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Country report

Gender equality



Greece
2019

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality and Union citizenship
Unit D.2 Gender Equality

*European Commission
B-1049 Brussels*

Country report

Gender equality

How are EU rules transposed into
national law?

Greece

Panagiota Petroglou

Reporting period 1 January 2018 – 31 December 2018

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Luxembourg: Publications Office of the European Union, 2020

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PDF ISBN 978-92-76-01794-3

ISSN 2600-0164

doi:10.2838/86790

DS-BD-19-009-EN-N

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1 Introduction

1.1 Basic structure of the national legal system

Greece is a parliamentary republic. The Greek legal order has a strict hierarchical structure provided by the Constitution,¹ which is written and rigid² and prevails over statutes. According to Article 28(1) of the Constitution, international treaties introduced into the Greek legal order by statute and subsequently ratified prevail over statutes. Greek courts acknowledge the primacy of EU law over the Constitution. They often apply EU law and they interpret and apply the Constitution in light of EU law, in particular in gender equality cases. All courts review the conformity of statutes with the standards of the Constitution, EU law and ratified treaties and either interpret the statutes in conformity with these standards or disapply those that they consider to be contrary thereto (Articles 93(4), 87(2) and 28 of the Constitution). There are three branches of the judiciary: i) administrative, ii) civil and penal and iii) the Court of Audit. The administrative courts hear claims against the State, local authorities and other legal persons governed by public law, including claims by their personnel and social security claims against compulsory social security schemes, as the entities that run them are legal persons governed by public law, except for pension claims by civil servants which are heard by the Court of Audit. The civil courts hear cases between private persons and the penal courts hear criminal cases (Articles 94-98 of the Constitution).

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

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

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

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

³ Article 22(1) of Act 4274/2014, OJ A 147/14.07.2014.

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

1.2 List of main legislation transposing and implementing the directives

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

- **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.

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

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

- **Presidential Decree 176/1997**, 'Measures for the Improvement of the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or are Breastfeeding in Compliance with Directive 92/85/EEC', OJ A 150/15.07.1997, 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 4488/2017,⁶ 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).

1.3 Sources of law

Gender equality law sources comprise:

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

More specifically, according to Article 28(1) of the Constitution, international treaties introduced into the Greek legal order by statute and ratified prevail over statutes. Greece has signed and ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) by **Act 1342/1983**.⁷ Thus the CEDAW is part of the national legal order and can be invoked directly before the courts. Greek courts apply the Constitution in the light of or in parallel with international human rights treaties, including the CEDAW.⁸

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

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

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

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

⁶ Greece, Act 4488/2017, OJ A 13/13.09.2017.

⁷ Greece, Act 1342/1983, OJ A 39/01.04.1983.

⁸ See e.g. CS Nos 3189/2003 and 1414/2018: application of Article 116(2) of the Greek Constitution in parallel with and in the light of the CEDAW.

2 General legal framework

2.1 Constitution

2.1.1 Constitutional ban on sex discrimination

Article 4(2) of the Greek Constitution ('Greek men and women have equal rights and obligations') requires (substantive)⁹ sex equality in all areas; it implicitly prohibits sex discrimination. Article 22(1)(b) of the Greek Constitution ('all workers, irrespective of sex or other distinctions, have a right to equal pay for work of equal value') exceeds the scope of Article 157 TFEU, as it covers any ground whatsoever and is not limited to sex.

2.1.2 Other constitutional protection of equality between men and women

Article 116(2) of the Constitution states that, 'Positive measures aiming at promoting equality between men and women do not constitute discrimination on grounds of sex. The State shall take measures to eliminate inequalities existing in practice, in particular those detrimental to women'. While Article 4(2) of the Constitution refers to 'Greek men and women,' Article 116(2) refers to 'men and women'. Therefore, the personal scope of the constitutional gender equality norm must be considered to also cover foreign nationals. According to its letter and to well-established Council of State (Supreme Administrative Court; CS) case law, the material scope of this provision includes all the areas covered by the gender equality directives, as well as any other area whatsoever,¹⁰ 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.¹¹ It thus exceeds the requirements of EU law, as it explicitly makes positive action obligatory. In accordance with the hierarchical structure of the Greek legal order, all national provisions relating to positive action must be read and applied in the light of this constitutional norm.¹²

It should be noted that Article 116(2) in its present wording, requiring positive action, was adopted almost unanimously by the Greek Parliament in the context of the constitutional revision of 2001, replacing the former provision of the same article, which allowed derogations from the gender equality principle.¹³ This development was inspired by Community law (Articles 2 and 3(2) EC Treaty and Declaration No 28 annexed to the Treaty), international human rights treaties (in particular Article 4(1) of the CEDAW), the Constitutions of other Member States (Germany, Austria and Portugal) and Greek case law. It was also the result of the efforts and intense lobbying of Greek women's NGOs and of prominent feminists, in particular Professor Alice Yotopoulos-Marangopoulos and Sophia Koukoulis-Spiliotopoulos.¹⁴ In fact, the Greek Parliament endorsed almost *verbatim* the proposal put forward by the Greek League for Women's Rights and supported by many other NGOs.

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

⁹ CS No 1933/1998 (Plen.).

¹⁰ CS No 3189/2003.

¹¹ CS Nos 2832-2833/2003, 192/2004.

¹² On the hierarchical structure of the Greek legal order, see 1.1. above.

¹³ Article 116(2) Constitution (1976), in its original version, provided that: 'Derogations from the provision of Article 4(2) are allowed only for sufficiently justified reasons, in cases specifically provided by statute.'

¹⁴ Koukoulis-Spiliotopoulos, S. (2003), 'Greece: From formal to substantive gender equality - The leading role of the jurisprudence and the contribution of women's NGOs', in *Essays in honour of Alice Yotopoulos-Marangopoulos*, Volume A, Athens Nomiki Bibliothiki, Brussels Bruylant, 2003; Koukoulis-Spiliotopoulos, S., contribution to the Bulletin *Legal Issues in Equality* of the Commission's Network of Legal Experts on the application of Community law on gender equality, 2/2000, Greece.

Article 4(2) of the Constitution, in order to uphold claims to maternity and parenthood protection.

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

2.2 Equal treatment legislation

Greece has specific equal treatment legislation, mainly the legislation transposing the gender equality directives (see above, 1.2) and Act 4443/2016 (OJ A 232/09.12.2016) re-transposing Directives 2000/43/EC and 2000/78/EC. The Greek equal treatment legislation prohibits direct and indirect sex discrimination.¹⁵

The Greek equal treatment legislation also covers the discrimination grounds covered by Directives 2000/43/EC and 2000/78/EC, plus certain new grounds added by Act 4443/2016 (see 3.5.1 below), as well as the grounds covered by Act 927/1979 on the (of its own motion criminal) punishment of acts aimed at racial discrimination (OJ A 139/28.06.1979, as amended by: (i) 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 and (ii) Act 4491/2017 (OJ A 152/13.10.2017). The grounds covered by the latter act are: race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, gender characteristics¹⁶ or disability.

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.

¹⁵ After the cut-off date of this report (31.12.2018), Act 4604/2019, 'on the promotion of substantive gender equality etcetera', OJ A 50/26.03.2019, was passed. This law, to the extent that it amended or rephrased the existing definitions of direct and indirect discrimination on the grounds of sex, sexual orientation and gender identity, is a model of bad and dangerous law-making. By omitting any reference to Directives 2006/54/EC and 2000/78/EC, it is in clear violation of their implementation requirements. Moreover, it undermines the coherence of national law implementing the above Directives and it creates lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the Directives. Most importantly, it results in a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece (see flash report on Act 4604/2019).

¹⁶ The words 'gender characteristics' were added by Act 4491/2017, OJ A 152/13.10.2017.

3 Implementation of central concepts

3.1 General (legal) context

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

To the author's knowledge no surveys or reports have been published over the last five years.

3.1.2 Other issues

Up to the cut-off date of this report (31 December 2018), the legal definitions of central concepts of gender equality law copied those of Directive 2006/54/EC, with the exception of positive measures, the concept of which is more positive and stronger at national level than in EU law, in that it explicitly provides that positive measures are not only allowed, but they are obligatory and that they do not constitute discrimination.

3.1.3 General overview of national acts

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

3.1.4 Political and societal debate and pending legislative proposals

In the period 6 March 2018 -20 March 2018 the bill 'On the promotion of substantive gender equality and on the fight against gendered violence'¹⁷ was uploaded to the open governance website for consultation.¹⁸ Among others, the women's NGO (confederation), National Council of Women, observed that the time limit for consultation was too short for such an important bill. Moreover, it warned that the provisions containing definitions of the bill would cause problems, in particular with a view to the existing legislation transposing the relevant Directives. Moreover Article 2 on definitions of central concepts of gender equality law, as worded in the relevant bill, was strongly criticised by the long-established women's NGO, League for Women's Rights, which demanded the withdrawal of all provisions relating to matters already regulated by legislation implementing directives or the Constitution.¹⁹ This article was also criticised by the Scientific Service of Parliament (which checks the conformity of bills with the Constitution, ratified international treaties and EU law) and by several MPs during the parliamentary debate.²⁰

3.2 Sex/gender/transgender

3.2.1 Definition of 'gender' and 'sex'

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

¹⁷ Bill 'On the promotion of substantive gender equality and on the fight against the gendered violence', www.opengov.gr/ypes/?p=5597.

¹⁸ In the context of electronic deliberation, almost every piece of draft legislation or even policy initiative by the government is posted on a blog-like platform prior to submission to parliament. Citizens and organisations can post their comments, suggestions and criticisms article-by-article.

¹⁹ League for Women's Rights protest, <http://leagueforwomenrights.gr/images/03032019/OUSIASTIKI-ISOTITA.pdf>, in Greek.

²⁰ In spite of the quite harsh comments of the women's NGO League for Women's Rights and the Parliament's Scientific Service and in spite of the critical comments by MPs who also invoked the League's paper, the bill was not improved. Moreover, the final text of the Act, as published in the OJ, proved to be worse than the bill as concerns fundamental issues! Finally, the bill passed in March 2019, as Act 4604/2019, OJ A 50/26.03.2019.

3.2.2 Protection of transgender, intersex and non-binary persons

Discrimination due to gender reassignment is explicitly prohibited by Article 3(2)(b) of Act 3896/2010 transposing Directive 2006/54/EC. This provision does not include discrimination on the ground of gender identity.²¹ There is no explicit anti-discrimination provision concerning intersex and non-binary people.

Article 1 of Act 4443/2016 which re-transposed Directives 2000/43/EC and 2000/78/EC, prohibits any direct or indirect discrimination, *inter alia*, on the ground of 'gender identity or characteristics' (see 3.5.1 below). Moreover, Article 1 of Act 927/1979 implementing the CERD, as amended by Act 4285/2014 and Act 4491/2017, prohibits any act that may entail discrimination, hate or violence against people or groups of people on the basis of, *inter alia*, 'gender identity' and 'gender characteristics', making it a criminal offence prosecuted by its own motion (see 2.2 above).

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 '[T]he inner and personal way in which someone feels his/her gender, irrespective of the sex registered at birth according to his/her biological features. Gender identity includes the personal feeling of one's body as well as the outer expression of gender which correspond to the person's will. The personal feeling of one's body may be linked to changes due to medical treatment or operations freely chosen. Gender features are understood as the chromosomes, the genes and the anatomic features, including primary features, such as the reproductive organs, and secondary features, such as muscle mass, breast or hair development.' For the 'correction' of someone's 'registered sex' from male to female and vice versa [there is no possibility not to choose a gender (an agender) or to choose a so-called 'third gender'] in accordance with the individual's will and personal feeling linked to their body and external 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 from an interdisciplinary Committee is also required. This Committee has been established by a joint decision of the Minister of Justice, Transparency and Human Rights and the Minister of Health for a two-year term. It is composed of a child psychiatrist, a psychiatrist, an endocrinologist, a child surgeon with a paediatrician as the Chair, all of them specialised in this particular area.

However, married people cannot 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 must draft the birth record in such a way that the confidentiality of the change and of the original birth entry is *erga omnes* ensured. Public services that draft other documents which mention the person's identity or from which the person derives rights, and services that

²¹ After the cut-off date of this report (31.12.2018), Act 4604/2019, 'On the promotion of substantive gender equality etcetera', OJ A 50/26.03.2019, was passed. This Act amended the definitions of 'direct discrimination' and 'indirect discrimination' given by Act 3896/2010, implementing Directive 2006/54/EC, adding the ground of 'gender identity', albeit falling short of the relevant definitions of Directive 2006/54/EC and without any reference to it, which is in clear violation of their implementation requirements. Moreover, it undermines the coherence of national law implementing the above Directive and creates lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the Directives. Most importantly, it results in a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece (see flash report on Act 4604/2019).

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 people born abroad. Rights and obligations predating the sex correction and tax and social security registration numbers of the person are maintained. If he/she has children, their birth registration is not changed and parental care rights and obligations are not affected. According to Article 6, Public Registry employees and any other people professionally involved in sex correction or having learnt about this in the course of their tasks are subject to a duty of confidentiality. Only the person concerned and those that he/she authorises in writing have access to the above judicial decision and to any data or document showing the sex correction kept by the competent Public Registry or by any other authority. Third parties are allowed to have access if they justify a specific legal interest that cannot be otherwise satisfied, following permission by the Agency for the Protection of Personal Data, an independent authority established by Act 2472/1976 (OJ A 50/10.04.1997), as amended.

In its opinion on the bill, the Scientific Service of Parliament (SSP),²² which monitors the compatibility of bills with the Constitution, EU law and international conventions, welcomed, *inter alia*, the non-requirement of gender reassignment (Article 3 of the Act, above), quoting the European Court of Human Rights (ECtHR), which held that this conflicts with Articles 8 and 3 ECHR.²³ The SSP also recalled that, according to the same judgment, a prior psychological diagnosis is required by the great majority of Council of Europe Member States. This does not affect a person's physical integrity; it aims to safeguard the interests of the person concerned by preventing an erroneous engagement in a procedure for the recognition of gender identity modification. In this respect, the interests of these people coincide with the general interest and the ECHR is not violated.²⁴

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 psychological diagnosis and considers that such a requirement ought to be included in the Act, with a view to safeguarding the interests of transgender people.

3.2.3 Specific requirements

In Greece no specific requirements have to be fulfilled in order to benefit from legal non-discrimination protection. More specifically, transgender people are not required to undergo gender confirmation or sterilisation surgery before they are protected by non-discrimination law, nor are they required to change their legal gender before they are protected by non-discrimination law. In this regard, some exemplary transgender rights cases are noteworthy:

- In judgment No. 3/2018, the Florina Justice of the Peace upheld the petition of a woman who, after having undergone hormone therapy, 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. The court upheld the applicant's arguments that since her early years she had stated to her family that the way she perceived her gender did not correspond to her appearance and that

²² The SSP opinion as well as the final text of the Act 4604/2019 are available on the Parliament website (in Greek): https://www.hellenicparliament.gr/Nomothetiko-Ergo/Katatethenta-Nomosxedia?law_id=75d1ff53-879c-4dcb-bfff-a7f20108f665.

²³ European Court of Human Rights (ECtHR), *A.P., Garçon and Nicot v. France*, No. 79885/12, 52471/13 and 52596/13, 6 April 2017.

²⁴ ECtHR, *A.P., Garçon and Nicot v. France*, No. 79885/12, 52471/13 and 52596/13, 6 April 2017, § 139-141.

her choices (clothing, appearance etc) and the inner and personal way in which she felt her gender was that of a male; and that she lives successfully as a man.

The court found that for the legal correction of the applicant's sex, she did not have to undergo medical surgery, because this is a procedure which is both painful (physically and psychologically) and costly, given that it is not covered by the social security funds; most importantly it is an amputation offending human dignity. In this regard, the court made reference to the relevant findings of the World Health Organization, of the European Parliament and of the United Nations (Report dated 1 February 2013 of the Special Rapporteur of the UN against torture etc.). The court also found that an eventual requirement of obligatory sterilisation would be in violation of the Greek Constitution (Articles 2(1) on human value, 4(1) on equality and 5(1) on the free development of the personality) and 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. Moreover, the court found that the discrepancy between gender identity and the registered sex does not have to be proven in a defined way.

- Judgment No 444/2018 of the Thessaloniki Justice of the Peace is the first case law which dealt with the gender correction of a refugee. The court held that the gender correction procedure provided by Act 4491/2017 has to be applied by analogy also to refugees residing in Greece who cannot seek this correction in their country of origin; the more so when they have been recognised as refugees because of a fear of victimisation in their country of origin due to their being transgender. In this respect the court applied Article 26 of the International Covenant on Civil and Political Rights (ICCPR) (general principle of equal treatment) and Article 2(1) of the Greek Constitution (respect for human dignity of any person on the Greek territory).

In this case the applicant, born a male, claimed that since the age of seven his choices (clothing, appearance etc) and the inner and personal way in which he felt his gender was that of a female; that during his adolescence he felt attraction to the male sex, not as a homosexual, but as a woman. His appearance, his psychology and his behaviour in his social relations were those of a woman. Once he realised and demonstrated his gender identity as a female, he was absolutely isolated from his family and chased out of his village; he was forced to wander homeless in his country without any access to work and healthcare, suffering insults, humiliations, sexual abuse, an attempted rape, beatings and robberies by both citizens and police officers. Finally, he escaped to Turkey and passed into Greece in late 2015. In Greece he was registered as a refugee due to the systematic persecution he had suffered in his country of origin, his membership of the social group of transgender people and the reasonable fear that an eventual return to his country of origin would put his physical and psychological integrity, even his life, in danger. He currently resides in Thessaloniki, living as a trans woman and undergoing psychotherapy, medication and hormone therapy.

The court found that the discrepancy between his gender identity and his registered sex had not to be proven in a certain way. Thus, upholding the applicant's arguments, the court corrected his gender from male to female and gave him a new (female) first name (the last name was not changed) so that the official documents recognising him as a refugee (which are valid as the equivalent to a birth certificate) and his resident permit could be corrected correspondingly.

- 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 into a male

name.²⁵ 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.

- Decisions No. 572/2017 and 604/2017 of the Athens Justice of the Peace²⁶ 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.²⁷
- 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.

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

In all the above cases the court 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'.²⁸ 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.²⁹ In view of its purpose and the nature of the rights that it seeks to safeguard, it also applies to discrimination arising from an individual's gender reassignment. The decisions are therefore in accordance with EU law and CJEU case law.

²⁵ Athens Justice of the Peace No 418/2016, available at: <http://dikastis.blogspot.com/2016/08/4182016.html>.

²⁶ Athens Justice of the Peace No. 572/2017, available at: www.nbonline.gr/journals/60/volumes/688/issues/1509/lemmas/4900055; No 604/2017 available at: www.nbonline.gr/journals/60/volumes/688/issues/1509/lemmas/4900009.

²⁷ Athens Justice of the Peace No 418/2016, available at: <http://dikastis.blogspot.com/2016/08/4182016.html>.

²⁸ CJEU, Case C-13/94, *P v S and Cornwall County Council*, 30 April 1996, § 16.

²⁹ See e.g. CJEU, Case C-423/04, *Richards v Secretary of State for Work and Pensions*, 27 April 2006, §24; CJEU, Case C-13/94, *P v S and Cornwall County Council*, 30 April 1996, §19-21.

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.³⁰ As it would cause serious inconvenience to the applicant at administrative, professional and private levels, it would also be reflected in matters of employment and occupation and so create discrimination that would fall within the scope of Directive 2006/54/EC. Fortunately, such conflicts with EU law were avoided thanks to the Justice of the Peace's decision.

3.3 Direct sex discrimination

3.3.1 Explicit prohibition

Direct sex discrimination is explicitly prohibited in Greek legislation.³¹ More specifically, Acts 3896/2010 transposing Directive 2006/54/EC and 4097/2012 transposing Directive 2010/41/EU prohibit direct and indirect discrimination on grounds of sex *and family status*:

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

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

³⁰ Cf. by analogy CJEU, Case C-177/88, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*, 8 November § 12; CJEU, Case C-421/92, *Gabriele Habermann-Beltermann v Arbeiterwohlfahrt*, 5 May 1994, § 15.

³¹ After the cut-off date of this report (31.12.2018), Act 4604/2019, 'On the promotion of substantive gender equality etcetera', OJ A 50/26.03.2019, was passed. Article 22 of the Act repeats (with some differences) the definitions of 'direct' and 'indirect discrimination' and 'sexual harassment', as laid down in its Article 2, and stipulates that they replace the definitions of the same concepts included in Article 2 Act 3896/2010 transposing Directive 2006/54/EC. The definition of 'direct discrimination' of Act 3896/2010 was amended as follows: 'direct discrimination': any act or omission that excludes or places in an evidently inferior position persons because of sex, sexual orientation and gender identity; moreover, any instruction, instigation or systematic encouragement of persons to discriminate in an unfavourable or unequal way against other persons on the grounds of sex' [Article 22(2)(a) Act 4604/2019]. However, the requirement of 'evidently' less favourable treatment is restrictive in comparison to the wording of Directive 2006/54/EC, which does not use such a word. Moreover, the definition of direct discrimination adopted by Act 4604/2019 uses only the present tense ('excludes or puts in an inferior position'), omitting the present perfect tense and the conditional tense ('is, has been or would be treated in a comparable situation') used by the Directive and its implementing Law 3896/2010; thus, no comparison to a past or hypothetical comparator is allowed. In view of the above, Act 4604/2019 results in a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece. On the other hand, Act 4604/2019 does not make any reference to the Directive, which is in clear violation of its implementation requirements. Moreover, it creates lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the Directives (see flash report on Act 4604/2019).

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/EC; Article 3(a) of Act 4097/2012 transposing Directive 2010/41/EU; and Article 2(a) of Act 3769/2009 transposing Directive 2004/113/EC. The definition is copied from the Directives.

3.3.2 Prohibition of pregnancy and maternity discrimination

Pregnancy and maternity discrimination are explicitly prohibited in Greek legislation as forms of direct sex discrimination in: Article 3(4) of Act 3896/2010 transposing Directive 2006/54/EC; Article 3(a) of Act 4097/2012 transposing Directive 2010/41/EU; Article 4(1)(a) of Act 3769/2009 transposing Directive 2003/113/EC. The legislator copied the prohibitions contained in the Directives.³² Article 18 of Act 3896/2010 also prohibits less favourable treatment of parents due to parental leave, adoption or fostering of a child as a form of discrimination (see 5.5.15 below).³³

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

3.3.3 Specific difficulties

Up to the cut-off date of this report (31 December 2018), there have been no specific difficulties in Greece in applying the concept of direct sex discrimination. 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 relied on Article 4(2) of the Constitution, Directive 76/207/EEC and the Act transposing it.³⁴

However, in a recent case the First Instance Civil Court of Athens³⁵ subjected the finding of discrimination to the requirement of fault, which is contrary to the CJEU case law in the cases *Draehmpaehl*³⁶ and *Dekker*.³⁷

3.4 Indirect sex discrimination

3.4.1 Explicit prohibition³⁸

³² The Supreme Civil and Penal Court (SCPC) (Civil Section) No 37/2004 relying on the Act transposing Directive 76/207/EEC, Article 4(2) of the Constitution and Article 141(1) TEC (now 157 TFEU) held that a prejudicial modification of working conditions after maternity leave constituted discrimination on the ground of sex.

³³ The Athens Court of Appeal (CA), No 3693/2018, dealt with the non-recognition of the time of unpaid parental leave of the claimant as working time for the purpose of the calculation of the pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme due to the payment of both the employer's and the employee's contribution by the employee. Although it did not explicitly identify it as direct gender discrimination, the Court of Appeal found that this practice was contrary to Act 3896/2010 and Article 21(1) of the Constitution requiring the protection of maternity.

³⁴ Quotas for access: SCPC (Civil Section) No 1360/1992 (private banks); CS No 1917/1998 (Plen.) (Police Academies). Nullity of dismissal: SCPC (Civil Section) Nos 85/1995, 593/2006, 496/2011 (private sector).

³⁵ Athens FICC No 2323/2018 (Labour Disputes Procedure).

³⁶ CJEU, Case C-180/95, *Draehmpaehl v Urania Immobilienservice* 22 April 1997.

³⁷ CJEU, Case C-177/88, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*, 8 November 1990.

³⁸ After the cut-off date of this report (31.12.2018), Act 4604/2019, 'On the promotion of substantive gender equality etc.', OJ A 50/26.03.2019, was passed. Article 22 of the Act repeats (with some differences) the definitions of 'direct' and 'indirect discrimination' and 'sexual harassment', as laid down in its Article 2, and stipulates that they replace the definitions of the same concepts included in Article 2 Act 3896/2010 transposing Directive 2006/54/EC. The definition of 'indirect discrimination' was amended as follows: 'indirect discrimination': 'any act or omission that places in an inferior position persons on the grounds of sex, sexual orientation and gender identity by means of an apparently neutral provision, criterion or practice, unless this provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary' [Article 22(2)(b) Act 4604/2019]. However,

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

- iii) 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).
- iv) Act 4097/2012: a prohibition in the areas listed in Article 4(1) of Directive 2010/41/EU (Article 4(1)).

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

3.4.2 Statistical evidence

Statistical evidence has been used in order to establish a presumption of indirect sex discrimination regarding the average height of men and women for access to military and semi-military corps. The issue of indirect discrimination appeared again regarding the average height of men and women for access to police academies. After the repeal of maximum quotas for accepting women, 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, OJ A 82/10.04.2003. Candidates who do not fulfil this condition are automatically excluded from any further assessment. The Athens Administrative Court of Appeal (ACA) held that the common minimum height requirement for men and women candidates (1.70 m.) 'is arbitrarily equalising men and women, in spite of their biological difference, since the average height of Greek men is 1.67m, 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.³⁹

The Council of State (CS), while accepting that 'according to common experience, the average height of Greek men is taller than that of Greek women', considered the requirement to be compatible with the Constitution and Directive 76/207/EEC, because it

the use only of the present tense ('excludes or puts in an inferior position') falls short of the wording of the Directive ('would put [...] at a particular disadvantage'), which also covers the possibility of creating a particular disadvantage. In view of the above, Act 4604/2019 results in a serious regression with respect to the gender equality and anti-discrimination *acquis* in Greece. On the other hand, Act 4604/2019 does not make any reference to the Directive, which is in clear violation of its implementation requirements. Moreover, it creates lack of clarity and legal uncertainty, not allowed by EU law in the implementation of the Directives (see flash report on Act 4604/2019).

³⁹ Athens Administrative Court of Appeal (ACA) Nos 734/2008, 737/2008, 738/2008, 571/2008, 1256/2007, 1255/2007, 761/2007, 762/2007, 763/2007, 75/2007, 1066/2004, 988/2004, 441/2004, 440/2004; *contra* CS No 1247/2008, Athens ACA Nos 164/2009, 911/2008, 608/2004, 697/2004, 1617/2004, 1683/2004, 2642/2004, 2953/2004, 2955/2004, 249/2006, 2790/2006, 382/2007, 1425/2007.

was justified by reasons of public interest related to police duties. More particularly, it held that this is a necessary and appropriate condition for effectively discharging police duties, which require specific physical qualifications, such as 'dealing with violence during public gatherings, violent and terrorist acts and the transfer of detained persons. These duties, the character of the police as a militarily organised armed corps and the conditions under which they exercise their activities constitute specific and appropriate criteria which, according to common experience justify indirect discrimination against women, since women must have the same physical qualifications as men in order to be able to discharge the main police duties as successfully as men'. However, the CS did not specify in which respect the 1.70m height requirement was a necessary and appropriate qualification. Those 'mere generalisations' could not exclude indirect discrimination, according to the CJEU.⁴⁰ Therefore, in the author's view, this CS case law is not in line with EU law.

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,⁴¹ which made a preliminary reference to the CJEU.⁴² This chamber invoked Directive 76/207/EEC, 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/EC (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 fulfil 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 a preliminary question.

In the *Kalliri* case, the CJEU held that, 'the provisions of Council Directive 76/207/EEC, as amended by Directive 2002/73/EC, must be interpreted as precluding a law of a Member State [...] which makes candidates' admission to the competition for entry to the police school of that Member State subject, whatever their sex, to a requirement that they are of a physical height of at least 1.70m, 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'.⁴³ More specifically the Court found that,

'[W]hile 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, clearly do not 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

⁴⁰ See e.g. CJEU, C-167/97, *Regina v Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez*, 9 February 1999; CJEU, C-77/02, *Erika Steinicke v Bundesanstalt für Arbeit*, 11 September 2003.

⁴¹ CS No 18/2014.

⁴² CS No 1420/2016.

⁴³ CJEU, C-409/16 *Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v Maria-Eleni Kalliri*, 18 October 2017.

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 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.⁴⁴

Since the CJEU *Kalliri* case, no other CS relevant judgments have been issued.⁴⁵

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.⁴⁶ The same was held by the CS regarding common athletic requirements for men and women in access to the fire brigade.⁴⁷

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/EC 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.'⁴⁸

3.4.3 Application of the objective justification test

The objective justification test has been applied correctly 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 test⁴⁹ – that is until the CS made the preliminary reference to the CJEU (see 3.4.2 above).

3.4.4 Specific difficulties

In Greece, there are specific difficulties in applying the concept of indirect discrimination. While the legislation is satisfactory and in spite of a preliminary CJEU ruling in a Greek case which concerned, *inter alia*, indirect discrimination,⁵⁰ case law or the absence thereof shows that the concept of indirect discrimination is still unclear. It is mainly the ACAs and

⁴⁴ CJEU, C-409/16 *Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v Maria-Eleni Kalliri*, 18 October 2017, § 38-44.

⁴⁵ CS Nos 3394/2017 and 3395/2017 refrained from issuing a judgment until the CJEU judgment in the *Kalliri* case was issued.

⁴⁶ Athens ACA Nos 41, 131 and 1191/2012; CS Nos 826/2016, 4300/2015 and 4655/2015.

⁴⁷ CS Nos 978/2016 and 980/2016.

⁴⁸ See the Ombudsman's report 'Μέτρα για την ισότητα των φύλων στις ένοπλες δυνάμεις μετά την παρέμβαση του Συνηγόρου του Πολίτη' (Gender equality measures in military corps after the intervention of the Ombudsman), available at: <https://www.synigoros.gr/resources/docs/203940.pdf>.

⁴⁹ See e.g. ACA No 1066/2004, quashed by CS No 1247/2008; ACA No 3358/2005 quashed by CS No 2367/2010; ACA No 3357/2005, quashed by CS No 2369/2010 (common minimum height for men and women for access to police academies).

⁵⁰ CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE.*, 10 March 2005.

the CS that have dealt with indirect discrimination in the public sector. The CS case law concerns access to police academies,⁵¹ municipal police and the fire brigade (see 3.4.2 above).

In the private sector only two cases alleging indirect discrimination are known to the author.

