



Adoption: 6 December 2019  
Publication: 18 December 2019

**Public**  
**Greco-AdHocRep(2019)2**

## **Ad hoc Report on GREECE (Rule 34)**

Adopted by GRECO  
at its 84<sup>th</sup> Plenary Meeting  
(Strasbourg, 2-6 December 2019)

## I. INTRODUCTION

1. In June 2019, GRECO received information on legislative initiatives in Greece to amend the Criminal Code (CC) and the Criminal Procedure Code (CPC), inter alia, downgrading the criminal offence of bribery of public officials from a “felony” to a “misdemeanour” and accordingly softening the sanctions for such offences. Consequently, GRECO requested clarifications from the Greek authorities as these moves could potentially have a negative effect on Greece’s ability to effectively fight corruption as well as in respect of the country’s compliance with the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), to which Greece is a contracting party.
2. During GRECO’s 83<sup>rd</sup> Plenary meeting (17-21 June 2019), the Greek authorities outlined the reasons behind the legislative amendments which were about to be finalised and submitted to Parliament at the end of the Government’s mandate in June 2019. The authorities also explained that further adjustments to the criminal legislation, including in respect of corruption offences, were foreseen once a new government was in place.
3. Against this background, GRECO decided on 21 June 2019 to apply Rule 34 of its Rules of Procedure in respect of Greece. This Rule provides for an *ad hoc* procedure which can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe.
4. GRECO’s misgivings about the amendments to the criminal legislation were shared by the OECD Working Group on Bribery (WGB) which, during its meeting on 25-27 June 2019, also expressed concern about the reform. In order to increase the synergies between the two Organisations and streamline the demands on the Greek authorities, GRECO and the WGB decided to jointly assess the amended anti-corruption provisions of relevance to the respective organisations. To this end, a joint questionnaire was drafted by the WGB and GRECO to which replies from the Greek authorities were received on 30 September 2019. Subsequently, GRECO and the WGB agreed with the Greek authorities on a joint programme for an on-site visit which took place on 29 October 2019 in Athens.
5. During the on-site visit, representatives of GRECO and the WGB met with the Minister of Justice, his deputy and other officials of the Ministry, the National Transparency Authority, the legislative drafting committee, the Public Prosecutor against Crimes of Corruption, the Hellenic Financial Unit (FIU), the Financial and Economic Crime Unit (SDOE) and with a panel of judges of different courts. Furthermore, meetings were organised with the Association of Judges, the Association of Prosecutors, the Athens Bar Association and practising lawyers, academics (University of Athens) and representatives of civil society (including Transparency International, Citizens’ movement for an Open Society and Corporate Social Responsibility (CSR) Hellas as well as with representatives of the media.
6. On behalf of GRECO, Ms Alexia KALISPERA, Counsel A’ at the Law Office of the Republic (Cyprus) and Mr Ernst GNAEGI, Deputy Head of the Criminal Law Division of the Federal

Office of Justice (Switzerland) were appointed as rapporteurs. They were assisted by Mr Björn Janson, Deputy Executive Secretary of GRECO.<sup>1</sup>

7. The current *Rule 34 ad hoc* report, drawn up by the Rapporteurs of GRECO, contains a summary description of the legislative and other measures taken by Greece within the context of the criminal law reform, with a particular focus on anti-corruption legislation. The report contains an analysis of the impact the new legislation may have in the light of Council of Europe Standards, in particular with regard to the Criminal Law Convention and its Additional Protocol and benchmarks developed by GRECO.

## II. CONTEXT AND BACKGROUND INFORMATION

8. GRECO recalls that it adopted its Third Round Evaluation Report on Greece concerning incrimination in 2010 (Greco Eval III Rep (2009)9). Although it was concluded in that Report that the criminal legislation of Greece covered all forms of corruption offences, the legal framework was considered excessively complex, scattered in a number of different legal acts (the Criminal Code, other laws and ratification instruments) and lacking a uniform terminology. The sanctions were considered proportionate and dissuasive; however, their effectiveness could not be assessed. GRECO also noted a number of shortcomings in the legislation and addressed eleven recommendations to Greece.
9. In the subsequent compliance procedure, which lasted until December 2016, GRECO noted improvements and Greece managed to comply fully with almost half of those recommendations, while the remaining recommendations were either partly complied with or not implemented. Some of these recommendations will be referred to in the context of the current report.
10. The Greek authorities have explained that efforts to reform the criminal legislation in Greece started almost 10 years ago as the criminal justice and correctional system had become overly complex, formalistic and overburdened. Ad hoc legislation had created a patchwork of provisions and ever more severe sanctions, overburden of courts, delays in the administration of justice (as a result of the classification of offences as felonies or misdemeanours which is decisive e.g. for the court jurisdiction), and overcrowding in prisons. At the same time, many prison sentences were not implemented as intended but transformed into softer penalties, fines etc., according to the authorities, resulting in considerable discrepancies between the sanctions provided for in the law and those applied.
11. In order to remedy this unsustainable situation, and following advice from international interlocutors (including the Council of Europe), Greece undertook a reform to rationalise the criminal legislation. This included to a large degree the downgrading of felonies to misdemeanours, the introduction of lower sanctions, alternative sanctions and other

