family business in Thessaloniki. After taking care to be left alone with her on the premises of the company, the employer sexually harassed her. The incident ended when another employee entered the office but the defendant kept sexually harassing the claimant. When she referred the incidents to the harasser's sister asking her help to resolve the matter, the claimant was dismissed. The testimonies of the mother, the female friend and the ex-fiancé of the claimant (hearsay evidence) together with the criminal court's sentence, were deemed by the Court enough to satisfy the requirements of Article 24(1) Act 3896/2010 for the reversal of the burden of proof. As the defendant, to whom the burden of proof was transferred, failed to prove that there had been no sexual harassment, the Court upheld the claim and adjudicated to the claimant the sum of EUR 6 000 for moral damages.

This judgment is very important in that it is the first ever judgment among the Greek case law: (a) to apply the rule of the reversal of the burden of proof to the defendant in a sex discrimination case, the more so in a sexual harassment case with no eyewitnesses; (b) to acknowledge sexual harassment as a form of gender discrimination governed by Act 3896/2010 transposing Directive 2006/54.

After 24 years of EU law on the reversal of the burden of proof in sex discrimination cases (Directive 97/80, Directive 2002/73 and Directive 2006/54), this long-term failure of the Greek courts to apply it can only be attributable to the fact that it is little known to both judges and lawyers. In spite of a relevant CJEU preliminary ruling in a Greek case,[179] the courts are rather reluctant to proceed with a reversal, even if they are asked to do so by the claimant. An important reason is that the provision on the reversal of the burden of proof remains in the acts transposing the directives, without being incorporated into the procedural (civil and administrative) codes[180] whereas the general rule appearing in the

[176] An offence to the 'personality', under Greek civil law, is broader than 'dignity' and means 'a complex of components of a person's being, such as his/her honour (i.e. moral value and reputation), mental health and emotional realm': SCPC (Civil Section) No. 84/2011; Athens CA No. 1139/2011.

[177] According to the Greek Penal Code, misdemeanours are punished with imprisonment, ranging from 10 days to 5 years (Art. 53 PC) or only with a pecuniary sanction.

[178] Article 24(1) Act 3896/2010 reads: '1. When a person who falls within the scope of this Act alleges that he/she is affected by a discriminatory treatment on grounds of sex, within the meaning of the preceding provisions, and invokes before a court or other competent authority facts or data from which direct or indirect discrimination on grounds of sex or sexual or other harassment within the meaning of this Act is inferred, the respondent shall prove that there has been no breach of the principle of equal treatment of men and women. This provision does not apply in penal proceedings. 2. Paragraph 1 also applies where an issue of unequal treatment arises in cases covered by Directive 92/85/EEC, as transposed by PDs 176/1997 and 41/2003, and Directive 96/34/EC, as transposed by Articles 5 and 6 of Act 1483/1984 […] and NGCA 2003.'

[179] CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*., 11 March 2005.

[180] Contrary to CS Opinion 348/2003 on the draft Decree transposing Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, OJ L 14, 20.01.1998, pp. 6-8.

procedural codes lays the burden of proof on the claimant. This has been deplored in all the EELN Greek annual country reports (see under Section 11.5) to date, albeit to no avail.

Moreover, in 2020, there was a societal debate for the ratification of the new ILO Violence and Harassment Convention 190 and Declaration 206 adopted in June 2019: (i) A relevant article was published by the author of this report in the September 2020 issue of the legal labour law review '*Epitheorissis Ergatikou Dikaiou*';[181] (ii) On the International Day for the elimination of violence against women (25 November 2020) the international human rights NGO ActionAid presented a Greek survey on sexual harassment at work in the general population and in the sectors of tourism and hospitality under the title 'Almost 9 out of 10 women are sexually harassed at work',[182] asking for the ratification. On the same day the Greek Trade Union Confederation (GSEE)[183] asked for the ratification as well; (iii) On 8 December 2020 the Greek League for Women's Rights made a 'Call to the Greek Government for the ratification of the ILO Violence and Harassment Convention'[184] which was sent to the President of the Greek Democracy, the Prime Minister, the members of the Greek Parliament and the competent ministers; this call was subsequently adopted by the Network of Equality Committees of the Greek Universities,[185] which according to Act 4589/2019 mediate in the case of complaints of discrimination or harassment and offer support to victims of discrimination when denouncing discriminatory treatment. Despite the above calls, by 25 December 2020 (when the relevant 18-month deadline expired), the Greek Government had not submitted the ILO Convention 190 to the national Parliament.[186]

3.7.6 Specific difficulties

According to the LI's annual reports for the years 2013-2017,[187] only 4 % of complaints to the LI annually concern sexual harassment; all of them were brought by women. Of 15 such cases in the years 2013-2017, 4 were resolved, 4 were sent to the courts, 5 were sent to the Ombudsman, in one case the LI instituted penal proceedings and in one case the LI imposed an administrative fine[188] of EUR 500. Currently, the administrative fine for any breach of the principle of equal treatment between men and women is EUR 2 000 per

[181] Petroglou, P. (2020), 'Η Δ.Σ.Ε. 190 και η Σύσταση 206 του Ιουνίου 2019: Αναγνώριση της σεξουαλικής παρενόχλησης και της παρενόχλησης λόγω φύλου στην εργασία ως μορφών έμφυλης βίας' (The ILO Convention 190 and the Recommendation 206 of June 2019: Recognition of sexual harassment and harassment related to sex at work as forms of gender-based violence', *Επιθεώρησις Εργατικού Δικαίου* (*Labour Law Review*), 9/2020, pp. 993-1008.

[182] https://www.actionaid.gr/enhmerwsou/nea/ellada-shedon-9-stis-10-gunaikes,-parenohloyntai-sexoualika-stin-ergasia-tous/.

[183] https://m.naftemporiki.gr/story/1662577.

[184] http://leagueforwomenrights.gr/images/10122020/DSE90.pdf.

[185] https://www.auth.gr/en/node/28723.

[186] After the cut-off date of this report (1 January 2021), as an immediate response to the Greek #MeToo, triggered by the revelations of the Greek Olympic Gold champion in sailing Sofia Bekatorou, on the sexual abuse she had suffered as a young athlete by a high-ranking executive officer of the Greek Sailing Federation, the Greek Prime Minister Kyriakos Mitsotakis announced on 21 January 2021 that in the near future Greece is going to ratify the ILO Violence and Harassment Convention. Moreover, on 25.02.2021 the Prime Minister appeared before the Greek Parliament to announce new measures on SH and sexual abuse. EELN Flash Report (Greece) of 12 March 2021 'ILO Convention 190 to be ratified by Greece in the near future', https://www.equalitylaw.eu/downloads/5369-greece-ilo-convention-190-to-be-ratified-by-greece-in-the-near-future-120-kb. Finally, ILO C190 was ratified by Act 4808/2021, OJ A 101/19.06.2021.

[187] Greek Labour Inspectorate: (2014) "Εκθεση πεπραγμένων ΣΕΠΕ έτους 2013' (Annual report of the year 2013), available at: www.ypakp.gr/uploads/docs/7702.pdf; (2015), "Εκθεση πεπραγμένων ΣΕΠΕ έτους 2014' (Annual report of the year 2014), available at: www.ypakp.gr/uploads/docs/11658.pdf; (2016), "Εκθεση πεπραγμένων ΣΕΠΕ έτους 2015' (Annual report of the year 2015), available at: www.ypakp.gr/uploads/docs/11659.pdf; (2017), "Εκθεση πεπραγμένων ΣΕΠΕ έτους 2016' (Annual report of the year 2016), available at: www.ypakp.gr/uploads/docs/11663.pdf; "Εκθεση πεπραγμένων ΣΕΠΕ έτους 2017' (Annual report of the year 2017), available at: www.ypakp.gr/uploads/docs/11919.pdf. To date no annual reports of the next years 2018-2020 have been published.

[188] Article 23(2) Act 3896/2010, transposing Directive 2006/54, provides that any breach of its provisions on the prohibition of gender discrimination constitutes a breach of labour law for which an administrative fine is imposed according to Article 16 Act 2639/1998.

case.[189] Given there is no explicit category for sexual harassment, this fine is applicable for sexual harassment cases as well. In the author's view, it is evident that this is not a sanction with a deterrent effect.

Moreover, in the Ombudsman's annual reports for the years 2013-2019, only 12 cases of sexual harassment were referred (2 in 2014, 2 in 2015, 3 in 2016, 1 in 2017, 1 in 2018 and 3 in 2019).[190] It is noteworthy that in two of these cases the reversal of the burden of proof to the employer was applied by the Ombudsman (in one case in 2016 the victim presented text messages sent by the perpetrator and in another case in 2015 the victim presented a video recording from the security video cameras at their workplace).

In 2019, the Greek Ombudsman dealt with an interesting case concerning sexual harassment against a trainee student by her supervisor. The LI had refused to examine the victim's complaint because she had no employment contract with the organisation where she was placed as a trainee. The Ombudsman asked the employer to examine the victim's allegations. Following the Ombudsman's intervention, the victim was transferred to another work post of the enterprise whereas the alleged perpetrator was neither questioned, nor faced with disciplinary proceedings. The Ombudsman addressed to the employer a 'severe recommendation'. This case shows that Labour Inspectors are not always aware of the personal scope of Directive 2006/54; further training on sexual harassment and harassment at work as forms of gender discrimination is deemed necessary.

However, these cases are only the tip of the iceberg. It is a common belief that sexual harassment at work is quite widespread in practice. Sexual harassment cases that reach the LI and the Ombudsman as well as the courts are scarce because in practice harassed women rarely complain:[191] (i) for fear of being victimised (claimants, witnesses: dismissal, detrimental modification of working conditions) and in particular for fear of the perpetrator bringing criminal charges against them for slander (which is quite common in practice) and/or civil claims for moral damages (see 11.2 below), (ii) for fear of acquiring a 'bad name' in the labour market, (iii) due to lack of evidence and support and (iv) due to the sharply rising litigation costs, etc. (see 11.3.1 below).

On victimisation in the form of legal retaliation related to sexual harassment see 11.2 below. On the use of sexist language as a disciplinary offence see 11.6.1 below.

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

Instruction to discriminate is explicitly prohibited in Greek legislation by: Article 3(3) of Act 3896/2010 transposing Directive 2006/54/EC; Article 4(2) of Act 3769/2009 transposing Directive 2004/113/EC; and Article 4(3) of Act 4097/2012 transposing Directive 2010/41/EU.

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[189] Ministerial Decision No. 60201/Δ7. 1422/2019 of the Ministry of Employment and Social Affairs, OJ B 4997/31.12.2019.

[190] Greek Ombudsman: (2014), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2014' (Gender and employment relationships - Special Report 2014), available at: https://www.synigoros.gr/resources/docs/ee2014-13-fylo--2.pdf; (2015) 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships - Special Report 2015), available at: https://www.synigoros.gr/resources/docs/ee2015-13-fylo--2.pdf; (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2016' (Gender and employment relationships - Special Report 2016), available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf; (2017), 'Ίση μεταχείριση – Ειδική έκθεση 2017' (Equal treatment – Special report 2017), available at: https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf; (2018), 'Ίση μεταχείριση – Ειδική έκθεση 2018' (Equal treatment – Special report 2018), available at: https://www.synigoros.gr/resources/docs/ee_im_2018_el.pdf.

[191] Koukoulis-Spiliotopoulos, S. (2008), 'Gender equality in Greece and effective judicial protection', NZA 2/2008, p. 77.

The wording of Article 3(3) Act 3896/2010 transposing Directive 2006/54/EC is broader than the wording of the provisions of the directives; instead of prohibiting an 'instruction' to discriminate, they prohibit an 'instruction which entails discrimination'. Article 4(2) of Act 3769/2009 transposing Directive 2004/113/EC prohibits 'encouragement' which is broader than an 'instruction' and may also concern the conduct of people who are not superiors of the addressee; Article 4(3) of Act 4097/2012 transposing Directive 2010/41/EU prohibits both an 'instruction' and 'encouragement'; both provisions therefore exceed the Directives.

3.8.2 Specific difficulties

There do not seem to be any special difficulties nor any cases in relation to this concept. However, to the author's knowledge there is no case law on instruction to discriminate.

3.9 Other forms of discrimination

Article 18 of Act 3896/2010 transposing Directive 2006/54/EC states: 'Less favourable treatment of parents due to parental leave, adoption or fostering of a child also constitutes discrimination.'

Article 12 Act 4604/2019 forbids the use of expressions that contain or hide gender discrimination in administrative reports.

Moreover, Article 14 Act 4604/2019 stipulates for the first time that the use of language introducing gendered discrimination by civil servants constitutes a disciplinary offence of civil servants (in addition to cases of violation of the equality principle, the equal opportunities and the equal treatment of men and women which were already provided as disciplinary offences).

No specific legal instrument has been adopted to combat algorithmic discrimination in Greece either in relation to gender equality or in relation to the other grounds. There is no pending bill or draft legislation in discussion which would aim at addressing algorithmic discrimination specifically. On 21 February 2020 the Minister of Digital Governance, Kyriakos Pierrakakis, announced the development of a National Strategy on Artificial Intelligence (AI) in the near future, which however has not been adopted to date. On 3 December 2020 the Hellenic Federation of Employers (SEV) called for the establishment of a National Committee on AI through a public-private partnership for the drafting of the regulatory framework and the code of deontology.[192]

3.10 Evaluation of implementation

The national legal provisions of Act 3896/2010 implementing the EU law concepts and the relevant case law have been satisfactory. The definitions of direct discrimination, indirect discrimination and positive action used to copy those of the Directive. The definition of positive action in Article 19 of Act 3896/2010 covers the scope of Article 157(4) TFEU, but its wording is more positive and stronger. It does not merely stipulate, like Article 157(4) TFEU, that the equal treatment principle 'shall not prevent' positive action; and it explicitly provides that positive measures 'do not constitute discrimination'. It therefore reflects the stronger concept of positive action as enshrined in Article 116(2) of the Constitution, which makes positive action obligatory in all areas. However, in practice the absence of case law concerning indirect discrimination shows that the concept of indirect discrimination is still unclear.

However, the definitions of general concepts in Act 4604/2019 fall short of the national and EU *acquis* (see 3.3.1 above on direct discrimination, 3.4.1 above on indirect

[192] https://www.infocom.gr/2020/12/03/sev-anagkaia-systasi-ethnikis-epitropis-technitis-noimosynis/52701/.

discrimination, 3.7.3 above on sexual harassment, 3.6.1 above on positive action and 3.5.1 above on multiple discrimination).

Despite its successful application by the CS in the follow-up to the *Kalliri* case and two other relevant cases (see 3.4.2 above), the objective justification test has not been successfully applied regarding common athletic requirements (see 3.4.3 (i) above). Moreover, the issue of the award of bonus points to candidates who have served in the army or in other corps to which women have no or only limited access has been raised recently (see 3.4.3 (ii) above).

On the contrary, in case law regarding employment in the private sector there seems to be limited awareness of the concept of indirect discrimination and of the non-fault requirement in discrimination cases (see 3.4.4 (i) above). A recent preliminary reference by the CSPC to the CJEU regarding indirect discrimination on the grounds of age may help the stakeholders of litigation familiarise with these concepts (see 3.4.4 (i) above).

There is no case law on multiple discrimination.

Last but not least, although national legal provisions on gender identity are satisfactory, to date, relevant case law concerns only judicial recognition of gender identity but not discrimination on this ground. A first discrimination complaint has been brought before the Ombudsman. Moreover, it has been deplored that access of transgender persons to the health system is problematic and that the cost of medical treatment for gender reassignment, if opted for, is not covered by social security.

3.11 Remaining issues

On positive action and substantive equality see 3.6 above.

There are no remaining issues.

4 Equal pay and equal treatment at work (Article 157 of the Treaty on the Functioning of the European Union (TFEU) and Recast Directive 2006/54)

4.1 General (legal) context

4.1.1 Surveys on the gender pay gap and the difficulties of realising to equal pay

A rare but encouraging signal of the awareness of social partners of the gender-related equal pay issue was the publication of a research document entitled *Addressing the gender pay gap. The EU action plan 2017-2019 and the role of the social partners and social dialogue* for the Institute of Small Enterprises of the Hellenic Confederation of Professionals, Craftsmen and Merchants (IME GSEVEE), written by Ioanna Profyri in March 2018.[193] The research took place in the framework of the 'Institutional, operational and research Empowerment of GSEVEE' project, co-funded by Greece and the European Union (European Social Fund) through the Operational Project 'Development of Human Resources, Education and Ongoing training 2014-2020', which makes it an interesting example of mainstreaming gender equality through the European funding programmes.

4.1.2 Surveys on the difficulties of realising equal treatment at work

An interesting survey on the Greek case law which led to the CJEU *Kalliri* case was published in 2018 by a judge of the First Instance Administrative Court.[194] The author criticises the *Kalliri* judgment, arguing that it is not clear enough and does not show the way forward concerning access for women to the Police force. However, the author agrees with the CJEU's finding that the aim pursued by the law at issue could be achieved by measures that are less disadvantageous to women, such as a pre-selection of candidates to the competition for entry into Schools for Police Officers and Policemen based on specific tests allowing their physical ability to be assessed; even in this case, very strict judicial control is needed as to whether such measures are justified by genuine occupational requirements.

In another paper published in 2018 by an academic[195] the issue of common MAR as a form of indirect gender discrimination was raised, *inter alia*. A strong criticism is made of CS 26/2016 which by a very vague reasoning found this discrimination to be objectively justified by the nature of the duties of the municipal Police. However, the paper praises the dissenting opinion of a judge, who found that these requirements are neither necessary nor appropriate for the duties of the municipal Police. It is proposed that the issue should be dealt with by the CS seven-member section or that a preliminary reference should be submitted to the CJEU, although to no avail, as the CS in its Judgment No. 1484/2020 found that common MAR do not constitute indirect discrimination against female candidates for the Police school without addressing a preliminary reference to the CJEU (see under 3.4.3.i. above).

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[193] Profyri, I. (2018), 'Η αντιμετώπιση του έμφυλου μισθολογικού χάσματος. Σχέδιο δράσης της ΕΕ 2017-2019 και ο ρόλος των κοινωνικών εταίρων και του κοινωνικού διαλόγου' (Addressing the gender pay gap. The EU action plan 2017-2019 and the role of the social partners and of the social dialogue), Research documents of the Institute of Small Enterprises of the Hellenic Confederation of Professionals, Craftsmen & Merchants (IME GSEVEE), 3/2018, available here.

[194] Kofinis, S. (2018), 'Στο κρεβάτι του Προκρούστη: Το ανάστημα των υποψηφίων για τις αστυνομικές σχολές υπό εξέταση' (On the bed of Procrustes: The height of candidates for Police academies under review), *Θεωρία και πράξη Διοικητικού Δικαίου (ΘΠρΔΔ) (Theory and practice of administrative law)* 2018, pp. 475 et seq.

[195] Goulas, D. (2018), 'Ελάχιστο ανάστημα των υποψηφίων ασχέτως φύλου για τη συμμετοχή σε διαγωνισμό εισαγωγής σε αστυνομική σχολή' (Minimum height of candidates irrespective of sex for participation in the contest for access to the police academy), *Επιθεώρησις Ευρωπαϊκού Δικαίου (ΕΕυρΔ) (European Law Review),* 1:2018, pp. 104-112.

4.1.3 Other issues

According to the latest Eurostat data,[196] the gender pay gap in Greece was 10.4 % for the year 2018 whereas across EU Member States, the gender pay gap varied by 20.4 percentage points, ranging from 1.3 % in Luxembourg to 21.7 % in Estonia. No information is available for Greece on the gender pay gap from the perspectives of part-time/full-time employment, age, economic activity and private/public sector. In fact, the gender pay gap in Greece has significantly decreased over the last few years: the gender pay gap was 10.4 % in 2018, 12.5 % in 2014 and 25.5 % in 2002. The relatively low gender pay gap index in Greece should be examined in the framework of the deep financial and economic crisis and the austerity measures suffered by Greece for more than 10 years (2009-2019). In a survey on the gender wage gap and the economic crisis in Greece for the year 2013, the researchers recorded a decreasing trend for the discrimination effects associated with the economic crisis.[197] This is in line with the findings at EU level[198] of Eurofound, showing that the observed trends of wage inequality contrast radically with developments in wider income inequality, which often moved in opposite directions. This phenomenon (occurring mostly in the southern European and Baltic Member States) was caused by the crisis having a significant impact on unemployment, which increased income inequality by drastically reducing the earnings of those who lost their jobs. At the same time, wage inequality fell as a result of some relatively low-paid segments of employment being eliminated. In such cases, the increase in unemployment had the effect of removing some inequality from the labour market, leading to a decrease in gender pay gap but an increase in overall inequality levels.

According to a study by SEV (Hellenic Federation of Enterprises),[199] based on data from the World Economic Forum, the relatively low placement of Greece in the overall assessment is due to the low participation of women in the labour force (59.6 % for women compared with 76.5 % for men, with the correspondent percentages in Western Europe being 70.2 % and 80.2 %) and to the over-representation of women in low-paid sectors. SEV notes that the general Gender Parity Index revealed a decline in the first years of the economic crisis, which shows that women were hit harder than men by the austerity measures. However, in more recent years the general Gender Parity Index shows an increasing trend, mostly due to the increased participation of women in the active population in their effort to counterbalance reduced (due to the crisis) family incomes. Moreover, there is a common belief that austerity measures in the years of the crisis have had an adverse impact on wages exceeding those stipulated in collective agreements (in some cases even shrinking to the minimum wage); this has resulted in a significant decrease in the gender pay gap while structural inequalities still persist.

Since 2011, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), through its reports on Greece, has expressed its concerns about the 'disproportionate impact' of the crisis and austerity measures on women and the widening of the pay gap to their detriment. The CEACR stresses in particular that the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures have adversely affected the negotiating power of women and lead to their over-representation in precarious, low-paid jobs. Serious concerns about the severe impact on gender equality were also explicitly expressed in the

[196] https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics.

[197] Agiomirgianakis, G., Bersatos, G. and Tsounis, N. (2018), Gender Wage Gaps and Economic Crisis in Greece, *International Review of Applied Economics*, Volume 33 (Issue 2), pp. 254-276.

[198] Eurofound (2015), *Recent developments in the distribution of wages in Europe*, Publications Office of the European Union, available at: https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1510en.pdf.

[199] Hellenic Federation of Enterprises (SEV) (2018), 'Η ισοτιμία γυναικών και ανδρών κάνει καλό στην οικονομία και στην κοινωνία!' (Equality between women and men is a good thing for economy and society!) available at: www.sev.org.gr/Uploads/Documents/Weekly_18_01_2018.pdf.

Report of the High-level mission to Greece.[200] The Council of Europe (CoE) Commissioner for Human Rights has also emphasised the serious impact of the crisis and austerity measures on women.[201]

In the private sector, the rapid growth of flexible forms of employment as well as the replacement of contracts of indefinite duration by fixed-term contracts has led to a significant reduction in wages. The ILO CEACR stresses, referring to the Ombudsman, that flexible forms of employment, mainly part-time and rotation work, are more often offered to women, especially during pregnancy and upon return from maternity leave, reducing their levels of pay, while layoffs due to pregnancy, maternity and sexual harassment are increasing. 'Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced.'[202] In fact, unemployment, especially among women and young people, is especially high; as the CEACR notes, 'a large number of women have joined the ranks of the "discouraged" workers who are not accounted for in the statistics'. Moreover, fiscal consolidation decisions and austerity measures are taken without any *ex ante* or even *ex post* impact assessment, as deplored by the European Committee of Social Rights (ECSR) and other treaty-bodies.

Given that collective agreements have been a principal source of determination of pay rates, the ILO CEACR refers to its comments on Convention No. 98 and calls upon the Greek Government to bear in mind that collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from indirect discrimination on the ground of sex.[203] In its 2016 Observations on the implementation of ILO Convention No. 100 (equal remuneration), the ILO CEACR again deplores the absence of impact assessment of austerity measures on women's pay, while 'the rapid growth of flexible forms of employment has led to a widening of the gender pay gap and to obstacles in women's career development'.[204]

According to the Government, gender wage differentials may exist where wages exceed those stipulated in collective agreements, but private agreements are not monitored. As the Ombudsman found, cuts in pay and allowances during pregnancy, maternity leave and parental leave increase the gender pay gap, even in the public sector.[205]

4.1.4 Political and societal debate and pending legislative proposals

Apart from the field of sexual harassment where the Greek #MeToo has triggered an intense public political and societal debate and significant legislative reforms have been announced (see under 3.7.5), there are no pending legislative proposals on the principles of equal pay, including pay transparency, and equal treatment at work.

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[200] ILO (2011), *Report on the High Level Mission to Greece (Athens, 19-23 September 2011)*, paras. 317-321, available at: www.ilo.org/global/standards/WCMS_170433/lang--en/index.htm.

[201] Council of Europe, Commissioner for Human Rights (2013), *Safeguarding human rights in times of economic crisis*, p. 23, available at: https://rm.coe.int/safeguarding-human-rights-in-times-of-economic-crisis-issue-paper-publ/1680908dfa; Council of Europe, Commissioner for Human Rights (2014), Protect women's rights during the crisis, available at: www.coe.int/en/web/commissioner/-/protect-women-s-rights-during-the-crisis.

[202] ILO Greece: Observation (CEACR), adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention 1951 (No.100), available at: www.ilo.org/dyn/normlex/en/f?p=1000:13201:0::NO:13201:P13201_COUNTRY_ID:102658.

[203] ILO Greece: Observation (CEACR), adopted 2012, 'Giving globalization a human face, International Labour Conference 101st Session, 2012', available at: www.ilo.org/public/libdoc/ilo/P/09661/09661(2012-101-1B).pdf; ILO Greece: Observation (CEACR), adopted 2013, 'Collective bargaining in the public service. A way forward, International Labour Conference 102nd Session', *2013*, available at: www.ilo.org/public/libdoc/ilo/P/09661/09661(2013-102-1B).pdf.

[204] ILO Greece, Observation (CEACR), adopted 2016, published 106th ILC session (2017), available at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3297841.

[205] ILO Greece: Observation (CEACR), International Labour Conference 106th ILC session, 2017, Greece, available at: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297841:NO.

4.2 Equal pay

4.2.1 Implementation in national law

The principle of equal pay for equal work or work of equal value is implemented in Greek legislation in Article 22(1)(b) of the Constitution (see 2.1.1 above) and Article 4(1) of Act 3896/2010 transposing Directive 2006/54/EC. Article 4(1) of Act 3896/2010 stipulates that 'men and women have a right to equal pay for equal work or work of equal value', in accordance with the rights-based wording of Article 22(1)(b) of the Constitution (see 2.1.1 above) as well as with CJEU case law.

4.2.2 Definition in national law

The concept of pay is defined in Greek legislation in Article 2(e) of Act 3896/2010 transposing Directive 2006/54/EC, which copies the definition of Article 157 TFEU. It defines as 'pay': any kind of wages and salary and all the other benefits that are offered directly or indirectly from any source, in cash or in kind, by the employer to the employee because of or in the context of the employment of the latter.

4.2.3 Explicit implementation of Article 4 of Recast Directive 2006/54

Greek law explicitly implements Article 4 of Recast Directive 2006/54/EC (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration) in Article 4 of Act 3896/2010 transposing Directive 2006/54/EC.

The wording of Article 4(1) of the Act is positive ('Men and women are entitled to equal pay for the same work or work of equal value' (see 4.2.1 above). The prohibition of direct and indirect discrimination in pay results from the general prohibition of direct discrimination (see 3.3.1 above) and indirect discrimination (see 3.4.1 above), albeit the definitions of these concepts have been amended by Act 4604/2019, resulting in a serious regression with respect to the EU gender equality *acquis;* it is also enshrined in Article 4(1) of the transposing Act and Article 12 of this Act which prohibits such discrimination in the designing and application of systems for evaluating personnel. The problem is that, although included in Article 22(1) of the Constitution since 1975 and in legislation since 1984 (in the act transposing Directive 75/117/EEC), the notion of 'equal value' is unclear to litigants and judges, so that in most cases the comparison concerns the same work. Moreover, in spite of a preliminary CJEU ruling in the Greek case *Nikoloudi vs OTE,*[206] which concerned, *inter alia*, indirect discrimination, there is no case law on indirect discrimination in equal pay cases.

Article 4(2)(a) of the Act copies Article 2 of the Directive, requiring that, 'when a professional classification system is used, it must be based on common criteria for men and women and be applied so as to exclude discrimination based on sex'. but it refers to 'professional' instead of 'job' classification. Also, Article 4(2)(b) of the Act reads: 'When systems of personnel evaluation related to the evolution of their pay are designed and applied, the equal treatment principle must be observed and no discrimination on grounds of sex or family status is allowed.' This provision exceeds the Directive, as it adds 'family status' to 'sex'. However, the terms 'professional' and 'personnel' (also used in the aforementioned Article 12 of the Act) are misleading; they may imply that the classification and evaluation concern the worker rather than the content of the work, as required by the CJEU. It might be considered that, as the Ministry of Employment notes, these provisions do not impose on undertakings the use of evaluation and classification systems (in particular since the great majority of Greek firms are small or medium-sized enterprises (SMEs) and they would not be able to establish such systems) and that, therefore, the

[206] CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*, 10 March 2005.

above requirements concern only those undertakings which have established a formal system of evaluation and classification. However, in every undertaking, the workers are paid on the basis of some kind of job classification. Moreover, any wage evolution is also based on some kind of criteria. It is clear from the Directive and CJEU case law that any evaluation and classification or pay scale must be transparent, based on common criteria for men and women and applied so as to exclude discrimination based on sex.

Anyway, in the absence of other measures, an improvement to the wording of the above Paragraph 2(a) of Article 4, so that, instead of 'professional classification,' the term '*job* classification' is used, as in Article 4(2) of the Directive, as well as an improvement to Paragraph 2(b) of Article 4, so that the term '*job* evaluation' is used, would help to make it clear that it is the nature of the job that matters. In the view of the author, this might promote awareness-raising concerning the equal value concept.

4.2.4 Related case law

There is no case law on the provisions of Article 4(1) Act 3896/2010 but rather in general on the equal pay principle enshrined in this provision and in the Constitutional Provision 22(1)(b) (see 2.1.1 above). Whereas the concept of pay is considered sufficiently clear in Greece, the notion of 'equal value' is still unclear to litigants and judges, although it has been included in Article 22(1) of the Constitution since 1975 and in legislation since 1984 (in the act transposing Directive 75/117/EEC), and in spite of a preliminary CJEU ruling in the Greek case *Nikoloudi v OTE*,[207] which concerned, *inter alia*, indirect discrimination. This is shown by the absence of case law on indirect discrimination in equal pay cases. The existing case law on equal pay is limited to the following issues:

- Family allowances paid by the employer (landmark judgment).[208]
- The refusal of an employer to allow female cleaners the possibility of being appointed as permanent members of staff.[209]
- The non-recognition of unpaid parental leave as working time for the purpose of the calculation of the pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social

[207] CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*, 10 March 2005.

[208] A landmark judgment on equal pay for men and women is SCPC (Full Court) No. 3/1995, which concerns the concept of pay and, in particular, family allowances paid by the employer. A female employee claimed the family allowance paid by her employer under the internal rules of the undertaking at a percentage of the basic salary. This was paid to all male employees who were married and had children without any further condition, but female employees were subjected to two conditions: that their husband be unable to support himself due to disability or illness and that the children be supported by the mother. The SCPC relied on the equal pay constitutional norm Article 22(1)(b) in the light of, and in conjunction with, ILO Convention No. 100 and Article 119 TEC (now Article 157 TFEU), as interpreted by CJEU case law, which required a levelling-up solution. It held that the concept of 'pay' includes family allowances paid by the employer, since they are paid in respect of the employment relationship. The SCPC thus reversed its previous case law which had not found any discrimination in this respect, as it applied the breadwinner concept.

[209] This case led to CJEU judgment *Nikoloudi* (C-196/02) which dealt with the exclusion of part-time cleaners of the Greek telecommunications company, Organismos Tilepikinonion Ellados (OTE), from the possibility of being appointed as permanent members of staff by a collective agreement provision that was ostensibly neutral as to the worker's sex. The CJEU ruled that, to the extent that this exclusion affected a category of workers which, under national rules with the force of law, was composed exclusively of women, it constitutes direct discrimination on grounds of sex within the meaning of Directive 76/207/EEC. According to the CJEU, 'should the premise that only part-time female cleaners had been denied the possibility of being appointed as an established member of staff prove incorrect, and should a much higher percentage of women than men have been affected by the provisions of the specific collective agreements, the exclusion of part-time temporary staff from being appointed as established staff, brought about by those agreements, would constitute indirect discrimination'. After the CJEU judgment *Nikoloudi*, the *Amaroussion* Justice of the Peace (Ειρηνοδικείο Αμαρουσίου), in its judgment No. 251/2006, found that the domestic applicant, Ms Nikoloudi, had been the victim of sex-based discrimination in pay and awarded her the pay differential she had claimed. The employer submitted an appeal, which has not been heard.

security scheme through payment of both the employer's and the employee's contribution by the employee.[210]

- Different age limits: supplementary compensation equal to nine months' wages paid by an employer in the private sector to female employees retiring after 25 years of service compared to male employees retiring after the completion of 30 years of service according to the provisions of a company collective agreement.[211]
- Different age limits: the distribution of the capital of a group insurance scheme following the transfer of a bank and the refusal of its successor employer to continue this voluntary practice. The relevant capital was distributed to the employees according to their pensionable age, which according to the insurance contract was set for male employees at 65 years and for female employees at 60 years.[212]

In its Opinion No. 112/2019, the Greek State Legal Council found that the period of maternity leave of intern female doctors in public hospitals is considered as actual working time for the purpose of salary progression,[213] irrespective of the fact that their education is completed when all the medical activities, including on-call duties,[214] provided by law, are accomplished. This Opinion has been endorsed by the competent minister and consequently is binding. From the Opinion, it appears that the competent public service used to refuse to take into account the period of maternity leave for the purpose of salary progression.

Moreover, there is no recourse to the LI for gender equal pay issues. A review of the annual reports of the LI over the last decade (2009-2017) reveals that the only equal pay case ever brought was connected to maternity protection.[215]

There is also no case law on the provision of Article 4(1) Act 3896/2010 and in general in relation to sex-based discrimination in job classification systems or any other instruments

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[210] Athens CA No. 3693/2018 concerned the non-recognition of unpaid parental leave (one year, five months and one day) of a female private-bank employee as working time for the purpose of the calculation of pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme through payment of both the employer's and the employee's contribution by the employee. Although it did not explicitly identify it as direct discrimination, the Court of Appeal found that this practice was contrary to Act 3896/2010 and Article 21(1) Constitution protecting maternity and awarded to the female employee EUR 6 118.12 for loss of pay for the last 5.5 years of service.

[211] SCPC (Civil Section) No. 214/2017: This case concerned a supplementary compensation equal to nine months' wages paid by an employer in the private sector (Greek telecommunications company – OTE) to female employees retiring after 25 years of service whereas the compensation was only paid to male employees retiring after the completion of 30 years of service, according to the provisions of an enterprise collective agreement. The SCPC found that this compensation falls within the concept of 'pay'. Applying Articles 4(1) and (2) (equality before the law and gender equality) and 116 of the Constitution and Act 3896/2010 transposing Directive 2006/54/EC, the SCPC found that the above-mentioned discriminatory provision to the detriment of male employees should be deemed to have been abolished as contrary to Article 30(2) Act 3896/2010 and that the more favourable provision for female employees applied to male employees as well (levelling-up approach). Consequently, the compensation in question was awarded to male employees retiring after 25 years of service (as was provided for women).

[212] In contrast to SCPC (Civil Section) No. 214/2017, SCPC (Civil Section) judgments Nos 603/2017 and 604/2017 failed to apply the levelling-up norm. These cases concerned the distribution of the capital of a group insurance scheme following the transfer of a bank and the refusal of its successor employer to continue this voluntary practice. The relevant capital was distributed to the employees according to their pensionable age, which according to the insurance contract was set for male employees at 65 years and for female employees at 60 years. The SCPC found that the distributed capital fell within the concept of 'pay'. However, according to the Court, the above-mentioned discriminatory provision of the insurance contract, which was to the detriment of women as it provided a lower pensionable age for them, should be deemed abolished as contrary to the constitutional norms of Articles 4(1) and (2) (equality before the law, gender equality), 22(1b) (equal pay) and 116, Article 119 TEC and Act 1414/1984; consequently, it could not be applied in favour of male employees (levelling-down approach).

[213] Articles 136 and 137 Act 4472/2017, OJ A 74/19.5.2017.

[214] Article 25 PD 38/2010, OJ A 78/25.5.2010.

[215] This case concerned direct sex discrimination due to a detrimental pay modification suffered by a female employee during her maternity leave. An administrative fine of EUR 1 500 was imposed by the Labour Inspectorate. See Greek Labour Inspection, "Έκθεση πεπραγμένων ΣΕΠΕ έτους 2013' (Annual report 2013), available at: www.ypakp.gr/uploads/docs/7702.pdf.

designated to assist in establishing gender-neutral job evaluation and pay systems and no monitoring of job classification.

4.2.5 Permissibility of pay differences

Neither the Constitution nor specific legislation allows any derogation from the equal pay principle; therefore, any justification is excluded. However, differences in the legal nature of the employment relationship (e.g. one worker is employed under a private-law contract, while another is a civil servant) or the wage-fixing instrument (e.g. one worker is covered by a collective agreement (CA), another is not, or they are covered by different CAs) are often used as justifications, even within the same company or service where the workers are employed by the same employer and perform the same work.[216] This is incompatible with EU law, which requires equal pay for equal work or work of equal value carried out in the same establishment or service for the same employer.[217] The absence of (or narrow) criteria for comparable work is also a justification. More generally, there is a tendency to justify pay differences on budgetary grounds and by mere generalisations, as was shown in the CJEU *Nikoloudi* judgment which concerned, *inter alia*, indirect discrimination in pay.[218]

4.2.6 Requirement for comparators

Neither Article 22(1)(b) of the Constitution nor the pertinent legislation explicitly require a comparator. However, Article 2(a) of Act 3896/2010 transposing Directive 2016/54/EC, which copies the definition of direct discrimination from the Directive, may be considered as implicitly requiring a comparator. Case law relying on the broader constitutional principle of equal pay requires such a comparator in the same undertaking or service or within the framework of the same wage-fixing instrument (e.g. CA or a statutory or administrative provision).[219]

The provisions copying the definition of direct discrimination from the directives allow a hypothetical comparator. This presents difficulties in practice because, according to case law, the hypothetical comparator must perform or have performed the same work.[220]

However, the definitions of 'direct' and 'indirect discrimination' given by Act 3896/2010 were amended by Article 22(2)(a), (b) Act 4604/2019, falling short of the EU and national gender equality *acquis* (see 3.3.1, 3.4.1 above).

An undertaking's employees may be covered by several wage-fixing instruments, while workers of several undertakings may be covered by the same wage-fixing instrument. According to case law, the comparator may be a worker employed at the same time, in the same undertaking or service, or having previously been employed there. In the absence of such a worker, the comparator may be a worker covered by the same wage-fixing instrument, but employed or having been employed in another undertaking. When there is no such comparator, the claimant can allege that he/she fulfils the conditions for the higher pay provided by an instrument for workers performing the same work or work of the same value, and claim the pay difference, without even naming a comparator.

A hypothetical comparator is also taken into account in cases of *de facto* employment relationships (when work is performed although the individual contract has ended or there is no valid individual contract). In such cases, pay is due according to the provisions on undue enrichment (Article 904 CC), which is given a limited scope: the employer must pay

[216] SCPC (Civil Section) Nos 3/1997 (Plen.), 288/2003, 453/2002 (these are not gender cases).
[217] CJEU, C-43/75, *Defrenne v Sabena* (*Defrenne II*), 8 April, Paragraph 22; CJEU, C-320/00, *Lawrence and Others v Regent Office Care Ltd*, 17 September 2002, Paragraph 18.
[218] CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*, 10 March 2005.
[219] SCPC (Civil Section) Nos 257-258/2014, 15/2013.
[220] SCPC (Civil Section) No. 31/2015.

the amount that he/she would have paid to another worker, who has 'the same qualifications and ability, and would have been employed under a valid contract, in the same circumstances, for the same work'.[221]

4.2.7 Existence of parameters for establishing the equal value of the work performed

Greek law does not lay down value assessment criteria or parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions and case law either ignores the concept or gives it a narrow meaning.

4.2.8 Other relevant rules or policies

There are no other relevant general rules or policies. It is up to individual companies to adopt gender-neutral classification systems.

4.2.9 Job evaluation and classification systems

There is no case law on the provision of Article 4(1) Act 3896/2010 and in general in relation to sex-based discrimination in job classification systems or any other instruments designated to assist in establishing gender-neutral job evaluation and pay systems, and no monitoring of job classification.

4.2.10 Wage transparency

The lack of pay transparency is a fundamental issue that is not addressed by the legislation and case law. However, the Greek Authority for the Protection of Personal Data (APPD) imposed a EUR 70 000 fine on a private firm for refusing to provide data to an employee on the comparative evaluation of its employees. The employee had requested these data in order to be able to exercise his employment rights. The APPD relied on the principles of equal treatment and the prohibition of discrimination in employment as enshrined in Act 3304/2005 transposing Directives 2000/43/EC and 2000/78/EC.[222] Although this case did not specifically concern equal pay, it is obvious that the employee's evaluation was also reflected in his pay. However, it appears that this landmark APPD decision has not been followed by others explicitly addressing the issue of wage transparency.

Moreover, in the framework of a competition for a work post for disabled persons, by its Decision No. 28/2018[223] the APPD allowed the Greek Manpower Organisation to provide sensitive data (regarding disability and unemployment) of the successful candidate, on the basis of which the assessment took place, to the unsuccessful candidate; the latter was considered to have such a legitimate interest in order to lodge a relevant complaint in time. It was also stated that, in such a case, simple (non-sensitive) personal data should be provided by the employer without the need for prior permission from the APPD.

In the author's view, it is obvious that the position of the APPD would be the same in an equal pay case.

4.2.11 Implementation of the transparency measures set out by European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women

The measures proposed in Recommendation 2014/124 have not been implemented either by legislation or by CAs. This lack of transparency, together with the lack of revision of traditional, felt-fair (i.e. classifications that have been traditionally considered fair due to stereotypes, without any justification), non-transparent job classifications to the detriment

[221] SCPC (Civil Section) Nos 390/2011, 82/2013 (these are not gender cases).
[222] Greek Authority for the Protection of Personal Data (APPD), Decision 1/2008, available at: www.dpa.gr.
[223] Greek APPD, Decision 28/2018, available at: www.dpa.gr.

of formerly 'female' (and still female-dominated) categories, render the legal provisions on equal pay to a great extent ineffective. To date there has been no political or societal debate on Recommendation 2014/124 nor on pay transparency in general.

4.2.12 Other measures, tools or procedures

There are no other measures, tools or procedures on equal pay.

4.3 Access to work, working conditions and dismissal

4.3.1 Definition of the personal scope (Article 14 of Recast Directive 2006/54)

The personal scope in relation to access to employment, vocational training, working conditions etc. (see Article 14 of Directive 2006/54/EC) is defined in Article 17 of Act 3896/2010 transposing Directive 2006/54/EC, which reads:

> 'The provisions of this statute apply to persons who are employed or candidates for employment in the public and private sectors, on any employment relationship or form, including a contract for services and a remunerated mandate, irrespective of the nature of the services performed; to persons who exercise the liberal professions as well as persons who receive or are candidates for vocational training.'

Therefore, the personal scope of the Act in all respects, including access to employment, vocational training, working conditions etc., is defined in a very broad way. It is not limited to employment under a formal contract; it also covers *de facto* employment relationships (i.e. employment of workers who have no valid individual contract or whose (valid) individual contract has ended). In such cases, pay is due according to the provisions on undue enrichment (see 4.2.6 above). This scope exceeds the scope of labour law, which only covers subordinate employment contracts or relationships, and it includes, *inter alia*, independent employment or services or remunerated mandates (for example lawyers).

Employment case law defines a 'worker' as someone who has a contract or relationship of *subordinate employment*, i.e. performs remunerated work, for a fixed or indefinite period of time, irrespective of the result, subject to the employer's instructions and control.[224] This definition is for the purposes of labour law, but the scope of Act 3896/2010 transposing Directive 2006/54/EC is wider. Case law also defines the other forms of employment contracts or relationships covered by this Act, such as a contract or relationship of *'independent employment'* (remunerated work for a fixed or indefinite period of time, without subordination);[225] for *'services'* (*contrat d'ouvrage*), not concerning work as such, but its final result only, i.e. the accomplishment of a specific task (e.g. building, repair or maintenance of a building, drafting and/or execution of a project etc.), without subordination.[226] People exercising *liberal professions* (e.g. doctors, practising lawyers, engineers etc.) may be employed in any of the above forms of employment. Practising lawyers may only be employed on a *contract of remunerated mandate*, under which they offer legal advice and/or represent clients in court for monthly or yearly wages without subordination.[227] These contracts or relationships are governed by private law, i.e. labour law or other, less protective private-law provisions, according to the nature of the contract or relationship. Civil servants and permanent employees of legal persons governed by public law and local authorities are in a public-law relationship. They enjoy constitutional guarantees, in particular protection against dismissal, downgrading and transfer, according to Article 103 of the Constitution, as implemented by the CSC, whose Article 1 requires equality regarding access to the civil service and the status of civil servants. However, the state, legal persons governed by public law and local authorities

[224] SCPC (Civil Section) Nos 1674/2010, 433/2011.
[225] SCPC (Civil Section) Nos 229/2011, 433/2011.
[226] SCPC (Civil Section) Nos 1674/2010, 223/2011, 77/2011, 433/2011.
[227] SCPC (Civil Section) Nos 302/2011, 229/2011.

may also hire, in certain circumstances, personnel on a private-law (fixed-term or indefinite duration) contract, according to Article 103 of the Constitution.

As the definition of 'worker' in EU law varies according to the area in which the definition is to be applied, the above definition referring to subordinate employment corresponds to the CJEU definition for the purposes of Article 157 TFEU.[228] The definitions of further contracts or relationships covered by Act 3896/2010 seem to cover the personal scope deriving from Article 14 of Directive 2006/54/EC.

4.3.2 Definition of the material scope (Article 14(1) of Recast Directive 2006/54)

The material scope in relation to (access to) employment (see Article 14(1) of the Recast Directive 2006/54/EC) is defined in Articles 11, 12, 13, 14 and 15 of Act 3896/2010 which transposes Directive 2006/54/EC. These Articles repeat the prohibitions listed in Article 14(1) of the Directive in a more detailed way. Article 11(1) prohibits:

> 'any kind of direct or indirect discrimination on grounds of sex or *family status*, regarding conditions of access to salaried or non-salaried [i.e. not subordinate] employment and professional life in general, including the criteria for selection and conditions of hiring in all sectors of activity and levels of professional hierarchy'.

Article 11(2) also prohibits:

> 'any reference to sex or *family status* or the use of criteria or features which result in direct or indirect discrimination on grounds of sex, according to Article 2 [definitions of discrimination] in *publications*, *advertisements*, calls for candidacies, circulars and internal regulations regarding the selection of persons for filling work vacancies, for professional education or training or for professional licences'.

Moreover, Article 3(1) of Act 3896/2010 prohibits 'any form of direct or indirect discrimination on grounds of sex, by reference in particular to *family status* […]' These provisions have been copied from the Acts transposing Directives 75/117/EEC, 76/207/EEC and 2002/73/EC.

The above provisions exceed Articles 14(1) and 23 of the Recast Directive in that they also prohibit discriminatory publications and advertisements and mention 'family status', repeating the relevant provisions of the Acts transposing Directives 76/207/EEC and 2002/73/EC. Family status was included in Article 2(1) of these Directives, but is not mentioned in the Recast Directive. However, the protection of the family is required by Article 33(1) of the EU Charter, which must be taken into account for the interpretation of the Directive and national law transposing it or dealing in any way with matters related to the family.

However, the definitions of 'direct' and 'indirect discrimination' given by Act 3896/2010 were amended by Article 22(2)(a), (b) Act 4604/2019, falling short of the EU and national gender equality *acquis* (see 3.3.1, 3.4.1 above).

4.3.3 Implementation of the exception on occupational activities (Article 14(2) of Recast Directive 2006/54)

The exception on occupational activities (Article 14(2) Recast Directive 2006/54/EC) has not been implemented in Greek law.

[228] CJEU, C-256/01, *Allonby v Accrington & Rossendale College*, 13 January 2004, Paragraphs 63, 65-67.

4.3.4 Protection against the non-hiring, non-renewal of a fixed-term contract, non-continuation of a contract and dismissal of women connected to their state of pregnancy and/or maternity

The Civil Section of the SCPC has held that the protection against dismissals of women connected to their state of pregnancy and/or maternity also concerns a fixed-term contract but does not extend beyond its expiry,[229] which is contrary to CJEU case law.[230] For example, the recent SCPC Judgment No. 107/21.6.2019 concerned a woman employed by a university during the period 1 October 2005 to 30 September 2010 under consecutive contracts in writing, labelled 'contracts for services' (*contrats d' ouvrage*). She gave birth to her child on 19 June 2010, during her last contract, which was to expire on 30 September 2010. As of 1 October 2010, the University of Athens refused to accept her services, claiming that her last contract had expired on 30 September 2010. The woman brought an action to the FICCA seeking the judicial recognition of the real nature of said contracts as a single contract of employment of indefinite duration. She also claimed that the refusal of the university to accept her services from 1 October 2010 onward amounted to a termination of her employment contract, such a termination being null and void because, *inter alia*, it violated Article 15(1) Act 1483/1984, which prohibits the dismissal of a female employee during her pregnancy and (at the time)[231] one year after childbirth. Moreover, she claimed that her dismissal was null and void because it was contrary to the principle of good faith (Article 281 of the CC), as she was dismissed for having given birth to her child, whereas two other colleagues of hers, whom she named and who were not in her situation, were maintained in the service. The FICCA by its Judgment 3744/2014 dismissed the claim as ill-founded. The claimant appealed to the Civil Court of Appeal of Athens (CCAA), which by its Judgment 644/2017 upheld the appeal, thus quashing the FICCA judgment and upholding the action. More specifically, the Court of Appeal found that, according to their real nature, the contracts were contracts of employment and that Article 15(1) Act 1483/1984 was, therefore, applicable. Consequently, the cessation of her employment after the expiration of her last contract amounted to dismissal, which was null and void because it took place within a year after childbirth without a serious ground being invoked by the employer. Consequently, the woman was awarded full pay without interruption from the date of the employer's refusal to employ her (1 October 2010) until the completion of the protection period of one year after childbirth (19 June 2011). The University of Athens lodged an appeal on points of law from the above-mentioned CCA judgment. The case was heard by the Supreme Civil and Penal Court (SCPC) on 23 January 2018. By its Judgment No. 107/21.6.2019 the SCPC upheld the appeal on points of law and quashed the CCA judgment. The SCPC found that the protection from dismissal afforded by Article 15(1) Act 1483/1984 to pregnant women or women who have recently given birth applies both to employment contracts of indefinite duration and to fixed-term employment contracts. However, in the event of a fixed-term contract, the protection against dismissal does not extend beyond the expiry thereof. According to the Supreme Court, such protection cannot apply in the absence of an express provision to this effect, as it would result in tacit modification of the will of the parties to the contract regarding its duration. In view of the above, the SCPC quashed the CCA judgment because of an error in law (erroneous interpretation and application of Article 15(1) Act 1483/1984).

In Greece, according to Article 15(1) Act 1483/1984 the prohibition of dismissal covers pregnancy and extends beyond maternity leave; it thus exceeds the minimum protection provided by the Directive (see Article 10(2) of Directive 92/85/EEC), since it covers at

[229] SCPC (Civil Section) Nos 107/2019, 1341/2005, 317/2011.

[230] CJEU Cases C-109/00 *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark (HK)* [2001] ECR I-6993; C-438/99 *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios* [2001] ECR I-6915.

