Section 4

Towards an equitably delineated protection of the gratuitous and impartial functioning of the public office through criminal law

I. Outlook: Criminal law as an ultima ratio in the fight against corruption

Corruption in the public sector is a malaise that intensifies mismanagement and is also decisively boosted by it. Therefore, this detrimental phenomenon cannot be addressed –or at least significantly moderated– without designing and implementing broader interventions far exceeding the limits, objectives, and capabilities of criminal law enforcement. Without rationalization and convincing re-establishment of central features of public administration (e.g. the clear demarcation and justification of civil servant permanency of employment), without simplifying administrative procedures, creating and effectively implementing e-governance, and managing human resources by stipulating and applying reliable evaluation systems for the preservation of meritocracy, and without other initiatives to restore the value of civil service in Greek society, the current sense on the excessive spread of corruption in the country is almost impossible to overturn. On a second level, a contribution towards a similar direction can be pursued through the institutionalization and reliable operation of disciplinary control mechanisms to assess and monitor maladministration conducts (inter alia) not necessarily carrying the demerit that would justify criminal intervention. As also proven by Greek experience, unrestrained criminal enforcement in this field cannot provide an operationally sturdy substitute for the aforesaid broad, long-term, and laborious interventions.

Of course, these deductions do not negate the necessity of criminal intervention (inter alia) as an ultima ratio to address relevant behaviors in the context of the wider principles of equitability and rule-of-law discussed previously.

In recent years, the Greek legislature has been especially active in the arena of corruption fighting; its initiatives, however, can hardly be described as fruitful. Consistency and equitability of the legal framework and a systematic effort to creatively integrate international trends and simplicity are still expected in discussed amendments.

II. Fundamentals of punishable corruption: The objective-impartial and gratuitous public office as a legally protected interest in bribery offenses

The proper functioning of public administration to the benefit of society requires the *objective-impartial* and gratuitous promotion and implementation of public policies.

Indeed, a primary obligation and existential element of public service is to exercise its functional role evenhandedly and generally gratuitously towards citizens, this being the only way possible to fulfill the main mission of the State, i.e. the implementation of public policies, as expressed by the democratically legitimized political power and designed for the further safeguarding of social and civil interests.

The arbitrary dependence of public officials' acts -or omissions- on compensations not specified in law flagrantly affects the unbiased nature of public administration and the equitable and unhindered access to it. Of course, these traits may be swayed

by other individual acts or omissions of public officials (e.g. favorable treatment of relatives, friends, or power-yielding individuals without imbursement).

These elements essentially differentiate corruption in the public sphere from similar conducts in the private sector. Public service undoubtedly differs in function from any private entity: the prior is committed to serve citizens through implementing democratically legitimate public policies, while the employee structure of a private company by default serves the interests of its owners or shareholders, whose decisions it strives to implement. Therefore, infringing its operative apparatus, however important for the economy, is not only a lesser, but also a qualitatively different illegitimacy compared to violations against the public service.

In light of the above considerations, "passive" bribery (according to the formerly dominant terminology) of public officials for future acts or omissions is at the nucleus of behaviors whose penal treatment is somehow implicit in any equitable State. Apparently, bribe-taking may not necessarily be linked to the threat of an unlawful omission of a rightful official act, or even be associated with the implementation (actual or intended) of official duty regardless of the citizen's willingness to concede to the public official's proposal. Consequently, it is possible that such conduct does not actually annul citizens' access to public services, nor does it disrupt the effective functioning of public administration in relevant fields. In such marginal cases, one can nevertheless acknowledge that bribed employees not only exploit or abuse their position to obtain an unlawful financial gain, but also improperly –albeit not insurmountably– obstruct the access to public service, thus affecting its abovementioned objective function.

Equal access for all citizens to public services is also obstructed by quae pro quibus for acts or omissions violating rightful official duties (bribery for illegal acts): the equitable, objective, and unbribed functioning of public service is supra-individual in nature and, therefore, the crucial element therein lies not in the bribed official granting access to a service that the particular citizen would otherwise not have enjoyed, but exactly in the fact that this accessibility is not granted to other persons. According to these contemplations, such distinct features should be ruminated in the sentencing stage, becoming neither building blocks nor gradation criteria for punishability. The same also applies to bribery for completed acts; in this case, the service is affected by the addition of a reprehensible supplementary term associated (even retrospectively) with the performance of each official duty. Therefore, the end result of such behaviors links the implementation of public service's missions to the obtainment of unwarranted advantages. In that way, public officials who are by definition required to provide equitable access for the benefit of society, become either impediments to this access itself, or facilitators of discriminatory access.

