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# Country report

## Gender equality



Greece

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# **Country report**

## **Gender equality**

How are EU rules transposed into national law?

### **Greece**

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Reporting period 1 January 2014 – 1 July 2015

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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,<sup>1</sup> which is written and rigid and prevails over statutes. According to Article 28(1) of the Constitution international treaties introduced in the Greek legal order by statute and subsequently ratified prevail over statutes. Greek courts acknowledge the primacy of EU law over the Constitution. They 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 pension claims against compulsory social security schemes, as the entities that run them are legal persons governed by public law, except for social security 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.<sup>2</sup> The CS considers that this applies not only to actions for annulment, but to all claims before administrative courts, such as claims for pay or social security benefits. The CS has used this discretion in judgments regarding pension cuts. It has held that the statutory provisions on the basis of which the claimants' pensions were cut for the seventh time within two years disregarded the requirement to respect and protect the value of the human being and the principles of solidarity, equality in public charges and proportionality enshrined in the Constitution, so that the essence of the right to social security, i.e. the granting of benefits allowing a decent standard of living, had been violated. Therefore, the

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<sup>1</sup> In 1975, after the fall of the seven-year military dictatorship, a new Constitution containing many provisions on human rights, including rights pertaining to gender equality and family protection, was adopted, while in 2001 a provision requiring positive action, in particular in favour of women, was added (see below under section 2.1. of this report). The text of the Constitution, as amended in 1986, 2001 and 2008, is available in Greek, English, French and German on the Parliament's website: <http://www.hellenicparliament.gr/en/Vouli-ton-Ellinon/To-Politevma/Syntagma/>, accessed 2 April 2016.

<sup>2</sup> Article 22(1) of Act 4274/2014 OJ A 147/ 14.07.2014.

impugned provisions were inapplicable because they were contrary to the Constitution and Article 1 of Protocol No. 1 to the ECHR. Yet, taking into account the public interest, and in view of the exacerbated financial crisis, it held that the non-applicability of these provisions cannot be invoked in support of claims for periods predating the judgments, except by the claimants and other pensioners having already lodged an action.<sup>3</sup> Although these were not gender equality cases, the CS also invoked in support of the non-retroactive effect of its judgments the ECJ *Defrenne* and *Barber* cases.<sup>4</sup> Moreover, these cases show the constantly deteriorating socio-economic context within which the implementation of EU law is taking place (see also, for example, under No. 12 below).

## 1.2 List of main legislation transposing and implementing Directives

- Act 4097/2012, 'Implementation of the Principle of Equal Treatment of Men and Women Engaged in an Activity in a Self-Employed Capacity – Harmonisation of the legislation with Directive 2010/41/EU of the European Parliament and the Council,' OJ A 235/03.12.2012 (Directive 86/613/EEC had not been transposed).
- Act 4075/2012, Articles 48-54, 'Incorporation into Greek Law of Directive 2010/18/EU of the Council of the EU Implementing the Revised Framework Agreement on Parental Leave Concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and Repealing Directive 96/34/EC,' OJ A 89/11.04.2012.
- Presidential Decree 80/2012, 'Granting of Parental Leave and Leave of Absence to Workers under a Contract of Maritime Work on Vessels Bearing the Greek Flag, in accordance with Directive 2010/18/EU,' OJ 138/14.06.2012.
- Act 1756/1988, Code on the Status of Judges, OJ A 35/2.02.1988.
- Act 3896/2010, 'Implementation of the Principle of Equal Treatment of Men and Women in Matters of Employment and Occupation. Harmonisation of Existing Legislation with Directive 2006/54/EC of the European Parliament and the Council,' OJ A 207/08.12.2010.
- Act 3769/2009 'Implementation of the Principle of Equal Treatment of Men and Women Regarding Access to Goods and Services and Their Supply' transposing Directive 2004/113/EC, OJ A 105/01.07.2009, as amended by Article 162 of Act 4099/2012 implementing the CJEU *Test-Achats* judgment, OJ A 250/20.11.2012.
- Act 3488/2006, 'Implementation of the Principle of Equal Treatment of Men and Women Regarding Access to Employment, Professional Training and Evolution and Terms and Conditions of Work' transposing Directive 2002/73/EC, OJ A 191/11.2006.
- Presidential Decree 105/2003, 'Adaptation of Domestic Law to Directive 97/80/EC on the Burden of Proof in Cases of Sex Discrimination,' OJ A 96/23.04.2003; repealed by Article 30(5) of Act 3896/2010 transposing Directive 2006/54/EC.
- Presidential Decree 87/2002, 'Implementation of the Principle of Equal Treatment of Men and Women in Occupational Social Security Schemes in Compliance with Directives 96/97/EC and 86/378/EEC;' repealed by Article 30(5) of Act 3896/2010 transposing Directive 2006/54/EC.
- Presidential Decree 176/1997, 'Measures for the Improvement of the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth 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 Article 54(1) of Act 4075/2012 transposing Directive 2010/18/EU.

<sup>3</sup> CS 2287-2290/2015 (Plen.).

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

- 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).

## **2 General legal framework**

### **2.1 Constitution**

2.1.1 Does your national Constitution prohibit sex discrimination?

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

Article 4(2) ('Greek men and women have equal rights and obligations') requires (substantive)<sup>5</sup> sex equality in all areas; it implicitly prohibits sex discrimination. Article 22(1)(b) ('all workers, irrespective of sex or other distinctions, have a right to equal pay for work of equal value') exceeds the scope of Article 157 TFEU, as it covers any ground whatsoever and is not limited to sex.

2.1.2 Does the Constitution contain other Articles pertaining to equality between men and women?

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

Article 116(2) states that 'Positive measures aiming at promoting equality between men and women do not constitute discrimination on grounds of sex. The State shall take measures to eliminate inequalities existing in practice, in particular those detrimental to women.' While Article 4(2) refers to 'Greek men and women,' Article 116(2) refers to 'men and women.' Therefore, the personal scope of the constitutional gender equality norm must be considered to also cover foreign nationals. Its material scope includes all the areas covered by the gender equality directives, as well as any other area whatsoever, even outside the scope of EU law. Article 116(2) requires that the legislature and all other state authorities take any positive measures which are necessary and pertinent in promoting gender equality in all areas.<sup>6</sup> It exceeds the requirements of EU law, as it explicitly makes positive action a 'must'. Article 21(1) requires the protection of marriage, the family, motherhood and childhood. This requirement seems to be similar to that of Article 33(1) of the EU Charter. Greek case law relies on this provision, alone or in conjunction with Article 4(2) of the Constitution, in order to uphold claims to maternity and parenthood protection.

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

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

### **2.2 Equal treatment legislation**

2.2.1 Does your country have specific equal treatment legislation?

Yes, mainly the legislation transposing the gender equality directives (see above under section 1.2 of this report) and Act 3304/2010 (OJ A 16/27.01.2005) transposing Directives 2000/43/EC and 2000/78/EC.

Yes, it prohibits direct and indirect sex discrimination.

The grounds covered by Directives 2000/43/EC and 2000/78/EC and by Act 927/1979 on the (criminal) punishment of acts aimed at racial discrimination (OJ A 139/28.06.1979 as amended by Act 4285/2014 (OJ A 191/10.9.2014)) implementing the International

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<sup>5</sup> CS 1933/1998 (Plen.).

<sup>6</sup> CS 2832-2833/2003, 192/2004.

Convention on the Elimination of All Forms of Racial Discrimination (CERD) and Framework Decision 2008/913/JHA. These grounds are race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity or handicap.

All the transposing legislation applies to the private and public sector and it stipulates that it lays down minimum standards and does not affect more favourable provisions.

### **3 Implementation of central concepts**

#### **3.1 Sex/gender/transgender**

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

No.

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

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

It does not include discrimination on the ground of gender identity, but Article 1 of Act 927/1979 implementing the CERD, as amended by Act 4285/2014, prohibits any act that may entail discrimination, hate or violence against persons or groups of persons on the basis of, inter alia, gender identity, making it a criminal offence. There is no case law.

#### **3.2 Direct sex discrimination**

3.2.1 Is direct sex discrimination explicitly prohibited in national legislation?

Yes. Acts 3896/2010 transposing Directive 2006/54 and 4097/2012 transposing Directive 2010/41 prohibit direct and indirect discrimination on grounds of sex *and family status*:

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

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

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

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

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

The definition is copied from the Directives.

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

Yes, in Article 3(4) of Act 3896/2010 transposing Directive 2006/54; Article 3(a) of Act 4097/2012 transposing Directive 2010/41; Article 4(1)(a) of Act 3769/2009 transposing Directive 2003/113. The legislator copied the prohibitions contained in the Directives.<sup>7</sup> Article 18 of Act 3896/2010 also prohibits less favourable treatment of parents due to parental leave, adoption or fostering of a child as a form of discrimination (5.3.3. below).

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

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

No. Case law has for a long time condemned direct sex discrimination in access to and the conditions of employment in the private and public sector, in particular concerning maximum quotas for women and discriminatory dismissals until they were abolished by the legislator. This case law was relying on Article 4(2) of the Constitution, Directive 76/207 and the Act transposing it.<sup>8</sup>

### 3.3 Indirect sex discrimination

3.3.1 Is indirect sex discrimination explicitly prohibited in national legislation?

Yes. See 3.2.1.

A definition is provided in Article 2(b) of Act 3896/2010 transposing Directive 2006/54(recast), Article 3(b) of Act 4097/2012 transposing Directive 2010/41, and Article 2(b) of Act 3769/2009 transposing Directive 2004/113: 'where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.'

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

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

Yes, by some administrative courts of appeal (ACAs) - the only courts which have upheld claims of indirect discrimination - regarding the average height of men and women for access to military and semi-military corps. For example, in cases regarding access to the police academies which were similar to the cases where the CS found no indirect discrimination (see 3.3.4. below) the Athens ACA held that the common minimum height requirement for men and women candidates (1.70 m.) 'is arbitrarily equalizing men and women, in spite of their biological difference, since the average height of Greek men is 1.67m, while the average height of Greek women is 1.55m.' The ACA moreover held that it does not result from relevant provisions or other data, in conjunction with common experience, that this minimum height is a genuine occupational qualification.<sup>9</sup>

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<sup>7</sup> The SCPC (Civil Section) (37/2004) relying on the Act transposing Directive 76/207, Article 4(2) of the Constitution and Article 141(1) TEC (now 157 TFEU) held that a prejudicial modification of working conditions after maternity leave constituted discrimination on the ground of sex.

<sup>8</sup> Quotas for access: SCPC (Civil Section) 1360/1992 (private banks); CS 1917/1998 (Plen.) (Police Academies). Nullity of dismissal: SCPC (Civil Section) 85/1995, 593/2006. 496/2011 (private sector).

<sup>9</sup> Athens ACA 734, 737-738/2008, 75, 1255, 1256/2007.

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

Yes, by some administrative courts. However, the Council of State (the Supreme Administrative Court; CS) has quashed certain decisions by the administrative courts of appeal (ACAs) which correctly applied the test.<sup>10</sup>

3.3.4 Are there specific difficulties in your country in applying the concept of indirect sex discrimination? Yes. If so, please explain these difficulties, with reference to legislation and/or (national) case law if relevant.

While the legislation is satisfactory and in spite of a preliminary CJEU ruling in a Greek case which concerned, inter alia, indirect discrimination,<sup>11</sup> case law or the absence thereof shows that the concept of indirect discrimination is still unclear. It is only the ACAs and the CS that have dealt with indirect discrimination. The CS case law concerns access to police academies.<sup>12</sup> After the repeal of maximum quotas for accepting women thereto, the minimum height requirement, which was previously 1.70m for men and 1.65m for women, was raised to 1.70m for both men and women. Candidates who do not fulfil this condition are automatically excluded from any further assessment. The CS, while accepting that 'according to common experience,' the average height of Greek men is taller than that of Greek women, considered the requirement to be compatible with the Constitution and Directive 76/207, because it was justified by reasons of public interest related to police duties. More in particular, it held that this is a necessary and appropriate condition for effectively discharging police duties, which require specific physical qualifications, such as 'dealing with violence during public gatherings, violent and terrorist acts and the transfer of detained persons. These duties, the character of the police as a militarily organized armed corps and the conditions under which they exercise their activities constitute specific and appropriate criteria, which, according to common experience justify indirect discrimination against women, since women must have the same physical qualifications as men in order to be able to discharge the main police duties as successfully as men.' However, the CS did not specify in which respect the 1.70m height requirement was a necessary and appropriate qualification. Those 'mere generalisations' could not exclude indirect discrimination, according to the CJEU.<sup>13</sup> Therefore, in the author's view, this CS case law is not in line with EU law.

In a recent similar case where the claimant requested a preliminary reference to the CJEU, the CS chamber was split as to the existence of indirect discrimination. It therefore referred the matter to a larger chamber regarding the need for a reference.<sup>14</sup> The case was heard by the latter on 1 January 2015, but the judgment is still pending.

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.<sup>15</sup> 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

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<sup>10</sup> See e.g. ACA 1066/2004, quashed by CS 1247/2008; ACA 3358/2005 quashed by CS 2367/2010; ACA 3357/2005, quashed by CS 2369/2010 (common minimum height for men and women for access to police academies).

<sup>11</sup> CJEU C-196/02 *Nikoloudi v. OTE* [2005] ECR I-1789.

<sup>12</sup> CS 1247/2008, 2367 and 2369/2010. See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2009), 'Greece', *European Gender Equality Law Review 1*, pp. 78-83, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2015.

<sup>13</sup> See e.g. CJEU Cases C-167/97 *Seymour-Smith* [1999] ECR I-623; C-77/02 *Steinicke* [2003] ECR I-9044.

<sup>14</sup> CS 18/2014.