[231] Article 15(1), (3) of Act 1483/1984, as subsequently replaced by Article 36(1) of Act 3996/2011 and amended by Article 46 of Act 4488/2017, prohibits the dismissal of a female employee during her pregnancy and 18 months after childbirth or during a longer absence due to illness brought about by pregnancy or childbirth.

least 18 months in both the public and the private sector. Even null and void employment relations are covered. However, SCPC case law on protection of fixed-term workers from dismissal in the event of pregnancy and childbirth is contrary to CJEU case law. In particular, in *Tele Danmark*[232] and *Jiménez Melgar*,[233] the CJEU found that, if the non-renewal of a fixed-term contract, which has come to an end, is due to the worker's pregnancy, it constitutes direct discrimination on grounds of sex, contrary to Article 2(1) and 3(1) of Council Directive 76/207/EEC. The case which led to the SCPC Judgment No. 107/21.6.2019 is a very blatant example of such discrimination. Firstly, it is evident (and it was not disputed as the text of the judgment shows) that the only reason for the non-renewal of the claimant's fixed-term contract was the recent birth of her child. Although a comparison is not needed in the case of pregnancy and maternity, the claimant did allege that similar fixed-term contracts of two colleagues of hers who were not in her condition were renewed at the same time (from the text of the judgment it does not appear whether these colleagues were male or female, but this allegation was not disputed either).

The issue of the non-renewal of fixed-term contracts due to pregnancy has been brought before the Greek Ombudsman, as well. This has been, *inter alia*, the case of a female worker employed on one-month fixed-term contracts, which had been successively renewed at the end of each month until she informed her employer of her pregnancy. The Ombudsman found the non-renewal illegal and proposed the infliction of an administrative fine by the LI. After the completion of the relevant inquiry, the employer rehired the female employee under an employment contract of indefinite duration. In view of the above, the Ombudsman asked the LI to revoke the fine since the employer had complied.[234]

4.3.5 Implementation of the exception on the protection for women in relation to pregnancy and maternity (Article 28(1) of Recast Directive 2006/54)

The exception on protection for women, in particular as regards pregnancy and maternity (see Article 28(1) of Recast Directive 2006/54/EC) has been implemented in Article 20 of Act 3896/2010 transposing Directive 2006/54/EC, which copies Article 28(1) of the Directive, adding the protection of 'paternity' and 'family life'.

4.3.6 Particular difficulties

It is not clear whether there are particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc., as case law applying the gender equality legislation is scarce and does not cover the whole scope of the Directive or of the transposing legislation. It should, however, be recalled that there are difficulties in certain areas which have their source in case law, for example regarding the notion of indirect discrimination in access to military and semi-military corps (see 3.4.2 above), or discrimination on grounds of pregnancy and maternity against women on a fixed-term contract who are not protected beyond its expiry (see 4.3.4 above). There are also difficulties that have their source in specific legislation, for example regarding direct discrimination on grounds of pregnancy and maternity against fixed-term workers in the public sector (see 5.3.8 below).

Discrimination against women regarding access to employment and working conditions is widespread and growing. In its 2016 Observations on the implementation of ILO Convention No. 111 (discrimination (employment and occupation)), the CEACR deplores that no impact assessment of the austerity measures on women's working conditions has been carried out, given that there is 'a rise in discriminatory practices, especially on

[232] CJEU, C-109/00, *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark (HK)*, 4 October 2001.
[233] CJEU, C-438/99, *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios*, 4 October 2001.
[234] Greek Ombudsman (2019), 'Ίση μεταχείριση – Ειδική Έκθεση 2019' (Equal treatment – Special report 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

multiple grounds, to the detriment of women'. Quoting the Greek National Human Rights Commission, it recalls that, 'it is essential that measures of an economic or political nature do not undermine the principles of equality and non-discrimination'.[235]

Regarding the application of the objective justification test by Greek case law in the context of indirect discrimination in access to employment in the public sector, see 3.4 and 3.11 above.

4.3.7 Positive action measures (Article 3 of Recast Directive 2006/54)

As explained already (see 3.6.4 above), Greece has adopted specific legislation providing quotas for the participation of the under-represented sex in public sector service councils and in research councils or committees.

4.4 Evaluation of implementation

4.4.1 Equal pay

Although included in Article 22(1) of the Constitution since 1975 and in legislation since 1984 (in the act transposing Directive 75/117/EEC) the notion of 'equal value' is unclear to litigants and judges, so that in most cases the comparison concerns the same work. Moreover, in spite of a preliminary CJEU ruling in the Greek case *Nikoloudi v OTE*, which concerned, *inter alia*, indirect discrimination, there is no case law on indirect discrimination in equal pay cases. The lack of pay transparency is a fundamental issue that is not addressed by the legislation and case law. The measures proposed in Recommendation 2014/124 have not been implemented either by legislation or by CAs and no political or societal debate exists thereon. This lack of transparency together with the lack of revision of traditional, felt-fair, non-transparent job classifications to the detriment of formerly 'female' (and still female-dominated) categories render the legal provisions on equal pay to a great extent ineffective.

4.4.2. Equal treatment

National legal provisions exceed EU law in that they prohibit: (i) discriminatory publications and advertisements and (ii) discrimination on grounds of *family status* as well.

National case law does not provide for sufficient protection against the non-renewal of a fixed-term contract for pregnant women or women in maternity leave (see 4.3.4 above). A recent judgment of the Civil Section of the SCPC has held that the protection against dismissals of women connected to their state of pregnancy and/or maternity also concerns a fixed-term contract but does not extend beyond its expiry,[236] which is contrary to CJEU case law.[237]

Regarding the application of the objective justification test by Greek case law in the context of indirect discrimination in access to employment in the public sector, see 3.4 and 3.11 above.

4.5 Remaining issues

Some employment issues are related to the COVID-19 pandemic.

[235] ILO *Observation (CEACR), International Labour Conference 106th session (2017),* Convention No. 111, available at: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297855.
[236] SCPC (Civil Section) Nos 107/2019, 1341/2005, 317/2011.
[237] CJEU Cases C-109/00 *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark (HK)* [2001] ECR I-6993; C-438/99 *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios* [2001] ECR I-6915.

On 19 November 2020 the Gender Secretariat for Demographic and Family Policy and Equality presented a first evaluation of statistical data on female unemployment during the pandemic.[238] According to its conclusions, the suspension of operation of enterprises in most of the economic branches in the period March-April 2020 had intense negative consequences on employment, despite the adoption of policy interventions aimed to support enterprises, liberal professionals and employees, which actually restrained to a certain extent these negative consequences. Female unemployment rose both in absolute numbers and in relation to male unemployment. In terms of calculation, the percentage of female unemployment was significantly held down due to the fact that many women were ranked as inactive as they were not immediately available for employment as they had to take over the care of the family/household/homeschooling of children (because of the closure of schools, care centres for the elderly, etc.).

To date there are no available data on the gender pay gap in the pandemic crisis, on the women's share in furlough allowances, in the 50 %:50 % employment (SURE programme) or in remote work, including telework.

[238] Gender Secretariat for Demographic and Family Policy and Equality (2020), 'Unemployment of Women during the Coronavirus Period - Comparative data by gender', available here.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54, 2010/18 and 2019/1158)[239]

5.1 General (legal) context

5.1.1 Surveys and reports on the practical difficulties linked to work-life balance

On the occasion of the recent CJEU judgment of 18 February 2018 in the case C-103/16, *Porras Guisado,*[240] an interesting survey was published in legal journals and reviews, dealing with aspects of Greek legislation and case law that do not comply with the EU *acquis*.[241] On the one hand, the author of the survey makes reference to the distinction made by the CJEU in the said judgment between protection against dismissal itself, as a preventative measure, and protection, by way of compensation, from the consequences of dismissal.[242] The author finds that Greek legislation offers only protection from the consequences of dismissal in a reparatory way: if there is no serious ground thereto, the dismissal is judicially declared null and void, i.e. it is deemed as never having happened; the worker retains her post (no reinstatement is needed) and is awarded full back pay (the whole pay which she would have received had she not been dismissed), plus legal interest and possibly moral damages.

According to the author, even this reparatory approach is not sufficient, given that it does not constitute the real and effective compensation or reparation provided in Article 18 Directive 2006/54/EC; this is so because full back pay can be significantly reduced or even eliminated in the following (not unusual) cases: (i) if the court upholds the employer's potential objection that the back pay due should be counterbalanced with the paid termination compensation; (ii) if the court upholds the employer's potential objection that the sum gained by the dismissed woman from offering her work to another employer in the period following the unlawful termination until the issue of the final judgment should be deducted from the back pay due; (iii) if the court upholds the employer's potential objection that the wronged woman's claim to back pay is in abuse of the law because after the termination she deliberately avoided looking for another job with another employer.

Most importantly, the author deplores the lack of any preventative protection against unlawful dismissal on the grounds of pregnancy/maternity: instead of providing that dismissal is permitted only 'in exceptional cases', as provided by Article 10(1) Directive 92/85/EEC, the Greek transposing legislation (Article 10 Decree 176/1997) uses

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[239] Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb; McColgan, A. (2015), *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: www.equalitylaw.eu/downloads/3631-reconciliation.

[240] CJEU, C-1033/16, *Jessica Porras Guisado v Bankia SA and Others*, 22 February 2018.

[241] Gavalas, N. (2018), 'Ζητήματα προστασίας από την απόλυση λόγω μητρότητας στο δίκαιο της Ε.Ε. και σοβαρά κενά ενσωμάτωσης της προστασίας στο ελληνικό εργατικό δίκαιο – Με αφορμή την απόφαση του Δ.Ε.Ε. της 18.2.2018 στην υπόθεση C-103/16, Porras Guisado' (Issues of protection against dismissal due to maternity in EU law and the significant lack of integration of the protection into Greek labour law – On the occasion of the CJEU judgment of 18 February 2018 in case C-103/16, Porras Guisado), *Επιθεώρησις Εργατικού Δικαίου (ΕΕργΔ), (Labour Law Review),* pp. 395-411 et seq.

[242] CJEU C-1033/16, *Jessica Porras Guisado v Bankia SA and Others*, 22 February 2018; Paragraph 59 'Article 10 of Directive 92/85 thus makes an express distinction between protection against dismissal itself, as a preventative measure, and therefore, proper implementation of that article requires Member States to establish such double protection.' Paragraph 65 'in order to ensure the faithful transposition of Article 10 of Directive 92/85, and the protection of pregnant workers and workers who have recently given birth or are breastfeeding from the risk of dismissal, Member States cannot confine themselves to providing, by way of reparation, only for that dismissal to be declared void when it is not justified'. Paragraph 64 'In view of the risk to the physical and mental state of pregnant workers, workers who have recently given birth or who are breastfeeding, protection by way of reparation, even if it leads to the reintegration of the worker dismissed and the payment of wages not received because of dismissal, cannot replace protection by way of prevention.'

the wording 'serious grounds', in the sense of Article 672 CC (applying in the termination of fixed-term employment relationships). According to the Greek case law, there is a 'serious ground' when one or more facts, objectively and according to good faith, make the continuation of the employment relationship unbearable for the employer, *irrespective of any fault of the worker*, the particular circumstances being taken into account. Examples include poor performance of the worker's duties or non-compliance with the employer's instructions, provided that this is not due to her situation[243] or the closing down of the business.[244]

The author of the survey acknowledges that, according to the existing Greek case law, a collective redundancy (and, in general, economic/technical reasons) cannot justify the dismissal of pregnant workers and workers who have recently given birth or are breastfeeding. Thus the CJEU judgment in the said case is irrelevant. However, the author expresses his fear for the future interpretation by case law of the 'serious grounds' in such dismissals. In view of the above, the author proposes that the Greek implementing legislation should comply with its obligation to provide preventative protection against such dismissals by assigning to the independent equality body (the Ombudsman) the role of verifying through an opinion the existence of 'serious grounds' prior to the realisation of the dismissal. Such obligatory and legally binding opinions (albeit by other competent administrative authorities) are provided in the Greek legal order as a preventative protection against dismissals of (i) trade unionists and (ii) people with disabilities or members of families with many children who were placed in undertakings by the state.

In 2020, a survey 'The protection of maternity under EU law' for the first time presents an elaborated and systematic analysis of the CJEU case law on maternity protection in the scope of Directive 92/85 in parallel with Directive 2006/54.[245]

In the same year on the occasion of CJEU *Syndicat CFTC*[246] the same author presents the findings of the Court of Justice in the light of Directive 2019/1158 and its implications on the Greek legislation on additional maternity leave.

5.1.2 Other issues

A very interesting research project on 'Work-life balance in the context of changing families and labour market in Greece' was carried out in 2016 by the National Centre for Social Research, including a quantitative and a qualitative study.[247] The qualitative research showed that the relationship between work and family life has been significantly influenced by the new conditions imposed by the recent economic crisis. Seven years after the advent of the crisis (2009-2016), Greek society has undergone a variety of changes which are reflected in income, employment, state care services, and benefits and allowances affecting those working in both the public and the private sector. In these circumstances, the relationship between work and family life, as shown by the project's case studies, has suffered from the successive shocks of social transformations taking place during the crisis. This is especially true for women professionals. In addition, key dimensions of gender inequality which existed even before the recent economic crisis have also been prevalent.

[243] SCPC (Civil Section) Nos 308/2011, 622/2008.
[244] Thessaloniki CA 47/1991.
[245] Polyhroniadou, A. (2020), 'Η προστασία της μητρότητας κατά το ενωσιακό δίκαιο' (The protection of maternity under EU law), *Επιθεώρησις Εργατικού Δικαίου* (*Labour Law Review*), 9/2020, pp. 1009-1046.
[246] Polyhroniadou, A. (2020), 'Πρόσθετη άδεια μητρότητας ή και πατρότητας; Με αφορμή την απόφαση Δ.Ε.Ε. της 18ης Νοεμβρίου 2020 επί της υποθέσεως C-463/19, *Syndicat CFTC*' (Additional maternity leave or paternity leave as well? On the occasion of CJEU judgment of 18 November 2020, C-463/19, *Syndicat CFTC*), *Επιθεώρησις Εργατικού Δικαίου (Labour Law Review),* 10/2020, pp. 1395-1412.
[247] Thanopoulou, M., Tsiganou, J. (2016), *Gender in science without numbers – From academia to work-life balance, Main results of case studies*, *Εθνικό Κέντρο Κοινωνικών Ερευνών* (National Centre for Social Research), Athens.

Evaluating the results of the qualitative research in their totality, it seems that today, in a Greece in a state of crisis, the relationship between work and family life is diverging ever further from any prospect of reconciliation. Regardless of the profession, work-life balance appears as a painful 'duty', due to the long list of professional and familial responsibilities people have to cope with. In the absence of supportive structures from the state and amidst income shrinkage, the provision of external auxiliary services, both at work and in the family, becomes extremely difficult. Instead, the memorandum policies adopted by the state worsen the conditions for people exercising their professions. Existing policies are, in practice, detrimental to the prospect of the reconciliation of work and family. In some cases, these lead women to seek early exit strategies from their professions. In a Greece in crisis, the studies reveal that the balance between professional and family life for women has begun to tilt towards a return to the traditional role of women as mothers and housewives, which goes against the emancipation won by women in the post-war era, particularly in recent decades.

5.1.3 Overview of national acts on work-life balance issues

See above under 1.2 (List of main legislation transposing and implementing Directives), 2.1 (Constitution) and 2.2 (Gender equality legislation).

5.1.4 Political and societal debate and pending legislative proposals

There has been no political and societal debate and no pending legislative proposals on work-life balance issues, neither generally nor in the light of the new work-life balance Directive recently adopted.[248] However, the Ombudsman has submitted his proposals[249] in view of the new Directive 2019/1158[250] which has to be implemented by 2 August 2022.

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

Article 2 of Decree 176/1997 transposing Directive 92/85/EEC, as amended by Decree 41/2003,[251] defines the concepts of a pregnant worker, a worker who has recently given birth and a worker who is breastfeeding. It reads:

- Pregnant worker: 'Any working woman who is pregnant and who has informed her employer of her condition, *provided that this is required for taking a positive measure in her favour*.' The provision of pregnant worker copies the Directive, but the last phrase extends the definition, in line with CJEU case law and Greek case law which does not require disclosure of the pregnancy as a condition of protection.[252]
- Worker who has recently given birth: 'Any working woman who is at the stage after confinement up to a period of two months and who has informed her employer of her condition, *provided that this is required for taking a positive measure in her favour*.'
- Breastfeeding worker: 'Any working woman who is breastfeeding for a period up to one year after confinement and who has informed her employer of her condition, *provided that this is required for taking a positive measure in her favour*.'

[248] Directive (EU) 2019/1158/EU of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.
[249] Greek Ombudsman, 'Ίση μεταχείριση – Ειδική έκθεση 2019' (Equal treatment – Special report 2019) pp. 94-95, available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.
[250] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, *OJ L 188*, 12.7.2019, pp. 79-93.
[251] Decree 41/2003, OJ A 44/21.2.2003.
[252] SCPC (Civil Section) Nos 954/2018, 433/2012; Athens CA 644/2017.

The definitions of 'worker who has recently given birth' and 'breastfeeding worker' also copy the Directive with the same addition. 'Positive measures' mean e.g. maternity leave or those measures required by Articles 4-7 and 9 of the Directive.

5.2.2 Obligation to inform the employer

According to the Greek case law, a pregnant worker does not have to inform her employer of her condition, except in the case of positive measures. In view of this, if an employer dismisses a pregnant worker without being aware of her condition, once informed of the pregnancy the employer must adopt measures in order to cure the nullity of the dismissal of the pregnant worker (i.e. reinstatement).[253]

5.2.3 Case law on the definition of a pregnant worker, a worker who has recently given birth and/or a worker who is breastfeeding

According to above-mentioned case law (see 5.2.2), the prior informing of the employer is not a prerequisite for the definition of a pregnant worker (except in the case of positive measures). There is no case law on the definition of a worker who has recently given birth and/or a worker who is breastfeeding.

5.2.4 Implementation of protective measures (Article 4-6 Directive 92/85)

The protective measures mentioned in Articles 4-6 of Directive 92/85/EEC are implemented in Greek law by Articles 4(2), 5 and 6 of Decree 176/1997 transposing Directive 92/85/EEC, correspondingly. More specifically, Article 4 of the Directive on the employer's assessment and information obligation was transposed by Article 4 of Decree 176/97 with almost the same wording. Article 5 of the Directive on action further to the results of the assessment was transposed by Article 5 of Decree 176/94 with a more protective wording than that of the Directive. More specifically, in Article 4(1) of Decree 176/97 it is provided that when the results of the assessment reveal a risk, the employer is to adjust the woman's working conditions permanently or temporarily, whereas the Directive provides only temporarily. Moreover, in Article 4(2) and 4(3) of Decree 176/97 the phrase of the Directive 'or cannot reasonably be required on duly substantiated grounds' has been omitted; thus the employer has to move the worker to another job or grant leave without the possibility of pleading any justification for not doing so. In 4(3) Decree 76/1997 the phrase 'in accordance with national legislation and/or national practice' has been omitted. Finally, in Article 4(4) of Decree 176/97 the phrase 'and informs her employer thereof' has been omitted as this prerequisite is provided in the above-mentioned definitions in Article 2 of the Decree regarding (only) positive measures.

5.2.5 Case law on issues addressed in Article 4 and 5 of Directive 92/85

There is no case law on Articles 4 and 5 of Directive 92/85/EEC.

5.2.6 Prohibition of night work

Article 7 Decree 176/97 transposes Article 7 Directive 92/85/EEC. It provides that: 'Working women referred to in Article 2 with full or part-time employment at night are transferred to day-time work subject to submission of a medical certificate stating that this is necessary for their health or safety. Where such a transfer is not technically and/or objectively feasible, they are granted leave from work.' The wording of this provision is more protective than the Directive in that the phrase 'or cannot reasonably be required on substantiated reasons' of the Directive has not been copied.

[253] SCPC (Civil Section) No. 954/2018.

5.2.7 Case law on the prohibition of night work

There is no case law on the prohibition of night work.

5.2.8 Prohibition of dismissal

Dismissal is prohibited in national law from the beginning of pregnancy but protection against dismissal extends beyond the maternity leave period, hence the Directive (see Article 10(2) Directive 92/85/EEC), since it covers at least 18 months, as explained below.

Article 10 of Decree 176/97 transposing Directive 92/85/EEC prohibits the dismissal of a woman during pregnancy and for a certain period thereafter by reference to Article 15(1),(3) of Act 1483/1984. The latter, as subsequently replaced by Article 36(1) of Act 3996/2011[254] and amended by Article 46 of Act 4488/2017,[255] reads as follows:[256]

> '1. Termination of the employment relationship of a female worker by her employer both during her pregnancy and 18 months after childbirth or during a longer absence due to illness brought about by pregnancy or childbirth, is prohibited and is null and void, unless there is a serious ground for the termination. The protection against termination applies with regard to the employer by whom the woman is hired, without having previously been employed elsewhere, before the expiry of the 18-month period or the longer period provided by this provision, as well as with regard to a new employer who hires the woman, and until the above periods are completed.'
>
> '3. The protection against the termination of the employment relationship, according to the provisions of the present Article, covers a female worker who adopts a child up to the age of 6, beginning from the placement of the child in the family; it also covers female workers in the case of surrogacy, either as commissioning mothers, beginning with the birth of the child, or as surrogate mothers.'

These provisions apply to the private and public sectors (Article 1(2) of Decree 176/97), even in the case of an invalid employment relationship.[257] Civil servants and permanent employees of legal persons governed by public law and local authorities also enjoy constitutional guarantees against dismissal, downgrading and transfers (Article 103 of the Constitution).

These provisions exceed the Directive regarding the length of the prohibition of dismissal and the designation of the employer who has such a duty. The Civil Section of the SCPC has held that a dismissal three days after the 18-month protection period is not abusive *per se*.[258] However, in another case, it held that a dismissal shortly after the expiry of the period of protection on the ground of the woman's longer absence due to a pregnancy-related illness was an abuse of rights, and was hence null and void.[259] It also held, however, that the protection also concerns a fixed-term contract, but does not extend beyond its expiry,[260] which is contrary to CJEU case law (see under 4.3.4 above).[261]

Dismissal is permitted in exceptional cases as defined in Article 10(1) of Directive 92/85/EEC, for a 'serious ground', which 'may in no case be the possible diminution of the

[254] Act 3996/2011, OJ A 170/5.8.2011.
[255] Act 4488/2017, OJ A 137/13.9.2017.
[256] After the cut-off date of this report (1 January 2021), Article 48(4) Act 4808/2021, OJ A 101/19.06.2021, amended Article 15(1) Act 1483/1984, as amended.
[257] Athens CA No. 644/2017.
[258] SCPC (Civil Section) No. 179/2016.
[259] SCPC (Civil Section) No. 1591/2010.
[260] SCPC (Civil Section) Nos 107/2019, 1341/2005, 317/2011.
[261] CJEU, C-109/00, *Tele Danmark A/S v Handels- og Kontorfunktionærernes Forbund i Danmark (HK)*, 4 October 2001; CJEU, C-438/99, *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios*, 4 October 2001.

pregnant worker's output due to pregnancy' (Article 15 of Act 1483/1984 above). The application of the above provision is subject to strict judicial scrutiny. According to case law, there is a 'serious ground' when one or more facts, objectively and according to good faith, make the continuation of the employment relationship untenable for the employer, irrespective of any fault of the worker, the particular circumstances being taken into account. For example, poor performance of the worker's duties or non-compliance with the employer's instructions, provided that this is not due to her condition,[262] a criminal offence committed by the worker concerned against the employer (e.g. theft of merchandise)[263] or the closing down of the business.[264] The abolishment of the work post of the pregnant woman does not constitute such a serious ground.[265] (see 5.1.1 above)

i) Prohibition of dismissal in the case of birth of a stillborn child

A medical visitor, employed by a multinational cosmetics company, gave birth to a stillborn child at the 32nd week of pregnancy. After five weeks of leave, she took her annual holiday. Upon her return, she was dismissed, albeit her employer handed to her a recommendation letter, in which she was described as a responsible, consistent, sociable, persuasive, easily adjustable and excellent medical visitor. In September 2004, she took the case to the FICC of Athens, asking for the recognition of the nullity of the dismissal as discrimination based on sex. By its judgment 1613/2005 the FICC dismissed the case. The claimant appealed to the Athens CCA, which by its judgment 3618/2007 upheld the appeal and the claimant's action and recognised the impugned dismissal as null and void. The employer made an appeal on points of law by the SCPC. By its landmark judgment 1362/2009, the SCPC ruled for the first time that the dismissal within a one year period after childbirth (as it was provided at the time by Article 15 of Act 1483/1984)[266] of a pregnant worker, whose child was stillborn, is null and void; according to the Court, the same protection period should apply as in cases where the child is born alive, with a view to protecting maternity and to encourage employed women to give birth to children by securing the rehabilitation and the adjustment of the female organism to the normal situation prior to the pregnancy.

It should be noted that at the time of the dismissal, according to its circular 128/1989, the competent social security scheme (the 'IKA' Organisation of Social Security) did not pay to the mother of a stillborn child a maternity leave allowance but a sick pay allowance just for five weeks. Following the SCPC 1362/2009 judgment, the State Legal Council (SLC) in its Plenary gave the univocal opinion that in the event of a childbirth, the woman who gives birth to a stillborn child is entitled to maternity leave and to the maternity allowance. The SLC's Opinion was endorsed by the Ministry of Labour. Subsequently, the IKA, in line with the SLC's Opinion, issued a new circular No. 16/2006, abolishing the previous one (128/1989). Henceforth, in the event of a childbirth, the woman who gives birth to a stillborn child is entitled to maternity leave and to the maternity allowance. This case, which was brought to court by the author of this report, in her capacity as a labour law lawyer, was not a *pro bono* case; nevertheless, it was a test case in the context of strategic litigation which resulted in a landmark judgment and subsequently led to a law reform, exceeding by far the protection afforded by EU law regarding maternity protection in the case of birth of a stillborn child. It should also be noted that a preliminary reference to the CJEU had been requested by the claimant's lawyer from both the CCA and the CS but the national courts implicitly skipped it.

[262] SCPC (Civil Section) Nos 308/2011, 622/2008.
[263] SCPC (Civil Section) No. 1340/2018.
[264] Thessaloniki CA No. 47/1991.
[265] SCPC (Civil Section) No. 954/2018.
[266] Actually, Article 15 Act 1483/1984 OJ A 153/8.10.1984, as subsequently replaced by Article 36(1) Act 3996/2011 (OJ A 170/5.8.2011) and amended by Article 46 Act 4488/2017, OJ A 137/13.9.2017, provides a prohibition of dismissal during pregnancy and 18 months after childbirth or during a longer absence due to illness brought about by pregnancy or childbirth.

5.2.9 Redundancy and payment during maternity leave

When an employee is made redundant during her maternity leave, the payment for maternity leave ceases. The Manpower Employment Organisation (OAED) pays a monthly unemployment allowance,[267] which is lower than the maternity allowance and is a fixed amount for all those unemployed (as of 1 February 2019, EUR 399.25, plus EUR 39.92 for each dependent family member),[268] which is well below the poverty threshold for Greece (about EUR 580).[269] When a dismissal is judicially declared null and void, it is deemed as never having happened: the worker retains her post (no reinstatement is needed) and is awarded full back pay (the whole pay which she would have received had she not been dismissed), plus legal interest and possibly moral damages[270] (see also 5.1.1 above).

5.2.10 Employer's obligation to substantiate a dismissal

In cases of dismissal from the beginning of pregnancy and for a period of 18 months after the birth of the child the employer is obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85/EEC). More specifically, Article 10 of Decree 176/97 reads: 'the employer must duly justify the termination in writing and notify it to the Labour Inspectorate'. The termination will be null and void in the absence of a justification in writing at the time of the termination[271] but not in the absence of notification to the LI.[272] In a case where no justification was stated on the termination notice and the justification was given by the employer for the first time 20 days after the termination, the Ombudsman found that the termination remained null and void and the LI imposed an administrative fine.[273] The Directive is thus exceeded regarding both the protection period and the sanction for the non-observance thereof. In the private sector, however, as soon as employers become aware of a woman's pregnancy, they often compel her to resign by adverse treatment or harassment, for example, by imposing a prejudicial modification of the woman's working conditions (e.g. a modification of working time or a change of workplace). Alternatively, the employer may dismiss the pregnant worker without notifying her of the dismissal, while declaring to the Ministry of Labour and the Manpower Employment Organisation (OAED), which is responsible for registering unemployed and paying unemployment benefits, that the woman has resigned of her own volition.[274]

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[267] Greek Ombudsman (2015) 'Σύνοψη διαμεσολάβησης – Χορήγηση από τον ΟΑΕΔ επιδόματος ανεργίας σε γυναίκες που απολύονταν κατά τη διάρκεια προστασίας λόγω μητρότητας' (Summary of intervention – Granting by OAED of the unemployment allowance to women dismissed during the maternity protection period), available at: www.synigoros.gr/resources/docs/150615-sinopsi.pdf; these women received the allowance thanks to the Ombudsman's intervention.

[268] Manpower Employment Organisation (OAED), http://www.oaed.gr.

[269] European Committee of Social Rights, *GENOP-DEI and ADEDY v. Greece,* Complaint No. 66/2011, 23 May 2012, invoking Eurostat data, available at: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-66-2011-general-federation-of-employees-of-the-national-electric-power-corporation-genop-dei-confederation-of-greek-civil-servants-trade-unions-ade?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Feuropean-social-charter%2Fprocessed-complaints%3Fp_p_id%3D101_INSTANCE_5GEFkJmH2bYG%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1.

[270] SCPC (Civil Section) No. 797/2013: the serious ground invoked proved untrue; the dismissal was null and void.

[271] Dodecanese CA No. 43/2014. See also Greek Ombudsman (2017), 'Πρόστιμο σε επιχείρηση για απόλυση εγκύου μετά από εισήγηση του Συνηγόρου του Πολίτη' (Fine to an enterprise for dismissal of a pregnant worker upon proposal of the Ombudsman), available at: https://www.synigoros.gr/resources/docs/20171010-synopsi-kim.pdf.

[272] SCPC (Civil Section) Nos 954/2018, 433/2012; CA Dodecanese No. 23/2018.

[273] Greek Ombudsman (2017), 'Σύνοψη διαμεσολάβησης – Πρόστιμο σε επιχείρηση για απόλυση εγκύου μετά από εισήγηση του Συνηγόρου του Πολίτη' (Summary of Intervention – Fine to an undertaking for dismissal of a pregnant worker upon proposal of the Ombudsman), available at: www.synigoros.gr/resources/docs/20171010-synopsi-kim.pdf.

[274] Greek Ombudsman (2018), "Ίση μεταχείριση – Ετήσια έκθεση 2018' (Equal treatment– Annual report 2018), p. 108, available at: https://www.synigoros.gr/resources/ee_im_2018_el.pdf; this was also the case with four complaints to the Labour Inspectorate in 2016, according to the L.I. Annual Report 2016: Greek

The above examples were reported by the Ombudsman following complaints by wronged women. Following the Ombudsman's relevant proposal, Article 38 Act 4488/2017 was passed; it provides in gender-neutral language that when an employee resigns of his/her own volition, the employer must declare it electronically to the OAED, submitting the relevant written document signed by the employee as well within four days of the date of the resignation. If the employee refuses to sign it, a written declaration must be served by the employer to the employee within four days of the date of the resignation and must subsequently be submitted electronically to OAED the next working day. In both cases, if the employer does not comply in a timely manner with the above requirements, the employment contract is deemed to have been terminated by the employer. However, the Ombudsman expresses reservation as to the effectiveness of this new provision.[275]

The Ombudsman notes that these complaints mostly come from female employees of small and medium-sized enterprises (i.e. employing up to 10 workers). According to the Ombudsman, this is probably due to the fact that these undertakings have been heavily hit by the financial crisis, as their receipts are constantly shrinking while their financial obligations are constantly growing; consequently, they see maternity rights as an additional burden. Quite often employers admit that they give priority to their tax and other financial obligations, while they consider that maternity protection is of lesser importance.

The Ombudsman notes that many of the cases in the private sector are settled following the mediation of its services. Where the employer does not comply with their recommendations, the Ombudsman requests that the LI impose a fine.[276] However, the complaints received by the Ombudsman are only the tip of the iceberg. Moreover, such cases do not seem to have reached the courts, as the employer's behaviour is very difficult to prove, while the spectre of unemployment, which is much higher for women than for men, in conjunction with rising litigation costs and scarcity of legal aid, make women reluctant to claim their rights (see also 11.3.1 and 11.3.2 below). The correct transposition of the procedural provisions of the directives, in particular regarding the standing of legal entities and the burden of proof (see 11.3.1 and 11.5 below) and their incorporation in the procedural codes would encourage wronged women to stand up for their rights, but this chronic problem remains unsolved.

5.2.11 Case law on the protection against dismissal

From a review of the annual reports of the Labour Inspectorate for the years 2015-2017 it becomes clear that an overwhelming percentage (58 %) of the gender equality complaints to the LI (72 in 2017, 91 in 2016 and 97 in 2015) concern dismissals of pregnant women or of women protected for the 18-month period after giving birth. Other gender equality cases against these groups concerned prejudicial modification of working conditions; women forced to resign; unilateral declaration by the employer to the Ministry of Labour and the Agency of Manpower Employment (OAED), which is responsible for registering the unemployed and paying unemployment benefits, that the woman has resigned of her own volition; and refusal to hire pregnant women. Most of these cases were referred to the civil courts, some of them were referred to the Ombudsman, other were resolved (it is not evident in what way) and only two administrative fines of EUR 1 500.00 were imposed. This shows that the existing case law is only the tip of the iceberg; the legislation *per se*, albeit more protective than the Directive, cannot address the problem in an economy harshly hit by the economic crisis with soaring unemployment,

Labour Inspectorate (2017), "Εκθεση πεπραγμένων ΣΕΠΕ έτους 2016' (Annual report of the year 2016), available at: www.ypakp.gr/uploads/docs/11663.pdf.

[275] Greek Ombudsman (2018), 'Ετήσια Έκθεση 2017' (Annual report 2017), available at: www.synigoros.gr/resources/ee2017-p00.pdf.

[276] Greek Ombudsman (2015), 'Ετήσια Έκθεση 2014' (Annual report 2014), p. 138, available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf; Greek Ombudsman (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2016' (*Gender and employment relationships* Special Report 2016), pp. 125-126, available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf.

in particular given the structural barriers to access to justice and the non-deterrent effect of the administrative fines imposed. In the author's view, positive measures should be examined with a view to rendering the employment of pregnant workers and young mothers more attractive for employers.

5.3 Maternity leave

5.3.1 Length

In the private sector maternity leave is 17 weeks' paid leave[277] (eight weeks before and nine weeks after delivery).[278] In the case of surrogacy, the surrogate mother is entitled to the full maternity leave (17 weeks), whereas the commissioning mother is entitled to the post-delivery part (nine weeks), as prescribed in Article 44 of Act 4488/2017.[279]

A further 'special' paid leave ('*ειδική άδεια προστασίας μητρότητας*')[280] is provided for in the private sector for six months after the end of the above-mentioned maternity leave (i.e. following the birth of the child) or after the agreed leave replacing reduced working hours (see 5.5.4 below) or after the taking up of the annual leave in continuity with the above-mentioned types of leave.[281] During this leave, the mother is paid the minimum legal salary by the Greek Manpower Organisation (OAED). This 'special leave' is independent of maternity leave, the agreed leave replacing reduced working hours (see 5.5.4 below) and parental leave. It is granted to women only, in addition to maternity leave with the aim to further extend the protection of the mother and her newborn;[282] it cannot be shared with the father. In the case of surrogacy, the commissioning mother is entitled to this further 'special' leave as well.[283] It can be taken as a whole or in part, irrespective of the employer's consent but it can be terminated only upon the written consent of the employer. The time of this leave is considered to be actual working time for all labour benefits. In practice, for several years, the Ministry of Employment had been interpreting the law as allowing the deduction of this 6-months 'special' paid leave from the 30-month period of reduced working hours ('*ειδική άδεια θηλασμού και φροντίδας παιδιού*') (see 5.5.4 below), with the result that the 30 months' duration of the latter was reduced to 24 months. Twice (in 2009 and again in 2014) the Ombudsman submitted reasoned opinions to the Ministry of Employment, albeit with no result. Finally, following a request by the Ministry of Employment, the SLC by its Opinion No. 124/2018 held unanimously that no such reduction is allowed. Actually, the 6-months 'special' paid leave can be taken directly after the agreed leave replacing reduced working hours (see 5.5.4 below); alternatively, it is taken directly after the maternity leave and upon its expiry the 30-month period of reduced working hours begins. The Minister of Employment endorsed the above SLC Opinion in November 2018. The Ombudsman welcomed this evolution whereas deploring the rights that so many working mothers have lost in the nine years since the Ombudsman's first opinion of the year 2009.[284]

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[277] Clause 7 of the National General Collective Agreement (NGCA) 2000, sanctioned by Article 11 of Act 2874/2000, OJ A 286/29.10.2000, in conjunction with Clause 7 of NGCA 1993.

[278] After the cut-off date of this report (1 January 2021), Article 34 in conjunction with Article 53 Act 4808/2021, OJ A 101/19.06.2021, amended Article 11 of Act 2874/2000.

[279] Act 4488/2017, OJ A 137/13.9.2017.

[280] Article 142 of Act 3655/2008, OJ A 58/3.4.2008, as amended by Article 36 of Act 3996/2011, OJ A 170/05.08.2011 and Ministerial Decision 33891/606/7.5.2008 of the Minister of Employment and Social Protection, OJ B 833/9.5.2008.

[281] After the cut-off date of this report (1 January 2021), Article 36 in conjunction with Article 53 Act 4808/2021, OJ A 101/19.06.2021, amended Article 36 of Act 3996/2011.

[282] SLC Opinion 124/2018; Greek Ombudsman (2019), 'Ίση μεταχείριση – Ειδική Έκθεση 2019' (Equal treatment – Special report 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

[283] Article 44(3) Act 4488/2017.

[284] Greek Ombudsman (2018) 'Δελτίο τύπου – Απώλεια δικαιωμάτων προστασίας μητρότητας' (Press release – Loss of rights related to the protection of maternity), available at: https://www.synigoros.gr/resources/docs/20181210-dt.pdf.

In the author's view, this leave should be considered as parental leave (in line with the nine months' paid leave in the public sector) and its personal scope should not be limited to female workers only. This has also been supported in a comment to the CJEU *Syndicat CFTC*.[285] The Greek Ombudsman has raised the issue of the exclusion of several categories of female workers from this leave[286] in a document submitted to the General Secretariat for Family Policy and Gender Equality. On the occasion of the pending implementation of the new Directive 2019/1158,[287] the Greek Ombudsman proposed that the personal scope of the said leave should be extended to all workers, irrespective of sex, who are employed on employment contracts governed by private law and are not entitled to the nine months' leave of the public sector (see 5.5.4 below). The leave should be granted upon the employee's petition until the child reaches the age of two. It should be funded by the Greek Manpower Employment Organisation (OAED) and/or the general social security scheme, 'EFKA'.[288]

In the public sector maternity leave is five months (plus one more month for each child beyond the first one, in the case of multiple births) fully paid, without any previous service requirement and without any upper limit,[289] for civil servants and the permanent employees of legal persons governed by public law and local authorities (Article 2 CSC) and for employees of local authorities,[290] as well as for people employed by these employers on a contract of indefinite duration.[291]

Employees working for these employers on fixed-term contracts receive only the less favourable private sector maternity leave. This is the case for, *inter alia*, substitute state schoolteachers who are providing the same services as permanent state schoolteachers. While the latter receive the CSC maternity leave, the former only receive private sector maternity leave (see 5.3.8 below) whereas they are not entitled to the six months' 'special' paid leave ('*ειδική άδεια προστασίας μητρότητας*') provided for employees in the private sector.[292] This less favourable treatment of fixed-term workers may be considered discrimination on the ground of maternity, which is prohibited by Directive 2006/54/EC, as well as discrimination against fixed-term workers in comparison with workers and civil servants on contracts of indefinite duration, which is prohibited by Directive 1999/70/EC.[293] In view of CJEU case law,[294] the fact that the maternity leave provided under Greek law is greater than the maternity leave provided by Directive 92/85/EEC as a minimum cannot be considered to exclude the application of these Directives (see 5.3.7 below).

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[285] Polyhroniadou, A. (2020), 'Πρόσθετη άδεια μητρότητας ή και πατρότητας; Με αφορμή την απόφαση Δ.Ε.Ε. της 18ης Νοεμβρίου 2020 επί της υποθέσεως C-463/19, *Syndicat CFTC*' (Additional maternity leave or paternity leave as well? On the occasion of CJEU judgment of 18 November 2020, C-463/19, *Syndicat CFTC*), *Επιθεώρησις Εργατικού Δικαίου* (*Labour Law Review*), 10/2020, pp. 1395-1412.

[286] E.g. fixed-term female workers in the public sector (i.e. public enterprises, research centres, municipal day care, etc.), female workers under a contract of indefinite duration in private enterprises of the extended public sector (i.e. in the metro company), female workers in the mass media, who since 2017 have been affiliated to the EDOEAP social security scheme for health insurance. See Green Ombudsman (2019), "Ιση μεταχείριση – Ειδική έκθεση 2019' (Equal treatment – Special report 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

[287] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188, 12.7.2019, pp. 79-93.

[288] Since 1 January 2017, all the main existing social security schemes together with state pensions have been merged into one single scheme (EFKA) (see 7.3 below).

[289] Article 52(1) CSC, as amended by Article 18 of Act 3801/2009.

[290] Article 59 Act 3584/2007, OJ A 143/28.6.2007, as amended by Article 18(1) Act 3801/2009, OJ A 163/4.9.2009.

[291] Article 4(5) Act 2839/2000, OJ A 196/12.9.2000.

[292] Article 142 of Act 3655/2008, OJ A 58/3.4.2008, as amended by Article 36 of Act 3996/2011, OJ A 170/05.08.2011 and Ministerial Decision 33891/606/7.5.2008 of the Minister of Employment and Social Protection, OJ B 833/9.5.2008.

[293] Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (*Fixed Term Directive*), OJ L 175, 10.7.1999, pp. 43-48.

[294] CJEU, Case C-284/02 Sass [2004] ECR I-11143 concerning maternity leave longer than 14 weeks.

Female judges,[295] female permanent state schoolteachers[296] and female Police officers[297] are granted the CSC pregnancy and maternity leave. Female military personnel receive pregnancy leave of five months, but only until the date of delivery, while parental leave (for both parents) starts immediately thereafter.[298] This does not serve the dual purpose of maternity leave, as recognised by the CJEU (protecting a woman's biological condition during and after pregnancy as well as the special relationship between a woman and her child over the period which follows pregnancy and childbirth), since the woman has no leave of her own after childbirth.[299] Moreover, the right to maternity leave must not be affected or substituted by the right to parental leave which serves a different purpose.[300]

5.3.2 Obligatory maternity leave

There is an obligatory period of maternity leave before and/or after birth: (i) in the private sector: eight weeks before and nine weeks after childbirth (Clause 7 of NGCA 2000) and in the public sector: two months before and three months after childbirth (Article 52(1) CSC). If the birth takes place earlier than estimated, the rest of the leave provided before the birth is granted thereafter, so that the full period of maternity leave is completed. No other derogation is provided. Moreover, no resignation or contrary agreement is allowed.

5.3.3 Legal protection of employment rights (Article 5, 6 and 7 Directive 92/85)

According to Article 11(1) and (2) of Decree 176/1997 the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85/EEC. The above provisions repeat the provisions in Article 11(1) of Directive 92/85/EEC and provide for a 'special maternity allowance' to be paid by the woman's social security scheme or the employer in the cases referred to in Articles 5, 6 and 7 of the Directive.

5.3.4 Legal protection of rights ensuing from the employment contract

Article 11(3)-(5) of Decree 176/1997 implementing Directive 92/85/EEC ensures the employment rights relating to the employment contract (including pay or an adequate allowance) during the pregnancy and maternity leave. The above provisions mostly repeat Article 11(3)-(4) of Directive 92/85/EEC.

5.3.5 Level of pay or allowance

The maternity allowance 'must guarantee an income at least equivalent to that which the worker would receive in the event of absence on sick leave' (Article 11(4) of Decree 176/1997).[301] The allowance paid by the IKA, the main social security scheme for subordinate workers under a private-law employment relationship, is equal to the sickness allowance.[302] For the 'special' six-month leave (see 5.3.1 above) the OAED (see 5.2.9 above) pays the legal minimum wage. The above do not concern the public sector where maternity leave is fully paid (Article 52(1) CSC).

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[295] Article 44(20) Act 1756/1988, OJ A 35/25.2.1988 (Code on Court Regulation and Judges' Status), as amended by Article 89 Act 4055/2012, OJ A 51/12.3.2012.

[296] Article 53 Act 2721/1999, OJ A 112/3.6.1999.

[297] Articles 10 and 10A Decree 27/1986 OJ A 11/10.02.1986, as amended by Article 2 Decree 66/2000, OJ A 57/9.3.2000, as amended by Article 24 P.D. 75/2016, OJ A 138/1.8.2016.

[298] Articles 8-9 of Ministerial Decision F.400/32/82424/S.343, OJ B 1139/3.6.2011; Athens ACA No. 921/2010.

[299] CJEU, C-320/01, *Wiebke Busch v Klinikum Neustadt GmbH & Co. Betriebs-KG*, 27 February 2003, Paragraph 42; CJEU, C-421/92*, Gabriele Habermann-Beltermann v Arbeiterwohlfahr*t, 5 May 1994, Paragraph 21; CJEU, C-32/93, *Carole Louise Webb v EMO Air Cargo (UK) Ltd*., 14 July 1994, Paragraph 20.

[300] CJEU, C-116/06, *Sari Kiiski v Tampereen kaupunki*, 20 September 2007, Paragraph 56; CJEU, C-519/03, *Commission of the European Communities v Grand Duchy of Luxemburg*, 14 April 2005, Paragraphs 32-33.

[301] No amounts can be given because they differ considerably according to the employee's wages. However, in 2018 the minimum wage as set by law was EUR 586 per month.

[302] Article 39 Act 1846/1951 on the IKA, OJ A 179/21.6.1951.

The employer pays part of the woman's wages during maternity leave, provided that she has worked for at least 10 days for the same employer.[303] This amount is supplemented by the IKA allowance[304] and an allowance paid by the OAED.[305] This way, the workers who are affiliated to both schemes receive their full pay throughout their maternity leave, provided that their monthly wages do not exceed the maximum amount taken into account by the IKA for calculating pensions (currently EUR 3 725.11).[306]

i) Non-provision of an adequate maternity allowance to female salaried lawyers

Historically, in the context of the fragmented social security system which used to be applied in Greece, all lawyers (including salaried lawyers) who were members of the Athens Bar used to be insured for health by the competent statutory social security scheme ('*Ταμείο Προνοίας Δικηγόρων Αθηνών*'). A maternity allowance[307] was provided only for female lawyers (and female trainee lawyers) practising as liberal professionals but not for female salaried lawyers. In 2008, the above scheme was merged (together with other social security schemes for the self-employed) to a new single social security scheme for the self-employed named 'ETAA'.[308] Again, a maternity allowance[309] was provided only for female independent workers, including female lawyers practising as liberal professionals but not for female salaried lawyers. Since 1 January 2017, the ETAA was merged[310] into one single scheme, the 'EFKA'.[311] In the transitional period until the entry into force of the Single Benefits Regulation of EFKA (i.e. a regulation that will regulate benefits on the same terms for every person insured on the scheme, irrespective of his/her previous affiliation to one of the various merged schemes), the particular provisions of the merged schemes governing entitlement to benefits continue to be applied.[312] However, almost three-and-a-half years later, the Single Benefits Regulation of EFKA has still not been adopted. As a result, for all these years, female salaried workers have not been (and still are not) entitled to an 'adequate' (in the sense of the Directive) maternity allowance during the 17 weeks of maternity leave, although their 'employers' and they themselves pay social security contributions to the said scheme on a monthly basis.

In September 2019, the Union of Salaried Lawyers addressed a written complaint[313] to the competent Minister of Employment and Social Affairs and to the Administrators of the social security schemes EFKA and ETEAEP deploring that, unlike the employees of the private sector, female salaried lawyers are deprived from the maternity allowance.[314] This is due to the fact that since 1 January 2017, when all the main existing social security schemes were merged into one single scheme (EFKA),[315] no Single Benefits Regulation has been adopted by the 'EFKA'. The Union of Salaried Lawyers asked for the immediate adoption of the Single Benefits Regulation of the EFKA.

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[303] Articles 657-658 CC (absence due to a serious reason, such as sickness or maternity leave); Piraeus CA No. 917/1996.
[304] Article 11 of Act 2874/2000, OJ A 286/29.10.2000, which sanctions Clause 7 of NGCA 2000.
[305] Decree 221/1997, OJ A 168/27.2.1997.
[306] https://www.efsyn.gr/oikonomia/elliniki-oikonomia/207865_dieykrinistiki-egkyklios-gia-plafon-stis-syntaxeis.
[307] Article 11 PD 162/1998, OJ A 122/5.6.1998 provided a maternity allowance of a total lump sum of EUR 940, which was paid within four months after the delivery, following a petition of the entitled person and an affidavit that she was not a salaried lawyer.
[308] By virtue of Article 25 Act 3655/2008, OJ A 58/3.4.2008.
[309] The joint ministerial decision 158/60617-10-2014, OJ B 2665/8.10.2014 provided a maternity allowance of a total lump sum of (4 months * EUR 200 =) EUR 800.
[310] Together with all the main existing social security schemes and the state pensions.
[311] On 1 March 2020, the general social security scheme 'EFKA' was renamed 'e-EFKA' by virtue of Article 1 Act 4670/2020, OJ A 43-28.2.2020.
[312] By virtue of the transitional provision of Article 32 Act 4387/2016.
[313] Available at: https://www.lawspot.gr/nomika-nea/emmisthoi-dikigoroi-epistoli-stoys-armodioys-ypoyrgoys-gia-ta-asfalistika-zitimata.
[314] Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (10th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), OJ L 348, 28.11.1992, pp. 1-7.
[315] By virtue of Articles 51, 53 and 100(1) & (2b) Act 4387/2016, OJ A 85/12.5.2016.

The issue was raised again in late 2019 by Professor Emeritus of Labour Law of the Athens University Law School, Georges Leventis, in a paper published in a labour law review.[316] He confirms that due to the non-adoption of the Single Benefits Regulation of the 'EFKA', no maternity allowance is provided by said social security scheme to female salaried lawyers who have recently given birth. According to the Code of Lawyers,[317] the provisions for sickness, pregnancy and maternity protection in the private sector apply also to female salaried lawyers. In practice, this means that a female salaried lawyer is entitled to 17 weeks' paid maternity leave (8 weeks before and 9 weeks after delivery),[318] whereas her 'employer' has to pay only the full pay for 1 month (or for 15 days if she has not completed a year of service). However, in the private sector, the employer's payment is supplemented by the maternity allowance paid by the general social security scheme ('e-EFKA') and a maternity allowance paid by the 'Greek Manpower Employment Organisation' (OAED) with the result that female workers of the private sector who are affiliated to both schemes receive their full pay throughout their maternity leave, provided that their monthly wages do not exceed the maximum amount taken into account by the scheme for calculating pensions. In contrast, female salaried lawyers who have recently given birth are not entitled to these maternity allowances supplementing the employer's pay because they are neither covered by the scheme of OAED nor entitled to a maternity allowance due to the non-adoption of the Single Benefits Regulation of the 'EFKA'. To the author's knowledge, to date, the Ombudsman has not dealt with the issue.[319]

In the author's view, the non-entitlement of female salaried lawyers to a maternity allowance by the competent social security scheme 'EFKA' due to the non-adoption of the Single Benefits Regulation of the latter is in breach of the relevant provision of Article 11 point (2)(b) Directive 92/85, which explicitly provides for an 'adequate' maternity allowance.[320] The employer's obligation to pay one month's salary (or half a month's salary if a year of service has not been completed) cannot be considered as an 'adequate' maternity allowance because it does not cover the whole period of the 17 weeks' maternity leave. Nor can it be lawfully argued that due to the lack of social security coverage, the employer's liability should be extended to cover the whole period of the maternity leave; this would be a *contra legem* interpretation with a high risk of creating unnecessary tensions and constraints with the employers and in any case, it would result in a strong disincentive for the employment of female salaried lawyers.

The failure of the social security system to provide an 'adequate' maternity allowance in the past is not an excuse. On the contrary, after the merge of all the social security schemes into one single scheme, 'EFKA', since 1 January 2017, the situation should have been remedied in due time. The delay of almost three-and-a-half years for the adoption of the Single Benefit Regulation of the latter cannot be objectively justified. If the competent social security is not ready to adopt it, the issue should be solved by virtue of a transitional provision as soon as possible. According to the wording of the Union of Salaried Lawyers, female salaried lawyers of the Athens Bar who have recently given birth are facing a 'huge problem'.

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316 Leventis, G. (2019), 'Άδειες δικηγόρων επί παγία αντιμισθία: Άδεια μητρότητος και άδεια φροντίδος παιδιών' (Leaves for salaried lawyers: Maternity leave and for the care of the child), *Δελτίον Εργατικής Νομοθεσίας (ΔΕΝ) (Bulletin of Labour Law),* p. 1106.

