



**International Convention for  
the Protection of All Persons  
from Enforced Disappearance**

Distr.: General  
11 March 2019

Original: English  
English, French and Spanish only

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**Committee on Enforced Disappearances**

**Report submitted by Greece under article 29 (1) of  
the Convention, due in 2017\***

[Date received: 1 February 2019]


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GE.19-03965(E)



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## **Drafting process**

1. The International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter: the Convention) was ratified by Greece on 9 July 2015 and entered into force for Greece on 8 August 2015. Law 4268/2014 ratifying the Convention (Government Gazette A'141, 27.6.2014) amended the Criminal Code (hereinafter: CC), as well as the Civil Code provisions on adoption, to harmonize the domestic legal order with the Convention.
2. The drafting of the report was coordinated by the Ministry of Foreign Affairs, in close cooperation with all Ministries involved in the protection against enforced disappearances. The draft report was submitted to the National Commission for Human Rights (NCHR), Greece's National Human Rights Institution, in conformity with the Paris Principles, with Status A accreditation, in which thirty-five institutions, whose activities cover the field of human rights, are currently represented (independent authorities, law and political science departments of university-level educational institutions, trade unions, 6 major NGOs, political parties and ministries); the comments of the NCHR, adopted in December 2018, have been taken into consideration in view of the finalization of the report.

## **Brief reference to constitutional, criminal and administrative provisions regarding the prohibition of enforced disappearance**

3. The Greek Constitution fully protects personal liberty. According to Article 5 (3) of the Constitution, "Personal liberty is inviolable. No one shall be prosecuted, arrested, imprisoned or otherwise confined except when and as the law provides". Furthermore, Article 6 of the Constitution contains a number of wide ranging guarantees for persons arrested or imprisoned, including the right to be brought before a judge within a short, explicitly set out time limit, or be immediately released, and specifies the maximum duration of pre-trial detention.
4. Other rights closely related to the prohibition of enforced disappearance are the right to absolute protection of life, honour and freedom, irrespective of nationality, race or language, and of religious or political beliefs (article 5 (2)), the prohibition of torture (Article 7 (2)), the right to compensation for those who have been sentenced, held in pre-trial custody or were in any way unjustly or illegally deprived of their liberty (Article 7 (4)), the right of every person to receive legal protection by the courts and to plead before them (Article 20), etc. Furthermore, as stressed by the NCHR in the abovementioned comments, the prohibition of enforced disappearance falls under the protective umbrella of the principle of human dignity, which is a cornerstone of the Greek Constitution (Article 2).
5. At the legislative level, Law no. 4268/2014 ratifying the Convention amended the Criminal Code and established enforced disappearance as a specific, self-standing criminal offense, distinct from other related offenses, punished as a serious crime. The same law amended the Civil Code and introduced a provision on the illegality of adoption of children victims of enforced disappearance. Reference should also be made to Law 3948/2011 (Government Gazette, A' 71, 5.4.2011), adjusting the provisions of domestic law to the Rome Statute of the International Criminal Court, which criminalizes, under certain circumstances, enforced disappearance as a crime against humanity.
6. No specific administrative provisions on enforced disappearance have so far been adopted. However, the general framework applicable to related offenses is also applicable in the case of enforced disappearances.

## **International treaties dealing with enforced disappearance to which the reporting State is a party**

7. Greece has ratified all major human rights treaties in the framework of the United Nations, including the International Covenant on Civil and Political Rights and its Optional

Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution, and child pornography, respectively, the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

8. Furthermore, Greece is a State party to the Rome Statute of the International Criminal Court, as well as to the Geneva Conventions on international humanitarian law and their additional protocols.

9. At the regional level, Greece has ratified the European Convention on Human Rights and is subject to the jurisdiction of the European Court for Human Rights, the case-law of which protects all persons against enforced disappearance.

### **Status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation – How the provisions of the Convention can be invoked before and are directly enforced by the courts or administrative authorities**

10. According to Article 28 (1) of the Constitution, “The generally accepted rules of international law, as well as international treaties, as from their approval by law and from their entry into force according to each one’s own terms shall constitute an integral part of Greek domestic law and shall prevail over any contrary provision of law...”.

11. International treaties, including the Convention, prevail over any contrary legislative provision. Courts are bound not to apply, in a specific case pending before them, a domestic law found to be contrary to an international treaty, including human rights treaties.

12. As of their incorporation into the Greek legal order, international treaties can be invoked directly before the courts, as well as before administrative authorities, insofar as they possess a self-executing character. Greek courts base their judgments all the more frequently on the provisions of international human rights treaties. There are numerous domestic courts’ judgments applying, in particular, the European Convention on Human Rights, the ICCPR and other human rights treaties. It is expected that this trend will continue in the future, as the legal community, including judges and lawyers, is getting even more familiarized with international human rights treaties and the work of their monitoring bodies. Due attention is also given to the case-law of the international judicial bodies, as well as the Concluding Observations, relevant Views and General Comments of UN treaty bodies or the work undertaken by other international or regional monitoring mechanisms. The National Human Rights Commission and the Greek Ombudsman, in particular, systematically refer to, and are guided by, international and regional human rights treaties in their reports and recommendations. Furthermore, national human rights action plans specifically address the recommendations adopted by treaty bodies following the consideration of Greece’s periodic reports.

### **Judicial, administrative or other competent authorities with jurisdiction/mandate over matters dealt with in the Convention, such as the Constitutional Court, Supreme Court, the ordinary and military courts, the public prosecutors, disciplinary bodies, administrative authorities in charge of police and prison administration, national institutions for the protection and promotion of human rights, etc.**

13. The main competent authorities with jurisdiction or mandate over matters dealt with in the Convention are the ordinary criminal courts; the Supreme Civil and Criminal Court (*Areios Pagos*) delivers judgements on appeals on points of law, both in civil and criminal cases. Criminal charges may be filed by Public Prosecutors, either *ex officio* or following a criminal complaint. Law enforcement personnel, including officers of the Hellenic Police,

are also subject to disciplinary control and to severe sanctions in case a serious breach of their duties has been ascertained.

14. Military personnel are subject to the jurisdiction of the military criminal courts, either as perpetrators or as victims of the crime of enforced disappearance, in accordance with article 193 of the Military Criminal Code, which stipulates that persons who belong to the military at the time of the commission of the act are subject to the jurisdiction of the military criminal courts.

15. It is important to stress that law enforcement personnel are subject to external control by the Greek Ombudsman, a constitutionally protected independent authority. Law 4228/2014 ratifying the Optional Protocol to the Convention against Torture designated the Office of the Ombudsman as the relevant “national prevention mechanism”. In 2016, pursuant to Law No. 4443, the Greek Ombudsman was designated as the “National Mechanism for the investigation of incidents of ill-treatment committed by law enforcement and detention facility agents”, a mechanism additional to the judicial system and the internal (disciplinary) procedures of the respective authorities, with the responsibility to collect, record, evaluate, investigate or forward to the services responsible for exercising disciplinary control, complaints about acts of uniformed personnel of the Hellenic Police, the Hellenic Coast Guard, the Fire Service and detention facility agents. Finally, the National Commission for Human Rights (Greece’s National Human Rights Institution) is responsible to constantly monitor human rights protection and promotion, to formulate relevant policy proposals, to inform the public and to advance research on such issues, and to cooperate with international organizations active in the field of human rights, as well as other NHRIs.

#### **Article 1**

16. In the national legal order, the right of any person not to be subjected to enforced disappearance (as defined in article 2 of the Convention) is absolute. There is no legislative provision, according to which, under any exceptional circumstances, a person might be excluded from the enjoyment of such right.

17. It is to be noted that suspension of individual liberties is provided for only under the strict requirements prescribed by Article 48 of the Constitution (in case of war or mobilization owing to external dangers or an imminent threat against national security, as well as in case of an armed coup aiming to overthrow the democratic regime). The abovementioned article does not allow suspension of any of the rights, derogation from which, pursuant to Article 4 (2) of the International Covenant for Civil and Political Rights, is not permitted; the right to personal liberty guaranteed in Article 5 (3) of the Constitution is not among the rights which may be suspended under Article 48 of the Constitution.

#### **Article 2**

18. As already stated, Law 4268/2014 ratifying the Convention contains provisions adapting domestic legislation to the latter’s requirements.

