

GREECE

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I. INTRODUCTION *

In the Introductory Report to the Greek Penal Code of 1950 the criminal policy pursued by it was described briefly as the individualisation of the penal treatment of the offender for the purpose of the most active and secure fight against crime. Greek penalist scholars agree that the purposes of the penal sanctions in general are both the general and the special or individual prevention of crime. At the phase of making penal legislation, necessarily only the general prevention interests, at the stage of sentencing both these goals are considered but the stress is on the special prevention, while at the stage of the execution of penalties, only the special prevention is considered¹.

Furthermore, Greece being a member State of the European Union, of the Council of Europe, and of the United Nations, it follows and participates in their criminal policy, as it is reflected in the numerous conventions, recommendations and other collective actions of which she is a part. Consequently, the common goals of these organisations, especially of the EU have been accepted and become also goals of the Greek criminal policy. In particular, Greece follows the prevailing tendency to ensure that the sanctions provided and applied aim at the social reintegration of the offenders, so that they may live in the social environment without violating the law. The harmonisation of these sanctions in the EU should fulfil this same goal.

* All references in Greek sources have been translated into English.

¹ Cf. CHORAFAS, *Penal Law*, volume I, 9th ed. (K. Stamatis ed.), 1978, 39 ; MANGAKIS, *Penal Law, Outline of the General Part*, 2nd ed., 1982., 54., SPINELLIS, *Basic Elements of Penal Law and Penal Procedure*, 1991, 27-29 ; ANDROULAKIS, *Penal Law*, General Part, 2000, 48-50.

The following information is given focusing on Greek national law and then by evaluating it with respect to the following three instruments of reference providing corresponding offences, namely terrorism, offences against the environment and cyber-crime :

— The Council Framework Decision on combating terrorism, dated 3/5.12.2001 ² (CFDecTerr.)

— The Convention on the Protection of the Environment through Criminal Law signed in Strasbourg on the 4.XI.1998 (ConvEnv) ³.

— The Convention on Cyber-Crime signed in Budapest on 23.XI.2001 (ConvCybCr) ⁴.

II. APPLICABLE PENALTIES

The Greek Law provides penalties of different kinds, i.e. custodial penalties, pecuniary penalties and certain alternative ones. Furthermore, it provides supplementary penalties and security measures.

Each kind of penalties is provided as a margin of discretion with a minimal limit and a maximal one, as is shown in *Tableaux 1 — 2*. The maximal penalty provided by the Penal Code (hereinafter : PC) and the special penal laws is the confinement or incarceration in a penitentiary for life ⁵.

The main penalties provided in the P.C. i.e. custodial and non custodial sanctions with their minima and maxima are shown in *Tableau 1*.

III. THE JUDGE'S MARGIN OF DISCRETION IN SENTENCING

Article 7 § 1 of the Constitution and article 1 of the Penal Code (PC) provide expressly the principle of legality : *nullum crimen, nulla poena sine lege (scripta, stricta, certa et praevia)*. Also the principles of *necessity* of the punishment and of *proportionality*, are inferred from articles 2 § 1 (protection of human dignity), 4 (principle of equality) and 25 § 2 (general recognition of fundamental rights) of the Constitution.

The court passes sentence in each case by computing the punishment within the limits prescribed by law, considering both the gravity of the offence and the personality of the offender (art. 79 § 1 PC).

The circumstances constituting the gravity of the offence are specified in § 2 and the ones concerning the personality of the offender in § 3 of the same article.

² DROIPEN 103 CAT 49.

³ Council of Europe, European Treaty Series — No 172.

⁴ Signed in Budapest on Nov. 23 2001.

⁵ The capital punishment has been abolished in Greece officially by art. 33 § 1 of Law 2172/1993. Previously, however, it was a standing practice not to execute death sentences ; therefore no execution had taken place since 1972. Also Protocol Nr. 6, to the European Convention on Human Rights, signed in Strasbourg in 1983, which provides for the abolition of the death penalty, has been ratified in Greece by Law 2610/1998.