317 Article 46(1) Act 4194/2013 ('Code of Lawyers'), OJ A 208/27.9.2013.

318 Clause 7 of the National General Collective Agreement (NGCA) 2000, sanctioned by Article 11 Act 2874/2000, OJ A 286/29.10.2000, in conjunction with Clause 7 of NGCA 1993.

319 In the Greek Ombudsman's Special Equality Report of the year 2019, it appears that another category of female workers employed in the mass media and entertainment of the private sector have also been deprived from maternity allowance due to their obligatory transfer from the coverage of the general social security scheme of IKA to the social security scheme 'EDOEAP'. The Ombudsman has contacted the competent Ministry which answered that amendment of the current legislative framework is envisaged.

320 Article 11(3),(4) PD 176/1997, OJ A 150/15.7.1997, as amended by Article 4(2) PD 41/2003, OJ A 44/21.2.2003, which implemented Article 11(2),(3) Directive 92/85/EEC.

5.3.6 Additional statutory maternity benefits

Statutory maternity benefits are supplemented by some employers (see 5.3.5 above).

5.3.7 Conditions for eligibility (Article 11(4) of Directive 92/85)

Conditions for eligibility for maternity benefits are provided for in Article 11(4) and (5) of Decree 176/1997 transposing Directive 92/85/EEC. According to the above provision, which repeats Article 11(4) of Directive 92/85/EEC, if the entitlement to the maternity allowance paid during maternity leave is made conditional upon a period of previous employment, this period must not exceed 12 months. However, social security legislation makes the payment of the maternity allowance conditional on the completion of 200 working days during the two years preceding the commencement of maternity leave.[321] This constitutes a violation of Article 11(4) of Directive 92/85/EEC. Moreover, the granting of maternity allowance is subject to stricter conditions than the granting of sickness allowance (the granting of the latter is subject to 75 working days in the year preceding the notification of the sickness which has been reduced to 50 days as of 28 February 2020).[322] This constitutes a violation of Article 11(3) of Directive 92/85/EEC, which requires that the maternity allowance guarantee income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health. The fact that Greek law foresees a maternity leave that exceeds the minimum EU law requirements in length and pay is irrelevant. The CJEU has also condemned adverse treatment related to forms of leave granted by national legislation which exceeded minimum EU law requirements.[323]

5.3.8 Right to return to the same or an equivalent job (Article 15 of Directive 2006/54)

Article 16 of Act 3896/2010 transposing Directive 2006/54/EC guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54/EC). This article copies the directive.[324] However, in the private sector this requirement frequently seems to be disregarded in practice. Women returning from maternity leave also complained to the Ombudsman about the behaviour of employers, as mentioned in Section 5.2.10 above. Moreover, some employers, during the woman's absence on maternity leave, transfer their undertaking to another employer, move away from their premises and disappear, without informing the female worker.[325] However, the Ombudsman sees only the tip of the iceberg and such cases do not seem to have reached the courts, for the reasons mentioned in Section 5.2.10 above (see also 11.3 below).

There are specific problems of discrimination on the ground of maternity against substitute state schoolteachers. As already mentioned, (see 5.3.1 above), as these teachers are fixed-term state employees, they are not granted the CSC maternity leave which their permanent colleagues receive, but are granted only private sector maternity leave. Moreover, in contrast to permanent teachers, where they experience pregnancy-related illness, substitute teachers are not covered by Article 52(3) CSC, which provides

[321] Article 39 Act 1846/1951 on IKA, OJ A 179/21.6.1951.

[322] Article 23 Act 4529/2018, OJ A 56/23.3.2018; Article 37(8) Act 4670/2020, OJ A 43/28.2.2020 reduced the minimum of 75 days to 50 days as of 28.02.2020.

[323] See e.g. CJEU, C-284/02, *Land Brandenburg v Ursula Sass*, 18 November 2004, concerning maternity leave longer than 14 weeks.

[324] In SLC Opinion 5/2017 it was upheld that the right to return to the same or an equivalent job applies to the public sector as well.

[325] Greek Ombudsman (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships – Special report 2015), available at: https://www.synigoros.gr/resources/docs/ee2015-13-fylo--2.pdf; Greek Ombudsman (2015), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2014' (Gender and employment relationships - Special Report 2014), pp. 138-141, available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf.

that 'a pregnant employee who needs a specific therapy, after the exhaustion of the paid sick leave, is granted paid pregnancy leave, following a certificate from her obstetrician and the director of a gynaecological clinic of a public hospital'.

Substitute teachers, like all other fixed-term state employees, are entitled to the paid sick leave of a maximum of 15 days per year provided by Articles 657-658 CC for private sector employees, which covers illness due to any cause whatsoever, including pregnancy-related illness, and is independent of maternity leave.[326] However, if they have exhausted the 15-day sick leave due to another illness during the same year, they are not entitled to wages for pregnancy-related illness.[327] Instead they are entitled only to the IKA sickness allowance, which does not correspond to full pay.[328]

In the author's view, the non-autonomous entitlement to pay for absence due to pregnancy-related illness beyond maternity leave and sickness leave constitutes direct discrimination against substitute teachers, as compared to permanent teachers, on the ground of maternity, which conflicts with Article 2(2)(c) of Directive 2006/54/EC, as well as direct discrimination on the ground of sex with respect to employment conditions and pay, which conflicts with Article 14(1)(c) of the same Directive. This unfavourable treatment also means direct discrimination against substitute teachers as fixed-term employees in comparison to permanent teachers, which conflicts with Directive 1999/70/EC.[329] Therefore, substitute teachers suffer multiple discrimination regarding pregnancy-related illness: on the ground of maternity/gender and on the ground of fixed-term status.[330]

Moreover, Ministry of Education Circular No. 155734/Δ1.10.12.2012, 'Qualification of sick leave as a period of effective teaching service of substitute teachers', which is still applied, reveals illegal administrative practices to the detriment of substitute teachers. This Circular states that all substitute teachers are only entitled to 15 days' sick leave per year. In the case of absence from work exceeding 15 days, they may be dismissed if this absence constitutes a serious reason justifying dismissal according to labour law. In the case of such an additional absence, it may also be presumed that the substitute teacher has tacitly resigned (in which case he/she is not entitled to redundancy compensation). Moreover, according to this circular, 'any granted leave exceeding 15 days per year does not qualify as teaching service'. The circular underlines that 'the above limitations do not apply to maternity leave only, which is guaranteed by law anyway'. It also recalls that dismissal is not allowed in relation to pregnancy-related illness, but it does not say that the periods of absence due to such illness qualify as periods of teaching service. Indeed, by underlining that the '*only'* period of absence exceeding 15 days that qualifies as teaching service is maternity leave, it implies that leave for pregnancy-related illness does not constitute teaching service.

However, according to settled CJEU case law, any prejudicial treatment of a female employee, directly or indirectly related to pregnancy, may only concern women and therefore constitutes direct discrimination on the ground of sex, the existence of a male

[326] SCPC (Civil Section) No. 2041/1984; Piraeus CA No. 917/1996.

[327] Ministry of Labour Circular 5731/229/10.4.2012 'Maternity leave and wages', and OAED Circular No. B. 116973/12 'Absence due to pregnancy and maternity as an obstacle to work', *Labour Legislation Bulletin* (Δελτίο Εργατικής Νομοθεσίας), vol. 69/2013, issue 122, pp. 440-442.

[328] IKA used to operate the main scheme for subordinate workers under a private-law contract. Since 1 January 2017, all the main existing social security schemes, together with state pensions, have been merged into one single scheme (EFKA) (see 7.3 below).

[329] Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (*Fixed Term Directive*), OJ L 175, 10.7.1999, pp. 43-48; Clause 4(1) in conjunction with Clause 1(a), 'principle of non-discrimination'.

[330] In September 2017 this discriminatory situation led to a parliamentary interpellation to the Minister of Employment signed by 53 MPs of the governing party SYRIZA, who asked for the unification of the conditions from maternity leave and sick leave between permanent and substitute teachers, available at: https://xenesglosses.eu/2017/09/ypourgos-ergasias-gia-tis-paroches-mitrotitas-oaed-anaplirotes-kai-epidoma-anergias/.

comparator being irrelevant.[331] As teaching service is an essential prerequisite for access to and evolution in the teaching profession, not taking into account sick leave granted for pregnancy-related illness in the calculation of teaching service falls within the scope of Paragraph (1)(a) and (c) of Article 14 of Directive 2006/54/EC. It therefore constitutes direct gender discrimination prohibited by these provisions of the directive.

There does not seem to be any case law on this matter. Moreover, it seems that the said circular has been applied till the recent amend of legislation in 2019. This is shown by a communication of the Federation of High School Teachers of Thessaloniki, dated 29 November 2016, by which the unfavourable treatment of substitute teachers in relation to maternity protection and parental leave was deplored and it was demanded that substitute teachers have the same entitlements as permanent school teachers, including paid maternity leave, paid sick leave in cases of pregnancy-related illness and parental leave, as these types of leave are provided by the CSC.[332] Following numerous complaints of female substitute teachers (more than 80 complaints in 2018) regarding illegal administrative practices to their detriment related to maternity and parental leave, the Ombudsman has repeatedly noted the serious deficits of the existing legal framework on maternity protection and reconciliation of professional and family life for some professional activities, including substitute teachers. According to the Ombudsman, in principle, substitute teachers are hired for the coverage of temporary needs of the education system, whereas in practice, they systematically cover a part of ordinary and continuous needs thereof and could remain in the regime of substitute teachers for a long period, at least as was the case until the application of the new system of hiring and appointment of teachers (Articles 53-66 Act 4589/2019, OJ A 13/29.01.2019). In 2018, after receiving an increased number of such complaints, the Ombudsman intensified the efforts for the solution of this problem; by a letter to the competent Ministry of Education, Research and Religious Affairs, the Ombudsman asked for the solution of this problem, proposing the adoption of maternity leave for female substitute teachers. The Ombudsman's proposal was endorsed by the Ministry and was included in Article 26 Act 4599/2019, the Explanatory Report (*travaux préparatoires*) of which makes explicit reference to the Ombudsman's proposal.[333] More specifically, Article 26 Act 4599/2019 (OJ A 40/4.3.2019) added a new Paragraph (b) to Article 14 Act 2083/1992 (OJ A 159/21.9.1992), which now reads:

> '(a) By a joint decision of the Ministers of Finance and Education and Religious Affairs, reduced working hours can be fixed for mothers, who are teachers in the first and second grade of education. The reduced hours begin from the date of the birth of the child, if it is born alive, and cannot exceed two hours a week for the first two years.
>
> (b) (aa) Alternatively, if the natural, adoptive or fostering substitute teacher or member of the Special Educational Staff or of the Special Auxiliary Staff does not make use of the reduced working hours of Paragraph (a), she is entitled to a paid leave for the upbringing of her child up to 3 months and 15 days, which is to be taken exclusively after the end of the maternity leave provided by Article 11(1) Act 2874/2000 (OJ A 286/29.12.2000).[334] (bb) Entitled to the above leave under (a) and (b) of this Act is the adoptive and foster mother, teacher or member of the Special Educational Staff or of the Special Auxiliary Staff, who adopts or fosters a child up

[331] CJEU, C-177/88, *E. J. P. Dekker v Stichting Vormingscentrum voor Jong Volwassenen*, 8 November 1990, Paragraph 12, Paragraph 17; CJEU, C-421/92, *Gabriele Habermann-Beltermann v Arbeiterwohlfahrt*, 5 May 1994, Paragraphs 15, 16; C-207/98, *S. K. Mahlburg v Land Mecklenburg-Vorpommern,* 3 February 2000, paragraph 20.

[332] *Γ΄ΕΛΜΕ Θεσσαλονίκης* (3rd Federation of High School Teachers of Thessaloniki), Communication dated 29 November 2016, available at: www.alfavita.gr/arthron/anakoinoseis/g-elme-thessalonikis-pliris-prostasia-tis-kyisis-kai-tis-mitrotitas-gia-tis#ixzz4Sc2jKIub.

[333] Greek Ombudsman (2019) 'Σύνοψη διαμεσολάβησης - Θεσμοθέτηση άδειας φροντίδας τέκνου για τις αναπληρώτριες εκπαιδευτικούς' (Provision of leave for the care of children for female substitute teachers), available at: https://www.synigoros.gr/resources/docs/20190412-synopsi.pdf.

[334] Greece, Article 11(1) Act 2874/2000 (OJ A 286/29.12.2000) ratified the provision of Article 7 NGCA of 23.05.2000, extending the maternity leave in the private sector from 16 to 17 weeks.

to six years, immediately after the completion of the adoption. (cc) The time period of the above leave constitutes teaching service and is recognised as insurable time by the competent social security insurance schemes…'.

In this respect, the CJEU *Roca Alvarez*[335] dealt with a period of Spanish leave in the form of reduced working hours, which was originally instituted as 'breastfeeding' leave but in practice, gradually became detached from the biological fact of breastfeeding, actually becoming leave facilitating the devotion of time to the child. Female employees, mothers of a child, were entitled, in various ways, to take that leave during the first nine months following the child's birth, whereas male employees, fathers of a child, were not entitled to the same leave unless the child's mother was also an employed person. According to the Court, to hold that only a mother whose status is that of an employed person is the holder of the right to qualify for the leave at issue, whereas a father with the same status can only enjoy this right but not be the holder of it, is liable to perpetuate a traditional distribution of the roles of men and women by keeping men in a role subsidiary to that of women in relation to the exercise of their parental duties. The Court found that the said leave was in breach of Article 2(1), (3) and (4) and Article 5 of Directive 76/207. The Court held that such a measure cannot be considered to be a positive measure eliminating or reducing existing inequalities in society within the meaning of Article 2(4) of Directive 76/207, nor as a measure seeking to achieve substantive as opposed to formal equality by reducing the real inequalities that can arise in society and thus, in accordance with Article 157(4) TFEU, to prevent or compensate for disadvantages in the professional careers of the relevant persons. In the given case, the Court refrained to examine whether the measure at issue was also contrary to Directive 96/34 as the European Commission had submitted, in the absence of details in the order for reference about the Spanish legislation on parental leave, and in the absence of a specific request to that effect. In view of the above, in the author's view, exclusion of male substitute teachers from the said leave constitutes direct discrimination on the grounds of gender in breach of Article 2(a) Act 3896/2010, no exception to the gender equality principle being applicable. Moreover, given that this leave falls under parental leave as well (see 5.5.4 below), entitlement thereto should also be extended to male substitute teachers.

5.3.9 Legal right to share maternity leave

There is no legal right to share maternity leave.

5.3.10 Case law

It is striking that since the adoption of Act 3896/2010 there has only been one judgment (Athens Court of Appeal No. 3693/2018) concerning the right to return after maternity leave to the same or equivalent job according to Article 16 of Act 3896/2010, implementing Article 15 of Directive 2006/54/EC. It is about a female employee who, upon returning from maternity leave, was moved from the main office area to the warehouse. At the same time her employment contract was unilaterally modified by the employer from full employment to only two days per week which resulted in a corresponding deduction to her wages from EUR 1 061 to EUR 398 per month. Of the undertaking's 11 employees, she was the only one subjected to such a unilateral modification. The court found that this constituted a prejudicial modification of her working conditions; and that the undertaking was obliged to employ her under the initial working conditions under the threat of a pecuniary penalty of EUR 100 per day and under the threat of a one-month detention against its legal representative. Moreover, the sum of EUR 1 500 was adjudicated to the wronged woman as moral damages.[336]

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[335] CJEU, C-104/09, *Pedro Manuel Roca Álvarez v Sesa Start España ETT SA*, 30 September 2010, ECLI:EU:C:2010:561.

[336] European Equality Law Review 2019/1, p. 94, available at: https://publications.europa.eu/en/publication-detail/-/publication/a120c4fa-a914-11e9-9d01-01aa75ed71a1/language-en/format-PDF.

However, this case is only the tip of the iceberg. From a review of the annual reports of the Labour Inspectorate for the years 2015-2017,[337] it becomes clear that a 10 % of the gender equality complaints to the LI (72 in 2017, 91 in 2016 and 97 in 2015) concern prejudicial modification of working conditions during pregnancy and maternity leave. In the view of the author, it is evident that these complaints (or the majority thereof) have never been brought to justice due to structural barriers (see 11.3 below).

In its Opinion No. 112/2019, the Greek SLC found that the period of maternity leave of intern female doctors in public hospitals is considered as actual working time for the purpose of salary progression,[338] irrespective of the fact that their education is completed when all medical activities, including on-call duties,[339] provided by law, are accomplished. This Opinion has been endorsed by the competent minister and consequently is binding. From the Opinion, it appears that the competent public service used to refuse to take into account the period of maternity leave for the purpose of salary progression.

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

Adoption leave is provided in Article 50(8) of Act 4075/2012, Article 3(1) of Decree 80/2012 transposing the Directive, Article 38 of Act 4342/2015, Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014, and Article 53(9) CSC, as added by Article 34(9) Act 4590/2019.[340]

Originally, in the public sector, the adoption leave (a paid three-month leave, following the finalisation of the adoption of a child under the age of six years) was limited only to female civil servants (old Article 52(4) CSC). Following the complaint to the Ombudsman by a father civil servant, the discriminatory provision of old Article 52(4) CSC was abolished by Article 34(5) Act 4590/2019, OJ A 17/7.2.2019 and a new gender-neutral provision on adoptive leave for civil servants was passed.[341] Actually, Article 53(9) CSC, as added by Article 34(1) Act 4590/2019, OJ A 17/7.2.2019, grants both male and female civil servants who are adoptive or foster parents a period of paid leave for three months within the first six months following the finalisation of the adoption (or fostering) of a child under the age of six (which corresponds to maternity leave after birth see 5.3.1 above).[342] One month of this leave can be taken before the adoption (or the fostering). This leave is granted irrespective of the use of the daily working time reduction or, alternatively, the nine months' fully paid parental leave for each child up to the age of four according to Article 53(2) CSC (see 5.5.4 below). This three-month adoption leave is granted to employees of local authorities as well (Article 60(9) Act 3584/2007, as added by Article 34(3) Act 4590/2019, OJ A 17/7.2.2019).

On parental leave of adoptive or foster parents[343] see 5.5.3 and 5.5.4 below.

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[337] Greek Labour Inspectorate: *Annual report 2015*, available at: www.ypakp.gr/uploads/docs/11659.pdf; *Annual report 2016*, available at: www.ypakp.gr/uploads/docs/11663.pdf; *Annual report 2017*, available at: www.ypakp.gr/uploads/docs/11919.pdf.

[338] Articles 136 and 137 Act 4472/2017, OJ A 74/19.5.2017.

[339] Article 25 PD 38/2010, OJ A 78/25.5.2010.

[340] Article 34(9) Act 4590/2019, OJ A 17/7.2.2019 abolished the provision of Article 52(4) CSC and a new Paragraph 9 was added to Article 52 CSC on adoption leave.

[341] Greek Ombudsman (2019) 'Σύνοψη διαμεσολάβησης - Άδεια υιοθεσίας και σε πατέρες δημοσίους υπαλλήλους μετά την παρέμβαση του Συνηγόρου του Πολίτη' (Summary of intervention – Adoption leave to father civil servants as well following the Ombudsman's intervention), available at: https://www.synigoros.gr/resources/docs/20190320-synopsi--2.pdf.

[342] Article 34(5) Act 4590/2019 abolished Article 52(4) CSC, which provided the three-month adoption leave only for mothers (civil servants), and Article 59(4) Act 3584/2007, which provided the three-month adoption leave only for mothers (employees of local authorities).

[343] Article 53(2) Civil Servants Code, as amended by Article 47(4)(a) Act 4674/2020, OJ A 53/11.3.2020, amended. According to the new Act, nine months' fully paid leave is granted to parents who adopt or foster a child under the age of four after the exhaustion of the adoption leave (Article 53(9) CSC, as added by Article 34(1) Act 4590/2019) as an alternative to a paid daily time reduction. If the age of four is to be

5.4.2 Protection against dismissal (Article 16 of Directive 2006/54)

National legislation provides for protection against dismissal of workers who take adoption leave and/or specifies their rights after the end of adoption leave in Article 15(3) Act 1483/1984, as added by Article 46 Act 4488/2017 and in Articles 18 and 20(3) of Act 3896/2010 transposing Directive 2006/54/EC and Article 52(1) and (3) of Act 4075/2012 transposing Directive 2010/18/EU.

Article 15(3) of Act 1483/1984, as added by Article 46 of Act 4488/2017 reads: 'The protection against termination of the employment relationship, according to the provisions of this Article, applies to female workers, who adopt a child under the age of six, beginning with the placement of the child in the family….'. This provision was adopted upon a relevant request of the Ombudsman following the complaint of a female worker in the private sector who was dismissed after she informed her employer that the judicial procedure of adoption would be completed in a few days.[344]

Article 18 of Act 3896/2010 reads: 'Less favourable treatment of parents due to parental leave, adoption or fostering of a child also constitutes discrimination.'

Article 20(3) of Act 3896/2010 reads: 'The protection provided by Article 16 [return from maternity leave] applies to all workers who make use of any leave related to the birth, raising or adoption of a child.'

Article 52(3) of Act 4075/2012 makes the dismissal of any worker, including adoptive and foster parents, due to an application for or the taking of parental leave, null and void. Article 52(1) of Act 4075/2012 entitles workers returning from parental leave, including adoptive and foster parents, to the protection required by the above Article 16 of Directive 2006/54/EC, and prohibits their unfavourable treatment due to an application for or the taking of parental leave. The directives are thus exceeded regarding foster parents. This provision also applies to women employed by the state, by legal entities governed by public law and by local authorities (Article 59(4) Act 3584/2007) on a contract of indefinite duration, but not to women employed by the same employers on a fixed-term contract (Article 2 CSC), in breach of Directives 2010/18/EU and 1999/70/EC (fixed-term work) (see 5.3.1 above).

5.4.3 Case law

There is no case law on adoptive leave. For case law on parental leave of adoptive or foster parents see 5.5.4 below.

i) Foster leave

According to Article 12(3) Act 4538/2018, OJ A 85/16.5.2018, foster parents are entitled to the same leave for the care and upbringing of minor children, as the biological parents. In Greece, spouses, partners (including same-sex partners)[345] in civil partnerships and individuals can become foster parents.[346]

reached sooner than nine months, only the corresponding part of the leave for the remaining time is granted. This is a big step forward given that until the adoption of the new Act, foster parents had no such entitlement, whereas adoptive parents were entitled only to leave of a length amounting to the total number of hours by which the daily working time would be reduced.

[344] Greek Ombudsman (2018) 'Δελτίο τύπου - Προστασία από απόλυση για τις θετές μητέρες' (Press release – Protection of adoptive mothers against dismissal), available at: https://www.synigoros.gr/resources/20180109-dt.pdf.

[345] Article 1 Act 4356/2018, OJ A 181/24.12.2015 recognised for the first time the same-sex civil partnership.

[346] Article 8(1) Act 4538/2018, OJ A 85/16.5.2018.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Directive 2010/18/EU has been explicitly implemented by Articles 48-54 of Act 4075/2012[347] and PD 80/2012 which transpose the Directive; Articles 51(2) and 53 CSC, Article 44 of the Judges Code; and several NGCAs.[348]

5.5.2 Applicability to public and private sectors (Clause 1 of Directive 2010/18)

Act 4075/2012 applies to both the public and the private sectors. Decree 80/2012 applies to workers employed under a contract of maritime employment on commercial vessels bearing the Greek flag. On the scope of the CSC see 5.3.1 above. NGCAs provide enforceable minimum standards for all workers under a private-law contract throughout the country.

5.5.3 Scope of the transposing legislation

As to the scope of the transposing legislation, according to Article 49(2) of Act 4075/2012, as amended by Article 39(3) Act 4144/2013, OJ A 88/18.4.2013, this Act covers natural, adoptive or foster parents employed under any relationship or form of employment, including part-time and fixed-term employment *via* a temporary agency, 'or a remunerated mandate', 'irrespective of the nature of the work performed'. The latter exceed the directive.

In particular, Article 50(8) of Act 4075/2012 grants adoptive and foster parents the same (unpaid) parental leave as natural parents, provided that the adoption or fostering has been finalised by the time the child reaches the age of six. Moreover, Article 38 of Act 4342/2015 grants adoptive and foster parents the paid leave (of a length corresponding to the total number of hours by which the daily working time would be reduced – see below 5.5.4) irrespective of the kind of professional activity of the other parent and even if the other parent is not employed. Act 4075/2012 applies to both the public and the private sectors.

In the public sector, Article 53(2) CSC, as amended by Article 47(4)(a) Act 4674/2020, OJ A 53/11.3.2020, provides that nine months' fully paid leave is granted to parents who adopt or foster a child under the age of four after the exhaustion of the adoption leave (Article 53(9) CSC, as added by Article 34(1) Act 4590/2019) as an alternative to a paid daily time reduction. If the age of four is to be reached sooner than nine months, only the corresponding part of the leave for the remaining time is granted. This is a big step forward given that until the adoption of the new Act, foster parents had no such entitlement, whereas adoptive parents were entitled only to leave of a length amounting to the total number of hours by which the daily working time would be reduced.

The CSC explicitly grants up to five years of unpaid parental leave to adoptive or foster parents provided that the adoption or fostering has been finalised by the time the child reaches the age of six or the age of eight, if the adoption has not been finalised up to the

[347] After the cut-off date of this report (1 January 2021), Article 53 Act 4808/2021, OJ A 101/19.06.2021, amended Article 11 of Act 2874/2000 whereas Article 37 of the new Act transposes the Directive's (2009/1158) provisions on parental leave. It provides, *inter alia,* six months' parental leave for both mothers and fathers to be taken continuously or on a piecemeal basis until the child reaches the age of eight years. The first two months will be paid by OAED with the minimum statutory wages whereas the next four months will be unpaid. A lone parent (in the case of death of the other spouse or removal of custody or non-recognition of child) is entitled to double the length of this leave; parents of twins, triples, etc. are entitled to this leave for each child separately; an adoptive or foster parent of a child up to eight years is entitled to this leave upon the placement of the child in the family; in the case of separation or divorce, entitlement thereto is autonomous for each parent.

[348] After the cut-off date of this report (1 January 2021), Articles 24-32 Act 4808/2021, OJ A 101/19.06.2021 transposed Directive 2009/1158.

age of six. A three-month period of this leave is granted with full pay in the event of the birth (or adoption by analogy) of a third child or subsequent children.[349] The same leave is provided for the employees of local authorities.[350]

5.5.4 Length of parental leave

The total duration of parental leave exceeds the minimum provided for in the directive.

In the private sector: four months' unpaid, non-transferable leave for each child up to the age of six (Article 50(1) and (3) of Act 4075/2012 transposing Directive 2010/18/EU).

A transferable paid daily working time reduction 'for breastfeeding and childcare' by one hour for two and a half years after maternity leave is granted to natural and adoptive parents, including both commissioning and surrogate mothers. Alternatively, paid leave of a corresponding length (amounting to the total number of hours by which the daily working time would be reduced) may be agreed with the employer.[351] The employer may not refuse to grant the reduction, as the worker's right is enforceable in the courts. However, when the length of the reduction depends on the employer's agreement, this agreement may depend on business needs, but its refusal may constitute an abuse of rights, as the SCPC (Civil Section – Plenary) held in the case of a female bank employee whose employer arbitrarily denied the granting of the accumulated leave.[352] This case law led to a more favourable provision in the banking sector CA for the years 2016-2018, which provided that this leave must be granted upon the employee's request unless serious reasons in the business justify the employer's refusal. This paid leave is granted to (natural, adoptive or foster) parents of both sexes irrespective of the kind of professional activity of the other parent and even if the other parent is not employed. In the case of divorce, separation or a child born out-of-wedlock, the leave is granted to the parent who has the custody of the child, unless otherwise agreed by the parents. The leave is granted upon a joint affidavit of the parents to the employer(s) stating who will take the leave and, if the leave is shared, for which period each parent will make use of it (Article 38 Act 4342/2015).

In maritime work: four months' unpaid leave for each child up to the age of five; at least one month non-transferable (Article 5(2) of Decree 80/2012).

In the public sector: nine months' fully paid, transferable leave for each child up to the age of four (Article 53(2) CSC for civil servants; Article 60(2) Act 3584/2007 for employees of local authorities); alternatively, a paid daily working time reduction (by two hours until the child reaches the age of two and by one hour until he or she reaches the age of four; in the event of the birth of a fourth child and any child born beyond the fourth, the daily working time reduction is extended for two more years).[353] Following the CJEU judgment in *Chatzi,*[354] which responded to a preliminary reference by the Thessaloniki ACA regarding the entitlement to parental leave of civil servants who are parents of twins, a provision granting an additional paid six-month period of leave for each child subsequent to the first one, in the case of multiple births, was added to Article 53(2) CSC (for civil servants),[355] to Article 60(2) Act 3584/2007 (for employees of local authorities)[356] and to the Judges

[349] Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014, OJ A 237/31.10.2014.
[350] Article 60(1) Act 3528/2007, as amended by Article 26(4) of Act 4305/2014, OJ A 237/31.10.2014.
[351] NGCAs: 1993 (Article 9), 2000, 2002-2003 (Article 6), which was ratified by Article 7(b) Act 3144/2003 (OJ A 111/8.5.2003), 2004-2005 (Article 9), 2006-2007 (Article 7(c), 2008-2009 (Article 6), 2014 (Article 2), available, in Greek, on the Greek General Confederation of Labour (GSEE) website: https://gsee.gr/?page_id=54.
[352] SCPC (Civil Section – Plenary) No. 10/2010.
[353] Article 47(4)(a) Act 4674/2020 amended Article 53(2) Civil Servants Code.
[354] CJEU, C-149/10, *Zoi Chatzi v Ipourgos Ikonomikon*, 16 September 2010; see Koukoulis-Spiliotopoulos, S. (2011), European Network of Legal Experts in the Field of Gender Equality, 'Greece', *European Gender Equality Law Review 1*, pp. 78-83, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights.
[355] Article 6(1) of Act 4210/2013, OJ A 254/21.11.2013.
[356] Article 6(1) of Act 4210/2013, OJ A 254/21.11.2013.

Code.[357] The Ombudsman dealt with the complaint of a female public servant, the head of a service, who requested to take this additional leave in the form of a working time reduction in order not to lose her responsibility allowance (as a part of the monthly salary), which stops after two months of absence. The Ombudsman found that this constituted a disincentive for women in positions of responsibility to make use of the leave and proposed that this additional leave should also be granted in the alternative form of a working time reduction. The proposal was endorsed by the Minister of the Interior.[358] The Athens Court of Appeal Judgment No. 374/2020 found that female salaried lawyers are entitled to the above-mentioned nine months' fully paid leave for each child up to the age of four[359] in the wider public sector and, for reasons of gender equality, male salaried lawyers as well.

Moreover, an unpaid leave of up to five years is provided for each child up to the age of six (or under the age of eight if the adoption has not been completed before the age of six); three months of this leave is granted with full pay for the third child and any subsequent children.[360] The CS in its Judgment No. 1850/2017 found that this leave does not apply to judges. According to the Court, this is not contrary to Directive 2010/18/EU, which provides a four-month minimum length of parental leave without excluding differentiation in the length of parental leave among the various professional categories depending on the nature of the duties of each category.

As Act 4075/2012 grants parental leave until the child reaches the age of six, the CSC leave – or, alternatively, the daily working time reduction – apply, in the author's view, until the child reaches the age of six, although the CSC's provision granting it up to the age of four was not formally modified. Yet, in practice, the CSC provisions on both the leave and the working time reduction are applied as they stood before the transposition of the Directive, until the child reaches the age of four.[361] Judges receive the CSC parental leave, but they are not entitled to a working time reduction; in fact, the child's maximum age is about one and a half years, as the leave starts soon after maternity leave (Article 44(21) Judges Code, see 5.5.7 below).

The above provisions apply to civil servants (Article 53 CSC) and permanent employees of legal persons governed by public law and local authorities (Article 60 Act 3584/2007), as well as to employees of the same employers on a private-law contract of indefinite duration (Article 2 and Article Second CSC). The Ombudsman has dealt with several complaints from substitute teachers, whose four-month parental leave according to Act 4075/2012 was not taken into account as real working time for the calculation of annual leave and wages. The Ombudsman's findings had a significant impact on legislation. Article 26 Act 4599/2019, OJ A 40/04.03.2019, provided three-and-a-half-months' leave for female substitute teachers, mothers of biological, adoptive or foster children, as an alternative to the paid weekly time reduction (two hours per week until the child reaches the age of two). This leave has to be taken exclusively after the end of maternity leave[362] without the possibility of being postponed for any reason. The said leave can be taken by the

[357] Article 44(21) Act 1756/1988, OJ A 35/25.2.1988, as amended by Article 8(1A) Act 4239/2014, OJ A 43/20.2.2014.

[358] Greek Ombudsman (2016), 'Φύλο και Εργασιακές σχέσεις – Ειδική έκθεση 2016), (Gender and employment relationships - Special Report 2016), p. 129: available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf. Greek Ombudsman (2016) 'Σύνοψη διαμεσολάβησης - Εναλλακτική χορήγηση επί πλέον άδειας ανατροφής τέκνου σε περίπτωση γέννησης διδύμων, τριδύμων κ.λπ., ως μειωμένο ωράριο' (Summary of intervention – Alternative granting of additional parental leave in cases of multiple births as reduced working hours), available at: https://www.synigoros.gr/resources/docs/20161121-synopsi.pdf.

[359] Article 15(2) Act 1483/1984, OJ A 153/8.10.1984, in combination with Article 1 Act 1302/1982, OJ A 133/29.10.1982.

[360] Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014 for civil servants; Article 60(1) Act 3584/2007 for employees of local authorities.

[361] See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/5.5.2014 aimed at clarifying the application of the CSC to state school teachers, following the transposition of Directive 2010/18/EU, Paragraph D4, pp. 8-9.

[362] In Greece, the maternity leave for substitute schoolteachers is the one applied in the private sector, i.e. eight weeks before and nine weeks after the birth of the child, Clause 7 of the National General Collective Agreement (NGCA) 2000, sanctioned by Article 11 of Act 2874/2000, OJ A 137/13.9.2017.

adoptive or foster mother who adopts or fosters a child up to six years old, after the completion of the adoption or the fostering. In all cases its duration cannot be extended, ending at the expiration of the employment contract of the substitute teacher. The time period of the said leave is considered as actual teaching time and as insurable time by the social security schemes.[363] In the author's view, this constitutes direct discrimination on the grounds of gender in breach of Article 2(a) Act 3896/2010, no exception from the gender equality principle being applicable, according to CJEU *Roca Alvarez*[364] (see 5.3.8 above); given that this leave also falls under parental leave, entitlement thereto should be extended to male substitute teachers as well.

Moreover, there is an irrational and unlawful practice within the civil service when the leave is not requested upon the expiry of the maternity leave, but later on or by a parent whose child was born before he/she was appointed to the civil service. Although the child is still under the age prescribed by law and the parent has made no use of the reduced working day (as an alternative to parental leave), a fictitious use of the reduced working day is taken into account, the leave being proportionately curtailed. The SLC[365] agreed with this practice, which is still ongoing, as it results from ministerial circulars[366] and a civil servant's complaint to the Ombudsman who intervened, albeit to no avail, as the competent Ministry insisted on the lawfulness of this practice.[367]

5.5.5 Age limits

The age limits of the child for the granting of parental leave are:

In the private sector: up to the age of six (Article 50(1) and (3) of Act 4075/2012 transposing Directive 2010/18/EU).

In the public sector: up to the age of four (Article 53(2) CSC for civil servants; Article 60(2) Act 3584/2007 for employees of local authorities).

As Act 4075/2012 grants this leave until the child reaches the age of six, the CSC leave or alternatively the daily working time reduction apply, in the author's view, until the child reaches the age of six, although the CSC was not formally modified. Yet in practice the CSC provisions on both the leave and the working time reduction are applied as they stood before the transposition of the Directive, until the child reaches the age of four.[368] Judges receive the CSC parental leave, but they are not entitled to a working time reduction; in fact, the child's maximum age is about one and a half years, as the leave starts soon after maternity leave (Article 44(21) Judges Code, see 5.5.7 below).

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[363] Greek Ombudsman (2019), *"Ίση μεταχείριση – Ειδική Έκθεση 2019"* (Equal treatment – Special report 2019), available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

[364] CJEU, C-104/09, *Pedro Manuel Roca Álvarez v Sesa Start España ETT SA*, 30 September 2010, ECLI:EU:C:2010:561.

[365] The Greek State Legal Council (SLC), Opinion 64/2008. The SLC gives opinions at the request of public authorities which are not binding, unless the competent Minister endorses them, which was the case with this opinion.

[366] Ministry of Education Circular Φ.351.5/43/57822/Δ1/5.5.2014, aimed at clarifying the parental leave regime applying to state school teachers under the CSC, following the transposition of Directive 2010/18/EU, Paragraph D4, p. 9, which refers to Minister of Home Affairs Circular ΔΙΔΑΔ/Φ.51/590/οικ.14346/29.5.2008, p. 5, available at: www.ydmed.gov.gr/wp-content/uploads/20080529_ypal_kodikas_adeies_08.pdf; the latter states that it complies with SLC Opinion 64/2008 (above).

[367] The Ministry invoked Circular ΔΙΔΑΔ/Φ.53α/1975/6219/16.04.2014, which is similar to the ones mentioned above. See Ombudsman, *Annual Report 2014*, pp. 134 et seq. (*Gender and employment relationships)*, available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf.

[368] Ministry of Education Circular Φ.351.5/43/57822/Δ1/5.5.2014 aimed at clarifying the application of the CSC to state school teachers following the transposition of Directive 2010/18/EU, Paragraph D4, pp. 8-9, available at: http://dipe.kor.sch.gr/index.php/2012-04-26-07-50-26/541-adeies-ekpaideftikon-a-thmias-kai-v-mias-f-351-5-43-67822-d1-5-5-2014.

5.5.6 Individual nature of the right to parental leave

In the private sector the right to parental leave is non-transferable, therefore it is individual. In the public sector it is fully transferable. If both parents are civil servants, by a joint declaration they define who will make use of the leave or, if the leave is shared, the successive time periods when the leave will be taken by each parent.[369] There is no minimum period of the leave which is non-transferable for civil servants. In the author's opinion, this is contrary to Clause 2(2) of Directive 2010/18 which provides that in order to encourage a more equal take-up of leave by both parents, at least one of the four months is to be provided on a non-transferable basis. Moreover, if the spouse of a parent covered by the CSC works in the private sector, the leave or the reduced working day is granted to him/her to the extent that his/her spouse makes no use of his/her own rights or to the extent that the CSC rights exceed his/her spouse's rights (Article 53(3) CSC). Therefore, it is not individual.

5.5.7 Transferability of the right to parental leave

Article 53(3) CSC also provided that a father whose wife does not work or exercise any profession was not entitled to the leave. This was the case unless, due to a serious illness or injury, the father's wife was unable to meet the needs related to the child's upbringing. A male judge whose wife was not in work was refused parental leave on the basis of this provision, which also applied to judges. He brought an action for the annulment of the refusal before the CS. Meanwhile, this provision was repealed[370] following a letter of warning by the Commission, but before its repeal it was copied in the Judges Code, as Paragraph 24 of Article 44 of this Code,[371] albeit in gender-neutral language: 'a judge whose spouse [irrespective of sex] does not work or exercise any profession is not entitled to parental leave unless, due to a serious illness or injury, the judge's spouse is unable to meet the needs related to the child's upbringing'. In the author's view, the new provision is also incompatible with Directive 2010/18/EU. As the impugned refusal took place before the repeal and on the basis of the provision of Article 53(3) CSC, it was this provision, not the new gender-neutral provision of the Judges Code, which was applicable to the case.

The CS (judgment 1113/2014) referred to the CJEU the question of whether Directives 96/34/EC and 2006/54/EC precluded national provisions such as that of Article 53(3) CSC. This referral was to the *Maïstrellis* case.[372] The CJEU considered Directive 96/34/EC applicable to the case and ruled that Directives 96/34/EC and 2006/54/EC preclude national provisions, such as the impugned provision of Article 53(3) CSC quoted above. The Court recalled that Directive 96/34/EC also applies to public officials. It provides for an 'individual right' to parental leave for both male and female workers on the grounds of the birth or adoption of a child, to enable them to take care of that child. Moreover, in setting out the conditions of access to parental leave that Member States and/or the social partners may adopt, '[the Directive does] not in any way provide that one of the parents can be denied the right to parental leave, *inter alia*, *because of the employment status of his or her spouse*'.[373] In the author's view, it is clear from the latter phrase, that the above gender-neutral provision of Paragraph 24 of Article 44 of the Judges Code also conflicts with Directive 96/34/EC and therefore with Directive 2010/18/EU as well. Regarding Directive 2006/54/EC, the Court recalled that it applies to employment relationships in the public or private sector and that the conditions for granting parental leave fall within 'working conditions', within the meaning of the Directive.[374] Under Greek

[369] Article 53(3) CSC, as amended by Article 34(2) Act 4590/2019, OJ A 17/7.2.2019.
[370] By virtue of Article 6(2) of Act 4210/2013, OJ A 254/21.11.2013.
[371] By virtue of Article 89 of Act 4055/2012, OJ A 51/12.3.2012.
[372] CJEU, C-222/14, *K. Maïstrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton,* 16 July 2015.
[373] CJEU, C-222/14, *K. Maïstrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton,* 16 July 2015, Paragraphs 29, 31 and 36; *emphasis added.*
[374] CJEU, C-222/14, *K. Maïstrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton,* 16 July 2015, Paragraphs 43 and 45.

law, female civil servants are always entitled to parental leave, whereas male civil servants are entitled to it only if the mother works or exercises a profession. This provision, 'far from ensuring full equality in practice between men and women in working life, is liable to perpetuate a traditional distribution of the roles of men and women'. It thus constitutes direct discrimination on the ground of sex, to the detriment of fathers.

In compliance with this ruling, in its Judgment No. 1513/2017 (the 'post-*Maïstrellis* CS judgment') the CS annulled the impugned refusal. It invoked, *inter alia*, another judgment of the CS Plenary (2511/2016), which solved the problem for another judge in a way that also benefited Mr Maïstrellis. It upheld an action by a female judge for the annulment of the refusal to grant her parental leave on the basis of the aforementioned gender-neutral provision of the Judges Code, because her husband was not in work. The CS first invoked the following provisions of the Greek Constitution: Article 4(1) (equality of Greek citizens before the law); Article 21(1) (protection of the family, marriage, motherhood and childhood) (see 2.1.2 above); Article 21(5) which requires that the state plan and implement a demographic policy; and Article 25(1) which puts human rights under state guarantee. The CS then invoked Article 6(1) TEU which confers on the EU Charter of Fundamental Rights (the Charter) the same legal value as the Treaties; Article 20 of the Charter (equality before the law); Article 24 of the Charter (rights of the child); and Article 33 of the Charter (family and professional life). It then referred to Act 4075/2012 transposing Directive 2010/18/EU, noting that this act repealed all less favourable provisions and provided that its measures must not affect more favourable provisions of laws, decrees, internal regulations, CAs, arbitration decisions or agreements between employers and workers.

The CS also referred to the *Maïstrellis* CJEU judgment, noting that the Court had underlined that the right to parental leave is an individual right of each parent. It also noted that the CSC sex discriminatory provision, due to which Mr Maïstrellis was refused parental leave, had been repealed following an intervention by the Commission, while the gender-neutral provision of the Judges Code, on which the impugned refusal was based, was still in effect. The CS recalled that an obligation to grant leave to working people, including judges, in order to enable them to raise their children, derives from Article 21 of the Constitution as well as from Article 33(2) of the Charter and from the EU law principle on reconciling family and professional life. It also noted that judges' parental leave is linked to civil servants' leave, the only difference being that the start of a judge's parental leave must be fixed within two months of the expiry of maternity leave. This is justified by the need for smooth functioning of the courts – a ground of public interest. Moreover, no ground of public interest is invoked in the *travaux préparatoires* of Act 4055/2012 (which introduced the impugned provision) as a justification thereof. The CS concluded that the impugned provision conflicted with Article 21 of the Constitution and annulled the refusal to grant leave to the claimant on that ground. In the view of the author, we can infer from the invocation of EU law that the CS interpreted Article 21 of the Constitution in light of EU law.

It should also be noted that, until recently, the repealed CSC provision that did not grant parental leave to fathers whose wives did not work was still applied to the military. Following repeated interventions by the Greek Ombudsman, who emphasised that this constituted direct discrimination on the ground of sex,[375] such fathers were also granted parental leave, by virtue of the single Article of Decision Φ.400/1/80039/Σ.1 of the Minister

[375] Greek Ombudsman (2014), 'Φύλο και Εργασιακές Σχέσεις -Ειδική Έκθεση 2014' (Gender and employment relationships – Special Report 2014), available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf; Greek Ombudsman (2015), 'Φύλο και Εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships - Special Report 2015), available at: www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798; Greek Ombudsman (2016), 'Σύνοψη διαμεσολάβησης – Άδεια ανατροφής τέκνων για πατέρες στρατιωτικούς των οποίων η σύζυγος δεν εργάζεται' (Summary of Intervention – Parental leave for military fathers whose wife does not work), in which it is stated that this discriminatory practice has stopped, available at: www.synigoros.gr/resources/docs/sinopsidiamesolavisis--2.pdf.

of National Defence,[376] which reads as follows: 'In cases where the wife of the male member of the military forces is not working, the latter is entitled to the whole parental leave'.

Only in maritime work (Article 3(2) Decree 80/2012) does the 'donor parent' retain the right to at least one month of leave for his/her own use (see Clause 2 of Directive 2010/18).

5.5.8 Form of parental leave

In both the private and public sectors, the leave is granted as a whole or on a piecemeal basis (according to the discretion of the parents). If both parents are employed by the same employer or both are covered by the CSC, they have to indicate by means of a joint statement who will make use of the leave in whole or in part (Article 50(4) and (6) of Act 4075/2012 transposing the Directive, Article 53(3) CSC, as amended by Article 34(2) Act 4590/2019, OJ A 17/7.2.2019). However, in the public sector, if the leave is shared, parents have to make successive use thereof, Article 53(3) CSC, as amended by Article 34(2) Act 4590/2019, OJ A 17/7.2.2019).

In the private sector the reduced working day (see 5.5.4 above) may be used in whole or in part by either parent, provided that the parents notify their choice to their employer(s) by means of a joint statement.

Maritime employment: the leave is granted in one full-time period, unless otherwise agreed with the employer; parents of disabled children are entitled to take the leave on a piecemeal basis (Articles 3(8) and 4(1) of Decree 80/2012).

5.5.9 Work and/or length of service requirements (Clause 3(b) of Directive 2010/18)

A length of service requirement is provided by Article 50(2) Act 4075/2012; employees must have completed one year of service (either continuous or fragmented) by the same employer unless there is a more favourable specific provision in laws, decrees, regulations, CAs, arbitration decisions or agreements between employers and employees.[377] In the case of more than one child, employees must have completed one year of service with the same employer unless there is a more favourable specific provision in laws, decrees, regulations, CAs, arbitration decisions or agreements between employers and employees (Article 50(5) Act 4075/2012). The CSC does not provide a length of service requirement.

In maritime work the sum of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work) is taken into account for the purpose of calculating the qualifying period (Article 3(3) of Decree 80/2012).

5.5.10 Notice period

Act 4075/2012 transposing the directive requires no period of notice; the parents must only indicate the beginning and the end of the leave (Article 50(4)).

Maritime employment: 'The parental leave is granted one month after the request is notified to the captain and/or the employer; this period is extended until the ship sails into a harbour where the parent's substitute can board' (Article 3(5) of Decree 80/2012). The interests of the workers and the employers are thus taken into account in view of the specific nature of maritime employment.

[376] OJ B 30/18.1.2016. As the original number of the latter Decision was incorrect, it was subsequently corrected so as to bear the above (correct) number Φ.400/32/82424/Σ.343 (Correction of *errata*, OJ B 228/9.2.2016).

[377] Korinthos FICC Judgment No. 189/2019 applied Article 50 Act 4075/2012 for granting parental leave to a sailor employed by a public company.

The CSC does not require a period of notice.

The Judges Code[378] provides that the starting date for the parental leave is fixed by the head of the court. When the leave is requested by a mother, it must start as soon as possible and no later than two months after the expiry of her maternity leave; a father's request must be filed as soon as possible after the expiry of the mother's maternity leave and, if she has taken no maternity leave, as soon as possible after the date on which her maternity leave would have expired. By Judgment No. 837/2019, the CS found that a female judge who had given birth during her studies at the National School of Judges and had taken no maternity leave (because it is not provided for students), had to submit a petition for parental leave no later than two months after her appointment as a judge.

5.5.11 Postponement of parental leave (Clause 3(c) Directive 2010/18)

Act 4075/2012 does not provide the right of the employer to postpone the granting of parental leave. Parental leave is granted by the employer according to the priority of requests within the enterprise in each calendar year; parents of children with a disability or a long-term or sudden illness and single parents have absolute priority (Article 50(4) Act 4075/2012). The Korinthos FICC in its Judgment No. 183/2019[379] obliged an employer of the wider public sector to grant the four months' unpaid parental leave to a male employee. However, the Court dismissed the employee's claim for moral damages as it found that the employer in good faith refused to grant the said leave to the employee. This is in breach of the non-fault requirement regarding civil sanctions in sex discrimination cases according to the CJEU *Dekker*[380] and *Draehmpaehl*.[381]

However, the granting of the accumulated paid leave as an alternative to the paid daily working time reduction (see 5.5.4 above) depends on the employer's agreement according to the business needs, but its refusal may constitute an abuse of rights.[382]

In maritime employment 'the captain and/or the employer may postpone the granting of parental leave: a) if no substitute can be found; b) in June to September for seafarers employed on coastal commercial ships or tourist passenger ships; c) for other extraordinary reasons related to the ship's safe functioning or the safety of the persons or board or the cargo' (Article 3(7) of Decree 80/2012).

5.5.12 Special arrangements for small firms (Clause 3(d) Directive 2010/18)

In a few cases there are special arrangements for small firms.

Article 2(3) of Decree 80/2012 states that arrangements regarding parental leave may be agreed with the employer in view of the operational needs of vessels with a crew of less than 30.

Article 8(1) of Act 1483/1984: 'A working day reduction is granted to parents of disabled children employed in an undertaking with at least 50 workers (see 5.4.11(d) below).'

[378] Article 44(21) Act 1756/1988, OJ A 35/25.2.1988, as amended by Article 8(1A) Act 4239/2014, OJ A 43/20.2.2014.
[379] Korinthos FICC 183/2019*, Επιθεώρησις Εργατικού Δικαίου* (*Labour Law Review*), 3/2020, pp. 490-492.
[380] CJEU, 8 November 1990, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen,* C-177/88, paragraphs 22-26.
[381] CJEU, 22 April 1997, *Draehmpaehl v Urania Immobilienservice OHG*, C-180/95, paragraphs 17-22.
[382] SCPC (Civil Section) No. 10/2010.