This sequence ultimately justifies the autonomy of unbribed public service as a distinct criminally relevant aspect of efficient and unprejudiced functioning of public administration.

Hence, the legality or illegality of every official activity associated with and undue advantage should not be a decisive criterion of criminal liability graduation, as any additional demerit could be covered by individual provisions on public administration offenses, malfeasance in office (discussed below), or even variations

within the same penalty scale in the sentencing stage, as long as no other public administration breach applies.

The transaction element present in many cases of corruption favors the initial understanding of "active" bribery's demerit similarly to that of "passive" bribery. However, one can see that this issue can stir further contemplations. For example, in large-scale corruption, the briber's conduct may sometimes reflect a greater demerit, as the lure of a substantial reward may drive a minor employee to violate the objective administrative function, thus carrying a reduced mens rea compared, e.g. to the blackmailing public official; nevertheless, this condition may considerably diverge in small-scale corruption, when the citizen is forced to succumb to the public official's demands, or even follow the "typical" path to gain access to basic public goods. Still, it seems preferable that these factors are worded in criminal law as specific sentencing rules that may result in reduced or increased penalties according to criteria such as the exercise of pressure by the public official, the existence of an enforcement relationship, or even a relevant initiative on behalf of the public official or the citizen to guide the implementer in tackling this complex matter without rigorous commitments.

Considering the appropriateness to enact culpability for acts of bribe-receiving for trading in influence, i.e. in absence of a clear link between the illegal transaction and the performance of a specific act by the bribed official, one can argue that, apart form the abuse of the official apparatus for personal interest, it is critical here that the objective-impartial functioning of the public service may be compromised, to the extent that bribing imposes empirical risk factors to the future exercise of official duties under the influence of the received advantage. Therefore, the enforcement of another significant obstacle is attempted upon the unimpeded rendering of an evenhanded public service. The same considerations support sanctioning for the corresponding "active" bribery.

III. Aggravated bribery offenses

Evidently, the sufficiency of an equitable legitimacy in typifying aggravated bribery is a question of complex weighing and arduous legislative alternatives.

Passive bribery offenses are predominantly encumbered when the public official involved in the illegal corrupt transaction is: (i) a *political official-overseer* of a public service at a central level or in the local government (: Prime Minister, members of the cabinet, deputy ministers, prefects), (ii) an *MP*, when the corrupt transaction concerns their abstention or specific participation in a vote, and (iii) a *judge*, when the bribery affects the exercise of their duties in administering justice.

Violations against the operation of the abovementioned *sensitive areas of public service*, which result both from the extraordinary position of the offending public servant at the highest echelons of the state apparatus (executive, legislative, and judicial) and the exceptional importance of the purchased official act, justify stricter threatened sanctions, even at the felony level.

Enacting aggravated offenses is justified in other *serious cases of passive or active bribery*. Diagnosing the severity of the illegal transaction which may incur amplified

sanctions (even at the felony level) should employ targeted criteria to prove the grim damage to public service functioning. In the case of bribe-receiving, that condition is met by: (i) *the repeated and systematic perpetration*, when the offender uses it to derive *income*, (ii) the perpetration by a *senior public executive or a public official acting as head of independent administrative authorities or legal entities under public or private law included to the public sector according to criminal legislation, or by an official during their inspection over administrative agencies*, and (iii) the *excessive value of the benefit*. In the case of *bribe-giving*, the corresponding factors are: (i) *the repeated and systematic promise or offering of gifts to the benefit or on account of a corporation or a business venture carried out by the offender or a third party*, through (ii) promises or offerings of gifts to *senior public executives or officials for and during their inspections over administrative agencies*, and (iii) promises or offerings of benefits of *excessive value* (determined as in the aggravated offenses against public property).

