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## *The New Era of Smuggling in the Mediterranean Sea*

*a cura di*

*Efthymios Papastavridis e Eva Tzavala*

### I traffici illeciti nel Mediterraneo

*Persone, stupefacenti, tabacco*

*Report Grecia*



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# *Chapter I*

## *Human smuggling*

*Konstantinos Delligiannis-Virvos and Maria Belevoni*

### *1. Identification and translation of the most relevant rules and their evolution. Statistical data about the crime*

The crime of smuggling is regulated by Law 4251/2014 (“Code of Immigration and Social Inclusion and other provisions”) as amended by Law 4332/2015 (adaptation to the Directive 2011/98/EU), except from the offence of the illegal entry and exit from the country which is still regulated by Article 83 of Law 3386/2005.

Law 4251/2014 is divided into three parts and a total of 139 articles, the first part consisting of eight chapters specifying the scope of the law, the procedure for entering and leaving the country, the conditions for issuing residence permits and their withdrawal, whereas the eighth chapter includes provisions on the obligations of services, officials, notaries, employers, transporters etc. (Articles 27 to 31). The second part of the law includes provisions that harmonize Greek law with the EU Law through the incorporation of the relevant EU Directives on the rights of foreigners in the country, and finally, the third part includes social, organizational and transitional arrangements.

## *2. Comparison with the International and European law.*

As it was stated before Greece is party to a number of international treaties concerning transnational crime and the protection of victims of trafficking and smuggling, including the 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, ratified by Greece on 11 January 2011. As a result, the international rules stemming from these treaties are incorporated in Greek national law, including the Code of Immigration and Social Inclusion. Moreover, as an EU member State, Greece implements the relevant rules of EU law.

## *3. Structure and purpose of the criminal offence.*

The offenses of Law 4251/2014 can be distinguished into two categories based on the main act and its supporting acts. The main offense is that of illegal entry and exit from the country, as provided by Article 83 of Law 3386/2005 and maintained by this law in force, according to which the third-country national and the citizen of the country EU, exiting or attempting to leave or enter the Greek territory or attempts to enter it without the legal formalities, shall be punished by imprisonment of at least three months and a pecuniary penalty of not less than one thousand five hundred (1,500) euro. An aggravating case occurs if the person attempting to leave illegally is wanted by the judicial or police authorities, is under tax or any other obligations towards the State or there is a bribe involved so the sentence is at least six months imprisonment and the money in at least three thousand (3,000) euros.

The second category, which qualifies as the crime of smuggling of migrants, includes the acts under Articles 27 to

30 of Law 4251/2014, where the organs of the state or the individuals either by action or omission assist in the commission the above-mentioned offense. The acts that lead to the illegal entry, exit and residence of the alien in the country are envisaged as self-standing crimes, without being limited to the rules on complicity under the Greek Penal Code.

#### *4. Conduct(s)*

Pursuant to Article 30, paragraph 1 of Law 4251/2014, Greece punishes the masters or commanders of a ship, a vessel or an airplane, and drivers of all means of transport who transport to Greece third country nationals having no right of entry or for whom such entry is prohibited, as well as those who receive third country nationals from the entry points, the external or internal borders, in order to promote their entry in the country or in the territory of a Member State of the EU or a third country or facilitate their transportation or provide shelter for them.

With regard to the transfer of refugees, just like the case of other persons which are excluded from the provisions of the Law 4251/2014, the actus reus of the offense cannot be established. However, it is not the same for those who have applied for recognition as refugees or persons in need of international protection after their transfer to the country took place. In this latter case, the transfer of persons constitutes the offense of Article 30.

What is of interest at this point is the provision of paragraph 6 of Article 30, as amended by Article 14, paragraph 2 of Law 4332/2015, which provides that sanctions of that Article are not imposed in cases of rescue of people at sea and transportation of people who need international protection

under international law, as well as in cases of promotion within the country or facilitating transportation. The transfer may be carried out by an individual or a police or port authority and the emergency situation is based on the risk of life and physical integrity of persons.

The actus reus of the crime of smuggling of paragraph 1 of Article 30 involves four alternative main acts: (i) the act of transferring from abroad to Greece a third-country national who does not have a legitimate right; (ii) the reception for the purpose of promotion from the entry points, the external or internal borders to the country, an EU Member State or a third country; (iii) facilitating transport; and (iv) providing accommodation.

In respect of transport per se, only the transfer from abroad to Greece is punished, and not the other way around. It is an instant crime, like the offense of illegal entry, and is completed at the time of removal from the checkpoint.

Regarding reception for the purposes of this Article, the third country national must be picked up at the points of entry at the border, and not from a city within the country for the purpose of transporting it to another. It includes both the transfer to the interior of the country and its crossing abroad. Thus reception at the border that is aimed at crossing the third country national from Greece to an EU country or third country is also included in the *ratione materiae* scope of the provision.

The third way of committing the crime of Article 30 is to facilitate the transportation of the third country national, for which a transportation vehicle is required. The facilitator of the transfer is the perpetrator who provides the means of transport to the third country national to enter he himself illegally in the country. Thus, or the actus reus of the third

country national's transfer will be realized when the driver of the means of transport is the perpetrator or the facilitator of the transfer when the driver is the alien himself.

The act of providing accommodation is time-related to the act of the carrier and seeks to preserve its effect. The perpetrator undertakes to find the right accommodation, which is not necessarily a residential place, but rather any place where the third country national will remain for a short period of time.

##### *5. Defendant(s)*

Whoever commits the acts under Articles 28 to 30 of Law 4251/2014 is to be characterized as a defendant of the crime of smuggling of migrants, whether he/she acts as an organ of the State or acts as an individual, including those individuals who offer work (Art. 28) or residence (Art. 29) to migrants that have not legally entered in Greece. Those acts that lead to the illegal entry, exit and residence of the alien in the country are envisaged as self-standing crimes and the perpetrator can be prosecuted under the respective provisions too.

Importantly masters or commanders of ships, vessels or aircraft and drivers of any kind of means of transport transporting from abroad third country nationals who are not allowed to enter the Greek territory or who have been denied entry for any reason, as well as those who promote their entry from EU external or internal borders into the Greek Territory and vice versa to the territory of an EU Member State, or a third country or facilitate their transportation or promotion or provide them with accommodation for concealment are considered as perpetrators of the crime of migrant smuggling.

*6. Victim(s) of crime.*

The victims of the crime are the migrants that are smuggled into the Greek State, even if, in most cases, they are willing to do so and they pay the smuggler(s) to help them through their journey. However, if the means of transportation (ships, boats, trucks etc) are in bad condition, it can be argued that the smuggled migrants are in danger for their life, health and well-being, a fact that would render them victims of the crime of smuggling.

It can also be accepted that the crime of smuggling of migrants is committed against the Greek State and the European Union.

*7. Focus on specific issues.*

*7.1. Relation between the two criminal offences (trafficking and smuggling)*

Human trafficking differs from smuggling in two respects: First, trafficking entails coercion and exploitation, whereas smuggling does not. Second, trafficking does not necessarily involve migrants and border crossing. However, what starts as smuggling can develop into trafficking. The reasons behind the individual's departure in both cases are fleeing from violence and/or insecurity and the prospect of finding work. In cases of labour-trafficking, the two even seem to merge, at least up to the point of the migrant's arrival at the agreed destination.

As a result, very often the victims of smuggling qualify as victims of trafficking too. Generally, the applicable laws do not address these cases directly but it falls under the general Part of the Greek Penal Code regarding concurrence with other

crimes (Articles 94-98 of the Greek Penal Code), which were also amended by the Law 4619 / 2019, even though they remain largely the same. Specifically, in Art. 94, the Penal Code distinguishes between “real” and “ideal” concurrence of offences. The former could be defined as the commission of two or more offences which were perpetrated through two or more criminal acts. The latter refers to the situation whereby the offender, by perpetrating a single criminal act, commits two or more offences. Moreover, the Penal Code distinguishes between concurrence of custodial sentences (Art. 94) and concurrence of pecuniary sanctions (Art. 96). The distinction between “real” and “ideal” concurrence of offences applies to both.

On the other hand, as it was mentioned before, Art. 323A para. 3 (c) provides that “The act of the preceding paragraphs [i.e. paras. 1 and 2] shall be punishable by a sentence of imprisonment of up to twenty years and a fine **if it is linked to the illegal entry, stay or exit of the victim from the country**”. As a result, the Greek legal system treats the fact that a victim may be a migrant as an aggravating circumstance to the crime of human trafficking.

Finally, Articles 49 - 56 of the Law 4251 / 2014 refer to the “Entry of nationals from third countries - victims of human trafficking or smuggling in accordance with EU Directive 2004/81.

## *7.2. Does a criminal offence about irregular migration exist?*

As it is already mentioned, Article 83 of Law 3386/2005 third-country nationals exiting or attempting to leave or enter the Greek territory or attempt to enter it without the legal formalities, shall be punished by imprisonment of at least three



months and a pecuniary penalty of not less than one thousand five hundred (1,500) euro. An aggravating case occurs if the person attempting to leave illegally is wanted by the judicial or police authorities, has tax or any other obligations to the State or is a bribe, so the sentence is at least six months imprisonment and the money in at least three thousand (3,000) euros.

However, in cases the migrant is a victim of trafficking and / or smuggling and in accordance with paragraph 8 of Article 323A the public prosecutor may temporarily refrain from prosecution for breaches of the Code of immigration and other offences, if these offences were a direct consequence of the fact that the alleged perpetrator is indeed a victim of trafficking. If the complaint is found to be well founded, the abstention from the criminal prosecution becomes final.

## *8. Judicial decisions*

### *8.1. General Introduction*

Since Greece is a transit country, there are numerous cases in both Criminal and Administrative Courts concerned with the crime of smuggling of migrants. The number of these cases has been significantly increased since the Refugee Crisis of 2015. Unfortunately, due to structural problems that the greek judicial system faces there are even more cases that have to yet find their way to the court.

Most prominent cases are the following: Areios Pagos Cases 524/2018, 980/2017, 1691/2016, Three-member Court of Appeal upon Felonies 2602/2016.

### 8.2. *Conduct(s)*

According to Areios Pagos Case No. 524/2018 in order to assess the *mens rea* of the conduct of the crime of migrant smuggling there is need to take into account whether the perpetrator knew or could have known that the migrants are entering greek territory unlawfully. This decision builds upon previous decisions, including Areios Pagos Cases No. 1691/2016 and 980/2017. It also adds that an aggravating circumstance also occurs when the offender acts in a speculative manner, that is to say, the gain of income from his/her criminal behaviour.

### 8.3. *Defendant(s)*

Most of the relevant case-law concerns masters or commanders of ships, boats and drivers of trucks and cars that are used to transport migrants. Every decision uses the same wording, as it is referred to the relevant legislation: Masters or commanders of ships, vessels or aircraft and drivers of any kind of means of transport transporting from abroad third country nationals who are not allowed to enter the Greek territory or who have been denied entry for any reason, as well as those who promote from the points of entry, external or internal borders, into the Greek Territory and vice versa to the territory of an EU Member State, or a third country or facilitate their transportation or promotion or provide them with accommodation for concealment are considered as perpetrators of the crime of migrant smuggling.

### 8.4. *Victim(s) of crime*

According to Areios Pagos Case No. 980/2017, the means of transportation of smuggled migrants can be

considered as posing a threat to the life, health and well-being of the migrants. Areios Pagos has noted upon that instant that: “the court was satisfied that the defendants committed the act of illegal transfer from abroad to Greece of third-country nationals who are not allowed to enter the Greek territory, which could result in a risk of the migrants lives. The Court bases this judgment on the facts that emerged from the hearing. In particular it turned out that [...] their operation could pose a risk to those on board the inflatable boat, as the boat was sailing in full darkness, and the above vessel was unsuitable for this voyage, as it was traveling in the dark without navigational lights, lifejackets and fire extinguishers, nor telecommunications, and carried a larger number of passengers (i.e. 19 persons), that is designed to safely carry.”

#### *8.5. Most relevant decisions of The European Human Rights Court and of the Court of Justice of EU*

The European Court of Human Rights (ECtHR) has concerned itself with numerous cases regarding trafficking and smuggling. The most relevant ones are the following:

- B.A.C v. Greece, No. 11981/15, 13 October 2016;
- *Ha.A v. Greece*, No. 58387/11, Judgment of 21 April 2016;
- *H.A. v. Greece*, No. 58424/11, Judgment of 21 January 2016;
- *M.S.S. v. Belgium and Greece*, No. 30696/09, Judgment of 21 January 2011;
- *Ahmade v. Greece*, No. 50520/09, Judgment of 25 September 2012;
- *Rahimi v. Greece*, No. 8687/08, Judgment of 5 April 2011;

- *Saidoun v. Greece*, No. 40083/07, Judgment of 28 October 2010;
- *R.T. v. Greece*, No. 5124/11, Judgment of 11 February 2016;
- *L.E. v. Greece*, No. 71545/12, Judgment of 21 January 2016.

A critical ECHR decision, which also gained great publicity, was that of *Chowdury and others v. Greece*, No. 21884/15, Judgment of 30 March 2017.

The facts relate to 42 Bangladeshi nationals with undocumented status who worked in a strawberry farm in Manolada in Greece. The employers of the farm promised the workers' wages of 22 euros for seven hours labour and 3 euros for each overtime hour, less 3 euros for food. They worked in plastic greenhouses picking strawberries every day from 7 a.m. till 7 p.m. under the supervision of armed guards. They lived in makeshift tents of cardboard boxes and nylon without running water and toilets. They were warned by their employers that they would only receive their salaries if they kept on working for them.

After striking several times in order to receive their wages a further group of Bangladeshi nationals were recruited to work in the fields. Fearing that the wages of those recruited for the 2012-2013 season would not be paid 100-150 of the workers demanded their salaries from their employers. They were subsequently shot at by an armed guard, who seriously injured several of the workers.

After the hospitalization of many of the workers and a subsequent investigation by the Amaliada prosecutor, the Patras Criminal Court acquitted the four defendants of trafficking in human beings (Article 323A Greek Penal

Code) on the ground that the objective element of the crime had not been established in the case. They convicted one of the guards and one of the employers for grievous bodily harm and unlawful use of firearms, later commuted to a financial sum. The Court noted that the workers were fully aware of the conditions of living and the amount of salary and had freely accepted them. Moreover, during their free time they could move freely in the region and there had been no proof that the workers free consent had been taken away from them, that they had been trapped and their vulnerability exploited. Indeed, the workers had the possibility to negotiate their salaries and their illegal stay in Greece had not been used as a mechanism by which to force the workers to continue working for their employers. The Court's decision was later appealed by the defendants, which is still pending. The applicants in turn requested the Prosecutor of the Court of Cassation to quash the decision of the Criminal Court since said Court had not adequately examined the allegation of human trafficking and that a correct application of the Greek Penal Code requires examining whether third country nationals' vulnerabilities had been capitalised upon in order to exploit them. The Prosecutor denied such a request, indicating that the conditions to appeal had not been met.<sup>1</sup>

Before the ECtHR the applicants argued that they were subjected to forced labour and human trafficking and that Greece has failed to fulfil its positive obligation under Art. 4 of the European Convention on Human Rights to protect

<sup>1</sup> Case summary provided for in <https://www.asylumlawdatabase.eu/en/content/ecthr-chowdury-and-others-v-greece-application-no-2188415-30-march-2017>

them against these abuses, to conduct an effective investigation, and to prosecute the perpetrators.

The ECtHR found a violation of Art. 4 of the European Convention on Human Rights and it ruled that Greece failed to protect 42 Bangladeshi victims on a strawberry farm near the town of Manolada. The Court ordered Greece to pay each of the applicants who had participated in the proceedings between €16,360 and €20,360 (\$19,640 and \$24,440).

## 9. Literature

As with trafficking, the crime of smuggling is heavily discussed in relevant literature. However, the authors again concentrate on the factual aspects of the crime, i.e. the way the criminals operate, the implications upon the victims, the migrational routes that are used etc.

Essential bibliography on the crime of smuggling of migrants includes the following:

- Triandafyllidou A. and Maroukis T., *Migrant Smuggling* (Palgrave Macmillan 2012).
- Damanakis M., *New migration from and to Greece* (Cretan University 2014)
- Dimitriadi A., *Transit and immigration to Greece: the case of Afghans, Pakistanis and Bangladeshis* (Nisos 2013)
- Lakka L., *Control of irregular migration and restrictions of International Law* (2011)

- Chatzinikolaou N., *The criminal repression of illegal immigration: dogmatic approach and basic interpretation problems* (Nomiki Vivliothiki 2009)
- Chionatou E., *Greece, Italy, Spain: Mediterranean “gates” of illegal migration* (2011)
- *Legal Regime for alien women-victims of exploitation and illegal smuggling of migrants* (2008)

#### *10. Reform proposal(s)*

As is the case with the legislation against trafficking, the relevant anti-smuggling legislation has not been perceived as successful, especially with regards to its implementation by the competent authorities. Below is a listing of reform proposals:

- Increase efforts to identify victims of smuggling among vulnerable populations and refer them to specialized services;
- impose heavier fines upon perpetrators of smuggling.
- provide advanced training to judges, prosecutors, and law enforcement on smuggling investigations and prosecutions;
- establish formal procedures for the national referral mechanism, including formalizing NGO and international organization services into the mechanism;
- train first responders on victim identification and the national referral mechanism;
- employ witness protection provisions already incorporated into law to further encourage victims' participation in investigations and prosecutions;

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- allocate adequate funds towards a compensation fund;
- inform victims of their right to compensation;
- enhance harmonization with relevant EU Law and international rules and standards against smuggling of people.





