



PERMANENT MISSION OF GREECE TO THE UNITED NATIONS

**Ref. No: 90.2.5.6 / AS 976**

### **VERBAL NOTE**

The Permanent Mission of Greece to the United Nations presents its compliments to the Office of Legal Affairs of the United Nations and, with reference to the latter's Verbal Note LA/COD/50/1 dated 10 January 2020 and General Assembly's resolution 74/181 of 18 December 2019, has the honor to enclose updated information with respect to the relevant provisions of Greece's criminal legislation.

There is no specific criminal legislation in place in Greece relating to UN officials or experts on mission. However, Greek criminal law adequately covers these categories of persons according to the rules of the first chapter of the general part of the Greek Criminal Code which defines the scope of application of Greek criminal law. Article 5 of this chapter, on crimes committed within the Greek territory (or on Greek vessels and aircrafts), reflects the principle of territoriality, article 6 on crimes committed by Greeks abroad reflects the principle of nationality and article 7 on crimes committed by aliens abroad against a Greek national reflects the principle of passive personality.

More specifically, article 6 provides for the application of Greek penal laws on acts such laws regard as a felony or misdemeanor, committed by Greek nationals abroad, including nationals who serve as UN officials or experts on mission, if such act is punishable according to the laws of the country where it was committed, or if it was committed in a constitutionally unsettled country. The prosecution of offences of a serious nature (felonies) is not tied to any further requirement. In so far as misdemeanours are concerned, it is necessary to have the victim's complaint requesting prosecution or a request for prosecution by the government of the country where the misdemeanour was committed. The competent national court for handling such cases is defined according to articles 123-124 of the Greek Code of Criminal Procedure.

Additionally, article 8 on crimes committed abroad that are always punishable according to the Greek laws, provides that Greek penal laws apply for acts committed abroad and enunciated in this provision, for Greeks and aliens alike, irrespective of the laws of the place where the crime was committed. This article deals respectively with (a) high treason against the Greek state or offences against the country's international status, (b) crimes relating to the military service and the military service obligation in Greece, (c) punishable acts committed by persons in their capacity as officials of the Greek State or of an organ or organization of the European Union having its seat in Greece, (d) an act against or directed to an official of the Greek State or a Greek official of an organ or organization of the European Union, provided it is committed in the exercise of their duties or in connection with the exercise of their duties, (e) perjury in the context of proceedings pending before the Greek authorities, (f) terrorist acts, (g) piracy, (h) crimes related to currency, (i) illegal trafficking in narcotic drugs, (j) trafficking in human beings and (k) any other crime to which Greek penal laws apply by virtue of specific provisions of international conventions signed and ratified by Greece.

The jurisdiction *ratione personae* of Greek criminal courts is subject to the jurisdictional immunities recognized in article 2 of the Greek Code of Criminal Procedure which refers also to relevant international agreements as well as to customary international law. Greece is a Contracting Party to the Convention on the Privileges and Immunities of the United Nations since the 27th of December 1947.

The legal status concerning the jurisdiction over serious crimes committed by Greek nationals, including those committed while serving as United Nations officials or experts on mission, is regulated by Law 3948/2011, which contains the necessary substantive and procedural clauses in order to fully incorporate the provisions of the International Criminal Court Statute (ratified by Law 3003/2002). In particular, the three categories of international crimes, as laid down in articles 6-9 of the ICC Statute (Genocide, Crimes against Humanity and War Crimes) are, with certain exceptions and variations, incorporated in national legislation by virtue of articles 7-13 of Law 3948/2011. Moreover, article 2 of that Law reads as follows : “The provisions of this Law apply to both nationals and non-nationals for all acts enumerated in articles 7-15, provided that they have been committed : a) in the territory of the Greek State or on board of Greek ships or aircrafts wherever they are situated, unless they are subject to foreign legislation, according to international law, b) abroad, by a Greek national or by an alien who became a Greek national after the commission of the act, c) abroad, against the Greek State or against a Greek national ”.

Regarding in particular military personnel, there is no special legislation in Greece about the criminal responsibility of such personnel while serving as United Nations officials or experts on mission. Thus the general provisions of the Greek Penal Code and the Greek Military Penal Code in force for all the military personnel of the Hellenic Armed Forces apply also to Greek military personnel deployed as United Nations officials or experts on mission. The criterion determining, in each case, whether the clauses of the common criminal law or of the military criminal law will apply, is the nature of the offence allegedly committed by the military personnel: if it is a military offence, the latter being defined in article 1 of the Greek Military Penal Code as any offence stipulated as such and punished under the provisions of this Code, the Code’s pertinent provisions will apply. On the contrary, in case of an offence of the common criminal law, then only the common Greek Penal Code applies. Hereupon, there is no provision for an “*a priori*” exclusive application to military personnel of either of the two Codes.

