

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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GREECE: MARRIAGE EQUALITY BILL IS AN EMBLEMATIC STEP BUT FURTHER CHANGES ARE REQUIRED TO ENSURE TRUE EQUALITY FOR LGBTQI+ PERSONS

On 24 January 2024, a much-anticipated bill introducing same-sex marriage in Greek legislation was presented by the Ministry of State and opened for public consultation that ended on 31 January 2024.¹ The bill is expected to be tabled to the Greek Parliament today.

In its written submission to the Greek authorities, Amnesty International welcomed this emblematic and significant step seeking to ensure marriage equality for LGBTQI+ persons.² On the other hand, the organization also highlighted significant gaps in the bill and proposed reforms that will ensure true equality for LGBTQI+ persons. Deep concerns were noted in relation to the very short period of six days provided to civil society to comment on the bill from the time it opened for public consultation. The aforementioned period does not constitute an effective and sufficient period for stakeholders to present their views. Further, in view of the transphobic and homophobic speech currently expressed in the public sphere, Amnesty International called the Greek authorities to condemn such expression which promotes discrimination against individuals on the grounds of their sexual orientation, gender identity, gender expression, or sex characteristics.

The proposed bill allows not only civil marriage between same-sex couples but also religious weddings. If the bill is adopted, non-biological parents in a same-sex marriage will be able to adopt the biological child of their spouse. The bill also, among others, extends benefits such as maternity leave and maternity benefits and parental leave to same-sex spouses and parents; expands the prohibition of discrimination on grounds of sexual orientation, gender identity, gender expression, and sex characteristics in the fields of social protection, social provisions and tax relief, education and access to the provision of goods and services; and recognizes as genuine from the moment they took place, marriages of Greek nationals with persons of the same sex that took place in another country before the entry into force of the bill. The bill also provides for the recognition of the relationship between a parent and child formally recognized in a third country, irrespective of the parents' sex and whether the manner that the relationship is established is provided in Greek legislation; and provides for the recognition of the adoption of a child by same-sex couples or by the non-biological spouse that took place in another jurisdiction.

However, the decision of the Greek authorities not to amend legislation on the “presumption of paternity”, civil partnerships and medically assisted reproduction perpetuates multiple forms of discrimination against LGBTQI+ persons and leaves significant gaps in the bill.

For example, non-biological parents in a same-sex marriage that will take place in Greece once the bill is adopted, will not enjoy the same rights as a man in a heterosexual marriage who is “presumed to be the father” of the children born during the marriage. Instead, non-biological parents in a same-sex marriage will have to undergo the lengthier procedure of adopting their spouse’s child in order to have their parental status legally recognised. LGBTQI+ non-governmental organizations highlight that this will mean that non-biological parents will not have any parental rights until the adoption procedure is completed in relation to children who will be born during the marriage.

¹ Bill of the Ministry of State, ‘Equality in civil marriage, amendment of the Civil Code and other provisions’, available at: <http://www.opengov.gr/ypep/?p=848>

² TG EUR 25/2024.5162 to the Minister of State, 31 January 2024.

In addition, while a man in a heterosexual civil partnership is “presumed to be the father” of children born during the partnership, the non-biological parents in a same-sex civil partnership are not afforded any parental rights in relation to the children born during the partnership.³ It should also be noted that heterosexual and same-sex couples in civil partnerships are only allowed to be foster parents but not to adopt.⁴ This creates discrimination against couples in civil partnerships who are denied their rights compared to married couples.

It is proposed that terms such as ‘presumption of paternity’ (‘τεκμήριο πατρότητας’), which are used in national legislation and can lead to discrimination against same-sex couples or transgender persons, should be replaced with non-gendered terms such as ‘presumption of parenthood’ (‘τεκμήριο γονεϊκότητας’). Such change in legislation relating to marriage and civil partnerships will allow same-sex couples to be granted parental responsibility automatically for children born during the marriage without going through the lengthy process of adoption. It is also proposed that the current bill extends the rights afforded to same-sex married couples to same-sex couples in a civil partnership.

Further, under the current legislation on assisted reproductive technology (ART) only heterosexual couples and single women can access ART on the grounds of medical need.⁵ The decision of the Greek authorities not to amend ART legislation, means that married lesbian couples, married gay men couples, single men, transgender and intersex persons won’t be able to access fertility treatment such as ART with a donor or surrogacy.

The right to respect for family life entails the possibility to have children via procreation including assisted procreation or adoption. The enjoyment of such right should be guaranteed to everyone including couples and single individuals without discrimination. According to the 2007 Yogyakarta Principles⁶ providing guidance on the application of international human rights framework with regards to sexual orientation and gender identity, States shall “take all necessary legislative, administrative and other measures to ensure the right to found a family, including through access to adoption or assisted procreation (including donor insemination), without discrimination on the basis of sexual orientation or gender identity”.⁷

Further, in its Concluding Observations on Italy, the Human Rights Committee expressed its concern about the continued denial of access to in vitro fertilization for same-sex couples and lesbian, gay, bisexual, transgender and intersex persons and called the State party to provide for equal access to in vitro fertilization.⁸ In addition, in its General Comment 22 on the right to sexual and reproductive health, the Committee on Economic, Social and Cultural Rights has observed that “non-discrimination, in the context of the right to sexual and reproductive health, also encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status”.⁹ The Committee also noted that “...failure or refusal to incorporate technological advances and innovations in the provision of sexual and reproductive health services, such as ...assisted reproductive technologies ...jeopardizes the quality of care”.¹⁰

3 Article 9 of Law 4356/2015 on Civil Partnership.

4 Law 4538/2018 on Measures for the Promotion of the Institutions of Fostering and Adoption.

5 Law 3305/2005 on the Implementation of Medically Assisted Reproduction; and Law 4958/2022 on Reforms on Medically Assisted Reproduction.