5.5.13 Special rules and exceptional conditions for parents of children with a disability or long-term illness (Clause 3(3) Directive 2010/18)

Special rules and exceptional conditions are provided for parents of children with a disability or long-term illness: Article 51 of Act 4075/2012,[383] Article 51(1) CSC,[384] Article 6 of Decree 80/2012,[385] Articles 50(2) and (3) CSC,[386] Article 53(6) and 53(8) CSC,[387] and Articles 7-9 of Act 1483/1984. See also 5.7 and 5.8 below.

a) Article 51 of Act 4075/2012, as amended by Article 45 Act 4488/2017, grants individual rights to each natural, adoptive and foster parent of a child under 18 years of age who i) needs blood transfusions, dialysis or a transplant or suffers from cancer or from a serious mental disability, Down's syndrome or autism: 10 working days a year, paid; ii) is hospitalised due to a disease or accident requiring the parent's presence: up to 30 days a year, unpaid, after the exhaustion of the parental leave; both types of leave presuppose the exhaustion of other paid leave, except annual leave. As each leave has its own purpose, both conditions conflict with the Directive and must be considered as being non-applicable.
b) Article 51(1) CSC, as amended by Article 26(1) of Act 4305/2014, grants unpaid leave for up to one month in each calendar year to the (natural, adoptive or foster) parent of a minor child who is hospitalised due to a disease or accident requiring the parent's presence. This leave is considered working time.
c) Article 6 of Decree 80/2012: the captain grants unpaid time off of up to 144 hours per year, once or on a piecemeal basis, on grounds of *force majeure* for urgent family reasons and for the sickness or accident of a dependent family member (including natural and adoptive children) making the seafarer's immediate presence indispensable.
d) Special paid leave up to 22 days a year: Leave of up to 22 working days a year, transferable and fully paid is granted: (i) to employees with a spouse or child requiring regular blood transfusions or periodic hospitalisation; the same is provided for employees who themselves require such treatment; (ii) to employees with children suffering from a serious mental disability or Down's syndrome and to employees with children suffering from diffused developmental disorder, if they are minor or if they are adult but unemployed. If the employee is entitled to the said leave for more than one such person, this paid special leave is extended up to 32 working days a year. In the case of entitlement of more than one employee for the same person, the leave is extended up to 32 working days a year for the total number of entitled persons cumulatively. In this case, the number of days of the leave to be taken by each entitled person is defined by an affidavit. This provision applies to both civil servants and employees of local authorities (Article 50(2) CSC, as amended by Article 47(1)(a) Act 4674/2020 and Article 57(2) Act 3584/2007, as amended by Article 47(1)(b) Act 4674/2020, respectively).
e) Extra annual leave of six days a year: Employees who do not fall under (i) and are disabled at a percentage of 50 % or more or with children disabled at a percentage of 50 % or more (minor or adult who are not employed due to their disability) are entitled to special paid leave of six working days a year, in addition to the annual leave. If the employee is entitled to the said leave for more than one disabled person, the said leave is extended up to 10 working days a year. If more than one employee is entitled to the said leave for the same disabled person, the said leave is extended up to 10 working days a year for the total number of entitled employees cumulatively. In this case, the number of days of the leave to be taken by each entitled person is defined by an affidavit. This provision applies to both civil servants and employees of local authorities (Article 50(3) CSC, as amended by

[383] As amended by Article 45 Act 4488/2017, OJ A137/13.9.2017.
[384] As amended by Article 26(1) of Act 4305/2014, OJ A 237/31.10.2014.
[385] Decree 80/2012 transposing Directive 2010/18/EU.
[386] As amended by Article 149 of Act 4483/2017, OJ A 107/31.7.2017.
[387] As added by Article 31 of Act 4440/2016, OJ A 224/2.12.2016.

Article 47(1)(a) Act 4674/2020 and Article 57(3) Act 3584/2007, as amended by Article 47(1)(b) Act 4674/2020, respectively).

f) Entitlement of guardians to the above leave (under (d) and (e)): Entitled to the above-mentioned leave are employees who have been appointed by a court judgment as guardians and have been awarded the custody of the above persons, if the everyday care of the latter is not provided by competent institutions and social care; otherwise, there is entitlement to half of the said leave. The extra annual leave of six days (under (ii)) is granted to guardians of persons suffering from dementia. This provision applies to both civil servants and employees of local authorities (Article 50(4) CSC, as amended by Article 47(1)(a) Act 4674/2020 and Article 57(4) Act 3584/2007, as amended by Article 47(1)(b) Act 4674/2020, respectively).

g) Article 53(8) CSC, as added by Article 31 Act 4440/2016 and amended by Article 76 Act 4590/2019, OJ A 17/7.2.2019, grants employees with minor children in the event of the illness of the child paid leave for up to: i) 4 working days in each calendar year, ii) 7 working days in each calendar year for employees with 3 children, iii) 8 working days in each calendar year for employees who are single parents and iv) 10 working days in each calendar year for employees with more than 4 children. The above-mentioned leave (under (i) and (iii)) is granted to employees of municipalities as well, according to Article 60(8) of Act 3584/2007, as added by Article 31 of Act 4440/2016 and amended by Article 76 Act 4590/2019, OJ A 17/7.2.2019 and Article 95 Act 4483/2017.[388]

h) Two days' leave for treatment of malignant growths: Employees with a spouse or a minor child suffering from malignant growths, such as leukaemia, lymphoma and solid tumours, and under treatment with chemical or immunomodulator agents or under radiotherapy, are entitled to special leave, which covers the day of the treatment and the day after. This leave, available per treatment, is granted upon a medical certificate for the scheduled treatment and after the exhaustion of the leave under (i) and (ii) above. This provision applies to both civil servants and employees of local authorities (Article 50(10) CSC, as added by Article 47(3)(a) Act 4674/2020 and Article 57(3) Act 3584/2007, as added by Article 47(3)(b) Act 4674/2020, respectively).

i) Articles 7-9 of Act 1483/1984 (the private sector): time off: (i) in cases of the illness of natural, adoptive and foster children under the age of 16 or older children suffering from a serious or chronic illness: up to 6 working days a year, 8 for two children, 10 for three or more children, non-transferable, unpaid; (ii) for school visits for children up to 16 years, who attend high school: up to 4 working days a year, transferable, paid; (iii) for mentally or physically disabled children, irrespective of their age: a transferable working day reduction of one hour with a corresponding pay cut, in undertakings with at least 50 workers. These provisions cover employees in part-time work as well.[389]

5.5.14 Measures addressing the specific needs of adoptive parents (Clause 4 of Directive 2010/18)

Adoptive parents are covered by the above-mentioned leaves (see 5.5.13 above) for parents of children with a disability or long-term illness provided by: (i) Article 51 of Act 4075/2012, as amended by Article 45 Act 4488/2017, (ii) Article 51(1) CSC, as amended by Article 26(1) of Act 4305/2014, (iii) Articles 50(2) and (3) CSC, as amended by Article 149 of Act 4483/2017 and further amended by Article 47(1) Act 4674/2020, OJ A 53/11.3.2020 and (iv) Articles 7-9 of Act 1483/1984.

[388] Act 4483/2017, OJ A 107/31.07.2017.
[389] Article 20(5) Act 3896/2010, OJ A 2071/8.12.2010.

5.5.15 Provisions protecting workers against less favourable treatment or dismissal (Clause 5(4) of Directive 2010/18)

National legislation provides for protection against dismissal or less favourable treatment of workers who take parental leave (Clause 5(4) Directive 2010/18).

Article 18 of Act 3896/2010 reads: 'Less favourable treatment of parents due to parental leave, adoption or fostering of a child also constitutes discrimination.' Article 20(3) of this Act reads: 'The protection provided by Article 16 [return from maternity leave] applies to all workers who make use of any leave related to the birth, raising or adoption of a child.' Article 52(3) of Act 4075/2012 makes the dismissal of any worker, including adoptive and foster parents, due to an application for or the taking of parental leave, null and void. Article 52(1) of Act 4075/2012 entitles workers returning from parental leave, including adoptive and foster parents, to the protection required by the above Article 16 of Directive 2006/54/EC and prohibits their unfavourable treatment due to an application for or the taking of parental leave; Article 5(1) and (7) of PD 80/2012 transposing Directive 2010/18/EU does the same for workers under a contract of maritime employment. These provisions comply with Directive 2010/18/EU.

5.5.16 Right to return to the same or an equivalent job (Clause 5(1) of Directive 2010/18)

National legislation provides for protection against dismissal or less favourable treatment of workers who take parental leave and the right of workers benefitting from parental leave to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship.

Article 18 of Act 3896/2010 reads: 'Less favourable treatment of parents due to parental leave, adoption or fostering of a child also constitutes discrimination.' Article 20(3) of this Act reads: 'The protection provided by Article 16 [return from maternity leave] applies to all workers who make use of any leave related to the birth, raising or adoption of a child.' Article 52(1) of Act 4075/2012 entitles workers returning from parental leave, including adoptive and foster parents, to the protection required by the above Article 16 of Directive 2006/54/EC and prohibits their unfavourable treatment due to an application for or the taking of parental leave; Article 5(1) and (7) of PD 80/2012 transposing Directive 2010/18/EU does the same for workers under a contract of maritime employment. These provisions comply with Directive 2010/18/EU.

5.5.17 Maintenance of rights acquired or in the process of being acquired by the worker (Clause 5(2) of Directive 2010/18)

Act 4075/2012 does not contain a general provision on maintenance of rights acquired or in the process of being acquired by the worker on the date on which parental leave starts until the end of the parental leave (Clause 5(2) Directive 2010/18/EU). However, rights upon return are ensured and parental leave counts as working time (see 5.5.16 above and 5.5.18 below). Article 5(4) of Decree 80/2012 copies the provisions in the Directive. However, in the maritime sector, Article 6(4) provides that non-timely return to the ship is a ground for dismissal without compensation.

5.5.18 Status of the employment contract or relationship during parental leave

Article 52(2) of Act 4075/2012 states: 'The period of parental leave is deemed to be working time for the purposes of pay, annual paid leave and the leave allowance, professional evolution and redundancy compensation'. On the constitutional guarantees for civil servants, see 5.2.8 above.

The Greek Ombudsman has dealt with a complaint by a female substitute teacher who, after having taken the four-month unpaid parental leave provided by Article 50(3) of

Act 4075/2012 transposing Directive 2010/18/EU, was informed by the Ministry of Education that the period of this leave was deducted from her service period. The Ministry justified this deduction by relying on opinions of the SLC predating Act 4075/2012. The Ombudsman drew the Ministry's attention to Article 52(2) of the Act (quoted above), underlining that it had repealed any less favourable provision. The Ministry informed the Ombudsman that it had submitted a new question on this matter to the SLC.[390] Subsequently, SLC (Third Section) issued Opinion No. 145/2015, dated 30 July 2015. In this Opinion, referring to its opinions predating Act 4075/2012, it reaffirmed the view according to which parental leave does not qualify as 'teaching service'. It moreover argued that Article 52(2) of Act 4075/2012 quoted above does not concern the issue of 'teaching service'. The Minister of Education accepted this opinion.

For case law on the recognition of non-paid parental leave as working time, see 5.5.23 below.

5.5.19 Continuity of entitlement to social security benefits

In the private sector, there is continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave, but only if the workers pay both their own and the employer's contributions (Article 52(4), (5) of Act 4075/2012, Article 5(2) of Decree 80/2012); otherwise, the social security coverage is interrupted during the parental leave. In the public sector there is full continuity.

5.5.20 Remuneration

Parental leave is fully paid in the public sector whereas in the private sector it is unpaid (see 5.5.4 above).

5.5.21 Social security allowance

The social security system in Greece does not provide for an allowance during parental leave.

5.5.22 More favourable provisions (Clause 8 of Directive 2010/18)

Greek legislation exceeds the directive regarding the prohibition of discrimination and dismissal on the grounds of sex and '*family status*' (see 3.3.1, 3.4.1 and 4.3.2 above); the addition of 'paternity' and '*family status'* to the exception to the protection of women (see 4.3.5 above); the length of maternity leave and the pay during this leave (see 5.3.1, 5.3.5 above) and parental leave (full pay in the public sector) (see 5.5.4, 5.5.20 above); the period of protection against dismissal which exceeds maternity leave (18 months after childbirth) (see 5.2.8 above); the protection against dismissal even in the event of the birth of a stillborn child (see 5.2.8 above); special types of leave and time off (5.5.13 above); the assimilation of adoptive and foster parents with natural parents (see 5.4.1, 5.5.4 and 5.5.13 above); a working day reduction, including for both commissioning and surrogate mothers (see 5.5.4 above, 5.9 below). However, in the view of the author, there is great legal uncertainty as the rules are complex, unequal, fragmented, scattered and are often and unexpectedly modified. There is a multitude of provisions besides those reported herein, the scope and effects of which are not clear.

5.5.23 Case law

Case law often applies the Constitution in conjunction with EU law in a dynamic and constructive way. However, as people are not aware of their rights and, moreover, in the

[390] Greek Ombudsman (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships – Special Report 2015), p. 116, 'Reconciliation of professional and family life' (Case 189795/2014), available at: www.synigoros.gr/resources/docs/ee2015-13-fylo--2.pdf.

current socio-economic context, few, in particular women, dare to complain. As a result, case law is scarce. It mostly concerns claims by public servants or judges who enjoy constitutional guarantees of personal and functional independence and are therefore protected against victimisation.[391]

To the author's knowledge, the only case law regarding parental leave as working time is Judgment No. 3693/20.7.2018 of the Athens Court of Appeal. It concerned a female private bank employee who brought a case to the Court complaining that her period of unpaid parental leave (one year five months and one day) from December 1999 to May 2001 was not recognised by her employer (a bank in the private sector) as working time for the purpose of pay calculation (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme due to the payment of both the employer's and the employee's contribution by the employee. It should be noted that the wronged employee had submitted written petitions regarding this issue to her employer upon her return from parental leave, which were never answered. However, as long as she was employed, she was afraid to bring the case to the court, which she actually did once she retired in September 2013.

The claimant alleged that the bank's refusal to recognise this period as working time constituted direct gender discrimination in breach of Act 3896/2010, implementing Directive 2006/54/EC, to be interpreted in the light of Articles 4(2) and 21(1) of the Greek Constitution, the CEDAW, Directive 2006/54/EC and Articles 21 and 33 of the Charter of Fundamental Rights of the EU. She claimed the relevant pay arrears for the last five years, given that pay arrears for the previous period had been time-barred. The Athens Court of Appeal found that the non-recognition of the period of unpaid parental leave (one year five months and one day) of the claimant as working time for the purpose of the calculation of pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme due to the payment of both the employer's and the employee's contribution by the employee was contrary to Act 3896/2010 and Article 21(1) of the Constitution requiring protection of maternity, although it did not explicitly identify it as direct gender discrimination. The Court of Appeal awarded to the female employee the relevant loss of pay in the form of pay arrears (EUR 6 118.12) for the last 5.5 years of service. Although a big step forward, this judgment shows the lack of familiarity of judges with the concepts of EU anti-discrimination law: although the judge found that this practice was contrary to Act 3896/2010 implementing Directive 2006/54/EC, she avoided stating explicitly that this constitutes direct gender discrimination, as the claimant had asked. This brings to the fore the need for intensification of programmes to raise awareness of judges about the EU *acquis* in gender equality.

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

National legislation[392] provides for paternity leave: (i) in the private sector: two days paid paternity leave, upon the birth of each child (NGCA 2000) and (ii) in the public sector: two

[391] E.g. CS No. 3216/2003 (Plen.) upholding the claim of female judges to the CSC maternity leave; CS Nos 1 and 2/2006 upholding the claim of male judges to the CSC parental leave; CS Nos 3590 and 3591/2013 (Plen.) condemning the curtailing of the parental leave of judges (see European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2014), 'Greece', *European Gender Equality Law Review 1* available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights. Thessaloniki ACA No. 1842/2010, implementing the CJEU judgment on parental leave for twins, which this same court had sought, in Case C-149/10 *Zoi Chatzi v. Ipourgos Ikonomikon* [Minister of Finance] [2010] ECR I-8489, in the best possible way in view of the situation in Greece (see 5.4.3 (i) above).

[392] After the cut-off date of this report (1 January 2021), paternity leave is governed by Article 27 Act 4808/2021, OJ A 101/19.06.2021, transposing Articles 4 and 8 Directive 2019/1158. The new Act provides for a paid paternity leave of 14 (instead of 2) working days (2 may be taken before birth and the rest either

days paid paternity leave, upon the birth of each child or the adoption of a child under two years of age (for public servants: Article 50(1) CSC, as amended by Article 18(1) of Act 3801/2009, OJ A 163/4.9.2009; for employees of local authorities: Article 57(1) Act 3584/2007, as amended by Article 18(2) of Act 3801/2009, OJ A 163/4.9.2009). For the military, paternity leave is five days to be taken within a reasonable time period after the birth of each child and, in any event, before the child has reached the age of two months.[393] In sectoral CAs paternity leave may be provided in a more favourable way.[394]

5.6.2 Protection against unfavourable treatment and/or dismissal (Article 16 of Directive 2006/54)

National legislation provides for protection against dismissal of workers who take paternity leave and/or specifies their rights after the end of paternity leave (see Article 16 of Directive 2006/54/EC). More specifically, Article 14 Act 3896/2010 transposing Directive 2006/54/EC prohibits any dismissal 'on grounds of sex or family status.' Article 20(3) of the said Act reads: 'The protection provided by Article 16 [return from maternity leave] applies to all workers who make use of any leave related to the birth, raising or adoption of a child.' In the author's view, these provisions must be considered to also cover paternity leave.

5.6.3 Case law

There is no relevant case law.

5.7 Time off for *force majeure*

5.7.1 Time off for *force majeure*

There is no general provision on time off on grounds of *force majeure* for urgent family reasons in the case of sickness or accident in breach of Clause 7 of Directive 2010/18/EU.[395] However, there are several fragmented provisions on special forms of leave and time off on specific grounds. In general, in Greece, there is no systematic differentiation between time off on grounds of *force majeure* and care leave (for reasons of size limitations, see 5.8 below).

5.7.2 Case law

There is no relevant case law.

5.8 Care leave

5.8.1 Existence of care (or carers') leave[396] in national law

a) Article 51 of Act 4075/2012, as amended by Article 45 Act 4488/2017, grants individual rights to each natural, adoptive and foster parent of a child under 18 years of age who i) needs blood transfusions, dialysis or a transplant or suffers from cancer or from a serious mental disability, Down's syndrome or autism: 10 working days a year, paid; ii) is hospitalised due to a disease or accident requiring the parent's

in total or on a piecemeal basis within 30 days from the date of birth); entitlement thereto is without any condition of prior service and irrespective of family status; in the case of part-time work, the leave is proportional to the hours worked; adoptive or foster fathers are entitled thereto since the placement of the child and up to the age of 8 years of the child.

393 Ministerial decision Φ. 400/34/292616/Σ4753, OJ B 2808/2016.

394 The banking sector collective agreement 2019-2021 provides a three-day paid paternity leave.

395 After the cut-off date of this report (1 January 2021), Article 30 Act 4808/2021, OJ A 101/19.06.2021, transposing Article 7 Directive 2019/1158, provides for time off for *force majeure*.

396 After the cut-off date of this report (1 January 2021), Article 29 Act 4808/2021, OJ A 101/19.06.2021, transposing Article 6 Directive 2019/1158, provides for care leave.

presence: up to 30 days a year, unpaid, after the exhaustion of the parental leave; both types of leave presuppose the exhaustion of other paid leave, except annual leave. As each leave has its own purpose, both conditions conflict with the Directive and must be considered as being non-applicable.

b) Article 51(1) CSC, as amended by Article 26(1) of Act 4305/2014, grants unpaid leave for up to one month in each calendar year to the (natural, adoptive or foster) parent of a minor child who is hospitalised due to a disease or accident requiring the parent's presence. This leave is considered working time.

c) Article 6 of Decree 80/2012: the captain grants unpaid time off of up to 144 hours per year, once or on a piecemeal basis, on grounds of *force majeure* for urgent family reasons and for the sickness or accident of a dependent family member (including natural and adoptive children) making the seafarer's immediate presence indispensable.

d) Article 53(8) CSC, as added by Article 31 Act 4440/2016 and amended by Article 76 Act 4590/2019, OJ A 17/7.2.2019, grants employees with minor children in the event of the illness of the child paid leave for up to: (i) 4 working days in each calendar year, (ii) 7 working days in each calendar year for employees with three children,[397] (iii) 8 working days in each calendar year for employees who are single parents[398] and (iv) 10 working days in each calendar year for employees with more than four children. The above-mentioned leave (under (i) and (iii)) is granted to employees of municipalities as well, according to Article 60(8) of Act 3584/2007, as added by Article 31 of Act 4440/2016 and amended by Article 76 Act 4590/2019, OJ A 17/7.2.2019, and Article 95 Act 4483/2017.[399]

e) Special paid leave up to 22 days a year: A leave of up to 22 working days a year,[400] transferable and fully paid is granted: (i) to employees with a spouse or child requiring regular blood transfusions or periodic hospitalisation; the same is provided for employees who themselves require such treatment; (ii) to employees with children suffering from a serious mental disability or Down's syndrome and to employees with children suffering from diffused developmental disorder, if they are minor or if they are adult but unemployed. If the employee is entitled to the said leave for more than one such person, this paid special leave is extended up to 32 working days a year. In the case of entitlement of more than one employee for the same person, the leave is extended up to 32 working days a year for the total number of entitled persons cumulatively. In this case, the number of days of the leave to be taken by each entitled person is defined by an affidavit. This provision applies to both civil servants and employees of local authorities (Article 50(2) CSC, as amended by Article 47(1)(a) Act 4674/2020 and Article 57(2) Act 3584/2007, as amended by Article 47(1)(b) Act 4674/2020, respectively).

f) Extra annual leave of six days a year: Employees who do not fall under (i) and are disabled at a percentage of 50 % or more or with children disabled at a percentage of 50 % or more (minor or adult who are not employed due to their disability) are entitled to special paid leave of six working days a year, in addition to the annual leave. If the employee is entitled to the said leave for more than one disabled person, the said leave is extended up to 10 working days a year. If more than one employee is entitled to the said leave for the same disabled person, the said leave is extended up to 10 working days a year for the total number of entitled employees

[397] However, entitlement to the extra days of this leave is granted to parents of three and more children only as long as the three or more children are underage. See Greek State Legal Council (SLC) Opinion No. 205/2019 which has been endorsed by the competent minister, hence it is binding for the Administration.

[398] A civil servant is considered a lone parent if: (i) he/she is divorced and has the lone custody of his/her minor child (with cohabitation); (ii) he/she has the lone custody of his/her minor child born out-of-wedlock (with cohabitation). See Greek SLC Opinion No. 205/2019 which has been endorsed by the competent minister, hence it is binding for the Administration.

[399] Act 4483/2017, OJ A 107/31.7.2017.

[400] Greek SLC Opinion No. 201/2019: Civil servants and employees of the local authorities, parents of children with serious health problems, are entitled only to the 22 days' leave and not to the 10 days' leave of Article 51 of Act 4075/2012, as amended by Article 45 Act 4488/2017 as well (see under (i)); the former prevails as more favourable than the latter. This Opinion has been endorsed by the competent minister and is binding.

cumulatively. In this case, the number of days of the leave to be taken by each entitled person is defined by an affidavit. This provision applies to both civil servants and employees of local authorities (Article 50(3) CSC, as amended by Article 47(1)(a) Act 4674/2020 and Article 57(3) Act 3584/2007, as amended by Article 47(1)(b) Act 4674/2020, respectively).

g) Entitlement of guardians to the above leave (under (e) and (f)): Entitled to the above-mentioned leave are employees who have been appointed by a court judgment as guardians and have been awarded the custody of the above persons, if the everyday care of the latter is not provided by competent institutions and social care; otherwise, there is entitlement to half of the said leave. The extra annual leave of six days (under (ii)) is granted to guardians of persons suffering from dementia. This provision applies to both civil servants and employees of local authorities (Article 50(4) CSC, as amended by Article 47(1)(a) Act 4674/2020 and Article 57(4) Act 3584/2007, as amended by Article 47(1)(b) Act 4674/2020, respectively).

h) Articles 7-9 of Act 1483/1984 (the private sector): time off: (i) in the case of the illness of natural, adoptive and foster children under the age of 16 or older children suffering from a serious or chronic illness: up to 6 working days a year, 8 for two children, 10 for three or more children, non-transferable, unpaid; (ii) for school visits for children up to 16 years, who attend high school: up to 4 working days a year, transferable.[401] Although Article 9(1) Act 1483/1984 is silent on whether this leave is paid, the SCPC (Civil Section – Full Court) by its Judgment No. 4/2000, by construing this provision under Article 21(1) of the Greek Constitution (protection of the family and the children), found that the time off for school visits has to be paid; (iii) for mentally or physically disabled children, irrespective of their age: a transferable working day reduction of one hour with a corresponding pay cut, in undertakings with at least 50 workers. These provisions cover employees in part-time work as well.[402]

The banking sector CA 2016-2018 provided some important types of care leave: (i) parents of children with a (mental, physical or psychological) disability percentage of more than 67 % or children suffering from diabetes treated with insulin or type I diabetes with a disability percentage of more than 50 % are entitled to a paid one-hour daily reduction of working time; the banking sector CA 2019-2021 provided that this reduction may be placed at the beginning or at the end of the working day upon the employee's request. (ii) natural, adoptive or foster parents of a child under 18 years of age who needs blood transfusions, dialysis or a transplant or suffers from cancer are entitled to a paid special leave of 12 days a year; (iii) natural, adoptive or foster parents of a child with a mental, psychological or physical disability over 67 % or employees with a spouse with a disability of 80 % who is sustained by them are entitled to a paid special leave of 10 working days a year.

5.8.2 Case law

There is no relevant case law.

5.9 Leave in relation to surrogacy

Surrogacy is legal in Greece. It is provided in Article 1464 of the CC, as amended by Article Second paragraph 5 Act 3089/2002, OJ A 327/23.12.2002.[403] Parental leave is available in relation to surrogacy: (i) in the private sector, the commissioning parents are assimilated with natural parents concerning all forms of leave for the care and raising of

[401] In sectoral collective agreements, the leave for school visits is provided in a more favourable way. According to the Bank sectoral collective agreement, this leave is six days for the first child up to the age of 18 years. Two more days for each child beyond the first one can be taken after the exhaustion of the annual leave.

[402] Greece, Article 20(5) Act 3896/2010, OJ A 2071/8.12.2010.

[403] After the cut-off date of this report (1 January 2021), Article 33 Act 4808/2021, OJ A 101/19.06.2021, provides that all leave provided for in its Articles 33-45 apply to the commissioning mothers as well.

the child whereas both the commissioning and the surrogate mother are entitled to reduced working days (see 5.3.1, 5.5.4 above). (Article 7(c) NGCA 2006-2007);[404] (ii) in the public sector, public servants who are the commissioning parents in a surrogacy are entitled to three months' fully paid leave after the birth of the child in addition to the reduced working hours or alternatively the accumulated nine months' leave (Article 53(9) CSC, as added by Article 34(1) Act 4590/2019 OJ A 17/7.2.2019).

5.10 Flexible working time arrangements[405]

5.10.1 Right to reduce or extend working time

In the private sector: a transferable paid daily working time reduction 'for breastfeeding and childcare' by one hour for two and a half years after maternity leave is granted to natural and adoptive parents, including both commissioning and surrogate mothers. Alternatively, paid leave of a corresponding length (amounting to the total number of hours by which the daily working time would be reduced) may be agreed with the employer.[406] The employer may not refuse to grant the reduction, as the worker's right is enforceable in the courts. However, when the length of the reduction depends on the employer's agreement, this agreement may depend on business needs, but its refusal may constitute an abuse of rights, as the SCPC (Civil Section – Plenary) held in the case of a female bank employee whose employer arbitrarily denied the granting of the accumulated leave.[407] This case law led to a more favourable provision in the banking sector CA for the years 2016-2018, which provided that this leave must be granted upon the employee's request unless serious reasons in the business justify the employer's refusal. This paid leave is granted to (natural, adoptive or foster) parents of both sexes irrespective of the kind of professional activity of the other parent and even if the other parent is not employed. In the case of divorce, separation or a child born out-of-wedlock, the leave is granted to the parent who has the custody of the child, unless otherwise agreed by the parents. The leave is granted upon a joint affidavit of the parents to the employer(s) stating who will take the leave and, if the leave is shared, for which period each parent will make use of it (Article 38 Act 4342/2015).

In the public sector: nine months' fully paid, transferable leave for each child up to the age of four (Article 53(2) CSC for civil servants, as amended by Article 47(4)(a) Act 4674/2020, OJ A 53/11.03.2020; Article 60(2) Act 3584/2007 for employees of local authorities); alternatively, a paid daily working time reduction (by two hours until the child reaches the age of two and by one hour until he or she reaches the age of four; in the event of the birth of a fourth child and any child born beyond the fourth, the daily working time reduction is extended for two more years). Following the CJEU judgment in *Chatzi,*[408] which responded to a preliminary reference by the Thessaloniki ACA regarding the entitlement to parental leave of civil servants who are parents of twins, an additional paid six-month period of leave for each child subsequent to the first one, in the case of multiple

[404] NGCA 2006-2007, available, in Greek, on the Greek General Confederation of Labour (GSEE) website: https://gsee.gr/?page_id=54.

[405] After the cut-off date of this report (1 January 2021), Article 31 Act 4808/2021, OJ A 101/19.06.2021, transposing Article 9 Directive 2019/1158, provides for flexible working time arrangements.

[406] NGCAs: 1993 (Article 9), 2000, 2002-2003 (Article 6), which was ratified by Article 7(b) Act 3144/2003 (OJ A 111/08.05.2003), 2004-2005 (Article 9), 2006-2007 (Article 7(c), 2008-2009 (Article 6), 2014 (Article 2), available, in Greek, on the Greek General Confederation of Labour (GSEE) website: https://gsee.gr/?page_id=54.

[407] SCPC (Civil Section – Plenary) No. 10/2010.

[408] CJEU, C-149/10, *Zoi Chatzi v Ipourgos Ikonomikon*, 16 September 2010; see Koukoulis-Spiliotopoulos, S. (2011), European Network of Legal Experts in the Field of Gender Equality, 'Greece', *European Gender Equality Law Review 1*, pp. 78-83, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights.

births, was provided for civil servants,[409] employees of local authorities[410] and judges.[411] The Ombudsman dealt with the complaint of a female public servant, the head of a service, who requested to take this additional leave in the form of a working time reduction in order not to lose her responsibility allowance (as a part of the monthly salary), which stops after two months of absence. The Ombudsman found that this constituted a disincentive for women in positions of responsibility to make use of the leave and proposed that this additional leave should also be granted in the alternative form of a working time reduction. The proposal was endorsed by the Minister of the Interior.[412]

5.10.2 Right to adjust working time patterns

There are no general provisions entitling workers to adjust working time patterns (temporarily or otherwise) on request. In the maritime sector, upon return from parental leave, the seafarer can request changes to his/her working time for a maximum of seven days, if the operational needs of the ship allow for this in the captain's judgment. Also, in order to facilitate a return to work, the seafarer and his/her employer can agree on suitable measures for returning to the workplace (Article 5(5) and (6) of Decree 80/2012).

5.10.3 Right to work from home or remotely

National law does not provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request. The legislation on teleworking is unrelated to the reconciliation of work and the family. It requires a specific teleworking contract, as follows: 'If ordinary work is transformed into teleworking, this contract must provide for a three-month period of adaptation, during which any party may put an end to teleworking following fifteen days' notice, in which case the worker returns to a post corresponding to the one he/she had before.'[413]

5.10.4 Other legal rights to flexible working arrangements

National law does not provide other legal rights to flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future related to paternity, maternity or parental leave.

However, in the public sector, a public servant working overtime (at least one hour daily) for the accomplishment of an extremely urgent and particularly important task that has to be completed within a certain time limit (this has to be confirmed in writing by his/her superior), instead of overtime payment can 'bank' hours to take time off up to 15 working days annually in the future.[414]

5.10.5 Case law

There is no relevant case law.

[409] Article 53(2) CSC, as amended by Article 6(1) Act 4210/2013, OJ A 254/21.11.2013.
[410] Article 60(2) Act 3584/2007, OJ A 143/28.6.2007, as amended by Article 6(1) Act 4210/2013, OJ A 254/21.11.2013.
[411] Article 44(21) Act 1756/1988, OJ A 35/25.2.1988, as amended by Article 8(1A) Act 4239/2014, OJ A 43/20.2.2014.
[412] Greek Ombudsman (2016), 'Φύλο και Εργασιακές σχέσεις – Ειδική έκθεση 2016', (Gender and employment relationships - Special Report 2016), p.129: available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf.
[413] Article 5 Act 3846/2010, OJ A 66/11.5.2010.
[414] Article 50(7) CSC, as added by Article 38 Act 4250/2014, OJ A 74/26.3.2014 and amended by Article 26(10) Act 4325/2015, OJ A 47/11.5.2015.

5.11 Evaluation of implementation

As mentioned above (see 5.5.22 above), Greek legislation exceeds the directive regarding the prohibition of discrimination and dismissal on the grounds of sex and '*family status*' (see 3.3.1, 3.4.1 and 4.3.2 above); the addition of 'paternity' and '*family status'* to the exception to the protection of women (see 4.3.5 above); the length of maternity leave and the pay during this leave (see 5.3.1, 5.3.5 above) and parental leave (full pay in the public sector) (see 5.5.4, 5.5.20 above); the period of protection against dismissal which exceeds maternity leave (18 months after childbirth) (5.2.8 above); the protection against dismissal even if the child is stillborn (5.2.8 above); special types of leave and time off (see 5.5.13, 5.7, 5.8 above); the assimilation of adoptive and foster parents with natural parents (see 5.4.1, 5.5.4 and 5.5.13 above); a working day reduction, including for both commissioning and surrogate mothers (see 5.5.4, 5.9 above); a 7-day leave for public servants and municipal employees who are subject to medically assisted procreation (see 5.12 below). However, the conditions for entitlement to the maternity allowance are in breach of Directive 92/85/EEC (see 5.3.7 above).

It is fortunate that, following the Ombudsman's proposals, female substitute teachers on fixed-term contracts in the public sector, for the first time, have been entitled to three-and-a-half-months' leave after the end of maternity leave, as an alternative to reduced working hours, albeit entitlement thereto should be extended to fathers, as well (see 5.3.8 and 5.5.4 above). However, female salaried lawyers (and female salaried trainee lawyers) are still not entitled to 'adequate' maternity allowance in the sense of the Pregnancy Directive (see 5.3.5 (i) above). Moreover, the 'special' paid maternity leave ('ειδική άδεια προστασίας μητρότητας'), which, despite its name, falls under the EU concept of parental leave, is provided only for mothers (not for fathers) and does not cover all the employees in the private sector (see 5.3.1 above).

Fully transferable parental leave in the public sector is in breach of Clause 2(2) of Directive 2010/18, which provides that in order to encourage a more equal take-up of leave by both parents, at least one of the four months is to be provided on a non-transferable basis (see 5.5.6 above).

To date, there has been no political or societal debate on the implementation of the new Directive 2009/1158[415] which has to be implemented by 2 August 2022. However, on the occasion of relevant complaints, the Ombudsman has submitted his proposals thereon.[416]

In general, there is great legal uncertainty as the rules are complex, unequal, fragmented, scattered and are often and unexpectedly modified. There is a multitude of provisions besides those reported herein, the scope and effects of which are not clear. Case law often applies the Constitution in conjunction with EU law in a dynamic and constructive way, but as people are not aware of their rights and, moreover, in the current socio-economic context, few, in particular women, dare to complain, case law is scarce. It mostly concerns claims by public servants or judges who enjoy constitutional guarantees of personal and functional independence and are therefore protected against victimisation.[417] In this context, priority should be given to the adoption of preventative measures against

[415] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, *OJ L 188*, 12.7.2019, p. 79-93.

[416] Greek Ombudsman, "Ίση μεταχείριση – Ειδική έκθεση 2019' (Equal treatment – Special report 2019) pp. 94-95, available at: https://www.synigoros.gr/resources/docs/ee_im_2019_el.pdf.

[417] CS No. 3216/2003 (Plen.) upholding the claim of female judges to the CSC maternity leave; CS Nos 1 and 2/2006 upholding the claim of male judges to the CSC parental leave; 3590 and 3591/2013 (Plen.) condemning the curtailing of the parental leave of judges (see European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2014), 'Greece', *European Gender Equality Law Review 1* available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights). Thessaloniki ACA No. 1842/2010, implementing the CJEU judgment on parental leave for twins, which this same court had sought, in CJEU, C-149/10, *Zoi Chatzi v Ipourgos Ikonomikon* [Minister of Finance] 16 September 2010, in the best possible way in view of the situation in Greece (see 5.4.3 (i) above).

dismissal of pregnant and women who have recently given birth, as required by Article 10 Directive 92/85/EEC (see 5.1.2 above).

5.12 Remaining issues

i) Leave for medically assisted procreation

Article 19 of Act 4604/2019 provided for the first time a seven-day leave period for public servants and municipal employees who are subject to medically assisted procreation.

ii) Leave for annual gynaecological check-up

Paid leave of one day a year is granted for the first time to female employees for an annual gynaecological check-up upon a medical certificate. This provision applies to both civil servants and employees of local authorities (Article 50(9) CSC, as added by Article 47(3)(a) Act 4674/2020 and Article 57(3) Act 3584/2007, as added by Article 47(3)(b) Act 4674/2020, respectively).

iii) Programme 'Nannies in the Neighbourhood' for the care of children aged 0.5-2.5 years

On 28 July 2020 the General Secretariat for Family Policy and Gender Equality announced the operational planning and the pilot function of the new programme 'Nannies in the Neighbourhood' for the care of children aged 0.5-2.5 years.[418] The programme aims to reconcile professional life with family and/or private life through the provision of a financial aid to parents (mostly to the employed ones), to single parents, to foster parents and in general to the family horizontally which will cover the cost of the care of children aged 0.5-2.5 years either at their home or at the house of a carer. The programme has a dual aim: on the one hand, it will support and facilitate mothers to fully integrate in the labour market and to continue their professional careers; on the other hand, it will encourage mostly unemployed (including long-term unemployed) women but also retired women to work as carers following the relevant certification. The implementation of the programme will also lead to the reduction of undeclared work given that nowadays most of the women providing care to children of this age at home are employed illegally, as the Secretary General pointed out. The programme has been adopted in the framework of the Partnership Agreement for the Development Framework (ESPA) of the period 2014-2020[419] and in particular of the Operational Programme 'Development of Human Resources and Education and Ongoing Training'. It will be implemented initially at a pilot stage at the beginning of 2021 with the aim of a universal implementation within the new programme period 2021-2027. In the author's opinion, both the term 'nannies' and the above description suggest that these roles are expected to be fulfilled by women. However, this approach does not promote a more equal sharing of work and care responsibilities between women and men; in contrast, it reproduces gender stereotyping and traditional gender roles, in particular given the long-term aim of the new programme. It remains to be seen how this programme will be applied in practice.

[418] Newsletter dated 28 July 2020, available here.

[419] The PA (Partnership Agreement for the Development Framework) 2014-2020 constitutes the main strategic plan for growth in Greece with the contribution of significant resources originating from the European Structural and Investment Funds (ESIF) of the European Union. The PA, through its implementation, seeks to tackle the structural weaknesses in Greece that contributed to the economic crisis, as well as other economic and social problems caused by it. Moreover, the PA 2014-2020 is called upon to help attain the national targets within the Europe 2020 Strategy. See: https://www.espa.gr/en/Pages/staticPartnershipAgreement.aspx.

1) Statistical data on work-life balance during the pandemic

A survey on 'The Impact of the Pandemic on Daily Life and Work'[420] conducted by the Hellenic-American Chamber of Commerce in the period 23 April-1 May 2020, i.e. during the first lockdown, showed that almost one in two women engaged more with housework during the pandemic and lockdown. This was the case with 2 out of 10 men. The indication is that under the conditions of threat and staying at home, women are even more strongly undertaking their traditional role of housewife.[421] The research concludes that the pandemic can be anticipated to disproportionately affect women, in terms of everyday life and work, though it will probably not leave anyone unscathed. Key steps should be taken to strengthen, enhance and encourage female employment. At the same time, steps should be taken to ensure that women's higher involvement with the unpaid work at home, with the care of children and the elderly, does not hinder their own professional and personal development.

According to a survey 'COVID-19 and young Greek researchers – The influence of the pandemic on their research activity' published in May 2020 by the National Documentation Centre (EKT),[422] 53.5 % of the respondents report that they are experiencing a high level to a very high level of personal psychological strain due to the lockdown and social-distancing measures. Out of them, 59.9 % are female researchers compared to 47 % male researchers, which makes a difference of 12.9 percentage points. Moreover, 53.7 % of the respondents report that the lockdown has added a very big or big burden related to their family environment. Out of them, 58.2 % are female researchers compared to 49.3 % male researchers, which makes a difference of 7.8 percentage points.

2) Legislative measures on work-life balance related to the COVID-19 pandemic

i. Furlough allowance is extended to (originally excluded) mothers on maternity leave which expired within the period of the furlough (Article 34 Act 4690/2020)

In enterprises, the function of which has been suspended by order of the state due to COVID-19, employees on legal leave (such as maternity leave, the six months' special maternity leave[423] or sick leave) had been excluded from the furlough according to Article 13(5b) of the Act of Legislative Content (hereinafter ALC) of 14 March 2020, OJ A 64/14.03.2020. For the first time, Article 34 Act 4690/2020, OJ A 104/30.05.2020 provided that if the said leave expired during the suspension of the function of the enterprise by order of the state, the employees returning from such leave are entitled to the furlough allowance from 1 May 2020 until the end of the suspension of the function of the enterprise. The allowance is calculated *pro rata* of the full furlough allowance (EUR 534 net for 30 calendar days) according to the number of days of furlough following the end of the leave. However, the period before 1 May 2020 has not been covered.

[420] https://www.amcham.gr/wp-content/uploads/2020/05/GenderImpactOfPandemic2020.ENGLISH.pdf.

[421] 44 % of women indicated that they did more housework than before. 9 % of women indicated that their partner did more housework than before. 21 % of men indicated that they did more housework than before. 78 % of the total sample indicated there was no change in supervising children's schoolwork. 76 % indicated that that there was no difference with children's creative playtime. 21 % of men indicated that they engaged in more creative playtime with their children. 74 % of the total sample indicated that there was no difference with the care of the elderly. 16 % of men indicated that they were more involved with caring for the elderly during the pandemic.

[422] See the Research (in Greek) available at: https://metrics.ekt.gr/sites/metrics-ekt/files/ekdoseis-pdf/2020/EKT_COVID19_GreekResearchers.pdf and a research note (in English), available at: https://metrics.ekt.gr/sites/metrics-ekt/files/ekdoseis-pdf/2020/ResearchNote_EKT_COVID19_GreekResearchers.pdf.

[423] The 'special' paid maternity leave is provided for employees in the private sector for six months after the end of the maternity leave (Article 142 Act 3655/2008, OJ A 58/3.4.2008, as amended by Article 36 of Act 3996/2011, OJ 170/05.08.2011). It is independent from both maternity and parental leave. It is granted to women only, in addition to maternity leave and cannot be shared with the father.

ii. The 'special purpose' leave

Private sector: The 'special purpose' leave in the private sector was provided by Article 4(3) of the ALC of 11 March 2020, OJ A 55/11.03.2020, sanctioned by Article 2 Act 4682/2020, OJ A 76/03.04.2020, for the following groups of employees in the private sector: (a) workers, who are parents of children who (i) attend nurseries and crèches, (ii) are students in compulsory education grades,[424] or (iii) are students in special education schools, irrespective of their age; (b) workers, who are parents of disabled persons benefitting from open care structures for disabled persons, irrespective of their age. This leave aimed to facilitate employees with children:[425] for every three days of the 'special purpose' leave, the worker makes use of one day of his/her annual leave. As a rule, two thirds of the cost of the days of said leave are covered by the employer and one third thereof is covered by the state. This leave, originally provided for the period 11 March 2020[426] to 10 April 2020, was successively extended until 24 April 2020,[427] again until 10 May 2020[428] and finally until the reopening of the schools.[429] [430] Exceptionally, in both the private[431] and the public sector,[432] the said leave was extended until the end of the school year[433] only for parents of children: (i) who are exempted from schooling because they belong to high-risk groups for COVID-19 or come in close contact with family members who belong to such groups or have already been ill or (ii) who attend exclusively e-classes because their teacher belongs to a high-risk group; in this case, alternatively the parent may perform telework upon the consent of the employer and under the condition that this is feasible. If schooling is scheduled every second day (which was the norm for Greek schools upon reopening after the first lockdown as classes were divided in two rotating sections), parents can combine the 'special purpose' leave on a piecemeal basis for the days off school with the accommodation of reduced daily working hours up to 25 % for the days of school attendance.

Public sector: The 'special purpose' leave in the public sector was provided by Article 5(1) ALC of 11 March 2020 for those employed by the state, prefectures, local authorities of the first and second grade, legal persons governed by public law and legal persons governed by private law in the framework of the General Governance, under any employment relationship ('public servants, etc.'), if they are parents of children who are: (a) registered in nurseries and crèches or (b) students up to the third grade of high school, the functioning of which has been suspended in the framework of preventative measures dealing with the coronavirus and aiming to limit its spreading. The Circular dated 12 March 2020 provided that the leave is also granted to parents of children who attend special education establishments, irrespective of their age. The above employees are entitled to be absent from their job as long as the functioning of the above establishments is suspended. Article 38(4) of the ALC of 20 March 2020 expanded the personal scope to

[424] In Greece, the education is compulsory up to the third grade of high school, i.e. in normal conditions up to the age of 15 years.

[425] Article 4(3) Act of Legislative Content (hereinafter ALC) of 11.03.2020, OJ A 55/11.03.2020, sanctioned by Article 2 Act 4682/2020, OJ A 76/03.04.2020.

[426] All preschools, schools and universities closed down on 10 March 2020 (Joint Ministerial Decision *Δ1α/ΓΠ.οικ*. 16838/10.03.2020, OJ B 783/10.03.2020).

[427] Joint Ministerial Decision of the Ministers of Finance, Labour and Social Affairs and Health 14556/448/07.04.2020, OJ B 1208/07.04.2020.

[428] Joint Ministerial Decision of the Ministers of Finance, Labour and Social Affairs and Health 16135/499/23.04.2020 OJ B 1566/24.04.2020.

[429] Joint Ministerial Decision 1 of the Ministers of Finance, Labour and Social Affairs and Health 17787/520/8.5.2020, OJ B 1778/10.05.2020; Circular of the Ministry of Labour and Social Affairs 26696/791/01-07-2020.

[430] High schools reopened on 18 May 2020 (except the last grade that reopened on 11 May 2020) and elementary schools, nurseries and crèches reopened on 1 June 2020.

[431] Circular 20477/604/27.05.2020 of the Ministry of Labour and Social Affairs, available at: https://www.ergasiaka-gr.net/wp-content/uploads/2020/05/eqk-20477-%CE%A8%CE%94%CE%97446%CE%9C%CE%A4%CE%9B%CE%9A-%CE%918%CE%A1.pdf.

[432] Circular *ΔΙΔΑΔ/Φ.69/118/οικ*. 11134/2020 of the Ministry of Interior, available at: https://www.taxheaven.gr/circulars/33283.

[433] The school year 2019-2020 for high school ended on 12 June 2020 whereas for the elementary school it will end on 26 June 2020.

cover parents of children up to the age of four years who are not registered in nurseries and crèches as well. For every four days of absence, three days are considered by the competent service as justified absence due to the suspension of the functioning of the above establishments and are fully paid, and one day is considered as annual leave. If the employee is absent for less than four days, these days are all considered as annual leave.[434] In the public sector, the 'special purpose' leave was also extended until the end of the school year of nurseries and crèches (31 July 2020) for parents of children who are exempted from schooling because they belong to high-risk groups for COVID-19 or come in close contact with family members who belong to such groups or have already been ill.[435]

The said leave was reactivated on 1 October 2020 in the case of a provisional close-down of schools or classes thereof in the event of a COVID-19 case; on this occasion, it was clarified that if the employee concerned has exhausted his/her annual leave (fourth day), he/she can make use of any other leave available either paid or unpaid (e.g. leave for school visits, leave due to the sickness of the child, leave without remuneration).[436] The said schools were closed down again on 6 November 2020 until 30 November 2020[437] and, with a small interval, remained closed in the 'red' areas of the pandemic.

On 21 March 2020, 45 members of the Greek Parliament of the opposition party '*ΣΥΡΙΖΑ*' lodged a question for the Minister of Labour and Social Affairs, deploring that employees at supermarkets were refused the 'special purpose' leave.[438] Moreover, according to the data provided by the General Trade Union Confederation (GSEE), within the last two months (up to 19 May 2020) more than 10 000 employees addressed the Anti-COVID-19 group for the information and the support of employees.[439] A percentage of 11.5 % thereof (about 1 150 employees) asked questions or submitted complaints about the 'special purpose' leave.[440]

There are still no data available on the take-up of the leave either overall or broken down by gender, however, common experience shows that it has been taken up mostly by female employees. The Anti-COVID-19 law does not offer any protection against dismissal of employees who took up the said leave, consequently the general rules on abuse of rights will apply for the judicial control of such eventual dismissals. In its annual report for the year 2020,[441] the Ombudsman refers to various complaints submitted on the event of asking for or making use of this leave. Data from the LI on eventual complaints are not available as its yearly reports have not been published since the year 2017. It remains to be seen whether a correlation between the take-up of the said leave and eventual dismissals exists.

iii. Employees with children are entitled to reduced daily working hours up to 25 % upon agreement with the employer (Article 35 Act 4690/2020)

According to Article 35 Act 4690/2020, by exception to the set labour law provisions on working time limits, until the end of the school year 2019-2020: (a) employees, who are parents of children who (i) attend nurseries and crèches, (ii) are students in compulsory

[434] The specific conditions of entitlement in the following cases are defined in detail in the ALC of 11 March 2020: (1) Where both parents are public servants; (2) where one parent is employed in the public sector and the other in the private sector; (3) where the employee's spouse is employed in the public sector and at the same time is on any other leave (parental leave, maternity leave, sabbatical leave); (4) where the employee's spouse is not employed; (5) in the case of divorce and (6) in the case of single-parent families.
[435] Article 16(3) Joint Ministerial Decision *Δ1α/ΓΠ.οικ*. 36857/14.05.2020, OJ B 2277/14.06.2020.
[436] Circular of the Ministry of Labour and Social Affairs 39683/1259/1.10.2020.
[437] Joint Ministerial Decision *Δ1α/Γ.Π.οικ*. 71342/6.11.2020, OJ B 4899/06-11-2020.
[438] http://www.avgi.gr/article/10842/10849467/sterixe-ton-ergazomenon-sta-souper-market-tora#.
[439] Available at: https://gsee.gr/?p=36791.
[440] https://www.news247.gr/koinonia/gsee-oi-kataggelies-ton-ergazomenon-logo-koronoioy.7619869.html.
[441] https://www.synigoros.gr/resources/ee2020-p00-plires-keimeno.pdf.

education grades[442] or (iii) attend special education schools, irrespective of their age; (b) employees, who are parents of disabled persons benefitting from open care structures for disabled persons, irrespective of their age, following a petition and upon agreement with their employer, are entitled to reduced daily working hours up to 25 % without any pay reduction. In this case, they can be employed beyond their normal working hours on other working days to be agreed between the parties for the equivalent hours without any surplus of pay. This accommodation is provided irrespective of the use of the 'special purpose' leave[443] and aims to facilitate working parents to collect their children from school given that after their close-down due to the COVID-19, for the period 1-25 June 2020, nurseries, crèches and elementary schools function only for the basic hours without the programme of 'all-day schooling'.

iv. Alternative entitlement to the four days' paid leave for school visits in order to collect children from school[444]

Alternatively, employees in the private sector can make use of the four days' paid leave 'for school visits'[445] on a piecemeal (hourly or daily) basis. According to the Ministry, this aims to facilitate parents to collect their children from school given that for the period 1-25 June 2020, nurseries, crèches and elementary schools function only for the basic hours without the programme of 'all-day schooling' whereas grandparents who often used to accompany children to school belong to high-risk groups for COVID-19. This leave can be taken up by employees who are not entitled to the 'special purpose' leave or who have exhausted their annual leave for the current year and consequently have lost entitlement to the 'special purpose' leave.

v. Protective measures for pregnant women

On 11 May 2020 pregnant workers in the public sector (public servants, local authorities, etc.) were recognised for the first time as susceptible groups of workers at high risk for COVID-19 (in addition to cancer patients submitted to chemotherapy, to those who have undergone a transplant, etc.) with entitlement to fully paid special leave.[446]

In contrast, in the private sector no such definition had applied for several months. At last, on 17 September 2020, Article 1 of Joint Ministerial Decision No. 37095/1436/17.09.2020 defined the persons falling under the 'susceptible groups of workers at high risk for COVID-19' in the private sector, including, *inter alia*, pregnant workers. As a result, pregnant workers in the private sector are entitled to the protective measures provided by Article 8 of ALC of 22.08.2020, OJ A 161/22.08.2020,[447] ratified by Act 4722/2020: (i) right to telework upon the pregnant worker's request, which the employer is obliged to accept if the work can be performed remotely; (ii) if working remotely is not feasible, the employer takes the necessary measures so that the pregnant worker does not come into contact with the public; (iii) if this is not feasible, the pregnant worker is put on the

[442] Education is compulsory from kindergarten to the third grade of high school, i.e. in normal conditions up to the age of 15 years.

[444] Circular 20477/604/27.05.2020 of the Ministry of Labour and Social Affairs, available at: https://www.pim.gr/index.php/ergatikamenu/ergatika-menu-egkapofasis/file/2053-27-5-2020-egkyklios-20477-604-diefkolynseis-goneon-sto-plaisio-epanaleitourgias-ton-sxoleion-kai-ton-vrefonipiakon-stathmon-odigies-gia-tin-efarmogi-tis-17787-520-8-5-2020-v-1778-xorigisis-adeias-eidikoy-skopoy-gia-tin-antimetopisi-tou-koronoioy-covid-19-.

