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Country report

Gender equality

How are EU rules transposed into
national law?

Greece

Sophia Koukoulis-Spiliotopoulos,
updated by Panagiota Petroglou

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Contents

| | | |
|------|---|----|
| 1 | Introduction..... | 6 |
| 1.1 | Basic structure of the national legal system | 6 |
| 1.2 | List of main legislation transposing and implementing Directives | 7 |
| 2 | General legal framework | 9 |
| 2.1 | Constitution | 9 |
| 2.2 | Equal treatment legislation | 9 |
| 3 | Implementation of central concepts | 11 |
| 3.1 | Sex/gender/transgender | 11 |
| 3.2 | Direct sex discrimination | 14 |
| 3.3 | Indirect sex discrimination..... | 15 |
| 3.4 | Multiple discrimination and intersectional discrimination | 18 |
| 3.5 | Positive action..... | 20 |
| 3.6 | Harassment and sexual harassment..... | 22 |
| 3.7 | Instruction to discriminate..... | 25 |
| 3.8 | Other forms of discrimination..... | 25 |
| 4 | Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)..... | 26 |
| 4.1 | Equal pay | 26 |
| 4.2 | Access to work and working conditions..... | 29 |
| 5. | Pregnancy, maternity, and leave related to work-life balance (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18) | 32 |
| 5.1. | Pregnancy and maternity protection | 32 |
| 5.2. | Maternity leave | 34 |
| 5.3. | Adoption leave | 39 |
| 5.4. | Parental leave | 40 |
| 5.5. | Paternity leave..... | 49 |
| 5.6. | Time off/care leave..... | 49 |
| 5.7. | Leave in relation to surrogacy | 50 |
| 5.8. | Leave sharing arrangements..... | 50 |
| 5.9. | Flexible working time arrangements..... | 50 |
| 6. | Occupational social security schemes (Chapter 2 of Directive 2006/54) | 52 |
| 6.1. | Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law? | 52 |
| 6.2. | Is the personal scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any. | 52 |
| 6.3. | Is the material scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any. | 52 |
| 6.4. | Has national law applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54? | 52 |
| 6.5. | Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54? | 52 |
| 6.6. | Is sex used as an actuarial factor in occupational social security schemes? .. | 53 |
| 6.7. | Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any..... | 53 |
| 7. | Statutory schemes of social security (Directive 79/7)..... | 54 |
| 7.1. | Is the principle of equal treatment for men and women in matters of social security implemented in national legislation? | 54 |
| 7.2. | Is the personal scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any | 54 |

| | | |
|-------|--|----|
| 7.3. | Is the material scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any. | 54 |
| 7.4. | Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any. | 54 |
| 7.5. | Is sex used as an actuarial factor in statutory social security schemes? | 54 |
| 7.6. | Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any..... | 55 |
| 8. | Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive) | 56 |
| 8.1. | Has Directive 2010/41/EU been explicitly implemented in national law? | 56 |
| 8.2. | What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)..... | 56 |
| 8.3. | Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners. | 56 |
| 8.4. | How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment the same, more restricted, or broader than specified in Article 4 Directive 2010/41/EU? | 57 |
| 8.5. | Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been? | 57 |
| 8.6. | Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)? | 57 |
| 8.7. | Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law? | 58 |
| 8.8. | Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)? | 59 |
| 8.9. | Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law. | 59 |
| 8.10. | Is Article 14(1)(a) of Recast Directive 2006/54 implemented in national law as regards self-employment? | 60 |
| 9. | Goods and services (Directive 2004/113) | 61 |
| 9.1. | Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services? | 61 |
| 9.2. | Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any. | 61 |
| 9.3. | Has national law applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education? | 61 |
| 9.4. | Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law. | 61 |
| 9.5. | Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial | |

| | |
|---|----|
| services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?..... | 61 |
| 9.6. How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 <i>Test-Achats</i> ruling in national legislation..... | 61 |
| 9.7. Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)? | 62 |
| 9.8. Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law..... | 62 |
| 10. Violence against women and domestic violence in relation to the Istanbul Convention..... | 63 |
| 10.1. Has your country ratified the Istanbul Convention? | 63 |
| 11. Enforcement and compliance aspects (horizontal provisions of all directives) | 64 |
| 11.1. Victimisation..... | 64 |
| 11.2. Burden of proof..... | 65 |
| 11.3. Remedies and Sanctions..... | 65 |
| 11.4. Access to courts | 66 |
| 11.5. Equality body | 68 |
| 11.6. Social partners..... | 69 |
| 11.7. Collective agreements..... | 70 |
| 12. Overall assessment | 72 |
| Annexes..... | 74 |

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 and prevails over statutes. According to Article 28(1) of the Constitution, international treaties introduced in 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.² 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, had been violated. Therefore, the

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 under 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: <http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>, accessed 11 April 2018.

² Article 22(1) of Act 4274/2014, OJ A 147/ 14 July 2014.

impugned provisions were inapplicable because they were contrary to the Constitution and Article 1 of Protocol No. 1 to the 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.³ Although these were not gender equality cases, the CS also invoked in support of the non-retroactive effect of its judgments the ECJ *Defrenne* and *Barber* cases.⁴ 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 No. 12 below).

1.2 List of main legislation transposing and implementing Directives

- 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 232/09.12.2016 [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 235/03.12.2012 (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 89/11.04.2012.
- 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 138/14.06.2012.
- Act 1756/1988, Code on the Status of Judges, OJ A 35/2.02.1988.
- 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 207/08.12.2010.
- 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 105/01.07.2009, as amended by Article 162 of Act 4099/2012 implementing the CJEU *Test-Achats* judgment, OJ A 250/20.11.2012.
- 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 96/23.04.2003; 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

³ CS 2287-2290/2015 (Plen.).

⁴ ECJ Cases 43/75 *Gabrielle Defrenne v. Sabena* [1976] ECR 455; C-262/88 *Douglas Harvey Barber v. Guardian Royal Exchange Assurance Group* [1990] ECR I-1889.

- or are Breastfeeding in Compliance with Directive 92/85/EEC,' OJ A 150/15.07.1997, as amended by Decree 41/2003, OJ A 44/21.02.2003.
- Act 1483/1984, 'Protection and Facilitation of Workers with Family Responsibilities,' as amended by Article 25 of Act 2639/1998, OJ A 205/02.09.1998 implementing Directive 96/34/EC and by Article 46 of Act 4488/2017,⁵ 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).

⁵ Act 4488/2017, OJ A 13/2017.

2 General legal framework

2.1 Constitution

2.1.1 Does your national Constitution prohibit sex discrimination?

Yes, in Articles 4(2) and 22(1)(b) since 1975.

Article 4(2) ('Greek men and women have equal rights and obligations') requires (substantive)⁶ sex equality in all areas; it implicitly prohibits sex discrimination. Article 22(1)(b) ('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 Does the Constitution contain other Articles pertaining to equality between men and women?

Yes. Article 116(2) since 2001. Article 21(1) is also relied upon, either alone or in conjunction with Article 4(2).

Article 116(2) 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) 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. Its material scope includes all the areas covered by the gender equality directives, as well as any other area whatsoever, 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.⁷ It exceeds the requirements of EU law, as it explicitly makes positive action a 'must'. Article 21(1) 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.

2.1.3 Can the Article(s) mentioned in the two previous questions be invoked in horizontal relations (between private parties)?

Yes. They all 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

2.2.1 Does your country have specific equal treatment legislation?

Yes, mainly the legislation transposing the gender equality directives (see above under section 1.2 of this report) and Act 4443/2016 (OJ A 232/09.12.2016) re-transposing Directives 2000/43/EC and 2000/78/EC.

If yes, does it prohibit sex discrimination?

Yes, it prohibits direct and indirect sex discrimination.

⁶ CS 1933/1998 (Plen.).

⁷ CS 2832-2833/2003, 192/2004.

Which other discrimination grounds are covered by national equal treatment legislation?

The grounds covered by Directives 2000/43/EC and 2000/78/EC, plus certain new grounds added by Act 4443/2016 (see section 3.4.1 below), as well as the grounds covered by Act 927/1979 on the (criminal) punishment of acts aimed at racial discrimination (OJ A 139/28.06.1979, as amended by Act 4285/2014 (OJ A 191/10.9.2014)) implementing the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Framework Decision 2008/913/JHA. The grounds covered by the latter act are race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity or handicap.

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.

3 Implementation of central concepts

3.1 Sex/gender/transgender

3.1.1 Are the terms gender/sex defined in your national legislation?

No.

3.1.2 Is discrimination due to gender reassignment explicitly prohibited in your national legislation?

Yes. In Article 3(2)(b) of Act 3896/2010 transposing Directive 2006/54.

This provision does not include discrimination on the ground of gender identity. However, Article 1 of Act 4443/2016 which re-transposed Directives 2000/43 and 2000/78, prohibits any direct or indirect discrimination, inter alia, on the ground of 'gender identity or characteristics' (see section 3.4.1 below). Moreover, Article 1 of Act 927/1979 implementing the CERD, as amended by Act 4285/2014, prohibits any act that may entail discrimination, hate or violence against persons or groups of persons on the basis of, inter alia, 'gender identity', making it a criminal offence.

Gender identity has been legally recognised for the first time by Act 4491/2017 (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 'the inner and personal way in which one 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 one'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 so-called 'third gender'] in accordance with one's will and personal feeling linked to their body and outer appearance, Article 3 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 of 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. Married persons cannot however request sex correction. Article 3 also stipulates that no prior gender reassignment or medical examination or treatment related to the bodily or mental health of the applicant is required. According to Article 4, 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 had drafted the birth act 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 applies erga omnes; the Registrar must notify it to the Public Prosecutor or to the Ministry of Justice for persons 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, his/her birth registration is not changed and parental care rights and obligations are not affected. According to Article 6, Public Registry employees and any other persons 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 authorizes 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 50/10.04.1997), as amended.

In its opinion on the bill, the Scientific Service of Parliament (SSP),⁸ which controls 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.⁹ The SSP also recalled that, according to the same judgment, a prior psych diagnosis is required by the great majority of Council of Europe Member States.¹⁰ 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 persons coincide with the general interest and the ECHR is not violated.¹¹

In general, the Act 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 psych diagnosis and considers that such a requirement ought to be included in the Act, with a view to safeguarding the interests of transgender persons.

An issue involving discrimination against transsexuals has arisen in practice, due to the Administration's refusal to change the elements of an educational degree of a trans person even after the trans person had undergone surgery. Specifically, a man who had undergone gender reassignment surgery lodged an application with the competent court for a change of name and sex.¹² This application was upheld, the requested modification was registered with the competent registry office and the trans person obtained a new identity card under her new name and sex. She then requested that a degree obtained prior to the surgery, also be modified accordingly. The relevant service of the Ministry of Education sought the opinion of the State Legal Council (SLC) on this question. The SLC¹³ noted that under Greek legislation, educational degrees are issued once only and may not be modified, that there is no provision regarding the replacement of a degree in order to reflect a change of personal details and that it was therefore impossible to issue a new degree. However, the SLC expressed the opinion that a certificate could be issued, which would bear her new personal details and would state that a degree had already been issued for this same person, with a reference to the registration number of that

⁸ The SSP opinion as well as the final text of the Act are available on Parliament's website (in Greek): http://www.hellenicparliament.gr/Nomothetiko-Ergo/Katatethenta-Nomosxedia?law_id=75d1ff53-879c-4dcb-bfff-a7f20108f665, accessed 11 April 2018.

⁹ *A.P., Garçon and Nicot v. France*, no. 79885/12, 52471/13 and 52596/13, ECHR 2017,

¹⁰ *Ibid*, § 139-142.

¹¹ *Ibid*, § 139-141

¹² This was a judgment by the First Instance Court of Athens obviously prior to SLC Opinion 180/2015, issued on 27 July 2015 and the new Act 4491/2017; however, in the text of the SLC Opinion no reference is made to the number of this case.

¹³ SLC Opinion 180/2015, issued on 27 July 2015.

degree. The SLC recommended that this certificate should however not mention that her personal details had changed following gender reassignment surgery, as this would constitute a revelation of sensitive personal data and therefore an interference with the person's private life, which would conflict with Article 8 ECHR.¹⁴

It should be noted that the SLC gives opinions at the request of public authorities and that such opinions are not binding, unless the competent Minister endorses them.¹⁵ The Ministry of Education, whose services sought the above opinion, has accepted the above SLC opinion. Meanwhile, several members of Parliament tabled a parliamentary question to the Minister of Justice regarding the above opinion. The Minister of Justice replied that the legal recognition of gender identity would soon be introduced,¹⁶ which took place through the above mentioned Act 4491/2017. It remains to be seen how the new Act will be applied in practice.

Some successful transgender rights cases are noteworthy.

In decision No. 418/2016, the Athens Justice of the Peace 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 to change it into a male name.¹⁷ 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 European Convention on Human Rights (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.

The same approach was adopted by decisions No. 572/2017 and 604/2017 of the Athens Justice of the Peace,¹⁸ which upheld the petition of two male applicants seeking confirmation of their female sex and the modification of their male name under which they were registered in the public registry in order to change it into a female name.¹⁹ Along the same lines, decision No. 1479/2017 of the Thessaloniki Justice of the Peace upheld the petition of a woman seeking the confirmation of her male sex and the modification of the female name under which she was registered in the public registry, in order to change it into a male name.²⁰ The applicants in all these cases had been undergoing hormone therapy and had been treated by special doctors, but had not undergone gender reassignment surgery. The court found that 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 European Convention on Human Rights (ECHR), which guarantees the right to respect for personal and family life, as well as Articles 2 and 26

¹⁴ SLC Opinion 180/2015, issued on 27 July 2015.

¹⁵ Act 3086/2002 'Organisation of the State Legal Council and status of officers and employees thereof', OJ A 324/ 23.12.2002, Articles 2 and 7(4).

¹⁶ See the reply of the Minister of Justice, dated 9 February 2016: available at: http://www.hellenicparliament.gr/Koinovouleftikos-Elenchos/Mesa-Koinovouleutikou-7Elegxou?pcm_id=f0796b7b-32e3-4a3f-a9c7-a5980135921d, accessed 30 March 2017.

¹⁷ Athens Justice of the Peace No 418/2016, <http://dikastis.blogspot.com/2016/08/4182016.html>, accessed 11 April 2018.

¹⁸ Athens Justice of the Peace No. 572/2017 <https://www.nbonline.gr/journals/60/volumes/688/issues/1509/lemmas/4900055>; No 604/2017 <http://www.nbonline.gr/journals/60/volumes/688/issues/1509/lemmas/4900009>, accessed 11 April 2018.

¹⁹ Athens Justice of the Peace No 418/2016, Legal Data Bank NOMOS, <http://lawdb.intrasoftnet.com>.

²⁰ Thessaloniki Justice of the Peace No. 1479/2017.

of the International Covenant on Civil and Political Rights (ICCPR) prohibiting discrimination on any ground, including sex.

In all the above cases the courts did not refer to EU law and did not invoke the gender equality principle. However, by invoking Articles 2 and 26 ICCPR, it implied that a refusal to confirm the applicant's transsexuality would violate his/her right to non-discrimination. Moreover, as it relied on the applicant's feeling of transsexuality, it implicitly adopted the CJEU definition of a 'transsexual'. Indeed, the CJEU has held, in agreement with the European Court of Human Rights (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'.²¹ 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.²² In view of its purpose and the nature of the rights that it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person'. 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.²³ 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. Fortunately, such conflicts with EU law were avoided thanks to the Justice of the Peace's decision.

3.2 Direct sex discrimination

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. Acts 3896/2010 transposing Directive 2006/54 and 4097/2012 transposing Directive 2010/41 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 (Article 4(1)).

Furthermore, Article 4(1) of Act 3769/2009 copies Article 4(1) of Directive 2004/113.

Article 52(3) of Act 4075/2012 transposing Directive 2010/18 prohibits the dismissal (stipulating that it is invalid) and any unfavourable treatment of a worker due to an

²¹ CJEU Case C-13/94 *P v. S* [1996] ECR I-2159, Paragraph 16.

