



# The EU Mutual Learning Programme in Gender Equality

## Combating female genital mutilation and other harmful practices

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### Comments Paper - Greece



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# Comments Paper - Greece

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## 1. Introduction and relevant country context

### 1.1. Policy Context and Social/Economic Circumstances

Greece has been deeply affected from the refugee wave coming from countries both practicing and not practicing FGM/C. In that sense, Greece has to deal with victims of FGM/C or women who may face FGM/C if returned to their country as a form of prosecution.<sup>1</sup> For this reason a special guidance edition has been published from UNHCR<sup>2</sup> in order to help practitioners and inform the public.<sup>3</sup>

### 1.2. Institutional and Legal Background

#### 1.2.1. Institutions

The following Ministries and Non-Governmental Organisations have been actively involved in the fight against FGM/C and other related harmful practices, in Greece:

- Ministry of Health<sup>4</sup>
- Ministry of Citizen Protection<sup>5</sup>
- Ministry of Interior, General Secretariat for Gender Equality<sup>6</sup>
- Greek National Committee of UNICEF<sup>7</sup>
- Hellenic Sudanese Friendship League<sup>8</sup>
- Institute of Child health<sup>9</sup>
- Greek Forum of Migrants<sup>10</sup>
- Greek Council for Refugees<sup>11</sup>
- The United African Women Organisation<sup>12</sup>
- The National Council of Greek Women<sup>13</sup>

<sup>1</sup> Amnesty International Greek Section Publication - <https://www.amnesty.org/en/countries/europe-and-central-asia/greece/>

<sup>2</sup> UNHCR, Ministry of Citizen Protection, Mrs. Alexia Basiliou, Instructions for the protection of women and girls during their entrance in Greece and the asylum procedure “Κατευθυντήριες Οδηγίες για την προστασία των γυναικών και των κοριτσιών κατά την πρώτη υποδοχή στην Ελλάδα και τη διαδικασία ασύλου», Athens June 2011.

<sup>3</sup> According to the above-mentioned guidance, refugee status can be granted due to the possibility of prosecution based on gender, where actions of sexual violence are involved, such as FGM/C. Even in countries where FGM/C has been made a criminal offence, it could still be used as ground for obtaining the refugee status where the state from where the refugee is originated tolerates or has no power to stop it from. (Article 60 of the Council of Europe Convention on preventing and combating violence against women and domestic violence).

<sup>4</sup> <http://www.moh.gov.gr/articles/health/domes-kai-drasesis-gia-thn-ygeia/ethnika-sxedia-drashs/95-ethnika-sxedia-drashs>

<sup>5</sup> <http://www.mopocp.gov.gr/main.php?lang=EN&lang=EN&lang=GR>

<sup>6</sup> <http://www.isotita.gr/en/index.php> Website with relevant International and European Documents related to FGM/C <http://www.isotita.gr/index.php?module=search&q=ακρωτηριασμό&x=0&y=0>

<sup>7</sup> <https://www.unicef.gr/tag>

<sup>8</sup> Member of the Steering Committee of the 2009 Greece National Action Plan to prevent and eliminate FGM [https://issuu.com/drets/docs/greece\\_national\\_plan\\_of\\_action\\_to\\_prevent\\_and\\_elim/3](https://issuu.com/drets/docs/greece_national_plan_of_action_to_prevent_and_elim/3)

As a result of their work, three action plans were developed; the National Programme for Substantive Gender Equality 2010-2013 (extended until December 2015)<sup>14</sup>, the National Action Plan for Reproductive and Sexual Health 2008-2012, drafted by the Ministry of Health in 2009 and the Greece National Plan of Action to prevent and eliminate Female Genital Mutilation.<sup>15</sup> The new national Action Plan for Gender Equality 2016-2020 is currently being prepared. Nevertheless, no other new action plans were found to replace or succeed the above-mentioned plans and there is still no official government National Action Plan to prevent and eliminate FGM/C.