[445] Article 9 Act 1483/1984, OJ A 153/08.10.1984, Article 4 National General Collective Agreement 2008-2009 and Article 20(5) Act 3896/2010, OJ A 207/08.12.2010. The leave 'for school visits' is four working days per calendar year for each child up to 16 years attending compulsory education. Entitled thereto are (both full-time and part-time) employees in order to get informed on the child's school performance.

[446] Article 25 ALC of 14 March 2020, OJ A 64/14.03.2020, sanctioned by Article 3 Act 4682/2020, OJ A 76/03.04.2020, in conjunction with Joint Ministerial Decision of the Ministers of Health and Interior Affairs *ΔΙΔΑΔ/Φ.64*/341/9188/11.05.2020, OJ B 1800/11.05.2020, and Joint Ministerial Decision of the Ministers of Health and Interior Affairs *ΔΙΔΑΔ/Φ.64*/346/9011/14.5.2020, OJ B 1856/15-05-2020.

[447] Article 8 of ALC of 22.08.2020, OJ A 161/22.08.2020, amended Article 4(2) ALC of 11 March 2020, OJ A 55/11.03.2020, which was ratified by Article 2 Act 4682/2020, OJ A 76/03.04.2020.

furlough scheme until 30 September 2020. This measure can be extended further in time by a joint ministerial decision of the Ministers of Economic Affairs, Labour and Social Affairs and Health. An administrative fine of EUR 5 000 is provided if the employer, despite the pregnant worker's proven request, does not comply with the above provision, including the adoption of the successive steps of the above protective measures.

For several months the system of pregnancy protection in relation to COVID-19 diverged from a total lack of protection in the private sector to full protection in the public sector. In the author's opinion, this approach was irrational: pregnant workers either fall into the category of the COVID-19 susceptible group of workers upon medical (epidemiological) criteria or not, irrespective of whether they are employed in the public or the private sector. In the author's view, the lack of regulation in the private sector can be attributed to the legislator's concern not to 'stigmatise' pregnant workers by placing the financial burden on the employer. However, this has often led to employment frictions, controversies and legal uncertainty as to whether the categorisation applied in the public sector was also applicable to the private sector by analogy.

The new provisions resolved the issue of categorisation on an equal footing for both the public and the private sector: pregnant women are considered at a high risk for COVID-19 in both sectors. However, there is still a significant inconsistency in the protection afforded: pregnant women in the public sector are entitled to fully paid leave whereas pregnant women in the private sector are only entitled to telework or to back office work or to furlough (the three steps to be successively applied). In contrast to the first and second step, the third step (furlough) does not require the employee's request. Being at no cost, it is also an obvious temptation for the employers: the employee put in furlough is entitled only to a net pay from the state of EUR 534 (i.e. the net minimum wage) for 30 days of employment. Of course, the right implementation of the new provisions can be checked by the LI (and potentially by the courts), the administrative fine of EUR 5 000 being a dissuasive one. However, in the midst of the financial crisis 'endemic' to the pandemic, it is arguable whether pregnant women will dare to raise a complaint to the LI or bring the case to the court. In this regard, in the author's view, a provision requiring the employee's request and/or the LI's prior consent before putting the pregnant worker on furlough would be preferable.

vi. Special leave for parents of children diagnosed with the coronavirus COVID-19

Article 16 Act 4722/2020 provides that workers in the private sector who are parents of children diagnosed with the coronavirus COVID-19 are entitled, due to their children's disease, to a special leave of 14 days or even more if necessary, upon medical certification or hospitalisation of the child. The term 'children' covers: infants; children attending pre-kindergarten, kindergarten, elementary school and high school; children attending special schools or school units of special education, irrespective of their age; disabled persons attending disability open care structures. During the leave, employees receive two thirds of their wages from their employer and one third from the state budget (whereas full pay in the wider public sector or in public enterprises). This leave is granted (a) in addition to other leave due to illness or hospitalisation of children, (b) irrespective of the adoption of other measures for the limitation of the spread of the leave (e.g. teleworking) and (c) under no condition of seniority. The details for the implementation of this leave will be regulated by a ministerial decision of the Minister of Employment and Social Affairs.

To date there have been no statistical data on the take-up of these types of leave broken down by sex.

6 Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1 General (legal) context

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

In a survey conducted in 2012 about Act 3863/2010 and the occupational social security schemes, Sophia Koukoulis-Spiliotopoulos[448] pointed out that the Act, although covering both statutory and occupational social security schemes, ignores the distinction between 'occupational' and 'statutory' and EU gender equality law in general. She gave examples of the provisions of the Act that create confusion; she also referred to the relevant remarks of the National Committee of Human Rights and of the Scientific Service of Parliament (which checks the conformity of bills with the Constitution, ratified international treaties and EU law) on the relevant bill. The author deplored the prevailing confusion concerning the concept of 'occupational social security schemes' and the field of application of the relevant EU law in Greece. She found that this confusion is accentuated by the lack of precision and clarity of Greek social security legislation which, in recent years, has undergone numerous unpredictable, complex, contradictory and mutually exclusive amendments, often with a retroactive effect, creating unsafety and in security, in particular in a society hit as hard by the economic crisis as the Greek one has been.

Another survey on occupational social security schemes under EU law was published in 2016 by E. Morayianni on the occasion of Judgment No. 4156/2015 of the Athens ACA.[449] This case concerned the social security scheme TAP-ETVA, which granted pensions to employees of the former Greek Bank of Industrial Development (ETVA). Subsequently, this fund was affiliated to the general social security scheme for private sector employees (IKA-ETAM). However, the retirement benefits granted by it continued to be governed by its own statutes.

The case was brought by a father of three minor children. He pleaded that the retirement conditions provided for mothers of three minor children were more favourable than those applicable to fathers of three minor children who, in order to be entitled to a pension, had to comply with the additional requirements of being widowers or divorced (in the latter case having been granted the custody of the children by a judicial judgment). He consequently claimed that the above different treatment resulted in discrimination on the ground of sex to the detriment of fathers of three minor children, like himself, and asked the court to grant him the pension, although he was neither a widower nor divorced.

The court found discrimination in breach of the Greek Constitution but refused to apply the levelling-up norm and rejected the claim. It did not examine and did not respond to the claimant's allegations that the above discrimination was in breach of Article 157 TFEU as the fund constituted an occupational social security scheme according to the well-established case law of the CJEU. In particular, he pleaded that all three requirements set by the CJEU case law were satisfied: (i) the scheme covered a particular category of employees, i.e. the employees of the former ETVA bank; (ii) the pension granted by it was calculated on the basis of the employee's years of service at the bank; (iii) the sum of the pension was calculated on the basis of the employee's final salary before retirement. According to the author, by omitting to examine and reply to these allegations, the ACA failed to apply the EU law.

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[448] Koukoulis-Spiliotopoulos, S. (2012), *'Ν. 3896/2010 και «επαγγελματικά» συστήματα κοινωνικής ασφάλισης – Η σύγχυση επιτείνεται'* (Act 3896/2010 and occupational schemes – The confusion is heightened), *Επιθεώρησις Δικαίου Κοινωνικής Ασφαλίσεως (ΕΔΚΑ) (Social Security Law Review),* pp. 27-39.

[449] Morayianni, E. (2016), '*Το ζήτημα της παραβίασης της αρχής της ισότητας των φύλων από τα συνταξιοδοτικά πλεονεκτήματα υπέρ των γυναικών. Σχόλιο με βάση την απόφαση ΔΕφΑθ 4156/2015'* ('The matter of the violation of the gender equality principle through social security privileges in favour of women, Comments on Athens Administrative Court of Appeal judgment No. 4156/2015'), *Επιθεώρησις Δικαίου Κοινωνικής Ασφαλίσεως (ΕΔΚΑ) (Social Security Law Review)* 2016, pp. 416 et seq.

The case was not brought before the Council of the State by an appeal on points of law due to lack of resources on the part of the claimant.

It should be noted that there have been three CJEU preliminary rulings on Greek cases (*Evrenopoulos,*[450] *European Commission v the Hellenic Republic*[451] and *European Commission v the Hellenic Republic)*[452] that explicitly confirmed the existence of occupational social security schemes in Greece. In view of the above it is striking that 18 years after the *Evrenopoulos* ruling Greek courts ignore the relevant EU law and case law.

6.1.2 Other issues related to gender equality and social security

See 6.1.1 above.

6.1.3 Political and societal debate and pending legislative proposals

There is no political and societal debate on occupational social security schemes nor are there any pending legislative proposals.

6.2 Direct and indirect discrimination

In Greek law direct and indirect discrimination on grounds of sex in occupational social security schemes is prohibited. Article 6 of Act 3896/2010 transposing Directive 2006/54/EC largely reproduces Article 5 of the Directive, with some additions to the first sentence, which reads: 'Any direct and indirect discrimination on grounds of sex, in particular in connection with the existence of a marriage or family status in general is prohibited.'

6.3 Personal scope

The personal scope of national law relating to occupational social security schemes is the same as specified in Article 6 of Directive 2006/54/EC, as Article 5(1) of Act 3896/2010 copies Article 6 of the Directive.

6.4 Material scope

The material scope of national law relating to occupational social security schemes is the same as specified in Article 7 of Directive 2006/54/EC, as Article 5(2) of Act 3896/2010 copies Article 6 of the Directive.

6.5 Exclusions

Greek law has applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54/EC by Article 5(3) of Act 3896/2010, which copies Article 8 of the Directive.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

Article 7 of Act 3896/2010 transposes Article 9 of the directive. Yet the notion of an 'occupational scheme' remains unknown, in spite of three Greek CJEU cases, the third of

[450] CJEU, C-147/95, *Dimossia Epicheirissi Ilektrismou (DEI) v Efthimios Evrenopoulos*, 17 April 1997. This case concerned the social security scheme of DEI, the Public Electricity Company, which was found to be an occupational social security scheme.

[451] CJEU, C-457/98, *European Commission v the Hellenic Republic,* 14 December 2000, which concerned the non-compliance of Greece with Directive 96/97/EC.

[452] CJEU, C-559/07 *European Commission v the Hellenic Republic,* 26 March 2009, which concerned the Code of Civil and Military Pensions of the Greek State, providing more favourable provisions for women than men.

which found a breach of Article 157 TFEU due to gender discrimination in relation to age and other conditions for civil servants' pensions whose scheme it considered to be occupational.[453] This is because Decree 87/2002 implementing Directives 96/97/EC and 86/378 and Act 3896/2010 merely reproduced EU law, without indicating which Greek schemes are occupational or providing any criteria for recognising them as such, thus not complying with the CJEU requirements of clarity and transparency. As a result, the case law either completely ignores the distinction between statutory and occupational schemes or wrongly considers that a scheme is not occupational; in both cases the judgments rely on Article 4(2) of the Constitution.[454]

The only case addressing the occupational character of a scheme (other than the civil servants' scheme) was *Evrenopoulos* (the first CJEU Greek pensions case). The Athens ACA asked whether a scheme for the personnel of a public corporation (the State Electricity Company (DEI)) was occupational and, if so, whether the granting of a survivor's pension to widowers which was subject to conditions that did not apply to widows conflicted with Article 119 TEC (now 157 TFEU). The CJEU held that the scheme was occupational; therefore, Article 119 TEC precluded the application of the provision.

Ongoing sex discrimination within the public servants' occupational social security scheme

Following the CJEU judgment *Commission v Greece* C-559/07,[455] which found that said provisions infringe the principle of equal pay between men and women enshrined in Article 141 TEC, and the subsequent letter of warning of the European Commission of 29 January 2010 regarding the non-timely compliance of Greece with said CJEU judgment, the above provision was amended as of 1 January 2011 by Article 6(1-9) Act 3865/2010, OJ A 120/21.07.2010, with the aim to gradually equalise the retirement age of female and male civil servants (see the Explanatory Report of Act 3865/2010). However, according to the transitional provision of Article 6(11) Act 3865/2010 adopted for reasons of legal safety and the protection of trust, the amended provisions (including retirement age differentiated by sex) continued to apply to civil servants who have established a right to a pension until 31 December 2010.

a) The calculation of the service in expedition units as pensionable time entails discrimination against male military staff

However, discrimination has been maintained in Articles 36 and 40 of the Civil and Military Pensions Code: although, as a rule, both men and women with three children are entitled to a pension after 25 years of actual service, irrespective of this condition, the length of service in expedition units of the military staff is recognised as double only for women with three children. The Court of Audit by its Judgment 743/2018 (Full Section) found that the above more favourable treatment of women constitutes gender discrimination and applied the more favourable conditions to a father of three children as well (levelling-up).[456]

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[453] CJEU, C-147/95, *DEI v Evrenopoulos,* 17 April 1997; CJEU, C-457/98, *European Commission vs the Hellenic Republic,* 14 December 2000; CJEU, C-559/07 *European Commission v the Hellenic Republic,* 26 March 2009.

[454] Examples: CS No. 4279/2014: the CS ignored the distinction (indeed it completely ignored EU law) regarding an obviously statutory scheme (IKA, see 7.1 below) and, relying on Article 4(2) of the Constitution, it held that the granting of an earlier old-age pension to the mothers of minor children was not discriminatory; therefore, the fathers of minor children were not entitled to that pension; CS No. 4099/2012: the CS ignored the distinction regarding an obviously occupational scheme (TAPP-ATE) and, relying on Article 4(2) of the Constitution, it held that the widower is entitled to a survivor's pension on the same conditions as a widow; Court of Audit 44/2009 (Full Section): the Court considered that the civil servants' scheme falls within the scope of Directive 79/7/EEC which allows different pensionable ages for men and women. However, it held that these different ages were contrary to Article 4(2) of the Constitution. CS 2196/2015.

[455] CJEU judgment of 26 March 2009, *Commission of the European Communities v Hellenic Republic,* C-559/07 OJ C 113, 16.05.2009, p. 9.

[456] The same reasoning was followed by the Court of Audit Judgment No. 1268/2018 (Full Section) on the relevant legal framework before the amendment enacted by Act 3865/2010 as of 1 January 2011.

b) Granting of a pension to fathers of deceased military personnel under less favourable terms than to mothers

Despite this case law, Article 32(1) of the Civil and Military Pensions Code still sets different conditions for the granting of a pension to fathers of deceased military personnel from those applying to mothers. If the deceased had neither a spouse nor children, then upon his/her death the pension is granted: (a) to his/her father who is a pauper, when the father reaches the age of 65, or if he is a pauper and unfit for any work, provided in all cases that he was mainly maintained by the deceased; (b) in the absence of a father, the mother who is a widow and a pauper, provided that she was mainly maintained by the deceased. Although the Court of Audit[457] held that mothers were entitled to a pension subject to the same conditions as fathers, the discriminatory provision remained.

c) Transitional provisions still apply more favourable retirement ages to female civil servants

Article 56(1),(2) of the Code of Civil and Military Pensions (PD 169/2007, OJ A 210/31.08.2007) used to provide for civil servants of a certain category (those appointed within the period 1 January 1983 to 31 December 1992 or those with a minimum retirement service of 25 years until 31 December 2010) a retirement age that varied according to sex: for female civil servants with minor (under 18 years) children this was set at 50 years, and for female civil servants without minor children it was set at 58 years (to be accrued by 6 months for every calendar year until the age of 60 years). Whereas for male civil servants (irrespective of whether they had minor children within their care) the retirement age was set at 60 years (to be accrued by 6 months for every calendar year until the age of 65 years). Despite the amendment of the discriminatory provision as of 1 January 2011 by Article 6(1-9) Act 3865/2010, OJ A 120/21.07.2010, according to the transitional provision of Article 6(11) Act 3865/2010 adopted for reasons of legal safety and the protection of trust, the amended provisions (including retirement age differentiated by sex) continued to apply to civil servants who have established a right to a pension until 31 December 2010.

A male civil servant who is a father of a minor child, the complainant, had reached the retirement age provided for women with minor children (50 years) but not the one provided for men (60 years) and satisfied the rest of the conditions of said provision (a minimum retirement service of 25 years until 31 December 2010) retired in 2014. He alleged direct discrimination in pay on the grounds of sex and claimed that the more favourable retirement age provided for female civil servants mothers of minor children should apply in his case as well. The Court of Audit by its Judgment No. 790/2016 upheld the case. The Greek state lodged an appeal on points of law. The case was heard by the Full Session of the Court of Audit on 1 March 2017 and the judgment was issued on 4 March 2020, i.e. three years later(!).

In its Judgment No. 317/04.03.2020, the Court of Audit (Full Section) by a strong majority (25 out of 32 judges) dismissed the appeal on points of law. It held that the more favourable retirement ages provided for female civil servants mothers of minor children (and the rest of female civil servants as well) compared to that provided for male civil servants, constituted direct discrimination in pay on the grounds of sex, in breach of Article 141(2) TEC (now Article 157(2) TFEU) with regard to the material scope of which the national civil and military retirement pensions regime falls. According to the Court, such discrimination cannot be justified by reasons of general social or public interest or by reasons amounting to a greater need of protection of women in issues related to maternity, marriage or family or to purely biological differences that require the adoption of specific measures. Moreover, the provision in question cannot be considered as a positive action measure according to Article 141(4) TEC (now Article 157(4) TFEU) as it does not facilitate

[457] Court of Audit No. 751/2000.

women to continue their professional activity nor does it redress problems faced by women in their professional career.

In view of the above, the Court found the impugned provision to be in breach of the principle of equality, as enshrined in the Greek Constitution and EU law. According to the Court, as long as this unfavourable treatment persists to the detriment of male civil servants (i.e. for those who have established a right to a pension up until 31 December 2010 – given that as of 1 January 2011 the retirement age of men and women has been equalised), the more favourable provision applying to female civil servants with minor children has to be extended to male civil servants with minor children as well (levelling-up).[458]

It is noteworthy that despite its successful application of Article 141 TEC (now Article 157 TFEU), in its 24 pages, said judgment does not make explicit reference to the character of the public servants regime as an 'occupational social security scheme' according to the relevant autonomous EU law concept in the field of gender equality. In the author's opinion, this is quite striking after the two CJEU judgments *Commission v Greece* which have acknowledged that either the relevant concept is a 'taboo', or it is still unclear among the judiciary.

Moreover, having already upheld that the issue at stake did not constitute positive action, the Court did not have to examine whether the differentiation of the retirement age between men and women was justified, as in EU equality law a direct discrimination in pay cannot be justified.

However, it should be stressed that the Court of Audit has successfully dealt with the issue of levelling-up which has often caused controversies in the jurisprudence of administrative courts, in particular regarding entitlement to (both occupational and statutory) social security. The judgment has been given a lot of publicity in the press (including e-press).

d) Transitional provisions still provide more favourable conditions of entitlement to a pension for unmarried daughters of a deceased public servant or military officer than those applying to unmarried sons

Article 5(1)(b) of the Code of Civil and Military Pensions (CCMP) (PD 169/2007, OJ A 210/31.08.2007), as amended by Article 9(1)(d) Act 3865/2010, OJ A 120/21.7.2010 and Article 3(1) Act 4151/2013, OJ A 103/29.4.2013, provides entitlement to a state pension for the unmarried daughters of a deceased civil servant irrespective of age whereas to the unmarried sons only under the additional condition that they are minors (under 18 years) or unfit to work at a percentage of at least 50 % when adults.

In its Judgment No. 60/2020, the Court of Audit rejected the appeal of an adult unmarried son of a deceased civil servant, who was fit to work, hence did not satisfy the conditions valid for unmarried sons. The Court acknowledged that the conditions of granting of the said pension were discriminatory to the detriment of unmarried sons; however, it held that the more favourable treatment of unmarried daughters is justified as a positive action aiming to eliminate their disadvantages as the under-represented sex. In January 2021, an appeal on points of law was heard by the Full Section of the Court of Audit. The Judge Rapporteur proposed the rejection of the appeal. The case is still pending.

In the author's opinion, Judgment No. 60/2020 of the Court of Audit is in breach of Article 157 TFEU and Article 7 Act 3896/2010, transposing Article 9 Directive 2006/54, as construed by the well-established case law of the CJEU in that:

[458] A minority of four judges held that, although discriminatory, the impugned provision cannot be extended to men because this would constitute an intrusion of the judiciary in the powers of the legislature.

i) the social security scheme of the Greek public servants is an occupational social security scheme according to the relevant autonomous EU law concept;[459] the fact that since 1 January 2017 it has been merged into one single scheme (EFKA)[460] together with all the main existing social security schemes for employees, self-employed, liberal professionals and farmers is totally irrelevant;[461]

ii) a survivor's pension from such an occupational scheme constitutes pay falling within the scope of Article 157 TFEU[462] which prohibits any direct or indirect discrimination on the grounds of gender without any derogation[463] whereas it cannot be considered as a positive action measure under Article 157(4);[464]

iii) once the Court has found that discrimination in relation to pay exists and so long as measures for bringing about equal treatment have not been adopted by the scheme, the only proper way of complying with Article 157 TFEU is to grant to the persons in the disadvantaged class the same advantages as those enjoyed by the persons in the favoured class.[465]

In case of any doubt, the Court of Audit (Full Section), as a court adjudicating at last instance, has the positive obligation to submit a preliminary ruling to the CJEU (Article 267(b) TFEU) whereas the three criteria laid out in the CJEU *Cilfit*[466] are not met. As the applicant has asked for it, the Court will have to give reasons for eventual rejection of his application, otherwise it will be in breach of Article 6(1) of the ECHR.[467] In any case,

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[459] CJEU, Judgment of 26 March 2009, *European Commission v the Hellenic Republic,* C-559/07; Court of Audit (CA) Judgments Nos: 317/2020 (Full Section), 1807/2014 (Full Section), 930/2020, 37/2017, 303/2017, 790/2016, 3744/2014, etc.

[460] As of 1 March 2020, the single scheme of supplementary pensions ETEAEP was merged into EFKA, which was renamed 'e-EFKA' (Article 1 Act 4670/2020, OJ A 43-28.2.2020).

[461] Article 7(2) Directive 2006/54: '2. This Chapter also applies to pension schemes for a particular category of worker such as that of public servants if the benefits payable under the scheme are paid by reason of the employment relationship with the public employer. *The fact that such a scheme forms part of a general statutory scheme shall be without prejudice in that respect'*; CJEU, Judgment of 12 September 2002, *Pirkko Niemi,* C-351/00, paragraph 42.

[462] CJEU, Judgment of 9 October 2001, *Pensionskasse für die Angestellten der Barmer Ersatzkasse WaG and Hans Menauer,* C-379/99, paragraph 32; CJEU, Judgment of 17 April 1997, *Dimossia Epicheirissi Ilectrismou (DEI) v Evrenopoulos,* C-379/99, paragraph 22; CJEU, Judgment of 28 September 1994, *Coloroll v Russell and Others*, C-200/91, paragraphs 18-19; CJEU, Judgment of 6 October 1993, *Ten Oever v Stichting Bedrijfspensioenfonds voor het Glazenwassers- en Schoonmaakbedrijf*, C-109/91, paragraphs 13-14.

[463] CJEU, Judgment of 26 March 2009, *European Commission v the Hellenic Republic,* C-559/07. The Court of Justice ruled that by maintaining in force provisions which provide for differences between male and female workers with regard to retirement age and minimum required service under the Greek Civil and Military Pensions Code instituted by PD No. 166/2000 of 3 July 2000 the Hellenic Republic has failed to fulfil its obligations under Article 141 EC (Article 157 TFEU).

[464] Measures limited to granting more favourable conditions for pensions in the framework of an occupational social security scheme (e.g. more favourable age limits for women, service credits for female civil servants who are mothers at the date of their retirement, etc.), without providing a remedy for the problems which they may encounter in the course of their professional career cannot be considered as positive action. See CJEU, Judgment of 26 March 2009, *European Commission v the Hellenic Republic,* C-559/07, paragraph 68; CJEU, Judgment of 13 November 2008, *European Commission v the Republic of Italy,* C-46/07, paragraphs 57-58; CJEU, Judgment of 29 November 2001, *Joseph Griesmar v Ministre de l'Économie, des Finances et de l'Industrie, Ministre de la Fonction publique, de la Réforme de l'État et de la Décentralisation,* C-366/99, paragraphs 62-65. See also Greek Court of Audit Judgment Nos 317/2020 (Full Section), 1807/2014 (Full Section), 930/2020, 37/2017, 303/2017, 790/2016, 3744/2014.

[465] CJEU Judgment of 28 September 1994, *Constance Christina Ellen Smith and Others and Avdel Systems Limited,* paragraph 19; CJEU, Judgment of 17 April 1997, *Dimossia Epicheirissi Ilectrismou (DEI) v Evrenopoulos,* C-379/99, paragraph 42.

[466] CJEU, 6 October 1982, C-283/81, *Cilfit*: '…a court or tribunal against whose decisions there is no judicial remedy under national law is required, where a question of Community law is raised before it, to comply with its obligation to bring the matter before the Court of Justice, unless it has established that the question raised is irrelevant or that the Community provision in question has already been interpreted by the Court of Justice or that the correct application of Community law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the specific characteristics of Community law, the particular difficulties to which its interpretation gives rise and the risk of divergences in judicial decisions within the Community'.

[467] ECHR, *Sanofi Pasteur v France* (13.02.2020), on the need for domestic courts which, under Article 267 TFEU, are in principle obliged to make a reference to the CJEU for a preliminary ruling, to give reasons

given that the issue at stake is the applicant's fundamental right to equal pay, as construed by the well-established case law of the CJEU, if the Court of Audit does not opt for a preliminary reference and dismisses the appeal, there will be an infringement of a manifest character of EU law, establishing liability of the Greek state to provide to the applicant reparation for the damage incurred by a decision of one of its courts adjudicating at last instance.[468] It remains to be seen what the judgment will be.

6.7 Actuarial factors

Sex is used as an actuarial factor in occupational social security schemes. Article 7(1)(h) of Act 3896/2010 transposing Directive 2006/54/EC copies Article 9(1)(h) of the directive. There is no relevant case law.

6.8 Difficulties

See 6.6 above.

6.9 Evaluation of implementation

The concept of occupational social security schemes and the relevant EU law and case law for a long time have been rather ignored by the Greek legislator and the Greek courts, with the exception of the recent jurisprudence of the Court of Audit which has – albeit tacitly – acknowledged the civil servants' scheme as an occupational scheme and has successfully applied the levelling-up norm (6.1.1 above).

6.10 Remaining issues

There are no other remaining issues.

when they reject an application to that effect by one of the parties to the proceedings. In the *Sanofi Pasteur* case, the ECHR found that the French Court of cassation had breached Article 6 of the Convention by limiting its reasoning to finding that there was no need to call the CJEU.

[468] CJEU, Judgment of 30 September 2003, *Gerhard Köbler v Republik Österreich*, C-244/01.

7 Statutory schemes of social security (Directive 79/7)

7.1 General (legal) context

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

To the author's knowledge there have been no surveys and reports published in Greece over the last five years that provide insights into the difficulties that workers face in practice in relation to social security schemes.

7.1.2 Other relevant issues

There are no other relevant issues.

7.1.3 Overview of national acts

See under 1.2 above.

7.1.4 Political and societal debate and pending legislative proposals

There has been no political and/or societal debate and there are no pending legislative proposals on this topic.

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

The principle of equal treatment for men and women in matters of social security is implemented in national legislation in Article Single of PD 1362/1981 implementing Directive 79/7/EEC. This is the only measure aimed at implementing Directive 79/7/EEC. The Decree replaced Article 33(1) of Act 1846/1951 (OJ A 179/21.6.1951) on the IKA, which operated the main scheme for subordinate workers under a private-law contract. It abolished the distinction between husbands and wives and fathers and mothers regarding pensions and medical care, which was to the detriment of women.

On more favourable pensionable age for mothers with underage children or disabled children irrespective of their age affiliated with IKA/EFKA and on other discriminatory provisions still in force, see under 7.5 below.

Although the possibility of earlier retirement for women only used to apply in the past, the Greek courts by a well-established jurisprudence have found dismissals on this ground to be in breach of constitutional and EU gender equality law, hence null and void.[469]

7.3 Personal scope

The scope of Decree 1362/1981 is limited to the IKA scheme (7.2 above), which is statutory, as it covers workers employed by different employers. There are other schemes which must also be considered to be statutory, e.g. the scheme operated by the Organisation for Agricultural Social Security (OGA),[470] which covers farmers who are not salaried workers; the scheme operated by the Merchant Seamen's Fund (NAT),[471] which covers workers in maritime employment; and the scheme operated by the Agency of Manpower Employment (OAED),[472] which provides workers under a private-law contract

[469] SCPC (Civil Section) Judgments Nos 85/1995, 266/1999, 1785/2001, 496/2011, Athens CA Nos 2675/1987, 2188/1986.
[470] Act 4169/1961, OJ A 81/1961; Act 2458/1997, OJ A 15/14.2.1997.
[471] PD 913/1978, OJ A 220/14.12.1978; Act 1085/1980, OJ A 255/6.11.1980.
[472] Act 2961/1954, OJ A 197/1954; Act 1545/1985, OJ A 91/20.5.1985.

with protection against unemployment, including unemployment allowances, assistance to job seekers and other allowances, such as maternity allowance. Since 1 January 2017 all the main existing social security schemes (IKA-ETAM, ETAP-MME, ETAA, OGA, NAT, TAYTEKO, ETAT), together with state pensions, have been merged into one single scheme (EFKA) according to the provisions of Articles 51, 53 and 100(1) (2b) of Act 4387/2016[473] (OJ A 85/12.5.2016).[474] However, the provisions governing affiliation and benefits from the different merged schemes still apply.

7.4 Material scope

Decree 1362/1981 only concerns social security, not social protection. The IKA, the only scheme it covers, provides protection against sickness, disability, old age, accidents at work and occupational diseases, as well as maternity protection. Protection against unemployment is provided by the OGA scheme, which is not covered by the Decree. Therefore, the material scope of the Decree is restricted.

7.5 Exclusions

Decree 1362/1981 is silent regarding the matters mentioned in Article 7 of the Directive.

i) Case law on Article 7 Directive 79/7

The scarce case law on Article 7 of the Directive 79/7/EEC discloses the limited awareness of the distinction between statutory and occupational schemes among the various stakeholders of litigation (see 6.6 above).

For example, the Administrative Court of Athens, by its Judgment No. 3865/2013, dealt with a complaint of a man who asked for an old-age pension at the lower age limit (applicable at the time) for women (57 years for women compared to 62 years for men) through the IKA social security scheme. The complainant relied on both Article 157 TFEU (ex-Article 141 TEC) and Directive 79/7, and on the constitutional provisions on gender equality, as well. The Court correctly found that the IKA is a statutory scheme to which Article 157 TFEU is not applicable; it also found that the determination of different pensionable ages for men and women for the purposes of granting old-age pensions on the one hand is allowed by Article 7(1)(a) of the Directive 79/7/EEC. According to the Court, such a differentiation is constitutional and justified in the context of the prevailing mentality and the given social circumstances within which the burden of child-raising is borne by women; consequently, women deserve greater social protection. This is a striking example of how deep-rooted social stereotypes can be reproduced in jurisprudence, even if in this particular case this was done in order to justify a women's 'privilege', entailing direct discrimination against men.

The CS Judgment No. 4099/2012 dealt with a complaint of a widower against the social security scheme TAP-ATE (an obviously occupational one, covering only the employees of a certain bank) because he was refused the survivor's pension, which was granted to widowers under stricter conditions than to widows. The defendant scheme raised the argument that the exclusion of widowers from the survivor benefits was allowed by Article 7(1)(a) of the Directive 79/7/EEC, albeit the Directive is not applicable to occupational schemes. The CS ignored the distinction between statutory and occupational schemes and, relying on national constitutional law (Article 4(2) of the Greek Constitution on equality before the law), it held that a widower is entitled to a survivor's pension on the same conditions as a widow.

[473] CS No. 1880/2019 found the merge into one single scheme of the pre-existing social security schemes for employees, self-employed, liberal professionals and farmers to be constitutional.

[474] As of 1 March 2020, the single scheme of supplementary pensions ETEAEP was merged into EFKA, which was renamed 'e-EFKA' (Article 1 Act 4670/2020, OJ A 43-28.2.2020).

ii) More favourable pensionable age for mothers with underage children or disabled children irrespective of their age affiliated to IKA/EFKA

According to Article 28(3)(d) Act 1846/1951, as in force after the amendment of its last sentence by Article 13(1) Act 3816/2010 (OJ A 6/26.01.2010), mothers with underage children or disabled children irrespective of their age affiliated to the general pension scheme for employees of the private sector IKA/EFKA for the purposes of old-age pension are entitled to a full old-age pension at the age of 55 years if they have an insurance record of 5 500 insurance days. Although discriminatory against fathers of such children, this provision clearly falls under the exclusion of Article 7(1)(a) of Directive 79/7 as it concerns the determination of pensionable age for the purposes of granting old-age and retirement pensions.

Originally, Judgment No. 3100/2008 of the CS found by a majority that the provision of Article 28(3)(d) Act 1846/1951 introduced discrimination against fathers in breach of the general equality norm of Article 4(1),(2) of the Greek Constitution[475] and that the 'privilege' in question should be extended to fathers who have the unique parental responsibility of their children (e.g. in the event of their wife's death, in the case of divorce, etc.) (the 'levelling-up' approach). However, the case was referred to the CS Full Section due to the importance of the issue raised regarding the compatibility of the impugned provision with the Greek Constitution. No reference to EU law was made.

By its Judgment 1580/2010, the CS Full Section found that the provision in question constituted a derogation to the system of determination of the pensionable age in force, generally applied to men and women; due to its derogatory nature, even if it was to be found in breach of the Constitution, it could not be extended to other general or special categories of persons. Thus, its invocation by a male worker seeking its extension to himself was 'devoid of purpose'. Thus, the CS Full section adopted the 'levelling-down' approach and rejected the case without expressing itself on the issue of constitutionality itself. Again, no reference to EU law was made.

Ever since, the findings of the above CS Full Section judgment have been followed and replicated by the case law of the CS (Nos 4278/2014, 4279/2014, 2766/2016) and of the lower administrative courts (Athens FIAC 9065/2019).

The same issue was brought again before the CS: CS 931/2019 rejected the petition of annulment of a male worker as inadmissible:[476] the appeal on the points of law did not expressly claim that the impugned judgment of the ACA was contrary to the jurisprudence of the CS or of other supreme courts. According to the Court, the case law of the CJEU, the CS and lower administrative courts invoked by the petitioner, was not aimed to satisfy the admissibility requirement of the petition but rather to support the substance of the claim, which the CS abstained from examining.

In the author's opinion, the impugned provision of Article 28(3)(d) Act 1846/1951 clearly falls within the scope of Article 7(1)(a),(b) of the Directive 79/7. However, it cannot be justified in the light of social developments in the matter concerned. To the author's knowledge, it seems that Greece has neither proceeded to the periodical examination of this exclusion, as required by Article 7(2) Directive 79/7, nor informed the Commission of its reasons for maintaining it, as required by Article 8(2) of the Directive.

Of course, it should be noted that the transitional provision of Article 13(1) Act 3816/2010 (which added to the last paragraph to the impugned provision) provides the gradual abolishment of the above favourable provision for mothers as of 2011. Thus, its practical

[475] Article 4 of the Greek Constitution provides: '1. Greek citizens are equal before the law. 2. Greek men and women have equal rights and obligations'.

[476] Article 12(1) Act 3900/2010 (OJ A 213), as complemented by Article 15(2) Act 4446/2016 (OJ A 240/22.12.2016).

effect is rather limited, applying mostly in old cases which have still not been adjudicated by the courts due to the extremely long duration of the judicial procedures (e.g. in the CS 931/2019 case, it took seven years from the issue of the IKA Director's initial decision to the issue of the CS judgment).

iii) Other discriminatory provisions still in force

Article 41(2) PD 284/1974, OJ A 101/17.4.1974, in combination with Article 48(5) Act 2084/1992, OJ A 165/7.10.1992, provides that mothers of underage children are entitled to an old-age pension by the social security fund for media employees (ETAP-MME).[477] By aligning with the reasoning of CS 1580/2010 (Full Section), in its Judgments Nos 1498/2019 and 9065/2019, the First Instance Administrative Court of Athens (FIACA) found that the provision in question constituted a derogation to the system of determination of the pensionable age in force, generally applied to men and women; due to its derogatory nature, even if it was to be found in breach of the Constitution, it could not be extended to other general or special categories of persons. Thus, its invocation by a male worker seeking its extension to himself was 'devoid of purpose'. Thus, the FIACA adopted the 'levelling-down' approach and rejected the case without expressing itself on the issue of constitutionality and compatibility with EU law. Of course, it should be noted that the transitional provisions of Article 144(3)(c) Act 3655/2008, OJ A 58/3.4.2008 and Article 10(17) Act 3863/2010, OJ A 115/17.7.2010 provide the gradual abolishment of the above favourable provision for mothers as of 2011. Thus, its practical effect is rather limited, applying mostly in old cases which have still not been adjudicated by the courts due to the extremely long duration of the judicial procedures.

The Ombudsman dealt with a complaint of a father of a disabled child regarding entitlement to old-age pension by EFKA (the general social security scheme). According to Article 2(E.3)(4) Act 4336/2015, OJ A 94/14.8.2015, mothers of disabled (and unable to work) children are exempted from the raised age limits adopted by the same Act (Article 2(E.3)(1)), which apply to the rest of the persons insured by EFKA, whereas fathers of such children are exempted only if they are widowers. The exempted categories are still covered by the more favourable age limits which were in force before the adoption of Act 4336/2015.[478] According to the Ombudsman, this provision is in breach of the constitutional norm of gender equality and the competent Ministry was asked to amend it by rendering it gender-neutral. The Ombudsman brought as an example the gender-neutral relevant provision[479] applying to civil servants. It provides that parents of children who are disabled (and unable to work), at a percentage of at least 67 % and who are not married, are exempted from the raise of age limits adopted by the same Act; in this case, the right to the above exemption can be exercised only by one parent upon the consent of the other.[480] To the author's knowledge, there has been no follow-up to this case.

A provision on the Merchant Seamen's Fund (NAT) scheme[481] sets stricter conditions for granting a pension to the mothers of deceased seafarers than those applying to fathers. The CS agreed with the First Instance Administrative Court, which held, relying on Article 4(2) of the Constitution and Directive 79/7/EEC, that mothers were entitled to the pension under the same conditions as fathers.[482] This provision has not been repealed.

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[477] ETAP-MME was merged into the single scheme EFKA as of 1 January 2017.

[478] Articles 28(3)(d) Act 1846/1951, OJ A 179/1.8.1951, as amended the last time by Article 144 Act 3655/2008, OJ A 58/3.4.2008, Article 24(6) Act 2084/1992, OJ A 165/7.10.1992 and Article 10(17) Act 3863/2010, OJ A 115/15.7.2010.

[479] Article 56(16) of the Code for Civil and Military Pensions (PD 169/2007, OJ A 210/31.8.2007), as added by Article 1(6) Act 4336/2015, OJ A 94/14.8.2015.

[480] Greek Ombudsman (2018), 'Σύνοψη διαμεσολάβησης - Σύνταξη γήρατος για μητέρες και χήρους πατέρες τέκνων ανίκανων για εργασία' (Summary of intervention – Old-age retirement for mother and fathers-widowers of children unable to work), available at: https://www.synigoros.gr/resources/docs/20180921-synopsi.pdf.

[481] Article 20(1)(c) of PD 913/1978, OJ A 220/14.12.1978.

[482] CS No. 831/2004 (Plen.).

7.6 Actuarial factors

Sex is not used as an actuarial factor in statutory social security schemes.

7.7 Difficulties

There is confusion between statutory and occupational schemes (see 6.6 above).

7.8 Evaluation of implementation

As mentioned above (see 7.4 above), the material scope of the Decree is restricted in that it does not cover social protection and unemployment.

The scarce case law on Article 7 of the Directive 79/7/EEC discloses the limited awareness of the distinction between statutory and occupational schemes among the various stakeholders of litigation (see 6.6, 7.5 (i) above).

There are some discriminatory provisions providing favourable age limits for mothers of disabled children unable to work, whereas excluding fathers in the same situation.

7.9 Remaining issues

There are no remaining issues regarding social security that have not been discussed so far.

8 Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1 General (legal) context

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

In July 2020, a thematic guide on maternity allowances and maternity leave for entrepreneurs and self-employed persons was published by the Institute of Small Enterprises of the Hellenic Confederation of Professionals, Craftsmen and Merchants (IME GSEVEE).[483] It includes the relevant legal framework and a series of answers to frequent questions about the rights deriving from maternity, the conditions of eligibility for maternity allowances and maternity leave, the medical expenses incurred by assisted reproduction and obstetric care, support for families with three or more children, entitlement to reduced social security contributions, indirect protection of maternity in the form of benefits such as summer camp programmes. The guide deals also with some specific cases, such as the death of the child or the mother, surrogacy and the derived rights and benefits for the father.

8.1.2 Other issues

There are no relevant issues.

8.1.3 Overview of national acts

Act 4097/2012, 'Implementation of the Principle of Equal Treatment of Men and Women Engaged in an Activity in a Self-Employed Capacity – Harmonisation of the legislation with Directive 2010/41/EU of the European Parliament and the Council', OJ A 235/3.12.2012 (Directive 86/613/EEC had not been transposed).

8.1.4 Political and societal debate and pending legislative proposals

There has been no political and/or societal debate and there are no pending legislative proposals on this topic.

8.2 Implementation of Directive 2010/41/EU

Directive 2010/41/EU has been explicitly implemented into national law by Act 4097/2012.[484]

8.3 Personal scope

8.3.1 Scope

With regard to personal scope related to self-employment in Greek legislation, Article 2(a) of Act 4097/2012 copies the definition of 'self-employed' which is used in the Directive. It covers self-employed workers, namely anyone pursuing a gainful activity for their own account, under the conditions laid down by national law and Article 1 of this Act. A more specific definition is not provided. For the purposes of employment and social security, several forms of employment are considered to be self-employment in contrast to subordinate employment.[485] The self-employed may work on the basis of a *contract for services* or *independent employment* or a *remunerated mandate*. The meaning of these

[483] Koutsoukou, I. (2020), *Guide on maternity allowances and leave for entrepreneurs and the self-employed*, Thematic guides IME-GSEVEE, Athens, available here.
[484] Act 4097/2012, OJ A 235/3.12.2012.
[485] On the meaning of 'subordinate employment' see SCPC (Civil Section) Nos 1674/2010, 433/2011.

terms results from the case law on employment in general (see 4.3.1 above). There is no case law which relies on Act 4097/2012.

8.3.2 Definitions

Self-employed workers belong to several categories depending on the form of their employment (see 8.3.1 above). The wording of Act 4097/2012 is so broad that it is difficult to justify any exclusion, but there is no case law.

8.3.3 Categorisation and coverage

Article 2(b) of Act 4097/2012 provides that this Act applies to 'the spouses of self-employed workers and their life partners, in accordance with the provisions of Act 3719/2008, OJ A 241/26.11.2008 and the provisions of Article 20[486] of Act 3801/2009, OJ A 163/4.9.2009, who are not employees or business partners, where they habitually participate in the activities of the self-employed worker and perform the same or ancillary tasks'.

8.3.4 Recognition of life partners

These Acts concern registered 'life partnership agreements' of two adults of different sexes, which produce some binding legal effects under civil law, but create no rights in matters of employment and social security. Act 4097/2012 creates no such rights (see 8.6 below).

Act 4097/2012 does not concern same-sex partnership agreements which have become possible by virtue of legislation postdating Act 4097/2012, i.e. Act 4356/2015.[487] Act 4356/2015 provided for life partnership agreements irrespective of sex, thus introducing same-sex partnership agreements for the first time.[488] According to its *travaux préparatoires*, Article 12 Act 4356/2015 grants to life partners irrespective of sex the same rights granted to spouses in all fields of law. However, it is only vaguely provided in Article 12 that existing provisions of labour and social security law 'may be adapted as regards life partners by Presidential Decree, within six months of the date on which this Act comes into effect'. As the Act came into effect upon its publication in the OJ (24 December 2015), the deadline for issuing the decree is 24 June 2016. Such a decree has not yet been issued, but rights in matters of social security have meanwhile been granted to same-sex partners by Article 16 of Act 4387/2016,[489] which stipulates: 'Persons having entered into a life partnership agreement in accordance with Act 4356/2015 are fully assimilated to married persons regarding all rights, benefits, obligations or restrictions related to social security which are provided by this Act or social security and social welfare legislation in general'. This provision applies only to life partnership agreements which were entered into after 23 December 2015. People who entered into a life partnership agreement before 23 December 2015 have the right, if they so wish, to have the provision of Act 4356/2015 applied in general by means of a notarial deed.[490]

In relation to employment rights, the decree provided by Article 12 Act 4356/2015 on employment rights of same-sex life partners has not yet been issued. However, the Ministry of Labour by its Circular 50763/1047/4.11.2016 states that employment rights are granted by Article 12(1) *per se* and the decree provided by Article 12(2) of the Act will provide only the necessary details; according to this interpretation, same-sex partners are

[486] There is a typing error in this provision: it is Article 29, not Article 20, which concerns life partnership.
[487] Act 4356/2015, OJ A181/24.12.2015.
[488] CS No. 2003/2018 found that the same-sex partnership is in line with the Greek Constitution and international treaties, it is not in breach of the constitutional provisions on the protection of marriage and family and it offends neither the Orthodox Christian religion nor the Church of Greece.
[489] Act 4387/2016, OJ A 85/12.5.2016.
[490] Circular EFKA 10/28.2.2017.

entitled to marriage benefits, marriage leave, etc. since the publication of the Act in the OJ (24 December 2015).

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

Article 4(1) of the transposing Act 4097/2012 has copied Article 4(1) of Directive 2010/41/EU.

8.4.2 Material scope

Article 4(1) of the transposing Act 4097/2012 has the same material scope as the Directive. It prohibits any direct or indirect discrimination on grounds of sex in the public or private sectors, either directly or indirectly, in particular in relation to family status, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

8.5 Positive action

Article 116(2) of the Constitution, which requires positive action, in particular in favour of women in all fields (see 2.1.2 above) is so broadly worded that it also covers the self-employed, but there do not seem to be any positive measures for the self-employed and/or their spouses or partners. Article 5 of the Directive on positive action was not transposed. In the author's view this is not a problem, given the Greek Constitutional provision of Article 116(2) that requires that the legislature and all other state authorities take any positive measures which are necessary and pertinent in promoting gender equality in all areas (see above under 2.1).

8.6 Social protection

Greece has a system of social protection for self-employed workers (see Article 7 Directive 2010/41/EU). Article 7 of the Directive has not been transposed. However, social security in Greece regarding old age, disability, provident and health benefits is mandatory for all workers and for their spouses and minor children as indirectly insured persons. This is unless they are personally covered by a scheme other than that which covers their spouse. Life partners are covered by social security, as explained under 8.3.4 above. Mandatory schemes are operated by legal entities under public law; therefore, their acts are subject to annulment by the CS.

Originally, there were specific mandatory (old-age and disability) pension schemes, health schemes as well as provident schemes (which pay a lump sum upon retirement), as well as certain voluntary supplementary pension schemes, for each profession or similar professions. These were gradually merged into larger schemes, as autonomous sections thereof; i.e. they have retained full autonomy regarding their accounts and finances, as well as their own regulations regarding affiliation and benefits. For example, the pension schemes for engineers and public works contractors (TSMEDE), for health workers (TSAY) and for lawyers, notaries public, bailiffs and land registrars (TAN), together with several health and provident schemes and supplementary pension schemes for these professionals, were merged into the Unified Scheme for Independent Workers (ETAA).[491]

The schemes for professionals and craftspeople (TEBE), traders (TAE), motorists and car owners (TSA) and maritime agents (TANPY) were abolished and those affiliated to them became automatically affiliated to the Organisation for the Insurance of Independent

[491] Articles 25-38 of Act 3655/2008, OJ 58/3.4.2008, establishing the ETAA, as amended and complemented by ministerial decisions; see ETAA website: http://www.etaa.gr and the websites of the schemes merged therein: http://www.tsmede.gr, http://www.tsay.gr and http://www.tnomik.gr.

Professionals (OAEE), which provides pension and healthcare coverage. The scheme for hoteliers was merged into the OAEE as an autonomous section thereof.[492] The pension, health and provident schemes for people working in the media, either as self-employed or as salaried workers, were merged into the Unified Scheme for the Personnel of Mass Media (ETAP-MME).[493] The pension and health scheme for farmers (OGA) covers both self-employed farmers and the salaried workers they employ.[494] Since 1 January 2017 all the main existing social security schemes (IKA-ETAM, ETAP-MME, ETAA, OGA, NAT, TAYTEKO, ETAT), together with state pensions, have been merged into one single scheme (EFKA) according to the provisions of Articles 51, 53 and 100(1) (2b) of Act 4387/2016 (OJ A 85/12.5.2016) (see 7.3 above).[495]

An unemployment allowance of EUR 360 per month which is well below the poverty threshold for Greece (about EUR 580, see 5.2.9 above) is paid to the self-employed for a period ranging from 3 months (under the condition of at least 3 completed years of affiliation to the social security scheme) up to 9 months (under the condition of 14 years of affiliation), and is subject to a strict means test.[496]

There are several systems which are mandatory for the people falling within their scope (see above).

Spouses of self-employed people who are covered by Article 7 in conjunction with Article 2(b) of the directive are not dealt with by Greek social security law. The spouses of the self-employed person, like other members of the family of the self-employed person, may be covered by the scheme of the self-employed person, if they so wish and if they are not covered by another scheme, albeit only regarding sickness benefits in kind.[497] They may be covered by the EFKA/IKA scheme (see 7.2 above), if they are full-time employees of their spouse.[498] However, these employees are outside the scope of Article 7 of the Directive.

Life partners of self-employed people are covered by the latter's social security scheme under the same conditions applying to spouses according to Article 12 Act 4356/2015.[499]

8.7 Maternity benefits

Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed people has been implemented into national law, but only partly, in Article 6(1) of the transposing Act 4097/2012, as amended by Article 44 of Act 4488/2017[500] which, however, has only transposed Article 8(1) of the Directive and only in part. It provides that self-employed women only (not the spouses or life partners of self-employed men) may be granted a maternity allowance allowing a temporary interruption of their activity due to pregnancy or maternity for at least 14 weeks and that the source, the amount of and the procedure for paying this allowance is to be determined by common decision of the competent ministers. This allowance is also granted to self-employed commissioning or surrogate

[492] Act 2676/1999, OJ A 1/5.1.1999 and Act 3655/2008, OJ 58/3.4.2008, Articles 7-24, as amended and complemented by ministerial decisions, and http://www.oaee.gr.
[493] Act 3655/2008 OJ 58/3.4.2008, as amended, Articles 39-51.
[494] Act 4169/1961, OJ 81/18.5.1961, as amended and complemented by ministerial decisions, and http://www.oga.gr.
[495] As of 1 March 2020, the single scheme of supplementary pensions ETEAEP was merged into EFKA, which was renamed 'e-EFKA' (Article 1 Act 4670/2020, OJ A 43/28.2.2020).
[496] Manpower Employment Organisation (OAED): www.oaed.gr.
[497] Act 3655/2008, OJ 58/3.4.2008, Article 26(d) regarding ETAA, Article 11 regarding OAEE.
[498] Article 1(1) Act 1759/1988 'Social security coverage of non-insured groups with IKA', OJ 50/1988; Ministerial Decision F.21/3288/20.12.1988, OJ B 04/1989, Regulation for the coverage by IKA of people employed in businesses belonging to members of their family.
[499] Social Security Organisation for the Self-Employed (OAEE) Circular 7/2016 on the granting of health benefits to life partners of the self-employed affiliated to the scheme.
[500] Act 4488/2017, OJ A 137/13.9.2017.

mothers and to mothers who adopt a child up to the age of two (Article 44(1) Act 4488/2017).

Article 8(3) of the Directive has not been transposed. Two joint ministerial decisions were issued on the basis of Article 6 of the transposing Act. The first one[501] granted a EUR 200 monthly allowance for four months to self-employed women insured with ETAA. The second one[502] granted a monthly allowance of EUR 150 for four months to self-employed women insured with OAEE, i.e. EUR 50 lower than the allowance granted to women insured with ETAA; this constitutes direct discrimination on grounds of pregnancy and maternity against self-employed women insured with OAEE. According to Circular 47/25.09.2019 of the Ministry of Employment and Social Affairs, the above maternity allowance is granted to self-employed women insured with OAEE irrespective of whether they have ceased to be self-employed before giving birth. Since 1 January 2017, both the ETAA and the OAEE were merged[503] into one single scheme, the 'EFKA'.[504] In the transitional period until the entry into force of the Single Benefits Regulation of EFKA, the particular provisions of the merged schemes governing entitlement to benefits continue to be applied.[505] However, almost three-and-a-half years later, the Single Benefits Regulation of EFKA has still not been adopted. As a result, for all these years, the above-mentioned maternity allowances still apply. Moreover, those insured with other schemes (ETAP-MME and OGA, see 8.6 above) have not yet been granted any allowance. This constitutes direct discrimination on grounds of pregnancy and maternity against self-employed women insured with these other schemes.

