

INTERNATIONAL ASSOCIATION OF JUDGES

THIRD STUDY COMMISSION

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Criminal Organizations: Identification, Seizure, and Forfeiture – Questionnaire

Response of the Hellenic Delegation

George Almpouras, Judge, President of the First Instance Court

Question 1: Has your country signed and ratified the Convention and the Protocols thereto? If yes, on what date?

Greece signed the Convention and its three Protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol Against the smuggling of Migrants by Land, Sea and Air and the Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition) on December 13, 2000, and ratified them on September 20, 2010, by the law 3875/2010.

Greece kept reservations in point of some articles of the Convention. Specifically at the article 16 (in virtue of the article 5 of the Hellenic Constitution and the article 438 of the Hellenic Code of Criminal Procedure), at the article 18 (in virtue of the article 438 of the Hellenic Code of Criminal Procedure and the law 2472/1997 for the protection of the person from the elaboration of data of personal character), at the article 35 par. 2 for which it was declared that Greece is not bound from its provisions.

Question 2: Has your country special legislation for

2.1 The identification

2.2 The seizure (freezing)

2.3 The forfeiture

of property of criminal organizations? If yes, could you specify to what extent? If no, is there any such legislation under consideration?

2.1 Special legislation for the identification of assets in the area of Organized Crime are the “Laws on the prevention and repression from the legalization of incomes from wrongfull

activity” (Money Laundering), no 3424/2005 & 3691/2008. These laws passed for the adoption of European directives (2001/97/EC, 2005/60/EC, 2006/70/EC). They include as well activities that concern legalization of fortune that took place on the territory of another State, provided that the basic misdeed would be illegal in Greece and in addition it is justiciable upon the legislation of that State. It includes for example, banks and insurance companies, trustees and brokers, lawyers, notaries and accountants, traders of goods that cost more than 15.000 euros and every person that provide services of establishment of companies, administer head offices, act as plenipotent of shareholders.

Accessory, in case of serious indications of activation of an organized group for the commitment of crimes in general or for the commitment of terrorism (practices that are punished by dint of the articles 187 par. 1, 2 & 187A of the Penal Code), in virtue of the article 253A of the Criminal Procedure Code inquisitive facilitation is foreseen. In this case, the prosecutive services enjoy the possibility of penetration (an officer pretends to be a member or a fellow of the organization), and major possibilities of controlled delivery (according to the terms of the article 2 of the Palermo Convention), control of communication, registration of activities and interrelation of data of personal character. Practically, the prevailing method is the arsis of the telephonic secret, which helps utmost for the identification of the persons who join the CO and reveal the relations between its members. In addition, many laws (such as the law 2472/1997 for the protection of the person from the elaboration of data of personal character and laws that require the reporting of large-scale currency transactions) may contain provisions that assist investigators in identifying the property of criminal organizations.

2.2 In virtue of the article 46 of the mentioned above law 3691/2008 for the money laundering and the legalization of incomes from illegal activities, all assets that constitute proceeds of a crime, their worth and every asset that was gained through them, also the items that were used or were destined to be used for the commitment of such an act are seized. If there is no instance of restitution to their owner they are mandatorily confiscated with the condemnatory decision. The confiscation is enforced even if these resources belong to a third person, in case that he was aware of the commitment of the basic misdeed or of the wrongdoing of money laundering at the time of their acquisition. Further, by dint of the article 48 of the mentioned law, the inquisitor (who is a judge) with the accordance of the prosecutor can freeze any movement of capitals of any account or open the safe-deposit box of the defendant.

Besides, there is no special legislation for the procedure of seizure (temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property, according to the terms of the article 2 of the Palermo Convention) or forfeiture (the permanent deprivation of property, according to the terms of the article 2 of the Palermo Convention) of the property of criminal organizations. According to my knowledge more specific legislation is not under consideration. General provisions regarding seizure and forfeiture apply as follows:

The persecutory agencies, especially the police or the prosecutor himself for punishable acts or the agents of the internal revenue service or the customs for any illegal transactions the

inquisitor (who is a judge) for a crime, can release a restraining order to freeze assets of any person and not only of criminal organizations.

