

GREECE

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February 2021

A. New Developments in the Field of Divorce (since September 2002)

Until the year 2002, divorce was regulated under the provisions of Law 1239/1983, as in force until that time, and provided for two types of divorce. The first one was *at-fault divorce* and was issued on the grounds of severe breakdown of the marital relationship concerning the other spouse or both spouses. Other grounds for granting the divorce were the four-year separation between the spouses, following relocation of one spouse, living in separate residences with no prior agreement between the spouses to this end, or when a spouse was missing. The second type was *divorce by consent* for marriages that had lasted at least one year, following an agreement between the spouses filed before the court. Until 2002, the dissolution of the marriage could be proclaimed solely and exclusively by means of a non-appealable judgment rendered by the competent civil court.¹

Over the course of the 19 years that have elapsed since 2002, major changes have occurred to the institution of divorce in terms of both substantive and procedural law. More specifically, pursuant to Law 3500/2006, domestic violence (including acts of physical, psychological or sexual violence against a family member) was added to the events that, according to a rebuttable presumption, constitute grounds for severe breakdown of the marital relationship, such as bigamy, adultery, abandonment, or threat to life and, if proven, affirm that the action for divorce is well founded.²

Another material change to at-fault divorce was introduced by virtue of Law 3719/2008, which reduced the period of separation between the spouses necessary for the issuance

¹ See, E. KOUNOUGERI-MANOLEDAMI, *Family Law* [in Greek], vol. 1, 7th ed., Sakkoulas Publications, Athens – Thessaloniki, 2018, pp. 315 ff.; I.S. SPYRIDAKIS, *Family Law* [in Greek], 3rd ed., Sakkoulas Publications, Athens – Thessaloniki, 2020, pp. 221 ff.; P. AGALOPOULOU, *Basic Concepts of Greek Civil Law*, Ant. N. Sakkoulas, Athens, Staephli, Berne, Bruylant, Brussels, 2005, pp. 450 ff.; K. D. KERAMEUS, P. J. KOZYRIS (eds.), *Introduction to Greek Law*, 3rd edition, KLUWER Law International, 2008, passim.; A. KOTZABASI, *Family Law Textbook* [in Greek], Sakkoulas Publications, Athens – Thessaloniki, 2021, passim.; A. GEORGIADIS, *Family Law* [in Greek], 2nd edition, Sakkoulas Publications, Athens – Thessaloniki, 2017, passim.

² I.S. SPIRYDAKIS, *op.cit.*, pp. 237 ff.; E. KOUNOUGERI-MANOLEDAMI, *op.cit.*, pp. 347 ff.

of a divorce from four years to two years.³ One of the reasons for this change (the Explanatory Memorandum of the Law is relevant to this matter) was that the time that elapsed from the commencement of separation until the dissolution of the marriage exceeded six years due to the workload of the courts.

Furthermore, Law 4055/2012 made key amendments to the procedure for divorce by consent.⁴ It reduced the required duration of the marriage from one year to six months, thus enabling the dissolution of shorter marriages through divorce by consent. Moreover, it stipulated that the declaration of intent to dissolve the marriage by the two spouses twice, i.e., at two stages of the trial that should be at least six months apart, was no longer required. In this way, the one-time declaration of the spouse's desire to dissolve the marriage was established.

Moreover, the most recent Law 4509/2017, which is currently in force, abolished the jurisdiction of civil courts to issue divorce by consent, and introduced the type of consensual dissolution of marriage by virtue of an agreement between the spouses recorded in a notarial deed.⁵ Thus, the procedural nature of the divorce, when both spouses agree, was simplified and took on the character of a dissolution agreement.⁶ Prior to the 2017 Law, a declaration of dissolution of the marriage by a court was required.

Furthermore, the 2017 law abolished the minimum required duration of the marriage before the spouses could dissolve it. Since 2002 and until Law 4055/2012 entered into force, the minimum required duration of the marriage was one year. Moreover, since the entry into force of the 2012 law and until the enactment of Law 4509/2017, the minimum required duration of the marriage was six months. Lastly, since the entry into force of Law 4509/2017 there is no time limitation, i.e., the marriage can be dissolved by virtue of an agreement concluded between the spouses, even the day after the marriage is solemnised.

Finally, the 2017 law stipulated that the spouses must agree in writing on the issues of custody and communication, as well as child support, in case they have had children, before proceeding with the contractual dissolution of their marriage. This agreement, according to the said law, shall be effective for at least two years, unless the spouses agree on a longer duration.

³ E. KOUNOUGERI-MANOLEDAKI, *op.cit.*, pp. 349 ff.