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<sup>1</sup> The four WGB lead examiners, assisted by two members of the OECD Secretariat, will report separately within the framework of the OECD procedure.

measures. These reforms resulted in the adoption of a number of new provisions in the Criminal Code (CC) as well as in the Code of Criminal Procedure (CPC), some affecting corruption related offences. The amended legislation was adopted by Parliament on 11 June 2019 and came into force on 1 July 2019. In addition, further amendments of the legislation (some of which triggered by criticism from GRECO and WGB) were in the parliamentary process at the time of the on-site visit. On 11 November 2019, Parliament adopted these amendments (proposed by the new Government) which entered into force on 18 November 2019.

### III. ANALYSIS BY GRECO

12. As a starting point, GRECO does not question that there was a need to engage in a general reform of the criminal legislation and the criminal justice system in Greece. Such a move was already supported by the conclusions of GRECO's Third Round Evaluation Report (adopted in 2010), indicating that the criminal legislation concerning corruption offences was excessively complex and scattered in a number of legal acts, lacking clarity and uniform terminology. While GRECO in that Report considered the sanctions in respect of corruption offences sufficiently severe (proportionate and dissuasive) at the time, it could not assess their effectiveness as applied.
  
13. The objective of the current Ad hoc Report is limited to assessing the amended provisions concerning corruption offences that may have an impact on Greece's compliance with the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), as targeted by GRECO in its Third Evaluation Round on "incriminations". It focuses on the following issues.

#### *Definitions of public officials*

14. GRECO notes that a general "umbrella" definition of public officials is contained in Article 13 CC, which reads: "*Public official is s/he to whom has been assigned, even tentatively, the discharge of a public service at the public sector, local government authorities or other public law entities*".
  
15. Furthermore, a specific definition of "public officials" in relation to the offence of passive and active bribery of officials (Articles 235 and 236), has been inserted (on 11 November 2019) as a new Article 237B CC, which reads:

<p>For the purposes of applying CC Articles 235 and 236, as public officials shall be regarded also those serving as permanent or temporary employees and in any capacity or relationship with organisations or undertakings of any legal form owned wholly or in the majority of their shares by the State, local authorities or to legal persons governed by public law or whose administration is wholly or majority appointed by the State or by the local Authorities or by the legal persons governed by public law.</p>
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16. GRECO notes that this definition will only apply in respect of bribery of officials and not, for example, in respect of other offences, e.g. trading in influence, which are covered by other provisions.

17. The Greek legislation singles out passive and active "bribery of political persons" (Articles 159 and 159A CC, see Appendix) as a specific offence. According to the amended law, it covers the Prime Minister, members of government, members of parliament (only passive), prefects, district governors and mayors. The authorities explained that bribery in respect of these categories of persons is considered particularly grave and that these offences are always felonies.
18. Following the amendments on 11 June 2019, passive and active bribery of political persons (Articles 159 and 159A CC), it was noted on-site that "deputy ministers" were not covered under these provisions, contrary to the previous law. It was also noted that while members of Parliament were covered under passive bribery of political persons (Article 159 CC), this category was not covered under active bribery of political persons (Article 159A CC). The Greek authorities explained that the exclusion of deputy ministers and members of parliament was the result of drafting mistakes and submitted (after the on-site visit) that by the amendments adopted by Parliament on 11 November 2019 these Articles include deputy ministers and members of parliament. GRECO welcomes that in the legislation amended on 11 November 2019 (after the on-site visit) deputy ministers and members of parliament have been added to the list of "political persons", covered by Articles 159 and 159A CC.
19. However, it was also noted that the President of the Republic was not among the officials listed as "political persons". Moreover, GRECO understands that the general offence of bribery of officials (Articles 235 and 236 CC) would not cover bribery of the President. Following some confusion whether the President was covered in the past under Article 159 CC since this was the case in previous draft legislation. However, the authorities stressed (after the on-site visit) that bribery of the President has never been criminalised under Greek law. This leads to the conclusion that neither passive, nor active bribery of the President of the Republic are criminal offences. This total exemption from criminal liability is difficult to understand, in particular, as the President could not be prosecuted for such an offence while in office as such a prosecution would be suspended until the end of the presidential term (Article 49 of the Constitution).
20. To conclude, the current legal situation excludes bribery in respect of the President (passive as well as active) from any criminal liability for corruption offences. The President of the Republic is undeniably a public official, regardless of whether his functions are only of a ceremonial nature, and the exclusion of bribery of the President from criminal liability in respect of corruption offences is a major shortcoming. The reference to the Constitution, which only suspends the prosecution of offences until the expiry of the presidential term, does not justify a total exclusion from liability. However, it would appear that this is not the result of the recently amended legislation, which was the focus of the current Ad hoc "Rule 34" procedure. For this reason, GRECO does not issue a formal recommendation in this respect. However, it urges the Greek authorities to consider this situation.