## *Chapter II*

### *Human trafficking*

*Konstantinos Delligiannis-Virvos and Maria Belevoni*

#### *1. Identification and translation of the most relevant rules and their evolution. Statistical data about the crime.*

The Greek Penal Code refers to the crime of trafficking of people in Art. 323A. According to this provision:

“1. Any person who enforces, abducts, transfers, detains, harbours, surrenders or receives another person for the purpose of exploitation by force, threat of violence or other coercive means or by enforcing or misusing his powers is punished by imprisonment of up to ten years and a fine.

2. The same penalty shall be punished upon the culprit and if, in order to achieve the same purpose, the acts of the preceding paragraph are carried out with the consent of the victim by the use of fraudulent means or by taking advantage of the vulnerable position in which he is.

3. The act of the preceding paragraphs shall be punishable by a sentence of imprisonment of up to twenty years and a fine if: (a) it is done on a professional basis; (b) it is performed by an official who in the course of his duties or in his capacity as such engages or participates in any way in practice , **(c) is linked to the illegal entry, stay or exit of the victim from**

**the country**; or (d) result in severe bodily injury to the victim. A prison sentence of at least ten years shall be imposed if the act resulted in death.

4. The penalties of the preceding paragraph shall be punishable by the offense referred to in paragraphs 1 and 2 when directed against a **minor**, even when committed without the use of the means referred to therein. The same penalties shall also be punishable by anyone who, by means of paragraphs 1 and 2, recruits a minor for the purpose of using it in armed operations.”

According to para. 5 of the same provision, the concept of "exploitation" in the preceding paragraphs includes the conveyance of an unlawful property benefit from: (a) his or her affiliation to slavery or similar practices; (b) his or her affiliation; (c) begging the victim (labor exploitation); (d) committing criminal offenses by him; (e) removing the cells, tissues or organs of his body; (f) committing sexual acts, are exclusive end sexual stimulation (sexual exploitation) or g) forcing into marriage.

Moreover paras. 6 and 7 provide the following:

“6. With imprisonment of at least three years and a pecuniary penalty shall be punishable by anyone who, knowingly, without using the means referred to in paragraphs 1 and 2, recruits a person who is a trafficked person to work for him, accepts the services of that person, sexually exploits him or accepts the proceeds from his exploitation.

7. Whoever, without using the means provided for in paragraphs 1 and 2, expel minors to begging, with the purpose of exploiting their income, shall be punished by imprisonment and a fine.”

It is apparent that Article 323A of the Greek Penal Code refers to human trafficking regardless the nationality of

the victim (or the offender). However, as it is provided for in para. 3 (c) “The act of the preceding paragraphs [i.e. paras. 1 and 2] shall be punishable by a sentence of imprisonment of up to twenty years and a fine if it is linked to the illegal entry, stay or exit of the victim from the country”. As a result, the Greek legal system treats the fact that a victim may be a migrant as an aggravating circumstance to the crime of human trafficking.

Importantly, the final paragraph of Article 323A provides that “8. For anyone who denounces offenses committed by him as a result of the acts of the preceding paragraphs, the public prosecutor may, if the complaint is well founded, with the approval of the prosecutor's office, **temporarily refrain from prosecution for breaches of the Code of Immigration**, the Law on sexually exploited persons, and for offenses related to their participation in criminal activities, since that involvement was a direct consequence of the fact that they were victims of the offenses of the preceding paragraphs until an irrevocable decision is taken on the acts that have been denounced. If the complaint is found to be well founded, the abstention from the criminal prosecution becomes final.”

It must be noted that the Greek Penal Code was recently amended by virtue of Law 4619 / 2019. Article 323A was among the amended provisions, as well as Article 323 which referred to the crime of slave trade. The provisions of Article 323 were incorporated in the amended provisions of Article 323A (above), which however does not refer anymore to “slaves”, but only to “slavery or similar practices”.

Previously, human trafficking was covered by Law 3064/2002 ‘Fighting human trafficking, crimes against sexual freedom, child pornography and in general the economic

exploitation of sex life and [providing] support to the victims of the above actions'. This law first amended Articles 323A and 351 of the Greek Penal Code until their recent amendment with Law 4619 / 2019.

The Greek Police provides statistical data regarding cases of human trafficking that have been tackled.<sup>2</sup>

Cases according to the kind of exploitation for the years 2016, 2017 and the first half of 2018			
<b>Year</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Work Exploitation</b>	<b>3</b>	<b>0</b>	<b>1</b>
<b>Forced begging</b>	<b>4</b>	<b>1</b>	<b>0</b>
<b>Sexual Exploitation</b>	<b>18</b>	<b>20</b>	<b>18</b>

<sup>2</sup> Available at [http://www.astynomia.gr/index.php?option=ozo\\_content&perform=view&id=82074&Itemid=73&lang=](http://www.astynomia.gr/index.php?option=ozo_content&perform=view&id=82074&Itemid=73&lang=)

**NESMES REPORT – HUMAN TRAFFICKING**

<b>Victims per Sex and State of Origin (2016)</b>		
	<b>Male</b>	<b>Female</b>
<b>Albania</b>	<b>0</b>	<b>4</b>
<b>Afghanistan</b>	<b>1</b>	<b>0</b>
<b>Bulgaria</b>	<b>0</b>	<b>4</b>
<b>Greece</b>	<b>3</b>	<b>8</b>
<b>Moldova</b>	<b>0</b>	<b>2</b>
<b>Nigeria</b>	<b>0</b>	<b>1</b>
<b>Hungary</b>	<b>0</b>	<b>1</b>
<b>Ukraine</b>	<b>2</b>	<b>0</b>
<b>Romania</b>	<b>12</b>	<b>8</b>

<b>Number of victims per sex</b>	<b>18</b>	<b>28</b>
<b>Total number of victims</b>	<b>46</b>	

<b>Victims per Sex and State of Origin (2017)</b>		
	<b>Male</b>	<b>Female</b>
<b>Albania</b>	<b>0</b>	<b>2</b>
<b>Afghanistan</b>	<b>0</b>	<b>4</b>
<b>Bulgaria</b>	<b>3</b>	<b>3</b>
<b>Greece</b>	<b>0</b>	<b>4</b>
<b>Moldova</b>	<b>0</b>	<b>8</b>
<b>Ukraine</b>	<b>0</b>	<b>2</b>
<b>Romania</b>	<b>0</b>	<b>9</b>
<b>Russia</b>	<b>0</b>	<b>3</b>
<b>Number of victims per sex</b>	<b>3</b>	<b>35</b>
<b>Total number of victims</b>	<b>38</b>	

**NESMES REPORT – HUMAN TRAFFICKING**

<b>Victims per Sex and State of Origin (first half of 2018)</b>		
	<b>Male</b>	<b>Female</b>
<b>Albania</b>	<b>0</b>	<b>1</b>
<b>Bulgaria</b>	<b>0</b>	<b>6</b>
<b>Greece</b>	<b>0</b>	<b>5</b>
<b>Belarus</b>	<b>0</b>	<b>2</b>
<b>Pakistan</b>	<b>1</b>	<b>0</b>
<b>Romania</b>	<b>0</b>	<b>2</b>
<b>Russia</b>	<b>0</b>	<b>1</b>
<b>Number of victims per sex</b>	<b>1</b>	<b>17</b>
<b>Total number of victims</b>	<b>18</b>	



## *2. Comparison with the International and European law.*

Greece is a State-party to the major international and regional treaties against human trafficking. These include the Council of Europe Convention against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. However, a grave omission is the fact that Greece has not yet signed and ratified the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Nevertheless, the internal legislation of Greece is in conformity with its obligations under the treaties it has ratified, a fact that is also mentioned in the Introductory Report of the amended Penal Code.

Furthermore, as EU member-State, Greece abides by the relevant EU law regarding trafficking in human beings. To address trafficking in human beings, the EU has put in place a comprehensive, gender-specific and victim-centred legal and policy framework, namely the *Directive 2011/36/EU on combating and preventing trafficking in human beings and protecting its victims* as well as the *EU Strategy towards the eradication of trafficking in human beings for the period 2012-2016*.

Directive 2011/36/EU is the fundamental EU legislative act addressing trafficking in human beings. It establishes robust provisions on victim's protection, assistance and support, but also on prevention and prosecution of the crime. The 2012-2016 EU Strategy has provided a coherent basis and direction for the EU policy in the area of trafficking in human beings and coming to its end has completed nearly all actions envisaged.

The Directive 2011/36/EU, as well as other relevant EU documents, are incorporated in Greek legislation.

### *3. Structure and purpose of the criminal offence.*

The recently amended Article 323A of the Greek Penal Code covers a wide range of instances of human trafficking, since it incorporates all the relevant provisions of the previous Penal Code. As a result, the definition of the crime of human trafficking is very general and includes “the enforcement, abduction, transferring, detention, harbouring, surrendering or receiving of a person for the purpose of exploitation by force, threat of violence or other coercive means or by enforcing or misusing ones powers” while the many variables of the crime (for example whether the victim is a minor or a migrant) are considered as aggravating circumstances.

The criminal offence is against the life and health, freedom, human dignity and the working rights of the victim. All these rights and freedoms are protected by the Greek Constitution and Laws, as well as international and European instruments.

### *4. Conduct(s)*

As provided for in the relevant provisions, the act of human trafficking is the enforcement, abduction, transferring, detention, harbouring, surrendering or receiving of a person for the purpose of exploitation by force, threat of violence or other coercive means or by enforcing or misusing one’s powers. The *actus reus* is further enhanced by the following paragraphs of Article 323A. For example, whoever recruits a person who is a trafficked person to work for him, accepts the

services of that person, sexually exploits him / her or accepts the proceeds from his exploitation (para. 6) or incites minors to begging, with the purpose of exploiting their income (para. 7) is considered as having engaged in the crime of human trafficking. As a result, it is crucial to refer to the specific acts referred to in Article 323 A in order to assess the *actus reus* of the crime in accordance with Greek law.

In order to determine the degree of *mens rea* that the relevant legislation requires to characterize an act as human trafficking, recourse to the general provisions of the Penal Code is needed.

The provision of Art. 27 indicates that the notion of intent [*mens rea*] is manifested in the following three variations: 1. Purpose (or direct intent of first degree - *dolus malus*) The offender acts in order to bring about the consequences of his illegal behaviour. 2. Direct Intent (or direct intent of second degree – *dolus directus*) The offender is not aiming at the materialization of the constitutive elements of a crime but visualizes them as the necessary consequences of his behaviour and, nevertheless, accepts it. In these cases, the offender accepts the commission of the offense as a necessary side effect of his intended aim. 3. Indirect or Eventual Intent (*dolus eventualis*) The offender is aware of or visualizes as probable the materialization of the constitutive elements of the offense as a result of this action but, nevertheless, accepts it. In these cases, the offender accepts the commission of the offense as a probable side effect of his intended aim.

It becomes evident from the relevant provisions that the required *mens rea* of the crime of human trafficking is any degree of intent, as described above, since the relevant provisions are of a general character and contain no provisions regarding degree of intent. The intent mainly focuses on the

intent to “exploit” the trafficked person, either by gaining profits from them, sexually exploiting them or force them into labour, and, in the case of minors, forcing them into begging.

With respect to negligence, Art. 28 of the Greek Penal Code defines it as the lack of attention (care), which the offender “owed” under the circumstances and which he/she could have exercised and, because of which, either he/she did not envisage the criminal consequences of his/her actions or he/she did envisage them but believed that they would not materialize. Evidently, the crime of human trafficking cannot be committed by negligence.

#### *5. Defendant(s).*

The defendant of the crime of human trafficking is whoever committed the acts described in Article 323A of the Greek Penal Code, provided that he/she acted fraudulently / intentionally.

#### *6. Victim(s) of crime.*

According to the first paragraph of Article 323A of the Greek Penal Code, the victim of the crime of trafficking is any person who is enforced, abducted, transferred, detained, harboured, surrendered or received by another person for the purpose of his / her exploitation by force, threat of violence or other coercive means or by enforcing or misusing his powers. The victim of the crime may be a minor, a migrant, or have other special characteristics which, if exploited, are treated as aggravating circumstances for the crime of human trafficking.

*7. Other elements of the criminal offences.*

The recently amended Article 323A contains all the relevant elements of the criminal offences. Neither the Greek Penal Code nor other Laws include any other provisions regarding a further specialization of the crime of human trafficking.

*8. Criminal and non-criminal sanctions.*

Each paragraph of Art. 323A' includes the criminal sanction for the crime of human trafficking and its aggravating circumstances.

First of all, and in accordance with paras. 1 and 2 of this provision, any person who enforces, abducts, transfers, detains, harbours, surrenders or receives another person for the purpose of exploitation by force, threat of violence or other coercive means or by enforcing or misusing his powers, and if, in order to achieve the same purpose, these acts are carried out with the consent of the victim by the use of fraudulent means or by taking advantage of the vulnerable position in which he is, is punished by imprisonment of up to ten years and a fine.

Furthermore, the act of the preceding paragraphs shall be punishable by a sentence of imprisonment of up to twenty years and a fine if: (a) it is done on a professional basis; (b) it is performed by an official who in the course of his duties or in his capacity as such engages or participates in any way in practice, (c) is linked to the illegal entry, stay or exit of the victim from the country; or (d) result in severe bodily injury to the victim. A prison sentence of at least ten years shall be imposed if the act resulted in death. The penalties of the preceding paragraph shall be punishable by the offense

referred to in paragraphs 1 and 2 when directed against a minor, even when committed without the use of the means referred to therein. The same penalties shall also be punishable by anyone who, by means of paragraphs 1 and 2, recruits a minor for the purpose of using it in armed operations.

Finally, according to paragraphs 6 and 7 anyone who, knowingly, without using the means referred to in paragraphs 1 and 2, recruits a person who is a trafficked person to work for him, accepts the services of that person, sexually exploits him or accepts the proceeds from his exploitation is punished with imprisonment of at least three years and a pecuniary penalty, while, whoever, without using the means provided for in paragraphs 1 and 2, incite minors to begging, with the purpose of exploiting their income, shall be punished by imprisonment and a fine.

#### *9. Criminal liability of legal persons/corporate liability.*

The Greek Penal Code refers to the criminal liability of individuals and not legal persons or corporations. In cases a legal person or a corporation is found to exercise practices that are related to human trafficking, the individuals behind these actions, as well as the lawful representatives, owners and shareholders, could be held criminally liable for the relevant offences.

## *10. Judicial decisions.*

Since the Article 323A of the Greek Penal Code was recently amended, there are no published judicial decisions based on the amended article. However, since article 323A incorporates all the relevant provisions of the previous Penal Code, older judicial decisions can be also used in the context of understanding the characteristics of the criminal offence. Furthermore, it must be noted that the case-law study demonstrates that the provisions of the law have been interpreted several times in a different manner and with a view to achieving a more severe repression.

The most relevant cases on the matter are Areios Pagos Cases No. 783/2013, 2397/2005, 673/2011, 1499/2011, 917/2008, 408/2014 and 326/2007, Patras Court of Appeals Case No. 110/2011, Dodecanese Court of Appeals Case No. 24/2005, and Case No. of the Amaliada Council of Misdemeanors 90/2003.

### *10.1. Structure and purpose of the criminal offence.*

According to “Areios Pagos”, the Supreme Civil and Criminal Court of Greece, in the Case No. 673/2011(G’ Criminal), the offender's behavior may be committed in more alternative ways due to the nature of the “multiple crime” of human trafficking. Furthermore, in cases where more than one means are used by the offender, he/she still commits a single act and a single sentence is imposed on him/her, the size of which can be augmented. In order to establish the crime provided for in paragraph 1 of Article 323a of the Greek Criminal Code, which is committed it without the free consent of the affected person, it is objectively required that the

offender on the one hand recruit, transport or promote within or outside the territory, withhold, care, surrender with or without consideration to another person, or receive from another person the victim and on the other hand, by using the above means of violence, intimidation or other coercive means, that is, one that results in the free will of the victim of human trafficking in or through the imposition or abuse of power.

#### *10.2. Conduct(s).*

According to Areios Pagos Case No. 783/2013, the actus reus of the crime consists of the enforcement, abduction, transferring, detention, harbouring, surrendering or receiving of a person for the purpose of exploitation by force, threat of violence or other coercive means or by enforcing or misusing one's powers.

In addition to the elements of Article 323 par. a and b, the crime is committed as a crime with an 'excessive subjective nature' that requires the intent of the perpetrator, which includes, on the one hand, his knowledge and will, using violence or threat or any of the other compulsory means mentioned, to recruit, transfer, promote, subjugate, detain, etc. by himself/herself or by another person whose action is judged by complicity ("aiding") provisions, the victim, or by fraudulent means or other benefits referred above, to obtain the consent of the victim or to entice him or her to take action in order to become an object of exploitation and on the other hand, the intent of the perpetrator to exploit the victim's work himself or herself in third parties, without the need to



accomplish that purpose, that is to say, the effective completion of the crime.