<sup>15</sup> Athens ACA 41, 131 and 1191/2012.

within the meaning of Directive 2002/73 and Act 3488/2006 transposing this Directive, as 'they put the female candidates in a particularly disadvantaged position in comparison to male candidates; in any event, they are not adequately justified as they do not constitute an objective criterion which serves a lawful aim (i.e. ensuring the smooth operation of the military corps), while they are not appropriate, and necessary for achieving their aim.'<sup>16</sup> The CS does not seem to have dealt with such issues until now.

Regarding pay, while direct discrimination seems to have been mostly eradicated, at least as concerns the same work,<sup>17</sup> professional classifications, in particular in collective agreements (which apply in the private sector), are based on felt-fair traditional, non-transparent criteria; these have remained unchanged and the under-classification of predominantly female categories seems to persist, thereby making indirect discrimination very probable. No review of the classifications has ever been undertaken, while there are no (official or trade union) data or studies on indirect discrimination.

As concerns the gender pay gap, in the words of Ms Vivian Reding, former Vice-President of the Commission: 'The causes of the gender pay gap are much more complex and include indirect discrimination, greater difficulties for women in balancing work and private life, segregation of the labour market, and stereotypes that influence the evaluation and classification of occupations or the choice of education undertaken by men and women'.<sup>18</sup> In Greece, the gender pay gap is not on the agenda of either state authorities or social partners and no recent studies can be found. According to the latest ELSTAT data available for Greece (2010), the gender pay gap in unadjusted form (i.e. not adjusted according to individual characteristics that may explain it) was 15.0.<sup>19</sup>

### **3.4 Multiple discrimination and intersectional discrimination**

3.4.1 Is multiple discrimination – i.e. discrimination based on two or more grounds simultaneously – and/or intersectional discrimination – i.e. discrimination resulting from the interaction of grounds of discrimination which interact to produce a new and different type of discrimination – explicitly addressed in national legislation?

No, and there are no proposals which are pending in this regard.

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

There are no judicial decisions. However, some cases dealt with by the Ombudsman seem to concern multiple discrimination, although the Ombudsman does not use this term. Examples: in one case a female journalist who had been refused a job with a municipal radio station complained that young, attractive women without family responsibilities were preferred. In another case a woman was dismissed because she had reached the age (applying to women only) at which she was entitled to a pension as a

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<sup>16</sup> See the Ombudsman's mediation report available at: [http://www.synigoros.gr/?i=isotita-ton-fylon.el.if1\\_3\\_2diagonismoi.32897](http://www.synigoros.gr/?i=isotita-ton-fylon.el.if1_3_2diagonismoi.32897), accessed 20 September 2015.

<sup>17</sup> For problems regarding equal value see 4.1.4. below..

<sup>18</sup> Viviane Reding, Vice-President of the European Commission, Justice, Fundamental Rights and Citizenship, Foreword in European Network of Legal Experts in the Field of Gender Equality *The Gender Pay Gap in Europe from a Legal Perspective (including 33 country reports)*, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights); [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/genderpaygapfromlegalperspective-nov2010\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/genderpaygapfromlegalperspective-nov2010_en.pdf).

<sup>19</sup> Available at: <http://ec.europa.eu/eurostat/web/equality/statistics-illustrated>; see also [http://ec.europa.eu/justice/gender-equality/files/gender\\_pay\\_gap/gpg\\_country\\_factsheet\\_el\\_2015\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/gender_pay_gap/gpg_country_factsheet_el_2015_en.pdf), both accessed 11 April 2016.

mother of a minor child. In the author's view both cases involved multiple discrimination (on grounds of sex, age and family status/family obligations).<sup>20</sup>

It can be deduced from the above that the notion of multiple discrimination is not clear to either the judiciary and other authorities or its victims and the trade unions.

### **3.5 Positive action**

#### **3.5.1 Is positive action explicitly allowed in national legislation?**

Yes. It is not merely allowed, but is moreover explicitly required by Article 116(2) of the Constitution (see 2.1.2. above). In accordance with the hierarchical structure of the Greek legal order (1.1. above), all national provisions relating to positive action must be read and applied in the light of this constitutional norm.

The relevant provisions are Article 19 of Act 3896/2010 transposing Directive 2006/54 and Article 5 of Act 3769/2009 transposing Directive 2004/113.

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

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

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

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

No.

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

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

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

According to Article 6(1)(a) of Act 2839/2000,<sup>21</sup> at least one-third of the persons appointed by the State, legal persons governed by public law or local authorities as

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<sup>20</sup> Available at: <http://www.synigoros.gr/?i=isotita-ton-fylon.el.ifexamples>; and [http://www.synigoros.gr/?i=isotita-ton-fylon.el.if7\\_3\\_1provri.193649](http://www.synigoros.gr/?i=isotita-ton-fylon.el.if7_3_1provri.193649), respectively, both accessed 20 October 2015.

<sup>21</sup> Act 2839/2000 (OJ A 196/12.09.2000).

members of the service councils<sup>22</sup> of the services of the State, legal persons governed by public law and local authorities must belong to each sex. This provision has been incorporated in Article 7(5) of the Code of Employees of Local Authorities (CELA).<sup>23</sup> The same measure has been included in Article 161 of the Civil Servants Code (CSC, which also covers the personnel of legal persons governed by public law),<sup>24</sup> in a more extended version provided by Article 2 of Act 4275/2014.<sup>25</sup> Consequently, Article 161 CSC, as it now stands, requires the one-third quota for the service councils as well as for other bodies that are entrusted with the assessment and selection of the heads of the services of the State and legal persons governed by public law (Articles 157-160 CSC).

The members of the service councils to which the one-third quota applies are in principle five; three out of the five are appointed by the Minister or the competent authority of the legal person concerned (who must observe the quota); the other two members are representatives of the personnel. The number of the members of the other bodies to which the quota applies as well as the mode of their appointment varies. Therefore, the quota does not concern the whole service council or other body. The quota applies provided that there is an adequate number of employees of each sex in the service concerned who have the necessary qualifications for appointment to the particular service council. If the act by which the State, the legal person governed by public law or the local authority appoints service council members does not observe the quota, it is subject to annulment. The decisions issued by service councils that are not composed in accordance with the provision on quotas are also subject to annulment.<sup>26</sup>

According to Article 6(1)(b) of Act 2839/2000, at least one-third of the (executive and non-executive) members of the boards of legal persons of the public sector who are appointed by the State, legal persons governed by public law or local authorities must belong to each sex. The legal form of the legal persons concerned is irrelevant; they may be governed by public law or by private law; they may or may not be companies, and, if they are companies, they must not necessarily be listed. It is not required that their whole capital belong to the State, a legal person governed by public law or a local authority. These may own part of the capital (not even the larger part thereof) and still be empowered by the provisions governing the particular legal person to appoint members of its board. The one-third quota applies in all the cases. The State, the legal persons governed by public law or the local authorities appoint a certain number of the board members, as provided by the provisions governing each particular legal person. Therefore, the quota does not concern the whole board. If the act by which the State, a local authority or a legal person governed by public law appoints board members does not observe the quota, it is subject to annulment. The decisions of boards that are not composed in accordance with the provision on the quota are also subject to annulment.

Employers who hire mothers having at least two children are exempted from the payment of social security contributions regarding these workers for one year for each child. Moreover, women farmers are exempted from the payment of social security contributions for one year following the birth of the second and each subsequent child.<sup>27</sup>

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<sup>22</sup> 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.'

<sup>23</sup> CELA: Act 3584/2007, OJ A 143/28.06.2007.

<sup>24</sup> CSC: Act 3528/2007, OJ A 26/09.02.2007.

<sup>25</sup> Act 4275/2014, OJ A 149/15.07.2014.

<sup>26</sup> CS 2977/2014: the composition of the service council was lawful, although it contained no women, because there were no women in the service concerned who possessed the required qualifications; therefore, its decisions were valid. ACA 216 and 602/2007 annulled decisions of service councils which were not composed in accordance with the above provision.

<sup>27</sup> Article 2(2) and (7) of Act 3227/2004 (measures for combating unemployment), OJ A 31/09.02.2004.

The number of scientists participating in any council or committee dealing with research, including those assessing candidacies for research projects, must be determined 'on the basis of scientific excellence and according to a quota of at least  $\frac{1}{3}$  from each sex, in accordance with Article 116(2) of the Constitution [2.1.2. above], provided that they possess the necessary qualifications for the particular post.'<sup>28</sup>

'The number of candidate members of local government councils of each sex shall correspond to at least  $\frac{1}{3}$  of the total number of candidates listed on each ballot paper.'<sup>29</sup> 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.<sup>30</sup> Greek NGOs, at the initiative of the Greek League for Women's Rights, strongly protested against this regression.<sup>31</sup> Where the quota is not observed, the elections for the particular local authority are invalidated and must be repeated.<sup>32</sup>

The number of candidates of each sex presented in the parliamentary elections by each party must correspond to  $\frac{1}{3}$  of the total number of its candidates in the country.<sup>33</sup> The candidates appear on a ballot paper on which the voter chooses his/her preferred candidate by placing a cross alongside the name of the relevant candidate. Yet, a part of Parliament, comprising not more than 5 % of the total number of MPs (300 in total), are elected throughout the country in proportion to the total electoral strength of each party, according to their order on this list ('state MPs'). In the last elections this system applied to all candidates. There does not seem to be any case law on this measure.

### 3.6 Harassment and sexual harassment

#### 3.6.1 Is harassment explicitly prohibited in national legislation?

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

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

#### 3.6.2 Does the definition of harassment cover a broader scope than employment in your country?

No.

#### 3.6.3 Is sexual harassment explicitly prohibited in national legislation?

Yes, together with harassment.

<sup>28</sup> Article 57 of Act 3653/2008, OJ A 49/21.03.2008.

<sup>29</sup> Article 75 of Act 2910/2001, OJ A 91/2001.

<sup>30</sup> Articles 18(3) and 120(3) of Act 3852/2010, OJ A 37/07.06.2010.

<sup>31</sup> See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2010), 'Greece', *European Gender Equality Law Review* 2, pp. 66-68, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2015.

<sup>32</sup> CS 2123/2011 invalidating local elections and ordering that they be repeated.

<sup>33</sup> Article 3 of Act 3636/2008, OJ A 11/01.02.2008.

In Article 3(2)(a) of Act 3896/2010 transposing Directive 2006/54; Article 4(1)(b) of Act 3769/2009 transposing Directive 2004/113; Article 4(2) of Act 4097/2012 transposing Directive 2010/41.

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

3.6.4 Does the definition of sexual harassment cover a broader scope than employment in your country? Yes. If so, please specify the scope.

Sexual harassment does not constitute a specific criminal offence, but it may be punished as another offence under the Penal Code (PC), e.g. as a 'lewd act'<sup>34</sup> or 'offence to a person's honour'<sup>35</sup> or as a disciplinary offence ('indecent conduct') under the Civil Servants Code (CSC).<sup>36</sup> In such cases, the scope is broader: 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. There is case law relating to goods and services; some of them predate the transposition of Directive 2004/113,<sup>37</sup> while others postdate it, but do not mention it or the transposing Act.<sup>38</sup>

3.6.5 Does national legislation specify that harassment and sexual harassment as well as any less favourable treatment based on the person's rejection of or submission to such conduct amounts to discrimination (see Article 2(2)(a) of Directive 2006/54)?

Yes, in the provisions which prohibit them (3.6.3. above). The courts will declare that dismissals due a rejection of sexual harassment are null and void.<sup>39</sup>

In spite of the satisfactory transposition of the provisions of Directives 2002/73 and 2006/54, Greek case law mostly relies on either the PC or the CSC or on the provisions of the Civil Code (CC) prohibiting an abuse of employers' rights or a prejudicial modification of working conditions<sup>40</sup> or prohibiting an offence to a person's personality whose scope is broader: the victim does not have to be working in the same firm or service as the perpetrator.<sup>41</sup> The lower courts are starting to rely on the Recast Directive in conjunction with the CC.<sup>42</sup>

### **3.7 Instruction to discriminate**

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

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

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<sup>34</sup> SCPC (Penal Section) 1783/2008, 1546/2008.

<sup>35</sup> SCPC (Penal Section) 148/2010.

<sup>36</sup> CSC: Act 3528/2007, OJ A 26/09.02.2007. See CS 505/2010.

<sup>37</sup> SCPC (Penal Section) 2590/2008 ('offence against the sexual dignity' of a patient during a medical examination).

<sup>38</sup> CS 505/2010: confirmation of a disciplinary sanction dismissing a public hospital doctor for 'indecent conduct', i.e. the harassment of a woman seeking information about a hospitalized relative.

<sup>39</sup> SCPC (Civil Section) 84/2011; Athens Court of Appeal 1139/2011.

<sup>40</sup> SCPC (Civil Section) 84/2011; Athens Court of Appeal 1139/2011.

<sup>41</sup> SCPC (Civil Section) 1664/2008.

<sup>42</sup> Larissa First Instance Civil Court 351/2014.

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

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

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

3.7.3 Is incitement to discrimination explicitly prohibited in your country?

It may be considered that 'encouragement' to discriminate prohibited by Act 3769/2009 and Act 4097/2012 (3.7.1. above) amounts to incitement.

### **3.8 Other forms of discrimination**

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

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

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

### **4.1 Equal pay**

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

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

Article 4(1) of Act 3896/2010 stipulates that 'men and women have a right to equal pay for equal work or work of equal value,' in accordance with the rights-based wording of Article 22(1)(b) of the Constitution (2.1.1. above) as well as with CJEU case law.

4.1.2 Is the concept of pay defined in national legislation?

Yes. Article 2(e) of Act 3896/2010 transposing Directive 2006/54.

This Article copies the definition of Article 157 TFEU.

