



Institute of Child Health – Department of Mental Health and Social Welfare

A DEEPER ANALYSIS OF GREEK FRAMEWORK

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“Support to Adult Survivors of Child Abuse in institutional settings -SASCA”

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Introduction

The Greek child protection system is composed by a number of laws and services in various sectors involved.¹ Noteworthy that in the Greek legal system there is a basic hierarchy of power among the legal documents in force. Specifically, the Greek Constitution takes precedence of domestic laws and ratified treaties and following, the international and European law take precedence over national norms. This also means that in instances of inconsistencies or controversies between national and international law, the last one prevails² and that in instances of gaps or ambivalent interpretation of national rules, relevant international law shall be the one employed. With regard to child protection the following guiding legal rules can be identified:

Firstly, under the Greek Constitution childhood and the youth explicitly fall under the protection of the State as separate legal rights safeguarded.³ Moreover, Greece has ratified the United Nations Convention on the Rights of the Child by the enactment of law 2101/1992 and ever since all the included provisions, rights, obligations and guiding principles constitute national rules with a primacy effect.

- Child protection system in Greece is being mobilized in cases of:
- children losing both of their parents
- children abandoned by their caregivers (here including infants)
- incapacity of parents to take care of their children
- unsuitability of parents for raising a child
- child abuse and/or neglect
- disability of children
- street children
- children presenting an antisocial or offending behaviour

According to Laws 2345/1995 and 2646/1998 the State provides for the necessary care and needs of the family, child, youth, elderly, persons with disability, vulnerable groups and people in emergency situation. By ministerial decisions the pertinent services, the national policy and relevant standards are defined. All entities of private law offering social care must meet the standards of operation and services drawn by the competent ministries. The administration of each Region is responsible for licencing such institutions.

¹ Legal framework related to child wellbeing and protection issues is presented at the end of the chapter

² Greek Constitution, Article 28, para 1

³ Greek Constitution, Article 21, paras 1, 3

Yet, supervision is conducted by the municipalities that each institution is located.⁴ At the same time, special accreditation of non-governmental entities that provide child protection services is conducted by the National Centre for Social Solidarity (EKKA) according to Law 2646/1998 article 5 and Ministerial Decision 1163/B/10.04.2012. On the other hand, the relevant public institutions are supervised by the Ministry of Labour, Social Security and Social Solidarity.

The provided services fall under three categories: primary social care (prevention), secondary social care (treatment) and tertiary social care (exclusive treatment).⁵ Prefectures provide secondary social services, whereas municipalities provide primary social services. In practice, due to vagueness in the relevant law (3852/2010) there is a confusion in duties. Social Services of Regions also undertake the role to approve and supervise children's adoption.

2. What are limits of our national laws concerning our target

a. Is there a definition of institutional abuse? – if yes describe. Could the national law be improved? How?

There is no legal term such as institutional abuse in Greek law and there is no particular definition for the abuse that takes place within an institution. However, under art. 6(5) of Law 3500/2006 on combating domestic violence, the physical harm that has been inflicted by an employee of a social care provider is considered “domestic physical harm”. Similarly, the harm of sexual dignity (art. 9(3)) that has been inflicted by an employee of a social care provider is considered to have taken place within the circle of trust and therefore is a “domestic” violation. Under the Greek Penal Code lewdness (sexual misconduct) committed by an employee working in a facility providing services to the victim is considered “lewdness/sexual misconduct by abuse of power” (art. 343 PC).

b. Are there aggravating circumstances if a child abuse happens in an institutional setting? – if yes describe

The setting alone does not constitute an aggravating circumstance. Instead the perpetrator's position and profession play a significant role, as well as if this was in general a person who should be supervising or protecting the child. The victim's

⁴ Law 3852/2010, Article 94

⁵ Law 2646/1998, Article 3

condition, apart from the young of his/her age, plays an addition role. Therefore, relevant aggravating circumstances are:

- if an employee commits a crime in the context of his/her job position or taking advantage of this position he/she holds – art. 262 Penal Code. (any serious crime)
 - If the child is disabled or mentally ill– art. 338 par. 1 PC (sexual abuse)
 - If the perpetrator is an employee in a social care service provider – L. 3500/2006, art. 6(5) & 9(3) (physical harm & harm on the sexual dignity)
 - If the victim for any reason cannot defend him/herself – art. 312 PC (infliction of harm by continuous cruel conduct)
 - If the perpetrator is providing services to the child, or was under his/her protection or care – art. 312 PC (infliction of harm by continuous cruel conduct)
 - If the perpetrator was responsible for the care and supervision of the child victim, even temporarily – art. 342 par. 1 PC (abuse of minors for sexual intercourse)
 - If the perpetrator was a psychologist, a doctor, nurse or of other specialty providing services to the child – art. 342 par. 2(f) PC
 - If the perpetrator took advantage of the child's mental and physical state – art. 342 par. 2(i) PC
 - If the perpetrator is an employee in prison, other detention facility, school, colleges, hospitals, other therapeutic clinics or other institutions for the care of persons in need and the victim a resident therein – art. 243 PC (sexual abuse)
- c. *Which are the terms (time) of prescription for each kind of abuse that may be committed against a child in institutional setting (e.g. sexual abuse, physical violence, psychological violence, torture, neglect, exploitation in labour ...) – describe*

The statute of limitation for initiating proceedings with regard to offences against the personal or sexual freedom or sexual exploitation of children commences after the victim reaches the age of majority (Penal Code, art. 113 par. 6). Especially for felonies the time begins after the child reaches the age of twenty-one (and lasts up to the age of 35 or 40 depending on the crime's gravity), and for the rest serious misdemeanors after the child reaches the age of nineteen (and up to the age of 23). The statute of limitation is similar for the two crimes considered to constitute domestic violence under law 3500/2006 when committed by an employee in care service provider (see point (a)). In general, felonies can be prosecuted within 15 or 20 years (depending on the crime's gravity and thus punishment), serious misdemeanors within 5 years, whereas light misdemeanors within a year (art. 111 PC). Crimes against children vary from felonies to serious misdemeanors.

Felonies are: severe physical harm (if the perpetrator intended to cause severe harm - art. 310 PC); rape (art. 336); lewdness/sexual misconduct against minors (art. 342); seduction of minors (when the victim is under 14 years old – art. 339); child pornography (if committed professionally or constantly, if the victim was under 15, if the victim was forced to do that or any type of disability was taken advantage, if the victim was physically harmed or dead – art. 348 A); procuring (art. 349); sex trafficking (art. 351); exposure to danger (if it resulted in severe physical harm or death – art. 306).

- d. *Prescription remains a major obstacle to seeking justice from the part of the victims. What are your hypothesis of modification in order to give more effective protection to victims?*

In Greece the statute of limitation is not considered a problem, given that national law has fully complied with European provisions. The problem is whether, the victim who has reached adulthood can still have access to appropriate free legal and other services in all cases of abuse. Crimes against the sexual freedom of a child are considered far more serious and, for this reason, are time-barred much later. On the other hand, if the nature and results of a physical abuse are considered to be a misdemeanor, then the crime will be time-barred sooner, despite the fact that the perpetrator was an employee in institution for the protection and care of children. Victims of sexual abuse or sexual exploitation or personal freedom violations have the right to free legal aid.

- e. *Do the national laws take into account the role of the abuser? Specifically, do the laws consider as an aggravating position if the abuser is a professional who should have protected the child? – if yes describe*

Yes. Please, see above at point (b). In addition to the aforementioned, the Penal Code (art. 67) provides that if a person is convicted for crimes committed as dereliction of duty with a penalty of imprisonment above 3 months and he/she holds an occupation that requires permission to practice it (e.g. doctors, nurses, social workers), the court can order his/her suspension from work for up to five years. For crimes against the personal and sexual freedom of children, this is also pertinent, if the occupation of the perpetrator involves children. On second conviction this penalty is obligatory.