The period covered by the above allowances is about 16 weeks, i.e. two weeks more than the minimum required by the directive, but one week less than the period for salaried women in the private sector (see 5.2.1, 5.2.5 above). Yet, the monthly amount granted by both ministerial decisions is far below the poverty threshold (about EUR 580) and even significantly lower than the unemployment allowance, which is EUR 360 (see 5.2.9 above). Therefore, these allowances cannot be considered 'sufficient', as required by Article 8(1) and (3) of the Directive. Anyway, the three criteria mentioned in Article 8(3) would make no sense in Greek law, as self-employed people receive no allowance when interrupting their activities on grounds connected with their health (a), nor any other family allowance (c), nor is it possible to estimate the average loss of their income (b). Furthermore, the first ministerial decision is in conflict with the directive, as on the occasion of the directive's transposition it lowered the maternity allowance granted by prior legislation to certain self-employed women falling within its scope. For example, self-employed women lawyers received a lump sum of EUR 470 before giving birth and EUR 470 after giving birth (EUR 940 in total).[506] This was EUR 140 higher than the total amount of the allowance granted by the first decision (EUR 200 monthly for four months).

Entitlement to the maternity allowance (Article 6(1) of Act 4097/2012, transposing Article 8(2) of the Directive) is subject to direct insurance with the scheme which grants it, settlement of the contributions to it, entitlement to sickness benefits, no entitlement to maternity allowance from another scheme and self-employment. If this allowance is requested and these conditions are satisfied, the payment is mandatory. In its Opinion No. 108/2020, the Legal Council of the State found that self-employed women who used to be insured with ETAA but have ceased their professional activity, are not entitled to said maternity benefit, irrespective of whether they are still eligible for benefits in kind or they have opted for voluntary insurance. The endorsement of this Opinion by the competent minister is still pending (hence it is not binding yet).

[501] Decision No. F.10060/15858/606, OJ B 2665/8.10.2014.
[502] Decision No. F.40035/41931/1653, OJ B 192/23.1.2015.
[503] Together with all the main existing social security schemes and the state pensions.
[504] As of 1 March 2020, the general social security scheme 'EFKA' was renamed 'e-EFKA' by virtue of Article 1 Act 4670/2020, OJ A 43/28.2.2020.
[505] By virtue of the transitional provision of Article 32 Act 4387/2016.
[506] Decree 162/1998, OJ A 122/5.6/1998.

Paragraph 4 of Article 8 of the Directive has not been transposed. There are no services supplying temporary replacements or relevant national social services.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

National law implemented the provisions regarding occupational social security for self-employed people (see Article 10 of Recast Directive 2006/54/EC) in Article 8 of Act 3896/2010 transposing the Recast Directive. This Article mostly merely copies the directive's provisions, without clarifying which Greek schemes are occupational. Therefore, the transposition of the directive's provisions on occupational schemes does not create the legal certainty which is required by well-established CJEU case law and so it is considered by the author to be inadequate (see 6.5 above).

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 Recast of Directive 2006/54)

Article 8(3) of Act 3896/2010 transposing Directive 2006/54/EC provides that, 'the application of the principle of equal treatment in occupational schemes for self-employed persons regarding the pensionable age […] is deferred until the date on which equal treatment is achieved in statutory schemes'. However, this date had already been determined by Act 3863/2010,[507] which gradually equalised the pension conditions (the pension age and service requirements) for men and women, in both statutory and occupational schemes, from 2011 to 2015. Thus, Article 8(3) of the act would only make sense if it referred to the relevant provisions of Act 3863/2010. As it stands, it can only create confusion. Moreover, Act 3863/2010 fixed a date for achieving the equalisation of minimum service requirements and the pensionable age in schemes for the self-employed: 31 December 2015. Therefore, in the author's view, for self-employed people affiliated with an occupational scheme, it is the transition period provided by Act 3863/2010, rather than the date of 1 January 1993 provided by Article 10(1) of the directive, that applies, since the directive does not allow the act to impair the existing legal situation. This is all the more so as Act 3863/2010, although it is aimed at dealing with the financial problems of social security in the context of the economic crisis, and although it does not refer to gender equality or EU law, must be deemed as also implementing the occupational social security provisions of the Recast Directive, since it has equalised pension conditions. However, all this is not clear; hence the transposition of the Recast Directive regarding the occupational schemes is generally inadequate (see 6.5 above).

8.9 Prohibition of discrimination

Article 14(1)(a) of Recast Directive 2006/54/EC has been implemented in national law as regards self-employment by Article 11(1) of Act 3896/2010 transposing Directive 2006/54/EC, which reads:

> 'Any kind of direct or indirect discrimination on grounds of sex or family status regarding conditions of access to salaried or non-salaried employment and professional life in general, including the criteria for selection and conditions of hiring in all sectors of activity and levels of professional hierarchy is prohibited.'

'Non-salaried employment' means any form of non-subordinate employment, such as employment *for services* or *independent employment* or a *remunerated mandate* (see 8.2 above), i.e. self-employment within the meaning of the directive.

[507] Act 3863/2010, 'New social security system and related provisions, regulation of employment relationships,' OJ A 115/15.7.2010.

An example of persisting gender discrimination can be found in the case of male lawyers who are not entitled to recoup the nursery fees they have paid, although female lawyers are entitled to do this. Article 15 of PD 162/1998 providing the regulation of social insurance for Athens lawyers against the risk of sickness (*Κανονισμός περίθαλψης Τ.Υ.Π.-Δ.Α.*) (OJ A 122/1998) has not been modified since its adoption. It provides that:

> 'The social security scheme grants an allowance for the coverage of nursery fees for the children of the insured persons. The amount of the allowance is defined by decision of the Administrative Board of the social insurance scheme and is granted for up to 11 months per year. Beneficiaries of the allowance are directly insured female lawyers and female trainee-lawyers who have children aged from one to five years insured in the same scheme and who are not entitled to such an allowance by another social security scheme. For the approval and reimbursement of the expense the following documents are required: a) an application of the entitled person, b) a receipt of payment issued by the crèche and c) a statement, as required by Act 1599/1986, by which it is declared that the relevant allowance is not granted by another source and that the child has remained in the crèche for the whole period concerned.'

The FIACA, in at least three judgments (FIACA 15908/2019, 3210/2017 and 5774/2007), has found this provision to be in breach of the principle of gender equality as proclaimed by Articles 4(2) and 116(2) of the Greek Constitution and EU law. More specifically, FIACA 5774/2017 applied PD 87/2002[508] for the implementation of the principle of equal treatment of men and women in occupational social security schemes, including those of the self-employed, which transposed Directives 96/97/EC and 86/378/EEC, and in particular its Article 5(e) prohibiting different conditions of access to allowances on the basis of sex (directly or indirectly) or the exclusion of one sex. FIACA 3210/2017 referred to Directive 76/207/EEC, which is irrelevant according to the author's view. Both judgments obliged the above social security scheme to pay the claimants (male lawyers) the sum of the nursery fees they had paid. In addition to this, FIACA 5574/2007 awarded the symbolic sum of EUR 100 for moral damages.

FIACA No. 15908/11.11.2019 concerned a male lawyer, father of two minor children born in 2004 and 2011, who in 2012 asked the social security scheme at issue 'Unified Insurance Fund for the Self-Employed' (*Ενιαίο Ταμείο Ανεξάρτητα Απασχολούμενων – ETAA* as a successor to *Τ.Υ.Π.-Δ.Α.*) to pay him the above nursery allowance for the period November 2005 to December 2011 in the sum of EUR 2 930.00. Said Fund refused to do so, arguing that according to the relevant regulation in force, the above allowance is restricted to female lawyers. In December 2012, having completed the obligatory internal administrative procedure, the male lawyer brought a recourse against said Fund to the FIACA. He argued that the refusal was a breach of Greek and EU gender equality law. The case was heard in February 2019. By its judgment, No. 15908/11.11.2019, the FIACA found that Article 15 of PD 162/1998 constituted direct discrimination against male lawyers in breach of the provisions of the Greek Constitution (Article 4(2) on gender equality[509] and Article 21 on family protection)[510] in conjunction with EU law (Article 157 TFEU, Directive 79/7/EEC),[511] PD 87/2002,[512] which transposed into the Greek legal order the

[508] PD 87/2002, OJ A 66/4.4.2002.

[509] Article 4(2) of the Greek Constitution ('Greek men and women have equal rights and obligations') requires (substantive) sex equality in all areas; it implicitly prohibits sex discrimination.

[510] Article 21(1) of the Greek Constitution requires the protection of marriage, the family, motherhood and childhood. This requirement seems to be similar to that of Article 33(1) of the EU Charter. Greek case law relies on this provision, alone or in conjunction with Article 4(2) of the Constitution, in order to uphold claims to maternity and parenthood protection.

[511] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979, pp. 24-25.

[512] PD 87/2002 on the application of the principle of equal treatment of men and women in the occupational social security schemes, implementing Directives 96/97/EC and 86/378/EEC, OJ A 66/4.4.2002. It has been repealed by Article 30(5) of Act 3896/2010 transposing Directive 2006/54/EC.

Directives 96/97/EC and 86/378/EEC, and Act 3896/2010,[513] which transposed Directive 2006/54/EC. By finding so, the Court proceeded to levelling up, declaring that beneficiaries of the allowance at issue are also male lawyers (and trainee lawyers) with children aged one to five years, who are insured with said scheme and who are not beneficiaries of the relevant allowance through another social security fund. However, the Court did not adjudicate to the male lawyer the due sum of EUR 2 930, finding that it does not have the power to check whether the other conditions for the payment of the above allowance are met; thus, the case was sent back to said Fund.

It is noteworthy that although it took seven full years from the filing of the recourse to the FIACA until the issue of its judgment, the sum in question has not been adjudicated to the wronged beneficiary, who will have to initiate a new administrative procedure by said Fund and wait several months before he is able to collect the due sum. This shows, again, the issue of the extensive duration of judicial proceedings as a deterrent to gender equality litigation.

Responding to a complaint lodged by a male lawyer, in December 2015, the Ombudsman found that Article 15 of PD 162/1998 introduced discrimination based on sex to the detriment of male lawyers insured with the scheme. As a result, the complainant was paid the allowance initially refused. Moreover, the scheme concerned committed itself to paying the nursery allowance to all male lawyers insured with the scheme henceforth.[514]

Despite the above jurisprudence and the Fund's public commitment (since 2015) to extend the allowance to male lawyers as well, the impugned provision has not been modified since its adoption. It still stays on the books with the potential effect of discouraging potential male beneficiaries who are not familiar with the above-mentioned jurisprudence (and gender equality law, in general) from exercising their right to said allowance.

The social security scheme at issue (Τ.Υ.Π.-Δ.Α.) provides protection against sickness and other social benefits to all Athens lawyers (i.e. to a specific group of self-employed workers). According to Article 5(1) of Act 3896/2010[515] transposing Directive 2006/54/EC, this Act applies to the working population, including the self-employed. This provision transposes Article 6 of the Directive. Moreover, according to Article 5(2)(a) of the Act, the material scope includes occupational social security schemes that provide sickness benefits. This provision transposes Article 7(1)(a) (i) of the Directive. Therefore, the prohibition of gender discrimination set out in Article 9(1)(e) of the Directive applies to the impugned provision of the above scheme. Besides, in the author's view, to the extent that the social security scheme at issue constitutes an occupational scheme, the nursery allowance must be considered an element of pay and, therefore, Article 14(1)(c) of the Directive also applies (whereas Article 5(a) does not apply given that in the specific case the sex discrimination does not impede access by male lawyers to the fund in general but excludes them from this specific allowance). It could also be argued that the impugned provision is in breach of Article 4 of Directive 2010/41/EU, which was transposed by Article 4 Act 4097/2012.[516]

8.10 Evaluation of implementation

The scarcity of relevant case law shows that the gender equality legislation in relation to self-employed workers is not widely known and applied in practice. Maternity benefits for

[513] Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council', OJ A 207/8.12.2010.

[514] Greek Ombudsman (2015), 'Σύνοψη διαμεσολάβησης- Άρση της διάκρισης λόγω φύλου στη χορήγηση επιδόματος βρεφονηπιακού σταθμού' (Summary of intervention – Gender discrimination in granting the nursery allowance abolished), available at: www.synigoros.gr/resources/docs/epidoma-vrefonhpiakoy-sta8moy.pdf.

[515] Act 3896/2010, OJ A, 207/8.12.2010.

[516] Act 4097/2012, OJ A 235/3.12.2012.

the self-employed have been fixed to a sum that is far beyond the poverty threshold. Despite the merge of the various social security schemes into one single scheme – the 'EFKA', since 1 January 2017 – still the Single Benefits Regulation of the 'EFKA' has not been issued and the particular provisions of the merged schemes governing entitlement to benefits continue to be applied (see 8.7 above).

An example of persisting gender discrimination can be found in the case of male lawyers who are not entitled to recoup the nursery fees they have paid, although female lawyers are entitled to do this (see 8.9 above).

8.11 Remaining issues

Self-employment issues related to the COVID-19 pandemic.

To date there are no available data on the effect of the pandemic on self-employed women.

Regarding female entrepreneurship, it has been deplored by the NGO 'Greek Association of Women Entrepreneurs' that female entrepreneurs have been largely affected by the pandemic: they were the first to close their enterprises or leave them ungoverned at the closure of schools and open care services whereas even after the end of the first lockdown, they could not return to their enterprises, as schools and open care services remained closed. According to a survey conducted by this NGO,[517] 92 % of female entrepreneurs stated that they felt neglected by the Government during the pandemic. Regarding family responsibilities (FR), 61 % of the interviewees stated that FR were raised unilaterally to their detriment, 21 % that FR fell on them to a significantly larger extent than to their husbands/partners, only 16 % stated that FR were shared equally with their husbands/partners whereas a mere 2 % stated that their partner bore the largest part of FR.

[517] https://www.sege.gr/%ce%bb-%cf%84%cf%83%ce%b1%ce%bb%cf%84%ce%b1%ce%bc%cf%80%ce%ac%cf%83%ce%b7-%ce%bf%ce%b9-%ce%b3%cf%85%ce%bd%ce%b1%ce%af%ce%ba%ce%b5%cf%82-%ce%b5%cf%80%ce%b9%cf%87%ce%b5%ce%b9%cf%81%ce%b7%ce%bc%ce%b1/.

9 Goods and services (Directive 2004/113)[518]

9.1 General (legal) context

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

In 2019, an article on the prohibition of discrimination in the provision of insurance and credit products and services analysed the CJEU *Test-Achats* judgment and the relevant provisions of Directive 2004/113. Although in this field an explicit prohibition of discrimination is provided only on the grounds of sex and race, the author argues that providers of such services are not free to take into account other characteristics that interfere with the narrow core of the personality of the individual to a lesser (age) or a greater grade (religion, sexual orientation) when fixing the price of relevant products and services and that a complex balancing of the different interests should take place in each particular case.[519]

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

There are no signs of emerging problems of discrimination concerning access to and supply of goods and services in the online environment/digital market/collaborative economy.

9.1.3 Political and societal debate

There has been no political and/or societal debate on this topic.

9.2 Prohibition of direct and indirect discrimination

Greek law prohibits direct and indirect discrimination on grounds of sex in access to goods and services in Act 3769/2009.[520]

The new Criminal Code in Greece, which was introduced by Law 4619/2019[521] and came into force on 1 July 2019 by replacing the previous Code of the year 1950, abolished Article 361B that concerned punishment of provision of goods and services in cases where this provision was based on grounds of discrimination. Article 361B had been introduced in the previous Criminal Code by Article 29 of Act 4356/2015.[522] Specifically, Chapter 21 of the current Greek Criminal Code abrogates Article 361B of the previous Code which stated that whoever supplies goods or offers services or announces through a public call the supply of goods or provision of services by excluding out of disdain individuals based on characteristics of, *inter alia*, gender identity or gender characteristics, is to be punished with imprisonment of a minimum of three months and a fine of at least EUR 1 500. However, it should be highlighted that this repeal does not affect the general interdiction of discrimination regarding access to goods and services enshrined in Act 4443/2016. In particular, Article 11 of Law 4443/2016[523] stipulates that whoever refuses to provide goods and services on grounds of, *inter alia*, gender identity and sex characteristics is punished

[518] See e.g. Caracciolo di Torella, E. and McLellan, B. (2018) *Gender equality and the collaborative economy* European network of legal experts in gender equality and non-discrimination, available at: www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb.

[519] Papikinou, A. (2019), 'Η απαγόρευση των διακρίσεων κατά την παροχή ασφαλιστικών και πιστωτικών προϊόντων και υπηρεσιών' (The prohibition of discrimination in the provision of insurance and credit products and services) in: Κέντρο Διεθνούς και Ευρωπαϊκού Οικονομικού Δικαίου (ΚΔΕΟΔ) (Centre for International and European Economic Law) (ed.), *Ελευθερία των συμβάσεων και απαγόρευση των διακρίσεων (Contractual freedom and the prohibition of discrimination),* Sakkoulas, pp. 55-89.

[520] Act 3769/2009, OJ A 105/1.7.2009.

[521] Act 4619/2019, OJ A 95/11.6.2019.

[522] Act 4536/2015, OJ A 181/24.12.2015.

[523] Act 4443/2016, OJ A 232/9.12.2016.

with an imprisonment ranging from three months to five years and a fine ranging from EUR 1 000 to EUR 5 000.

Moreover, the Code of Consumerist Deontology (PD 10/2017, OJ A 23/1.3.2017), which entered into force on 31 March 2017, provides in Paragraph 2 of its Article 2 entitled 'General principles of the entrepreneurial behaviour of the providers' that 'the entrepreneurial behaviour of the providers ensures the equal treatment of men and women'. This Code sets the principles that should govern the transactive behaviour and the relations between providers and consumers and their unions; it aims to ensure the economic interests of the consumers through the providers' compliance with the law in the performance of their professional activity. The implementation of this Code is monitored by the Consumer's Ombudsman, who is also competent to monitor the implementation of Act 3769/2009 transposing Directive 2004/113/EC, albeit only in the private sector (see 11.7 below). A newsletter of the Consumer's Ombudsman with the title 'The implementation of the principle of equal treatment between men and women in terms of equal access to goods and services in the private sector' was issued in March 2017.[524]

9.3 Material scope

The material scope of the transposing Act 3769/2009 relating to access to goods and services is the same as specified in Article 3 of Directive 2004/113/EC. Actually, Article 3 of the Act transposing Directive 2004/113/EC has copied Article 3 of the Directive. It states that its provisions apply to everyone who provides goods and services which are available to the public, irrespective of the person concerned as regards the public sector, the wider public sector, as it is defined by the provisions in force, and the private sector and which are offered outside the area of private and family life and the transactions carried out in this context. There is no case law on either this act or the Directive.

9.4 Exceptions

Greek law has applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113/EC, regarding the content of media, advertising and education in Article 3(3) of Act 3769/2009.

9.5 Justification of differences in treatment

Differences in treatment in the provision of goods and services have been justified in national law (see Article 4(5) of Directive 2004/113/EC). More specifically, Article 4(3) of the transposing Act 3769/2009 has copied Article 4(5) of the Directive. It provides that it does not preclude differences in treatment, if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim, the means of achieving that aim are appropriate and necessary and there is a reasonable analogy between the difference in treatment and the legitimate aim.

In 2019, the Consumer's Ombudsman (which is the monitoring authority for the private sector) (Article 11 Act 3769/2009) (see 11.5.1 below) dealt with a complaint brought by a woman against a private insurance company. She complained that her private health insurance contract for outpatient care excluded from coverage the diseases of female genitals and their complications. In its written explanations to the Ombudsman, the private insurance company failed to justify this exclusion on the basis of trustworthy actuarial statistical evidence. The Consumer's Ombudsman found this exclusion to be discriminatory on the grounds of sex regarding benefits, in breach of the transposing Act 3769/2009. The Ombudsman recommended to the company to eliminate said exclusion from its contracts and to reimburse the complainant for the expenditure unlawfully entailed. The private

[524] Greek Consumer's Ombudsman newsletter 'The implementation of the principle of equal treatment between men and women in terms of equal access to goods and services in the private sector', March 2017, available at: http://www.synigoroskatanaloti.gr/docs/info/Info-leaflet-Isotita-v2017.pdf.

company accepted the Ombudsman's recommendations and committed itself to immediately eliminating the said exclusion from its new insurance contracts and to inform the holders of old insurance contracts on the elimination of the said exclusion, satisfying eventual claims for reparation.

9.6 Actuarial factors

Greek law ensures that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services does not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113/EC) in Article 6(1) of Act 3769/2009. The above provision has copied Article 5(1) of the Directive, omitting the date of 21 December 2007 as the starting date for the prohibition, as the transposing Act is subsequent to this date. More specifically, Article 6(1) of the transposing Act 3769/2009 provides that the use of sex as a factor in the calculation of premiums and benefits in all contracts for the purposes of insurance and related financial services, which are concluded after the entry into force of this Act, is not to result in differences in individuals' premiums and benefits.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

The exceptions allowed by Article 5(2) were also allowed by Article 6 of Act 3769/2009, although this Act was subsequent to the date of 21 December 2007, before which the differences should have been allowed. Following the *Test-Achats* ruling, Article 6(1) and (2) were replaced by Article 162 of Act 4099/2012,[525] as follows:

> '1. The use of sex as a factor in the calculation of premiums and benefits in all contracts for insurance and other related financial services concluded as from 01.07.2009 [date of the publication of Act 3769/2009 in the OJ] shall not result in differences in individual premiums and benefits.
> 2. Proportionate differences in individual premiums and benefits where the use of sex is a determining factor in risk assessment are only allowed, as an exception to Paragraph 1, for insurance contracts concluded until 20.12.2012 [date of the publication of Act 4099/2012 in the OJ] only regarding life insurance, insurance against accidents, illness and civil liability for vehicles, in accordance with the risk management policy of the insurance companies, on the basis of significant and reliable actuarial statistical data.'

Article 162 of Act 4099/2012 also replaced Article 14(1) of Act 3769/2009 as follows:

> 'Contracts for life insurance, insurance against accidents, illness and civil liability for vehicles, which were concluded or will be concluded until 21.12.2012 [one day after the publication of Act 4099/2012 in the OJ] and maintain the use of sex as an actuarial factor, will remain in effect until they expire, in accordance with Paragraph 2f Article 6.'

There is no case law regarding either Act 3769/2009 or Article 162 of Act 4099/2012.

In its newsletter, 'The implementation of the principle of equal treatment between men and women in terms of equal access to goods and services in the private sector', dated March 2017,[526] the Consumer's Ombudsman refers to women's complaints submitted under the scope of Act 3769/2009 concerning the readjustment of insurance premiums in life insurance contracts on the basis of age alteration by sex. The female complainants argued that Article 6 Act 3769/2009 does not allow the insurance companies to readjust

[525] Act 4099/2012, OJ A 250/20.12.2012.
[526] Greek Consumer's Ombudsman newsletter 'The implementation of the principle of equal treatment between men and women in terms of equal access to goods and services in the private sector', March 2017, available at: http://www.synigoroskatanaloti.gr/docs/info/Info-leaflet-Isotita-v2017.pdf.

insurance premiums on the basis of sex. In one case, an insured woman had been wrongly registered as 'male' in the insurance contract and for several years had been paying lower premiums than those she would have paid, if she had been registered as 'female'; this mistake was found by the insurance company when the insured woman asked for the childbirth benefit upon the birth of her child. In all these cases, the insurance companies clarified that the use of sex as an actuarial factor in the calculation of premiums and benefits for the purposes of insurance is allowed only for insurance contracts concluded up to 20 December 2012 regarding life insurance, insurance against accidents, illness and civil liability for vehicles, on the basis of significant and reliable actuarial statistical data, whereas after 21 December 2012, the insurance premiums have been equalised for men and women for the new contracts, according to the CJEU *Test-Achats* judgment.[527] All the cases were settled out of court. It seems that no other such complaints have been submitted.

9.8 Positive action measures (Article 6 of Directive 2004/113)

Greece has not adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113/EC), but in the author's view Article 116(2) of the Constitution (see 2.1.2 above) requiring positive action in all fields applies. Article 116(2) of the Constitution imposes on the state a positive obligation on positive action which goes far beyond the scope of this Directive.

9.9 Specific problems related to pregnancy, maternity or parenthood

In Greece there seem to be no specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in relation to access to and the supply of goods and services; at least, there is no relevant case law. The Annual Reports of the Ombudsman[528] and the Consumer's Ombudsman[529] (which are the monitoring authorities for the public and private sector respectively) mention no problems related to pregnancy, maternity or parenthood in relation to access to and the supply of goods and services.

9.10 Evaluation of implementation

The lack of relevant jurisprudence shows that the gender equality legislation in relation to goods and services is not widely known and applied in practice. The Consumer's Ombudsman has successfully dealt with women's complaints concerning the readjustment of insurance premiums in life insurance contracts on the basis of age alteration differentiated by sex by applying the findings of the CJEU *Test-Achats* judgment (see 9.7 above).

9.11 Remaining issues

There are no remaining issues. There are no examples of issues regarding access to goods and services related to the COVID-19 crisis.

[527] CJEU (Grand Chamber), Case C-236/09, *Association Belge des Consommateurs Test-Achats ASBL and Others v Conseil des ministres*, 1 March 2011.
[528] https://www.synigoros.gr/resources/ee2020-p00-plires-keimeno.pdf.
[529] http://www.synigoroskatanaloti.gr/docs/StK-Annual-Report-2019.pdf.

10 Violence against women and domestic violence in relation to the Istanbul Convention

10.1 General (legal) context

10.1.1 Surveys and reports on issues of violence against women and domestic violence

Act 3500/2006[530] was the first systematic attempt to deal with domestic violence in Greece. According to Act 3500/2006, domestic physical injury constitutes a specific offence and is punished more severely than the common physical injury. A big novelty of Act 3500/2006 was the institution of penal mediation in the Greek penal system for the first time, in implementation of the Decision-Framework of the European Council of 15 March 2001 (2001/220). According to the Greek case law,[531] penal mediation is a specific procedural condition for the exercise of criminal prosecution: the Advocate General has to examine the possibility of penal mediation before following the penal procedure, otherwise the latter is null and void.

An interesting survey providing insights into issues of domestic violence was published in 2015. It is based on empirical research into cases involving penal mediation between spouses and partners by the District Attorney of the city of Thessaloniki in Northern Greece.[532] The introduction of penal mediation has been criticised due to the lack of entities to conduct the therapeutic/counselling programme. The empirical research was conducted in 2011 and concerned cases put forward for penal mediation from the entry into force of the said Act until 2010.

Most of the cases involved violence between spouses (56 %). Of 27 perpetrators 26 were male and only one female, who happened to be the victim as well (case of mutual violence). Of 29 victims, 23 were female and 6 male (3 of whom were perpetrators as well), i.e. there was an over-representation of men among the perpetrators and of women among the victims. In 5 out of 18 cases of violence between spouses there was a minor child in the family who, according to the Act, is considered to be a victim of domestic violence. Among the people involved, 59 % were Greek nationals whereas 41 % were citizens of the ex-Soviet Union and the Balkans. According to the survey, this shows that the factors which lead to domestic violence deteriorate due to the traumatic experience of immigration. However, among the cases where the procedure of penal mediation was recalled,[533] the percentage of foreigners was 71 % (five out of seven perpetrators). 50 % of the cases concerned physical violence, 40 % psychological violence and 10 % verbal violence. The author criticised the implementation as typically bureaucratic and to a great extent impersonal and time-consuming and the therapeutic/counselling programme as particularly short and not likely to prevent relapse; the victim has a secondary role in the procedure and her/his protection is not secured.

According to the author, penal mediation could be successful if: (i) there were more entities competent to run the therapeutic/counselling programme; (ii) the less serious cases were selected for penal mediation following an expert opinion by a psychologist or a social worker; (iii) the social services of the local authorities were involved. Moreover, more hostels for the victims are needed along with awareness-raising campaigns. Long-

[530] Act 3500/2006, OJ A 232/24.10.2006.

[531] SCPC (Penal Section) 498/2019.

[532] Hatzispyrou, Th. (2015), *'Ενδοοικογενειακή βία & ποινική διαμεσολάβηση. Θεωρητική μελέτη με έμφαση στη βία μεταξύ συζύγων/συντρόφων και εμπειρική έρευνα υποθέσεων Ποινικής Διαμεσολάβησης στην Εισαγγελία Πρωτοδικών Θεσσαλονίκης'* (Domestic violence and penal arbitration. A theoretical study with emphasis on violence between spouses/partners and an empirical study of penal mediation cases by the District Attorney of Thessaloniki), *Εγκληματολογία* (*Criminology*) (2015), pp. 117 et seq.

[533] According to the system of penal mediation, if the perpetrator complies with the conditions of the penal mediation for a period of 3 years, the procedure is concluded and there is no penal sanction by the state. During the penal mediation, the criminal act is not time-barred until the penal mediation is concluded. In case the perpetrator breaches on purpose the terms of the mediation, the penal mediation is recalled and the penal proceedings continue. In this case, a new petition for penal mediation is not allowed.

term prevention should be sought through education, by enhancing the gender equality principle and relations of mutual respect between men and women from the early years of childhood.

In 2019, a survey was published dealing, *inter alia*, with violence against women and domestic violence in relation to the IC.[534] The survey presents, in an analytical way, the legal framework which was adopted after the ratification of the IC by Act 4531/2018, focusing on its main innovative provisions. In principle, the new Act is evaluated positively. Nonetheless, it is criticised for not providing: (i) the introduction into schools of educational material on the fight against violence and the elimination of gender stereotypes; (ii) the training of professionals dealing with the victims of violence (e.g. doctors, psychologists, teachers) and of the Police officers, regarding the treatment of violence incidents. Moreover, the survey proposes the adoption of preventative measures aiming at the sensibilisation of society. Finally, it estimates that the GREVIO mechanisms will contribute to the monitoring of the application of the new law.

In 2020, an article with the title 'The ILO Convention 190 and Recommendation 206 of June 2019: Recognition of sexual harassment and harassment related to sex at work as forms of gender-based violence' was published by the author of this report in the September 2020 issue of a legal labour law review.[535] Based on this report, on 8 December 2020 the Greek League for Women's Rights made a 'Call to the Greek Government for the ratification of the ILO Violence and Harassment Convention'. On 15 January 2021, the Greek Olympic Gold champion in sailing Sofia Bekatorou revealed that she had suffered sexual abuse as a 21-year-old member of the Greek national team back in 1998 by a high-ranking executive officer of the Greek Sailing Federation. By an immediate response to these revelations which marked the still ongoing #MeToo movement in Greece, the Greek League for Women's Rights brought once again to the fore, *inter alia,* the issue of the ratification of ILO Convention 190 by Greece. Soon its claim was adopted by almost all women's NGOs and several political parties as well. Six days later, on 21 January 2021, the Greek Prime Minister Kyriakos Mitsotakis announced that Greece is going to ratify the ILO 190 Violence and Harassment Convention in the near future. With the publisher's consent, this Article has been posted in several women's NGOs websites where it still stands.[536]

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

Act 4531/2018 'Ratification of the Council of Europe on preventing and combating violence against women and domestic violence and adaptation of the national legislation etc.'[537]

Act 3500/2006 'Tackling domestic violence and other provisions.'[538] [539] Amended by: (i) Article 16(2) Act 3868/2010, which added a new paragraph to Article 4 of this Act, declaring 30 April as the day against corporal punishment of children, and (ii) Article 3

[534] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα (The legal treatment of gender-based discrimination in Greece),* Heinrich Böll Stiftung, Greece.

[535] Petroglou, P. (2020), 'Η Δ.Σ.Ε. 190 και η Σύσταση 206 του Ιουνίου 2019: Αναγνώριση της σεξουαλικής παρενόχλησης και της παρενόχλησης λόγω φύλου στην εργασία ως μορφών έμφυλης βίας' (The ILO Convention 190 and the Recommendation 206 of June 2019: Recognition of sexual harassment and harassment related to sex at work as forms of gender-based violence), *Επιθεώρησις Εργατικού Δικαίου* (*Labour Law Review*), vol. 9/2020, pp. 993-1008.

[536] http://leagueforwomenrights.gr/images/15032021/993-1008.pdf; https://tomov.gr/2021/02/01/diethnis-symvasi-ergasias-190-ti-via-stin-ergasia/.

[537] Act 4531/2018, OJ A 62/5.4.2018.

[538] Act 3500/2006, OJ A 232/24.10.2006.

[539] Stefanidou, A. (2011), *Ενδοοικογενειακή βία – Η έννοια της οικογένειας και η διαδικασία της ποινικής διαμεσολάβησης* (Domestic violence – The concept of family and the procedure of the penal mediation), *Νομική Βιβλιοθήκη* (Nomiki Vivliothiki).

Act 4531/2018, which *inter alia* extended the personal scope of the Act to life partners and their children.[540]

10.1.3 National provisions on online violence and online harassment

Article 333(1) PC[541] prohibits stalking, *inter alia*, through a telephone or an electronic device. This provision, adopted for the first time by Act 4531/2018, implements Article 34 of the IC.

10.1.4 Political and societal debate

An information workshop was organised by the General Secretariat for Equality on 10 October 2018 on the ratification of the IC and its entry into force for Greece.

Moreover, on the occasion of the public consultation on the amendment of the PC, on 26 March 2019, the Greek Department of Amnesty International submitted a written report to the Minister of Justice asking for an amendment of the definition of rape in the new PC (Article 336) so that it is based on the lack of consent, thus in harmony with the international standards of human rights, such as the IC. Amnesty International denounced the fact that both the existing wording of Article 336 PC and its proposed amendment focus on resistance and violence rather than the lack of consent (see 10.2 (ii(b)) below).

In November 2019, a special Task Force for the Treatment of Domestic Violence was established within the Greek Police[542] aiming at the effective protection and support of the victims and the prevention of their secondary victimisation; the encouragement and better management of the complaints; the prevention and the treatment of domestic violence crimes; the coordination of all the authorities involved and the systematic monitoring of the cases; the education and ongoing training of the Police force and the sensitisation of citizens.[543] The establishment of this Task Force was the result of a fruitful cooperation of the General Secretariat for Equality and the competent Ministry of Citizen Protection since the beginning of 2019, upon the acknowledgement that there were serious problems concerning the treatment of victims of domestic violence at local Police stations. Although this evolution has been welcomed by feminist groups as long-due, it has been deplored that the relevant press release of the Ministry of Citizen Protection is striking gender-

[540] Act 4531/2018, OJ A 62/5.4.2018.

[541] Article 333 PC reads: '1. Anyone who causes to another terror or uneasiness, by threatening him/her with violence or other unlawful act or omission is punished with imprisonment up to one year or with a fine. The punishment of the paragraph above is imposed on anyone who, without the threat of violence or other unlawful act, causes to another person terror or uneasiness by repeatedly following or watching him/her, i.e. in particular by seeking constant contact through a telephone or an electronic device or by repeated visits to his/her family, social or working environment, contrary to the individual's explicitly expressed will. 2. Imprisonment up to three years or a fine is imposed if the act takes place to the detriment of an underage person or a person who cannot defend him/herself, if these persons are in the custody or under the protection of the perpetrator by law, following a court judgment under the actual circumstances, cohabit with the perpetrator or are employed by or serve the latter. The same punishment is imposed if the act takes place against the spouse during the marriage or against the partner during the partnership'.

[542] See relevant publication, available at: https://tomov.gr/2019/11/06/el-as-apokta-ypiresia-antimetopisis-endooikogeneiakis-vias/.

[543] PD 37/2019, OJ A 63/23.4.2019.

neutral, in that it does not make any reference to women or to 'spousicide', the most extreme form of violence, far from the wording and the rationale of the IC.[544] [545]

Violence against women and domestic violence in times of the COVID-19 pandemic

During the first lockdown due to COVID-19 in Greece, an information campaign was launched by the General Secretariat for Family Policy and Gender Equality (hereinafter GSFPGE) in order to support female victims of violence under the title 'We stay home but we do not stay silent. Confinement at home does not mean tolerance of violence'. By a newsletter dated 5 May 2020,[546] the GSFPGE announced that there has been a significant increase of domestic violence against women during the lockdown and the confinement at home due to the COVID-19 pandemic in April 2020. More specifically, in April 2020, a total of 1 769 calls were made to the GSFPGE's SOS hotline, SOS 15900. According to the data available, 1 070 of these calls concerned incidents of violence, in comparison with 325 calls in March 2020. Moreover, in April 2020 the calls for domestic violence incidents quadrupled from 166 to 648 in comparison to the previous month. Seven out of ten of the above violence incidents were reported by the victims themselves whereas three out of ten were reported by third persons, i.e. parents, children, siblings, neighbours, friends. Nine out of ten persons who dialled the SOS hotline 15900 called for the first time. According to the Secretary General for Family Policy and Gender Equality, Maria Syrengela, this is attributable to the effective information campaign of the GSFPGE. The majority of the victims of violence (61 % of the incidents or 485 persons) were spouses/partners. Moreover, 10 % of incidents (77 victims) concerned children, 8 % of incidents (56 victims) concerned ex- spouses/partners and 9 % of incidents (67 victims) concerned parents and siblings. The main age group was 40-54 years (27 %) with the age group of 25-39 years (18 %) to follow. Regarding family status, the majority of victims were married (52 %),

[544] After the cut-off date of this report (1.01.2021), revelations of the Greek Olympic Gold champion in sailing Sofia Bekatorou about sexual abuse she had suffered as a 21-year-old member of the Greek national team back in 1998 by a high-ranking executive officer of the Greek Sailing Federation led to a still ongoing series of revelations of harassment and sexual harassment at work or concerning access to work by journalists and theatre actresses (and some actors), some of them concerning minors. These revelations, known as the Greek #MeToo movement, has led to an intense political and societal debate on sexual harassment and gender-based violence in general. In this context, a series of legislative measures were announced by the Greek Government, inter alia the imminent ratification of the ILO Violence and Harassment Convention, amendments to the Penal Code's provisions on sexual harassment and sexual abuse, amendments to the disciplinary law of public servants acknowledging sexual harassment at work as a distinct disciplinary offence, etc. See EELN Greek Flash Report of 12 March 2021 'ILO Convention 190 to be ratified by Greece in the near future', https://www.equalitylaw.eu/downloads/5369-greece-ilo-convention-190-to-be-ratified-by-greece-in-the-near-future-120-kb. ILO C 190 was ratified by Article 1 Act 4808/2021, OJ A 101/19.6.2021.

[545] After the cut-off date of this report (1.01.2021), on 9 March 2021 the Greek Manpower Employment Organisation (OAED), i.e. the National Employment Service[545] (Act 2956/2001, OJ A 258/6.11.2001), put in practice for the first time measures for the employment of women who are victims of gender-based and domestic violence. More specifically, OAED introduced measures aimed at the integration of unemployed women who are victims of gender-based and domestic violence in its improved programme for the employment of vulnerable social groups. The programme provides subsidies to private enterprises and social entities for a period of 12-24 months. The subsidies cover 90 % of the total costs (salary and non-salary) up to EUR 800 per month for a full-time position, and EUR 400 for a part-time position. The subsidy covers the Christmas bonus (equal to a one-month salary), the Easter bonus (equal to half a monthly salary) and the annual leave bonus (equal to half of the monthly salary). The total budget of the programme is EUR 33 million and is covered by the resources of OAED. In the same context, in December 2020 the Administrative Board of OAED decided the allocation of extra selection points (up to 60 %) to female victims of gender-based and family violence in the framework of the improved programme for a second business opportunity. The programme targets unemployed persons who have interrupted (for any reason) their business activity and want to create a new business and re-enter the labour market. At least 40 % of the 3 000 beneficiaries are unemployed women. The amendment of OAED'S programmes for employment and entrepreneurship aimed at supporting unemployed female victims of gender-based and domestic violence took place in the framework of the collaboration of the General Secretariat for Demographic and Family Issues and Gender Equality. EELN Flash Report (Greece) of 12 March 2021 'Employment measures for female victims of gender-based violence', https://www.equalitylaw.eu/downloads/5368-greece-employment-measures-for-female-victims-of-gender-based-violence-78-kb.

[546] Newsletter of the General Secretariat for Family Policy and Gender Equality dated 5 May 2020 available at: http://www.isotita.gr/δελτίο-τύπου-σημαντική-αύξηση-των-περ/.

with children (62 %) and employed (21 %). 40 % of the victims sought psychosocial support; 36 % asked for legal counselling and help; 41 persons asked for accommodation at hospitality structures. 15 calls concerned emergency incidents and the victims had to be immediately removed from their house and accommodated in special lodging provided by the GSFPGE in collaboration with the 'Hellenic Society of Forensic Medicine'.

In this regard, the Greek National Commission for Human Rights (GNCHR), deploring this phenomenon, has called for the systematic provision of preventative services and psychological, social and legal support of women, including foreign women and female refugees, women with disabilities and LGBT+ persons who are threatened. The GNCHR has stressed the sensitisation and information campaigns should be organised in a systematic way even after the end of the pandemic.[547]

10.2 Ratification of the Istanbul Convention

i) Act 4531/2018, ratifying the Istanbul Convention

The Istanbul Convention (IC) on preventing and combating violence against women and domestic violence, of the Council of Europe, signed by Greece on May 2011, was ratified by the Greek Parliament by virtue of Article 1 Act 4531/2018[548] and came into force in Greece on 1 October 2018. Article 2 Act 4531/2018 made the amendments to the PC[549] which were necessary for its alignment with the IC. In particular:

- Initially, it was explicitly provided that the customs and traditions followed by the perpetrator, as well as his/her religion cannot reduce the sentence (amendment to Article 79(3a) PC with a view to aligning it with Article 42 IC). This provision has been abolished by the new PC (Act 4619/2019, OJ A 95/11.6.2019), in force since 1 July 2019, although it is very pertinent for forced marriages and female genital mutilation.
- Article 315B was added to the PC (in accordance with Article 38 IC) providing that anyone who causes or incites a woman to undergo genital mutilation and anyone who publicly provokes or stimulates that act is punished with imprisonment. Since the entry into force (1 July 2019) of the new PC (Act 4619/2019), female genital mutilation (FGM) is governed by Article 315 PC which reads: 'Whoever convinces a woman to undergo female genital mutilation is punished with imprisonment'. In the Explanatory Report (*travaux préparatoires*) of the new PC there is no reference to the reasons of the abolition of the old Article 315B PC. The new provision of Article 315 PC is narrower than Article 38 IC in that it covers only the persuasion of a woman to be submitted to FGM but it does not cover the coercion to do so.
- Forcing a person to enter into a marriage is added to the criminalised aims of human trafficking. Under Article 323A PC, as amended by the new PC (Act 4619, OJ A 95/11.6.2019), in force since 1 July 2019, forced marriage is punishable only as a form of human trafficking, i.e. when illegal material benefit is derived therefrom. Thus, a forced marriage for reasons of 'honour' (e.g. in the case of rape, sexual intercourse, pregnancy) is not punishable under the new provision. This is in breach of Article 37 IC.
- Stalking was criminalised for the first time by Article 333(1) PC, which implements Article 34 IC. Stalking is defined as the causing of fear or uneasiness in another person, whom the perpetrator repeatedly follows or watches, i.e. in particular by seeking constant contact through a telephone or an electronic device or by repeated visits to her/his family, social or working environment, contrary to the individual's explicitly expressed will. This provision does not presuppose the threat of violence

[547] https://nchr.gr/images/pdf/apofaseis/isothta_fullwn/EEDA_Endooikogeneiaki_via__Vouli_2252020.pdf.
[548] Act 4531/2018, OJ A 62/5.4.2018.
[549] The new Greek Penal Code was ratified by Law 4619/2019 and came into force on 1 July 2019, replacing the previous Penal Code of the year 1950 (see 10.2 (ii(a)) below on domestic violence and 10.2 (ii(b)) below on rape).

or other illegal act or omission. The new PC (Act 4619/2019, OJ A 95/11.6.2019), in force since 1 July 2019, added a new paragraph 2 to the above provision. Article 333(2) provides a more severe punishment (imprisonment of up to three years or a pecuniary sanction) if the above punishable act is committed against a minor or a person who cannot defend him/herself, if those persons are under the custody or the protection of the perpetrator by law, following a judicial order or *de facto*, cohabitate with the perpetrator or are employed by or serve the perpetrator. The same punishment is imposed when the above punishable act is committed against a spouse during marriage or against a partner during a life partnership. Under Article 333(2) prosecution is *ex officio*.

- The anachronistic provision of Article 339(3) PC was repealed, which provided that penal pursuit of the perpetrator of the crime of seduction of a minor under 15 years old stops or does not start if the perpetrator marries the victim. This provision had been widely criticised by national and international bodies for the protection of human rights and by NGOs.

Article 3 Act 4531/2018 amended Act 3500/2006 'on domestic violence'.[550] In particular:

- The concept of 'family' was broadened so as to comprise the parties to a life partnership (including same-sex partners) provided by Act 4356/2015.[551] Moreover, the scope of Act 3500/2006 was extended to comprise not merely former spouses, but also the parties to a dissolved life partnership.
- In alignment with Article 3 IC, cohabitation (sharing the same residence as the victim) is no longer a prerequisite for the application of Act 3500/2006 in the case of former spouses and their children (common children or children of one of them).
- The procedure of penal mediation provided by Article 11(2b) Act 3500/2006 was amended.[552] In the event that the person attending a special consultative therapeutic programme run by a public entity deliberately chooses not to complete it, the Public Prosecutor interrupts the penal mediation with retrospective effect and the penal prosecution continues. This provision was adopted to ensure the effective compliance of the perpetrator with the procedure of penal mediation.
- When the victim is a minor, the statute of limitation of the offence of domestic violence is suspended until the victim reaches the age of majority and for one year thereafter in the case of a misdemeanour and for three years thereafter in the case of a felony. Article 56 Act 3500/2006 is thus harmonised with Article 58 IC.
- Restraining or protection measures for the protection of the physical and psychological health of the victim can be imposed even by the Public Prosecutor. Moreover, the enumeration of restraining measures (removal from the family home, change of location and domicile etc.) is indicative and the competent judicial authorities can impose the most appropriate ones. Subsequent violation of a restraining measure is punished by imprisonment. The restraining measure is valid until its repeal, replacement or amendment by the judicial authority that imposed it.
- The imposed restraining measure can be repealed, replaced or amended following a petition by the victim or the person on whom it was imposed or ex officio, if needed; a hearing of both parties has to take place before this can happen.

[550] Act 3500/2006, OJ A 232/24.10.2006.
[551] Act 4356/2015, OJ A 181/24.12.2015.
[552] A big novelty of Act 3500/2006 was the institution of penal mediation in the Greek penal system for the first time, in implementation of the Decision-Framework of the European Council of 15 March 2001 (2001/220). According to the system of penal mediation, if the perpetrator complies with the conditions of the penal mediation for a period of three years, the procedure is concluded and there is no penal sanction by the state. During the penal mediation, the criminal act is not time-barred until the penal mediation is concluded. If the perpetrator breaches the terms of the mediation on purpose, the penal mediation is recalled and the penal proceedings continue. In this case, a new petition for penal mediation is not allowed. According to the Greek case law (SCPC (Penal Section) 498/2019), penal mediation is a specific procedural condition for the exercise of criminal prosecution: the Public Prosecutor has to examine the possibility of penal mediation before following the penal procedure, otherwise the latter is null and void.

Article 4 Act 4531/2018 amended various pieces of legislation with the aim of harmonising them with the IC. More specifically:

- Act 3811/2009[553] provides the granting of an indemnity to the victims of deliberate crimes of violence following a request lodged by them with the Hellenic Authority for Indemnity which is part of the Ministry of Justice. This Act was amended with a view to being harmonised with Article 30 IC. According to Act 4531/2018 the above indemnity covers psychological support for the victim in case there is no relevant public structure in her/his place of residence. Moreover, there is coverage of expenses for changing location and domicile and, in particular, of the expenses for moving and purchasing the necessary consumer goods, so that the victim can be relocated in a safe environment away from the perpetrator. A ministerial decision will define the sum of the indemnity and the kinds of expenses covered. Moreover, a time limit was provided within which the Hellenic Authority for Indemnity must examine the petitions and rule thereon, so that the victim of violence can collect the indemnity within a total period of six months from lodging the petition. The time limit for recourse against decisions by the Hellenic Authority for Indemnity is extended for both the claimant and the Greek State; this facilitates the victim's access to court.
- Act 2168/1993[554] was amended to align it with Article 51 IC: permits for firearms must not be granted to people prosecuted for domestic violence, as provided by Act 3500/2006, or to people irrevocably convicted (i.e. any appeal has been rejected) for a misdemeanour as provided by Act 3500/2016, irrespective of the sanction imposed.
- Victims of domestic violence who are third-country nationals are protected against deportation or return even before they lodge a petition for the granting of a residence permit.
- In compliance with Article 59(4) IC, Article 21(6) Act 4251/2014 (OJ A 80/01.04.2014) was amended to provide that the residence permits of third-country nationals who were trafficked abroad in order to enter into a forced marriage and who, consequently, lost their residence rights continue to be valid.
- The GSGE was designated as the coordinating body for monitoring the application of the Istanbul Convention, in accordance with Article 10 IC. Moreover, the Observatory operating within the GSGE is competent for data collection and research in accordance to Article 11 IC.

In accordance with Article 78(2) IC, Greece has expressed its reservation as to the application of Articles 44(1e), 44(3) and 44(4) IC. According to the Introductory Report to Act 4531/2018, this reservation was justified by the reluctance of the Greek Government to accept the drastic extension of the state's international penal jurisdiction, as provided by Article 44 IC. The legislator found that this issue is premature and should be approached in a more global and systematic way.

The inadequacy and ineffectiveness of the pre-existing legislation (i.e. mainly Act 3500/2006 on domestic violence), the need for adequate structures and systematic data collection and the persistence of gender stereotypes which lie at the heart of violence against women have been constantly stressed by women's NGOs. Moreover, given that the provisions of Act 3500/2006 had remained outside of the PC (and the other relevant codes), there was legal uncertainty and difficulties in implementation. In this context, the alignment of the PC, of Act 3500/2006 and of the various Acts mentioned here above with the IC was long overdue.

ii) The new Greek Penal Code

The new Greek Penal Code (hereinafter PC) was ratified by Law 4619/2019 and came into force on 1 July 2019, replacing the previous PC of the year 1950. According to its

[553] Act 3811/2009, OJ A 231/17.12.2009.
[554] Act 2168/1993, OJ A 147/3.9.1993.

Explanatory Report (*travaux préparatoires*), the new Act aims to incorporate into the PC the acts of domestic violence, whereas maintaining in force Act 3500/2006. Consequently, in practice it may happen that the same criminal act falls under the scope of two different penal provisions of the new PC and Act 3500/2006 respectively. For example, the domestic threat may fall under both Article 7(2) Act 3500/2006[555] and Article 333(2) PC.[556] In this case, Article 333(2) PC will be applicable as the more favourable provision according to Article 2 PC.[557] In any case, the procedural provisions of Act 3500/2006 continue to apply for all criminal offences described in it, even if some of them are punished with the punishments provided by Articles 312 and 333(2) of the new PC. In its Articles 312 and 336, the new PC reformed, *inter alia*, the legal framework on domestic violence (see 10.2 (ii(a)) below) and rape (see 10.2 (ii(b)) below) respectively, bringing the Greek legislation in line with the IC.[558]

a. Domestic violence

Article 312 PC entitled 'Physical harm against weak persons' covers domestic violence by providing heavier punishment for all kinds of physical harm (simple, dangerous, serious and lethal) against a spouse during the marriage or against a partner during the partnership. More specifically, Article 312(1) PC stipulates that anyone who causes physical injury or harm to the health of a minor or a person who cannot defend him/herself, if these persons are under the perpetrators' custody or protection according to the law, following a court judgment or within the actual situation, cohabitate with the perpetrator or have an employment or service relationship with the perpetrator, is punished: (a) for a physical injury or harm to the health with imprisonment of at least one year (whereas the general provision of Article 308(1)(a) PC punishes the same deeds with imprisonment of up to two years or a fine); (b) for a dangerous physical injury or harm to the health with imprisonment of at least two years (whereas the general provision of Article 309 PC punishes the same deeds with imprisonment of up to three years or a fine); (c) for heavy physical harm with imprisonment of at least three years; in cases where the heavy physical harm was wilful, with imprisonment (whereas the general provision of Article 310(1)(a) PC punishes the same deed with imprisonment of at least one year and in cases where the heavy physical harm was wilful, with imprisonment up to 10 years); (d) for lethal physical harm resulting in the death of the victim, with imprisonment (whereas the general provision of Article 311 PC punishes the same deed with imprisonment of up to 10 years and in cases where the lethal physical harm was on purpose, with imprisonment).

