

The new greek legislation opening marriage to same-sex couples: an analysis

Alina Tryfonidou

Assistant Professor in EU law and Family Law, University of Cyprus

CONTENTS: 1. Introduction. – 2. The 2024 law. – 3. An assessment of the 2024 law. – 4. Conclusion.

Abstract: In February 2024, Greece became the 36th country in the world to open marriage to same-sex couples. This important change in the family law of Greece has come about through the promulgation of new legislation – Law 5089/2024 – which opens marriage to same-sex couples, allows two persons of the same sex to be the joint legal parents of a child, and makes some changes to the existing legal framework that bolster the rights of LGBTI persons. This article has as its aim to explain the main advances that this legislation has made in the protection of LGBTI rights in Greece, whilst also highlighting some of the gaps in protection that remain despite its promulgation.

Keywords: Greece – Family law – Marriage equality – Parenthood – Rainbow families – LGBTI rights

1. Introduction

In a historic move, in February 2024, Greece became the 16th EU Member State,¹ the 21st European country,² and the 36th country in the world,³ to allow same-sex couples to

¹ The other EU Member States that have opened marriage to same-sex couples are: the Netherlands (2001), Belgium (2003), Spain (2005), Sweden (2009), Portugal (2010), Denmark (2012), France (2013), Luxembourg (2015), Ireland (2015), Finland (2017), Germany (2017), Malta (2017), Austria (2019), Slovenia (2022), and Estonia (2023).

² The other European countries (in addition to the above EU Member States) that have opened marriage to same-sex couples are the following: Norway (2009), Iceland (2010), the United Kingdom (2014), Switzerland (2022), and Andorra (2023).

³ In addition to the above European countries, the following countries have opened marriage to same-sex couples: Canada

marry⁴. Most importantly, however, Greece is the first Christian Orthodox-majority country which extended marriage to same-sex couples, despite fierce opposition from its powerful Orthodox Church, which plays a central role in the social and political life of the nation and has traditionally acted as a barrier for promoting the rights of sexual minorities in the country⁵.

This important change in the family law of Greece has come about through the promulgation of new legislation – Law 5089/2024 (hereinafter «the 2024 Law»)⁶ – which introduces same-sex marriage, allows two persons of the same sex to be legally established and recognised as the joint legal parents of a child, and makes some changes to the existing legal framework which bolster the rights of lesbian, gay, bisexual, trans and intersex (hereinafter «LGBTI») persons. The 2024 Law acts itself as the legal source of a number of new rights that are granted to same-sex couples, but it also constitutes an amending piece of legislation which introduces new provisions or amendments to existing laws in order to «safeguard the principle of equality, through the extension of the possibility of entering into a marriage to persons of the same sex, and [through] the enhancement of the protection from discrimination, in furtherance of the National LGBTIQ Equality Strategy»⁷. Hence, although the 2024 Law has attracted attention mainly as the piece of legislation that has brought marriage equality to Greece, it has also made a number of additional changes which benefit the LGBTI community as a whole and not, merely, same-sex couples who wish to marry and found a family⁸. This article will have as its aim to explain the main

(2005), South Africa (2006), Argentina (2010), Brazil (2013), New Zealand (2013), Uruguay (2013), the USA (2015), Colombia (2016), Australia (2017), Taiwan (2019), Costa Rica (2020), Ecuador (2019), Chile (2022), Cuba (2022), and Mexico (2022).

⁴ For literature on same-sex marriage see, *inter alia*, RICHARDSON-SELF, *Justifying Same-Sex Marriage: A Philosophical Investigation*, Rowman & Littlefield International, 2015; PIERCESON, *Same-Sex Marriage in the United States: The Road to the Supreme Court and Beyond*, Rowman & Littlefield International, 2014; ESKRIDGE, *From Sexual Liberty to Civilized Commitment: The Case for Same-Sex Marriage*, The Free Press, 1996.

⁵ For an analysis of the relationship between religion and politics in contemporary Greece see, *inter alia*, ROUDOMETOF, MAKRIDES (eds), *Orthodox Christianity in 21st Century Greece: The Role of Religion in Culture, Ethnicity and Politics*, Routledge, 2010; and the PhD thesis by MOSKOFF, *Church, State, and Political Culture in Greece since 1974: Secularisation, Democratisation, Westernisation*, LSE, 2014, available online: < <https://core.ac.uk/download/pdf/46518531.pdf>>. For an explanation of the correlation between religious belief and negative attitudes towards homosexuality see Mole, *Nationalism and Homophobia in Central and Eastern Europe*, in Sloomaeckers, Touquet, Vermeersch (eds), *The EU Enlargement and Gay Politics: The Impact of Eastern Enlargement on Rights, Activism and Prejudice*, Palgrave Macmillan, 2016.