### 1.2.2. Legal Background

#### *Criminal Law*

In Greece there is no specific criminal prohibition of FGM. There is, however, a general protection provision in the Penal Code. Articles 308 bodily harm, 309 dangerous bodily harm, 310 serious bodily harm and 312 bodily harm inflicted at minors of the Penal Code, provide that inflicting bodily harm, serious, grave or dangerous bodily harm to adults or minors is a crime under the said provisions of the Penal Code.

#### *Child protection laws/provisions*

There are no specific law provisions protecting minors from FGM in Greece. Nevertheless, the general legislative framework appears to cover cases of FGM, as a form of child human rights violation or child abuse. Inflicting bodily harm to minors is a crime under provision 312 of the Penal Code. Another legal provision in Greece generally protecting children is Law 3625/2007 incorporating the Optional protocol for the Protection of the Rights of the Child. This law mainly focuses on child trafficking, child prostitution and the selling children's organs. It is important to note that this law provides for the prohibition of corporate violence and not corporate punishment of the child, thus providing for a wider scope of protection. However, there is no specific reference to protection mechanisms or rehabilitation schemes for children facing bodily harm within the family, with special reference to FGM cases.

#### *Asylum law(s)/provisions*

The relevant law dealing with asylum seekers is now the Asylum Law 4375/2016<sup>16</sup> which amended Law 3907/2011.<sup>17</sup> Articles 9 and 14 of the said Law, providing on

<sup>9</sup> Member of the Steering Committee of the 2009 Greece National Action Plan to prevent and eliminate FGM <https://www.crin.org/en/library/countries/greece>

<sup>10</sup> Member of the Steering Committee of the 2009 Greece National Action Plan to prevent and eliminate FGM <http://www.migrant.gr/cgi-bin/pages/indexv2.pl?arlang=English&type=index>

<sup>11</sup> <http://www.gcr.gr/index.php/en/>

<sup>12</sup> Member of the Steering Committee of the 2009 Greece National Action Plan to prevent and eliminate FGM <http://www.africanwomen.gr/en/>

<sup>13</sup> <http://ncgw.org/wp-content/uploads/2016/01/Ενημερωτικό-Σημε-Δεκ-2015-olo.pdf>

<sup>14</sup> The review of the Gender Equality Action Plan can be found online. There is reference to the Cooperation of the General Secretariat for Gender Equality with UNICEF for research for FGM/C in Greece aiming at prevention and combatting FGM/C. More information available at: <http://www.isotita.gr/var/uploads/DELTIA%20TYPOU/2016/Apologismos%20GGIF%202015.pdf>

<sup>15</sup> The text of the action plan can be read at:

[http://issuu.com/drets/docs/greece\\_national\\_plan\\_of\\_action\\_to\\_prevent\\_and\\_elim](http://issuu.com/drets/docs/greece_national_plan_of_action_to_prevent_and_elim)

<sup>16</sup> Law 4375/2016, Organisation and Operation of the Asylum service, the Appeal Authority, the Reception and Identification Service, establishment of the Reception General Secretariat and incorporating the provisions of European Directive 2013/32/EC into Greek Legislation, “Οργάνωση και Λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης, σύσταση

the classification of refugees according to their situation could be used to classify victims of FGM or persecuted women as refugees. Articles 8, 9 and 14 refer to vulnerable persons and minors, which could be used in cases of child victims of FGM. Articles 21 and 45 specifically refer to the protection of child asylum claimants and unaccompanied minors. Under the provisions of the Common Ministerial Decision 30651/2014,<sup>18</sup> a permit for humanitarian grounds can be granted to victims or witnesses of crimes provided in articles 309 and 310 of the Penal Code, as described above. Furthermore, under Common Ministerial Decision 1982/2016,<sup>19</sup> a new procedure for the validation of the age of minor applicants for international protection has been recently put in place, providing for the protection of under-aged applicants once identified, including minors who may be victims of FGM/C or at risk, if deported.