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

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

The wording of Article 4(1) of the Act (4.1.1. above) is positive. The prohibition of direct and indirect discrimination in pay results from the general prohibition of direct and indirect discrimination enshrined in Article 4(1) of the transposing Act and Article 12 of this Act which prohibits such discrimination in the designing and application of systems for evaluating personnel (3.2.1. above). Article 4(2)(a) of the Act copies Article 2 of the Directive, but it refers to 'professional' instead of 'job' classification. Also, Article 4(2)(b) of the Act reads: 'When systems of personnel evaluation related to the evolution of their pay are designed and applied, the equal treatment principle must be observed and no discrimination on grounds of sex or family status is allowed.' This provision exceeds the Directive, as it adds 'family status' to 'sex'. However, the terms 'professional' and 'personnel' (also used in the afore-mentioned Article 12 of the Act) are misleading; they may imply that the classification and evaluation concern the worker rather than the content of the work, as required by the CJEU.

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

No. Neither Article 22(1)(b) of the Constitution (2.1.1. above) nor the pertinent legislation explicitly require a comparator. However, Article 2(a) of Act 3896/2010 transposing Directive 2006/54, which copies the definition of direct discrimination from the Directive, may be considered as implicitly requiring a comparator. Case law relying on the broader constitutional principle of equal pay (2.1.1. above) requires such a comparator in the same undertaking or service or within the framework of the same wage-fixing instrument (e.g. a collective agreement (CA), or a statutory or administrative provision).<sup>43</sup>

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

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<sup>43</sup> See e.g. SCPC (Civil Section) 257-258/2014, 15/2013.

according to case law, the hypothetical comparator must perform or have performed the same work.<sup>44</sup>

There have been no equal pay judgments relying on the Act transposing Directive 2002/73 or the Act transposing Directive 2006/54. Most equal pay judgments concern grounds of discrimination other than gender. The few gender discrimination cases mostly concern the notion of 'pay' and discrimination arising from a wage-fixing instrument. They mostly apply Article 22(1)(b) of the Constitution, in conjunction with (old) Article 119 or 141 TEC and ILO Convention No. 100. See Supreme Civil and Penal Court, Civil Section (SCC) (Plenum), landmark judgment 3/1995, which upheld a claim of female workers for a family allowance, i.e. an allowance paid to all male workers who were married and had children, while only paid to female workers subject to two conditions: that their husband be unable to maintain himself due to invalidity or illness and that the children be maintained by the mother.<sup>45</sup>

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

The problem is that the notion of 'equal value', although included in Article 22(1) of the Constitution since 1975 and in legislation since 1984 (in the act transposing Directive 75/117), is unclear to litigants and judges, so that in most cases the comparison concerns the same work. There are no value assessment criteria in legislation or case law. Some judgments vaguely refer to the 'same nature and value' of the jobs without questioning the job classification. The typical major premise is as follows: the equal pay principle applies to 'workers employed by the same employer, who belong to the same category, have the same formal qualifications and provide the same services aimed at serving the same category of needs, under the same conditions'. So, workers having different qualifications or performing different duties are not compared, even where they perform the same work under the same conditions. Some judgments require that the content of the work be specified, but the criteria are unclear.<sup>46</sup>

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'.<sup>47</sup>

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

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<sup>44</sup> See e.g. SCPC (Civil Section) 31/2015.

<sup>45</sup> This judgment is mentioned in ECJ Case 187/98 *Commission v. Greece* [1999] ECR I-7713 and it is the only Greek equal pay landmark case mentioned in Annex 3 of the Commission's staff working document accompanying the Commission's Report on the application of Directive 2006/54: SWD(2013) 512 final.

<sup>46</sup> SCPC (Civil Section) 242, 454, 684/2007, 1483, 207/2006 (these are not gender cases).

<sup>47</sup> See e.g. SCPC (Civil Section) 390/2011, 82/2013 (these are not gender cases).

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

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

No. However, the Greek Authority for the Protection of Personal Data (APPD) imposed a EUR 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 and 2000/78.<sup>48</sup> Although this case did not specifically concern equal pay, it is obvious that the employee's evaluation was also reflected in his pay.

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

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

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

Neither the Constitution nor specific legislation allows any derogation from the equal pay principle; therefore, any justification is excluded. However, differences in the legal nature of the employment relationship (e.g. one worker is employed under a private-law contract, while another is a civil servant) or the wage-fixing instrument (e.g. one worker is covered by a CA, another is not, or they are covered by different CAs) are often used as justifications, even within the same company or service where the workers are employed by the same employer and perform the same work.<sup>49</sup> 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.<sup>50</sup> The absence of (or narrow) criteria for comparable work (4.1.4. above) is also a justification. More generally, there is a tendency to justify pay differences on budgetary grounds and by mere generalisations, as was shown in *Nikoloudi*<sup>51</sup> which concerned, *inter alia*, indirect discrimination in pay.

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

Out-sourcing is a justification for differentials when the employers are different (which is in principle the case in out-sourcing), unless the workers of both employers are covered by the same wage-fixing instrument and perform the same work (see 4.1.8. above). The only Greek landmark judgment on equal pay of men and women is SCC 3/1995 (Plen.), which concerns the concept of 'pay' (4.1.4. above).

## 4.2 Access to work and working conditions

<sup>48</sup> Decision 1/2008, available at: <http://www.dpa.gr>, accessed 25 September 2015.

<sup>49</sup> SCPC (Civil Section) 3/1997 (Plen.), 288/2003, 453/2002 (these are not gender cases).

<sup>50</sup> CJEU 43/75 *Defrenne v. Sabena (Defrenne II)* [1976] ECR 455, Paragraph 22; C-320/00 *Lawrence and Others v. Regent Office Care Ltd* [2002] ECR I-7345, Paragraph 18,

<sup>51</sup> CJEU C-196/02 *Nikoloudi v. OTE* [2005] ECR I-1789.

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

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

'The provisions of this statute apply to persons who are employed or candidates for employment in the public and private sectors, on any employment relationship or form, including a contract for services and a remunerated mandate, irrespective of the nature of the services performed; to persons who exercise the liberal professions as well as persons who receive or are candidates for vocational training.' Therefore, the personal scope of the Act in all respects, including access to employment, vocational training, working conditions etc., is defined in a very broad way. It is not limited to employment under a formal contract; it also covers *de facto* employment relationships (i.e. employment of workers who have no valid individual contract or whose (valid) individual contract has ended). In such cases, pay is due according to the provisions on undue enrichment (4.1.4. above). This scope exceeds the scope of labour law, which only covers subordinate employment contracts or relationships, and 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.<sup>52</sup> This definition is for the purposes of labour law, but the scope of Act 3896/2010 transposing Directive 2006/54 is wider. Case law also defines the other forms of employment contracts or relationships covered by this Act, such as a contract or relationship of '*independent employment*' (remunerated work for a fixed or indefinite period of time, without subordination);<sup>53</sup> 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.<sup>54</sup> Persons exercising *liberal professions* (e.g. doctors, practising lawyers, engineers etc.) may be employed in any of the above forms of employment. Practising lawyers may only be employed on a *contract of remunerated mandate*, under which they offer legal advice and/or represent clients in court for monthly or yearly wages without subordination.<sup>55</sup> 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.<sup>56</sup> 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.

<sup>52</sup> See e.g. SCPC Civil Section 1674/2010, 433/2011.

<sup>53</sup> SCPC Civil Section 229/2011, 433/2011.

<sup>54</sup> SCPC Civil Section 1674/2010, 223/2011, 77/2011, 433/2011.

<sup>55</sup> SCPC Civil Section Nos. 302/2011, 229/2011.

<sup>56</sup> CJEU C-256/01 *Allonby v. Accrington & Rossendale College* [2004] ECR I-873, Paragraphs 63, 65-67.

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

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

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

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

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

No.

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

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

4.2.5 Are there particular difficulties related to the personal and/or material scope of national law in relation to access to work, vocational training, employment, working conditions etc.?

This is not clear, as case law applying the gender equality legislation is scarce and does not cover the whole scope of the Directive or of the transposing legislation. It should however be recalled there are difficulties in certain areas which have their source in case law, for example regarding the notion of indirect discrimination in access to military and semi-military corps (section 3.3. above), or discrimination on grounds of pregnancy and maternity against women on a fixed term contract who are not protected beyond its expiry (5.1.3. below). There are also difficulties that have their source in specific legislation, for example regarding direct discrimination on grounds of pregnancy and maternity against fixed term workers in the public sector (5.2.1. below).

## **5 Pregnancy and maternity protection; maternity, paternity, parental leave and adoption leave (Directive 92/85, relevant provisions of the Directives 2006/54 and 2010/18)**

### **5.1 Pregnancy and maternity protection**

#### 5.1.1 Does national law define a pregnant worker?

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

*'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.'*

It copies the Directive, but its last sentence extends the definition, in line with CJEU case law and Greek case law which does not require disclosure of the pregnancy as a condition of protection.<sup>57</sup> The definitions of 'worker who has recently given birth' and 'breastfeeding worker' also copy the Directive with the same addition. 'Positive measures' mean e.g. maternity leave or those required by Articles 4-7, 9 of the Directive.

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

Yes. In Articles 3-7 of Decree 176/1997.

The Decree copies Articles 4-7 of the Directive and refer to the annexes which are also copied from the Directive.

These Articles copy Articles 4-7 of the Directive in a clear way.

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

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

Article 10 of Decree 176/97 transposing Directive 92/85 prohibits the dismissal of a woman during pregnancy and for a certain period thereafter by reference to Article 15 of Act 1483/1984. The latter, as subsequently replaced by Article 36(1) of Act 3996/2011 (OJ A 170/5.08.2011), reads as follows:

*'Termination of the employment relationship of a female worker by her employer both during her pregnancy and 18 months after childbirth or during a longer absence due to illness brought about by pregnancy or childbirth, is prohibited and is null and void, unless there is a serious ground for the termination. The protection against termination applies with regard to the employer by whom the woman is hired, without having previously been employed elsewhere before the expiry of the 18-month period or the longer period provided by this provision, as well as with regard to a new employer who hires the woman and until the above periods are completed.'*

These provisions apply to the private and public sectors (Article 1(2) of Decree 176/97). Civil servants and permanent employees of legal persons governed by public law and local authorities also enjoy constitutional guarantees against dismissal, downgrading and

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<sup>57</sup> SCPC (Civil Section) 433/2012.

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 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.<sup>58</sup> It also held, however, that the protection also concerns a fixed-term contract, but does not extend beyond its expiry<sup>59</sup> (which is contrary to CJEU case law).<sup>60</sup>

Dismissal is permitted in exceptional cases as defined in Article 10(1). 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). According to case law, there is a 'serious ground' when one or more facts, objectively and according to good faith, make the continuation of the employment relationship unbearable for the employer, irrespective of any fault of the worker, the particular circumstances being taken into account. Examples: poor performance of the worker's duties or non-compliance with the employer's instructions provided that this is not due to her situation,<sup>61</sup> or the closing down of the business.<sup>62</sup>

When an employee is made redundant during her maternity leave, the payment for maternity leave ceases. The Manpower Employment Organisation (OAED) pays an unemployment allowance<sup>63</sup> which is lower than the maternity allowance: a fixed amount for all those unemployed (EUR 360, plus EUR 36 for each dependent family member),<sup>64</sup> which is well below the poverty threshold for Greece (about EUR 580).<sup>65</sup> When the dismissal is judicially declared null and void, it is deemed as never having happened: the worker retains her post (no reinstatement is needed) and is awarded full back pay (the whole pay which she would have received had she not been dismissed), plus legal interest and possibly moral damages.<sup>66</sup>

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

Yes. Article 10 of Decree 176/97: 'the employer must duly justify the termination in writing and notify it to the Labour Inspectorate.' This requirement concerns the whole 18-month period (5.1.3. above). In the absence of a justification in writing, the termination will be null and void. The Directive is thus exceeded regarding both the protection period and the sanction for the non-observance thereof. In the private sector, however, employers in practice often compel pregnant women to resign by adverse treatment or harassment, as reported by the Ombudsman following complaints by wronged women.<sup>67</sup> However, such cases do not seem to have reached the courts, as the employer's behaviour is very difficult to prove.

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<sup>58</sup> SCPC (Civil Section) 1591/2010.

<sup>59</sup> SCPC (Civil Section) 1341/2005, 317/2011.

<sup>60</sup> 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.

<sup>61</sup> SCPC (Civil Section) 308/2011, 622/2008.

<sup>62</sup> Thessaloniki Court of Appeal 47/1991.

<sup>63</sup> These women received the allowance thanks to the Ombudsman's intervention; see the mediation report available at: <http://www.synigoros.gr/resources/docs/150615-sinopsi.pdf>, accessed 25 September 2015.

<sup>64</sup> See the OAED website: <http://www.oaed.gr>, accessed 25 September 2015.

<sup>65</sup> See European Committee of Social Rights *GENOP-DEI and ADEDY v. Greece* Complaint No. 66/2011, decision of 23 May 2012, invoking Eurostat data: [http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/complaints\\_EN.asp?](http://www.coe.int/t/dghl/monitoring/socialcharter/complaints/complaints_EN.asp?), accessed 9 October 2015.

<sup>66</sup> SCPC, Civil Section 797/2013: the serious ground invoked proved untrue; the dismissal was null and void.

<sup>67</sup> See the Ombudsman's Annual Report 2014, p. 138 ('*Gender and Employment Relationships*'), available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>, accessed 30 September 2015.

## 5.2 Maternity leave

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

The private sector: 17 weeks (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). The women in question can take a further 'special' leave for six months after the maternity leave or after the agreed leave replacing reduced working hours (5.4.4. below)<sup>68</sup> which 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.