⁶ Νόμος Υπ' Αριθμό 5089, Ισότητα στον πολιτικό γάμο, τροποποίηση του Αστικού Κώδικα σε άλλες διατάξεις, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 16 Φεβρουαρίου 2024, Τεύχος Πρώτο, Αρ. Φύλλου 27. Available online: < <https://www.nomotelia.gr/photos/File/27a-24.pdf>>.

⁷ Author's translation of Article 1 of the 2024 Law. The National Strategy for LGBTI Equality 2021-2025 was adopted in Greece in 2021. The Strategy is available (in Greek) online: <https://www.primeminister.gr/wp-content/uploads/2021/06/ethniki_statigiki_gia_thn_isothta_ton_loatki.pdf?fbclid=IwAR0H3gutNs17FyqCqevtEw8A8p-mbzb8KC_jRAQaEyQhjRsJdta8e0XhBN0>.

⁸ One could argue that Greece has followed the so-called «incrementalist approach» towards LGBTI egalitarianism – for an article exploring whether this approach has been followed in other countries (namely, Italy, England and Wales, and Northern Ireland) see HAMILTON, SPERTI, *Incrementalism Revisited – The Contrasting Approaches of Italy, England and Wales and Northern Ireland Towards Legalization of Same-Sex Marriage*, in *Journal of Homosexuality*, 2024, p. 1782.

advances that the 2024 Law has made in the protection of LGBTI rights in Greece, whilst it will also highlight some of the gaps in protection that remain despite its promulgation.

2. The 2024 law

In the summer of 2023, the re-elected government of Greece, headed by the main centre-right party of the country (New Democracy), announced its intention to legalise same-sex marriage. This announcement was greeted with great enthusiasm by human rights advocates, pro-LGBTI NGOs, as well as numerous public figures. Nonetheless, it also caused the outrage of the Greek Orthodox Church⁹, as well as of some politicians, including Antonis Samaras – member of the New Democracy party – who served as the Greek Prime Minister from 2012 to 2015¹⁰.

The Bill was submitted to the Greek Parliament on 1 February 2024 and passed on 15 February with 175 votes in favour (from MPs across the political spectrum) and 77 votes against. The Bill was signed into Law by President Katerina Sakellaropoulou and took effect upon its publication in the Government Gazette on 16 February¹¹.

In the remaining of this section, the main advances that the 2024 Law has made in the protection of LGBTI rights in Greece shall be analysed.

In a nutshell, the 2024 Law greatly enhances the family rights that LGB persons enjoy under Greek law, by allowing same-sex couples to marry and to become the joint legal parents of a child through adoption. The Law also requires the Greek authorities to recognise same-sex marriages validly concluded abroad, whilst also recognising the parenthood of the children of same-sex parents as this was legally established abroad. These are, indeed, major steps forward. Until the coming into force of the 2024 Law, in Greece, same-sex couples could only enter into a civil partnership agreement (something which was also available to different-sex couples, in addition to marriage),¹² and could not be established

⁹ See, for instance, «Greece faces Orthodox Church opposition over same-sex marriage plans», *Euronews*, 25/1/2024 <<https://www.euronews.com/2024/01/25/greece-faces-orthodox-church-opposition-over-same-sex-marriage-plans>>; «Greek Orthodox church calls for excommunication of MPs after same-sex marriage vote», *The Guardian*, 7/3/2024 <<https://www.theguardian.com/world/2024/mar/07/greek-orthodox-church-calls-for-excommunication-of-mps-after-same-sex-marriage-vote#:~:text=Outrage%20in%20the%20Greek%20Orthodox,who%20backed%20the%20landmark%20law>>.

¹⁰ See, for instance, «Ex-PM Samaras says same-sex legislation is 'dangerous', vows to vote against», *Kathimerini*, 15/2/2024 <<https://www.ekathimerini.com/news/1231799/ex-pm-samaras-says-same-sex-legislation-is-dangerous-vows-to-vote-against/>>.

