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PREDICTIONS ON COMBATING INTERNATIONAL ORGANIZED CRIME AND MORE SPECIFICALLY ON CORRUPTION IN THE UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND IN THE HELLENIC LEGAL ORDER. EVALUATIVE APPROACH

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ABSTRACT

The combating of organized crime phenomenon, occupies modern societies with similar intensity that is occurred in response to phenomena such as terrorism, corruption and drug trafficking. This phenomenon today because of economy globalization and the growth of transnational flows in economic and social sectors has got international dimensions. The proliferation of international contacts because of distances overcoming due to technology has played a key role in the organized crime expansion in the international area, developing profitable activities. To its internationalization have contributed and the changes that have taken place in the political and economic field in the area of Eastern Europe in combination with the economic crisis that dominates in the world during the last years. As a result of economic, social and consequently of political progress are the criminal phenomenon relations to be expanded internationally as also to be expanded and to be grown the efforts on its combating internationally, resulting the greater penetration of international law in national legal orders.

Keywords: United nations (UN) convention, Transnational organized crime, European union (EU), Organized crime, Corruption, International law, Hellenic legal order law enforcement agencies (LEA), Criminality

INTRODUCTION

The activation of organized criminal groups both in Hellas and internationally in the recent years has been increased. Subsequently have been changed and the qualitative characteristics of criminality. The traditional image of the common – law offender has been replaced by the organized offender, the criminal – entrepreneur, while the crime from individual behavior has

evolved into business, profitable business with organized infrastructure, with several persons to be active in this, who have distinct roles and responsibilities (Korontzis, 2012b).

Criminal organizations are constantly using new technological methods for the development of their activities. These criminal organizations do not limit their action to national borders, but exceed them and act as transnational enterprises (Marangopoulou–Yiotopoulou, 2008). Organized crime outside of the victims causing, undermines the social cohabitation, corrodes institutions and creates to citizens' doubts regarding the validity and enforcement of law and order.

It's combating due to the above mentioned characteristics, occupied and occupies the international community which is seeking ways for successfully combating by encouraging cooperation between Member States (MS) and promoting bilateral or multilateral agreements. One of the best moments of the international community in this field was the signed by more than 120 States, under the aegis of the UN in Palermo, Italy in December 2000, of the Convention against Organized Transnational Crime.

Hellas incorporated this Convention into national legal order by the law 3875/2010 (A' 158), «Ratification and implementation of the United Nations Convention against transnational organized crime and its three protocols and related provisions». Until the incorporation into national law in 2010, Hellas with law 2928/2001 (A' 141), «Modifications of Penal Code and Code of Criminal Procedure and other provisions on the protection of citizens from punishable criminal organization actions», included in its internal legislative order measures foreseen therein. In the drafting of this law were considered also EU joint action plans on combating organized crime. Its regulation were extended in any kind of organized criminality, while were predicted and increased judicial guarantees, in cases where it was found that cannot be provided effective protection to civilians but only through the limitation of their individual liberties.

Purpose of this summary study is to examine critically and chronologically the provisions which were formed by the Hellenic legal order since 2000, when the Hellenic State signed the Palermo Convention until 2010 when was incorporated into national legal order in order to be combated the phenomenon of organized crime and in particular the phenomenon of corruption (Gkntampi-Kaiaphas, 2008). At the same time will be developed in summary the predictions of the said Convention for Law Enforcement cooperation between them for its combating as well as the initiatives that have been developed by Hellas with its participation in International and European organizations that have been established and aim on fuller treatment of this phenomenon.

Also will be presented the recommendations of the Group of States against corruption (GRECO), related to Hellas and which demonstrate the inadequacy of the measures taken by the Hellenic State in this area, as well as the lack of will for the promotion of other necessary institutional measures for an effective response. This reference to corruption in this study is essential as it is known that

this is affected – is linked to organized crime. For the development of this concise study will exploit the existing legislative framework, namely laws, introductory reports, minutes of the Standing Committee on Public Administration, Public Order and Justice as well as the report on the law draft issued by the First Scientific Studies Directorate of the Hellenic Parliament. Finally this brief study will be completed by citing the conclusions arising from its development.

Legal framework

Law 2829/2001(A' 141), «Modifications of Penal Code and Penal Procedures provisions on citizen protection from criminal actions»

As has already been mentioned in this law, the Hellenic State incorporated in the domestic legislation measures foreseen in the Palermo Convention that was signed in December 2000. Its regulations were extended in any kind of organized criminality, while were predicted and increased judicial guarantees in cases that were found that cannot be provided effective protection to civilians but only through the limitation of their individual liberties.

However, with the explicit mention of DNA exception examination, all the stated rights restrictions already were foreseen in the existing law, and more specifically in special criminal law provisions in order to be combated crimes as offences against legislation on drugs, guns, munitions, antiquities trafficking, corruption within the Hellenic Police (HP), Hellenic Coast Guard (HCG) and on provisions of legislation concerning secrecy lifting toward calibration of multiple categories felonies and legislation on the protection of individuals with regard on personal data proceedings.

In particular:

With article 1 entitled «Criminal organization» was replaced the article 187 of the Hellenic Penal Code (HPC), with which is predicted as a key crime the establishment and involvement in an organization with aim systematically committing felonies. Also is described the concept of criminal organization where «is not enough the simple association of persons on committing criminal offences, but on the contrary is required "structured" and with continuously action group of three or more persons (organization) which must make with a view on committing selected felonies». In this article are described analytically the articles, violation of which when are subjected specific conditions constituted a felony (Korontzis, 2012g). Also in the same article is combated the so-called «Legalization of the proceeds or of income» derived from organized crime.

Article 4 provides that felonies provided in article 187 § 1 of the HPC are under the jurisdiction of the Court of Appeal and in second decree responsible is the Three Member Appeal Court as was modified by the article 111 of the Hellenic Criminal Code Procedure (HCCP). With this modification was removed the jurisdiction of litigation from the mixed swart courts, arguing as it appears from the explanatory statement of the law «are courts whose members are distinguished by their experience and their legal training, in front of are judged and so far most of the felonies referred in article 187 of the HPC». With this way is manifested disbelief to juries.