⁴ See, A. G. KOUTSOURADIS, "Die einvernehmliche Scheidung im aktuellen griechischen Recht und ihr Beitrag zur Entlastung der Zivilgerichte", *Zeitschrift für Zivilprozess (ZZZ)*, 2011-2021, pp. 264 ff.

⁵ E. KOUNOUGERI-MANOLEDAKI, *op.cit.*, pp. 405 ff.

⁶ A. G. KOUTSOURADIS, "Aktuelles zum griechischen Familienrecht 2017-2018", *FamRZ*, 2018, pp. 1389ff.

B. New Developments in the field of Maintenance between former spouses (since September 2002)

There have been no major material changes to doctrine or case-law with regard to maintenance during separation or divorce since the year 2002. The only development concerns Law 4055/2012, which stipulated that the agreement, which the spouses must draft in writing, if they have children together, and prior to the hearing of their application for divorce by consent, could potentially, also, include an agreement on the maintenance owed by the spouse not granted custody. In this case, the maintenance agreement is incorporated as such in the court decision and becomes immediately enforceable.⁷ Until then, this agreement concerned only custody of the children and communication with them by the spouse not granted custody, and not the issue of their maintenance, which was left for the judge to decide, in order to ensure the best interests of the children.

The most recent Law 4509/2017, which abolished the jurisdiction of civil courts to issue divorces by consent, and introduced the consensual dissolution of marriage by virtue of an agreement between the spouses recorded in a notarial deed, provides for the said maintenance agreement to be included as such in the notarial deed, as there is no requirement anymore for a court decision for the dissolution of marriage, in the case of divorce by consent.

C. New Developments in the Field of Parental responsibilities (since December 2004)

In Greece, the family law regarding parental responsibilities has not been substantially changed since 1983, and applies in accordance with the current provisions and in particular Article 1518 of the Greek Civil Code, which provides that the care of the person of the child comprises in particular the upbringing, supervision, education and instruction of the child as well as the determination of its place of abode. The custody of the minor child is therefore part of the concept of parental care, which includes the custody, the administration of the property and the representation of the minor. According to Articles 1513 and 1514 of the Greek Civil Code, in case of divorce or annulment of the marriage or termination of the cohabitation, the Court may entrust the exercise of parental care and responsibility to one of the parents, to both of them jointly, or to divide the exercise of parental care between the parents or to entrust parental care to a third party.

⁷ I.S. SPYRIDAKIS, *op.cit.*, pp. 273 ff.; E. KOUNOUGERI-MANOLEDAKI, *op.cit.*, pp. 394 ff.

Following the enactment of Law 3719/2008 concerning civil partnership agreements between heterosexual couples and Law 4356/2015 concerning civil partnership agreements irrespective of sex, a relationship between a parent and a child is also established with respect to children born by heterosexual partners in the context of a civil partnership agreement.⁸

Moreover, before Law 4714/2020 was enacted, the divorced parent charged with custody of the child could freely determine their place of residence and decide to relocate on the basis of their personal or professional needs, etc. Under the new Article 1519 of the Greek Civil Code, enacted by virtue of the aforesaid law, this possibility has been limited to the benefit of the child for the purpose of seamless communication between the child and the other parent. The parent charged with custody can now change their place of residence only with the assent of the other parent or, in the event of disagreement, pursuant to a court judgment allowing this move on the basis of the child's best interest, whilst also setting out the new mode of communication. The relevant draft bill had proposed that both parents have a say in major, non-recurring decisions concerning the future of their child, even if one exercises custody, or by virtue of a court judgment on a joint custody, but the provision was ultimately adopted with just the aforementioned content.

A new draft bill being debated and to be voted on presently, proposes major amendments concerning the relationships between parents and children after the divorce.⁹ In particular, new provisions have been proposed, such as the stay of a child at the parent exercising access rights for a period of 1/3 of the child's minor life, unless the parent does not desire this or desires a shorter stay. Also, it has been proposed to allow joint decisions by the parents on issues with a decisive effect on the child's future, such as the child's name, religion, or issues pertaining to their health or education. The new draft bill is based on the principle of non-discrimination between parents, as it establishes the joint exercise of parental responsibility by both parents after divorce, as applied in most European countries. At the same time, alternative methods of resolving family disputes, such as mediation, are promoted. Objective criteria for poor parental care are also established, which must be taken into account by the court in regulating parental care and child custody issues, such as non-payment of maintenance, non-compliance with court decisions and the agreements of divorced parents, and the rupture of the child's

⁸ See, E. KOUNOUGERI-MANOLEDAKI, *op. cit.*, vol. 2, p. 87.