¹¹ On the website of the Greek Parliament access is provided to the Bill and to videos of the meetings of the Parliament in which the Bill was discussed (all in Greek): https://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=ebe2964c-c991-4ac0-9c09-b109017cdcad.

¹² Law 4356/2015 allowed for the first time the legal recognition of same-sex relationships in Greece: Νόμος Υπ' αριθμό 4356, Σύμφωνο συμβίωσης, άσκηση δικαιωμάτων, ποινικές και άλλες διατάξεις, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 24 Δεκεμβρίου 2015, Τεύχος Πρώτο, Αρ. Φύλλου 181. Available online: <[https://database.ilga.org/api/downloader/download/1/GR%20-%20LEG%20-%20Civil%20Union%20Law-4356%20\(2015\)%20-%20OR-OFF\(el\).pdf](https://database.ilga.org/api/downloader/download/1/GR%20-%20LEG%20-%20Civil%20Union%20Law-4356%20(2015)%20-%20OR-OFF(el).pdf)>.

as the *joint* legal parents of a child. Hence, even if a same-sex couple went through the process of becoming parents together and were both acting as the social parents of a child, only one of them would be legally established as the parent of that child. Same-sex marriages concluded abroad had no legal effect in Greece and same-sex couples had to conclude a civil partnership agreement in Greece, if they wished to be legally recognised as a couple in the country. Moreover, since in under no circumstances could two persons of the same sex be the joint legal parents of a child, the children of same-sex couples who came from abroad had their legal relationship with one parent severed, despite the fact that this relationship had been validly established in another country.

But let us now examine in more detail the changes made by the 2024 Law to the family rights that same-sex couples can enjoy in Greece.

Article 3 of the 2024 Law amends Article 1350(1) of the Greek Civil Code¹³, in order to extend the right to marry to two persons of the same sex. The amended Article 1350(1) now provides, inter alia, that «Marriage can be entered into by two persons of different or of the same sex»¹⁴. When reference is made to «marriage» in this context, it is clear that this is only to civil marriage and does not include religious marriage.

The 2024 Law also regulates the private international law aspects of marriages in situations with cross-border elements. In particular, Article 10 of the Law provides that the same-sex marriages of Greek citizens that were concluded abroad prior to the coming into force of this legislation, shall be recognised retroactively from the day they were entered into. The same provision also clarifies that in situations where such same-sex couples that were married abroad subsequently concluded a civil partnership agreement in Greece (given that their marriage was considered non-existent under the Greek legal order), they now need to make a choice as to which status they wish to maintain. Thus, if they wish to maintain their civil partnership agreement, they need to obtain a divorce and – within one year since the coming into force of the 2024 Law – make a declaration to this effect to the registry where they registered their civil partnership agreement; alternatively, and if they take no action whatsoever, their civil partnership agreement will be deemed non-existent and their status as married couple shall prevail as their only status. Finally, Article 13 of the 2024 Law makes provision for same-sex couples that had entered into a civil partnership agreement in Greece but now wish to contract a marriage: in this case, they can marry within one year since the coming into force of the 2024 Law, and they can then make a declaration to the registry where their civil partnership agreement was registered that they wish for their marriage to have effect from the date that their civil partnership agreement had been entered into. In such a case, it will be considered that the civil partnership agreement had never been concluded.

¹³ The full text of the Greek Civil Code can be found online here: <<https://www.ministryofjustice.gr/wp-content/uploads/2019/10/Αστικός-Κώδικας.pdf>>.

¹⁴ Author's translation.

The 2024 Law also allows for the first time in the Greek legal order, two persons of the same sex to be the joint legal parents of a child. This is not done through a provision which explicitly recognises the right of a same-sex couple to become parents. Rather, it is done implicitly: since, according to Article 1545 of the Greek Civil Code, a married couple can jointly adopt a child, with the extension of the right to marry to same-sex couples, the right to adopt a child jointly has now also (implicitly) been extended to married same-sex couples; the terms used in this provision when referring to spouses are gender neutral and, thus, capable of being read in a way which includes both different-sex and same-sex spouses. Moreover, since the same provision of the Greek Civil Code allows second-parent adoptions in situations involving married couples, this right is now also available to same-sex married couples.