6 The Yogyakarta Principles were drafted in Yogyakarta, Indonesia, by a group of international human rights experts. As international principles, they pertain to sexual orientation and gender identity (SOGI). They arose in response to the documented cases of abuse due to SOGI. In November 2017, the Yogyakarta Principles plus 10 were adopted to include the intersections between sexual orientation, gender identity and sex characteristics. See: Brown, D., “Making Room for Sexual Orientation and Gender Identity in International Human Rights Law: An Introduction to the Yogyakarta Principles”, 2010, Michigan Journal of International Law, Volume 31, Issue 4, pp. 821-879, available at: heinonline.org/HOL/LandingPage?handle=hein.journals/mjil31&div=24&id=&page=; “The Yogyakarta Principles”, <https://yogyakartaprinciples.org/>

7 See principle 24 of Yogyakarta Principles, - Principles on the application of international human rights law in relation to sexual orientation and gender identity, 2007, available at: <https://bit.ly/3udAPCg>.

8 Concluding Observations on the 6th Periodic Report of Italy, 1 May 2017, CCPR/C/ITA/CO/6, paras. 10 and 11.

9 General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 23, 2 May 2016, E/C.12/GC/22, available at: <https://bit.ly/49h7aah>.

10 General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para. 21, 2 May 2016, E/C.12/GC/22.

In addition, according to the enhanced Yogyakarta Principles (Yogyakarta plus 10), States shall “...[e]nsure that surrogacy, where legal, is provided without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics”.¹¹

Attention should also be drawn to the 2021 National Strategy for the Equality of LGBTQI+ persons where it is observed: “In relation to the issue of medically assisted reproduction, a proposal for the broader review of the framework that would include heterosexual and same-sex couples would possibly exceed the mandate of the present Committee. It is noted however, that in the framework of an inclusive policy based on the principle of equality, a broader interpretation of the requirement of inability to reproduce... would cover persons who are in a same-sex relationship”.¹²

On the basis of the above, the organization calls on the Greek authorities to ensure that access to ART is enjoyed without discrimination based on marital status, sex/gender, sexual orientation, gender identity, gender expression or sex characteristics. At the same time, all steps must be taken to ensure that the health, well-being, and autonomous decision-making of surrogates are protected.

In relation to the protection of the rights of transgender persons and their families, the organization welcomes the repeal by Article 12 of the bill of the much-contested provision of Article 3 para. 3 of Law 4491/2017 that forces transgender people who are married to get divorced before they were able to obtain legal gender recognition. LGBTQI+ organizations and Amnesty International have called for the repeal of the aforementioned provision since the adoption of Law 4491/2017 on legal gender recognition.¹³

On the other hand, Amnesty International joins its voice with LGBTQI+ organizations and urge the Greek authorities to amend provisions that perpetuate discrimination against children of transgender families. According to the Yogyakarta Principles, States are under the obligation to “[p]rotect children from discrimination, violence or other harm due to the sexual orientation, gender identity, gender expression or sex characteristics of their parents, guardians, or other family members; and “issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents”.¹⁴

For that reason, the Greek authorities must amend urgently Article 5 para. 2 of Law 4491/2017 which states that the name and gender of a transgender person who has children and has obtained legal recognition of their gender identity, cannot change in their children’s birth certificate.¹⁵ The aforementioned provision is a breach of the transgender person’s right to privacy and has a significant impact on the rights and lives of the children of transgender persons as it leads in practice to discriminatory and harmful representations in relation to their parents’ gender identity.

Finally, the Greek authorities must also proceed with overdue reforms that will ensure the effective enjoyment of their rights for transgender and non-binary persons including the amendment of Law 4491/2017 in order to ensure that the requirement that legal gender recognition has to be validated by a local court is replaced by a simple, quick and accessible administrative process; and the introduction of provisions that allow individuals who identify as neither man nor woman to obtain official papers that reflect their gender identity, including an ‘other’ option for those whose gender identity is not reflected in the gender binary.

11 See Yogyakarta plus 10, 2017, addition to principle 24, available at: <https://bit.ly/4brwbBwa>.

12 See <https://bit.ly/48Xor8z>.

13 Greek Transgender Support Association, Colour Youth, Amnesty International, All Out, Transgender Europe and ILGA Europe, Greece: Bill on legal recognition of gender identity must fully uphold transgender people’s rights, Joint Public Statement, 20 September 2017, available at: <https://bit.ly/42iOXZm>; also Greece: Vote on legal gender recognition is a historic step forward for transgender rights, 10 October 2017, available at: <https://bit.ly/47Yd2UG>.

14 Yogyakarta plus 10, 2017, addition to principle 24, available at: <https://bit.ly/4brwbBw>

15 Law 4491/2017 on legal gender recognition, available at: <https://bit.ly/3Sfe9JJ>.