### *Forced and Child Marriage*

With reference to forced marriage and child marriage as a related harmful practice, research indicates that forced marriage exists in Greece especially amongst Roma and Muslim communities.<sup>20</sup> A special Committee has been working in Greece since 2011 on the new legislation to incorporate the Istanbul Convention's Principles.<sup>21</sup> In Greece, the concept of forced marriage is indistinguishable from child marriage and although bigamy and fraud to marriage are criminal offences, child marriage is primarily a civil code violation. The exception to the minimum age to enter into marriage usually applies to children between 14 and 18 years of age with the permission of the court; nevertheless, the legislation does not state a minimum age to which the exception may apply.<sup>22</sup> Concerning the asylum procedure followed in Greece, forced marriage is recognised as an additional personal reason of danger to a female refugee.

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Γενικής Γραμματείας Υποδοχής, προσαρμογή της Ελληνικής Νομοθεσίας προς τις Διατάξεις της Ευρωπαϊκής Οδηγίας 2013/32/ΕΚ”.

<sup>17</sup> Law 3907/2011 Establishing the Asylum service and the First reception service and incorporating the provisions of European Directive 2008/115/EC into Greek Legislation, “Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής προσαρμογή της Ελληνικής Νομοθεσίας προς τις Διατάξεις της Ευρωπαϊκής Οδηγίας 2008/115/ΕΚ.

<sup>18</sup> Common Ministerial Decision 30651/2014, for the Establishment of a Class Residence Permit on humanitarian grounds, as well as the type, the procedure and the specific conditions for the granting of the permit, “Κοινή Υπουργική Απόφαση 30651/2014, Καθορισμός Κατηγορίας Άδειας Παραμονής για Ανθρωπιστικούς Λόγους, καθώς και του τύπου, της διαδικασίας και των ειδικότερων προϋποθέσεων χορήγησης της”.

<sup>19</sup> Common Ministerial Decision 1982/2016, Validation of the underage applicants for international protection, “Κοινή Υπουργική Απόφαση 1982/2016, Διαπίστωση ανηλικότητας των αιτούντων διεθνή προστασία”.

<sup>20</sup> European Parliament Study on Forced Marriage from a Gender Perspective (2016), available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556926/IPOL\\_STU\(2016\)556926\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/556926/IPOL_STU(2016)556926_EN.pdf)

<sup>21</sup> The Committee was created to process provisions, which would improve and strengthen the existing legal framework for combating violence against women. Decisions establishing the committee, conclusions and annexes to the conclusions of the committee. <http://www.isotita.gr/index.php/info/1447>

<sup>22</sup> Article 1350 of the Greek Civil Code, Mandatory Law 2250/1940 ‘Civil Code’, as updated to modern Greek by Presidential Decree 456/1984 (OJ 164/A/1984) ‘Civil Code and its Introductory Law’.

## 2. Policy Debate

### 2.1. Current Discussions

FGM/C has been discussed in the Hellenic Parliament since 1996 with the enactment of Law 2552/1996<sup>23</sup> and has also been mentioned in various discussions since in a way of reference, either regarding Women's Day,<sup>24</sup> or with reference to violence within the family and in gender equality discussions,<sup>25</sup> but with no substantive legislative measures directly and expressly related to FGM/C.

It is very important to mention the landmark decision of Athens Administrative Appeals Court which decided to suspend the expulsion of a Kenyan woman due to a threat of being subjected to FGM/C and her three children tortured if she returned to her country. This is a very important case as it is the first time a Greek court applied the 1951 Geneva Convention provisions to grant protection due to an FGM threat (decision 419/2014).<sup>26</sup> As demonstrated in the aforementioned case, although there is no specific provision dealing with FGM, the legal definition of refugee can be used in an asylum procedure to obtain the status of refugee in Greece, for a woman or a child that has either undergone FGM, or is in fear of undergoing FGM if returned to their country of origin.