### *10.3. Defendant(s).*

Apart from the case where the defendant is the sole perpetrator, according to Article 45 of the Criminal Code, if two or more have jointly committed a criminal offense, each is penalized as the perpetrator of the act. Furthermore, it follows from the Article 47 par. 1 of the Greek Criminal Code that a form of complicity (mere aiding) is any material or mental, positive or negative assistance provided to the perpetrator of that particular act, prior to, or at the time of the commission, that provided by the offender with intent. [“Areios Pagos” (E’ Criminal) in the Case No. 326/2007].

### *10.5. Victim(s) of crime.*

Relevant jurisprudence confirms the provision of Article 323 of the Greek Criminal Code, according to which the victim of the crime is any person who is enforced, abducted, transferred, detained, harboured, surrendered or received by another person for the purpose of his / her exploitation by force, threat of violence or other coercive means or by enforcing or misusing his powers. The victim of the crime may be a minor, a migrant, or have other special characteristics which, if exploited, are treated as aggravating circumstances for the crime of human trafficking.

For instance, in Case No. 326/2007 adjudicated by Areios Pagos, the victims were foreigners in great vulnerable position because of their financial condition, while in case 917/2008 of Areios Pagos, the victims were also foreigners (Albanians) in

dire financial situation and who had minor children and were unable to feed them because of their miserable financial situation. Taking advantage of the above vulnerable position of the parents of the minors, as well as the minors themselves, by using deceptive means and in particular by providing assurances that minors would spend well in Athens, that they would care of them and provide them proper work, from which they would earn enough money to deal with the financial problems of themselves and their children, gained the consent of, and through them, the consent of the minors, who were persuaded.

*10.6. Other facts relevant for the criminal liability.*

As far as evidence procedure and defendant's rights are concerned, Areios Pagos in Case No. 673/2011 ruled that the Court of First Instance did not violate the defendant's rights by law, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights, the absence of the foreigner suffering from a CBA at the hearing of the Court of Instance of the case, the fact that the victim did not testify in public as a witness and that the Court had taken into account the preliminary ruling and interrogation of that witness, together with the other evidence. Areios Pagos found the above-mentioned ground of appeal inadmissible and that the exercise of his rights under the above provisions 510 par 1 element A in conjunction with Article 171 (1) (a). d. is unfounded and therefore rejected.

### *10.7. Constitutional matters.*

Constitutional matters regarding the criminalization of human trafficking are not raised in the relevant judicial decisions. Constitutional matters are raised only with respect to matters of judicial procedure. For example, in Cases No. 783/2013, 917/2008 and No. 673/2011 adjudicated by Areios Pagos, the conviction of the perpetrators has the specific and detailed reasoning required by the provisions of Article 93 para. 3 of the Constitution.

### *11. Literature*

Taking into account the ongoing refugee crisis, as well as the continuous contemplation of the international and Greek communities on the matter of human trafficking, Greek academic literature has occupied itself greatly with the matter.

Of course, the available bibliography is about the criminal offence as stipulated in the Penal Code before its amendments, since the new Penal Code entered into force only in June 2019. Public discourse on the matter has not yet been crystallized as to whether the new amendments are beneficiary or not.

Nevertheless, the crime of human trafficking has been greatly discussed along with the other relevant penal provisions that used to be in force (i.e. the crime of slave trade and the previous Article 323A).

Moreover, most academics focus on the international and European Union legislation on the matter of human trafficking.

In addition, there is extensive literature on the factual aspects of the crime of human trafficking, i.e. the structure of the criminal networks, the origin of the victims and / or the conditions of them during the perpetration or tackling of the crime of trafficking.

Essential bibliography on the crime of human trafficking includes the following:

- Kyriazi T., *Trafficking in human beings* (Nomiki Vivliothiki, 2010)
- Papassiopi-Passia Z., *The Legal Status of Foreign Women - Victims of Exploitation and Illegal International Trafficking*, Volume III. "International and European Efforts", EPEAEK Pythagoras II, Gender Equality, (Department of Law, Aristotle University of Thessaloniki 2008)
- Ariadne Network Against Human Trafficking, *Fighting Human Trafficking*, (Sakoulas 2007)
- EDEA: *Proposals on the issue of trafficking in human beings and the situation in Greece*, (2007)
- Lazos G., *The foreign prostitute in Modern Greece, A qualitative and quantitative phenomenology* (1998)
- Micha E., *A Practical Legal Guide on addressing Human Trafficking* [in greek] (2014)
- Sykiotou A., *Human Trafficking in the Balkans: The victim, the Perpetrator and repressive strategies* [in greek] (Sakoulas, 2003).
- Triandafyllidou A. and Maroukis T., *Migrant Smuggling* (Palgrave Macmillan 2012).
- Papantoniou A., *Trafficking: the Role of the “Customer”*: *Legal Approach and Empirical Data* [in greek] (Sakoulas, 2013)

- Magliveras K., *Combating Trafficking in persons: the role and action of International Organizations* (Sakoulas, 2007)
- Symeonidou - Kastanidou E., Kosmidis C. and Dimitrainas G., *The new Law 3064 / 2002 on Human Trafficking* [in greek] (Sakoulas 2003).

## 12. Reform Proposal(s).

It remains to be seen whether the new amendments to the Greek Penal Code will be adequate to further combat the challenges posed by the crime of trafficking. Nevertheless, there is much work to be done especially in field work and the ways the Greek Authorities try to combat trafficking in human beings. Below is a listing of reform proposals, some of which are also included in the relevant 2018 UNHCR report on Trafficking in Persons<sup>3</sup>:

- Increase efforts to identify trafficking victims among vulnerable populations and refer them to specialized services;
- provide advanced training to judges, prosecutors, and law enforcement on trafficking investigations and prosecutions;
- establish formal procedures for the national referral mechanism, including formalizing NGO and international organization services into the mechanism;
- train first responders on victim identification and the national referral mechanism;

<sup>3</sup> Available at <<https://www.refworld.org/docid/5b3e0b344.html>>

- strengthen specialized services including shelter and psycho-social support for adult male and child victims;
- employ witness protection provisions already incorporated into law to further encourage victims' participation in investigations and prosecutions;
- allocate adequate funds towards a compensation fund;
- inform victims of their right to compensation.

### *13. Criminal Procedure Law.*

#### *13.1. International and European judicial cooperation and implementing law about the following issues: taking of evidence, transfer of sentenced persons, transfer of detained persons.*

Greece has signed and ratified a number of bilateral agreements regarding police and judicial cooperation on the suppression of the crimes of human trafficking and migrant smuggling.

According to the Greek Police official database, by 26 May 2015, these agreements were the following:<sup>4</sup>

Bilateral Agreements on Police Cooperation:

<sup>4</sup> The list in greek is available at <[http://www.astynomia.gr/images/stories/2015/pinakas\\_symf\\_ell.pdf](http://www.astynomia.gr/images/stories/2015/pinakas_symf_ell.pdf)>

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	<b>Country</b>	<b>Place and Date</b>	<b>Ratification by the Parliament</b>
<b>1</b>	Egypt	Cairo, 21/02/1998	Law.2754/ 1999 (Official Gazette A'251 /19-11-1999)
<b>2</b>	Albania	Athens, 17/07/1992	Law 2147/1993 (Official Gazette A'96 /16-6-1993)
		Tirana, 12/03/2010 <i>(Implementation Protocol)</i>	Law 3962/2011 (Official Gazette 98 A'/29-4-2011)
<b>3</b>	Armenia	Athens, 18/06/1996	Law 2499/1997 (Official Gazette 100 A'/28-5-1997)
<b>4</b>	Bosnia and Herzegovina	Athens, 09/02/2006	Law 3725/2008 (Official Gazette 255 A'/17-12-08)

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5	Bulgaria	Athens, 08/07/1991	Law 2096/1992 (Official Gazette 188 A'/30-11-92)
		Sofia, 22/02/1996 <i>(Implementation Protocol)</i>	(Official Gazette A' 68/ 23-04-96)
		Sofia, 29/04/2008 <i>(Agreement for the establishment and operation of a Contact Centre)</i>	Law 3779/2009 (Official Gazette 132 A'/7-8-2009)
		Sofia, 29/04/2008 <i>(Agreement on one stop control for the crossing of borders)</i>	Law 3780/2009 (Official Gazette 133 A'/7-8-2009)
		Sofia, 09/06/2010 <i>(Amended Agreement)</i>	<i>(not yet ratified)</i>



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6	France	Paris, 19/05/2008	Law 3901/2010 (Official Gazette 215 A'/23-12- 2010)
7	United States of America	Corfu, 28/06/2009	Law 3800/2009 (Official Gazette 162 A'/4-9-2009)
8	Iran	Tehran, 16/03/1995	<i>(not yet ratified)</i>
9	Israel	Athens, 05/04/1995	Law 2383/1996 (Official Gazette 40 A'/7-3-1996)
		Jerusalem, 08/10/2013 <i>(Amended Agreement)</i>	<i>(not yet ratified)</i>
10	Italy	Rome, 10/01/2000	Law 3159/2003 (Official Gazette 64 A'/26-06- 2003)

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<b>1</b> <b>1.</b>	China	Beijing  05/06/2007	Law 3963/2011 (Official Gazette 99 A'/29-04-11)
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<b>1</b> <b>2.</b>	Croatia	Athens,  23/11/1998	Law 2756/1999 (Official Gazette 253 A'/19-11-99)
<b>1</b> <b>3.</b>	Cyprus	Nicosia,  03/12/2007	Law 3936/2011 (Official Gazette 56 A'/21- 03-11)
<b>1</b> <b>4.</b>	Lithuan ia	Athens,  26/06/1995	Law 2426/1996 (Official Gazette A' 149/ 04-07-96)
<b>1</b> <b>5.</b>	Malta	Valeta,  24/05/2001	Law 3125/2003 (Official Gazette 63 A'/14- 03-2003)
<b>1</b> <b>6.</b>	Hungar y	Budapes t,  17/02/1993	Law 2222/1994 (Official Gazette 111 A'/06-07-94)

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1 7.	Ukraine	Athens, 24/04/2001	Law 3158/2003 (Official Gazette 163 A'163/26-6- 2003)
1 8.	Pakistan	Islamabad, 12/05/2005	Law 3571/2007 (Official Gazette 124 A'/08-06-2007)
1 9.	North Macedonia	Ohrid, 08/07/1998	( <i>not yet ratified</i> )
2 0.	Poland	Warsaw, 18/06/1993	Law 2221/1994 (Official Gazette 110 A'/6- 7-1994)
2 1.	Romania	Athens, 06/06/1992	Law 2138/1993 (Official Gazette 84 A'/28- 5-1993)
2 2.	Russia	Athens, 06/12/2001	Law 3215/2003 (Official Gazette A'- 311/31-12-2003)

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<b>2 3.</b>	Serbia	Athens, 17/10/2008	Law 3935/2011 (Official Gazette 55 A'/21- 03-11)
<b>2 4.</b>	Sloveni a	Ljubljana, 27/09/2002	Law 3269/2004 (Official Gazette 186 A'/11-10-2004)
<b>2 5.</b>	Turkey	Ankara, 21/01/2000	Law 2926/2001 (Official Gazette 139 A'/27-06-2001)

**Multilateral Agreements on Police Cooperation**

		<b>Place and Date</b>	<b>Ratificati on by the Parliament</b>
		Corfu, 02/10/1998	Law 2933/2001 (Official Gazette 150 A'/10-7- 2001)

1	Organization of the Black Sea Economic Cooperation (BSEC)	Tbilisi, 30/04/1999 (1st Protocol)	Law 3334/2005 (Official Gazette 92 A' /12.04.05)
		Kiev, 15/03/2002 (2nd Protocol)	Law 3452/2006 (Official Gazette 70 A' /03.04.06)
		Athens, 03/12/2004 (3rd Protocol)	Law 2933/2001 (Official Gazette 150 A' /10-7-2001)
2	Southeast European Law Enforcement Center	Bucharest, 09/12/2009	Law 4054/2012 (Official Gazette 45 A' /7-3-12)
		Bucharest, 24/11/2010 (Additional Protocol)	Law 4245/14 (Official Gazette 62 A' /11-3-14)

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3	Protocol on the Cooperation between Greece, Bulgaria and Romania	Sofia, 08/09/1998	Law 2814/2000 (Official Gazette 69 A/10-3-2000)
4	Agreement between Greece, Bulgaria and Turkey on the establishment of a Common Contact Center	Sofia, 25/05/2015	<i>(not yet ratified)</i>

*13.2. Police cooperation.*

The National Rapporteur Office is a regular associate partner in numerous international projects implemented by Greek state and civil society stakeholders.

One of the main deliverables of the National Rapporteur Office, developed through EU cooperation and funding, is the National Referral Mechanism. The National Rapporteur Office’s strategic objective for the period 2018-2023 is to bring in more stakeholders in first level identification of potential victims of trafficking and / or smuggling in order to consolidate a more inclusive identification regime for the

victims. The Office is also a regular contributor to the European Union Regional Task Force that addresses the issue of mixed migration and refugee flows.

The Greek Directorate for International Police Cooperation operates under the auspices of the Greek Police Force and concerns itself, amongst others, with the tackling of international crimes such as human trafficking and migrant smuggling.

The Directorate for International Police Cooperation is an institutional forum for communication with the Police Authorities and Government Services of third States, as well as the International and European Organizations, on cooperation issues related to the responsibilities of the Hellenic Police Headquarters. Based on article 8 of Presidential Decree 178/2014, it is structured into 5 departments, namely the Support and Missions Division, the European and International Affairs Department, the SIRENE Division, the INTERPOL Department and the EUROPOL Division. In addition, under the same Decree the Joint Intelligence Center for International Police Cooperation is established within the structures of the Directorate.

Importantly, the main purpose of the SIRENE Department is to exchange supplementary information under the Schengen Convention. The content of the information concerns the taking of administrative and criminal measures against persons and objects, such as arrests of European arrest warrants, detection and seizure of stolen vehicles, detection and protection of minors, etc. In this context, it provides guidance to police, customs services with regard to the operation of the Schengen Information System (how to implement the Convention and the procedure to be followed in any case).

### *13.3. Auditing of the victims and their protection.*

Since the 2015 refugee crisis, Greece has adopted the “hotspot approach” to audit and protect not only victims of trafficking and/or smuggling but also refugees and irregular migrants. The “hotspot approach” is part of the European Agenda on Migration of April 2015 adopted with the aim to address the immediate challenges related to the refugee crisis and to equip the EU with the tools to better manage migration in the medium and long term. In that context, a number of hotspots, i.e. first reception facilities, were set up to establish streamlined cooperation on the ground between Member States in the frontline of asylum-seeker and other migrant arrivals and the relevant EU agencies, in order to swiftly identify, register and fingerprint them. However, there are still many concerns raised about the reception conditions in hotspots with respect to the effectiveness of vulnerability screenings, the availability of interpreters and mediation services, the number of people accommodated at the facilities, and their access to healthcare.<sup>5</sup>

At the national level, the responsibility to audit victims of human trafficking and oversee related assistance ultimately lies with a specifically mandated government agency. However, procedures related to the identification of vulnerabilities are in reality implemented by a considerable number of actors, including national authorities, NGOs, EU agencies and international organisations, such as the UNHCR. In principle, it is the duty of the National Centre for Social

<sup>5</sup> See more at Scherer A., “Victims of Trafficking in Hotspots”, European Parliamentary Research Service (2018), available at <[http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631734/EPRS\\_BRI\(2019\)631734\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2019/631734/EPRS_BRI(2019)631734_EN.pdf)>.



Solidarity (EKKA) along with the Greek Police to act as the principal government agency coordinating the efforts of all anti-trafficking stakeholders in the framework of the Greek national anti-trafficking and anti-smuggling mechanism.

#### *13.4. Protection of minors.*

In addition to difficulties related to victims' identification at an early stage, the living conditions in reception centres increase the risks of further exploitation for vulnerable groups, such as women and unaccompanied, minors while they are waiting for their papers to be processed. In November 2018 the UNHCR reported on the 'abhorrent' conditions in the centres in Samos and Lesbos.<sup>6</sup> The UNHCR expressed concern over the protection of the most vulnerable groups, given the high number of reports it had received of sexual and gender-based violence being perpetrated against women and minors. The UNHCR insisted that Greece take urgent steps to address the humanitarian situation of around 11,000 asylum-seekers on these islands. In its 2017-2018 annual report<sup>7</sup> and its country report on Greece, Amnesty International similarly noted that security continues to be a main source of concern in many of the hotspots. According to the same report, as of 15 December 2018, there were 2,256 unaccompanied minors waiting to be placed in shelters, including 74 detained in police stations.

