SECTION 2

Towards an equitably outlined criminal protection of public property

I. Introduction

The criminal protection of public property and assets in the Greek legal system is characterized by a paradox: the chronic legislature's option to provide a significantly superior protection compared to private property has not been accompanied by the corresponding proper attention by law enforcement agencies for the effective and fair repression of assaults against it. This seems to owe mainly to the lack of effective internal and external mechanisms for tracking and reporting relevant behaviors, which is certainly not true for the private sector, in view of the vested interest of private property holders for judicial protection through criminal law (among others).

II. The enhanced criminal protection of public property: conditions and limits

Public property has particular characteristics. Its difference over private property consists especially in its Constitutionally and legally upheld functional orientation to serve society on terms of equality, supporting wealth redistribution mechanisms and the balancing of social conflict (including the financing of welfare state to ensure public health system, education, social benefits, etc.) and the subsistence of state itself. Of course, the verification of this role is a persistent historical challenge.

However, acknowledging this orientation does not alter the dogmatic character of public property as an *individual* legally protected interest. However, state assets' mission to serve social needs explains why their infringement constitutes unjust conduct with additional features compared to corresponding breaches against private property, leading to possible increased punishment. Weighing these particular characteristics should rationally reflect upon law and respect the principle of proportionality, so that the additional demerit will not necessarily lead to an automatic transition to particularly aggravated criminal liability.

In light of the above, a fraud against the public with damage suffered amounting to € 5,000 should not perfectly correspond to an equivalent damage against private property, but neither become an aggravated offense by default. An adequate solution to cover the extra demerit lies in envisaging a general aggravating circumstance for both property crimes and violations of "intermediary"' legal interests (esp. in forgery), when the latter caused damage to public property.

Certainly, there are cases where it seems coherent to introduce a particularly aggravated variant specifically for the protection of public property, foreseeing stricter penalty thresholds compared to respective offenses against private property. Such a case refers basically to violations of extremely high value, to the extent that they significantly undermine the State's ability to fulfill the above social-functional destination.

III. Defining "public property under criminal law" – The extent of its increased protection

The above mentioned increased penal protection obviously stretches over all State and public property. Expanding to other, non-genuine forms of public property should be frugal.

The current conception of property belonging to legal entities that may receive grants or funding from the State, public entities or local banks as allegedly "public" is typical of the outlook.

The modern reality of purely state functions being implemented through legal entities of a private nature poses quite difficult issues on defining the boundaries of increased protection of public property by means of criminal law. It is essential to formulate criteria that would appropriately reflect the current relevant areas of conflict. An increased (majority) participation of the State or another public entity, or even public control over the administration of the legal person coupled with at least a reduced equity State partnership (minority) could be discussed as reliable criteria for the extension of increased protection, together with a possible provision for a general sentencing clause to reduce the increased sanctions, exactly due to the partly private nature of the property. However, it appears more appropriate to provide increased protection for the property of legal entities under private law, in which State participation is definitely linked to control over the administration, as it ensures that their property is put to the service of society.

Since these conditions are not met, the criminal protection of relevant entities should be identical to that afforded to the private sector, so that the State assumes the respective risks of acting within the open economy.

IV. Protecting tax revenue through criminal law

The specific features of a large part of the tax revenue, its identification and collection typically requiring the cooperation of the taxed natural or legal person and referring to its productive activity, justify the formulation of special criminal shielding provisions, as also confirmed by international experience.

This property is more vulnerable to violations, as its origins depend on the degree of tax, "customs", etc. compliance of all societies, while criminal conduct is often different to the phenomenology of common property crimes.

The individual traits of this specific part of public property specify the axes of its proper criminal protection.

Therefore, introducing special provisions in the area of criminal tax law, including risk crimes, is originally justified; however, this must be accompanied by a similar outline of threatened penalties (see esp. crimes of issuing/receiving false tax records). Sanctions should also properly weigh the fact that these are by and large proceeds arising from private productive activity and are claimed forcefully and under the State's privileged status; this latter term also favors the introduction of broad

prerequisites for repentance. Thus, even for cases of increased demerit, it is appropriate to establish an intermediate sentencing range.