19. As far as the definition of enforced disappearance is concerned, Article Two, paragraphs 1–3 of the abovementioned Law amends/supplements the Greek Criminal Code by introducing three new articles, article 322A (Enforced Disappearance of a Person), article 322B (Aggravated Cases) and article 322C (General Provisions).

20. Article 322A, which defines the crime of enforced disappearance, reads as follows:

“Article 322A

Enforced Disappearance of a Person

1. Whoever commits an enforced disappearance of a person shall be punished by imprisonment of at least five years.

2. As enforced disappearance shall be considered the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by

concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

3. The same penalty shall be imposed on a superior who:

(a) Knew or consciously disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; or

(b) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance and failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.”

21. Furthermore, Articles 322B and 322C of the Greek Criminal Code read as follows:

“Article 322B

Aggravated Cases

1. The acts laid down in the previous article shall be punished by imprisonment of at least ten (10) years:

(a) If the person criminally responsible as superior ordered the commission of such acts; or

(b) If the commission of such acts had as victims pregnant women, minors, persons with disabilities with a degree of disability of 67% or more; or

(c) If such acts resulted in severe bodily harm of the victim.

2. If the acts of the previous article resulted in the death of the victim, a sentence to life imprisonment shall be imposed.”

“Article 322C

General Provisions

1. Whoever, having been implicated in the commission of an enforced disappearance, effectively contributes to bringing the disappeared person forward alive or makes it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance shall be punished by a reduced penalty (article 83 of the Criminal Code).

2. The sentencing for the acts laid down in articles 322A and 322B to life imprisonment entails the permanent deprivation of the political rights of the person convicted, whereas the conviction to temporary imprisonment of at least five years entails the deprivation of those rights for at least five years.

3. An order from a superior, concerning the acts laid down in Articles 322A and 322B does not preclude, in any case, the wrongfulness of such acts.

4. If the acts laid down in Articles 322A and 322B are committed under a state of usurpation of the democratic regime, the limitation period commences upon the restoration of the lawful authority.

5. The victim of the crimes laid down in Articles 322A and 322B shall be entitled to demand from the perpetrator and from the State, who have joint and several liability, compensation for the damages sustained and pecuniary compensation for moral distress and moral damages.”

22. It is to be noted that Article 322A (2) of the Greek Criminal Code follows the exact wording of article 2 of the Convention, containing all three constitutive elements of the crime.

**Article 3**

23. Acts of the nature of enforced disappearance, as defined in Article 2 of the Convention, but committed by persons or groups of persons acting without the authorization, support or acquiescence of the State, do not fall under the definition of Article 2 of the Convention and, consequently, are not covered by Article 322A CC, defining and punishing the crime of enforced disappearance.

24. Such acts, however, fall within the scope of Article 322 CC (crime of abduction) and are investigated and prosecuted by the Greek prosecutorial authorities, according to the relevant provisions of the Code of Criminal Procedure, which are common for all crimes.

**Article 4**

25. A Special Law drafting Committee was established by virtue of Decision no. 76044/04.09.2013 of the Minister of Justice, Transparency and Human Rights (published in the Government Gazette B' 2361/23.09.2013) with the task of preparing a draft law for the ratification of the Convention and the adaptation of the domestic legislation to its provisions. The abovementioned Committee was comprised of members appointed by the Ministry of Justice, Transparency and Human Rights, the Ministry of Foreign Affairs, the Ministry of National Defense and the Ministry of Citizen Protection. The Committee started its work on October 7th, 2013, held eight sessions at the Ministry of Justice and completed its work on March 31st, 2014. The text of the draft law as well as the relevant explanatory report were submitted to the Minister of Justice and were subsequently tabled before Parliament.

26. Law 4268/2014 was adopted in June 2014. The law ratified the Convention and, in addition, amended the Criminal Code, introducing the specific, self-standing criminal offense of enforced disappearance (articles 322A, 322B and 322C of the Criminal Code), which constitutes a felony in both its basic and aggravated forms, clearly distinct from other related offenses (such as abduction, article 322 CC, slave trade, article 323 CC, human trafficking, article 323A CC, child abduction, article 324 CC, illegal detention, article 325 CC, and torture, article 137A CC).

27. The same law also amended the Civil Code and introduced a provision on the illegality of adoption of children victims of enforced disappearance.

**Article 5**

28. Law 3948/2011 adjusting the provisions of domestic law to the Rome Statute of the International Criminal Court (the latter was ratified by virtue of Law 3003/2002, Government Gazette A' 75, 8.4.2002), criminalizes, under certain circumstances, enforced disappearance as a crime against humanity.

29. More specifically, article 8 (1) of the abovementioned law provides that whoever, in the framework of a widespread or systematic attack against a civilian population that is directed or encouraged by a State or an organization that exercises de facto state authority in a certain place: (a) (f) causes the disappearance of another person with the intention of removing such person from the protection of the State for a prolonged period of time (aa) by abducting that person with the authorization or acquiescence of a State or a political organization or by depriving him or her of his or her freedom of movement, without providing direct and accurate information on the fate or whereabouts of that person or (bb) refusing, with the authorization or acquiescence of a State or a political organization or in violation of a relevant legal obligation, to immediately provide information on the fate or whereabouts of a person against whom the act laid down in case (aa) was committed or by providing false information, shall be punished with imprisonment of at least ten years or, in case death was caused, with life imprisonment.

30. The crimes set out in article 8 of the said law, including enforced disappearance, are characterized as "Crimes against humanity". The provisions of the Criminal Code and of the Military Criminal Code are applicable to these crimes, if no differing provisions are included in law 3948/2011. Furthermore, the provisions of the law are applicable to Greek and foreign nationals, including for the abovementioned crimes, provided that the latter

have been committed: (a) in the territory of the Hellenic Republic or on board a ship or aircraft registered in the Hellenic Republic, wherever they may be, unless according to international law they are subject to foreign law, (b) abroad, by a Greek national or a foreign national that acquired the Greek citizenship after committing the act, (c) abroad, against the Greek State or a Greek national. No limitation period is applied to these crimes, nor to the penalties irrevocably imposed in connection with them.

31. According to article 5 of the same law, the fact that a crime against humanity, including enforced disappearance, has been committed by a person pursuant to an order of a superior, whether military or civilian, shall not relieve that person of criminal responsibility. Furthermore, according to article 6 of the abovementioned law, a military commander or civilian superior who omits to prevent a subordinate from committing a crime proscribed by the provisions of the Law, including an enforced disappearance, though he or she has the opportunity to do so, shall be punished as the perpetrator of this crime actually committed by his or her subordinate.

#### **Article 6**

32. As described above, under Article 2 of the Convention, article 322A (1) CC lays down the basic form of the crime of enforced disappearance and punishes the perpetrator with imprisonment of at least 5 years (up to 20 years).

33. The acts of ordering, soliciting and inducing an enforced disappearance, the attempt to commit an enforced disappearance as well as the participation and aiding and abetting an enforced disappearance, mentioned in article 6 (1) (a) of the Convention, are covered by the provisions of the General Part of the Greek Criminal Code concerning attempt and participation (articles 42–49 CC). Articles 42–44 CC concern the various forms of attempt, article 45 the co-perpetrators of an offense, article 46 the instigator of and the direct accessory to an offense and article 47 the simple accessory. The attempt to commit a felony or a misdemeanour is punished with a reduced penalty (article 83 CC), each of the co-perpetrators of an offense is punished as the perpetrator (article 45 CC), the instigator and the direct accessory are punished with the same penalty as the perpetrator (article 46 (1) CC), whereas the simple accessory is punished with a reduced penalty (article 47 CC). The choice made by the legislator was not to treat the attempted crime as a completed crime, but to address the attempt in the framework of the General Part of the Criminal Code (applicable to all crimes), providing for a reduced sentence (Articles 42 and 83 CC). According to the NCHR, it is not easy to define when the crime of enforced disappearance is attempted and not completed.

34. The wording of Article 322A (3) CC is essentially identical to that of article 6 (1) (b) of the Convention, establishing the criminal liability of a superior under the circumstances described in the abovementioned provision and providing for his/her punishment with the same penalty as the perpetrator (imprisonment, 5–20 years). The legislator considered necessary to repeat the wording of the relevant article of the Convention in a distinct paragraph of the legislative provision laying down the basic form of the crime of enforced disappearance in order to dispel any divergence in the interpretation, since that particular issue is not fully covered by the abovementioned general provisions of the Criminal Code concerning participation (articles 45–49 CC). The NCHR pointed out that the abovementioned provision, which equates the penalty of superiors who order the commission of a disappearance, to that of the perpetrator, is to the correct direction, since it takes in consideration how states design enforced disappearance mechanisms.