²² See e.g. CJEU Case C-423/04 *Richards* [2006] ECR I-3602, Paragraph 24; Case C-13/94 *P/S* [1996] ECR I-2143, Paragraphs 19-21.

²³ Cf. by analogy CJEU Case C-177/88 *Dekker* [1990] ECR I-3941, Paragraph 12; Case 42/92 *Habermann-Beltermann* [1994] ECR I-1668, Paragraph 15.

application for or the taking of parental leave, as does Article 5(1) and (7) of Presidential Decree 80/2012 transposing Directive 2010/18 for workers under a contract of maritime employment. These provisions comply with Directive 2010/18.

The definition is: 'where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation'. It is in Article 2(a) of Act 3896/2010 transposing Directive 2006/54; Article 3(a) of Act 4097/2012 transposing Directive 2010/41; and Article 2(a) of Act 3769/2009 transposing Directive 2004/113.

The definition is copied from the Directives.

3.2.2 Are pregnancy and maternity discrimination explicitly prohibited in legislation as forms of direct sex discrimination?

Yes, in Article 3(4) of Act 3896/2010 transposing Directive 2006/54; Article 3(a) of Act 4097/2012 transposing Directive 2010/41; Article 4(1)(a) of Act 3769/2009 transposing Directive 2003/113. The legislator copied the prohibitions contained in the Directives.²⁴ 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 (5.3.3. below).

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

3.2.3 Are there specific difficulties in your country in applying the concept of direct sex discrimination?

No. 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 maximum quotas for women and discriminatory dismissals until they were abolished by the legislator. This case law was relying on Article 4(2) of the Constitution, Directive 76/207 and the Act transposing it.²⁵

3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes. See 3.2.1.

A definition is provided in Article 2(b) of Act 3896/2010 transposing Directive 2006/54 (recast), Article 3(b) of Act 4097/2012 transposing Directive 2010/41, and Article 2(b) of Act 3769/2009 transposing Directive 2004/113: '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.'

The definition is copied from Article 2(2)(c) of Directive 2006/54.

3.3.2 Is statistical evidence used in your country in order to establish a presumption of indirect sex discrimination?

²⁴ The SCPC (Civil Section) (37/2004) relying on the Act transposing Directive 76/207, 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.

²⁵ Quotas for access: SCPC (Civil Section) 1360/1992 (private banks); CS 1917/1998 (Plen.) (Police Academies). Nullity of dismissal: SCPC (Civil Section) 85/1995, 593/2006, 496/2011 (private sector).

Yes, by some administrative courts of appeal (ACAs) - the only courts which have upheld claims of indirect discrimination - regarding the average height of men and women for access to military and semi-military corps. For example, in cases regarding access to the police academies which were similar to the cases where the Council of State (CS) found no indirect discrimination (until the CS made a preliminary reference to the CJEU – see 3.3.4 below), the Athens ACA held that the common minimum height requirement for men and women candidates (1.70 m.) 'is arbitrarily equalizing men and women, in spite of their biological difference, since the average height of Greek men is 1.67m, while the average height of Greek women is 1.55m.' 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.²⁶

3.3.3 Is in your view the objective justification test applied correctly by national courts?

Yes, by some administrative courts. The Council of State (the Supreme Administrative Court; CS) quashed certain decisions made by the administrative courts of appeal (ACAs) that correctly applied the test²⁷ – that is until the CS made the preliminary reference to the CJEU (see section 3.3.4 below).

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination?

Yes. While the legislation is satisfactory and in spite of a preliminary CJEU ruling in a Greek case which concerned, inter alia, indirect discrimination,²⁸ case law or the absence thereof shows that the concept of indirect discrimination is still unclear. It is only the ACAs and the CS that have dealt with indirect discrimination. The CS case law concerns access to police academies.²⁹ After the repeal of maximum quotas for accepting women thereto, the minimum height requirement, which was previously 1.70m for men and 1.65m for women, was raised to 1.70m for both men and women by Article 1(1) of Presidential Decree (PD) 90/2003.³⁰ Candidates who do not fulfil this condition are automatically excluded from any further assessment. 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, because it was justified by reasons of public interest related to police duties. More in particular, 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 organized 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 1.70m height requirement was a necessary and appropriate qualification. Those 'mere generalisations' could not exclude indirect discrimination, according to the CJEU.³¹ Therefore, in the author's view, this CS case law is not in line with EU law.

²⁶ Athens ACA 734, 737-738/2008, 75, 1255, 1256/2007.

²⁷ See e.g. ACA 1066/2004, quashed by CS 1247/2008; ACA 3358/2005 quashed by CS 2367/2010; ACA 3357/2005, quashed by CS 2369/2010 (common minimum height for men and women for access to police academies).

²⁸ CJEU C-196/02 *Nikoloudi v. OTE* [2005] ECR I-1789.

²⁹ CS 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, accessed 25 March 2017.

³⁰ OJ A 82/2003.

³¹ See e.g. CJEU Cases C-167/97 *Seymour-Smith* [1999] ECR I-623; C-77/02 *Steinicke* [2003] ECR I-9044.

In a recent similar case, the five-member chamber was split as to the existence of indirect discrimination and so referred the matter to a seven-member chamber,³² which made a preliminary reference to the CJEU.³³ This chamber invoked Directive 76/207, as modified by Directive 2002/73/EC. It quoted the definition of direct and indirect sex discrimination, noted that those directives apply to the public and private sectors and that they were replaced by Directive 2006/54 (Recast), which contains similar provisions of direct effect.

The seven-member chamber also noted that 'measures related to access to employment, training and working conditions in the army or other militarily organised corps are not excluded from the scope of the Directives' and that 'derogations to the equal treatment principle are only allowed in specific and clearly provided cases of threat to public security, in accordance with the principle of proportionality'. The question was whether the fixing of a common minimum height of 1.70m, as a necessary qualification of male and female candidates for access to the training leading to employment in the Greek Police, entailed indirect sex discrimination, since, 'as it results from scientific research and common experience, female candidates fulfill this condition at an overwhelmingly lower percentage than male candidates'. Finally, considering that this issue had not been clarified by the CJEU, it submitted to the CJEU the following preliminary question:

'Is Article 1(1) of PD 90/2003, which provides that the civilian candidates to the Schools for Officers and Constables of the Police Academy must, among other qualifications, "have a height (men and women) of at least 1.70m", compatible with the provisions of Directives 76/207/EEC, 2002/73/EC and 2006/54/EC which prohibit any indirect discrimination on grounds of sex regarding access to employment, vocational training and promotion and working conditions in the public sector (except if this different (in result) treatment is due to factors which are objectively justified and unrelated to any discrimination on grounds of sex, and it does not exceed what is appropriate and necessary for serving the aim pursued)?'.

In the above mentioned 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 1.70m, 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.'³⁴ More specifically the Court found that 'while it is true that the exercise of police functions involving the protection of persons and goods, the arrest and custody of offenders and the conduct of crime prevention patrols may require the use of physical force requiring a particular physical aptitude, the fact remains that certain police functions, such as providing assistance to citizens or traffic control, do not clearly require the use of significant physical force. Furthermore, 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 and that shorter persons naturally lack that aptitude. In that context, it may be taken into account that until 2003 the Greek law required, for the purposes of admission to the competition for entry to the Greek School for Police Officers and Policemen, different minimum heights for men and for women, since, regarding the latter, the minimum height was fixed at 1.65m, compared with 1.70m for men. The fact[s] referred to by Ms Kalliri that, as regards the Greek armed forces, port police and coast guard, different minimum heights are required for men and women and, for women, the minimum height

³² CS 18/2014.

³³ CS 1420/2016.

³⁴ CJEU judgment of 18.10.2017 C-409/16 *Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v Maria-Eleni Kalliri* EU:C:2017:767.

is 1.60m, is also relevant. In any event, the aim pursued by the law at issue in the main proceedings could be achieved by measures that are less disadvantageous to women, such as a preselection 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. It follows that, subject to the assessments that it is for the national court to carry out, the law in question is not justified.³⁵

ACAs have also dealt with common athletic requirements for men and women in access to municipal police forces. Applying the same vague reasoning as the CS, they found that these requirements were not indirectly discriminatory, as they were justified by reasons of public interest related to municipal police duties. Finally, the CS, endorsing this vague justification, held that these common requirements were not indirectly discriminatory.³⁶

The same issue was also addressed by the Greek Ombudsman regarding access to military academies. The Ombudsman considered that the common athletic requirements entail indirect gender discrimination within the meaning of Directive 2002/73 and Act 3488/2006 transposing this directive, as 'they put the female candidates in a particularly disadvantaged position in comparison to male candidates; in any event, they are not adequately justified as they do not constitute an objective criterion which serves a lawful aim (i.e. ensuring the smooth operation of the military corps), while they are not appropriate, and necessary for achieving their aim.'³⁷

Regarding pay, while direct discrimination seems to have been mostly eradicated, at least as concerns the same work,³⁸ professional classifications, in particular in collective agreements (which apply in the private sector), are based on felt-fair traditional, non-transparent criteria; these have remained unchanged and the under-classification of predominantly female categories seems to persist, thereby making indirect discrimination very probable. No review of the classifications has ever been undertaken, while there are no (official or trade union) data or studies on indirect discrimination.

As concerns the gender pay gap, in the words of Ms Vivian Reding, former Vice-President of the Commission: 'The causes of the gender pay gap are much more complex and include indirect discrimination, greater difficulties for women in balancing work and private life, segregation of the labour market, and stereotypes that influence the evaluation and classification of occupations or the choice of education undertaken by men and women'.³⁹ In Greece, the gender pay gap is not on the agenda of either state authorities or social partners and no recent studies can be found. According to the latest EUROSTAT data available for Greece (2014), the gender pay gap in unadjusted form (i.e. not adjusted according to individual characteristics that may explain it) was 12.5.⁴⁰

3.4 Multiple discrimination and intersectional discrimination

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to

³⁵ Ibid, [38]-[44].

³⁶ Athens ACA 41, 131 and 1191/2012. CS 826/2016, 4300/2015, 4655/2015.

³⁷ See the Ombudsman's mediation report available at: http://www.synigoros.gr/?i=isotita-ton-fylon.el.if1_3_2diagonismoi.32897, accessed 20 March 2017.

³⁸ For problems regarding equal value see 4.1.4 below.

³⁹ Viviane Reding, Vice-President of the European Commission, Justice, Fundamental Rights and Citizenship, Foreword in European Network of Legal Experts in the Field of Gender Equality *The Gender Pay Gap in Europe from a Legal Perspective (including 33 country reports)*, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights; http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/genderpaygapfromlegalperspective-nov2010_en.pdf, accessed 20 March 2017.

⁴⁰ Available at: <http://ec.europa.eu/eurostat/web/equality/statistics-illustrated>; see also http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/gpg_country_factsheet_el_2015_en.pdf, both accessed 11 April 2018.

produce a new and different type of discrimination - explicitly addressed in national legislation?

Yes. Article 2(2)(i) of Act 4443/2016, Part I of which re-transposes Directives 2000/43 and 2000/78, 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 and 2000/78, 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 handicap or chronic illness' constitutes discrimination. 'Sex' is not among the grounds and discrimination on the ground of sex is not prohibited by the act. There are no specific provisions in relation to multiple discrimination.

It may be deemed that multiple discrimination to the detriment of women is covered by the grounds of 'gender identity or characteristics'. However, adding the ground 'sex' to the definition of 'multiple discrimination' would bring it more in line with the Treaty obligation to mainstream gender equality and to the purpose of the prohibition of multiple discrimination, which is to protect women in the first place, as it results from the preamble to the directives.⁴¹ It would also be advisable to add at the end of the definition, '*in particular when it affects women*' and to acknowledge that, in its report to the Commission on the application of the directives, the Government must provide information on the impact on women and men of the measures that have been taken.⁴² 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.

3.4.2 Is there any case law that addresses multiple discrimination and/or intersectional discrimination (where gender is one of the grounds at stake)?

There are no judicial decisions. However, some cases dealt with by the Ombudsman – the Greek Equality Body – seem to concern multiple discrimination, although the Ombudsman does not always use this term. Examples: in one case a female journalist who had been refused a job with a municipal radio station complained that young, attractive women without family responsibilities were preferred. In another case a woman was dismissed because she had reached the age (applying to women only) at which she was entitled to a pension as a mother of a minor child. In the author's view both cases involved multiple discrimination on grounds of sex, age and family status/family obligations.⁴³ In a third case, a local union had published in a local newspaper a job offer 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.⁴⁴ It appears that the case ended at that stage, without further litigation before the courts.

⁴¹ See Directive 2000/43, Preamble, Paragraph 14; Directive 2000/78, Preamble, Paragraph 3.

⁴² See Directive 2000/43, Article 17; Directive 2000/78, Article 19.

⁴³ Available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.ifexamples>; and http://www.synigoros.gr/?i=isotita-ton-fylon.el.if7_3_1provri.193649, respectively, both accessed 20 March 2017.

⁴⁴ Available at: <https://www.lawspot.gr/nomika-nea/anaklisi-aggelias-gia-proslipsi-grammatea-sylogoy-anaklithike-logo-pollaplis-diakrasis>, accessed 11 April 2018.

It can be deduced from the above that the notion of multiple discrimination is not clear to either the judiciary and other authorities or its victims and the trade unions. This is why the author argues that the definition of this concept should be improved as noted above.

3.5 Positive action

3.5.1 Is positive action explicitly allowed in national legislation?

Yes. It is not merely allowed, 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 (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 and Article 5 of Act 3769/2009 transposing Directive 2004/113.

Article 19 of Act 3896/2010 transposing Directive 2006/54 reads: 'The adoption or maintenance of specific or positive measures aimed at abolishing eventual discrimination to the detriment of the underrepresented 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 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 in Article 116(2) of the Constitution, which makes positive action a 'must' in all areas (2.1.2. above).

Act 4097/2012 transposing Directive 2010/41 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. There is no relevant case law.

3.5.2 Are there specific difficulties in your country in relation to positive action?

No.

3.5.3 Has your country adopted measures that aim to improve the gender balance in company boards?

No, except for those mentioned under 3.5.4 below, and neither are there any proposals which are pending in this regard, nor are there any policy measures or relevant good practices or debates.

3.5.4 Has your country adopted other positive action measures to improve the gender balance in some fields, e.g. in political candidate lists or political bodies? If so, please describe these measures.

According to Article 6(1)(a) of Act 2839/2000,⁴⁵ at least one-third of the persons appointed by the State, legal persons governed by public law or local authorities as members of the service councils⁴⁶ of the services of the State, legal persons governed by

⁴⁵ Act 2839/2000 (OJ A 196/12.09.2000).

⁴⁶ 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.'

public law and local authorities must belong to each sex. This provision has been incorporated in Article 7(5) of the Code of Employees of Local Authorities (CELA).⁴⁷ The same measure has been included in Article 161 of the Civil Servants Code (CSC, which also covers the personnel of legal persons governed by public law),⁴⁸ in a more extended version provided by Article 2 of Act 4275/2014.⁴⁹ Consequently, Article 161 CSC, as it now stands, requires the one-third quota for the 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).

The members of the service councils to which the one-third quota applies are in principle five; three out of the five are appointed by the Minister or the competent authority of the legal person concerned (who must observe the quota); the other two members are representatives of the personnel. The number of the members of the 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. 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. If the act by which the State, the legal person governed by public law or the local authority appoints service council members does not observe the quota, it is subject to annulment. The decisions issued by service councils that are not composed in accordance with the provision on quotas are also subject to annulment.⁵⁰

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 must not necessarily be listed. It is not required that their whole capital belong to the State, a legal person governed by public law or a local authority. These may own part of the capital (not even the larger part 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 the cases. The State, the legal persons governed by public law or the 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. 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. The decisions of boards that are not composed in accordance with the provision on the quota are also subject to annulment.