On the other hand, the need for thorough protection does not justify the criminalization of behaviors carrying a low socio-ethical demerit, the harmful effects of which are exclusively due to the inefficient operation of recovery mechanisms for all public revenue (see esp. the criminalization of defaulting payments: Art. 25 Law 1882/1990, Law 86/1967). These provisions can and should be fully substituted by strong measures of administrative repression and prevention, unless they entail misappropriation.

The possibility of a uniform criminal regulation for all public revenue should also be investigated (particularly for tax, customs, and social security laws). Even if distinct solutions would be promoted in each individual piece of legislation, historical reasons would call for a similar reasoning on the affirmation and status of punishability in order to avoid inconsistencies in the course of criminal repression.

V. The increased duty of public officials to protect public property

Public property is protected not only trough criminal provisions on behaviors directly assaulting it. Special provisions referring to those legally responsible for its management and protection also play an important part in the area of malfeasance by civil servants.

This duty, coupled with the fact that the related criminal behaviors have special characteristics (privileged access to public property and internal deterioration of its protection mechanism) but also affect additional protective features are individual rational criteria for the classification of criminal responsibility. It is more preferable here to express the extra demerit through simply aggravated variants threatened for similar behaviors by non-officials, and particularly aggravated variants when further conditions apply, such as the essentially substantial value of the infringed property.

VI. The safeguarding of "intermediary" legally protected interests

The criminal protection of public property (inter alia) is significantly backed by provisions safeguarding "intermediary" legally protected interests (e.g. documents), whose violations the law occasionally links to endangerments and/or harms against public property. This outlook should be retained, but in a way that helps eliminate awkward assumptions in case-law, particularly in the area of concurrence. For example, this could suggest a specific clause prohibiting the dual criminal assessment of the violation against public property when this is achieved via false documents, certificates, etc., thus fulfilling the technical depiction of more offenses.

VII. Administrative sanctions

All efforts to strengthen the just protection of public property can only imply extensive reforms in the provisions and implementation of various administrative measures, through which the State advantageously protects its property. Provided the effectiveness and fairness of relevant administrative sanctions, especially as

regards disciplinary and tax law, an effective mechanism for their co-assessment by the criminal judge is necessary, so that the European equitable ne bis in idem principle could be expressed efficiently in our juridical reality.

In the same context, the formulation of a communication interspace between the two fields should be considered, within which the enforcement of effective administrative sanctions for behaviors of minor demerit (e.g. small-time tax evasion, small-time social benefit fraud, etc.) could potentially act as substitutes to criminal liability, with a synchronized contraction of the legality principle.

VIII. EU property as public property

According to primary EU law, the protection of independent standalone EU property should be equivalent to its Member States' counterparts. The minimum level of this protection is today determined in the PIF Convention for violations of EU's financial interests. Whether this assimilation is effectively justified is related to the above criteria for defining public property and the specific identity of EU property itself.

The usual reference to EU's "financial interests" rather than "property" does not imply a different extent of protection, being an alternative rendering of the term. According to the PIF Convention, EU property includes tax claims (i.e. income claims), claims related to EU's expenditure (e.g. recovering illegally obtained subsidies), and any property of the supranational organization in general (EU real estate, securities, etc.) While all contributions comprising EU's own funds are undoubtedly EU property, one must not overlook that some are identified on the basis of revenue collected initially by each Member State. For example, EU claims for Member-State contributions of collected VAT can only be determined based on the amounts *actually* accumulated by the Member State. The fact that Member States may collect smaller amounts due to VAT fraud and thus yield a smaller contribution to the EU does not suffice to deem VAT fraud a fraud against EU's financial interests, despite the Commission's conflicting interpretation, which it wrongfully justifies by invoking ECJ case-law. VAT fraud directly inflicts the property of each Member State and through it only *indirectly* affects the implementation of the single EU VAT tax-rate, thus in effect EU property. Therefore, as to the still EU-wide debatable issue of whether VAT fraud consists fraud against EU property, it is wise to carry on viewing VAT fraud as an offense exclusively against the property of each Member State, hence applying the criminal protection envisaged in the respective legal order.

