



ΕΘΝΙΚΗ ΕΠΙΤΡΟΠΗ ΓΙΑ ΤΑ ΔΙΚΑΙΩΜΑΤΑ ΤΟΥ ΑΝΘΡΩΠΟΥ
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

GNCHR's Observations on Draft Law of Ministry of Justice "Reforms regarding parent-child relationships and other family law issues"¹

Summary in English

General Observations

The Greek National Commission for Human Rights (GNCHR), in its dual role as an independent advisory body to the State on all matters pertaining to human rights protection and promotion and the National Human Rights Institution in Greece has the primary competence to provide its expert views on taking of legislative or other measures concerning human rights issues and/or with an impact on them.

On the specific provisions of the Draft Law of Ministry of Justice "Reforms regarding parent-child relationships and other family issues", the GNCHR has raised the following observations:

Taking into account, on the one hand, the increasing divorce rate and the often observed reluctance between ex spouses/partners to co-operate in the custody of their children and considering that the primary purpose of the legislator is the regulation of these particular cases, on the other, the GNCHR would like to emphasize the need to **protect the best actual interests of children** with emphasis on promoting an **effective communication with their parents**. To

¹ This Declaration was adopted by the Plenary Session of the GNCHR on 31.3.2021. Rapporteurs: Professor M. Gavouneli, President of the GNCHR and K. Charokopou, legal officer in the GNCHR. The GNCHR expresses its gratitude to both its regular Member K. Trimmi, appointed by the "Rainbow Families" and its alternate Member A. Costopoulou, appointed by IMDA for their contributions.

achieve that, it is necessary, according to [no. 12 General Comment of the UN Committee on the Rights of the Child](#) (Right of the Child to be heard), to pay due attention to the individual assessment of the best interests of the child, which should be identified in accordance with [no. 14 General Comment of the UN Committee on the Rights of the Child](#) (Right of the child to have his or her best interests taken as a primary consideration), to take into account the child's views and identity, the preservation of the family environment and maintaining relations, its care, protection and safety, its right to health and to education, while ensuring the procedural guarantees and the proper implementation of its rights. In this context, the GNCHR considers as necessary preconditions the strengthening of the institution of **parental counseling** through public mental health services in each divorce, in parallel with the previous assessment of the child's needs. To this end, both parents and judges should be assisted by properly staffed public child psychological services and social services. Furthermore, judges who handle family law cases should be systematically trained. Lastly, it has to be pointed out that that the **acceleration of judicial proceedings in cases of family disputes** is a key element of the effectiveness of the institutional framework in question and at the same time an urgent need to effectively safeguard the best interests of the child.

In this regard, the GNCHR considers particularly important the legislative provision of ongoing **monitoring the application of child custody decisions** in practice and the impact of the relevant measures, as well as the review of court decisions, when necessary.

Finally, the GNCHR recognizing the wide variety of family forms, points out the need to **broaden the narrow definition of "family" by including LGBTIQ+ families** and to **revise the concept of marriage** as well as the individuals that unite their lives in a life relationship, by setting out the appropriate implementing measures in line with the [Union of Equality: LGBTIQ Equality Strategy 2020-2025](#), so that children living in "rainbow" families enjoy the right to equal treatment and respect for their family life.

Parent-child contact based on the actual best interests of the child

In the light of the above and in the spirit of the existing law (article 1510 of Civil Code), which stipulates that "*Care for a child under age is a duty and a right of the parents (parental care) and is exercised jointly*", the GNCHR emphasizes the need to promote the parent-child contact as well as the joint decision-making model as the key issues of parental care. In this respect the GNCHR urges the legislator to take into account the special circumstances that exist in each divorce or interruption of

life in common and assign the **parental responsibility based on the actual best interests of the child**, especially when there is inability or reluctance of the parents to a joint legal custody.

In cases where either the parents or the judge decide the alternating residence as an appropriate measure after divorce, the primary criterion should always be the best interest of the child. The judge concerned must first safeguard the facilitation and promotion of the parent-child contact and weigh, on a case-by-case basis, the choice of alternating residence. To this end, the GNCHR suggests an explicit regulation of the cases of **parents' disagreement**, in order to resolve the problems before going to and/or out of Court by providing, at the same time, effective support from specialized mediators as well as mandatory **recourse to special services of child psychologists and social work professionals**. These professionals should first assess the needs of each individual child in the family and respectively support the parents to choose what will be the best parenting arrangement for them. In this regard, it is deemed necessary to amend the articles 1512 and 1514, par. 3c, of Civil Code.

Smooth and effective parent-child contact

In respect of the physical presence of parent-child in the framework of their communication, the GNCHR emphasizes the obligation of the competent State authorities to respect **the right of the child, who is separated from one or both parents is entitled 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 (art. 9 of the [Convention of the Rights of the Child](#) and point 60 of the [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration](#) (art. 3, para. 1)). The GNCHR emphasizes the importance of quality parent-child time, as well as the need to establish additional forms of contact, in cases where physical presence is not possible. Crucial to the best interests of the child is the provision of specific law criteria, which must be met in order to **ensure smooth and effective contact**.

Conviction of a parent

Additionally, it is suggested, always on the grounds of protecting the child's best interests, that the precondition of irrevocable **conviction of a parent for domestic violence or for crimes against sexual freedom or crimes sexual exploitation shall be deleted**. The exclusion or restriction of contact in these circumstances is

crucial after a detailed report by public social work professionals and child psychologists on the inadequacy of the parent, whose assistance should be sought immediately. The last subpar. of par. 1 of art. 1520 of the Civil Code should be accordingly amended.

Poor exercise of parental care

In view of the aforesaid, the GNCHR considers that, in order to assess the poor exercise of parental care, it would be appropriate to advance other reasons, such as a child's exposure to danger, poor living conditions, neglect of the child's health, obstruction of education process, abandonment, exploitation through work that is not consistent with its age, etc. To this end, social services should be organized in collaboration with psychologists and psychiatrists, who shall assist the family law departments of courts and shall provide support to the family according to the standards introduced by Law 2447/1996. With regard to the exclusion or restriction of contact in such cases, it is reiterated that it should be explained on the basis of a reasoned report drafted by specialized public social work professionals and child psychologists, and prepared without delay, on the one hand, for the protection of mental and physical health of the child and, on the other, for the protection of the parent who is maliciously accused.