However, such acts perpetrated by or in favor of *senior public executives or public officials acting as heads of independent administrative authorities or legal entities under public or private law included to the public sector according to criminal legislation, or officials during their inspection over administrative agencies* should not establish aggravated bribery when the relevant benefits are of *small value*; in such cases, the harm intensity against the public service can still be countered through the stricter penalties envisaged for the respective non-aggravated offenses.

With the exception of bribery by or in favor of a senior public executive manager or an official during inspections over administrative agencies, the abovementioned conditions should establish particularly aggravated variants of corruption offenses which involve judges, MPs, and other senior political officials.

IV. Leniency for bribery perpetrators – Aims and limitations of equitability

A typical characteristic of corruption behaviors, particularly of briberies, is their *inherent secrecy*, as the unlawful transaction takes place exclusively between two – possibly punishable– individuals. With the possible exception of cases when public officials blackmail, bribery is a transaction without a victim that could denounce it as a criminal behavior. Therefore, acts of bribery are rarely disclosed.

In light of the above and in acknowledging the challenges faced by law enforcement agencies, the legislature attempted to *motivate* bribery offenders to leak the illegal transaction through leniency measures in Art. 263B GPC; such provisions are also *deterrents* to the conclusion of the bribery agreements, by increasing the odds of exposure. By envisaging preferential treatment for the participant to the agreement (and especially the briber), the legislator attempts to breach the trust between the parties to such illegal transactions.

In current law, Art. 263B GPC provides *impunity* (§ 1) *for perpetrators of active bribery* (regardless of their status as public officials or not) who willfully and prior to any investigations disclose it to competent authorities, while paragraphs 2-4 provide the opportunity for favorable treatment of bribery offenders (reduced penalty and

potential sentence suspension even outside the conditions of Articles 99 and 100 GPC) who -even until the closure of the appellate procedure- help reveal the participation of public officials (senior staff when whistleblowers are also public officials).

The provisions of §§ 2-4 reflect the so-called *crown witness* (Kronzeuge) institution, modeled upon the corresponding provisions for drugs (Art. 27 Law 4139/2013) and organized crime (Art. 187B GPC). They aim to: (i) *prevent* bribery offenses, and (ii) *facilitate their exposure*, once committed. The same objectives are also served by the briber's impunity according to Article 263B § 1 GPC, regardless of the provision's correctness. Of course, the question is whether such leniency is also dogmatically justified under substantive criminal law.

Although both crimes are initially threatened with the same sanctions, the leniency measures *mainly concern perpetrators of active bribery*, especially when they are not public officials. Such offenders are often the most "vulnerable" parts in the illegal transaction, especially when the latter concerns a future official act; even if they did not fall prey to extortion by a public official, they have paid for an uncertain quid pro quo. For this reason, it is easier for the legislature to "approach" them rather than the public official, by proposing a measure of leniency.

The legislature's choice to grant the opportunity of a favorable treatment (in the form of a reduced sanction and its suspension, regardless of the terms in Arts. 99 et seq. GPC) for bribe-takers or even bribe-giving civil servants is also comprehensible when they help reveal the involvement of a higher-ranking official. Indeed, superiors are those who usually control the illegal operation mechanisms within the public service, and it is only rational that the legislator's equilibrium of expediency be directed towards the disclosure of their involvement in corrupt transactions, with the promise of a more lenient handling of their junior accomplices.

Acute concerns are raised by the impunity envisaged for perpetrators of active bribery who voluntarily disclose their conduct to the authorities prior to any relevant investigation. Firstly, a question exists on the ability to substantially justify impunity beyond reasons of expediency. It is a fact that the perpetrator's initiative enables justice to restore legitimacy where such a capability seemed nonexistent without its own activation in a criminality area where the inherent secrecy vastly impairs detection by the crime-fighting apparatus. It is also worth considering that in other jurisdictions, the essential facilitation of crime solving by means of cooperating with the authorities after the perpetration is a mitigating factor yielding a reduced sentence. Therefore, for all leniency measures currently provided in Article 263B GPC, a lower penalty could not be contradicted. Conversely, even the voluntary disclosure prior to any investigation cannot be considered a repentance that eliminates criminality, as the voluntary conversion of the offender does not restore the violated legal interests of the pro bono functioning of public service. For this reason, the impunity of Article 263B GPC is unjustifiable.