<sup>6</sup><https://www.unhcr.org/news/briefing/2018/11/5be15c454/unhcr-urges-greece-accelerate-emergency-measures-address-conditions-samos.html>

<sup>7</sup> Amnesty International, *Report 2017-2018 - The state of the World's Human Rights*, available at <<https://www.amnesty.org.uk/files/2018-02/annualreport2017.pdf>>

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Currently, according to the relevant legislation, after an unaccompanied minor is identified, the Reception and Identification Service is responsible to inform the local prosecutor who acts as temporary guardian of her/him in the area of his jurisdiction. The Reception and Identification Service also informs the National Centre for Social Solidarity (EKKA) for the identification of the unaccompanied minors. EKKA is the responsible authority for the accommodation of them. The Office of the National Rapporteur monitors closely the process and advocates towards its timely conclusion.

# *Chapter III*

## *Drug Trafficking*

*Eleni Gerasoudi, Konstantinos Delligiannis-Virvos and Maria Belevoni*

### *1. Legal basis: national legal provisions.*

The Greek Penal Code does not provide for the criminalization of illicit trafficking of drugs. All matters regarding the production, possession, transport, storage, supply, circulation and trafficking are governed by Special Penal Laws.

The current legislation in force is ***Greek Law 4139/2013*** (Government Gazette, issue A, nr. 74/20.03.2013) *on dependent substances and other provisions*, as amended.

The first legislation that criminalized the use of drugs in Greece was adopted in 1919 (Law 1681/1919). This law linked use of narcotic drugs with begging and truancy, either directly or indirectly, and punished "those who were using hashish", those who provided room for the use of hashish and those who sold or supplied hashish. A year later, a special law banned the cultivation, marketing and consumption of Indian cannabis (Law 2107/1920). At the beginning of the 1930s, Law

5539/1932 "on the drug monopoly and control of these drugs" was adopted, criminalizing the use of cannabis but did not include heroin among narcotic drugs. Greek Law 6025/1934 and Compulsory Law 2430/1940 adopted in relation to narcotic drugs, including heroin. In 1970, during military junta in Greece, the Law Decree Nr. 743 was issued, regulating drugs' use. At the end of the 1980s, Greek Law 1729/1987 was adopted which dealt extensively and substantially with the trafficking and use of drugs and constituted the core legislation for all subsequent legislation. In 2006, a Code of Laws on Drugs was adopted, codifying all previous legislation (Government Gazette, issue A, Nr. 103/26.06.2006).

## *2. Legal definition of drug trafficking.*

Article 20 paragraph 2 of Law 4139/2013, as amended by Law 4523/2018, stipulates the following definition:

*"2. Subject to provisions of articles 2A and 29, "**drug trafficking offense**" shall mean any act by which the narcotic drugs or precursors referred to in the tables of article 1 (2) are being trafficked and especially the import, export, transit, sale, purchase, offer, dealing, distribution, dispatch, delivery, storage, deposit, manufacture, possession, transport, adulteration, the sale of adulterated monopoly drug substances, the cultivation or harvesting of any plant belonging to the genus of cannabis, the plant opium poppy, any kind of plant belonging to the genus of erythrocycle and any other plant from which drugs are produced, the production and extraction of narcotic drugs, the supply of substances to substitute dependence in breach of the relevant*

*provisions, the management of a store where systematic drug trafficking takes place in knowledge of the manager, the financing, organizing or directing drug trafficking activities, the adulteration or the drafting or the use of a falsified medical drug prescription for the purpose of their trafficking, as well as the mediation in any of these acts.”*

Prior to Law 4139/2013, the legal definition of drug trafficking was included in Article 20 par. 1 (e) of Law 3459/2006, which provided for the criminalization only of import, provision, manufacture, production, sale, delivery, transport, possession and distribution of precursors, whereas by virtue of the new law, all forms of commission of the trafficking of precursors, like drugs, is punishable. According to the Explanatory Report of Article 20 of Law 4139/2013, the article was amended based on “the experience from the implementation of the basic provisions on drug trafficking, the guidelines of the Council Framework Decision 2004/757/JHA of the European Union and the need to widen the threatened penalties so as to give the Court the necessary room for measuring the penalty proportionate to the gravity of the crime”.

The notion of drug “trafficking” is tantamount to drug “trade”. Greek law provides for a definition of drug trafficking whereas the jurisprudence provides for a definition of drug trade. All standardized drug trafficking activities aiming to a direct or indirect trafficking of narcotic substances constitute the concept of “trade” (see Supreme Court (Plenary) 34/1994, Supreme Court (Plenary) 1200/1976, Supreme Court 1283/2005, Supreme Court 873/2002, Supreme Court 1577/1995, Supreme Court 90/1994, Supreme Court

177/1987, Supreme Court 569/1984, Supreme Court 911/1982).

### *3. Legal definition of drugs.*

The current legislation on illicit trafficking of drugs provides the following definition in article 1 par. 1 (L. 4139/2013):

*“By the term "drugs", within the scope of this law, are meant substances with different chemical structure and different action on the central nervous system and with common features changing the user's anxiety and causing dependence of a different nature, mental or physical and of varying degrees, as well as alleviating those chronically suffering from the symptoms of a particular disease for which they are considered medically necessary.”*

In paragraph 2 of the same article, there is an explicit reference to paragraph 2 of article 1 of Law 3459/2006 (previous legal regime) whereby the latter remains in force, even after the entry into force of the new law. Paragraph 2 of art. 1 of L. 3459/2006 includes Tables (A, B, C and D) of substances indicatively constituting drugs.

### *4. Soft vs. Heavy Drugs.*

To begin with, we would like to highlight two facts: a) the Greek legislation on narcotic drugs does not draw a distinction between “heavy” drugs and “soft” drugs; and b) there is no general decriminalization or legalization of the use of cannabis

in Greece; rather a partial one regarding industrial and pharmaceutical cannabis.

In general, cannabis and its derivatives fall into the category of drugs for which the possession and use is prohibited. However, the penalties are more lenient towards those who, for their own exclusive use, in any way obtain or possess drugs in quantities justified only for their own use or use or cultivate cannabis plants in number or which is justified only for their individual use. For this category of offenders, law stipulates for an imprisonment of up to five (5) months (article 29 of L. 4139/2013). The determination of the purpose of servicing their own exclusive use shall be made taking into account the type, purity and quantity of the particular drug, in combination with the frequency of use, the time of use, the daily dose and the specific needs of the particular user.

More specifically, regarding the raw materials and substances of cannabis varieties of the Cannabis Sativa L species, the Greek legislation, as it now stands, explicitly provides **for two exceptions**: article 1 par. 3 (industrial cannabis) and article 2A of Law 4139/2013 as amended (pharmaceutical cannabis).

In 2013, by virtue of Law 4139/2013, **industrial cannabis** was **legalized** in Greece. The initial paragraph 3 of art. 1 of the above Law stipulated that the raw harvested products resulting from the cultivation of cannabis varieties of Cannabis Sativa L species containing up to 0.2% of tetrahydrocannabinol (THC) shall be exempted from the list of drug substances, in accordance with the relevant provisions of the EU law (par. 3 of article 1 of L. 4139/2013). In 2016, the Joint Ministerial

Decision Nr. 1750/39224/31.03.2016 was issued to regulate the details on the terms and conditions for cultivating the cannabis varieties of *Cannabis Sativa L* containing up to 0.2% of THC, in accordance with EU Regulation nr. 1307/2013 of the EU Parliament and the Council and the EU Regulations 809/2014 and 639/2014 of the EU Commission. This Ministerial Decision is still in force. However, the wording of paragraph 3 of art. 1 of L. 4139/2013 has changed and it now reads as follows: *“The above substances do not include the raw harvested products resulting from the cultivation of cannabis varieties of Cannabis Sativa L species containing up to 0.2% of tetrahydrocannabinol (THC). Also, with the exception of baby foods, foodstuffs within the meaning of Article 2 of Regulation (EC) No 178/2002 are not included, cosmetic and dietary supplements containing tetrahydrocannabinol (THC), which will be defined with the corresponding decisions of the following paragraphs.”* (par. 3 of article 1 of Law 4139/2013 as amended by Law 4554/2018).

In 2018, by virtue of Law 4523/2018 (Government Gazette, issue A, nr. 41/07.03.2018) amending Law 4139/2013, a **second exception** was introduced in the Greek drug law regarding the legalization of **medical cannabis**. *“By way of exception, it is approved by single act the production, possession, transport, storage, supply of raw materials and substances of cannabis varieties of the Cannabis Sativa L species containing more than 0,2%, of tetrahydrocannabinol (THC) as well as the establishment and operation of a manufacturing unit for the processing and producing of pharmaceutical final cannabis products for the sole purpose of either supplying them to the State monopoly for distribution for medical purposes or exporting them.”* A couple of months



later, the Ministerial Decision nr. 51483/700/F.15/14.05.2018 was issued to regulate the terms and conditions for cultivating and processing pharmaceutical cannabis. The pharmaceutical cannabis is being cultivated under controlled circumstances from the approved industries. Approvals have a duration of 5 years, whereas the approved industries have to renew their supportive documents on an annual basis. By April 2019, three industries have received an installation approval (Biomecann, Bioprocann, Tikunolam).

*5. Relevant international law provisions applicable in Greece.*

Greece is a party to all major international treaties regarding drug trafficking, organized crime and corruption. More analytically, it has ratified: a) the Single Convention on Narcotic Drugs in 1972 and its Amending Protocol in 1985; b) the Convention on Psychotropic Substances in 1977; c) the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1992; d) the UN Convention against Transnational Organized Crime in 2011 and its three Additional Protocols;<sup>8</sup> and the) the UN Convention against

<sup>8</sup> Greece ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2011 with the following reservation: “The Greek State ratifies Article 13 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, ... without prejudice to Articles 9A of the Constitution, 19(3) of the Constitution, 8(1) of the European Convention on Human Rights, 436-457 of the Code of Criminal Procedure and 352B of the Criminal Code, as added by Article Second (12) of Law 3625/2007 (Government Gazette 290A), Law 2472/1997, as amended by Articles 8 of Law 2819/2000 (Government Gazette 84A), 10 of Law 3090/2002 (Government Gazette 329A) and Eighth of Law 3625/2007, Law 3471/2006 (Government Gazette 133A) and Presidential Decree 47/2005 (Government Gazette

Corruption in 2008. According to Article 28 para 1 of the Greek Constitution, the treaties that have been ratified by the Greek Parliament and have entered into force, as applies to all the above treaties, are part of the Greek legal order and prevail over any contrary provision of Greek legislation.

*6. Relevant EU law provisions applicable in Greece.*

The EU Directive 2017/2103 (of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of ‘drug’ and repealing Council Decision 2005/387/JHA) is applicable in Greece.

By virtue of Ministerial Decision D3c/81508/24.10.2018 (Government Gazette, issue B’, nr. 4838/30.10.2018) the annex of “Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of

64A).” Greece has ratified the Protocol Against the Smuggling of Migrants by Land, Sea and Air in 2011 with the following reservation: “Article 13 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, without prejudice to Articles 9A of the Constitution, 19(3) of the Constitution, 8(1) of the European Convention on Human Rights, 436-457 of the Code of Criminal Procedure and 352B of the Criminal Code, as added by Article Second (12) of Law 3625/2007 (Government Gazette 290A), Law 2472/1997, as amended by Articles 8 of Law 2819/2000 (Government Gazette 84A), 10 of Law 3090/2002 (Government Gazette 329A) and Eighth of Law 3625/2007, Law 3471/2006 (Government Gazette 133A) and Presidential Decree 47/2005 (Government Gazette 64A). The Greek State makes use of Article 20(3) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, and declares that it is not bound by para. 2 of this article.”

‘drug’ and repealing Council Decision 2005/387/JHA” was incorporated in L. 4139/2013.

### *7. Criminal offence and the protected interest.*

The protected interest been offended by the acts of drug trafficking is life, health and physical integrity of an indeterminate number of people (L. Kotsalis, M. Margaritis, I. Farsedakis, *Drugs. Interpretation article by article of L. 4139/2013*, Nomiki Vivliothiki, 2013, p. 48).

### *8. Analysis of the elements of the crime.*

According to the Greek Courts, “any act by which the circulation of such substances (narcotic drugs or precursors) is either effected or facilitated, under any cause” constitutes drug “trafficking” (see Supreme Court 1200/1976, Supreme Court 1283/2005, Supreme Court 873/2002, Supreme Court 246/1999). The basic offense is a multiple acts crime, meaning that there are different conducts which might constitute a drug trafficking crime. Law 4139/2013 as amended provides an indicative list:

1) the **import, export, transit**: The import is defined as the illegal entry of drugs in the Greek territory, through its land, sea or air borders (see Supreme Court 951/2006). There is an extensive jurisprudence on different ways of illegal entry, such as by a vehicle (bus, car), through the airport, by mail, by a commercial or private ship or within the body of the perpetrator. The crime of illicitly exporting drugs is committed by trafficking narcotic substances outside of Greece, through its borders, abroad. The “transit” of drugs is a continuing

offense and occurs when drugs are trafficked within Greece, with a third country destination. The transit of drugs differs from the transport of drugs which is being committed by moving drugs from one place to another within the Greek territory, by any means of transport (see for instance Supreme Court 1677/2007).

2) the **sale** and **purchase**: For the determination of the terms “sale” and/or “purchase”, the relevant provisions of the Greek Civil Code on sale of goods apply (see article 513 et seq. of the Greek Civil Code). Therefore, only three elements are important: the transfer of ownership, the delivery of the narcotic drugs to the buyer and the payment of the agreed price to the seller. In relation to the above, according to solid jurisprudence by the Greek Courts, the identification of the exact quantity of drugs, the specific place and time of sale, the identity of the seller or buyer, the specific price agreed and the payment method are not necessary for the fulfillment of the constituent elements of the crime.

3) the **offer**: This act is related to the trafficking and delivery of drugs, in most cases of small quantity of drugs, to specific persons free of charge.

4) the **dealing**: It refers to distribution and delivery of small quantity of drugs in more than one person, even if the dealer does not collect or keep the money (price).

5) the **distribution**: This term covers all other acts which are not specifically mentioned in law.

6) the **dispatch** and **delivery**/ the **production** and **extraction** of narcotic drugs: These acts were not included in the initial text of Law 4139/2013 but were later on added (by virtue of Law 3727/2008) in order to harmonize the relevant Greek legislation with the EU Council Framework Decision 2004/757/JHA provisions.

7) the **storage**: This act differs from the act of simple possession given that it requires an additional act of securing their possession.

h) the **deposit**: The notion of the “deposit” is the same as deposit being defined in article 822 of the Greek Civil Code. “By a depository's agreement, the custodian receives from another a movable property to guard it, with the obligation to return it when requested”.

8) the **manufacture**: This constitutes a preparatory act of trafficking which is being criminalized under the Greek law in force.

9) the **possession**: This act usually coincides with other acts of trafficking. There is an extensive jurisprudence related to the notion of “possession”. Among them, two significant decisions: a) The Supreme Court has interpreted the provision in order to include the possession of narcotic drugs in the hands of the perpetrator with the sole purpose to deliver them to the purchaser by the person indicated to him/her (Judgment Nr. 39/2000), b) The shipowner is considered as a perpetrator of the crime of drug trafficking through possession even if the act of possession is committed by the captain or the crew of the ship, given that the shipowner knew and accepted the loading of drugs into the ship (Court of Appeal of Piraeus 118/1996).

For the justification of the commission of the crime, the identification of the specific quantity, the identity of seller or buyer, the specific date of the commission of the crime, the reference of the motive of the perpetrator's conduct are not necessary (see Supreme Court 723/2011, Supreme Court 182/2008, Supreme Court 76/2007, Supreme Court 669/2005, Supreme Court 1187/2005).

10) the **adulteration** and sale of adulterated substances: For the commission of this crime, the narcotic substances must have been bought by the state monopoly agencies and then been adulterated and sold in the market.

11) the **cultivation** or **harvesting** of cannabis: See also article 19 of the UN Convention against illicit trafficking of drugs. The term “cultivation” is defined as act related to the agricultural production of cannabis, without permit from the state, such as the planting of seeds, the gardening of plants, the supervision of their growing, the giving of instructions as to their care etc.

12) the **supply** of substances to substitute dependence in breach of the relevant provisions: see also article 22 of L. 4139/2013 which applies in relevant cases.

13) the **management of a store** where systematic drug trafficking takes place in knowledge of the manager: For the commission of such a crime, the offender must, in addition to mens rea, have a purpose of producing a certain additional effect. Offences with such a double subjective element are called offences with an “overflowing” subjective element.

14) the **financing, organizing** or **directing** drug trafficking activities: By virtue of this provision, preparatory and participatory acts of instigators or accomplices are treated equally to the physical perpetrators of the crime.

15) the **adulteration** or the **drafting** or the **use** of a **falsified medical drug prescription** for the purpose of their trafficking: The offender of such a crime must act with a purpose of producing a certain additional effect, i.e. trafficking. This provision constitutes *lex specialis* in relation to the provisions of the Greek Penal Code on adulteration (see article 216 GPC) and therefore, if the adulteration is

committed with the purpose of drug trafficking, it is only Article 20 of L. 4139/2013 that applies.

16) the **mediation**: Mediation usually occurs in the sale and purchase of drugs. A mediator brings in contact the seller and the buyer. Whether the sale or purchase have indeed taken place is irrelevant for the criminalization of this act (see Supreme Court 249/2005). However, the conviction must specify the exact date and means by which the offender attempted to bring in contact or communication the other persons for the purpose of drug trafficking in order to be fully and duly justified.