- The CJEU judgment *Nikoloudi* (C-196/02)⁵² dealt with the exclusion of part-time cleaners of *Organismos Tilepikoinonion Ellados* (OTE) from the possibility of appointment as permanent members of staff by a collective agreement provision which was ostensibly neutral as to the worker's sex. The Court ruled that, to the extent that this exclusion affected a category of workers which, under national rules with the force of law, is composed exclusively of women, it constitutes direct discrimination on grounds of sex within the meaning of Directive 76/207/EEC.⁵³ Should the premise that only part-time female cleaners have been denied the possibility of appointment as permanent members of staff prove incorrect, and if a much higher percentage of women than men has been affected by the provisions of the specific collective agreements, the exclusion, brought about by those agreements, of the appointment of part-time temporary staff as permanent staff constitutes indirect discrimination. After the CJEU judgment, the Amaroussion Justice of the Peace, in judgment No 251/2006, found that Mrs Nikoloudi was the victim of sex discrimination in relation to pay and awarded her the pay differential she claimed. The employer, OTE, submitted an appeal, which has not been heard to date.⁵⁴
- A recent case was inspired by the CJEU judgment in *Nikoloudi* (C-196/02).⁵⁵ It concerned the decision of a private bank to close down the cleaning department in order to outsource cleaning activities. This resulted in the redundancy of 64 cleaners, all of them women (with the exception of one male cleaner). Of these cleaners, 62 accepted the employer's offer to resign in order to be paid a bonus, which amounted to double or triple the legal redundancy compensation. The remaining four female cleaners who declined the offer were dismissed. One of them brought the case before the First Instance Civil Court of Athens (FICCA) alleging, inter alia, that she was the victim of direct (or indirect) sex discrimination. According to the claimant, her employment in a largely female-dominated profession was terminated without any possibility of transfer to other jobs being provided, whereas people working in predominantly male departments, such as those of blue-collar workers or clerks, were given the possibility of transfer to other jobs within the bank.

In its judgment No. 2323/12.12.2018 the FICCA found that the provision of the internal rules of the bank, as modified in June 2014, for the first time excluding the cleaners (the word in Greek is used in the female gender given that it is a predominantly female profession) from the possibility to be transferred to other jobs, whereas people working in predominantly male departments, such as those of blue-collar workers or clerks, were offered that possibility, constituted indirect sex discrimination in breach of Act 3846/2010,⁵⁶ which implemented Directive

⁵¹ CS Nos 1247/2008, 2367 and 2369/2010. See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2009), 'Greece', *European Gender Equality Law Review* 1, pp. 78-83, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights.

⁵² CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE.*, 10 March 2005.

⁵³ Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions OJ 1976, L 39/40.

⁵⁴ In the author's view, this is probably because the litigant has received a pay-out and the employer does not want any more negative publicity.

⁵⁵ CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE.*, 10 March 2005.

⁵⁶ 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.

2006/54/EC. However, the Court did not find that the termination of the employment contract per se constituted (direct or indirect) sex discrimination. The reasoning of the FICCA was as follows: the termination was due to the implementation of the business decision by the bank to close down the cleaning department and not to any other ground which would amount to or could be deemed sex discrimination. This wording shows that the Court was in search of an eventual 'fault' on the part of the employer, which it did not find. Nonetheless, the termination was found null and void in breach of other national law provisions, which are not of interest under EU law and in the present context.

To the author's knowledge, after the aforementioned CJEU preliminary ruling in *Nikoloudi* this is the only Greek judgment applying the notion of indirect discrimination on the grounds of sex in the private sector. Therefore, this judgment is of great importance. However, it is obvious that the Court subjected the finding of discrimination to the requirement of fault, which is contrary to the ECJ case law in the cases of *Draehmpaehl* and *Dekker*.⁵⁷ Although a significant step forward, this judgment shows the lack of awareness among judges of the concepts of EU anti-discrimination law, in particular the concepts of indirect discrimination and the non-requirement of fault. It also shows that the concept of indirect discrimination is still unclear, which explains the scarcity (almost non-existence) of relevant case law in employment in the private sector.

On indirect discrimination and equal pay see 4.2 below.

3.5 Multiple discrimination and intersectional discrimination⁵⁸

3.5.1 Definition and explicit prohibition⁵⁹

Multiple discrimination is explicitly addressed in Greek legislation. Article 2(2)(i) of Act 4443/2016 Part I, which re-transposes Directives 2000/43/EC and 2000/78/EC, prohibits 'any discrimination, exclusion or restriction to the detriment of a person, on more than one of the grounds [covered by the act]'. The grounds are those of Directives 2000/43/EC and 2000/78/EC, plus some new grounds: 'colour', 'genetic features', 'chronic illness', 'family or social status' and 'gender identity or characteristics'. The act also prohibits 'discrimination due to relationship' and 'discrimination due to perceived characteristics', and it stipulates that 'refusal of reasonable accommodation for persons with a disability or chronic illness' constitutes discrimination. 'Sex' is not among the grounds and discrimination on the ground of sex is not prohibited by 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.⁶⁰ It would also be advisable to add at the end of the definition, 'in

⁵⁷ CJEU, Case C-180/95, *Draehmpaehl v Urania Immobilienservice*, 22 April 1997; CJEU, Case C-177/88, *Dekker v Stichting Vormingscentrum voor Jong Volwassenen*, 8 November 1990.

⁵⁸ See for more information Fredman, S. (2016) *Intersectional discrimination in EU gender equality and non-discrimination law*, European network of legal experts in gender equality and non-discrimination, available at www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb.

⁵⁹ After the cut-off date of this report (31.12.2018), Act 4604/2019, 'On the promotion of substantive gender equality etc', OJ A 50/26.03.2019, was passed. Article 2(7) of the Act gives for the first time a definition of 'multiple discrimination' on the grounds, *inter alia*, of sex: any act or omission that places persons in an inferior position on the grounds of sex, sexual harassment and gender identity, in combination with one or more other characteristics, in particular national/ethnic or social origin, age, family status, disability, religious, political or other belief (see flash report on Act 4604/2019).

⁶⁰ See Directive 2000/43/EC, Preamble, Paragraph 14; Directive 2000/78/EC, Preamble, Paragraph 3.

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.⁶¹ 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 who are not Greek are left unprotected from multiple discrimination.

3.5.2 Case law and judicial recognition

There are no judicial decisions on multiple discrimination. However, some cases dealt with by the Ombudsman – the Greek Equality Body – have concerned multiple discrimination.

In 2018, an orphanage made a public call for a female psychologist aged 25-40 years. The Ombudsman explicitly found that this call constituted multiple discrimination in relation to access to employment both on the grounds of gender and age; following the Ombudsman's request, the administrative council of the orphanage proceeded to issue a new call without the impugned characteristics (gender, age).⁶²

In another case, a local union had placed a job advertisement in a local newspaper for a position as a secretary, requiring that she was female, under 35 years of age and of Greek nationality. The Ombudsman explicitly found that this offer constituted multiple discrimination on grounds of sex, age and nationality and asked the local union to revoke it, which it did.⁶³ It appears that both cases ended at that stage, without further litigation before the courts.

It can be deduced from the above that the notion of multiple discrimination is not clear to either the judiciary 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.

3.6 Positive action⁶⁴

3.6.1 Definition and explicit prohibition

Positive action is not merely explicitly allowed in Greek legislation but is moreover explicitly required by Article 116(2) of the Constitution (see 2.1.2 above). In accordance with the

⁶¹ See Directive 2000/43/EC, Article 17; Directive 2000/78/EC, Article 19.

⁶² Greek Ombudsman (2018), 'Ίση μεταχείριση – Ειδική έκθεση 2018' (Equal treatment – Special report 2018), available at: https://www.synigoros.gr/resources/docs/ee_im_2018_el.pdf.

⁶³ See 'Αγγελία για πρόσληψη γραμματέα συλλόγου ανακλήθηκε λόγω πολλαπλής διάκρισης (ΣΤΠ)' (Job advertisement for the hiring of a secretary recalled due to multiple discrimination (Ombudsman)), available at: www.lawspot.gr/nomika-nea/anaklisi-aggelias-gia-proslipsi-grammatea-sylogoy-anaklithike-logoi-pollaplis-diakrisis.

⁶⁴ After the cut-off date of this report (31.12.2018), Act 4604/2019, 'On the promotion of substantive gender equality etc', OJ A 50/26.03.2019, was passed. Article 2(2) of the Act gives the following definition of 'positive measures': 'acts and decisions taken by the Administration, which aim to eliminate gender inequalities, according to Article 116(2) of the Constitution'; Article 2(3) of the Act gives the following definition of 'positive action': 'any initiative by the competent state or local authorities which aims to prevent gender inequalities and to sensitise society to them'. Moreover, Article 3(2) of Act 4604/2019 provides that, when 'positive measures' are adopted in accordance with Article 2(2) Act 4604/2019, 'the physical features and the situations related to sex, sexual orientation and gender identity, in favour of which the positive measures are taken, as well as their eventual concurrence with other areas of discrimination, such as, in particular, ethnic or social origin, age, family status, disability, religious, political or other belief, shall be taken into consideration'. The new definitions of Act 4604/2019 on positive measures compared to the provisions of Article 19 Act 3896/2010 are narrower in that they do not stipulate in a straightforward way that positive measures do not constitute discrimination, as the general provisions of Article 116(2) Constitution and Article 19 Act 3896/2010 do. This is a serious regression with respect to the gender equality acquis in Greece (see flash report on Act 4604/2019).

hierarchical structure of the Greek legal order (see 1.1 above), all national provisions relating to positive action must be read and applied in the light of this constitutional norm.

The relevant provisions are Article 19 of Act 3896/2010 transposing Directive 2006/54/EC and Article 5 of Act 3769/2009 transposing Directive 2004/113/EC. Article 19 of Act 3896/2010 transposing Directive 2006/54/EC reads: 'The adoption or maintenance of specific or positive measures aimed at abolishing eventual discrimination to the detriment of the under-represented sex or achieving substantive equality in the areas included in the scope of application of this law, does not constitute discrimination.' Article 5 of Act 3769/2009 copies Article 6 of Directive 2004/113/EC which it transposes.

The definition of positive action in Article 19 of Act 3896/2010 covers the scope of Article 157(4) TFEU, but its wording is more positive and stronger. It does not merely stipulate, like Article 157(4) TFEU, that the equal treatment principle 'shall not prevent' positive action; and it explicitly provides that positive measures 'do not constitute discrimination'. It therefore reflects the stronger concept of positive action as enshrined in Article 116(2) of the Constitution, which makes positive action obligatory in all areas (see 2.1.2 above).

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

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

Act 3896/2010, transposing Directive 2006/54/EC, is entitled 'Implementation of the Principle of Equal Opportunities and of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council'. Act 3896/2010 does not provide a definition of the concept of 'equality of opportunity' or 'equal opportunities'. It is, however, obvious that the EU-relevant concepts, as developed by CJEU case law, underlie this Act and condition its application. Moreover, the constitutional gender equality norm (Article 4(2) Constitution) (see 2.1.1 above) obviously encompasses the said concepts and it is applied by Greek courts in this sense. Therefore, the said concepts are free-standing legal concepts in Greek law, based on both EU law and the Greek Constitution, in light of which Greek legislation is applied.

3.6.3 Specific difficulties

There are no specific difficulties in Greece in relation to positive action.

3.6.4 Measures to improve the gender balance on company boards

Greece has not adopted measures that aim to improve the gender balance on company boards,⁶⁵ except for those mentioned below, and neither are there any proposals which are pending in this regard, nor are there any policy measures or relevant good practice or debates.

(i) Specific Legal Provisions: Quotas for the Participation of the Under-Represented Sex on Service Councils of the Public Sector and on Research Councils or Committees

⁶⁵ There are no specific law provisions for the promotion of women to middle or senior management levels. However, after the cut-off date of this Report (31.12.2018), Art 21 Act 4604/2019 provides that for the award of the equality mark the balanced participation of women and men in managerial positions is taken into account, among other parameters. So, it is up to undertakings to adopt such positive measures. However, to the author's knowledge, there is no such private regulation.

According to Article 6(1)(a) of Act 2839/2000,⁶⁶ of the persons appointed by the State, legal persons governed by public law or local authorities as members of public sector service councils⁶⁷ of the services of the State, legal persons governed by public law and local authorities, at least one third must long to each sex. In principle, the members of the service councils are five; three out of the five are appointed by the Minister or the competent authority of the legal person concerned (who must observe the one third quota); the other two members are representatives elected by the employees. The number of members of other bodies to which the quota applies, as well as the mode of their appointment, varies. Therefore, the quota does not concern the whole service council or other body but only the appointed members (not the elected ones).⁶⁸ The quota must be applied to the regular members of the council; it is not enough apply it to the deputy members.⁶⁹

The quota applies, provided that there is an adequate number of employees of each sex in the service concerned who have the necessary qualifications for appointment to the particular service council. Should the numbers be insufficient to fulfil the requirement, the inadequate number must be stated in the council decision, otherwise the decision can be annulled.⁷⁰

According to Article 6(1)(b) of Act 2839/2000,⁷¹ at least one third of the (executive and non-executive) members of the boards of legal persons of the public sector who are appointed by the State, legal persons governed by public law or local authorities, must belong to each sex. The legal form of the legal persons concerned is irrelevant; they may be governed by public law or by private law; they may or may not be companies and, if they are companies, they do not necessarily have to be listed. It is not required for their whole capital to belong to the State, a legal person governed by public law or a local authority. They may own part of the capital (not necessarily even the majority thereof) and still be empowered by the provisions governing the particular legal person to appoint members of its board. The one-third quota applies in all cases. The State, legal persons governed by public law or local authorities appoint a certain number of the board members, as provided by the provisions governing each particular legal person. Therefore, the quota does not concern the whole board.

According to the standard case law of the administrative courts and of the CS: (i) if the act by which the State, a local authority or a legal person governed by public law appoints board members does not observe the quota, it is subject to annulment and (ii) the decisions of boards that are not composed in accordance with the provision on the quota are also subject to annulment.⁷²

⁶⁶ Greece, Act 2839/2000 OJ A 196/12.09.2000.

⁶⁷ 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.'

⁶⁸ Athens ACA No 90/2010.

⁶⁹ CS No 1414/2018.

⁷⁰ Athens ACA No 811/2012.

⁷¹ After the cut-off date of this Report, Article 16 Act 4604/2019 OJ A 50/29.03.2019 added a new provision at the end of that of Article 6(1)(b) of Act 2839/2000, which stipulates that, if the composition of the service council does not fulfil the above requirements, it is unlawful. An exception to this rule is provided in the case of service councils, the members of which are partially or totally designated ex officio or through a ballot or are designated by the Ministry of National Defence and the legal persons supervised by it due to a proven lack of a sufficient number of persons of the other sex. The aforementioned amendment will come into force after the end of the current term of the above service councils. This provision is in conformity with the abovementioned case law.

⁷² CS No 2977/2014: the composition of the service council was lawful, although it contained no women, because there were no women in the service concerned who possessed the required qualifications; therefore, its decisions were valid. Athens Administrative Court of Appeal 811/2012, 90/2010, 216/2007, 602/2007 and 890/2007 annulled decisions of service councils which were not composed in accordance with the above provision.

The above provision of Article 6(1) of Act 2839/2000 has been incorporated into Article 7(5) of the Code for Employees of Local Authorities (CELA).⁷³ The same measure has been included in Article 161 of the Civil Servants Code⁷⁴ (CSC), which also covers the personnel of legal persons governed by public law, in a more extended version provided by Article 2 of Act 4275/2014.⁷⁵ Consequently, Article 161 CSC, as it now stands, requires the one-third quota for service councils as well as for other bodies that are entrusted with the assessment and selection of the heads of the services of the State and legal persons governed by public law (Articles 157-160 CSC).

Within its competences, the General Secretariat for Equality has designed an easy to use electronic application,⁷⁶ where the public administration should submit the data on the composition of the service councils so that their compliance with Article 6(1)(b) of Act 2839/2000 can be monitored. In the period 1 January 2017 to 1 October 2017, out of 97 public entities, eight did not comply, which corresponded to 12 service councils, i.e. a percentage of 11.43 %.⁷⁷ However, not all the public entities use this application given that there is no legal obligation and consequently no sanction. Thus, the above-mentioned data are not reliable.

Case law on positive action in employment is restricted to the issue of quotas for the participation of the under-represented sex in public sector service councils. Moreover, according to Article 57 of Act 3653/2008,⁷⁸ the number of scientists participating in any council or committee dealing with research, including those assessing candidacies for research projects, must be determined 'on the basis of scientific excellence and according to a quota of at least one third from each sex, in accordance with Article 116(2) of the Constitution, provided that they possess the necessary qualifications for the particular post'. There is no jurisprudence on this provision.

(ii) Soft Law: Corporate Governance Codes

Corporate governance codes impose specific obligations on companies to enhance the number of women on their boards, but only in the form of soft law of private regulation. More specifically, the Corporate Governance Code of Ethics of the Hellenic Corporate Governance Council (Ελληνικό Συμβούλιο Εταιρικής Διακυβέρνησης)⁷⁹ for listed companies provides under Article 5.4 (Nomination of board members) that the Board Nomination

⁷³ Greece, CELA, Act 3584/2007, OJ A 143/28.06.2007.

⁷⁴ Art 161 of the Civil Servants Code Act 3528/2007, OJ A 26/09.02.2007, as amended by Article Second Act 3839/2010 OJ A 51/29.03.2010 and re-amended by Act 4275/2016 OJ A 149/15.07.2014.

⁷⁵ Greece, Act 4275/2014, OJ A 149/15.07.2014.

⁷⁶ See 'Ισότητα των φύλων στα διοικητικά και υπηρεσιακά συμβούλια των δημόσιων φορέων (Gender equality in administrative and service councils of public entities), available at: <http://posostosi.isotita.gr>.

⁷⁷ 12th Informative Bulletin of the Equality Observatory of the General Secretariat for Equality entitled 'Γυναίκες σε θέσεις ευθύνης' (Women in managerial posts), available at: <http://www.isotita.gr/wp-content/uploads/2017/11/%CE%A0%CE%B1%CF%81%CE%B1%CF%84%CE%B7%CF%81%CE%B7%CF%84%CE%AE%CF%81%CE%B9%CE%BF-%CE%93%CE%93%CE%99%CE%A6-12o-%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C-%CF%83%CE%B7%CE%BC%CE%B5%CE%AF%CF%89%CE%BC%CE%B1-%CE%93%CF%85%CE%BD%CE%B1%CE%AF%CE%BA%CE%B5%CF%82-%CF%83%CE%B5-%CE%B8%CE%AD%CF%83%CE%B5%CE%B9%CF%82-%CE%B5%CF%85%CE%B8%CF%8D%CE%BD%CE%B7%CF%82.pdf>.

⁷⁸ Article 57 Act 3653/2008, OJ A 49/21.03.2008.

⁷⁹ The Hellenic Corporate Governance Council (HCGC) (Ελληνικό Συμβούλιο Εταιρικής Διακυβέρνησης – ΕΔΕΣ) has been established in 2012 as a non-profit company with the joint initiative of Athens Stock Exchange and the Hellenic Federation of Enterprises (SEV). Since October 2018, the Hellenic Banking Association has become a regular member of the HCGC. The purpose of the HCGC is to continuously enhance the credibility of the Greek market among domestic and international investors and to improve the competitiveness of Greek corporations. It functions as a specialised body for disseminating the principles of corporate governance and seeks to develop a culture of good governance in the Greek economy and society. Its overall action plan includes: formulating positions on the institutional framework; making proposals; taking part in consultations and working groups; organising educational and information activities; monitoring and evaluating corporate governance practices and implementing corporate governance codes; and providing support and rating tools for the performance of Greek corporations.

Committee should ensure that there is an effective and transparent procedure for the nomination of board members and that the responsibilities of the Nomination Committee should ensure, among other things, the proposal of a board diversity policy, including gender balance.⁸⁰ This is a general soft law provision applying only to the boards of listed companies. No quantitative objectives, no timelines, no defined procedures and no reporting duty are provided. There has been no research or quantitative data concerning the effectiveness of this Code of Ethics.

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

In areas other than company boards, Greece has adopted the following positive action measures to improve gender balance.

(i) Quotas for parliamentary elections⁸¹

The number of candidates of each sex presented for the parliamentary elections by each party must correspond to one third of the total number of its candidates in the country.⁸² The candidates appear on a ballot paper on which the voter chooses his/her preferred candidate by placing a cross alongside the name of the relevant candidate. However, a proportion of Parliament, comprising not more than 5 % of the total number of MPs (300 in total), are elected throughout the country in proportion to the total electoral performance of each party, according to their order on this list ('state MPs'). There does not seem to be any case law on this measure.

(ii) Quotas for local elections⁸³

'The number of candidate members for local government councils of each sex shall correspond to at least one third of the total number of candidates listed on each ballot paper.'⁸⁴ 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.⁸⁵ Greek NGOs, on the initiative of the Greek League for Women's Rights, strongly protested against this regression.⁸⁶ According to standard case law, this is a positive measure in favour of women, according to Article 116(2) Constitution, which aims to achieve substantive gender

⁸⁰ The Hellenic Corporate Governance Code of the Hellenic Corporate Governance Council (HCGC) for listed companies (English version) is available at: www.helex.gr/documents/10180/2227810/HCGC_EN_OCT_2013_form.pdf/e53731a3-a972-4e21-bbf8-2644f6709e26.

⁸¹ After the cut-off date of this report (31.12.2018), Article 15(1) Act 4604/2019, OJ A 50/26.03.2019 amended Article 34(6)(b) Presidential Decree 96/2007, OJ A 116/05.06.2007. According to the new provision, the number of candidates of each sex presented for the parliamentary elections by each party must correspond to 40 % (instead of one third) of the total number of its candidates in the voting region (instead of the country). The new provision will apply to the next parliamentary elections.

⁸² Article 34(6)(b) Presidential Decree 96/2007, OJ A 116/05.06.2007 (as valid before its Amendment by Act 4604/2019) and Article 3 of Act 3636/2008, OJ A 11/01.02.2008.

⁸³ After the cut-off date of this report (31.12.2018), Article 15(1) Act 4604/2019, OJ A 50/26.03.2019, amended Article 34(6)(b) Presidential Decree 96/2007, OJ A 116/05.06.2007. According to the new provision, the number of candidates of each sex presented for the parliamentary elections by each party must correspond to 40 % (instead of the previously provided quota of one third) of the total number of its candidates in the voting region (and not in the whole country, as was previously provided). The new provision will apply to the next parliamentary elections.

⁸⁴ Article 75 of Act 2910/2001, OJ A 91/2001 and Article 22(3) Act 3051/2003, OJ A 220/20.09.2002.

⁸⁵ Article 18(3) of Act 3852/2010, OJ A 37/07.06.2010, as added by Article 18(10)(c) Act 3870/2010, OJ A 138/09.08.2010 and Article 120(3) Act 3852/2010, OJ A 37/07.06.2010.

⁸⁶ 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: www.equalitylaw.eu/downloads/2795-european-gender-equality-law-review-2-2010.

equality in local government.⁸⁷ Where the quota is not observed, the elections for the particular local authority are invalidated and must be repeated.⁸⁸

(iii) Measures for the promotion of employment.

Employers who hire mothers with 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 their second and each subsequent child.⁸⁹

There seems to be no case law on these provisions.

3.7 Harassment and sexual harassment

3.7.1 Definition and explicit prohibition of harassment

Harassment (together with sexual harassment) is explicitly prohibited in national legislation by: Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54/EC; Article 5 of Act 3769/2009 transposing Directive 2004/113/EC; and Article 4(2) of Act 4097/2012 transposing Directive 2010/41/EU.⁹⁰

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

Furthermore, by virtue of Article 23(3) of Act 3896/2010 transposing Directive 2006/54/EC, a paragraph was added to Article 107 of the Civil Servants Code (CSC) which lists the acts that constitute disciplinary offences by civil servants.⁹¹ 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.⁹²

Moreover, Article 23(4) of Act 3896/2010 (which repeats Article 16(4) of Act 3488/2006 transposing Directive 2002/73/EC) added to Article 337 of the 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 a person at work or seeking work' an aggravating circumstance.

3.7.2 Scope of the prohibition of harassment

The prohibition of 'harassment' has a broader coverage than employment in some respects. Firstly, Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54/EC, which prohibits harassment and sexual harassment, applies to the whole scope of the Act, and therefore also to vocational training. Secondly, harassment and sexual harassment

⁸⁷ CS Nos 2388/2004, 192/2004, 2831/2003, 2832/2003, 2833/2003, 2834/2003, 3027/2003, 3028/2003, 3185/2003, 3187/2003, 3188/2003 and 3189/2003.

⁸⁸ CS No 2123/2011, invalidating local elections and ordering that they be repeated.

⁸⁹ Article 2(2) and (7) of Act 3227/2004 (measures for combating unemployment), OJ A 31/09.02.2004.

⁹⁰ After the cut-off date of this Report (31.12.2018), Article 2(10) Act 4604/2019, OJ A 50/26.03.2019, gives the following definition of 'harassment': 'any unwanted conduct related to the sex, sexual orientation and gender identity of a person with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.

⁹¹ CSC: Act 3528/2007, OJ A 26/09.02.2007.

⁹² After the cut-off date of this Report (31.12.2018), Article 14 Act 4604/2019, OJ A 50/26.03.2019, the above paragraph was amended, stipulating that: 'the violation of the principle of equality, of equal opportunities and equal treatment of men and women in matters of employment and occupation, according to Act 3896/2010 and the use of language introducing gendered discrimination' represent a disciplinary offence.

are prohibited by other pieces of legislation which, however, do not mention the terms 'harassment' or 'sexual harassment'. More particularly, although not constituting a specific criminal offence, harassment and sexual harassment may be punished as another offence under the PC or as a disciplinary offence under the CSC. Moreover, harassment and sexual harassment may be sanctioned as an offence to the 'personality', and therefore a violation of Article 57 of the Civil Code (CC). The scope of the relevant criminal, disciplinary and civil provisions is broader than the scope of the Directives (see 3.7.4 below).

3.7.3 Definition and explicit prohibition of sexual harassment

'Sexual harassment' (together with harassment) is explicitly prohibited in national legislation by: Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54/EC; Article 4(1)(b) of Act 3769/2009 transposing Directive 2004/113/EC; and Article 4(2) of Act 4097/2012 transposing Directive 2010/41/EU.⁹³

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

3.7.4 Scope of the prohibition of sexual harassment

As mentioned above (see 3.7.2), the prohibition of sexual harassment covers employment, occupation, self-employment and access to goods and services, as the Greek legislation transposing the relevant directives covers the whole scope of the directives and 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/EC, or on Act 4097/2012 which transposes Directive 2010/41/EU. Some lower courts have, however, relied on Act 3488/2006 transposing Directive 2002/73/EC, 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 someone's honour, profession or future. Having found that the defendant was speaking to the claimant in vulgar language with sexual connotations, had tried to embrace her in her office against her will, was pressing her to date with him and was calumniating her in her working environment, the court considered that this behaviour constituted sexual harassment and consequently upheld the female civil servant's claim.⁹⁴

In a case of sexual harassment in the workplace reported to the employer by the victim (a female employee), the perpetrator (a male colleague) was dismissed by the company as punishment for his offence. The perpetrator lodged a claim, arguing that his dismissal was contrary to the principle of proportionality. The Court of Appeal upheld his claim, finding that the alleged harassment was rather an act of humour and courtesy in a climate

⁹³ After the cut-off date of this Report (31.12.2018) Act 4604/2019, OJ A 50/26.03.2019 was passed. Article 22(1) of the Act amended Article 2(d) of Act 3896/2010 transposing Directive 2006/54/EC and replaced its definition of 'sexual harassment' by the following definition of 'sexual harassment': 'any form of unwanted verbal, psychological or physical conduct of a sexual nature, with the effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment' [Articles 2(11) and 22(2) Act 4604/2019]. This definition, compared to the definition of the Directive, is narrower in that it does not stipulate 'with the purpose or effect' as the Directive does. This is a serious regression with respect to EU gender equality *acquis* (see flash report on Act 4604/2019). Act 4604/2019, to the extent that it amended or rephrased the existing definition of sexual harassment, is a model of bad and dangerous law-making. By omitting any reference to Directive 2006/54/EC, it is in clear violation of its implementation requirements. Moreover, it undermines the coherence of national law implementing the gender equality and anti-discrimination Directives and creates a lack of clarity and legal uncertainty, which is not allowed by EU law in the implementation of the Directives.

⁹⁴ See e.g. Larissa FICC No 351/2014.

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. However, the Supreme Civil and Penal Court quashed the judgment for conflicting reasons, given that the Court of Appeal had furthermore found that: a) the perpetrator unsuccessfully asked to be excused by the victim, which constituted a confession to his unlawful act and b) that the relations between the parties had been severely damaged.⁹⁵ 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/EC,⁹⁶ while others postdate it, but do not mention it or the transposing Act.⁹⁷ More generally, the existing scarce case law relies mostly on other legislation, the scope of which is broader than the scope of the Directives: the victim does not have to be working in the same firm or service as the perpetrator; the offence may not even be related to employment, occupation or self-employment or to access to or supply of goods or services.

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)⁹⁸ or 'offence to a person's honour' (such as insult or slander (Articles 361-363 PC))⁹⁹ or bodily harm (Articles 308-312 PC)).¹⁰⁰ It may also be punished as a disciplinary offence under Article 107 of the CSC (see 3.7.1 above).¹⁰¹

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'.¹⁰² 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.¹⁰³

In spite of the satisfactory transposition of the provisions of Directives 2002/73/EC and 2006/54/EC, 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. However, in the context of civil law (which is applicable due to the lack of explicit provisions for moral damages in the event of sexual harassment), moral damages for the victims of sexual harassment are rarely adjudicated and when they are, the sum is very low.¹⁰⁴ In the author's view, it is evident that this is not a sanction with a deterrent effect.

⁹⁵ SCPC (Civil Section) No 102/2017.

⁹⁶ SCPC (Penal Section) No 2590/2008 ('offence against the sexual dignity' of a patient during a medical examination).

⁹⁷ CS No 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 hospitalised relative.

⁹⁸ 'Rape' consists of 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 of lewd gestures or proposals concerning lewd acts, without reaching intercourse, which crudely offend a person's dignity in the area of his/her sexual life (SCPC (Penal Section) 1783/2008, 1546/2008, 1998/2006).

⁹⁹ SCPC (Penal Section) No 1149/2011.

¹⁰⁰ SCPC (Penal Section) No 148/2010.

¹⁰¹ CSC: Act 3528/2007, OJ A 26/09.02.2007. See CS No 505/2010.

¹⁰² SCPC (Civil Section) No 418/2010 (harassment outside the scope of the Directives).

¹⁰³ SCPC (Civil Section) No 84/2011; Athens CA No 1139/2011.

¹⁰⁴ Athens FICC (three-member chamber) No 796/2013, which compensated a female employee, who was victim of sexual harassment at work by her superior, with the sum of EUR 3 000 against the perpetrator.