35. Furthermore, according to Article 322B (1) (a) CC, the crime of enforced disappearance is punished in its aggravated form in case the person criminally responsible as superior ordered the commission of such act, in accordance with article 7 (2) (b) of the Convention (penalty of imprisonment of at least 10 years).

36. Moreover, article 6 (2) of the Convention is covered by Article 322C (3) introduced in the Greek Criminal Code, according to which an order from a superior, concerning the acts laid down in Articles 322A and 322B, does not preclude, in any case, their wrongfulness.

37. Finally, it should be noted that article 3 of the Military Criminal Code stipulates that the provisions of the Criminal Code (including, of course, Articles 322A, 322B and 322C, as applicable, are also applied to military crimes, provided that there are no different provisions in the Military Criminal Code.

#### **Article 7**

38. In accordance with Article 322A (1) CC, laying down the basic form of the crime of enforced disappearance, the perpetrator of such crime (as defined in para. 2 of the same article) is punished by imprisonment of 5–20 years. The abovementioned penalty is severe (there are three types of criminal offences in Greek criminal law, petty offences, misdemeanors and felonies, the latter being punished with life imprisonment or imprisonment of 5 to 20 years) and appropriate, taking into account the extreme seriousness of that crime.

39. According to paragraph 3 of the abovementioned article, the same penalty shall be imposed to a superior who:

(a) Knew or consciously disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; or

(b) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance and failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution.

40. Moreover, as explained under article 6 of the Convention, the acts of ordering, soliciting and inducing an enforced disappearance, as well as the participation and aiding and abetting an enforced disappearance, mentioned in article 6 (1) (a) of the Convention, are punished in accordance with the provisions of the general part of the Greek Criminal Code concerning attempt and participation (articles 42–49 CC).

41. Article 322C (1) CC, establishing mitigating circumstances for the crime of enforced disappearance, is essentially identical to article 7 (2) (a) of the Convention. The choice of introducing a new, specific legislative provision on this matter instead of relying on the relevant provision of the general part of the Greek Criminal Code (article 84) was made because the mitigating circumstances referred to in the latter, applicable to the crimes referred to in the special part of the Code, are not identical to those provided by article 7 (2) (a) of the Convention. The reduced penalty referred to in article 322C (1) is provided in article 83 of the general part of the Criminal Code and, as far as cases of enforced disappearance are concerned, ranges from 2 to 12 years of imprisonment.

42. Article 322B CC lays down aggravated cases of enforced disappearance and covers all the cases set out in article 7 (2) (b) of the Convention with the addition, in subparagraph (a) of paragraph 1, of the case of a superior who gave the order to commit an enforced disappearance, a circumstance adding to the unworthiness of the punishable act, as it has already been recognized by the Greek legislator in article 137 (1) (d) CC with regard to the crime of torture.

43. In the aggravated cases of Article 322B (1), the minimum sentence is increased from 5 to 10 years of imprisonment. Furthermore, in subparagraph (b) of paragraph 1, it was deemed necessary, for reasons of legal certainty, to define in more detail the term “disability”, with the addition of the degree of disability of 67% or more, which the Greek legislator applies in many cases. The circumstance described in subparagraph c) of the same paragraph (“if such acts resulted in severe bodily harm of the victim”) characterizes a crime in which “liability depends on the result” (of the crime), in accordance with Article 29 CC. Therefore, intention is required for the criminal liability as far as the basic crime of enforced disappearance (Article 322A (1)) is concerned, while only negligence is required with respect to the result (death of the victim). The term “severe bodily harm” is defined in Article 310 (2) CC.



44. Article 322B (2) provides that if the acts laid down in Article 322A (enforced disappearance) resulted in the death of the victim, life imprisonment shall be imposed. This aggravated case also constitutes a crime in which liability depends on the result, in accordance with Article 29 of the general part of the Greek Criminal Code, as it is the case also with Article 137B (3) CC punishing aggravated cases of the crime of torture.

45. It should be pointed out that the victim's death or severe bodily harm must be caused directly from the enforced disappearance and not indirectly from it; this means that there should be a connection between the danger unlawfully posed by the conduct punished under the basic crime of enforced disappearance and the result caused by that conduct (death or severe bodily injury). However, when both the basic crime (article 322A (1) CC) and the more severe result (death or severe bodily harm) were committed or caused with intention, there is a real (not apparent) ideal concurrence of crimes, more specifically between the basic crime of enforced disappearance and those laid down in Articles 299 (1) (intentional homicide) or 310 (3) (intentional severe bodily harm) CC, respectively, and the perpetrator is subject to stricter punishment, by serving the two sentences prescribed for the abovementioned crimes (life imprisonment for the crime laid down in Article 299 (1), and imprisonment from 5 to 10 years for the crime laid down in Article 310 (3)).

46. Moreover, it should be underlined that as stipulated in Article 322C (2) of the Criminal Code, conviction for the crimes laid down in articles 322A and 322B (basic and aggravated forms of enforced disappearance) and sentencing to life imprisonment entails the permanent deprivation of the political rights of the person convicted, whereas the sentencing to temporary imprisonment of at least five years entails the deprivation of those rights for at least five years, thereby making even stricter the already strict penalties provided by Greek law for the abovementioned crime.

47. Furthermore, the crime of enforced disappearance, both in its basic and its aggravated form (articles 322A and 322B), has been included in the list of the basic felonies as per article 187 (1) CC<sup>1</sup> that establishes the offence of criminal organization (in accordance with the standards of the 2000 United Nations Palermo Convention against Transnational Organized Crime ratified by Law 3875/2010).

48. As a result of the integration of the crime of enforced disappearance in article 187 (1) CC, provisions that facilitate the elucidation of such crime are applicable, including the special interrogation acts envisaged in article 253A CCP (especially infiltration in the context of an ongoing investigation), as well as the protection of witnesses and their relatives and especially their systematic guarding by the police, their separate detention, if they are detained, the change of identity details, their transfer in case of public officers, the non-disclosure of their identity during the criminal proceedings as well as the relevant protection of the participants to the trial, such as the Public Prosecutor, the investigating judge and the judges of the case (articles 9 and 10 of Law 2928/2001) by order of the competent Public Prosecutor.

## Article 8

49. The continuous nature of the crime of enforced disappearance is clearly set out in the explanatory report of Law 4268/2014.

50. The limitation period for the crime of enforced disappearance (in its basic form) is 15 years from the date of the commission. Such period is suspended during the main proceedings stage before the competent court, after the summoning of the defendant, and until the convicting judgment becomes irrevocable. However, suspension may not exceed 5 years.

51. In the case of the aggravated form of the crime of enforced disappearance, in which life imprisonment may be imposed (Article 322B (2) CC), the limitation period is 20 years

<sup>1</sup> This article stipulates that whoever forms or participates as a member to a structured and constantly active group of persons, comprising three or more persons (organization), intending the commission of various felonies, including those of Articles 322A and 322B CC, is punished by imprisonment of up to 10 years.

from the date of the commission of the crime (articles 111 (2) and 113 (CC)) with five-year suspension.

52. Given the continuous nature of the crime of enforced disappearance, its limitation period commences on the date the unlawful situation of the enforced disappearance was lifted and not before it (articles 17 and 112 CC).

53. Article 322C (4) CC, introduced by Law 4268/2014, stipulates that the limitation period for both the basic and the aggravated forms of the crime of enforced disappearance (Articles 322A and 322B), when committed under a state of usurpation of the democratic regime, commences upon the restoration of the lawful authority. The addition of this provision was deemed necessary because the crime of enforced disappearance is mostly committed under oppressive regimes and in the context of abnormal situations affecting the institutions of the State, during which there is arbitrary state activity and increased infringement of the right of personal liberty. A similar provision can be found in article 137D (3) CC punishing torture.

54. The crime of enforced disappearance is prosecuted *ex officio* as provided for in article 36 CCP; however, the victim or any third party may inform the prosecuting authorities of the commission of such crime, in which case the prosecuting mechanism is activated automatically and immediately (articles 42, 43 CCP). It is to be noted that such crime has not been found to have been committed in Greece yet.