⁹ See, A. G. KOUTSOURADIS, "Aktuelles zum griechischen Familienrecht 2019-2020", *FamRZ*, 2020, pp. 1441ff.

relationship with one of the parents. Finally, the draft bill provides for the establishment of special programs of the Greek National School of Judges for the training of judges who will adjudicate family disputes.¹⁰

From 2004 to date, a number of judgments have been rendered, which, contrary to most judgments awarding custody exclusively to one parent (usually the mother), apportion custody between the separated spouses every month or fortnight, in which cases the child regularly moves between the parents' residences.¹¹ In the grounds of these judgments, it is taken into consideration that the parents' residences are in the same city, that the minor has or must have their own room at each residence, that their psyche is being shaped in their familiar environment, and that they must interact equally with both parents and spend equal time with both parents both during the day and over the course of the month. Thus, it is deemed that living both with the mother and with the father is in the best interest of the child, so as to cause the smallest possible disruption to their lifestyle. It is also taken into consideration that shared custody necessitates good cooperation and understanding between the parents as regards the choices and handling of the child's affairs in a productive manner.

D. New Developments Regarding Property Relations Between Spouses (since August 2008)

There have been no major material changes to doctrine or case-law with regard to property relations between spouses since the year 2008.

Nevertheless, of particular interest is Judgment No 6/2019 of the Supreme Civil and Criminal Court of Greece¹² on the possibility of the waiver of the claim of community of accrued gains during the marriage¹³ in view of an agreement to a divorce by consent. The Supreme Court reiterated its position under established case-law that the issue of accrued gains can become subject to a more general settlement of the matrimonial relationship in

¹⁰ See, A.G. KOUTSOURADIS, "Aktuelles zum griechischen Familienrecht 2017-2018", *FamRZ* 2018, pp.1390 ff., and A.G. KOUTSOURADIS, "Aktuelles zum griechischen Familienrecht 2019-2020", *FamRZ*, 2020, pp.1441 ff.

¹¹ See for example, Judgment No 7131/2017 of the Athens Court of First Instance and judgment No 250/2016 of the Xanthi Court of First Instance, *Theory and Practice of Civil Law and Civil Procedural Law (EfAD)* [Greek legal journal], n. 10, 2017, pp. 951 ff.

¹² This Court is called in Greek "Areios Pagos", and will be, hereinafter, referred to as *Supreme Court* in the main body of the text. The specific Judgment is available at <http://www.areiospagos.gr/nomologia/apofaseis.asp> (last accessed on 15.02.2021).

¹³ See, P. AGALOPOULOU, *op.cit.*, pp. 447 ff., who translates the concept as "claim to participate in the increments".

their negotiations to reach an agreement on a divorce by consent under Article 1441 of the Greek Civil Code. In this case, the Supreme Court accepts, by way of exception, that the spouses' agreement on accrued gains is valid on the condition that it is predicated on the condition precedent of dissolution of the marriage, exclusively in cases of divorce by consent. The Supreme Court insists on this position, arguing that the agreement regulating accrued gains, where the condition precedent it is predicated upon is not met, i.e., dissolution of marriage through divorce by consent, it does not take effect and, therefore, it cannot substantiate a peremptory plea in favour of the other (subject party) spouse.

In fact, in this judgment, the Supreme Court correlates the express proscription of Law 4356/2015 on civil partnerships, which expressly provides that the a priori waiver by the partners of the claim of community of accrued gains is prohibited, contending that an argument to the contrary cannot derive from the provisions of Article 5(2) of Law 4356/2016, which stipulates, with regard to the parties entering into a civil partnership agreement, that 'the parties cannot waive the claim of community of accrued gains before they arise', because if the legislator wished for this proscription to also apply in the case of Article 1400 of the Greek Civil Code, they would have expressly legislated this.

This position taken in case-law has been contested,¹⁴ because it makes the legal error of relegating one of the essential requirements for the claim arising to a condition, allowing for the possibility of any claim of public policy to be open to an a priori contractual waiver, thus circumventing the meaning and purpose of existence of jus cogens provisions, let alone the protective function they perform as policy. This assessment of the provisions of Law 4356/2015¹⁵ has also been remarked upon as allowing for two similar cases (waiver of the claim of community of accrued gains in marriage and in civil partnership) being treated in diametrically opposing ways.

E. New Developments Regarding *de Facto* Partnerships (since February 2015)

There has been no institutional recognition of *de facto* partnerships,¹⁶ as Greek law insists on subjecting solely 'relationships recorded with a Registry' or 'declared partnerships' to

¹⁴ Th. PAPACHRISTOU, "Waiver of Claims of Community of Accrued Gains", *Annals of Private Law* [Greek legal journal], Athens, 2001, p. 577.

¹⁵ S.S. KIKIDOPOULOS, "Waiver of Claims of Community of Accrued Gains in Light of the New Legislative Regime of Law 4509/2017", *Tetravivlos* [Greek legal journal], 27.02.2020, available at <https://www.tetravivlos.com/news/357> (accessed 15.02.2021).