With article 5 was added in the HCCP the article 200A «DNA analysis», with which introduced the DNA testing as a kind of expertise, for the identification of the offender for an offence referred in article 187 paragraph 1 of the HPC. The regulation was based primarily in opinion No. 1 of the Hellenic Data Protection Authority which had requested by the ministry of Justice. In the same article is also defined and which is the process of sample destruction. This new exam is mandatory as is the expert opinion provided in article 183 of the HCCP.

With the article 6 was added in the HCCP the article 253A «Investigative acts on criminal organizations», in which the investigation of the offences referred in article 187 paragraphs 1 and 2 of the HPC can include and the infiltration investigating, controlled delivery, lifting the secrecy of letters and telecommunications, recording with audio or video devices or with other special technical means of personal data processing and control of accounts movements (Korontzis, 2012c; Korontzis, 2012d; Korontzis, 2012e) in financial institutions, i.e. namely investigative acts as provided in special legislative acts (respectively article 20 of the Palermo Convention).

The performances of the above investigative acts are not allowed in any case in accordance with paragraph 2 of the said article, but only:

- (a) If reveal serious evidence that has been committed an offence referred in article 187 paragraphs 1 and 2 of the HPC and
- (b) if the dismantling of a criminal organization would be otherwise impossible or very difficult. Also is required a special reasoned order issued by the competent judicial Council after proposal from the Prosecutor, and only in extremely urgent cases is possible to be ordered the conduct of investigation by the Prosecutor or by the investigating judge.

From article 6 wording is viewing the conflict between the actions of State organs to find and to punish the perpetrators of happened crimes and the claim of individuals as during the exercise of this activity, to be protected their human dignity (art. 2 paragraph 1 of the Constitution).

With article 7 «Interrogation termination» is regulated the way of the main interrogation closure on article 187 felonies and associated with them actions.

Article 8 «Liability of legal persons and enterprises» regulating the criminal responsibility of legal persons involved in organized crime operations, usually financial organized crime such as money laundering, etc., while article 9 «Witness Protection» refers to witnesses protection who are examined during criminal proceedings on crimes committed by criminal organizations (Hellenic Parliament, 2012).

Law 3875/2010 (A´ 158), «United Nations Convention against Transnational Organized Crime and its endorsement in the Hellenic legal order»

Object of this law is to improve the institutional framework governing the prevention and fight against organized crime and the relevant with those crimes in fulfilling Hellas international obligations by the conventional texts ratification of the so-called Palermo Convention and to its

additional Protocols against trafficking in human beings, migrants smuggling and weapons trafficking.

As is referred in article 1 of the United Nations Convention against Transnational Organized Crime «The purpose of this Convention is to promote cooperation to prevent and combat organized crime more effectively». As will be explained below, the Hellenic legal order has covered most of the issues raised by the Convention.

More specifically participation in an organized criminal group has been criminalized according to the law 2928/2001, which as has been mentioned earlier had taken under consideration the provisions of Palermo Convention concerning crime proceeds laundering, corruption and justice obstruction (articles 5, 6, 8 and 23 of the Convention in conjunction with article 3 «Scope of application»).

The Convention has entrenched its scope in the transnational organized crime, however in any case in accordance with articles 3 paragraph 1 subparagraph a and 34 paragraph 2 the offences established in accordance with articles 5, 6, 8 and 23 of the Convention (participation in an organized criminal group, crimes proceeds laundering, corruption and justice obstruction) should be established in the domestic law of each State party, independently of the transnational nature or the involvement of organized criminal group, with the exception of article 5 (participation in an organized criminal group) in so far as it requires the involvement of an organized criminal group.

In this way the Palermo Convention is a comprehensive legal basis for the promotion of cooperation between States parties with regard on the prevention and combating of transnational organized crime.

In article 2 of the Convention «Use of terms», in the concept of an organized criminal group, the procurement of a direct or indirect financial or other material benefit constitutes an essential element of this concept, as is repeated in article 5, paragraph 1 (a) (i). In the Hellenic legal order respectively the financial pursuit or other material benefit constitutes aggravating circumstance in accordance with article 187 paragraph 4 subparagraph A of law 2928/2001. During law 2928/2001 drafting as was mentioned above has been taken under consideration all the relative predicted in Palermo Convention on criminalization of participation in a criminal organization and as set out in the explanatory statement: «The proposed arrangements were extended to all kinds of organized criminality, criminality that is caused by criminal organizations, with whatever name they may be known regardless of the various objectives that can promote. Social demerits have criminal acts and not necessarily the objectives».

Also article 2 (a) of the Convention «Organized criminal group» refers to a structured group that acts with common purpose the performance of one or more serious crimes, namely the purpose of the performance should be attributed on the individual actions that compose the organization and not only to the person who integrates as member of this (see also article 5, paragraph 1 (a) (ii) of the Convention refers to the knowledge of the offender on the purposes and the criminal action of the organization) (Symeonidou – Kastanidou, 2001).

In subparagraph (b) of the same article is described the concept of «Serious crime». As a serious crime «shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty». This concept is unknown in the Hellenic legal order which presuppose felonies committing for someone punishment as a member of a criminal organization. But the felonies with a minimum penalty of four years provided by the Convention, namely with a stricter penalty, clearly fall within the concept of «Serious crimes» of the Convention.

Articles 8 and 9 of the Convention refer on the obligation of corruption criminalization and on measures against corruption. Hellenic State has formed legislative, administrative and other measures on combating corruption.

Specifically, the criminal combat on the corruption in the Hellenic legal order is regulated by the articles 235 «Bribery on licit actions», 236 «Bribery on illicit actions» and 237 «Judge bribery» of the HPC.

In cases of the said articles application according to the article 238 of the HPC are confiscated the gifts or their value. In addition, in accordance with article 159 «Corruption» of the HPC is also punished the active and passive bribery of parliament members, of prefectural, municipal or community counciler. Furthermore in article 187 paragraph 2 of the HPC is defined that: «Anyone who with the use of threat or with the use of force against judicial officers, investigators or judicial officials, witnesses, experts and interpreters or with bribery of the same persons attempting to forestall the revelation or the prosecution and punishment of the previous paragraph acts is punishable by imprisonment of at least one year».