The functional purpose of EU's property exhibits similar traits to those found in the properties of its individual Member States. In acknowledging that, one renders the unjust violations specific attributes, but does not alter the *individual* character of the particular legal right. Arguing that EU's financial interests are qualitatively superior to those of Member States is ultimately incompatible to the Lisbon Treaty itself. The key provision of Article 325 § 2 TFEU promotes the assimilation principle in protecting EU's financial interests compared to the respective interests of individual Member States.

The criminal protection of EU property through such a methodology, given that it can currently be implemented through local law enforcement systems only, should reasonably account for the origins and structure of each legal order. This explains the adoption of the assimilation principle by EU primary law in an absolute manner.

Therefore, the protection of the EU's financial interests by the Greek criminal legal order should adhere to the same guiding principles described above and employed in the criminal protection of national public property.

IX. The principle of assimilation in the protection of EU property via criminal law

The principle of assimilation in the criminal protection of EU's financial interests, although derived from primary EU law, does not imply automatic absorption. It requires actions of the national legislature, and expresses no options on the specific content of criminal protection. It remains neutral as to the type of criminal protection envisaged for EU property, and is imposed by the "collaborative action model" between the EU and its Member States, which currently dominates the Union's institutional system in the field of criminal repression.

The transposition of PIF Convention in the Greek legal order clearly proves that the assimilation principle was not upheld. As regards the criminal protection of EU's financial interests, this principle does not forbid a broader criminal protection for EU's financial interests compared to the national public ones. However, it demands a minimum protection according to current EU law (found in the respective requirements of the PIF Convention and its Protocols), and its monitoring through the fundamental principles and rights guaranteed in Union law under their more specific coexistence with Greek Constitution. The principle of assimilation does not make it methodologically necessary for the criminal safeguarding of EU property to fall under the same provisions that protect Greek public property. Nevertheless, this approach is the most familiar to conceive. Hence, the necessary criminal protection of EU property should basically utilize the same provisions dealing with offenses against the Greek public property.

X. The criminal protection of the property of international organizations as public property subject to conditions

Unlike the EU, non-supranational international organizations own their (distinct) property committed to serving their existence and operation, but it has no functional destination in serving social needs through the exercise of public authority, nor do they raise claims to citizens of the international community to contribute in accumulating its own, specified assets aimed to satisfy such needs. Thus, their property is reasonably protected by criminal law according to the evaluations of each legal system, originally as the property of any person or entity.

However, there are international organizations whose property institutionally conveys an international community support to developing or developed countries, citizens, or even regions around the globe hit by natural disasters, etc. So, their function is linked to the exercise of public authorities that are co-decided and agreed

for (co-)implementation by their Member States. Such property is qualitatively akin to national public property. Hence, the property of international organizations allocated according to their functional purpose (i.e. the international community's benefit) to support a State's attempts to counter an existential economic crisis or a natural disaster that exceeds the limits of its potential, or even to alleviate the negative impact of the intense and long-lasting exploitation of the so-called third world, justifiably deserves a criminal protection equal to that foreseen for the public property of its individual Member States. This, of course, is understandably not imposable by international law, as it lacks the assimilation principle the way it was previously described. However, it can very well be the choice of legal orders.

XI. Harming and endangering public property as a condition and limit of its criminal protection

Harm and risk in crimes against the public property and ownership, at least general (: common) property and ownership crimes, do not differ from those referring to crimes against private property.

1. Subsidy Fraud (abuse of grants & subsidies)

Typically, the public property suffers a pecuniary damage when a subsidy is received by fraudulent conduct, as in the case of misuse of legally obtained grants. The prior case is fully covered by the provisions on fraud, with no reason for introducing a new, special one.

In contrast, for any misuse of legally obtained subsidies or grants that does not fulfill the elements of fraud, it is necessary to introduce a new relevant offense, to the degree that one can find several cases left criminally uncovered de lege lata. The same provision should reasonably occupy corresponding behaviors against EU property. Indeed, criminalizing such conduct without including the element of fraud requires: a) a digression from the term "subsidy fraud" often used internationally to describe such demeanor, and the adoption of the term "subsidy abuse", and b) a milder retribution in relation to fraud, to the extent that the subsidy abuser has legally acquired the disputed amount and simply uses it in breach of the undertaken commitments.