To the extent that the voluntary conversion of the perpetrator of active bribery prior to any relevant investigation by the authorities is a generally recognized mitigating

factor that serves both the prevention and efficient detection of corruption, the provision for lenient treatment should be maintained. However, instead of the impunity, it would be doctrinally more appropriate to envisage a mandatory double reduction of the imposable penalty (Art. 44 § 2 GPC), an automatic suspension of its execution (irrespective of Arts. 99 & 100 GPC), and *additional terms* ensuring the effective realization of the abovementioned objectives. Firstly, these benefits are clearly related only to instances when one or more acts of corruption have been committed apart from active bribery, i.e. cases of "integrated" corrupt transactions. Moreover, they should explicitly depend upon the disclosure of *all* information known to the offender about the committed bribery offenses, and not just a part of them. Therefore, a provision should be added regarding the mandatory suspension of prosecution for the cooperating briber on behalf of the public prosecutor of the court of first instance (with the approval of the prosecutor of the court of appeals), until the accuracy of the unveiled information is confirmed.

To regulate the functionality of the individual leniency measures without systemic contradictions and doctrinal inconsistencies, for cases currently regulated according to Art. 263 §§ 2 et seq. (: bribery offenders uncovering participation of public officials –senior executives when whistleblowers themselves are civil servants– *during the procedure*), instead of a double sentence reduction, a mandatory single reduction should be envisaged, together with a preservation of the current provision for a possible suspension of its execution (even if the general suspension conditions do not apply). On the other hand, as applicable today, any beneficial treatment granted to wrongdoing public officials in these cases, should depend upon the restoration of property acquired via criminal corruption.

By including the above requirements, the favorable treatment of bribery offenders can still be acceptable, in the sense that they contribute to the functioning of criminal justice and to the revelation of truth in cases where crime detection is otherwise either impossible or extremely challenging.

V. The extent of punishability in the fight against corruption under Greece's international commitments – Trading in influence

Greece is internationally committed to criminalize *passive and active trading in influence*.

The intermediary's conduct, provided that their assurances on the probability of an undue trading in influence are truthful, endangers the legal interest of the public service insofar as the intermediary (due to their status, connections, and contacts) permits or at least facilitates a partial and biased access of third parties to the service. Moreover, even in the (more debatable) case where assurances as to the probability of undue trading in influence are fabricated, the intermediary plays a role comparable to that of a public official in bribery. There, the employee becomes a provider of inequitable (or any) access to the service for individual gain, thus

impairing the gratuitous relationship between the citizen and the public service; in trading in influence, such activity is promoted by the intermediary.

The above findings can only partially justify the superior protection of public service from trading in influence; nevertheless, they cannot justify the equivalence in sentences envisaged for bribery violations, where the service is inflicted internally by the civil servants themselves and the linkage to the public officials' activity is much more evident. The anti-crime intervention becomes more difficult when assurances on the feasibility of the undue influence are false, i.e. when the middleman deceives the interested transacting party. As the punishability of such behaviors is imposed by Greece's international commitments, the lack of a real risk for an unconditionally impartial and unbiased access of the third party to the service requires a milder treatment compared to factual assertions. This is only established in the abovementioned improper interference of a third person and a reward to the relationship between the citizen and the public service; the criminality of the property infringement is covered through the provision for fraud.

Currently, the Greek legislature typifies criminal trading in influence (Art. 237A GPC) through acts that are completely detached from the corruption nucleus. The prior describes the demand or promise of an advantage for the future exercise of undue influence over a public official's decision. The problems with these provisions are further reinforced by the fact that the intermediary does not represent the public service, in contrast to the public official who has it at his/her disposal to abuse at any time. It would be better to punish the intermediary and the third party for a completed trading in influence, *if they have at least agreed upon the future exercise of undue influence by the prior*, as in this case at least a risk factor for future infection of public service. Of course, such a solution seems to contradict Art. 12 of the (binding) Convention on Corruption of the Council of Europe. However, this divergence is only ostensible, as offering or demanding a quid pro quo for such conduct generally constitutes attempted trading in influence.

VI. Digression: extra protection of the impartial functioning of the public office without establishing an undue benefit?