The Hellenic legislation as far as regards article 8 paragraph 2 of the Convention concerning the legislative and other measures in order to be established as criminal offences the acts referred in paragraph 1 of the same article when is involved alien civil servant or employee of an international organization predicts the following:

Article 1 of law 2656/1998 (A' 265) with which Hellas has ratified the «Convention on combating bribery of foreign public officials in international business transactions» of OECD (Organization for Economic Co-operation and Development), with which is predicted the criminal bribery offence of foreign public officials.

Article 4 of law 2802/2000 (A' 47) with which Hellas has ratified the «Convention on the fight against corruption involving officials of the European communities or officials of European Union Member States», with which are assimilated these employees as domestic servants and officials for the passive and active bribery offenses.

Article 3 of law 2803/2000 (A' 48) with which Hellas has ratified the «Convention on the protection of European communities financial interests» and the related Protocols, with which is formalized the offence of active and passive bribery of EU officials or of another Member State, when is damaged the community financial interests.

Articles 2 to 12 of law 3560/2007 (A' 103) with which Hellas has ratified the «Criminal Law Convention on corruption and its additional Protocol» of Europe Council, with which are predicted

the equality of all employees, officers and members of the Contracting States and international organizations in which Hellas is a member as domestic servants, ministers and parliamentarians on the implementation of the provisions where are standardized the offences of active and passive bribery, while is introduced the criminal offence of corruption acts in the private sector and the offence of offering influence exercise in private or foreign officials.

With the provisions of law 3666/2008 (A' 105) with which Hellas has ratified the «UN Convention against corruption».

The criminal offences establishment «Other forms of corruption» minus than those are predicted in article 8 paragraph 1 of the Convention is covered by the above, as well as by the articles 11-12 of law 5227/1931 (A' 292) «Mediators» .

For as provided in article 8 paragraph 3 of the Convention with regard to the measures which are necessary in order to be established as a criminal offence participation in crimes laid down by that article, relatives are the following articles of HPC 45: «Accomplices», 46 «Moral accomplice and direct accomplice» and 47 «Simple accomplice».

As regards the definition of the civil servant referred in article 8, paragraph 4, of the Convention, relevant is article 13 subparagraph a of the HPC, according to which «Employee is the one in who has been assigned legally, albeit temporarily, the pursuit of public service, municipal or community or other legal person of public law».

Furthermore in article 263A of the HPC and especially with crimes related to service, the concept of the official fall and other categories of persons such as the mayors and presidents of communities and those who serve permanently or temporarily and with any status in the cases referred in subparagraphs (a), (b) and (c) of that article.

Minus than those previously mentioned, there are other legislative texts that ensure effective prevention and suppression of corruption. More specifically:

EU Council decision of 6 April 2009 establishing the European Police Office (Europol) [(2009/371/JHA)] in annex of which among other forms of serious crime for which Europol is competent under article 4, paragraph 1 of this decision is included corruption ([Korontzis, 2012d](#)).

Article 1, paragraph 2 of law No. 2713/1999 (A' 89) «Hellenic Police Internal Affairs Service and other provisions etc» as amended by article 2 paragraph 1 of law 3103/2003 (A' 23) «Passports issuing by the Hellenic Police and other provisions», according to which the aforementioned Service is conducting preliminary investigation and for violations of article 235 and 236 of HPC «Bribery on licit deeds» and «Bribery on illicit acts» respectively.

Article 1 of law 2925/2001 (A' 138) «Agreement among the government of the Black Sea economic cooperation participating States on cooperation in combating crime, in particular in its organized forms», where is referred that the contracting States shall cooperate to prevent, suppress, investigate, uncovering crimes and conducting relevant investigations, where among the various criminal activities are included organized crime and corruption.

Articles 49 to 54 of law 2367/2001 (A' 162) «Hellenic Coast Guard Personnel and other provisions», where was established the Office of Internal Affairs in the Ministry of Mercantile Marine (MMM) [now ministry of Shipping and Aegean (MSA)] [Presidential Decree (PD) 94/2012

(A' 149), PD 98/2012 (A' 160)] where in its mission are included the investigation, detection and prosecution including corruption cases of HCG personnel of all grades, of servants of MMM and of supervised public law legal persons.

Article 5 of law 2957/2001 (A' 260) «Ratification of the Europe Council Convention on matters of civil law concerning Corruption», in which is predicted responsibility of the State according to is allowed to persons who have suffered damage as a result of public officials corruption act during the exercise of their functions, to claim for compensation from the State or from the competent authorities.

Article 21 of Law 3023/2002 (A' 146) «Political parties financing by the State. Revenues and expenses, promotion, publicity and financial control of political parties and candidate congressmen» with which is established a control committee. Relevant on the subject are the Ministerial Decisions (MD):

(a) 5587/1996 «Control commission of party finances, and members of parliament» (the decision was maintained in force by article 157 of the 1737/1997 Decision issued by the Parliament Plenary A' 51) and

(b) 1429/2003 «Organization and operation of the Committee referred in article 21 of law 3023/2002». The Committee referred in article 21 controls the political parties finances, coalitions and congressmen candidates, as well as the fulfillment of the obligations of this law as may also can assign financial or economic expertise or other investigative acts to auditors. In paragraph 5 of the said article is predicted the punishment with imprisonment at least six months of whom interferes in any way the audit work and in particular, refuses to provide information to the Commission or to the auditors.

Article 6 of law 3074/2002 (A' 296) «Public Administration General Inspector. Upgrading of Public Administration Inspectorate Auditors and the Coordinating Inspection and Control Body and other provisions», in which is predicted that in the preliminary investigation competencies of Public Administration Inspectorate Auditors is the preliminary investigation after Appeal Prosecutor's ordering or by the intimate Misdemeanor Public Prosecutor for offences referred in article 2 paragraph 3 of that law which are attributed to employees referred in article 13 a of the HPC.

Article 2 paragraph b of law 3090/2002 (A' 329) «Composition of inspection and control of detention facilities body» according to in the mission of this Body is predicted the investigation and detection of offences prosecuted ex officio and committed in places of detention. Consequently can be subjected and the offence of corruption.