Employers who hire mothers having at least two children are exempted from the payment of social security contributions regarding these workers for one year for each child. Moreover, women farmers are exempted from the payment of social security contributions for one year following the birth of the second and each subsequent child.⁵¹ 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 $\frac{1}{3}$ from each sex, in accordance with Article 116(2) of the Constitution [2.1.2 above], provided that they possess the necessary qualifications for the particular post.'⁵²

⁴⁷ CELA: Act 3584/2007, OJ A 143/28.06.2007.

⁴⁸ CSC: Act 3528/2007, OJ A 26/09.02.2007.

⁴⁹ Act 4275/2014, OJ A 149/15.07.2014.

⁵⁰ CS 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. ACA 216 and 602/2007 annulled decisions of service councils which were not composed in accordance with the above provision.

⁵¹ Article 2(2) and (7) of Act 3227/2004 (measures for combating unemployment), OJ A 31/09.02.2004.

⁵² Article 57 of Act 3653/2008, OJ A 49/21.03.2008.

'The number of candidate members of local government councils of each sex shall correspond to at least $\frac{1}{3}$ of the total number of candidates listed on each ballot paper.'⁵³ Voters choose their preferred candidates by placing a cross alongside their name. Thus, the number of women elected depends on the voters' choice. This measure has now been modified. Instead of corresponding to the number of *candidates* on each ballot, the quota must correspond to the number of *members* of the particular local authority.⁵⁴ Greek NGOs, at the initiative of the Greek League for Women's Rights, strongly protested against this regression.⁵⁵ Where the quota is not observed, the elections for the particular local authority are invalidated and must be repeated.⁵⁶

The number of candidates of each sex presented in the parliamentary elections by each party must correspond to $\frac{1}{3}$ of the total number of its candidates in the country.⁵⁷ 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. Yet, a part 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 strength of each party, according to their order on this list ('state MPs'). In the last elections this system applied to all candidates. There does not seem to be any case law on this measure.

3.6 Harassment and sexual harassment

3.6.1 Is harassment explicitly prohibited in national legislation?

Yes, together with sexual harassment, according to Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54; Article 5 of Act 3769/2009 transposing Directive 2004/113; and Article 4(2) of Act 4097/2012 transposing Directive 2010/41.

Article 2(c) of Act 3896/2010 transposing Directive 2006/54, Article 2(c) of Act 3769/2009 transposing Directive 2004/113 and Article 3(c) of Act 4097/2012 transposing Directive 2010/41 copy the definition from the Directives and thus therefore comply with the Directive.

Furthermore, by virtue of Article 23(3) of Act 3896/2010 transposing Directive 2006/54, a paragraph was added to Article 107 of the Civil Servants Code (CSC)⁵⁸ which lists the acts that constitute disciplinary offences by civil servants. This new paragraph makes '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.

Moreover, Article 23(4) of Act 3896/2010 (which repeats Article 16(4) of Act 3488/2006 transposing Directive 2002/73) added to Article 337 of the Penal Code (PC) a paragraph that concerns 'offences to sexual dignity'. This new paragraph makes the perpetration of such offences 'through the exploitation of the situation of person at work or seeking work' an aggravating circumstance.

3.6.2 Please specify the scope of the prohibition on harassment (e.g. does it cover employment and access to goods and services; is it broader?)

⁵³ Article 75 of Act 2910/2001, OJ A 91/2001.

⁵⁴ Articles 18(3) and 120(3) of Act 3852/2010, OJ A 37/07.06.2010.

⁵⁵ See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2010), 'Greece', *European Gender Equality Law Review* 2, pp. 66-68, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights, accessed 25 March 2017.

⁵⁶ CS 2123/2011 invalidating local elections and ordering that they be repeated.

⁵⁷ Article 3 of Act 3636/2008, OJ A 11/01.02.2008.

⁵⁸ CSC: Act 3528/2007, OJ A 26/09.02.2007.

It is broader in some respects. Firstly, Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54, 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 3.6.4. below)

3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes, together with harassment, in Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54; Article 4(1)(b) of Act 3769/2009 transposing Directive 2004/113; Article 4(2) of Act 4097/2012 transposing Directive 2010/41.

Article 2(d) of Act 3896/2010 transposing Directive 2006/54; Article 2(d) of Act 3769/2009 transposing Directive 2004/113 and Article 3(d) of Act 4097/2012 transposing Directive 2010/41 copy the definition in the Directives, and thus comply therewith.

3.6.4 Please specify the scope of the prohibition on sexual harassment (e.g. does it cover employment and access to goods and services; is it broader?).

As mentioned above in 3.6.3, 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 copies the definitions included in the directives. There is no case law relating to harassment or sexual harassment relying on Act 3896/2010 which transposes Directive 2006/54, or on Act 4097/2012 which transposes Directive 2010/41 or on Act 4097/2012 which transposes Directive 2010/41. Some lower courts have, however, relied on Act 3488/2006 transposing Directive 2002/73, in conjunction with provisions of the Civil Code, 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 the honour, the profession or the future of somebody. 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.⁵⁹

In a case of sexual harassment at the workplace reported to the employer by the victim (a female employee), the harasser (a male colleague) was dismissed by the enterprise as punishment for his offence. The harasser 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. The Supreme Civil and Penal Court however quashed the judgment for conflicting reasonings given that the Court of Appeal had furthermore found that: a) the harasser unsuccessfully asked to be excused by the victim, which constituted a

⁵⁹ See e.g. Larissa First Instance Court 351/2014.

confession to his unlawful act and b) that the relations between the parties had been severely damaged.⁶⁰ The Court of Appeal's new judgment has not yet been issued.

There is some case law relating to goods and services; some of the judgments predate the transposition of Directive 2004/113,⁶¹ while others postdate it, but do not mention it or the transposing Act.⁶² More generally, the (more and more scarce) existing 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.

Furthermore 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) or other acts which are misdemeanours, such as 'offence to a person's sexual dignity' (Article 337 PC)⁶³ or 'offence to a person's honour' (such as insult or slander (Articles 361-363 PC))⁶⁴ or bodily harm (Articles 308-312 PC)).⁶⁵ It may also be punished as a disciplinary offence ('indecent conduct') under the CSC.⁶⁶

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'.⁶⁷ 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 CivC prohibiting the abuse of rights.⁶⁸

3.6.5 Does national legislation specify 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 (see Article 2(2)(a) of Directive 2006/54)?

Yes, in the provisions that prohibit them (3.6.3. above). The courts will declare that dismissals due to a rejection of sexual harassment are null and void.⁶⁹

In spite of the satisfactory transposition of the provisions of Directives 2002/73 and 2006/54, Greek case law mostly relies on either the PC or the CSC or on the provisions of the Civil Code (CC) prohibiting an abuse of employers' rights or offences to a person's personality (see 3.6.3 and 3.6.4 above). However, case law is scarce, as harassed women rarely complain for fear of being victimised and/or acquiring a 'bad name' in the labour market and due to lack of evidence and support, while litigation costs are sharply rising (see also 11.4.1 below).

⁶⁰ SCPC (Civil Section) 102/2017.

⁶¹ SCPC (Penal Section) 2590/2008 ('offence against the sexual dignity' of a patient during a medical examination).

⁶² CS 505/2010: confirmation of a disciplinary sanction dismissing a public hospital doctor for 'indecent conduct', i.e. the harassment of a woman seeking information about a hospitalized relative.

⁶³ 'Rape' consists in forcing a person 'by physical violence or threat of serious and immediate danger into intercourse or other lewd act or tolerance thereof'. An 'offence to a person's sexual dignity' is an act which consists in lewd gestures or proposals concerning lewd acts, without reaching intercourse, which offend crudely a person's dignity in the field of his/her sexual life (SCPC (Penal Section) 1783/2008, 1546/2008, 1998/2006).

⁶⁴ SCPC (Penal Section) 1149/2011.

⁶⁵ SCPC (Penal Section) 148/2010.

⁶⁶ CSC: Act 3528/2007, OJ A 26/09.02.2007. See CS 505/2010.

⁶⁷ SCPC (Civil Section) 418/2010 (harassment outside the scope of the Directives).

⁶⁸ SCPC (Civil Section) 84/2011; Athens Court of Appeal 1139/2011.

⁶⁹ SCPC (Civil Section) 84/2011; Athens Court of Appeal 1139/2011.

3.7 Instruction to discriminate

3.7.1 Is an instruction to discriminate explicitly prohibited in national legislation?

Yes. In Article 3(3) of Act 3896/2010 transposing Directive 2006/54; Article 4(2) of Act 3769/2009 transposing Directive 2004/113; and Article 4(3) of Act 4097/2012 transposing Directive 2010/41.

The wording of Article 3(3) of Act 3896/2010 transposing Directive 2006/54 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 prohibits 'encouragement' which is broader than an 'instruction' and may also concern the conduct of persons who are not superiors of the addressee; Article 4(3) of Act 4097/2012 transposing Directive 2010/41 prohibits both an 'instruction' and 'encouragement'; both provisions therefore exceed the Directives.

3.7.2 Are there specific difficulties in your country in relation to the concept of instruction to discriminate? If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

There do not seem to be any cases in relation to this concept.

3.8 Other forms of discrimination

Are any other forms of discrimination prohibited in national law, such as discrimination by association or assumed discrimination?

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

4 Equal pay and equal treatment at work (Article 157 TFEU and Recast Directive 2006/54)

4.1 Equal pay

4.1.1 Is the principle of equal pay for equal work or work of equal value implemented in national legislation?

Yes. In Article 22(1)(b) of the Constitution (2.1.1. above) and Article 4(1) of Act 3896/2010 transposing Directive 2006/54.

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 (2.1.1. above) as well as with CJEU case law.

4.1.2 Is the concept of pay defined in national legislation?

Yes. In Article 2(e) of Act 3896/2010 transposing Directive 2006/54, which copies the definition of Article 157 TFEU.

4.1.3 Does national law explicitly implement Article 4 of Recast Directive 2006/54 (prohibition of direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration)?

Yes. In Article 4 of Act 3896/2010 transposing Directive 2006/54.

The wording of Article 4(1) of the Act (4.1.1. above) is positive. The prohibition of direct and indirect discrimination in pay results from the general prohibition of direct and indirect discrimination 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 (3.2.1. above). Article 4(2)(a) of the Act copies Article 2 of the Directive, 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 afore-mentioned 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.

4.1.4 Is a comparator required in national law as regards equal pay?

No. Neither Article 22(1)(b) of the Constitution (2.1.1. above) nor the pertinent legislation explicitly require a comparator. However, Article 2(a) of Act 3896/2010 transposing Directive 2006/54, 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 (2.1.1. above) requires such a comparator in the same undertaking or service or within the framework of the same wage-fixing instrument (e.g. a collective agreement (CA), or a statutory or administrative provision).⁷⁰

The provisions copying the definition of direct discrimination from the directives (3.2.1. above) allow a hypothetical comparator. This presents difficulties in practice, because,

⁷⁰ See e.g. SCPC (Civil Section) 257-258/2014, 15/2013.

according to case law, the hypothetical comparator must perform or have performed the same work.⁷¹

There have been no equal pay judgments relying on the Act transposing Directive 2002/73 or the Act transposing Directive 2006/54. Most equal pay judgments concern grounds of discrimination other than gender, in accordance with Article 22(1)(b) of the Constitution (see 2.1.1. above). The few gender discrimination cases mostly concern the notion of 'pay' and discrimination arising from a wage-fixing instrument. They mostly apply Article 22(1)(b) of the Constitution, in conjunction with (old) Article 119 or 141 TEC and ILO Convention No. 100. See Supreme Civil and Penal Court, Civil Section (SCC) (Plenum), landmark judgment 3/1995, which upheld a claim of female workers for a family allowance, i.e. an allowance paid to all male workers who were married and had children, while only paid to female workers subject to two conditions: that their husband be unable to maintain himself due to invalidity or illness and that the children be maintained by the mother.⁷²

Workers of an undertaking may be covered by several wage-fixing instruments; 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.

The problem is that the notion of 'equal value', although included in Article 22(1) of the Constitution since 1975 and in legislation since 1984 (in the act transposing Directive 75/117), is unclear to litigants and judges, so that in most cases the comparison concerns the same work. There are no value assessment criteria in legislation or case law. Some judgments vaguely refer to the 'same nature and value' of the jobs without questioning the job classification. The typical major premise is as follows: the equal pay principle applies to 'workers employed by the same employer, who belong to the same category, have the same formal qualifications and provide the same services aimed at serving the same category of needs, under the same conditions'. So, workers having different qualifications or performing different duties are not compared, even where they perform the same work under the same conditions. Some judgments require that the content of the work be specified, but the criteria are unclear.⁷³

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 Civil Code), which is given a limited scope: the employer must pay 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'.⁷⁴

4.1.5 Does national law lay down parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions?

⁷¹ See e.g. SCPC (Civil Section) 31/2015.

⁷² This judgment is mentioned in ECJ Case 187/98 *Commission v. Greece* [1999] ECR I-7713 and it is the only Greek equal pay landmark case mentioned in Annex 3 of the Commission's staff working document accompanying the Commission's Report on the application of Directive 2006/54: SWD (2013) 512 final.

⁷³ SCPC (Civil Section) 242, 454, 684/2007, 1483, 207/2006 (these are not gender cases).

⁷⁴ See e.g. SCPC (Civil Section) 390/2011, 82/2013 (these are not gender cases).

No and case law either ignores the concept or gives it a narrow meaning (see 4.1.4. above and 4.1.8 below).

4.1.6 Does national (case) law address wage transparency in any way?

No. However, the Greek Authority for the Protection of Personal Data (APPD) imposed a EUR 70000 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 and 2000/78.⁷⁵ Although this case did not specifically concern equal pay, it is obvious that the employee's evaluation was also reflected in his pay.

4.1.7 Is the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency applied in your country?

No. Neither the courts nor the administrative authorities seem to be aware of it.

4.1.8 Which justifications for pay differences are allowed in legislation and/or case law?

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 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.⁷⁶ 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.⁷⁷ The absence of (or narrow) criteria for comparable work (4.1.4. above) 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 *Nikoloudi*⁷⁸ which concerned, *inter alia*, indirect discrimination in pay.

4.1.9 Are there specific difficulties related to the application of the principle of equal pay for equal work and work of equal value in practice? For example in case of out-sourcing?

Out-sourcing is a justification for differentials when the employers are different (which is in principle the case in out-sourcing), unless the workers of both employers are covered by the same wage-fixing instrument and perform the same work (see 4.1.8. above).

The only Greek landmark judgment on equal pay of men and women is SCC 3/1995 (Plen.), which concerns the concept of 'pay' (see section 4.1.4 above).

It should be noted that in 2017 the SCC adopted two contradictory approaches towards levelling up as an effect of eliminating gender discrimination in pay.

In the first case, the Statutes of an enterprise provided that the employment relationship had to end after 30 years of actual service for male employees and after 25 years of

⁷⁵ Decision 1/2008, available at: <http://www.dpa.gr>, accessed 12 April 2018.

⁷⁶ SCPC (Civil Section) 3/1997 (Plen.), 288/2003, 453/2002 (these are not gender cases).

⁷⁷ CJEU 43/75 *Defrenne v. Sabena (DefrenneII)* [1976] ECR 455, Paragraph 22; C-320/00 *Lawrence and Others v. Regent Office Care Ltd* [2002] ECR I-7345, Paragraph 18.

⁷⁸ CJEU C-196/02 *Nikoloudi v. OTE* [2005] ECR I-1789.

service for female employees. SCC 214/2017 found that this constituted gender discrimination to the detriment of male employees and extended to them the more favourable treatment provided to female employees so that they could benefit from the legal compensation and from the even higher compensation within the framework of a voluntary exit scheme.⁷⁹

In contrast, in its judgment Nos 603/2017 and 604/2017 in the same year the SCC did not apply the equality principle in the same way.⁸⁰ 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 to continue this voluntary practice. The SCC found the liquidation that took into account different ages for men (65 years) and for women (60 years) to be lawful and rejected the male applicants' claim that this constituted discrimination based on sex with the reasoning that the more favourable age provision which was valid for women must be deemed to have been abolished and cannot be extended to male employees.