#### **Article 9**

55. Articles 5–8 CC define the jurisdiction of Greek courts.

56. Article 5 CC, concerning crimes perpetrated in the Greek territory, stipulates that Greek criminal legislation is applicable to any act perpetrated in the Greek territory, even by foreign nationals (para.1), that vessels or aircrafts registered in Greece are considered as part of the Greek territory, wherever they may be, unless if, according to international law, they are subject to the legislation of another country (para. 2) and that, when the act is committed through the internet or another means of communication, the Greek territory is considered as the place of commission, provided that access to these means was given in the Greek territory, irrespective of their place of installation.

57. Article 9 (1) (a) of the Convention is covered by the abovementioned provision.

58. Article 6 CC, concerning crimes of Greek nationals abroad, stipulates that Greek criminal legislation is applicable to any act characterized by it as a felony or a misdemeanor and committed abroad by a Greek national, in case such act is also punishable under the legislation of the country where it was committed or in case it was committed in a country where there is no lawful state authority (para.1); criminal charges may also be brought against a foreign national who was a Greek national at the time of the commission of the crime, as well as against whomever acquired Greek citizenship after the commission of the crime (para. 2).

59. Article 9 (1) (b) of the Convention is covered by the abovementioned provision, while para.1 (c) is covered by article 7 CC, concerning crimes of foreign nationals abroad, stipulating that Greek criminal legislation is also applicable to a foreign national for any act committed abroad and characterized by the Greek legislation as a felony or a misdemeanour, in case such act is committed against a Greek national and is also punishable under the legislation of the country where it was committed or in case it was committed in a country where there is no lawful state authority.

60. Article 8 of the Greek Criminal Code stipulates that Greek criminal legislation is applicable to Greek and foreign nationals for certain acts committed abroad, irrespective of the legislation of the country where the act was committed. Such crimes indicatively include: high treason, treason against the Greek state and terrorist acts, crimes concerning military service and the obligation for conscription, piracy, slave trade, trafficking in human beings, trafficking, child pornography, illegal trafficking in narcotic drugs and any other crime to which Greek criminal legislation applies by virtue of specific provisions or international conventions signed and ratified by Greece.

61. By virtue of Article Two (4) of Law 4268/2014, the crime of enforced disappearance of a person was included in the list of crimes of Article 8 CC, and is therefore subject to the jurisdiction of the Greek courts to the extent provided by the abovementioned provision, thus satisfying (and even going beyond) the requirement of article 9 (2) of the Convention.

62. It should also be noted that Law 3948/2011 on the “Adjustment of domestic law provisions to the provisions of the Statute of the International Criminal Court ratified by Law 3003/2002 (A’75)” provides for a limited extraterritorial jurisdiction of domestic courts concerning crimes against humanity, including the crime of enforced disappearance, when it constitutes such a crime. More specifically, the provisions of the abovementioned law are applicable to both Greek and foreign nationals, provided that the relevant crime has been committed: a) in the territory of the Hellenic Republic or on board a ship or aircraft registered in the Hellenic Republic, wherever they may be, unless, according to international law, they are subject to foreign law, b) abroad, by a Greek national or a foreign national who acquired the Greek citizenship after committing the act, c) abroad, against the Greek State or a Greek national.

#### **Article 10**

63. The criminal procedure for a person accused of the crime of enforced disappearance, as well as his/her rights in the context of such procedure, are regulated by the general provisions of the Code of Criminal Procedure (CCP), which are applicable in respect of any person accused of a felony.

64. Consequently, such defendant may be subject to pre-trial detention under the general conditions set out in the CCP (risk of fleeing or risk of commission of new similar crimes), by a decision of the investigating judge with the consenting opinion of the public prosecutor, for a maximum duration of 18 months (article 6 of the Constitution and articles 282–288, 296 CCP). The defendant, upon his/her arrest, enjoys the general rights of the defendant set out in articles 96–103 CCP (including, in particular, the right to have and communicate with a counsel, to be informed of the charges brought against him/her in a language he/she understands, to receive copies of the case file and be given adequate time to prepare his or her defense). More specifically, the competent authorities of the Hellenic Police are obliged to provide to any person arrested a standardized information sheet on the rights of the person arrested/defendant as well as a standardized information sheet on the rights of any person arrested pursuant to the European Arrest Warrant. These documents are provided in the language that the person arrested speaks or in a language that he/she understands. As a detainee, he/she generally has the right to communicate (including, in the case of foreign nationals, with the consular authorities of their country), pursuant to articles 4 and 53 of Law 2776/1999 (Penitentiary Code).

65. It should also be stressed that the relevant guarantees provided by the Code of Criminal Procedure also apply to military criminal proceedings, in accordance with Article 213 of the Military Criminal Code.

#### **Article 11**

66. As mentioned before, in the context of the ratification of the Convention by Law 4268/2014, it was decided to integrate the crime of enforced disappearance in the provision of article 8 (h) CC, thus establishing the jurisdiction of the Greek criminal courts so as to ensure maximum protection for the victims of such crime.

67. The rules concerning criminal prosecution (articles 36 et seq. CCP) are the same as those applicable to other felonies (ex officio prosecution), while the general provisions of the CCP, applicable to all felonies, regarding the defendant’s rights (article 99–10 CCP), the principle of free evaluation of the evidence (article 177 CCP), the presumption of innocence, the intermediate stage between the investigation and the trial (articles 305–319 CCP), the trial – hearing proceedings (Articles 320 et seq. CCP) and the legal remedies (articles 462 et seq. CCP), apply also in this case, provisions that comply with the ICCPR and the European Convention of Human Rights.

68. The crime of enforced disappearance is tried by the ordinary criminal courts and, more specifically, by the mixed jury court of the place where the crime was committed

(articles 109 and 122 CCP) unless the defendant is a member of the military, in which case the military courts are competent (article 193 of Law 2287/1995 – Military Criminal Code, as currently in force). If defendants are both members of the military and civilians, the case will be tried by the abovementioned mixed jury court (article 195 MCC).

## **Article 12**

69. The crime of enforced disappearance is prosecuted *ex officio*, not only after a written complaint has been lodged, but also following any information (from any source), which the Public Prosecutor, the law enforcement authorities or other public officers become aware of (articles 36, 37, 38 CCP). Upon receiving such information, the Public Prosecutor is obliged to order a (preliminary) investigation to be conducted immediately by the investigating officers. Following the investigation and on the basis of the evidence collected, if there are sufficient indications, the Public Prosecutor decides to start the prosecution (Article 43 CCP); in case of felonies, such as the crime of enforced disappearance, the Public Prosecutor assigns the file to an ordinary investigating judge (articles 239 *et seq.* CCP). If the Public Prosecutor at the first instance court finds that the case should not proceed, the victim may appeal within three months against the relevant dismissal order before the Public Prosecutor at the Court of Appeals who may, if he or she finds that sufficient evidence exists, order the continuation of the investigation (article 48 CCP). In addition, if a case is closed due to lack of evidence, the relevant file is immediately reopened if new pieces of evidence arise, as long as the crime has not fallen under the statute of limitations.

70. Furthermore, the crime of enforced disappearance, both in its basic and its aggravated form (articles 322A and 322B), has been included in the list of the basic felonies as per article 187 CC that establishes the offence of criminal organization (in accordance with the standards of the 2000 United Nations Palermo Convention against Transnational Organized Crime ratified by Law 3875/2010).

71. As a result of the integration of the crime of enforced disappearance in article 187 (1) C.C., provisions that facilitate the elucidation of such crime are applicable, including the special interrogation acts envisaged in article 253A CCP (especially infiltration in the context of an ongoing investigation), as well as the protection of witnesses and their relatives and especially their systematic guarding by the police, their separate detention, if they are detained, the change of identity details, their transfer in case of public officers, the non-disclosure of their identity during the criminal proceedings as well as the relevant protection of the participants to the trial, such as the Public Prosecutor, the investigating judge and the judges of the case (articles 9 and 10 of Law 2928/2001) by order of the competent Public Prosecutor.

72. Finally, there is no obstacle for the judicial or prosecutorial authorities to visit any place of detention and investigate whether there is a victim of enforced disappearance.

73. It is to be noted that Greece has ratified by Law 4228/2014 the Optional Protocol to the Convention against Torture (OPCAT). According to the provisions of Laws 3094/2003 and 4228/2014, the Greek Ombudsman, as the National Prevention Mechanism against torture and other cruel, inhuman or degrading treatment or punishment, may carry out visits to all detention facilities, without notice, any day (work day or not) and time. In addition, the Greek Ombudsman can collect information by any available means, such as examination of persons (direct contact with prisoners, with or without the presence of third parties, or staff), taking pictures, accessing any file, document, item or folder and taking copies thereof. Furthermore, in May 2016, a Memorandum of Cooperation between the Ministry of Justice, Transparency and Human Rights and the Greek Ombudsman was signed, aiming, *inter alia*, at the enhancement of transparency and accountability in prisons and the enhancement of the relevant role of the Greek Ombudsman against ill-treatment.