2.3 By virtue of the article 187 par. 8 (as it was amended by the law 3875/2010 with which was ratified the Palermo Convention) combined with the article 238 of the Penal Code, the property of criminal organizations and of their members, which was gained by their criminal activity or its substitute, including incomes from this property, is forfeited. According to the Hellenic Penal Code forfeiture is always associated to confiscation.

In addition, many other statutes are relevant to target criminal organizations including the foresaid law for money laundering, which imposes the forfeiture of all the assets that are the products of this crime or their substitutes, even if they belong to a third person, in condition that he was aware of the commitment of this crime at the time of their possession or even if the culpable is already dead. Moreover, the law 3459/2006 “Code for the drugs” contains its own forfeiture provision, which calls for the forfeiture of the property that derives from drug trading or its price or real or personal estates that were gained from this price, even if no person was convicted of a drug offense. In general, forfeiture provisions of the special penal laws, call for the forfeiture of property that was used in connection with a violation of the statute or was acquired as the result of a violation of the statute.

Question 3: Has your country set up one or more specialized agencies to identify and seize the proceeds of organized crime?

There is no service specialized exclusively on seizure of proceeds of organized crime. In Greece the Department of Justice has organized two subdirections of the police service for the Confrontation of Organized Crime. They are composed of four branches: 1. Branch of data management and strategy, 2. Branch of confirmation and documentation of data, 3. Branch of challenging of human trafficking and 4. Branch of protection of witnesses. Besides there exist several particular agencies for the prosecution of special crimes (organized or not) as the Drug Enforcement Agency, the Agency for the Prosecution of Electronic Crime, the Agency of Confrontation of Special Crimes of Violence (anti-terroristic matters and special controls) and others, which all are police services. These agencies are collaborating with the prosecutors or the inquisitors (who are judges) and help the judicial mission as experts. These services, fulfilling their mission, go forward to seizures of the assets that accomplish the mentioned above conditions.

Question 4:

4.1 What assets are subject to seizure?

4.2 What assets are subject to forfeiture?

4.3 Does an asset need to have been seized in order to be forfeited?

4.4 What is the process for seizure of assets?

4.5 What is the process for forfeiture?

4.6 Does the judge play a role in the process mentioned in 4.4 and 4.5?

4.1 In virtue of the articles 260 and next of the Code of Criminal Procedure, seizure is possible for stocks, banked values, documents (except if they regard to a diplomatic or military secret), even if they don't belong to the defendant, being sufficient that they are attached to the crime. Special statutes, including constitutional ones, foresee the seizure of newspapers and other printed matter. Generally, all assets that can be forfeited go through seizure. According to the 76 of the Penal Code, those are the proceeds of a crime or delinquency, their worth and every asset that was gained through them, also the items that were used or were destined to be used for the commitment of such an act. In addition, assets that are dangerous for the public order are mandatorily seized and forfeited, even if no person is convicted. Conclusively, the general categories of seizable (and forfeitable) property are contraband (as smuggled goods, drugs, weapons), proceeds from illegal activity (ex. any interest from the crime) and tools used in commission of a crime (including any conveyance).

4.2 As it was already referred, all assets that are subject to seizure are also to forfeiture and confiscation under the article 76 of the Penal Code and 373 of the Criminal Procedure Code. Confiscation by forfeiture is an adjunctive sentence. So it is not executed against the inheritors of the defendant. Exception is made when the forfeiture has the character of safety measure. Practically, as there is no specialized agency to identify and seize the proceeds of organized crime this procedure is not so productive.

4.3 There is no statute that requires an asset to be frozen prior to forfeiture. However, virtually, forfeited are seized assets. Anyway, freezing assets formerly is advantageous in order to prevent the destruction or disappearance or venturesomeness of forfeitable assets.

4.4 It depends on which procedure is in action. Upon the filing of the indictment or information or prior to the filing of the indictment or information, the prosecutor can indent an investigation. In this case he can address this duty to inquisitive officers (mostly police officers but also police court judges and for special offences: officers of the fire department or the coast guard etc), who seize the goods upon a restraining order (article 31, 33, 34, 251 of the Criminal Procedure Code). In case of illegal activity caught in the act, the seizure can be materialized from the police officers and the mentioned above special officers without a

permission of the prosecutor. For crimes, as a general rule seizure is realized by the inquisitor (who is a judge) who acts through an order. In any case, the legality of the seizure is controlled by the court or the division of the court of justice. After the end of the inquisition, seizure is ordered by decision of the court; afterwards the publication of the irrevocable decision of the court (upon the illegal act) seizure is ordered by the prosecutor (article 263 of the Criminal Procedure Code). In any case prior notice to the defendant is not required, nor warrant or search warrant are prevised.