Despite its silence regarding the parenthood rights of married same-sex couples in situations confined within Greece, the 2024 Law does explicitly regulate the private international law aspects of parenthood in situations involving cross-border elements. In particular, Article 11 of the 2024 Law provides that the parenthood of a child which is evidenced or established through public documents or a court decision of another country, must be recognised in Greece, irrespective of the sex of one or both parents and irrespective of whether the legal relationship between the child and the parent(s) could have been established under Greek law. Accordingly, this Article makes provision for the continuation in Greece of the parent-child relationship in situations where parenthood was established in another country and this, obviously, applies also in situations where the legal parents of the child were two persons of the same sex.

Apart from allowing two persons of the same sex to marry and to found a family, the 2024 Law also makes provision for extending to same-sex spouses and parents the rights that have been granted to date only to different-sex spouses and parents under labour law and social security law. Hence, Articles 6 and 7 of the 2024 Law add new provisions to the Greek Code of Individual Labour Law to this effect,¹⁵ while Article 8 operates as a more general amending provision which requires that provisions in existing laws which concern entitlements, grants, and benefits that spouses and parents claim from third parties or from the State, should now be read as applying also to married same-sex couples or to two persons of the same sex that are the joint legal parents of a child. With these amendments, therefore, the 2024 Law essentially equalises the position of different-sex and same-sex parents and spouses in relation to employment-related matters (e.g. parental leave and protection from dismissal) and other benefits and entitlements.

In order to abolish the discrimination based on sex – which was, to date, imbued in the Greek Civil Code as regards the determination by a married couple of their child's sur-

¹⁵ Κώδικας Ατομικού Εργατικού Δικαίου, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 4 Δεκεμβρίου 2022, Τεύχος Πρώτο, Αρ. Φύλλου 222. Available online: <https://www.alikakou.gr/system/uploads/asset/data/69/FEK-2022-Tefxos_A-00222-downloaded_-04_11_2023.pdf>.

name – and in order to make provision for situations involving same-sex parents, the 2024 Law amends Article 1505(3) of the Greek Civil Code. The latter now provides that in case the parents have not registered the chosen surname of their child as required by the law, the child will no longer automatically acquire the surname of the father but, rather, it shall have a composite surname, comprised of the surnames of both parents placed in alphabetical order. Article 12 of the 2024 Law also delegates to the Minister of the Interior the task of making all necessary amendments or updates to existing legislation regarding, inter alia, the registration of births, marriages and civil partnership agreements, in order to take into account the main changes brought by the 2024 Law.

One final point that should be made here regarding family rights is that Article 14 of the 2024 Law repeals Article 3(3) of the Greek Law on Gender Identity Recognition (Law 4491/2017)¹⁶, which – until the coming into force of the 2024 Law – required that trans persons should be single in order to be able to rectify their registered gender in their birth certificate and other legal documents. This requirement meant, in practice, that trans persons who were married (to a person of the sex opposite to the one to which they were legally deemed to belong when they were born), had to obtain a divorce in order to be able to apply for rectification of their registered gender. Since, with the opening of marriage to same-sex couples, the rationale for this requirement no longer holds true (the rationale being the need to preclude situations whereby two persons of the same sex would continue to be married, at a time when same-sex marriage was not allowed in Greece), it came as no surprise that the 2024 Law abolished this requirement¹⁷.

Last – but not least – the 2024 Law made a significant amendment to the anti-discrimination legal regime of the country, which has nonetheless received scant media attention. Article 9 of the 2024 Law amended certain provisions of Law 4443/2016¹⁸, which is the legislation

¹⁶ Νόμος Υπ' αριθμό 4491, Νομική αναγνώριση της ταυτότητας φύλου – Εθνικός Μηχανισμός Εκπόνησης, Παρακολούθησης και Αξιολόγησης των Σχεδίων Δράσης για τα Δικαιώματα του Παιδιού και άλλες διατάξεις, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 13 Οκτωβρίου 2017, Τεύχος Πρώτο, Αρ. Φύλλου 152. Available online: <[https://database.ilga.org/api/downloader/download/1/GR%20-%20LEG%20-%20Law%204491%20\(2017\)%20-%20OR-OFF\(gr\).pdf](https://database.ilga.org/api/downloader/download/1/GR%20-%20LEG%20-%20Law%204491%20(2017)%20-%20OR-OFF(gr).pdf)>.