Drug trafficking requires an intention by the offender to produce the prohibited result (or an acceptance of the result), knowing that is either certain or probable to occur. Meaning that the offender must at least have acted with intent (*dolus eventualis*, see Supreme Court 1722/2008) and have accepted to distribute the drugs. The element of “intention to further distribute the drugs” distinguishes the offense of drug trafficking under article 20 of L. 4139/2013 to the misdemeanor of supply and possession of drugs for personal use only (article 29 L. 4139/2013).

*9. Sanctions: criminal penalties, administrative sanctions, accessory penalties, security measures, users/small quantity, aggravating circumstances.*

Article 20 par. 1 of L. 4139/2013 reads as follows: “1. Notwithstanding articles 21, 22 and 23, whoever illegally traffics drugs is punished by imprisonment **for at least eight (8) years** and by a fine of **up to three hundred thousand**

**(300.000) Euros.**”. In view of the above, the Greek legislator has categorized the crime of drug trafficking as a felony. According to article 18 of the Greek Penal Code “every act punishable by the death penalty or imprisonment is a felony”. In addition, article 52 par. 3 of the same Code stipulates that “the duration of the non-permanent imprisonment shall not exceed twenty (20) years nor be less than five (5) years...”. Taken all the above into consideration, the **drug trafficking offense is punishable cumulatively with an imprisonment of minimum eight (8) to maximum twenty (20) years and a fine of maximum 300.000 Euros.**

For the calculation of the punishment, the Court will take into consideration the gravity of the act (e.g. the quantity and the category of drugs), the defendant’s character and other criteria, stipulated in article 79 of the Greek Penal Code, including the principle of proportionality.

There are **no administrative sanctions** in the Greek legislation regarding drug trafficking.

However, Law 4136/2013 provides for **accessory penalties and security measures** imposed to drug trafficking offenders, as per the case. Article 36 (in line with article 67 of the Greek Penal Code) grants the Court the right to impose an interdiction of exercising a profession, as an accessory penalty to the convicted, for a period of 1 to 5 years following the completion of his/her prison time and the expiry of the security measure, if any. Furthermore, another accessory penalty is the confiscation of drugs as well as the confiscation or seizure of assets related to the crime (see articles 40 and 41 of L. 4136/2013 in line with article 76 par. 1 of the Greek Penal Code). Moreover, article 37 (in line with article 73 of the



Greek Penal Code) gives the Court the right to order a 1 to 5 years' ban against the convicted for staying in certain places, as a security measure.

In addition to the above specific provisions of L. 4136/2013, the general provisions of the Penal Code on accessory penalties and security measures apply, such as article 68 on the publication of the conviction, article 60 on the deprivation of political rights and article 74 on the expulsion of aliens.

### **Mitigating circumstances**

Greek law provides for a reduction or an increase of the penalty depending on special circumstances. Article 84 of the Greek Penal Code provides an indicative list of general mitigating circumstances, such as: a) that the perpetrator has lived, until the date of the crime, an honest, individual, family, professional and general social life; b) the fact that his/her act was driven by not humble causes or by great poverty or suffering under the influence of serious threatens or under threat from a person to whom he/she is obedient or with which he/she is in a relationship of dependence; c) that in his/her act, he/she was incited by improper behavior of the victim or was led by anger or violent sadness following an unfair behavior against him/her; d) the fact that he/she showed sincere remorse and sought to eliminate or reduce the effects of his/her act and e) that the perpetrator behaved well for a relatively long time after the act.

### **Special treatment**

Article 21 par. 1 of L. 4139/2013 imposes a more lenient penalty, an imprisonment of **up to three (3) years** to: a) whoever distributes small quantities of drugs to meet the needs of everyday use and is addicted; b) whoever disposes drugs without profit to his / her family, in order to meet their immediate needs for use; and c) whoever, from the quantity of drugs he has purchased for his personal needs, disposes, without profit, part of to another for his / her own exclusive use.

Similarly, under paragraph 1 of Article 29 of L. 4139/2013, whoever, **for his own exclusive use**, in any way obtains or possesses drugs in quantities justified only for his own use or makes use or cultivates cannabis plants at a number or extent justified solely for his individual use is punishable with **imprisonment of up to five (5) months**. In order to delimitate the purpose of “servicing his/her own exclusive use”, Greek Courts take into account the type, purity and quantity of the drug in question, together with the frequency of use, the time of use, the daily dose and the specific needs of the user. Even more, the perpetrator may go unpunished if, considering the circumstances of the act and the personality of the perpetrator, the Court concludes that the offense was entirely incidental and is unlikely to be repeated. Under the same article (par. 4), whoever makes false, distorts or uses a fake medical prescription for the purpose of his/her own exclusive use, shall be punished with an imprisonment of up to two (2) years.

Moreover, the element of **addiction** constitutes a ground for requesting an abatement or waiver of penalty by the offender if proven that due to his/her addiction, at the time of

the commitment of the offense, he/she had a diminished mental capacity. Therefore, if these conditions are fulfilled, a user found guilty of a drug trafficking offense under article 20 of L. 4136/2013 will be punished by imprisonment for at least one (1) year. Whereas if the user is found guilty of a drug trafficking offense under the special circumstances provided for in article 21 of the same law (small quantity, for personal use or use of family members etc), he/she will be punished by imprisonment for up to one (1) year (article 30 par. 4 (b) and (c) of L. 4136/2013). In such context, drug trafficking is designated by the Greek legislator as a misdemeanor. Furthermore, if a user commits the aggravated crime of drug trafficking under article 22 of the same law, he/she will be punished by non-permanent imprisonment for up to ten (10) years (article 30 par. 4 (d)). Regarding the aggravated crime of article 23 of L. 4136/2013, there is no differential treatment reserved to users, since, these crimes cannot relate to his/her addiction.

If the person responsible for one of the acts referred to in articles 20 to 22, **provides**, prior to his/her final conviction and on his/her own initiative, **information** for the arrest or dismantling of a drug trafficker or a criminal drug trafficking organization and given that the gravity of the defendant's act is manifestly less than the gravity of the acts of the persons in whose arrest he/she have contributed, the Court may recognize mitigating circumstances in his/her benefit. At the same time, the Court may order the suspension of execution of the sentence for a period of two (2) to twenty (20) years.

### **Aggravating circumstances**

Article 22 imposes more severe penalties, an imprisonment of **at least ten (10) years** and a fine **from fifty thousand (50.000) euros to five hundred thousand (500.000) euros** to “an offender of article 20 and article 21 par. 1 (a) in case he is a civil servant, who, due to his service, deals with drugs, and in particular by protecting or prosecuting the offender of the present law, or belonging to the staff of the centers or institutions referred to in article 2 (a) or in case his purpose is to facilitate or conceal other felonies committed”. The same penalty applies also to: a) doctors prescribing drugs use where, knowingly there is no real and specific medical indication or supplying drugs, containing any form of narcotic drugs, knowing that they will be used for the manufacture or trafficking of drugs, and b) pharmacists or distributors of drugs in general, supplying, as directors or employees of the pharmacy, drugs knowing that there is no medical prescription meeting the requirements of law or that the prescription is inappropriate.

Other aggravating circumstances besides the offender’s profession is the place of the crime (in sensitive areas such as military camps, police departments, prisons, youth centers of any kind, school establishments of all levels, other units of training, in sporting areas, camps, private training centers, in social service facilities, in places where pupils or students are concentrated for educational or sporting purposes), the profile of the offender (recidivist) or his/her acting **as a member of a criminal organization**. Articles 187 and 187A of the Greek Penal Code provide whoever forms part of a structured group, with sustained action, comprising of three or more persons and aiming at committing more than one felonies is considered a member of a criminal organization. Moreover, regarding

**recidivism**, the provisions of L. 4139/2019 deviate from the general provisions of the Greek Penal Code. According to article 88, a recidivist is the person convicted for a felony with intent for which the law provides for an imprisonment of at least three months, who has already been convicted, in the past 10 years, of a felony, by a penalty of imprisonment exceeding six months. On the other hand, article 22 par. 2 (c) of L. 4139/2013 defines as a “recidivist” the defendant who, without being judged as an addicted, has already been convicted irrevocably for the felony of drug trafficking in the last 10 years.

Article 23 of L. 4139/2013 deals with the most serious types of drug trafficking, resulting to maximum penalties (such as life imprisonment). Whoever commits the offense of article 20 or 22 of L. 4139/2013 with the involvement of drugs that have caused or are able to cause serious injury (article 310 par. 2 of the Greek Penal Code) or death to a third person or dangerous harm to the health of many people is sentenced to **life imprisonment or imprisonment of at least ten (10) years and a fine from 50.000 euros to 600.000 euros**. Likewise, if an adult offender is a professional drug trafficker who incites minors to drug use or uses minors in his/her business is sentenced to the same penalty above. Furthermore, if a professional drug trafficker commits or finances illicit trafficking of drugs with the intention to earn more than 75.000 euros and/or uses weapons during the trafficking act or his/her arrest is sentenced to **life imprisonment and a fine from 50.000 euros to 1.000.0000 euros**. These heavier penalties are justified by the high risk that the particular offender entails and the infringement of public order due to the illegal use of weapons. Two elements contribute towards the

characterization of a particular offender as “extremely dangerous”: his/her acting as a professional and the large quantity of drugs (specified by the expected profit from the illicit trafficking act).

However, these penalties are higher than the EU average. In accordance with the EU Council Framework Decision 2004/757/JHA, the above aggravating circumstances may lead to penalties of a maximum of at least between 5 and 10 years of imprisonment.

Finally, it should be noted that recently the Drafting Committee for a new Penal Code has concluded its work and handed over a Draft Code to the Government. The Government launched an open public consultation on the proposed Code. The deadline for the open public consultation has expired and currently, the new Draft Code is pending at the Ministry for Justice. According to Article 463 “1. Where, in special laws, a prison sentence is threatened, a pecuniary penalty shall be added alternatively, as provided for in Article 57 of this Code. 2. Where, in special laws, an imprisonment of up to ten years is threatened, it shall be converted into imprisonment of at least three years and a pecuniary penalty. 3. Where, in special laws, only life imprisonment is threatened, a temporary imprisonment of at least 10 years shall be added alternatively.”. Relating to drug trafficking, whoever is found guilty with the aggravating circumstances of Article 23 par. 2 of L. 4139/2013, is sentenced only to life imprisonment. If, however, the new Penal Code is adopted, an alternative punishment of imprisonment from 10 to 15 years will be offered.

Note: The new Greek Penal Code was adopted by Law 4619/2019 (Government Gazette, issue A’, nr. 95/11.06.2019) which entered into force on 01/07/2019.

### *10. Corporate liability.*

Article 26 of L. 4139/2013 provides for the responsibility of legal persons, to the benefit of which, the offenses of articles 20, 22 and 23 of that Law have been committed. The criminalization of corporate acts is irrespective of the individual liability of physical persons which represent the legal person and are involved in the same illicit trafficking act either as perpetrators or instigators or accomplices. To the above legal entities are imposed by decision of the head of the relevant regional directorate of the Financial Crime Investigation Corps of the Ministry of Finance: a) an administrative fine from 100.000 euros to 1.000.000 euros; b) a temporary - or in case of repeated offense a permanent - ban on commercial activity and temporary - or in case of repeated offenses under Article 88 et seq. of the Penal Code, definitive - exclusion from tax and other benefits as well as public benefits or aids; c) a temporary or final closure of the shop, office or other, in general, facilities which were used to commit the crime; d) a dissolution of the legal person by judicial decision; e) a confiscation of drugs and/or a confiscation or seizure of assets related to the crime.

### *11. Concurrence with other crimes.*

The Greek penal system makes a distinction between ‘real’ and ‘ideal’ concurrence with other offences. For the former to occur the offender needs to inflict (with one or more acts or omissions) - at a given time – several legal interests, resulting in multiple crimes and thus in true concurrence. As for the

latter case, when the offender inflicts one legal interest, but more than one punishment is enforceable, there is an ideal concurrence of crimes.

Under the previous legislative framework (Law Decree Nr. 743/1970 and Law Decree Nr. 1729/1987), each illicit act constituted an autonomous crime, the trafficking of drugs being a multiple acts crime. Therefore, if an offender committed multiple illicit acts, even if those acts referred to the same quantity of drugs, the Greek Penal Courts acknowledged that there has been a true concurrence of crimes. For instance, the Supreme Court stated that the possession, for personal use and the use of drugs truly concur (1633/2009). However, since the supply, possession and cultivation are preparatory acts to the use of drugs, the majority of the Greek legal doctrine agreed that this is a case of an ideal concurrence of crimes.

Finally, the national legislator opted for the ideal concurrence of crimes, by explicitly providing, in Article 20 paragraph 3 of the current law in force (L. 4139/2013), that “If more trafficking acts refer to the same amount of drugs, one only drug offense occurs. For the computation of the punishment, it is taken into account the total number of trafficking acts, the kind, the total quantity and the purity of the drug, as well as the severity of the relevant health effects.”. In fact, the legal interested protected under the criminalization of all the above acts is health of an indefinite number of people.

The offense of drug trafficking may indeed concur with other offenses prescribed by the Greek Penal Code or Special Penal Laws, such as illicit possession of weapons and weaponry and resistance to the authorities (see Supreme Court 542/2005, 1585/2005, 124/2004, 1429/2004), (see Supreme



Court 861/1998), possession of weapons (see Supreme Court 1585/2005), falsification of certificates (see Supreme Court 642/1998), transportation of an illegal migrant (see Supreme Court 706/2004), cultivation and harvest of cannabis, grievous bodily harm and resistance (see Supreme Court 861/1998).

## *12. Jurisdictional issues.*

For the drug trafficking offenses of article 20 and 22 of L. 4139/2013, the Court of Appeal (single judge formation) is competent at first degree. The Court of Appeal for Felonies (three membered panel) is seized after appeal, at second degree. According to the Greek Code of Penal Procedures (articles 211A together with article 171 par. 1 (d)), only the testimony or accusation of a co-defendant for the same act is not sufficient to convict the accused. Moreover, the proceedings are considered null if the following categories of persons testify as witnesses before the audience: (a) those who have exercised prosecution or investigative duties or worked as a secretary of the interrogation in the same case; (b) those who have been found guilty of the act being tried, even if they have not been punished.

For the drug trafficking offenses of Article 21 of L. 4139/2013, the Criminal Court of First Instance is competent both at first degree (single judge formation) and second degree (three membered panel), in case of an appeal.

For the drug trafficking offenses of article 22 of L. 4139/2013, the Court of Appeal for Felonies is competent both at first degree (three membered panel) and second degree (five membered panel), in case of an appeal.

Under article 82 par. 10 of the Greek Penal Code, penalties imposed in case of drug trafficking convictions as felonies (articles 20, 22 and 23 of L. 4139/2013) shall not be converted. However, the penalties imposed under articles 21 and 30 par. 5 of L. 4139/2013 may be converted since, in such cases, the offenses are categorized as misdemeanors. In addition, the penalties imposed under articles 21 and 30 par. 5 of L. 4139/2013 may be also suspended (in accordance with article 99 of the Greek Penal Code).

### *13. Jurisprudence.*

Of all the illicit products trafficked by organized crime, drug trafficking is the most famous and it has received systematic attention over the last decades. The dockets of the Greek Criminal Courts are full of drug trafficking cases since, as already stated, drug trafficking is widespread. Moreover, the great majority of these cases reach “Areios Pagos”, the Supreme Civil and Criminal Court of Greece.

#### *13.1. Conduct (s).*

In order to understand how actus reus and mens rea of drug trafficking offenses are interpreted by Greek courts, we will present in full the consistent case law on the interpretation of the above in relation to one of the basic offenses, which is stipulated under Article 20 of L. 4139/2013. The aforementioned article refers to three different forms of offenses: a) the import of narcotic drugs into the Greek territory; b) the export of narcotic drugs from the Greek territory and c) the transit of narcotic substances. The common

feature of the above cases is the crossing of the country's borders.

With regard to actus reus of the crime, according to the consistent case law of the Greek courts, a decisive element in the first form of the offense, is the entry of narcotic drugs on the borders of Greek territory from the territory of another state (Key Case: Supreme Court 1535/2002). In order to establish the objective element of the drug import offense in Greek territory, an objective act of importing narcotic drugs is required, in any way and means, (Supreme Court 65/2005, 1994/2002, 1535/2002, 1865/2001), i.e. 1) by land (Supreme Court 422/1996) in a tourist bus (Supreme Court 132/2016), in a car (Supreme Court 1204/1984) from Albania (Supreme Court 1090/2010, 1770/2008, 1645/2008, 2545/2005) or Turkey (Supreme Court 1/2008, 460/2007, 1034/2003), in a human body (Supreme Court 1357/1989), 2) by sea (Supreme Court nos. 520/2003, 1122/2006, 1812/1997) in commercial ships from Latin America (Supreme Court 110/2003, 226/2003), in private high speed boats from Albania (Supreme Court 1160/2007), Lebanon (Supreme Court 60/2006), Turkey (Supreme Court 2394/2005), 3) by mail in an envelope from Chili (Supreme Court 1190/2006) or Netherlands (Supreme Court 2259/2002), 4) by air (Supreme Court 1637/1997 and more recent no. 776/2016 – import of cannabis by a non-addicted person). The crime occurs with the entry of the narcotic drugs into Greek territory (Supreme Court 1882/1994), even by sending them by mail (Supreme Court 1328/1993 - the crime is considered complete once the recipient acquires the possession of the sent narcotic drugs). The factual background requires a specific and detailed justification which does not lead to contradictions and

ambiguity, otherwise the decision is rejected (Supreme Court 1287/1998).