As already noted (see above) equal pay cases are scarce and usually do not concern gender discrimination. However, in practice, discrimination against women is widespread and growing. In its 2016 Observations on the implementation of ILO Convention No. 100 (equal remuneration), the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) 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'. According to the Government, gender wage differentials may exist where wages exceed those stipulated in CAs, 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.⁸¹

4.2 Access to work and working conditions

4.2.1 Is the personal scope in relation to access to employment, vocational training, working conditions etc. defined in national law (see Article 14 of Directive 2006/54)?

Yes. In Article 17 of Act 3896/2010 transposing Directive 2006/54, 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 (4.1.4. 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

⁷⁹ SCC No 214/2017 <http://www.areiospagos.gr/> accessed 11 April 2018.

⁸⁰ SCC No 603/2017 and No 604/2017 SCC <http://www.areiospagos.gr/> accessed 11 April 2018.

⁸¹ Observation (CEACR), 106th ILC session (2017), Greece http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297841:NO, accessed 30 February 2017.

control.⁸² This definition is for the purposes of labour law, but the scope of Act 3896/2010 transposing Directive 2006/54 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);⁸³ 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.⁸⁴ Persons 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.⁸⁵ 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 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.⁸⁶ 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.

4.2.2 Is the material scope in relation to (access to) employment defined in national law (see Article 14(1) of the Recast Directive 2006/54)?

Yes. In Articles 11, 12, 13, 14 and 15 of Act 3896/2010 which transposes Directive 2006/54.

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, 76/207 and 2002/73.

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',

⁸² See e.g. SCPC Civil Section 1674/2010, 433/2011.

⁸³ SCPC Civil Section 229/2011, 433/2011.

⁸⁴ SCPC Civil Section 1674/2010, 223/2011, 77/2011, 433/2011.

⁸⁵ SCPC Civil Section Nos. 302/2011, 229/2011.

⁸⁶ CJEU C-256/01 *Allonby v. Accrington & Rossendale College* [2004] ECR I-873, Paragraphs 63, 65-67.

repeating the relevant provisions of the Acts transposing Directives 76/207 and 2002/73. 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.

4.2.3 Has the exception on occupational activities been implemented into national law (see Article 14(2) of Recast Directive 2006/54)?

No.

4.2.4 Has the exception on protection for women, in particular as regards pregnancy and maternity, been implemented in national law (see Article 28(1) of Recast Directive 2006/54)?

Yes, in Article 20 of Act 3896/2010 transposing Directive 2006/54, which copies Article 28(1) of the Directive, adding the protection of 'paternity' and 'family life'.

4.2.5 Are there 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.?

This is not clear, 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 (section 3.3. above), or discrimination on grounds of pregnancy and maternity against women on a fixed term contract who are not protected beyond its expiry (5.1.3 below). 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 (5.2.1 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 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'.⁸⁷

⁸⁷ Observation (CEACR), 106th ILC session (2017), Convention No. 111: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312256:NO, accessed 11 April 2018.

5. Pregnancy, maternity, and leave related to work-life balance (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)

5.1. Pregnancy and maternity protection

5.1.1. Does national law define a pregnant worker?

Yes. In Article 2 of Decree 176/1997 transposing Directive 92/85 which reads:

'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.'

This provision copies the Directive, but its last sentence 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.⁸⁸ 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 required by Articles 4-7, 9 of the Directive.

5.1.2. Are the protective measures mentioned in the Articles 4-7 of Directive 92/85 implemented in national law?

Yes. In Articles 3-7 of Decree 176/1997. The Decree copies Articles 4-7 of the Directive and refers to the annexes which are also copied from the directive.

5.1.3. Is dismissal prohibited in national law from the beginning of the pregnancy until the end of the maternity leave (see Article 10(1) of Directive 92/85)?

Yes, but the protection against dismissal exceeds the maternity leave, hence the Directive, since it covers at least 18 months, as explained below.

Article 10 of Decree 176/97 transposing Directive 92/85 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 (OJ A 170/5.08.2011) and amended by Article 46 of Act 4488/2017,⁸⁹ reads as follows:

'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.
'2 [] 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.⁹⁰ Civil servants and permanent

⁸⁸ SCPC (Civil Section) 433/2012, Athens Court of Appeal 644/2017.

⁸⁹ Act 4488/2017, OJ A 137/13.09.2017.

⁹⁰ Athens Court of Appeal 644/2017.

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 3 days after the 18-month protection period is not abusive per se;⁹¹ 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.⁹² It also held, however, that the protection also concerns a fixed-term contract, but does not extend beyond its expiry⁹³ (which is contrary to CJEU case law).⁹⁴

Dismissal is permitted in exceptional cases as defined in Article 10(1) of Directive 92/85, for a 'serious ground', which 'may in no case be the possible diminution of the 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 unbearable for the employer, irrespective of any fault of the worker, the particular circumstances being taken into account. Examples: poor performance of the worker's duties or non-compliance with the employer's instructions, provided that this is not due to her situation,⁹⁵ or the closing down of the business.⁹⁶

When an employee is made redundant during her maternity leave, the payment for maternity leave ceases. The Manpower Employment Organisation (OAED) pays an unemployment allowance⁹⁷ which is lower than the maternity allowance: a fixed amount for all those unemployed (EUR 360, plus EUR 36 for each dependent family member),⁹⁸ which is well below the poverty threshold for Greece (about EUR 580).⁹⁹ When the 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.¹⁰⁰

5.1.4. In cases of dismissal from the beginning of pregnancy until the end of maternity leave, is the employer obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85)?

Yes. Article 10 of Decree 176/97: 'the employer must duly justify the termination in writing and notify it to the Labour Inspectorate. This requirement concerns the whole 18-month period (5.1.3. above). In the absence of a justification in writing at the time of the termination, the termination will be null and void. 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

⁹¹ SCPC (Civil Section) 179/2016.

⁹² SCPC (Civil Section) 1591/2010.

⁹³ SCPC (Civil Section) 1341/2005, 317/2011.

⁹⁴ 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.

⁹⁵ SCPC (Civil Section) 308/2011, 622/2008.

⁹⁶ Thessaloniki Court of Appeal 47/1991.

⁹⁷ These women received the allowance thanks to the Ombudsman's intervention; see the mediation report available at: <http://www.synigoros.gr/resources/docs/150615-sinopsi.pdf>, accessed 25 March 2017.

⁹⁸ See the OAED website: <http://www.oaed.gr>, accessed 11 April 2018.

⁹⁹ See European Committee of Social Rights *GENOP-DEI and ADEDY v. Greece* Complaint No. 66/2011, decision of 23 May 2012, invoking Eurostat data: http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/complaints_EN.asp?, accessed 11 April 2018.

¹⁰⁰ SCPC, Civil Section 797/2013: the serious ground invoked proved untrue; the dismissal was null and void.

remained null and void and the Labour Inspectorate imposed an administrative fine.¹⁰¹ The Directive is thus exceeded regarding both the protection period and the sanction for the non-observance thereof. In the private sector, however, employers, as soon as they take cognisance of the pregnancy, often compel pregnant women 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), or the employer dismisses the pregnant worker without notifying her of the dismissal, while they declare 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 will.

The above examples were reported by the Ombudsman following complaints by wronged women. The Ombudsman notes that these complaints mostly come from female employees of small and medium-sized undertakings (i.e. undertakings 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 his services. Where the employer does not comply with their recommendations, the Ombudsman requests that the Labour Inspectorate inflict a fine.¹⁰² 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 11.4.1 and 11.4.3 below). The correct transposition of the procedural provisions of the directives, in particular regarding the standing of legal entities and the burden of proof, and their incorporation in the procedural codes would encourage wronged women to stand up for their rights, but this chronic problem remains unsolved (see 11.2.1 and 11.4.2 below).

5.2. Maternity leave

5.2.1. How long (in days or weeks) is maternity leave? Please specify the relevant legislation and Article(s).

In the private sector: 17 weeks paid leave (8 weeks before and 9 weeks after confinement) (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). 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-confinement part (9 weeks) of the maternity leave (Article 44 of Act 4488/2017).¹⁰³

A further 'special' paid leave is provided 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 (5.4.4 below).¹⁰⁴ This 'special leave'

¹⁰¹ See Ombudsman <https://www.synigoros.gr/resources/docs/20171010-synopsi-kim.pdf>, accessed 11 April 2018.

¹⁰² See Ombudsman Annual Report 2014 (Special Report 'Gender and Employment Relationships'), p. 138 available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>; Ombudsman Annual Report 2015 (Special Report 'Gender and Employment Relationships'), pp. 117-121, available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798>; Ombudsman Annual Report 2016 (Special Report 'Gender and Employment Relationships'), pp.125-126: available at: <https://www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf;all> accessed 12 April 2018.

¹⁰³ Act 4488/2017, OJ A 137/13.09.2017.

¹⁰⁴ Article 142 of Act 3655/2008, as amended by Article 36 of Act 3996/2011, OJ A 170/05.08.2011.

is independent from both maternity and parental leave. It is granted to women only, in addition to maternity leave; it cannot be shared with the father. In the case of surrogacy the commissioning mother is entitled to this further 'special' leave as well (Article 44(3) Act 4488/2017).

In the public sector: five months (plus 1 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 (Article 52(1) CSC, as amended by Article 18 of Act 3801/2009)¹⁰⁵ for civil servants and the permanent employees of legal persons governed by public law and local authorities (Article 2 and Article Second CSC) as well as persons employed by these employers on a contract of indefinite duration.¹⁰⁶ Fixed-term contract employees of these employers receive only the less favourable private sector maternity leave. This is the case for, inter alia, substitute state school teachers who are providing the same services as permanent state school teachers. While the latter receive the CSC maternity leave, the former only receive private sector maternity leave (see also 5.2.8 below). This less favourable treatment of fixed term workers may be considered discrimination on the ground of maternity, which is prohibited by Directive 2006/54, as well as discrimination against fixed term workers in comparison with indefinite term workers and civil servants, which is prohibited by Directive 1999/70.¹⁰⁷ In view of CJEU case law, the fact that the maternity leave provided under Greek law is higher than the maternity leave provided by Directive 92/85 as a minimum cannot be considered to exclude the application of these Directives (see 5.2.7 below). Female judges,¹⁰⁸ permanent state school teachers¹⁰⁹ and policewomen¹¹⁰ are granted the CSC pregnancy and maternity leave. Female military personnel receive pregnancy leave of five months, but only until the date of confinement, while parental leave (for both parents) starts immediately thereafter.¹¹¹ 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.¹¹² Moreover, the right to maternity leave must not be affected or substituted by the right to parental leave which serves a different purpose.¹¹³

5.2.2. Is there an obligatory period of maternity leave before and/or after birth?

Yes. According to Clause 7 of NGCA 2000 and Article 52(1) CSC (above 5.2.1.).

Private sector: 8 weeks before and 9 weeks after childbirth (Clause 7 of NGCA 2000).
Public sector: 2 months before and 3 months after childbirth (Article 52(1) CSC. If the confinement takes place earlier than estimated, the rest of the leave provided before the confinement 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.

¹⁰⁵ Act 3801/2009, OJ A 163/04.09.2009.

¹⁰⁶ Article 4(5) of Act 2839/2000, OJ A 196/12.09.2000.

¹⁰⁷ 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, 10.07.1999, pp. 43-48.

¹⁰⁸ Article 44(20) of Act 1756/1988, OJ A 35/1988 (Code on Courts' Regulation and Judges' Status).

¹⁰⁹ Article 53 Act 2721/1999, OJ A 112/03.06.1999.

¹¹⁰ Articles 10 and 10A Decree 27/1986, as amended by Article 2 Decree 66/2000, OJ A 57/2000.

¹¹¹ Articles 8-9 of Ministerial Decision F.400/32/82424/S.343, OJ B 1139/03.06.2011; Athens Administrative Court of Appeal 921/2010.

¹¹² ECJ Cases C-320/01 *Busch* [2003] ECR I-2041, Paragraph 42; 421/92 *Habermann-Beltermann* [1994] ECR I-1657, Paragraph 21; C-32/93 *Webb* [1994] ECR I-1963, Paragraph 20.

¹¹³ ECJ Cases C-116/06 *Kiiski* [2007] ECR I-7643, Paragraph 56; C-519/03 *Commission v. Luxembourg* [2005] ECR I-3067, Paragraphs 32-33.

5.2.3. Is there a legal provision ensuring that 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?

Yes. In Article 11(1) and (2) of Decree 176/1997.

The above provisions repeat the provisions in Article 11(1) of Directive 92/85 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.

5.2.4. Is there a legal provision that ensures the employment rights relating to the employment contract (including pay or an adequate allowance) during the pregnancy and maternity leave?

Yes. In Article 11(3)-(5) of Decree 176/1997 implementing Directive 92/85.

The above provisions mostly repeat Article 11(3)-(4) of Directive 92/85.

5.2.5. Is pay or an allowance during the pregnancy and maternity leave at the same level as sick leave or is it higher?

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). The allowance paid by the Organisation of Social Security (IKA), the main social security scheme for subordinate workers under a private law employment relationship, is equal to the sickness allowance.¹¹⁴ For the 'special' six-month leave (5.2.1. above) the OAED (see 5.1.3. above) pays the legal minimum wage. The above do not concern the public sector where maternity leave is fully paid (Article 52(1) CSC).

The employer pays part of the woman's wages during maternity leave, provided that she has worked for at least ten days for the same employer.¹¹⁵ This amount is supplemented by the IKA allowance¹¹⁶ and an allowance paid by the OAED,¹¹⁷ so that 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 2400).¹¹⁸

5.2.6. Are statutory maternity benefits supplemented by some employers up to the normal remuneration?

Yes. See 5.2.5. above.

5.2.7. Are there conditions for eligibility for benefits applicable in national legislation (see Article 11(4) of Directive 92/85)?

Yes. In Article 11(4) and (5) of Decree 176/1997 transposing Directive 92/85.

According to the above provision, which repeats Article 11(4) of Directive 92/85, 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 twelve 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

¹¹⁴ Article 39 of Act 1846/1951 on IKA, OJ A 179/21.06.1951.

¹¹⁵ Articles 657-658 Civil Code (absence due to a serious reason, such as sickness or maternity leave); Piraeus Court of Appeal 917/1996.

¹¹⁶ Article 11 of Act 2874/2000, OJ A 286/29.10.2000, which sanctions Clause 7 of NGCA 2000.

¹¹⁷ Decree 221/1997, OJ A 168/27.2.1997.

¹¹⁸ As wages and pensions have been frozen since 2009, this maximum amount remains the same (Ministry of Labour Circular 10/09.02.2011, *Bulletin of Labour Legislation (Deltio Ergatikis Nomothesis)* 2011, p. 446.

commencement of maternity leave.¹¹⁹ This constitutes a violation of Article 11(4) of Directive 92/85. Moreover, the granting of the maternity allowance is subject to stricter conditions than the granting of the sickness allowance (the granting of the latter is subject to 100 working days in the year preceding the notification of the sickness).¹²⁰ This constitutes a violation of Article 11(3) of Directive 92/85, 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.¹²¹

5.2.8. In national law, is there a provision that 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)?

Yes. Article 16 of Act 3896/2010 transposing Directive 2006/54.

This article copies the directive. However, in the private sector this requirement seems to be frequently disregarded in practice. Women returning from maternity leave also complained to the Ombudsman about the behaviour of employers that is mentioned in section 5.1.4 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.¹²² 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 5.1.4 above (see also 11.4.1 below).

There are specific problems of discrimination on the ground of maternity against substitute state school teachers. As mentioned above (5.2.1), 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 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 a 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,¹²³ which covers illness due to any cause whatsoever, including pregnancy-related illness, and is independent from maternity leave. However, if they have exhausted the 15-day sick leave due to another illness during the same

¹¹⁹ Article 39 of Act 1846/1951 (on the IKA).

¹²⁰ Article 35(1) of Act 1846/1951, as amended by Article 178(3) of Act 4261/2014, OJ A 107/05.05.2014.