¹⁷ Given that the ECHR has been interpreted by the ECtHR as not (yet) imposing an obligation on signatory States to open marriage to same-sex couples (ECtHR, June 24, 2010, Application no. 30141/04, *Schalk and Kopf v. Austria*), it has been held that in States where marriage between two persons of the same sex is not allowed, it is permissible to require that trans persons obtain a divorce prior to applying to have their gender in legal documents changed in order to reflect their psychological gender as it does not violate any of the provisions of the ECHR – see, inter alia, (ECtHR, July 16, 2014, Application no. 37359/09, *Hämäläinen v. Finland*). Note, however, that the European Court of Justice (ECJ) concluded that the fact that such a requirement means that some trans persons may not request to have their gender in legal documents changed and, as a result of this, they may not be entitled to social security at the age they would have been entitled if their legal documents were rectified, amounts to discrimination on the grounds of sex in relation to matters of social security and is thus contrary to EU law – see ECJ, June 26, 2018, Case C451/16, *MB* ECLI:EU:C:2018:492.

¹⁸ Νόμος Υπ' Αριθμό 4443, I) Ενσωμάτωση της Οδηγίας 2000/43/EK περί εφαρμογής της αρχής της ίσης μεταχείρισης προσώπων ασχέτως φυλετικής ή εθνοτικής τους καταγωγής, της Οδηγίας 2000/78/EK για τη διαμόρφωση γενικού πλαισίου για την ίση μεταχείριση στην απασχόληση και την εργασία της Οδηγίας 2014/54/EE περί μέτρων που διευκολύνουν την άσκηση των δικαιωμάτων των εργαζομένων στο πλαίσιο της ελεύθερης κυκλοφορίας των εργαζομένων, II) λήψη αναγκαίων μέτρων συμμόρφωσης με τα άρθρα 22, 23, 30, 31 παρ. 1, 32 και 34 του Κανονισμού 596/2014 για την κατάχρηση της αγοράς και την κατάργηση της Οδηγίας 2003/6/EK του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου και των Οδηγιών της Επιτροπής 2003/124/EK, 2003/125/EK και 2004/72/EK και ενσωμάτωση της Οδηγίας 2014/57/EE περί ποινικών κυρώσεων για την

that has implemented in Greece the two main EU anti-discrimination Directives which prohibit discrimination based on grounds other than sex¹⁹. With these amendments, gender expression has been added as a prohibited ground of discrimination and has been brought on a par with other prohibited grounds of discrimination, including sexual orientation, gender identity and gender characteristics. The provision also extended the prohibition of discrimination on the grounds of, inter alia, sexual orientation, gender identity, gender characteristics and gender expression beyond the areas of employment and occupation, to the areas of social protection (including social security and healthcare), social entitlements and tax advantages, education, and access to goods and services to the public, including housing. In this way Greece has extended the prohibition of discrimination in its territory in the way that the European Commission has been trying unsuccessfully to achieve for the last 15+ years at EU level²⁰, and has therefore provided LGBTI persons with enhanced protection from discrimination, in situations where this is not required by EU law.

3. An assessment of the 2024 law

Marriage is universally viewed as the «par excellence» status attached to the intimate relationship of two persons who have chosen to commit to each other and as such is legally sanctioned and protected around the globe. It is a deeply entrenched societal institution which not only has it resolutely endured decades of feminist criticism, but has also come out unscathed, as a status symbol and a marker of a successful personal life²¹. Therefore, despite opposing views grounded mainly on queer theory²², the opening of marriage to same-sex couples is considered immensely important in practical, legal and symbolic terms

κατάχρηση αγοράς και της εκτελεστικής Οδηγίας 2015/2391, III) ενσωμάτωση της Οδηγίας 2014/62 σχετικά με την προστασία του ευρώ και άλλων νομισμάτων από την παραχάραξη και την κίβδηλεια μέσω του ποινικού δικαίου και για την αντικατάσταση της απόφασης – πλαισίου 2000/383/ΔΕΥ του Συμβουλίου και IV) Σύσταση Εθνικού Μηχανισμού Διερεύνησης Περιστατικών Αυθαιρεσίας στα σώματα ασφαλείας και τους υπαλλήλους των καταστημάτων κράτησης και άλλες διατάξεις, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 9 Δεκεμβρίου 2016, Τεύχος Πρώτο, Αρ. Φύλλου 232. Available online: < <https://ypergasias.gov.gr/wp-content/uploads/2021/03/v.-4443-2016-ΦΕΚ-A-232.pdf>>.