3.7.5 Understanding of (sexual) harassment as discrimination

Greek legislation specifies that harassment and sexual harassment, as well as any less favourable treatment based on the person's rejection of or submission to such conduct, amounts to discrimination in the provisions that prohibit them (see 3.7.1 and 3.7.3 above). The courts will declare that dismissals due to a rejection of sexual harassment are null and void.¹⁰⁵

3.7.6 Specific difficulties

According to the Labour Inspectorate's (LI) annual reports for the years 2013-2017,¹⁰⁶ only 4 % of complaints to the LI annually concern sexual harassment; all of them were brought by women. Of 15 such cases in the years 2013-2017, four were resolved, four were sent to the courts, five were sent to the Ombudsman, in one case the LI instituted penal proceedings and in one case the LI imposed an administrative fine of EUR 500. In the author's view, it is evident that this is not a sanction with a deterrent effect.

Moreover, in the Ombudsman's annual reports for the years 2013-2017, only nine cases of sexual harassment were referred (two in 2014, two in 2015, three in 2016, one in 2017 and one in 2018).¹⁰⁷ It is noteworthy that in two of these cases the reversal of the burden of proof to the employer was applied by the Ombudsman (in one case in 2016 the victim presented text messages sent by the perpetrator and in another case in 2015 the victim presented a video recording from the security video cameras at their workplace).

However, these cases are only the tip of the iceberg. It is a common belief that sexual harassment at work is quite widespread in practice. Sexual harassment cases that reach the LI and the Ombudsman as well as the courts are scarce because in practice harassed women rarely complain:¹⁰⁸ (i) for fear of being victimised (claimants, witnesses: dismissal, detrimental modification of working conditions) and in particular for fear of the perpetrator bringing criminal charges against them for slander (which is quite common in practice) and/or civil claims for moral damages,¹⁰⁹ (ii) for fear of acquiring a 'bad name' in the labour

¹⁰⁵ SCPC (Civil Section) No 84/2011; Athens CA No 1139/2011.

¹⁰⁶ Greek Labour Inspectorate: (2014) 'Εκθεση πεπραγμένων ΣΕΠΕ έτους 2013' (Annual report of the year 2013), available at: www.ypakp.gr/uploads/docs/7702.pdf; (2015), 'Εκθεση πεπραγμένων ΣΕΠΕ έτους 2014' (Annual report of the year 2014), available at: www.ypakp.gr/uploads/docs/11658.pdf; (2016), 'Εκθεση πεπραγμένων ΣΕΠΕ έτους 2015' (Annual report of the year 2015), available at: www.ypakp.gr/uploads/docs/11659.pdf; (2017), 'Εκθεση πεπραγμένων ΣΕΠΕ έτους 2016' (Annual report of the year 2016), available at: www.ypakp.gr/uploads/docs/11663.pdf; 'Εκθεση πεπραγμένων ΣΕΠΕ έτους 2017' (Annual report of the year 2017), available at: www.ypakp.gr/uploads/docs/11919.pdf.

¹⁰⁷ Greek Ombudsman: (2014), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2014' (Gender and employment relationships - Special Report 2014), available at: <https://www.synigoros.gr/resources/docs/ee2014-13-fylo--2.pdf>; (2015) 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships - Special Report 2015), available at: <https://www.synigoros.gr/resources/docs/ee2015-13-fylo--2.pdf>; (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2016' (Gender and employment relationships - Special Report 2016), available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf; (2017), 'Ίση μεταχείριση – Ειδική έκθεση 2017' (Equal treatment - Special report 2017), available at: <https://www.synigoros.gr/resources/docs/ee-isi-metaxeirisi-2017-gr.pdf>; (2018), 'Ίση μεταχείριση – Ειδική έκθεση 2018' (Equal treatment - Special report 2018), available at: https://www.synigoros.gr/resources/docs/ee_im_2018_el.pdf.

¹⁰⁸ Koukoulis-Spilliotopoulos, S. (2008), 'Gender equality in Greece and effective judicial protection', NZA 2/2008, p.77.

¹⁰⁹ Athens FICC (three-member chamber) No 796/2013, which, in a case of sexual harassment at work against a female employee by her superior, dismissed a EUR 200 000 civil claim for moral damages due to slander/defamation brought by the perpetrator against the victim, while compensating the victim with the sum of EUR 3 000 for moral damages due to sexual harassment against the perpetrator; Athens FICC (three-member chamber) No 1122/2013: this was a case of sexual harassment at work against a female employee by her superior; the victim brought a labour law action against the employer for unlawful dismissal, arguing that the Director of the undertaking had offered protection to the perpetrator. The Director of the undertaking raised a EUR 400 000 civil action for moral damages due to slander/defamation against the victim of the sexual harassment which was dismissed by the Court with the reasoning that the victim's allegations did not exceed the necessary measure for the exercise of her rights.

market, (iii) due to lack of evidence and support (iv) due to the sharply rising litigation costs etc (see 11.3.1 below).

3.8 Instruction to discriminate

3.8.1 Explicit prohibition

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

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

3.8.2 Specific difficulties

There do not seem to be any special difficulties nor any cases in relation to this concept.

3.9 Other forms of discrimination

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

Moreover, multiple discrimination is explicitly addressed in Greek legislation. Article 2(2)(i) of Act 4443/2016 Part I, which re-transposes Directives 2000/43/EC and 2000/78/EC, prohibits 'any discrimination, exclusion or restriction to the detriment of a person, on more than one of the grounds [covered by the act]'. The grounds are those of Directives 2000/43/EC and 2000/78/EC, plus some new grounds: 'colour', 'genetic features', 'chronic illness', 'family or social status' and 'gender identity or characteristics'. The act also prohibits 'discrimination due to relationship' and 'discrimination due to perceived characteristics', and it stipulates that 'refusal of reasonable accommodation for persons with a disability or chronic illness' constitutes discrimination. 'Sex' is not among the grounds and discrimination on the ground of sex is not prohibited by 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.¹¹⁰ 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.¹¹¹ 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

¹¹⁰ See Directive 2000/43/EC, Preamble, Paragraph 14; Directive 2000/78/EC, Preamble, Paragraph 3.

¹¹¹ See Directive 2000/43/EC, Article 17; Directive 2000/78/EC, Article 19.

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 who are not Greek are left unprotected from multiple discrimination.

3.10 Evaluation of implementation

Up to the cut-off date of this report (31 December 2018), the national legal provisions implementing the EU law concepts and the relevant case law have been satisfactory.¹¹² The definitions of direct discrimination, indirect discrimination and positive action copy those of the Directive. The definition of positive action in Article 19 of Act 3896/2010 covers the scope of Article 157(4) TFEU, but its wording is more positive and stronger. It does not merely stipulate, like Article 157(4) TFEU, that the equal treatment principle 'shall not prevent' positive action; and it explicitly provides that positive measures 'do not constitute discrimination'. It therefore reflects the stronger concept of positive action as enshrined in Article 116(2) of the Constitution, which makes positive action obligatory in all areas. However, in practice the absence of case law concerning indirect discrimination shows that the concept of indirect discrimination is still unclear.

3.11 Remaining issues

Another relevant concept related to gender equality law is substantive equality (as distinguished from formal equality).¹¹³ Article 19 of Act 3896/2010 transposing Directive 2006/54/EC on positive measures makes explicit reference to substantive equality as an aim of positive measures. Such a reference is also found in the case law on Article 116(2) Constitution on positive action.

¹¹² After the cut-off date of this report (31.12.2018), Act 4604/2019, 'On the promotion of substantive gender equality etc', OJ A 50/26.03.2019, was passed. This Act amended the definitions of 'direct discrimination', 'indirect discrimination' and 'sexual harassment' given by Act 3896/2010, implementing Directive 2006/54/EC, falling short of the relevant definitions of the Directive and without any reference to it, which is in clear violation of its implementation requirements. Moreover, it stipulates new definitions on 'positive measures' and 'positive action', which falls short of the Greek *acquis*, as enshrined in Article 116(2) Constitution (see flash report on Act 4604/2019).

¹¹³ After the cut-off date of this report (31.12.2018), Act 4604/2019, 'On the promotion of substantive gender equality etc', OJ A 50/26.03.2019, was passed, giving for the first time a definition of substantive equality. Article 2 of the new Act distinguishes between 'positive action' and 'positive measures', providing a different definition for each of these concepts. However, the only term used in Article 116(2) of the Constitution and in Act 3896/2010 (Article 19), as well as in Article 157(4) TFEU and Article 23(2) of the EU Charter of Fundamental Rights, is 'positive measures'. Great confusion and legal uncertainty are thus created, inter alia because it is only the term 'positive measures' that appears further in the Act, while the term 'positive action' does not appear in any other provision of the Act. Moreover, these definitions limit the scope of the above concepts to the public sector only. The new definitions of Act 4604/2019 on positive measures compared to the previous definitions of these concepts provided in Article 19 of Act 3896/2010 are narrower because they do not stipulate in a straightforward way that positive measures do not constitute discrimination, as the general provisions of Article 116(2) of the Constitution and Article 19 Act 3896/2010 do. This is a serious regression with respect to the gender equality *acquis* in Greece. See the relevant flash report, available at: www.equalitylaw.eu/downloads/4907-greece-new-act-4604-2019-on-substantive-equality-entered-into-force-on-26-march-2019-pdf-102-kb.

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

4.1 General (legal) context

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

A rare but encouraging signal of the awareness of social partners of the gender-related equal pay issue was the publication of a research document entitled *Addressing the gender pay gap. The EU action plan 2017-2019 and the role of the social partners and social dialogue* for the Institute of Small Enterprises of the Hellenic Confederation of Professionals, Craftsmen and Merchants (IME GSEVEE), written by Ioanna Profyri in March 2018.¹¹⁴ The research took place in the framework of the 'Institutional, operational and research Empowerment of GSEVEE' project, co-funded by Greece and the European Union (European Social Fund) through the Operational Project 'Development of Human Resources, Education and On-going training 2014-2020', which makes it an interesting example of mainstreaming gender equality through the European funding programmes.

4.1.2 Surveys on the difficulties of realising equal treatment at work

An interesting survey on the Greek case law which led to the CJEU *Kalliri* case was published in 2018 by a judge of the First Instance Administrative Court.¹¹⁵ The author criticises the *Kalliri* judgment, arguing that it is not clear enough and does not show the way forward concerning access for women to the police force. However, the author agrees with the CJEU's finding that the aim pursued by the law at issue could be achieved by measures that are less disadvantageous to women, such as a pre-selection of candidates to the competition for entry into Schools for Police Officers and Policemen based on specific tests allowing their physical ability to be assessed; even in this case, very strict judicial control is needed as to whether such measures are justified by genuine occupational requirements.

4.1.3 Other issues

The scarcity of gender equality case law should be examined in the context of the economic crisis and the soaring unemployment that has hit Greece hard in recent years. According to Eurostat, the gender wage gap in Greece was 12.5 % on average in 2018 (compared with 16 % in the EU).¹¹⁶ The Eurostat study places Greece ninth among EU Member States with the lowest gender pay gap. Moreover, the average gender-related overall earnings gap in Greece is 39.6 % (compared with 41.4 % in the EU). In fact, the gender pay gap in Greece has significantly decreased over the last few years: the gender pay gap was 12.5 % in 2014 and in 2018 and 25.5 % in 2002.

¹¹⁴ Profyri, I. (2018), 'Η αντιμετώπιση του έμφυλου μισθολογικού χάσματος. Σχέδιο δράσης της ΕΕ 2017-2019 και ο ρόλος των κοινωνικών εταίρων και του κοινωνικού διαλόγου' (Addressing the gender pay gap. The EU action plan 2017-2019 and the role of the social partners and of the social dialogue), Research documents of the Institute of Small Enterprises of the Hellenic Confederation of Professionals, Craftsmen & Merchants (IME GSEVEE), 3/2018, available at:

<https://imegsevee.gr/%ce%b4%ce%b7%ce%bc%ce%bf%cf%83%ce%b9%ce%b5%cf%8d%cf%83%ce%b5%ce%b9%cf%82/%ce%b5%cf%81%ce%b5%cf%85%ce%bd%ce%b7%cf%84%ce%b9%ce%ba%cf%8c-%ce%ba%ce%b5%ce%af%ce%bc%ce%b5%ce%bd%ce%bf-%ce%b7-%ce%b1%ce%bd%cf%84%ce%b9%ce%bc%ce%b5%cf%84%cf%8e%cf%80%ce%b9%cf%83%ce%b7-%cf%84%ce%bf%cf%85-%ce%ad%ce%bc%cf%86%cf%85%ce%bb%ce%bf%cf%85-%ce%bc%ce%b9%cf%83%ce%b8%ce%bf%ce%bb%ce%bf%ce%b3%ce%b9%ce%ba%ce%bf%cf%8d-%cf%87%ce%ac%cf%83%ce%bc%ce%b1%cf%84%ce%bf%cf%82/>.

¹¹⁵ Kofinis, S. (2018), 'Στο κρεβάτι του Προκρούστη: Το ανάστημα των υποψηφίων για τις αστυνομικές σχολές υπό εξέταση' (On the bed of Procrustes: The height of candidates for police academies under review), *Θεωρία και πράξη Διοικητικού Δικαίου (ΘΠρΔΔ)* (Theory and practice of administrative law) 2018, pp. 475 et s.

¹¹⁶ Eurostat *Gender pay gap statistics*, March 2018, available at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/6776.pdf>.

According to a study by SEV (Hellenic Federation of Enterprises),¹¹⁷ based on data from the World Economic Forum, the relatively low placement of Greece in the overall assessment is due to the low participation of women in the labour force (59.6 % for women compared with 76.5 % for men, with the correspondent percentages in Western Europe being 70.2 % and 80.2 %) and to the over-representation of women in low-paid sectors. SEV notes that the general Gender Parity Index revealed a decline in the first years of the economic crisis, which shows that women were hit harder than men by the austerity measures. However, in more recent years the general Gender Parity Index shows an increasing trend, mostly due to the increased participation of women in the active population in their effort to counterbalance reduced (due to the crisis) family incomes. Moreover, there is a common belief that austerity measures in the years of the crisis have had an adverse impact on wages exceeding those stipulated in collective agreements (in some cases even shrinking to the minimum wage); this has resulted in a significant decrease in the gender pay gap while structural inequalities still persist.

Since 2011, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), through its reports on Greece, has expressed its concerns about the 'disproportionate impact' of the crisis and austerity measures on women and the widening of the pay gap to their detriment. The CEACR stresses in particular that the combined effect of the financial crisis, the growing informal economy and the implementation of structural reform measures have adversely affected the negotiating power of women and lead to their over-representation in precarious, low-paid jobs. Serious concerns about the severe impact on gender equality were also explicitly expressed in the Report of the High-level mission to Greece.¹¹⁸ The Council of Europe (CoE) Commissioner for Human Rights has also emphasised the serious impact of the crisis and austerity measures on women.¹¹⁹

In the private sector, the rapid growth of flexible forms of employment as well as the replacement of contracts of indefinite duration by fixed-term contracts has led to a significant reduction in wages. The ILO CEACR stresses, referring to the Ombudsman, that flexible forms of employment, mainly part-time and rotation work, are more often offered to women, especially during pregnancy and upon return from maternity leave, reducing their levels of pay, while layoffs due to pregnancy, maternity and sexual harassment are increasing. 'Flexibility had been introduced without sufficient safeguards for the most vulnerable, or safeguards which had been introduced by law were not effectively enforced.'¹²⁰ In fact, unemployment, especially among women and young people, is especially high; as the CEACR notes, 'a large number of women have joined the ranks of the "discouraged" workers who are not accounted for in the statistics'. Moreover, fiscal consolidation decisions and austerity measures are taken without any *ex ante* or even *ex post* impact assessment, as deplored by the European Committee of Social Rights (ECSR) and other treaty-bodies.

Given that collective agreements have been a principal source of determination of pay rates, the ILO CEACR refers to its comments on Convention No 98 and calls upon the Greek Government to bear in mind that collective bargaining is an important means of addressing equal pay issues in a proactive manner, including unequal pay that arises from

¹¹⁷ Hellenic Federation of Enterprises (SEV) (2018), 'Η ισότητα γυναικών και ανδρών κάνει καλό στην οικονομία και στην κοινωνία!' (Equality between women and men is a good thing for economy and society!) available at: www.sev.org.gr/Uploads/Documents/Weekly_18_01_2018.pdf.

¹¹⁸ ILO (2011), *Report on the High Level Mission to Greece (Athens, 19-23 September 2011)*, paras. 317-321, available at: www.ilo.org/global/standards/WCMS_170433/lang--en/index.htm.

¹¹⁹ Council of Europe, Commissioner for Human Rights (2013), *Safeguarding human rights in times of economic crisis*, p. 23, available at: <https://rm.coe.int/safeguarding-human-rights-in-times-of-economic-crisis-issue-paper-publ/1680908d4a>; Council of Europe, Commissioner for Human Rights (2014), *Protect women's rights during the crisis*, available at: www.coe.int/en/web/commissioner/-/protect-women-s-rights-during-the-crisis.

¹²⁰ ILO Greece: Observation (CEACR), adopted 2011, published 101st ILC session (2012), Equal Remuneration Convention 1951 (No.100), available at: www.ilo.org/dyn/normlex/en/f?p=1000:13201:0::NO:13201:P13201_COUNTRY_ID:102658.

indirect discrimination on the ground of sex.¹²¹ In its 2016 Observations on the implementation of ILO Convention No. 100 (equal remuneration), the ILO CEACR again deplores the absence of impact assessment of austerity measures on women's pay, while 'the rapid growth of flexible forms of employment has led to a widening of the gender pay gap and to obstacles in women's career development'.¹²²

According to the Government, gender wage differentials may exist where wages exceed those stipulated in collective agreements, but private agreements are not monitored. As the Ombudsman found, cuts in pay and allowances during pregnancy, maternity leave and parental leave increase the gender pay gap, even in the public sector.¹²³

4.1.4 Political and societal debate and pending legislative proposals

There are no pending legislative proposals on the above issues.

4.2 Equal pay

4.2.1 Implementation in national law

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

4.2.2 Definition in national law

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

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

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

The wording of Article 4(1) of the Act is positive ('Men and women are entitled to equal pay for the same work or work of equal value' (see 4.2.1 above). The prohibition of direct and indirect discrimination in pay results from the general prohibition of direct 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 (see 3.3.1 above). The problem is that, although included in Article 22(1) of the Constitution since 1975 and in legislation since 1984 (in the act transposing Directive 75/117/EEC), the notion of 'equal value' is unclear to litigants and judges, so

¹²¹ ILO Greece: Observation (CEACR), adopted 2012, 'Giving globalization a human face, International Labour Conference 101st Session, 2012', available at: [www.ilo.org/public/libdoc/ilo/P/09661/09661\(2012-101-1B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2012-101-1B).pdf); ILO Greece: Observation (CEACR), adopted 2013, 'Collective bargaining in the public service. A way forward, International Labour Conference 102nd Session', 2013, available at: [www.ilo.org/public/libdoc/ilo/P/09661/09661\(2013-102-1B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2013-102-1B).pdf).

¹²² ILO Greece, Observation (CEACR), adopted 2016, published 106th ILC session (2017), available at: www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3297841.

¹²³ ILO Greece: Observation (CEACR), International Labour Conference 106th ILC session, 2017, Greece, available at: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297841:NO.

that in most cases the comparison concerns the same work. Moreover, in spite of a preliminary CJEU ruling in the Greek case *Nikoloudi vs OTE*,¹²⁴ which concerned, *inter alia*, indirect discrimination, there is no case law on indirect discrimination in equal pay cases.

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

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

4.2.4 Related case law

There is no case law on the provisions of Article 4(1) Act 3896/2010 but rather in general on the equal pay principle enshrined in this provision and in the constitutional provision 22(1)(b) (see 2.1.1 above). Whereas the concept of pay is considered sufficiently clear in Greece, the notion of 'equal value' is still unclear to litigants and judges, although it has been included in Article 22(1) of the Constitution since 1975 and in legislation since 1984 (in the act transposing Directive 75/117/EEC), and in spite of a preliminary CJEU ruling in the Greek case *Nikoloudi vs OTE*,¹²⁵ which concerned, *inter alia*, indirect discrimination. This is shown by the absence of case law on indirect discrimination in equal pay cases. The existing case law on equal pay is limited to the following issues:

- Family allowances paid by the employer (landmark judgment).¹²⁶

¹²⁴ Court of Justice of the European Union (CJEU), C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*, 10 March 2005.

¹²⁵ Court of Justice of the European Union (CJEU), C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*, 10 March 2005.

¹²⁶ A landmark judgment on equal pay for men and women is SCPC (Full Court) No. 3/1995, which concerns the concept of pay and, in particular, family allowances paid by the employer. A female employee claimed the family allowance paid by her employer under the internal rules of the undertaking at a percentage of the basic salary. This was paid to all male employees who were married and had children without any further condition, but female employees were subjected to two conditions: that their husband be unable to support himself due to disability or illness and that the children be supported by the mother. The SCPC relied on the equal pay constitutional norm Article 22(1)(b) in the light of, and in conjunction with, ILO Convention No. 100 and Article 119 TEC (now Article 157 TFEU), as interpreted by ECJ case law, which required a levelling-up solution. It held that the concept of 'pay' includes family allowances paid by the employer, since they are paid in respect of the employment relationship. The SCC thus reversed its

- The refusal of an employer to allow female cleaners the possibility of being appointed as permanent members of staff.¹²⁷
- The non-recognition of unpaid parental leave as working time for the purpose of the calculation of the pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme through payment of both the employer's and the employee's contribution by the employee.¹²⁸
- Different age limits: supplementary compensation equal to nine months' wages paid by an employer in the private sector to female employees retiring after 25 years of service compared to male employees retiring after the completion of 30 years of service according to the provisions of a company collective agreement.¹²⁹
- Different age limits: the distribution of the capital of a group insurance scheme following the transfer of a bank and the refusal of its successor employer to continue this voluntary practice. The relevant capital was distributed to the employees according to their pensionable age, which according to the insurance contract was set for male employees at 65 years and for female employees at 60 years.¹³⁰

Moreover, there is no recourse to the Labour Inspectorate for gender equal pay issues. A review of the annual reports of the Labour Inspectorate over the last decade (2009-2017)

previous case law which had not found any discrimination in this respect, as it applied the breadwinner concept.

¹²⁷ This case led to CJEU judgment *Nikoloudi* (C-196/02) which dealt with the exclusion of part-time cleaners of the Greek telecommunications company, Organismos Tilepikinonion Ellados (OTE), from the possibility of being appointed as permanent members of staff by a collective agreement provision that was ostensibly neutral as to the worker's sex. The CJEU ruled that, to the extent that this exclusion affected a category of workers which, under national rules with the force of law, was composed exclusively of women, it constitutes direct discrimination on grounds of sex within the meaning of Directive 76/207/EEC. According to the CJEU, 'should the premise that only part-time female cleaners had been denied the possibility of being appointed as an established member of staff prove incorrect, and should a much higher percentage of women than men have been affected by the provisions of the specific collective agreements, the exclusion of part-time temporary staff from being appointed as established staff, brought about by those agreements, would constitute indirect discrimination'. After the CJEU judgment *Nikoloudi*, the *Amaroussion* Justice of the Peace (Ειρηνοδίκηio Αμαρουσίου), in its judgment No. 251/2006, found that the domestic applicant, Ms Nikoloudi, had been the victim of sex-based discrimination in pay and awarded her the pay differential she had claimed. The employer submitted an appeal, which has not been heard.

¹²⁸ Athens CA No. 3693/2018 concerned the non-recognition of unpaid parental leave (one year, five months and one day) of a female private-bank employee as working time for the purpose of the calculation of pay (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme through payment of both the employer's and the employee's contribution by the employee. Although it did not explicitly identify it as direct discrimination, the Court of Appeal found that this practice was contrary to Act 3896/2010 and Article 21(1) Constitution protecting maternity and awarded to the female employee EUR 6 118.12 for loss of pay for the last 5.5 years of service.

¹²⁹ SCPC (Civil section) No. 214/2017: This case concerned a supplementary compensation equal to nine months' wages paid by an employer in the private sector (Greek telecommunications company – OTE) to female employees retiring after 25 years of service whereas the compensation was only paid to male employees retiring after the completion of 30 years of service, according to the provisions of an enterprise collective agreement. The SCC found that this compensation falls within the concept of 'pay'. Applying Articles 4(1) and (2) (equality before the law and gender equality) and 116 of the Constitution and Act 3896/2010 transposing Directive 2006/54/EC, the SCC found that the above-mentioned discriminatory provision to the detriment of male employees should be deemed to have been abolished as contrary to Article 30(2) Act 3896/2010 and that the more favourable provision for female employees applied to male employees as well (levelling-up approach). Consequently, the compensation in question was awarded to male employees retiring after 25 years of service (as was provided for women).

¹³⁰ In contrast to SCPC (Civil section) No. 214/2017, SCPC (Civil section) judgments Nos. 603/2017 and 604/2017 failed to apply the levelling-up norm. These cases concerned the distribution of the capital of a group insurance scheme following the transfer of a bank and the refusal of its successor employer to continue this voluntary practice. The relevant capital was distributed to the employees according to their pensionable age, which according to the insurance contract was set for male employees at 65 years and for female employees at 60 years. The SCPC found that the distributed capital fell within the concept of 'pay'. However, according to the Court, the above-mentioned discriminatory provision of the insurance contract, which was to the detriment of women as it provided a lower pensionable age for them, should be deemed abolished as contrary to the constitutional norms of Articles 4(1) and (2) (equality before the law, gender equality), 22(1b) (equal pay) and 116, Article 119 TEC and Act 1414/1984; consequently, it could not be applied in favour of male employees (levelling-down approach).

reveals that the only equal pay case ever brought was connected to maternity protection.¹³¹

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

4.2.5 Permissibility of pay differences

Neither the Constitution nor specific legislation allows any derogation from the equal pay principle; therefore, any justification is excluded. However, differences in the legal nature of the employment relationship (e.g. one worker is employed under a private-law contract, while another is a civil servant) or the wage-fixing instrument (e.g. one worker is covered by a collective agreement (CA), another is not, or they are covered by different CAs) are often used as justifications, even within the same company or service where the workers are employed by the same employer and perform the same work.¹³² 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.¹³³ The absence of (or narrow) criteria for comparable work is also a justification. More generally, there is a tendency to justify pay differences on budgetary grounds and by mere generalisations, as was shown in the CJEU *Nikoloudi* judgment which concerned, *inter alia*, indirect discrimination in pay.¹³⁴

4.2.6 Requirement for comparators

Neither Article 22(1)(b) of the Constitution nor the pertinent legislation explicitly require a comparator. However, Article 2(a) of Act 3896/2010 transposing Directive 2016/54/EC, which copies the definition of direct discrimination from the Directive, may be considered as implicitly requiring a comparator. Case law relying on the broader constitutional principle of equal pay requires such a comparator in the same undertaking or service or within the framework of the same wage-fixing instrument (e.g. CA or a statutory or administrative provision).¹³⁵

The provisions copying the definition of direct discrimination from the directives allow a hypothetical comparator. This presents difficulties in practice because, according to case law, the hypothetical comparator must perform or have performed the same work.¹³⁶

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

¹³¹ This case concerned direct sex discrimination due to a detrimental pay modification suffered by a female employee during her maternity leave. An administrative fine of EUR 1 500 was imposed by the Labour Inspectorate. See Greek Labour Inspection, "Εκθεση πεπραγμένων ΣΕΠΕ έτους 2013" (Annual report 2013), available at: www.ypakp.gr/uploads/docs/7702.pdf.

¹³² SCPC (Civil Section) Nos 3/1997 (Plen.), 288/2003, 453/2002 (these are not gender cases).

¹³³ Court of Justice of the European Union (CJEU), C-43/75, *Defrenne v. Sabena (Defrenne II)*, 8 April, § 22; CJEU, C-320/00, *Lawrence and Others v. Regent Office Care Ltd*, 17 September 2002, § 18.

¹³⁴ Court of Justice of the European Union (CJEU), C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*, 10 March 2005.

¹³⁵ See e.g. SCPC (Civil Section) Nos 257-258/2014, 15/2013.

¹³⁶ See e.g. SCPC (Civil Section) No 31/2015.

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'.¹³⁷

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

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

4.2.8 Other relevant rules or policies

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

4.2.9 Wage transparency

The lack of pay transparency is a fundamental issue that is not addressed by the legislation and case law. However, the Greek Authority for the Protection of Personal Data (APPD) imposed a EUR 70 000 fine on a private firm for refusing to provide data to an employee on the comparative evaluation of its employees. The employee had requested these data in order to be able to exercise his employment rights. The APPD relied on the principles of equal treatment and the prohibition of discrimination in employment as enshrined in Act 3304/2005 transposing Directives 2000/43/EC and 2000/78/EC.¹³⁸ Although this case did not specifically concern equal pay, it is obvious that the employee's evaluation was also reflected in his pay. However, it appears that this landmark APPD decision has not been followed by others explicitly addressing the issue of wage transparency.

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

The measures proposed in Recommendation 2014/124 have not been implemented either by legislation or by collective agreements. This lack of transparency, together with the lack of revision of traditional, felt-fair (i.e. classifications that have been traditionally considered fair due to stereotypes, without any justification), non-transparent job classifications to the detriment of formerly 'female' (and still female-dominated) categories, render the legal provisions on equal pay to a great extent ineffective.

4.2.11 Other measures, tools or procedures

The policy debate has not been influenced by Recommendation 2014/124. There are no proposed pay transparency measures pending in the Parliamentary.

4.3 Access to work, working conditions and dismissal

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

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

¹³⁷ See e.g. SCPC (Civil Section) Nos 390/2011, 82/2013 (these are not gender cases).

¹³⁸ Greek Authority for the Protection of Personal Data (APPD), Decision 1/2008, available at: www.dpa.gr.

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

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

Employment case law defines a 'worker' as someone who has a contract or relationship of *subordinate employment*, i.e. performs remunerated work, for a fixed or indefinite period of time, irrespective of the result, subject to the employer's instructions and control.¹³⁹ This definition is for the purposes of labour law, but the scope of Act 3896/ 2010 transposing Directive 2006/54/EC is wider. Case law also defines the other forms of employment contracts or relationships covered by this Act, such as a contract or relationship of '*independent employment*' (remunerated work for a fixed or indefinite period of time, without subordination);¹⁴⁰ 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.¹⁴¹ People exercising *liberal professions* (e.g. doctors, practising lawyers, engineers etc.) may be employed in any of the above forms of employment. Practising lawyers may only be employed on a *contract of remunerated mandate*, under which they offer legal advice and/or represent clients in court for monthly or yearly wages without subordination.¹⁴² 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.¹⁴³ The definitions of further contracts or relationships covered by Act 3896/2010 seem to cover the personal scope deriving from Article 14 of Directive 2006/54/EC.

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

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

¹³⁹ See e.g. SCPC (Civil Section) Nos 1674/2010, 433/2011.

¹⁴⁰ SCPC (Civil Section) Nos 229/2011, 433/2011.

¹⁴¹ SCPC (Civil Section) Nos 1674/2010, 223/2011, 77/2011, 433/2011.

¹⁴² SCPC (Civil Section) Nos. 302/2011, 229/2011.

¹⁴³ Court of Justice of the European Union (CJEU), C-256/01, *Allonby v. Accrington & Rossendale College*, 13 January 2004, § § 63, 65-67.