Law 3216/2003 «Declaration and assets control of congressmen, of public officials and civil servants, media owners and other persons categories».

Article 12 paragraphs 1, 2 and 3 subparagraph c of law 3320/2005 (A' 309) «Regulations of issues on public staff and of width public sector legal persons and on local authorities», where is predicted the information from the competent judicial authorities concerning judicial decisions and orders issued in each instance and for prosecutions where are exercised in any form of participation against employee, officer or body of sectors of law 3074/2002 (A' 296) of article 1, paragraph 2a for crimes related to service (articles 235-263A of HPC, on memorandum (articles 216, 217, 218, 220, 222 of the HPC), against property (372,375, 381, 382 of the HPC) and against property rights (articles 386, 386A, 389, 390, 394 of the HPC) which are against the Government and to upper bodies.

Also the Inspector has the right to ask from the public, legally represented by the minister of Economy and Finance to be present as civil proceedings and to exercise all the rights. Also, the General Inspector after approval issued by the minister of the Interior, Public Administration and Decentralization may cooperate with the EU competent services and international organizations, such as OECD, the Council of Europe, UN and others, with the aim transferring of know-how and participation in actions and programmes for misrule control and corruption reduce. Article 14 paragraph 3 and 4 of law 3345/2005 (A' 138) «Prefectural Self-governments economic issues and regulating administrative affairs», with which is predicted the possibility of banking lifting, stock exchange and tax secrecy in the context of the checks carried out by the General Inspector, or after his/her order by the body of Public Administration Inspectorate-Auditors and by the particular bodies and inspection and audit services. The confidentiality lifting is possible and within the audit carried out by the General Inspector of the annual financial statements of the specific Control and Inspection bodies' members.

Articles 8, 28 and 107 of law 3528/2007 (A' 26) «Ratification of Civil Administrative Public Officials Status Code and Public Officials of Public Law Legal Persons». In particular in article 8 paragraph a is predicted that the sentencing of a person for bribery is an impediment to his/her appointment as official. In article 28 is provided the assets control of the staff, of their spouses and their children as well as any substantial subsequent alteration. If serious evidence reveals that the employee's property was obtained in a manner that constitutes a criminal offence, the minister shall carry out the necessary actions for criminal or disciplinary action. In article 107 paragraph 1 subparagraph iz is predicted as disciplinary offense of the employee «Any acceptance of any material favour or remuneration derived by a person whose handles affairs handles or will handle during the performance of his/her duties».

Article 43 (A) «Special standing committees» of the Decision 2689/1987/7-106 «Hellenic Parliament Regulation Code», where in paragraph 1b is predicted the establishment of a «Standing Institutions Committee and transparency» object of which is the parliamentary scrutiny of independent administrative authorities, as well as the survey and the evaluation of each element useful for studying and preparing proposals that contribute on the transparency of political and

public life in general and article 138A «Control on the independent authorities» which refers to the submission of any independent authority annual reports.

The efficient ensuring action by the authorities of each State in order to prevent, detect and punish the corruption of public officials, as required by article 9 paragraph 2 of the Convention is covered by the above mentioned legal texts. It should be noted that in the internal affairs services of the HP and in the MSA [law 2713/1999 (A´ 89) and law 2935/2001 (A´ 162) respectively] on the effectiveness of their action contribute the qualifications and preconditions that are required for the selection of suitable executives. Also in both cases are predicted the lifting of letters secrecy, correspondence or of other communication forms, lifting of the stock exchange or other transactions, is allowed the recording of relative actions by the use of audio or video devices or other special technical means and use of material as evidence in court, investigating or any other public authority. Finally, in article 54 of law 2935/2001 as was amended subsequently is predicted that the HCG personnel and the civilian staff of the MMM (now MSA) and the public law supervised legal persons, spouses and minor children are obliged to submit to the Internal Affairs Office statement of their patrimonial situation [relatives are the article 32 of PD 67/2011 (A´ 149) and article 21 of law 4058/2012 (A´ 63)]. Also the Internal Affairs Office of the HP is subjected directly to the HP chief as well as to the HCG Chief in order to be avoided interventions for cover-up cases that may involve and senior executives.

Providing independence to the abovementioned authorities in order to carry out effectively their work stems from the Constitution itself and in particular from articles 8, 55, 56, 57.87, and 101A. Concerning article 10 of the Convention that is referred to the legal persons liability on participation in serious crimes in which are involved organized criminal group, as well as the offences established in accordance with articles 5,6, 8 and 23 of the Convention, relevant is article 51 of law 3691/2008 (A´ 166) «Prevention and suppression of money laundering and terrorist financing and other provisions», entitled «Legal persons liability» in which are predicted economic and administrative sanctions for legal persons of whom for their benefit are committed offences referred in articles 2 and 3 of the same law.

In particular for corruption offences, provisions relating to legal persons liability involved in them, exist in the article 5 of law 2656/1998 (A´ 265) [as amended by article 9 «Bribery of foreign public official» of the law 3090/2002 (A´ 329)] with which was ratified the OECD Convention, in article 8 «Administrative sanctions» of the law 2803/2000 (A´ 48), with which was ratified the Convention on the protection of the European Communities financial interests and related to this protocols and in articles 10 «Legal persons liability» of law 3560/2007 (A´ 103) and 8 «Liability of legal persons» of the law 3666/2008 (A´ 105). It is stressed that the respective special rules for legal persons as defined in the Convention who are involved in serious crimes in which is involved criminal organization does not exist. Solution would be the drafting of a provision that would

extend the validity of article 41 of law 3251/2004 (A' 127) – which regards the liability of legal persons for their involvement in terrorist acts – and in crimes committed by criminal organizations.

Concerning article 11 of the Convention relating on the penalties for the offences referred in the Convention, namely articles 5 «Criminalization of participation in an organized criminal group», 6 «Criminalization of crime laundering proceeds», 8 «Criminalization of corruption» and 23 «Criminalization of justice obstruction» in the Hellenic legal order exist the following predictions: As far as concern the presence of the accused as provided in article 11 paragraph 3 of the Convention in accordance with article 3 paragraph 1 and 2 of the Hellenic Criminal Code Procedure (HCCP) the hearing of felonies (serious crimes) in which is referred the Convention is taking place either with the presence of the accused or either by the counsel whom has been designated for this purpose.