The crime of drug export from the Greek territory is carried out by the movement of narcotic drugs outside the borders of the state (Supreme Court 615/1987, 1014/1984).

Transit of drugs is to be distinguished from transport of drugs within the Greek territory. The crime of drug transit requires the transport of drugs through Greece with a third country destination. For the interpretation of the term ‘transit’ see Supreme Court 1084/2007, 873/2002). Given that the air space above Greece is part of the Greek territory, the objective element of the drug trafficking crime is fulfilled even if the plane did not land in Greece.

The crime of drug trafficking also occurs in case of illegal transport of drugs within the Greek territory, by bus (Supreme Court Judgment 1078/2016 - defendant of Albanian nationality), by car (Supreme Court 1687/2016 – multiple defendants), by ship (Supreme Court 1429/2008).

With regard to mens rea of the crime concerned, the perpetrator's intent is required, in all the above cases, consisting either in the attempt to produce the illegal result or in knowledge (sure or possible) and acceptance of this result. That is, the perpetrator must have at least the knowledge of a potential (*dolus eventualis*, Supreme Court 1722/2008) and accept, either to import from a foreign state to Greek territory narcotic drugs, either to export them from the Greek territory to a foreign state or finally to use the Greek territory as a passage of the drugs coming from and going to different countries (Supreme Court 48/1999). Furthermore, it is accepted that it is necessary to diagnose and specifically justify the purpose of the drug trafficking and at the same time exclude the offender's purpose for personal use (Supreme

Court nos 1947/2010, 802/2010, 1664/2009, 2365/2008, 1626/2008, 902/2007, 17/2007, 921/2003 and Court of Appeal of Athens nos 1502/2004, 1143/2004, Court of Appeal of Patras no 269/1996, Council of Misdemeanours Judges of Kastoria no 118/1992). L. 4139/2013 adopted the above jurisprudence of Greek courts (see Art. 20 par. 2) and henceforth, all forms of drug trafficking may legitimately be characterized as fulfilling the purpose of “servicing his own exclusive use” in accordance to art. 29 of L. 4139/2013 (lawful alteration of charges).

### *13.1. Definition of trafficking.*

The notion of trafficking is equal to distribution, according to Greek jurisprudence. Greek law does not provide a definition for the term “trafficking”. However, Greek courts have ruled that all standard drug trafficking acts aiming to a direct or indirect distribution of drugs formulate the notion of “trafficking” (see Supreme Court Judgments nos 34/1994, 1200/1976, 1283/2005, 873/2002, 1577/1995, 90/1994, 177/1987, 569/1984, 911/1982).

### *13.2. Participation in a criminal organization.*

According to Greek law, participation in a criminal organization is an aggravating circumstance in drug trafficking offenses (see art. 22 L. 4139/2013). In practice, this type of offense usually concurs with the felonies of art. 187 and 187A of the Greek Penal Code relevant to setting up and participating into a criminal organization of three or more persons with sustained action, seeking to commit more than one crimes. Paragraph 3 of Art. 187 of the Greek Penal Code

stipulates that whoever is organized with other persons to commit a misdemeanor seeking financial gain risks imprisonment of up to three years. See relevant caselaw on import, transit and possession of narcotic drugs from members of a criminal organization (Supreme Court 973/2015, 1043/2015, 176/2017, 796/2017, 1174/2017).

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## *15. Criminal Procedure Law*

### *15.1. International and European judicial and police cooperation*

Greece has concluded a large number of Conventions and bilateral agreements on judicial and police cooperation against drug trafficking. Within the UN framework, Greece has ratified the **United Nations Convention against Transnational Organized Crime**. Article 1 of the Convention provides for the following: “The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively”. The main provisions regarding cooperation can be found in articles 7 par. 4, 13 (international cooperation for purposes of confiscation), 16 par. 5 (cooperation on extradition), 26 (measures to enhance cooperation with law enforcement authorities), 27 (law enforcement cooperation). Greece considers the United Nations Convention against Transnational Organized Crime (ratified by Law 3875/2010) as a basis for the provision of mutual legal assistance in corruption cases involving transnational organized crime. Although there are no instances of its implementation in

relation to the Mutual Legal Assistance applications submitted under the above Convention, **Greece has conducted a joint legal investigation based on it for a drug trafficking case in the past** (United Nations Office for the Control of Drugs and Prevention of Crime, Country Survey Report for Greece, p. 11.)

Furthermore, in 1992, Greece ratified the **United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** (1998). According to article 5, par. 4 (g), of the abovementioned Convention, ‘the Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article’.

With respect to Multilateral Cooperation Agreements Greece has concluded the Trilateral Cooperation Protocol among Greece- Bulgaria- Romania (Place/ Date of signing: Sofia, 08/09/1998, Ratification Law 2814/2000, Official Gazette Nr 69 A’/10-3-00)

Moreover, Greece signed 20 bilateral agreement providing for police and judicial cooperation within the drug trafficking framework with different countries.

### *15.2. Right of hot pursuit.*

There is no specific provision in the Greek Code of Criminal Procedure regarding hot pursuit. However, in terms of this research, reference should be made to the right of hot pursuit in public international law. Article 111 of the United Nations Convention on the Law of the Sea (‘UNCLOS’) regulates the right of hot pursuit. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit



must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established. 2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones. 3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State. 4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship 64 pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship. 5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on

government service and authorized to that effect. 6. Where hot pursuit is effected by an aircraft: (a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis; (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption. 7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary. 8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

*Decision No. 584/2009 of the Supreme Court of Greece (Criminal Section) → Pursuit by Greek border guards. Essential facts of the case: During a pursuit by border guards, drugs were found in the perpetrators' car trunk and in particular Indian cannabis. The defendants jointly held 35,323kg of Indian cannabis packed in 53 parcels and placed them in the luggage compartment of the car. During the pursuit of the border guards, the first defendant threw out of the car the aforementioned quantity of drugs, which was*

*placed in two bags. The drugs were found on the road, and there is no doubt that the drugs were the same as the remains of cannabis found in the trunk of the car that the first defendant drove. Furthermore, it was proved that the defendants at the same place and time when driving their vehicles did not comply with a stop sign police officers (border guards) in uniform, but they fled and that resulted in their pursuit.*

### *15.3. Patrimonial investigations and confiscatory measures.*

#### **Confiscatory Measures**

Article 40 of L. 4139/2013 reads as follows:

In the event of a conviction for a violation of Articles 20, 22 and 23, subject to the last subparagraph of this paragraph, the court shall order the confiscation of all property arising from the transaction, their price, the movable and immovable property that were acquired at that price or by their acceptance and disposal, as well as the means of transport and all the objects which served or were intended for the commission of the act, whether they belonged to the perpetrator or to any of the participants. For the rest, the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, ratified by Law 1990/1991 (A 193) and in particular those of Article 5 of the Convention on confiscation of assets, apply. Any of the technical means confiscated by a final judicial decision is deemed to be indispensable to meet the needs of drug-related services, it is preferably allocated to the services that have confiscated the above at the request of the competent Ministries.

Moreover, article 41 paragraph 1 of L. 4139/2013 regulates seizure and confiscation of drugs and reads as follow: ‘Drugs

are seized and confiscated in any case. During the pre-trial stage, as well as in the case of no prosecution or abstention for any reason whatsoever, confiscation shall be ordered by the Council of Misdemeanors Judges’.

*15.4. Undercover operations: procedural handling of undercover agents, issues on the gathering of evidence and testimony/witnessing of the undercover agent.*

Article 28 of L. 4139/2013 and Joint Ministerial Decision 83509/18.12.2015 regulates undercover operations in the context of drug trafficking.

Article 28 of L. 4139/2013, titled as ‘Acts of controlling bodies’, reads as follows:

The act of a police officer, customs official, fraud squad officer (Body for the Prosecution of Economic Crimes) and a member of the Hellenic Coast guard, who is instructed by the chief of police responsible for the prosecution of drugs and with a view to detect or arrest a person committing a crime as referred to in Articles 20, 22 and 23, following the procedure of Article 253A (3) of the Code of Criminal Procedure, and acts as a purchaser or mediator or carrier or guardian of narcotic drugs or other means that do not create or aggravate risks to third parties, is not unjust,. The same applies to the individual who, for that purpose, is doing so on a proposal from the authorities responsible for the prosecution of drugs.

The aforementioned control bodies or the private individual may act in accordance with paragraph 1 and deal with covert identity, tax or other evidence, and conduct transactions

imposed solely by the covert activity. The procedure for issuing the covert elements of the control bodies or the private individual, the procedure for the approval of transactions with these elements, the process of approving the funds to be disposed of for the purpose of the undercover action, and any other relevant are defined by a joint ministerial decision of the Ministers of Finance, Justice, Transparency and Human Rights and Public Order and Citizenship and Maritime and Aegean Protection. The Minister of Infrastructure, Transport and Networking also participates in the adoption of this joint ministerial decision.

The abovementioned procedure is determined by the Joint Ministerial Decision No. 83509/18.12.2015. Essential points of the Joint Ministerial Decision can be identified in the following: According to article 1, undercover agents, who act in accordance with Article 28 par. 1 of Law 4139/2013, are issued on a case-by-case basis and are issued to them: a) Police Identity Card b) Personal Identification Card c) Greek Passport d) Tax Registration Number e) High Speed Craft Driving License and Maritime Capability Certificates and g) Driving License for all categories of road vehicles. In particular, the no. (e) and (g) shall be granted only if the persons in question are already holders of the corresponding supporting documents and certificates. Moreover, article 3 regulates the details on the terms and conditions for the transactions, such as the opening a bank account and engagement in any kind of relationship with a credit institution.

Generally, regarding testimony/witnessing, article 224 of Greek Procedural Criminal Code provides the following: 1. The witness must reveal how she/he was informed. If her/his testimony is a fact that she/he has heard from others, she/he

must in all cases name those at the same time. 2. If the witness does not name the source of her or his information, her/his testimony is not taken into account.

Furthermore, article 253A provides for the investigating and evidence-gathering acts in relation to criminal organizations. Pursuant to paragraph 1, especially for the offenses referred to in Article 187 par. 1 and 2 (criminal organizations) and for the offenses referred to in Article 187A (terrorist acts) of the Penal Code, the investigation may also include the following:

a) investigative intrusion, subject to the safeguards and procedures set out in the following paragraphs and, as in the rest, the penetration is provided for in Article 25B (1) of Law No. 1729/1987 "Combating the proliferation of drugs, protecting young people and other provisions" as in force, and paragraph 1 of Article 5 of Law No. 2713/1999 "Internal Affairs Division of the Hellenic Police Force and other provisions", provided that the investigative intrusion is limited to the acts strictly necessary for the identification of crimes, that had been previously decided by the members of the organization;

(b) controlled transport, subject to the same safeguards and procedures as those provided for in Article 38 of Law No. 2145/1993 "Regulation of matters of accelerated punishment and modernization of procedures for the administration of justice and other matters";

(c) lifting of confidentiality, subject to the same safeguards and procedures as those provided for in Articles 4 and 5 of Law No. 2225/1994 "For the protection of freedom of communication and other provisions";

(d) the recording of activity or other events outside the home with audio or video devices or other special technical

means, subject to the same safeguards and procedures as those provided for in paragraph 4 of Article 6 of Law No. 2713/1999; and

(e) the association or combination of personal data, subject to the same safeguards and procedures and under the substantive terms and conditions of Law No. 2472/1997 "Protection of individuals from the processing of personal data".

In paragraph 2 of the same article we find the two following conditions: The investigative acts referred to in the preceding paragraph shall only be carried out: (a) whether there are serious indications that an offense has been committed in accordance with paragraphs 1 and 2 of Article 187 or an offense under Article 187A of the Penal Code, (b) whether the dismantling of the criminal organization or the detection of the terrorist acts referred to in Article 187A is otherwise impossible or particularly difficult.

According to paragraph 3, for the purposes of carrying out the investigative measures referred to in paragraph 1 and for the time necessary to achieve the objective pursued, the competent judicial council shall, on a proposal by the Public Prosecutor, decide on a special reasoned order. In extremely urgent cases, the prosecutor or the investigating magistrate may order the investigation. In this case, the prosecutor or the investigating magistrate shall be obliged to bring the matter to the competent judicial council within three days. Otherwise, the validity of the relevant provision ceases automatically upon the expiry of the three-day time limit. Moreover, according to next paragraph of the same article, any evidence or knowledge gained in the conduct of the investigative measures referred to in paragraph 1 may be used only for the reasons set by the Judicial Council. Exceptionally, such

information or knowledge may be used to establish a crime, arrest of perpetrators and the dismantling of another criminal organization, provided that the court has specifically ruled on it. Lastly, paragraph 5 of article 253A provides that “the provisions of this Article shall also apply to the conduct of the respective investigations provided for in Special Penal Laws, the provisions of which remain in force, provided that they do not conflict with the provisions of the present.

For the purposes of these provisions, investigative intrusion is the covert action of investigators and police officers who appear to be citizens and act as undercover agents, that is to say, as instigators of crime or of parties involved in committing criminal offenses, in the event of the unlawfulness of such acts, provided that they are made by order of their superior.

However, the acts of police officers acting as undercover agents for the detection or arrest of a person committing a crime as referred to in Articles 20, 22 and 23 of Law No. 4139/2013 shall not exceed the limits of the above-authorized covert activity. Specifically, the undercover agents should be limited to the acts strictly necessary for the identification of crimes of No. 4139/2013, the commission of which the perpetrator had previously decided and would have committed in any case. Otherwise, there is a breach of the principle of fair trial, and in particular a breach of a fair procedure required by Article 6 of the European Convention on Human Rights. In the event that the investigative acts, including the investigative intrusion, were not performed under the conditions set out in the above law, they become null and thus the data collected from them cannot be used before the court.

However, when it turns out that the offense was predetermined by the perpetrators and would have been



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committed even if the intervention and intrusion of the police bodies had not occurred, the latter are not considered agents provocateurs and it is not necessary to observe the above formalities. Therefore, in this case, the testimony/witnessing of undercover agents are legitimate means of proof and their statements are admissible. (Key Case: Supreme Court 1122/2014).

## *Chapter IV*

### *Cigarette smuggling*

*Eleni Gerasoudi and Konstantinos Delligiannis-Virvos*

#### *1. Legal basis.*

Cigarette smuggling is regulated by the National Customs Code (Law 2960 / 2001) with reference to the general part of the Greek Penal Code. The Greek Penal Code does not contain provisions regarding the criminalization of cigarette smuggling.

The National Customs Code refers to a set of codified laws and provisions concerning the customs and customs clearance of goods, the control of the legal process of imports and exports, the prosecution of offenses and smuggling and the responsibilities of the accredited control bodies. It provides for the regulation of customs regarding cigarettes in its Third Part and the criminalization of cigarette smuggling (among others) in its Fifth Part.

In particular, Greece adheres to a general customs legislation for all “goods” in customs duties and a more specific prohibition of smuggling in order for prosecution authorities to be able to deal with such offences more efficiently.

*Historical Background:* The first Greek Customs Code was introduced in 1918 and entered into force by law 1165 on 17 March 1918 under the title "Law Regarding the Customs Code", as subsequently amended by a series of separate laws and decrees, parts of which are still in force. The Code included 144 articles in 18 chapters in which all the customs legislation that had been enacted so far was methodically classified.

The National Customs Code refers generally in Art. 94 to manufactured tobacco, to which cigarettes are included. This provision also includes cigars and cigarillos, fine-cut smoking tobacco intended for the rolling of cigarettes and other tobacco smoke. A special Consumption Tax is imposed upon these products, in accordance with Article 53 of the Code.

2. *International and European instruments: harmonization; National implementation and enforcement.*

Art. 180 of the National Customs Code provides for the following: "1. Presidential decrees issued on a proposal from the Minister of Finance may adapt the provisions of this Act to acts of the competent bodies of the European Communities [now European Union] which are mandatory and which relate to matters regulated in a different way from this Code. 2. Decisions of the Minister of Finance, published in the Official Gazette, shall lay down the necessary arrangements for adapting customs procedures to the corresponding procedures as defined by acts of the Community Institutions [now European Union Institutions]."

As a result, the National Customs Code includes the relevant European Directives and Regulations as long as they are implemented through the applicable procedures, mainly the issue of Presidential decrees.

The harmonization procedure of the National Customs Code includes all the relevant European Directives and Regulations. Amongst them, the most important are the Regulation (EC) No 450/2008 of the European Parliament and of the Council of 23 April 2008 laying down the Community Customs Code and the more recent Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

Moreover, the Common Customs Tariff, along with the Integrated Tariff are applicable to all goods imported from non-EU countries. Goods moving freely within the EU must comply with the rules of the internal market and with certain provisions of the Common Commercial Policy.