Furthermore, according to the second article of the Military Penal Code, the provisions of the latter apply also for acts committed outside Greek territory. This is particularly relevant in the present context, as regards the violations of international humanitarian law provided for in articles 156-162 of the Military Penal Code, which apply to the extent they are not superseded by the provisions of the above mentioned Law 3948/2011.

Article 3 of the same Code stipulates that the provisions of the Penal Code apply also to military offences when there are no different regulations in the Military Penal Code. From the aforementioned, it is clearly understood that in lack of special regulations in the Military Penal Code, the clauses of articles 5-11 of the Greek Penal Code presented above apply also to military offences of the military personnel (either serving in a UN mission or not).

According to the first paragraph of article 193 of the Military Penal Code, individuals who are in the military at the time the act was committed fall under the jurisdiction of the military criminal courts. This general rule does not apply in the cases provided for in paragraph 2 of the

same article which include, inter alia, military offences committed during leave of absence, holiday or suspension which exceed three months or during defection, as well as capital offences and misdemeanors which under special laws fall under the court of appeals jurisdiction.

Furthermore, according to article 195 of the Military Penal Code, if military personnel and civilians have participated at a crime, the common criminal courts have jurisdiction if the crime pertains to the common criminal law, but if the crime is a military offence, then the case is divided and military courts have jurisdiction for the military personnel while jurisdiction for civilians remains with the common criminal courts. Finally article 197 of the Military Penal Code stipulates that if the offender has committed numerous crimes which fall under both the military and common courts' jurisdiction, they are all judged by the court which has jurisdiction for the more severe offence, excluding defection which is always judged by the military courts. If from the partial acts of a repeated crime, some were committed at a time the offender was in the military and others were committed when he/she was a civilian, then all crimes are judged by the common criminal courts.

Finally, Greece is ready and continuously endeavors, in accordance with its national law, to afford every possible assistance, support and protection in relation to criminal investigations or criminal or extradition proceedings in respect of crimes committed by UN officials and experts on missions, as foreseen in par. 12 of Resolution 74/181, and to explore all ways and means of enhancing such measures and facilitating the relevant proceedings, bearing in mind due process considerations.

Please see attached excerpts of the relevant national provisions.

The Permanent Mission of Greece to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of its highest consideration.

Encl: 7 pages

New York, 22 May 2020

To: The Office of Legal Affairs of the UN

In Town

## **PENAL CODE**

### **Article 5**

#### **Crimes committed within the Greek territory**

1. Greek penal laws apply on all acts committed within the Greek territory, even when committed by aliens. They also apply on acts of participation committed within the Greek territory if the main act, for which the Greek criminal courts have no jurisdiction, is also punishable according to the Greek criminal laws.

2. Greek vessels and aircrafts are considered part of the Greek territory wherever they are situated, unless they are subject to foreign law in accordance with international law.

### **Article 6**

#### **Crimes committed by Greeks abroad**

1. Greek penal laws also apply on any act that they regard as a felony or misdemeanour, which has been committed abroad by a Greek, if such act is regarded as a punishable act by the laws of the country where it has been committed, or if it has been committed in a country that is constitutionally unsettled.

2. Prosecution shall also be turned against an alien who was Greek at the time when the act was committed. Moreover, prosecution shall also be turned against a person who acquired the Greek nationality after the act was committed.

3. In so far as misdemeanours are concerned, even if they are prosecuted ex officio, the victim's complaint requesting prosecution or a request for prosecution by the government of the country where the misdemeanour was committed is necessary in order for the provisions of paragraphs 1 and 2 to be applied.

### **Article 7**

#### **Crimes committed by aliens abroad**

1. Greek penal laws are also applied against an alien for an act committed abroad that they regard as a felony or misdemeanour, if this act is directed against a Greek citizen and is also considered as a criminal offence according to the laws of the country where it was committed or if it was committed in a constitutionally unsettled country. As a Greek citizen is also considered the unborn child who will acquire their Greek citizenship with their birth, as well as the legal entities established within the Greek territory.