¹⁶ See, I.S. SPYRIDAKIS, *op.cit.*, pp. 42, 63.

the provisions governing family law. There have been long-standing conflicting views in doctrine and case-law as to whether or not rights arise in the context of a de facto partnership and, if it is considered that they do exist, whether these are founded on rights under family law through a broad interpretation of its provisions, or the general provisions of the contract law.¹⁷

Case-law has long elected not to recognise claims in the context of de facto partnerships, not even on the basis of the general provisions of Civil Law.¹⁸

However, in 2014, the Supreme Court decided differently in its judgment,¹⁹ which concerns the following dispute: An action was brought by a partner against the heirs of her deceased de facto partner, on the basis of the provisions on unjust enrichment, for the return of enrichment granted to the deceased during the partnership, due to expiry of the cause of its retention (death of the partner). The action was successful at first instance, but it was found during the appeal trial that the action was not lawful and dismissed it, as the court of second instance ruled that the provisions on unjust enrichment do not apply to the dissolved de facto partnership. The Greek Supreme Court set aside the judgment

¹⁷ For a discussion on the new forms of family, see, P. AGALLOPOULOU, “Les différents types de famille contemporaines selon le droit hellénique”, *Revue hellénique de droit international (RHDI)* 2002, pp. 21 ff., and P. AGALLOPOULOU, “Free unions” in: M. Stathopoulos, K. Beys, Ph. Doris & I. Karakostas (eds), *Studies in honour of Apostolos G. Georgiadis* [in Greek], Athens - Komotini 2006, pp. 4 ff.; P. AGALLOPOULOU, “Modifications du droit de la famille hellénique dues aux changements socio-familiaux”, *RHDI*, v. 50, 1997, pp. 579 ff.; E. MOUSTAIRA, “Grèce: Régimes Matrimoniaux, successions, et libéralités dans les relations internationales et internes”, in: *Livre Bleu du Notariat Latin*, v. II, 3^{ème} éd., Bruxelles, 2003, pp. 1319-1410; CH. DELIYIANNI-DIMITRAKOU, “Le droit social de l’Union européenne face aux nouvelles formes de famille”, in: *Mélanges à l’honneur de Yota Kravaritou: a trilingual tribute*, I. Schömann (éd), ETUI, 2011, pp. 49 ff.; E. MOUSTAIRA, “Grèce”. Étude sur les régimes matrimoniaux des couple mariés et sur le patrimoine des couples non mariés dans le droit international privé et le droit interne des États membres de l’ Union Européenne, effectuée à la demande de la COMMISSION EUROPÉENNE, Direction générale Justice et Affaires intérieures, Unité A3 Coopération judiciaire en matière civile, 2003 available at https://www.asser.nl/upload/ipr-webroot/documents/cms_ipr_6_1_Final%20Report%20EU%20Commission%20030703.pdf (last accessed 15/02/2021).

¹⁸ See, A. G.. KOUTSOURADIS, “Rechtsregeln für nichteheliches Zusammenleben. Länderbericht Griechenland”, *Beiträge zum europäischen Familien-und Erbrecht*, Band 12, Bielefeld, 2009.

¹⁹ Judgment No 1751/2014 of the Civil and Criminal Supreme Court (Areios Pagos), available online in Greek at <http://www.dsanet.gr/Epikairothta/Nomologia/ap%201751.htm> (last accessed on 15.02.2021). Also relevant are: Judgment No 351/1993 of the Civil and Criminal Supreme Court (Areios Pagos), *Nomiko Vima* (NoV) [Greek legal journal], 1994, pp. 998 ff., Judgment No 194/1990 of the Civil and Criminal Supreme Court (Areios Pagos) *NoV* [Greek legal journal], 1991, pp. 548 ff., Judgment No 54/2007 of the West Macedonia Court of Appeal, *Armenopoulos* [Greek legal journal], 2008 pp. 226 ff., Judgment No 5530/2009 of the Athens Court of Appeal, *Elliniki Dikeossini* (EllDni) [Greek legal journal], 2010, pp. 134 ff., Judgment No 778/2004 of the Athens Multi-Member Court of First Instance, available online at http://www.dsanet.gr/Epikairothta/Nomologia/ppa778_04.htm (last accessed on 15/02/2021), and No 204/1999 of the Kozani Single-Member Court of First Instance, *NoV* [Greek legal journal], 2000, pp. 1446 ff.

rendered by the Court of Appeal, ruling that the provisions concerning unjust enrichment do apply since the provisions of the plaintiff fall outside the concept of ordinary provisions between partners, i.e., if there is an asset of very high value acquired by the enriched party.