### *3. Criminal offence and the protected interest.*

The definition of smuggling in Greek Legislation is provided for in Art. 155 para. 1 of the National Customs Code. According to this provision, smuggling is defined as “(a) *the importation or export within the customs territory of goods subject to customs duties, taxes and other charges levied on the Customs without the written permission of the competent Customs Authority or in any other place or place specified by it; and (b) any action intended to deprive the Greek State or the European Union of the duties, taxes and other charges to be levied therefrom on imported or exported goods, even if*

*they were collected in a time and manner other than those prescribed by law.”*

This definition covers smuggling of goods provided for in the National Customs Code, except for smuggling of specific goods that are covered by other provisions (such as cars).

Article 155 para. 1 provides for the description of the criminal offence of smuggling and a hint of the protected interest of the relevant legislation. Specifically, lit (b) refers to “any action intended to deprive the Greek State or the European Union of the duties, taxes and other charges to be levied therefrom on imported or exported goods”. Taking this into account, it becomes evident that the protected interest is the financial interests of both the Greek State and the European Union, which are threatened by the unregulated importing and exporting of goods in general, and cigarettes in particular.

Furthermore, it is accepted that contraband cigarettes generally avoid restrictions and health regulations, such as requirements for health-warning labels in the local language, regulations on additives, and others. To the extent that health-warning labels and other policies reduce smoking by informing potential smokers about the health consequences of smoking, the lack of appropriate local warnings can lead to increased consumption and its consequences. As a result, it can be supported that another protected interest been offended by the acts of cigarette smuggling are the rights to life, health and physical integrity.

*4. Conduct(s).*

As it was already mentioned above, smuggling is defined as “(a) the importation or export within the customs territory of goods subject to customs duties, taxes and other charges levied on the Customs without the written permission of the competent Customs Authority or in any other place or place specified by it, (b) any action intended to deprive the Greek State or the European Union of the duties, taxes and other charges to be levied therefrom on imported or exported goods, even if they were collected in a time and manner other than those prescribed by law.”

Para. 2 of the same provision further stipulates that smuggling includes the following acts: (a) the release for consumption without the written permission of the competent customs authority and payment of the import duty, tax and other charges, of goods imported under a law or contract free of charge or with reduced charges for certain specific uses or the use of such goods for uses other than certain specific ones; (b) the export or importation of goods which, by law or decision of the competent authority, are prohibited from being exported or imported unless, by way of derogation from a prohibition by the competent authority; (c) any shortage of goods from warehouses for the purpose of depriving the State of the duties, taxes and other charges, unless the total of the customs, duties and other charges corresponding to the missing goods exceeds one thousand five hundred EURO (1,500) and the due within 48 hours of the discovery and certification of the deficit, in which case the act is classified as a mere customs offense according to the provision of paragraph 3 of Article 148 of the Code; (d) the presence of goods on ships irrespective of the capacity which docks on the coast and/or are directed to a Greek port without being

indicated on the ship's log; (e) the existence of goods, whether inscribed on the manifest, on board a ship, boat or floating vessel of any capacity which has docked, without force majeure, in a port or bay of the State; [...] (i) under-pricing or over-pricing of imported or exported goods, if it involves the loss of duties, taxes and other charges; [...] (k) the release for free circulation of goods in Community transit.

Moreover, Art. 156 states that “1. In accordance with paragraphs 1 and 2 of the previous Article, a written permission of the competent authority shall not exclude the smuggling when the license was issued without a lawful issue or without the legal formalities required for such publication; and payments. 2. The civil servant, who thus issued the license, is punished as a smuggler if he acted fraudulently / intentionally.”

The **forementioned general provisions are applicable to cigarette smuggling** since the National Customs Code does not differentiate this crime from smuggling of goods that their circulation is regulated by the same law.

It must be noted that according to Article 106 para. 1 of the National Customs Code, the lawful circulation of manufactured tobacco consumed within the country is evinced by the official tax bundles affixed to the packages or the smallest packaging available to consumers. Moreover, according to Article 53 of the Law 2960/2001, the validity of which started on 1 January 2002 under Article 185 of the National Customs Code, special excise duty on mineral oils, alcohol and alcoholic beverages and manufactured tobacco is imposed and the for the production, processing, possession, movement and control of such products in accordance with the provisions of the Customs Code.

Pursuant to Art. 118 para. 5, the, in any way, escape or attempt to evade the payment of taxes and other charges due, and failure to comply with the formalities provided for in Part Three of the National Customs Code for the purpose of non-payment of the above taxes and other charges are classified and punishable as administrative and criminal penalties as smuggling in accordance with the provisions of article 142 et seq. of the Code and impose the imposition in any way of the participants actions referred to in Articles 142 and Articles 152 and 155 of the National Customs Code fines and fees.

In order to determine the degree of *mens rea* that the relevant legislation requires to characterize an act as smuggling, recourse to the general provisions of the Penal Code is needed.

The provision of Art. 27 indicates that the notion of intent [*mens rea*] is manifested in the following three variations: 1. Purpose (or direct intent of first degree - *dolus malus*) The offender acts in order to bring about the consequences of his illegal behaviour. 2. Direct Intent (or direct intent of second degree – *dolus directus*) The offender is not aiming at the materialization of the constitutive elements of a crime but visualizes them as the necessary consequences of his behaviour and, nevertheless, accepts it. In these cases, the offender accepts the commission of the offense as a necessary side effect of his intended aim. 3. Indirect or Eventual Intent (*dolus eventualis*) The offender is aware or visualizes as probable the materialization of the constitutive elements of the offense as a result of this action but, nevertheless, accepts it. In these cases, the offender accepts the commission of the offense as a probable side effect of his intended aim.

It becomes evident from the relevant smuggling provisions that the required *mens rea* of the crime of



[cigarette] smuggling is any degree of intent, as described above, since the relevant provisions are of a general character and do not contain provisions regarding degree of intent.

With respect to negligence, Art. 28 of the Greek Penal Code defines it as the lack of attention (care), which the offender “owed” under the circumstances and which he could have exercised and, because of which, either he did not envisage the criminal consequences of his action or he did envisage them but believed that they would not materialize. It is clear that the crime of [cigarette] smuggling cannot be committed by negligence. In this vein, Art. 156 demands that the civil servant, who thus issued the license, is punished as a smuggler if he acted fraudulently / intentionally”.

#### *5. Defendant(s).*

Defendant of the crime of [cigarette] smuggling is whoever committed the acts described above, provided that he acted fraudulently / intentionally.

#### *6. Victim(s) of the crime.*

Since the relevant criminalization and penalties regarding smuggling are applied through the context of customs legislation, there are no *stricto sensu* victims of these crimes. It is accepted that the crime of cigarette smuggling is committed against the Greek State and the European Union, to which duties, taxes, tariffs and other charges are owed.

*7. Other elements of the criminal offences.*

The National Customs Code does not include provisions regarding a further specialization of the crime of cigarette smuggling.

*8. Sanctionary measures: criminal penalties and administrative sanctions.*

The National Customs Code includes both criminal penalties and administrative sanctions against smuggling, including the smuggling of cigarettes.

The criminal penalties are provided for in Art. 157. According to Article 157 paragraph 1, smuggling under Article 155 of this Code is penalized:

(a) With imprisonment of at least six (6) months. However, if the smuggling has no significant value and is intended for individual use or for exhaustion, the minimum penalty is reduced to one sixth.

(b) With imprisonment of at least one (1) year in the following cases:

- if committed repeatedly,
- if committed in full or in combination with three or more,
- if the duties, taxes and other charges deprived of the State or the European Union amount to at least thirty thousand (30,000) euro or more; and
- if the perpetrator used particular tricks.<sup>9</sup>

<sup>9</sup> A particular trick is any action invented by human inventiveness in order to deprive the Greek State of the possibility of receiving a legal import duty, tax or other right for any imported or exported goods. Areios Pagos Case no. 766 / 2017.

c) With term,<sup>10</sup> if the duties, taxes and other charges deprived of the State or the European Union exceed the amount of one hundred and fifty thousand (150,000) euro.

Furthermore, paragraphs 2 and 3 of Article 157 respectively provide that in the event of a repetition of the offense, a penalty less than that previously imposed may never be imposed and that in the event of an attempt of commission the penalty imposed is the penalty imposed on the act of smuggling and the accomplices may be subject to the same penalty imposed on the perpetrators.

Moreover, Art. 160 of the National Customs Code, provides that all the smuggled goods will be confiscated by the competent authorities. Also, animals, wagons, vehicles, ships of any capacity, logistic boats and any other means of transport used to carry the smuggled goods are being confiscated. If, for whatever reason, it was made impossible to confiscate the smuggling items referred to in this article, the penalty shall be penalized equal to the CIF value thereof, in addition to any other penalty imposed under the Code.

Importantly, the confiscation according to the aforementioned article occurs irrespective of the participation in the offense having any right over the property except in the case that he / she proves lack of participation or knowledge of the offense committed.

The confiscated goods, after the final decision of the Criminal Court, which adjudicated upon the crime of smuggling, become the property of the State and are disposed of in accordance with the provisions of the Code and the relevant legislation.

<sup>10</sup> Type of imprisonment applicable to felonies.

As of the administrative penalties, these are provided for in Articles 153 and 154. According to the first provision, when a Customs Authority finds smuggling or frauds which, according to a Special Audit Report, reveals that more than one hundred and fifty thousand (150,000) euros of duties, taxes and other charges have been avoided to the State or the European Union, it is forbidden to the competent Public Financial Services to receive statements or to provide the certificates or certificates required by the applicable provisions and requested by the offender for the preparation of notarial deeds for the transfer of property elements. The above measures shall be taken to the detriment of the perpetrators and accomplices of the offenses.

However, these measures and penalties are compulsorily lifted when the offender pays more than seventy percent (70%) of the amounts of duty, taxes and other charges to be paid to the State and their statutory surcharges. For the application of the preceding provisions, the offender shall submit a request to the Head of the competent Customs Service, who shall be obliged within two (2) months to issue a provisional or partial imputation act. An appeal against this act does not invalidate the measures taken. If, within this period, no action has been taken by law to impose the above amounts or additional charges for establishing such amounts, the consequences and prohibitions set out in this Article shall be automatically revoked.

The provision of Article 154 states that the Administrative Court of Appeal, in the same decision, ruling on the evasion of duties, taxes and other charges, amounting to more than one hundred and fifty thousand (150,000) euro, and imposing the multiplication fees provided for by the

applicable provisions, imposes to the perpetrator at least one of the following sanctions:

a) Loss of the right to participate in public auctions, Public Law Bodies, Public Benefit Institutions and Public Benefit Organizations for a period of one (1) year.

b) The prohibition for a period of three (3) years of the conclusion of a contract with the State or other Public Organizations or Agencies.

c) The loss for a period of three (3) years of the right to obtain a loan with the guarantee of the State or public subsidies or government credits.

The penalties provided for in this Article shall be imposed irrespective of the chargeable duties levied and the multiple charges and fines provided for by the provisions in force.

### *9. Corporate liability.*

Articles 161-163 of the National Customs Code provides for the civil liability of persons regarding smuggling of goods. These provisions do not differentiate between individuals and legal entities. As a result, the provision of Art. 162 which states that “The Criminal Court may also, declare jointly and severally liable to the owner of the ships, cars, wagons or aircraft of the convicted person for payment of the financial penalty and the costs incurred by him as civil claimant and the claim he has suffered, land, air or air transport companies, as well as any agents or agents of these or owners of ships, cars, wagons or aircraft, hotel managers and any other category of cafés or other shops accessible to the public and even when they are not criminally liable for smuggling when committed within or through the above means of transport or

under the direction of the shops or by using them either to commit smuggling or to facilitate it in any way or to conceal the objects of smuggling, except in the case where the above were not able to have knowledge of the smuggling committed probability”, is accepted that it refers to both individuals and legal entities.

However, according to Art. 163 the above persons or entities have the right to take over the money paid by the convicted persons and the agents or representatives of shipping companies or shipowners or owners of other means of transport from the companies and owners they represent.

#### *10. Concurrence with other crimes.*

Concurrence with other crimes is not regulated through the National Customs Code and as a result the general provisions of the Greek Penal Code are applicable. Specifically, Articles 94-98 of the Greek Penal Code are applicable in cases of concurrent crimes. Specifically, in Art. 94, the Penal Code distinguishes between “real” and “ideal” concurrence of offences. The former could be defined as the commission of two or more offences which were perpetrated through two or more criminal acts. The latter refers to the situation whereby the offender, by perpetrating a single criminal act, commits two or more offences. Moreover, the Penal Code distinguishes between concurrence of custodial sentences (Art. 94) and concurrence of pecuniary sanctions (Art. 96). The distinction between “real” and “ideal” concurrence of offences applies to both.

*11. Other facts relevant for the criminal liability.*

A key provision in the Greek Penal Code regarding criminal liability is that of Art. 187 which provides for the participation in a criminal organization as an aggravating circumstance.

In accordance with Art. 187 of the Greek Penal Code “up to 10 years' imprisonment is punishable by anyone who forms or joins as a member in a structured and sustained group of three or more persons (organization) seeking to commit more offenses in connection with [...] avoidance of payment of a lawful tax, duty, duty or other charge when buying, selling, receiving, delivering, transporting, transit, marketing, holding, stocking, importing or exporting goods [...].” This provision clearly refers to the relevant customs regulations as provided for in the National Customs Code, even though it does not mention it.

Furthermore, according to para. 2 of the same provision “Anyone who provides essential information or material means to facilitate or assist the organization of the preceding paragraph for the commission of the alleged felons is punished by imprisonment for up to ten years”. In addition, para. 3 states that “Any person who directs the organization of the first paragraph shall be punished by imprisonment for at least ten years. The same penalty is punishable by the member of the organization if, at the time of the offense referred to in the second paragraph of the first paragraph, he was a civil servant or an official within the meaning of Article 263a of the Greek Penal Code”.

Importantly, para. 7 of Art. 187 sets out that “the provisions of this Article shall also apply where the offenses referred to therein have been committed abroad by a national or were directed against a Greek citizen or against a legal person

domiciled in Greece or against the Greek State even if they are not punishable under the laws of the country in which they were executed.”

*12. Focus on specific issues.*

*12.1. Is smuggling of cigarettes sanctioned more heavily than other crimes of smuggling?*

As it was mentioned earlier, Greece adheres to a general customs legislation for all “goods” in customs duties and a more specific prohibition of smuggling. As a result, smuggling of cigarettes is sanctioned in the same manner as smuggling of other goods in accordance with the relevant provisions of the National Customs Code.

*12.2. Territorial and extraterritorial validity of the criminal provisions.*

The National Customs Code does not contain any provision on the territorial limits of the application of the Code. Consequently, recourse to the general rule on territorial limits of penal laws is necessary. Pursuant to Article 5 (Crimes committed within the Greek territory) paragraph 1 of the Greek Penal Code, Greek penal laws apply on all acts committed within the Greek territory, even when committed by aliens. Also, under paragraph 2, Greek vessels and aircrafts are considered part of the Greek territory wherever they are situated, unless they are subjected to foreign law in accordance with international law.



### *13. Judicial decisions.*

While smuggling of various products subject to excise duty is widespread and the dockets of the Criminal Courts are full of relevant cases, those relating specifically to cigarette smuggling are comparatively limited since the entry into force of the revised National Customs Code in 2002. As already stated, although smuggling in its basic form is punishable as a misdemeanor, in addition to criminal penalties, administrative fines are also imposed - multiple charges-, which subsequently are brought before the competent Administrative Courts.

#### *13.1. Structure and purpose of the criminal offence*

According to “Areios Pagos”, the Supreme Civil and Criminal Court of Greece (E’ Criminal) in the Case No. 267/2009 smuggling is considered to be the purchase, sale and possession of goods imported or released for consumption in a manner constituting the offense of smuggling. In the latter form, both the provisions of the previous Customs Code and the provisions of the applicable Customs Code, the object of smuggling consists in the purchase, sale or possession by persons other than of the importer, goods subject to import duty, tax duty, imported into the frontier of the Greek State, without the permission of the customs authority.

Furthermore, intent is required, which in knowing at the relevant time that the commodity which the perpetrator has bought, sold or held is the product of the smuggling in the above sense and his wish to deprive the Greek State of the due duty, fee or right. Therefore, the crime of smuggling when in possession of a particular product resulting from smuggling if the holder knows this origin, without any further information being required.

Moreover, in the case of Article 53 of Law 2960/2001 “National Customs Code”, “Special Consumption Tax” is imposed on petroleum products, on alcohol and alcoholic beverages and manufactured tobaccos and determine the production, processing, possession and circulation of such products in accordance with the provisions of this Code and, in accordance with the provision of Article 118 (5) thereof, the escape or attempted escape of payment of those due taxes and other charges and non-compliance with the formalities provided for in Part Three of this Code for the purpose of non-payment of such taxes and other charges are classified as smuggling in accordance with the provisions of Article 142 et seq. of this Code, and as a result the special fee due even if the elements of the crime of smuggling are not met. It follows from those provisions in conjunction with that of Article 155 of the Law which defines the concept of smuggling that under that new Customs Code or in any way escaping or attempting to escape the payment of the debt owed manufactured tobacco for excise duty is a criminal offense characterized as smuggling and punishable by the penalties provided for by that law.