74. The Hellenic Police, within the framework of its mission, as defined by the relevant laws and regulations, is responsible to look for, locate and identify disappeared persons. Article 11 (5) of Law 4249/2014 stipulates that policing in the context of public security includes, in particular, the search for disappeared persons. The actions that the staff of the Hellenic Police have to undertake in every case of reporting of a disappearance of a person

are reflected in full detail in the existing regulatory framework (Presidential Decree 141/1991 and Regulatory Order 2/1985).

75. More specifically, according to article 124 of the abovementioned Presidential Decree on “Search for disappeared persons”, the Hellenic Police Services should make every effort to locate the disappeared persons, while the specific actions to be undertaken in order to achieve that aim are set out therein. Additionally, Regulatory Order 2/1985 defines the procedure foreseen for the reporting of a disappearance and the search for disappeared persons, as well as the forms to be filled in. In Articles 12 on searching for disappeared persons and 12A on disappeared minors the procedure of the reporting of a disappearance and the actions undertaken by the Hellenic Police Services are set out in detail. According to the legislation in force, the disappearance is declared by persons close to the disappeared person, to the Hellenic Police Service performing police duties at the place of disappearance, or, if unknown, to the competent Police Service of the place of habitual residence or residence of the disappeared person or to any other Service of the Hellenic Police, which is obliged to forward the relevant statement to the police authority of the place of disappearance. Police Services, as soon as they have received a person’s disappearance statement from a person close to the disappeared, proceed to all the actions provided for, in accordance with the applicable law. If it is suspected that a criminal act has been committed, the competent Public Prosecutor is immediately informed and the Police Services perform their duties under his or her supervision.

76. In addition, police officers of the Hellenic Police, as soon as they become aware in any way that an offense has been committed, act in accordance with the provisions of Article 243 CCP. In particular, as set out in paragraph 1 of the aforementioned Article, “The preliminary investigation shall be carried out by any investigating officer following a written request from the Public Prosecutor” or, as provided for in paragraph 2 of the same Article, “If the delay poses an immediate risk or in case of a flagrant offense, all investigating officers ... shall be obliged to conduct all procedural actions at the stage of preliminary investigation which are necessary to ascertain the act and to locate the perpetrator, even without the Public Prosecutor’s prior order. In such case, they shall notify the Public Prosecutor without delay and shall promptly submit the reports drawn up. The Public Prosecutor, after receiving the reports, shall act in accordance with the provisions of Articles 43 et seq.” Moreover, article 95 of Presidential Decree 141/91 stipulates that in the event of the commission of any offense, the Hellenic Police must undertake the necessary actions, in accordance with the provisions of the Code of Criminal Procedure, to ascertain the offense, to collect evidence, to locate and arrest the perpetrator and bring him/her before the competent judge.

### **Article 13**

77. Following its ratification by the abovementioned Law 4268/2014, the Convention prevails over any contrary legislative provision (in accordance with Article 28 (1) of the Constitution). This also applies to Article 13, which concerns the extradition of the perpetrator of the crime of enforced disappearance. Therefore, by virtue of the abovementioned article, the crime of enforced disappearance may in no case be considered as a political crime, so as to hinder the extradition of the perpetrator to a third country, on the basis of article 438 CCP or relevant bilateral or multilateral international conventions on extradition.

78. Besides, the generally accepted in the Greek case-law (Supreme Court Judgment 1137/1998) and doctrine interpretation of the concept of “political crime”, based on the objective criterion that characterizes as “political” only a crime committed directly against the State and aiming at overthrowing or changing the existing system of government, excludes the characterization of the crime of enforced disappearance committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State (article 2 of the Convention), as a political crime.

79. Based on the abovementioned legal status of the Convention in the Greek legal order, the crime of enforced disappearance is considered to be included in the offences for which extradition is allowed, regardless of the existence of an international convention between

Greece as requested state and a third country, under the conditions generally applicable as set out in articles 437 et seq. CCP.

80. So far, there has been no extradition case based on the Convention.

81. The crime of enforced disappearance is not expressly mentioned in the bilateral or multilateral (such as the 1957 European Convention on Extradition, ratified by Law 4165/1961) extradition treaties to which Greece is a party. It is to be noted that Article 10 of the European Arrest Warrant (Law 3251/2004) indirectly concerns enforced disappearances, by excluding the requirement of double criminality with regard to crimes within the jurisdiction of the International Criminal Court, among which the crime of enforced disappearance.

82. The competence to decide on extradition requests lies with the higher courts of the country, namely the Court of Appeal sitting in council, and, if an appeal is lodged, by the Supreme Court sitting in Council (articles 450 and 451 CCP). By virtue of Articles 438 (e) CCP, but also Articles 3 (2) of the European Convention on Extradition and 11 (e) of the Law on the European Arrest Warrant, the extradition of a person is not possible when the request for extradition has been submitted for the purpose of prosecuting a person on account of his or her sex, race, religion, nationality, national origin or political beliefs, in particular for his or her action in favour of freedom (judgment of the Supreme Court 1410/2010).

#### **Article 14**

83. As stated above, following its ratification by Law 4268/2014, the Convention prevails over any contrary legislative provision (in accordance with Article 28 (1) of the Constitution). This also applies to Article 14, which concerns the provision of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance.

84. Furthermore, the general provisions of the Greek Code of Criminal Procedure regarding legal assistance (articles 457–461 CCP) are also applicable in respect of the crime of enforced disappearance.

85. More specifically, article 457 CCP stipulates that requests of the Greek courts to foreign authorities concerning the hearing/examination of witnesses and defendants, the visit on the scene of an offense, the preparation of expert reports or the seizure of pieces of evidence are submitted by the competent Public Prosecutor at the Court for Appeals to the Ministry of Justice, Transparency and Human Rights, which sees to their execution through the Ministry of Foreign Affairs. Article 458 CCP provides for the procedure to be followed when there is a request for legal assistance from a foreign judicial authority, while articles 459–461 concern specific forms of provision of legal assistance to foreign judicial authorities (transfer of a detained person to another country, so that they can be examined as a witness, under the condition of their immediate return, provision of pieces of evidence).

86. It should also be noted that, in the framework of the European Union, Greece is a Party to the Schengen Convention (ratified by Law 2514/1997), according to which member States may make directly between them requests for legal assistance (articles 48 et seq. of Law 2514/1997) and, in the framework of the Council of Europe, is a party to the European Convention on Mutual Assistance in Criminal Matters (ratified by Legislative Decree 4218/1961) as well as to its Additional Protocol (ratified by Law 1129/1981).

#### **Article 15**

87. As stated above, following its ratification by Law 4268/2014, the Convention prevails over any contrary legislative provision (in accordance with Article 28 (1) of the Constitution). This also applies to Article 15, requiring States Parties to cooperate with each other and afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance and in searching for, locating and releasing disappeared persons and, in the event of death, for exhuming and identifying them and returning their remains.

88. The abovementioned (under article 14 hereabove) general legislative framework allows for the provision of mutual legal assistance in respect of the crime of enforced disappearance, although there is no specific reference to such crime in a relevant international convention.

#### **Article 16**

89. On the extradition of a foreign national, see above, under Article 13.

90. Furthermore, there are two forms of expulsion, the administrative expulsion (ordered by the Police Director of the Region, according to articles 76 et seq. of Law 3386/2005) and the judicial expulsion (ordered by a court as a security measure against a convict, in accordance with Article 74 CC).

91. The administrative expulsion is ordered, under the conditions set out in Article 76 (1) of Law 3386/2005, by decision of the competent Police Director, having given the foreign citizen concerned a period of at least 48 hours to submit his or her objections. Foreign citizens under expulsion are entitled to appeal against the expulsion decision within 5 days of the service thereof to the Deputy Minister of Interior or the body authorized thereby (General Regional Police Directors). The lodging of the appeal results in the suspension of enforcement of the decision (Article 77 of Law 3386/2005).