2. Special cases of public property endangerment: a call for enhanced protection?

Breaches of diligent management, especially on public procurement and public spending in general, by public officials-managers of public property, even if not associated with a specific pecuniary damage, often entail endangerment of public property (e.g. when a mayor awards a contract for a municipal project in violation of the public procurement legislation without reducing the municipal property). Such cases of endangerment, however, do not necessary require individual criminal remedies: the subsidiarity principle and the fragmentary nature of criminal law justify anti-crime intervention when the abuse of management relates to specific property damage (even an attempted one), and the perpetrator's harmful intent. In

all other cases, administrative (disciplinary, etc.) rules suffice to address managerial deficiencies, for which Art. 259 GPC on breach of duty may apply.

In contrast, another case of public property endangerment seems challengeable by means of criminal law; reference is made to cartel partnerships in tenders for awarding public contracts, supplies, or services. In these cases, cartel members distort free competition by selecting their "favored" participant in each tender, while other members are required to either abstain or participate pretextually by submitting a pricier and non-competitive bid. This behavior implies a real risk to public property, in the sense that it is possible to choose a financially non-competitive offer or an unsuitable contractor (who will not properly carry out the project, etc.). This risk can only partially be addressed through administrative law and the criminal provisions on competition (given the very mild sentences of Art. 44 § 1 Law 3959/2011), so it seems appropriate to introduce a special provision.

3. The infringement of tax and social security claims as a special form of assault against public property

Infringements against the Greek state's tax claims constitute special violations of public property, which occur in two ways:

Firstly, acts affecting the tax liability and its proper assessment, i.e. tax evasion. In particular, the tax claim is impaired in the event of its (financial and not legal) annulment, as IRS authorities either issue a reduced assessment or none at all, even after the expiration of the legal time due to taxpayer responsibility (e.g. in not even filing tax returns within the prescribed period). Likewise, the tax claim is jeopardized when the taxpayer's actions create a risk of inaccurate or no evaluation of tax revenues, though not yet annulled.

Secondly, tax claims (and therefore, public property) are also infringed when the taxpayer prevents or jeopardizes the collection of certified past due tax revenue. This applies both for simple delays in tax payments ("standard delayed tax payment") and for cases when the offender annuls (or attempts to annul) tax collection by diminishing his/her assets or obscuring their actual status thereof ("fraudulent delayed tax payment"). In all such cases, harms against public property (in particular, tax or other claims) occur when recovery is definitively forsaken, while all other cases constitute endangerment. To the extent, however, that the obligation to pay is tied to specific legal deadlines, the annulment-harm of tax claims illustrates a more specific-technical content, consisting in the failure to meet the payment deadline, as the public has a vested right to expect a property increase through cash inflows to its assets, no later than the deadline. Consequently, even merely exceeding these time limits cancels that expectation. Moreover, viewing such property damage under the classical scope of property crimes would be ineffective: Both before and after the offense, the public holds the same (asserted) claim, which as such is neither impaired nor compromised by a mere delay in tax payment. It is obvious that this reasoning equally applies to delays in insurance contributions.

XII. Sentence increases and reductions in financial crimes against public property and the proportionality principle – Sanction scales and criminal liability

In some cases when the actus reus or mens rea exhibit substantial qualitative or quantitative discrepancies, the proportionality principle imposes a diversification in threatened punishment, i.e. either an increase (through aggravated variants and circumstances) or a reduction (through minor variants and mitigating circumstances).

1. Escalation of threatened sanctions for financial crimes against public property

The distinct purpose of public property in relation to its private counterpart and its need for increased protection should be expressed in the penalty envisaged for each relevant offense (property and ownership crimes, crimes against "intermediary" legally protected interests such as documents, etc.) This could be achieved by introducing a general aggravating circumstance (e.g. in Art. 79 et seq. GPC) referring to all property crimes affecting public financial interests.