4.5 Confiscation by forfeiture is used as a penalty for convicted individuals and exceptionally as measure of defense for dangerous items, as mentioned above. No notice to the defendant is required or warrant are prevised. All seized goods are underlied to forfeiture. In reverse to the seizure, confiscation which only drives to forfeiture is always ordered by the court, generally with the decision for the culpability (article 373 of the Criminal Procedure Code).

4.6 Judges have a lot of discretion whether to seize or forfeit property connected to criminal organizations and persons indicted or convicted of crimes. During the inquisition or after it and before the induction of the affair before the court, if the defendant or other person contests the legitimacy of the seizure, it can refer to the division of a court of justice which has the pertinence to render the frozen good. Definitively the legality of the seizure and the decision for the forfeiture (respectively confiscation) is accorded to the court, which in general is constituted from tactical judges. Only for some crimes there exists a mixed court constituted from three tactical judges and a jury of four citizens.

Question 5: Has your country legislation in force to confiscate after due process the proceeds of crime?

Confiscation is realized by forfeiture. It is forseen for the proceeds of every crime and especially for crimes due to the activity of criminal organizations. See for details previous paragraphs for forfeiture.

Question 6: "Money makes the world go 'round': Has your country special legislation in force with regard to the electronic movements [of money]?

According to my knowledge all directives of the European Union related to laundering of money have been incorporated in Hellenic law as required. For example, the law 3424/2005 for the adaptation of the Hellenic legislation to the directive 2001/97/EC (L 344/4.12.2001, p. 76) of the European Council and Parliament for the prevention of using the banking system

for legalization of incomes from criminal activities and the adoption of defined resolutions of the Financial Action Task Force – FATF. Alike, the law 3691/2008 for the adaptation of the Hellenic legislation to the directive 2005/60/EC of the European Council and Parliament for the prevention of using the banking system for legalization of incomes from criminal activities and the financing of terrorism (L 309/15/25.11.2005) and the statutes of the directive 2006/70/EC (L 214/29/4.8.2006).

Question 7:

7.1 Should there be an international authority to handle organized crime besides, for instance, Interpol, Eurojust, and Frontex?

7.2 Could your country be more active in that field?

7.3 Could you as Judge be more active in that field? Do you think that you have enough instruments and qualifications to handle cases of organized crime in Court?

7.1 In Greece, the last decade and especially the last two years, there is a flux of clandestine immigrant from Asia and Africa. It seems that the majority of them is passing the EU borders supported and conducted by the organized crime. Even if lately the transfer of clandestine emigrants changed from a delinquency to a crime, the entrance of emigrants has not diminished. It seems that national and international authorities are not able to confront the problem. Accordingly, either the existent international authorities must be refreshed or it is necessary to establish a new one, which will be able to handle the problem.

In addition, it will be very useful if there was established an international authority focused on the forfeiture of proceeds of international organized crime, as foreseen in the Dutch Law via the BOOM (Criminal Assets Deprivation Bureau).

7.2 Yes. Even if existing agencies are active in the field, statistics show that the organized crime and the common crime combined with the expansion of illegal immigration are increasing excessively. Even if great efforts are taking place the last five years, at institutional and organizational level, more money has to be invested and the services must get reorganized in order to prosecute and repress effectively the organized crime.

7.3 No. In Greece, judges are not part of law enforcement which resides to the government and the administration. Judges should not be more active in that field given the sovereign character of the adjudicators in Greece. The judiciary, which constitutes of judges, adjudicates criminal cases from a neutral perspective.

Judges in Greece have no special education or other specific equipment to handle organized crimes. The legal instruments are sufficient; difficulties and gaps result from deficiencies in

staffing. Infrastructure and assistance staff are needed, in order to advance efficiently the hearing of cases dealing with criminal organizations.

Court security is not very well organized relatively to inferior courthouses. Referring to superior courts that sit in judgement of criminal organizations, sufficient security measures are taken.

Athens, July 2011.