¹⁹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303/16. Originally, these two Directives were implemented by Greek Law 3304/2005 (Νόμος Υπ' Αριθμό 3304, Εφαρμογή της αρχής της ίσης μεταχείρισης ανεξαρτήτως φυλετικής ή εθνοτικής καταγωγής, θρησκευτικών ή άλλων πεποιθήσεων, αναπηρίας, ηλικίας ή γενετήσιου προσανατολισμού, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 27 Ιανουαρίου 2005, Τεύχος Πρώτο, Αρ. Φύλλου 16), which was however repealed by Law 4443/2016, *ibid*.

²⁰ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM(2008) 426 final.

²¹ For feminist critiques of marriage see, *inter alia*, MILL, *On Liberty and the Subjection of Women*, Wordsworth, 1996; De Beauvoir, *The Second Sex*, Vintage, 1997.

²² See, for instance, AHMED, *Orientations: Toward a Queer Phenomenology*, in *GLQ: A Journal of Lesbian and Gay Studies*, 2006, 543; BUTLER, *Undoing Gender*, Routledge, 2005; HALBERSTAM, *Gaga Feminism: Sex, Gender, and the End of Normal*, Beacon, 2012; REDDY, *Time for Rights? Loving, Gay Marriage, and the Limits of Legal Justice*, in *Fordham Law Review*, 2008, 2849; WARNER, *The Trouble with Normal: Sex, Politics, and the Ethics of Queer Life*, Harvard University Press, 2000.

and has been viewed by many as the successful culmination of the (long) process leading to LGBTI egalitarianism²³. Accordingly, the opening of marriage to same-sex couples in Greece can be hailed as an unqualified success of the LGBTI movement in the country. As noted earlier, prior to the coming into force of the 2024 Law, same-sex couples could formalise their relationship in Greece only by concluding and registering a civil partnership agreement. Nonetheless, civil partnerships in Greece are not akin to marriage in all but name: there are still some important differences between the two statuses²⁴, both in terms of the procedures for concluding or dissolving them, as well as with regard to more substantive matters, and, in particular, parenthood: *same-sex* couples that conclude a registered partnership agreement are excluded from the parenting rights that the law (Law 4356/2015²⁵) extends to *different-sex* couples that conclude such an agreement²⁶.

Thus, the opening of marriage to same-sex couples in Greece does not merely have a symbolic importance, but also a practical one. As explained in the previous section of this article, married same-sex couples can now jointly adopt a child. Moreover, in cases where only one of the spouses is a legal parent of a child, the other spouse can now adopt the child, through second-parent adoption. This is of immense practical importance to those same-sex couples who became parents in Greece prior to the coming into force of the 2024 Law: although, in such instances, both members of the couple have acted as the parents of their child, due to the impossibility under the law for two persons of the same sex to be the joint legal parents of the child, only one of them was legally established as a parent. With the extension of the right of second-parent adoption to married same-sex couples, nonetheless, the 2024 Law now allows the non-recognised parent to adopt his or her spouse's (legal) child without this terminating the rights – and extinguishing the status – of the (already legally recognised) parent. Accordingly, for the first time in Greece, now a child can establish and maintain legal ties with two parents of the same sex and, thus, rainbow families can – now – be recognised as families in the eyes of the law and enjoy the protection afforded to «families», under Article 21(1) of the Greek Constitution²⁷.

Nonetheless, a married same-sex couple can – still – be established as the joint legal parents of a child *only* through adoption (whether full adoption or second-parent adoption). The 2024 Law does not make any amendments to the existing laws regulating medically assisted procreation and surrogacy and, thus, those routes to parenthood appear to contin-

²³ See, for instance, WAALDIJK, *Small Change: How the Road to Same-Sex Marriage Got Paved in the Netherlands*, in WINTEMUTE, ANDENÆS (eds), *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*, Hart, 2001, 439-441.

²⁴ Γεωργιάδης, *Οικογενειακό Δίκαιο, Σάκκουλας*, 2022, 415-437.

²⁵ *Op. cit.*, 12.

²⁶ One can argue that this amounts to discrimination based on sexual orientation in relation to the enjoyment of the right to respect for private and family life and thus violates Article 14 ECHR read in conjunction with Article 8 ECHR.