Beyond that, however, one discovers cases where the intensification of threatened sanctions through modifications in their range (: aggravated variants) is, indeed, necessary for the protection of both public and private property.

Nevertheless, the key persisting issue refers to the selection of the decisive criteria turning this escalation of criminal responsibility to a liability for an aggravated variant. The current legislation's main axis of reference is the amount of financial damage (an approach that may initially be suitable, given the nature of the legal interests violated), via a purely quantitative escalation, at least for felony variants.

This approach carries a certain degree of legal certainty. However, the occasional necessary readjustments in amounts corresponding to each distinct variant place an unbearable burden to legal certainty itself, one that does no honor to our legal system: an automatic and cyclical elimination of punishability due to the statute of limitations for violations "switching" to misdemeanors, simply because the cases did not get irrevocably tried before the new law came into effect.

On the other hand, however, none should overlook the issue of intense legal uncertainty caused by the introduction of aggravating (felony) variants on the basis of extremely vague terms (e.g. particularly high value). The problem is exacerbated even more, especially in view of established Supreme Court case-law accepting that substance courts may unjustifiably invoke these terms.

The solution, therefore, can only be found in merging the advantages of both the escalation and the use of more "flexible" phrasing. This could be achieved by linking the escalation to a socio-economic "measuring unit" that adjusts "automatically" and intermittently to the fluctuating financial data –such as the daily wage of an unskilled worker, which is a clear definition over other possible measuring units (e.g. the annual gross remuneration of senior civil servants). Thus, the multiple of that unit, which will be required for the "transition" to an aggravating variant, shall acquire a more "open" designation, in line with the temporally variable nature of the defined

article (e.g. “high value is one exceeding 1.000 times the wage of an unskilled worker, as calculated during the tempus delicti”).

It is proper to adopt a threefold classification of aggravated violations against (public and private) property:

(i) The first tier should include cases where the amount of damage or benefit is (simply) high, producing liability for an aggravated misdemeanor, in absence of other aggravating factors. The wording could go as follows: “High value is one exceeding 1.000 times the wage of an unskilled worker, as calculated during the tempus delicti“ (currently € 26.180).

(ii) The second tier would include felonies (punishable by 5-15 years incarceration), i.e. cases where the damage or benefit is particularly high. The proposed penalty range will “respond” sufficiently to violations against private property not currently addressed adequately (e.g. fraud in the millions). The proposal estimates that this will compensate the effects of the significant limitation of the criminally protected public sector and the retraction of criminal provisions from the protection of a large number of legal persons under private law it currently monitors (e.g. banks). The wording could go as follows: “Particularly high value is one exceeding 5.000 times the wage of an unskilled worker, as calculated during the tempus delicti“ (currently € 130.900). Moreover, since the proposed penalty range (5-15 years) will cover a broad spectrum of crimes, it is advisable to include the reductive options of Art. 83 GPC, thus providing for 1-9 years imprisonment upon mitigating circumstances.

(iii) Finally, the third tier should include cases involving extremely high-valued assets, damages, or benefits, with threatened sanctions (under the current general part of the GPC) of 10-20 years incarceration. The wording could go as follows: “Extremely high value is one exceeding 25,000 times the wage of an unskilled worker, as calculated during the tempus delicti“ (currently € 654,500). This aggravated variant would concern only public property, where the extremely significant damage seriously impairs the public sector’s capacity to meet the needs of society by utilizing public property according to its functional purpose. On the contrary, in both previous tiers of aggravated variants, the nature of the contested property as public is only evaluated in the context of the general aggravating circumstance proposed herein.

Besides linking aggravated criminal liability to quantitative factors such as damage and benefit, it is appropriate to also associate it (individually for simply aggravated variants and jointly with the quantitative criterion for particularly aggravated ones) with additional (non-quantitative) criteria, which compose a qualitatively harsher violation and outline an extra culpability. Such criteria are:

(i) The offender’s employment status. It should sometimes be simply assessed under the general provision on increased liability of public officials (Art. 262 GPC) and sometimes lead to an aggravated criminal liability, especially when associated with a specific breach of official duty to protect the contested property or, even more, with administrative duties and abuse of managerial authority. Accordingly, disloyalty and

embezzlement in office should become aggravated forms of the corresponding common crimes.