14(1) of the Directive in a more detailed way. Article 11(1) prohibits 'any kind of direct or indirect discrimination on grounds of sex or *family status*, regarding conditions of access to salaried or non-salaried [i.e. not subordinate] employment and professional life in general, including the criteria for selection and conditions of hiring in all sectors of activity and levels of professional hierarchy'. Article 11(2) also prohibits 'any reference to sex or *family status* or the use of criteria or features which result in direct or indirect discrimination on grounds of sex, according to Article 2 [definitions of discrimination] in *publications, advertisements, calls for candidacies, circulars and internal regulations regarding the selection of persons for filling work vacancies, for professional education or training or for professional licences*'. Moreover, Article 3(1) of Act 3896/2010 prohibits 'any form of direct or indirect discrimination on grounds of sex, by reference in particular to *family status* [...]'. These provisions have been copied from the Acts transposing Directives 75/117/EEC, 76/207/EEC and 2002/73/EC.

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

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

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

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

The Civil Section of the SCPC has held that the protection against dismissals of women connected to their state of pregnancy and/or maternity also concerns a fixed-term contract but does not extend beyond its expiry,¹⁴⁴ which is contrary to CJEU case law.¹⁴⁵

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

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

4.3.6 Particular difficulties

It is not clear whether there are particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc., as case law applying the gender equality legislation is scarce and does not cover the whole scope of the Directive or of the transposing legislation. It should, however, be recalled that there are difficulties in certain areas which have their source in case law, for example regarding the notion of indirect discrimination

¹⁴⁴ SCPC (Civil Section) Nos 107/2019, 1341/2005, 317/2011.

¹⁴⁵ 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.

in access to military and semi-military corps (see 3.4.2 above), or discrimination on grounds of pregnancy and maternity against women on a fixed-term contract who are not protected beyond its expiry (see 4.3.4 above). There are also difficulties that have their source in specific legislation, for example regarding direct discrimination on grounds of pregnancy and maternity against fixed-term workers in the public sector (see 5.3.8 below).

Discrimination against women regarding access to employment and working conditions is widespread and growing. In its 2016 Observations on the implementation of ILO Convention No. 111 (discrimination (employment and occupation)), the CEACR deplores that no impact assessment of the austerity measures on women's working conditions has been carried out, given that there is 'a rise in discriminatory practices, especially on 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'.¹⁴⁶

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

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

4.4 Evaluation of implementation

4.4.1 Equal pay

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

4.4.2. Equal treatment

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

National case law does not provide for sufficient protection against the non-renewal of a fixed-term contract for pregnant women or women in maternity leave.

4.5 Remaining issues

There are no other remaining issues regarding national law on equal pay and/or equal treatment at work that have not been discussed so far.

¹⁴⁶ ILO Observation (CEACR), *International Labour Conference 106th session (2017)*, Convention No. 111, available at: www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3297855.

5 Pregnancy, maternity, and leave related to work-life balance for workers (Directive 92/85, relevant provisions of Directives 2006/54 and 2010/18)¹⁴⁷

5.1 General (legal) context

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

On the occasion of the recent CJEU judgment of 18 February 2018 in the case C-103/16, *Porras Guisado*,¹⁴⁸ an interesting survey was published in legal journals and reviews, dealing with aspects of Greek legislation and case law that do not comply with the EU *acquis*.¹⁴⁹ On the one hand, the author of the survey makes reference to the distinction made by the CJEU in the said judgment between protection against dismissal itself, as a preventative measure, and protection, by way of compensation, from the consequences of dismissal.¹⁵⁰ The author finds that Greek legislation offers only protection from the consequences of dismissal in a reparatory way: if there is no serious ground thereto, the dismissal is judicially declared null and void, i.e. it is deemed as never having happened; the worker retains her post (no reinstatement is needed) and is awarded full back pay (the whole pay which she would have received had she not been dismissed), plus legal interest and possibly moral damages.

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

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

¹⁴⁷ Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, European network of legal experts in gender equality and non-discrimination, available at www.equalitylaw.eu/downloads/4808-family-leave-enforcement-of-the-protection-against-dismissal-and-unfavourable-treatment-pdf-962-kb; McColgan, A. (2015), *Measures to address the challenges of work-life balance in the EU Member States, Iceland, Liechtenstein and Norway*, European network of legal experts in gender equality and non-discrimination, available at: www.equalitylaw.eu/downloads/3631-reconciliation.

¹⁴⁸ Court of Justice of the European Union (CJEU), C-1033/16, *Jessica Porras Guisado v Bankia SA and Others*, 22 February 2018.

¹⁴⁹ Gavalas, N. (2018), 'Ζητήματα προστασίας από την απόλυση λόγω μητρότητας στο δίκαιο της Ε.Ε. και σοβαρά κενά ενσωμάτωσης της προστασίας στο ελληνικό εργατικό δίκαιο – Με αφορμή την απόφαση του Δ.Ε.Ε. της 18.2.2018 στην υπόθεση C-103/16, *Porras Guisado*' (Issues of protection against dismissal due to maternity in EU law and the significant lack of integration of the protection into Greek labour law – On the occasion of the CJEU judgment of 18 February 2018 in case C-103/16, *Porras Guisado*), *Επιθεώρησης Εργατικού Δικαίου (ΕΕργΔ)*, (Labour Law Review), pp. 395-411 et s.

¹⁵⁰ CJEU C-1033/16, *Jessica Porras Guisado v Bankia SA and Others*, 22 February 2018; § 59 'Article 10 of Directive 92/85 thus makes an express distinction between protection against dismissal itself, as a preventative measure, and therefore, proper implementation of that article requires Member States to establish such double protection.' § 65 'in order to ensure the faithful transposition of Article 10 of Directive 92/85, and the protection of pregnant workers and workers who have recently given birth or are breastfeeding from the risk of dismissal, Member States cannot confine themselves to providing, by way of reparation, only for that dismissal to be declared void when it is not justified'. § 64 'In view of the risk to the physical and mental state of pregnant workers, workers who have recently given birth or who are breastfeeding, protection by way of reparation, even if it leads to the reintegration of the worker dismissed and the payment of wages not received because of dismissal, cannot replace protection by way of prevention.'

wording 'serious grounds', in the sense of Article 672 CC (applying in the termination of fixed-term employment relationships). According to the Greek case law, there is a 'serious ground' when one or more facts, objectively and according to good faith, make the continuation of the employment relationship unbearable for the employer, *irrespective of any fault of the worker*, the particular circumstances being taken into account. Examples include poor performance of the worker's duties or non-compliance with the employer's instructions, provided that this is not due to her situation¹⁵¹ or the closing down of the business.¹⁵²

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

5.1.2 Other issues

A very interesting research project on 'Work-life balance in the context of changing families and labour market in Greece' was carried out in 2016 by the National Centre for Social Research, including a quantitative and a qualitative study.¹⁵³ The qualitative research showed that the relationship between work and family life has been significantly influenced by the new conditions imposed by the recent economic crisis. Seven years after the advent of the crisis (2009-2016), Greek society has undergone a variety of changes which are reflected in income, employment, state care services, and benefits and allowances affecting those working in both the public and the private sector. In these circumstances, the relationship between work and family life, as shown by the project's case studies, has suffered from the successive shocks of social transformations taking place during the crisis. This is especially true for women professionals. In addition, key dimensions of gender inequality which existed even before the recent economic crisis have also been prevalent.

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

¹⁵¹ SCPC (Civil Section) Nos 308/2011, 622/2008.

¹⁵² Thessaloniki CA 47/1991.

¹⁵³ Thanopoulou, M., Tsiganou, J. (2016), *Gender in science without numbers – From academia to work-life balance, Main results of case studies*, Εθνικό Κέντρο Κοινωνικών Ερευνών (National Centre for Social Research), Athens.

5.1.3 Overview of national acts on work-life balance issues

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

5.1.4 Political and societal debate and pending legislative proposals

There has been no political and societal debate and no pending legislative proposals on work-life balance issues, neither generally nor in the light of the new work-life balance Directive recently adopted.¹⁵⁴

5.2 Pregnancy and maternity protection

5.2.1 Definition in national law

Article 2 of Decree 176/1997 transposing Directive 92/85/EEC, as amended by Decree 41/2003,¹⁵⁵ defines the concepts of a pregnant worker, a worker who has recently given birth and a worker who is breastfeeding. It reads:

- Pregnant worker: 'Any working woman who is pregnant and who has informed her employer of her condition, *provided that this is required for taking a positive measure in her favour.*' The provision of pregnant worker copies the Directive, but the last phrase extends the definition, in line with CJEU case law and Greek case law which does not require disclosure of the pregnancy as a condition of protection.¹⁵⁶
- Worker who has recently given birth: 'Any working woman who is at the stage after confinement up to a period of two months and who has informed her employer of her condition, *provided that this is required for taking a positive measure in her favour.*'
- Breastfeeding worker: 'Any working woman who is breastfeeding for a period up to one year after confinement and who has informed her employer of her condition, *provided that this is required for taking a positive measure in her favour.*'

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

5.2.2 Obligation to inform the employer

According to the Greek case law, a pregnant worker does not have to inform her employer of her condition, except in the case of positive measures. In view of this, if an employer dismisses a pregnant worker without being aware of her condition, once informed of the pregnancy the employer must adopt measures in order to cure the nullity of the dismissal of the pregnant worker (i.e. reinstatement).¹⁵⁷

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

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

¹⁵⁴ After the cut-off date of this report, Directive (EU) 2019/1158/EU of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU was adopted.

¹⁵⁵ Decree 41/2003, OJ A 44/21.02.2003.

¹⁵⁶ SCPC (Civil Section) Nos 954/2018, 433/2012; Athens CA 644/2017.

¹⁵⁷ SCPC (Civil Section) No 954/2018.

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

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

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

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

5.2.6 Prohibition of night work

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

5.2.7 Case law on the prohibition of night work

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

5.2.8 Prohibition of dismissal

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

Article 10 of Decree 176/97 transposing Directive 92/85/EEC prohibits the dismissal of a woman during pregnancy and for a certain period thereafter by reference to Article 15 (1), (3) of Act 1483/1984. The latter, as subsequently replaced by Article 36(1) of Act 3996/2011¹⁵⁸ and amended by Article 46 of Act 4488/2017,¹⁵⁹ 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-

¹⁵⁸ Greece, Act 3996/2011, OJ A 170/5.08.2011.

¹⁵⁹ Greece, Act 4488/2017, OJ A 137/13.09.2017.

month period or the longer period provided by this provision, as well as with regard to a new employer who hires the woman, and until the above periods are completed. '3. The protection against the termination of the employment relationship, according to the provisions of the present Article, covers a female worker who adopts a child up to the age of 6, beginning from the placement of the child in the family; it also covers female workers in the case of surrogacy, either as commissioning mothers, beginning with the birth of the child, or as surrogate mothers.'

These provisions apply to the private and public sectors (Article 1(2) of Decree 176/97), even in the case of an invalid employment relationship.¹⁶⁰ Civil servants and permanent employees of legal persons governed by public law and local authorities also enjoy constitutional guarantees against dismissal, downgrading and transfers (Article 103 of the Constitution).

These provisions exceed the Directive regarding the length of the prohibition of dismissal and the designation of the employer who has such a duty. The Civil Section of the SCPC has held that a dismissal three days after the 18-month protection period is not abusive *per se*.¹⁶¹ 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.¹⁶² It also held, however, that the protection also concerns a fixed-term contract, but does not extend beyond its expiry,¹⁶³ which is contrary to CJEU case law.¹⁶⁴

Dismissal is permitted in exceptional cases as defined in Article 10(1) of Directive 92/85/EEC, for a 'serious ground', which 'may in no case be the possible diminution of the pregnant worker's output due to pregnancy' (Article 15 of Act 1483/1984 above). The application of the above provision is subject to strict judicial scrutiny. According to case law, there is a 'serious ground' when one or more facts, objectively and according to good faith, make the continuation of the employment relationship untenable for the employer, irrespective of any fault of the worker, the particular circumstances being taken into account. For example, poor performance of the worker's duties or non-compliance with the employer's instructions, provided that this is not due to her condition,¹⁶⁵ a criminal offence committed by the worker concerned against the employer (e.g. theft of merchandise)¹⁶⁶ or the closing down of the business.¹⁶⁷ The abolishment of the work post of the pregnant woman does not constitute such a serious ground.¹⁶⁸ (see 5.1.1 above)

5.2.9 Redundancy and payment during maternity leave

When an employee is made redundant during her maternity leave, the payment for maternity leave ceases. The Manpower Employment Organisation (OAED) pays a monthly unemployment allowance,¹⁶⁹ which is lower than the maternity allowance and is a fixed amount for all those unemployed (EUR 360, plus EUR 36 for each dependent family

¹⁶⁰ Athens CA No 644/2017.

¹⁶¹ SCPC (Civil Section) No 179/2016.

¹⁶² SCPC (Civil Section) No 1591/2010.

¹⁶³ SCPC (Civil Section) Nos 107/2019, 1341/2005, 317/2011.

¹⁶⁴ Court of Justice of the European Union (CJEU), C-109/00, *Tele Danmark A/S v. Handels- og Kontorfunktionærernes Forbund i Danmark (HK)*, 4 October 2001; CJEU, C-438/99, *Maria Luisa Jiménez Melgar v. Ayuntamiento de Los Barrios*, 4 October 2001.

¹⁶⁵ SCPC (Civil Section) Nos 308/2011, 622/2008.

¹⁶⁶ SCPC (Civil Section) No 1340/2018.

¹⁶⁷ Thessaloniki CA No 47/1991.

¹⁶⁸ SCPC (Civil Section) No 954/2018.

¹⁶⁹ Greek Ombudsman (2015) Σύνοψη διαμεσολάβησης (Mediation Summary), www.synigoros.gr/resources/docs/150615-sinopsi.pdf; these women received the allowance thanks to the Ombudsman's intervention.

member),¹⁷⁰ which is well below the poverty threshold for Greece (about EUR 580).¹⁷¹ When a dismissal is judicially declared null and void, it is deemed as never having happened: the worker retains her post (no reinstatement is needed) and is awarded full back pay (the whole pay which she would have received had she not been dismissed), plus legal interest and possibly moral damages¹⁷² (see also 5.1.1 above).

5.2.10 Employer's obligation to substantiate a dismissal

In cases of dismissal from the beginning of pregnancy and for a period of 18 months after the birth of the child the employer is obliged to indicate substantiated grounds for the dismissal in writing (see Article 10(2) of Directive 92/85/EEC). More specifically, Article 10 of Decree 176/97 reads: 'the employer must duly justify the termination in writing and notify it to the Labour Inspectorate'. In the absence of a justification in writing at the time of the termination, the termination will be null and void.¹⁷³ In a case where no justification was stated on the termination notice and the justification was given by the employer for the first time 20 days after the termination, the Ombudsman found that the termination remained null and void and the Labour Inspectorate imposed an administrative fine.¹⁷⁴ The Directive is thus exceeded regarding both the protection period and the sanction for the non-observance thereof. In the private sector, however, as soon as employers become aware of a woman's pregnancy, they often compel her to resign by adverse treatment or harassment, for example, by imposing a prejudicial modification of the woman's working conditions (e.g. a modification of working time or a change of workplace). Alternatively, the employer may dismiss the pregnant worker without notifying her of the dismissal, while declaring to the Ministry of Labour and the Manpower Employment Organisation (OAED), which is responsible for registering unemployed and paying unemployment benefits, that the woman has resigned of her own volition.¹⁷⁵

The above examples were reported by the Ombudsman following complaints by wronged women. Following the Ombudsman's relevant proposal, Article 38 Act 4488/2017 was passed; it provides in gender neutral language that when an employee resigns of his/her own volition, the employer must declare it electronically to the OAED, submitting the relevant written document signed by the employee as well within four days of the date of the resignation. If the employee refuses to sign it, a written declaration must be served by the employer to the employee within four days of the date of the resignation and must subsequently be submitted electronically to OAED the next working day. In both cases, if the employer does not comply in a timely manner with the above requirements, the employment contract is deemed to have been terminated by the employer. However, the Ombudsman expresses reservation as to the effectiveness of this new provision.¹⁷⁶

¹⁷⁰ Manpower Employment Organisation (OAED), <http://www.oaed.gr>.

¹⁷¹ European Committee of Social Rights, *GENOP-DEI and ADEDY v. Greece*, Complaint No. 66/2011, 23 May 2012, invoking Eurostat data, available at: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-66-2011-general-federation-of-employees-of-the-national-electric-power-corporation-genop-dei-confederation-of-greek-civil-servants-trade-unions-ade?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Furope-an-social-charter%2Fprocessed-complaints%3Fp_p_id%3D101_INSTANCE_5GEFkJmH2bYG%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1.

¹⁷² SCPC (Civil Section) No 797/2013: the serious ground invoked proved untrue; the dismissal was null and void.

¹⁷³ Dodecanese CA No 43/2014.

¹⁷⁴ Greek Ombudsman (2017), 'Σύνοψη διαμεσολάβησης – Πρόστιμο σε επιχείρηση για απόλυση εγκύου μετά από εισήγηση του Συνηγόρου του Πολίτη' (Summary of Intervention – Fine to an undertaking for dismissal of a pregnant worker upon proposal of the Ombudsman), available at: www.synigoros.gr/resources/docs/20171010-synopsi-kim.pdf.

¹⁷⁵ Greek Ombudsman (2018), 'Ιση μεταχείριση – Ετήσια έκθεση 2018' (Equal treatment– Annual report 2018), p. 108, available at: https://www.synigoros.gr/resources/ee_im_2018_el.pdf; this was also the case with four complaints to the Labour Inspectorate in 2016, according to the L.I. Annual Report 2016: Greek Labour Inspectorate (2017), 'Εκθεση πεπραγμένων ΣΕΠΕ έτους 2016' (Annual report of the year 2016), available at: www.ypakp.gr/uploads/docs/11663.pdf.

¹⁷⁶ Greek Ombudsman (2018), 'Ετήσια Έκθεση 2017' (Annual report 2017), available at: www.synigoros.gr/resources/ee2017-p00.pdf.

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

The Ombudsman notes that many of the cases in the private sector are settled following the mediation of its services. Where the employer does not comply with their recommendations, the Ombudsman requests that the Labour Inspectorate impose a fine.¹⁷⁷ However, the complaints received by the Ombudsman are only the tip of the iceberg. Moreover, such cases do not seem to have reached the courts, as the employer's behaviour is very difficult to prove, while the spectre of unemployment, which is much higher for women than for men, in conjunction with rising litigation costs and scarcity of legal aid, make women reluctant to claim their rights (see also 11.3.1 and 11.3.2 below). The correct transposition of the procedural provisions of the directives, in particular regarding the standing of legal entities and the burden of proof (see 11.3.1 and 11.5 below) and their incorporation in the procedural codes would encourage wronged women to stand up for their rights, but this chronic problem remains unsolved.

5.2.11 Case law on the protection against dismissal

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

5.3 Maternity leave

5.3.1 Length

In the private sector maternity leave is 17 weeks' paid leave (eight weeks before and nine weeks after delivery).¹⁷⁸ In the case of surrogacy, the surrogate mother is entitled to the

¹⁷⁷ Greek Ombudsman (2015), 'Ετήσια Έκθεση 2014' (Annual report 2014), p. 138, available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf; Greek Ombudsman (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2016' (*Gender and employment relationships* Special Report 2016), pp.125-126, available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf.

¹⁷⁸ 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.

full maternity leave (17 weeks), whereas the commissioning mother is entitled to the post-delivery part (nine weeks), as prescribed in Article 44 of Act 4488/2017.¹⁷⁹

A further 'special' paid leave is provided for in the private sector for six months after the end of the above-mentioned maternity leave (i.e. following the birth of the child) or after the agreed leave replacing reduced working hours (see 5.5.4 below).¹⁸⁰ This 'special leave' is independent of 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.¹⁸¹

In the public sector maternity leave is five months (plus one more month for each child beyond the first one, in the case of multiple births) fully paid, without any previous service requirement and without any upper limit,¹⁸² for civil servants and the permanent employees of legal persons governed by public law and local authorities (Article 2 CSC) and for employees of local authorities,¹⁸³ as well as for people employed by these employers on a contract of indefinite duration.¹⁸⁴

Employees working for these employers on fixed-term contracts receive only the less favourable private sector maternity leave. This is the case for, *inter alia*, substitute state 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 5.3.8 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/EC, as well as discrimination against fixed-term workers in comparison with i workers and civil servants on contracts of indefinite duration, which is prohibited by Directive 1999/70/EC.¹⁸⁵ In view of CJEU case law,¹⁸⁶ the fact that the maternity leave provided under Greek law is greater than the maternity leave provided by Directive 92/85/EEC as a minimum cannot be considered to exclude the application of these Directives (see 5.3.7 below).

Female judges,¹⁸⁷ *φεµαλε* permanent state school teachers¹⁸⁸ and female police officers¹⁸⁹ are granted the CSC pregnancy and maternity leave. Female military personnel receive pregnancy leave of five months, but only until the date of delivery, while parental leave (for both parents) starts immediately thereafter.¹⁹⁰ 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.¹⁹¹ Moreover, the right to maternity leave must not be affected or substituted by the right to parental leave which serves a different purpose.¹⁹²

¹⁷⁹ Greece, Act 4488/2017, OJ A 137/13.09.2017.

¹⁸⁰ Article 142 of Act 3655/2008 OJ A 58/03.04.2008, as amended by Article 36 of Act 3996/2011, OJ A 170/05.08.2011.

¹⁸¹ Article 44(3) Act 4488/2017.

¹⁸² Article 52(1) CSC, as amended by Article 18 of Act 3801/2009.

¹⁸³ Article 59 Act 3584/2007, OJ A 143/28.6.2007.

¹⁸⁴ Article 4(5) Act 2839/2000, OJ A 196/12.09.2000.

¹⁸⁵ 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.

¹⁸⁶ CJEU, Case C-284/02 Sass [2004] ECR I-11143 concerning maternity leave longer than 14 weeks.

¹⁸⁷ Article 44(20) Act 1756/1988, OJ A 35/25.02.1988 (Code on Court Regulation and Judges' Status), as amended by Article 89 Act 4055/2012, OJ A 51/12.03.2012.

¹⁸⁸ Article 53 Act 2721/1999, OJ A 112/03.06.1999.

¹⁸⁹ Articles 10 and 10A Decree 27/1986 OJ A 11/10.02.1986, as amended by Article 2 Decree 66/2000, OJ A 57/09.03.2000, as amended by Article 24 P.D. 75/2016, OJ A 138/01.08.2016.

¹⁹⁰ Articles 8-9 of Ministerial Decision F.400/32/82424/S.343, OJ B 1139/03.06.2011; Athens ACA No 921/2010.

¹⁹¹ CJEU, C-320/01, *Wiebke Busch v Klinikum Neustadt GmbH & Co. Betriebs-KG*, 27 February 2003, § 42; CJEU, C-421/92, *Gabriele Habermann-Beltermann v Arbeiterwohlfahrt*, 5 May 1994, § 21; CJEU, C-32/93, *Carole Louise Webb v EMO Air Cargo (UK) Ltd.*, 14 July 1994, § 20.

¹⁹² CJEU, C-116/06, *Sari Kiiski v Tampereen kaupunki*, 20 September 2007, § 56; CJEU, C-519/03, *Commission of the European Communities v Grand Duchy of Luxemburg*, 14 April 2005, §§ 32-33.

5.3.2 Obligatory maternity leave

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

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

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

5.3.4 Legal protection of rights ensuing from the employment contract

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

5.3.5 Level of pay or allowance

The maternity allowance 'must guarantee an income at least equivalent to that which the worker would receive in the event of absence on sick leave' (Article 11(4) of Decree 176/1997).¹⁹³ 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.¹⁹⁴ For the 'special' six-month leave (see 5.3.1 above) the OAED (see 5.2.9 above) pays the legal minimum wage. The above do not concern the public sector where maternity leave is fully paid (Article 52(1) CSC).

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.¹⁹⁵ This amount is supplemented by the IKA allowance¹⁹⁶ and an allowance paid by the OAED.¹⁹⁷ This way, the workers who are affiliated to both schemes receive their full pay throughout their maternity leave, provided that their monthly wages do not exceed the maximum amount taken into account by the IKA for calculating pensions (currently EUR 2 400).¹⁹⁸

5.3.6 Additional statutory maternity benefits

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

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

¹⁹³ No amounts can be given because they differ considerably according to the employee's wages. However, in 2018 the minimum wage as set by law was EUR 586 per month.

¹⁹⁴ Article 39 Act 1846/1951 on the IKA, OJ A 179/21.06.1951.

¹⁹⁵ Articles 657-658 Civil Code (absence due to a serious reason, such as sickness or maternity leave); Piraeus CA No 917/1996.

¹⁹⁶ Article 11 of Act 2874/2000, OJ A 286/29.10.2000, which sanctions Clause 7 of NGCA 2000.

¹⁹⁷ Decree 221/1997, OJ A 168/27.02.1997.

¹⁹⁸ As wages and pensions have been frozen since 2009, this maximum amount remains the same (Ministry of Labour Circular 10/09.02.2011, *Δελτίον Εργατικής Νομοθεσίας (ΔΕΝ)* (*Bulletin of Labour Legislation*) 2011, pp. 446 et s.

Conditions for eligibility for maternity benefits are provided for in Article 11(4) and (5) of Decree 176/1997 transposing Directive 92/85/EEC. According to the above provision, which repeats Article 11(4) of Directive 92/85/EEC, if the entitlement to the maternity allowance paid during maternity leave is made conditional upon a period of previous employment, this period must not exceed 12 months. However, social security legislation makes the payment of the maternity allowance conditional on the completion of 200 working days during the two years preceding the commencement of maternity leave.¹⁹⁹ This constitutes a violation of Article 11(4) of Directive 92/85/EEC. Moreover, the granting of maternity allowance is subject to stricter conditions than the granting of sickness allowance (the granting of the latter is subject to 120 working days in the year preceding the notification of the sickness).²⁰⁰ This constitutes a violation of Article 11(3) of Directive 92/85/EEC, which requires that the maternity allowance guarantee income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health. The fact that Greek law foresees a maternity leave that exceeds the minimum EU law requirements in length and pay is irrelevant. The CJEU has also condemned adverse treatment related to forms of leave granted by national legislation which exceeded minimum EU law requirements.²⁰¹

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

Article 16 of Act 3896/2010 transposing Directive 2006/54/EC guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54/EC). This article copies the directive.²⁰² However, in the private sector this requirement frequently seems to be disregarded in practice. Women returning from maternity leave also complained to the Ombudsman about the behaviour of employers, as mentioned in Section 5.2.10 above. Moreover, some employers, during the woman's absence on maternity leave, transfer their undertaking to another employer, move away from their premises and disappear, without informing the female worker.²⁰³ However, the Ombudsman sees only the tip of the iceberg and such cases do not seem to have reached the courts, for the reasons mentioned in Section 5.2.10 above (see also 11.3 below).

There are specific problems of discrimination on the ground of maternity against substitute state school teachers. As already mentioned (see 5.3.1 above), as these teachers are fixed-term state employees, they are not granted the CSC maternity leave which their permanent colleagues receive, but are granted only private sector maternity leave. Moreover, in contrast to permanent teachers, where they experience pregnancy-related illness, substitute teachers are not covered by Article 52(3) CSC, which provides that 'a pregnant employee who needs a specific therapy, after the exhaustion of the paid sick leave, is granted paid pregnancy leave, following a certificate from her obstetrician and the director of a gynaecological clinic of a public hospital'.

Substitute teachers, like all other fixed-term state employees, are entitled to the paid sick leave of a maximum of 15 days per year provided by Articles 657-658 CC for private

¹⁹⁹ Article 39 of Act 1846/1951 on IKA, OJ A 179/21.06.1951.

²⁰⁰ Article 31(2) of Act 1846/1951, OJ A 179/21.06.1951, as amended by Article 36(4) Act 3996/2011, OJ A 170/05.08.2011.

²⁰¹ See e.g. CJEU, C-284/02, *Land Brandenburg v Ursula Sass*, 18 November 2004; concerning maternity leave longer than 14 weeks.

²⁰² In SLC Opinion 5/2017 it was upheld that the right to return to the same or an equivalent job applies to the public sector as well.

²⁰³ Greek Ombudsman (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships – Special report 2015), available at: <https://www.synigoros.gr/resources/docs/ee2015-13-fylo--2.pdf>; Greek Ombudsman (2015), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2014' (Gender and employment relationships – Special Report 2014), pp. 138-141, available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf.

sector employees, which covers illness due to any cause whatsoever, including pregnancy-related illness, and is independent of maternity leave.²⁰⁴ However, if they have exhausted the 15-day sick leave due to another illness during the same year, they are not entitled to wages for pregnancy-related illness.²⁰⁵ Instead they are entitled only to the IKA sickness allowance, which does not correspond to full pay.²⁰⁶

In the author's view, the non-autonomous entitlement to pay for absence due to pregnancy-related illness beyond maternity leave and sickness leave constitutes direct discrimination against substitute teachers, as compared to permanent teachers, on the ground of maternity, which conflicts with Article 2(2)(c) of Directive 2006/54/EC, as well as direct discrimination on the ground of sex with respect to employment conditions and pay, which conflicts with Article 14(1)(c) of the same Directive. This unfavourable treatment also means direct discrimination against substitute teachers as fixed-term employees in comparison to permanent teachers, which conflicts with Directive 1999/70/EC.²⁰⁷ Therefore, substitute teachers suffer multiple discrimination regarding pregnancy-related illness: on the ground of maternity/gender and on the ground of fixed-term status.²⁰⁸

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, but it does not say that the periods of absence due to such illness qualify as periods of teaching service. Indeed, by underlining that the 'only' period of absence exceeding 15 days that qualifies as teaching service is maternity leave, it implies that leave for pregnancy-related illness does not constitute teaching service.

However, according to settled CJEU case law, any prejudicial treatment of a female employee, directly or indirectly related to pregnancy, may only concern women and therefore constitutes direct discrimination on the ground of sex, the existence of a male comparator being irrelevant.²⁰⁹ As teaching service is an essential prerequisite for access to and evolution in the teaching profession, not taking into account sick leave granted for pregnancy-related illness in the calculation of teaching service falls within the scope of Paragraph (1)(a) and (c) of Article 14 of Directive 2006/54/EC. It therefore constitutes direct gender discrimination prohibited by these provisions of the directive.

²⁰⁴ SCPC (Civil Section) No 2041/1984; Piraeus CA No 917/1996.

²⁰⁵ 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.

²⁰⁶ IKA (Organisation of Social Security) operates the main scheme for subordinate workers under a private-law contract.

²⁰⁷ 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; Clause 4(1) in conjunction with Clause 1(a), 'principle of non-discrimination'.

²⁰⁸ In September 2017 this discriminatory situation led to a parliamentary interpellation to the Minister of Employment signed by 53 MPs of the governing party SYRIZA, who asked for the unification of the conditions from maternity leave and sick leave between permanent and substitute teachers, available at: <https://xenesglosses.eu/2017/09/ypourgos-ergasias-gia-tis-paroches-mitrotitas-oad-anaplirotes-kai-epidoma-anergias/>.

