

Adoption: 29 October 2020
Publication: 27 November 2020

Public
Greco-AdHocRep(2020)1

**Follow-up Report to
The Ad hoc Report on GREECE
(Rule 34)**

Adopted by GRECO
at its 86th Plenary Meeting
(Strasbourg, 26-29 October 2020)

I. INTRODUCTION AND CONTEXT

1. In June 2019, Greece amended 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. On 21 June 2019, GRECO decided 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 information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of anti-corruption standards of the Council of Europe.
3. On 6 December 2019, GRECO adopted an Ad hoc Report on Greece, containing four recommendations. On 29 September 2020, Greece submitted information on measures taken to implement these recommendations, which serves as the basis for the Follow-up Report.
4. GRECO appointed as rapporteurs 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). They were assisted by Mr Björn Janson, Deputy Executive Secretary of GRECO, in drawing up the Follow-up Report.

II. CONTEXT

5. The downgrading in June 2019 of the criminal offence of bribery of public officials from a felony to a misdemeanour resulted in strong criticism in Greece as well as from the international community. GRECO expressed concern in June 2019 in relation to the legislative changes. Also, the OECD Working Group on Bribery (WGB) was concerned about the reform and the two Organisations agreed to apply a joint procedure - based on written information and a joint on-site visit to Greece in October 2019 - to assess the amended anti-corruption provisions of relevance to the respective organisation. (for details on the procedure, see the Ad hoc Report). However, GRECO adopted its own Ad hoc Report, in its particular field of competence.
6. The initial and main reason for GRECO to trigger the current Rule 34 Ad hoc procedure was the amendment of Article 236 CC, thus downgrading 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. However, following massive criticism – and after the onsite visit by GRECO and the WGB – the law (Article 236 CC) was again amended (November 2019). As a result, this offence did again become a felony providing for 5 to 8 years’ incarceration. GRECO welcomed this amendment, which entered into force on 18 November 2019.
7. 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, are nevertheless to

be considered misdemeanours, in respect of which the more lenient sanctions apply. This was - and is - an inevitable effect of the *lex mitior principle* (the most lenient law applies) which is a basic principle of Greek criminal law enshrined in Article Article 2 of the CC, Article 7 paragraph 1 of the Greek Constitution and Article 49 paragraph 1 of the EU Charter of Fundamental Human Rights. GRECO understands that this is the case also in other jurisdictions but considered it regrettable from the perspective of an effective fight against corruption. Moreover, some other issues remained of concern to GRECO.

8. 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 at least one year imprisonment and a fine of EUR 5 000 to 50 000.</p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by up to ten years' incarceration and a fine of EUR 15 000 to 150 000.</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 up to three years (misdemeanour) or a pecuniary penalty.</p> <p>2. If the aforementioned action or omission contravenes the duties of the official, the offender shall be punished by imprisonment of at least three years (misdemeanour) and a pecuniary penalty.</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</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 up to three years (misdemeanour) or a pecuniary penalty.</p> <p>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.</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 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.</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</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
	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 punishable under the laws of the country where it was committed.	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.

9. While GRECO in the Ad hoc Report was pleased that Article 236.2 CC had been re-qualified as a felony, it also noted that Article 236.1 CC remained weakened; it conveys the message that this offence is considered less serious following the change. GRECO recalled 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 (for details, see the Ad hoc Report, paragraphs 24 and 25).
10. GRECO also noted with concern that a general feature of the amended criminal legislation was contained in Article 48 of the Code of Criminal Procedure (CPC) allowing the prosecutor to abstain from prosecution in respect of misdemeanours punishable with up to 3 years' imprisonment, with or without a pecuniary penalty with the consent of a court appointed magistrate, provided that the offender consents to alternative measures (for details, see the Ad hoc Report, paragraph 26).
11. Further, GRECO stressed 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), while the active side of such an offence is clearly referred to in Article 236.4 b CC. GRECO concluded that the amended text was not fully in line with Article 5 of the Criminal Law Convention. Moreover, GRECO noted that the amended Article 237.4c CC, while on the one side covers the offences of active bribery of judges, jurors and arbitrators of other states, on the other side the passive side of these offences did not appear to be covered by the amended provision, whereas it was in the previous law. It also took the view that the same shortcomings had been noted in respect of passive bribery of members of foreign assemblies (Article 6 of the Criminal Law Convention) (for details, see Ad hoc Report, paragraph 30).
12. Finally, GRECO noted that Article 263A CC 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. GRECO recalled its view that such systems may be subject to abuse in certain situations and called for

caution and monitoring in this respect (for details, see Ad hoc Report, paragraphs 33 and 34).