The court shall determine the sentence within the margin provided by the law for each offence, in view of the general criteria included in article 79 and also certain special ones in articles 80 — 85 PC. It shall set forth in the judgment its reasons for the punishment imposed (art. 79 § 4 PC).

IV. CONSIDERATION OF MITIGATING CIRCUMSTANCES

Mitigating circumstances are provided both by a general provision, namely that of article 84 PC, and by certain provisions of the Special Part of the PC and of special penal laws. In article 84 PC a series of such circumstances are listed, such as the fact that until the commission of the offence the offender had led an honourable life, that he was impelled to commit the offence due to grave and weighty reasons, due to extreme poverty or under the influence of dire threat or by the bad conduct of the victim, that he demonstrated genuine regret and sought to make good or mitigate the effects of his offence etc.

Certain provisions are included also in articles of the Special Part, such as the one concerning perjury (art. 224 PC), by which if the guilty person has committed the offence to avert criminal responsibility of himself or of one of his relatives, the court may release him from any punishment (art. 227 § 3 PC). Or, the one of article 308 § 3 PC, on simple bodily injury, by which the offender may be released from any punishment if he was driven to the offence by reasonable indignation, due to an immediately preceding cruel and rude provocation by the victim etc. Or, article 379 PC on theft, by which a theft or an illicit appropriation shall not be punishable if the offender returns the stolen property or wholly satisfies the victim, while a partial return or satisfaction shall reduce punishability to the extent they occur.

Evaluation in view of the three categories of offences : The above provisions on mitigating circumstances, to the extent they are of a general character, can be applied also to the offences on terrorism, on the environment and on cyber-crime, mentioned above.

V. CONSIDERATION OF AGGRAVATING CIRCUMSTANCES

The PC does not provide aggravating circumstances by one general provision, as the one of article 84 on mitigating circumstances (*supra* under IV), but only occasionally in certain articles.

An important general provision which could be considered as empowering the court to recognise such circumstances is the general one on sentencing, (art. 79 § 2 b PC, *supra* under III), whereby the court in sentencing should consider also all circumstances of time, place and methods, accompanying the preparation and committing of the offence. Obviously, such circumstances may be taken into account, either when they are favourable or unfavourable to the offender.

Some other general provisions concerning special cases where the court is empowered to apply more severe punishment in view of certain aggravating circumstances, in addition to the ones provided for the concrete offence, are :

— Article 80 § 2 PC, empowering the court to apply both pecuniary and custodial penalties, even if these are provided in a certain provision as alternatives, if it considers it necessary in order to deter the offender from further offences ;

— Article 81 PC which authorises the court to impose more severe penalties if the offence was motivated by greed ;

— Articles 88, 89, 412 § 1 PC providing more severe punishments for repeated offenders or recidivists⁶.

Furthermore, a group of provisions of the Special Part. of the PC provide as aggravating circumstance the occurrence of a more severe criminal result as a consequence of the original basic crime ; e.g. if death of a person was caused by the offences of (intentional) arson (art. 264 § c), flood (268 § c PC) explosion (art. 270 § d), damage dangerous to the public (art. 273 § c).

The above and other aggravating circumstances are included in aggravated variations of the basic form of an offence. For instance the provision on the basic offence of simple bodily injury (art. 308 PC) is followed by the one on the dangerous bodily injury (art. 309 PC), the grievous bodily injury (art. 310 PC) and the injury with deadly result (art. 311 PC.). Or, the provision on theft (art. 372 PC) is followed by the provision on aggravated forms of theft (art. 374 PC), e.g. of property used for religious worship, of articles of scientific, artistic or historical importance stolen from a public collection etc. Or, according to special penal Law 1608/1950, re « Increase of penalties provided for the offenders against the Public Treasury », certain criminal offences, e.g. forgery, bribery, theft, embezzlement, fraud etc., if committed against the Public Treasury or of that of legal entities of the public law, are punishable by more severe penalties than the ones provided for these offences in general.

In all the above cases a certain margin of discretion is granted to the court to determine the sentence, e.g. in article 264 PC (arson with deadly consequence) confinement for life or temporary one for a period between 10 and 20 years is provided. This penalty is much higher than the one provided for the basic offence (e.g. for arson : imprisonment for 2-5 years).