92. According to article 78A, introduced by article 15 (1) of Law 4332/2015, no expulsion decision shall be issued in case the conditions of the principle of non-refoulement, as set out in article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 7 of the International Covenant on Civil and Political Rights, articles 31 and 33 of the 1951 Convention Relating to the Status of Refugees and article 3 of the European Convention on Human Rights, are fulfilled. In such case, the competent police authority shall grant a certificate of non-removal on humanitarian grounds which entails for its holder the same rights and obligations as the “certificate of postponement of removal” provided for in article 24 of Law 3907/2011 (in particular a temporary right to stay in the country, while remaining at the disposal of the authorities and cooperating with the latter).

93. Furthermore, judicial expulsion is prohibited by virtue of Article 74 (5) CC, among others, in case the country of destination is not safe for the foreign citizen concerned, which would be the case if the latter incurs the risk of enforced disappearance under the conditions set out in Article 16 (2) of the Convention.

#### **Article 17**

94. In Greece, personal safety is protected by Articles 5 (3) and 6 of the Constitution, but also by provisions of international human rights treaties, to which Greece is a party, such as Article 5 ECHR and Articles 9–11 ICCPR.

95. Personal freedom is inviolable and nobody can be prosecuted, arrested or imprisoned unless when and as the law prescribes (in particular the Code of Criminal Procedure). Therefore, secret detention is absolutely prohibited.

96. According to Article 6 of the Constitution, the arrest may be made by the prosecuting authorities (law enforcement personnel) only in cases of flagrant crimes or through the issuance of a judicial arrest warrant. The arrested person must be brought immediately before the competent investigating judge (within twenty-four hours of his or her arrest at the latest; if the arrest has been made outside the seat of the investigating judge, within the shortest time required to transfer him or her thereto). The investigating judge must, within three days from the day the person was brought before him/her, either release the detainee or issue a warrant of detention. Upon application of the person brought before him or her in case of force majeure confirmed by decision of the competent judicial council, this time-limit may be extended by two days. Should either of these time-limits elapse before action has been taken, any warden or other officer, civil or military servant, responsible for the detention of the arrested person must release him or her immediately. Violators shall be punished for illegal detention and shall be liable to restore any damage caused to the victim and to pay him or her moral damages, as specified by law. As stressed

by the NCHR, the critical point when a disappearance might take place lies between one's arrest and the issuance of a detention warrant; in the Greek legal order, this time frame is very short and strict, in accordance with international legal requirements.

97. The maximum duration of detention pending trial shall be specified by law; such detention may not exceed a period of one year in the case of felonies or six months in the case of misdemeanors. In entirely exceptional cases, these maximum limits may be extended by six or three months respectively, by decision of the competent judicial council. It is prohibited to exceed these maximum limits of detention pending trial, by successively applying this measure to separate acts of the same case (see Article 6 of the Constitution and Articles 275 CCP).

98. Pre-trial detention may be imposed only in case of felonies, if there is a risk of commission of new crimes or of absconding (Articles 282 and 296 CCP). In every case, the detainee may lodge an appeal before the competent Judicial Council (Article 285 CCP). The perpetrator of the crime of enforced disappearance as a defendant, is entitled to all of the above mentioned rights (articles 96–103 CCP) while, as a detainee, he or she is entitled to communication with his or her relatives up to 4th degree, lawyers and consular personnel of his or her country of origin, either in person or via letters etc. (articles 4, 51–53 of Law 2776/1999, Penitentiary Code).

99. Furthermore, Greece has ratified the UN Convention against Torture and its Optional Protocol, as well as the European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment. The monitoring bodies of both of the abovementioned human rights treaties are competent to conduct unhindered visits to detention places in order to verify compliance with the relevant treaties. Moreover, as already explained, the Greek Ombudsman, as the National Prevention Mechanism against torture and other cruel, inhuman or degrading treatment or punishment, may carry out visits to all detention facilities, without notice, any day (work day or not) and time. Also, the Greek Ombudsman can collect information by every available means, such as examination of persons (direct contact with prisoners, with or without the presence of third parties, or staff), taking pictures, accessing any file, document, item or folder and taking copies of them.

100. Police Services take all measures required to guarantee the rights of the accused, in accordance with the Constitution and the relevant provisions of the Code of Criminal Procedure. In no case communication of the accused with his or her lawyer shall be prohibited. Furthermore, Police Services have the obligation to provide to those arrested an information sheet on the rights of the accused or detainees or on the rights of those arrested under the European Arrest Warrant, in a language that they can speak or understand.

101. The main rights of the arrested or detained persons are the following:

- The right to request clear and comprehensive explanations about their rights;
- The right to communicate confidentially with counsel and to appoint up to two defense counsel at their expense or to receive free legal aid if they are low-income persons;
- The right to inform their relatives about their arrest; in case the arrested or detained persons are foreign citizens, the Police Service informs the relevant consular authorities.

102. Detained persons are notified of the obligation of the Police authorities to bring them before the competent Prosecutor within twenty-four hours of their arrest or within the shortest time required if the arrest has been made outside the seat of the Prosecutor.

103. In case the detainee does not speak or understand the Greek language, he or she has the right to be freely assisted by an interpreter, who has a legal obligation of confidentiality, in order for the detainee to be able to communicate with counsel. Moreover, detainees enjoy the right to have translated at least excerpts of relevant documents, including any judicial order for their arrest or detention, the charges filed against them, as well as any judicial decision.



104. According to Article 30 of Law 3907/2011 and Article 76 of Law 3386/2005, third-country nationals subject to return or expulsion procedures may be placed under temporary detention for the preparation or the completion of the removal, only if, in a specific case, there are no other sufficient but less coercive measures, such as the alternatives to detention referred to in the Article 22 (3) of the Law (regular reporting to the authorities, deposit of an adequate financial guarantee, submission of documents, the obligation to stay at a certain place, in order to avoid the risk of absconding).

105. All removal procedures are subject to a mechanism of external control by the Greek Ombudsman, in cooperation with international organizations and NGOs.

106. The legislation in force provides for the right of third-country nationals to challenge the measure of detention in removal procedures. More specifically, Article 76 of Law 3386/2005 on “conditions and procedure of administrative expulsion” (as well as Law 3907/2011) stipulates that the foreign national in detention, along with his or her rights according to the Code of Administrative Procedure, may also express, at any time during the period of detention, objections against the decision ordering his or her detention or extension thereof, before the President of the competent First Instance Court or a judge appointed by the latter.

107. Foreign citizens may not be detained arbitrarily under any circumstances, while each case is considered on an individual basis.

108. With regard to the duration of the detention, foreign nationals may be detained as long as necessary for the completion of the removal procedure; detention, however, cannot last more than six months in any case; if deportation is delayed because the foreign national refuses to cooperate or the documents necessary for his or her deportation are not sent timely from his or her home country or country of origin, detention may be extended for a limited time, which cannot exceed twelve months. Furthermore, the foreign national concerned should be informed in a language that he or she understands about the reasons for his or her detention, while communication with his or her attorney should be facilitated.

109. In any case, the existence of the conditions which must be fulfilled for the detention shall be reviewed *ex officio*, every three months, by the body that issued the detention decision or the body responsible for further handling a third country national. In this context, the availability of adequate detention facilities and the ability to provide decent living conditions to detainees are taken into consideration. Moreover, the abovementioned conditions are reviewed *ex officio* also by the competent First Instance Administrative Courts.

## **Article 18**

110. At the outset, it should be noted that Article 18 has, as already explained, a supra-legislative force in the Greek legal order and thereby establishes a direct right of relatives of the person deprived of liberty, their representatives or their counsel, to have access to relevant information.

111. In addition, the general provisions of Articles 10 (3) of the Constitution and 5 of the Code of Administrative Procedure (Law 2690/1999 as currently in force) give the abovementioned persons the right to have access to the information referred to in Article 18 of the Convention, as well as to the relevant administrative documents through the provision of copies. In case of refusal of the authorities to grant access to such documents, which must be reasoned and within a deadline of 20 days (Article 5 (6) of the same Law), there is the possibility of appeal within 10 days before the General Inspector of Public Administration; in case of refusal on his or her part as well, an action for annulment may be submitted by anyone having legal interest, before the Three-Member Administrative Court of Appeal (article 5 (3)–(5) of Law 3448/2006 and 5 (1) of Law 4305/2014). According to the NCHR, the right to information is also based on Article 20 (2) of the Constitution (the right to be heard before administrative authorities), comprising the right to access official documents, the right to be heard before a negative administrative decision has been issued and the right to a reasoned decision, as provided for in the Code of Administrative Procedure.