III. ANALYSIS

13. GRECO addressed four recommendations to Greece in the Ad hoc Report. The following analysis focuses on the implementation of these recommendations by the Greek authorities.
14. *i) GRECO recommended 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.*
15. *ii) GRECO recommended 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.*
16. The authorities of Greece report in respect of both these recommendations that a Ministerial Decision 11820F/340, published in the Government Gazette (YODD 167/12 March 2020), established a Drafting Committee within the Ministry of Justice with the following aims: a) continuous monitoring of the manner of implementation by case-law and doctrine of the provisions of the Criminal Code and the Code of Criminal Procedure; b) issuing of substantive conclusions with a view to drafting necessary legislation amendments; c) drafting of explanatory reports; and d) drafting of impact assessment reports and tables of amended/abolished provisions.
17. The Drafting Committee consists of 17 members, eight of which are high-ranking prosecutors, one judge of a first instance court, five law school professors and three lawyers. The Committee has started to work remotely, and two members of the Greek delegation to GRECO has informed the Committee in detail of relevant international obligations of Greece, including the pending GRECO recommendations. A first report of the Drafting Committee is expected by the summer 2021. The Drafting Committee is fully aware of the Ad hoc report recommendations and will address them in due course, according to the authorities.
18. GRECO takes note of the information provided. It welcomes that the recommendations are to be dealt with by the newly established Drafting Committee. However, at this moment, nothing tangible has been reported. GRECO concludes that recommendations i) and ii) have not been implemented.
19. *iii) GRECO recommended 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.*
20. The authorities state that Article 235(5) CC does cover certain categories of officials of EU institutions or international organisations of which Greece is a member. The same

applies in respect of the offence of passive bribery for judges etc. (Article 237(4) CC) and politicians (Article 159(4) CC): “the sections of the preceding paragraphs apply also when the act is committed by.....”.

21. More generally, though, the Greek Code of Criminal Procedure (CCP) establishes in Article 43 the principle of legality with respect to the prosecution of criminal offences. This fundamental principle dictates that the Public Prosecutor must prosecute every criminal offence to which Greek criminal law applies irrespective of the territory on which it has been committed and/or the nationality of the perpetrator. Failing to prosecute a criminal offence in breach of the legality principle constitutes a serious crime under the Criminal Code, i.e. abuse of power, punishable with imprisonment of up to ten years (Article 239 CC). In other words, the principle of legality would oblige Greek Public Prosecutors in the above cases to always prosecute not only the Greek national, who committed active bribery, but also the foreign official, who does not reside on Greek territory – notwithstanding the practical difficulties arising.
22. Furthermore, the Greek authorities recall that according to Articles 6 and 7 CC, the Greek criminal laws can be enforced against a foreigner for an act of passive bribery committed abroad, when the following connecting factors apply: a) the act is classified by Greek law as a crime or misdemeanour; b) the act is committed against a Greek citizen, or infringes upon the interests of a Greek legal entity; d) the act constitutes a crime under the laws of the country where it was committed or committed in a failed State (dual criminality).
23. The authorities refer to Article 6 CC (crimes committed abroad by nationals): 1. Greek criminal law also applies to an act characterised as a felony or misdemeanour and committed abroad by a national, provided that with its specific characteristics it constitutes a crime under the laws of the country in which it was committed or if it was committed in a failed State; 2. Criminal prosecution is also brought against a foreigner, who at the time the act was committed was a national. It is also brought against anyone, who acquired Greek citizenship after the commission of the act; 3. In the case of misdemeanours, even when prosecuted ex officio, the provisions of the preceding paragraphs shall apply only if there is a complaint from the victim or at the request of the Government of the country where the misdemeanour was committed.
24. The authorities also refer to Article 7 CC (crimes committed abroad by foreigners): 1. Greek criminal laws apply also against a foreigner for an act committed abroad characterised by them as a felony or misdemeanour, if this act is turned against a Greek national, provided that with its specific characteristics it constitutes a crime under the laws of the country in which it was committed or if it was committed in a failed State. For the application of the previous paragraph, an unborn child who will acquire Greek citizenship at birth, as well as the legal entities residing in the country, are also considered Greek citizens; 2. Paragraph 3 of Article 6 applies herewith.
25. Reference is also made by the authorities to Article 8 CC (crimes committed abroad that are always punished under Greek laws): The Greek criminal laws apply to nationals and foreigners, regardless of the laws of the place of commission, inter alia, for the following acts committed abroad: d) an act directed against a public official of the Greek state or a Greek official of an institution or body of the European Union or addressed to them, if