Hence the adjudication of the aforementioned acts is conducted in absentia of the accused only in exceptional cases exclusively identified in the HCCP and in particular to articles 432 and 435 of HCCP. Moreover, regulations relating to the temporary or conditional dismissal clause (article 11, paragraph 4), always are taking under consideration the gravity of the crimes that are felonies.

With regard to article 11, paragraph 5 which refers to the establishment of long period limitation for offences of the Convention, is noted that according to the law in force is predicted long period for all felonies limitation, while when the alleged offender absconds, there is provision for suspension of time limitation, as defined in article 432 paragraph 2 of HCCP. At the same time, in accordance with article 113 of the HPC is predicted suspension of limitation period for as long with a provision cannot begin or to be continued the prosecution, but also for the time being that lasts the main process and until it becomes the conviction irrevocable. As regards the measures on seizure and confiscation that are predicted in article 12 of the Convention relative is article 76 of the HPC «Confiscation». Additionally in the third chapter of the HCCP entitled «Seizure» and in articles 260 to 269 of the HCCP are regulated seizure issues.

Concerning article 13 of the Convention «International cooperation on purposes of confiscation» and 14 «Disposal of confiscated proceeds of crime or property» the ratification of the Convention in conjunction with the legislative provisions on judicial assistance (articles 436 and next of HCCP) and the relevant bilateral or multilateral conventions, constitute the legal basis for such cooperation. For the article 14 paragraph 1 in addition to those listed above concerning confiscation relative is article 394 of the HPC «Acceptance and disposal of crime proceeds». So in accordance with the internal legislation there is a comprehensive legal framework for combating on such crimes and international cooperation.

As far as concerns the establishment of jurisdiction concerning the offences referred in articles 5, 6, 8 and 23 of the Convention shall apply the general provisions of articles 5 «Crimes committed in

domestic», 6 «Crimes of domestics in abroad», 7 «Crimes of aliens in abroad» and 8 «Crimes in abroad punishable always under Hellenic laws».

Also the jurisdiction on crimes related to a criminal organization has expanded in accordance with article 187 paragraph 5 of the HPC, while regarding acts of corruption has been extended in accordance with article 6 of law 2802/2000, 9 of law 3560/2007 and 10 of law 3666/2008. With these provisions have been covered the Convention requirements.

Article 18 of the Convention refers to the mutual assistance and functions complementary and for crimes that are combating by the Convention, with the relevant articles of the HCCP (457 and next) as also with the bilateral and multilateral conventions concerning judicial assistance that Hellas has signed such as the Convention on mutual assistance in criminal matters [Legislative Decree (LD) 4218/1961 (A' 171)] and the relevant EU conventions on extradition and mutual assistance in criminal matters (laws 2738/1999, 2787/2000, 2655/1999, 2772/1999).

In article 18, paragraph 6 is determined that the provisions of this article of the Convention shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern in whole or in part, mutual legal assistance. MS can if are bounded by mutual legal assistance treaties, to agree on the application of article 18, paragraphs 9 to 29 of the Convention as defined in paragraph 7 of the same article.

Article 19 is related to joint investigations for cases which are the subject of investigations, prosecutions or judicial proceedings in one or more countries with absolute respect for the sovereignty of the State party in its territory the investigation is conducted. Important role in these plays Eurojust [law 3663/2008 (A' 99)] «European judicial cooperation unit (EUROJUST), Joint Investigation Teams and other provisions» as also Europol something which is provided in article 88 paragraph 2b of the Lisbon EC Treaty (Korontzis, 2012a). For article 20 of the Convention which is referred in special investigative techniques, relevant is article 253A of the HCCP «Investigative acts on criminal organizations» (Article 6 of law 2928/2001).

Concerning witness protection referred in article 24 of the Convention, provisions exist in article 9, «Witnesses protection» and 10 «Other people's protection» of law 2928/2001. Also relative are the provisions of article 5 «Lifting criminality-attenuating circumstances – witnesses protection» of the law 2713/1999. Also, if will be signed relevant bilateral or multilateral conventions, the Hellenic State can send witnesses living in third countries as to accept from third countries, under the reciprocity condition and in order to protect them. The provisions of article 9 of law 2928/2001 have been extended to corruption acts in accordance with article 12 of law 3560/2007 and 7 of law 3666/2008, while for officials that disclose acts of money laundering, there is provision in article 30 «Measures to protect petitioners» of law 3691/2008 (A' 166).

Concerning article 26 of the Convention on measures to enhance cooperation with law enforcement authorities in article 187B «Leniency measures» of the HPC are predicted measures for those who cooperate with the authorities on the prevention of crimes or contribute significantly in the dismantling of a criminal organization. In article 31, the Convention encourages States parties to take measures to prevent transnational organized crime, giving the cardinal directions. Hellas in this specific area for the prevention on corruption, has incorporated into national law the Criminal Law Convention on corruption with the law 3560/2007 (A' 103), the UN Convention against corruption with the law 3666/2008 (A' 105), money laundering, articles 6 and 40 of law 3691/2008 (A' 166).

Articles 32-41 of the Convention refer to its implementation issues. On article 35 «Settlement of disputes», it should be noted that the procedure laid down in paragraph 2 is not a known process in the Hellenic legal order, and for this reason the Hellenic State make use of article 35 paragraph 3 and indicates that is not committed by paragraph 2 of this article.

From the above articles examination of the Convention on the effective prevention and combating of transnational organized crime and related to this activities such as money laundering from criminal activity, corruption, involvement in a criminal organization, etc. in relation with the existing legal provisions in the Hellenic legal order, appears that the latter is sufficient and the modifications required are minimal. It is stressed that after the incorporation of the Convention in Palermo in the Hellenic legal order was voted by the Hellenic Parliament and the following laws:

Law 3932/2011 (A' 49), «Establishment of Authority on combating money laundering and terrorist financing and Assets Declarations control».

Law 3961/2011 (A' 97), «Modification of law 3126/2003 on the criminal responsibility of Ministers and other provisions».