Evaluation in view of the three categories of offences : The above provisions on aggravating circumstances, to the extent they are of a general character, may be applied also to the offences on terrorism, on the environment and on cyber-crime mentioned above. Special circumstances could be included in the provisions on the particular offences.

⁶ It should be noted that the repetition or the recidivism for a felony or misdemeanour presupposes a conviction by a Greek criminal court to a custodial punishment of more than 6 months.

VI. SUBSEQUENT ADJUSTMENTS OF CUSTODIAL PENALTIES :
POSSIBILITIES OF CHANGING THE IMPOSED SENTENCE

Various modalities or institutions are provided by law, by which sentences already imposed by a final and irrevocable court decision may be modified subsequently, by changing, decreasing or increasing the imposed sanctions. Such changes may be effected either by law or by court decision or even by decision of administrative authorities, such as the prison ward or a parole committee. In the following, each type of sanction will be approached from the angle of the existing modalities.

The change of the already legally imposed sanction most often involves reduction of the sentence and in fewer cases it amounts to the total disappearance of it ; in some cases it amounts to a deterioration of the initially imposed sentence. The change may be related to the duration of the sentence or to the conditions under which the sentence is served (better or worse quality than the one provided by law).

Such institutions or modalities are the following :

A. — *Amnesty*

Amnesty is generally defined ⁷ as an act of the State by which the criminal character of certain acts is extinguished on the basis of general criteria concerning *the acts* and not the perpetrator. It may be applied as amnesty of offences not yet tried by the courts, or as amnesty extinguishing the right of the State to execute the sentence(s) of the court(s) already imposed. It is considered as an institution used in cases of violent political and social conflicts involving also the criminal justice, and serves the purpose of appeasing such conflicts. Accordingly, the Greek Constitution provides in article 47 §§ 3 and 4 that : « Amnesty may be granted only for political crimes, by law passed in a plenary session of the Parliament with a majority of the three-fifths of the total number of members. Amnesty for common crimes may not be granted, even by law. »

It should be noted, however, that Greek governments in the latest decades have used the method of « statute of limitation by lapse of time », which may be considered as a concealed amnesty ⁸, in order to extinguish

⁷ E.g. MANGAKIS, *supra*, 373.

⁸ So, for instance, Law 1240/1982 art. 1 provided that the criminal character of misdemeanors punishable by imprisonment of up to one year, committed prior to the 21-12-1981, is extinguished by lapse of time, on condition that the perpetrator does not commit a new intentional criminal offence within a year as of the promulgation of that Law. The constitutionality of that law has been disputed. By decision Nr. 249/1982 the Athens Court of Appeal, has considered Law 1240/82 as a « crypto-amnesty » of common offences in violation of the prohibition of art. 47 § 4 of the Constitution and therefore as unconstitutional. That decision, however, was quashed by judgment Nr. 672/1982 of the Areios Paghos (Greek Supreme Court, hereinbelow referred to as : AP) in Plenary Session, which held that the provisions of that law are not an amnesty but a special case of limitation of time. Although the latter judgement has been strongly criticised (E.g. by Androulakis, Amnesty, crypto-amnesty, « special amnesty » and « criminal policy » in *Poinika Chronika*, 332, (1982), 577 ff), it has remained as a precedent in the case law of the AP and it is obvious that it offered subsequently to the governments an excuse to grant « amnesty » to certain categories of common criminal offences, circumventing the constitutional prohibition in a more-or-less arbitrary way. Subsequently, such « extinction by lapse of time » has been granted by law

the criminal character of certain categories of common crimes, the above prohibition of the Constitution notwithstanding.

B. — *Pardon*

Under Greek law, pardon is the act of the State, in the form of a decision of the President of the Republic, which remits totally or partially *a certain penalty of a certain person* or extinguishes its legal consequences. In contrast to the amnesty, pardon does not refer to acts in general *but to persons and to concrete penalties*. In particular, according to article 47 §§ 1 and 2 of the Constitution : « 1. The President of the Republic shall have the right, on a recommendation by the Minister of Justice and after consulting with a council composed in its majority of judges, to grant pardon, to commute or reduce sentences pronounced by the courts, and to revoke all consequences at law of sentences pronounced and served. 2. The President of the Republic shall, only with the consent of Parliament, have the right to grant pardon to a minister convicted as provided in article 86 »⁹.

