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FLASH REPORT

Country:	Greece
Title:	New penal provisions on domestic violence in line with the Istanbul Convention
Date:	29 July 2019
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<u>Context</u>	
Issue at stake:	New provisions of the Penal Code on domestic violence
Grounds of discrimination:	Sex
Field of application:	Other field
Source:	National legislation
Applicable law:	Article 312 of Act 4619/2019 'Ratification of the Penal Code' ('Κύρωση του Ποινικού Κώδικα'), OJ A 95/11.06.2019

Content

Law development: The new Greek Penal Code (hereinafter PC) was ratified by Law 4619/2019 and came into force on 1 July 2019, replacing the previous Penal Code of the year 1950. In its Article 312, it reformed, *inter alia*, the legal framework on domestic violence bringing the Greek legislation in line with the Istanbul Convention.¹

I.1 Domestic violence

Article 312 PC entitled 'Physical harm against weak persons' covers domestic violence by providing heavier punishment for all kinds of physical harm (simple, dangerous, heavy and lethal) against a spouse during the marriage or against a partner during the partnership.

More specifically Article 312(1) PC stipulates that anyone who causes physical injury or harm to the well-being a minor or a person who cannot defend him/herself, if these persons are under the perpetrators' custody or protection according to the law, following a court judgment or within the actual situation, cohabitate with the perpetrator or have an employment or service relationship with the perpetrator, is punished: (a) for a physical injury or harm of the well-being with imprisonment of at least one year (whereas the general provision of Article 308 (1)(a) PC punishes the same deeds with imprisonment of up to two years or a fine); (b) for a dangerous physical injury or harm of the well-being with imprisonment of at least two years (whereas the general provision of Article 309 PC punishes the same deeds with imprisonment of up to three years or a fine); (c) for a heavy physical harm with imprisonment of at least three years; in case the heavy physical harm was willful with imprisonment (whereas the general provision of Article 310(1)(a) PC punishes the same deed with imprisonment of at least one year and in case the heavy physical harm was intentional with imprisonment up to ten years); (d) for a lethal physical

¹ The Convention on preventing and combating violence against women and domestic violence of the Council of Europe (Istanbul Convention), available at: <https://www.coe.int/fr/web/conventions/full-list/-/conventions/rms/090000168008482e>.

harm resulting in the death of the victim with imprisonment (whereas the general provision of Article 311 PC punishes the same deed with imprisonment of up to ten years and in case the lethal physical harm was intentional with imprisonment).

According to Article 312(2)(a) PC, the same punishments are imposed when the above deeds are committed against a spouse during the marriage or against a partner during the partnership. According to the Explanatory Report to the new Act, in this case the victims do not have to prove that they are in a weak position as they are deemed to be due to the commitments created by the cohabitation. Article 312(2)(b) PC provides as an aggravating circumstance the commitment of the said deeds against a pregnant woman.

Key points of analysis: Prior to the entry into force of the new Penal Code (Act 4619/2019), domestic violence had been governed by Act 3500/2006 'on domestic violence', OJ A 232/24.10.2006. Act 3500/2006 was strongly criticised by legal theory as creating serious dogmatic problems² by requesting, *inter alia*, the ascertainment of the perpetrator's continuous rough behaviour.³ It has been also criticised as inadequate and ineffective, the more so given that its provisions had remained outside of the PC (and the other relevant Codes), creating legal uncertainty and difficulties in implementation.⁴

The new PC (Act 4619/2019) does not make any explicit reference to Act 3500/2006. However, the Explanatory Report of the new Act clearly states that the new Article 312 was meant to cover the crime of domestic violence, until then covered by Act 3500/2006. It is argued that Article 312 of the new PC should prevail over the provisions of Act 3500/2006, which will continue to apply only to the victims or behaviours of domestic violence which are not covered by Article 312 PC; as to the procedural provisions of Act 3500/2016, it is argued that they continue to apply for all criminal offences described in Act 3500/2006, even if some of them are punished with the punishments provided by Article 312 PC.⁵

Internet link source: <https://www.e-nomothesia.gr/kat-kodikies-nomothesias/nomos-4619-2019-phek-95a-11-6-2019.html>.

² Simenonidou, E. (2006), Το νομοσχέδιο για την ενδοοικογενειακή βία ('The Bill on Domestic Violence'), ΠοινΔικ (Penal justice) 2006, p. 1051; Haralmbaki, A. (2008), Ο ν. 3500/2006 για την αντιμετώπιση της ενδοοικογενειακής βίας ('Act 3500/2006 on combating domestic violence'), ΠΛογ (Panel Speech) 2008, p. 720.

³ See the Explanatory Report to Act 4619/2019, p. 62, available at: https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=053d3a90-ef5a-4d18-a335-aa610111664b.

⁴ See Country report Gender Equality Greece 2017, author Sophia Koukoulis-Spiliotopoulos, updated by Panagiota Petroglou, available at: <https://www.equalitylaw.eu/downloads/4368-greece-country-report-gender-equality-2017-pdf-1-93-mb>.

⁵ Sevastidis, H., (2019), Σημειώσεις για νέους Ποινικούς Κώδικες ('Notes on the new Penal Codes'), available at: <http://ende.gr/%cf%83%ce%b7%ce%bc%ce%b5%ce%b9%cf%8e%cf%83%ce%b5%ce%b9%cf%82-%ce%b3%ce%b9%ce%b1-%cf%84%ce%bf%ce%bd-%ce%bd%ce%ad%ce%bf-%cf%80%ce%bf%ce%b9%ce%bd%ce%b9%ce%ba%cf%8c-%ce%ba%cf%8e%ce%b4%ce%b9%ce%ba%ce%b1/>.