

Mandates of the Working Group on discrimination against women and girls; and the Special Rapporteur on violence against women, its causes and consequences

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Excellency,

We have the honour to address you in our capacities as Working Group on discrimination against women and girls and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 41/6 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning some provisions contained in the Draft Law of the Ministry of Justice on "'Reforms relating to parent-child relationships and other matters of family law' (hereafter the Bill) **amending the Greek's Civil Code concerning child custody in case of a separation or divorce of the parents which is currently being discussed in Parliament**. This Bill, if enacted, could facilitate the exposure to heightened risks for victims of domestic violence in the context of shared custody.

The Bill intends to redefine the "best interest of the child" under Greek law and presumes equal shared custody of children in cases of separation or divorce as a principle. Any exception, such as in cases of violence against women including domestic violence, would require a potentially lengthy court process and would potentially expose women and children to gender-based discrimination in judicial procedures.

Article 5 of the Bill provides that the best interest of the child, which is served in particular by the effective participation of both parents in the upbringing and care of the child, as well as by the prevention of disruption of the child's relations with each of them, must also be the aim sought by the court, when deciding on the award of parental responsibility or on the manner in which it is to be exercised. The court's decision shall take into account factors such as the ability of each parent to respect each other's rights, the conduct of each parent before and during the proceeding, as well as his or her compliance with his or her legal obligations, court decisions, prosecution orders and previous agreements made with the other parent concerning the child.

Although the Bill aims at incorporating the concept of best interest of the child in domestic law, it fails to determine this notion on a case-by-case basis, and hence whether or not the child would be at risk of domestic violence with one of the parents. In cases of "imminent danger" to a child's mental and physical health, a prosecutor can take immediate protection measures and then has 90 days to bring the case to court. However, we are concerned that the Bill does not make any specific mention of abuse by one parent towards the other parent or measures to protect victims of intimate partner abuse in cases of shared custody.

Article 11 of the Bill provides that each parent be obliged to safeguard and strengthen the child's relationship with the other parent, his/her brothers and sisters, as well as with the other parent's family, especially when the parents do not live together or the other parent is deceased. We express our concerns that this article presumes that the contact with the other parent's extended family is in the best interest of the child without any exceptions or best interest determination. In fact, contact and relationships with extended family can present additional risks in cases of abuse or acts of violence against the child.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), ratified by your Excellency's Government in 18 June 2018, establishes in its article 31, para. 1 that States parties shall take into account incidents of violence against women and domestic violence in the determination of custody and visitation rights of children. Likewise, paragraph 2 commits States parties to ensure that the exercise of any visitation or custody rights does not jeopardize the rights and safety of the victim or children.

In its General Recommendation No.35 on gender-based violence, updating General Recommendation No. 19, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) recommends States parties that in order to comply with its obligations under the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Greece in 1983), to implement an effective protective measure in providing appropriate and accessible protective mechanisms which include immediate risk assessment and protection comprising a wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for noncompliance. Protective measures should avoid imposing an undue financial, bureaucratic or personal burden on women who are victims/ survivors. The rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity and guided by the principle of the best interests of the child.

The Convention on the Rights of the Child, ratified by Greece on 11 May 1993 also contains several provisions in line with the prioritization of the best interests of the child on the issue of custody. Namely, article 3 (1) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In addition, article 9 (1) of the Convention provides that States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence. It further states that States Parties shall respect the right of the child who is separated from

one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Finally, article 19 of the Convention stipulates that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

The General Comment 14 of the Committee on the Rights of the Child on the right to have his or her best interests taken as a primary consideration states the concept of the child's best interests is complex and its content must be determined on a case by case basis. The concept of the child's best interests is flexible and adaptable. It should be adjusted and defined on an individual basis, according to the specific situation of the child or children concerned, taking into consideration their personal context, situation and needs. For individual decisions, the child's best interests must be assessed and determined in light of the specific circumstances of the particular child.

Article 12 of the bill prescribes that for changes in the child's place of residence which substantially affects the right of contact of the parent with whom the child does not reside, shall require prior written agreement of both parents or a prior court decision issued at the request of one of the parents. A parent who has not been awarded custody shall have the right to request information about the other parent and the residence of the child.

We are concerned that requiring the permission for the non-custodial parent to request any information about the custodial parent and child violates their right to privacy and puts victims of domestic abuse at risk, as does the requirement to inform of any change of address without exceptions in cases of domestic abuse or risk of abuse since such exception is not provided by the draft law.

Article 13 of the Bill provides that the time for the child to communicate physically with the parent with whom he or she does not reside shall be presumed be one-third (1/3) of the total time, unless that parent requests a shorter contact time, or in case it is necessary to establish a shorter or longer contact time for reasons relating to living conditions or the best interests of the child, provided that, in any event, the child's daily life is not disrupted.

We would like to bring to your Excellency's Government attention that this provision does not provide a clear definition of the best interest of the child. In the event of an abusive parent, the other parent would still need to go through a court process to reduce or eliminate the abusive parent's time with the child, as there are no specific mention of domestic abuse as grounds for such a decision. Concerns have also been raised that the parent responsible for two-third (2/3) of the custody time will become the sole responsible caretaker of the child with regards to education, health care,

clothing, shelter, etc. Such practice would tend to leave women who benefit from the child's custody with more financial responsibilities and economic burden.