²⁰⁹ CJEU, C-177/88, *E. J. P. Dekker v. Stichting Vormingscentrum voor Jong Volwassenen*, 8 November 1990, § 12, § 17; CJEU, C-421/92, *Gabriele Habermann-Beltermann v Arbeiterwohlfahrt*, 5 May 1994, §§ 15, 16; C-207/98, *S. K. Mahlburg v. Land Mecklenburg-Vorpommern*, 3 February 2000, § 20.

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 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.²¹⁰ At the time of writing, it seems that the above circular is still in force and applied by the Ministry of Education.

5.3.9 Legal right to share maternity leave

There is no legal right to share maternity leave.

5.3.10 Case law

It is striking that since the adoption of Act 3896/2010 there has only been one judgment (Athens Court of Appeal No 3693/2018) concerning the right to return after maternity leave to the same or equivalent job according to Article 16 of Act 3896/2010, implementing Article 15 of Directive 2006/54/EC. It is about a female employee who, upon returning from maternity leave, was moved from the main office area to the warehouse. At the same time her employment contract was unilaterally modified by the employer from full employment to only two days per week which resulted in a corresponding deduction to her wages from EUR 1 061 to EUR 398 per month. Of the undertaking's 11 employees, she was the only one subjected to such a unilateral modification. The court found that this constituted a prejudicial modification of her working conditions; and that the undertaking was obliged to employ her under the initial working conditions under the threat of a pecuniary penalty of EUR 100 per day and under the threat of a one-month detention against its legal representative. Moreover, the sum of EUR 1 500 was adjudicated to the wronged woman as moral damages.²¹¹

However, this case is only the tip of the iceberg. From a review of the annual reports of the Labour Inspectorate for the years 2015-2017,²¹² it becomes clear that a 10 % of the gender equality complaints to the LI (72 in 2017, 91 in 2016 and 97 in 2015) concern prejudicial modification of working conditions during pregnancy and maternity leave. In the view of the author, it is evident that these complaints (or the majority thereof) have never been brought to justice due to structural barriers (see 11.3 below).

5.4 Adoption leave

5.4.1 Existence of adoption leave in national law

Adoption leave is provided in Article 50(8) of Act 4075/2012, Article 3(1) of Decree 80/2012 transposing the Directive, Article 38 of Act 4342/2015, Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014, and Article 52(4) CSC.²¹³

²¹⁰ Γ' ΕΑΜΕ Θεσσαλονίκης (3rd Federation of High School Teachers of Thessaloniki), Communication dated 29 November 2016, available at: www.alfavita.gr/arthron/anakoinoseis/q-elme-thessalonikis-pliris-prostasia-tis-kyisis-kai-tis-mitrotitas-gia-tis#ixzz4Sc2jKIub.

²¹¹ See relevant flash report in European Equality law review 2019/1, p. 94, available at: <https://publications.europa.eu/en/publication-detail/-/publication/a120c4fa-a914-11e9-9d01-01aa75ed71a1/language-en/format-PDF>.

²¹² Greek Labour Inspectorate: *Annual report 2015*, available at: www.ypakp.gr/uploads/docs/11659.pdf; *Annual report 2016*, available at: www.ypakp.gr/uploads/docs/11663.pdf; *Annual report 2017*, available at: www.ypakp.gr/uploads/docs/11919.pdf.

²¹³ After the cut-off date of this report (31.12.2018), Article 34(9) Act 4590/2019, OJ A 17/07.02.2019 abolished the provision of Article 52(4) CSC and a new paragraph 9 was added to Article 52 CSC on adoption leave.

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

The CSC explicitly grants up to five years of unpaid parental leave to adoptive or foster parents provided that the adoption or fostering has been finalised by the time the child reaches the age of six or the age of eight, if the adoption has not been finalised up to the age of six. A three-month period of this leave is granted with full pay in the event of the birth (or adoption by analogy) of a third child or subsequent children.²¹⁴ The same leave is provided for the employees of local authorities.²¹⁵

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 six months following the finalisation of the adoption, which corresponds to maternity leave after birth (see 5.3.1 above).²¹⁶ One month of this leave can be taken before the adoption. Adoptive and foster parents are granted the special parental leave provided by Article 51 Act 4075/2012 (see 5.5.4 below).

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

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

Article 15 (3) of Act 1483/1984, as added by Article 46 of Act 4488/2017 reads: 'The protection against termination of the employment relationship, according to the provisions of this Article, applies to female workers, who adopt a child under the age of six, beginning with the placement of the child in the family...'

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

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

Article 52(3) of Act 4075/2012 makes the dismissal of any worker, including adoptive and foster parents, due to an application for or the taking of parental leave, null and void. Article 52(1) of Act 4075/2012 entitles workers returning from parental leave, including adoptive and foster parents, to the protection required by the above Article 16 of Directive 2006/54/EC, and prohibits their unfavourable treatment due to an application for or the taking of parental leave. The directives are thus exceeded regarding foster parents. This provision also applies to women employed by the State, by legal entities governed by

²¹⁴ Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014, OJ A 237/31.10.2014.

²¹⁵ Article 60(1) Act 3528/2007, as amended by Article 26(4) of Act 4305/2014, OJ A 237/31.10.2014.

²¹⁶ After the cut-off date of this report (31.12.2018), Article 34(9) Act 4590/2019, OJ A 17/07.02.2019 abolished the provision of Article 52(4) CSC; a new paragraph 9 was added to Article 52 CSC by Article 34(1) Avt 4590/2019 on adoption and foster leave; it provides for both male and female civil servants a period of paid leave for three months within the first six months following the finalisation of the adoption or fostering of a child under the age of six; one month of this leave can be taken before the adoption or the fostering. This leave is granted irrespective of the use of the daily working time reduction or, alternatively, the nine months fully paid parental leave for each child up to the age of four according to Article 53(2) CSC.

public law and by local authorities (Article 59(4) Act 3584/2007) on a contract of indefinite duration, but not to women employed by the same employers on a fixed-term contract (Article 2 CSC), in breach of Directives 2010/18/EU and 1999/70/EC (fixed-term work) (see 5.3.1 above).²¹⁷

5.4.3 Case law

Prior to the directive, the CS held that female civil servants who adopt a child under the age of six are also entitled to CSC parental leave (see 5.5.4 below).²¹⁸ The CS, relying on Article 10(1) of the European Convention on the Adoption of Children, which confers on adopted children the same rights as natural children, as well as on Articles 20, 24 and 33 of the EU Charter of Fundamental Rights and Directive 2010/18/EU, and interpreting the Greek legislation and Constitution in light of these supra-national instruments, held that the entitlement to a nine-month period of paid parental leave provided for male and female judges by the Judges Code also applies to adoptive parents.²¹⁹ 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 subsequent to the first one in the case of multiple births (twins, triplets, etc.) (see 5.5.4 below).²²⁰ 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 5.5.4 below). Therefore, in the author's 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.

5.5 Parental leave

5.5.1 Implementation of Directive 2010/18

Directive 2010/18/EU has been explicitly implemented by Articles 48-54 of Act 4075/2012 and Presidential Decree 80/2012 which transpose the Directive; Articles 51(2) and 53 CSC, Article 44 of the Judges Code; and National General Collective Agreements (NGCAs).

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

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

5.5.3 Scope of the transposing legislation

As to the scope of the transposing legislation, according to Article 49(2) of Act 4075/2012, 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,

²¹⁷ After the cut-off date of this report (31.12.2018), Article 34(5) Act 4590/2019, OJ A 17/07.02.2019 abolished the provision of Article 59(4) Act 3584/2007; a new paragraph 9 was added to Article 59 Act 3584/2007 by Article 34(3) Act 4590/2019 on adoption and foster leave; it provides for both male and female civil servants a period of paid leave for three months within the first six months following the finalisation of the adoption or fostering of a child under the age of six; one month of this leave can be taken before the adoption or the fostering. This leave is granted irrespective of the use of the daily working time reduction or, alternatively, the nine months fully paid parental leave for each child up to the age of four according to Article 53(2) CSC.

²¹⁸ CS No 607/2007.

²¹⁹ Act 1756/1988, OJ A 35/25.02.1988 (Code on Court Regulation and Judges' Status), Article 44(21). See 5.4.4 below.

²²⁰ CS No 4088/2015.

'or a remunerated mandate', 'irrespective of the nature of the work performed'. The latter exceed the directive.

5.5.4 Length of parental leave

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

In the private sector: four months' unpaid, non-transferable leave for each child up to the age of six (Article 50(1) and (3) of Act 4075/2012 transposing Directive 2010/18/EU). A transferable paid daily working time reduction 'for breastfeeding and childcare' by one hour for two and a half years after maternity leave is granted to natural and adoptive parents, including both commissioning and surrogate mothers. Alternatively, paid leave of a corresponding length (amounting to the total number of hours by which the daily working time would be reduced) may be agreed with the employer.²²¹ The employer may not refuse to grant the reduction, as the worker's right is enforceable in the courts. However, when the length of the reduction depends on the employer's agreement, this agreement may depend on business needs, but its refusal may constitute an abuse of rights, as the SCPC (Civil Section - Plenary) held in the case of a female bank employee whose employer arbitrarily denied the granting of the accumulated leave.²²² This case law led to a more favourable provision in the banking sector collective agreement for the years 2016-2018, which provided that this leave must be granted upon the employee's request unless serious reasons in the business justify the employer's refusal. This paid leave is granted to (natural, adoptive or foster) parents of both sexes irrespective of the kind of professional activity of the other parent and even if the other parent is not employed (Article 38 Act 4342/2015).

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

In the public sector: nine months' fully paid, transferable leave for each child up to the age of four (Article 53(2) CSC for civil servants; Article 60(2) Act 3584/2007 for employees of local authorities); alternatively a paid daily working time reduction (by two hours until the child reaches the age of two and by one hour until he or she reaches the age of four). Following the CJEU judgment in *Chatzi*,²²³ which responded to a preliminary reference by the Thessaloniki ACA regarding the entitlement to parental leave of civil servants who are parents of twins, a provision granting an additional paid six-month period of leave for each child subsequent to the first one, in the case of multiple births, was added to Article 53(2) CSC (for civil servants) and to Article 60(2) Act 3584/2007 (for employees of local authorities).²²⁴ However, this provision is 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, who requested to take this additional leave in the form of a working time reduction in order not to lose her responsibility allowance (as a part of the monthly salary), which stops after two months of absence. The Ombudsman found that this constituted a disincentive for women in positions of responsibility to make use of the leave and proposed that this additional leave should also be granted in the alternative form of a working time reduction. The proposal was endorsed by the Minister of the Interior.²²⁵

²²¹ NGCAs 1993, 2000, 2002-2003, 2004-2005, 2006-2007, 2014, available, in Greek, on the Greek General Confederation of Labour (GSEE) website: https://gsee.gr/?page_id=54.

²²² SCPC (Civil Section - Plenary) No 10/2010.

²²³ CJEU, C-149/10, *Zoi Chatzi v Ipourgos Ikonomikon*, 16 September 2010; see Koukoulis-Spiliotopoulos, S. (2011), European Network of Legal Experts in the Field of Gender Equality, 'Greece', *European Gender Equality Law Review* 1, pp. 78-83, available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights.

²²⁴ By virtue of Article 6 of Act 4210/2013, OJ A 254/21.11.2013.

²²⁵ Greek Ombudsman (2016), 'Φύλο και Εργασιακές σχέσεις - Ειδική έκθεση 2016), (Gender and employment relationships - Special Report 2016), p.129: available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf.

Moreover, an unpaid leave of up to five years is provided for each child up to the age of six; three months of this leave is granted with full pay for the third child and any subsequent children.²²⁶ The CS in its judgment No. 1850/2017 found that this leave does not apply to judges. According to the Court, this is not contrary to Directive 2010/18/EU, which provides a four-month minimum length of parental leave without excluding differentiation in the length of parental leave among the various professional categories depending on the nature of the duties of each category.

The above provisions apply to civil servants and permanent employees of legal persons governed by public law and local authorities (Article 60 Act 3584/2007), as well as to employees of the same employers on a private-law contract of indefinite duration (Article 2 and Article Second CSC). 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/EU and 1999/70/EC on fixed-term work (see 5.3.1 above). The Ombudsman has dealt with several complaints from substitute teachers, whose four-month parental leave according to Act 4075/2012 was not taken into account as real working time for the calculation of annual leave and wages. 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.²²⁷ Judges receive the CSC parental leave, but they are not entitled to a working time reduction; in fact, the child's maximum age is about one and a half years, as the leave starts soon after maternity leave (Article 44(21) Judges Code, see 5.5.7 below).

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)²²⁸ agreed with this practice, which is still ongoing, as it results from ministerial circulars²²⁹ 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.²³⁰

5.5.5 Age limits

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

²²⁶ Article 53(1) CSC, as amended by Article 26(2) of Act 4305/2014 for civil servants; Article 60(1) Act 3584/2007 for employees of local authorities.

²²⁷ 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/EU, Paragraph D4, pp. 8-9.

²²⁸ The State Legal Council (SLC), Opinion 64/2008. The SLC gives opinions at the request of public authorities which are not binding, unless the competent Minister endorses them, which was the case with this opinion.

²²⁹ 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/EU, paragraph D4, p. 9, , which refers to Minister of Home Affairs Circular ΔΙΑΔ/Φ.51/590/οικ.14346/29.05.2008, p. 5, available at: www.ydmed.gov.gr/wp-content/uploads/20080529_ypal_kodikas_adeies_08.pdf; the latter states that it complies with SLC Opinion 64/2008 (above).

²³⁰ The Ministry invoked Circular ΔΙΑΔ/Φ.53α/1975/6219/16.04.2014, which is similar to the ones mentioned above. See Ombudsman, *Annual Report 2014*, pp. 134 et s. (*Gender and employment relationships*), available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf.

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

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

As Act 4075/2012 grants this leave until the child reaches the age of six, the CSC leave or alternatively the daily working time reduction apply, in the author's view, until the child reaches the age of six, although the CSC was not formally modified. Yet in practice the CSC provisions on both the leave and the working time reduction are applied as they stood before the transposition of the Directive, until the child reaches the age of four.²³¹ Judges receive the CSC parental leave, but they are not entitled to a working time reduction; in fact, the child's maximum age is about one and a half years, as the leave starts soon after maternity leave (Article 44(21) Judges Code, see 5.5.7 below).

5.5.6 Individual nature of the right to parental leave

In the private sector the right to parental leave is non-transferable, therefore it is individual. In the public sector it is fully transferable 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.

5.5.7 Transferability of the right to parental leave

Article 53(3) CSC also provided that a father whose wife does not work or exercise any profession was not entitled to the leave. This was the case unless, due to a serious illness or injury, the father's wife was unable to meet the needs related to the child's upbringing. A male judge whose wife was not in work was refused parental leave on the basis of this provision, which also applied to judges. He brought an action for the annulment of the refusal before the CS. Meanwhile, this provision was repealed²³² 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,²³³ albeit in gender-neutral language: 'a judge whose spouse [irrespective of sex] does not work or exercise any profession is not entitled to parental leave unless, due to a serious illness or injury, the judge's spouse is unable to meet the needs related to the child's upbringing'. In the author's view, the new provision is also incompatible with Directive 2010/18/EU. As the impugned refusal took place before the repeal and on the basis of the provision of Article 53(3) CSC, it was this provision, not the new gender-neutral provision of the Judges Code, which was applicable to the case.

The CS (judgment 1113/2014) referred to the CJEU the question of whether Directives 96/34/EC and 2006/54/EC precluded national provisions such as that of Article 53(3) CSC. This referral was to the *Maistrellis* case.²³⁴ The CJEU considered Directive 96/34/EC applicable to the case and ruled that Directives 96/34/EC and 2006/54/EC preclude national provisions, such as the impugned provision of Article 53(3) CSC quoted above. The Court recalled that Directive 96/34/EC also applies to public officials. It provides for an 'individual right' to parental leave for both male and female workers on the grounds of the birth or adoption of a child, to enable them to take care of that child. Moreover, in setting out the conditions of access to parental leave that Member States and/or the social

²³¹ 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/EU, Paragraph D4, pp. 8-9, available at: <http://dipt.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>.

²³² By virtue of Article 6(2) of Act 4210/2013, OJ A 254/21.11.2013.

²³³ By virtue of Article 89 of Act 4055/2012, OJ A 51/12.03.2012.

²³⁴ CJEU, C-222/14, *K. Maistrellis v. Ypourgos Dikaionymis, Diafaneias kai Anthropon Dikaionaton*, 16 July 2015.

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'.²³⁵ In the author's view, it is clear from the latter phrase, that the above gender-neutral provision of Paragraph 24 of Article 44 of the Judges Code also conflicts with Directive 96/34/EC and therefore with Directive 2010/18/EU as well. Regarding Directive 2006/54/EC, the Court recalled that it applies to employment relationships in the public or private sector and that the conditions for granting parental leave fall within 'working conditions', within the meaning of the Directive.²³⁶ 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.

In compliance with this ruling, in its judgment No 1513/2017 (the 'post-*Maïstrellis* CS judgment') the CS annulled the impugned refusal. It invoked, *inter alia*, another judgment of the CS Plenary (2511/2016), which solved the problem for another judge in a way that also benefited Mr Maïstrellis. It upheld an action by a female judge for the annulment of the refusal to grant her parental leave on the basis of the aforementioned gender-neutral provision of the Judges Code, because her husband was not in work. The CS first invoked the following provisions of the Greek Constitution: Article 4(1) (equality of Greek citizens before the law); Article 21(1) (protection of the family, marriage, motherhood and childhood (see 2.1.2 above); Article 21(5) which requires that the State plan and implement a demographic policy; and Article 25(1) which puts human rights under State guarantee. The CS then invoked Article 6(1) TEU which confers on the EU Charter of Fundamental Rights (the Charter) the same legal value as the Treaties; Article 20 of the Charter (equality before the law); Article 24 of the Charter (rights of the child); and Article 33 of the Charter (family and professional life). It then referred to Act 4075/2012 transposing Directive 2010/18/EU, noting that this act repealed all less favourable provisions and provided that its measures must not affect more favourable provisions of laws, decrees, internal regulations, 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 gender-neutral provision of the Judges Code, on which the impugned refusal was based, was still in effect. The CS recalled that an obligation to grant leave to working people, including judges, in order to enable them to raise their children, derives from Article 21 of the Constitution as well as from Article 33(2) of the Charter and from the EU law principle on reconciling family and professional life. It also noted that judges' parental leave is linked to civil servants' leave, the only difference being that the start of a judge's parental leave must be fixed within two months of the expiry of maternity leave. This is justified by the need for smooth functioning of the courts – a ground of public interest. Moreover, no ground of public interest is invoked in the *travaux préparatoires* of Act 4055/2012 (which introduced the impugned provision) as a justification thereof. The CS concluded that the impugned provision conflicted with Article 21 of the Constitution and annulled the refusal to grant leave to the claimant on that ground. In the view of the author, we can infer from the invocation of EU law that the CS interpreted Article 21 of the Constitution in light of EU law.

²³⁵ CJEU, C-222/14, *K. Maïstrellis v. Ypourgos Dikaïosynis, Diafaneias kai Anthroponon Dikaïomaton*, 16 July 2015, §§ 29, 31 and 36; *emphasis added*.

²³⁶ CJEU, C-222/14, *K. Maïstrellis v. Ypourgos Dikaïosynis, Diafaneias kai Anthroponon Dikaïomaton*, 16 July 2015, §§ 43 and 45.

It should also be noted that, until recently, the repealed CSC provision that did not grant parental leave to fathers whose wives did not work was still applied to the military. Following repeated interventions by the Greek Ombudsman, who emphasised that this constituted direct discrimination on the ground of sex,²³⁷ 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,²³⁸ which reads as follows: 'In cases where the wife of the male member of the military forces is not working, the latter is entitled to the whole parental leave'.

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

5.5.8 Form of parental leave

In both the private and public sectors, the leave is granted as a whole or on a piecemeal basis (according to the discretion of the parents). If both parents are employed by the same employer or both are covered by the CSC, they have to indicate by means of a joint statement who will make use of the leave in whole or in part (Article 50(4) and (6) of Act 4075/2012 transposing the Directive, Article 53(3) CSC).

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

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

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

A length of service requirement is provided by Article 50(2) Act 4075/2012; employees must have completed one year of service (either continuous or fragmented) by the same employer unless there is a more favourable specific provision in laws, decrees, regulations, collective agreements, arbitration decisions or agreements between employers and employees.

The CSC does not provide a length of service requirement.

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

5.5.10 Notice period

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

²³⁷ Greek Ombudsman (2014), 'Φύλο και Εργασιακές Σχέσεις -Ειδική Έκθεση 2014' (Gender and employment relationships – Special Report 2014), available at: www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf; Greek Ombudsman (2015), 'Φύλο και Εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships – Special Report 2015), available at: www.synigoros.gr/?i=isotita-ton-fylon.el.files.366798; Greek Ombudsman (2016), 'Σύνοψη διαμεσολάβησης – Άδεια ανατροφής τέκνων για πατέρες στρατιωτικούς των οποίων η σύζυγος δεν εργάζεται' (Summary of Intervention - Parental leave for military fathers whose wife does not work), in which it is stated that this discriminatory practice has stopped, available at: www.synigoros.gr/resources/docs/sinopsidiamesolavisis--2.pdf.

²³⁸ OJ B 30/18.1.2016. As the original number of the latter Decision was incorrect, it was subsequently corrected so as to bear the above (correct) number Φ.400/32/82424/Σ.343 (Correction of *errata*, OJ B 228/09.02.2016).

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

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 the court. When the leave is requested by a mother, it must start as soon as possible and no later than two months after the expiry of her maternity leave; a father's request must be filed as soon as possible after the expiry of the mother's maternity leave and, if she has taken no maternity leave, as soon as possible after the date on which her maternity leave would have expired.

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

Act 4075/2012 does not provide the right of the employer to postpone the granting of parental leave. Parental leave is granted by the employer according to the priority of requests within the enterprise in each calendar year; parents of children with a disability or a long-term or sudden illness and single parents have absolute priority.

However, the granting of the accumulated paid leave as an alternative to the paid daily working time reduction (see 5.5.4 above) depends on the employer's agreement according to the business needs, but its refusal may constitute an abuse of rights.²³⁹

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

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

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

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

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

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

Special rules and exceptional conditions are provided for parents of children with a disability or long-term illness: Article 51 of Act 4075/2012,²⁴⁰ Article 51(1) CSC,²⁴¹ Article 6 of Decree 80/2012,²⁴² Articles 50(2) and (3) CSC,²⁴³ Article 53(6) and 53(8) CSC,²⁴⁴ and Articles 7-9 of Act 1483/1984.

²³⁹ SCPC (Civil Section) No 10/2010.

²⁴⁰ As amended by Article 45 Act 4488/2017, OJ A137/13.09.2017.

²⁴¹ As amended by Article 26(1) of Act 4305/2014, OJ A 237/31.10.2014.

²⁴² Decree 80/2012 transposing Directive 2010/18/EU.

²⁴³ As amended by Article 149 of Act 4483/2017, OJ A 107/31.07.2017.

²⁴⁴ As added by Article 31 of Act 4440/2016, OJ A 224/02.12.2016.

- a) Article 51 of Act 4075/2012, as amended by Article 45 Act 4488/2017, grants individual rights to each natural, adoptive and foster parent of a child under 18 years of age who i) needs blood transfusions, dialysis or a transplant or suffers from cancer or from a serious mental disability, Down's syndrome or autism: ten working days a year, paid; ii) is hospitalised due to a disease or accident requiring the parent's presence: up to 30 days a year, unpaid, after the exhaustion of the parental leave; both types of leave presuppose the exhaustion of other paid leave, except annual leave. As each leave has its own purpose, both conditions conflict with the Directive and must be considered as being non-applicable.
- b) Article 51(1) CSC, as amended by Article 26(1) of Act 4305/2014, grants unpaid leave for up to one month in each calendar year to the (natural, adoptive or foster) parent of a minor child who is hospitalised due to a disease or accident requiring the parent's presence. This leave is considered working time.
- c) Article 6 of Decree 80/2012: the captain grants unpaid time off of up to 144 hours per year, once or on a piecemeal basis, on grounds of force majeure for urgent family reasons and for the sickness or accident of a dependent family member (including natural and adoptive children) making the seafarer's immediate presence indispensable.
- d) Articles 50(2) and (3) CSC, as amended by Article 149 of Act 4483/2017 grant: i) to employees with a spouse or child requiring regular blood transfusions or periodic hospitalisation or a child suffering from a serious mental disability 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. 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 4440/2016,²⁴⁵ grants employees with minor children in the event of the illness of the child paid leave for up to: i) four working days in each calendar year, ii) five working days in each calendar year for employees with three or more children and iii) six 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 Article 60(8) of Act 3584/2007,²⁴⁶ as added by Article 31 of Act 4440/2016²⁴⁷ and Article 95 Act 4483/2017.²⁴⁸
- 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 a corresponding pay cut, in undertakings with at least 50 workers. These provisions cover employees in part-time work as well.²⁴⁹

²⁴⁵ After the cut-off date of this report (31.12.2018), Article 53(8) CSC, as added by Article 31 Act 4440/2016, was amended by Article 76 Act 4590/2019, OJ A 17/07.02.2019. According to the new provision, employees with minor children in the event of the illness of the child are entitled to paid leave for up to: i) four working days in each calendar year, ii) seven working days in each calendar year for employees with 3 children, iii) eight working days in each calendar year for employees who are single parents and iv) 10 working days in each calendar year for employees with more than four children.

²⁴⁶ After the cut-off date of this report (31.12.2018), Article 60(8) of Act 3584/2007 was amended by Article 76 Act 4590/2019, OJ A 17/07.02.2019. According to the new provision, employees with minor children in the event of the illness of the child are entitled to paid leave for up to: i) four working days in each calendar year, ii) seven working days in each calendar year for employees with three children, iii) eight working days in each calendar year for employees who are single parents and iv) 10 working days in each calendar year for employees with more than four children.

²⁴⁷ Act 4440/2016, OJ A 224/02.12.2016.

²⁴⁸ Act 4483/2017, OJ A 107/31.07.2017.

²⁴⁹ Article 20(5) Act 3896/2010, OJ A 2071/08.12.2010.

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

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

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

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

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

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

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

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

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

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

5.5.18 Status of the employment contract or relationship during parental leave

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

The Greek Ombudsman has dealt with a complaint by a female substitute teacher who, after having taken the four-month unpaid parental leave provided by Article 50(3) of Act 4075/2012 transposing Directive 2010/18/EU, was informed by the Ministry of Education that the period of this leave was deducted from her service period. The ministry justified this deduction by relying on opinions of the 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.²⁵⁰ Subsequently, 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.

5.5.19 Continuity of entitlement to social security benefits

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

5.5.20 Remuneration

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

5.5.21 Social security allowance

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

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

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

²⁵⁰ Greek Ombudsman (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2015' (Gender and employment relationships – Special Report 2015), p. 116, 'Reconciliation of professional and family life' (Case 189795/2014), available at: www.synigoros.gr/resources/docs/ee2015-13-fylo--2.pdf.

5.5.23 Case law

Case law often applies the Constitution in conjunction with EU law in a dynamic and constructive way. However, as people are not aware of their rights and, moreover, in the current socio-economic context, few, in particular women, dare to complain. As a result, case law is scarce. It mostly concerns claims by public servants or judges who enjoy constitutional guarantees of personal and functional independence and are therefore protected against victimisation.²⁵¹

In the private sector, the Athens Court of Appeal was the first court to issue a decision on the recognition of parental leave as working time.²⁵² It concerned a female private bank employee who brought a case to the Court complaining that her period of unpaid parental leave (one year five months and one day) from December 1999 to May 2001 was not recognised by her employer (a bank in the private sector) as working time for the purpose of pay calculation (the pay system was set in pay grades on the basis of seniority), although this period had been recognised as insurable time by the social security scheme due to the payment of both the employer's and the employee's contribution by the employee. It should be noted that the wronged employee had submitted written petitions regarding this issue to her employer upon her return from parental leave, which were never answered. However, as long as she was employed, she was afraid to bring the case to the court, which she actually did once she retired in September 2013.

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

5.6 Paternity leave

5.6.1 Existence of paternity leave in national law

²⁵¹ E.g. CS No 3216/2003 (Plen.) upholding the claim of female judges to the CSC maternity leave; CS Nos 1 and 2/2006 upholding the claim of male judges to the CSC parental leave; CS Nos 3590 and 3591/2013 (Plen.) condemning the curtailing of the parental leave of judges (see European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2014), 'Greece', *European Gender Equality Law Review 1* available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights. Thessaloniki ACA No 1842/2010, implementing the CJEU judgment on parental leave for twins, which this same court had sought, in Case C-149/10 *Zoi Chatzi v. 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).

²⁵² Athens Court of Appeal, No. 3693/2018.

National legislation provides for paternity leave: (i) in the private sector: two days paid paternity leave, upon the birth of each child (NGCA 2000) and (ii) in the public sector: two days paid paternity leave, upon the birth of each child or the adoption of a child under two years of age (for public servants: Article 50(1) CSC, as amended by Article 18 of Act 3801/2009, OJ A 163/04.09.2011; for employees of local authorities: Article 57(1) Act 3584/2007). 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.²⁵³ In sectoral collective agreements paternity leave may be provided in a more favourable way.²⁵⁴

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

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

5.6.3 Case law

There is no relevant case law.

5.7 Time off/care leave

5.7.1 Existence of care leave in national law (Clause 7 of Directive 2010/18)

There is no general provision on time off on grounds of force majeure for urgent family reasons in case of sickness or accident (see Clause 7 of Directive 2010/18/EU). However, there are several provisions on special forms of leave and time off on specific grounds. Any other, even serious, circumstances of force majeure do not entitle a worker to time off. For more information please see 5.5.13 above.

The banking sector collective agreement 2016-2018 provided that parents of children with a (mental, physical or psychological) disability percentage of more than 67 % or children suffering from diabetes treated with insulin or type I diabetes with a disability percentage of more than 50 % are entitled to a one-hour daily reduction of working time.²⁵⁵

5.7.2 Case law

There is no relevant case law.

5.8 Leave in relation to surrogacy

Surrogacy is legal in Greece. It is provided in Article 1464 of the Civil Code, as amended by Article Second para. 5 Act 3089/2002 OJ A 327/23.12.2002. Parental leave is available in relation to surrogacy,²⁵⁶ in the private sector, according to the provisions of the NGCA

²⁵³ YA Φ. 400/34/292616/Σ4753, OJ B 2808/2016.

²⁵⁴ After the cut-off date of this report (31.12.2018), the banking sector collective agreement 2019-2021 provided a three-day paid paternity leave.

²⁵⁵ After the cut-off date of this report (31.12.2018), the banking sector collective agreement 2019-2021 provided that this reduction may be placed in the beginning or at the end of the working day upon the employee's request.