112. In addition, the party concerned may seek an order by the Public Prosecutor (Article 25 (4) of Law 1756/1988) to be given access to such administrative documents.

113. In all Greek detention premises, official records and relevant archives are kept for all detainees, with no exception.

114. The Greek Penitentiary Code (Law 2776/1999) provides, in article 22, that the order to execute a decision of deprivation of liberty and the entry of the person concerned into a penitentiary facility shall be accompanied with a series of supporting documents, such as the relevant court decision or an extract thereof, a reasoned judicial warrant of arrest or pre-trial detention, the relevant foreign judgment in the framework of international conventions ratified by Greece, etc. Furthermore, article 23 of the same Law sets out in detail the data to be registered in the official records kept in the detention facility upon the entry of the person concerned (such as identity, place of last residence, family status, persons or authority to be notified in case of emergency, the supporting documents of the detention, identity details of the victim, date and time of the entry into the facility, a brief report by the responsible correctional officer, the date of commencement of the detention or execution of the sentence, the date of its termination, as well as any other change relevant to the detention status of those concerned). It is to be noted that, according to article 80, the death of a prisoner is certified by the doctor of the relevant detention facility, therapeutic or healthcare institution. In all cases, a forensic examination shall be carried out. The Director of the relevant establishment is under the obligation to immediately notify the competent administrative and judicial authorities, as well as the relatives of the deceased (and the competent diplomatic or consular authorities in case of a foreign national).

115. As already mentioned, arrested or detained persons, or their counsel, have the right to access documents which are necessary for challenging the detention or arrest. In addition, they have the right to be informed of or examine themselves, or their counsel, the documents in the case file formed in the context of the preliminary investigation, before their pleading, as well as to seek copies thereof at their expenses. Access to elements of the file of the preliminary investigation may not be granted in case of risk for the life or the fundamental rights of other persons or to safeguard an important public interest. If the case is referred to a court, the right to access to the evidence contained in the file, in favour of or against the accused, is provided.

#### **Article 19**

116. DNA analysis is performed on appropriate biological materials, which are derived from missing persons, human or skeletal remains as well as relatives of disappeared persons, in accordance with Presidential Decree 178/2014 (Government Gazette A' 281) and to this effect a relevant Database of DNA Profiles is kept.

117. The Department of National DNA Database of the Subdirectorate of Biological and Biochemical Examinations and Analyses of the Directorate of Criminal Investigations is responsible for the overall organization and operation of the abovementioned database, in which DNA profiles are stored in accordance with the rules of science and the applicable provisions, for the purpose of investigating criminal offenses. The establishment and operation of the National Database is provided by Article 200A CCP.

118. More specifically, according to article 30 of Presidential Decree 178/2014, the Office for the Collection and Handling of Biological Materials is responsible for the registration in a special protocol of objects and biological materials of missing persons or individuals who have lost their memory, which are provided by their relatives. In such case, a unique alphanumeric code is issued, which accompanies the materials during the whole processing of the case.

119. The Department of Biological Materials Analysis examines suitable biological materials derived from human bodies or skeletal remains in order to verify the identity of the individuals at the request of the competent investigating authorities.

120. In the Laboratory for the registration and search of DNA profiles, an independent database of DNA profiles is kept, collected from the analysis of materials provided by relatives of missing persons or persons who have lost their memory, for the purpose of

facilitating the search for their whereabouts. It should be noted that only the Public Prosecutor, as provided for in Article 200A CCP, as currently in force, has access to the personal data registration protocol, as well as the Director of the Department of Criminal Investigations or, subject to the latter's authorization, the Director of the Subdirectorate of Biological and Biochemical Examinations and Analyses.

121. Law 2472/1997 on the protection of persons from the processing of their personal data provides wide and sufficient protection, monitored by the Hellenic Data Protection Authority, an independent authority. Additionally, Greece has ratified by Law 2068/1992 the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which prevails over any contrary legislative provision. Therefore, there are adequate guarantees against human rights violations from the processing, use and storage of personal data.

#### **Article 20**

122. The abovementioned right to access to administrative documents is not subject to any specific restrictions with regard to persons deprived of their liberty. Such right may be restricted, in accordance with Article 5 (3) of Law 2690/1999 (Code of Administrative Procedure), for the protection of the private or family life of a third party or in case of violation of confidentiality, grounds, which, however, are not linked to the issue of enforced disappearance. As mentioned before, the defendant, in accordance with Article 101 CCP, is entitled to be informed and receive copies of any document contained in the case file, upon his or her being subpoenaed to enter his or her plea as well as at every ulterior stage of the criminal procedure.

#### **Article 21**

123. The release of convicts is made in accordance with Articles 105 et seq. CC, by their conditional dismissal from the detention premises upon fulfillment of the relevant conditions (in the case of felonies, after having served 3/5 of their sentence and in the case of sentencing to life imprisonment after having served at least 19 years), by virtue of an order issued immediately by the Judicial Council of the place where the sentence was served, composed by regular judges. In every prison, a Council of Prisons operates, presided by a Public Prosecutor, while, at the level of the Ministry of Justice, Transparency and Human Rights, the Central Scientific Council of Prisons has been established, composed by university professors, court and administrative officers.

124. It should furthermore be noted that, according to Article 78 (2) of Law 2776/1999 (Penitentiary Code) the health of detained persons who are about to be released is examined by the doctor of the relevant penitentiary institution.

#### **Article 22**

125. With a view to the effective protection of the rights of citizens in case of arbitrary conduct by members of the law enforcement personnel, specific criminal provisions have been enacted, providing for severe penalties, such as Articles 239 CC (abuse of power), 259 CC (violation of duty), 325–326 CC (illegal detention). In case the first two of the abovementioned offenses have allegedly been committed by Hellenic Police personnel, the preliminary investigation may also be conducted by the Department of Internal Affairs of the Hellenic Police Headquarters, an independent central Police Service subject to the Chief of the Hellenic Police, supervised by the Public Prosecutor at the Court of Appeals. Prosecuting authorities conducting a preliminary investigation on offenses in which police officers are involved have the obligation, upon completion of the investigation and the submission of the case file to the competent Prosecutor, to transmit copies of the relevant report to the Minister of Citizen Protection, to be used as evidence in the administrative case file, in parallel to the investigation of the disciplinary aspect of the case. The same obligation lies with the Public Prosecutors in respect of preliminary investigations carried out by judicial officials.

126. As a result, any complaint is thoroughly investigated and a disciplinary investigation is ordered and is conducted in the framework of the particularly strict relevant disciplinary

law, while punishment for unlawful behaviour is carried out as soon as possible, in accordance with Presidential Decree 120/2008. Complaints against police officers alleging human rights violations are investigated as a matter of priority.

127. In addition, in 2016, the Greek Ombudsman was designated as the “National Mechanism for the investigation of incidents of ill-treatment committed by law enforcement and detention facility agents”, a mechanism additional to the judicial system and the internal (disciplinary) procedures of the respective authorities, with the responsibility to collect, record, evaluate, investigate or forward to the services responsible for exercising disciplinary control, complaints about acts of uniformed personnel of the Hellenic Police, the Hellenic Coast Guard, the Fire Service and detention facility agents, allegedly committed in the exercise of their duties or in abuse of their authority. In case of complaints about a behaviour unworthy of a police officer, having also a criminal aspect, if the police officer concerned has irrevocably been found guilty, the relevant disciplinary procedure may be reopened, to allow the imposition of more severe disciplinary penalties (suspension with temporary dismissal or suspension that leads to dismissal).

128. Furthermore, public officials hindering the exercise of the right to access to information regarding the crime of enforced disappearance are punished based on article 242 (1) CC (regarding false declaration in a public document) or article 259 CC (violation of duty), crimes that are ex officio prosecuted.

### **Article 23**

129. There is no special education or training programme with regard to the provisions and the implementation of the Convention. The existence and the provisions of the Convention, as well as the fact that Greece is a State party thereof, are, however, widely known. No crime of enforced disappearance has been found to have been committed in Greece so far.

130. A public official is not obliged to obey to an illegal order given to him or her by a hierarchically superior officer (such as the order to commit the crime of enforced disappearance) and may not be punished for failing to do so (articles 25 and 107 (1) (b) of Law 3528/2007 – Code of Civil Servants) nor may such refusal be considered as an offence under article 259 CC (violation of duty).

