



PERMANENT MISSION OF GREECE TO THE UNITED NATIONS

Ref. No. AS 853

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 Note LA/COD/50/1/18.12.2020 and General Assembly's Resolution 75/132 of 15 December 2020, has the honor to refer, with respect to Greece's criminal legislation, to the information and excerpts of relevant national provisions provided by the Permanent Mission of Greece, Verbal Note ref. No. 90.2.5.6/AS 976 dated 22 May 2020.

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.

New York, 23 April 2021

Office of Legal Affairs
of the United Nations
New York



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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