- f. *Do the laws recognize a responsibility also on the system of services and institutions (having the mandate of take care of the child victim) if an institutional abuse is not stopped? – if yes describe*

Yes, they do. However, it needs to be proven that the head of the department for example was aware of what was happening or that had suspicions or that s/he was not aware due to negligence in the workplace. Potential crimes committed are the concealment of crime (art. 232 PC) and the dereliction of duty (art. 259 PC). The public entities responsible for the supervision of such institutions (private law or public law) cannot be held liable. According to Laws 2345/1995 and 2646/1998 the State provides for the necessary care and needs of the family, child, youth, elderly, persons with special needs, vulnerable groups and people in emergency situation. By ministerial decisions the pertinent services, the national policy and relevant standards are defined. All entities of private law offering social care must meet the standards of operation and services drawn by the competent ministries. The administration of each Region is responsible for licensing such institutions. Yet, supervision is conducted by the municipalities that each institution is located⁶. At the same time, special accreditation of non-governmental entities that provide child protection services is conducted by the National Centre for Social Solidarity (EKKA) according to Law 2646/1998 article 5 and Ministerial Decision 1163/B/10.04.2012. On the other hand, the relevant public institutions are supervised by the Ministry of Labour, Social Security and Social Solidarity. The provided services fall under three categories: primary social care (prevention), secondary social care (treatment) and tertiary social care (exclusive treatment)⁷. Prefectures provide secondary social services, whereas municipalities provide primary social services. In practice, due to vagueness in the relevant law (3852/2010) there is a confusion in duties⁸.

Even a very late response in investigating a case of child sexual abuse in an institution on behalf of a public independent authority mandated to investigate accusations for child rights breaches and child abuse cases did not lead to any type of penalty. In politics this is usually resolved by merely removing the person from such a critical position.

- g. Are there other mechanisms that may be use to “punish” the professionals who committed the crimes (in particular if the crimes are not any more prosecutable) or did not react to stop it? For example, in Italy we have the National Order (something more important than simple national associations) of Medical Doctor, Psychologists, social workers, they may cancel a member if he/she has been recognized responsible of a crime, when we discover the institutional abuse and the victim is still a child or the crime is still prosecutable, maybe, it is easily possible the annulment of the registration*

⁶ Law 3852/2010, art. 94

⁷ Law 2646/1998, art. 3

⁸ Social Services of Regions also undertake the role to approve and supervise children's adoption.

of the professional, but when the case is not prosecutable but it is recognized true, should the national order intervene? We are discussing on it. Do you have any similar organism in your country?

There is the Disciplinary Law for all public servants and servants of public law legal entities (Law 4057/2012 and law 3528/2007). Professional misconducts under disciplinary law are foreseen explicitly (art. 107 L. 3528/2007, as amended). Dereliction of duty according to the Penal Code or other more specific penal laws, as well as improper conduct while on duty or outside the service are two of them. In the latter case, all types of abuse fall under. The period of prescription of misconducts under the Disciplinary Law is five years from the day they were committed (art. 112). In case, these constitute crimes also under the Penal Code then the period of prescription is extended until the date that the claim for these crimes is time-barred under the Penal Code. This procedure is independent from the penal procedure, but if there is a convicting or acquitting judgement, disciplinary procedure must be in alignment (art. 114). Penalties are provided in general for all misconducts and vary from written reprimand or fines to temporary suspension or permanent disbarment (art. 109).

There is no similar provision for private law legal entities. There is the Body of Inspectors for Health and Welfare Services (Law 2920/2001, particularly art. 3) which is mandated to conduct inspections at all health care institutions (par. 2(a)), as well as child protection and welfare institutions (par. 4). Yet, in practice this type of inspection is limited to more bureaucratic (administrative) checks or to checks concerning safety and hygiene standards in the building.