Moreover, the Court held that when there is a relationship of trust between the parties and a promise for a possible future marriage or future assurance in general, then the cause of the provision does not arise from intention of a donation. Therefore, there is no legitimate cause for preservation of the enrichment after the discontinuation of the de facto partnership, but there is an expired or non-subsequent cause, and the provider is entitled to seek the benefit after the cessation of the bonds of de facto partnership, even from the heirs of her partner. In the judgment in question, one dissenting member of the Court accepted that the cause is deemed to have expired when the de facto partnership ends while the partners are alive, therefore the bond of trust between the members of the de facto partnership ends. But in the event of dissolution of the de facto partnership due to the death of a partner, then there can be no question of discontinuation of the bond of mutual trust.

The disagreement on whether or not the provisions regarding unjust enrichment apply was resolved by Law 4356/2015 on civil partnerships, stipulating in Article 6 that in cases of de facto partnerships, claims arise on the basis of the provisions regarding unjust enrichment after the expiry of the partnership.

Furthermore, certain judgments diverge from the general presumption that actual partnership relationships are in no way related to institutionally recognised and statutorily regulated 'declared partnerships'. In interpreting the concept of a family, they invoke a broad interpretation and have accepted that claims arise in favour of a de facto partner identical to those arising in favour of the members of a natural person's family. A 2019 judgment of the Athens Court of First Instance²⁰ illustrates the long-standing judicial dissent on the recognition of rights conferred by law to family members for persons associated through de facto partnerships. The judgment ruled on a claim concerning compensation for non-material damage following the death of a person, brought by the de facto partner of the deceased woman. Based on the provisions in force, i.e. Article 932 of the Greek Civil Code, such claims can be brought by the family members of the

²⁰ Judgment No 1815/2019 of the Athens Court of First Instance, available online at <https://www.lawspot.gr/nomika-nea/hrimatiki-ikanopoiisi-gia-psyhiki-odyni-se-syntrofo-thanoyisis-me-tin-opoia-itan-se> (last access on 15/02/2021).

deceased. The judgment accepted that the term 'family' must be interpreted broadly, and that persons who shared strong emotions of love and affection with the deceased can raise such claims for compensation, as they de facto hold a position analogous to that of family members *stricto sensu*.²¹ Therefore, this judgment ruled that the concept of family must be interpreted and broadened in the aforementioned provision on the basis of modern social views shaping new forms of relationships, where the traditional concept of marital cohabitation no longer seems to be the exclusive form of the family.

In recent years, legislators have been assessed as tending to distance themselves from the traditional presumption on the creation of a family solely by means of a religious or civil marriage, under the provisions of the Greek Civil Code invoking the European Court of Human Rights (ECtHR) decision in *Saucedo Gomez v. Spain*,²² which recognised that lengthy cohabitation between two persons, without being married, leads to the existence of 'family life' within the meaning of Article 8 of the European Convention of Human Rights (ECHR). This decision stands in contrast to past Supreme Court judgments,²³ and is part of a number of differing views found in case-law, as recorded in judgments rendered over the course of approximately the last fifty years, starting with a 1976 Karditsa Court of First Instance judgment,²⁴ which upheld a claim for compensation for non-material damage (psychological suffering) brought by a de facto partner. In fact, the Court subjected the cohabitation to the concept of 'concubinage'. Nevertheless, even in cases of broad interpretation of the term, there is always a review of the duration of the relationship, the existence of cohabitation, the existence of children, the uninterrupted, close, loving relationship, etc.

Finally, it should be stressed that Law 4356/2015 is the first law in Greece to enable de facto couples of the same sex to enter, if they so wish, into a civil partnership agreement, which recognises personal and property consequences for the partners. In the past, there was no provision for their subjection to any form of enacted, legitimate bond of familial relationship.

²¹ See among others, Judgment No 6862/2007, *EllDni* [Greek legal journal], 2008, pp. 822 ff., and Judgment No 727/2001 of the Athens Court of Appeal, *EllDni*, 2001, pp. 1358 ff.

²² ECtHR *Saucedo Gomez v. Spain* (No 37784/97), 26.01.1999.

²³ See for example, Judgment No 775/2011 of the Civil and Criminal Supreme Court (Areios Pagos), available online at <http://www.areiospagos.gr/nomologia/apofaseis.asp> (last accessed on 15.02.2021).

²⁴ Judgment No 193/1976 of the Karditsa Court of First Instance, *NoV* [Greek legal journal], 1977, pp. 776 ff.