131. Law 4268/2014, which ratified the Convention, inserted a new article 322 A to the Penal Code, punishing with imprisonment a hierarchically superior officer who knew or knowingly disregarded information which clearly indicated that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance, or exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance and failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution. Within this framework, the competent Services send the relevant signal reports to the hierarchically superior and other responsible authorities. In case foreign nationals are involved, the relevant consular authorities are also informed.

132. The uniformed personnel of the Hellenic Police is trained and retrained at the national level, in the Schools of the Police Academy, as well as, at the international level, with relevant seminars on the topics of protection of human rights and tackling racist violence and discrimination phenomena. At the level of basic training, the students of the Schools of the Police Academy are taught the thematic unit “Human Rights”, as an independent field of study, in the context of the subjects “Constitutional Law – Human Rights” and “Elements of Constitutional Law – Human Rights and elements of Administrative Law” from well-known University professors and specialized scientific personnel. Moreover, lectures are conducted on topics such as: racism and xenophobia, migration in the 21st Century: political identities, integration models, borders and boundaries, sensitization on topics regarding drug addicts and HIV/AIDS, trafficking in human beings, fight against discrimination, rights of LGBTI individuals.

133. Furthermore, at the level of higher training, seminars, online seminars and lectures are conducted, in Greece as well as abroad, on topics regarding human rights, such as:

fundamental rights and police ethics, management of diversity, hate crimes, racist violence in general, racist violence against members of the LGBT community, fight against discrimination with emphasis on issues affecting the Roma, refugee Law and legal protection of refugees in Greece, comprehensive management of external borders, racism, hate speech, etc.

#### **Article 24**

134. The possibility for the relatives of the disappeared person to be informed and to have access to administrative documents was mentioned hereinabove.

The authorities are responsible for the return of the corpse to the relatives – in case the relatives are found in Greece – to organize the burial and take genetic sample from the corpse for investigation purposes.

135. The genetic sampling for the elucidation of a crime (felony or offence punishable with imprisonment of more than 1 year) is made, in accordance with article 200A CCP by virtue of an order issued by the investigating magistrate or the Public Prosecutor in a manner respectful of the dignity of the concerned person, by a State laboratory; the findings are notified to the defendant, while the cellular sample is immediately destroyed and the DNA profile is stored at a special database of the Directorate of Criminal Investigations, Hellenic Police Headquarters and is destroyed upon his irrevocable acquittal or (in any case) upon the person's death.

136. As to the compensation of the victim of enforced disappearance, Article 322C (5) CC contains a provision ensuring sufficient compensation of the victim ("The victim of the crimes laid down in Articles 322A and 322B shall be entitled to demand from the perpetrator and from the State, who have joint and several liability, compensation for the damages sustained and pecuniary compensation for moral distress and moral damages").

137. Furthermore, the victim (in derogation from articles 105 of the Introductory Law to the Civil Code and 38 of Law 3528/2007 – Code of Civil Servants) may seek compensation for his or her material and/or moral damage from both the State and the liable party who are jointly and severally liable (articles 481 et seq. of the Civil Code), thus enjoying greater legal protection. Furthermore, in addition to the enactment of the abovementioned specific provision, the applicable Greek law on compensation fulfills the requirements of the Convention (article 24), according to the provisions of the articles 105, 106 of the Introductory Law to the Civil Code, articles 57, 59, 914, 922, 297–299 of the Civil Code and the provision for the award of full compensation (covering actual damage and loss of opportunity) for the victim's material and moral damage.

138. It is to be noted that EU Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime was recently transposed into the domestic legal order (Law 4478/2017). The new Law contains provisions on information and support of victims (right to understand and to be understood, to receive information from the first contact with a competent authority, to receive information about their case, to interpretation and translation, to access victim support services), on participation in criminal proceedings (right to safeguards in the context of restorative justice services, rights of victims resident in another Member State), on protection of victims and recognition of victims with specific protection needs (right to avoid contact between victim and offender, right to protection of victims during criminal investigations, right to protection of privacy, individual assessment of victims to identify specific protection needs, right to protection of victims with specific protection needs during criminal proceedings, right to protection of child victims during criminal proceedings). Other provisions concern the training of practitioners as well as cooperation and coordination of services.

#### **Article 25**

139. By virtue of law 4268/2014 ratifying the Convention and in order to ensure compliance with Article 25 of the Convention, as well as to provide for a comprehensive and clear regulation, article 1569 of the Civil Code was amended to introduce as a ground for annulling an adoption (ex nunc, by a formative court judgment (modifying the relevant

legal relationship)) the fact that the minor concerned or at least one of his or her parents were victims of the crime of enforced disappearance. The automatic annulment of the adoption with retroactive effect, in accordance with article 1576 of the Civil Code was not enacted, since the adoptive parents may not know that the adopted child or his or her birth parents are victims of enforced disappearance and they or their adopted children may wish for the non-dissolution of the adoption.

140. Additionally, article 1570 of the Civil Code has been amended to allow anyone having legal interest, as well as the Public Prosecutor, to challenge the illegal adoption of a victim of enforced disappearance. The adopted child, after coming into age, is entitled to be informed by his or her adopted parents and any competent authority, about the details of his or her biological (birth) parents, in accordance with article 1599 (2) of the Civil Code, while his or her biological parents have the respective right, in accordance with article 800 (4) of the Code of Civil Procedure. DNA profiles are stored only in the context of the elucidation of a crime in accordance with article 200A of Code of Criminal Procedure.

141. Information regarding interstate adoptions (biological parents' and children's identity) is given in accordance with article 30 of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (ratified by Law 3765/2009) while the child's right to be informed of the details of his or her biological parents is protected also by Article 9 of the Convention on the Rights of the Child (ratified by Law 2101/1992). It is to be noted that Greece has also ratified the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (Law 2102/1992). Finally, forging, destroying, concealing documents concerning the identity of such children, are crimes (offenses) as per articles 216, 222, 242 (2) CC, same as the abduction of minors, as per article 324 CC (felony, under certain conditions).

142. The Hellenic Police attaches great importance and attention to the issue of protecting minors against any risk of physical, mental or other abuse. In the framework of the implementation of the current Anti-Crime Policy Program 2015–2019, the Regional Services undertook the implementation of specific actions aimed at protecting minors against any possible victimization. In the existing regulatory framework (Presidential Decree 141/91 and Regulatory Order 2/1985), as currently in force, the actions that the Hellenic Police Personnel must undertake in all cases of disappearance of a minor are reflected in a detailed and comprehensive manner. Furthermore, given that the disappearance of a minor is a phenomenon that in many cases has also European and / or international dimensions, it becomes necessary to develop substantial cooperation with foreign authorities. To this end, the competent Police Services cooperate with the relevant foreign law enforcement authorities through the international INTERPOL and SIRENE communication channels, exchanging, where appropriate, information and data. In particular, the Services dealing with cases of disappearance-abduction of a minor, if there is suspicion, evidence or proof of transfer abroad, transmit a request to the national INTERPOL or SIRENE unit, depending on the country where the minor is likely to be, with all the information required to search for him or her. The INTERPOL National Central Bureau, in any case of disappearance, acts in accordance with the existing INTERPOL Rules of Procedure. In particular, it issues a yellow notice for international searches for disappeared persons, while updating the relevant database of the INTERPOL General Secretariat, to which all INTERPOL National Bureaus have access. Furthermore, whenever new information emerges in respect of such cases, correspondence is exchanged between the National Central Bureaus and, at the same time, the competent national authorities are informed. The SIRENE Division of the Directorate for International Police Co-operation of the Hellenic Police Headquarters is the central authority of Article 7 of Decision 2007/533 / JHA and of Regulation (EC) 1987/2006, for the exchange of supplementary information relating to data registered in the SCHENGEN Information System (SIS II).

143. Concerning the search for disappeared minors, the competent Police Department:

- Exchanges information with the SIRENE National Agencies of other Contracting Parties to the Convention implementing the Schengen Agreement (SESC), which was ratified by Law 2514/1997,

- Ensures cooperation with other national agencies and international bodies in charge of dealing with matters covered by the Schengen Agreement,
  - Handles cases of disappearance of persons sought in the framework of Article 32 of Decision 2007/533/JHA; ensures co-operation and co-ordination of the competent bodies for the handling of cases falling within their remit, as well as cases where there is a joint competence with other national law enforcement agencies. As far as the EUROPOL National Unit is concerned, it exchanges information via the Europol channel on human trafficking cases, if relevant for cases related to the Convention.
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