(ii) The repeated and systematic perpetration by which the offender obtains income (professional crime-commission).

(iii) The formulation of organized crime units by the perpetrator and civil servants having an official link to the contested property.

Furthermore, other aggravating factors to be assessed only at the sentencing stage, without a revision of the penalty scale (: aggravating circumstances) include:

- The abovementioned general aggravating circumstance of direct infringement of public property,

- Employing intricate and fitting methods of concealment and deception,

- Influence peddling by supervisors on public officials to achieve breach of duties, given that it is not independently criminalized.

2. Reduction in threatened sanctions for financial crimes against the public property

Current law provides for a more lenient treatment for perpetrators of certain property and ownership crimes when the asset or harm is insignificant, establishing a petty variant. It is an appropriate option that should remain effective (threatening only a pecuniary sanction), though with a reference to the term “small value” to encompass more cases and facilitate the inclusion of petty violations to the offender’s benefit. The relevant wording could go as follows: “Small value is at most 10 times the wage of an unskilled worker, as calculated during the tempus delicti“ (currently € 261,80 euro). Moreover, this petty variant appropriately does not apply to violations against “intermediary” legally protected interests (e.g. forgery, issuing of false certificates) with such behaviors (when targeting the intended petty benefit) certainly play a role in sentence calculation.

It is also appropriate to preserve the option for a judicial remission of punishment when the ownership or property infringement is committed due to a need for immediate use or imminent consumption of the item or benefit.

Additional criteria that may play a special role in sentence determination of financial crimes in particular, include: the offender’s great poverty that forced his/her hand, the effort for voluntary restoration that does not meet the requirements of repentance, victim compensation or criminal conciliation, voluntary abstinence from the continuation of the crime, as well as the offender’s cooperation with law enforcement authorities. However, all these possibilities can already be assessed in the context of the current provisions for mitigating circumstances (Art. 84 § 2 GPC), or even according to the sentencing criteria of Art. 79 GPC.

XII. Criminal jurisdiction for financial crimes against the Greek State and the EU

1. Jurisdiction for crimes against property of the Greek public

The Greek criminal provisions on financial crimes against the public sector are directly applicable, without any further requirements, if the relevant offense is committed in whole or in part on Greek soil (: territoriality principle) or on a ship carrying a Greek flag (: flag principle – Art. 5 GPC). A question as to the application of Articles 6-8 GPC arises only when relevant offenses are committed wholly abroad. In such cases, the possibility to establish Greek criminal jurisdiction depends both de lege lata and de lege ferenda on certain fundamental doctrinal and interpretative approaches regarding both the nature of such crimes and the regulatory limits of other (i.e. apart from the flag and territoriality principles) internationally recognized principles of criminal jurisdiction reflected upon the provisions of Articles 6-8 GPC (: active and passive personality, state protection, and universal jurisdiction). It is vital to clarify whether the relevant crimes may be perceived as crimes against state legally protected interests and, consequently, whether they can freely and entirely fall under the regulatory scope of state protection, or whether they are offenses against personal or non-state legal interests, making vital a reduction in other principles establishing Greek criminal jurisdiction for acts committed wholly abroad.

Financial criminality against the State is primarily directed, as mentioned above, against the legal interest of (public) property (: including ownership). This legal right's bearer is, in principle, the Greek state and Greek legal entities under public law, except when exceptional conditions allow for assets of legal persons under private law to be considered public property.

If the legally protected interests of the State were defined as only those exclusively linked to it and its individual functions (e.g. regime), thus excluding legal rights possibly concerning individuals (e.g. property, ownership), then crimes against (public) property do not infringe legal rights of the State, to the extent that such interests are also acknowledged for individuals. Even according to this analysis, however, tax crimes could be identified as violating legal interests of the State, tax claims being financial claims of the State against its citizens that are unilateral, sovereignty-bound, and lacking a specific exchange, which constitute a particular property asset relating only to the powers of the State, and never found in private property. Under that conceptual classification (more appropriate doctrinally), the State protection principle and the establishment of Greek competence may be triggered (without double jeopardy) only for tax crimes against the Greek State (: as long as the above criteria differentiating the various components of public property are adopted). For crimes against the property and ownership of the State (or public entities, or equivalent private entities), perhaps for tax offenses also, the foundation of Greek criminal jurisdiction for acts committed outside Greek soil should depend on the possible provisions of the active or passive personality principle.