*Active bribery of public officials*

21. The initial reason for triggering the current Rule 34 Ad hoc procedure was the move in Greece to amend Article 236 CC, in order to downgrade the offence of active bribery of public officials from a felony to a misdemeanour and, at the same time, to lower the sanctions for this offence. For comparative reasons, Article 236 CC, as it was before the amendments in June 2019, following the amendments in June 2019 and following the amendments in November 2019 is displayed here:

Article 236 CC before amendments in June 2019	Article 236 CC after the amendments adopted in June 2019	Article 236 CC after the amendments adopted in November 2019
<p>1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by <b>at least one year imprisonment and a fine of EUR 5 000 to 50 000</b>.</p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by <b>up to ten years' incarceration and a fine of EUR 15 000 to 150 000</b>.</p> <p>3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment, if the act is not punished more severely by another criminal provision, if he/she by negligence failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.</p>	<p>1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by imprisonment of <b>up to three years (misdemeanour) or a pecuniary penalty</b>.</p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by imprisonment of <b>at least three years (misdemeanour) and a pecuniary penalty</b>.</p> <p>3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment of up to two years or a pecuniary penalty if the act is not penalized heavier if he/she by negligence failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.</p> <p>4. The provisions of paragraphs 1, 2 and 3 shall also apply when the actions are committed regarding: (a) officials or other employees of any contractual relationship of an institution or body of the European Union having its headquarters in Greece and of any public international or supranational organization of which Greece is a member and any person, whether detached or not, performing duties corresponding to those performed by the officials or other employees or b) any person exercising a public office or service for a foreign country. In such cases, the Greek criminal laws also apply when the act is performed abroad by a national, even if it is not</p>	<p>1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by <b>imprisonment of up to three years (misdemeanour) or a pecuniary penalty</b>.</p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by <b>incarceration five to eight years (felony) and a pecuniary penalty</b>.</p> <p>3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment of up to <b>two years or a pecuniary penalty</b> if the act is not punished more severely if he/she, <b>by infringing a specific obligation of due diligence by negligence</b>, failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.</p> <p>4. The provisions of paragraphs 1, 2 and 3 shall also apply when the actions are committed towards: (a) officials or other employees of any contractual relationship of an institution or body of the European Union having its headquarters in Greece and of any public international or supranational organization of which Greece is a member and any person, whether detached or not, performing duties corresponding to those performed by the officials or other employees or b) any person exercising a public office or service for a foreign country. In such cases, Greek criminal laws also apply when the act is performed abroad by a national, even if it is not punishable under the laws of the country where it was committed <b>and for the</b></p>

Article 236 CC before amendments in June 2019	Article 236 CC after the amendments adopted in June 2019	Article 236 CC after the amendments adopted in November 2019
	punishable under the laws of the country where it was committed.	<b>prosecution of the misdemeanour of par.1 of this article no application for prosecution or the petition of par.3 art. 6 PC is required.</b>

22. It is noted that even before Article 236.1 CC was amended in June 2019, this offence was classified as a misdemeanour (1-5 years imprisonment **and** a fine). Following the amendments, the offence under 236.1 CC remains a misdemeanour but with a reduced sanction of up to 3 years of imprisonment **or** a fine. GRECO notes that the new sanction represents a significant reduction. GRECO is also concerned that even if the value of the bribe/advantage was considerable or there were any other aggravating circumstances for such an offence (except for a breach of duty by the official), Article 236.1 with its reduced sanctions would be applicable.
23. Moving to Article 236.2 CC, it is noted that this qualified form of bribery (also including a breach of duty by the official) was, prior to the amendment in June 2019, considered a felony carrying a sanction of up to 10 years' incarceration and fines. Following the amendments of 11 June 2019 it became a misdemeanour, carrying a sanction of at least 3 years' (means 3-5 years') imprisonment and a fine. Undoubtedly, this represented a considerable reduction of the sanction. That said, on 11 November 2019, Article 236.2 CC was again amended, following criticism from, inter alia, GRECO and the WGB. As a result, this offence has now again become a felony providing for 5 to 8 years' incarceration. GRECO welcomes this amendment, which entered into force on 18 November 2019.
24. By contrast, in respect of offences under Article 236.2 CC committed before this date and not adjudicated or when the sentence has not been executed, will be considered as misdemeanours, in respect of which the more lenient sanctions will apply. This is an inevitable effect of these amendments and the *lex mitior principle* (principle of the most lenient law) which is a basic principle of Greek criminal law (Article 2 CC, see Appendix). The fact that this will affect quite a number of cases is regrettable from the perspective of an effective fight against corruption.
25. To conclude, while GRECO is pleased that Article 236.2 CC has been re-qualified as a felony and with an appropriate sanction for such offences following the amendments of 11 June 2019, it also notes that Article 236.1 CC remains weakened. The current situation conveys the message that this offence is considered less serious now than before. GRECO wishes to recall the intentions underlying the Criminal Law Convention according to which corruption may represent an economic offence, sometimes involving considerable value, but not only; it may also threaten the rule of law, the stability of democratic institutions and the moral foundations of society, undermine good governance, security, health, fairness, justice and equal treatment. Against this background, **GRECO recommends to review Article 236.1 of the Criminal Code with a**