¹²¹ See e.g. Case C-284/02 *Sass* [2004] ECR I-11143 concerning maternity leave longer than 14 weeks.

¹²² See Ombudsman Annual Report 2014 (*'Gender and Employment Relationships'*), pp. 138-141: available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>; Ombudsman Annual Report 2015 (Special Report *'Gender and Employment Relationships'*), pp. 117-121: available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798>, both accessed 11 April 2018.

¹²³ Supreme Civil and Penal Court (Civil Section) 2041/1984; Piraeus Court of Appeal 917/1996.

year, they are not entitled to wages for pregnancy-related illness,¹²⁴ but are entitled only to the IKA¹²⁵ sickness allowance, which does not correspond to full pay.

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, 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 1999/70¹²⁶ (Clause 4(1) in conjunction with Clause 1(a), 'principle of non-discrimination'). Therefore, substitute teachers suffer multiple discrimination regarding pregnancy-related illness: on the ground of maternity/gender and on the ground of fixed term status.

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 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 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 (see 5.1.3. above), 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,¹²⁷ the existence of a male comparator being irrelevant.¹²⁸ 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. 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 not been repealed and is still applied. 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 is deplored and it is demanded that substitute teachers

¹²⁴ See 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.

¹²⁵ IKA (Organisation of Social Security) operates the main scheme for subordinate workers under a private law contract.

¹²⁶ 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, 10.07.1999, pp. 43-48.

¹²⁷ CJEU Cases C-177/88 *E. J. P. Dekker v. Stichting Vormingscentrum voor Jong Volwassenen* [1990] ECR I-3941, Paragraph 12; C-421/92 *Haberman-Bertelmann* [1994] ECR I-1657, Paragraphs 15, 16; C-207/98 *S. K. Mahlburg v. Land Mecklenburg-Vorpommern* [2000] ECR I-549, Paragraph 20.

¹²⁸ *Dekker*, Paragraph 17

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 leaves are provided by the CSC.¹²⁹ At the time of writing, it seems that the above circular is still in force and applied by the Ministry of Education.

5.3. Adoption leave

5.3.1. Does national legislation provide for adoption leave?

Yes. In Article 50(8) of Act 4075/2012 and 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, Article 52(4) CSC.

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 analogous to the total number of hours by which the daily working time would be reduced – see below 5.4.4) irrespective of the kind of professional activity of the other parent, even if the other parent is not employed. The CSC explicitly grants up to 5 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 age of six. A 3-month period of this leave is granted with full pay in the event of the birth (or adoption by analogy) of the third child and beyond (Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014).¹³⁰

Article 52(4) CSC grants female civil servants who adopt a child under the age of six a period of paid leave for three months within the first semester following the finalisation of the adoption, which corresponds to maternity leave after birth (see 5.2.2. above). Prior to the directive, the CS had held that these women are also entitled to CSC parental leave (5.4.4. below).¹³¹ This provision also applies to women employed by the State, by legal entities governed by public law and by local authorities on a contract of indefinite duration, but not to women employed by the same employers on a fixed-term contract (Article 2 and Article Second CSC), in breach of Directives 2010/18 and 1999/70 (fixed-term work) (cf. 5.2.1 above).

More recently, the CS, relying on Article 10(1) of the European Convention on the Adoption of Children, which requires the assimilation of adopted children to natural children, as well as on Articles 20, 24 and 33 of the EU Charter of Fundamental Rights and Directive 2010/18, and interpreting the Greek legislation and Constitution in light of these supra-national instruments, held that the entitlement to a nine-month paid parental leave provided for male and female judges by the Judges Code¹³² also applies to adoptive parents. The CS consequently ruled that, in case of simultaneous adoption of two children of different ages by a judge, the adoptive parent is entitled, in addition to the nine-month parental leave, to a six-month parental leave for the second adopted child. It reached this conclusion applying by analogy to the adoptive parent Article 53(2) CSC which grants a further six-month parental leave for each child beyond the first one in the case of multiple birth (see 5.4.4. below).¹³³ The provision of the Judges Code regarding parental leave has the same content as the provision of Article 53(2) CSC granting parental leave to civil servants (see 5.4.4. below). Therefore, in the author's

¹²⁹ Γ' ΕΛΜΕ Θεσσαλονίκης (3rd Federation of High School Teachers of Thessaloniki), Communication dated 29 November 2016, available at: <http://www.alfavita.gr/arhron/anakoinoseis/g-elme-thessalonikis-pliris-prostasia-tis-kyisis-kai-tis-mitrotitas-gia-tis#ixzz4Sc2jKIub>, accessed 12 March 2017.

¹³⁰ Act 4305/2015, OJ A 237/31.10.2014.

¹³¹ CS 607/2007.

¹³² Act 1756/1988, OJ A 35/1988 (Code on Courts' Regulation and Judges' Status), Article 44(21). See 5.4.4 below.

¹³³ CS 4088/2015.

view, the interpretation given by the CS to the Judges Code provision also applies to Article 53(2) CSC. This means that Article 53(2) CSC also covers adoptive parents.

Adoptive and foster parents are granted the special parental leave provided by Article 51 Act 4075/2012 (see below 5.4.12)

5.3.2. Does national legislation provide for protection against dismissal of workers who take adoption leave and/or specify their rights after the end of adoption leave (see Article 16 of Directive 2006/54)?

Yes. 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 and Article 52(1) and (3) of Act 4075/2012 transposing Directive 2010/18.

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....' 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, and prohibits their unfavourable treatment due to an application for or the taking of parental leave. The directives are thus exceeded regarding foster parents.

5.4. Parental leave

5.4.1. Has Directive 2010/18 been explicitly implemented in your country?

Yes. In Articles 48-54 of Act 4075/2012 and Presidential Decree 80/2012 which transpose the Directive; Articles 51(2) and 53 CSC, Article 44 of the Judges Code; National General Collective Agreements (NGCAs).

5.4.2. Is the national legislation applicable to both the public and the private sector (see Clause 1 of Directive 2010/18)?

Act 4075/2012 applies to both the public and the private sector. 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 5.2.1 above. NGCAs provide enforceable minimum standards for all workers under a private law contract throughout the country.

5.4.3. Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

Yes. According to Article 49(2) of Act 4075/2012, 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.

5.4.4. What is the total duration of parental leave? If the provisions regarding duration differ between the public and the private sector, please address the two sectors separately.

In all cases the duration exceeds the minimum provided in the directive.

The private sector: four months, unpaid, non-transferable, for each child up to the age of six (Article 50(1) and (3) of Act 4075/2012 transposing Directive 2010/18). 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 analogous length (amounting to the total number of hours by which the daily working time would be reduced) may be agreed with the employer.¹³⁴ 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.¹³⁵ This paid leave is granted to (natural, adoptive or foster) parents of both sexes irrespectively of the kind of professional activity of the other parent, even if the other parent is not employed (Article 38 Act 4342/2015). Maritime work: four months, unpaid, for each child up to the age of five; at least one month non-transferable (Article 5(2) of Decree 80/2012).

The public sector: nine months, fully paid, transferable, for each child up to the age of four (Article 53(2) CSC); alternatively a paid daily working time reduction (by two hours until the child reaches the age of two and by one hour until it reaches the age of four). Following the CJEU judgment in *Chatzi*,¹³⁶ 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 beyond the first one, in the case of multiple births, this was added to Article 53(2) CSC.¹³⁷ This provision is however silent about a working time reduction as an alternative to this additional leave. The Ombudsman dealt with the complaint of a female public servant, the head of a service, asking to take this additional leave in the form of a working time reduction in order not to lose the allowance of responsibility (as a part of the monthly salary), which stops after 2 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.¹³⁸

Moreover, an unpaid leave of up to 5 years is provided for each child up to the age of 6; 3 months of this leave is granted with full pay for the third child and the following children (Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014). The CS in its recent 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, which provides a 4-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.

¹³⁴ NGCAs 1993, 2000, 2002-2003, 2004-2005, 2006-2007, 2014, available, in Greek, on the Greek General Confederation of Labour (GSEE) website: <http://www.gsee.gr/nomothesia/e-g-s-s-e>, accessed 12 April 2018.

¹³⁵ SCPC (Civil Section) 10/2010.

¹³⁶ Case C-149/10 *Zoi Chatzi v. Ipourgos Ikonomikon* [Minister of Finance] [2010] ECR I-8489. See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2011), 'Greece', *European Gender Equality Law Review* 1, pp. 78-83, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights, accessed 25 March 2017.

¹³⁷ By virtue of Article 6 of Act 4210/2013 (OJ A 254/21.11.2013).

¹³⁸ Greek Ombudsman *Annual Report 2016* (Special Report 'Gender and Employment Relationships'), p.129: available at: <https://www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf>; accessed 12 April 2018.

The above provisions apply to civil servants and permanent employees of legal persons governed by public law and local authorities, as well as to employees of the same employers on a private law contract of indefinite duration (Article 2 and Article Second CSC) Employees of these employers on a fixed-term contract only receive the private sector, unpaid, four-month parental leave. This is in breach of Directives 2010/18 and 1999/70 on fixed-term work (cf. 5.2.1. and 5.3.1. above). The Ombudsman has dealt with several complaints of substitute teachers, whose 4-month parental leave according to Act 4075/2012 was not taken into account as real working time for the calculation of the annual leave and the wages. To date the Ombudsman's findings have not had any impact on legislation.

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.¹³⁹ 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 5.4.7. below).

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 State Legal Council (SLC)¹⁴⁰ agreed with this practice, which continues, as it results from ministerial circulars¹⁴¹ 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.¹⁴²

5.4.5. Is the right of parental leave individual for each of the parents, a family entitlement or a combination of the two? How many months are reserved for each parent on a take-it or leave it basis?

In the private sector it is non-transferable, therefore it is individual. In the public sector it is fully transferable and, 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.

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

¹³⁹ See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/05.05.2014 aimed at clarifying the application of the CSC to state school teachers following the transposition of Directive 2010/18, 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>, accessed 12 April 2018.

¹⁴⁰ 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.

¹⁴¹ See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/05.05.2014, aimed at clarifying the parental leave regime applying to state school teachers under the CSC, following the transposition of Directive 2010/18, paragraph D4, p. 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>, which refers to Minister of Home Affairs Circular ΔΙΑΔ/Φ.51/590/οικ.14346/29.05.2008, p. 5, available at: http://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), both circulars accessed 25 March 2016.

¹⁴² The Ministry invoked Circular ΔΙΑΔ/Φ.53α/1975/6219/16.4.2014, which is similar to the ones mentioned above. See Ombudsman Annual Report 2014, p. 134 ('Gender and Employment Relationships'), available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>, accessed 12 April 2018.

illness or injury, the father's wife was unable to meet the needs related to the child's upbringing. A 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 repealed¹⁴³ 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,¹⁴⁴ albeit in sex-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. 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 sex-neutral provision of the Judges Code that was applicable to the case. The CS (judgment 1113/2014) referred to the CJEU the question whether Directives 96/34 and 2006/54 precluded national provisions such as that of Article 53(3) CSC.

This referral is the *Maïstrellis* case. The CJEU considered Directive 96/34 applicable to the case and ruled that Directives 96/34 and 2006/54 preclude national provisions, such as the impugned provision of Article 53(3) CSC quoted above.

The Court recalled that Directive 96/34 also applies to public officials. It provides for an 'individual right' to parental leave for both men and women 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*'.¹⁴⁵ 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, and therefore with Directive 2010/18 as well.

Regarding Directive 2006/54, 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.¹⁴⁶ Under Greek 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.

The question that now arises is what the *effet utile* of the Court's ruling for the applicant will be. The CS judgment in compliance with this ruling (the 'post-*Maïstrellis* CS judgment') is still pending. However, in the author's view, even after the impugned refusal is annulled (as expected) by the CS, the applicant may again be refused parental leave, this time on the basis of the sex-neutral provision, which is still on the books. Therefore, he will once more have to have recourse to the CS. If this happens, meanwhile, the child concerned will have exceeded the age up to which the leave is granted and the father will not be able to enjoy his leave at all.¹⁴⁷

However, a recent judgment of the CS Plenary (2511/2016) solved the problem for another judge in a way that must also benefit Mr. Maïstrellis. It upheld an action by a

¹⁴³ By virtue of Article 6(2) of Act 4210/2013, OJ A 254/21.11.2013.

¹⁴⁴ By virtue of Article 89 of Act 4055/2012, OJ A 51/12.03.2012.

¹⁴⁵ *K. Maïstrellis v. Ypourgos Dikaïosynis, Diafaneias kai Anthropinon Dikaïomaton*, Case C-222/14, 16 July 2015, Paragraphs 29, 31 and 36; emphasis added.

¹⁴⁶ *K. Maïstrellis v. Ypourgos Dikaïosynis, Diafaneias kai Anthropinon Dikaïomaton*, Case C-222/14, 16 July 2015, Paragraphs 43 and 45.

¹⁴⁷ See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2014), 'Greece', *European Gender Equality Law Review* 2, pp. 62-66, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights, accessed 25 March 2017.

female judge for the annulment of the refusal to grant her parental leave on the basis of the aforementioned sex-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 section 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 to 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, 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, collective agreements, 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 sex 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 persons, 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. We can infer from the invocation of EU law that the CS interpreted Article 21 of the Constitution in light of EU law.

As noted above, the post-*Maïstrellis* CS judgment is still pending. Although the *Maïstrellis* CJEU ruling concerned the repealed sex discriminatory provision, not the sex-neutral one, it contains a sentence which gives a broader scope to the ruling: '[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'.¹⁴⁸ This sentence creates an obligation on the Greek State not to apply the sex-neutral provision of the Judges Code and to repeal it – and furthermore, to grant the nine-month paid parental leave to Mr Maïstrellis. Therefore, in view also of the recent CS Plenary judgment (2511/2016) reported above, the post-*Maïstrellis* CS judgment must uphold Mr Maïstrellis's action. One only hopes that this judgment is given soon, so that it has an *effet utile*, as noted above. Nevertheless, as all state authorities bear the obligation to implement EU law,¹⁴⁹ the Ministry of Justice – the author of the refusal to grant the leave to Mr Maïstrellis – is also under the obligation to grant him the leave, in compliance with the CJEU *Maïstrellis* ruling, without waiting for the post-*Maïstrellis* CS judgment.

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

¹⁴⁸ *K. Maïstrellis v. Ypourgos Dikaïosynis, Diafaneias kai Anthroponon Dikaïomaton*, Case C-222/14, 16 July 2015, Paragraphs 29, 31 and 36; emphasis added.

¹⁴⁹ See the leading CJEU case 14/83 *S. von Colson and E. Kamann* [1984] ECR I-1891, Paragraph 26.

constituted direct discrimination on the ground of sex,¹⁵⁰ such fathers were also granted parental leave, by virtue of the single Article of Decision Φ.400/1/80039/Σ.1 of the Minister of National Defence,¹⁵¹ 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'.

5.4.6. What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done (see Clause 3 of Directive 2010/18)?

Private and public sector: The leave is granted as a whole or on a piecemeal basis. 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). Private sector: The reduced working day (5.4.4. 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).

5.4.7. Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done? (see Clause 3 of Directive 2010/18)?

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 her' (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. The CSC does not require a period of notice. The Judges Code provides that the starting date for the parental leave is fixed by the head of court. When the leave is requested by a mother, it must start as soon as possible and not 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.

5.4.8. Did the Government take measures to address the specific needs of adoptive parents (see Clause 4 of Directive 2010/18)?

Yes. In Article 50(8) of Act 4075/2012 transposing Directive 2010/18.

This provision is meant to transpose Clause 4 of the directive. While parental leave is granted to natural parents until the child reaches the age of six, this provision grants the

¹⁵⁰ See Ombudsman Annual Report 2014 (Special Report 'Gender and Employment Relationships'), p. 137: available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>; Ombudsman Annual Report 2015 (Special Report 'Gender and Employment Relationships'), p. 114: available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798>; and finally, Ombudsman Summary of Intervention 'Parental leave for military fathers whose wife does not work', April 2016, in which it is stated that this discriminatory practice stopped: available at: <http://www.synigoros.gr/resources/docs/sinopsidiamesolavisis--2.pdf>, both accessed 12 April 2018.