Law 4013/2011 (A' 204), «Establishment of Independent Recommendation Procurement Authority and E-Procurement Central Registry – Replacement of the sixth chapter of law 3588/2007 (Bankruptcy Code) – Pro bankruptcy procedure and other provisions».

Law 4022/2011 (A' 219), «Hearing of Politicians and State officials' corruption acts of high social interest and major public interest and other provisions».

With the ratification of the Convention pursuant to article 28 of the Hellenic Constitution the Hellenic State is trying to combat transnational organized crime with the high requirements set by the Convention, without any fundamental changes and conflicts with a functioning criminal justice system, such as the Hellenic ([Hellenic Parliament, 2010](#)).

Group of States against Corruption (GRECO)

As called for by the Stockholm Programme (OJ C 115, 4.5.2010, p. 1.), the Commission submits to the Council Report [COM (2011) 307 final], on the modalities for the European Union to accede to the Council of Europe Group of States against Corruption (GRECO).

GRECO is the most inclusive existing anti-corruption monitoring mechanism at European level, in which participates all EU Member States. Also must be mentioned that GRECO has an important role in setting certain minimum European standards for a legal and institutional framework in order to combat corruption.

Yet some Member States still face serious problems with corruption and unfortunately effective results are not achieved consistently across the EU. This reinforces the Commission's belief that political engagement and wish to fight corruption remains uneven across the EU. The Communication on an EU policy against corruption [(COM (2011) 307 final), recommends EU participation in GRECO, together with the establishment of an EU anti-corruption reporting mechanism. This should provide the potential to stimulate political will among Member States and render the existing legal and institutional framework more effective.

GRECO was set up in 1999 by the Council of Europe, to «improve the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance with their undertakings in this field» [Resolution (99) 5 of Council of Europe's Committee of Ministers on establishing the 'Group of States against Corruption – GRECO]. 49 states are GRECO members (48 European states and the USA). The work of GRECO is governed by its Statute [Appendix to Resolution (99) 5 of the Council of Europe's Committee of Ministers on establishing the 'Group of States against Corruption – GRECO'] and Rules of Procedure (Rules of Procedure adopted by GRECO on 4-6 October 1999). Each GRECO member appoints up to two representatives in plenary meetings with the right to vote. Members also provide GRECO with a list of experts available to carry out evaluations. Evaluations of GRECO members are divided into rounds and are carried out against the standards set out in the Twenty «Guiding Principles» for the Fight against Corruption (Council of Europe's Committee of Ministers' Resolution (97) 24), the Civil Law Convention on Corruption (The Civil Law Convention on corruption adopted on 4 November 1999, entered into force on 1 November 2002) and in the Criminal Law Convention on Corruption with its Additional Protocol (The Criminal Law Convention on corruption adopted on 27 January 1999, entered into force on 1 July 2002).

GRECO's first evaluation round took place in 2000-2002 and covered the independence, specialization and means of national bodies engaged in preventing and fighting corruption, as well as the immunities of public officials. In 2003-2006 was conducted the second evaluation round, focused on the seizure and confiscation of corruption proceeds, the prevention and detection of corruption in public administration, and the prevention and fighting of corruption in the private sector. The third evaluation round, started in January 2007 and is still ongoing. It covers the criminalization of offences in accordance with the Criminal Law Convention on Corruption and political party financing.

Evaluation reports are issued after discussion with the evaluated state and then these reports are debated and endorsed by the plenary. These are as a rule confidential, but may be published with the consent of the evaluated state. Each report comprises recommendations to the country is requested to comply with in a certain period of time (e.g. 18 months). A compliance procedure is conducted in order to check the follow-up of the recommendations and ends with the issuing of compliance reports, possibly with addenda.

Third Evaluation Round. Compliance Report on Hellas ‘‘Incriminations (ETS 173 and 191, GPC 2)

1. The Compliance Report (Group of States against Corruption GRECO, Strasbourg, 20-22 June 2012) assesses the measures taken by the authorities of Hellas to implement the 27 recommendations issued in the Third Round Evaluation Report on Hellas (see paragraph 2), covering two distinct themes, namely:

- Theme I – Incriminations: Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalization of corruption).
- Theme II – Transparency of party funding: Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

2. The Third Round Evaluation Report was adopted at GRECO’s 47th Plenary Meeting (7-11 June 2010) and made public on 7 July 2010, following authorization by Hellas [Greco Eval III Rep (2009) 9E, Theme I (Incriminations) and Theme II (Transparency of party funding)].

3. The Compliance Report assesses the implementation of each individual recommendation which is contained in the Evaluation Report and establishes an overall appraisal of the level of the member’s compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report which will be submitted by the authorities 18 months after the adoption of the present Compliance Report.

RECCOMENDATIONS

Recommendation i

GRECO recommended to consolidate all relevant provisions on bribery and trading in influence, preferably within the Penal Code (recommendation i has been partly implemented.)

Recommendation ii

GRECO recommended to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official’s competences (recommendation ii has not been implemented).

Recommendation iii

GRECO recommended to take the appropriate measures, such as circulars or training, to make it clear to or to remind those concerned that the offences of active and passive bribery are autonomous and do not necessarily require an agreement between the parties (recommendation iii has not been implemented).

Recommendation iv

GRECO recommended to incriminate more broadly bribery of domestic, foreign and international judges, arbitrators and jurors, in accordance with Articles 2, 3, 5, 11 of the Criminal Law Convention (ETS 173), as well as Articles 2 to 6 of its Additional Protocol (ETS 191), in particular as regards intermediaries, third party beneficiaries and the scope of the bribe-taker's actions/omissions (recommendation iv has been partly implemented).

Recommendation v

GRECO recommended to incriminate more broadly bribery of domestic, foreign and international members of public assemblies, in accordance with Articles 4, 6 and 10 of the Criminal Law Convention (ETS 173), in particular as regards the "giving" and "receipt" of an undue advantage, intermediaries, third party beneficiaries and the scope of the bribe-taker's actions/omissions (recommendation v has been partly implemented).

Recommendation vi

GRECO recommended to carry out a proper assessment of the effectiveness of the provisions concerning bribery and trading in influence (recommendation vi has not been implemented).

