



PERMANENT MISSION OF GREECE TO THE UNITED NATIONS
866 SECOND AVENUE · NEW YORK, NY 10017-2905
TEL: (212) 888-6900 · FAX: (212) 888-4440
E-mail: grdel.un@mfa.gr

Ref. Nr. 10.1.3/1801

VERBAL NOTE

The Permanent Mission of Greece to the United Nations present their compliments to the Office of Legal Affairs of the United Nations and, with reference to the latter's Note LA/COD/50/1 dated 16 January 2017 and General Assembly's resolution 71/134 of 19 December 2016, have the honour to enclose information pursuant to paragraph 24 of the Resolution, structured according to the Questionnaire referred to in paragraph 26 of the same Resolution.

The Permanent Mission of Greece to the United Nations avail themselves of this opportunity to renew to the Office of Legal Affairs of the United Nations the assurances of their highest consideration

A handwritten signature in black ink, appearing to be a stylized 'D' or similar character.

New York, 20 July 2017 .

To: The Office of Legal Affairs
of the United Nations
IN TOWN

Enclosed pages: 10

**Reply of Greece to the Questionnaire on criminal accountability of United Nations
officials and experts on mission**

Question 1

Points (a)-(c) : There is no specific legislation in place relating to UN officials or experts on mission. Greek criminal law applies to those persons according to the rules of the first chapter of the general part of the Greek Penal Code which defines the scope of application of Greek criminal law. Article 5 of this first chapter, on crimes committed within the Greek territory (or in Greek vessels and aircrafts), reflects the principle of territoriality, article 6 on crimes committed by Greeks abroad deals reflects the principle of nationality and article 7 on crimes committed by aliens abroad against a Greek citizen reflects the principle of passive personality.

Point (e) : Article 8 on crimes committed abroad that are always punishable according to the Greek laws, provides that Greek penal laws apply, for the acts committed abroad and enunciated in this provision, for Greeks and aliens, irrespective of the laws of the place where the crime was committed. This article reflects the protective principle in its paras. (a)-(e) dealing respectively with (a) treason aimed against the Greek state and terrorist acts, (b) crimes relating to the military service and the obligation to join the armed forces, (c) acts committed by Greeks and aliens under their capacity as officials of the Greek State or of any institution or body of the European Union based in Greece, (d) an act against or addressed to an official of the Greek State or a Greek official of an institution or body of the European Union, in the course of or in connection with the performance of his/her duties and (e) perjury in a proceeding pending before the Greek authorities.

Point (f) : Article 8 on crimes committed abroad that are always punishable according to the Greek laws, reflects the universality principle in its paras. (f)-(k), dealing respectively with (f) piracy, (g) a crime related to currency (h) an act of slave trading, human trafficking or lewd conduct with a minor (i) illegal trafficking of narcotic drugs (j) illegal circulation and trading of obscene publications (k) any other crime covered by special provisions or international conventions to which Greece is a party, providing for the application of the penal laws of Greece.

Question 2

Point (a) : As stressed in the reply to question 1 above, there is no specific legislation in place relating to UN officials or experts on mission, thus the application of Greek penal laws and the jurisdiction *ratione personae* of Greek criminal courts to those persons is governed by the common law regime.

Point (b) : The Greek Penal Code provides in its article 6 for the application of Greek penal laws, on acts such laws regard as a felony or misdemeanor, committed by Greek nationals abroad, if such act is punishable according to the laws of the country where it was committed, or if it was committed in a constitutionally unsettled country. The competent national court for handling such cases is defined according to articles 123-124 of the Greek Code of Criminal Procedure.

Point (d) : Subject to the jurisdictional immunities recognized in article 2 of the Greek Code of Criminal Procedure which refers also to relevant international agreements

as well as customary international law, Greek judicial authorities may exercise criminal jurisdiction over foreign nationals according to articles 7 and 8 of the Greek Penal Code.