¹⁵¹ (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*, JO B 228/09.02.2016).

leave to adoptive and foster parents until the child reaches the age of eight, if the adoption or fostering has not been finalised until the child has reached the age of six. It exceeds Clause 4 in that it also covers foster parents.

5.4.9. Is there a work and/or length of service requirement in order to benefit from parental leave?

Yes, in the private sector and in maritime employment. No, in the public sector, including judges.

Article 50(2) of Act 4075/2012 and Article 3(1) of Decree 80/2012 transposing Directive 2010/18.

The required period of service is one year.

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

5.4.10. Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?

Article 50(4) of Act 4075/2012: leave is granted according to the priority of requests; parents of children with a disability or a long-term or sudden illness and single parents have absolute priority. 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). For judges see 5.4.7. above.

5.4.11. Are there special arrangements for small firms?

Yes, in a few cases. Article 2(3) of Decree 80/2012, Article 8(1) of Act 1483/1984.

Article 2(3) of Decree 80/2012 states: 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 (5.4.11(d) below).

5.4.12. Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

Yes. Article 51 of Act 4075/2012, as amended by Article 45 Act 4488/2017¹⁵² and Article 6 of Decree 80/2012 transposing Directive 2010/18; Articles 50(2) and (3) CSC, as amended by Articles 149 of Act 4483/2017¹⁵³ and 53(6) and (8) CSC, as added by Article 31 of Act 4440/2016;¹⁵⁴ Articles 7-9 of Act 1483/1984.

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 handicap, Down's syndrome or autism: ten

¹⁵² Act 4488/2017, OJ A137/13.09.2017.

¹⁵³ Act 4483/2017, OJ A 107/31.07.2017.

¹⁵⁴ Act 4440/2016, OJ A 224/02.12.2016.

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 the 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 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.
- c) Article 51(1) CSC, as amended by Article 26(1) of Act 4305/2014,¹⁵⁵ 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.
- d) Articles 50(2) and (3) CSC, as amended by Article 149 of Act 4483/2017 and 53(6) CSC grant: i) to employees with a spouse or child requiring regular blood transfusions or periodic hospitalisation or a child suffering from a serious mental handicap or Down's syndrome: a leave of up to 22 working days a year, transferable, and fully paid, ii) to employees with a child suffering from a serious mental handicap or Down's syndrome and to employees with a child suffering from diffused developmental disorder, if they are minor or if they are adult but unemployed, iii) for school visits: time-off of up to four working days a year or five days for two or more children, transferable, and fully paid.¹⁵⁶ These provisions prevail to the extent that they are more favourable than those of the main transposing legislation.
- e) Article 53(8) CSC, as added by Article 31 Act 4440/2016, 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) 5 working days in each calendar year for employees with 3 or more children and iii) 6 working days in each calendar year for employees who are single parents. The above-mentioned leave (under i and iii) is granted to employees of municipalities as well according to Art. 60(8) of Act 3584/2007, as added by Article 31 of Act 4440/2016.
- f) Articles 7-9 of Act 1483/1984 (the private sector): time off: i) in 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 six working days a year, eight for two children, 14 for three or more children, non-transferable, unpaid; ii) for school visits: up to four 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 an analogous pay cut, in undertakings with at least 50 workers.

5.4.13. Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave (see Clause 5 of Directive 2010/18)?

Yes. See 3.2.1 and 5.3.3 above.

5.4.14. Do workers benefitting from parental leave have the right 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?

Yes. See 5.3.3 above.

¹⁵⁵ Act 4305/2014, OJ A 237/31.10.2014.

¹⁵⁶ See also Joint Ministerial Decision ΔΙΔΑΔ/Φ.53/12222/οικ.20561, OJ B 1613/17.8.2007.

5.4.15. Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?

Act 4075 does not contain such a general provision. However, rights upon return are ensured and parental leave is working time (5.3.3 above, 5.4.16 below). Article 5(4) of Decree 80/2012 copies the provisions in the Directive. However, Article 6(4) provides that non-timely return to the ship is a ground for dismissal without compensation.

5.4.16. What is the status of the employment contract or employment relationship for the period of the 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 5.1.3 above.

The Greek Ombudsman is dealing 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, 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 State Legal Council (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.¹⁵⁷

Subsequently, the State Legal Council (SLC) (3rd 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.

5.4.17. Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?

Yes, but only if the workers pay both their own and the employer's contributions (Article 52(4) 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.

5.4.18. Is parental leave remunerated by the employer? If so, how much and in which sectors?

Public sector: fully paid. Private sector: unpaid (5.4.4 above).

5.4.19. Does the social security system in your country provide for an allowance during parental leave?

No.

5.4.20. In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see Clause 8 of Directive 2010/18)?

¹⁵⁷ Ombudsman (2015), 'Reconciliation of professional and family life' (Case 189795/2014) in *Equal Treatment of Men and Women in Employment and Labour relations, Special Report 2015*, available (in Greek) at: <http://www.synigoros.gr/resources/docs/ee2015-13-fylo--2.pdf>, accessed 30 March 2017.

Greek legislation exceeds the directive regarding the prohibition of discrimination and dismissal on the grounds of sex and ‘family status’ (4.1.3, 4.2.2 above and 5.5.2 below); the addition of ‘paternity’ and ‘family status’ to the exception to the protection of women (4.2.4 above); the length of maternity leave and the pay during this leave (5.2.1, 5.2.4 above) and the parental leave (full pay in the public sector) (5.4.4, 5.4.17 above); special leaves and time off (5.4.11 above); the assimilation of adoptive and foster parents with natural parents (3.8, 5.3.1, 5.3.2, 5.3.3, 5.4.3, 5.4.11(a) and (d) above); a working day reduction, including for both commissioning and surrogate mothers (5.4.4 above). However, 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.¹⁵⁸

5.5. Paternity leave

5.5.1. Does national legislation provide for paternity leave?

Yes. NGCA 2000; Article 50(1) CSC, as amended by Article 18 of Act 3801/2009, OJ A 163/04.09.2011 provides for the private sector: two days paid paternity leave, upon the birth of each child. The CSC provides for two days paid paternity leave, upon the birth of each child or the adoption of a child under two years of age. 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.¹⁵⁹

5.5.2. Does national legislation provide for protection against dismissal of workers who take paternity leave and/or specify their rights after the end of paternity leave (see Article 16 of Directive 2006/54)?

Yes. Act 3896/2010 transposing Directive 2006/54: Articles 14 and 20(3).

Article 14 prohibits any dismissal ‘on grounds of sex or family status.’ Article 20(3) 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.’

These provisions must be considered to also cover paternity leave; there is no relevant case law.

5.6. Time off/care leave

¹⁵⁸ E.g. CS 3216/2003(Plen.) upholding the claim of female judges to the CSC maternity leave; 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, accessed 25 March 2017. Thessaloniki ACA 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. Ipourgios Ikonomikon* [Minister of Finance] [2010] ECR I-8489, in the best possible way in view of the situation in Greece (see 5.4.4. above).

¹⁵⁹ YA Φ. //2016 (YA Φ. 400/34/292616/Σ4753, OJ B 2808/2016).

- 5.6.1. Does national legislation entitle workers to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18)?

Yes, but there is no general provision on time off on grounds of force majeure; there are several provisions on special forms of leave and time off on specific grounds, so that any other, even serious, circumstances of force majeure do not entitle a worker to time off.

For more information please see 5.4.12 above.

5.7. Leave in relation to surrogacy

- 5.7.1. Is parental leave available in case of surrogacy?

Yes. NGCA 2006 (the private sector).

The commissioning parents are assimilated with natural parents concerning all forms of leave for the care and raising of the child. Both the commissioning and the surrogate mother are entitled to reduced working days (5.4.3, 5.4.4 above).

5.8. Leave sharing arrangements

- 5.8.1. Does national law provide a legal right to share (part of) maternity leave?

No.

- 5.8.2. Is there a possibility for one parent to transfer part of the parental leave to the other parent?

Yes. See 5.4.4 above.

The 'donor parent' retains the right to at least 1 month of leave for his/her own use (see Clause 2 of Directive 2010/18), only in maritime work (Article 3(2) of Decree 80/2012).

5.9. Flexible working time arrangements

- 5.9.1. Does national law provide workers with a legal right (temporarily or otherwise) to reduce working time on request?

Yes. See 5.4.4 above.

- 5.9.2. Does national law provide workers with a legal right to adjust working time patterns (temporarily or otherwise) on request?

Yes, in maritime employment. Article 5(5) and (6) of Decree 80/2012: Upon a 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 eventual suitable measures for returning to the workplace.

- 5.9.3. Does national law provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request?

No. 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.¹⁶⁰

5.9.4. Are there any other legal rights to flexible working arrangements, such as arrangements by which workers can “bank” hours to take time off in the future?

No.

¹⁶⁰ Article 5 of Act 3846/2010, OJ A 66/11.05.2010.

6. Occupational social security schemes (Chapter 2 of Directive 2006/54)

6.1. Is direct and indirect discrimination on grounds of sex in occupational social security schemes prohibited in national law?

Yes. Article 6 of Act 3896/2010 transposing Directive 2006/54 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 the family status in general is prohibited.'

6.2. Is the personal scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 6 of Directive 2006/54? Please explain and refer to relevant case law, if any.

It is the same, as Article 5(1) of Act 3896/2010 copies Article 6 of the directive.

6.3. Is the material scope of national law relating to occupational social security schemes the same, more restricted, or broader than specified in Article 7 of Directive 2006/54? Please explain and refer to relevant case law, if any.

It is the same, as Article 5(2) of Act 3896/2010 copies Article 7 of the directive.

6.4. Has national law applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54?

Yes. Article 5(3) of Act 3896/2010 copies Article 8 of the Directive.

6.5. Are there laws or case law which would fall under the examples of sex discrimination as mentioned in Article 9 of Directive 2006/54?

Yes. 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 which found a breach of Article 157 TFEU due to gender discrimination in ages and other conditions for civil servants' pensions whose scheme it considered to be occupational.¹⁶¹ This is because Decree 87/2002 implementing Directives 96/97 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.¹⁶²

The only case addressing the occupational character of a 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

¹⁶¹ C-147/95 *DEI v. Evrenopoulos* [1997] ECR I-2057; C-457/98 *Commission v. Greece* [2000] ECR I-11481. C-559/07 *Commission v. Greece* [2009] ECR I-47.

¹⁶² Examples: CS 4279/2014: the CS ignored the distinction (indeed it completely ignored EU law) regarding an obviously statutory scheme (IKA, see 7.1. above) 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; Court of Audit 44/2009 (Plen.): the Court considered that the civil servants' scheme falls within the scope of Directive 79/7 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.

(now 157 TFEU). The CJEU held that the scheme was occupational; therefore, Article 119 TEC precluded the application of the provision.

Some occupational schemes maintain discrimination, in spite of Greek case law condemning it. For example, Article 32(1) of the Civil and Military Pensions Code¹⁶³ sets different conditions for the granting of a pension to fathers of deceased military personnel than 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 Audit¹⁶⁴ held that mothers were entitled to a pension subject to the same conditions as fathers, the provision remained.

6.6. Is sex used as an actuarial factor in occupational social security schemes?

Yes. Article 7(1)(h) of Act 3896.2010 transposing Directive 2006/54 copies Article 9(1)(h) of the directive. There is no case law.

6.7. Are there specific difficulties in your country in relation to occupational social security schemes, for example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

See 6.5 above.

¹⁶³ Presidential Decree 169/2007, OJ A 210/31.8.2007.

¹⁶⁴ Court of Audit 751/2000.

7. Statutory schemes of social security (Directive 79/7)

7.1. Is the principle of equal treatment for men and women in matters of social security implemented in national legislation?

Yes. In Article Single of Presidential Decree 1362/1981 implementing Directive 79/7. This is the only measure aimed at implementing Directive 79/7. The Decree replaced Article 33(1) of Act 1846/1951 (OJ A 179/21.06.1951) on the Organisation of Social Security (IKA), which operates 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.

7.2. Is the personal scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 2 of Directive 79/7? Please explain and refer to relevant case law, if any

The scope of Decree 1362/1981 is limited to the IKA scheme (7.1 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),¹⁶⁵ which covers farmers who are not salaried workers; the scheme operated by the Merchant Seamen's Fund (NAT),¹⁶⁶ which covers workers in maritime employment; the scheme operated by the Agency of Manpower Employment (OAED),¹⁶⁷ which provides workers under a private law contract with protection against unemployment, including unemployment allowances, assistance to job seekers and other allowances, such as a maternity allowance.

7.3. Is the material scope of national law relating to statutory social security schemes the same, more restricted, or broader than specified in Article 3 par. 1 and 2 of Directive 79/7? Please explain and refer to relevant case law, if any.

Decree 1362/1981 only concerns social security, not social protection. The IKA, the only scheme it covers, provides protection against sickness, invalidity, old age, accidents at work and occupational diseases, as well as maternity protection (5.2.5 to 5.2.7 above). Protection against unemployment is provided by the OGA scheme, which is not covered by the Decree (7.2 above). Therefore, the material scope of the Decree is restricted.

7.4. Has national law applied the exclusions from the material scope as specified in Article 7 of Directive 79/7? Please explain (specifying to what extent the exclusions apply) and refer to relevant case law, if any.

Decree 1362/1981 is silent regarding the matters mentioned in Article 7 of the Directive. A provision on the Merchant Seamen's Fund (NAT) scheme¹⁶⁸ sets stricter conditions for granting a pension to the mothers of deceased seamen 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, that mothers were entitled to the pension under the same conditions as fathers.¹⁶⁹ This provision has not been repealed.

7.5. Is sex used as an actuarial factor in statutory social security schemes?

No.

¹⁶⁵ Acts 4169/1961, OJ A 81/1961; 2458/1997, OJ A 15/14.2.1997.

¹⁶⁶ Presidential Decree 913/1978, OJ A 220/14.12.1978, Act 1085/1980, OJ A 255/1980.

¹⁶⁷ Acts 2961/1954, OJ A 197/1954; Act 1545/1985, OJ A 91/1985.

¹⁶⁸ Article 20(1)(c) of Presidential Decree 913/1978, OJ A 220/14.12.1978.

¹⁶⁹ CS 831/2004 (Plen.).

7.6. Are there specific difficulties in your country in relation to implementing Directive 79/7? For example due to the fact that security schemes in your country are not comparable to either statutory social security schemes or occupational social security schemes? If so, please explain with reference to relevant case law, if any.

There is confusion between statutory and occupational schemes (see 6.5 above).

8. Self-employed workers (Directive 2010/41/EU and some relevant provisions of the Recast Directive)

8.1. Has Directive 2010/41/EU been explicitly implemented in national law?

Yes, in Act 4097/2012 (OJ A 235/03.12.2012).

8.2. What is the personal scope related to self-employment in national legislation? Has your national law defined self-employed or self-employment? Please discuss relevant legislation and national case law (see Article 2 Directive 2010/41/EU)

Article 2(a) of Act 4097/2012 copies the definition of 'self-employed' which is used in the directive. 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.¹⁷⁰ The self-employed may work on a *contract for services* or *independent employment* or a *remunerated mandate*. The meaning of these terms results from the case law on employment in general (see 4.2.1 above). There is no case law which relies on Act 4097/2012.

8.3. Related to the personal scope, please specify whether all self-employed workers are considered part of the same category and whether national legislation recognises life partners.

Self-employed workers belong to several categories depending on the form of their employment (8.2. above). The wording of Act 4097/2012 is so wide that it is difficult to justify any exclusion, but there is no case law.

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 Act 20¹⁷¹ of Act 3801/2009 (OJ A 163/2009), 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'. These Acts concern registered 'life partnership agreements' of two adults of different sex, 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 (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 4356/2015.¹⁷² Act 4356/2015 introducing same-sex partnership agreements has not filled the gaps of Act 4097/2012; it has 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 this 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 4387/2016¹⁷³ 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 23.12.2015. Persons who entered into a life partnership agreement before 23.12.2015

¹⁷⁰ On the meaning of 'subordinate employment' see SCPC (Civil Section) 1674/2010, 433/2011.