²⁵⁶ After the cut-off date of this report (31.12.2018), Article 34(1) Act 4590/2019 OJ A 17/7.2.2019, by adding a new paragraph 9 to Article 53 CSC, provided that public servants who are the commissioning parents in a

2006. 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 (see 5.3.1, 5.5.4 above).

5.9 Flexible working time arrangements

5.9.1 Right to reduce or extend working time

In the private sector: a transferable paid daily working time reduction 'for breastfeeding and childcare' by one hour for two and a half years after maternity leave is granted to natural and adoptive parents, including both commissioning and surrogate mothers. Alternatively, paid leave of corresponding length (amounting to the total number of hours by which the daily working time would be reduced) may be agreed with the employer.²⁵⁷ 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.²⁵⁸ This paid leave is granted to (natural, adoptive or foster) parents of both sexes irrespective of the kind of professional activity of the other parent, even if the other parent is not employed (Article 38 Act 4342/2015).

In the public sector: 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); alternatively, nine months, fully paid, transferable, for each child up to the age of four (Article 53(2) CSC for civil servants; Article 60(2) Act 3584/2007 for employees of local authorities). Following the CJEU judgment in *Chatzi*,²⁵⁹ 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, was added to Article 53(2) CSC (for civil servants) and to Article 60(2) Act 3584/2007 (for employees of local authorities).²⁶⁰ However, this provision is 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, who asked to take this additional leave in the form of a working time reduction in order not to lose her responsibility allowance (forming part of the monthly salary), which stops after two months of absence. The Ombudsman found that this constituted a disincentive for women in positions of responsibility to make use of the leave and proposed that this additional leave should also be granted in the alternative form of a working time reduction. The proposal was endorsed by the Minister of the Interior.²⁶¹

5.9.2 Right to adjust working time patterns

There are no general provisions entitling workers to adjust working time patterns (temporarily or otherwise) on request. In the maritime sector, upon return from parental leave, the seafarer can request changes to his/her working time for a maximum of seven days, if the operational needs of the ship allow for this in the captain's judgment. Also, in

surrogacy are entitled to three-months fully paid leave after the birth of the child in addition to the reduced working hours or alternatively the accumulated nine-months leave.

²⁵⁷ NGCAs 1993, 2000, 2002-2003, 2004-2005, 2006-2007, 2014, available, in Greek, on the Greek General Confederation of Labour (GSEE) website: https://gsee.gr/?page_id=54.

²⁵⁸ SCPC (Civil Section) No 10/2010.

²⁵⁹ CJEU, Case C-149/10, *Zoi Chatzi v. Ipourgos Ikononikon*, 16 September 2010; 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.

²⁶⁰ By virtue of Article 6 Act 4210/2013, OJ A 254/21.11.2013.

²⁶¹ Greek Ombudsman (2016), 'Φύλο και εργασιακές σχέσεις – Ειδική έκθεση 2016' (Gender and employment relationships - Special Report 2016), available at: www.synigoros.gr/resources/docs/ee2016-15-fylo.pdf.

order to facilitate a return to work, the seafarer and his/her employer can agree on suitable measures for returning to the workplace (Article 5(5) and (6) of Decree 80/2012).

5.9.3 Right to work from home or remotely

National law does not provide workers with a legal right to work from home or remotely (temporarily or otherwise) on request. The legislation on teleworking is unrelated to the reconciliation of work and the family. It requires a specific teleworking contract, as follows: 'If ordinary work is transformed into teleworking, this contract must provide for a three-month period of adaptation, during which any party may put an end to teleworking following fifteen days' notice, in which case the worker returns to a post corresponding to the one he/she had before.'²⁶²

5.9.4 Other legal rights to flexible working arrangements

National law does not provide other legal rights to flexible working arrangements, such as arrangements by which workers can 'bank' hours to take time off in the future related to paternity, maternity or parental leave.

However, in the public sector, a public servant working overtime (at least one hour daily) for the accomplishment of an extremely urgent and particularly important task that has to be completed within a certain time limit (this has to be confirmed in writing by his/her superior), instead of overtime payment can 'bank' hours to take time off up to 15 working days annually in the future.²⁶³

5.9.5 Case law

There is no relevant case law.

5.10 Evaluation of implementation

As mentioned above (see 5.5.22 above), Greek legislation exceeds the directive regarding the prohibition of discrimination and dismissal on the grounds of sex and '*family status*' (see 3.3.1, 3.4.1 and 4.3.2 above); the addition of 'paternity' and '*family status*' to the exception to the protection of women (see 4.3.5 above); the length of maternity leave and the pay during this leave (see 5.3.1, 5.3.5 above) and parental leave (full pay in the public sector) (see 5.5.4, 5.5.20 above); special leaves and time off (see 5.5.13 above); the assimilation of adoptive and foster parents with natural parents (see 5.4.1, 5.5.4 and 5.5.13 above); a working day reduction, including for both commissioning and surrogate mothers (see 5.5.4 above). However, it does not provide for preventative measures against dismissal of pregnant and breastfeeding women and women who have recently given birth, as required by Article 10 Directive 72/85/EEC (see 5.1.2 above).

In general, there is great legal uncertainty as the rules are complex, unequal, fragmented, scattered and are often and unexpectedly modified. There is a multitude of provisions besides those reported herein, the scope and effects of which are not clear. Case law often applies the Constitution in conjunction with EU law in a dynamic and constructive way, but as people are not aware of their rights and, moreover, in the current socio-economic context, few, in particular women, dare to complain, case law is scarce. It mostly concerns claims by public servants or judges who enjoy constitutional guarantees of personal and functional independence and are therefore protected against victimisation.²⁶⁴

²⁶² Article 5 Act 3846/2010, OJ A 66/11.05.2010.

²⁶³ Article 50(7) CSC, as added by Article 38 Act 4250/2014, OJ A 74/26.03.2014 and amended by Article 26(10) Act 4325/2015, OJ A 47/11.05.2015.

²⁶⁴ E.g. CS No 3216/2003 (Plen.) upholding the claim of female judges to the CSC maternity leave; CS Nos 1 and 2/2006 upholding the claim of male judges to the CSC parental leave; 3590 and 3591/2013 (Plen.) condemning the curtailing of the parental leave of judges (see European Network of Legal Experts in the

5.11 Remaining issues

There are no remaining issues.

Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2014), 'Greece', *European Gender Equality Law Review 1* available at: http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights.
Thessaloniki ACA No 1842/2010, implementing the CJEU judgment on parental leave for twins, which this same court had sought, in CJEU, C-149/10, *Zoi Chatzi v. Ipourgios Ikonomikon* [Minister of Finance] 16 September 2010, in the best possible way in view of the situation in Greece (see 5.4.4 above).

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

6.1 General (legal) context

6.1.1 Surveys and reports on the practical difficulties linked to occupational and/or statutory social security issues

In a survey conducted in 2012 about Act 3863/2010 and the occupational social security schemes, Sophia Koukoulis-Spiliotopoulos²⁶⁵ pointed out that the Act, although covering both statutory and occupational social security schemes, ignores the distinction between 'occupational' and 'statutory' and EU gender equality law in general. She gave examples of the provisions of the Act that create confusion; she also referred to the relevant remarks of the National Committee of Human Rights and of the Scientific Service of Parliament (which checks the conformity of bills with the Constitution, ratified international treaties and EU law) on the relevant bill. The author deplored the prevailing confusion concerning the concept of 'occupational social security schemes' and the field of application of the relevant EU law in Greece. She found that this confusion is accentuated by the lack of precision and clarity of Greek social security legislation which, in recent years, has undergone numerous unpredictable, complex, contradictory and mutually exclusive amendments, often with a retroactive effect, creating unsafety and in security, in particular in a society hit as hard by the economic crisis as the Greek one has been.

Another survey on occupational social security schemes under EU law was published in 2016 by E. Morayianni on the occasion of judgment No 4156/2015 of the Athens Administrative Court of Appeal (ACA).²⁶⁶ This case concerned the social security scheme TAP-ETVA, which granted pensions to employees of the former Greek Bank of Industrial Development (ETVA). Subsequently, this fund was affiliated to the general social security scheme for private sector employees (IKA-ETAM). However, the retirement benefits granted by it continued to be governed by its own statutes.

The case was brought by a father of three minor children. He pleaded that the retirement conditions provided for mothers of three minor children were more favourable than those applicable to fathers of three minor children who, in order to be entitled to a pension, had to comply with the additional requirements of being widowers or divorced (in the latter case having been granted the custody of the children by a judicial judgment). He consequently claimed that the above different treatment resulted in discrimination on the ground of sex to the detriment of fathers of three minor children, like himself, and asked the court to grant him the pension, although he was neither a widower nor divorced.

The court found discrimination in breach of the Greek Constitution but refused to apply the levelling-up norm and rejected the claim. It did not examine and did not respond to the claimant's allegations that the above discrimination was in breach of Article 157 TFEU as the fund constituted an occupational social security scheme according to the well-established case law of the CJEU. In particular, he pleaded that all three requirements set by the CJEU case law were satisfied: (i) the scheme covered a particular category of employees, i.e. the employees of the former ETVA bank; (ii) the pension granted by it was calculated on the basis of the employee's years of service at the bank; (iii) the sum of the pension was calculated on the basis of the employee's final salary before retirement. According to the author, by omitting to examine and reply to these allegations, the ACA failed to apply the EU law.

²⁶⁵ Koukoulis-Spiliotopoulos, S. (2012), 'N. 3896/2010 και «επαγγελματικά» συστήματα κοινωνικής ασφάλισης – Η σύγχυση επιτείνεται' (Act 3896/2010 and occupational schemes – The confusion is heightened), *Επιθεώρησης Δικαίου Κοινωνικής Ασφάλισης (ΕΔΚΑ) (Social Security Law Review)*, pp. 27-39.

²⁶⁶ Morayianni, E. (2016), 'Το ζήτημα της παραβίασης της αρχής της ισότητας των φύλων από τα συνταξιοδοτικά πλεονεκτήματα υπέρ των γυναικών. Σχόλιο με βάση την απόφαση ΔΕΦΑΘ 4156/2015' ('The matter of the violation of the gender equality principle through social security privileges in favour of women, Comments on Athens Administrative Court of Appeal judgment No 4156/2015'), *Επιθεώρησης Δικαίου Κοινωνικής Ασφάλισης (ΕΔΚΑ) (Social Security Law Review)* 2016, pp. 416 et s.

The case was not brought before the Council of the State by an appeal on points of law due to lack of resources on the part of the claimant.

It should be noted that there have been three CJEU preliminary rulings on Greek cases (*Evrenopoulos*,²⁶⁷ *European Commission vs the Hellenic Republic*²⁶⁸ and *European Commission vs the Hellenic Republic*)²⁶⁹ that explicitly confirmed the existence of occupational social security schemes in Greece. In view of the above it is striking that 18 years after the *Evrenopoulos* ruling Greek courts ignore the relevant EU law and case law.

6.1.2 Other issues related to gender equality and social security

See 6.1.1 above.

6.1.3 Political and societal debate and pending legislative proposals

There is no political and societal debate on occupational social security schemes nor are there any pending legislative proposals.

6.2 Direct and indirect discrimination

In Greek law direct and indirect discrimination on grounds of sex in occupational social security schemes is prohibited. Article 6 of Act 3896/2010 transposing Directive 2006/54/EC largely reproduces Article 5 of the directive, with some additions to the first sentence, which reads: 'Any direct and indirect discrimination on grounds of sex, in particular in connection with the existence of a marriage or family status in general is prohibited.'

6.3 Personal scope

The personal scope of national law relating to occupational social security schemes is the same as specified in Article 6 of Directive 2006/54/EC, as Article 5(1) of Act 3896/2010 copies Article 6 of the directive.

6.4 Material scope

The material scope of national law relating to occupational social security schemes is the same as specified in Article 7 of Directive 2006/54/EC, as Article 5(2) of Act 3896/2010 copies Article 6 of the directive.

6.5 Exclusions

Greek law has applied the exclusions from the material scope as specified in Article 8 of Directive 2006/54/EC by Article 5(3) of Act 3896/2010, which copies Article 8 of the Directive.

6.6 Laws and case law falling under the examples of sex discrimination mentioned in Article 9 of Directive 2006/54

Article 7 of Act 3896/2010 transposes Article 9 of the directive. Yet the notion of an 'occupational scheme' remains unknown, in spite of three Greek CJEU cases, the third of

²⁶⁷ CJEU, C-147/95, *Dimossia Epicheirissi Ilektrismou (DEI) v Efthimios Evrenopoulos*, 17 April 1997. This case concerned the social security scheme of DEI, the Public Electricity Company, which was found to be an occupational social security scheme.

²⁶⁸ CJEU, C-457/98, *European Commission vs the Hellenic Republic*, 14 December 2000, which concerned the non-compliance of Greece with Directive 96/97/EC.

²⁶⁹ CJEU, C-559/07 *European Commission vs the Hellenic Republic*, 26 March 2009, which concerned the Code of Civil and Military Pensions of the Greek State, providing more favourable provisions for women than men.

which found a breach of Article 157 TFEU due to gender discrimination in relation to age and other conditions for civil servants' pensions whose scheme it considered to be occupational.²⁷⁰ This is because Decree 87/2002 implementing Directives 96/97/EC and 86/378 and Act 3896/2010 merely reproduced EU law, without indicating which Greek schemes are occupational or providing any criteria for recognising them as such, thus not complying with the CJEU requirements of clarity and transparency. As a result, the case law either completely ignores the distinction between statutory and occupational schemes or wrongly considers that a scheme is not occupational; in both cases the judgments rely on Article 4(2) of the Constitution.²⁷¹

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 (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 Code²⁷² sets different conditions for the granting of a pension to fathers of deceased military personnel from those applying to mothers. If the deceased had neither a spouse nor children, then upon his/her death the pension is granted: a) to his/her father who is a pauper, when the father reaches the age of 65, or if he is a pauper and unfit for any work, provided in all cases that he was mainly maintained by the deceased; b) in the absence of a father, the mother who is a widow and a pauper, provided that she was mainly maintained by the deceased. Although the Court of Audit²⁷³ held that mothers were entitled to a pension subject to the same conditions as fathers, the discriminatory provision remained.

6.7 Actuarial factors

Sex is used as an actuarial factor in occupational social security schemes. Article 7(1)(h) of Act 3896/2010 transposing Directive 2006/54/EC copies Article 9(1)(h) of the directive. There is no relevant case law.

6.8 Difficulties

See 6.6 above.

6.9 Evaluation of implementation

The concept of occupational social security schemes and the relevant EU law and case law are rather ignored by the Greek legislator and the Greek courts (6.1.1 above).

6.10 Remaining issues

There are no other remaining issues.

²⁷⁰ CJEU, C-147/95, *DEI v. Evrenopoulos*, 17 April 1997; CJEU, C-457/98, *European Commission vs the Hellenic Republic*, 14 December 2000; CJEU, C-559/07 *European Commission vs the Hellenic Republic*, 26 March 2009.

²⁷¹ Examples: CS No 4279/2014: the CS ignored the distinction (indeed it completely ignored EU law) regarding an obviously statutory scheme (IKA, see 7.1 below) and, relying on Article 4(2) of the Constitution, it held that the granting of an earlier old-age pension to the mothers of minor children was not discriminatory; therefore, the fathers of minor children were not entitled to that pension; Court of Audit 44/2009 (Plen.): the Court considered that the civil servants' scheme falls within the scope of Directive 79/7/EEC which allows different pensionable ages for men and women. However, it held that these different ages were contrary to Article 4(2) of the Constitution. CS 2196/2015.

²⁷² Presidential Decree 169/2007, OJ A 210/31.08.2007.

²⁷³ Court of Audit No 751/2000.

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

7.1 General (legal) context

7.1.1 Surveys and reports on the practical difficulties linked to statutory schemes of social security (Directive 79/7)

To the author's knowledge there have been no surveys and reports published in Greece over the last five years that provide insights into the difficulties that workers face in practice in relation to social security schemes.

7.1.2 Other relevant issues

There are no other relevant issues.

7.1.3 Overview of national acts

See under 1.2 above.

7.1.4 Political and societal debate and pending legislative proposals

There has been no political and/or societal debate and there are no pending legislative proposals on this topic.

7.2 Implementation of the principle of equal treatment for men and women in matters of social security

The principle of equal treatment for men and women in matters of social security is implemented in national legislation in Article Single of Presidential Decree 1362/1981 implementing Directive 79/7/EEC. This is the only measure aimed at implementing Directive 79/7/EEC. The Decree replaced Article 33(1) of Act 1846/1951 (OJ A 179/21.06.1951) on the Organisation of Social Security (IKA), which operated the main scheme for subordinate workers under a private-law contract. It abolished the distinction between husbands and wives and fathers and mothers regarding pensions and medical care, which was to the detriment of women.

7.3 Personal scope

The scope of Decree 1362/1981 is limited to the IKA scheme (7.2 above), which is statutory, as it covers workers employed by different employers. There are other schemes which must also be considered to be statutory, e.g. the scheme operated by the Organisation for Agricultural Social Security (OGA),²⁷⁴ which covers farmers who are not salaried workers; the scheme operated by the Merchant Seamen's Fund (NAT),²⁷⁵ which covers workers in maritime employment; and the scheme operated by the Agency of Manpower Employment (OAED),²⁷⁶ which provides workers under a private-law contract with protection against unemployment, including unemployment allowances, assistance to job seekers and other allowances, such as maternity allowance. Since 1 January 2017 all the main existing social security schemes (IKA-ETAM, ETAP-MME, ETAA, OGA, NAT, TAYTEKO, ETAT), together with State pensions, have been merged into one single scheme (EFKA) according to the provisions of Articles 51, 53 and 100(1) (2b) of Act 4387/2016 (OJ A 85/12.05.2016).

²⁷⁴ Greece, Act 4169/1961, OJ A 81/1961; Act 2458/1997, OJ A 15/14.02.1997.

²⁷⁵ Greece, Presidential Decree 913/1978, OJ A 220/14.12.1978; Act 1085/1980, OJ A 255/06.11.1980.

²⁷⁶ Greece, Act 2961/1954, OJ A 197/1954; Act 1545/1985, OJ A 91/20.05.1985.

7.4 Material scope

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

7.5 Exclusions

Decree 1362/1981 is silent regarding the matters mentioned in Article 7 of the Directive.

A provision on the Merchant Seamen's Fund (NAT) scheme²⁷⁷ sets stricter conditions for granting a pension to the mothers of deceased seafarers than those applying to fathers. The CS agreed with the First Instance Administrative Court, which held, relying on Article 4(2) of the Constitution and Directive 79/7/EEC, that mothers were entitled to the pension under the same conditions as fathers.²⁷⁸ This provision has not been repealed.

7.6 Actuarial factors

Sex is not used as an actuarial factor in statutory social security schemes.

7.7 Difficulties

There is confusion between statutory and occupational schemes (see 6.6 above).

7.8 Evaluation of implementation

As mentioned above (see 7.4 above), the material scope of the Decree is restricted in that it does not cover social protection and unemployment.

7.9 Remaining issues

There are no remaining issues regarding social security that have not been discussed so far.

²⁷⁷ Article 20(1)(c) of Presidential Decree 913/1978, OJ A 220/14.12.1978.

²⁷⁸ CS No 831/2004 (Plen.).

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

8.1 General (legal) context

8.1.1 Surveys and reports on the specific difficulties of self-employed workers

To the author's knowledge, there have been no surveys and reports published in Greece over the last five years that provide insights into the difficulties that self-employed workers face.

8.1.2 Other issues

There are no relevant issues.

8.1.3 Overview of national acts

Act 4097/2012, 'Implementation of the Principle of Equal Treatment of Men and Women Engaged in an Activity in a Self-Employed Capacity – Harmonisation of the legislation with Directive 2010/41/EU of the European Parliament and the Council,' OJ A 235/03.12.2012 (Directive 86/613/EEC had not been transposed).

8.1.4 Political and societal debate and pending legislative proposals

There has been no political and/or societal debate and there are no pending legislative proposals on this topic.

8.2 Implementation of Directive 2010/41/EU

Directive 2010/41/EU has been explicitly implemented into national law by Act 4097/2012.²⁷⁹

8.3 Personal scope

8.3.1 Scope

With regard to personal scope related to self-employment in Greek legislation, Article 2(a) of Act 4097/2012 copies the definition of 'self-employed' which is used in the Directive. It covers self-employed workers, namely anyone pursuing a gainful activity for their own account, under the conditions laid down by national law and Article 1 of this Act. A more specific definition is not provided. For the purposes of employment and social security, several forms of employment are considered to be self-employment in contrast to subordinate employment.²⁸⁰ The self-employed may work on the basis of 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 4.3.1 above). There is no case law which relies on Act 4097/2012.

8.3.2 Definitions

Self-employed workers belong to several categories depending on the form of their employment (see 8.3.1 above). The wording of Act 4097/2012 is so broad that it is difficult to justify any exclusion, but there is no case law.

²⁷⁹ Act 4097/2012, OJ A 235/03.12.2012.

²⁸⁰ On the meaning of 'subordinate employment' see SCPC (Civil Section) Nos 1674/2010, 433/2011.

8.3.3 Categorisation and coverage

Article 2(b) of Act 4097/2012 provides that this Act applies to 'the spouses of self-employed workers and their life partners, in accordance with the provisions of Act 3719/2008, OJ A 241/26.11.2008 and the provisions of Article 20²⁸¹ of Act 3801/2009, OJ A 163/04.09.2009, who are not employees or business partners, where they habitually participate in the activities of the self-employed worker and perform the same or ancillary tasks'.

8.3.4 Recognition of life partners

These Acts concern registered 'life partnership agreements' of two adults of different sexes, which produce some binding legal effects under civil law, but create no rights in matters of employment and social security. Act 4097/2012 creates no such rights (see 8.6 below).

Act 4097/2012 does not concern same-sex partnership agreements which have become possible by virtue of legislation postdating Act 4097/2012, i.e. Act 4356/2015.²⁸² Act 4356/2015 provided for life partnership agreements irrespective of sex, thus introducing same-sex partnership agreements for the first time. According to its *travaux préparatoires*, Article 12 Act 4356/2015 grants to life partners irrespective of sex the same rights granted to spouses in all fields of law. However, it is only vaguely provided in Article 12 that existing provisions of labour and social security law 'may be adapted as regards life partners by Presidential Decree, within six months of the date on which this Act comes into effect'. As the Act came into effect upon its publication in the OJ (24 December 2015), the deadline for issuing the decree is 24 June 2016. Such a decree has not yet been issued, but rights in matters of social security have meanwhile been granted to same-sex partners by Article 16 of Act 4387/2016,²⁸³ which stipulates: 'Persons having entered into a life partnership agreement in accordance with Act 4356/2015 are fully assimilated to married persons regarding all rights, benefits, obligations or restrictions related to social security which are provided by this Act or social security and social welfare legislation in general'. This provision applies only to life partnership agreements which were entered into after 23 December 2015. People who entered into a life partnership agreement before 23 December 2015 have the right, if they so wish, to have the provision of Act 4356/2015 applied in general by means of a notarial deed.²⁸⁴

In relation to employment rights, the decree provided by Article 12 Act 4356/2015 on employment rights of same-sex life partners has not yet been issued. However, the Ministry of Labour by its Circular 50763/1047/4.11.2016 states that employment rights are granted by Article 12(1) *per se* and the decree provided by Article 12(2) of the Act will provide only the necessary details; according to this interpretation, same-sex partners are entitled to marriage benefits, marriage leave etc since the publication of the Act in the OJ (24 December 2015).

8.4 Material scope

8.4.1 Implementation of Article 4 of Directive 2010/41/EU

Article 4(1) of the transposing Act 4097/2012 has copied Article 4(1) of Directive 2010/41/EU.

²⁸¹ There is a typing error in this provision: it is Article 29, not Article 20, which concerns life partnership.

²⁸² Greece, Act 4356/2015, OJ A181/24.12.2015.

²⁸³ Greece, Act 4387/2016, OJ A 85/12.05.2016.

²⁸⁴ Circular EFKA 10/28.02.2017.

8.4.2 Material scope

Article 4(1) of the transposing Act 4097/2012 has the same material scope as the Directive. It prohibits any direct or indirect discrimination on grounds of sex in the public or private sectors, either directly or indirectly, in particular in relation to family status, for instance in relation to the establishment, equipment or extension of a business or the launching or extension of any other form of self-employed activity.

8.5 Positive action

Article 116 (2) of the Constitution, which requires positive action, in particular in favour of women in all fields (see 2.1.2 above) is so broadly worded that it also covers the self-employed, but there do not seem to be any positive measures for the self-employed and/or their spouses or partners. Article 5 of the Directive on positive action was not transposed. In the author's view this is not a problem, given the Greek Constitutional provision of Article 116(2) that requires that the legislature and all other state authorities take any positive measures which are necessary and pertinent in promoting gender equality in all areas (see above under 2.1).

8.6 Social protection

Greece has a system of social protection for self-employed workers (see Article 7 Directive 2010/41/EU). Article 7 of the Directive has not been transposed. However, social security in Greece regarding old age, disability, provident and health benefits is mandatory for all workers and for their spouses and minor children as indirectly insured persons. This is unless they are personally covered by a scheme other than that which covers their spouse. Life partners are covered by social security, as explained under 8.3.4 above. Mandatory schemes are operated by legal entities under public law; therefore, their acts are subject to annulment by the CS.

Originally, there were specific mandatory (old-age and disability) pension schemes, health schemes as well as provident schemes (which pay a lump-sum upon retirement), as well as certain voluntary supplementary pension schemes, for each profession or similar professions. These were gradually merged into larger schemes, as autonomous sections thereof; i.e. they have retained full autonomy regarding their accounts and finances, as well as their own regulations regarding affiliation and benefits. For example, the pension schemes for engineers and public works contractors (TSMED), 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).²⁸⁵

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 healthcare coverage. The scheme for hoteliers was merged into the OAEE as an autonomous section thereof.²⁸⁶ The pension, health and provident schemes for people working in the media, either as self-employed or as salaried workers, were merged into the Unified Scheme for the Personnel of Mass Media (ETAP-MME).²⁸⁷ The pension and health scheme for farmers (OGA) covers both self-employed farmers and the salaried workers they employ.²⁸⁸

²⁸⁵ 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>.

²⁸⁶ Act 2676/1999, OJ A 1/05.01.1999 and Act 3655/2008, OJ 58/03.04.2008, Articles 7-24, as amended and complemented by ministerial decisions, and <http://www.oaee.gr>.

²⁸⁷ See Act 3655/2008 OJ 58/03.04.2008, as amended, Articles 39-51.

²⁸⁸ See Act 4169/1961, OJ 81/18.05.1961, as amended and complemented by ministerial decisions, and <http://www.oga.gr>.

Since 1 January 2017 all the main existing social security schemes (IKA-ETAM, ETAP-MME, ETAA, OGA, NAT, TAYTEKO, ETAT), together with State pensions, have been merged into one single scheme (EFKA) according to the provisions of Articles 51, 53 and 100(1) (2b) of Act 4387/2016 (OJ A 85/12.05.2016).

An unemployment allowance of EUR 360 per month, which is well below the poverty threshold for Greece (about EUR 580, see 5.2.9 above) is paid to the self-employed for three to nine months and is subject to a strict means test.²⁸⁹

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

Spouses of self-employed people who are covered by Article 7 in conjunction with Article 2(b) of the directive are not dealt with by Greek social security law. The spouses of the self-employed person, like other members of the family of the self-employed person, may be covered by the scheme of the self-employed person, if they so wish and if they are not covered by another scheme, albeit only regarding sickness benefits in kind.²⁹⁰ They may be covered by the EFKA/IKA scheme (see 7.2 above), if they are full-time employees of their spouse.²⁹¹ However, these employees are outside the scope of Article 7 of the directive.

Life partners of self-employed people are covered by the latter's social security scheme under the same conditions applying to spouses according to Article 12 Act 4356/2015.²⁹²

8.7 Maternity benefits

Article 8 Directive 2010/41/EU regarding maternity benefits for self-employed people has been implemented into national law, but only partly, in Article 6(1) of the transposing Act 4097/2012, as amended by Article 44 of Act 4488/2017²⁹³ which, however, has only transposed Article 8(1) of the Directive and only in part. It provides that self-employed women only (not the spouses or life partners of self-employed men) may be granted a maternity allowance allowing a temporary interruption of their activity due to pregnancy or maternity for at least 14 weeks and that the source, the amount of and the procedure for paying this allowance 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 two (Article 44(1) Act 4488/2017).

Article 8(3) of the Directive has not been transposed. Two joint ministerial decisions were issued on the basis of Article 6 of the transposing Act. The first one²⁹⁴ granted a EUR 200 monthly allowance for four months to self-employed women insured with ETAA. The second one²⁹⁵ 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, see 8.6 above) have not yet been granted any allowance. This constitutes direct discrimination on grounds of pregnancy and maternity against self-employed women insured with these other schemes.

²⁸⁹ Manpower Employment Organisation (OAED): www.oaed.gr.

²⁹⁰ Act 3655/2008, OJ 58/03.04.2008, Article 26(d) regarding ETAA, Article 11 regarding OAEE.

²⁹¹ Article 1(1) Act 1759/1988 'Social security coverage of non-insured groups with IKA', OJ 50/1988; Ministerial Decision F.21/3288/20.12.1988, OJ B 04/1989, Regulation for the coverage by IKA of people employed in businesses belonging to members of their family.

²⁹² Social Security Organisation for the Self-Employed (OAEE) Circular 7/2016 on the granting of health benefits to life partners of the self-employed affiliated to the scheme.

²⁹³ Act 4488/2017, OJ A 137/13.09.2017.

²⁹⁴ Decision No. F.10060/15858/606, OJ B 2665/08.10.2014.

²⁹⁵ 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 (see 5.2.1, 5.2.5 above). Yet, the monthly amount granted by both Ministerial Decisions is far below the poverty threshold (about EUR 580) and even significantly lower than the unemployment allowance, which is EUR 360 (see 5.2.9 above). Therefore, these allowances cannot be considered 'sufficient', as required by Article 8(1) and (3) of the Directive. Anyway, the three criteria mentioned in Article 8(3) would make no sense in Greek law, as self-employed people receive no allowance when interrupting their activities on grounds connected with their health (a), nor any other family allowance (c), nor is it possible to estimate the average loss of their income (b). Furthermore, the first Ministerial Decision is in conflict with the directive, as on the occasion of the directive's transposition it lowered the maternity allowance granted by prior legislation to certain self-employed women falling within its scope. For example, self-employed women lawyers received a lump sum of EUR 470 before giving birth and EUR 470 after giving birth (EUR 940 in total).²⁹⁶ This was EUR 140 higher than the total amount of the allowance granted by the first Decision (EUR 200 monthly for four months).

Entitlement to the maternity allowance (Article 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 of the Directive has not been transposed. There are no services supplying temporary replacements or relevant national social services.

8.8 Occupational social security

8.8.1 Implementation of provisions regarding occupational social security

National law implemented the provisions regarding occupational social security for self-employed people (see Article 10 of Recast Directive 2006/54/EC) in Article 8 of Act 3896/2010 transposing the Recast Directive. This Article mostly merely copies the directive's provisions, without clarifying which Greek schemes are occupational. Therefore, the transposition of the directive's provisions on occupational schemes does not create the legal certainty which is required by well-established CJEU case law and so it is considered by the author to be inadequate (see 6.5 above).