The public sector: five months fully paid (Article 52(1) CSC) for civil servants and the permanent employees of legal persons of governed by public law and local authorities (Article 2 and Article Second CSC) as well as persons employed by these employers on a contract of indefinite duration.<sup>69</sup> Employees of these employers on a fixed-term contract only receive the private sector maternity leave. This may be considered discrimination on the ground of maternity, which is prohibited by Directive 2006/54, as well as discrimination against fixed term workers in comparison with indefinite term workers and civil servants, which is prohibited by Directive 1999/70.<sup>70</sup> In view of CJEU case law, the fact that the maternity leave under Greek law is higher than the maternity leave provided by Directive 92/85 as a minimum cannot be considered to exclude the application of these Directives (see 5.2.7. below) Female judges,<sup>71</sup> permanent state school teachers<sup>72</sup> and policewomen<sup>73</sup> are granted the CSC pregnancy and maternity leave. Female military personnel receive pregnancy leave of five months, but only until the date of confinement, while parental leave (for both parents) starts immediately thereafter.<sup>74</sup> 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.<sup>75</sup> Moreover, the right to maternity leave must not be affected or substituted by the right to parental leave which serves a different purpose.<sup>76</sup>

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

Yes. Clause 7 of NGCA 2000; Article 52(1) CSC (above 5.2.1.).

Private sector: 8 weeks before and 9 weeks after childbirth (Clause 7 of NGCA 2000).  
Public sector: 2 months before and 3 months after childbirth (Article 52(1) CSC).

### 5.2.3 Is there a legal provision ensuring that the employment rights relating to the employment contract are ensured in the cases referred to in Articles 5, 6 and 7 of Directive 92/85?

<sup>68</sup> Article 142 of Act 3655/2008, as amended by Article 36 of Act 3996/2011, OJ A 170/05.08.2011.

<sup>69</sup> Article 4(5) of Act 2839/2000, OJ A 196/12.09.2000.

<sup>70</sup> 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.

<sup>71</sup> Article 44(20) of Act 1756/1988, OJ A 35/1988 (Code on Courts' Regulation and Judges' Status).

<sup>72</sup> Article 53 Act 2721/1999, OJ A 112/03.06.1999.

<sup>73</sup> Articles 10 and 10A Decree 27/1986, as amended by Article 2 Decree 66/2000, OJ A 57/2000.

<sup>74</sup> Articles 8-9 of Ministerial Decision F.400/32/82424/S.343, OJ B 1139/03.06.2011; Athens Administrative Court of Appeal 921/2010.

<sup>75</sup> ECJ Cases C-320/01 *Busch* [2003] ECR I-2041, Paragraph 42; 421/92 *Habermann-Beltermann* [1994] ECR I-1657, Paragraph 21; C-32/93 *Webb* [1994] ECR I-1963, Paragraph 20.

<sup>76</sup> ECJ Cases C-116/06 *Kiiski* [2007] ECR I-7643, Paragraph 56; C-519/03 *Commission v. Luxembourg* [2005] ECR I-3067, Paragraphs 32-33.

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

The above provisions repeat the provisions in Article 11(1) of Directive 92/85 and provide for a 'special maternity allowance' to be paid by the woman's social security scheme or the employer in the cases referred to in Articles 5, 6 and 7 of the Directive.

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

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

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

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

The maternity allowance 'must guarantee an income at least equivalent to that which the worker would receive in the event of absence on sick leave' (Article 11(4) of Decree 176/1997). The allowance paid by the Organisation of Social Security (IKA), the main social security scheme for subordinate workers under a private law employment relationship, is equal to the sickness allowance.<sup>77</sup> For the 'special' six-month leave (5.2.1. above) the OAED (see 5.1.3. above) pays the legal minimum wage. The above do not concern the public sector where maternity leave is fully paid (Article 52(1) CSC).

The employer pays part of the woman's wages during maternity leave, provided that she has worked for at least ten days for the same employer.<sup>78</sup> This amount is supplemented by the IKA allowance<sup>79</sup> and an allowance paid by the OAED,<sup>80</sup> so that workers who are affiliated to both schemes receive their full pay throughout their maternity leave, provided that their monthly wages do not exceed the maximum amount taken into account by the IKA for calculating pensions (currently EUR 2 400).<sup>81</sup>

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

Yes. See 5.2.5. above.

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

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

According to the above provision, which repeats Article 11(4) of Directive 92/85, if the entitlement to the maternity allowance paid during maternity leave is made conditional upon a period of previous employment, this period must not exceed twelve months. However, social security legislation makes the payment of the maternity allowance conditional on the completion of 200 working days during the two years preceding the commencement of maternity leave.<sup>82</sup> This constitutes a violation of Article 11(4) of Directive 92/85. Moreover, the granting of the maternity allowance is subject to stricter

<sup>77</sup> Article 39 of Act 1846/1951 on IKA, OJ A 179/21.06.1951.

<sup>78</sup> Articles 657-658 Civil Code (absence due to a serious reason, such as sickness or maternity leave); Piraeus Court of Appeal 917/1996.

<sup>79</sup> Article 11 of Act 2874/2000, OJ A 286/29.10.2000, which sanctions Clause 7 of NGCA 2000.

<sup>80</sup> Decree 221/1997, OJ A 168/27.2.1997.

<sup>81</sup> As wages and pensions have been frozen since 2009, this maximum amount remains the same (Ministry of Labour Circular 10/09.02.2011, *Bulletin of Labour Legislation (Deltio Ergatikis Nomothesias)* 2011, p. 446.

<sup>82</sup> Article 39 of Act 1846/1951 (on the IKA).

conditions than the granting of the sickness allowance (the granting of the latter is subject to 100 working days in the year preceding the notification of the sickness).<sup>83</sup> This constitutes a violation of Article 11(3) of Directive 92/85, which requires that the maternity allowance guarantee income at least equivalent to that which the worker concerned would receive in the event of a break in her activities on grounds connected with her state of health. The fact that Greek law foresees a maternity leave that exceeds the minimum EU law requirements in length and pay is irrelevant. The CJEU has also condemned adverse treatment related to forms of leave granted by national legislation which exceeded minimum EU law requirements.<sup>84</sup>

5.2.8 In national law, is there a provision that guarantees the right of a woman to return after maternity leave to her job or to an equivalent job, on terms and conditions that are no less favourable to her, and to benefit from any improvement in working conditions to which she would have been entitled during her absence (see Article 15 of Directive 2006/54)?

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

It copies the Directive. However, in the private sector this requirement seems to be frequently disregarded in practice.<sup>85</sup>

### 5.3 Adoption leave

5.3.1 Does national legislation provide for adoption leave?

Yes. Article 50(8) of Act 4075/2012 and Article 3(1) of Decree 80/2012 transposing the Directive, Article 52(4) CSC.

Article 50(8) of Act 4075/2012 grants adoptive and foster parents the same (unpaid) parental leave as natural parents, provided that the adoption or fostering has been finalised by the time the child reaches the age of six. The CSC is silent regarding adoption, but as Act 4075/2012 also applies to the public sector (2.2.1. above), it must be considered that this provision also applies to persons covered by the CSC and that it is paid as CSC parental leave (5.4.17 below). Article 52(4) CSC grants female civil servants who adopt a child under the age of six a period of paid leave for three months within the first semester following the finalisation of the adoption. Prior to the Directive, the CS had held that these women are also entitled to CSC parental leave (5.4.4. below)<sup>86</sup>. This provision also applies to women employed by the State, by legal entities governed by public law and by local authorities on a contract of indefinite duration, but not to women employed by the same employers on a fixed-term contract (Article 2 and Article Second CSC), in breach of Directives 2010/18 and 1999/70 (fixed-term work) (cf. 5.2.1. above).

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

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

This provision is meant to transpose Clause 4 of the Directive. While parental leave is granted to natural parents until the child reaches the age of six, this provision grants the leave to adoptive and foster parents until the child reaches the age of eight, if the

<sup>83</sup> Article 35(1) of Act 1846/1951, as amended by Article 178(3) of Act 4261/2014, OJ A 107/05.05.2014.

<sup>84</sup> See e.g. Case C-284/02 *Sass* [2004] ECR I-11143 concerning maternity leave longer than 14 weeks.

<sup>85</sup> See the Ombudsman's Annual Report 2014, pp. 138-141 ('*Gender and Employment Relationships*'), available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>, accessed 30 September 2015.

<sup>86</sup> CS 607/2007.

adoption or fostering has not been finalised until the child has reached the age of six. It exceeds Clause 4 in that it also covers foster parents.

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

Yes. In Articles 18 and 20(3) of Act 3896/2010 transposing Directive 2006/54 and Article 52(1) and (3) of Act 4075/2012 transposing Directive 2010/18.

Article 18 of Act 3896/2010 states: 'Less favourable treatment of parents due to parental leave, adoption or fostering of a child also constitutes discrimination.' Article 20(3) of this Act states: 'The protection provided by Article 16 [return from maternity leave] applies to all workers who make use of any leave related to the birth, raising or adoption of a child.' Article 52(3) of Act 4075/2012 makes the dismissal of any worker, including adoptive and foster parents, due to an application for or the taking of parental leave, null and void. Article 52(1) of Act 4075/2012 entitles workers returning from parental leave, including adoptive and foster parents, to the protection required by the above Article 16 of Directive 2006/54, and prohibits their unfavourable treatment due to a application for or the taking of parental leave. The Directives are thus exceeded regarding foster parents.

## 5.4 Parental leave

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

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

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

Act 4075/2012 applies to both the public and the private sector. Decree 80/2012 applies to workers employed under a contract of maritime employment on commercial vessels bearing the Greek flag. On the scope of the CSC see 5.2.1. above. NGCAs provide enforceable minimum standards for all workers under a private law contract throughout the country.

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

Yes. According to Article 49(2) of Act 4075/2012, this Act covers natural, adoptive or foster parents employed under any relationship or form of employment, including part-time and fixed-term employment *via* a temporary agency, 'or a remunerated mandate,' 'irrespective of the nature of the work performed;' the latter exceed the Directive.

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

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

The private sector: four months, unpaid, non-transferable, for each child up to the age of six (Article 50(1) and (3) of Act 4075/2012 transposing Directive 2010/18). A

transferable paid daily working time reduction 'for breastfeeding and childcare' by one hour for two and a half years after maternity leave is granted to natural and adoptive parents, including both commissioning and surrogate mothers. Alternatively, paid leave of analogous length (amounting to the total number of hours by which the daily working time would be reduced) may be agreed with the employer.<sup>87</sup> 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.<sup>88</sup> Maritime work: four months, unpaid, for each child up to the age of five; at least one month non-transferable (Article 5(2) of Decree 80/2012).

The public sector: nine months, fully paid, transferable, for each child up to the age of four (Article 53(2) CSC); alternatively a paid daily working time reduction (by two hours until the child reaches the age of two and by one hour until it reaches the age of four. Following the CJEU judgment in *Chatzi*,<sup>89</sup> which responded to a preliminary reference by the Thessaloniki ACA regarding the entitlement to parental leave of civil servants who are parents of twins, a provision granting an additional paid six-month period of leave for each child beyond the first one, in the case of multiple births, this was added to Article 53(2) CSC.<sup>90</sup> This provision is however silent about a working time reduction as an alternative to this additional leave. The above provisions apply to civil servants and permanent employees of legal persons governed by public law and local authorities, as well as to employees of the same employers on a private law contract of indefinite duration (Article 2 and Article Second CSC); employees of these employers on a fixed-term contract only receive the private sector, unpaid, four-month parental leave, in breach of Directives 2010/18 and 1999/70 on fixed-term work (cf. 5.2.1. and 5.3.1. above).

As Act 4075/2012 grants this leave until the child reaches the age of six, the CSC leave, and therefore, the daily working time reduction, as an alternative, 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.<sup>91</sup> Judges receive the CSC parental leave, but they are not entitled to a working time reduction; the child's maximum age is about one and a half years, as the leave starts soon after maternity leave (Article 44(21) Judges Code, see 5.4.7. below).

Moreover, there is an irrational and unlawful practice within the civil service when the leave is not requested upon the expiry of the maternity leave, but later on or by a parent whose child was born before he/she was appointed to the civil service. Although the child is still under the age prescribed by law and the parent has made no use of the reduced working day (as an alternative to parental leave), a fictitious use of the reduced working day is taken into account, the leave being proportionately curtailed. The Legal Council of the State<sup>92</sup> agreed with this practice, which continues, as it results from ministerial

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<sup>87</sup> NGCAs 1993, 2000, 2002-2003, 2004-2005, 2006-2007, 2014, available, in Greek, on the Greek General Confederation of Labour (GSEE) website: <http://www.gsee.gr/nomothesia/e-q-s-s-e>, accessed 2 October 2015.

<sup>88</sup> SCPC (Civil Section) 10/2010.

<sup>89</sup> Case C-149/10 *Zoi Chatzi v Ipourgos Ikonomikon* [Minister of Finance] [2010] ECR I-8489. See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2011), 'Greece', *European Gender Equality Law Review 1*, pp. 78-83, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2015.

<sup>90</sup> By virtue of Article 6 of Act 4210/2013 (OJ A 254/21.11.2013).

<sup>91</sup> See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/05.05.2014 aimed at clarifying the application of the CSC to state school teachers following the transposition of Directive 2010/18, paragraph D4, pp. 8-9, available at: <http://dipe.kor.sch.gr/index.php/2012-04-26-07-50-26/541-adeies-ekpaideftikon-a-thmias-kai-v-mias-f-351-5-43-67822-d1-5-5-2014>, accessed 25 September 2015.

<sup>92</sup> Opinion 64/2008. The Legal Council of the State 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.

circulars<sup>93</sup> 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.<sup>94</sup>

#### 5.4.5 Is the right of parental leave individual for each of the parents?

In the private sector it is non-transferable, therefore it is individual. In the public sector it is fully transferable and, moreover, if the spouse of a parent covered by the CSC works in the private sector, the leave or the reduced working day is granted to him/her to the extent that his/her spouse makes no use of his/her own rights or to the extent that the CSC rights exceed his/her spouse's rights (Article 53(3) CSC); therefore it is not individual.