Recommendation vii

GRECO recommended to ensure that bribery of foreign public officials, judges, members of public assemblies, arbitrators and jurors is criminalized in respect of bribe-takers from any foreign State, in line with Articles 5 and 6 of the Criminal Law Convention (ETS 173) and Articles 4 and 6 of its Additional Protocol (ETS 191 [recommendation vii has been partly implemented]).

Recommendation viii

GRECO recommended to incriminate trading in influence in a consolidated manner, making sure that all the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met, in particular as regards the elements of improper influence, the active side of trading in influence, the requesting of an undue advantage, immaterial advantages, intermediaries and third party beneficiaries (recommendation viii has been partly implemented).

Recommendation ix

GRECO recommended (i) to keep the application of the provisions on the special defense of effective regret under review in order to ascertain the potential use and misuse of this defense in the

investigation and prosecution of corruption and, if need be, to take appropriate measures; (ii) to abolish the provisions relating to the automatic return of the bribe to the briber (recommendation ix has been implemented satisfactorily).

Recommendation x

GRECO recommended to abolish the special statute of limitation for the prosecution of members of government and former members of government (recommendation x has not been implemented).

Recommendation xi

GRECO recommended to amend current legislation to expressly exclude the operation of Article 30 (2) of the Code of Penal Procedure concerning the postponement or suspension of prosecution of “political acts” and “offences through which international relations of the State may be disturbed” in the context of all domestic and foreign bribery offences (recommendation xi has not been implemented).

Recommendations i-xvi

GRECO recommended the financial reference period applicable to election campaigns to be extended so that the financial activity during this period is accurately and comprehensively recorded (recommendation i);

(i) to abolish the possibility for donations to political parties, coalitions and candidates to use anonymous coupons and (ii) to introduce a requirement that all donations above a certain threshold to political parties and coalitions and further if appropriate, to election candidates, be made by bank transfer (recommendation ii);

to take appropriate measures in order to ensure that loans granted to political parties, coalitions and candidates are not used to circumvent political financing regulations, by ascertaining in particular whether loans are reimbursed in conformity with the terms under which they were granted (recommendation iii);

to ensure that all goods and services provided in kind to political parties, coalitions, members of the Hellenic and European Parliaments and election candidates (other than voluntary work by non-professionals) are properly identified and comprehensively recorded, at their market value, both as regards parties’ and coalitions’ operational activities and as regards election campaigns (recommendation iv);

to properly reflect in party accounts the value of the services rendered by public officials that are seconded to assist members of the Hellenic or the European Parliament and to make sure this information is readily available to the public (recommendation v);

to increase the accounts transparency and entities activities that are related, directly or indirectly, to political parties, or otherwise under their control (recommendation vi);

to introduce requirements for the timely publication of private donations to political parties, coalitions and candidates above a certain threshold (recommendation vii) to increase considerably the transparency of the financing of election campaigns, in particular by (i) making apparent the

financial support by political parties and coalitions to candidates in local and regional elections and (ii) by introducing reporting and publication requirements for all election candidates or lists of candidates at all levels (recommendation viii);

to facilitate easy public access to published information concerning the financing of political parties and election campaigns (recommendation ix);

to ensure an independent auditing in respect of political parties obliged to keep books and accounts (recommendation x);

to strengthen considerably the independence of the Control Committee from the political parties and coalitions (recommendation xi);

to ensure a more substantial and ongoing monitoring of political parties, coalitions and candidates financial documents (recommendation xii);

(i) to ensure the publication and an easy access by the public to the reports of the Control Committee, including the appendices containing the reports of the chartered auditors and

(ii) to introduce the possibility for members of the Control Committee to express and publish dissenting or minority opinions on the Committee's report (recommendation xiii); to ensure that files may be re-opened when new information comes to light and to modify the rules on the retention of financial documentation by the parties, coalitions, candidates, as well as by the Control Committee itself, accordingly (recommendation xiv);

to ensure that political funding at sub-national level is subject to monitoring by an independent and effective control mechanism which ideally will be under the supervision of the Control Committee (recommendation xv);

(i) to introduce a requirement for the Control Committee and the auditors in order to report suspected violations of the rules on political financing to the law enforcement authorities and

(ii) to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding works effectively in practice (recommendation xvi) [recommendations i-xvi have not been implemented].

In view of the above, GRECO concludes that Hellas has implemented satisfactorily or dealt with in a satisfactory manner only one of the twenty-seven recommendations contained in the Third Round Evaluation Report. More specifically with respect to Theme I – Incriminations, recommendation ix has been implemented satisfactorily, recommendations i, iv, v, vii and viii have been partly implemented and recommendations ii, iii, vi, x and xi have not been implemented. With respect to Theme II – Transparency of Party Funding, none of the recommendations (i-xvi) has been implemented.

Even if this almost complete lack of concrete results may be understandable given the difficult situation in Hellas and the fact that the former government only had a limited mandate, it is striking that no progress has been recorded either in respect of the few recommendations that would not necessarily require changing the law. GRECO urges the competent authorities to do their utmost in order to give careful consideration to each of the recommendations and to the current report, in

order to improve, as far as possible in the current situation, their level of compliance. It is noted that although the legislative framework that has been drawn up by Hellas according to what has been mentioned above is apparently sufficient, in no other country in Europe the phenomenon of corruption is not as widespread as in Hellas. This has been revealed by a research which took place for the year 2012 by the Transparency International organization which was published in Berlin in December 2012.

This is the index of corruption perception based on people who shape public opinion. With better score of 100, Hellas takes just 36 degrees, ranks first position in corruption across the continent, the 94th position in the world (80th in 2011) among 174 countries, namely shares the same position with countries like Colombia or Djibouti (Kalliris, 2012), (Transparency International Hellas, 2012). Consequently, was concluded that the existing institutional framework for combating corruption is not applied, or is applied selectively or ineffective.

Law enforcement cooperation according to United Nations Convention against Transnational Organized Crime and Hellenic Law Enforcement Authorities

In article 27 of the Convention «Law enforcement cooperation» are described the sectors in which must be taken effective measures to be strengthen the LEAs cooperation. More specifically paragraph 1 of that article refers in the cooperation of the competent national authorities on enhancing the effectiveness of offences investigation and suppression which are combating by the Convention.