When it comes to family honour crimes, forced and child marriages related to FGM/C no reported cases or studies could be found. There was however reference to crimes reported in the 50s and 60s, the so-called "vendettas" with little prevalence in recent years.<sup>27</sup>

### 2.2. Future Developments

As mentioned above, there is no evidence to the development of an official government Action Plan related to FGM/C. There is however a lot of work done concerning awareness and advocacy on behalf of the stakeholders and relevant institutions mentioned above. Furthermore, legislative activity concerning the refugee status and asylum seekers is developing continuously. At the same time, a special Committee has been working since 2011 to incorporate the Istanbul Convention's Principles.<sup>28</sup>

<sup>23</sup> Hellenic Parliament website [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=83011ed9-ed99-40cc-a872-ccab0b8a8b4f](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=83011ed9-ed99-40cc-a872-ccab0b8a8b4f)

<sup>24</sup> Hellenic Parliament website [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=83011ed9-ed99-40cc-a872-ccab0b8a8b4f](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=83011ed9-ed99-40cc-a872-ccab0b8a8b4f)

<sup>25</sup> Hellenic Parliament website <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?sessionRecord=1a028864-9f09-44f9-ae75-a1cae498c6dc>

<sup>26</sup> Case No 419/2014 <http://www.dsnet.gr/Epikairothta/Nomologia/defath419.htm> - Annex I

<sup>27</sup> «Some of the most prominent honour crime murders include; in 1960 Stavroula Gouvousi drowned her daughter-in-law in a tank because she had a love affair. Both she and her son, as an accomplice, were convicted to execution. In 1996 Apostolos Kosmas "sawed" his son, because he was mentally ill and in 1997 composer Akis Panou murdered Sotiris Yialama because he did not consent to his relationship with his daughter." Anna Karageorgiou, Common Law Advocate, Society: Family Honour, Crimes Public Prosecutor Order No. 77/2013, Thessaloniki, 16.10.2013 <http://koinoniodikeio.blogspot.com.cy/2013/10/772013.html>

<sup>28</sup> The Committee was created to process provisions, which would improve and strengthen the existing legal framework for combating violence against women. Decisions establishing the committee, conclusions and annexes to the conclusions of the committee. <http://www.isotita.gr/index.php/info/1447>

## 3. Transferability Aspects

### 3.1. UK Best Practices

The UK Discussion Paper outlines a great number of good practices to prevent FGM/C and to protect FGM/C women and girls at risk. The general proposal is to shift the emphasis on funding specialist services to protect and support victims rather than on law enforcement, in order to promote better understanding of FGM/C problems and other forms of gender-based violence. The key to UK's successful initiatives is the integration of a diverse range of activities and measures.

#### 3.1.1. Collecting Evidence and Reporting

Collecting evidence on the extent and nature of FGM/C aims to assist policy makers and NGOs in their efforts to address the practice. Although in the past evidence and statistic data collection has been piecemeal mainly through funded studies or single initiatives, it seems that this problem may be tackled by way of introducing obligatory reporting from October 2015, for health and social care professionals. This measure however must be applied with care so as to avoid breaching the professional privilege and generally the rights of the patient. At the same time it is important to transfer a balanced onus on professionals that will help rather than intimidate them if their "positive duty" to act and report is breached. When the situation is regulated there is always the risk of going undercover and this concern should also be taken into account.

#### 3.1.2. Legislation

According to the Discussion Paper, FGM/C is a criminal offence in England, Wales, Northern Ireland and in Scotland. What is more, "FGM/C is an offence which extends to acts performed outside of the UK and to any person who advises, helps or forces a girl to inflict FGM on herself". Although it is in many ways difficult to prove and apply this legal provision, as "there have been no convictions for FGM in the UK to date", this measure, unlike the legal framework in Greece, can guarantee in a high probability the application of the extraterritoriality principle, where the offence of FGM/C has occurred outside the UK by or to a UK citizen or resident. This best practice could form a valid suggestion for Greece; especially the provisions for failing to protect a girl from risk of FGM/C and the provisions for FGM/C taking place abroad. Furthermore, it is important to note, as an additional good practice suggestion, the measure of FGM/C Protection Court Orders applied in emergency FGM/C risk cases.

#### 3.1.3. Care Proceedings for Minors

A very good example, which is mostly oriented to protection of FGM/C victims or people at risk, is the measure of providing care for children who are at risk of FGM/C. Although this measure promotes the principle of the "welfare of the child", it may pose problems to the psychological health of a child that is being parted from her parents. As reported in Her Majesty's Inspectorate of Constabulary research, "Participants with experience of FGM expressed mixed feelings about reporting new cases that they were aware of to the police". In another instance, a participant noted that while reading FGM/C information she wondered whether she was a freak, her parents were the worst people ever, and her culture was disgusting. She felt this

was not true, but at the same time, she felt that her human rights have been taken away from her, as her body was altered without her consent. Professionals who provide help should deal with these concerns in order to support women struggling to intergrade into Western culture and society.