According to Article 312(2)(a) PC, the same punishments are imposed when the above deeds are committed against a spouse during the marriage or against a partner during the

[555] Greece, Article 7(2) Act 3500/2006 reads: '2. The member of family who causes terror or uneasiness to another family member, by threatening him/her with violence or other unlawful act is punished with imprisonment'.

[556] Greece, Article 333 PC reads: '1. Anyone who causes to another terror or uneasiness, by threatening him/her with violence or other unlawful act or omission is punished with imprisonment up to one year or with a fine. The punishment of the paragraph above is imposed on anyone who, without the threat of violence or other unlawful act, causes to another person terror or uneasiness by repeatedly following or watching him/her, i.e. in particular by seeking constant contact through a telephone or an electronic device or by repeated visits to his/her family, social or working environment, contrary to the individual's explicitly expressed will. 2. Imprisonment up to three years or a fine is imposed if the act takes place to the detriment of an underage person or a person who cannot defend him/herself, if these persons are in the custody or under the protection of the perpetrator by law, following a court judgment under the actual circumstances, cohabit with the perpetrator or are employed by or serve the latter. The same punishment is imposed if the act takes place against the spouse during the marriage or against the partner during the partnership'.

[557] Stefanidou, A. (2020), *'Απειλή Ενδοοικογενειακή - Απειλή σε βάρος συζύγων/συντρόφων, ανηλίκων, ανυπεράσπιστων στο νέο Ποινικό Κώδικα. Σχέση μεταξύ των δύο εγκλημάτων - Έκταση Εφαρμογής'* (Domestic threat – Threat against spouses/partners, underage, defenceless), available at: https://www.lawspot.gr/nomika-nea/apeili-endooikogeneiaki-apeili-se-varos-syzygon-syntrofon-anilikon-anyperaspiston-sto-neo.

[558] The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), available at: https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e.

partnership. According to the Explanatory Report to the new Act, in this case, the victims do not have to prove that they are in a weak position, as they are deemed to be, due to the commitments created by the cohabitation. Article 312(2)(b) PC provides as an aggravating circumstance the commitment of the said deeds against a pregnant woman. Article 312(3) provides that the acts of physical injury which are committed in the presence of a minor are deemed as acts of physical violence against the minor him/herself, thus amounting to an aggravating circumstance. According to Article 312(4) PC, assimilated to acts of physical injury are `the planned cause of intense physical pain or physical exhaustion which is dangerous for the health, or psychic pain apt to cause severe psychic damage, in particular by the prolongated isolation of the persons referred to in 312(1) PC.

Until the entry into force of the new PC (Act 4619/2019), domestic violence had been governed by Act 3500/2006 'on domestic violence', OJ A 232/24.10.2006. Act 3500/2006 was strongly criticised by legal theory as creating serious dogmatic problems[559] by requesting, *inter alia*, the ascertainment of the perpetrator's continuous rough behaviour.[560] It has been also criticised as inadequate and ineffective, all the more so given that its provisions had remained outside of the PC (and the other relevant codes), creating legal uncertainty and difficulties in implementation.[561] The new PC (Act 4619/2019) does not make any explicit reference to Act 3500/2006. However, the Explanatory Report of the new Act clearly states that the new Article 312 was meant to cover the crime of domestic violence, until then covered by Act 3500/2006. It is argued that Article 312 of the new PC should prevail over the provisions of Act 3500/2006, which will continue to apply only to the victims or behaviours of domestic violence which are not covered by Article 312 PC; as to the procedural provisions of Act 3500/2016, it is argued that they continue to apply for all criminal offences described in Act 3500/2006, even if some of them are punished with the punishments provided by Article 312 PC.[562]

b. Domestic threat

Article 333(2)(b) of the new PC (Act 4619/2019) provides the 'domestic threat' as a separate variant of the general crime of threat provided by Article 333(1) PC. It is prosecuted *ex officio* as well. The Supreme Penal Court in its Judgment No. 638/2020 found that domestic threat exists where a person threatens to exercise violence or commit another illegal act or omission against a member of the family (spouse or partner) and renders the victim to a situation of terror or concern. This threat can take any form: oral, written, by gestures or other menacing movements and in general by any act with which the perpetrator externalises his/her will to threaten the members of the family (spouse, partner). There is *dolus* when the perpetrator knows that the threatened act consists in violence or other unlawful act and wants to provoke terror or concern to the victim. Article 333(2) PC renders an aggravated form of threat, the threat against minors and weak persons who are under the perpetrator's custody or protection (Article 333(2)(a)) and against spouses during the marriage or against life partners during the life partnership (Article 333(2)(b)). The domestic threat under Article 333(2)(b) PC is punished with up to three years of imprisonment or with a pecuniary sanction.

The issue of the applicable law in cases of domestic threat after the entry into force of the new PC (Act 4619/2019) has been dealt with by the Supreme Penal Court in its Judgment

[559] Simeonidou, E. (2006), *'Το νομοσχέδιο για την ενδοοικογενειακή βία'* (The Bill on Domestic Violence), ΠοινΔικ (Penal justice) 2006, p. 1051; Haralambaki, A. (2008), *'Ο ν. 3500/2006 για την αντιμετώπιση της ενδοοικογενειακής βίας'* (Act 3500/2006 on combating domestic violence), ΠΛογ (Panel Speech) 2008, p. 720.

[560] See the Explanatory Report to Act 4619/2019, p. 62, available at: https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=053d3a90-ef5a-4d18-a335-aa610111664b.

[561] See Country Report Gender Equality Greece 2017, author Sophia Koukoulis-Spiliotopoulos, updated by Panagiota Petroglou, available at: https://www.equalitylaw.eu/downloads/4368-greece-country-report-gender-equality-2017-pdf-1-93-mb.

[562] Sevastidis, H. (2019), *'Σημειώσεις για νέους Ποινικούς Κώδικες'* (Notes on the new Penal Codes), available here.

No. 638/2020. This case was about domestic threat between ex-spouses, who had separated but were not yet divorced. According to the Court, domestic threat between spouses/partners during the marriage / life partnership until its irrevocable solution, irrespective of whether the spouses / life partners have been separated and do not cohabitate, is governed by Article 333(2) PC which constitutes an aggravated form of the offence of threat (Article 333(1) PC). Article 333(2) PC is punished with imprisonment from 10 days to 3 years or a pecuniary sanction. The provision of Article 7(2) Act 3500/2006 punishes domestic threat with imprisonment without upper limit, i.e. from 10 days up to 5 years. Consequently, the provision of 333(2) PC is more favourable for the perpetrator and prevails over that of Article 7(2) Act 3700/2006.

The fact that the same punishable act is governed by two different laws (Article 333(2) of the new PC and Article 7(2) Act 3500/2006) in parallel may lead to absurd results as shown in the following examples:[563] (a) domestic threat between spouses during the marriage / life partnership is punished with imprisonment of up to three years whereas after the irrevocable dissolution of the marriage / life partnership the same deed is punished according to Article 7(2) Act 3500/2006 with imprisonment of up to five years; (b) the spouse who threatens the mother-in-law or the adult child of the other spouse is punished with the punishment of Article 7(2) Act 3500/2006, i.e. more strictly than the spouses who threaten the other spouse; (c) the perpetrator who threatens the minor under his/her custody who cohabitates with him/her is punished with imprisonment of up to three years according to Article 333(2) PC whereas if the same minor is threatened by the perpetrator's spouse from a second marriage who does not have custody of the minor but cohabitates with them, the stricter punishment of Article 7(2) Act 3500/2006 would apply; (d) if the same minor is threatened by the other parent, who does not cohabitate with the minor but has his/her joint custody, the stricter punishment of Article 7(2) Act 3500/2006 applies. In view of the above, the provisions of the new PC on domestic violence should be brought in line with Act 3500/2006.

c. Rape

Article 336 of the new PC provides that:

> '1. Anyone who by physical violence or by threat of serious and direct danger for the life or the physical integrity forces another person to engage in or to tolerate acts of a sexual nature is punished with imprisonment. 2. Act of a sexual nature is deemed the intercourse and acts of the same gravity. 3. If the act of a sexual nature was committed by two or more perpetrators who acted jointly, a punishment of at least 10 years is imposed. 4. If any of the acts of the previous paragraphs resulted in the death of the victim, a life sentence or provisional imprisonment of at least 10 years is imposed. 5. Anyone who, except the case of Paragraph 1, engages in an act of a sexual nature without the consent of the victim, is punished with imprisonment of up to 10 years.'

Article 338 of the new PC stipulates:

> '1. Anyone who by abuse of the mental or the physical disability of another person or of his/her inability due to any reason to react engages in an act of a sexual nature with him/her, is punished with imprisonment up to 10 years. 2. If the act of the previous paragraph was committed by two or more persons acting jointly, imprisonment is imposed.'

[563] Stefanidou, A. (2020), 'Απειλή Ενδοοικογενειακή - Απειλή σε βάρος συζύγων/συντρόφων, ανηλίκων, ανυπεράσπιστων στο νέο Ποινικό Κώδικα' (Domestic threat – The threat against spouses / life partners, minors, undefended persons in the new Penal Code), https://www.lawspot.gr/nomika-nea/apeili-endooikogeneiaki-apeili-se-varos-syzygon-syntrofon-anilikon-anyperaspiston-sto-neo.

According to clarifications by the Ministry of Justice, this provision covers the case where the victim 'freezes' when confronted with the perpetrator due to his/her temporary inability to resist. According to the Explanatory Report to the new Act, a person is deemed unable to react not only because of illness, sedation, etc., but also when he/she is in such a situation even temporarily, because of the mastery imposed on him/her by the perpetrator or because of the shock suffered from the act of a sexual nature itself, either taking place or looming.

Article 343 of the new PC stipulates:

> 'With imprisonment of at least two years and a fine is punished: (a) anyone who forces another person to engage in or tolerate an act of a sexual nature by abusing the relationship of employment dependency of any nature; (b) anyone who forces another person to engage in or tolerate an act of a sexual nature, taking advantage of his/her urgent need to work; (v) the personnel appointed or employed in any way in prisons or other holding cells, in Police stations, in universities, pedagogic foundations, hospitals, clinics or any kind of therapeutic organisations or in other foundations aimed to nurse persons who need help, if, by the abuse of their post, force into an act of a sexual nature, a person who has been sent to these foundations.'

The previous version of Article 343 of the old PC punished only public servants who force a subordinate into such acts with imprisonment from one to five years.

Article 336(1) PC covers the *stricto sensu* rape by use of physical violence or psychological violence (threat). In interpreting the former provision of Article 336(1) PC,[564] the case law required a 'serious' and 'direct' threat against a 'substantial right' of the victim; thus, the field of application of the crime of rape was considerably restricted. According to its Explanatory Report, the legislator of the new Act did not consider satisfactory the previous wording of 'threat of serious and direct danger', which had created problems in practice as to the content of these two terms; explicit specification of the endangered goods (life or physical integrity) was thought necessary.

Most importantly, for the first time in Greece, Article 336(5) PC of the new Act acknowledges that the crime of rape is committed, not only by use of physical violence or psychological violence (threat), as provided in the above-mentioned Article 336(1) PC, but also in the absence of the victim's consent, in line with Article 36 of the IC. Such a rape is a felony, punished with imprisonment up to 10 years. It should be noted that in the relevant bill sent to the Parliament, the Paragraph 5 of Article 336 PC had a totally different wording.[565] In this context, Amnesty International Greece launched a campaign for the amendment of Article 336 of the Bill and the redefinition of the crime of rape on the basis of the lack of consent, according to the international human rights standards. Moreover, the wording of Article 336 of the Bill was strongly criticised by women's NGOs and several MPs, as well (two MPs of the ex-governmental party threatened not to vote for it if Article 336(5) PC was not rephrased). As a result, the initial wording of Article 336(5) in the bill was replaced with the above, which was voted for and is currently in force. As to the consent, according to the Explanatory Report to Act 4619/2019, the consent of the victim has to be given even in personal or legal relations in the context of which acts of a sexual nature are socially expected and it can never be deemed irrevocable. For this reason, the rape exists even if the victim has withdrawn his/her consent although he/she

[564] The former provision of Article 336(1) PC on rape, adopted by Article 8(1) Act 3500/2006 'on domestic violence', OJ A 232/24.10.2006, reads: '1. Anyone who by physical violence or threat of serious and direct danger forces another person to engage in sexual intercourse or to other lascivious act or to tolerate it, is punished by imprisonment.'

[565] Article 336(5) of the Bill read: 'Anyone who, except the case of Paragraph 1, forces another person to commit or tolerate an act of a sexual nature by threat of illegal act or omission, is punished with imprisonment of at least three years.'

had engaged in such acts recently or even though the victim has already engaged in such acts but in the course he/she withdraws his/her consent.

The General Secretariat for Equality, a governmental body for gender equality and the coordinating body for monitoring the application of the IC, applauded the new Act 4616/2019 as a major legal reform giving credit to the long-term fight of women NGOs for the redefinition of the legal concept of rape on the basis of non-consent.[566]

iii) The provisions on gender-based violence of Act 4604/2019

Articles 25-30 Act 4604/2019, OJ A 50/26.3.2019 provide a network of structures for the elimination of gender-based violence and multiple discrimination against women, both at central and at local level, which comprises: Counselling Centres for women,[567] Hospitality Hostels for Women Victims of gender-based violence and of multiple discrimination[568] and their children and a 24/7 SOS phone line, 15900.[569] The legislator has been criticised for the use of 'may' clauses, which in practice risk rendering the provisions of the new law into non-binding wishes. Moreover, for systematic reasons, these provisions should have been incorporated into the above-mentioned Act 4531/2018, which ratified the IC, given that in the *travaux préparatoires* of Act 460/2019 it is explicitly stated that its provisions are to function in a complementary way with the provisions implementing the IC.[570]

[566] General Secretariat for Equality, Press Release of 11 June 2019, available at: http://www.isotita.gr/%ce%b4%ce%b5%ce%bb%cf%84%ce%af%ce%bf-%cf%84%cf%8d%cf%80%ce%bf%cf%85-%ce%bf%ce%b9-%ce%b8%ce%ad%cf%83%ce%b5%ce%b9%cf%82-%cf%84%ce%b7%cf%82-%ce%b3%ce%b5%ce%bd%ce%b9%ce%ba%ce%ae%cf%82-%ce%b3%cf%81%ce%b1/.

[567] The Counselling Centres for Violence against Women are staffed with specialised professionals as counsellors (psychologists, social workers and lawyers) who provide free of charge information and counselling to the women, in the framework of integrated actions of psychosocial support. Actually, 41 such Centres have been set up in 14 big cities of Greece (14 by the GSGE and the rest by the local authorities). From the beginning of the project in 2012 to the end of 2018, 25 079 women sought advice and counselling in the above Centres.

[568] Actually, 21 Hospitality Hostels for Women have been set up in the big cities of Greece by the local authorities. From the beginning of the project in 2012 to the end of 2018, 1 518 women were hospitalised therein. According to Article 26 Act 4604/2019, OJ A 50/26.3.2019, the Research Centre on Gender Equality (KETHI) and the local authorities (municipalities) can create Hospitality Hostels with the aim to provide a safe stay to women victims of gendered violence and to women victims of multiple discrimination and their children up to the age provided by internal regulations.

[569] The line SOS 15900 is meant to support women victims of violence. It covers the whole country and is available 24 hours per day, 365 days per year. This service is staffed with psychologists and social scientists who provide immediate help in urgent incidents of any form of gender violence. From the beginning of the project in 2012 to the end of 2018, 37 482 calls were made thereto. According to Article 27 of the recent Act 4604/2019, OJ A 50/26.3.2019, the line SOS 15900 is operated by the GSGE (see 11.9 (ii) above) with the aim to: a) fight violence against women and to provide immediate psychosocial support of victims by using any kind of communication means on a 24-hour 365-days basis; b) immediate counselling to women victims of violence; c) information on gender equality issues; d) psychosocial counselling in the event of incidents of violence against women which demand immediate psychological and social support; e) refer incidents to Counselling Centres for Violence against Women and Hospitality Hostels.

[570] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα (The legal treatment of gender-based discrimination in Greece),* Heinrich Böll Stiftung, Greece, pp. 44-45.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

There have been no surveys and reports published in Greece over the last five years that provide insights into the particular difficulties faced by victims of gender discrimination in practice in obtaining legal redress. However, the findings of surveys conducted in earlier years remain valid[571] and may even have been amplified by the harsh economic crisis that has hit Greece in recent years (see 4.1.3 and 4.3.6 above). More specifically, research has shown that the most often reported difficulties and barriers which victims of sex discrimination encounter, and which may explain the low level of litigation, relate to: low levels of compensation; the cost and length of legal proceedings; overly short time limits for initiating proceedings; conditions for entitlement to legal aid; reluctance of unions and other associations to bring proceedings; 'stigma' of being a 'troublemaker' associated with such cases and fear of retaliation or victimisation, especially within small companies (where co-workers have hierarchical and often close relationships with the discriminating party) and small-scale communities (where the stigma associated with adverse treatment by the employer or with dismissal is more evident); lack of confidence of claimants that they will be believed and difficulties of proof; lack of awareness and knowledge about equality law; lack of experience and of the habit of defending one's own rights; lack of skilled and experienced advice and assistance; strongly rooted traditional gender stereotypes which have a greater degree of tolerance; and the socio-economic crisis, the ensuing high unemployment and long-term unemployment amongst women and the low level of unemployment benefits which are subject to strict conditions.[572] The fear of unemployment affects not only the victim, but also potential witnesses.[573] These deterrent factors apply in general to all gender equality cases.

11.1.2 Other issues related to the pursuit of a discrimination claim

There are no other issues apart from the difficulties and barriers related to access to the courts (see below under 11.3).

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[571] Koukoulis-Spiliotopoulos, S. (2008), 'Gender equality in Greece and effective judicial protection – issues of general relevance in employment relationships', *Neue Zeitschrift für Arbeitsrecht NZA-Beilage* (*New journal of labour law*), pp. 74-82.
Koukoulis-Spiliotopoulos, S. (1997), *'Δικαστική προστασία και κυρώσεις για τις παραβάσεις του κοινοτικού δικαίου'* (Judicial protection and sanctions for violations of EU law), *Δικαιοσύνη (Justice),* 1997, pp. 351 et seq.
Koukoulis-Spiliotopoulos, S. (1995), *'Δέσμευση των δικαστηρίων από το κοινοτικό δίκαιο και αυτεπάγγελτος αναιρετικός έλεγχος'* (EU law is binding for the courts and applied by the Supreme Court of its own motion), *Δίκη (Trial),* 1995, pp. 999 et seq.
Koukoulis-Spiliotopoulos, S. (1993), *'Αποτελεσματική δικαστική προστασία κατά των διακρίσεων λόγω φύλου'* (Effective judicial protection against sex discrimination), *Δικαιοσύνη (Justice),* 1993, pp. 256 et seq.
Koukoulis-Spiliotopoulos, S. (1992), *'Ζητήματα για την επίδραση του κοινοτικού δικαίου στην παροχή δικαστικής προστασίας'* (Issues of the effect of EU law in granting judicial protection), *Νομικό Βήμα (Legal Podium),* 1992, pp. 825 et seq.
Koukoulis-Spiliotopoulos, S. (1992), *'Ζητήματα διαχρονικής εφαρμογής του κοινωνικού κοινοτικού δικαίου'* (Issues of the diachronic application of EU social law), *Επιθεώρηση Ευρωπαϊκών Κοινοτήτων (European Community Revue),* 1989, pp. 157 et seq.

[572] European Commission, European network of legal experts in gender equality and non-discrimination (EELN), A comparative analysis of gender equality law in Europe (2018), available at: https://publications.europa.eu/en/publication-detail/-/publication/4645e402-38cc-11e9-8d04-01aa75ed71a1/language-en/format-PDF/source-87818151.

[573] Koukoulis-Spiliotopoulos, S. (2009), *'Συνταξιοδότηση και εναρμόνιση οικογένειας και εργασίας – Ζητήματα ουσιαστικής ισότητας των φύλων και δικαστικής προστασίας (με αφορμή τη Δ.Ε.Κ. 26.3.2009 C-559/07)'* (Retirement and harmonisation of family and work – Issues of substantive gender equality and judicial protection (on the occasion of CJEU 26.3.2009 C-559/07), *Επιθεώρησις Δικαίου Κοινωνικής Ασφαλίσεως (Social Security Law Review)* 2009, pp. 753-785 (780-785).

11.1.3 Political and societal debate and pending legislative proposals

There have been no political and societal debates and there are no pending legislative proposals on this issue.

11.1.4 Gender mainstreaming

Gender mainstreaming, for the first time, has been regulated by Act 4604/2019. Article 2(1) Act 4604/2019 gives, for the first time, the definition of 'gender mainstreaming':

> 'the strategy for the realisation of substantive gender equality, which includes gender mainstreaming in the preparation, the planning, the application, the follow-up and the evaluation of policies, regulatory measures and expense programmes for the achievement of equality between women and men and the fight against discrimination'.

Article 3(1) Act 4604/2019 provides that the gender dimension has to be integrated into all areas of private and public life and, in particular, in the political, social, economic and cultural reality of the country. Gender mainstreaming is provided: in public policies (Article 10 Act 4604/2019);[574] in the budgeting of ministries (Article 11 Act 4604/2019);[575] in the drafting of public documents (Article 12 Act 4604/2019); in the collection of statistical data (Article 13 Act 4604/2019);[576] in education (Article 17 Act 4604/2019);[577] in public health policies and research (Article 18(2) Act 4604/2019: 'the administration … aims at the equal gender participation in all the research projects'),[578] including the award of new competencies to the Health Mediators (Article 18(4) Act 4604/2019 provides that Health Mediators are competent to facilitate access to the National Health System of single parent families with a female single parent, of battered women, of women victims of human trafficking, of women refugees and migrants, of women members of minority groups, of female minors, of teenage mothers, of older women, of women on parole with several health problems, of homeless women or women under the poverty threshold);[579] in social protection (Article 20

[574] More specifically, every ministry in its area of competence (a) presents annually a progress report on the fight against gender discrimination, adopting relevant actions, measures and programmes, (b) adopts quantitative and qualitative indicators according to the international, European and national standards for the evaluation of gender mainstreaming in public policies, (c) includes in every bill an analysis and evaluation of the consequences of its provisions on the basis of gender.

[575] Article 11 Act 4604/2019 provides for gender mainstreaming in the budgets of ministries, legal persons governed by public law and private entities falling under the 'General Government'. However, the ministerial decision which, according to Article 11(2) of the said Act, would define the procedure for the application of gender mainstreaming has not yet been issued, despite the fact that the relevant time limit (six months since the adoption of Act 4604/2019) has expired a long time ago.

[576] Article 13 Act 4604/2019 provides for the first time that public services, legal persons governed by public law and legal persons governed by private law belonging to the 'General Government', are obliged to collect and keep statistical data based on sex for their areas of competence. These data are sent at least once a year to the Equality Observatory of the General Secretariat for Equality, where a relevant file is kept and is used for the aims of the Observatory.

[577] In particular, the gender dimension with a focus on achieving gender equality should be integrated into the education system in general and in particular, *inter alia*, in vocational training programmes which encourage fairly non-stereotypical career choices by the trainees. Gender mainstreaming is provided in primary and secondary education (study programmes and books, vocational training programmes, programmes of sensitisation of teachers) and in the universities.

[578] In a survey of the year 2019 it is deplored that this provision is purely declaratory; instead, the legislator should have opted for the adoption and application of positive measures for the elimination of women's under-representation in the higher ranks, including the award of new competencies to the Health Mediators (Article 18(4) Act 4604/2019). See Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (The legal treatment of gender-based discrimination in Greece), Heinrich Böll Stiftung, Greece, p. 42.

[579] The Greek Health Mediators were established by virtue of Article 61 Act 4368/2016, OJ A 21/21.2.2016 in order to facilitate access of vulnerable groups to the National Health System.

Act 4604/2019);[580] and in the social media (Article 24 Act 4604/2019).[581] It is also provided that the National Council for Radio and Television (NCRTV):[582]

- adopts guidelines for the mainstreaming of gender equality and the prohibition of discrimination on the grounds of gender, gender identity and sexual orientation in the broadcasts;
- imposes fines in the case of a breach of their obligations under the new law. Relying on its competence under Article 24 Act 4604/2019, by its Decision No. 192/2019 the NCRTV imposed on a TV channel severe sanctions for the wilful breach of the principle of human value and for gender discrimination to the detriment of women in breach of, *inter alia*, Articles 1 and 21(1) of the Charter of Fundamental Rights of the European Union, Articles 4(2) and 116(2) of the Greek Constitution, Article 2 of the CEDAW, Article 14 ECHR, Article 2 UN Covenant on Civil and Political Rights and Article 7(1)(a) PD 109/2010. During a broadcast in the morning time, the act of sexual harassment perpetrated by a male student against a female co-student on the premises of a public university was presented through mockery and persiflage, resulting in the trivilisation of the incident: the behaviour of the perpetrator was neither condemned nor disdained but rather the presenters of the show sympathised with him; in contrast, there was no expression of support to the victim who suffered this humiliating and degrading treatment. Taking into account other relevant issues which show the general perception of the broadcast and the degrading of its qualitative standards, for the lack of respect to the human value and the detrimental discrimination on the grounds of gender, the NCRTV imposed: (1) as an administrative sanction, the temporary suspension of broadcasting the show at stake for four full calendar days (00:01-24:00) and (2) as a moral sanction the obligation of the TV channel to continuously transmit during the four-day suspension period a clearly visible card stating that the administrative sanction of the provisional suspension of the show was imposed on the television channel in question by the Decision No. 192/2019 of the NCRTV. Moreover, for the degrading of the quality standards, the NCRTV imposed an administrative fine of EUR 150 000 to be collectable from both the channel company and its legal representatives (natural persons) jointly accountable.[583] In the author's opinion this is a landmark and exemplary case of enforcement of the new law.

[580] Article 20 Act 4604/2019 provides for gender mainstreaming in public policies for social solidarity and for the adoption of programmes of social protection oriented towards vulnerable groups of women with the aim to enhance their potential so that they are more easily incorporated or reintegrated into the economic and social environment.

[581] Article 24 Act 4604/2019 provides that the social media (including the electronic ones) and advertising should act for the promotion of substantive equality by presenting a non-stereotypical image of persons. This can be achieved through the adoption of provisions that aim to realise substantive equality and to eradicate sexism and gender stereotypes in the codes of ethics and in self-binding rules; moreover, the social media should draft a yearly report on the adoption of the above provisions and submit it to the competent ministry. The radio and the television should promote the presence of women in all the areas of social, economic, cultural and political aspects of life in the country.

[582] The Greek National Council for Radio and Television (NCRTV) is a Greek independent administrative authority that supervises and regulates the radio/television market, founded in 1989 by virtue of Act 1866/1989, OJ A 322/6.10.1989, as amended by Act 2863/2000, OJ A 262/29.11.2000 and Act 3051/2002, OJ A 220/30.9.2002. The National Council for Radio and Television exercises its competencies as a collective administrative authority. The Council has been assigned to ensure that all broadcasts comply with the provisions laid down by the law of the Greek state from which they emanate as well as by the Directive 'Television without Frontiers' of the European Commission. It is competent to control, where practicable and by appropriate means, the broadcasters' operation with reference to their informational, educational, cultural and entertainment responsibilities to the public. NCRT is the appropriate authority to ensure fundamental benefits such as the freedom of expression, political and cultural pluralism and the broadcasting of reliable, fair and balanced information. The Council is the only responsible body with regard to the control of media companies and the imposition of fines. Furthermore, it is the competent authority for allocating licences and to take any decision of non-regulatory character.

[583] Article 4(3) Act 2328/1995, OJ A 159/3.8.1995, as amended by Article 23(4) Act 3166/2003, OJ A 178/2.7.2003.

- dedicates in its Annual Report a section to the monitoring of the application of the provisions of the new law by the broadcasters and the issue of relevant guidelines and recommendations.[584]

A survey of the year 2019[585] welcomed the above-mentioned provisions of Act 4604/2019 on gender mainstreaming as a novelty in the Greek legal order in line with the international and EU *acquis*. Gender mainstreaming in the budgeting of the ministries was considered a first step towards the adoption of gender mainstreaming into the state budget,[586] whereas its adoption in the field of education was welcomed as long overdue.[587] However, it was deplored that, unlike the previous bill of the year 2010,[588] Act 4604/2019 provides only for a progression report to be publicised by each ministry but does not provide for the submission of a progression report to the Parliament at the end of each parliamentary period; this would promote the parliamentary dialogue and would help to evaluate the achievements or possible failures or deficits of the governmental action in this field. Unfortunately to date, to the author's knowledge, the progression reports provided for by Act 4604/2019 have not been publicised by each ministry, nor is there any public debate for a further obligation to submit them to the Parliament.

11.2 Victimisation

The Directives' provisions on victimisation are implemented in national legislation:

- Article 14 of Act 3896/2010 transposing Directive 2006/54/EC;
- Article 8 of Act 3769/2009 transposing Directive 2004/113/EC;
- Article 52(3) of Act 4075/2012 transposing Directive 2010/18/EU.

Article 14 of Act 3896/2010, which aims to transpose Articles 14(1) (the prohibition of discrimination) and 24 (victimisation) of Directive 2006/54/EC, prohibits 'the termination or dissolution in any other way of the employment relationship or other adverse treatment: a) on grounds of sex or family status, b) as revenge by the employer due to the worker's rejection of sexual or other harassment, in accordance with the provisions of Article 2;[589] c) as a reaction by the employer or the person responsible for vocational training to a protest, complaint, testimony or any other action of a worker or vocational trainee or a representative thereof, within the undertaking or place of vocational training or before a court or other authority, which is related to the application of this Act'.

This provision, in particular in point (c), exceeds Article 24 of the Directive as it i) also prohibits victimisation by 'persons responsible for vocational training' in the 'place of vocational training'; and it ii) is not limited to 'employees' representatives provided for by national laws and/or practices' like Article 24 of the Directive, but refers to any 'representative' of a worker or trainee. However, in point (b), victimisation due to 'submission' to harassment or sexual harassment is omitted, but is included in Article 3 of the Act which aims to transpose Article 2(2) of the Directive.

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[584] Since the adoption of Act 4604/2019, the NCRTV has still not issued its annual report, so this provision has not yet been implemented in practice.

[585] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (The legal treatment of gender-based discrimination in Greece), Heinrich Böll Stiftung, Greece, p. 36.

[586] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (The legal treatment of gender-based discrimination in Greece), Heinrich Böll Stiftung, Greece, pp. 37-38.

[587] Natsi, D., Papa, Th. (2019), *Η νομοθετική αντιμετώπιση των έμφυλων διακρίσεων στην Ελλάδα* (The legal treatment of gender-based discrimination in Greece), Heinrich Böll Stiftung, Greece, pp. 41-42.

[588] See Article 14 of the previous bill on substantive gender equality of the year 2010 which has never been submitted for voting, available at: https://bit.ly/30pg9Ub.

[589] Article 2 of Act 3896/2010 contains the definitions provided by Article 2(1) of Directive 2006/54/EC ('direct' and 'indirect' discrimination, 'harassment' and 'sexual harassment', 'pay', 'occupational social security schemes').

Article 8 of Act 3769/2009, which aims to transpose Article 10 of Directive 2004/113/EC (victimisation), prohibits 'any adverse treatment or adverse consequence to the detriment of a person who lodges a complaint or is involved in proceedings aimed at enforcing compliance with the equal treatment principle within the meaning of this Act'. This provision copies the requirements of Article 10 of the Directive.

Article 52(3) of Act 4075/2012, which aims to transpose Clause 5(4) of Directive 2010/18/EU, reads: 'The termination of the contract of employment due to an application for or the taking of parental leave […] is null and void. Any adverse treatment of a worker due to an application for or the taking of parental leave is prohibited.' This provision reproduces the requirements of Clause 5(4) of the Directive.

As shown above, Article 14 of Act 3896/2010 transposing Directive 2006/54/EC exceeds the Directive, while Article 8 of Act 3769/2009 transposing Directive 2004/113/EC and Article 52(3) of Act 4075/2012 transposing Directive 2010/18/EU fully comply with it.

i) Victimisation in the form of legal retaliation

In practice, in discrimination cases in general, but in particular in cases of sexual harassment and harassment related to sex (see 3.7.1 above), a serious aspect of victimisation is the legal (both penal and civil) retaliation by the perpetrator, who can be the employer or a superior, a co-worker or a third party. The victims' (and potential claimants') fear of victimisation both against them and/or their witnesses is not limited to their employment conditions (dismissal, detrimental modification of working conditions, bad performance assessment). Most importantly, they fear that the perpetrator will sue them and/or their witnesses or potential witnesses for slander, defamation or insult and even go so far in some cases as to bring a 'blackmail' civil action for moral damages due to slander, defamation or insult against them and/or their witnesses or potential witnesses.[590] This kind of 'legal retaliation', which is quite common in practice, is not addressed by the Recast Directive:[591] first, it is questionable whether it falls under 'other adverse treatment' or whether the latter refers only to the deterioration of employment conditions; secondly, victimisation in the form of 'adverse treatment' is prohibited only by the employer and not by the perpetrator (in case these persons do not coincide, the perpetrator being a superior, co-worker or a third party).

The following three Greek judgments show quite clearly the seriousness of such a risk. In the first case, the female claimant, working as a secretary in a trade union, alleged that the termination of her employment relationship was a result of sexual harassment by the representative of the trade union. She won the action in the First Instance Court, but the defendant appealed the decision in the Court of Appeal while simultaneously suing the claimant's witness in the First Instance Court. This witness's testimony was the sole proof of the harassment, and when the penal court found the defendant guilty, the case failed in both the Court of Appeal and the SCPC, although there was significant *prima facie* evidence, which was not taken into account.[592]

The other two cases concerned sexual harassment at work against female employees by their male direct superiors (not the employer). In the second case, the female employee brought a civil action against the male perpetrator (superior) seeking moral damages for sexual harassment; in retaliation, the perpetrator (superior) brought a civil action against her for moral damages of EUR 200 000, alleging that by characterising him as a perpetrator of sexual harassment she had committed slander/defamation against him. The

[590] Koukoulis-Spiliotopoulos, S. (2008), 'Gender equality in Greece and effective judicial protection', NZA 2/2008, p. 77.

[591] Kjeruf Thorgeirsdóttir, H. (2019) 'Protection from victimisation in the workplace: Comparative EU-Icelandic perspectives', *European Equality Law Review* (EELR) 2019/1, p. 44; Petroglou, P. (2019), 'Sexual harassment and harassment related to sex at work: time for a new directive building on the EU gender equality acquis', *European Equality Law Review* (EELR) 2019/2, p. 16.

[592] SCPC, Judgment No. 1655/1999.

court found that sexual harassment had taken place. Accordingly, it dismissed the perpetrator's claim for EUR 200 000 against the victim and upheld the victim's claim against the perpetrator adjudicating moral damages of EUR 3 000 due to sexual harassment.[593]

In the third case, a female worker, who was a victim of sexual harassment at work by her superior, brought a labour law action against the employer (the company). She alleged that upon denouncing her superior as the perpetrator of sexual harassment at work, she was dismissed by the director of the company (her indirect superior), who thereby chose to offer coverage to the perpetrator (her direct superior). She sought the recognition of the nullity of the dismissal with an automatic result of her entitlement to full back pay. In retaliation, the director of the company brought against her a civil action for moral damages of EUR 400 000; he alleged that by blaming him in claiming that he offered coverage to her superior (the alleged perpetrator), she had committed slander/defamation against him. The court dismissed the director's action with the reasoning that the victim's allegations did not exceed the necessary measure for the exercise of her rights.[594]

This risk of penal or civil retaliation measures by the perpetrator against the victim (and potential witnesses) is usually not counterbalanced by the prospect of successful judicial proceedings: unlike in the USA, in most EU countries, the sums adjudicated for moral damages in cases of sexual harassment at work are very low,[595] as is also shown by the Greek cases mentioned above.[596]

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

Greek legislation transposing the directives copies their provisions on access to the courts:

- Article 22(1) of Act 3896/2010 copies Article 17(1) of Directive 2006/54/EC;
- Article 7(1) of Act 3769/2009 copies Article 8(1) of Directive 2004/113/EC;
- Article 7(1) of Act 4097/2012 copies Article 9(1) of Directive 2010/41/EU.

The right to judicial protection is also enshrined in Article 20(1) of the Constitution, which produces vertical and horizontal effects according to Article 25(1) of the Constitution. However, women rarely complain, in particular in the private sector, for fear of being victimised and/or acquiring a 'bad name' in the labour market and due to a lack of evidence and support (see also 3.6.5, 3.7.1, 5.1.4 and 5.4.19 above). Their fears are growing along with their soaring unemployment.[597] According to the Greek Statistical Authority (ELSTAT) data (available at: www.statistics.gr), between June 2009 and June 2016 the unemployment rate rose from 8.6 % to 23.4 % (the male rate from 5.8 % to 19.8 %; the female rate from 12.4 % to 27.8 %).[598] From the second quarter of 2009 to the second

[593] Athens FICC (three-member chamber), Judgment No. 796/2013.
[594] Athens FICC (three-member chamber), Judgment No. 1122/2013.
[595] Zorbas, G. (2010) *Le Harcèlement* (The Harassment); Zorbas, A., Zorbas, G. (2016) *Risques Psychosociaux, harcèlement et violences au travail. Droits belge, français et luxembourgeois* (Psychosocial risks, harassment and violence at work. The law of Belgium, France and Luxembourg).
[596] Petroglou, P. (2019), 'Sexual harassment and harassment related to sex at work: time for a new directive building on the EU gender equality acquis', *European Equality Law Review* (EELR) 2019/2, p. 16.
[597] According to the Greek Statistical Authority (ELSTAT) data (available at: www.statistics.gr), between June 2009 and June 2016 the unemployment rate rose from 8.6 % to 23.4 % (the male rate from 5.8 % to 19.8 %; the female rate from 12.4 % to 27.8 %). From the second quarter of 2009 to the second quarter of 2015, long term unemployment (over 12 months) rose from 40.9 % to 73.1 %. These figures do not include 'discouraged workers' (no longer actively looking for a job). This is the 'worrying' case of people aged 15-24, in particular women, as deplored by the Commission. Due to strict entitlement conditions, only 9 % of the registered unemployed receive an allowance, for 12 months in principle, of EUR 399.25 per month plus EUR 39.25 for each dependent family member. It must be noted that the number of people registered unemployed is lower than the ELSTAT number, while the allowance is well below the poverty threshold, which is EUR 580 (see 5.2.9 above).
[598] Greek Statistical Authority (ELSTAT), available at: www.statistics.gr.

quarter of 2015, long-term unemployment (over 12 months) rose from 40.9 % to 73.1 %.[599] These figures do not include 'discouraged workers' (no longer actively looking for a job). This is the 'worrying' case of people aged 15-24, in particular women, as deplored by the Commission.[600] Due to strict entitlement conditions, only 9 % of the registered unemployed receive an allowance, for 12 months in principle, of EUR 399.25 per month plus EUR 39.25 for each dependent family member. It must be noted that the number of people registered unemployed[601] is lower than the ELSTAT number, while the allowance is well below the poverty threshold, which is EUR 580 (see 5.2.9 above).

According to the general procedural provisions (Article 621(2) Code of Civil Procedure), in labour law proceedings an action can be brought to the court (First Instance Civil Court or Justice of the Peace) by an individual worker or several aggrieved workers (jointly) who have a claim with the same legal basis against the employer. However, *res judicata*, in all cases, applies only to parties and there is no possibility for class actions.

i) Litigation costs

The barriers to justice are growing, as litigation costs are sharply rising, proceedings are too long and legal aid is inadequate and difficult to obtain (see 11.3.2 below). Rises in administrative fees were aimed at discouraging litigation and thus diminishing the heavy caseload of the courts which is leading to extensive procedural delays – a systemic problem in Greece.[602] The GNCHR has deplored this situation and warned that the increases restrict access to the courts, thus violating Article 6(1) ECHR.[603] In the author's view, Article 19(2) of the TEU and Article 47 of the Charter are also being violated.

ii) Lawyers' fees

There is no legal cap to the fees of lawyers. A more popular solution in labour law cases used to be the agreement that the lawyers' fees will be paid only if the case is won (Article 60 of the Code for Lawyers Act 4194/2013, OJ A 208/27.09.2013). In this case, there is a fees' cap (20 % of the capital of the claim). Such an agreement has been a standard practice in labour disputes for a long time, in particular, in cases of unlawful dismissal, where dismissed workers could not afford the lawyers' fees. However, the sharp economic crisis of the recent years has significantly discouraged labour law lawyers to engage in such an agreement because they do not have the resources to fund them at their own risk. This explains to a certain degree the sharp reduction in the number of new labour law cases reaching the courts in the recent years, as experienced in everyday life by legal practitioners (no relevant official statistical data available).

Finally, it should be stressed that according to Article 82 of the Code for Lawyers, lawyers are not allowed to provide their services for free; free services are allowed only if the lawyer handles a personal case or the case of his/her wife/husband or of a close relative up to the third grade. According to Article 95(i) of the said Code, *pro bono* services can be allowed only by a decision of the Administrative Council of the competent Lawyers' Bar only for the promotion of the interests of the Lawyers' Bar or in the case of those who

[599] Greek Statistical Authority (ELSTAT), available at: www.statistics.gr; Of the population aged 15 years and over by the duration of employment: 2001-2015 by quarter, Table 6.

[600] European Commission (2014), *Employment and Social Situation Quarterly,* December 2014, Executive Summary, p. 23; European Commission (2014), *Employment and Social Developments in Europe* 2014, p. 54.

[601] Manpower Employment Organisation (OAED), available at: www.oaed.gr. The number of registered unemployed was 803 687 in June 2015.

[602] ECtHR, *Athanasiou v Greece*, No. 10691/04, 1 June 2006.

[603] Act 4055/2012 'fair trial and reasonable length thereof', OJ A 51/12.3.2012; GNCHR *'Παρατηρήσεις και προτάσεις σχετικά με το Σχέδιο Νόμου του Υπουργείου Δικαιοσύνης για τη δίκαιη δίκη και την εύλογη διάρκεια αυτής'* (Comments on the bill 'fair trial and reasonable length thereof), available at: nchr.gr/images/pdf/apofaseis/dikaih_dikh/EEDA_parat_polunomosxedio_tel.pdf, in Greek and in English. Also published in *Επιθεώρησις Δικαίου Κοινωνικής Ασφαλίσεως* (*Review of Social Security Law*) 2012, pp. 412-422, in Greek.

cannot afford to bring their case to the Court or other authority. However, to the author's knowledge, this provision has scarcely been applied (if ever), and not in sex discrimination cases. Moreover, according to same Article 82, the provision of legal services for free constitutes a disciplinary offence by the lawyer to the extent that it is considered to be against the lawyer's dignity. This provision is problematic for lawyers (and law firms) who would like to provide *pro bono* services and support wronged workers, in particular, victims of discrimination based on sex. In practice, lawyers who provide *pro bono* services atypically, have to declare as an income (and be taxed on) the minimum fees (albeit they do not collect them), so that they will not find themselves disciplinarily or fiscally in trouble. It is evident that no publicity can be given to *pro bono* cases and to lawyers / law firms who have brought them to court; this evidently discourages litigation not only in gender discrimination cases but also in general in labour law cases, all the more so in the context of the economic crisis of the recent years. In practice, there are sensitised individual lawyers or small informal networks thereof, who give free legal advice and take test cases to court *pro bono*, often in collaboration with women's NGOs. In view of the above provisions, this is done informally without any publicity on the *pro bono* practice.

iii) *Locus standi* of entities

Article 22(2) Act 3896/2010, OJ A 207/08.12.2010, implementing Directive 2006/54, provides for any legal entity with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit unions): (i) the rights to engage in litigation in the name of the victim upon his/her 'approval' and (ii) the right to intervene in favour of the victim, before any competent administrative authority and court. However, the rule on the standing of entities and unions of persons before the courts so that they can engage in litigation is incorrectly worded. It requires the wronged person's *'consent',* while the directives require the wronged person's '*approval'*. Under Greek law, 'consent' must be given before the lodging of proceedings, while 'approval' can be given thereafter.[604] Thus, until consent is obtained, the remedy may well be time-barred (e.g. a dismissal must be challenged within three months of its notification and an administrative act within 60 days from the date on which the wronged person took cognisance thereof). Moreover, this rule is not incorporated into the procedural codes, while there are insurmountable barriers to justice for NGOs and non-profit unions of persons which have standing, but inadequate resources (see 11.9 below).

Article 23 of the Act 4604/2019, OJ A 50/26.3.2019, added to the Civil Procedure Code a new paragraph providing the procedural right of trade unions to intervene in labour law disputes in favour of litigants who exercise rights deriving from the applicable legislation on equal treatment between men and women and the prohibition of discrimination on the grounds of sex in employment, and in particular, rights from Act 3896/2010, OJ A 207/8.12.2010, in any stage of the judicial procedure, even before the SCPC. However, this right is restricted to trade unions, excluding women's NGOs, whereas the relevant provision of Article 22(2) Act 3896/2010, OJ A 207/8.12.2010, implementing the Directive 2006/54, which has not been explicitly amended by Act 4604/2019, OJ A 50/26.3.2019, provides for any legal entity with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit unions) both the rights to engage in litigation in the name of the victim upon his/her 'approval' and to intervene in favour of the victim, before any competent administrative authority and court. Thus, the provision of Article 23 Act 4604/2019 falls short of the relevant provision of the Directive and its implementing law 3896/2010 and may create legal uncertainty as to whether (i) the right of trade unions also to engage in gender equality litigation in the name of the victim and (ii) the right of NGOs to both engage in gender equality litigation in the name of the victim and intervene in his/her favour in such procedures, are still valid. However, it should be noted that the placement of the new provision in the Civil Procedure Code will

[604] See Articles 236-238 of the Greek CC for the meaning of 'consent' and 'approval'.

render it more visible to the stakeholders of litigation (victims of discrimination, lawyers, trade unionists and judges).

The author is only aware of one case involving an NGO: a successful action by the Greek League for Women's Rights for the annulment of a decision by the Minister of Education excluding maternity and parental leave from the period required for teachers to apply for the post of school director and school counsel (see 11.9(i) below).[605] [606]

iv) Access to CJEU

In general terms, in the past, the lower courts used to be more eager to make preliminary CJEU references than the supreme ones, which had the tendency to resolve the matters based on national law, if possible. This has changed in the recent years with the supreme courts (in particular the CS – see 3.4.2 above) becoming more and more familiar with CJEU case law and the procedure of a preliminary ruling.

Intensification of information programmes for judges, lawyers, trade unionists, Labour Inspectors, the Ombudsman and women's NGOs would help the stakeholders of litigation to identify the victims of discrimination and the applicable EU law, in particular in the fields of indirect discrimination in equal pay cases and in sexual harassment cases. However, even if lawyers and judges are sensitised and familiar with EU law, the practice has shown that lawyers hesitate to request preliminary references because of the time and costs involved. This is more so in the context of the deep economic crisis, which has hit Greece in recent years. One solution could be the provision of financial support of test cases brought in the context of strategic litigation before the CJEU, given that the conditions for legal aid laid down by CJEU Regulation are so strict that only the poor can profit therefrom.

11.3.2 Availability of legal aid

Legal aid is granted to low-income EU citizens and low-income third-country nationals or stateless people. It consists of an exemption from the pre-payment of litigation costs and the appointment of a lawyer, a notary public and a bailiff at no cost. Legal aid is granted for litigation in civil, penal and administrative courts, subject to a very strict means test: the beneficiary must establish that he/she is unable to pay litigation costs without the necessary means for his/her maintenance and the maintenance of his/her family being restricted or that his/her family income does not exceed one third of the minimum wages provided by the NGCA (currently the statutory minima), i.e. EUR 216 (one third of the minimum wage of workers amounting to EUR 650, as of 1 February 2019) (see 11.8 below). Moreover, in the case of claimants, the remedy must not be inadmissible or manifestly ill-founded.

An exemption from litigation costs, without any condition, is granted for penal complaints (not for civil or administrative claims, including employment and social security claims, as the GNCHR had demanded)[607] lodged by victims of offences against sexual freedom or abuse of sexual life for financial benefit and by victims of domestic violence. These are penal offences for which those guilty of harassment are also punished (see 3.7.4 above). Non-profit legal entities are also entitled to legal aid if they establish that the payment of

[605] According to Article 1(2) Act 1304/1982, the School Counsel is a public servant with the competence to supervise and control the teaching methods and services of the teachers, to evaluate them, to organise training seminars for them etc. within a given geographical area.

[606] CS 4875/2012 annulling this decision; see European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2013), 'Greece', *European Gender Equality Law Review 1*, pp. 72-74, available at: https://www.equalitylaw.eu/downloads/2800-european-gender-equality-law-review-1-2013.

[607] GNCHR *'Παρατηρήσεις και προτάσεις στο σχέδιο νόμου 'Δίκαιη δίκη και εύλογη διάρκεια αυτής'* (Comments on the bill 'fair trial and reasonable length thereof'), as unanimously adopted in its Plenary of 26 January 2012, available at: nchr.gr/images/pdf/apofaseis/dikaih_dikh/EEDA_parat_polunomosxedio_tel.pdf, in Greek and in English. Also published in *Επιθεώρησις Δικαίου Κοινωνικής Ασφαλίσεως* (*Review of Social Security Law*) 2012, pp. 412-422, in Greek.

litigation costs makes the pursuit of their aim impossible or problematic. The beneficiaries' obligation to pay costs if their remedy fails and they are ordered to make this payment is not affected.[608] However, no execution proceedings may be lodged against them to this end, as long as the conditions for their entitlement to legal aid have not ceased, as was confirmed by a judicial decision.[609] Therefore, legal aid is in principle available to entities who are without resources. As a result, access to the courts for both victims and entities working in their interest is not sufficiently facilitated.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

The Greek gender equality law has a horizontal effect; thus, there is no particular problem in ensuring compliance with and in enforcing gender equality law in Greece.

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

The recognition of horizontal direct effects of the charter provisions (in the *Bauer* ruling of the CJEU) is in line with the fact that Greek gender equality law has horizontal effect.

11.5 Burden of proof

National legislation provides for a shift of the burden of proof in sex discrimination cases (Article 24 of Act 3896/2010 transposing Directive 2006/54/EC; Article 9 of Act 3769/2009 transposing Directive 2004/113/EC).

Article 24 of Act 3896/2010 reads:

> '1. When a person who falls within the scope of this Act alleges that he/she is affected by a discriminatory treatment on grounds of sex, within the meaning of the preceding provisions, and invokes before a court or other competent authority facts or data from which direct or indirect discrimination on grounds of sex or sexual or other harassment within the meaning of this Act is inferred, the respondent shall prove that there has been no breach of the principle of equal treatment of men and women. This provision does not apply in penal proceedings. 2. Paragraph 1 also applies where an issue of unequal treatment arises in cases covered by Directive 92/85/EEC, as transposed by Presidential Decrees 176/1997 and 41/2003, and Directive 96/34/EC, as transposed by Articles 5 and 6 of Act 1483/1984 […] and NGCA 2003.'

Article 9 of Act 3769/2009: the rule is formulated in the same way as in Paragraph 1 of Article 24 of Act 3896/2010 above.

Judgment No. 1196/2020 of the Thessaloniki CCA[610] for the first time applied the rule of the transfer of the burden of proof in a sexual harassment case. The testimonies of the mother, the female friend and the ex-fiancé of the claimant (hearsay evidence) together with the criminal court's sentence, were deemed by the Court enough to satisfy the requirements of Article 24(1) Act 3896/2010 for the reversal of the burden of proof. As the defendant, to whom the burden of proof was transferred, failed to prove that there had been no sexual harassment, the Court upheld the claim. This judgment is very important in that it is the first ever judgment among the Greek case law to apply the rule

[608] Act 3226/2004 'granting of legal aid to citizens on low income', OJ A 24/4.2.2004, as amended; Articles 194-204 Code of Civil Procedure (CCP), Article 46(2) Code of Penal Procedure (CPC), Articles 276-276A Code of Administrative Procedure (CAP).

[609] SCPC (Civil Section) No. 2069/2013.