### *13.2. Conduct(s)*

According to “Areios Pagos”, the Supreme Civil and Criminal Court of Greece (G’ Criminal) in the Case No. 766/2017, the relevant *actus reus* consists in the purchase, sale or possession by a person other than the importer of goods which are subject to import duty, tax or duty and which have

been imported into the frontier of the Greek State without the permission of the customs authority.<sup>11</sup>

The One-Member Court of Misdemeanors of Thebes expounded this matter in its ruling in the Case No. 1717/2018 concerning the “Repeated commission of the act of smuggling”.<sup>12</sup> The Court applied the relevant law as follows: “Pursuant to Article 2(1)(b) of the Decision of the Council of the European Communities of 24 June 1988, approved by virtue of No 76742/1397/23-8-1988 [Government Gazette Issue B '622/25-8-1988] and ratified by article 37 of Law 1828/1989 the duties applicable to trade with non-member countries of the Communities and already of the European Union are considered as resources of the European Communities.

Furthermore, Article 2(3) provides that Member States withhold 10% of the duties to be paid in accordance with the provisions of paragraph 26. In addition, Article 2(1) of Law 2127/1993 “Harmonization of the tax regime for petroleum

<sup>11</sup> Summary of the Case: The defendants received a container by a Chinese company containing cigarettes, carefully hidden, that did not carry the special excise tax cigarette film and were imported into Greece without the permission of the competent Customs Authority. The conviction for smuggling is correct and justified. Any escape or attempt to escape the payment of excise duty on a range of products, including tobacco, is characterized and punished as smuggling, which is also penalized by the Greek Customs Code.

<sup>12</sup> Summary of the Case: The defendant was found to be in possession of cigarettes and quantity of tobacco and was thereby accused of having imported them in a manner constituting the offense of smuggling, ie goods subject to import taxes and other charges levied on the Customs without the written permission of the competent Customs Authority. Innocence of the defendant - It has not been proved that the cigarettes referred to in the indictment were unlawfully imported from a non-EU country in order to have the offense of smuggling committed.

products, alcohol and alcoholic beverages and manufactured tobacco with Community law” states that excise duty shall be assigned to domestically produced tobacco, which comes from other Member States or is imported within the country. Importation is to be understood as the entry of these products from third countries into the country. This provision is also found in Article 53 of Law 2960/2001 “National Customs Code”.

Finally, according to article 155(1)(2) of Law 2960/2001 “National Customs Code”, smuggling constitutes, *inter alia*, any action which deprives the Greek State or the European Union of the customs duties receivable by the imported goods, as well as the purchase, sale and possession of such goods.”

Consequently, the Court ruled that it follows from the combination of the above provisions that smuggling is committed when the non-tariff goods have been imported from third countries which are not members of the European Union and not from Member States. Additionally, in this case the Greek State is deprived of only 10% of the non-imposed duties and not the entire amount thereof. On the contrary, import from States-Members of the European Union constitutes only a simple customs offense.

In order to establish the crime of smuggling, a necessary element is the existence of will, which consists in the knowledge at the relevant time of the perpetrator that the commodity which he has bought, sold or held is the product of smuggling and his wish to deprive the Greek State or the European Union of duty, fee or royalty and other charges on such goods and merchandise.<sup>13</sup>

<sup>13</sup> “Areios Pagos”, the Supreme Civil and Criminal Court of Greece (G’ Criminal) in the Case No. 766 / 2017

There is, in principle, no need to justify the existence of intent, because it is inherent in the intent to proceed with action which constitutes the actus reus of the crime and it is understood that in each particular case the occurrence of these incidents is forthcoming unless the law requires additional information for the offense, such as the fact that the act was knowingly committed or the purpose of obtaining a certain additional effect, such as cases of smuggling. Thus, the Supreme Court in the Case No. 766/2017 considered that the intent of the perpetrators was sufficiently proved taking into account the fact that they stored large quantities of cigarettes in knowledge of their origin as products of smuggling.<sup>14</sup>

### *13.3. Defendant(s).*

Apart from the case where the defendant is the sole perpetrator, according to Article 45 of the Criminal Code, if two or more have jointly committed a criminal offense, each is penalized as the perpetrator of the act. “Areios Pagos” (E’ Criminal) in the Case No. 267/2009 has interpreted that the term jointly means objective involvement in the execution of the principal act and subjectively common intent, that is to say, each participant wants or accepts the realization of the actus

<sup>14</sup> Similarly: “Areios Pagos”, Supreme Civil and Criminal Court of Greece (E’ Criminal), Case No. 1322/2015 (Summary of the Case: Any escape or attempted escape of the excise duty provided for products such as cigarettes, as prescribed by law, is characterized and punished as smuggling. A crime of smuggling exists only on possession of a particular quantity of smuggled product if the holder *knows its origin* without any further information being required. The accused and his co-defendant used a leased property as a transshipment place and owned cigarettes imported from an unknown non-EU country within the Greek territory without prior permission of the competent customs authority thereby resulting in the loss of the corresponding fees and duties by the Greek State.)

reus of the committed crime, knowing that the other participants also commit the same crime. The involvement in the execution of the principal act may consist in or in the fact that each person carries out the whole *actus reus* of the crime or that the crime is carried out by concurrent individual acts of the parties, concurrent or successive, without the necessity of specifying the actions of each perpetrator.

#### *13.4. Victim(s) of the crime.*

Relevant jurisprudence confirms the provision of Article 155 of the National Customs Code, according to which the victims of the crime are the Greek State or the European Union.<sup>15</sup>

#### *14. Sanctionary measures: criminal and non-criminal sanctions.*

As already illustrated, smuggling is perceived as both a criminal and an administrative offense. Thus, for the same offense-illegal behavior one can be ‘punished’ twice. This issue is of major importance in the light of the basic *ne bis in idem* principle: “No one can be prosecuted or convicted by the courts of the same State for an offense for which he has already been finally acquitted or convicted by a judgment”.

The current case-law of the Council of State (Supreme Administrative Court) has been addressing the application (or not) of the *ne bis in idem* principle in the context of the relationship between criminal proceedings and administrative proceedings and the procedure for the recovery of tax offenses

<sup>15</sup> e.g. Case No. 1104/2017 of the Three-Member Court of Misdemeanors of Thebes.

and the imposition of corresponding sanctions since 2009 (decision no. 1734/2009). The first phase (case-law of 2009-2015) is characterized by the refusal of the Court to accept the application of the *ne bis in idem* principle in that context, either by invoking Articles 94 and 96 of the Greek Constitution and the principle of legal certainty or on the basis of the assessment that administrative penalties for breaches of tax law are not “criminal”.

The second phase, which corresponds to the case law of 2016-2017, which was produced following the convictions of the ECtHR in the cases of *Kapetanios and others (2015)* and *Sismanidis (2016)*, the Court of First Instance complied *stricto sensu* with the said ECtHR judgments, accepting the applications for reopening the appeals of Anglope and Sismanidis. On the other hand, by ruling on pending appeals, it adjusted its case-law by holding, in a series of judgments, that the *ne bis in idem* principle, as enshrined in Article 4 of the seventh Protocol of the ECHR, is in principle applicable to a multiple-smuggling case for which an irrevocable criminal court decision has been issued, without such application being in breach of the Constitution (Council of State decisions 2987/2017, 1777/2017, 3470-1/2017, 3449/2017, 3447/2017, 3174/2017, 2346/2017, 2569-70/2017, 3174-5/2017). The Council of State, however, maintains its case-law that, in light of the provision in Article 5 (4) of the Code of Administrative Procedure, the administrative court is not required to examine *proprio motu* the question of the existence of an irrevocable criminal court decision for the same person and the same substantial violation (Council of State decisions 2403/2015, 1993/2016, 2926-2928/2017).

The third phase concerns the case law since 2018 which, on the one hand, incorporates the recent CJEU case-law in *Menci*

(C-524/15), *Garlsson Real Estate* (C-537/16) and *Di Puma & Zecca* C-596/16 & C-597/16), in relation to Article 50 of the Charter, and interprets the new provision of Article 5 (2) in the light of the *ne bis in idem* principle, as enshrined in European law.

Specifically, Council of State decision no. 1102/2018 concerned a multiple fee for participation in smuggling of cigarettes. The criminal court first seized terminated the criminal proceedings with a final court order. The Council of State in its decision underscores that the *ne bis in idem* principle is a manifestation of the fundamental principles of the rule of law, proportionality, *res judicata* and constitutional principles. Hence, the *ne bis in idem* principle also acquires constitutional basis. The existence of parallel proceedings and sanctions against the same person for the same offense raises issues of disproportionate infringement of the offender's legal assets, leaving him in a precarious situation that is not finalized after the end of one of these procedures. With regard to the fight against tax evasion, the struggle against tax evasion must not result in decisions that are too protective for the taxpayer's interests and at the same time excessively burdensome for the public interest.

Thus, if the criminal proceedings are terminated by an irrevocable order to end the prosecution for a period of limitation or by an irrevocable decision of a criminal court, a penalty of such a slight degree will not lead to effective prevention or even suppression of the offending conduct. In order to trigger the principle, the acquittal must be based on sufficient investigation and assessment of the substance of the case. An irrevocable decision by a court of magistrates to definitively cease prosecution due to a limitation of the criminal offense is not an irrevocable decision by which the



offender has been “acquitted” because it is not based on an assessment of the commission of the offense, but on the elimination of the crime by statutory limitation. A different approach would necessarily involve an expansive interpretation of the notion of acquittal, and the *res judicata* of the order does not cover the commission of the offense or not.

Consequently, the Council of State with its recent Decisions seems to be in line with the European Court of Human Rights (ECHR) judgments on this fundamental legal issue.

### *15. Literature.*

Unfortunately, academic literature in Greece has not addressed extensively the smuggling of cigarettes, nor other goods. Most academic pieces occupy themselves with an analysis of the relevant legislation and recent judicial decisions.

However, part of the academic literature has dealt with the issue of confiscation of the means of transport of smuggled goods, which is provided for in Art. 160 of the National Customs Code. Judicial decisions, for example the Case No. 321 / 2000 adjudicated by Areios Pagos, have stated that: It follows from that provision (i.e. Art. 160 of the National Customs Code) that the confiscation bears a mixed character of ancillary punishment and compensation, and is obligatory, whether the accused is convicted or acquitted or definitively ceases to bring proceedings against him for limitation, provided that only proof that there is smuggling, namely that it was objectively established and that confiscated objects are its object.

However, Greek scholars<sup>16</sup> are of the opinion that confiscation has the character of an ‘incidental penalty’, which means that it can only be imposed as a result of the principal sentence, that is, the conviction of the owner of the object or means of smuggling. In this academic view, the confiscation of the means of transport imposed on the owner, even though not being one of the perpetrators of the smuggling crime, runs counter to the provisions of the Constitution protecting property as well as other constitutional institutions such as the *nulla poena sine lege* principle and the principle of equality.

Essential bibliography on the smuggling of cigarettes:

Papachristou V., *Smuggling and Customs Offenses: Theory-Judicial Decisions*, Sakoulas (1989).

Kaiafa-Gbadi M., *Criminal Laws: Smuggling*, Sakoulas (1998)

Adamou O., *Smuggling*, 2nd ed., Nomiki Vivliothiki (2018)

## 16. Reform proposal(s)

Since the National Customs Code is fully harmonized with the relevant EU legislation, including both Regulations and Directives, there are little to be done regarding reforms of the existing legislation. The aspects of the criminal offence, as provided for in the National Customs Code and the Greek

<sup>16</sup> Androulakis, “Private Opinion (Ιδιωτική Γνωμοδότηση)”, ΠοινXP KH’, p. 361, Christoforidis, *Smuggling and Confiscation of transportation means, (Λαθρεμπορία και δήμευση μεταφορικών μέσων)*,” ΠοινΧρ ΜΔ’, p. 1327, Charalampakis, *Summary of Criminal Law: General Part, Penalties*, Sakoulas (2012), pp. 124-125.

Penal Code are deemed to be in conformity with relative rules and standards of Constitutional, European and International Law, which have primacy over such Law. However, one has to take into account, the discussion about the application of the *ne bis in idem* principle, which was analyzed in the relevant chapter.

## *17. Criminal Procedure Law.*

### *17.1. International cooperation.*

Greece has signed and ratified a number of bilateral and multilateral Conventions regarding Police and Judicial Cooperation.

According to the official database of the Greek Police,<sup>17</sup> the bilateral agreements on Police and Judicial Cooperation which cover, amongst others, cooperation on the suppression of smuggling of cigarettes, or more generally, on money laundering are the following:

Greece and Albania (Athens, 17/07/1992, ratified by Greece in accordance with Law 2147/1993, Official Gazette No. 96 A' /16-6-93)

Between Greece and Bulgaria (Athens, 08/07/1991, ratified by Greece in accordance with Law 2096/1992, Official Gazette No. 188-A'/92)

Between Greece and China (Beijing, 05/06/2007, ratified by Greece in accordance with Law 3963/2011, Official Gazette No. 99 A'/29-4-11)

<sup>17</sup>

[http://www.astynomia.gr/images/stories/2015/pinakas\\_symf\\_ell.pdf](http://www.astynomia.gr/images/stories/2015/pinakas_symf_ell.pdf)

Between Greece and Turkey Ankara, 21/01/2000, ratified by Greece in accordance with Law 2926/2001, Official Gazette No. 139 A'/27-6-01)

Between Greece and Slovenia (Ljubljana, 27/09/2002, ratified by Greece in accordance with Law 3269/2004, Official Gazette No. 186 A'/11-10-04)

Between Greece and Serbia (Athens, 17/10/2008, ratified by Greece in accordance with Law 3935/2011, Official Gazette No. 55 A'/21-3-11)

Between Greece and Russia (Athens, 06/12/2001, ratified by Greece in accordance with Law 3215/2003, Official Gazette No. 311 A'/31-12-03)

Between Greece and Romania (Athens, 06/06/1992, ratified by Greece in accordance with Law 2138/1993, Official Gazette No. 84 A'/28-5-93)

Between Greece and Malta (Valletta, 24/05/2001, ratified by Greece in accordance with Law 3125/2003, Official Gazette No. 63 A'/14-3-03)

Multilateral treaties covering police and judicial cooperation against a number of issues and crimes, including cigarette smuggling and money laundering are the following, according to the same source:

Protocol for the enhanced trilateral cooperation in combating crime and especially trans-border crime (Sofia, 8/9/1998, ratified by Greece in accordance with Law 2814/2000, Official Gazette No. 69 A' /10-3-2000)

Additional Protocol to the Agreement among the Governments of the Black Sea Economic Cooperation participating States on cooperation in combating crime, in particular in its organized forms (Corfu, 2/10/1998, ratified by

Greece in accordance with Law 2933/2001, Official Gazette No. 150 A' /10-7-2001)

Convention of the Southeast European Law Enforcement Center (SELEC) (Bucharest, 9/12/2009, ratified by Greece in accordance with Law 4054/2012, Official Gazette No. 45 A' /7-3-2012).

#### 5.2. INTERPOL, WCO and regional agreements

INTERPOL maintains a National Central Bureau (NCB) in Athens which works with police forces across the globe in tackling the transnational crime groups which operate on its territory, sharing intelligence, monitoring emerging trends and working together in targeted regional police operations. The NCB is part of the national police, sitting structurally in the International Police Cooperation Division at the Police Headquarters in Athens.

Greece is a member of the World Customs Organization and a party to several conventions adopted under its auspices, and namely: the Convention establishing a Customs Co-operation Council, the International Convention on the simplification and harmonization of Customs procedures (Kyoto Convention) as amended, the Convention on Temporary Admission (Istanbul Convention), the Customs Convention on the temporary importation of pedagogic material, the Customs Convention on the temporary importation of professional equipment, the Customs Convention concerning facilities for the importation of goods for display or use at exhibitions, fairs, meetings or similar events, the Customs Convention on the ATA carnet for the temporary admission of goods (ATA Convention), the Customs Convention on the temporary importation of scientific equipment, the Customs Convention concerning welfare material for seafarers, and the International

Convention on the Harmonized Commodity Description and Coding System.

*17.2. Confiscatory measures.*

According to Article 373 of the Code of Criminal Procedure, in its final judgment, the Court orders the return of the things confiscated to the owner and the confiscation of the items to be confiscated. Furthermore, according to the provisions of Article 76 (1) and (3) of the Criminal Code, objects produced by felony or misdemeanor arising from deceit, as well as the price of these and those acquired with them, as well as items which served or were destined for such an act may, if belonging to the perpetrator or one of the participants, be confiscated. In any case of confiscation, the Court decides whether the things that have been confiscated must be destroyed. Also according to the provision of paragraph 1 of a. 1602/2960/2001, in all cases of smuggling, the objects which are the subject of it are confiscated. In this vein, the One-Member Court of Misdemeanors of Thebes in Case No. 1717/2018 ordered the confiscation and destruction of 241 packages of cigarettes which did not bear the special excise tax film.