2. The provision of paragraph 3 of the previous article also applies herein.

## **Article 8**

### **Crimes committed abroad punishable always according to greek laws**

Greek laws apply both to natives and foreigners, irrespective of the laws of the place where the offence was committed, for the following acts committed abroad:

- a) High treason against the Greek State or offences against the country's international status,
- b) Crimes related to military service and military service obligation,
- c) Criminal acts committed within the capacity of official of the Greek State or of Greek official of Institution or Body of the European Union, based in Greece,
- d) Act either directed against employee of the Greek State or Greek official of Body or Institution of the European Union or addressed towards them, if it is committed within the exercise of their service or in connection with the performance of their duties,
- e) Perjury in proceedings pending before the Greek authorities,
- f) Terrorist acts,
- g) Piracy,
- h) Crimes related to currency,
- i) Illegal trafficking of narcotic drugs,
- j) Human trafficking,
- k) Any other crime covered by special provisions or international conventions that are signed and ratified by the Greek State, providing for the application of the greek penal laws

## **Article 9**

### **Non-prosecution of crimes committed abroad**

1. Prosecution of an act committed abroad is excluded: (a) if the perpetrator was tried abroad and found not guilty or, in case he/she was found guilty, has served or is serving his/her sentence; (b) if, according to the foreign law, the act has fallen under the statute of limitations or the penalty imposed has been prescribed or pardoned; (c) if, according to the foreign law, a complaint by the victim is necessary for prosecution and such complaint was either never made or has been withdrawn.

2. The above provisions are not applied in relation to the acts stipulated in article 8.

3. Prosecution is excluded if a final decision has been issued on the same act by a court of the European Union.

#### **Article 10**

##### **Calculation of penalties served abroad**

A penalty served abroad in whole or in part is subtracted from the subsequent penalty imposed by the Greek courts, if a verdict on guilt is pronounced in Greece for the same act.

#### **Article 11**

##### **Recognition of foreign penal decisions**

1. If a Greek has been found guilty abroad for an act that, in accordance with the provisions of Greek laws, entails the imposition of supplementary penalties, the competent court of misdemeanours may impose such penalties.

2. The competent court of misdemeanours may also impose the measures of security provided for by the Greek laws to anyone found guilty or innocent abroad.

3. The above provisions are not applied in relation to the acts stipulated in article 9 par. 3.

#### **Article 16**

##### **Place of commission**

The act is regarded as having been committed at the place where the perpetrator committed the punishable act or omission in whole or in part, as well as the place where the punishable result occurred or, in cases of attempt, the place where the punishable result should have occurred according to the perpetrator's intent.

**Law 3948/2011**

**Adaptation of the provisions of internal law to the provisions of the Statute of the International Criminal Court ratified by Law 3003/2002**

**Article 2**

**Territorial Limits of application of this Law**

The provisions of this Law apply to both nationals and non-nationals for all acts enumerated in articles 7-15, provided that they have been committed:

- a) in the territory of the Greek State or on board of Greek ships or aircrafts wherever they are situated, unless they are subject to foreign legislation, according to international law,
- b) abroad, by a Greek national or by an alien who became a Greek national after the commission of the act,
- c) abroad, against the Greek State or against a Greek national.

## **Law Number 2287**

### **Validation of the Military Penal Code**

#### **Article 1**

##### **Definition of military offence**

A military offence is any act stipulated and punished by the clauses of this code.

#### **Article 2**

##### **Territory in which the code is in force**

The clauses of this code also apply for acts committed out of the country's territory.

#### **Article 3**

##### **Force of the penal code clauses**

The clauses of the Penal Code stand as always and apply also to the military offences, when no different regulations are included in the current code.

#### **Article 193**

##### **Jurisdiction of military criminal courts**

1. The individuals who are in the military when the act was committed as well as the prisoners of war fall under the jurisdiction of the military criminal courts.
2. Individuals in the military do not fall under the military courts but under the common criminal courts in the following instances:



- a. Non military offences which they commit during a leave of absence, holiday or suspension, when they exceed three months or during defection.
- b. Misdemeanors and petty offences committed during the hearing of any common criminal court, if they are judged immediately according to the clauses of the Common Penal Code.
- c. Offences against the laws for the conduct of public elections or referendums.
- d. The crimes of barratry, piracy and duel as well as crimes committed during a duel.
- e. Offences against the customs and forestal code and the laws about hunting and fishing.
- f. Offences against the law on taxation and market regulation, with the exception of acts contained in article 154 of this code.
- g. Capital offenses and misdemeanors which fall under the court of appeals through special laws.
- h. Crimes committed against bodies of the Hellenic Police when these bodies execute their duties or for reasons relating to them.

#### **Article 195**

##### **Participation of military personnel and civilians**

If the crime is committed by both military and civilian individuals then the competent courts are:

- a. The common criminal courts, if the crime pertains to the common criminal law.

- b. Court Martial for military personnel and common criminal courts for civilians, when the crime is military.

#### **Article 197**

##### **Competence on related, repeated and enduring crimes**

1. If numerous crimes are committed and some fall under military courts while others fall under common criminal courts, they are judged by the court which has jurisdiction for the most severe crime. Defection is an exemption since it is always judged by military courts.
2. If from the partial acts of a repeated crime, some were committed at a time when the offender was in the military and others when he/she was a civilian, all are judged by the common criminal courts. This clause applies accordingly to enduring crimes too.