At the same time, the association of each profession, such as the Medical Association, the Greek Association of Social Workers, the Association of Greek Psychologists, National Association of Nurses⁹ have their own disciplinary boards for imposing penalties to their members. For each of these professions, there is a code of conduct that must be followed¹⁰. Moreover, every association has its own statute. If the members of the Board are informed about a crime (under Penal Law or against their statute or Code of Conduct) that one their association's members has committed, they have to examine the case. The accused can be disbarred.

Apart from the penal procedure, one can file a report to the Child Ombudsman and in this was evoke an investigation (Law 3094/2003). As soon as the worries or suspicion is substantiated through inspections and communication with employees

⁹ These professions are mentioned indicatively given that these are the most commonly involved in the care of children.

¹⁰ For social workers: Presidential Decree 23/1992; for psychologists: Law 991/1979; for doctors: Law 3418/2005; for dentists: PD 39/2009; for nurses: PD 167/2001.

mainly, the Child Ombudsman will inform the Public Prosecutor to initiate a Penal Procedure.

- h. In other words, is there a way to give weight to the responsibilities of a single professional, but also institutions and local services?*

There is up to a certain extent, but it hardly implemented due to the difficulty to prove that there was intention to conceal the crime.

- i. In concrete, which are the possibilities for the survivors to find justice when they are not anymore underage and find the courage to report? Describe*

The victim, as mentioned above (point c), can report the crime after he/she becomes an adult. Yet, if it is a crime that took place in the past, evidence might be hard to obtain and provide before the court.

- j. May the survivor start a process for having a monetary compensation for the damage she/he suffered from the institutional abuse? Is there a prescription also on the civil process for asking compensation? – describe*

Yes, the survivor may file a lawsuit claiming compensation. In civil court procedures the victim may seek for compensation primarily according to article 932 of the Civil Code on the grounds of the *moral damage* caused by the unlawful act committed against him/her, especially if his/her health, honour, integrity or personal freedom was infringed. According to article 937 of the Civil Code, the claim because of a wrongful act committed against the plaintiff is subjected to a five-year period of prescription and in any case to a twenty-year period of prescription. If this wrongful act constitutes a crime under the Penal Code or other penal law, which is subjected to a longer period of prescription, then the same goes for the eligibility of the lawsuit. The penal prosecution of the perpetrator is not a precondition for filing a lawsuit. Yet, under this article the period of suspension granted to minor victims is not taken into account. The survivor may claim compensation also based on article 914 of the Civil Code for a wrongful act that was intended and has caused him/her damage or based on article 929 of the Civil Code for any physical harm that demanded medical treatment. In addition, the person hierarchal above the perpetrator (director etc) is liable to compensating the victim for the damages caused by the perpetrator, if the latter caused harmed in the context of his/her duties though by breaching his/her duties (art. 922 CC).

In penal court procedure the victim may act as “civil plaintiff” and demand a compensation and restoration of the damage caused by the crime, as well as

“monetary satisfaction” on the grounds of moral damage or mental anguish (art. 63 Code of Criminal Procedure). Finally, the Greek Authority for Compensation of victims of crimes, department of the Ministry of Justice, provides compensation to victims of criminal acts committed in Greece, who live in Greece or any other Member-State or of acts committed in another member state and the victim lives in Greece, on three occasions: a) the perpetrator cannot afford to compensate the victim; b) the perpetrator is unknown; c) perpetrator is no longer prosecuted. It concerns victims of violent crimes. In practice, this Authority was almost inactive and unknown for anyone who could benefit from it, while it is required to pay a fee of 100 Euros for filing the request and that before all other legal ways of compensation have been exhausted¹¹. All the aforementioned apply equally for children and adult survivors, as long as they are within the provided deadlines (within a year after a definitive judgment). The situation might change due to the transposition of the EU Directive 2012/29/EE on minimum standards in victims’ rights, support and protection (Law 4478/2017) and the Ratification of the Istanbul Council of Europe Convention (Law 4531/2018).

k. Do the survivors have real health and social support?