**view to introducing aggravating circumstances decisive for when such an offence can be considered a felony and/or increase the sanctions accordingly.**

*Abstention from prosecution*

26. GRECO also notes that a new general feature of the criminal legislation is contained in Article 48 CPC (see Appendix), allowing the prosecutor to abstain from prosecution in respect of misdemeanours punishable with up to 3 years' imprisonment. Provided there is sufficient evidence of guilt and with the consent from a court appointed magistrate, the prosecutor may abstain from prosecution and issue an order, if the offender gives his/her consent to alternative measures. It follows that this measure is applicable in respect of active bribery of public officials under Article 236.1 CC. GRECO understands the advantages of such a possibility in respect of some less serious offences. However, it believes that it does not appear suitable for intentional offences such as bribery, the reaction to which is to be effective, proportionate and dissuasive. GRECO is of the opinion that there is a considerable risk that this measure may further weaken Greece's possibilities to effectively fight this form of corruption and possibly other related crimes, such as money laundering. **GRECO recommends to strictly limit the scope of corruption offences that can be subject to abstention of prosecution under Article 48 of the Criminal Procedure Code, by ensuring that this Article can be applied only in exceptional, minor cases of corruption offences.**

*Statute of limitation*

27. GRECO notes that the statute of limitation, is 15 years for corruption offences classified as felonies and 5 years in respect of misdemeanours (Article 111 CC, see Appendix). In both cases the time could be prolonged for 3 more years if the case is under consideration by a court ("*sub iudice*") (Article 113 CC). Following the recent amendment (11 November 2019) of Article 236.2 CC making this offence a felony, the longer period applies again in respect of this offence, as before these amendments. The situation regarding statute of limitations has thus been reset in respect of offences committed after the entry into force of the current amendments on 11 November 2019. By contrast, offences under Article 236.2 CC committed before this date, will be considered as misdemeanours in respect of which the shorter period applies. This is an inevitable effect of these amendments and the *lex mitior principle* (as explained above).

*Confiscation/seizure/special investigative techniques*

28. GRECO notes that the changes to the legislation do not have an effect on either seizure or confiscation of proceeds of corruption nor on the use of special investigative techniques. Furthermore, the classification of an offence as a misdemeanour or felony has no impact in this respect, according to the Greek authorities.
29. Moreover, as far as the use of freezing orders issued by the Greek FIU is concerned, the Greek authorities stressed that the amended legislation concerning corruption would have no impact under the money laundering provisions. All forms of corruption offences (including active bribery) are predicate offences to money laundering. The Greek authorities stated during the on-site visit that these provisions remained



unchanged. However, during the period of preparation of this report, amendments to the money laundering legislation have been presented to Parliament. While at the time of drafting this report, these proposals were still at an early stage of discussion, GRECO wishes to recall the need for Greece to comply with the relevant international standards against money laundering and combating the financing of terrorism. These standards contribute to an effective fight against corruption as well.

*Passive bribery of foreign public officials*

30. GRECO notes that Article 235.5 CC, as amended, does not refer to passive bribery of public officials of a foreign country (whereas it did in the previous law (Article 263A 2 (d) and (e) CC), while the active side of such an offence is clearly referred to in Article 236.4 b CC (see comparative reference texts in the Appendix). Consequently, the current text is not fully in line with Article 5 of the Criminal Law Convention. Furthermore, GRECO notes that the amended Article 237.4c CC, while covering the offences of active bribery of judges, jurors and arbitrators of other states, the passive side of these offences does not appear to be covered by the current text, whereas it was in the previous law (Article 263A 2 (d) and (e) CC (See Appendix). Also this provision is thus not fully in line with Article 5 of the Criminal Law Convention. It would appear that the same goes for passive bribery of members of foreign assemblies (Article 6 of the Criminal Law Convention). Whereas this was referred to in previous Article 263A 2(e), this is not the case in Article 159.4, while active bribery of members of foreign assemblies is explicitly covered in Article 159A 4(c). No reservation had been made by Greece in accordance with the Criminal Law Convention to that effect. **GRECO recommends ensuring that passive bribery of foreign public officials, including judges, members of assemblies, jurors and arbitrators is criminalised in accordance with Articles 5 and 6 of the Criminal Law Convention on Corruption and its Additional Protocol.**

*Postponement and suspension of criminal prosecution*

31. GRECO noted that Article 29 CPC provided that the Minister of Justice could, with the agreement of the government, postpone or suspend criminal proceedings in respect of crimes which may disrupt international relations between Greece and foreign states. GRECO recalls that this issue was already criticised in its Third Round Evaluation Report on Greece and that it was recommended to exclude all domestic and foreign bribery offences from this provision. When the Third Round compliance procedure in respect of Greece was closed this recommendation had not been implemented.
32. GRECO is therefore pleased to learn that, on 11 November 2019 Article 29 CPC was amended by Parliament to exclude “active and passive bribery of any kind” from the scope of Article 29 CC (see Appendix). GRECO welcomes this development.