Article 53(3) CSC also provided that a father whose wife does not work or exercise any profession was not entitled to the leave. This was the case unless, due to a serious illness or injury, the father's wife was unable to meet the needs related to the child's upbringing. A judge whose wife was not in work was refused parental leave on the basis of this provision, which also applied to judges. He brought an action for the annulment of the refusal before the CS. Meanwhile, this provision was repealed<sup>95</sup> 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,<sup>96</sup> albeit in sex-neutral language: 'a judge whose spouse [irrespective of sex] does not work or exercise any profession is not entitled to parental leave unless, due to a serious illness or injury, the judge's spouse is unable to meet the needs related to the child's upbringing.' In the author's view, the new provision is also incompatible with Directive 2010/18. As the impugned refusal took place before the repeal and on the basis of the provision of Article 53(3) CSC, it was this provision, not the new sex-neutral provision of the Judges' Code, that was applicable to the case. The CS (judgment 1113/2004) referred to the CJEU the question whether Directives 96/34 and 2006/54 precluded national provisions such as that of Article 53(3) CSC.

However, in the author's view, whatever the CJEU ruling and whatever the CS judgment in compliance with this ruling may be, the applicant will again be refused this leave, this time on the basis of the sex-neutral provision, and he will once more have to have recourse to the CS. Meanwhile, the child concerned will have exceeded the age up to which the leave is granted and the father will not be able to enjoy his leave at all.<sup>97</sup>

It should also be noted that the repealed CSC provision which did not grant this leave to fathers whose wife did not work is still applied to the military.<sup>98</sup>

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<sup>93</sup> See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/05.05.2014, aimed at clarifying the parental leave regime applying to state school teachers under the CSC, following the transposition of Directive 2010/18, paragraph D4, p. 9, available at: <http://dipe.kor.sch.gr/index.php/2012-04-26-07-50-26/541-adeies-ekpaideftikon-a-thmias-kai-v-mias-f-351-5-43-67822-d1-5-5-2014>, which refers to Minister of Home Affairs Circular ΔΙΑΔ/Φ.51/590/οικ.14346/29.05.2008, p. 5, available at: [http://www.ydmed.gov.gr/wp-content/uploads/20080529\\_ypal\\_kodikas\\_adeies\\_08.pdf](http://www.ydmed.gov.gr/wp-content/uploads/20080529_ypal_kodikas_adeies_08.pdf); the latter states that it complies with Legal Council of the State Opinion 64/2008 (above), both circulars accessed 25 September 2015.

<sup>94</sup> The Ministry invoked Circular ΔΙΑΔ/Φ.53α/1975/6219/16.4.2014, which is similar to the ones mentioned above. See the Ombudsman's Annual Report 2014, p. 134 ('*Gender and Employment Relationships*'), available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>, accessed 30 September 2015.

<sup>95</sup> By virtue of Article 6(2) of Act 4210/2013, OJ A 254/21.11.2013.

<sup>96</sup> By virtue of Article 89 of Act 4055/2012, OJ A 51/12.03.2012.

<sup>97</sup> See European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2014), 'Greece', *European Gender Equality Law Review* 2, pp. 62-66, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2015.

<sup>98</sup> The Ombudsman intervened, albeit to no avail: Ombudsman's Annual Report 2014 (Special Report '*Gender and Employment Relationships*'), p. 137; available at: <http://www.synigoros.gr/resources/docs/ee2014-13-fylo.pdf>, accessed 30 September 2015.

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

Private and public sector: The leave is granted as a whole or on a piecemeal basis. If both parents are employed by the same employer or both are covered by the CSC, they have to indicate by means of a joint statement who will make use of the leave in whole or in part (Article 50(4) and (6) of Act 4075/2012 transposing the Directive, Article 53(3) CSC). Private sector: The reduced working day (5.4.4. above) may be used in whole or in part by either parent, provided that the parents notify their choice to their employer(s) by means of a joint statement. Maritime employment: the leave is granted in one full-time period, unless otherwise agreed with the employer; parents of disabled children are entitled to take the leave on a piecemeal basis (Articles 3(8) and 4(1) of Decree 80/2012).

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

Act 4075/2012 transposing the Directive requires no period of notice; the parents must only indicate the beginning and the end of the leave (Article 50(4)). Maritime employment: 'The parental leave is granted one month after the request is notified to the captain and/or the employer; this period is extended until the ship sails into a harbour where the parent's substitute can board her' (Article 3(5) of Decree 80/2012). The interests of the workers and the employers are thus taken into account in view of the specific nature of maritime employment. The CSC does not require a period of notice. The Judges' Code provides that the starting date for the parental leave is fixed by the head of court. When the leave is requested by a mother, it must start as soon as possible and not later than two months after the expiry of her maternity leave; a father's request must be filed as soon as possible after the expiry of the mother's maternity leave, and if she has taken no maternity leave, as soon as possible after the date on which her maternity leave would have expired.

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

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

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

The required period of service is one year.

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

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

Article 50(4) of Act 4075/2012: leave is granted according to the priority of requests; parents of children with a disability or a long-term or sudden illness and single parents have absolute priority. Maritime employment: 'The captain and/or the employer may

postpone the granting of parental leave: a) if no substitute can be found; b) in June to September for seafarers employed on coastal commercial ships or tourist passenger ships; c) for other extraordinary reasons related to the ship's safe functioning or the safety of the persons or board or the cargo' (Article 3(7) of Decree 80/2012). For judges see 5.4.7. above.

#### 5.4.10 Are there special arrangements for small firms?

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

Article 2(3) of Decree 80/2012 states: Arrangements regarding parental leave may be agreed with the employer in view of the operational needs of vessels with a crew of less than 30. Article 8(1) of Act 1483/1984: A working day reduction is granted to parents of disabled children employed in an undertaking with at least 50 workers (5.4.11(d) below).

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

Yes. Article 51 of Act 4075/2012 and Article 6 of Decree 80/2012 transposing Directive 2010/18; Articles 50(2) and (3) and 53(6) CSC; Articles 7-9 of Act 1483/1984.

- a) Article 51 of Act 4075/2012 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: 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 the annual leave. As each leave has its own purpose, both conditions conflict with the Directive and must be considered as being non-applicable.
- b) Article 6 of Decree 80/2012: The captain grants unpaid time off of up to 144 hours per year, once or on a piecemeal basis, on grounds of force majeure for urgent family reasons and for the sickness or accident of a dependent family member (including natural and adoptive children) making the seafarer's immediate presence indispensable.
- c) Articles 50(2) and (3) and 53(6) CSC grant: i) to employees with a spouse or child requiring regular blood transfusions or periodic hospitalisation, or a child suffering from a serious mental handicap or Down's syndrome: a leave of up to 22 working days a year, transferable, and fully paid (ii) for school visits: time-off of up to four working days a year or five days for two or more children, transferable, and fully paid.<sup>99</sup> These provisions prevail to the extent that they are more favourable than those of the main transposing legislation.
- d) Articles 7-9 of Act 1483/1984 (the private sector): time off: i) in case of the illness of natural, adoptive and foster children under the age of 16 or older children suffering from a serious or chronic illness: up to six working days a year, eight for two children, 14 for three or more children, non-transferable, unpaid; ii) for school visits: up to four working days a year, transferable, paid; iii) for mentally or physically disabled children, irrespective of their age: a transferable working day reduction of one hour with an analogous pay cut, in undertakings with at least 50 workers.

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<sup>99</sup> See also Joint Ministerial Decision ΔΙΑΔ/Φ.53/12222/οικ.20561, OJ B 1613/17.8.2007.

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

Yes. See 3.2.1. and 5.3.3. above.

5.4.13 Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?

Yes. See 5.3.3. above.

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

Act 4075 does not contain such a general provision. Rights upon return are ensured and parental leave is working time (5.3.3. above, 5.4.15 below). Article 5(4) of Decree 80/2012 copies the provisions in the Directive. However, Article 6(4) provides that non-timely return to the ship is a ground for dismissal without compensation.

5.4.15 What is the status of the employment contract or employment relationship for the period of the parental leave?

Article 52(2) of Act 4075/2012 states: 'The period of parental leave is deemed to be working time for the purposes of pay, annual paid leave and the leave allowance, professional evolution, and redundancy compensation.' On the constitutional guarantees for civil servants, see 5.1.3. above.

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

Yes, but only if the workers pay both their own and the employer's contributions (Article 52(4) of Act 4075/2012, Article 5(2) of Decree 80/2012); otherwise, the social security coverage is interrupted during the parental leave. In the public sector there is full continuity.

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

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

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

No.

5.4.19 In your view, regarding which issues does the national legislation apply or introduce more favourable provisions (see 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' (4.1.3., 4.2.2. above, 5.5.2. below); the addition of 'paternity' and 'family status' to the exception to the protection of women (4.2.4. above); the length of maternity leave and the pay during this leave (5.2.1., 5.2.4. above) and the parental leave (full pay in the public sector) (5.4.4., 5.4.17 above); special leaves and time-off (5.4.11. above); the assimilation of adoptive and foster parents with natural parents (3.8., 5.3.1., 5.3.2., 5.3.3., 5.4.3., 5.4.11. (a), (d) above); a working day reduction, including for both commissioning and surrogate

mothers (5.4.4. above). However, there is great legal uncertainty as the rules are complex, unequal, fragmented, scattered and are often and unexpectedly modified. There is a multitude of provisions besides those reported herein, the scope and effects of which are not clear. Case law often applies the Constitution in conjunction with EU law in a dynamic and constructive way, but as people are not aware of their rights, and, moreover, in the current socio-economic context, few, in particular women, dare to complain, case law is scarce. It mostly concerns claims by public servants or judges who enjoy constitutional guarantees of personal and functional independence and are therefore protected against victimisation.<sup>100</sup>

## 5.5 Paternity leave

5.5.1. Does national legislation provide for paternity leave?

Yes. NGCA 2000; Article 50(1) CSC, as amended by Article 18 of Act 3801/2009, OJ A 163/04.09.2011.

NGCA 2000, private sector: two days, paid, upon the birth of each child; CSC: two days, paid, upon the birth of each child or the adoption of a child under two years of age.

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

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

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

'The protection provided by Article 16 [return from maternity leave] applies to all workers who make use of any leave related to the birth, raising or adoption of a child.'

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

## 5.6 Time off/care leave

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

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

For more information please see 5.4.11. above.

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<sup>100</sup> E.g. CS 3216/2003(Plen.) upholding the claim of female judges to the CSC maternity leave; 1 and 2/2006 upholding the claim of male judges to the CSC parental leave; 3590 and 3591/2013 (Plen.) condemning the curtailing of the parental leave of judges (see European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2014), 'Greece', *European Gender Equality Law Review 1* available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2015. Thessaloniki ACA 1842/2010, implementing the CJEU judgment on parental leave for twins, which this same court had sought, in Case C-149/10 *Zoi Chatzi v Ipourgos 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).

## **5.7 Leave in relation to surrogacy**

5.7.1 Is parental leave available in case of surrogacy?

Yes. NGCA 2006 (the private sector).

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

## **5.8 Leave sharing arrangements**

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

No.

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

Yes. See 5.4.4. above.

The 'donor parent' retains the right to at least 1 month of leave for his/her own use (see Clause 2 of Directive 2010/18), only in maritime work (Article3(2) of Decree 80/2012.

## **5.9 Flexible working time arrangements**

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

Yes. See 5.4.4. above.

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

Yes, in maritime employment. Article 5(5) and (6) of Decree 80/2012: Upon a return from parental leave, the seafarer can request changes to his/her working time for a maximum of seven days, if the operational needs of the ship allow for this in the captain's judgment. Also, in order to facilitate a return to work, the seafarer and his/her employer can agree on eventual suitable measures for returning to the workplace.

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

No. The legislation on tele-working is unrelated to the reconciliation of work and the family. It requires a specific tele-working contract, as follows: 'If ordinary work is transformed into tele-working, this contract must provide for a three-month period of adaptation, during which any party may put an end to tele-working following fifteen days' notice, in which case the worker returns to a post corresponding to the one he/she had before.'<sup>101</sup>

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

No.

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<sup>101</sup> Article 5 of Act 3846/2010, OJ A 66/11.05.2010.

## **6 Occupational pension schemes (Chapter 2 of Directive 2006/54)**

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

Yes. Article 6 of Act 3896/2010 transposing Directive 2006/54 largely reproduces Article 5 of the Directive, with some additions to the first sentence, which read: 'any direct and indirect discrimination on grounds of sex, in particular in connection with the existence of a marriage or the family status in general is prohibited.'

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

Article 5(1) of Act 3896/2010 copies Article 6 of the Directive.

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

Article 5(2) of Act 3896/2010 copies Article 7 of the Directive.

### **6.4 Have the exclusions from the material scope as specified in Article 8 of Directive 2006/54 been implemented in national law?**

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

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

Yes. Article 7 of Act 3896/2010 transposes Article 9 of the Directive. Yet, the notion of an 'occupational scheme' remains unknown, in spite of three Greek CJEU cases, the third of which found a breach of Article 157 TFEU due to gender discrimination in ages and other conditions for civil servants' pensions whose scheme it considered to be occupational.<sup>102</sup> This is because Decree 87/2002 implementing Directives 96/97 and 86/378 and Act 3896/2010 merely reproduced EU law, without indicating which Greek schemes are occupational or providing any criteria for recognising them as such, thus not complying with the CJEU requirements of clarity and transparency. As a result, the case law either completely ignores the distinction between statutory and occupational schemes or wrongly considers that a scheme is not occupational; in both cases, the judgments rely on Article 4(2) of the Constitution.<sup>103</sup>

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

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<sup>102</sup> C-147/95 *DEI v Evrenopoulos* [1997] ECR I-2057; C-457/98 *Commission v Greece* [2000] ECR I-11481. C-559/07 *Commission v Greece* [2009] ECR I-47.