8.8.2 Application of exceptions for self-employed persons regarding matters of occupational social security (Article 11 Recast of Directive 2006/54)

Article 8(3) of Act 3896/2010 transposing Directive 2006/54/EC provides that, 'the application of the principle of equal treatment in occupational schemes for self-employed persons regarding the pensionable age [...] is deferred until the date on which equal treatment is achieved in statutory schemes'. However, this date had already been determined by Act 3863/2010,²⁹⁷ which gradually equalised the pension conditions (the pension age and service requirements) for men and women, in both statutory and occupational schemes, from 2011 to 2015. Thus, Article 8(3) of the act would only make sense if it referred to the relevant provisions of Act 3863/2010. As it stands, it can only create confusion. Moreover, Act 3863/2010 fixed a date for achieving the equalisation of minimum service requirements and the pensionable age in schemes for the self-employed: 31 December 2015. Therefore, in the author's view, for self-employed people affiliated with an occupational scheme, it is the transition period provided by Act 3863/2010, rather than the date of 1 January 1993 provided by Article 10(1) of the directive, that applies,

²⁹⁶ Decree 162/1998, OJ A 122/05.06/1998.

²⁹⁷ Greece, Act 3863/2010, 'New social security system and related provisions, regulation of employment relationships,' OJ A 115/15.07.2010.

since the directive does not allow the act to impair the existing legal situation. This is all the more so as Act 3863/2010, although it is aimed at dealing with the financial problems of social security in the context of the economic crisis, and although it does not refer to gender equality or EU law, must be deemed as also implementing the occupational social security provisions of the Recast Directive, since it has equalised pension conditions. However, all this is not clear; hence the transposition of the Recast Directive regarding the occupational schemes is generally inadequate (see 6.5 above).

8.9 Prohibition of discrimination

Article 14(1)(a) of Recast Directive 2006/54/EC has been implemented in national law as regards self-employment by Article 11(1) of Act 3896/2010 transposing Directive 2006/54/EC, which reads:

‘Any kind of direct or indirect discrimination on grounds of sex or family status regarding conditions of access to salaried or non-salaried employment and professional life in general, including the criteria for selection and conditions of hiring in all sectors of activity and levels of professional hierarchy is prohibited.’

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

An example of persisting gender discrimination can be found in the case of male lawyers who are not entitled to recoup the nursery fees they have paid, although female lawyers are entitled to do this. Article 15 of Presidential Decree (ΠΔ) 162/1998 providing the regulation of social insurance for Athens lawyers against the risk of sickness (Κανονισμός περίθαλψης Τ.Υ.Π.-Δ.Α.) (OJ A 122/1998) has not been modified since its adoption. It provides that:

‘The social security scheme grants an allowance for the coverage of nursery fees for the children of the insured persons. The amount of the allowance is defined by decision of the Administrative Board of the social insurance scheme and is granted for up to 11 months per year. Beneficiaries of the allowance are directly insured female lawyers and female trainee-lawyers who have children aged from one to five years insured in the same scheme and who are not entitled to such an allowance by another social security scheme. For the approval and reimbursement of the expense the following documents are required: a) an application of the entitled person, b) a receipt of payment issued by the crèche and c) a statement, as required by Act 1599/1986, by which it is declared that the relevant allowance is not granted by another source and that the child has remained in the crèche for the whole period concerned.’

The First Instance Administrative Court of Athens (FIACA), in at least two judgments (FIACA 3210/2017 and 5774/2007), has found this provision to be in breach of the principle of gender equality as proclaimed by Articles 4(2) and 116(2) of the Greek Constitution and EU law. More specifically, FIACA 5774/2017 applied Presidential Decree 87/2002²⁹⁸ for the implementation of the principle of equal treatment of men and women in occupational social security schemes, including those of the self-employed, which transposed Directives 96/97/EC and 86/378/EEC, and in particular its Article 5(e) prohibiting different conditions of access to allowances on the basis of sex (directly or indirectly) or the exclusion of one sex. FIACA 3210/2017 referred to Directive 76/207/EEC, which is irrelevant according to the author’s view. Both judgments obliged the above social security scheme to pay the claimants (male lawyers) the sum of the nursery fees they had

²⁹⁸ Presidential Decree 87/2002, OJ A 66/4.4.2002.

paid. In addition to this, FIACA 5574/2007 awarded the symbolic sum of EUR 100 for moral damages.

Responding to a complaint lodged by a male lawyer, in December 2015, the Ombudsman found that Article 15 of Presidential Decree 162/1998 introduced discrimination based on sex to the detriment of male lawyers insured with the scheme.²⁹⁹ As a result, the complainant was paid the allowance initially refused. Moreover, the scheme concerned committed itself to paying the nursery allowance to all male lawyers insured with the scheme henceforth.³⁰⁰

The social security scheme at issue (Τ.Υ.Π.-Δ.Α.) provides protection against sickness and other social benefits to all Athens lawyers (i.e. to a specific group of self-employed workers). According to Article 5 (1) of Act 3896/2010³⁰¹ transposing Directive 2006/54/EC, this Act applies to the working population, including the self-employed. This provision transposes Article 6 of the Directive. Moreover, according to Article 5(2)(a) of the Act, the material scope includes occupational social security schemes that provide sickness benefits. This provision transposes Article 7 (1) (a) (i) of the Directive. Therefore, the prohibition of gender discrimination set out in Article 9 (1) (e) of the Directive applies to the impugned provision of the above scheme. Besides, in the author's view, to the extent that the social security scheme at issue constitutes an occupational scheme, the nursery allowance must be considered an element of pay and, therefore, Article 14(1)(c) of the Directive also applies (whereas Article 5(a) does not apply given that in the specific case the sex discrimination does not impede access by male lawyers to the fund in general but excludes them from this specific allowance). It could also be argued that the impugned provision is in breach of Article 4 of Directive 2010/41/EU, which was transposed by Article 4 Act 4097/2012.³⁰²

8.10 Evaluation of implementation

The scarcity (almost absence) of relevant case law shows that the gender equality legislation in relation to self-employed workers is not widely known and applied in practice.

8.11 Remaining issues

There are no remaining issues.

²⁹⁹ See the Ombudsman's relevant mediation report available at: www.synigoros.gr/resources/docs/epidoma-vrefonhpiakoy-sta8moy.pdf.

³⁰⁰ Summary of the case available at: www.synigoros.gr/resources/docs/epidoma-vrefonhpiakoy-sta8moy.pdf.

³⁰¹ Greece, Act 3896/2010, OJ A, 207/08.212.2010.

³⁰² Greece, Act 4097/2012, OJ A 235/03.12.2012.

9 Goods and services (Directive 2004/113)³⁰³

9.1 General (legal) context

9.1.1 Surveys and reports about the difficulties linked to equal access to and supply of goods and services

In Greece there have been no surveys and/or reports published over the last five years that provide insights into the difficulties men and women may face in terms of equal access to and supply of goods and services.

9.1.2 Specific problems of discrimination in the online environment/digital market/collaborative economy

There are no signs of emerging problems of discrimination concerning access to and supply of goods and services in the online environment/digital market/collaborative economy.

9.1.3 Political and societal debate

There has been no political and/or societal debate on this topic.

9.2 Prohibition of direct and indirect discrimination

Greek law prohibits direct and indirect discrimination on grounds of sex in access to goods and services in Act 3769/2009.³⁰⁴

9.3 Material scope

The material scope of the transposing Act 3769/2009 relating to access to goods and services is the same as specified in Article 3 of Directive 2004/113/EC. Actually, Article 3 of the Act transposing Directive 2004/113/EC has copied Article 3 of the Directive. It states that its provisions apply to everyone who provides goods and services which are available to the public, irrespective of the person concerned as regards the public sector, the wider public sector, as it is defined by the provisions in force, and the private sector and which are offered outside the area of private and family life and the transactions carried out in this context. There is no case law on either this act or the Directive.

9.4 Exceptions

Greek law has applied the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113/EC, regarding the content of media, advertising and education in Article 3(3) of Act 3769/2009.

9.5 Justification of differences in treatment

Differences in treatment in the provision of goods and services have been justified in national law (see Article 4(5) of Directive 2004/113/EC). More specifically, Article 4(3) of the transposing Act 3769/2009 has copied Article 4(5) of the Directive. It provides that it does not preclude differences in treatment, if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim, the means of achieving that aim are appropriate and necessary and there is a reasonable analogy between the difference in treatment and the legitimate aim.

³⁰³ See e.g. Caracciolo di Torella, E. and McLellan, B. (2018) *Gender equality and the collaborative economy* European network of legal experts in gender equality and non-discrimination, available at www.equalitylaw.eu/downloads/4573-gender-equality-and-the-collaborative-economy-pdf-721-kb.

³⁰⁴ Greece, Act 3769/2009, OJ A 105/01.07.2009.

9.6 Actuarial factors

Greek law ensures that the use of sex as a factor in the calculation of premiums and benefits for the purposes of insurance and related financial services shall not result in differences in individuals' premiums and benefits (see Article 5(1) of Directive 2004/113/EC) in Article 6(1) of Act 3769/2009. The above provision has copied Article 5(1) of the Directive, omitting the date of 21 December 2007 as the starting date for the prohibition, as the transposing Act is subsequent to this date. More specifically, Article 6(1) of the transposing Act 3769/2009 provides that the use of sex as a factor in the calculation of premiums and benefits in all contracts for the purposes of insurance and related financial services, which are concluded after the entry into force of this Act, shall not result in differences in individuals' premiums and benefits.

9.7 Interpretation of exception contained in Article 5(2) of Directive 2004/113

The exceptions allowed by Article 5(2) were also allowed by Article 6 of Act 3769/2009, although this Act was subsequent to the date of 21 December 2007, before which the differences should have been allowed. Following the *Test-Achats* ruling, Article 6(1) and (2) were replaced by Article 162 of Act 4099/2012,³⁰⁵ 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.

9.8 Positive action measures (Article 6 of Directive 2004/113)

Greece has not adopted positive action measures in relation to access to and the supply of goods and services (see Article 6 of Directive 2004/113/EC), but in the author's view Article 116(2) of the Constitution (see 2.1.2. above) requiring positive action in all fields applies. Article 116(2) of the Constitution imposes on the State a positive obligation on positive action which goes far beyond the scope of this Directive.

9.9 Specific problems related to pregnancy, maternity or parenthood

In Greece there seem to be no specific problems of discrimination on the grounds of pregnancy, maternity or parenthood in relation to access to and the supply of goods and services; at least, there is no relevant case law. The Annual Reports of the Ombudsman

³⁰⁵ Greece, Act 4099/2012, OJ A 250/20.12.2012.

(which is the monitoring authority for the public sector) and the Consumer's Ombudsman, (which is the monitoring authority for the private sector) (Article 11 Act 3769/2009) (see 11.5.1 below) mention no gender equality cases.

9.10 Evaluation of implementation

The lack of relevant jurisprudence shows that the gender equality legislation in relation to goods and services is not widely known and applied in practice.

9.11 Remaining issues

There are no remaining issues.

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

10.1 General (legal) context

10.1.1 Surveys and reports on issues of violence against women and domestic violence

An interesting survey providing insights into issues of domestic violence was published in 2015. It is based on empirical research into cases involving penal mediation between spouses and partners by the District Attorney of the city of Thessaloniki in Northern Greece.³⁰⁶ The institution of penal mediation was provided for the first time in the Greek penal system by Act 3500/2006,³⁰⁷ in implementation of the Decision-Framework of the European Council of 15 March 2001 (2001/220). The introduction of penal mediation has been criticised due to the lack of entities to conduct the therapeutic/counselling programme. The empirical research was conducted in 2011 and concerned cases put forward for penal mediation from the entry into force of the said Act until 2010.

Most of the cases involved violence between spouses (56 %). Of 27 perpetrators 26 were male and only one female, who happened to be the victim as well (case of mutual violence). Of 29 victims, 23 were female and six male (three of whom were perpetrators as well), i.e. there was an over-representation of men among the perpetrators and of women among the victims. In five out of 18 cases of violence between spouses there was a minor child in the family who, according to the Act, is considered to be a victim of domestic violence. Among the people involved, 59 % were Greek nationals whereas 41 % were citizens of the ex-Soviet Union and the Balkans. According to the survey, this shows that the factors which lead to domestic violence deteriorate due to the traumatic experience of immigration. However, among the cases where the procedure of penal mediation was recalled,³⁰⁸ the percentage of foreigners was 71 % (five out of seven perpetrators). 50 % of the cases concerned physical violence, 40 % psychological violence and 10 % verbal violence. The author criticised the implementation as typically bureaucratic and to a great extent impersonal and time-consuming and the therapeutic/counselling programme as particularly short and not likely to prevent relapse; the victim has a secondary role in the procedure and her/his protection is not secured.

According to the author, penal mediation could be successful if: (i) there were more entities competent to run the therapeutic/counselling programme; (ii) the less serious cases were selected for penal mediation following an expert opinion by a psychologist or a social worker; (iii) the social services of the local authorities were involved. Moreover, more hostels for the victims are needed along with awareness-raising campaigns. Long-term prevention should be sought through education, by enhancing the gender equality principle and relations of mutual respect between men and women from the early years of childhood.

No surveys have been published on violence against women and domestic violence in relation to the Istanbul Convention.

³⁰⁶ Hatzispyrou, Th. (2015), 'Ενδοοικογενειακή βία & ποινική διαμεσολάβηση. Θεωρητική μελέτη με έμφαση στη βία μεταξύ συζύγων/συντρόφων και εμπειρική έρευνα υποθέσεων Ποινικής Διαμεσολάβησης στην Εισαγγελία Πρωτοδικών Θεσσαλονίκης' ('Domestic violence and penal arbitration. A theoretical study with emphasis on violence between spouses/partners and an empirical study of penal mediation cases by the District Attorney of Thessaloniki'), *Εγκληματολογία (Criminology)* (2015), pp. 117 et c.

³⁰⁷ Greece, Act 3500/2006, OJ A 232/24.10.2006.

³⁰⁸ According to the system of penal mediation, if the perpetrator complies with the conditions of the penal mediation for a period of 3 years, the procedure is concluded and there is no penal sanction by the State. During the penal mediation, the criminal act is not time-barred until the penal mediation is concluded. In case the perpetrator breaches on purpose the terms of the mediation, the penal mediation is recalled and the penal proceedings continue. In this case, a new petition for penal mediation is not allowed.

10.1.2 Overview of national acts on violence against women, domestic violence and issues related to the Istanbul Convention

Act 4531/2018 'Ratification of the Council of Europe on preventing and combating violence against women and domestic violence and adaptation of the national legislation etc.'³⁰⁹

Act 3500/2006 'Tackling domestic violence and other provisions.'³¹⁰ Amended by: (i) Article 16(2) Act 3868/2010, which added a new paragraph to Article 4 of this Act, declaring 30 April as the day against corporal punishment of children, and (ii) Article 3 Act 4531/2018, which *inter alia* extended the personal scope of the Act to life partners and their children.³¹¹

10.1.3 National provisions on online violence and online harassment

To the author's knowledge there is no specific legislation on online violence and online harassment in Greece.

10.1.4 Political and societal debate

Up to the cut-off date of this report, there had been no political and societal debate on violence against women and domestic violence.³¹² However, an information workshop was organised by the General Secretariat for Equality on 10 October 2018 on the ratification of the Istanbul Convention and its entry into force for Greece.

10.2 Ratification of the Istanbul Convention

The Istanbul Convention on preventing and combating violence against women and domestic violence of the Council of Europe (IC), signed by Greece on May 2011, was ratified by the Greek Parliament by virtue of Article 1 Act 4531/2018³¹³ and came into force in Greece on 1 October 2018. Article 2 Act 4531/2018 made the amendments to the Penal Code (PC) which were necessary for its alignment with the IC. In particular:

- It is explicitly provided that the customs and traditions followed by the perpetrator, as well as his/her religion cannot reduce the sentence (amendment to Article 79(3a) PC with a view to aligning it with Article 42 IC).
- Article 315B was added to the PC (in accordance with Article 38 IC) providing that anyone who causes or incites a woman to undergo genital mutilation and anyone who publicly provokes or stimulates that act is punished with imprisonment.
- Forcing a person to enter into a marriage is added to the criminalised aims of human trafficking; Article 323A PC is thus aligned with Article 37 IC.
- Stalking is criminalised for the first time by Article 333(1) PC, which implements Article 34 IC. Stalking is defined as the causing of fear or uneasiness in another person, whom the perpetrator repeatedly follows or watches, i.e. in particular by seeking constant contact through a telephone or an electronic device or by repeated visits to her/his family, social or working environment, contrary to the individual's explicitly expressed will. This provision does not presuppose the threat of violence or other illegal act or omission.

³⁰⁹ Greece, Act 4531/2018, OJ A 62/05.04.2018.

³¹⁰ Greece, Act 3500/2006, OJ A 232/24.10.2006,

³¹¹ Greece, Act 4531/2018, OJ A 62/05.04.2018.

³¹² After the cut-off date of this Report (31.12.2018), on the occasion of the public consultation on the amendment of the Penal Code, on 26.03.2019 the Greek Department of Amnesty International submitted a written report to the Minister of Justice asking for an amendment of the definition of rape in the new Penal Code (Article 336) so that it is based on the lack of consent, thus in harmony with the international standards of human rights, such as the Istanbul Convention. Amnesty International denounces the fact that both the existing wording of Article 336 PC and its proposed amendment focus on resistance and violence rather than the lack of consent.

³¹³ Greece, Act 4531/2018, OJ A 62/05.04.2018.

- The anachronistic provision of Article 339(3) PC is repealed, which provided that penal pursuit of the perpetrator of the crime of seduction of a minor under 15 years old stops or does not start if the perpetrator marries the victim. This provision had been widely criticised by national and international bodies for the protection of human rights and by NGOs.

Article 3 Act 4531/2018 amended Act 3500/2006 'on domestic violence'.³¹⁴ In particular:

- The concept of 'family' was broadened so as to comprise the parties to a life partnership provided by Act 4356/2015.³¹⁵ Moreover, the scope of Act 3500/2006 was extended to comprise not merely former spouses, but also the parties to a dissolved life partnership.
- In alignment with Article 3 IC, cohabitation (sharing the same residence as the victim) is no longer a prerequisite for the application of Act 3500/2006 in the case of former spouses and their children (common children or children of one of them).
- The procedure of penal mediation provided by Article 11(2b) Act 3500/2006 is amended. In the event that the person attending a special consultative therapeutic programme run by a public entity deliberately chooses not to complete it, the Public Prosecutor interrupts the penal mediation with retrospective effect and the penal prosecution continues. This provision was adopted to ensure the effective compliance of the perpetrator with the procedure of penal mediation.
- When the victim is a minor, the statute of limitation of the offence of domestic violence is suspended until the victim reaches the age of majority and for one year thereafter in the case of a misdemeanour and for three years thereafter in the case of a felony. Article 56 Act 3500/2006 is thus harmonised with Article 58 IC.
- Restraining or protection measures for the protection of the physical and psychological health of the victim can be imposed even by the Public Prosecutor. Moreover, the enumeration of restraining measures (removal from the family home, change of location and domicile etc.) is indicative and the competent judicial authorities can impose the most appropriate ones. Subsequent violation of a restraining measure is punished by imprisonment. The restraining measure is valid until its repeal, replacement or amendment by the judicial authority that imposed it.
- The imposed restraining measure can be repealed, replaced or amended following a petition by the victim or the person on whom it was imposed or ex officio, if needed; a hearing of both parties has to take place before this can happen.

Article 4 Act 4531/2018 amended various pieces of legislation with the aim of harmonising them with the IC. More specifically:

- Act 3811/2009³¹⁶ provides the granting of an indemnity to the victims of deliberate crimes of violence following a request lodged by them with the Hellenic Authority for Indemnity which is part of the Ministry of Justice. This Act was amended with a view to being harmonised with Article 30 IC. According to Act 4531/2018 the above indemnity covers psychological support for the victim in case there is no relevant public structure in her/his place of residence. Moreover, there is coverage of expenses for changing location and domicile and, in particular, of the expenses for moving and purchasing the necessary consumer goods, so that the victim can be relocated in a safe environment away from the perpetrator. A ministerial decision will define the sum of the indemnity and the kinds of expenses covered. Moreover, a time limit was provided within which the Hellenic Authority for Indemnity must examine the petitions and rule thereon, so that the victim of violence can collect the indemnity within a total period of six months from lodging the petition. The time limit for recourse against decisions by the Hellenic Authority for Indemnity is extended for both the claimant and the Greek State; this facilitates the victim's access to court.

³¹⁴ Greece, Act 3500/2006, OJ A 232/24.10.2006.

³¹⁵ Greece, Act 4356/2015, OJ A 181/24.12.2015.

³¹⁶ Greece, Act 3811/2009, OJ A 231/17.12.2009.

- Act 2168/1993³¹⁷ was amended to align it with Article 51 IC: permits for firearms must not be granted to people prosecuted for domestic violence, as provided by Act 3500/2006, or to people irrevocably convicted (i.e. any appeal has been rejected) for a misdemeanour as provided by Act 3500/2016, irrespective of the sanction imposed.
- Victims of domestic violence who are third-country nationals are protected against deportation or return even before they lodge a petition for the granting of a residence permit.
- In compliance with Article 59(4) IC, Article 21(6) Act 4251/2014 (OJ A 80/01.04.2014) was amended to provide that the residence permits of third-country nationals who were trafficked abroad in order to enter into a forced marriage and who, consequently, lost their residence rights continue to be valid.
- The General Secretariat for Gender Equality was designated as the co-ordinating body for monitoring the application of the Istanbul Convention, in accordance with Article 10 IC. Moreover, the Observatory operating within the General Secretariat for Gender Equality is competent for data collection and research in accordance to Article 11 IC.

In accordance with Article 78(2) IC, Greece has expressed its reservation as to the application of Articles 44(1e), 44(3) and 44(4) IC. According to the Introductory Report to Act 4531/2018, this reservation was justified by the reluctance of the Greek Government to accept the drastic extension of the State's international penal jurisdiction, as provided by Article 44 IC. The legislator found that this issue is premature and should be approached in a more global and systematic way.

The inadequacy and ineffectiveness of the pre-existing legislation (i.e. mainly Act 3500/2006 on domestic violence), the need for adequate structures and systematic data collection and the persistence of gender stereotypes which lie at the heart of violence against women have been constantly stressed by women's NGOs.³¹⁸ Moreover, given that the provisions of Act 3500/2006 had remained outside of the PC (and the other relevant Codes), there was legal uncertainty and difficulties in implementation.³¹⁹ In this context, the alignment of the PC, of Act 3500/2006 and of the various Acts mentioned here above with the IC was long overdue. It remains to be seen how this Act will be applied in practice.

³¹⁷ Greece, Act 2168/1993, OJ A 147/03.09.1993.

³¹⁸ See the Gender Equality Law country report for Greece 2017, written by Sophia Koukoulis-Spiliotopoulos and updated by Panagiota Petroglou, paragraph 10.1.

³¹⁹ See the Gender Equality Law country report for Greece 2017, written by Sophia Koukoulis-Spiliotopoulos and updated by Panagiota Petroglou, paragraph 10.1.

11 Compliance and enforcement aspects (horizontal provisions of all directives)

11.1 General (legal) context

11.1.1 Surveys and reports about the particular difficulties related to obtaining legal redress

There have been no surveys and reports published in Greece over the last five years that provide insights into the particular difficulties faced by victims of gender discrimination in practice in obtaining legal redress. However, the findings of surveys conducted in earlier years remain valid³²⁰ and may even have been amplified by the harsh economic crisis that has hit Greece in recent years (see 4.1.3 and 4.3.6 above). More specifically, research has shown that the most often reported difficulties and barriers which victims of sex discrimination encounter, and which may explain the low level of litigation, relate to: low levels of compensation; the cost and length of legal proceedings; overly short time limits for initiating proceedings; conditions for entitlement to legal aid; reluctance of unions and other associations to bring proceedings; 'stigma' of being a 'troublemaker' associated with such cases and fear of retaliation or victimisation, especially within small companies (where co-workers have hierarchical and often close relationships with the discriminating party) and small-scale communities (where the stigma associated with adverse treatment by the employer or with dismissal is more evident); lack of confidence of claimants that they will be believed and difficulties of proof; lack of awareness and knowledge about equality law; lack of experience and of the habit of defending one's own rights; lack of skilled and experienced advice and assistance; strongly rooted traditional gender stereotypes which have a greater degree of tolerance; and the socio-economic crisis, the ensuing high unemployment and long-term unemployment amongst women and the low level of unemployment benefits which are subject to strict conditions.³²¹ The fear of unemployment affects not only the victim, but also potential witnesses.³²² These deterrent factors apply in general to all gender equality cases.

11.1.2 Other issues related to the pursuit of a discrimination claim

There are no other issues apart from the difficulties and barriers related to access to the courts (see below under 11.3).

³²⁰ Koukoulis-Spiiotopoulos, S. (2008), 'Gender equality in Greece and effective judicial protection – issues of general relevance in employment relationships', *Neue Zeitschrift für Arbeitsrecht NZA-Beilage (New journal of labour law)*, pp.74-82.

Koukoulis-Spiiotopoulos, S. (1997), 'Δικαστική προστασία και κυρώσεις για τις παραβάσεις του κοινοτικού δικαίου' (Judicial protection and sanctions for violations of EU law), *Δικαιοσύνη (Justice)*, 1997, pp. 351 et s.

Koukoulis-Spiiotopoulos, S. (1995), 'Δέσμευση των δικαστηρίων από το κοινοτικό δίκαιο και αυτεπάγγελτος αναγκαστικός έλεγχος' (EU law is binding for the courts and applied by the Supreme Court of its own motion), *Δίκη (Trial)*, 1995, pp. 999 et s.

Koukoulis-Spiiotopoulos, S. (1993), 'Αποτελεσματική δικαστική προστασία κατά των διακρίσεων λόγω φύλου' (Effective judicial protection against sex discrimination), *Δικαιοσύνη (Justice)*, 1993, pp. 256 et s.

Koukoulis-Spiiotopoulos, S. (1992), 'Ζητήματα για την επίδραση του κοινοτικού δικαίου στην παροχή δικαστικής προστασίας' (Issues of the effect of EU law in granting judicial protection), *Νομικό Βήμα (Legal Podium)*, 1992, pp. 825 et s.

Koukoulis-Spiiotopoulos, S. (1992), 'Ζητήματα διαχρονικής εφαρμογής του κοινωνικού κοινοτικού δικαίου' (Issues of the diachronic application of EU social law), *Επιθεώρηση Ευρωπαϊκών Κοινοτήτων (European Community Review)*, 1989, pp. 157 et s.

³²¹ European Commission, European Network of Legal Experts in gender equality and non-discrimination (EELN), A comparative analysis of gender equality law in Europe (2018), available at: <https://publications.europa.eu/en/publication-detail/-/publication/4645e402-38cc-11e9-8d04-01aa75ed71a1/language-en/format-PDF/source-87818151>.

³²² Koukoulis-Spiiotopoulos, S. (2009), 'Συνταξιοδότηση και εναρμόνιση οικογένειας και εργασίας – Ζητήματα ουσιαστικής ισότητας των φύλων και δικαστικής προστασίας (με αφορμή τη Δ.Ε.Κ. 26.3.2009 C-559/07)' (Retirement and harmonisation of family and work – Issues of substantive gender equality and judicial protection (on the occasion of ECJ 26.3.2009 C-559/07), *Επιθεώρησης Δικαίου Κοινωνικής Ασφάλισης (Social Security Law Review)* 2009, pp. 753-785 (780-785).

11.1.3 Political and societal debate and pending legislative proposals

There have been no political and societal debates and there are no pending legislative proposals on this issue.

11.2 Victimisation

The Directives' provisions on victimisation are implemented in national legislation:

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

Article 14 of Act 3896/2010, which aims to transpose Articles 14(1) (the prohibition of discrimination) and 24 (victimisation) of Directive 2006/54/EC, prohibits 'the termination or dissolution in any other way of the employment relationship or other adverse treatment: a) on grounds of sex or family status, b) as revenge by the employer due to the worker's rejection of sexual or other harassment, in accordance with the provisions of Article 2;³²³ c) as a reaction by the employer or the person responsible for vocational training to a protest, complaint, testimony or any other action of a worker or vocational trainee or a representative thereof, within the undertaking or place of vocational training or before a court or other authority, which is related to the application of this Act'.

This provision, in particular in point (c), exceeds Article 24 of the Directive as it i) also prohibits victimisation by 'persons responsible for vocational training' in the 'place of vocational training'; and it ii) is not limited to 'employees' representatives provided for by national laws and/or practices' like Article 24 of the Directive, but refers to any 'representative' of a worker or trainee. However, in point (b), victimisation due to 'submission' to harassment or sexual harassment is omitted, but is included in Article 3 of the Act which aims to transpose Article 2(2) of the Directive.

Article 8 of Act 3769/2009, which aims to transpose Article 10 of Directive 2004/113/EC (victimisation), prohibits 'any adverse treatment or adverse consequence to the detriment of a person who lodges a complaint or is involved in proceedings aimed at enforcing compliance with the equal treatment principle within the meaning of this Act'. This provision copies the requirements of Article 10 of the Directive.

Article 52(3) of Act 4075/2012, which aims to transpose Clause 5(4) of Directive 2010/18/EU, reads: 'The termination of the contract of employment due to an application for or the taking of parental leave [...] is null and void. Any adverse treatment of a worker due to an application for or the taking of parental leave is prohibited.' This provision reproduces the requirements of Clause 5(4) of the Directive.

As shown above, Article 14 of Act 3896/2010 transposing Directive 2006/54/EC exceeds the Directive, while Article 8 of Act 3769/2009 transposing Directive 2004/113/EC and Article 52(3) of Act 4075/2012 transposing Directive 2010/18/EU fully comply with it.

11.3 Access to courts

11.3.1 Difficulties and barriers related to access to courts

Greek legislation transposing the directives copies their provisions on access to the courts:

- Article 22(1) of Act 3896/2010 copies Article 17(1) of Directive 2006/54/EC;

³²³ Article 2 of Act 3896/2010 contains the definitions provided by Article 2(1) of Directive 2006/54/EC ('direct' and 'indirect' discrimination, 'harassment' and 'sexual harassment', 'pay', 'occupational social security schemes').

- Article 7(1) of Act 3769/2009 copies Article 8(1) of Directive 2004/113/EC;
- Article 7(1) of Act 4097/2012 copies Article 9(1) of Directive 2010/41/EU.