Given the above and assuming that tax offenses affect legal interests co-determined by the powers of the State, it is de lege ferenda vital to introduce three corrective amendments in Articles 5 et seq. GPC regulating the territorial limits of Greek criminal law application: (a) adding tax crimes to Art. 8, thus releasing them from the

double criminality requirement when committed abroad, (b) adding to Art. 7 crimes (including financial violations) committed abroad by a foreign national against the Greek State or legal persons under public law or equivalent private ones, to the extent that the current phrasing refers only to acts against a Greek citizen and creates problems for the inclusion of acts against the Greek State, and (c) detaching the implementation of Articles 6 & 7 GPC from the obligation of foreign States to file an application or charges, especially for misdemeanors against public property

2. Jurisdiction and violations against the financial interests of the EU

As to the foundation of criminal jurisdiction for the protection of its financial interests and by means the PIF Convention, the EU invited its Member States to establish extraterritorial criminal jurisdiction only when perpetrators are EU-nationals. Therein, it also explicitly envisaged the possibility for Member States to determine their jurisdiction upon dual criminality. The same tactic was basically followed in the proposal for a Directive, where adopting the principle of active citizenship was extended for offenders residing in a Member State, while the establishment of extraterritorial criminal jurisdiction for such cases became unambiguously detached from the submission of a complaint or application on behalf of the Member State where the eurofraud was committed, but not from double criminality.

Of course, the phenotype of infringements against EU financial interests highlights that violations essentially take place in Member States. So the locus delicti is a dominant element for establishing criminal jurisdiction in all such cases, according to the territoriality principle.

Nevertheless, it is possible that a violation against EU property is not criminalized in a Member State (and not a third country), even if perpetrated there (e.g. due to faulty transposition of EU regulations to national legislation).

Of course, and depending on provisions one would formulate to deal with infringements of EU's financial interests (e.g. crimes of abstract endangerment), the violation against EU property could occur even in a third country, and even by a third country national. The EU did not interfere in such cases, and still the establishment of extraterritorial criminal jurisdiction is basically left to Member States (principle of assimilation). Such a protection is acknowledged against similar offenses against Greek public property according to Art. 7 GPC, at least to a degree. Combined with the assimilation principle, and given Art. 7 GPC should be amended to include crimes against the Greek State; the EU may call upon Greece to protect its Union property.

As mentioned, we need to accept a divergence from dual criminality in establishing extraterritorial criminal jurisdiction for EU tax claims that are violated in third countries. EU customs and tax claims and that relative expression of EU property are not subject to protection by third country tax legislations, as they protect exclusively their own tax claims; such protection may be achieved by amending Art. 8 GPC.

In redesigning the establishment of Greece's extraterritorial criminal jurisdiction for infringements against EU's financial interests, made imperative due the poor choices in current law, one must: a) distinguish customs and tax offenses against the Union similarly to those against the Greek government and link them under a "quasi- State protection principle" with Art. 8 GPC, and b) also regulate the other violations of EU's financial interests committed abroad (i.e. in Member States and third countries), according to the principles of Articles 6 & 7 GPC, after an amendment of the latter to include assaults against EU's financial interests. Also, the provisions regarding Articles 6 & 7 GPC should account for the requirements of the PIF Convention or an anticipated Directive. Especially in the case of the latter, if it maintains its post-1st-reading version, the country's extraterritorial criminal jurisdiction shall need to be extended to non-Greek nationals merely residing in Greece, but also grant it for violations of EU's financial interests by Greeks abroad without requiring the respective country to file a complaint or application. According to applicable law (i.e. PIF), it is necessary to extend the territoriality principle of Art. 5 GPC to violations against EU's financial interests, when the proceeds of the so-called "eurofraud" are obtained in Greece.