As mentioned above, the impartiality of public administration and the equitable and unhindered access to it can be impaired by other (i.e. non-bribery) acts or omissions of the public servant, with the latter neither necessarily expecting or actually deriving a benefit, nor fulfilling the actus reus of another relevant special crime.

In a society like Greece, the influence of interpersonal and family relationships in everyday dealings (including those with the State) is strong and sometimes negative; hence, promoting an objective-impartial public service faces additional challenges.

In current law, such conduct can be regulated by the broad provision on breach of duty (Art. 259 GPC), according to which the punishable impartial act of the public official must -correctly- infringe a specific official duty.

However, the unclear conditions of imputability in this provision raise doubts as to whether the debated countering of particular conducts that violate (sometimes intensely) the evenhanded functioning of the public service passes through the

aggravated form in Art. 259 GPC. This would require a thorough restructuring of this general crime of public corruption.

Provided such a wider reform, one could examine both the formulation of a plausibly more stringent penalty range and the introduction of aggravated liability for specific fields of official action, whereby breaches of duty may sometimes be linked to a severe infringement against the equitable functioning of public services (e.g. public procurement, staffing, human resources assessment, nationwide entry examination procedures for Universities, the National School of Judges, etc.).

VII. Special provisions a la money laundering to endorse anti-crime policy in the public sector? Declarations of assets – Illicit enrichment

Omitting to file a declaration of assets and *filing a false or incomplete declaration* (Art. 6 Law 3213/2003) fall under a preventive and repressive apparatus for tracking "slush funds", whose effectiveness is equipped through criminal law in a way that strongly resembles the approach to money laundering. These provisions establish additional liability for undeclared assets to civil servants-officials and to a multitude of other persons legally bound to file such statements. In effect, this enables sanctioning even without verification of the assets' criminal nature (much less their association to corruption), therefore further facilitating the recovery of property that was only allegedly accumulated from suchlike conduct, as the evidentiary corroboration of such claims is not compulsory. This can potentially solve all complex issues of discovering and fairly countering the specific criminality, as instead of requiring the fulfillment of all elements of bribery, it settles for the intentional non-compliance with an administrative obligation to declare the financial situation.

One could already challenge the rationale and -especially- the intensity of this anti-crime reprisal in terms of legally protected interests. Its criticism based upon the ECHR-solidified right to non-self-incrimination is intriguing, though contested by the assumption that those liable to file a declaration hold the respective public or other position in free will, which they may negate at any time. Evidently, this argument retracts proportionally to the expansion of such liability to more individuals.

However, it seems that the systemic issues and problems of "penal inflation" in the relevant provisions are more critical. One may wonder how undeclared assets can establish criminal liability -even at the felony level- without linking them to any general or specific official act or other function, while the Greek legislature has so far widely rejected the (narrower, compared to the declaration of assets) international trend for establishing money laundering by merely requiring proof of the illegal source of assets. Therefore, the better option requires abandoning the recent legislative choices by annulling the relevant criminal provisions.

Definitely, this does not imply that the whole system of asset declarations should be abandoned. To the contrary, its further operational and organizational fortification (electronic data processing, adequate and reliable staffing of relevant committees, etc.) is absolutely beneficial and crucial, as is its association with proportionate and effective administrative sanctions that can express equitably (if not optimally) the real added value of the issue. In this context, the detection of fraudulent non-compliance to the relevant obligations aiming to conceal assets of significant value should entail corresponding disciplinary measures, including permanent discharge

for serious offenses, additional administrative pecuniary sanctions to counter relevant behaviors of accountable non-public officials (e.g. journalists), as well as a *compulsory dispatch* of the file to tax authorities and the Agency of Law 3691/2008, to investigate the possibility of criminal fraud and money laundering. Under the same system, additional safeguards could be introduced to ensure asset recovery (: immediate freezing and judicial seizure of all undeclared assets in favor of the State), together with flexible provisions aiming at a more effective functioning of this special monitoring mechanism (e.g. sample inspections of statements according to risk analysis upon criteria relating to the specific agency, responsibility status, etc.).

Alternatively, and possibly requiring a more mature and collected public debate, one could at the very least vouch for the restriction of punishability by *adding extra requirements in relevant crimes* (*e.g. the undeclared assets should in any case originate from crime, or abuse of power, or malfeasance in office*) and a significant cutback in envisaged criminal sanctions, including a subsidiarity clause for asset declaration offenses as to the abovementioned relevant violations.