¹⁷¹ There is a typing error in this provision: it is Article 29, not Article 20, which concerns life partnership.

¹⁷² OJ A181/24-12-2015.

¹⁷³ OJA 85/12.5.2016.

have the right, if they so wish, to have the provision of Act 4356/2015 applied in general by means of a notarial deed.¹⁷⁴ However, life partners have not yet been granted rights related to employment.

8.4. How has national law implemented Article 4 Directive 2010/41/EU? Is the material scope of national law relating to equal treatment in self-employment the same, more restricted, or broader than specified in Article 4 Directive 2010/41/EU?

Article 4(1) of the transposing Act has copied Article 4(1) of Directive 2010/41.

8.5. Has your State taken advantage of the power to take positive action (see Article 5 Directive 2010/41/EU)? If so, what positive action has your country taken? In your view, how effective has this been?

Article 116 (2) of the Constitution, which requires positive action, in particular in favour of women in all fields (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 was not transposed.

8.6. Does your country have a system for social protection of self-employed workers (see Article 7 (Directive 2010/41/EU)?

Yes. Article 7 of the Directive has not been transposed. 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 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).¹⁷⁵ 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 Professionals (OAEE), which provides pension and health care coverage. The scheme for hoteliers was merged into the OAEE as an autonomous section thereof.¹⁷⁶ The pension, health and provident schemes for persons working with mass media, either as self-employed or as salaried workers, were merged into the Unified Scheme for the Personnel of Mass Media (ETAP-MME).¹⁷⁷ The pension and health scheme for farmers (OGA) covers both self-employed farmers and the salaried workers they

¹⁷⁴ Circular EFKA 10/28.02.2017.

¹⁷⁵ Articles 25-38 of Act 3655/2008, OJ 58/03.04.2008, 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>, accessed 12 April 2018.

¹⁷⁶ Acts 2676/1999, OJ A 1/05.01.1999, and 3655/2008, OJ 58/03.04.2008, Articles 7-24, as amended and complemented by ministerial decisions, and <http://www.oaee.gr>, accessed 12 April 2018.

¹⁷⁷ See Act 3655/2008 OJ 58/03.04.2008, as amended, Articles 39-51.

employ.¹⁷⁸ Since 1.1.2017 all existing main 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 85/12.05.2016).

An unemployment allowance of EUR 360 per month, which is well below the poverty threshold for Greece (about EUR 580, see 5.1.3. above) is paid to the self-employed for three to nine months and is subject to a strict means test.¹⁷⁹

There are several systems, which are mandatory for the persons falling within their scope (see above).

Spouses of self-employed persons 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.¹⁸⁰ They may be covered by the IKA scheme (7.1. above), if they are full-time employees of their spouse;¹⁸¹ however, these employees are outside the scope of Article 7 of the directive. Life partners of the self-employed persons are in no case covered by the latter's social security scheme. Therefore, Article 7 of the directive should have been transposed and the category covered by this Article, in conjunction with Article 2(b) of the directive, should have been specified.

8.7. Has Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed been implemented in national law?

Yes, but only partly in Article 6(1) of the transposing Act 4097/2012, as amended by Article 44 of Act 4488/2017 (OJ A 137/13.09.2017) which, however, has only transposed Article 8(1) of the directive, albeit 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 shall be determined by common decision of the competent ministers. This allowance is also granted to self-employed commissioning or surrogate mothers and to mothers who adopt a child up to the age of 2.

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 one¹⁸² granted a EUR 200 monthly allowance for 4 months to self-employed women insured with ETAA. The second one¹⁸³ 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. Moreover, those insured with other schemes (ETAP-MME and OGA, 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.

¹⁷⁸ See Act 4169/1961, OJ 81/18.05.1961, as amended and complemented by ministerial decisions, and <http://www.oga.gr>, accessed 30 June 2016.

¹⁷⁹ Manpower Employment Organisation (OAED): <http://www.oaed.gr> accessed 30 March 2017.

¹⁸⁰ Act 3655/2008, OJ 58/03.04.2008, Article 26(d) regarding ETAA, Article 11 regarding OAEE.

¹⁸¹ 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 persons employed in undertakings of members of their family.

¹⁸² Decision No. F.10060/15858/606, OJ B 2665/08.10.2014.

¹⁸³ Decision No. F.40035/41931/1653, OJ B 192/23.01.2015.

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 (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 5.1.3. 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 persons 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 childbirth and EUR 470 after childbirth (EUR 940 in total).¹⁸⁴ This was higher by EUR 140 than the total amount of the allowance granted by the first Decision (EUR 200 for four months).

Entitlement to the maternity allowance (Article 8(2)) 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.

Paragraph 4 of Article 8 has not been transposed. There are no services supplying temporary replacements or relevant national social services.

8.8. Has national law implemented the provisions regarding occupational social security for self-employed persons (see Article 10 of Recast Directive 2006/54)?

Yes. 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).

8.9. Has national law made use of the exceptions for self-employed persons regarding matters of occupational social security as mentioned in Article 11 of Recast Directive 2006/54? Please describe relevant law and case law.

Article 8(3) of Act 3896/2010 transposing Directive 2006/54 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 3863/2010,¹⁸⁵ 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 the self-employed 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

¹⁸⁴ Decree 162/1998, OJ A 122/05.06/1998.

¹⁸⁵ Act 3863/2010, 'New social security system and related provisions, regulation of employment relationships,' OJ A 115/15.07.2010.

directive, that applies, since the directive does not allow the act to worsen 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).

8.10. Is Article 14(1)(a) of Recast Directive 2006/54 implemented in national law as regards self-employment?

Yes. In Article 11(1) of Act 3896/2010 transposing Directive 2006/54, 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.’

By ‘non-salaried employment’ is meant any form of non-subordinate employment, such as employment *for services* or *independent employment* or a *remunerated mandate* (8.2. above), i.e. self-employment within the meaning of the directive.

9. Goods and services (Directive 2004/113)

9.1. Does national law prohibit direct and indirect discrimination on grounds of sex in access to goods and services?

Yes. In Act 3769/2009 (OJ A 105/01.07.2009).

9.2. Is the material scope of national law relating to access to goods and services more restricted or broader than specified in Article 3 of Directive 2004/113? Please explain and refer to relevant case law, if any.

Article 3 of the Act transposing Directive 2004/113 has copied Article 3 of the directive, adding Paragraph 2 to Article 4. There is no case law on either this act or the directive.

9.3. Has national law applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education?

Yes. In Article 3(3) of the Act transposing Directive 2004/113.

9.4. Have differences in treatment in the provision of the goods and services been justified in national law (see Article 4(5) of Directive 2004/113)? Please provide references to relevant law and case law.

Article 4(3) of the Act transposing the Directive has copied Article 4(5) of the Directive.

9.5. Does national law ensure that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113)?

Yes. In Article 6(1) of the Act transposing the Directive.

The above provision has copied Article 5(1), omitting the date of 21 December 2007 as the starting date for the prohibition, as the transposing Act is subsequent to this date.

9.6. How has the exception of Article 5(2) of Directive 2004/113 been interpreted in your country? Please report on the implementation of the C-236/09 *Test-Achats* ruling in national legislation.

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 (OJ A 250/20.12.2012), 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.

9.7. Has your country adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113)?

No, but in the author's view Article 106(2) of the Constitution (2.1.2. above) applies.

9.8. Are there specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in your country in relation to access to and the supply of goods and services? Please briefly describe relevant case law.

There seems to be no case law. The Annual Reports of the Ombudsman and the Consumer's Ombudsman (11.5.1. below) mention no cases. The latter's reports only show the general percentage of complaints by sex, without specifying their subject-matter; there are less complaints by women, while from 2010 to 2014 the percentage of women's complaints decreased (from 42.8 % to 39.1 %).

10. Violence against women and domestic violence in relation to the Istanbul Convention

10.1. Has your country ratified the Istanbul Convention?

Up until 31.12.2017 (the cut-off date for this report) Greece had not yet ratified the Istanbul Convention (IC) signed on 11 May 2011.¹⁸⁶ The previous and the current government have declared their intention to ratify it and to adapt Greek law to its provisions. The current government has included in its programme the promotion of gender equality, with an explicit reference to gender violence and the ratification of the IC.¹⁸⁷ The General Secretariat of Gender Equality (GSGE) is constantly calling for the ratification of the IC, the improvement of the legislation and the taking of preventive and supporting measures, including the training of police officers and other officials dealing with cases of violence.¹⁸⁸ The inadequacy and ineffectiveness of the existing legislation (i.e. mainly Act 3500/2006 'on dealing with domestic violence'),¹⁸⁹ the need for adequate structures and systematic data collection and the persistence of gender stereotypes which lie at the heart of violence against women were highlighted at two sessions/hearings on gender violence of the Special Permanent Parliamentary Committee for Equality, Youth and Human Rights, on 5 May and 4 June 2015, by the invitees (the Greek National Commission for Human Rights (GNCHR), NGOs active in this field, competent public services etc.) and MPs.¹⁹⁰ However, no concerns with regard to the possible financial impact of the ratification have been explicitly raised by the competent authorities.

The existing specific statute (Act 3500/2006 above) only concerns domestic violence, and even in this area it needs to be improved. In particular, several crimes provided in the Penal Code (PC) are included in the concept of 'domestic violence', but there are still more to be included. As most of the acts criminalised by this Act were already covered by the PC, there is confusion as to whether a particular act is regulated by the PC or by Act 3500/2006. Most of the provisions of Act 3500/2006 have remained outside of the codes although the subject-matters do concern the PC, the Civil Code (CC), the Code of Civil Procedure (CCP) and the Code of Penal Procedure (CPP); this creates legal uncertainty and difficulties in implementation. The Act introduced a system of penal mediation, the constitutionality of which is questionable, as the Prosecutor who is empowered to implement it is given judicial competences which are incompatible with his/her office. Moreover, this mediation does not seem to be carried out or is being inadequately carried out, as the Prosecutor's Office lacks the necessary specialised staff, such as social workers.¹⁹¹

A working group has been set up by a decision of the Minister of the Interior and Administrative Reorganisation with a view to preparing the ratification of the IC by issuing recommendations for the drafting of a bill implementing the IC.¹⁹²

¹⁸⁶ The IC was ratified by Act 4531/2018, OJ A 62/05-04-2018.

¹⁸⁷ See the speech by the Minister of the Interior upon taking office (in Greek), available at: <http://www.ypes.gr/el/MediaCenter/Minister/PressReleases/?id=3c5e75eb-49e5-42d8-a462-ef7cab8cfb93>, accessed 6 March 2017.

¹⁸⁸ See e.g. press releases on the occasion of her meetings with the Minister of Justice and the Minister of Public Order (in Greek), available at: <http://www.isotita.gr/index.php/press/c58>, accessed 12 April 2018.

¹⁸⁹ OJ A 232/24.10.2006.

¹⁹⁰ See videotaped sessions, available at: <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#e276c90d-bb44-45e2-9e9d-a49500c4a403>; and <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#1f812c91-9f92-4faa-9878-a4ae009edfd6>, accessed 8 March 2017.

¹⁹¹ See *Written submission by the Greek National Commission for Human Rights (GNCHR)*, UN General Assembly, Human Rights Council, 29th session, A/HRC/29/NI/X, 16 September 2014 (violence against women).

¹⁹² OJ 699/YOΔΔ/30.09.2015; GSGE press release available at: <http://www.isotita.gr>, accessed 12 April 2018.

11. Enforcement and compliance aspects (horizontal provisions of all directives)

Preliminary remark: Regarding the competence of the courts, see 1.1 above.

11.1. Victimisation

11.1.1. Are the provisions on victimisation implemented in national legislation and interpreted in case law?

Yes:

- Article 14 of Act 3896/2010 transposing Directive 2006/54;
- Article 8 of Act 3769/2009 transposing Directive 2004/113;
- Article 52(3) of Act 4075/2012 transposing Directive 2010/18.

Article 14 of Act 3896/2010, which aims to transpose Articles 14(1) (the prohibition of discrimination) and 24 (victimisation) of Directive 2006/54, 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 a revenge of the employer due to the worker's rejection of sexual or other harassment, in accordance with the provisions of Article 2;¹⁹³ c) as a reaction of the employer or of 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 i) it also prohibits victimisation by 'persons responsible for vocational training' in the 'place of vocational training'; and ii) it 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.

Article 8 of Act 3769/2009, which aims to transpose Article 10 of Directive 2004/113 (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, 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 it is shown above, Article 14 of Act 3896/2010 transposing Directive 2006/54 exceeds the Directive, while Article 8 of Act 3769/2009 transposing Directive 2004/113 and Article 52(3) of Act 4075/2012 transposing Directive 2010/18 fully comply with it.

¹⁹³ Article 2 of Act 3896/2010 contains the definitions provided by Article 2(1) of Directive 2006/54 ('direct' and 'indirect' discrimination, 'harassment' and 'sexual harassment', 'pay', 'occupational social security schemes').

11.2. Burden of proof

11.2.1. Does national legislation and/or case law provide for a shift of the burden of proof in sex discrimination cases?

Yes. Article 24 of Act 3896/2010 transposing Directive 2006/54; Article 9 of Act 3769/2009 transposing Directive 2004/113.

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.

The rules are fine on the books, but they do not seem to be applied, as the Ombudsman also notes (3.6.3 above), in spite of a relevant CJEU preliminary ruling in a Greek case.¹⁹⁴ An important reason is that they remain in the acts transposing the directives, without being incorporated in the procedural codes,¹⁹⁵ and they are therefore hardly 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 12 below). Furthermore, rising litigation costs discourage litigation (11.4.1 below). The situation could improve, if organisations took cases to courts and other authorities, which they hardly do (11.4.2 below). Yet, without changing their approach to the burden of proof, some courts rely on circumstantial evidence.¹⁹⁶ Moreover, 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 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 and 2000/78.¹⁹⁷ It is obvious that the position of the APPD would be the same in a gender equality case (see also 4.1.6 above).

11.3. Remedies and Sanctions

11.3.1. What types of remedies and sanctions (e.g. compensation, reinstatement, criminal sanctions, administrative fines etc.) exist in your country for breaches of EU gender equality law? Please specify the applicable legislation.

¹⁹⁴ C-196/02 *Nikoloudi* [2005] ECR I-1789.

¹⁹⁵ 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.

¹⁹⁶ See in particular CS 505/2010 in a sexual harassment case (3.6.4. above).

¹⁹⁷ APPD Decision 1/2008, available at: <http://www.dpa.gr>, accessed 12 April 2018.

Paragraph 1 of Article 23 of Act 3896/2010 transposing Directive 2006/54 reads: '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* (11.3.2. below), 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. Paragraph 4 punishes the 'offence to sexual dignity' with a harsher criminal sanction (imprisonment for 6 months to 3 years and a pecuniary penalty of at least EUR 1 000)¹⁹⁸ if it is committed through the exploitation of the situation of a worker or candidate for employment (see 3.6.1 above).

Article 10 of Act 3769/2009 transposing Directive 2004/113 repeats Paragraphs 1, 3 and 4 of the above Article 23 of Act 3896/2010, adding that in case of a breach of Article 6 of this Act ('actuarial factors', as amended following the *Test-Achats* judgment), the sanctions provided by insurance law will apply. It is obviously the breach of Article 6(1) of the Act (the prohibition on the use of sex in a way which results in differences in individual premiums and benefits) that is meant (9.6 above).

11.3.2. In your opinion, do the remedies and sanctions meet the standards of being effective, proportionate and dissuasive? Please explain, if possible referring to relevant legislation or case law.