C. — *Conditional release*

By article 105 et seq. PC¹⁰, persons sentenced to a punishment deprivative of liberty, may be released subject to revocation, in accordance with the following provisions, after having served :

- (a) in case of imprisonment two-fifths of the imposed punishment ;
- (b) in case of temporary confinement in a penitentiary, three-fifths ;

(act of Parliament) to certain criminal offences of violation of regulations concerning the construction of buildings (Law 1512/1985), of conscripts failing to serve in the armed forces (Laws 2109/1992 and 2510/1997), of some minor offences of violence committed between two groups of bus drivers having contrary interests (Law 2224/1994), of some offences committed by the press (Law 2140/ 1981 already mentioned and Law 2172/1993), of some minor offences against the elections procedure (Law 2130/1983), of offences of failing to pay contributions to the Social Security Fund (Law 2127/1993), of military personnel, who married without permission of their superiors (Law 605/1997), etc. Another case of quasi-amnesty has been granted by Law 2408/1996 which, inter alia, provided for a special conditional release of detainees serving misdemeanour sentences of up to 5 years. Art. 1 § 5d et seq., is setting aside the prerequisites set by law for conditional release (*infra* 7.1.3.) and provides for two conditions only : a) that adult detainees will be released as soon as they have served 2/5 of their term, even if the 2/5 of imprisonment were fictitiously served due to the policy of beneficial counting because of work within the prison (*infra* 7.1.6.), and b) that they will serve the remaining of their sentence, if, within 1 year from the publication of Law 2408/1996 they re-offend. This unusual, and even « problematic » provision diverts from a number of accepted practices (e.g. in this case the competent authority for granting this early release is the public prosecutor of the place where the sentence is served and not the court.).

⁹ Art. 86 provides a special procedure by which serving or former members of the Government may be arraigned and tried for criminal offences.

¹⁰ As amended by Law 2408/1996.

(c) in case of confinement in a penitentiary for life, at least twenty years.

For the conditional release it is not necessary that the sentencing judgment becomes final and irrevocable.

The above minimum periods of execution of the custodial penalty are reduced if the sentenced person has completed the 70th year of age. In any case the convict may be released, if he has served 20 years. After having completed his 67th year of age, every day being served is calculated as two days. If the convict works in prison, every working day is calculated as an additional half a day served. Furthermore, additional complicated provisions are included with respect to concurrent offences etc.

Article 106 PC ¹¹ provides that the conditional release is granted as a rule, unless by express reasoning in the court decision it is decided that the continuation of the execution of the sentence is absolutely necessary in order to prevent the commitment of new crimes. To the person being conditionally released certain obligations may be imposed, concerning the way of his life, especially his place of residence. Such obligations may be revoked or modified on application by such person.

The conditional release is decided *by the misdemeanor court* sitting in chambers (called « judicial council »), of the place where the sentence is executed, on application of the warden of the prison where the prisoner is serving his sentence. The same court decides on the revocation of the conditional release.

Finally, article 110A PC ¹² provides that the conditional release is granted, irrespective of the conditions of articles 105 and 106 PC, if the sentenced person is suffering of AIDS, which must be verified by a medical expertise.

D. — *Retroactivity of new law decriminalising the offence*

Article 2 § 2 PC provides that « if by subsequent statute an act is no longer punishable, the execution of the sentence imposed and the other criminal consequences shall terminate. » It is obvious that no social necessity would be served by the execution of a penalty for an act, which is no longer considered as a criminal offence.

E. — *Extinction of punishments by lapse of time*

By article 114 PC, punishments, which have been imposed by a final sentence and which *have not been executed*, shall be extinguished due to lapse of time, as follows :

- (a) the confinement in a penitentiary for life and the restriction of liberty in a psychiatric institution, after 30 years,
- (b) the temporary confinement in a penitentiary, after 20 years,

¹¹ As amended by Law 2172/1993 art. 33 para 2.

