



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Greece
<b>Title:</b>	New penal provisions on rape in line with Istanbul Convention
<b>Date:</b>	29 July 2019
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	New provisions of the Penal Code on domestic violence
<b>Grounds of discrimination:</b>	Sex
<b>Field of application:</b>	Other field
<b>Source:</b>	National legislation
<b>Applicable law:</b>	Article 336 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 336, it reformed, *inter alia*, the legal framework on rape bringing the Greek legislation in line with Article 36 of the Istanbul Convention.<sup>1</sup>

Article 336 of the new PC provides that '1. Anyone who by physical violence or by threat of serious and direct danger for the life or the physical integrity forces another person to engage in or to tolerate acts of a sexual nature is punished with imprisonment. 2. Act of a sexual nature is deemed the intercourse and acts of the same gravity. 3. If the act of a sexual nature was committed by two or more perpetrators who acted jointly, a punishment of at least 10 years is imposed. 4. If any of the acts of the previous paragraphs resulted in the death of the victim, a life-sentence or provisional imprisonment of at least ten years is imposed. 5. Anyone who, except the case of paragraph 1, engage in an act of a sexual nature without the consent of the victim, is punished with imprisonment of up to ten years.'

Article 338 of the new PC stipulates: '1. Anyone who by abuse of the mental or the physical disability of another person or of his/her inability due to any reason to react engages in an act of a sexual nature with him/her, is punished with imprisonment up to 10 years. 2. If the act of the previous paragraph was committed by two or more persons acting jointly, imprisonment is imposed.' According to clarifications by the Ministry of Justice, this provision covers the case where the victim 'freezes' when confronted with the perpetrator due to his/her temporary inability to resist. According to the Explanatory Report to the new Act, a person is deemed in able to react not only because of illness, sedation etc., but also when he/she is in such a situation even temporarily, because of the mastery imposed on

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<sup>1</sup> 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>.

him/her by the perpetrator or because of the shock suffered from the act of a sexual nature itself, either taking place or looming.

Article 343 of the new PC stipulates: 'With imprisonment of at least two years and a fine is punished: (a) anyone who forces another person to engage in or tolerate an act of a sexual nature by abusing the relationship of employment dependency of any nature; (b) anyone who forces another person to engage in or tolerate an act of a sexual nature, taking advantage of his/her urgent need to work; (v) the personnel appointed or employed in any way in prisons or other holding cells, in police stations, in universities, pedagogic foundations, hospitals, clinics or any kind of therapeutic organizations or in other foundations aimed to nurse persons who need help, if, by the abuse of their post, force to an act of a sexual nature, a person who has been sent to these foundations.' The prior version of Article 343 of the old PC punished only public servants who force a subordinate to such acts with imprisonment from one to five years.

**Key points of analysis:** Article 336(1) PC covers the *sticto sensu* rape by use of physical violence or psychological violence (threat). In interpreting the former provision of Article 336(1) PC,<sup>2</sup> the case law required a 'serious' and 'direct' threat against a 'substantial right' of the victim; thus, the field of application of the crime of rape was considerably restricted. According to its Explanatory Report, the legislator of the New Act did not consider satisfactory the previous wording of 'threat of serious and direct danger', which had created problems in practice as to the content of these two terms; explicit specification of the endangered goods (life or physical integrity) was thought necessary.

Most importantly, for the first time in Greece Article 336(5) PC of the new Act acknowledges that the crime of rape is committed, not only by use of physical violence or psychological violence (threat), as provided in the above-mentioned Article 336(1) PC, but also in the absence of the victim's consent, in line with Article 36 of the Istanbul Convention. Such a rape is a felony, punished with imprisonment up to 10 years.

It should be noted that in the relevant Bill sent to the Parliament the paragraph 5 of Article 336 PC had a totally different wording.<sup>3</sup> In this context, Amnesty International Greece launched a campaign for the amendment of Article 336 of the Bill and the redefinition of the crime of rape on the basis of the lack of consent according to the international human rights standards. Moreover, the wording of Article 336 of the Bill was strongly criticized by women's NGOs and several MPs as well (two MPs of the ex-governmental party threatened not to vote for it if Article 336(5) PC was not rephrased). As a result the initial wording of Article 336(5) in the Bill was replaced with the above, which was voted and is currently in force.

As to the consent, according to the Explanatory Report to Act 4619/2019, the consent of the victim has to be given even in personal or legal relations in the context of which acts of a sexual nature are socially expected and it can never be deemed irrevocable. For this reason, rape exists even if the victim has withdrawn his/her consent although he/she had engaged in such acts recently or even though the victim has already engaged in such acts but in the course he/she withdraws his/her consent.

The General Secretary for Equality, a governmental body for gender equality and the coordinating body for monitoring the application of the Istanbul Convention, applauded the

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<sup>2</sup> The former provision of Article 336(1) PC on rape, adopted by Article 8(1) Act 3500/2006 'on domestic violence', OJ A 232/24.10.2006, read: '1. Anyone who by physical violence or threat of serious and direct danger forces another person to engage in sexual intercourse or to other lascivious act or to tolerate it, is punished by imprisonment.'

<sup>3</sup> Article 336(5) of the Bill read: 'Anyone who, except the case of paragraph 1, forces another person to commit or tolerate an act of a sexual nature by threat of illegal act or omission, is punished with imprisonment of at least three years.'

new Act 4616/2019 as a major legal reform doing credit to the multiannual fight of women NGOs for the redefinition of the legal concept of rape on the basis of non-consent.<sup>4</sup>

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

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<sup>4</sup> General Secretary for Equality, Press Release of 11 June 2019, available at: <http://www.isotita.gr/%ce%b4%ce%b5%ce%bb%cf%84%ce%af%ce%bf-%cf%84%cf%8d%cf%80%ce%bf%cf%85-%ce%bf%ce%b9-%ce%b8%ce%ad%cf%83%ce%b5%ce%b9%cf%82-%cf%84%ce%b7%cf%82-%ce%b3%ce%b5%ce%bd%ce%b9%ce%ba%ce%ae%cf%82-%ce%b3%cf%81%ce%b1/>.