The definitive choices on the previous issues formulate the stance of the Greek legal order against illicit enrichment. While the provision that criminalizes the omission to file a declaration of assets remains valid, the legislature's compliance to the non-binding UN Convention on illicit enrichment (which is not deemed appropriate for the abovementioned reasons) would not serve any further expediency.

VIII. Defining "public official" in the fight against corruption within the international and EU institutional context and its adoption by Greek legal order

1. The definition of "public official" within the international institutional context

Over time, the definition of "public official" received international influences and broadened to include officials of international organizations and other States; hence, the national legislature is urged to protect public office as and international, EU, or simply foreign legally protected interest.

Two trends are recorded in international conventions on the definition of "public official": *the first refers to the designation outlined in the legal order where he/she is employed, while the second provides a definition according both to the formal criterion of (official) employment status and to the substantive criterion of undertaking a public function, office, or enterprise*. Adopting the first pays almost absolute respect to the choices of a legal order, as the relevant designation can only be determined based on national definitions; adopting the second (i.e. accepting a combination of formal and substantive criteria even if it concerns a public official of another State) leads to the broadest possible definition and, thus, to the broadest possible criminal repression of the relevant acts. Choosing the latter scheme that combines the conventions of the UN and the OECD is not accidental: they penalized the *active* bribery of foreign officials in *international business transactions*, and thus aimed at safeguarding the international financial competition. To achieve this goal to the maximum extent possible by applying criminal law provisions against bribery, the definition of "public official" as to the relevant offenses should be the broadest possible.

2. The definition of "public official" within the EU institutional context

As a sovereign entity, the EU provided a definition for the European official; to that end, it basically combined a formal and a substantive criterion, leaving Member States to provide corresponding definitions for their national public officials. Thus, it promoted a largely *non-intrusive* approach to the relevant choices of Member States in defining the terms "national or foreign public servant"; however, as to the European (Community - now EU) officials, it adopted the broadest possible version.

3. The incorporation by Greek law of the international institutional framework for the definition of "public official"

Under Greek law, the definition of *national public official* that derives from the combination of Articles 13 point a and 263A GPC exceeds the relevant requirements of the international community to which Greece pledged.

On the other hand, as regards the term "*foreign public official or official of international organizations or members of international tribunals*", the Greek legislation correctly restricts the application of Articles 235 §§ 1 & 2 and 236 GPC to officials of international organizations and members of parliamentary assemblies of international organizations *to which Greece participates*, and to members of international tribunals *whose competence it has recognized*. However, as regards the concept of "*public official of another State*", one wonders if it is appropriate for Greek legislation to not include any restrictions, as is the case with Art. 263A GPC.

Having primarily ratified the Convention of the Council of Europe (which refers to the national legislations for the individual definitions for "public official"), Greece is constitutionally (Art. 28 § 1) bound by the legislatively superior ratifying Act, and therefore cannot provide its own definition for "foreign national official of a Member-party to this convention", but must accept the one given by the corresponding foreign legal order, unless it is incompatible with its own. On the other hand, however, the ratification of the OECD and UN conventions on corruption (also via superior legal documents) allows the Greek legislature to define the term "foreign public official" by adopting the designations therein (to which Articles 236A § 2 points d & e GPC are indeed consistent). This practically means that the culpability thus created for acts of foreign public officials may also include States that do not adopt the same definitions for their civil servants and are not bound by these conventions, as their rationale is substantively linked to the protection (inter alia) of the financial aspects of international business transactions, and therefore they vouch for the broadest possible definition, regardless of the designations granted by individual national parties. That is why it is imperative for Art. 263A GPC to continue "hosting" the extended definition to encompass foreign public officials, as envisaged by the international OECD and UN Conventions, without the restriction regarding only the Member States to these international organizations. Moreover, insofar as this extended definition applies only to crimes of public corruption and not all perpetrations involving public officials, it would be fallacious to reposition this provision to the general part.