Survivors receive adequate physical health support. With regard to mental health support, the situation is more complicated. Though the law¹² provides for psychological support, it is hard to find specialized treatment in a public service and to book an appointment soon. With regard to children services might be more coordinated and alert than with regard to adults in need of support. The local social services should also provide support and it is likely to help in practice, but they are understaffed and sometimes with limited expertise, there they would avoid to provide counseling to a victim. There are also services especially for female victims, but none for male adult victims.

2. Which changes could be introduced in your administrative and legal framework (definition of crime and procedure) in order to protect effectively the victims of institutional abuse?

Abuse taking place in the context of an institution should constitute a serious aggravating condition in relation to the perpetrator’s employment to such an institution.

¹¹ Law 3011/2009 (EU Directive 2004/80/EC relating to compensation to crime victims), as amended by Law 4198/2013 (EU Directive 2011/36/EU on preventing and combating trafficking in human beings, Law 4267/2014 (EU Directive 2011/93/EU on combating child sexual abuse and exploitation and child pornography), and Law 4531/2018 (Ratification of Istanbul Convention).

¹² PD 233/2003, Protection and support under article 12 of the L. 3064/2002 to the victims of the crimes under articles 323,323A,323B,348A,349,351 και 351A of the Penal Code, and articles 87 paragraphs 5 and 6 and 88 of the law 3386/2005; L. 3024/2002 as ammended; Law 4478/2017; L. 4531/2018

Right now, in the penal laws, this constitutes an aggravating condition and at particular points it is considered domestic violence. Yet, the principal factors determining the penalty is the gravity of the act and the age of the child, which is correct given the principle of analogy between crimes and punishment. However, with regard to the employment status of the person this should play a more important role and a public authority should oversee such procedures within public and private institutions. Moreover, more careful screening procedures should be in place for employing staff in institutions with children or other vulnerable groups and periodic assessment too. Finally, though there are many provisions with regard to the right of the victim to services and support and to a child-friendly penal procedure, these should be concretely laid down with ministerial decisions or presidential decrees to assist the enforcement of the law.

3. Are there changes that may be proposed to improve the legislation concerning the function of child agencies, residential institutions and so on, in order to prevent institutional abuse? - Describe

In overall, as it is quite obvious the current legislative framework include several provisos scattered among different pieces of legislation (very frequently mainly on other topics which include just one or two articles related with child protection), often contradictive to one another or at least overlapping. The inexistence of a unique framework law for child protection makes enactment of existing provisos often challenging and the procedure for resolving of issues of conflicting jurisdictions or provisos lengthy and hard. One alternative solution might be to introduce a framework law on child protection and repeal all previous ones for unifying and aligning legal provisos as such.

It is foreseen that Police and Public Prosecution Office should inform the victim for all his/her options and services available for him/her. However, given that this hardly ever takes place, it would be more appropriate to directly refer the person to a social worker/social service, where they could provide the victim with all the necessary information. An appointment with a lawyer should be arranged in every case, regardless if the victim has expressed or not the desire to file a suit. A serious effort has been introduced with the law 4478/2017¹³, but these could be improved further by setting details and exact procedures of referral and intervention. Common and evidence-based protocols have to be adopted by all services involved. Importantly, a national statute, which all institutions must abide with, should be established. This statute should in alignment with international evidence-based standards, where such a place should of small capacity (small group

¹³ EU Directive 2012/29/EE on minimum standards in victims' rights, support and protection

homes; up to 10 children) with specially trained staff, who undertake concrete tasks and have clear responsibilities. Regular assessment, monitoring and supervision by an independent authority for the staff should be mandatory. Any closed facility for care must be open to the community. Children should have a say for the design of the living in and for being able to complain and discuss several issues with independent experts. Promoting foster care should be a primary concern for all institutions. Finally, staff should be trained regularly and this should be mandatory for continuing to work with children.