*Effective regret*

33. It is recalled that in its Third Round Evaluation Report on Greece, GRECO had concerns about provisions related to effective regret and that it recommended that the authorities closely monitor the application of this tool and possibly abolish features of

it. It is also recalled that Greece abrogated all provisions of effective regret shortly thereafter and thus complied with the recommendation (Third Round Compliance Report on Greece, June 2012).

34. GRECO notes that the amended Criminal Code (Article 263A CC, see Appendix) reintroduces a system of special defence of effective regret in situations of active bribery, where the offender shall remain without punishment if s/he reports the act before being questioned as a suspect. According to the authorities, the application of this provision is not automatic but needs to be considered by a court. GRECO has already stated its view in respect of the appearance of such systems which may be subject to abuse in certain situations. As this is a new system, **GRECO recommends that the authorities carefully monitor the use of the provisions on the special defence of effective regret in order to ascertain the possible misuse of this instrument and, if need be, reduce or abolish its application in respect of corruption offences.**

#### IV. CONCLUSION

35. In view of the above, GRECO concludes that the criminal legislation in Greece as amended on 11 June 2019 gave rise to a number of concerns. Some of these concerns have been dealt with in a satisfactory manner by further amendments to the law (11 November 2019), following criticism, inter alia, from GRECO and the OECD Working Group on Bribery. In particular, the qualified form of bribery of public officials (Article 236.2 of the Criminal Code) has been re-categorised as a severe offence (felony) again. This is to be welcomed for the future. However, by contrast, in respect of such offences committed before the date this amendment entered into force (18 November 2019), the softer legislation (misdemeanours) and sanctions will apply, which is an inevitable effect of these amendments. Some other issues of concern remain in the current legislation, which require further attention by the authorities.
36. GRECO addresses the following **recommendations** to Greece:
- i. **to review Article 236.1 of the Criminal Code with a view to introducing aggravating circumstances decisive for when such an offence can be considered a felony and/or increase the sanctions accordingly;**
  - ii. **to strictly limit the scope of corruption offences that can be subject to abstention of prosecution under Article 48 of the Criminal Procedure Code, by ensuring that this Article can be applied only in exceptional, minor cases of corruption offences;**
  - iii. **ensuring that passive bribery of foreign public officials, including judges, members of assemblies, jurors and arbitrators is criminalised in accordance with Articles 5 and 6 of the Criminal Law Convention on Corruption and its Additional Protocol; and**
  - iv. **that the authorities carefully monitor the use of the provisions on the special defence of effective regret in order to ascertain the possible misuse of this instrument and, if need be, reduce or abolish its application in respect of corruption offences.**

37. GRECO invites the authorities of Greece to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2020.
38. GRECO invites the Greek authorities to authorise, at their earliest convenience, the publication of this report, and to make a translation of it into the national language available to the public.

## APPENDIX

### Reference texts, English only

#### **Article 159 CC Passive Bribery of political persons (amended on 11 June 2019 and on 11 November 2019, in red)**

1. The Prime Minister, members of government, **the Deputy Ministers**, the Members of the Parliament, prefects, the district governor, the mayor or the members of the committees according to art. 157 par.2 shall, if they request or receive, directly or through a third party, for themselves or for a third party, an undue advantage of any nature not entitled to themselves, or demand such an advantage for a future or already completed act or omission, related to the performance of their duties, shall be punished by incarceration and a pecuniary penalty of up to one thousand daily units.

#### **Article 159A CC Bribery of political persons (amended on 11 June 2019 and on 11 November 2019, in red)**

1. Whosoever promises or offers to the Prime Minister or a member of the Government, **the Deputy Minister, the member of the Parliament**, the district governor or the mayor, directly or through a third party, any advantages not entitled to himself or to a third party, for a future or already completed act or omission, in relation with the performance or against his or her duties, is punished by **incarceration of up to ten years (felony) and a pecuniary penalty** of up to **one thousand daily units** (ref: 1EUR < 1 daily unit < 100 EUR) .

2. **The same punishment** shall apply to whosoever promises or provides to a member of the above bodies or their committees or a committee of local government referred to in Article 157 (2) any benefits to which he/she is not entitled, for himself/herself or for a third party, in connection with a parliamentary election or vote or the local council to not take part in the election or vote or to vote in a certain way.

3. A business director or any person vested with a decision-making or control power in a business shall be punished by **imprisonment<sup>2</sup> (misdemeanor) and a pecuniary penalty**, if the act is not punished more severely under another criminal provision, if he/she failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.

#### **Article 235 CC: Passive bribery of an official (as amended on 11 June 2019)**

1. A public official who requests or receives, directly or through a third party, for himself/herself or for a third party, an undue advantage of any nature, or accepts the promise to be provided with such an advantage, for a future or already completed act or omission related to the performance of his/her duties, shall be punished by at least one year of imprisonment and a pecuniary penalty. If the offender commits the act of the previous section in a professional or a habitual way shall be punished by imprisonment of at least three years and a pecuniary penalty.