#### **3.1.4. FGM Web App**

The FGM web app is a great example demonstrating the good use of technology to educate youth. It is important however to review the effectiveness of this measure on educating teenagers as well as the way it is promoted through school initiatives or in other ways.

#### **3.1.5. New Steps for the African Community**

FGM training to staff and pupils in high schools in Manchester should also be evaluated and though the right policy and funding, if successful, it should be extended to all schools in the UK, starting from areas where people who are mostly affected reside.

#### **3.1.6. Raising awareness and Multi-stakeholders Discussions**

Measures of raising awareness at localities such as Bristol and the London Borough of Lambeth are a very good starting point to develop think tanks while taking into account the opinions of healthcare professionals, social care and police professionals who then deal with women and girls affected by FGM/C at the “one stop shop”. It is very important however to report and keep statistic data on the cases treated in order to demonstrate the effectiveness of the said measures and receive funding. It seems that funding is one of the greatest hurdles in the fight against FGM/C both in the UK and Greece. Hence, finding possible ways to self-fund activities would be very helpful.

### **3.2. Italy Best Practices**

According to Italy's Discussion Paper Italian policy focuses on FGM/C and Forced Marriage with an integrated institutional system and the main goal is to remove all forms of discrimination and developing gender-sensitive policies. The main best practices adopted in Italy are the following.

#### **3.2.1. Multi-layered Strategy**

Under the coordination of the Department of Equal Opportunities, Italy established a coordinating National Commission. The Commission approved the first Strategic Plan (2007) to combat traditional harmful practices in the areas of action/research projects, awareness-raising campaigns and training courses. In 2011 the Commission drafted the second Strategic Plan aiming at regions where immigrants from FGM/C practicing countries resided. In addition to the above, Italy incorporated FGM/C in the National Action Plan combatting violence against women. Greece should adopt a similar structured design in order to effectively implement measures at a national level.



### 3.2.2. Collecting Statistic Data

Statistical Data were collected to measure FGM/C prevalence, through different initiatives; nevertheless, the variety of methodologies used makes it difficult to compare the collected data. Moreover, there are no available statistic data to estimate the entity of the phenomenon of forced marriages. Italian authorities have identified the problem and they are now promoting a promising improved method of indirect estimation of prevalence developed by the University of Milano Bicocca.<sup>29</sup> What needs some clarification before this method could be adopted by other EU countries is how the collected data would be compared to data collected through the Daphne project being currently implemented in the EU, if the methodology used in this project is different.

### 3.2.3. Legislation and Guidelines

Italian law 7/2006 includes provisions on the prevention and prohibition of FGM/C. The Italian Ministry of Health released guidelines for the prevention, support, and rehabilitation activities for women and girls who had FGM/C or are at risk, targeting the education of health and social work professionals and teachers. With regards to forced marriage, Italy has no special offence and this legislative void should thus be addressed with new legislation. As mentioned above, Greece could also legislate specifically against FGM/C.

### 3.2.4. Funding

According to the discussion paper, the budgets available for activities combatting FGM/C are 177,000 EUR per year from 2006 onwards. It is important to note that funding is allocated to regional projects realised under a strategic plan. Furthermore the Italian Development Cooperation supports through annual voluntary contributions the activities of UNWOMEN, UNFPA and UNICEF. Although funding policies largely depend on a country's financial situation, Greece could seek to form alliances with other countries and also to obtain financing from EU funds.