In this context, Hellas cooperates with other MS in the context of transnational agreements, through international organizations such as Interpol [law 3640/1956 (A´ 303)] (Interpol, 2012), European organizations such as Europol (Korontzis, 2010; Korontzis, 2012a; Korontzis, 2012f; Korontzis, 2012k), Eurojust (Korontzis, 2012a) and FRONTEX (Korontzis, 2010; Korontzis, 2012f; Korontzis, 2012k).

Participates in the initiative for cooperation in South-East Europe (SECI now SELEC), [law 4054/2012 (A´ 45)] while via the International Police Cooperation Directorate of the Ministry of Public Order and the Citizen Protection [PD 189/2006 (A´ 194)] exchanges personnel and seconded liaison officers, exchange and analyze relevant information on means and methods of criminal organizations. The service that collects and analyzes relative information is the department of Crime Analysis of Public Security Division of the HP Headquarter.

It is noted that also the HCG seconds liaison officer in European organizations such as Europol and FRONTEX in accordance with its relevant legislation [article 120 of Law 3079/2002 (A´ 311)] for the promotion of international police cooperation. Additionally HCG officers are postponed as Maritime Attaché in Hellenic embassies working among others with duties related on international police cooperation [MD with No. 1141.1/39/02 (B´ 929) and with No 1141.1/11/2005 (B´ 729).

Hellas also participates through the Chief of the HP at the group of EU police forces Chiefs known as «Police Chiefs Task Force» which was a corollary of the Tampere Council held on 15-16/10/1999, in order to fill gaps and to strengthen the overall structure and functionality of the EU internal security mechanisms (Bunyan, 2006).

There is also the European Anti-fraud Office (OLAF) set up by Commission decision of 28 April 1999 (OLAF) [notified under the number SEC(1999) 802, (1999/352/EC, ECSC, Euratom)], in which its duties in accordance with article 2 paragraph 2 is the assistance providing of the Commission in cooperation with MS in the field of combating fraud.

Regarding article 27, paragraph 2 of Hellas has concluded a plethora of bilateral and multilateral agreements for law enforcement cooperation and in any case the Convention with its promulgation consist the framework for strengthening the cooperation of EU law enforcement authorities.

Regarding paragraph 3 of article 27 and as far as concerns the prosecution of organized crime that occurs with the use of modern technology at the beginning of 2004 were established in Athens and Thessaloniki cyber crime units. Hellas has LEAs on combating finance crime like HP, HCG, Finance and Economic Crime Unit (SDOE) etc. (Korontzis, 2012h; Korontzis, 2012i). Important helpers in combating finance crime are the International and European organizations that previously mentioned

The requirements laid down in article 28(1) of the Convention are covered by the annual report on organized crime in Hellas (Korontzis, 2012g) which are prepared by the Directorate of Public Security at HP Headquarter, where the rest of the Hellenic competent authorities transmit the necessary elements for reports drafting.

The requirements of article 28(2) of the Convention are covered through Interpol, Europol, Eurojust, FRONTEX and other competent International and European organizations. The classification of criminal behavior in the category of organized crime becomes for all EU countries on the basis of the eleven criteria described in EU Council document (ENFOPOL 35, Rev. 2 (6204/2/97) in combination for Hellas with the criteria which are required under Hellenic law (article 187 paragraph 1 of the HPC).

CONCLUSIONS

Organized crime occupied and is occupying the whole of the international community, since it constitutes the most serious threat the modern States face both in nationally and internationally level as members of the international community.

The markets liberalization, the free transmission of capital, services, goods and persons as well as electronic banking services are breeding ground for committing organized crimes.

The analysis revealed that most of the issues that had been raised in the Convention were covered by the Hellenic legal texts, while after its ratification in 2010, the Hellenic State drafted and other legal texts aimed on combating of organized crime and corruption.

More specifically has been criminalized the participation in an organized criminal group, money laundering, corruption and justice obstruction in connection with organized crime. The law merely to a limited interventions in article 187 of the HPC concerning criminal organizations where longer is required the Organization's purpose on committing felonies, are being punishable providing information or material means in order to be facilitated or to be assisted the criminal organization as well as the management of a criminal organization.

In addition with the ratification of the Convention, reinforced the context of extradition and mutual assistance in the field of organized crime, while with article 10 of the law was introduced special rule for the application of administrative penalties on legal persons involved in the activities of criminal organizations, with the simultaneous reforming of articles 41 of the law 3251/2004 and article 51 of the law 3691/2008.

Yet despite all the legal that have been prepared by the Hellenic State as was analytically described above, the Group of States against Corruption (GRECO) in accordance with the compliance report which was prepared in 2012 concluded that Hellas has implemented satisfactorily or has faced with satisfactory way only one of the twenty-seven recommendations contained in the Report of the Third Evaluation Round.

This fairly creates many questionings concerning in the implementation of the existing institutional framework for tackling corruption. Very clear reveals problem in the formulation and implementation of public policies and for that reason the Hellenic state by the time that have been identified deficiencies by GRECO should review its legal framework that seems to be completed (another contradiction) but also to review its exercised public policies.

Undoubtedly the international police cooperation is the most important factor in order to be combated organized crime. For achieving of this objective are forthcoming bilateral and multilateral agreements between States, new methods of investigation and international police cooperation.

The combating of organized crime is a priority of all States as the democracy, individual and social freedoms are in constant confrontation with organized crime, which threatens the society's cohesion. The activities of organized criminal networks aim in continuously larger profits with a

result to be grown in all parts of the world. Inevitably are needed international co operations and legal texts assisting to its prosecution. This fulfills and the UN International Convention against Transnational Organized Crime which has been signed by dozens of States, including Hellas.

Hellas has taken all the necessary legal measures on combating organized crime, while the participation of LEAs with their executives in international and European organizations responsible on combating international organized crime, show the willingness to combat it to the maximum possible extent. In this respect it is necessary its active participation in the establishment of joint investigation teams as foreseen in law 3663/2008 and to the implementing of GRECO recommendations on combating corruption.

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