Article 14 of the Bill concerning the consequences of mistreatment, lacks safeguards for victims of domestic abuse, including ongoing contact with an abuser, heightened by the need to go to court in order to obtain a final decision to stop contact or communication with the abusive parent.

Article 7 of the Bill on the joint exercise of parental responsibility in the event of divorce or annulment of marriage and separation of the spouses, provides that both parents continue to exercise parental responsibility jointly and equally. We are concerned that the scope of this article and the shared responsibility between the two parents are only taking into account married and legal partners, which could lead to a discrimination against women if the primary caretaker of the child is a single parent who is not in a case of a registered partnership. As mentioned by the Working Group in its thematic report on economic, social and cultural rights (A/HRC/26/39), the roles and responsibilities assigned to women and men on the basis of stereotypes relegate women to a subordinate status and limit their economic opportunities. A significant number of countries have adopted anti-discrimination measures, but these have not resulted in equality of opportunity in women's economic and social lives. Women are disproportionately concentrated in informal and precarious employment: they are more exposed to multiple forms of discrimination.

Article 8 of the Bill provides that if joint exercise of parental responsibility is not possible due to disagreement between the parents and in particular if one of the parents is indifferent or does not cooperate or does not comply with any existing agreement on the exercise or manner of exercising parental responsibility, or if such agreement is contrary to the best interests of the child, either parent shall have recourse to mediation. If they disagree, the court shall decide.

We are also concerned that such process of mediation could be lengthy and burdensome and may fail to take into account the possible economic inequality between the two parents and provide an avenue for potential economic abuse. In its general recommendation No.19, the CEDAW Committee recognized that the lack of economic independence forces many women to stay in violent relationships, and that failure to take this into account can violate State's obligations under article 16 of the CEDAW Convention, requiring that States take all appropriate measures to eliminate discrimination against women with regard to marriage and in its country visit report to Greece (A/HRC/44/51/Add.1) the Working Group on discrimination against women and girls expressed concern at proposed amendments to provisions in the Criminal Code relating to rape, which appeared to be inconsistent with the international legal obligations of Greece under the Istanbul Convention.

With respect to the articles and concerns described above, we would like to draw the attention of your Excellency's Government to the Statement of the Platform of the United Nations and regional independent mechanisms on violence against women and women's rights dated of 31 May 2019¹ titled "Intimate partner violence against women is an essential factor in the determination of child custody cases". The experts voiced

¹ StatementVAW_Custody.pdf (ohchr.org)

their concerns over patterns across various jurisdictions of the world that ignore intimate partner violence against women in determining child custody cases. These patterns reveal underlying discriminatory gender bias and harmful gender stereotypes against women. Ignoring domestic violence against women in the determination of child custody can result in serious risks to the children and thus must be considered to ensure and grant their effective protection.

The experts hold the view that abusive relationships predominantly affect women and have direct impacts on the children's life, yet violence against women is rarely considered as relevant factor by national authorities in child custody decisions. There is also no doubt that intimate partner violence predominantly affects women, and yet the correlation between domestic violence against women and child abuse is most often underestimated by practitioners and courts. Gender bias against women in such contexts is prevalent as women subjected to intimate partner violence are at higher risk of negative custody-visitation outcomes. Moreover, discriminatory gender bias often leads to mistrust women, in particular concerning presumed false allegations of child abuse and domestic violence. In this regard, the experts stressed that a holistic and coordinated approach based on the existing international and regional standards must be applied at the national level in such cases, not only to uphold the principle of the best interests of the child but also the principle of equality between women and men. This approach is confirmed by jurisprudence of various international courts, UN treaty bodies and other relevant mechanisms.

In the *Angela Gonzalez Carreño v. Spain* case² for instance, where an abusive father, during an unsupervised visit, murdered his daughter and then took away his own life, the CEDAW Committee found that, by ruling to allow unsupervised visits without giving sufficient consideration to the background of domestic violence, the Spanish authorities had failed to fulfil their due diligence obligations under the Convention (para 9.7). The Committee recommended, among other things that any history of domestic violence be considered when determining visitation schedules in order to ensure that these do not endanger women or children.

Such scenario, according to the experts, could have been prevented if the authorities had exercised their international obligation to adhere to a standard of due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women, including intimate and domestic violence.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned information.
2. Please provide an update on the status on the amendment of the Civil Code on child custody.

² CEDAW Communication n. 47/2012, available here: [Treaty bodies Download \(ohchr.org\)](https://www.ohchr.org/Treaty_bodies/Download)

3. Please provide information regarding the procedures or mechanisms in the Parliament to review and ensure the compatibility of draft legislation with human rights obligations.
4. Please provide information regarding any efforts to review, evaluate and amend the discussed bill on Civil Code on child custody to ensure its compatibility with Greece's obligations under regional and international human rights law.

We would be grateful if this letter could be shared with the Parliament at the earliest.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting for the replies to the above questions, we recommend review and reconsideration of those provisions in the Bill taking into account Greece's international human rights obligations.

Please accept, Excellency, the assurances of our highest consideration.

Elizabeth Broderick
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