Article 7 of the Greek Penal Code provides that Greek penal laws are applied against an alien for an act committed abroad that these laws regard as a felony or misdemeanor, if this act is directed against a Greek citizen and is also considered as a criminal offence according to the laws of the country where it was committed, or if it was committed in a constitutionally unsettled country. For article 8, see points (e) and (f) of the reply to question 1 above. The competent national court for handling such cases is defined according to articles 123-124 of the Greek Code of Criminal Procedure.

Point (e)(iv) : According to article 8 points (c) and (d) of the Greek Penal Code, Greek penal laws apply, for Greeks and aliens, irrespective of the laws of the place where the crime was committed (i) in case of punishable acts committed by those persons in their capacity as officials of the Greek State or of any institution or body of the European Union based in Greece and (ii) in case of acts committed abroad against or addressed to an official of the Greek State or a Greek official of an institution or body of the European Union, in the course or in connection with the performance of his/her duties.

Question 3

Points (a) and (c) : Jurisdiction *ratione materiae* over crimes committed outside the territory by nationals while serving as United Nations officials or experts on mission is governed by the general criminal law regime described in replies to questions 1 and 2 above. It should be stressed that, according to para. 4 of article 6 of the Greek Penal Code, petty offences committed by Greek nationals abroad are punished only in specific cases provided for by law. By virtue of para. 2 of article 7 of the Greek Penal Code, this provision applies also in case of petty offences committed abroad by aliens against Greek citizens.

Regarding misdemeanours committed by Greek nationals abroad and according to para. 3 of article 6 of the Greek Penal Code, the victim's complaint requesting for prosecution or a request for prosecution by the government of the country where the misdemeanor was committed, is necessary for Greek penal laws to apply to such an act. By virtue of para. 2 of article 7 of the Greek Penal Code, this provision applies also in case of misdemeanours committed abroad by aliens against Greek citizens.

Question 4

Point I(d) : In the absence of any particular international agreement binding upon Greece, the general criminal law regime as described above in replies to questions 1-3 applies, subject to the jurisdictional immunities recognized in article 2 of the Greek Code of Criminal Procedure which refers also to relevant international agreements as well as customary international law.

Point II(b) : On double criminality, see reply to question 2, points (b) and (d).

Point II(d) : See attached articles 9-11 of the Greek Penal Code.

Question 5

Greece is a Contracting Party to the Convention on the Privileges and Immunities of the United Nations since the 27th of December 1947. Besides any specific SOFA and SOMA agreements binding upon Greece which may contain provisions regarding the

immunity of United Nations officials and experts on mission, the attached article 2 of the Greek Code of Criminal Procedure grants jurisdictional immunity before Greek criminal courts to certain categories of persons. This provision refers also to relevant international agreements and rules of customary international law.

Question 6

Point (a). There is no special legislation in Greece about the criminal responsibility of military personnel deployed as United Nations officials or experts on mission. Thus the general provisions of the Greek Penal Code and the Greek Military Penal Code in force for all the military personnel of the Hellenic Armed Forces, apply also to Greek military personnel deployed as United Nations officials or experts on mission.

The criterion determining, in each case, whether the clauses of the common criminal law or of the military criminal law will apply, is the nature of the offence allegedly committed by the military personnel: if it is a military offence, the latter being defined in article 1 of the Greek Military Penal Code as any offence stipulated as such and punished under the provisions of this Code, the Code's pertinent provisions will apply. On the contrary, in case of an offence of the common criminal law, then only the common Greek Penal Code applies. Hereupon, there is no provision for an "a priori" exclusive application to military personnel of either of the two Codes.

Furthermore, according to the second article of the Military Penal Code, the provisions of the latter apply also for acts committed outside Greek territory.

Article 3 of the same Code stipulates that the provisions of the Penal Code apply also to military offences when there are no different regulations in the Military Penal Code. From the aforementioned, it is clearly understood that in lack of special regulations in the Military Penal Code, the clauses of articles 5-11 of the Greek Penal Code presented above in replies to questions 1-4, apply also to military offences of the military personnel (either serving in a UN mission or not).