¹² Introduced by Law 2172/1993 art. 33 para 3.

- (c) the imprisonment, the pecuniary penalty and the restriction of liberty in a correctional institution for minors, after 10 years and
- (d) any smaller punishment, after two years.

F. — *Beneficial calculation of days of custodial sentences due to work within the prison system*

Article 25 of Law 2058/1952 provides that every day of work in prison, either to the benefit of the State or of third persons, may be calculated :

- as two days if it is performed in the open air (e.g. farming works) ;
- as one day and 3/4, if the work is performed in the prison and included in a list provided by Presidential Decree 178/1980 ;
- and in all other cases of auxiliary work as one day and a half.

Furthermore, the Correctional Code, article 46, provides that inmates who perform work of any kind or who participate in programs of professional training may benefit of a favorable calculation of the days of their sentence on proposal of the Prisoners Work Board and decision of the competent judicial officer.

G. — *Serious sickness of the convicted person*

The Code of Penal Procedure provides in article 557 that, if an inmate is seriously sick and the cure in a prison hospital is not adequate to avert a deterioration of his health or a danger to his life, and if it is possible to avert these dangers by a cure in another special hospital out of the prison, he may request to be introduced in such a hospital, to be especially named in his request. The court of misdemeanors of the place where the convict is held decides on the application. A therapy in his domicile is not permitted, except in very exceptional cases and by decision of the court of appeals.

If the convict is suffering of AIDS a conditional release may be granted (art. 110A PC, see also *supra* VI.C.)

VII. TAKING INTO ACCOUNT OF FINAL JUDGMENTS
IN OTHER MEMBER STATES

The following three articles of the Greek PC provide a certain recognition of foreign judgments :

- Article 9 PC, by which no criminal prosecution shall ensue for an offence committed abroad :
- (a) If the accused has been tried abroad and found not guilty, or found guilty and served fully his punishment ;
- (b) If, under the applicable foreign law, prosecution for the offence is barred by lapse of time, or if execution of punishment is barred by lapse of time or if punishment is remitted ;

— (c) If under the applicable foreign law a complaint from a private person is required for prosecution and that has not been submitted or has been waived.

— Article 10 PC, which provides that a punishment executed abroad in whole or in part, when followed by a conviction in Greece for the same offence, shall be deducted from the punishment imposed by the Greek courts.

— Article 11 § 1, which provides that, if a Greek citizen has been convicted abroad for an offence which, under the provisions of the Greek law, is also subject to supplementary punishments, the misdemeanour court which has jurisdiction may impose them.

— Article 11 § 2, which provides that the misdemeanour court which has jurisdiction may impose upon a Greek citizen convicted or acquitted abroad, the security measures applicable under Greek law.

By contrast, it is generally accepted that a conviction effected abroad by a foreign court cannot be considered in order to apply the provisions on recidivism ¹³ (*supra* under 5 and footnote 6).

VIII. OBSTACLES TO HARMONISATION AT EUROPEAN LEVEL? — CONCLUSIONS

The classical arguments against efforts to unify criminal law in general at an international level, are that such law should not be harmonised or unified, because it is the product of culture and history exhibiting the deepest national convictions and values. An effort to take such a step in, for example, the European Union (EU), not only may violate pluralism of values, but would also impinge upon the nation's sovereignty.

Although these arguments may concern the choice of certain forms of conduct to be criminalised, especially those closely related to morals, some other forms of conduct, e.g. murder, grievous bodily harm, theft, rape etc. are universally disapproved and considered as dangerous by the general public in all countries. Finally, such forms of conduct as the cyber-crimes, the terrorist offences and the offences against the environment are not connected with national systems of values, so that their criminalisation does not depend on them. Therefore, there are no serious objections or obstacles to the harmonisation of the choice of conducts to be criminalised and also of the sanctions to be provided for such forms of conduct.

Also from the viewpoint of the Greek law, there are no serious obstacles against efforts to harmonise criminal sanctions at European level, especially those concerning the categories of offences mentioned above.

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