Law 4356/2015²⁵ brought changes to the concept of civil partnership which was until then regulated by Law 3719/2008,²⁶ extending the capability to enter into such a partnership to two adults of the same sex. This law was adopted in order for Greece to comply with the ECtHR judgment in *Vallianatos and others v. Greece*.²⁷ Civil partnership differs both

²⁵ See, K. SAITAKIS, in K. CHRISTODOULOU (ed.), *The New Civil Partnership: following Law 4356/2015* [in Greek], *Nomiki Vivliothiki*, Athens, 2016; K. SAITAKIS, 'Inheritance law consequences of the new civil partnership (Law 4356/2015)', *EfAD* [Greek legal journal], v. 11, 2015, pp. 947-957.

²⁶ On civil partnership in general, see *inter alia*, A. KOTZAMPASI, "Civil Partnership: Relations between the partners and third parties", *EfAD* [Greek legal journal], n. 3, 2010, pp. 259 ff.; A. KOTZAMPASI, "Dissolution of civil partnerships and its consequences under Law 3719/2008", *Armenopoulos* [Greek legal journal], v. 63, n. 10, 2009, pp. 1491 ff.; A. KOTZAMPASSI (ed.), *Cohabitation pact and family law amendments*, Sakkoulas Publications, Athens/Thessaloniki 2009 [in Greek]; S. AKTYPIS, 'Prohibition of discrimination and civil partnership in the case-law of the European Court of Human Rights', *NoV* [Greek legal journal], v. 63, n. 4, 2015, pp. 701 ff.; N. GAVALAS, "Discrimination due to sexual orientation: marriage allowance and leave for employees entering into a solidarity pact with a same-sex partner: comment on EU Court case C-267/12 of 12.12.2013", *Labour Law Review* (EERD) [Greek legal journal], v. 74, n. 9, pp. 1120 ff.; E. GKLEGKLE, *EfAD* [Greek legal journal], "The innovations arising from Civil Partnership - Concerns and practical implementation", n. 1, 2009, pp. 3 ff.; I. KAMTSIDOU, "Trends of demoralisation of marriage in modern welfare states: The 'Social Solidarity Pact' in France", *Human Rights (DtA)* [Greek legal journal], n. 20, 2003, pp. 1151 ff.; P. NIKOLOPOULOS, "The exclusion of same-sex couples from the cohabitation agreement of Law 3719/2008 and the ECtHR judgment in *Vallianatos and Others v. Greece* (7.11.2003)", *NoV* [Greek legal journal], 2014, pp. 1785 ff.; Th. PAPACHRISTOU, "Cohabitation agreement: a rival to marriage or an alternative form of cohabitation?", *EfAD* [Greek legal journal], 2008, pp. 393 ff.; Th. PAPACHRISTOU, N. P. KOUMOUTZIS, CH. TSOUKA, *Civil partnership: An interpretative guide to Articles 1 to 13 of Law 3719/2008* [in Greek], P. N. Sakkoulas, Athens, 2009; Th. PAPACHRISTOU, N. KOUMOUTZIS & Chr. TSOUKA, *Cohabitation Pact* [in Greek], Sakkoulas Publications, Athens 2009; Ch. STAMPELOU, "Civil partnership and equality", *ChrID* [Greek legal journal], n. 9, 2009, pp. 189 ff.; I. SPYRIDAKIS, *The cohabitation pact according to Law 3719/2008* [in Greek], Ant. Sakkoulas Publications, Athens-Komotini 2009; P. AGALLOPOULOU, Greek law 3719/2008 on cohabitation between persons of opposite sex, *International Family Law*, 2009, pp. 85 ff.; P. AGALLOPOULOU, Financial consequences of cohabitation between persons of the opposite sex according to Greek law, in B. Verschraegen (eds.) *Family Finances*, Jan Sramek Verlag, Vienna 2009, pp. 293 ff.; E. MOUSTAIRA, "Matrimonios del mismo sexo: Un estudio comparativo de la realidad jurídica en varios países" in: C. Lasarte (ed.), *Familia, matrimonio y divorcio en los albores del siglo XXI*, Madrid 2006, pp. 59 ff.; A.G. KOUTSOURADIS, "Law 3719/2008: audietur et altera pars et cetera!", *EfAD* [Greek legal journal], 2009, pp. 56 ff.; Th. PAPACHRISTOU, Critical comments on Law 3719/2008, *EfAD* 2008, 1018 et seq. [in Greek]; E. KOUNOUGERI-MANOLEDAKI, "The new Law 3719/2008: a first assessment", *EfAD* [Greek legal journal] 2008, pp. 1016 ff.; Ch. STAMBELOU, "Cohabitation pact and equality", *ChrID* [Greek legal journal], 2009, pp. ff.; G.S.P. A. VARKA, "Cohabitation pact - a contractual form of family", *Elidni* [Greek legal journal], 2009, pp. 401 ff.; Th. PAPAZISSI, "Same-sex marriage: valid, null or inexistent? (opinion)", *ChrID* [Greek legal journal], 2009, pp. 851 ff.; V. SOTIROPOULOS, "The right to marriage: the judicial pursuit of an inexistent prohibition", *NoV* [Greek legal journal], 2009, pp. 2002 ff., 2005-2007; L. PAPADOPOULOU, "Same-sex marriage: a legal and policy evaluation attempt", *DtA* [Greek legal journal], n. 38, 2008, pp. 405 ff.; K. CHRISTODOULOU, "Cohabitation pact. Issues of substantive and procedural law", *Dike* [Greek legal journal], 2009, 346 ff.

