

CHAPTER VI. REFORM OF FAMILY LAW IN GREECE

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I. Introduction

The Greek Civil Code¹ came into force in Greece on 23 February 1946. This codification of the civil law replaced pre-existing laws which were: (a) Byzantine Law, codified in the year 1345 in the *Hexabible* of Constantin Harmenopoulos, a Byzantine judge of Thessalonica. This prevailed over the greatest part of Greece; (b) the Ionian Civil Code of 1841 which applied to the Ionian Isles; (c) the Civil Code of Samos of 1899, and (d) the Civil Code of Crete of 1903.

All these laws were modified by a number of more recent Greek statutes. These affected different areas of the Civil Law. For instance, prior to the annexation of the Ionian Isles of Samos and of Crete, two laws of 1861 could be noted in the field of Family Law, on mixed marriages, minors, guardianship and emancipation. After the annexation of these territories, there was Law 2228 of 1920 on divorce and the decree of 14/17 July 1926 on the status of natural children. The two last, i.e. the law on divorce and the decree on the status of natural children, were fairly progressive works for their time in the context of the economic and social situation of Greece. In fact, their provisions have been reproduced in substance in the relevant articles of the new Greek Civil Code.

The preparatory work on the Greek Civil Code goes back to 1930. But the dream of a modern codification of Civil Law had inspired several generations of Greek jurists. Ever since 1821, the first year of the Greek War of Independence against the Turkish domination, the desire to work out such a codification was often expressed officially. But earlier Commissions, which had worked from the 19th century onwards, first under the influence of the Code Napoléon and later, i.e. in the first decades of the present century, under the influence of the German Civil Code, did not produce results. At last in 1930 a Committee, charged with the task of drafting a civil code, was set up by the Liberal Government of E. Venizelos by virtue of Law No. 4680. The Committee was composed of Professors K Demertzis, K Triantaphyllopoulos, G Balis, G Maridakis and P Thivaïos. The committee elaborated a draft Civil Code which was published in six parts during the years 1933 to 1936. Two revision Committees were set up in 1930 and in 1934, but they did not make much progress. The dictatorship of 4 August 1936 under General Metaxas dismissed the second revision Committee and entrusted the task to a single member, Professor G Balis. He revised the draft and modified it in a conservative spirit. This was true above all in respect of the part concerning Family Law. The Metaxas government then promulgated the text thus revised by Law No. 2250 of 15 March 1940 but, owing to the War and the subsequent occupation of Greece, it did not come into force. The Code was retroactively enacted by the Law of 23 February 1946.

1. Law 2250 of 15 March 1940.

The Greek Civil Code consists of five books: (1) The General Principles of Law, Private International Law and the Law relating to Persons (Arts. 1-286); (2) The Law of Obligations (Arts. 287-946); (3) The Law of Things (Arts. 947-1345); (4) Family Law (Arts. 1346-1709); (5) The Law of Succession (Arts. 1710-2035). The first three books of the Code were mainly inspired by the German Civil Code and the Swiss Civil Code, as well as by the Swiss Law of Obligations. The last two books of the Code reflect the Byzantine law, which had evolved through the centuries and had been modified by modern Greek law in the form in which it applied in Greece at the time the Code was drafted. Some foreign influences, not always happy ones, can also be detected in the last two books. In a final article it was anticipated that the Civil Code would come into force on 1 July 1941. But, following the entry of Greece into the Second World War on 28 October 1940, the struggle of several months' duration against Italy, the attack by Germany and the Occupation in April 1941, the coming into force of the Civil Code was suspended by the *de facto* Government appointed by the forces of occupation. It is very probable that the Occupation authorities did not view with favour the unification of the law over the whole of Greece as, at that time, the country became divided into three zones of occupation.

After the liberation there was a movement to replace the Code of 1940 by a new Civil Code, drafted in some haste by Professors K Triantaphyllopoulos and G. Maridakis, but in a more progressive spirit than the Code of 1940. This Code, which became known as the Code of 1945, was put into effect by the Law No. 777 of 29 December 1945, as from 23 February 1946, by the Liberal Government of Th. Sofoulis. But the Government of the Popular Party (Conservative) of K Tsaldaris that won the elections of 31 March 1946, withdrew the Code of 1945 and, by a decree of 7/10 May 1946, enacted that the Civil Code of 1940 was deemed to have come into force on 23 February 1946.

This history of the Greek Civil Code now in force, i.e. the Civil Code of 1940, shows that the current Greek law represents a pre-war tradition. The modern tendencies that have manifested themselves since 1945 in several countries of Europe in Family Law matters, did not touch the "new" Greek Civil Code. The principle of the equality of the spouses, the abolition of a compulsory religious marriage ceremony, a more rapid emancipation of youth, etc, still remain unsatisfied in Greece. But democratic evolution which has resumed its course since 1974, will no doubt lead to the reform of Family Law.

II. The Equality of the Spouses

The equality of the spouses is not recognised currently in Greek law. On the contrary, Greek Family Law is based on the principle that the husband is the head of the family. The predominant role of the husband was a feature of the law prior to the Civil Code. It derived from the ancient traditions of Byzantine Law and from the old Greek Law. It corresponded to social reality. It should be added that the wife was in a position of inferiority and that, even now, she retains that position in a large part of Greek territory, especially in the villages. On the other hand, it runs counter to the development of life in the industrial and modern centres and in the large towns. There, the emancipation of women and their