<sup>103</sup> Examples: CS 4279/2014: the CS ignored the distinction (indeed it completely ignored EU law) regarding an obviously statutory scheme (IKA, see 7.1. above) and, relying on Article 4(2) of the Constitution, it held that the granting of an earlier old-age pension to the mothers of minor children was not discriminatory; therefore, the fathers of minor children were not entitled to that pension; Court of Audit 44/2009 (Plen.): the Court considered that the civil servants' scheme falls within the scope of Directive 79/7 which allows different pensionable ages for men and women; however, it held that these different ages were contrary to Article 4(2) of the Constitution. CS 2196/2015.

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

Some occupational schemes maintain discrimination, in spite of Greek case law condemning it. E.g. Article 32(1) of the Civil and Military Pensions Code<sup>104</sup> sets different conditions for the granting of a pension to fathers of deceased military personnel than those applying to mothers: if the deceased had neither a spouse nor children, then upon his/her death the pension is granted: a) to his/her father who is a pauper, when the father reaches the age of 65, or if he is a pauper and unfit for any work, provided in all cases that he was mainly maintained by the deceased; b) in the absence of a father, the mother who is a widow and a pauper, provided that she was mainly maintained by the deceased. Although the Court of Audit<sup>105</sup> held that mothers were entitled to a pension subject to the same conditions as fathers, the provision remained.

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

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

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

See 6.5. above.

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<sup>104</sup> Presidential Decree 169/2007, OJ A 210/31.8.2007.

<sup>105</sup> Court of Audit 751/2000.

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

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

Yes. In Article Single of Presidential Decree 1362/1981 implementing Directive 79/7.

This is the only measure aimed at implementing Directive 79/7. The Decree replaced Article 33(1) of Act 1846/1951 (OJ A 179/21.06.1951) on the Organisation of Social Security (IKA), which operates the main scheme for subordinate workers under a private law contract. It abolished the distinction between husbands and wives and fathers and mothers regarding pensions and medical care, which was to the detriment of women.

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

The scope of Decree 1362/1981 is limited to the IKA scheme (7.1. above), which is indeed statutory, as it covers workers employed by different employers. However, 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),<sup>106</sup> which covers farmers who are not salaried workers; the scheme operated by the Merchant Seamen's Fund (NAT),<sup>107</sup> which covers workers in maritime employment; the scheme operated by the Agency of Manpower Employment (OAED),<sup>108</sup> which provides workers under a private law contract, inter alia, with protection against unemployment, including unemployment allowances, assistance for job seekers and several other allowances, such as a maternity allowance.

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

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

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

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

A provision on the Merchant Seamen's Fund (NAT) scheme<sup>109</sup> sets stricter conditions for granting a pension to the mothers of deceased seamen than those applying to fathers. The CS agreed with the First Instance Administrative Court, which held, relying on Article 4(2) of the Constitution and Directive 79/7, that mothers were entitled to the pension under the same conditions as fathers.<sup>110</sup> This provision has not been repealed.

<sup>106</sup> Acts 4169/1961, OJ A 81/1961; 2458/1997, OJ A 15/14.2.1997.

<sup>107</sup> Presidential Decree 913/1978, OJ A 220/14.12.1978, Act 1085/1980, OJ A 255/1980.

<sup>108</sup> Acts 2961/1954, OJ A 197/1954; Act 1545/1985, OJ A 91/1985.

<sup>109</sup> Article 20(1)(c) of Presidential Decree 913/1978, OJ A 220/14.12.1978.

<sup>110</sup> CS 831/2004 (Plen.).

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

No.

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

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

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

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

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

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

Article 2(a) of Act 4097/2012 copies the definition of 'self-employed' which is used in the Directive. A more specific definition is not provided. For the purposes of employment and social security, several forms of employment are considered to be self-employment in contrast to subordinate employment.<sup>111</sup> The self-employed may work on a *contract for services* or *independent employment* or a *remunerated mandate*. The meaning of these terms results from the case law on general employment (see 4.2.1. above). There is no case law which relies on Act 4097/2012.

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

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

Article 2(b) of the Act provides that this Act applies to 'the spouses of self-employed workers and their life partners, in accordance with the provisions of Act 3719/2008 (OJ A 241/26.11.2008) and the provisions of Act 20<sup>112</sup> of Act 3801/2009 (OJ A 163/2009), who are not employees or business partners, where they habitually participate in the activities of the self-employed worker and perform the same or ancillary tasks'. These Acts concern registered 'life partnership agreements' of two adults of different sex, which produce some binding legal effects under civil law, but create no rights in matters of employment and social security. Act 4097/2012 creates no such rights (8.5. below).

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

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

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

Article 116 (2) of the Constitution, which requires positive action, in particular in favour of women in all fields (2.1.2. above) is so broadly worded that it also covers the self-employed, but there do not seem to be any positive measures for the self-employed and/or their spouses or partners. Article 5 of the Directive was not transposed.

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<sup>111</sup> On the meaning of 'subordinate employment' see SCPC (Civil Section) 1674/2010, 433/2011.

<sup>112</sup> There is a typing error in this provision: it is Article 29, not Article 20, which concerns life partnership.

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

Yes. Article 7 of the Directive has not been transposed. Social security in Greece regarding old age, disability, provident and health benefits is mandatory for all workers and for their spouses and minor children as indirectly insured persons. This is unless they are personally covered by a scheme other than that which covers their spouse. Life partners are not covered by social security (8.3. above). Mandatory schemes are operated by legal entities under public law; therefore, their acts are subject to annulment by the CS.

Originally there were specific mandatory (old-age and disability) pension schemes, health schemes as well as provident schemes (which pay a lump-sum payment 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 (TSMEDÉ), 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).<sup>113</sup> The schemes for professionals and craftspeople (TEBE), traders (TAE), motorists and car owners (TSA), and maritime agents (TANPY) were abolished and those affiliated to them became automatically affiliated to the Organisation for the Insurance of Independent Professionals (OAEE), which provides pension and health care coverage. The scheme for hoteliers was merged into the OAEE as an autonomous section thereof.<sup>114</sup> The pension, health and provident schemes for persons working with mass media, either as self-employed or as salaried workers, were merged into the Unified Scheme for the Personnel of Mass Media (ETAP-MME).<sup>115</sup> The pension and health scheme for farmers (OGA) covers both self-employed farmers and the salaried workers they employ.<sup>116</sup> An unemployment allowance of EUR 360 per month, which is well below the poverty threshold for Greece (about EUR 580, see 5.1.3. above) is paid to the self-employed for three to nine months and is subject to a strict means test.<sup>117</sup>

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

Spouses of self-employed persons who are covered by Article 7 in conjunction with Article 2(b) of the Directive are not dealt with by Greek social security law. The spouses of the self-employed person, like other members of the family of the self-employed person, may be covered by the scheme of the self-employed person, if they so wish and if they are not covered by another scheme, albeit only regarding sickness benefits in kind.<sup>118</sup> They may be covered by the IKA scheme (7.1. above), if they are full-time employees of their spouse;<sup>119</sup> however, these employees are outside the scope of Article

<sup>113</sup> Articles 25-38 of Act 3655/2008, OJ 58/03.04.2008, establishing the ETAA, as amended and complemented by ministerial decisions; see ETAA website: <http://www.etaa.gr> and the websites of the schemes merged therein: <http://www.tsmede.gr>, <http://www.tsay.gr> and <http://www.tnomik.gr>, accessed 30 September 2015.

<sup>114</sup> Acts 2676/1999, OJ A 1/05.01.1999, and 3655/2008, OJ 58/03.04.2008, Articles 7-24, as amended and complemented by ministerial decisions, and <http://www.oaee.gr>, accessed 30 September 2014.

<sup>115</sup> See Act 3655/2008 OJ 58/03.04.2008, as amended, Articles 39-51.

<sup>116</sup> See Act 4169/1961, OJ 81/18.05.1961, as amended and complemented by ministerial decisions, and <http://www.oga.gr>, accessed 30 September 2014.

<sup>117</sup> Manpower Employment Organisation (OAED): <http://www.oaed.gr>, accessed 30 September 2014.

<sup>118</sup> Act 3655/2008, OJ 58/03.04.2008, Article 26(d) regarding ETAA, Article 11 regarding OAEE.

<sup>119</sup> Article 1(1) Act 1759/1988 'Social security coverage of non-insured groups with IKA', OJ 50/1988; Ministerial Decision F.21/3288/20.12.1988, OJ B 04/1989, Regulation for the coverage by IKA of persons employed in undertakings of members of their family.

7 of the Directive. Life partners of the self-employed persons are in no case covered by the latter's social security scheme. Therefore, Article 7 of the Directive should have been transposed and the category covered by this Article, in conjunction with Article 2(b) of the Directive, should have been specified.

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

Yes, but only partly in Article 6 of the transposing Act which, however, has only transposed Article 8(1) of the Directive, albeit in part. It provides that self-employed women only (not the spouses or life partners of self-employed men) may be granted a maternity allowance allowing a temporary interruption of their activity due to pregnancy or maternity for at least 14 weeks and that the source, the amount of and the procedure for paying this allowance shall be determined by the common decision of the competent ministers.

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 one<sup>120</sup> granted a EUR 200 monthly allowance for 4 months to self-employed women insured with ETAA. The second one<sup>121</sup> granted a monthly allowance of EUR 150 for 4 months to self-employed women insured with OAEE, i.e. EUR 50 lower than the allowance granted to women insured with ETAA; this constitutes direct discrimination on grounds of pregnancy and maternity against self-employed women insured with OAEE. Moreover, those insured with other schemes (ETAP-MME and OGA, 8.6. above) have not yet been granted any allowance. This constitutes direct discrimination on grounds of pregnancy and maternity against self-employed women insured with these other schemes.

The period covered by the above allowances is about sixteen weeks, i.e. 2 weeks more than the minimum required by the Directive, but 1 week less than the period for salaried women in the private sector (5.2.1., 5.2.5. above). Yet, the monthly amount granted by both Ministerial Decisions is far below the poverty threshold (about EUR 580) and even significantly lower than the unemployment allowance, which is EUR 360 (see 5.1.3. above); therefore, these allowances cannot be considered 'sufficient', as required by Article 8(1) and (3) of the Directive. Anyway, the three criteria mentioned in Article 8(3) would make no sense in Greek law, as self-employed persons receive no allowance when interrupting their activities on grounds connected with their health (a), nor any other family allowance (c), nor is it possible to estimate the average loss of their income (b). Furthermore, the first Ministerial Decision is in conflict with the Directive, as on the occasion of the Directive's transposition it lowered the maternity allowance granted by prior legislation to certain self-employed women falling within its scope. For example, self-employed women lawyers received a lump sum of EUR 470 before childbirth and EUR 470 after childbirth (EUR 940 in total).<sup>122</sup> This was higher by EUR 140 than the total amount of the allowance granted by the first Decision (EUR 200 for 4 months).

Entitlement to the maternity allowance (Article 8(2)) is subject to direct insurance with the scheme which grants it, settlement of the contributions to it, entitlement to sickness benefits, no entitlement to maternity allowance from another scheme and self-employment. If this allowance is requested and these conditions are satisfied, the payment is mandatory.

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

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<sup>120</sup> Decision No. F.10060/15858/606, OJ B 2665/08.10.2014.

<sup>121</sup> Decision No. F.40035/41931/1653, OJ B 192/23.01.2015.

<sup>122</sup> Decree 162/1998, OJ A 122/05.06/1998.

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

Yes. In Article 8 of Act 3896/2010 transposing the Recast Directive.

This Article mostly merely copies the Directive's provisions, without clarifying which Greek schemes are occupational. Therefore, the transposition of the Directive's provisions on occupational schemes does not create the legal certainty which is required by well-established CJEU case law and so it is considered by the author to be inadequate (see 6.5. above).

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

Article 8(3) of Act 3896/2010 transposing Directive 2006/54 provides that 'the application of the principle of equal treatment in occupational schemes for self-employed persons regarding the pensionable age [...] is deferred until the date on which equal treatment is achieved in statutory schemes.' However, this date had already been determined by Act 3863/2010,<sup>123</sup> which gradually equalised the pension conditions (the pension age and service requirements) for men and women, in both statutory and occupational schemes, from 2011 to 2015. Thus, Article 8(3) of the Act would only make sense if it referred to the relevant provisions of Act 3863/2010. As it stands, it can only create confusion. Moreover, Act 3863/2010 fixed a date for achieving the equalisation of minimum service requirements and the pensionable age in schemes for the self-employed: 31 December 2015. Therefore, in the author's view, for the self-employed affiliated with an occupational scheme, it is the transition period provided by Act 3863/2010, rather than the date of 1 January 1993 provided by Article 10(1) of the Directive, that applies, since the Directive does not allow the Act to worsen the existing legal situation. This is all the more so as Act 3863/2010, although it is aimed at dealing with the financial problems of social security in the context of the economic crisis, and although it does not refer to gender equality or EU law, must be deemed as also implementing the occupational social security provisions of the Recast Directive, since it has equalised pension conditions. However, all this is not clear; hence the transposition of the Recast Directive regarding the occupational schemes is generally inadequate (see 6.5. above).

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

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

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

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

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<sup>123</sup> Act 3863/2010, 'New social security system and related provisions, regulation of employment relationships,' OJ A 115/15.07.2010.

## **9 Goods and services (Directive 2004/113)**

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

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

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

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

### **9.3 Have the exceptions from the material scope as specified in Article 3(3) of Directive 2004/113, regarding the content of media, advertising and education, been implemented in national law?**

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

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

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

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

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

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

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

The exceptions allowed by Article 5(2) were also allowed by Article 6 of Act 3769/2009, although this Act was subsequent to the date of 21 December 2007, before which the differences should have been allowed. Following the *Test-Achats* ruling, Article 6(1) and (2) was replaced by Article 162 of Act 4099/2012 (OJ A 250/20.12.2012), as follows:

1. The use of sex as a factor in the calculation of premiums and benefits in all contracts for insurance and other related financial services concluded as from 01.07.2009 [date of the publication of Act 3769/2009 in the OJ] shall not result in differences in individual premiums and benefits.
2. Proportionate differences in individual premiums and benefits where the use of sex is a determining factor in risk assessment are only allowed, as an exception to Paragraph 1, for insurance contracts concluded until 20.12.2012 [date of the publication of Act 4099/2012 in the OJ] only regarding life insurance, insurance against accidents, illness and civil liability for vehicles, in accordance with the risk management policy of the insurance companies, on the basis of significant and reliable actuarial statistical data.'