²⁷ The full text of the Greek Constitution can be found online here (in Greek): <https://www.hellenicparliament.gr/Vouli-ton-Ellinon/To-Politevma/Syntagma/>.

ue to be reserved for different sex couples and *single* women who satisfy certain (medical) conditions²⁸. Accordingly, it is not clear what will be the correct response – legally – to a claim by a married female same-sex couple who wishes to have a child through medically assisted procreation techniques (including surrogacy): assuming that one spouse – or, even, both, of them – has a medical condition that does not allow her to carry or bear a child and, thus, satisfies the conditions imposed by the legislation, will the couple still not be treated in the same way as opposite-sex married couples and be allowed to go through the process together as a married couple? Is this not directly discriminatory on the grounds of sexual orientation as regards the right to found a family? Practically speaking, women who are in a same-sex marriage will be able to go through medically assisted procreation as single women and their (female) spouse will subsequently be able to adopt the child, through second-parent adoption. But why should such couples have to go through this extra administrative hurdle, which is time-consuming and costly? Married male couples are in an even worse position, as they continue to be completely foreclosed from the only medically assisted procreation technique (surrogacy) which would enable them to have a child which is genetically-related to one of them. Thus, the only way for them to become parents in Greece is through adoption and this, again, begs the question whether this amounts to direct discrimination, this time on the combined grounds of sex and sexual orientation, as regards the right to found a family?

As explained in the previous section of this article, the 2024 Law imposes an obligation on the Greek authorities to legally recognise the parent-child relationship between a child and both parents as this was legally established abroad. This means that in situations where a married same-sex couple (whether male or female) resort to a medically assisted procreation procedure (including surrogacy) abroad, in a country which permits this and where they are established as the joint legal parents of the child, and then they seek to be recognised as the joint legal parents of their child in Greece, the Greek authorities will be obliged to afford such recognition. Accordingly, married same-sex couples who wish to have a child through medically assisted procreation techniques will be able to be eventually recognised as the joint legal parents of their child in Greece. However, this presupposes that they are able to spend a significant amount of time abroad, in order to go through the required legal and (where applicable) medical processes involved in becoming parents, prior to returning to Greece where they will seek legal recognition of their status. Obviously, this creates a (practical) distinction between, on the one hand, those couples who are better-off financially and can make use of this opportunity of becoming parents abroad

²⁸ Medically assisted procreation in Greece is regulated through a set of legal provisions found in different pieces of legislation, namely, the Civil Code (Articles 1455-1460); Νόμος Υπ' αριθμό 3089, Ιατρική υποβοήθηση στην ανθρώπινη αναπαραγωγή, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 23 Δεκεμβρίου 2002, Τεύχος Πρώτο, Αρ. Φύλλου 327. Available online: <https://gonimotita.gr/wp-content/uploads/2018/07/3089_2002.pdf>; Νόμος Υπ' αριθμό 3305, Εφαρμογή της ιατρικώς υποβοηθούμενης αναπαραγωγής, Επίσημη Εφημερίδα της Κυβερνήσεως της Ελληνικής Δημοκρατίας, 27 Ιανουαρίου 2005, Τεύχος Πρώτο, Αρ. Φύλλου 17. Available online: <https://gonimotita.gr/wp-content/uploads/2018/07/3305_2005.pdf>.

and then return to Greece to require legal recognition of their child's parenthood, and, on the other hand, those less fortunate ones who do not have the means to do so.

Accordingly, although the 2024 Law constitutes a significant step forward as regards the legal recognition of same-sex relationships, nonetheless, it appears wanting at best, and blatantly discriminatory at worst, when it comes to the legal recognition of rainbow families, especially in situations involving families founded by two men.

4. Conclusion

This article had as its aim to present Law 5089/2024 through which Greece extended the right to marry to same-sex couples. It has been seen that although this piece of legislation has become known as the law that brought marriage equality to Greece, nonetheless it has also made a number of other important changes to the legal framework governing the rights of sexual minorities in Greece: it allowed for the first time in Greece two persons of the same sex to become the joint legal parents of a child through adoption; it introduced an obligation imposed on the Greece authorities to recognise the parenthood of a child as this has been legally established abroad, irrespective of whether it could have been established under the Greek legal framework; it has equated for *most* legal purposes the position of same-sex spouses/parents with that of different-sex spouses/parents; and it has added gender expression as a prohibited ground of discrimination, whilst it has also extended the scope of application of the prohibition of discrimination against LGBTI persons to situations outside employment and occupation. Accordingly, the 2024 Law can certainly be viewed as a significant step towards LGBTI egalitarianism in Greece. Nonetheless, for the reasons explained, the protection that the 2024 Law offers to the family rights of same-sex couples appears wanting at best, and blatantly discriminatory at worst, especially in situations involving families founded by two men.