

Greek family law reform puts victims of domestic violence at high risk

On 18 March 2021, the Greek Ministry of Justice launched a public consultation on a bill amending the Civil Code provisions on custody of children to “strengthen the active presence of both parents in the upbringing of the child”.¹

The provisions of the bill raise alarm as regards compliance with the State's obligation under the Istanbul Convention to guarantee a gendered understanding of violence against women and “an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment”. Concerns about a backsliding of safeguards against domestic violence are all the more worrying at a critical time of sharply rising domestic violence incidents during the COVID-19 pandemic in Greece,² an increase in hate speech against women following the presentation of the bill, and alarming instances of contestation of the Convention by Council of Europe countries.³

In addition, the Ministry of Justice disregarded the recommendations made in the draft prepared by the Law Commission (νομοπαρασκευαστική επιτροπή) and presented a draft on its own initiative. It also refrained from taking into consideration consistent recommendations from experts such as the Family Law Association, judges, legal practitioners and child psychiatrists on the creation of dedicated Family Courts composed by specialised judges.⁴ The Ministry also failed to pay due regard to vulnerable categories of children that will be affected by the provisions such as asylum seekers and refugees, while measures such as interpretation and support from social services, necessary for the determination of the needs of those children and for their access to the relevant procedures, are not foreseen.⁵

Recommendation: EU and Council of Europe bodies should urge the Greek government to refrain from legislative reforms that run counter to Greece's obligations stemming from the Convention on the Rights of the Child, the Istanbul Convention and fundamental rights.

Best interests of the child

The bill re-defines the best interests of the child in Article 1511 of the Civil Code as served “primarily through the substantive participation of both parents” in such a way as to introduce abstract legislative direction to courts. This is contrary to the established

¹ Ministry of Justice, *Μεταρρυθμίσεις αναφορικά με τις σχέσεις γονέων και τέκνων και άλλα ζητήματα οικογενειακού δικαίου*, 18 March 2021, <https://bit.ly/3u2Rgvh>.

² Ministry of Labour and Social Affairs, cited in To Vima, ‘Κορωνοϊός : Η καραντίνα απογείωσε την ενδοοικογενειακή βία’, 24 November 2020: <https://bit.ly/3vYwW0c>; European Commission, *EU strategy on the rights of the child*, COM(2021) 142, 24 March 2021, 11.

³ EEAS, Turkey: ‘Statement on Turkey's withdrawal of the Istanbul Convention’, 20 March 2021, <https://bit.ly/3crOU38>.

⁴ On the views of the President of the Commission, see Proto Thema, ‘Ιωάννης Τέντες στο podcast του ΘΕΜΑ 104,6: Δείτε τι λέει ο πρώην εισαγγελέας του Αρείου Πάγου για τη συνεπιμέλεια’, 20 December 2020, <https://bit.ly/3fVkyL>.

⁵ UN Working Group on Discrimination against Women and Girls, *Report on visit to Greece*, A/HRC/44/51/Add.1, 29 June 2020, para 67, <https://bit.ly/3w8rzv9>.

international law principle that the best interests of the child shall be determined following assessment and weighing of all elements of the individual case,⁶ on the basis of indicative and non-hierarchical criteria.⁷ It also creates the risk of denial of immediate and effective protection to children experiencing environments of abuse and domestic violence, where distance from one parent is often indispensable to ensuring a calm and conducive personal and family environment.⁸

In addition, the bill restricts the child's right to have their views expressed "insofar as the court determines the opinion of the child not to be the outcome of guidance or suggestion". The proposed provision interferes with the unequivocal right of children to express their views on any decision affecting them, pursuant to the Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR).⁹

Recommendation: The proposed amendment to the definition of the best of interests of the child should be deleted.

Contact rights and removal of custody

According to the bill, custody and visiting rights under Articles 1532 and 1520 of the Civil Code may be removed from a parent for reasons of domestic violence, sexual offences or sexual exploitation only upon an irrevocable criminal conviction. The reform therefore subjects the child's protection to the conclusion of particularly lengthy criminal trials exceeding 8 years until a judgment becomes irrevocable, given Greece's ongoing inability to guarantee rapid and efficient administration of justice.¹⁰

The provisions create potent risks of circumvention of the purpose and guarantees of the Istanbul Convention, in dereliction of the duty of the State to legislate in line with international law. They also dismantle existing safeguards in Article 735 of the Civil Procedure Code, according to which, in domestic violence cases, the court may immediately issue an order prohibiting the perpetrator from approaching the victim's residence or workplace, the residence of close family members, the child's school, or shelters.

Recommendation: The bill should be amended to allow for removal of custody and prohibition on contact by court order upon a charge for acts of domestic violence, supported by expertise, or for sexual offences or sexual exploitation.

⁶ European Court of Human Rights (ECtHR), *Petrov & X v. Russia*, App No 15197/02, 22 May 2008, paras 98-102.

⁷ Committee on the Rights of the Child, *General Comment no. 14 (2013)*, CRC/C/GC/14, 29 May 2013, paras 48-51.

⁸ On the particular predicament of refugees suffering domestic violence, see Administrative Court of Athens [Single-Judge], Decisions 1557/2020 and 16244/2019.

⁹ Committee on the Rights of the Child, *General Comment no. 14 (2013)*, paras 53-54; ECtHR, *M & M v. Croatia*, App No 10161/13, 3 September 2015, paras 171-172.

¹⁰ European Commission, *Rule of Law Report 2020 – Greece*, SWD(2020) 307, 30 September 2020, 4-5.