Article 162 of Act 4099/2012 also replaced Article 14(1) of Act 3769/2009 as follows:

'Contracts for life insurance, insurance against accidents, illness and civil liability for vehicles, which were concluded or will be concluded until 21.12.2012 [one day after the publication of Act 4099/2012 in the OJ] and maintain the use of sex as an actuarial factor, will remain in effect until they expire, in accordance with Paragraph 2 f Article 6.'

There is no case law regarding either Act 3769/2009 or Article 162 of Act 4099/2012.

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

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

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

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

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

### 10.1 Has your country ratified the Istanbul Convention?

No. Greece signed the Istanbul Convention (IC) on 11 May 2011. The previous and the current government have declared their intention to ratify it and to adapt Greek law to its provisions. This was the reply of Ministers of the previous government last year to a 'topical question' (discussed in Parliament) by the MP Katerina Papakosta<sup>124</sup> and a 'written question' by the MP Maria Yannakaki (which received written replies).<sup>125</sup> The current government has included in its programme the promotion of gender equality, with an explicit reference to gender violence and the ratification of the IC.<sup>126</sup> The General Secretariat of Gender Equality (GSGE) is constantly calling for the ratification of the IC, the improvement of the legislation and the taking of preventive and supporting measures, including the training of police officers and other officials dealing with cases of violence.<sup>127</sup> The inadequacy and ineffectiveness of the existing legislation (i.e. mainly Act 3500/2006 'on dealing with with domestic violence'),<sup>128</sup> the need for adequate structures and systematic data collection and the persistence of gender stereotypes which lie at the heart of violence against women were highlighted at two sessions/hearings on gender violence of the Special Permanent Parliamentary Committee for Equality, Youth and Human Rights, on 5 May and 4 June 2015, by the invitees (the Greek National Commission for Human Rights (GNCHR), NGOs active in this field, competent public services etc.) and MPs.<sup>129</sup> However, no concerns with regard to the possible financial impact of the ratification have been explicitly raised by the competent authorities.

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

<sup>124</sup> The videotaped discussion in Parliament between the MP and the Minister of the Interior, on 1 January 2014, is available at: <https://www.youtube.com/watch?v=0EuAmVRti8w>, accessed 7 October 2015.

<sup>125</sup> The MP's question, dated 23 June 2014, and the replies of the Ministers are available (in Greek) at: <http://www.mariayannakaki.gr/%CE%B4%CE%B7%CE%BC%CE%BF%CE%BA%CF%81%CE%B1%CF%84%CE%B9%CE%BA%CE%B7-%CE%B1%CF%81%CE%B9%CF%83%CF%84%CE%B5%CF%81%CE%B1-%CE%BC%CE%B1%CF%81%CE%B9%CE%B1-%CE%B3%CE%B9%CE%B1%CE%BD%CE%BD%CE%B1%CE%BA%CE%B1%CE%BA%CE%B7-%CE%B2%CE%BF%CF%85%CE%BB%CE%B7/774-%CE%B5%CF%80%CE%B9%CE%BA%CF%85%CF%81%CF%89%CF%83%CE%B7%CF%83%CF%85%CE%BC%CE%B2%CE%B1%CF%83%CE%B7%CE%BA%CF%89%CE%BD%CF%80%CE%BF%CE%BB%CE%B7%CF%82>, accessed 7 October 2015.

<sup>126</sup> See the speech by the Minister of the Interior upon taking office (in Greek), available at: <http://www.ypes.gr/el/MediaCenter/Minister/PressReleases/?id=3c5e75eb-49e5-42d8-a462-ef7cab8cfb93>, accessed 6 October 2015.

<sup>127</sup> See e.g. press releases on the occasion of her meetings with the Minister of Justice and the Minister of Public Order (in Greek), available at: <http://www.isotita.gr/index.php/press/c58>, accessed 5 October 2015.

<sup>128</sup> OJ A 232/24.10.2006.

<sup>129</sup> See videotaped sessions, available at: <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#e276c90d-bb44-45e2-9e9d-a49500c4a403>; and <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#1f812c91-9f92-4faa-9878-a4ae009edfd6>, accessed 8 October 2015.

inadequately carried out, as the Prosecutor's Office lacks the necessary specialised staff, such as social workers.<sup>130</sup>

A working group has been set up by a decision of the Minister of the Interior and Administrative Reorganisation with a view to preparing the ratification of the IC and elaborating a draft bill for the implementation of this Convention.<sup>131</sup>

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<sup>130</sup> See *Written submission by the Greek National Commission for Human Rights (GNCHR)*, UN General Assembly, Human Rights Council, 29th session, A/HRC/29/NI/X, 16 September 2014 (violence against women).

<sup>131</sup> OJ 699/YOΔΔ/30.09.2015; GSGE press release available at: <http://www.isotita.gr>, accessed 1 October 2015.

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

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

### **11.1 Victimisation**

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

Yes:

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

Article 14 of Act 3896/2010, which aims to transpose Articles 14(1) (the prohibition of discrimination) and 24 (victimisation) of Directive 2006/54, prohibits 'the termination or dissolution in any other way of the employment relationship or other adverse treatment: a) on grounds of sex or family status, b) as a revenge of the employer due to the worker's rejection of sexual or other harassment, in accordance with the provisions of Article 2;<sup>132</sup> c) as a reaction of the employer or of the person responsible for vocational training to a protest, complaint, testimony or any other action of a worker or vocational trainee or a representative thereof, within the undertaking or place of vocational training or before a court or other authority, which is related to the application of this Act.'

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

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

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

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

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<sup>132</sup> Article 2 of Act 3896/2010 contains the definitions provided by Article 2(1) of Directive 2006/54 ('direct' and 'indirect' discrimination, 'harassment' and 'sexual harassment', 'pay', 'occupational social security schemes').

## 11.2 Burden of proof

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

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

Article 24 of Act 3896/2010 reads:

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

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

The rules are fine on the books, but they do not seem to be applied, as the Ombudsman also notes (3.6.3. above), in spite of a relevant CJEU preliminary ruling in a Greek case.<sup>133</sup> An important reason is that they remain in the Acts transposing the Directives, without being incorporated in the procedural codes,<sup>134</sup> and they are therefore hardly known. The general rule appearing in the procedural codes lays the burden of proof on the claimant. This rule, in conjunction with other factors, such as fear of victimization 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 constant deterioration of the position of women in the labour market (see 12 below). Furthermore, rising litigation costs discourage litigation (11.4.1. below). The situation could improve, if organisations took cases to courts and other authorities, which they hardly do (11.4.2. below). Yet, without changing their approach to the burden of proof, some courts rely on circumstantial evidence.<sup>135</sup> Moreover, the Greek Authority for the Protection of Personal Data (APPD) imposed a EUR 70.000 fine on a private firm for refusing to provide data on the comparative evaluation of its employees to an employee wishing to claim his employment rights. It relied on the principles of equal treatment and the prohibition of discrimination enshrined in Act 3304/2005 (see 2.2. above) transposing Directives 2000/43 and 2000/78.<sup>136</sup> It is obvious that the position of the APPD would be the same in a gender equality case (see also 4.1.6. above).

<sup>133</sup> C-196/02 *Nikoloudi* [2005] ECR I-1789.

<sup>134</sup> 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.

<sup>135</sup> See in particular CS 505/2010 in a sexual harassment case (3.6.4. above).

<sup>136</sup> APPD Decision 1/2008, available at: <http://www.dpa.gr>, accessed 25 September 2015.

## 11.3 Remedies and Sanctions

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

Paragraph 1 of Article 23 of Act 3896/2010 transposing Directive 2006/54 reads: 'The violation of the prohibition of discrimination on grounds of sex enshrined in this Act entitles the victim to, inter alia, full compensation, including actual damage and loss of earnings as well as moral damages.' The expression 'inter alia' means that the traditional sanctions for a breach of employment law, which constitute *restitutio in integrum* (11.3.2. below), are not affected. Greek law thus exceeds the EU law minimum requirements. Paragraph 2 of the same Article makes employers or directors of undertakings or their representatives who breach the Act liable to the administrative fines provided for breaches of labour law. Paragraph 3 makes the breach of this Act a disciplinary offence for civil servants. Paragraph 4 punishes the 'offence to sexual dignity' with a harsher criminal sanction (imprisonment for 6 months to 3 years and a pecuniary penalty of at least EUR 1 000)<sup>137</sup> if it is committed through the exploitation of the situation of a worker or candidate for employment.

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

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

Although the EU burden of proof rule does not seem to be applied (see section 11.2. above), once an illegality is established through the traditional procedural rules, the remedies and sanctions are traditionally effective, proportionate and dissuasive; in most cases the claimant is put in the position in which she/he would have been in had the illegal act or omission not occurred (*restitutio in integrum*): an unlawful refusal to hire or promote is declared null and void by the civil courts and the hiring or promotion is deemed to exist from the time it should have occurred; administrative courts annul such a refusal and order a retroactive hiring or promotion.<sup>138</sup> An unlawful dismissal is declared null and void by the civil courts and is annulled by the administrative courts.<sup>139</sup> The dismissal is deemed never to have occurred; the worker retains his/her post, reinstatement not being necessary. In all cases full back pay is awarded, without a ceiling, plus legal interest. Moral damages may also be awarded pursuant to relevant general rules.<sup>140</sup> Penal sanctions, administrative fines as well as disciplinary sanctions for civil servants (11.3.1. above) are also satisfactory. In pay<sup>141</sup> and social security<sup>142</sup> cases, levelling-up is traditionally applied. Yet, procedural and socio-economic problems deter a

<sup>137</sup> Article 337 PC punishes this act with imprisonment for a maximum of one year or a pecuniary sanction.

<sup>138</sup> 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).

<sup>139</sup> SCPC (Civil Section) 85/1995, 593/2006, 496/2011 (the dismissal of women upon reaching the pensionable age which was at the time lower than men's pensionable age); 2035/2002 (the dismissal of a pregnant woman; knowledge of the pregnancy by the employer is irrelevant); 1591/2010 (the dismissal of a mother during the period for which she was entitled to reduced working time (5.4.4. above)).

<sup>140</sup> SCPC (Civil Section) 2069/2013 (moral damages – the principle of proportionality).

<sup>141</sup> SCPC (Civil Section) landmark judgment 35/1995 (Plen.) (4.1.4, above), 75/2009; CS 890/2006.

<sup>142</sup> Court of Audit 44 and 3157/200 (Plen.). The annulment by the CS of a refusal to pay social security benefits also results in a levelling up: CS 3088/2007 (Plen.).

recourse to legal proceedings, therefore limiting the use of these effective remedies (11.4.1. below).

## 11.4 Access to courts

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

Greek legislation transposing the Directives copies their provisions on access to the courts: Article 22(1) of Act 3896/2010 copies Article 17(1) of Directive 2006/54; Article 7(1) of Act 3769/2009 copies Article 8(1) of Directive 2004/113; Article 7(1) of Act 4097/2012 copies Article 9(1) of Directive 2010/41. The right to judicial protection is also enshrined in Article 20(1) of the Constitution, which produces vertical and horizontal effects according to Article 25(1) of the Constitution. However, women rarely complain, in particular in the private sector, for fear of being victimised and/or acquiring a 'bad name' in the labour market and due to a lack of evidence and support (see also 3.6.3., 5.4.19 above). Their fears are growing along with their soaring unemployment. Between June 2009 and June 2015 the unemployment rate rose from 8.6 % to 25.2 % (the male rate rose from 5.8 % to 21.7 %; the female rate rose from 12.4 % to 29.5 %). From the 2nd quarter of 2009 to the 2nd quarter of 2015, long-term unemployment (over 12 months) rose from 40.9 % to 73.1 %.<sup>143</sup> 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.<sup>144</sup> Due to strict entitlement conditions, only 9 % of the registered unemployed receive an allowance, for 12 months in principle, of EUR 360 per month plus EUR 36 for each dependent family member. It must be noted that the number of the registered unemployed<sup>145</sup> is lower than the ELSTAT number, while the allowance is well below the poverty threshold, which is EUR 580 (5.1.3. above).

The barriers to justice are growing, as litigation costs are sharply rising, proceedings are too long and legal aid is inadequate and difficult to obtain (11.4.3. below). For example, the amount, the payment of which is a condition for the admissibility of a claim and must be paid at every stage of the trial (at first instance, on appeal and on final appeal) was abruptly increased to EUR 300-400 (51 %-68 % of the minimum monthly salary of a worker over 25 years old and 59 %-78 % of the minimum monthly salary of a younger worker (11.4.1. above). 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.<sup>146</sup> 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.<sup>147</sup> In the author's view, Article 19(2) of the TEU and Article 47 of the Charter are also being violated.

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<sup>143</sup> Of the population aged 15 years and over by the duration of unemployment: 2001-2015 by quarter, Table 6: <http://www.statistics.gr>.

<sup>144</sup> European Commission, *Employment and Social Situation Quarterly*, December 2014, Executive Summary and 23; *Employment and Social Developments in Europe* 2014, 54.

<sup>145</sup> They were 803 687 in June 2015: Manpower Employment Organisation (OAED): <http://www.oaed.gr>.

<sup>146</sup> See pilot judgment ECtHR *Athanasiou v Greece*, 21 December 2010 (final since 21 March 2011).

<sup>147</sup> Act 4055/2012 'fair trial and reasonable length thereof' OJ A 51, of 12 March 2012; see GNCHR *Comments* on the relevant bill: available at: <http://www.nchr.gr>, in Greek and in English, accessed 20 September 2015. Also published in *Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης (Review of Social Security Law)* 2012, pp. 412-422, in Greek.