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<sup>2</sup>The maximum liberty-depriving penalty for a misdemeanour (*imprisonment*) is, unless stated otherwise, 5 years, whereas *incarceration* (imposed for felonies without mitigating circumstances) ranges from 5 to 15 years.

2. If the aforementioned action or omission of the offender contravenes his/her duties, the public official shall be punished by incarceration up to ten years and a pecuniary penalty. If the offender commits the act of the previous section in a professional or a habitual way, s/he shall be punished by incarceration and a pecuniary penalty up to one thousand units.

3. A public official who requests or receives, for himself/herself or for another person, any undue advantage of a financial nature by taking advantage of his/her status, shall be punished by imprisonment, if the action is not punished more severely by another criminal provision.

4. A head of a public service or an inspector or any person who is vested with a decision-making or control power in public services, local government authorities and public legal entities shall be punished by imprisonment up to three years or a pecuniary penalty, if the act is not punished more severely by another criminal provision, if he/she, **by infringing a specific obligation of due diligence by negligence**, failed to prevent a person under his/her command or subject to his/her control from committing any act of the preceding paragraphs.

5. The provisions of paragraphs 1 and 2 shall also apply when the actions are committed by: (a) officials or other employees of any contractual relationship of an institution or body of the European Union having its headquarters in Greece and of any public international or supranational organization of which Greece is a member and by any person, whether detached or not, performing duties corresponding to those performed by the public officials or other employees, even if they are not punishable under the laws of the country where it was committed.

**Article 263A CC (before amendments in comparison with 235.5 CC)**

1. For the implementation of Articles 235(1) and (2) and 236 officials shall also mean, all those who serve either permanently or temporarily and in any kind of capacity:
  - (a) in businesses or organisations which belong to the State, in organisations of local government or in legal persons of public or private law, who serve, through exclusive or preferential exploitation, the public provision of water, electricity, heating, motor power or transportation means or means of communication or the media,
  - (b) in banks whose seat is located within national territory according to the law or their constitution,
  - (c) in legal persons of private law which were founded by the State, by legal persons of public law and by legal persons mentioned in the previous points, providing that the founding legal persons take part in its management, or in case of a limited company in its capital, or when these founded legal persons are commissioned with the execution of state programmes for economic reconstruction or development,
  - (d) in legal persons of private law which, according to the current provisions, may receive funding or sponsoring from the State, or from legal persons of public law or from the above banks,
  - (e) € to institutions or bodies of the European Union, including the members of the European Commission and the Court of Justice and the Court of Auditors of the European Union.
2. For the implementation of Articles 235(1) and (2) and 236 officials shall also mean:
  - (a) the servants or other officials, under any contractual relationship, of any public international or supranational organisation to which Greece is a member, and any person authorised by such organisation to act on its behalf;

- (b) the members of parliamentary assemblies of international or supranational organisations to which Greece is a member;
  - (c) those who perform judicial or arbitrator duties in international courts, whose jurisdiction is recognised by Greece;
  - (d) any person performing a public function or service for a foreign country, including judges, jurors and arbitrators; and
  - (e) members of parliaments and local government assemblies of other states.
3. With regard to the applicability of Article 237 as judges shall also mean members of the Court of Justice and the Court of Auditors of the European Union.

**Article 236 CC, Active Bribery of an official (as amended on 11 June 2019 and on 11 November 2019, in red)**

1. Whosoever offers, promises or gives to an official, directly or through a third party, an undue advantage of any nature, for himself/herself or for another person, for an action or omission on his/her part, future or already completed, related to the performance of his/her duties, shall be punished by **imprisonment of up to three years (misdemeanour) or a pecuniary penalty.**<sup>3</sup>

2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished **by incarceration five to eight years (felony) and a pecuniary penalty.**<sup>4</sup>

3. A head of business or any other person who is vested with a decision-making or a control power in business shall be punished by imprisonment of up to **two years or a pecuniary penalty** if the act is not punished more severely if he/she, **by infringing a specific obligation of due diligence by negligence**, failed to prevent a person under his/hers command or subject to his/hers control from committing, to the benefit of the business, any act of the preceding sections.

4. The provisions of paragraphs 1, 2 and 3 shall also apply when the actions are committed towards: (a) officials or other employees of any contractual relationship of an institution or body of the European Union having its headquarters in Greece and of any public international or supranational organization of which Greece is a member and any person, whether detached or not, performing duties corresponding to those performed by the officials or other employees or b) any person exercising a public office or service for a foreign country. In such cases, Greek criminal laws also apply when the act is performed abroad by a national, even if it is not punishable under the laws of the country where it was committed **and for the prosecution of the misdemeanour of par.1 of this article no application for prosecution or the petition of par.3 art. 6 PC is required.**

**Article 237 CC, Active and passive bribery of judicial officers (as amended)**

1. Whosoever invited under the law to perform judicial duties or an arbitrator who requests or receives, directly or through a third party, for himself/herself or for another person, an undue advantage of any nature, or accepts the promise to provide such an advantage for an action or

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<sup>3</sup> According to art. 57 of the new Criminal Code (L. 4619/2019, GG I 95), if a pecuniary penalty is provided alternatively to imprisonment, it cannot exceed 180 daily units. The range of each daily unit is between 1 euro and 100 euros. Therefore the pecuniary penalty of article 236 par. 1 can amount from 1 euro to 18.000 euros. Article 57 stands barring special provisions (such as art. 159 A of the new Criminal Code).