²⁷ ECtHR *Vallianatos and Others v. Greece* (Nos 29381/09 and 32684/09), 7.11.2013. See P. NIKOLOPOULOS, *op.cit.*

from marriage²⁸ and from de facto partnership,²⁹ since the latter concerns persons who do not wish to place their cohabitation within a legal framework,³⁰ and mainly concerns soft law provisions, i.e., it is left to the parties to regulate relations between them, while marriage mainly consists of mandatory rules, with little room for self-regulation by the spouses.³¹ In essence, civil partnership promotes the conflation of the principle of private autonomy with the principle of protection of family life.³² While civil partnership is a very

²⁸ With respect to the issue of same-sex marriage in Greece, it has been asserted that the fact that civil marriage is not permitted to same-sex couples is an infringement of the principle of equality (Article 2(1) of the Greek Constitution), as well as the right to freely develop one's personality (Article 5(1) of the Greek Constitution) and the protection of private and family life (Article 21(1) of the Greek Constitution). In its 2017 judgment on the weddings performed on the island of Telos, the Supreme Court acknowledged that the weddings in question between same-sex partners performed by the local mayor are null and void, but cannot preclude the need for such statutory regulation (Supreme Court Judgment No 1428/2017, Civil Chamber A2). See, S. AIDINLIS - G. NIKOLOU, 'What establishes law? A legi-philosophical reading of Supreme Court Judgment No 1428/2017 on the existence of marriages of same-sex couples from the perspective of legal interpretivism', *The Constitution (ToS)* [Greek legal journal], n. 1, 2018, pp. 293 ff.; L. PAPADOPOULOU, *op.cit.*

²⁹ The most salient differences between marriage and civil partnership are the following: a) juveniles can enter into marriage with the permission of the court (Article 1350(2)(2) of the Greek Civil Code), whereas only adults can enter into a civil partnership; b) civil partnerships are entered into before a notary public, whereas marriage ceremonies are solemnised by a civil or religious authority; c) the parties can use their partner's surname in their social relations, without this generating legal consequences, in contrast to the institution of marriage, where one's surname can be changed by filing a statement with a registrar (Article 1388(3) of the Greek Civil Code); d) the dissolution of marriage requires action by a judicial or other authority, whereas a civil partnership shall be dissolved in accordance with Article 7 through an agreement between the parties, or automatically if the parties enter into marriage, or by virtue of a unilateral notarial declaration; e) partners entering into a civil partnership can waive the right to reserved share of an estate (Article 8(b)), whereas there is no such provision with respect to marriage (Article 1825 of the Greek Civil Code); f) with regard to maintenance after the dissolution of a civil partnership, it is expressly provided that the provisions of the Greek Civil Code shall apply *mutatis mutandis* (Article 7(3)), while the possibility of a waiver is provided during the drafting of the civil partnership. Consequently, persons entering into a civil partnership enter into a scheme similar to that of marriage, particularly with respect to property rights. See D. NATSI - TH. PAPA, *The legislative treatment of gender-based discrimination in Greece*, Heinrich-Böll-Stiftung, Thessaloniki, 2019, pp. 52-53, available online at: <https://gr.boell.org/el/2019/06/05/i-nomothetiki-antimetopisi-ton-emfylon-diakriseon-stin-ellada> (last accessed on 15/02/2021).

³⁰ However, the de facto partnership of persons is referred to in Articles 1444(2)(a), 1456(1)(b) and 1475(2)(a) of the Greek Civil Code, and there is express reference to de facto partnerships in Article 6 of Law 4556/2015, whereby assets obtained after the commencement of the partnership shall be ruled upon according to the provisions concerning unjust enrichment. See, A. KOUTSOURADIS & A-M. KONSTA, 'National Report: Greece', in: K. BOELLE-WOELKI, C. MOL, E. VAN GELDER (eds), *European Family Law in Action*, Vol. V, *Informal Relationships*, Intersentia, 2015, pp. 1-24, available online at <http://ceflonline.net/wp-content/uploads/Greece-IR.pdf> (last access on 15/02/2021); D. NATSI - TH. PAPA *op.cit.*, and K. SAITAKIS, 'Inheritance law consequences', *op.cit.*

³¹ V. PERAKI, *Unmarried Cohabitation: de facto or with an agreement* [in Greek], Sakkoulas Publications, Thessaloniki, 2010; D. NATSI - TH. PAPA, *op.cit.*, p. 52.