[610] Thessaloniki CCA Judgment No. 1196/2020, Armenopoulos, 1/2021, pp. 52-59 with comments by Goulas, D. EELN Flash Report (Greece) of 12 March 2021, 'First Greek judgment to apply the reversal of the burden of proof', https://www.equalitylaw.eu/downloads/5370-greece-first-greek-judgment-to-apply-the-reversal-of-the-burden-of-proof-94-kb.

of the transfer of the burden of proof to the defendant in a sex discrimination case, the more so in a sexual harassment case with no eyewitnesses.

There is no explicit case law on the reversal of the burden of proof. It seems that the courts are rather reluctant to proceed with a reversal, even if they are asked to do so by the claimant. This happened in a recent case concerning direct or indirect sex discrimination against female cleaners in a private bank, which resulted in unlawful dismissal. The applicant requested the transfer of the burden of proof, but the Court neither responded to this request nor applied the EU law burden of proof.[611] Yet, without changing their approach to the burden of proof, some courts rely on circumstantial evidence.[612]

The rules are fine in writing, but they do not seem to be applied in practice, as the Ombudsman also notes, in spite of a relevant CJEU preliminary ruling in a Greek case.[613] An important reason is that they remain in the acts transposing the directives, without being incorporated into the procedural codes[614] and they are therefore little known. The general rule appearing in the procedural codes lays the burden of proof on the claimant. This rule, in conjunction with other factors, such as fear of victimisation or a 'bad name' in the labour market, deters women from complaining. These fears, which potential witnesses share, are increasing with the deregulation of employment relationships and the growing deterioration of the position of women in the labour market (see 4.1.3 and 4.3.6 above). Furthermore, rising litigation costs discourage litigation. The situation could improve, if organisations took cases to courts and to other authorities, which they rarely do (see 11.9 (i) below).

The Greek APPD imposed a EUR 70 000 fine on a private firm for refusing to provide data on the comparative evaluation of its employees to an employee wishing to claim his employment rights. It relied on the principles of equal treatment and the prohibition of discrimination enshrined in Act 3304/2005 (see 2.2 above) transposing Directives 2000/43/EC and 2000/78/EC.[615] In another case concerning a competition for a work post for disabled persons, the APPD[616] allowed the Greek Manpower Organisation to provide sensitive data (regarding disability and unemployment) of the successful candidate on the basis of which the assessment took place, to the unsuccessful candidate; the latter was considered to have such a legitimate interest in order to lodge a relevant complaint in time. It was also stated that, in such a case, simple (non-sensitive) personal data should be provided by the employer without need of prior permission by the APPD. Although these landmark APPD decisions have not been followed by others explicitly addressing the issue of wage transparency, in the author's view, the position of the APPD would be the same in an equal pay case (see also 4.2.9 above).

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

Paragraph 1 of Article 23 of Act 3896/2010 transposing Directive 2006/54/EC reads:

[611] Athens FICC No. 2323/12.12.2018 (3.4.4 above). After the cut-off date of this report (1 January 2021), the Athens Court of Appeal 188/2021 adopted the findings of the FICCA Judgment No. 2323/12.12.2018, without responding to the applicant's request for the transfer of the burden of proof nor applying the EU law burden of proof.

[612] CS No. 505/2010 in a sexual harassment case (3.6.4 above).

[613] CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*., 11 March 2005.

[614] Contrary to CS Opinion 348/2003 on the draft Decree transposing Directive 97/80/EC on the burden of proof in cases of discrimination based on sex, OJ L 14, 20.1.1998, pp. 6-8.

[615] APPD Decision 1/2008, available at: www.dpa.gr.

[616] Greek APPD, Decision 28/2018, www.dpa.gr.

'The violation of the prohibition of discrimination on grounds of sex enshrined in this Act entitles the victim to, *inter alia*, full compensation, including actual damage and loss of earnings as well as moral damages.'

The expression '*inter alia'* means that the traditional sanctions for a breach of employment law, which constitute *restitutio in integrum* are not affected. Greek law thus exceeds the EU law minimum requirements. Paragraph 2 of the same Article makes employers or directors of undertakings or their representatives who breach the Act liable to the administrative fines provided for breaches of labour law. Paragraph 3 makes the breach of this Act a disciplinary offence for civil servants.[617] Paragraph 4 punishes the 'offence to sexual dignity' with a harsher criminal sanction (imprisonment for six months to three years and a pecuniary penalty of at least EUR 1 000)[618] if it is committed through the exploitation of the situation of a worker or candidate for employment (see 3.7.1 above). Article 10 of Act 3769/2009 transposing Directive 2004/113/EC repeats Paragraphs 1, 3 and 4 of the above Article 23 of Act 3896/2010, adding that in the case of a breach of Article 6 of this Act (prohibition on the use of 'actuarial factors' on the grounds of sex in a way which results in differences in individual premiums and benefits), the sanctions provided by insurance law will apply.

Moreover, by virtue of Article 23(3) of Act 3896/2010 transposing Directive 2006/54/EC, a paragraph was added to Article 107 of the CSC[619] which lists the acts that constitute disciplinary offences by civil servants. This new paragraph made 'the violation of the principle of equal treatment and equal opportunities of men and women in matters of employment and occupation, according to the legislation which transposed Directive 2006/54' a disciplinary offence.[620] The above paragraph was amended again by Article 14 Act 4604/2019[621] and now defines as a disciplinary offence: 'the violation of the principle of equality, of equal opportunities and equal treatment of men and women in matters of employment and occupation, according to Act 3896/2010 and the use of language introducing gendered discrimination'.

11.6.2 Effectiveness, proportionality and dissuasiveness

Although the EU burden of proof rule does not seem to be applied (see Section 11.5 above), once an illegality is established through the traditional procedural rules, the remedies and sanctions are generally effective, proportionate and dissuasive. In most cases the claimant is put in the position in which they would have been in had the illegal act or omission not occurred (*restitutio in integrum*): an unlawful refusal to hire or promote is declared null and void by the civil courts and the hiring or promotion is deemed to exist from the time it should have occurred; administrative courts annul such a refusal and order a retroactive hiring or promotion.[622] An unlawful dismissal is declared null and void by the civil courts and is annulled by the administrative courts.[623] The dismissal is deemed never to have occurred; the worker retains their post, reinstatement not being necessary. In all cases full back pay is awarded, without a ceiling, plus legal interest. Moral damages may also be awarded pursuant to relevant general rules.[624] However, it has been argued

[617] Article 14 Act 4604/2019 OJ A 50/26.3.2019 made the use of language introducing gender discrimination a disciplinary offence for civil servants.
[618] Article 337 PC punishes this act with imprisonment for a maximum of one year or a pecuniary sanction.
[619] CSC: Act 3528/2007, OJ A 26/9.2.2007.
[620] See CS No. 505/2010.
[621] Act 4619/2019 'Ratification of the Penal Code' (*'Κύρωση του Ποινικού Κώδικα'*), OJ A 95/11.6.2019.
[622] Refusals to hire due to maximum quotas for women: SCPC (Civil Section) 1360/1992 (nullity of the refusal; retroactive effects); CS 1229/2008 (annulment of the refusal; retroactive effects); CS 13/2015 (annulment of the exclusion of a pregnant candidate from the fire corps because she could not take the fitness tests).
[623] SCPC (Civil Section) Nos 85/1995, 593/2006, 496/2011 (the dismissal of women upon reaching the pensionable age which was at the time lower than men's pensionable age); SCPC (Civil Section) No. 2035/2002 (the dismissal of a pregnant woman; knowledge of the pregnancy by the employer is irrelevant); SCPC (Civil Section) No. 1591/2010 (the dismissal of a mother during the period for which she was entitled to reduced working time (see 5.4.3 (i) above)).
[624] SCPC (Civil Section) No. 2069/2013 (moral damages – the principle of proportionality).

that, in the case of an unlawful dismissal of a pregnant or breastfeeding woman or a woman who has recently given birth, sanctions are not effective, given that full back pay can be significantly reduced or even eliminated if the Court upholds potential objections by the employer (see 5.1.1 above).

Penal sanctions, administrative fines as well as disciplinary sanctions for civil servants (see 11.6.1 above) are also satisfactory. Concerning pay[625] and social security[626] cases, levelling-up is traditionally applied. Yet procedural and socio-economic problems deter a recourse to legal proceedings, therefore limiting the use of these effective remedies (see 11.4.1 above).

11.7 Equality body

In Greece, the main equality body that seeks to implement the requirements of EU gender equality law is the Ombudsman, an independent authority whose independence is guaranteed by the Constitution (Articles 101A, 103(9)).[627] The Consumers' Ombudsman , also an independent authority, is an equality body in the private sector.[628]

The Ombudsman was the equality body for Directives 2000/43/EC and 2000/78/EC, by virtue of Act 3304/2005[629] transposing both directives, albeit in the public sector only. Therefore, in Greece there was no independent body for the implementation of Directives 2000/43/EC and 2000/78/EC in the private sector, in breach of these directives. Act 4443/2016 remedied this situation by designating the Ombudsman as the equality body for those directives in the private sector as well (see 3.4.1 above).

The Ombudsman is also the equality body in the public and private sector, for Directives 2006/54/EC and 2010/41/EU (Acts 3896/2010 and 4097/2012 transposing them, respectively); and for Directive 2004/113/EC (transposed by Act 3769/2009), albeit in the public sector only. These tasks are fulfilled by a Deputy Ombudsman for Gender Equality. The implementation of Directive 2004/113/EC in the private sector is monitored by the Consumer's Ombudsman, by virtue of Act 3769/2009 transposing this Directive.

Both Ombudsmen receive complaints, intervene between parties in order to achieve a solution ensuring the complainant's rights and give non-binding opinions. They publish annual reports and propose legislative changes. They do not have the *locus standi* to bring cases before civil or administrative courts. The Ombudsman's annual reports include a special section in the areas of Directives 2000/43/EC and 2000/78/EC and on Gender Equality in Employment and Occupation. The Ombudsmen are not competent to adjudicate on cases. Article 25(7) Act 3896/2010 provides that in the event a case is brought before the Court, the competency of the Ombudsman continues until the first hearing before the court. Article 20 Act 4443/2016 provides that in a case where the Ombudsman has found that a breach of the gender equality principle has taken place, the LI is obliged to impose the relevant administrative fines; otherwise a full and substantiated justification has to be presented by the LI.

The Ombudsman notes that there is extensive discrimination against women in practice, but a relatively low number of complaints, which, however, has increased regarding the

[625] SCPC (Civil Section) Landmark Judgment No. 35/1995 (Plen.) (4.1.4, above); SCPC (Civil Section) Nos 75/2009; CS No. 890/2006.
[626] Court of Audit Nos 44 and 3157/200 (Plen.). The annulment by the CS of a refusal to pay social security benefits also results in a levelling up: CS No. 3088/2007 (Plen.).
[627] Founded by Act 3094/2003, OJ A 10/22.1.2003, www.synigoros.gr.
[628] Founded by Act 3297/2004, OJ A 259/23.12.2004, www.synigoroskatanaloti.gr.
[629] Act 3304/2005, OJ A 16/27.1.2005.

public sector, in particular concerning parental leave. An increase is not noted for the private sector where discrimination in practice is more serious and widespread.[630]

The annual reports of the Consumer's Ombudsman contain no information on cases regarding the application of Directive 2004/113/EC which they are competent to monitor. On the Consumer's Ombudsman interventions regarding: (i) the readjustment of insurance premiums in life insurance contracts on the basis of age alteration differentiated by sex, see 9.7 above; (ii) regarding the exclusion of the diseases of female genitals and their complications from coverage under a private health insurance contract for outpatient care (see 9.5 above).

11.8 Social partners

Since the incorporation of the gender equality principle in the Constitution (see 2.1.1 above), the social partners have often included gender equality issues in collective bargaining and have gradually eradicated direct discrimination in pay. However, professional classifications in CAs are based on felt-fair, traditional, non-transparent criteria; this situation remains unchanged and the under-classification of predominantly female categories seems to persist, making indirect discrimination very probable.[631] No review of the classifications has ever been undertaken and no implementation of Recommendation 2014/124 is on the agenda.

It should be mentioned that in 2015, in the context of social dialogue, social partners (GSEE – Confederation of trade unions of employees in the private sector) and SEV[632] (Hellenic Federation of Enterprises) have jointly issued four policy papers. One of them, 'Social dialogue and discrimination in the workplace', was sent to the Ministry of Labour but was never taken into consideration, as mentioned in the 2019 Report of the Committee of Experts, ILO. In 2015 this policy paper was accompanied by common national actions for the promotion of equality and combating discrimination under the title 'The world of work together for equality', adopted by the social partners with the technical support of ILO. According to the parties, these actions were meant to show the value of social dialogue for raising awareness in the world of work of, *inter alia*, gender equality.[633] Furthermore, the national social partners have included an entry in the appendix to the 2017 National General Collective Agreement on combating discrimination at the workplace.

Large trade union federations have special secretariats for women/equality. This is the case, for example, with the Greek General Confederation of Labour (GSEE)[634] and the Supreme Administration of Unions of Civil Servants (ADEDY),[635] which represent Greek unions at the ILO and sign NGCAs, as well as the Federation of Unions of Bank Employees (OTOE).[636] The Hellenic Federation of Enterprises (SEV) has set up a working group of businesswomen with a view to promoting the participation of women in the labour market.[637] There are no specific legislative provisions requiring or encouraging a role for the social partners in ensuring compliance with and the enforcement of gender equality law.

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[630] The findings are summed up in the Ombudsman's speech 'The Ombudsman and gender discrimination: equal treatment of men and women in matters of employment and occupation', 17 October 2014, available (in Greek) at: www.synigoros.gr/resources/141021-omilia.pdf.

[631] Koukoulis-Spiliotopoulos, S. (2008), 'Gender equality in Greece and effective judicial protection', NZA 2/2008, p.77.

[632] SEV (Hellenic Federation of Enterprises) represents the large and medium enterprises in Greece and is the leading business network, with its membership including 400 of the largest corporations and regional associations/federations in Greece.

[633] Greek General Confederation of Labour (GSEE), available at: https://ineqsee.gr/wp-content/uploads/2015/03/1554_2-3-2015-koino_DT_Koines_Draseis_Diakriseis.pdf.

[634] Greek General Confederation of Labour (GSEE), available at: www.gsee.gr/?cat=14.

[635] Supreme Administration of Unions of Civil Servants (ADEDY), available at: http://adedy.gr.

[636] Federation of Unions of Bank Employees (OTOE), available at: www.otoe.gr/isotita.

[637] See Hellenic Federation of Enterprises (SEV) www.sev.org.gr/tomeis-draseon/ergasia-anthropino-kefalaio.

In practice, unions seem to support (mostly by referring to union lawyers and potentially paying litigation costs) mainly cases of victimisation for union activity, rarely sex discrimination cases. They deplore their lack of resources. They do not make use of their *locus standi* in sex discrimination cases.

CAs are legally binding on the signatory workers' and employers' unions and their members and are judicially enforceable. NGCAs provide minimum standards for private sector salaried workers employed by any employer throughout the country and bind all these employers. Since 2010, the CA system has gradually been dismantled through repeated and extensive statutory interventions in free and voluntary collective bargaining, in compliance with Memoranda of Understanding. The CA hierarchy was reversed, so that company-level CAs (where women's bargaining power is weaker) prevail over sectoral CAs.[638] To date, company-level CAs prevail over sectoral CAs only exceptionally, in the case of enterprises which face serious financial problems and are in the procedure of bankruptcy or the procedure prior to it or under consolidation measures or in an out-of-court settlement. Those enterprises are defined by a ministerial decision of the Minister of Employment and Social Affairs after consultation of the Supreme Council of Employment.[639] Moreover, NGCAs, a safety net of last resort, were deprived of their main subject: minimum wage fixing for the whole country. In particular, minimum wages fixed by NGCA 2010 were reduced by statute, moreover in a discriminatory way (on the grounds of age): by 22 % for workers over 25 years old and by 32 % for workers below this age, and were then frozen. As a result, for employees over 25 years old, the minimum monthly salary was EUR 586.08, while for manual workers over 25 years old the minimum daily salary was EUR 26.18. For employees under 25 years old the minimum monthly salary was EUR 510.95, while for manual workers under 25 years old the minimum daily salary was EUR 22.83.[640] This was considered to be a breach of the European Social Charter by the ECSR.[641] As of 1 February 2019, the minimum monthly salary is EUR 650, irrespective of age (this amounts to an increase of 10.91 % for employees over 25 years old and 27.22 % for employees under 25 years old).[642]

Given that wage fixing was removed from the scope of NGCAs,[643] NGCAs now only concern non-wage matters and can only bind the signatory employers' and workers' federations and their members and no longer all employers in the country. Currently, it is estimated that only 15-17 % of the employees in the private sector are covered by sectoral CAs.

Following GSEE complaints, the ILO CEACR and the ILO Committee on Freedom of Association (CFA) found that the above-mentioned repeated and extensive statutory interventions in free and voluntary collective bargaining, in compliance with Memoranda of Understanding violate several ILO Conventions.[644] The CEACR stressed that 'collective agreements have been a principal source of determining rates of remuneration'. It 'call[ed] upon the Government to bear in mind that collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from

[638] Article 10(2) Act 1876/1990, OJ A 27/8.3.1990, as amended by Article 37(5) Act 4024/2011, OJ A 226/27.10.2011, Article 16(1) Act 4472/2017, OJ A 74/19.5.2017 and Article 5(1) Act 4475/2017, OJ A 83/12.6.2017.

[639] Article 10(2) Act 1876/1990, as amended by Article 55 Act 4635/2019, OJ A 167/30.10.2019.

[640] Ministerial Council Act (MCA) 6/2012, OJ A 38/28.2.2012, implementing Article 1 of Act 4046/2012, OJ A 28/14.2.2012; Article 1, Paragraph IA.1(3) of Act 4093/2012, OJ A 222/12.11.2012.

[641] ECSR Decision on the merits of 23.05.2012, Complaint No. 66/2011, *General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v Greece.*

[642] Ministerial Decision No. 4241/127/2019, OJ B 173/30.1.2019 by virtue of Article 103 Act 4172/2013, OJ A 167/23.7.2013, as amended.

[643] Article 1, Paragraph IA.1 (1) and (2a) of Act 4093/2012, OJ A 222/12.11.2012.

[644] ILO CEACR, Observations, International Labour Conference 102nd Session, 2013, Greece, Convention 98 (right to organise and collective bargaining) and Convention 100 (equal remuneration), available at: www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658; CFA 365th Report, Governing Body 316th Session, 1-16 November 2012, Case 2820, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf.

indirect discrimination on the ground of sex' and to ensure an 'effective enforcement' of equal pay legislation.[645] CAs, in particular NGCAs, have also improved maternity and parenthood protection (see 5.2.1, 5.2.2, 5.4.1, 5.4.3 (i) above).

Article 11 of Act 1876/1990[646] empowered the Minister of Labour to extend and declare generally mandatory for all workers of a sector or profession a CA which is already binding on employers who employ 51 % of the workers in that sector or profession. The application of this provision was suspended until the end of the Programme of Economic Adjustment, i.e. 20 August 2018 (Article 37(6) of Act 4024/2011).[647] After 21 August 2018 the above provision was applied again and several sectoral CAs have been extended and declared generally mandatory. However, as of 30 October 2019, stricter conditions govern the extension and declaration of CAs as generally mandatory for all workers of a sector or profession.[648] Under the new regime, no CAs have been extended and declared generally mandatory.

11.9 Other relevant bodies

i) The role of women's NGOs for strategic litigation

Certain women's NGOs offer counselling and, potentially, assistance at court (by providing a volunteer lawyer and, if necessary, the costs) to women who have legal problems. It is usually women with family problems (battering, etc.) – very seldom with employment cases – who appear.

Article 22(2) Act 3896/2010 used to provide the right of intervention before any administrative authority and any court for any legal entity with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit human rights organisations). However, this provision had not been incorporated into the procedural codes, so it was not widely known. Article 23 of Act 4604/2019, OJ A 50/26.03.2019, added to the Civil Procedure Code a new paragraph providing the procedural right of trade unions to intervene in labour law disputes in favour of litigants who exercise rights deriving from the applicable legislation on equal treatment between men and women and the prohibition of discrimination on the grounds of sex in employment, and in particular, rights from Act 3896/2010, in any stage of the judicial procedure, even before the SCPC. However, this right is restricted to trade unions, excluding women's NGOs, whereas the relevant provision of Article 22(2) Act 3896/2010, implementing the Directive 2006/54/EC, which has not been explicitly amended by Act 4604/2019, provides for any legal entity with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit organisations) both the rights to engage in litigation in the name of the victim with his/her 'approval' and to intervene in favour of the victim, before any competent administrative authority and court. Thus, the provision of Article 23 Act 4604/2019 falls short of the relevant provision of the Directive and its implementing Law 3896/2010 and may create legal uncertainty as to whether (i) the right of trade unions also to engage in gender equality litigation in the name of the victim and (ii) the right of NGOs to both engage in gender equality litigation in the name of the victim and intervene in his/her favour in such procedures are still valid. However, it should be noted that the placement of the new provision in the Civil Procedure Code has rendered it more visible to the stakeholders in litigation (victims of discrimination, lawyers, trade unionists and judges).

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[645] ILO CEACR, Observations, International Labour Conference 101st Session, 2012, Greece, Convention 100 (equal remuneration), available at: www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658.

[646] Act 1876/1990 'free collective bargaining,' OJ A 27/8.3.1990.

[647] Article 37(6) of Act 4024/2011 OJ A 226/27.10.2011, as amended by Article 4472/2017 OJ A 74/19.5.2017 and by Article Fifth Act 4475/2017 OJA 83/12.6.2017.

[648] Article 11(2) Act 1876/1990, OJ A 27/8.3.1990, as amended by Article 56 Act 4635/2019, OJ A 167/30.10.2019.

The author is only aware of one case brought by a women's NGO, the historical 'Greek League for Women's Rights' (GLWR) (*Σύνδεσμος για τα Δικαιώματα της Γυναίκας*). More specifically, the GLWR lodged before the CS (Supreme Administrative Court) a petition for annulment of a decision by the Minister of Education, which excluded maternity and parental leave time from the period of service in education required for teachers in order to apply for the post of school director and school counsel.[649] This was an act of general applicability (*acte réglementaire)* issued under an enabling statutory provision[650] (Article 43 of the Constitution). According to the law,[651] teachers are governed by the Code for Civil Servants,[652] which provides five months' maternity leave and nine months' parental leave. By its judgment 4875/2012, the CS (seven-member section) found that the statutory aim of the GLWR to promote gender equality established its legitimate interest to lodge the petition for annulment of the said ministerial decision, to the extent that the latter excludes both the period of maternity leave, which concerns only women, and the period of parental leave, which concerns both women and men; in this context, the Court recalled that the nine-month parental leave is granted in the framework of the principle of the harmonisation of professional and family life, which is a natural corollary of the principle of gender equality and a means to realise its substantive implementation,[653] with a view to encouraging fathers to assume their family responsibilities. Having accepted the *locus standi* of the NGO, the Court found that the impugned ministerial decision, to the extent that it excluded maternity and parental leave from the calculation of the time of service in education, fell out of the scope of the enabling statutory provision: instead of restricting itself only to the regulation of the necessary implementation details of the selection procedure in question, as it was enabled to do, it established for the first time a new typical qualification. As a result, the impugned ministerial decision was annulled. It should be noted that the GLWR was represented at court by the prominent lawyer and ex-member of the EELN, Sophia Spiliotopoulos, who had the idea to bring this case (and also funded it herself!) in order to create for the first time jurisprudence on the *locus standi* of women's NGOs in the absence of concrete victims (the time limit for the petition of annulment was 60 days from the issue of the impugned ministerial decision and within this period, potential victims of discrimination could not be identified by the GLWR).

As mentioned above (see above under 1.1), the annulment of an administrative act has, in principle, a retroactive *erga omnes* effect: the act or its provision that has been annulled is deemed never to have been enacted. In the above case, the same ministerial provision continued to apply, albeit without its annulled provision: henceforth the time of maternity and parental leave is considered as a period of service in education. There was no need for a law reform.

The duration of the above judicial procedure was one year and eight months, which is not long (at least according to the Greek standards). The added value of the strategic litigation in this landmark case was the retroactive *erga omnes* effect of the above annulment. If the impugned ministerial decision had not been challenged by the GLWR within 60 days after its issue (and consequently had not been annulled), each one of the potential victims of discrimination, who would not have been selected as a school counsellor, due to the non-calculation of the maternity leave or the parental leave as working time, would have to lodge a separate petition of annulment of his/her non-selection; in this case, the legality of the impugned ministerial decision would be only incidentally reviewed by the competent court (ACA) and the *res judicata* would apply only to the parties.

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649 CS 4875/2012 annulling this decision; see European network of legal experts in the field of gender equality, Koukoulis-Spiliotopoulos, S. (2013), 'Greece', *European Gender Equality Law Review 1*, pp. 72-74, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights.

650 Article 18(10) Act 3848/2010, OJ A 71/19.5.2010.

651 Article 53(2) Act 2721/1999, OJ A 112.

652 At that time, Act 2683/1999, OJ A 19/9.2.1999, which has been repealed and replaced by Act 3528/2007, OJ A 26/9.2.2007.

653 See also CS 1/2006, 2/2006.

To the author's knowledge, no other judgment has been issued on the *locus standi* of NGOs in gender equality issues. Although ahead of its time, this judgment did not get the publicity it deserved, nor has it caused any doctrinal or public debate.

In practice, there are insurmountable barriers to access to the courts for NGOs and non-profit organisations which have standing, but inadequate resources. Even long-established women's NGOs have been hit hard by the economic crisis because their members are not paying their contributions and they have no other resources. In this context, it should be noted that in Greece, women's NGOs are established under the legal form of an association. According to Article 80 of the CC, the resources of an association are defined by its statutes. In practice, the resources of an association comprise: the members' yearly contributions, private donations (no legal restrictions apply) and less often, public funding. After 10 years of financial recession under the Memoranda of Understanding, the Greek women's NGOs have been financially drained, as their members cannot cope with the payment of contributions, their assets have been exhausted and there is no public funding. In the future, things will get even worse due to the financial repercussions of the COVID-19 crisis. Nonetheless, the role of women's NGOs in the protection of equality rights is crucial, as they can litigate even in cases of unidentified victims, according to the CJEU's case law under the anti-discrimination directives.[654] In view of the above, in the author's opinion, gender equality NGOs (and, in general, equality NGOs) should be exempted from judicial fees when bringing a claim under EU gender equality (and in general equality) law or when intervening in favour of the victim of discrimination on the grounds of gender.

ii) The Labour Inspectorate

Labour Inspectors supervise the application of labour legislation. They receive complaints from workers and unions and inspect workplaces (on their own initiative or following complaints), give information and advice, intervene between employers and workers attempting a peaceful solution of their disputes, inflict fines and lodge complaints with criminal courts for infringement of labour legislation. They do not have the *locus standi* to bring cases before civil or administrative courts. Workers consider them as their protectors, as their interference may be very effective; it is mostly to them that workers and unions immediately turn in the event of problems. After a complaint is lodged, the Labour Inspector invites both parties with a view to conciliation. If a settlement is achieved, the Labour Inspector draws up a record of conciliation, which is signed by both parties and has the legal force of a labour agreement. Otherwise, the Labour Inspector draws up a record of non-conciliation, which contains the declarations of the parties and his/her justified opinion. The above records can be used in court as evidence of the facts established and the declaration of the parties. Thus, important and costless out-of-court settlements can be achieved. However, Labour Inspectors are admittedly not able to cope with all their responsibilities (e.g. workplace inspection, infliction of fines of their own initiative) due to lack of staff and means, limited information and further training. They mostly rely on Ministry of Labour circulars and two Greek law reviews for solving everyday problems. They are often not familiar with sex equality law and CJEU case law. The issues they are most aware of and receive the most usual complaints about are pregnancy and maternity protection. The number of sex equality cases handled each year by the Labour Inspectors appear in the Yearly Report of the Labour Inspection, categorised according to the nature of the dispute.

[654] CJEU, C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV,* 10 July 2008; CJEU, C-81/12, *Asociaţia Accept v Consiliul Naţional pentru Combaterea Discriminării*, 25 April 2013.

iii) The General Secretariat for Gender Equality and its monitoring role for the Istanbul Convention

The General Secretariat for Gender Equality (hereinafter GSGE), which was renamed as General Secretariat for Family Policy and Equality in 2019,[655] is a governmental body which was designated as the coordinating body for monitoring the application of the Istanbul Convention, in accordance with Article 10 IC. Moreover, the Observatory operating within the GSGE is competent for data collection and research in accordance with Article 11 IC. The GSGE is the competent governmental body for the planning, implementation and evaluation of gender equality policies in all fields. Since its establishment in 1985,[656] it has fallen initially under the Ministry of the Presidency of the Government and later under the Ministry of Interior, with the exception of a short-lived transfer to the Ministry of Justice, Transparency and Human Rights (5 November 2009[657] to 28 September 2010).[658] The GSGE is part of the National Mechanism for Gender Equality at central national level[659] and the monitoring body for the IC. GSGE also plays a leading and supervisory role in the implementation of gender mainstreaming in public budgeting and in the social media; it collaborates with the competent entities for gender mainstreaming in public health, social solidarity and welfare; it awards equality marks to companies in the public and private sector which excel in the implementation of policies aimed at equal treatment of and equal opportunities for working women and men (see 3.6.5 (iv) above). Under the GSGE fall: (a) the Observatory for Gender Equality[660] and (b) the 11-member National Council for Gender Equality.[661] Moreover, the GSGE runs a Network of Structures for Gender Equality, including Advisory Centres for Women and the help line SOS 15900 for the support of women victims of gender-based violence (see 3.6.5 (iv) above). The GSGE does not have *locus standi*.

In July 2019, the GSGE was transferred from the Ministry of Interior to the Ministry of Labour and Social Affairs[662] and was renamed the 'General Secretariat for Family Policy and Gender Equality'. This was strongly criticised by women's NGOs as a downgrade.[663] After the cut-off date of this report (1 January 2021), the GSGE's title was changed again to 'General Secretariat for Demographic and Family Policy and Gender Equality' and it was brought under the Undersecretary for Employment competent for Demographic and Family Policy (in the Undersecretary's title the term 'gender equality' is completely missing!). The recent development has been strongly criticised as a severe and visible regression regarding gender equality, which reproduces traditional stereotypes regarding the role of

655 Article 7 PD 84/2019, OJ A 123/17.7.2019.
656 Article 27 Act 1555/1985, OJ A 137/26.7.1985.
657 PD 189/2009, OJ A 221/5.11.2009.
658 PD 96/2010, OJ A 170/28.9.2010.
659 Together with: 1) the Research Centre on Gender Equality (KETHI), a legal person governed by private law and supervised by the Ministry of Interior Affairs, which coordinates, promotes and makes research on gender equality issues and implements national and European action plans for the support of women through counselling and for their social and labour market integration, 2) the Gender Equality Units of all ministries and 3) the Ombudsman (Equality Section). Article 4(1) Act 4604/2019, OJ A 50/26.3.2019.
660 The Greek Observatory for Gender Equality is an online portal of the GSGE designed to include, analyse, process and disseminate statistical data and indicators on gender equality policies. Its goal is to map gender differentiations in 12 basic policy areas and monitor any relevant trends and advances in Greece. Moreover, it includes 82 gender indicators based either on the Beijing Platform for Action or on specific national priorities and is followed by metadata. Every Ministry in its area of competence submits annually to this Observatory: (a) a progress report on the combat against gender discrimination, adopting relevant actions, measures and programmes (Article 10(1) Act 4604/2019, OJ A 50/26.3.2019) and (b) statistical data per gender on their areas of competence (Article 12 Act 4604/2019, OJ A 50/26.3.2019).
661 Article 9 Act 4604/2019 provides that the National Council for Gender Equality is composed of the Secretary General for Gender Equality as President; a representative of the Ministry of Interior; a representative of the Ministry of Justice; two University members specialised in gender studies; one KETHI representative; a person of acknowledged prestige and experience in the field of gender equality and gender-based violence and two representatives of women's or feminist NGOs. It submits to the GSGE proposals for the adoption of policies and actions promoting gender equality and evaluates the existing equality policies.
662 Article 4(2) PD 81/2019, OJ A 119/8.7.2019
663 These concerns are neither hypothetical nor unjustified, considering a similar development in Turkey several years ago. See EELN country report gender equality Turkey 2020, under 3.1.4, pp. 18-19, available at: https://www.equalitylaw.eu/downloads/5248-turkey-country-report-gender-equality-2020-2-1-mb.

women in society, by women's NGOs (Article 2 PD 3/06.01.2021, OJ A 3/06.01.2021). The new Undersecretary for Demographic and Family Policy, Maria Syrengela, has repeatedly stressed that this development was merely meant to promote the aim of reconciliation of family/private life with work. However, according to the CJEU, the latter is 'a natural corollary to gender equality' and a means for achieving gender equality not only in law but also in the reality of everyday life. Accordingly, this development cannot be objectively justified. Women's NGOs are seriously concerned about whether this development will mark a backlash in gender equality, in particular concerning the right to legal and safe abortion. Actually, gender mainstreaming has been made even more crucial during the COVID-19 pandemic and the recovery. In view of the above, the recent development could be considered a real 'backlash', as those deplored by the European Parliament in its recent Resolution of 21 January 2021 on the EU Strategy for Gender Equality. Gender equality has slipped out of the title of the competent Undersecretary. It remains to be seen whether it is going to slip down the agenda as well.[664]

11.10 Evaluation of implementation

Fear of victimisation in the form of legal retaliation by the employer or the alleged perpetrator has been, *inter alia*, a barrier to access to justice in the field of sexual harassment. This may explain to a certain extent the scarce relevant litigation, although the reports of the Ombudsman and the LI show that the phenomenon is still present to a significant extent in the Greek labour market. There is also limited awareness of sexual harassment as a form of gender discrimination, whereas there has been no political or societal debate on the new ILO Violence and Harassment Convention 190 and Declaration 206 adopted in June 2019.

In 1990-1993 a research study was conducted into the records of the Greek courts with the aim of identifying gender equality cases, the level of litigation and the impact of case law.[665] This was a huge task, given that in Greece the judgments are kept in the courts' files and only some of them (mostly those from the supreme courts) are published in law reviews or data banks. According to the findings of this research, women's reactions are conditioned (much more than those of men in similar circumstances) by feelings of insecurity, inhibitions and numerous justified or unjustified, conscious or subconscious, fears: of unemployment, of employers' power, of social disapproval and a bad reputation in the labour market, of not being able to cope with employment and family responsibilities (and associated feelings of guilt) and of losing a case (even if this will not be detrimental) etc. This ambiguous and controversial situation, in conjunction with lack of information among workers, trade unions and lawyers, limited support from trade unions, the weaknesses of the competent administrative authorities and shortcomings of substantive and procedural litigation (particularly the scope of legislation and burden of proof) seem to condition women's reluctance to claim their rights and their readiness to compromise.

Thirty years later, the above findings have not been amplified by the severe economic crisis that has hit the Greek economy and the subsequent recession due to COVID-19 (see 12 'The socio-economic context' below). In view of the above, at national level, women's NGOs should be exempted from judicial fees (see 11.3.1 (i) above) when instigating gender equality litigation procedures in the name of a victim, or in the case of unidentified victims or victims not willing to be identified (see 11.9 (i) above). The provisions on the standing of legal entities (women's NGOs, trade unions) should be included in the Codes of Civil Procedure and brought in line with the directives' provisions (see 11.9 (i) above). Victimisation in the form of legal retaliation by the perpetrator against the victim should

[664] EELN Flash Report (Greece) of 12 March 2021, 'Further degradation of the General Secretariat for Gender Equality', https://www.equalitylaw.eu/downloads/5367-greece-further-degradation-of-the-general-secretariat-for-gender-equality-95-kb.

[665] Koukoulis-Spiliotopoulos, S., Petroglou, A., Petroglou, P. (1993), Greek Report in the research project 'Sex equality litigation in the Member States of the European Community – A comparative study', led by Barry Fitzpatrick.

also be addressed, in particular in cases of sexual harassment and harassment related to sex at work (see 11.2 (i) above). Training seminars should be intensified for the stakeholders of litigation (judges, lawyers, representatives of women's NGOs, trade unionists), Equality Bodies (the Ombudsman) and the LI. Moreover, the provisions of the Code of Lawyers should be amended in order to allow *pro bono* lawyering in gender equality cases as a form of positive action to enhance access to courts for victims of gender discrimination (and discrimination in general).

11.11 Remaining issues

There are no remaining issues.

12 Overall assessment

The following transposition problems were mentioned in this report:

1. New definitions of general concepts falling short of national and EU gender equality *acquis*

Act 4604/2019 amended the existing definitions of direct discrimination (see 3.3.1 above), indirect discrimination (see 3.4.1 above), sexual harassment (see 3.7.3 above), multiple discrimination (see 3.5.1 above) and positive action (see 3.6.1 above), falling short of the gender equality EU *acquis*. By omitting any reference to Directive 2006/54/EC, Greece is in clear violation of its implementation requirements. Moreover, this undermines the coherence of national law implementing the gender equality and anti-discrimination Directives and creates a lack of clarity and legal uncertainty, which is not allowed by EU law in the implementation of the Directives.

2. Equal pay: Non-implementation of the pay transparency Recommendation 2014/124

Despite the provision of Article 4(2)(a) Act 3896/2010, copying that of Directive 2006/54 on job classification, there is no case law on the provision of Article 4(1) Act 3896/2010 or in general in relation to sex-based discrimination in job classification systems or any other instruments designated to assist in establishing gender-neutral job evaluation and pay systems, and no monitoring of job classification. Consequently, there is no awareness, hence no application of the notion of equal value (see 4.2.3 and 4.2.4 above). To make things worse, the measures proposed in Recommendation 2014/124 have neither been implemented by legislation nor by CAs. This lack of transparency – together with the fact that non-transparent job classifications that have traditionally been considered fair, due to stereotypes to the detriment of formerly 'female' (and still female-dominated) categories still not having been revised – renders the legal provisions on equal pay, to a great extent, ineffective (see 4.2.11 above).

3. Conditions for maternity allowance in breach of Directive 92/85/EEC

In breach of Article 11(4) of Directive 92/85/EEC, social security legislation makes the payment of the maternity allowance conditional upon the completion of 200 working days during the 2 years preceding the commencement of maternity leave. Moreover, in breach of Article 11(3) of Directive 92/85/EEC, the granting of maternity allowance is subject to stricter conditions than the granting of sickness allowance (the granting of the latter is subject to 75 working days in the year preceding the notification of the sickness, reduced to 50 days as of 1 January 2020) (see 5.3.7 above).

4. Female salaried lawyers not entitled to 'adequate' maternity allowance

Non-entitlement of female salaried lawyers to a maternity allowance by the competent social security scheme 'EFKA' due to the non-adoption of the Single Benefits Regulation of the latter, in breach of Article 11(2)(b) Directive 92/85, which explicitly provides for an 'adequate' maternity allowance (see 5.3.5 (i) above).

5. Non-renewal of a fixed-term employment contract of female workers due to their state of pregnancy and/or maternity not covered by protection against dismissal

According to the Greek jurisprudence, female workers on a fixed-term contract enjoy protection against dismissal connected to their state of pregnancy and/or maternity only until the expiry of their contract, whereas the non-renewal of their fixed-term contract is not covered (see 4.3.4 above).

6. Non-entitlement of fathers to the 'special' paid maternity leave

The 'special' paid maternity leave ('*ειδική άδεια προστασίας μητρότητας*'), which, despite its name, falls under the EU concept of parental leave, is provided only for mothers (not for fathers) and does not cover all the employees in the private sector (see 5.3.1 above).

7. Non-entitlement of fathers who are substitute teachers to reduced working hours and to a 3.5-months' paid leave after the end of maternity leave

Following recent changes (Article 26 Act 4599/2019), female substitute teachers are now entitled to reduced working hours and to three-and-a-half-months' paid leave to raise the child (to be taken after the end of maternity leave). The non-entitlement of fathers to said accommodation and leave, which fall under the concept of parental leave, constitutes direct discrimination (see 5.3.8 and 5.5.4 above).

8. Provisions of the Civil Servants Code (CSC) limiting entitlement to parental leave until the age of four

Although Act 4075/2012, implementing Directive 2010/18, grants parental leave until the child reaches the age of six, the CSC still limits entitlement to the nine months' parental leave or, alternatively, the daily working time reduction, until the child reaches the age of four and it is applied in this way in practice, in breach of the national implementing law (see 5.5.9 above).

9. Irrational and unlawful administrative practice curtailing the nine months' paid parental leave of civil servants if the child was born before appointment to the civil service

There is an irrational and unlawful practice within the civil service: when a civil servant requests parental leave later than the expiry of maternity leave, or for a child born before his/her appointment to the civil service, while the child is still under the age prescribed by law, a fictitious use of the reduced working day is taken into account and the leave is proportionately curtailed (see 5.5.9 above).

10. Non-transposition of Articles 5, 7, 8(3), (4) Directive 2010/41/EU – Insufficient maternity benefits for self-employed women

Article 8(3) of Directive 2010/41 has not been transposed. Maternity benefits for the self-employed have been fixed to a sum that is far below the poverty threshold. Despite the merging of the various social security schemes into one single scheme – the 'EFKA', since 1 January 2017 – the Single Benefits Regulation of the 'EFKA' has still not been issued and the particular provisions of the merged schemes governing entitlement to benefits continue to be applied (see 8.7, 8.10 above).

11. No provision of a non-transferable part of parental leave in the public sector, in breach of Article 2(2) Directive 2010/18

Regarding parental leave in the public sector, the law does not require that one month be retained by one parent, in breach of Clause 2(2) Directive 2010/18 (see 5.5.6 above). Moreover, a civil servant whose spouse works in the private sector is granted the leave to the extent that his/her spouse makes no use of it or the CSC leave exceeds that of the private sector (see 5.5.6 above). This does not encourage the more equal take-up of leave by both parents, as per the aim of the Directive.

12. Lack of a general provision on time off from work on grounds of *force majeure*

There are fragmented provisions for specific cases, but no general provision of time off from work on grounds of *force majeure*, in breach of Clause 7 of Directive 2010/18 (see 5.7.1 above).

13. *Locus standi* of entities: Requirement of the victim's 'consent' instead of 'approval'

The rule on the standing of organisations requires the victim's '*consent'* (to be given before the lodging of the remedy), in breach of Article 17(2) Directive 2006/54 which requires the victim's '*approval'* (which may be given thereafter) (see 11.3.1 (iii) above).

14. *Procedural rules*: Inclusion of procedural rights of all entities in the Civil Procedure Code

By a recent amendment of the Civil Procedure Code, the procedural right to intervene in labour law disputes in favour of litigants is restricted to trade unions, excluding women's NGOs, whereas the national law implementing Directive 2006/54 (Act 3896/2010) provides any legal entity or union of persons with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit unions) with the rights to engage in litigation in the name of the victim upon his/her 'consent' and to intervene in favour of the victim. To comply with the provision of Article 17(2) Directive 2006/54, this procedural right should be incorporated into the procedural codes for both of the above entities (see 11.3.1 (iii) above).

15. Lack of sexual harassment cases due to fear of victimisation in the form of legal retaliation

In practice, very few cases of sexual harassment reach the courts, *inter alia*, due to fear of victimisation in the form of penal or civil retaliation measures by the perpetrator against the victim (and potential witnesses) (see 11.2 (i) above).

16. Common minimum athletic requirements (MAR) for access to the Police schools and semi-military corps

MAR common for male and female candidates were found by the Greek jurisprudence to be lawful for access to the municipal Police forces and to the Fire Brigade. Instead of revisiting this jurisprudence in the light of the CJEU *Kalliri* case, which found that not all of the Police forces' functions could be said to use physical force (e.g. providing assistance to citizens or traffic control), a recent CS judgment in line with its previous case law, found that common MAR for access to the Police school entail no indirect discrimination against female candidates (see 3.4.3.i above).

17. Ongoing sex discrimination within the public servants' occupational social security scheme

In the occupational social security scheme for public servants and military staff several gender discriminations have been found to persist, in particular in transitional provisions providing more favourable retirement ages to female civil servants and more favourable conditions of entitlement to a pension for unmarried daughters of a deceased public servant or military officer than those applying to unmarried sons (see under 6.6 above).

18. Ongoing sex discrimination within the statutory social security scheme for employees

In the statutory social security scheme for employees several gender discriminations have been found to persist, in particular a more favourable pensionable age for mothers with

underage children or disabled children irrespective of their age affiliated to the general statutory social security scheme EFKA/IKA or EFKA/ETAP-MME (see under 7.5 above).

The socio-economic context

The sweeping reforms in the areas of employment and social security which have been made since 2010 were required as bailout conditions by Memoranda of Understanding (MoUs) signed by the European Commission, acting on behalf of the Euro area Member States, and the Hellenic Republic. The drastic cuts in pay and social security benefits are coupled with significant increases in direct and indirect taxes and other charges. As incomes shrink and charges rise, the welfare state is gradually being dismantled through social budget cuts. The general situation thus keeps deteriorating, as the (usually cautious) CS has also found (see 1.1 above). Growing legal uncertainty adds to the general feeling of insecurity. The austerity measures are included in long and tortuous pieces of legislation, dealing with subjects unrelated to one another ('omnibus laws'), which have retroactive effect and are difficult to combine amongst themselves and with other relevant legislation, and are often and unpredictably modified. As international organisations, institutions, bodies and experts have found, the crisis and austerity measures have a disproportionate impact on women. Moreover, their financial effectiveness is highly questionable.[666]

The Ombudsman stresses that women are more exposed to adverse working conditions, in particular in the private sector, more generally and during pregnancy and upon their return from maternity leave. They are pressed to accept flexible forms of employment which do not ensure adequate living standards and do not allow them to meet their family obligations.[667] In particular, downgrading and imposed part-time or rotation work are spreading, but women's reluctance to lodge actions is also growing (see 11.10 above).[668] The Ombudsman stresses that in the context of the crisis and labour market deregulation, gender stereotypes are being resurrected, if not prevailing.

Unfortunately, the situation in Greece is not going to improve in the near future. Due to the financial repercussions of COVID-19 in the global economy, huge tides of dismissals and deterioration of working conditions are expected as soon as the States' aid to the enterprises hit by the crisis ceases or is reduced; this will affect, in particular, South European countries, like Greece, which are more dependent on the tourism 'industry' and have a big number of small enterprises, which are the most vulnerable.

Currently, there is widespread concern worldwide that women (and minorities) will be made more vulnerable by the financial recession due to the pandemic. The sad experience of Greece after a 10-year financial crisis under the MoUs has shown so far that during a

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[666] ILO CEACR, Observations, International Labour Conference 101st, 102nd, 104th, and 106th Sessions, 2012-2017, Convention 100 (equal remuneration) and Convention 111 (discrimination (employment and occupation)), available at: www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658; Council of Europe Commissioner for Human Rights, *Protect women's rights during the crisis*, 10.07.2014, available at: www.coe.int/en/web/commissioner/-/protect-women-s-rights-during-the-crisis; UN Independent Experts on the effects of foreign debt on human rights, Lumina, C. (2014), *Mission to Greece (22–27 April 2013),* UN Human Rights Council 25th Session, 11 March (A/HRC/25/50/Add.1): available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx; Bohoslavsky, J.-P. (2015), *Greek crisis: human rights should not stop at doors of international institutions*, 02 June 2015, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032&LangID=E; Bohoslavsky, J.-P. (2016) *End-of-Mission Statement. Visit to the European Union Institutions*, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20057&LangID=E.

[667] See the speech by the Greek Ombudsman, Spanou, K. (2014), 'The Ombudsman and gender discrimination: equal treatment of men and women in matters of employment and occupation', 17 October, summing up the findings. Available (in Greek) at: www.synigoros.gr/resources/141021-omilia.pdf.

[668] See SCPC, Civil Section No. 37/2004 condemning the downgrading of a woman upon her return from maternity leave. This was and still is common in the state-owned bank concerned, but only the claimant dared to bring an action, which an expert lawyer dealt with as a test case, *pro bono*. Although this practice is growing, recourse to the courts is still rare.

crisis the protection of human and social rights is not a priority at societal level: in a EUROBAROMETER research of the year 2012, 80 % of Greeks (the highest percentage among EU Member States) stated that in Greece, policies against discrimination were rendered less important because of the financial crisis.[669] Moreover, it is common knowledge among legal practitioners in Greece that during a financial crisis victims cannot afford to, or do not dare to, litigate for fear of unemployment, victimisation, stigmatisation, etc. Women NGOs should be encouraged to instigate proactive litigation even in the case of unidentifiable victims of gendered discrimination or victims that are not willing to be identified. To be able thereto, NGOs should be exempted from judicial fees. *Pro bono* lawyering should be also be allowed in Greece.

The COVID-19 pandemic has also shown that domestic violence against women thrives during the lockdown period. This experience after 1.5 months of confinement should be food for thought about the violence (and even domestic violence) experienced by women and girls asylum seekers hosted in structures on EU territory in their everyday life. The IC is a useful tool to address these problems at both national and European level.

Last, but not least, in the near future, legal practitioners will be faced with more structural and covert forms of indirect gender discrimination, in the context of gender-neutral collective employment measures (transfer of undertakings, mass redundancies, working time reductions, etc.) which risk disproportionately affecting women, especially in low-paid, low-skilled jobs and gender-segregated areas of employment. Free e-training seminars for monitoring mechanisms (equality bodies, labour inspectorates) and all the stakeholders of litigation (judges, lawyers, women's NGOs, trade unionists) should be intensified and the correlation between EU employment law and gender equality (and anti-discrimination in general) should be added to the thematic of the topics addressed. This is crucial in order to ensure vigilance of the monitoring mechanisms and awareness of the various stakeholders of litigation. Hopefully, this will lead to satisfactory levels of gender equality litigation in all Member States, participation on an equal footing of all national judges in the building of the CJEU jurisprudence and ultimately, enhanced compliance with EU gender equality law.

The Commission's proposal for a directive on pay transparency comes at a point when concerted EU action is more important than ever due to the COVID-19 crisis which has hit female workers especially hard in terms of both employment positions and wages. The directive will ensure a positive trajectory during the crisis and in the recovery therefrom. Its ratification and implementation by the Member States is a crucial commitment in this direction. Fundamental rights are not a 'luxury' to be addressed only during the periods of prosperity but a precondition for social cohesion to defend at any time. After all, women are more than half the population.

[669] Goulas, D., Kofinis, St. (2018), Introduction to *'Η απαγόρευση των διακρίσεων στην πράξη'* (Applying non-discrimination law), p. 13, available at: https://www.academia.edu/37637121/Applying_non-discrimination_law_-_%CE%97_%CE%B1%CF%80%CE%B1%CE%B3%CF%8C%CF%81%CE%B5%CF%85%CF%83%CE%B7_%CF%84%CF%89%CE%BD_%CE%B4%CE%B9%CE%B1%CE%BA%CF%81%CE%AF%CF%83%CE%B5%CF%89%CE%BD_%CF%83%CF%84%CE%B7%CE%BD_%CF%80%CF%81%CE%AC%CE%BE%CE%B7_2018?email_work_card=view-paper/.

Annexes

List of Abbreviations

ACA: Administrative Court of Appeal
ALC: Act of Legislative Content
APPD: Authority for the Protection of Personal Data
CA: Collective Agreement
CC: Civil Code
CCA: Civil Court of Appeal
CCP: Code of Civil Procedure
CERD: International Convention on the Elimination of All Forms of Racial Discrimination
CJEU: Court of Justice of the European Union
Const.: Constitution
CS: Council of State (Supreme Administrative Court)
CSC: Civil Servants Code
ECHR: European Convention on Human Rights
ECtHR: European Court of Human Rights
ECSR: European Committee of Social Rights
EELN: European Equality Law Network – European network of legal experts in gender equality and non-discrimination
EFKA: general social security scheme
ETAA: Unified Scheme for Independent Workers (social security scheme)
ETEAEP: single scheme of supplementary pensions (social security scheme)
FIACA: First Instance Administrative Court of Athens
FICC: First Instance Civil Court
FICCA: First Instance Civil Court of Athens
GNCHR: Greek National Commission for Human Rights
GSFPGE: General Secretariat for Family Policy and Gender Equality
GSGE: General Secretariat for Gender Equality
ICCPR: International Covenant on Civil and Political Rights
IKA: Organisation of Social Security (social security scheme)
ILO: International Labour Organization
JP: Justice of the Peace
LI: Labour Inspectorate
MAR: Minimum Athletic Requirements
MHR: Minimum Height Requirement
NGCA: National General Collective Agreement
PC: Penal Code
PD: Presidential Decree
SCPC: Supreme Civil and Penal Court
SSP: Scientific Service of Parliament

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[670] The bibliography is limited to five references for reasons of size limitations.

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