<sup>4</sup> According to art. 57 of the new Criminal Code, if a pecuniary penalty is imposed cumulatively with a liberty-deprivation sanction, it cannot exceed 360 daily units. Therefore the pecuniary penalty of art. 236 par. 2 may range from 1 euro to 36.000 euros.

omission on his/her part, future or already completed, related to the performance of his/her duties in the administration of justice or in the resolution of a dispute, shall be punished by **incarceration (felony)** and a **pecuniary penalty of up to one thousand daily units**.

2. Up to ten years' **incarceration (felony)** and a **pecuniary penalty of up to one thousand daily units** shall apply to punish any person who for the above purpose promises or provides such advantages, directly or through a third party, to the persons in the previous paragraph, for themselves or for another person.

3. A head of business or any other person who is vested with a decision-making or control power in a business shall be punished by **imprisonment (imprisonment)** **and a pecuniary penalty** if the act is not punished more severely under another criminal provision, if he/she, **by infringing a specific obligation of due diligence by negligence**, failed to prevent a person under his/hers command or subject to their control from committing, to the benefit of the business, the act under the preceding paragraph.

4. The provisions of the preceding paragraphs shall also apply where the acts are: (a) to or from Members of the Court of Justice or the Court of Auditors of the European Union; (b) from or to those exercising judicial or arbitral duties in international courts whose jurisdiction is accepted by Greece; or (c) to judges, jurors or arbitrators of other States for the exercise of their judicial functions. In such cases, Greek criminal laws are also applicable when the act is carried out abroad by or from a national, even if it is not punishable under the laws of the country where it was committed.

#### **Article 263A CC, Leniency measures**

1. The acts of articles 236 par. 1, 2 and 3, 237 paragraphs 2 and 3 and 396 par.1 shall remain without punishment if the perpetrator, on his own will and before he/she is questioned as a suspect or an accused for his/her act, reports to the public prosecutor or any investigation official or any competent authority, by submitting a written statement or orally, in which case a relevant report is conducted.

2. If the perpetrator of the acts of articles 236 par. 1, 2 and 3 and 237 par. 2 and 3 or the one who participates in the acts of articles 235 par. 1, 2 and 3, 237 par. 1 and 239 to 261, and of article 390, when committed by an official, contributes substantially, by announcement to the authority, to the disclosure of the participation of an official in these acts, shall be punished by a penalty reduced to the extent of Article 44 par. 2 . The court may order the suspension of the execution of the sentence, regardless of the fulfilment of the conditions of art. 99. The Judicial Council, by decree issued upon the proposal of the competent prosecutor, can order the suspension of the criminal proceedings brought against the person responsible for a certain period of time, in order to confirm the truth of the facts. The suspension of the criminal proceedings can be ordered by the court, if the relevant evidence is brought to it until the issue of the judgment in the second degree. By the same decree or judgment, the removal or replacement of the procedural coercive measures imposed may also be ordered. If after the suspension of the criminal proceedings is found that that the evidence brought by the accused person were not sufficient for the initiation of the criminal proceedings against the public official, the relevant decree or the judgment is recalled and the suspended criminal proceedings are continued against the perpetrator.

3. An official who is the perpetrator of the acts of articles 235 to 261 and article 390, or a participant in these acts, who contributes substantially, with announcement to the authority, to the revelation of the participation in these acts of other officials, is punished in accordance with the preceding paragraph, if the person accused has a senior position to his/her own and if the official has transferred

to the State all the assets acquired, directly or indirectly, from the commission or participation in the commission of these crimes. If, exceptionally, this transfer has not been completed by the time the penalty is measured, the court may reserve its discretion, suspending the proceedings for a specified date and without the time limit of Article 352 par. 1 of the Code of Criminal Procedure. In this case it also specifies the specific transfers or other actions that the offender must take in order to benefit from it. The court in its adjournment judgment may order the removal or replacement of the procedural coercive measures imposed by the court.

4. **a)** If one of those responsible for the crimes of Articles 235 to 261, 390 and 396 acts or acts of money laundering derived directly from these criminal activities, contributed evidence for the participation in these acts of persons who have served or are serving as members of the Cabinet or Deputy Ministers, the judicial council with a decree issued upon proposal of the prosecutor, orders the suspension of the criminal proceedings against him/her and the immediate referral of the case-file to the Parliament. The above suspension may be ordered by the court when the elements are contributed till the decision of the Court of Appeal. By the same decree or judgment, the removal or replacement of coercive procedural measures that have been imposed may be ordered.