### 3.2.5. Training and Awareness-Raising activities

It is very important to mention the promising regional experiences of Emilia Romagna (a regional system of local networks on FGM for an effective "community and proximity work" through exhibitions, theatre shows, art performances etc), Tuscany ('online bulletin board' for trained operators) and Lombardy (creating a website containing information and e-learning resources addressed to operators, migrants communities and general population and collecting data to set up a specific FGM Support Service in Milan). A critique to the above measures is the fact that there are no evaluation elements available to assess the effectiveness of the campaigns. If Greece is to adopt the above good practices; all awareness activities should be accompanied by questionnaires or independent evaluations.<sup>30</sup>

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<sup>29</sup> This process involves a study of first generation migrant flows, an assessment of socio-demographic and inter-regional groups, as well as a correction technique that takes into consideration the evolving nature of the phenomenon.

<sup>30</sup> An example in Italy that used feedback evaluations was the AIDOS project creating audio documentaries from FGM/C practicing countries, which was positively evaluated by participants.

### **3.2.6. Health Care Assistance**

In addition to the above regional initiatives, an important best practice was the pilot healthcare assistance on women suffering of reproductive health disorders, sexual and relational problems as a consequences of the mutilation, obstetric problems during pregnancy and childbirth, at the Maternal and Child Department of the San Camillo-Forlanini Hospital in Rome. Considering that most FGM/C affected women were found in Athens, Greece could adopt this best practice in a specialised hospital in Athens. Furthermore, considering that Greece is now accommodating a great number of refugees and migrants of whom a number may originate from an FGM/C practicing countries, Greece could implement a project similar to the Piedmont project(Torino), targeting health and social care professionals working with migrants.

## **4. Recommendations for Action**

### **4.1. Recommendations at National Level – Greece**

Greece lacks in policy making and activities specifically targeted towards eliminating FGM/C and other related harmful practices, in comparison to the UK and Italy. The first main step for Greece would be to create and follow a National Action Plan for FGM/C and other related harmful practices. Dealing with FGM/C as a matter of gender equality, or an issue of reproductive and sexual health or as a ground for obtaining the refugee or humanitarian status to remain in the country is not wrong; it does not however fully captivate or deal with the complexities of FGM/C as a criminal offence, as a social, psychological and human rights violation problem.

It would hence be very effective for Greece to start collecting statistical data through health practitioners, teachers and NGO's, at a National level, to determine how big the problem is in Greece, in order to decide on the best way to eradicate it. A good suggestion would be for Greece to join the EIGE Project on measuring FGM prevalence of females at risk. The next step would be to raise awareness in the Society, Migrants, Roma and refugees for FGM/C and other related harmful practices such as forced and child marriage. Moreover, it would be helpful to include teaching materials at schools and to educate Asylum Service Personnel, police, health care and social care professionals. In order to establish a holistic approach, Greece has to create preventative intervention and treatment programmes and at the same time make an active effort to involve the media and the private sector in these activities. Last but not least, as mentioned above, the legal framework could be amended in a way to be able to apply the extraterritoriality principle and also to include a special provision for the prohibition of FGM/C as a criminal offence. This amendment could be part of the work currently being done by the special Committee on transposing the Istanbul Convention's Principles in Greek Law.

### **4.2. Recommendations at European Level**

What seems to be the main concern both in the UK and Italy and also in Greece is the problem of funding. It is therefore vital for the European Union to promote the development of initiatives for exchanging good practices and experiences, but also to encourage a common policy through funding sustainable activities and initiatives using partnerships within the EU.

## Annex I

### Athens Administrative Appeals Court, Decision 419/2014<sup>31</sup>

In the landmark decision of Athens Administrative Appeals Court, the Court decided to suspend the expulsion of a Kenyan woman and her children due to a threat of being subjected to FGM/C and her three children tortured if she returned to her country. This is a very important case as it is the first time a Greek court applied the 1951 Geneva Convention provisions to grant protection due to an FGM threat.

The Kenyan national arrived in Greece on September 3, 2002 and applied for an international protection permit under the Convention at the regional asylum office in Attica for herself and her children, aged 13, 5 and 3 years old.

In her application, she stated she did not want to return to her country because she belongs to the Kikuyu tribe which practices FGM on all females, and she could also be subjected to the same under the Mungiki organisation, which is active in many Kenyan areas. The regional asylum office rejected her application on the grounds that she and her children did not meet the Geneva Convention's classification conditions for refugee status.