it is performed during the exercise of their service or in relation to the exercise of their duties. They stress that section d) was amended as above by article 95 of Law 4623/2019 (Government Gazette A 134 / 9.8.2019).

26. The Greek authorities put forward that it follows from the above and in application of the principle of legality in respect to the prosecution of criminal offences, that a foreigner perpetrator may be prosecuted for a crime committed abroad whether s/he is a public official, judge, member of an assembly, juror and arbitrator or act on his/her own capacity, if the act turns against a Greek citizen or a Greek legal entity (Articles 6 and 7 CC). Furthermore, the Greek Prosecutor is obliged to prosecute a foreigner for a crime committed abroad, if the act is directed against a public official of the Greek state or a Greek official of an institution or body of the European Union or addressed to them (Article 8 CC).
27. GRECO takes note of the explanations provided. However, the relevant legal provisions at stake have not changed since the adoption of the Ad hoc Report. It follows that the shortcomings as regards passive bribery of public officials of a foreign country (Articles 235.5 CC, 237.4c CC and Article 159.4 CC) remain the same now as they were at the adoption of the Ad hoc Report, while the corresponding provisions as they were prior to the amendments in 2019 (Article 263 A 2 (d) and (e) did explicitly cover such situations. There is no doubt that the Greek provisions on jurisdiction are broad, however, the prerequisite for applying any jurisdiction is of course, that the relevant act is classified by the (*in casu* the Greek) law as an offence. This is still not the case.
28. In the view of GRECO, the general principles of jurisdiction in the Criminal Code, referred to by the authorities, do not fill the gaps noticed. GRECO therefore maintains its position as explained in detail in the Ad hoc Report (paragraph 30) and concludes that recommendation iii) has not been implemented.
29. *iv) GRECO recommended 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.*
30. The authorities of Greece submit that the provision of effective regret aims at motivating perpetrators of active bribery to spontaneously reveal the offence before they are interrogated as suspects by the authorities in exchange for leniency. Non-punishment of the offender is not automatic but shall be decided by the competent judicial authorities. They claim that the provision of incentives to offenders in bribery cases seems necessary, in view of the secrecy which normally surrounds the offences in question, which is the rationale of Article 263B CC.
31. GRECO takes note of the information provided. It recalls that Greece abolished the special defence of effective regret following GRECO's recommendation to this effect during the Third Round compliance procedure. The recent re-introduction of such a provision in 2019 is contradictory in itself and the situation calls for careful monitoring of the use of this provision in practice, as it can be subject to abuse in certain situations.

GRECO takes the view that the above mentioned Drafting Committee could possibly carry out such a monitoring, and - if need be – have an impact in order to reduce or abolish the application of the special defence of effective regret. However, nothing has been reported to this end and GRECO can only conclude that recommendation iv has not been implemented.

IV. CONCLUSION

32. **In view of the above, GRECO concludes that none of the four recommendations contained in the Ad hoc Report have been implemented to date.**
33. GRECO recalls that a main concern when the Ad hoc procedure was initiated was dealt with by the legislator when the qualified form of bribery of public officials (Article 236.2 of the Criminal Code) was re-categorised as a severe offence (felony). That said, 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.
34. The pending concerns raised in the Ad hoc Report have not, so far, been dealt with by the Greek authorities. GRECO welcomes, however, the recent establishment of a form of expert committee (“Drafting Committee”), with the objective of dealing with some of the recommendations. GRECO hopes that this Committee will take on board all the pending recommendations and come up with tangible results in due course.
35. GRECO invites the authorities of Greece to submit a report on measures taken to implement the above-mentioned recommendations by 31 October 2021.
36. 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.