The right to judicial protection is also enshrined in Article 20(1) of the Constitution, which produces vertical and horizontal effects according to Article 25(1) of the Constitution. However, women rarely complain, in particular in the private sector, for fear of being victimised and/or acquiring a 'bad name' in the labour market and due to a lack of evidence and support (see also 3.6.5, 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 from 5.8 % to 19.8 %; the female rate from 12.4 % to 27.8 %).³²⁴ From the second quarter of 2009 to the second quarter of 2015, long-term unemployment (over 12 months) rose from 40.9 % to 73.1 %.³²⁵ 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.³²⁶ 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 people registered unemployed³²⁷ is lower than the ELSTAT number, while the allowance is well below the poverty threshold, which is EUR 580 (see 5.2.9 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 (see 11.3.2 below). For example, in addition to the amount, the payment of which is a condition for the admissibility of a claim, further sums 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 (see 11.8 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.³²⁸ 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.³²⁹ In the author's view, Article 19(2) of the TEU and Article 47 of the Charter are also being violated.

The rule on the standing of entities and unions of persons before the courts so that they can engage in litigation is incorrectly worded. It requires the wronged person's 'consent', while the directives require the wronged person's 'approval'. Under Greek law, 'consent' must be given before the lodging of proceedings, while 'approval' can be given thereafter.³³⁰ Thus, until consent is obtained, the remedy may well be time barred (e.g. a dismissal must be challenged within three months of its notification and an administrative act within 60 days from the date on which the wronged person took cognisance thereof). Moreover, this rule is not incorporated into the procedural codes, while there are insurmountable barriers to justice for NGOs and non-profit unions of persons which have

³²⁴ Greek Statistical Authority (ELSTAT), available at: www.statistics.gr.

³²⁵ Greek Statistical Authority (ELSTAT), available at: www.statistics.gr; Of the population aged 15 years and over by the duration of unemployment: 2001-2015 by quarter, Table 6.

³²⁶ European Commission (2014), *Employment and Social Situation Quarterly*, December 2014, Executive Summary, p. 23; European Commission (2014), *Employment and Social Developments in Europe 2014*, p. 54.

³²⁷ Manpower Employment Organisation (OAED), available at: www.oaed.gr. The number of registered unemployed was 803 687 in June 2015.

³²⁸ European Court of Human Rights (ECtHR), *Athanasίου v. Greece*, No. 10691/04, 1 June 2006?

³²⁹ Act 4055/2012 'fair trial and reasonable length thereof', OJ A 51 12 March 2012; GNCHR 'Παρατηρήσεις και προτάσεις σχετικά με το Σχέδιο Νόμου του Υπουργείου Δικαιοσύνης για τη δίκαιη δίκη και την εύλογη διάρκεια αυτής' (Comments on the bill 'fair trial and reasonable length thereof'), available at: nchr.gr/images/pdf/apofaseis/dikaih_dikh/EEEDA_parat_polunomosxedio_tel.pdf, in Greek and in English. Also published in *Επιθεώρησης Δικαίου Κοινωνικής Ασφάλισης* (Review of Social Security Law) 2012, pp.412-422, in Greek.

³³⁰ See Articles 236-238 of the Greek Civil Code for the meaning of 'consent' and 'approval'.

standing, but inadequate resources (see 11.9 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 from the period required for teachers to apply for the post of school director and school counsel.^{331 332}

11.3.2 Availability of legal aid

Legal aid is granted to low-income EU citizens and low-income third-country nationals or stateless people. It consists of an exemption from the pre-payment of litigation costs and the appointment of a lawyer, a notary public and a bailiff at no cost. Legal aid is granted for litigation in civil, penal and administrative courts, subject to a very strict means test: the beneficiary must establish that he/she is unable to pay litigation costs without the necessary means for his/her maintenance and the maintenance of his/her family being restricted or that his/her family income does not exceed one third of the minimum wages provided by the NGCA (currently the statutory minima), i.e. EUR 172 (one third of the minimum wage for workers over 25 years old) or EUR 170 (one third of the minimum wage for workers under 25 years old) (see 11.8 below). Moreover, in the case of claimants, the remedy must not be inadmissible or manifestly ill-founded.

An exemption from litigation costs, without any condition, is granted for penal complaints (not for civil or administrative claims, including employment and social security claims, as the GNCHR had demanded)³³³ lodged by victims of offences against sexual freedom or abuse of sexual life for financial benefit and by victims of domestic violence. These are penal offences for which those guilty of harassment are also punished (see 3.7.4 above). Non-profit legal entities are also entitled to legal aid if they establish that the payment of 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.³³⁴ 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.³³⁵ Therefore, legal aid is in principle available to entities who are without resources. As a result, access to the courts for both victims and entities working in their interest is not sufficiently facilitated.

11.4 Horizontal effect of the applicable law

11.4.1 Horizontal effect of relevant gender equality law

The Greek gender equality law has a horizontal effect; thus, there is no particular problem in ensuring compliance with and in enforcing gender equality law in Greece.

11.4.2 Impact of horizontal direct effects of the charter after *Bauer*

³³¹ According to Article 1(2) Act 1304/1982, the School Counsel is a public servant with the competence to supervise and control the teaching methods and services of the teachers, to evaluate them, to organise training seminars for them etc. within a given geographical area.

³³² CS 4875/2012 annulling this decision; see European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2013), 'Greece', *European Gender Equality Law Review* 1, pp. 72-74, available at: <https://www.equalitylaw.eu/downloads/2800-european-gender-equality-law-review-1-2013>.

³³³ GNCHR 'Παρατηρήσεις και προτάσεις στο σχέδιο νόμου 'Δίκαιη δίκη και εύλογη διάρκεια αυτής' (Comments on the bill 'fair trial and reasonable length thereof), as unanimously adopted in its Plenary of 26 January 2012, available at: [nchr.gr/images/pdf/apofaseis/dikaih_dikh/EEDA_parat_polunomosxedio_tel.pdf](https://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/EEDA_parat_polunomosxedio_tel.pdf), in Greek and in English. Also published in *Επιθεώρησης Δικαίου Κοινωνικής Ασφάλισης (Review of Social Security Law)* 2012, pp. 412-422, in Greek.

³³⁴ Greece, 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).

³³⁵ SCPC (Civil Section) No 2069/2013.

The recognition of horizontal direct effects of the charter provisions (in the *Bauer* ruling of the CJEU) is in line with the fact that Greek gender equality law has horizontal effect.

11.5 Burden of proof

National legislation provides for a shift of the burden of proof in sex discrimination cases (Article 24 of Act 3896/2010 transposing Directive 2006/54/EC; Article 9 of Act 3769/2009 transposing Directive 2004/113/EC).

Article 24 of Act 3896/2010 reads:

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

Article 9 of Act 3769/2009: the rule is formulated in the same way as in Paragraph 1 of Article 24 of Act 3896/2010 above.

There is no explicit case law on the reversal of the burden of proof. It seems that the courts are rather reluctant to proceed with a reversal, even if they are asked to do so by the claimant. This happened in a recent case concerning direct or indirect sex discrimination against female cleaners in a private bank, which resulted in unlawful dismissal. The applicant requested the transfer of the burden of proof, but the Court neither responded to this request nor applied the EU law burden of proof.³³⁶ Yet, without changing their approach to the burden of proof, some courts rely on circumstantial evidence.³³⁷

The rules are fine in writing, but they do not seem to be applied in practice, as the Ombudsman also notes, in spite of a relevant CJEU preliminary ruling in a Greek case.³³⁸ An important reason is that they remain in the acts transposing the directives, without being incorporated into the procedural codes³³⁹ and they are therefore little known. The general rule appearing in the procedural codes lays the burden of proof on the claimant. This rule, in conjunction with other factors, such as fear of victimisation or a 'bad name' in the labour market, deters women from complaining. These fears, which potential witnesses share, are increasing with the deregulation of employment relationships and the growing deterioration of the position of women in the labour market (see 4.1.3 and 4.3.6 above). Furthermore, rising litigation costs discourage litigation. The situation could improve, if organisations took cases to courts and to other authorities, which they rarely do (see 11.9.1 below).

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

³³⁶ Athens FICC No 2323/12.12.2018 (3.4.4 above).

³³⁷ See in particular CS No 505/2010 in a sexual harassment case (3.6.4 above).

³³⁸ CJEU, C-196/02, *Vasiliki Nikoloudi v Organismos Tilepikoinonion Ellados AE*, 11 March 2005.

³³⁹ 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.

3304/2005 (see 2.2 above) transposing Directives 2000/43/EC and 2000/78/EC.³⁴⁰ In the view of the author, it is obvious that the position of the APPD would be the same in a gender equality case (see also 4.2.9 above).

11.6 Remedies and sanctions

11.6.1 Types of remedies and sanctions

Paragraph 1 of Article 23 of Act 3896/2010 transposing Directive 2006/54/EC reads:

'The violation of the prohibition of discrimination on grounds of sex enshrined in this Act entitles the victim to, inter alia, full compensation, including actual damage and loss of earnings as well as moral damages.'

The expression '*inter alia*' means that the traditional sanctions for a breach of employment law, which constitute *restitutio in integrum* are not affected. Greek law thus exceeds the EU law minimum requirements. Paragraph 2 of the same Article makes employers or directors of undertakings or their representatives who breach the Act liable to the administrative fines provided for breaches of labour law. Paragraph 3 makes the breach of this Act a disciplinary offence for civil servants.³⁴¹ Paragraph 4 punishes the 'offence to sexual dignity' with a harsher criminal sanction (imprisonment for six months to three years and a pecuniary penalty of at least EUR 1 000)³⁴² if it is committed through the exploitation of the situation of a worker or candidate for employment (see 3.7.1 above). Article 10 of Act 3769/2009 transposing Directive 2004/113/EC repeats Paragraphs 1, 3 and 4 of the above Article 23 of Act 3896/2010, adding that in case of a breach of Article 6 of this Act (prohibition on the use of 'actuarial factors' on the grounds of sex in a way which results in differences in individual premiums and benefits), the sanctions provided by insurance law will apply.

11.6.2 Effectiveness, proportionality and dissuasiveness

Although the EU burden of proof rule does not seem to be applied (see section 11.5 above), once an illegality is established through the traditional procedural rules, the remedies and sanctions are generally effective, proportionate and dissuasive. In most cases the claimant is put in the position in which they would have been in had the illegal act or omission not occurred (*restitutio in integrum*): an unlawful refusal to hire or promote is declared null and void by the civil courts and the hiring or promotion is deemed to exist from the time it should have occurred; administrative courts annul such a refusal and order a retroactive hiring or promotion.³⁴³ An unlawful dismissal is declared null and void by the civil courts and is annulled by the administrative courts.³⁴⁴ The dismissal is deemed never to have occurred; the worker retains their post, reinstatement not being necessary. In all cases full back pay is awarded, without a ceiling, plus legal interest. Moral damages may also be awarded pursuant to relevant general rules.³⁴⁵ However, it has been argued that, in the case of an unlawful dismissal of a pregnant or breastfeeding woman or a woman who has recently given birth, sanctions are not effective, given that full back pay can be significantly

³⁴⁰ APPD Decision 1/2008, available at: www.dpa.gr.

³⁴¹ After the cut-off date of this report (31.12.2018), Article 14 Act 4604/2019 OJ A 50/26.03.2019 makes the use of language introducing gender discrimination a disciplinary offence for civil servants.

³⁴² Article 337 PC punishes this act with imprisonment for a maximum of one year or a pecuniary sanction.

³⁴³ 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).

³⁴⁴ SCPC (Civil Section) Nos 85/1995, 593/2006, 496/2011 (the dismissal of women upon reaching the pensionable age which was at the time lower than men's pensionable age); SCPC (Civil Section) No 2035/2002 (the dismissal of a pregnant woman; knowledge of the pregnancy by the employer is irrelevant); SCPC (Civil Section) No 1591/2010 (the dismissal of a mother during the period for which she was entitled to reduced working time (see 5.4.4. above)).

³⁴⁵ SCPC (Civil Section) No 2069/2013 (moral damages – the principle of proportionality).

reduced or even eliminated if the Court upholds potential objections by the employer (see 5.1.1 above).

Penal sanctions, administrative fines as well as disciplinary sanctions for civil servants (see 11.3.1 above) are also satisfactory. Concerning pay³⁴⁶ and social security³⁴⁷ cases, levelling-up is traditionally applied. Yet procedural and socio-economic problems deter a recourse to legal proceedings, therefore limiting the use of these effective remedies (see 11.4.1 below).

11.7 Equality body

In Greece, the main equality body that seeks to implement the requirements of EU gender equality law is the Ombudsman, an independent authority whose independence is guaranteed by the Constitution (Articles 101A, 103(9)).³⁴⁸ The Consumers' Ombudsman, also an independent authority, is an equality body in the private sector.³⁴⁹

The Ombudsman was the equality body for Directives 2000/43/EC and 2000/78/EC, by virtue of Act 3304/2005³⁵⁰ transposing both directives, albeit in the public sector only. Therefore, in Greece there was no independent body for the implementation of Directives 2000/43/EC and 2000/78/EC in the private sector, in breach of these directives. Act 4443/2016 remedied this situation by designating the Ombudsman as the equality body for those directives in the private sector as well (see 3.4.1 above).

The Ombudsman is also the equality body in the public and private sector, for Directives 2006/54/EC and 2010/41/EU (Acts 3896/2010 and 4097/2012 transposing them, respectively); and for Directive 2004/113/EC (transposed by Act 3769/2009), albeit in the public sector only. These tasks are fulfilled by a Deputy Ombudsman for Gender Equality. The implementation of Directive 2004/113/EC in the private sector is monitored by the Consumer's Ombudsman, by virtue of Act 3769/2009 transposing this Directive.

Both Ombudsmen receive complaints, intervene between parties in order to achieve a solution ensuring the complainant's rights and give non-binding opinions. They publish annual reports and propose legislative changes. The Ombudsman's annual reports include a Special Report on Equal Treatment in the areas of Directives 2000/43/EC and 2000/78/EC and 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.³⁵¹

The annual reports of the Consumer's Ombudsman contain no information on cases regarding the application of Directive 2004/113/EC which they are competent to monitor (see 9.1 above).

11.8 Social partners

Since the incorporation of the gender equality principle in the Constitution (see 2.1.1 above), the social partners have often included gender equality issues in collective

³⁴⁶ SCPC (Civil Section) landmark judgment No 35/1995 (Plen.) (4.1.4, above); SCPC (Civil Section) Nos 75/2009; CS No 890/2006.

³⁴⁷ Court of Audit Nos 44 and 3157/200 (Plen.). The annulment by the CS of a refusal to pay social security benefits also results in a levelling up: CS No 3088/2007 (Plen.).

³⁴⁸ Founded by Act 3094/2003, OJ A 10/22.01.2003, www.synigoros.gr.

³⁴⁹ Founded by Act 3297/2004, OJ A 259/23.12.2004, www.synigoroskatanaloti.gr.

³⁵⁰ Act 3304/2005, OJ A 16/27.01.2005.

³⁵¹ The findings are summed up in the Ombudsman's speech 'The Ombudsman and gender discrimination: equal treatment of men and women in matters of employment and occupation', 17 October 2014, available (in Greek) at: www.synigoros.gr/resources/141021-omilia.pdf.

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.³⁵² No review of the classifications has ever been undertaken and no implementation of Recommendation 2014/124 is on the agenda.

It should be mentioned that in 2015, in the context of social dialogue, social partners (GSEE – Confederation of trade unions of employees in the private sector) and SEV³⁵³ (Hellenic Federation of Enterprises) have jointly issued four policy papers. One of them, 'Social dialogue and discrimination in the workplace', was sent to the Ministry of Labour but was never taken into consideration, as mentioned in the 2019 Report of the Committee of Experts, ILO. In 2015 this policy paper was accompanied by common national actions for the promotion of equality and combating discrimination under the title 'The world of work together for equality', adopted by the social partners with the technical support of ILO. According to the parties, these actions were meant to show the value of social dialogue for raising awareness in the world of work of, inter alia, gender equality.³⁵⁴ Furthermore, the national social partners have included an entry in the appendix to the 2017 National General Collective Agreement on combating discrimination at the workplace.

Large trade union federations have special secretariats for women/equality. This is the case, for example, with the Greek General Confederation of Labour (GSEE)³⁵⁵ and the Supreme Administration of Unions of Civil Servants (ADEDY),³⁵⁶ which represent Greek unions at the ILO and sign NGCAs, as well as the Federation of Unions of Bank Employees (OTOE).³⁵⁷ The Hellenic Federation of Enterprises (SEV) has set up a working group of businesswomen with a view to promoting the participation of women in the labour market.³⁵⁸ 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.

Collective agreements (CAs) are legally binding on the signatory workers' and employers' unions and their members and are judicially enforceable. NGCAs provide minimum standards for private sector salaried workers employed by any employer throughout the country and bind all these employers. Since 2010, the CA system has gradually been dismantled through repeated and extensive statutory interventions in free and voluntary collective bargaining, in compliance with Memoranda of Understanding. The CA hierarchy was reversed, so that company-level CAs (where women's bargaining power is weaker) prevail over sectoral CAs. 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

³⁵² Koukoulis-Spiiotopoulos, S. (2008), 'Gender equality in Greece and effective judicial protection', NZA 2/2008, p.77.

³⁵³ SEV (Hellenic Federation of Enterprises) represents the large and medium enterprises in Greece and is the leading business network, with its membership including 400 of the largest corporations and regional associations/federations in Greece.

³⁵⁴ Greek General Confederation of Labour (GSEE), available at: https://inegsee.gr/wp-content/uploads/2015/03/1554_2-3-2015-koino_DT_Koines_Draseis_Diakriseis.pdf.

³⁵⁵ Greek General Confederation of Labour (GSEE), available at: www.gsee.gr/?cat=14.

³⁵⁶ Supreme Administration of Unions of Civil Servants (ADEDY), available at: <http://adedy.gr>.

³⁵⁷ Federation of Unions of Bank Employees (OTOE), available at: www.otoe.gr/isotita.

³⁵⁸ See Hellenic Federation of Enterprises (SEV) www.sev.org.gr/tomeis-drason/ergasia-anthropino-kefalaio.

EUR 22.83.³⁵⁹ This was considered to be a breach of the European Social Charter by the European Committee of Social Rights (ECSR).³⁶⁰ Wage fixing was then removed from the scope of NGCAs.³⁶¹ NGCAs now only concern non-wage matters and can only bind the signatory employers' and workers' federations and their members and no longer all employers in the country.

Following GSEE complaints, the ILO CEACR and the ILO Committee on Freedom of Association (CFA) found that the above-mentioned repeated and extensive statutory interventions in free and voluntary collective bargaining, in compliance with Memoranda of Understanding violate several ILO Conventions.³⁶² 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 to ensure an 'effective enforcement' of equal pay legislation.³⁶³ CAs, in particular NGCAs, have also improved maternity and parenthood protection (see 5.2.1, 5.2.2, 5.4.1, 5.4.4 above).

Article 11 of Act 1876/1990³⁶⁴ empowered the Minister of Labour to extend and declare generally mandatory for all workers of a sector or profession a CA which is already binding on employers who employ 51 % of the workers in that sector or profession. The application of this provision was suspended until the end of the Programme of Economic Adjustment, i.e. 20 August 2018 (Article 37(6) of Act 4024/2011).³⁶⁵ After 21 August 2018 the above provision was applied again and several sectoral collective agreements have been extended and declared generally mandatory.

11.9 Other relevant bodies

11.9.1 The role of women's NGOs for strategic litigation

Up to the cut-off date of this report (31 December 2018),³⁶⁶ Article 22(2) Act 3896/2010 provided the right of intervention before any administrative authority and any court for

³⁵⁹ 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.

³⁶⁰ 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*.

³⁶¹ Article 1, Paragraph IA.1 (1) and (2a) of Act 4093/2012, OJ A 222/12.11.2012. After the cut-off date of this report (31.12.2018), the above discrimination on the grounds of age was repealed and the minimum monthly salary is fixed by law at the sum of EUR 650 for any employee irrespective of age.

³⁶² ILO CEACR, Observations, International Labour Conference 102nd Session, 2013, Greece, Convention 98 (right to organise and collective bargaining) and Convention 100 (equal remuneration), available at: www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658; CFA 365th Report, Governing Body 316th Session, 1-16 November 2012, Case 2820, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf.

³⁶³ ILO CEACR, Observations, International Labour Conference 101st Session, 2012, Greece, Convention 100 (equal remuneration), available at: www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658.

³⁶⁴ Act 1876/1990 'free collective bargaining,' OJ A 27/08.03.1990.

³⁶⁵ Article 37(6) of Act 4024/2011 OJ A 226/27.10.2011, as amended by Article 4472/2017 OJ A 74/19.05.2017 and by Article Fifth Act 4475/2017 OJA 83/12.06.2017.

³⁶⁶ After the cut-off date of this report (31.12.2018), Article 23 of Act 4604/2019 OJ A 50/26.03.2019 added to the Civil Procedure Code a new paragraph providing the procedural right of trade unions to intervene in labour law disputes in favour of litigants who exercise rights deriving from the applicable legislation on equal treatment between men and women and the prohibition of discrimination on the ground of sex in employment, and in particular of Act 3896/2010, in any stage of the judicial procedure, even before the Supreme Civil Court. However this right is restricted to trade unions, excluding women's NGOs, whereas the relevant provision of Article 22(2) Act 3896/2010, implementing the Directive 2006/54/EC, which has not been explicitly amended by Act 4604/2019, provides for any legal entity with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit organisations) both the rights to engage in litigation in the name of the victim with his/her 'approval' and to intervene in favour of the victim, before any competent administrative authority and court. Thus, the provision of Article 23 Act

any legal entity with a relevant legitimate aim (i.e. not only for trade unions but also for women's NGOs and non-profit human rights organisations). However, this provision has not been incorporated into the procedural codes, so it is not widely known. Moreover, there are insurmountable barriers to access to the courts for NGOs and non-profit organisations which have standing, but inadequate resources. Even long-established women's NGOs have been hit hard by the economic crisis because their members are not paying their contributions and they have no other resources.

11.9.2 The monitoring role of the General Secretariat for Gender Equality for the Istanbul Convention

The General Secretariat for Gender Equality, a governmental body, was designated as the co-ordinating body for monitoring the application of the Istanbul Convention, in accordance with Article 10 IC. Moreover the Observatory operating within the General Secretariat for Gender Equality is competent for data collection and research in accordance with Article 11 IC.

11.10 Evaluation of implementation

In 1990-1993 a research study was conducted into the records of the Greek courts with the aim of identifying gender equality cases, the level of litigation and the impact of case law.³⁶⁷ This was a huge task, given that in Greece the judgments are kept in the courts' files and only some of them (mostly those from the supreme courts) are published in law reviews or data banks. According to the findings of this research, women's reactions are conditioned (much more than those of men in similar circumstances) by feelings of insecurity, inhibitions and numerous justified or unjustified, conscious or subconscious, fears: of unemployment, of employers' power, of social disapproval and a bad reputation in the labour market, of not being able to cope with employment and family responsibilities (and associated feelings of guilt) and of losing a case (even if this will not be detrimental) etc. This ambiguous and controversial situation, in conjunction with lack of information among workers, trade unions and lawyers, limited support from trade unions, the weaknesses of the competent administrative authorities and shortcomings of substantive and procedural litigation (particularly the scope of legislation and burden of proof) seem to condition women's reluctance to claim their rights and their readiness to compromise.

Twenty-nine years later, the above findings remain valid and have even been amplified by the severe economic crisis that has hit the Greek economy.

11.11 Remaining issues

There are no remaining issues.

4604/2019 falls short of the relevant provision of the Directive and its implementing law 3896/2010 and may create legal uncertainty as to whether (i) the right of trade unions also to engage in gender equality litigation in the name of the victim and (ii) the right of NGOs to both engage in gender equality litigation in the name of the victim and intervene in his/her favour in such procedures are still valid. However, it should be noted that the placement of the new provision in the Civil Procedure Code will render it more visible to the stakeholders in litigation (victims of discrimination, lawyers, trade unionists and judges).

³⁶⁷ Koukoulis-Spiliotopoulos, S., Petroglou, A., Petroglou, P. (1993), Greek Report in the research project 'Sex equality litigation in the Member States of the European Community – A comparative study', led by Barry Fitzpatrick.

12 Overall assessment

The implementation of the EU gender equality *acquis* into Greek legislation is relatively satisfactory. In some matters, such as the examples below, the Constitution and the legislation even exceed EU law:

- *Equal pay*: Article 22(1)(b) of the Constitution 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 (see 2.1.1 and 4.1.1 above).
- *Positive action* is obligatory in all fields, in particular in favour of women (Article 116(2) of the Constitution, see 2.1.2 and 3.6.1 above). In the field of employment, positive action has been provided only in the form of quotas for the participation of women on service councils and administrative boards of the public sector. According to the findings of CJEU *Badeck* case,³⁶⁸ such measures are related to employment.
- *Instruction to discriminate*: the prohibition is broader, as it includes 'encouragement' (see 3.8.1. above).
- *Prohibition of direct and indirect discrimination*: 'family status' is added to the ground of 'sex'; the prohibition also concerns publications, advertisements etc. (see 3.3.1 and 3.4.1).
- *Pregnancy/maternity protection*: disclosure of the pregnancy is not required (see 5.2.2 above); the length of maternity leave exceeds the EU law minimum (see 5.2.8 above); the period of protection exceeds maternity leave (see 5.2.8 above); full pay during maternity leave is in principle ensured, but conditions for entitlement to maternity allowance are discriminatory (see 5.3.7 above; see also below); both the commissioning and the surrogate mother are entitled to maternity leave (see 5.3.1 above) and a reduced working day (see 5.5.4 and 5.8 above).
- *Parental leave*: public sector: longer than the EU law minimum and fully paid, an extension for multiple births, no length of service requirement (see 5.5.4 above); public and private sector: paid working day reduction (see 5.5.4 above); adoptive, foster and commissioning parents are mostly assimilated with natural parents regarding parental leave (see 5.4.1, 5.5.3 and 5.8 above).
- *Time-off, special leave*: several examples are provided in the private and the public sector (see 5.5.13, 5.7.1 above).
- *Victimisation*: the prohibition also concerns 'persons responsible for vocational training,' while any 'representative' of a worker or trainee is also protected (see 11.2 above).
- *Remedies and sanctions* in general are effective, proportionate and dissuasive; they exceed EU law minimum requirements (see 11.6.1 and 11.6.2 above).

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

- *Indirect discrimination*: limited awareness of the notion among judges, in spite of its correct legal definition up to the cut-off date of this report (see 3.4.1 above).
- *Equal pay*: no criteria for assessing the value of jobs; consequently, no awareness, hence no application of the notion of equal value (see 4.2.3 and 4.2.4 above); no implementation of the transparency measures set out by Recommendation 2014/124 (see 4.2.10 above).
- *Self-employed*: no transposition of certain provisions of Directive 2010/41/EU (Articles 5, 7, 8(3) and (4)), while Article 8(1) is transposed in part I (see 3.6.1, 8.6 and 8.7 above).
- *Pregnancy/maternity protection*: conditions for paying the maternity allowance breach Directive 92/85/EEC (see 5.3.7 above).
- *Parental leave*: where it is transferable (the public sector) the law does not require that one month be retained by one parent (see 5.5.7 above); a civil servant whose

³⁶⁸ CJEU judgment of 28 March 2000 Case C-158/97.

- 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 (see 5.5.6 above).
- *Irrational and unlawful practice regarding the take-up of parental leave*: when a civil servant requests parental leave later than the expiry of maternity leave or for a child born before his/her appointment to the civil service, while the child is still under the age prescribed by law, a fictitious use of the reduced working day is taken into account and the leave is proportionately curtailed (see 5.5.4 above).
- *Time off*: there are provisions for specific cases, but no general provision on force majeure (see 5.7.1 above).
- *Occupational schemes*: limited awareness of the notion, as the transposing legislation has merely reproduced the provisions in the directives, with no further specification (see 6.6 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) (see 11.3.1 above).
- *Legal aid*: entitlement conditions make it available only to people living in poverty and entities without any resources (see 11.3.2 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 (see 11.3.1 and 11.5 above).

The socio-economic context

The sweeping reforms in the areas of employment and social security which have been made since 2010 were required as bailout conditions by Memoranda of Understanding (MoUs) signed by the European Commission, acting on behalf of the Euro area Member States, and the Hellenic Republic. The drastic cuts in pay and social security benefits are coupled with significant increases in direct and indirect taxes and other charges. As incomes shrink and charges rise, the welfare state is gradually being dismantled through social budget cuts. The general situation thus keeps deteriorating, as the (usually cautious) CS has also found (see 1.1 above). Growing legal uncertainty adds to the general feeling of insecurity. The austerity measures are included in long and tortuous pieces of legislation, dealing with subjects unrelated to one another ('omnibus laws'), which have retroactive effect and are difficult to combine amongst themselves and with other relevant legislation, and are often and unpredictably modified. As international organisations, institutions, bodies and experts have found, the crisis and austerity measures have a disproportionate impact on women. Moreover, their financial effectiveness is highly questionable.³⁶⁹

The Ombudsman stresses that women are more exposed to adverse working conditions, in particular in the private sector, more generally and during pregnancy and upon their return from maternity leave. They are pressed to accept flexible forms of employment which do not ensure adequate living standards and do not allow them to meet their family obligations.³⁷⁰ In particular, downgrading and imposed part-time or rotation work are

³⁶⁹ ILO CEACR, Observations, International Labour Conference 101st, 102nd, 104th, and 106th Sessions, 2012-2017, Convention 100 (equal remuneration) and Convention 111 (discrimination (employment and occupation)), available at: www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658; Council of Europe Commissioner for Human Rights, *Protect women's rights during the crisis*, 10.07.2014, available at: www.coe.int/en/web/commissioner/-/protect-women-s-rights-during-the-crisis; UN Independent Experts on the effects of foreign debt on human rights, Lumina, C. (2014), *Mission to Greece (22-27 April 2013)*, UN Human Rights Council 25th Session, 11 March (A/HRC/25/50/Add.1): available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx; Bohoslavsky, J.-P. (2015), *Greek crisis: human rights should not stop at doors of international institutions*, 02 June 2015, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032&LangID=E; Bohoslavsky, J.-P. (2016) *End-of-Mission Statement. Visit to the European Union Institutions*, available at: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20057&LangID=E.

³⁷⁰ 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 (in Greek) at: www.synigoros.gr/resources/141021-omilia.pdf.

spreading, but women's reluctance to lodge actions is also growing (see 11.10 above).³⁷¹ The Ombudsman stresses that in the context of the crisis and labour market deregulation, gender stereotypes are being resurrected, if not prevailing.

³⁷¹ See SCPC, Civil Section No 37/2004 condemning the downgrading of a woman upon her return from maternity leave. This was and still is common in the state-owned bank concerned, but only the claimant dared to bring an action, which an expert lawyer dealt with as a test case, *pro bono*. Although this practice is growing, recourse to the courts is still rare.

Annexes

List of Abbreviations

ACA: Administrative Court of Appeal
CA: Civil Court of Appeal
CC: Civil Code
CCP: Code of Civil Procedure
Const.: Constitution
CS: Council of State (Supreme Administrative Court)
CSC: Civil Servants Code
FICC: First Instance Civil Court
JP: Justice of the Peace
LI: Labour Inspectorate
NGCA: National General Collective Agreement
SCPC: Supreme Civil and Penal Court
SSP: Scientific Service of Parliament

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