³² E. KOUNOUGERI-MANOLEDAKI, *Family Law*, Sakkoulas Publications, 7th edition, Athens - Thessaloniki, 2018, pp. 560 ff.

important institution for Greek reality, the 2015 law contained no provision whatsoever as to the parental rights of same-sex couples. This gap was bridged, in a way, by Law 4538/2018, enshrining the right of same-sex couples to become foster parents.³³

While Article 8 of Law 4538/2018 does not preclude same-sex couples who have entered into a civil partnership from becoming foster parents, it paradoxically does not permit them to engage in adoption, whether this concerns one partner adopting the other partner's biological child, who existed prior to the conclusion of the civil partnership, or joint adoption. Article 7(2) of the 2008 Revised European Convention on the Adoption of Children of the Council of Europe expressly stipulates that states are free to extend the scope of the Convention to same-sex couples who are married to each other or who have entered into a registered partnership together. As of February 2021, Greece has not yet become a signatory to this Convention. Furthermore, in the ECtHR judgment in *X and Others v. Austria*,³⁴ the Court ruled against Austria because, under its legislation, the right to adopt was extended solely to opposite-sex couples, expressly excluding same-sex couples. The ECtHR ruled that this exclusion constituted unlawful discrimination against same-sex couples through the combined provisions of Articles 14 and 8 ECHR.³⁵

Another issue is whether same-sex couples should be given the right by statute to jointly acquire a child as parents through medically assisted reproductive measures. These rights are conferred, under the Greek legal system, to members of same-sex couples as individuals, but not in the context of the family they have created with their same-sex partner. However, in practice, same-sex couples in present-day Greece are jointly raising children, and there is clearly a lacuna as to their legal protection in the context of the de facto family being created. The argument often raised against extending parental rights to same-sex couples is to protect the best interest of the child, without taking into consideration the fact that it does not derive either from Greek legislation or international

³³ Furthermore, Article 68 of Law 4356/2018 abolished the completely anachronistic Article 347 of the Penal Code, which set out punishments for "unnatural debauchery between males".

³⁴ ECtHR *X and Others v. Austria* (No 19010/07), 19.2.2013.

³⁵ See, L. PAPADOPOULOU, "The legal concept of 'family' and same-sex couples: Lessons from the ECtHR" in G. APOSTOLAKIS, P. ARVANITAKIS, G. ARCHANIOTAKIS et al., *Volume in Honour of Professor E. Kounougeri-Manoledaki* [in Greek], Sakkoulas Publications, Thessaloniki, 2016, pp. 355 ff.; L. PAPADOPOULOU, "Exclusions from medically assisted reproduction", in V. KANTSA (ed.), *Changing relations: Kinship and Medically Assisted Reproduction* [in Greek], (In)FERCIT, Athens, 2015, pp. 225 ff.; A.G. KOUTSOURADIS & L. PAPADOPOULOU, "Country report on Greece", in ANDREA BUECHLER & HELLEN KELLER (eds), *Family Forms and Parenthood: Theory and Practice on Art 8 ECHR*, Intersentia, Cambridge, 2016, pp. 237 ff.

texts³⁶ that the child should not have same-sex parents. On the contrary, Greek law requires that the child's opinion is also taken into consideration and that it is ensured that the child lives in a dignified environment that guarantees its prosperity and development, within the framework of actual relationships of affection and love developing within its actual family.

³⁶ In the Greek legal order, the principle of the best interest of the child is expressly enshrined in Article 1511 of the Greek Civil Code on parental care. This is understood as the physical, material, intellectual, mental, moral and, generally speaking, any type of interest. The favourable treatment that must be reserved for children also arises from the Greek Constitution and Articles 2(1) (protection of the value of the human being), 5(1) (right to freely develop one's personality), 25(1) (protection of the rights of the human being as a member of society) and, in particular, Article 21(1), where the protection of childhood is placed under the protection of the state. At the level of international law, the principle of the child's best interest is enshrined in Article 3(1) of the Convention on the Rights of the Child, which was ratified by virtue of Law 2101/1992 and constitutes the supreme text on children's rights. The best interests of the child are also regulated under Article 24(2) CFREU. See also, P. NASKOU-PERAKI, K. CHRYSOGONOS, CH. ANTHOPOULOS, *The Convention on the Rights of the Child and Domestic Legal Order* [in Greek], Centre of International and European Economic Law, A. N. Sakkoulas, Athens, 2002.