The woman then appealed to a Ministry of Justice Committee, but the Committee rejected her application on the grounds that she did not submit "incontrovertible evidence proving that her fear due to the threat of being subjected to FGM by the Mungiki organisation can be seen as justifiable and substantiated on objective facts, in order to conclude that there is immediate and unavoidable threat to her life or physical safety if she returns to her country of origin."

The woman took recourse to Greek courts on the grounds that if she and her children returned to Kenya they would be tortured or treated inhumanely and that her children would be either conscripted into criminal organisations, abducted by them or be persecuted – in the youngest case – for being a legitimate child of an American citizen. The court accepted her plea and decided to suspend the Ministry of Justice Committee's decision that would result in the forced exit and repatriation of the woman and her children to Kenya.<sup>32</sup>

#### Commentary:

As demonstrated in the aforementioned case, although there is no specific provision dealing with FGM, the legal definition of refugee can be used in an asylum procedure to obtain the status of refugee in Greece, for a woman or a child that has either undergone FGM, or is in fear of undergoing FGM if returned to their country of origin. Women who have undergone FGM may be granted asylum on the basis of not being able to obtain medical treatment for complications arising from FGM, if returned to their countries of origin; if returned, victims of FGM could have their article 3 of the ECHR breached by the country that sends them back to their country of origin.

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<sup>31</sup> Case No 419/2014 <http://www.dsanet.gr/Epikairothta/Nomologia/defath419.htm>

<sup>32</sup> Sotiria Nikolouli, "Greek Court Issues First-Time Ruling on Female Genital Mutilation Case", Greek Reporter, (20 July 2014) Article available in English at: <http://greece.greekreporter.com/2014/07/20/greek-court-issues-first-time-ruling-on-female-genital-mutilation-case/#sthash.uP5sOE4b.dpuf>

In Greece, the legal definition of a refugee is a translation of the 1951 Convention<sup>33</sup> definition in Greek: "the term "refugees" shall apply to persons who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, are outside their country of nationality and are unable or, owing to such fear, are unwilling to avail themselves of the protection of that country; or who, not having a nationality and being outside the country of their former habitual residence as a result of such events, are unable or, owing to such fear, are unwilling to return to it."

In cases where a woman fears persecution if returned to her country of origin, because of her membership to a particular social group<sup>34</sup> which practices FGM, she could claim asylum on this basis. The practice of FGM itself could be interpreted as persecution, since FGM is defined as a cruel, inhuman and to some, a torturous act.

It is the opinion of many refugee law experts<sup>35</sup> that article 3 of the European Convention on Human Rights, prohibition of torture or inhuman or degrading treatment or punishment, would have been breached by the Government of Greece, in case that victim is returned to her county of origin. Another reason for following the non-refoulement principle<sup>36</sup> and not returning the FGM victim to her country of origin would have been to grant her asylum status on a humanitarian basis. To further illustrate the above point, asylum is often granted to asylum seekers on humanitarian grounds which cover issues that are not covered by the 1951 Convention; being a victim or potential victim of FGM could form one of the grounds to obtain the refugee status, for humanitarian reasons, or at least for the victim to obtain the humanitarian leave to stay in the safe third country.

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<sup>33</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at:

<http://www.unhcr.org/refworld/docid/3be01b964.html> [accessed 12 February 2012].

<sup>34</sup> A "particular social group" is defined under provision 3D(1)d(I) of the Asylum Law L. 6(I)/2000, as a group comprising persons of similar background, habits or social status.

<sup>35</sup> Professor Satvinder Juss, King's College London. Prof. Guy S. Goodwin Gill, Prof. James Hathaway.

<sup>36</sup> "The principle of non-refoulement is the cornerstone of asylum and of international refugee law.

Following from the right to seek and to enjoy in other countries asylum from persecution, as set forth in Article 14 of the Universal Declaration of Human Rights, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is returned to persecution or danger". For more information please refer to UN High Commissioner for Refugees, UNHCR Note on the Principle of Non-Refoulement, November 1997, available at:

<http://www.unhcr.org/refworld/docid/438c6d972.html> [accessed 23 February 2012]