4. The incorporation by Greek law of the EU institutional framework for the definition of "public official"

On the other hand, as to the "*EU official*", Art. 263A § 1d is aligned with the relevant contents of the 1997 Convention. As to the term "*public official of EU Member-*

States", the 1997 EU Convention prevails (Art. 1 point c) regardless of Art. 263A § 2 points d & e GPC. The prior underlines an obligation to accept the definition given by each Member-State state in its national law, unless it is incompatible with the national law of the prosecuting Member-State. Therefore, a Member State that does not use the broad definition of the Greek legal system for national civil servants (e.g. including even those serving in legal entities under private law that receive State subsidies) is not obliged to acknowledge bribery of a public official if such an act is perpetrated in its jurisdiction and involves an employee of a private legal entity that receives any State funding. The same should apply to Greece for Member States adopting such broad definitions, if one accepts the restriction in the relevant definition proposed herein.

Nevertheless, in relation to the provisions of the EU 1997 Convention for the above definition, it is generally worth noting that Greek law must take into consideration the respective designations in other binding international conventions (i.e. UN and OECD for active bribery in international business transactions), when their definitions establish broader criminality, i.e. beyond that allowed by the EU legal instruments, and when they do not contradict EU law.

IX. Criminal jurisdiction for corruption crimes of officials employed in the EU, international organizations or tribunals, EU Member States, and third countries

1. State protective principle and establishing supranational criminal jurisdiction for the safeguarding of the national and EU public office

While provisions on crimes against Greek or EU public property (with the exception of specialized tax offenses) essentially promote the safeguarding of shared and concurrently individual legal interests, corruption crimes intend to protect the public service, which is an exclusively "domestic" or "EU" legal interest that is appropriate to the structures and functioning of a state or supranational organization that serves society, and is not in principle protected by foreign jurisdictions. Due to that, the various jurisdictions for which public service is (inversely) a "foreign" legal interest usually establish supranational criminal jurisdiction to provide effective protection over their own public service, by prosecuting relevant acts without any additional conditions or restrictions, regardless of the locus delicti itself and especially regardless of punishability in the locus delicti. In this way, they apply the so-called state protective principle, described in Greek law in Art. 8 points c & d GPC. This option is justified in terms of legislative policy: although perpetrators of such crimes are asked to foresee the culpability of their acts under a law that lies outside the locus delicti, a violation of a legal interest that is exclusively "foreign" to the legal order of the crime scene (but has become such by another jurisdiction), makes it imperative for the perpetrator to account for the legal order originally linked to it.

The same basically applies for acts against the public office of the EU as a supranational organization. Upon the principle of assimilation, Greece provides a somewhat different criminal protection to EU public service than to its national counterpart. According to Articles 8 points c & d and 236 § 4 GPC, Greece establishes extraterritorial criminal jurisdiction to prosecute acts of corruption by or against EU officials given a) they are Greek, or b) they work for an agency or organization based in Greece, or c) the EU public office is infringed by a Greek national who bribes a

non-Greek EU official abroad. If one of these requirements applies, these acts can be prosecuted in Greece regardless of their punishability by the law of the place of commission. Therefore, the EU legal right of EU public service via a Greek link to a specific event enjoys protection under criminal law on the basis of the State protective principle (now extended to supranational organizations and restricted to the abovementioned national features).

Choosing to restrict Greece's extraterritorial criminal jurisdiction regarding the protection of EU public office by means of introducing a certain national link is essentially correct: since EU itself is not competent to employ criminal protection (this being exercised through its Member States), an absolute assimilation would enable all Member States to establish criminal competence, which would cause issues of multiple concurrent jurisdictions for the same behavior and apparently place a profound burden upon the alleged perpetrators.

In this sense, the recent provision in Greek law for establishing extraterritorial criminal jurisdiction for offenses against the EU public office followed the right path. However, an oversight on behalf of the Greek legislature created a problem and a gap to be filled. As to the prior, Art. 236 § 4 GPC stated that its implementation for acts committed abroad by Greek nationals need not satisfy the requirements of Article 6; in this way, however, it applies neither to bribery of magistrates of the ECJ or the ECA (aggravated according to Art. 237 § 2 GPC), nor to bribery of EU political officials and MPs (also aggravated according to Art. 159A GPC). These cases are also not covered by Art. 8 point d GPC, which regulates acts against or related to officials of EU agencies or institutions, as the provision applies only to Greek nationals. The proportional implementation of Article 236 § 4 GPC in these cases is not permissible, as it signifies an enlargement of Greek extraterritorial jurisdiction without dual criminality, i.e. an extension of punishability. Consequently, the legislature should correct this slip-up.