Although the EU burden of proof rule does not seem to be applied (see section 11.2. above), once an illegality is established through the traditional procedural rules, the remedies and sanctions are traditionally effective, proportionate and dissuasive; in most cases the claimant is put in the position in which she/he 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.¹⁹⁹ An unlawful dismissal is declared null and void by the civil courts and is annulled by the administrative courts.²⁰⁰ The dismissal is deemed never to have occurred; the worker retains his/her 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.²⁰¹ Penal sanctions, administrative fines as well as disciplinary sanctions for civil servants (11.3.1 above) are also satisfactory. In pay²⁰² and social security²⁰³ 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 (11.4.1. below).

11.4. Access to courts

¹⁹⁸ Article 337 PC punishes this act with imprisonment for a maximum of one year or a pecuniary sanction.

¹⁹⁹ 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).

²⁰⁰ SCPC (Civil Section) 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); 2035/2002 (the dismissal of a pregnant woman; knowledge of the pregnancy by the employer is irrelevant); 1591/2010 (the dismissal of a mother during the period for which she was entitled to reduced working time (5.4.4. above)).

²⁰¹ SCPC (Civil Section) 2069/2013 (moral damages – the principle of proportionality).

²⁰² SCPC (Civil Section) landmark judgment 35/1995 (Plen.) (4.1.4, above), 75/2009; CS 890/2006.

²⁰³ Court of Audit 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 3088/2007 (Plen.).

- 11.4.1. In your opinion, is the access to courts safeguarded for alleged victims of sex discrimination? Please explain and discuss particular difficulties and barriers victims of sex discrimination have encountered. Refer to relevant legislation and case law.

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; Article 7(1) of Act 3769/2009 copies Article 8(1) of Directive 2004/113; Article 7(1) of Act 4097/2012 copies Article 9(1) of Directive 2010/41. 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, 5.1.4 and 5.4.19 above). Their fears are growing along with their soaring unemployment. According to Greek Statistical Authority (ELSTAT) data, between June 2009 and June 2016 the unemployment rate rose from 8.6 % to 23.4 % (the male rate rose from 5.8 % to 19.8 %; the female rate rose from 12.4 % to 27.8 %).²⁰⁴ From the 2nd quarter of 2009 to the 2nd quarter of 2015, long-term unemployment (over 12 months) rose from 40.9 % to 73.1 %.²⁰⁵ 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.²⁰⁶ Due to strict entitlement conditions, only 9 % of the registered unemployed receive an allowance, for 12 months in principle, of EUR 360 per month plus EUR 36 for each dependent family member. It must be noted that the number of the registered unemployed²⁰⁷ is lower than the ELSTAT number, while the allowance is well below the poverty threshold, which is EUR 580 (5.1.3 above).

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 (11.4.3 below). For example, in addition to the amount, the payment of which is a condition for the admissibility of a claim, further amounts must be paid on appeal and on final appeal as conditions of their admissibility. These amounts were abruptly increased to EUR 300-400 (40 %-68 % of the minimum monthly salary of a worker over 25 years old and 45 %-78 % of the minimum monthly salary of a younger worker (11.7.1. below). These rises are 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.²⁰⁸ The Greek National Commission for Human Rights (GNCHR) has deplored this situation and warned that the increases restrict access to the courts, thus violating Article 6(1) ECHR.²⁰⁹ In the author's view, Article 19(2) of the TEU and Article 47 of the Charter are also being violated.

- 11.4.2. In your opinion, is the access to courts safeguarded for anti-discrimination/gender equality interest groups or other legal entities? Please explain and refer to relevant legislation and case law.

²⁰⁴ See the ELSTAT website: <http://www.statistics.gr>, accessed 12 April 2018.

²⁰⁵ Of the population aged 15 years and over by the duration of unemployment: 2001-2015 by quarter, Table 6: available at: <http://www.statistics.gr>, accessed 12 April 2018.

²⁰⁶ European Commission, *Employment and Social Situation Quarterly*, December 2014, Executive Summary and 23; *Employment and Social Developments in Europe 2014*, 54.

²⁰⁷ They were 803 687 in June 2015: Manpower Employment Organisation (OAED): <http://www.oaed.gr>, accessed 12 April 2018.

²⁰⁸ See pilot judgment ECtHR *Athanasίου v. Greece*, 21 December 2010 (final since 21 March 2011).

²⁰⁹ Act 4055/2012 'fair trial and reasonable length thereof' OJ A 51, of 12 March 2012; see GNCHR *Comments* on the relevant bill: available at: <http://www.nchr.gr>, in Greek and in English, accessed 12 April 2018. Also published in *Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης* (*Review of Social Security Law*) 2012, pp.412-422, in Greek.

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, the 'consent' must be given before the lodging of proceedings, while the 'approval' can be given thereafter.²¹⁰ Thus, until the consent is obtained, the remedy may well be time barred (e.g. a dismissal can 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 (11.4.3 below). 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 time from the period required for teachers to apply for the post of school director and school counsel.²¹¹

11.4.3. What kind of legal aid is available for alleged victims of gender discrimination?

Legal aid is granted to low income EU citizens and low income third country nationals or stateless persons. 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 172 (one third of the minimum wage of workers over 25 years old) or EUR 170 (one third of the minimum wage of workers under 25 years old) (11.7.1 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)²¹² 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 (3.6.4 above). Non-profit legal entities are also entitled to legal aid if they establish that the payment of 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.²¹³ 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.²¹⁴

Therefore, legal aid is in principle available to paupers and totally resourceless entities. This restricts access to the courts by both victims and entities working in their interest.

11.5. Equality body

²¹⁰ See Articles 236-238 of the Greek Civil Code for the meaning of 'consent' and 'approval'.

²¹¹ 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, accessed 25 March 2017.

²¹² GNCHR *Comments on the bill 'fair trial and reasonable length thereof'*: available at: <http://www.nchr.gr>, in Greek and in English, accessed 12 April 2018. Also published in *Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης* (Review of Social Security Law) 2012, pp.412-422, in Greek.

²¹³ Act 3226/2004 'granting of legal aid to citizens on low income', OJ A 24/04.02.2004, 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).

²¹⁴ SCPC (Civil Section) 2069/2013.

11.5.1. Does your country have an equality body that seeks to implement the requirements of EU gender equality law?

Yes. The main equality body is the Ombudsman,²¹⁵ an independent authority whose independence is guaranteed by the Constitution (Articles 101A, 103(9)). The Consumers' Ombudsman,²¹⁶ an independent authority, is an equality body in the private sector.

The Ombudsman was the equality body for Directives 2000/43 and 2000/78, by virtue of Act 3304/2005²¹⁷ transposing both directives, albeit in the public sector only. Therefore, in Greece there was no independent body for the implementation of Directives 2000/43 and 2000/78 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 and 2010/41 (Acts 3896/2010 and 4097/2012 transposing them, respectively); and for Directive 2004/113 (Act 3769/2009 transposing this directive), albeit in the public sector only. These tasks are fulfilled by a Deputy Ombudsman for Gender Equality. The implementation of Directive 2004/113 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. The Ombudsman's Annual Reports include a Special Report on Equal Treatment in the areas of Directives 2000/43 and 2000/78 and a Special Report on Gender Equality in Employment and Occupation. 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 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.²¹⁸

The Annual Reports of the Consumer's Ombudsman contain no information on the application of Directive 2004/113 which he is competent to monitor (see 9.8 above).

11.6. Social partners

11.6.1. What kind of role do the social partners in your country play in ensuring compliance with and enforcement of gender equality law? Are there any legislative provisions in this respect?

Since the incorporation of the gender equality principle in the Constitution (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. No review of the classifications has ever been undertaken (see 3.3.4. above).

Large trade union federations have special Secretariats for Women/Equality. This is the case, for example, with the Greek General Confederation of Labour (the GSEE)²¹⁹ and

²¹⁵ Founded by Act 3094/2003, OJ A 10/22.01.2003, www.synigoros.gr, accessed 12 April 2018.

²¹⁶ Founded by Act 3297/2004, OJ A 259/23.12.2004, www.synigoroskatanaloti.gr, accessed 12 April 2018.

²¹⁷ OJ A 16/27.01.2005.

²¹⁸ 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 at: <http://www.synigoros.gr/resources/141021-omilia.pdf>, accessed 12 April 2018.

²¹⁹ See <http://www.gsee.gr/?cat=14>, accessed 12 April 2018.

the Supreme Administration of Unions of Civil Servants (the ADEDY),²²⁰ which represent Greek unions at the ILO and sign NGCAs, as well as the Federation of Unions of Bank Employees (OTOE).²²¹ The Hellenic Federation of Enterprises (SEV) has set up a working group of businesswomen with a view to promoting the participation of women in posts in the labour market.²²² 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.

11.7. Collective agreements

11.7.1. To what extent does your country have collective agreements that are used as means to implement EU gender equality law? Please indicate the legal status of collective agreements in your country (binding/non-binding, usually declared to be generally applicable or not).

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 enterprise-level CAs (where women's bargaining power is weaker) prevail over sectoral CAs. 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 is EUR 586.08, while for manual workers over 25 years old the minimum daily salary is EUR 26.18. For employees under 25 years old the minimum monthly salary is EUR 510.95, while for manual workers under 25 years old the minimum daily salary is EUR 22.83.²²³ This was considered to be a breach of the European Social Charter by the European Committee of Social Rights (ECSR).²²⁴ Wage fixing was then removed from the scope of NGCAs.²²⁵ NGCAs shall only concern non-wage matters and shall only bind the signatory employers' and workers' federations and their members, and no longer all employers in the country.

Following GSEE complaints, the ILO CEACR and the ILO Committee on Freedom of Association (CFA) found that these measures violate several ILO Conventions.²²⁶ 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 indirect discrimination on the ground of sex' and

²²⁰ See <http://adedy.gr>, accessed 12 April 2018.

²²¹ See <http://www.otoe.gr/isotita>, accessed 12 April 2018.

²²² See <http://www.sev.org.gr/tomeis-draseon/ergasia-anthropino-kefalaio>, accessed 12 April 2018.

²²³ Ministerial Council Act (MCA) 6/2012, OJ A 38/28.02.2012, implementing Article 1 of Act 4046/2012, OJ A 28/14.02.2012; Article 1, Paragraph IA.1(3) of Act 4093/2012, OJ A 222/12.11.2012.

²²⁴ 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*.

²²⁵ Article 1, Paragraph IA.1 (1) and (2a) of Act 4093/2012, OJ A 222/12.11.2012.

²²⁶ CEACR Observations, 102nd ILC Session (2013), Conventions 98 (right to organise and collective bargaining) and 100 (equal remuneration), Greece: available at: http://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: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf, both accessed 12 April 2018.

to ensure an 'effective enforcement' of equal pay legislation.²²⁷ CAs, in particular NGCAs, have also improved maternity and parenthood protection (5.2.1, 5.2.2, 5.4.1, 5.4.4 above).

Article 11 of Act 1876/1990²²⁸ 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 of that sector or profession. The application of this provision was suspended by Article 37(6) of Act 4024/2011.²²⁹

²²⁷ CEACR Observations 101st ILC Session (2012), Convention 100, Greece: available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658, accessed 12 March 2017.

²²⁸ Act 1876/1990 'free collective bargaining,' OJ A 27/1990.

²²⁹ OJ A 226/27.10.2011.

12. Overall assessment

The implementation of the EU gender equality *acquis* in Greek legislation is rather satisfactory. In some matters the Constitution and the legislation even exceed EU law.

Examples:

- *Equal pay*: Article 22(1)(b)) is worded in a rights-based way and has a broader scope (it covers any ground whatsoever); the wording of the transposing legislation is also rights-based (2.1.1, 4.1.1 above).
- *Positive action* is a 'must' in all fields, in particular in favour of women (Article 116(2) of the Constitution, 2.1.2 above).
- *Instruction to discriminate*: the prohibition is broader, as it includes 'encouragement' (3.7.1. above).
- *Prohibition of direct and indirect discrimination*: 'family status' is added to the ground of 'sex'; the prohibition also concerns publications, advertisements etc. (4.1.3, 4.2.2).
- *Pregnancy/maternity protection*: disclosure of the pregnancy is not required (5.1.1 above); the length of maternity leave exceeds the EU law minimum (5.1.3 above); the period of protection exceeds maternity leave (5.2.1 above); full pay during maternity leave is in principle ensured, but conditions for entitlement to the maternity allowance are discriminatory (5.2.5 above; see also below); both the commissioning and the surrogate mother are entitled to a reduced working day (5.7.1 above).
- *Parental leave*: public sector: longer than the EU law minimum and fully paid, an extension for multiple births, no length of service requirement (5.4.8 above); public and private sector: paid working day reduction (5.4.4 above); foster and commissioning parents are mostly assimilated with natural parents regarding parental leave (5.3.1, 5.4.3, 5.7.1 above).
- *Time-off, special leave*: several are provided in the private and the public sector (5.4.11, 5.6.1 above).
- *Victimisation*: the prohibition also concerns 'persons responsible for vocational training,' while any 'representative' of a worker or trainee is also protected (5.9.5. above).
- *Remedies and sanctions* are effective, proportionate and dissuasive; they exceed EU law minimum requirements (11.3.1, 11.3.2 above).

However, there are gaps and incompatibilities with EU law in the legislation, while its application is often inadequate. Examples:

- *Indirect discrimination*: no awareness of the notion, in spite of its correct legal definition (3.3.4 above).
- *Equal pay*: no criteria for assessing the value of jobs; consequently, no awareness, hence no application of the notion of equal value (4.1.4, 4.1.5 above).
- *Self-employed*: no transposition of certain provisions of Directive 2010/41 (Articles 5, 7, 8(3) and (4)), while Article 8(1) is transposed in part I (3.5.1, 8.5, 8.6 above).
- *Pregnancy/maternity protection*: conditions for paying the maternity allowance breach Directive 92/85 (5.2.7 above).
- *Parental leave*: where it is transferable (the public sector) the law does not require that one month be retained by one parent (5.8.2 above); 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 exceeds the private sector (5.4.5 above).
- *An irrational and unlawful practice*: when a civil servant requests parental leave later than the expiry of maternity leave or for a child born before his/her appointment in 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 (5.4.4 above).
- *Time off*: there are provisions for specific cases, but no general provision on force majeure (5.6.1 above).
 - *Occupational schemes*: no awareness of the notion, as the transposing legislation has merely reproduced the provisions in the directives, with no further specification (6.5 above).
 - *Access to justice*: the rule on the standing of organisations requires the victim's 'consent' (to be given before the lodging of the remedy), while the directives require the victim's 'approval' (which may be given thereafter) (11.4.2 above).
 - *Legal aid*: entitlement conditions make it available to paupers and totally resourceless entities only (11.4.3 above).
 - *Procedural rules*, in particular on the standing of entities and the burden of proof, are not known, hence are not applied, as they are not incorporated into the procedural codes (5.9.6, 11.4.2 above).

The socio-economic context: The sweeping reforms in the employment and social security area which have been made since 2010 were required as bailout conditionalities 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 drastic 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 (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'), with retroactive effect and being difficult to combine amongst themselves and with other relevant legislation, and often and unpredictably modified. As international organisations, institutions, bodies and experts find, the crisis and austerity measures have a disproportionate impact on women; and moreover, their financial effectiveness is highly questionable.²³⁰

The Ombudsman stresses²³¹ 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 not ensuring adequate living standards and not allowing them to meet their family obligations. In particular, downgrading and imposed part-time or rotation work are spreading, but women's reluctance to lodge actions is also growing²³² (11.4.1 above). The Ombudsman stresses that in the context of the crisis and labour market deregulation, gender stereotypes are resurrected, if not prevailing.

²³⁰ CEACR Observations, Conventions 100 (equal remuneration) and 111 (discrimination (employment and occupation)), Greece: 101st (2012), 102nd (2013), 104th (2015) and 106th (2017) ILC sessions, available at: http://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: <http://www.coe.int/en/web/commissioner/news-2014>; 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: <http://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*, 02.06.2015, available at: <http://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: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20057&LangID=E>, all accessed 30 March 2017.

²³¹ See the speech by the 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 at: <http://www.synigoros.gr/resources/141021-omilia.pdf>, accessed 12 April 2018.

²³² See SCPC, Civil Section, 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.

Annexes

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