Points (b)-(c): According to the first paragraph of article 193 of the Military Penal Code, individuals who are in the military at the time the act was committed fall under the jurisdiction of the military criminal courts. This general rule does not apply in the cases provided for in paragraph 2 of the same article which include, *inter alia*, military offences committed during leave of absence, holiday or suspension which exceed three months or during defection, as well as capital offences and misdemeanors which under special laws fall under the court of appeals jurisdiction.

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

military and others were committed when he/she was a civilian, then all crimes are judged by the common criminal courts.

Please find attached excerpts of relevant national provisions.

"PENAL CODE

BOOK ONE, GENERAL PART CHAPTER ONE: THE PENAL LAW

[...]

II. Territorial limits of penal laws

Article 5

Crimes committed within the Greek territory

1. Greek penal laws apply on all acts committed within the Greek territory, even when committed by aliens.
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.
3. When the act is committed through the internet or other means of communication, the Greek territory is also considered as place of commission, if access is provided to these particular means in its soil, independently of their place of installation.

Article 6

Crimes committed by Greeks abroad

1. Greek penal laws also apply on any act that they regard as a felony or misdemeanour, which has been committed abroad by a Greek, if such act is regarded as a punishable act by the laws of the country where it has been committed, or if it has been committed in a country that is constitutionally unsettled.
2. Prosecution shall also be turned against an alien who was Greek at the time when the act was committed. Moreover, prosecution shall also be turned against a person who acquired the Greek nationality after the act was committed.
3. In so far as misdemeanours are concerned, the victim's complaint requesting prosecution or a request for prosecution by the government of the country where the misdemeanour was committed is necessary in order for the provisions of paragraphs 1 and 2 to be applied.
4. Petty violations committed abroad are punished only in cases specifically provided for by law.

Article 7

Crimes committed by aliens abroad

1. Greek penal laws are also applied against an alien for an act committed abroad that they regard as a felony or misdemeanour, if this act is directed against a Greek citizen and is also considered as a criminal

offence according to the laws of the country where it was committed or if it was committed in a constitutionally unsettled country.

2. The provisions of paragraphs 3 and 4 of the previous article are also applied herein.

Article 8

Crimes committed abroad that are always punishable according to the Greek laws

Greek penal laws apply for Greeks and aliens, irrespective of the laws of the place where the crime was committed, for the following acts committed abroad:

- (a) High treason, treason aimed against the Greek state and terrorist acts (article 187A);
- (b) Crimes relating to the military service and the obligation to join the armed forces (special part, Chapter 8);
- (c) A punishable act committed by the above persons under their capacity as officials of the Greek state or of any institution or body of the European Union based in Greece;
- (d) an act against or addressed to an official of the Greek State or a Greek official of an institution or body of the European Union, in the course of or in connection with the performance of his/her duties;
- (e) Perjury in a proceeding pending before the Greek authorities;
- (f) Piracy;
- (g) A crime related to currency (special part, Chapter 9);
- (h) An act of slave-trading, human trafficking or lewd conduct with a minor for pay, travel with the purpose of intercourse or other lewd acts against a minor or underage pornography;
- (i) Illegal trafficking of narcotic drugs;
- (j) Illegal circulation and trading of obscene publications;
- (k) Any other crime covered by special provisions or international conventions that are signed and ratified by the Greek state, providing for the application of the penal laws of Greece.

Article 9

Non-prosecution of crimes committed abroad

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

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

Article 10**Calculation of penalties served abroad**

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

Article 11**Recognition of foreign penal decisions**

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

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

(...)

Article 16**Place of commission**

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

Law Number 2287**Validation of the Military Penal Code****Article 1****Definition of military offence**

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

Article 2**Territory in which the code is in force**

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

Article 3**Force of the penal code clauses**

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

Article 193**Jurisdiction of military criminal courts**

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

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

Article 195

Participation of military personnel and civilians

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

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

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

Article 197

Competence on related, repeated and enduring crimes

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