**b)** If the Parliament considers, in accordance with the provision of par. 3 of Article 86 of the Constitution, that the evidence is not sufficient for the prosecution against the Minister or Deputy Minister, the decree or judgment is revoked, and the suspended prosecution continues. If the Parliament decides the prosecution against the Minister or Deputy Minister under Article 86 of the Constitution, on conviction by the Special Court, the participant, referred in the previous paragraph, who contributed the evidence shall be punished with penalty reduced to the extent of article 44 par.2. The court may decide the suspension of the execution of the sentence according par. 2 of this art.

5. If the initiation of criminal proceedings is not possible due to elimination of criminality, as defined in subparagraph b of paragraph 3 of Article 86 of the Constitution, the accused person shall be punished with a penalty reduced to the extent of Article 44 par.2. The court may order the suspension of the execution of that sentence, as defined in paragraph 2 of this art.

#### **Article 2 CC, Retroactive effect of the milder law**

1. If more than one laws has been in force since the commission of the act until its irrevocable conviction, the one which in this case leads to a more favourable treatment of the accused, is applied.

2. If a subsequent law has made the act non-criminal (unpunished), the enforcement of the sentence imposed and its criminal consequences, as well as the enforcement of security measures, shall cease.

#### **Article 111 CC, Prescription of crimes**

1. The right of punishment is extinguished through statute of limitation.

2. Felonies prescribe in twenty years if the law provides for the life imprisonment and in fifteen years, in any other case, unless the law provides otherwise.

3. Misdemeanours prescribe in five years.

4. The above time limits are calculated on the basis of the calendar year.

If the law provides alternatively for the imposition of one out of more penalties specifically provided, the above time limits are calculated according to the heavier penalty.



#### **Article 48 of the CPC, Abstention from the prosecution of misdemeanours under certain conditions**

In the event of a misdemeanour which is punishable by law with imprisonment of up to three years with or without a pecuniary penalty or the provision of public service, the prosecutor may-upon the consent of the court-appointed magistrate, and if there are sufficient evidence of guilt-abstain temporarily from prosecution issuing a reasoned order, provided that the person to whom the act is assigned shall consent to fulfil the conditions that are deemed fit to satisfy the public interest for prosecution and reduce the consequences of the act. For this reason, the public prosecutor invites the person to whom the act is attributed to appear before him/her alone or with a lawyer. Such conditions are in particular: (a) a substantial effort to reconcile with the sufferer; (b) the payment of a certain amount of money to a charity or utility fund; (c) the compliance with an existing obligation of sustenance; (d) the participation in a social education program (e) attending a certain number of driving lessons.

2. In the case of the misdemeanours referred to in Articles 216, 242 par. 1 and 2, 375 par. 3 and 390 par.2 and in Laws 1599/1986, 2803/2000, 2960/2001, 4557/2018 and 4174/2013, the prosecutor of the first instance court may-upon the consent of the court-appointed magistrate and if there is sufficient evidence of guilt- abstain temporarily from prosecution issuing a reasoned order, provided that the person to whom the act is assigned shall fully recover the damage caused by paying the cash capital and the interests to the victim. For this reason, the public prosecutor calls upon the person to whom the act is attributed to appear before him/her alone or with a lawyer and, if necessary, he/she calls the victim in advance.

3. Prior to the commencement of the procedure for the temporary abstention from criminal proceedings, the offender shall be informed of the crime that he/she is accused of and has the right to express his/her views in writing to the public prosecutor, which shall be freely assessed.

4. The prosecutor shall specify to the person liable to fulfil the conditions in a time period not exceeding six months, which may be extended for three more months. The provision of Article 113 PC applies here as well. The public prosecutor may, upon the consent of the defendant, to modify or remove some specific conditions.

5. If the person to whom the conditions have been imposed, if he/she is in compliant with them, the public prosecutor shall issue an order by which he/she shall abstain permanently from the criminal proceedings and shall inform the first-instance court magistrate referred to in paragraph 1 hereof.

6. In the event that the person accused is non-compliant with the conditions that have been imposed to him/her, his initial consent for the application of this procedure is not allowed to be considered against him/her at the later stage of criminal procedures.

7. If criminal proceedings have already been instituted in the above cases, the competent court may, upon a proposal by the public prosecutor and if the conditions of paragraph 1 are satisfied, to temporarily cease the criminal proceedings by imposing on the defendant the conditions that are relevant to his/her act. Paragraphs 2 to 5 apply respectively.

8. The above procedure of abstention from criminal prosecution cannot be re-applied to the same person in the event of a similar crime.

**Article 29 CPC, Suspension of prosecution (amended on 11 November 2019, in red)**

In cases of political crimes as well as crimes which could disrupt the international relations between the Greek State and foreign states, *with the exception of active and passive bribery of any kind*, the Minister of Justice has the right, with the agreement of the Council of Ministers, to postpone the initiation of the criminal prosecution or to suspend the criminal prosecution indefinitely”.