As to the gap: under the current legal status, if a foreign national bribes a foreign EU official abroad (even if the latter works for an EU agency or institution based in Greece), Greece cannot establish criminal jurisdiction for the prosecution of such active bribery, but only for its passive counterpart (Art. 8 point c GPC). Although the latter can obviously be prosecuted by the Member State of the employee's nationality, the absence of extraterritorial criminal jurisdiction for Greece is incorrect in terms of ensuring the uniformity of trial in such cases, since the active and passive legs are closely linked. Hence, Art. 8 point d GPC should be supplemented with a provision establishing jurisdiction when the act is directed not only against Greek EU officials, but also against employees of EU agencies or institutions based in Greece.

2. Establishing criminal jurisdiction to prosecute corruption involving employees of international organizations to which Greece is a Member State or international tribunals recognized by Greek legal order

Unlike the case of EU agencies, the current regime does not recognize Greek extraterritorial criminal jurisdiction for: a) active bribery of employees of international organizations to which Greece is a Member State or international tribunals recognized by Greek legal order, b) passive bribery conducted abroad and

involving such employees, even when the agencies or institutions are based in Greece (for EU, see Art. 8 point c GPC), and c) when a foreign national bribes a Greek official of such international organizations abroad (for EU, see Art. 8 point d GPC). Greek extraterritorial criminal jurisdiction is established only if the bribe-giver is a Greek national -without the need for dual criminality- (Art. 236 § 4 GPC), or the bribe-taker is a Greek national (Art. 6 GPC) -with dual criminality being necessary. These divergences are not justified, since the safeguarding of international organizations or tribunals should apply (without the dual criminality restriction) to the legal orders of countries they are based in, and to the countries of employee nationality.

3. Establishing criminal jurisdiction to prosecute corruption involving foreign public officials

None of the three main international conventions (: OECD, UN and Council of Europe) requires ratifying States to establish extraterritorial criminal jurisdiction to prosecute acts of corruption involving foreign public officials, regardless of dual criminality. Even the OECD Convention (which is more than any other inclined to protect additional legal interests beyond the public office) expects cosigning States to establish such jurisdiction for active bribery in international business transactions conducted abroad by their nationals *under the same terms generally enforced* (Art. 4 § 2). As to the definition of "foreign public official", when not left to the discretion of the legal order that granted the relevant status, international conventions (e.g. Convention of the Council of Europe) provide their own designation, in no way open to interpretation by the legal order that is competent for prosecution. Finally, none of the aforementioned international conventions obliges cosigning States to establish extraterritorial criminal jurisdiction without a link to the domestic legal order (e.g. act or omission by a native perpetrator); this is perfectly reasonable, as their protection does not refer to a supranational or international legal interest.

In light of the current Greek legislation, Greece establishes extraterritorial criminal jurisdiction for violations against foreign public services only for acts of bribery committed by Greeks abroad, notwithstanding dual criminality. Binding international treaties do not envisage the unrestricted foundation of such competence. What's more, regarding the issue at hand, the UN Convention notably acknowledges the sovereignty of States and urges against its infringement (Art. 4).

This means that the extension of Greece's extraterritorial criminal jurisdiction to Greeks who infringe the public office of other Member States abroad without dual criminality (at least with respect to the locus delicti and the nationality of the bribe-taking public official in terms of sovereign States) appears incompatible with the respect for the sovereignty of individual states.

Nevertheless, the Council's Convention on corruption required Member States to explicitly clarify whether the implementation of the active personality principle was anyhow restricted in their legislations (as in Greece via art. 6 GPC); unfortunately, Greece ratified the Convention without any relevant proclamation. Therefore, a higher-ranking law now binds the national legislator to establish extra-territorial criminal jurisdiction for briberies of foreign officials by Greeks committed abroad,

without double jeopardy. This exaggerated jurisdiction does not pay heed to the sovereignty of foreign States and owes to sloppiness in ratifying the specific Convention. The latter imposes a commitment to preserve Art. 236 § 4 in its current form. However, Greece should utilize international law in seeking out the Council's permission to properly amend this obligation.