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

The rule on the standing of entities and unions of persons before the courts so that they can engage in litigation is incorrectly worded. It requires the wronged person's 'consent', while the Directives require the wronged person's 'approval'. Under Greek law, the 'consent' must be given before the lodging of proceedings, while the 'approval' can be given thereafter.<sup>148</sup> Thus, until the consent is obtained, the remedy may well be time barred (e.g. a dismissal can be challenged within three months of its notification and an administrative act within 60 days from the date on which the wronged person took cognisance thereof). Moreover, this rule is not incorporated into the procedural codes, while there are insurmountable barriers to justice for NGOs and non-profit unions of persons which have standing, but inadequate resources (11.4.3. below). The author is only aware of one case involving an NGO: a successful action by the Greek League for Women's Rights for the annulment of a decision by the Minister of Education excluding maternity and parental leave time from the period required for teachers to apply for the post of school director and school counsel.<sup>149</sup>

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

Legal aid is granted to low income EU citizens and low income third country nationals or stateless persons. It consists of an exemption from the pre-payment of litigation costs and the appointment of a lawyer, a notary public and a bailiff at no cost. Legal aid is granted for litigation in civil, penal and administrative courts, subject to a very strict means test: the beneficiary must establish that he/she is unable to pay litigation costs without the necessary means for his/her maintenance and the maintenance of his/her family being restricted or that his/her family income does not exceed one third of the minimum wages provided by the NGCA (currently the statutory minima), i.e. EUR 172 (one third of the minimum wage of workers over 25 years old) or EUR 170 (one third of the minimum wage of workers under 25 years old) (11.7.1 below). Moreover, in the case of claimants, the remedy must not be inadmissible or manifestly ill-founded. An exemption from litigation costs, without any condition, is granted for penal complaints (not for civil or administrative claims, including employment and social security claims, as the GNCHR had demanded<sup>150</sup>) lodged by victims of offences against sexual freedom or abuse of sexual life for financial benefit and by victims of domestic violence. These are penal offences for which those guilty of harassment are also punished (3.6.4. above). Non-profit legal entities are also entitled to legal aid if they establish that the payment of litigation costs makes the pursuit of their aim impossible or problematic. The beneficiaries' obligation to pay costs if their remedy fails and they are ordered to make this payment is not affected.<sup>151</sup> 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.<sup>152</sup>

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

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<sup>148</sup> See Articles 236-238 of the Greek Civil Code for the meaning of 'consent' and 'approval'.

<sup>149</sup> CS 4875/2012 annulling this decision; see European Network of Legal Experts in the Field of Gender Equality, Koukoulis-Spiliotopoulos, S. (2013), 'Greece', *European Gender Equality Law Review* 1, pp. 72-74, available at: [http://ec.europa.eu/justice/gender-equality/document/index\\_en.htm#rights](http://ec.europa.eu/justice/gender-equality/document/index_en.htm#rights), accessed 25 September 2015.

<sup>150</sup> GNCHR *Comments on the bill 'fair trial and reasonable length thereof'*: available at: <http://www.nchr.gr>, in Greek and in English, accessed 20 September 2015. Also published in *Επιθεώρηση Δικαίου Κοινωνικής Ασφάλισης (Review of Social Security Law)* 2012, pp. 412-422, in Greek.

<sup>151</sup> 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).

<sup>152</sup> SCPC (Civil Section) 2069/2013.

## 11.5 Equality body

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

Yes. The main equality body is the Ombudsman,<sup>153</sup> an independent authority whose independence is guaranteed by the Constitution (Articles 101A, 103(9)). The Consumers' Ombudsman,<sup>154</sup> an independent authority, is an equality body in the private sector.

The Ombudsman is the Equality Body for Directives 2000/43 and 2000/78, by virtue of Act 3304/2005<sup>155</sup> transposing both Directives, albeit in the public sector only. In the private sector, this task is entrusted by this Act to the 'Equal Treatment Committee', which is composed of the General Secretary of the Ministry of Justice, as chairman, and 4 members and 2 alternate members appointed by this Minister. This body is therefore not independent. Moreover, no information is available regarding its activity. The Equality Body for the above Directives, in the private sector, regarding occupation and work, is, according to the same Act, the Labour Inspectorate, a public service under the Ministry of Labour, which monitors, more generally, the application of labour law.<sup>156</sup> Therefore, in Greece there is no independent body for the implementation of Directives 2000/43 and 2000/78 in the private sector. This constitutes a breach of these directives.

The Ombudsman is also the Equality Body, in the public and private sector, for Directives 2006/54 and 2010/41 (Acts 3896/2010 and 4097/2012 transposing them, respectively); and for Directive 2004/113 (Act 3769/2009 transposing this Directive), albeit in the public sector only. These tasks are fulfilled by a Deputy Ombudsman for Gender Equality. The implementation of Directive 2004/113 in the private sector is monitored by the Consumer's Ombudsman, by virtue of Act 3769/2009 transposing this Directive.

Both Ombudsmen receive complaints, intervene between parties in order to achieve a solution ensuring the complainant's rights, and give non-binding opinions. They publish annual reports and propose legislative changes. The Ombudsman's Annual Reports include a Special Report on Equal Treatment in the areas of Directives 2000/43 and 2000/78 and a Special Report on Gender Equality in Employment and Occupation. The Ombudsman notes that there is extensive discrimination against women in practice, but a relatively low number of complaints, which, however, has increased regarding the public sector, in particular concerning parental leave. An increase is not noted for the private sector where discrimination in practice is more serious and widespread.<sup>157</sup>

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

## 11.6 Social partners

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

Since the incorporation of the gender equality principle in the Constitution (2.1.1. above), the social partners have often included gender equality issues in collective bargaining and have gradually eradicated direct discrimination in pay. However,

<sup>153</sup> Founded by Act 3094/2003, OJ A 10/22.01.2003, [www.synigoros.gr](http://www.synigoros.gr), accessed 20 October 2015.

<sup>154</sup> Founded by Act 3297/2004, OJ A 259/23.12.2004, [www.synigoroskatanaloti.gr](http://www.synigoroskatanaloti.gr), accessed 20 October 2015.

<sup>155</sup> OJ A 16/27.01.2005

<sup>156</sup> See these reports on <http://www.ypakp.gr>, accessed 20 October 2015.

<sup>157</sup> The findings are summed up in the Ombudsman's speech 'The Ombudsman and gender discrimination: equal treatment of men and women in matters of employment and occupation', 17 October 2014, available at: <http://www.synigoros.gr/resources/141021-omilia.pdf>, accessed 2 October 2015.

professional classifications in CAs are based on felt-fair traditional, non-transparent criteria; this situation remains unchanged and the under-classification of predominantly female categories seems to persist, making indirect discrimination very probable. No review of the classifications has ever been undertaken (see 3.3.4. above).

Large trade union federations have special Secretariats for Women/Equality. This is the case, for example, with the Greek General Confederation of Labour (the GSEE)<sup>158</sup> and the Supreme Administration of Unions of Civil Servants (the ADEDY),<sup>159</sup> which represent Greek unions at the ILO and sign NGCAs, as well as the Federation of Unions of Bank Employees (OTOE).<sup>160</sup> The Hellenic Federation of Enterprises (SEV) has set up a working group of businesswomen with a view to promoting the participation of women in posts in the labour market.<sup>161</sup> There are no specific legislative provisions requiring or encouraging a role for the social partners in ensuring compliance with and the enforcement of gender equality law.

## 11.7 Collective agreements

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

CAs are legally binding on the signatory workers' and employers' unions and their members and are judicially enforceable. NGCAs provide minimum standards for private sector salaried workers employed by any employer throughout the country and bind all these employers. Since 2010, the CA system has gradually been dismantled through repeated and extensive statutory interventions in free and voluntary collective bargaining, in compliance with Memoranda of Understanding. The CA hierarchy was reversed, so that enterprise-level CAs (where women's bargaining power is weaker) prevail over sectoral CAs. NGCAs, a safety net of last resort, were deprived of their main subject: minimum wage fixing for the whole country.

In particular, minimum wages fixed by NGCA 2010 were reduced by statute, moreover in a discriminatory way (on the grounds of age): by 22 % for workers over 25 years old and by 32 % for workers below this age, and were then frozen. As a result, for employees over 25 years old, the minimum monthly salary is EUR 586.08, while for manual workers over 25 years old the minimum daily salary is EUR 26.18. For employees under 25 years old the minimum monthly salary is EUR 510.95, while for manual workers under 25 years old the minimum daily salary is EUR 22.83.<sup>162</sup> This was considered to be a breach of the European Social Charter by the European Committee of Social Rights (ECSR).<sup>163</sup> Wage fixing was then removed from the scope of NGCAs.<sup>164</sup> NGCAs shall only concern non-wage matters and shall only bind the signatory employers' and workers' federations and their members, and no longer all employers in the country.

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<sup>158</sup> See <http://www.gsee.gr/category/grammaties/ginekeio-tmima>, accessed 15 October 2015.

<sup>159</sup> See <http://adedy.gr>, accessed 15 October 2015.

<sup>160</sup> See <http://www.otoe.gr/isotita>, accessed 15 October 2015.

<sup>161</sup> See <http://www.sev.org.gr/tomeis-draseon/ergasia-anthropino-kefalaio>, accessed 15 October 2015.

<sup>162</sup> 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.

<sup>163</sup> 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*.

<sup>164</sup> Article 1, Paragraph IA.1 (1) and (2a) of Act 4093/2012, OJ A 222/12.11.2012.

Following GSEE complaints, the ILO CEACR and the ILO Committee on Freedom of Association (CFA) found that these measures violate several ILO Conventions.<sup>165</sup> 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.<sup>166</sup> CAs, in particular NGCAs, have also improved maternity and parenthood protection (5.2.1., 5.2.2., 5.4.1., 5.4.4. above).

Article 11 of Act 1876/1990<sup>167</sup> empowered the Minister of Labour to extend and declare generally mandatory for all workers of a sector or profession a CA which is already binding on employers who employ 51 % of the workers of that sector or profession. The application of this provision was suspended by Article 37(6) of Act 4024/2011.<sup>168</sup>

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<sup>165</sup> CEACR Observations, 102nd ILC Session (2013), Conventions 98 (right to organise and collective bargaining) and 100 (equal remuneration), Greece: available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110\\_COUNTRY\\_ID:102658](http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658); CFA 365th Report, Governing Body 316th Session, 1-16 November 2012, Case 2820, available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_193260.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf), both accessed 12 October 2015.

<sup>166</sup> CEACR Observations 101st ILC Session (2012), Convention 100, Greece: available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110\\_COUNTRY\\_ID:102658](http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658), accessed 12 October 2015.

<sup>167</sup> Act 1876/1990 'free collective bargaining,' OJ A 27/1990

<sup>168</sup> OJ A 226/27.10.2011.

## 12 Overall assessment

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

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

*The socio-economic context:* The sweeping reforms in the employment and social security area which have been made since 2010 were required as bailout conditionalities by Memoranda of Understanding (MoUs) signed by the European Commission, acting on behalf of the Euro area Member States, and the Hellenic Republic. The drastic cuts in pay and social security benefits are coupled with drastic increases in direct and indirect taxes and other charges. As incomes shrink and charges rise, the welfare state is gradually being dismantled through social budget cuts. The general situation thus keeps deteriorating, as the (usually cautious) CS has also found (1.1. above). Growing legal uncertainty adds to the general feeling of insecurity. The austerity measures are included in long and tortuous pieces of legislation, dealing with subjects unrelated to one another ('omnibus laws'), with retroactive effect and being difficult to combine amongst themselves and with other relevant legislation, and often and unpredictably modified. As international organisations, institutions, bodies and experts find, the crisis and austerity measures have a disproportionate impact on women.<sup>169</sup> The Ombudsman stresses<sup>170</sup> that women are more exposed to adverse working conditions, in particular in the private sector, more generally and during pregnancy and upon their return from maternity leave: they are pressed to accept flexible forms of employment not ensuring adequate living standards and not allowing them to meet their family obligations. In particular, downgrading and imposed part-time or rotation work are spreading, but women's reluctance to lodge actions is also growing<sup>171</sup> (11.4.1. above). The Ombudsman stresses that in the context of the crisis and labour market deregulation, gender stereotypes are resurrected, if not prevailing.

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<sup>169</sup> CEACR Observations, Conventions 100 (equal remuneration) and 111 (discrimination (employment and occupation)), Greece: 101st (2012), 102nd (2013), and 104th (2015) ILC session, available at: [http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110\\_COUNTRY\\_ID:102658](http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102658). Council of Europe Commissioner for Human Rights, *Protect women's rights during the crisis*, 10.07.2014, available at: <http://www.coe.int/en/web/commissioner/news-2014>; UN Independent Experts on the effects of foreign debt on human rights, Lumina, C. (2014), *Mission to Greece (22–27 April 2013)*, UN Human Rights Council 25<sup>th</sup> Session, 11 March (A/HRC/25/50/Add.1): available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>; and Bohoslavsky, J.-P. (2015), *Greek crisis: human rights should not stop at doors of international institutions*, 02.06.2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032&LangID=E>, all accessed 2 October 2015.

<sup>170</sup> See the speech by the Ombudsman, Spanou, K. (2014), 'The Ombudsman and gender discrimination: equal treatment of men and women in matters of employment and occupation', 17 October, summing up the findings: available at: <http://www.synigoros.gr/resources/141021-omilia.pdf>, accessed 2 October 2015.

<sup>171</sup> See SCPC, Civil Section, 37/2004 condemning the downgrading of a woman upon her return from maternity leave. This was common in the state-owned bank concerned, but only the claimant dared to bring an action, which an expert lawyer dealt with as a test case, *pro bono*. Although this practice is growing, recourse to the courts is still rare.

## Annexes

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