Section 10

The challenge for a qualitative upgrade of criminal justice

I. Introduction

As previously outlined, the Greek institutional framework included provisions that express the increased anti-social character of financial criminality and corruption. Until recently, however, an impression prevailed regarding a deficit in isolating relevant behaviors, a well as impediments to the reliable documentation of evidentiary material and to the proper application of substantive criminal law for the cases ultimately brought to justice. In light of that, the widespread intervention to the criminal justice mechanism is indeed of central importance to any effort for fairly and effectively countering such conduct.

Certainly, the Greek criminal justice apparatus faces many problems that command a discussion on its essential characteristics. However, the debate should not be limited only to technical issues such as the substantial conclusion of the main investigation, available procedural remedies, etc. A single-sided approach leads to inefficient scrutiny, which addresses neither real problems nor the causes of the "despised" delay in the administration of criminal justice.

Although most weaknesses are perceived as shortcomings of the judicial mechanism, they are in fact related (inter alia) to the quality of wider public service structures, which ultimately determine the quality of judicial work (e.g. deficient administrative mechanisms for the monitoring of public funds and lack of computerization in key agencies managing them, a prolonged weakness of tax administration to capture e.g. false or fraudulent tax data)

This does not imply that the criminal justice system is flawless. However, it means that focusing exclusively on its defects does not provide grounds for its overall improvement. Broader institutional changes are required, directly related to the quality of the judicial activity.

II. The need for organizational interventions in the area of justice - Statistical monitoring of the system as a basic prerequisite for any reform

The challenge for a qualitative improvement of the judicial mechanism does not only concern the offenses analyzed herein. However, cases of corruption and financial criminality against the public property often outline the course of criminal repression. For this additional reason, any efforts to tackle such conduct can only be accompanied by individual focal proposals for a comprehensive reform of the criminal justice mechanism.

In this sense, the central statistical monitoring of the system is an urgent priority. Today, for example, no-one can know if the problem in felony cases lies mainly –and to what extent– within the pre-trial stage, the referral to a hearing, or deferments. Without such knowledge, any suggestion for reliable solutions is undermined, and it

is likely that possible interventions reduce the quality of the judicial mechanism without promoting the desired acceleration. Similar reservations can be expressed for endorsing plea bargaining, which has recently been favored in the public debate as a drastic solution that would restore the criminal justice mechanism to the desired balance. Besides, the statistical monitoring can document additional problems, whose resolution might be achieved through purely organizational interventions, without intervention to the Greek Code of Criminal Procedure (GCCP). A clear picture of the capabilities of the judicial mechanism (actual number of cases handled per hearing session, average hearing sessions per court, available courtrooms and their monthly occupancy, etc.) could thus lead to practical-organizational changes, largely referring to the courts' procedural rules, in order to subsequently formulate a safe estimation on crucial reforms at all levels.

The ability to reliably oversee the judicial mechanism is also a necessary condition for the wider criminal policy formulation, while its statistical monitoring also seems to be an EU priority achieved through the European Statistical System (ESS).

Certainly, in safeguarding personal data, pre-trial secrecy, and the presumption of innocence, and aiming at a centralized supervision, it is appropriate to delegate this mission to an institutionally reliable organization whose function is compatible with judicial independence. For that reason, it seems more appropriate to establish a National Statistical Office for the Administration of Criminal Justice (Greek acronym: ESYAPD), an autonomous agency under the Ministry of Justice chaired by an acting Deputy Public Prosecutor of the Supreme Court. This project's nature and the utilization of new technologies in data collection facilitate the option of a centralized structure, with no need for local branches.

This agency's fundamental assignment should be the collection, recording, and processing of criminal cases within its area of competence. A three-year pilot program on a specific material (e.g. cases handled by the Prosecutors against Corruption of Athens and Thessaloniki) could be a first realistic option.

In this context, each Prosecutor's office undertaking a particular case would have to submit the following information to the ESYAPD:

- Type of case (selected by a list).
- Offense (at the initial pressing of criminal charges, subject to possible reconsideration).
- Fact-based information (e.g. perpetrator's status, locus & tempus delicti, etc.)
- Method of discovery for the investigated case.
- Case summary, possibly drawing from the indictment documents.
- Victim (for crimes against State legal rights, the specific agency - e.g. IRS, etc.)
- Amount of damage/benefit for property crimes (as defined in the indictment, to enable comparison with the amount accepted in the decision and the amount eventually recovered).
- Possible measures of procedural coercion.
- Upon issuing of the judgment, its outcome and –in case of conviction– all imposed penalties (primary, ancillary, pecuniary) and/or security measures.

- Length and type of sentence serving, i.e. suspension, commutation or conversion (in money or community service), parole, sentence served until conditional release, etc.

This information, together with notes on the completion time of each procedural stage (preliminary investigation, prosecution, formal and substantive conclusion of investigations, etc.) should be submitted by the Secretariat of the Prosecutor and under the supervision of the competent Prosecutor. The first data entry could "open" a relevant e-form with a unique case number, which can later be supplemented during the following procedural stages.

Data must be "anonymized" when dispatched to the agency department responsible for processing and correlating them to draw conclusions. This method protects the suspect's/defendant's privacy and the pre-trial secrecy, while access to further information in Prosecutors' Offices could improve organizational interventions at a local level and better service those involved in the criminal justice system.

Moreover, the agency itself could play a central role in managing each case for the purposes of faster processing, avoiding competence conflicts, and coordination of parallel procedures. If the program is extended to a wider range of criminal cases in the future and such practices are utilized in certain administrative procedures (e.g. during tax investigations), the association of cases concerning the same person will be enabled, with beneficial outcomes in more or less important issues (e.g. suspension revocation, early identification of relevant evidence in new preliminary and/or administrative investigations, efficiency in all resources, etc.).

Further down the road, ESYAPD could operate an office of criminological research, responsible for composing reports on national criminality trends, qualitative data on offenses committed, etc.

Moreover, such an agency could include, among others, the following activities:

- Collection and qualitative analysis of statistical data on the prison system, detainees, sentence serving, etc.
- Statistical monitoring of the work of judges and prosecutors and information on justice management (e.g. allocation of cases per prosecutor, appellate court district, etc.), and administrative officials.
- Publication of annual reports with findings on criminality and national judicial activity.

III. Strengthening independence, transparency, and meritocracy in the criminal judicial apparatus

The previous decade saw the Greek justice facing ordeals due to cases of corruption within it; "para-judiciary networks" was the term used to describe the phenomenon.

Despite the exceptional occurring of these cases, the general need to restore the credibility of institutional operations in Greece renders individual interventions in the justice management and administration system a necessity.

The institutional regulations for the management, disciplinary control and evaluation of the judiciary obey to constitutional limitations, particularly to the decisive role of the executive in the selection of its leadership, which does not always favor accountability and transparency.

However, besides the necessary amendments in the judges' system of promotion to the highest echelons of the judiciary, the current constitutional framework can and must support distinct interventions.

First, the evaluation procedure for judges must become more transparent; at least the quantitative criteria should be selected unequivocally and directly.

Moreover, the gradual practical implementation of the current Art. 142A GCCP (voice-recorded transcription of hearings) can help create conditions for upgrading the quality and transparency by enhancing the potential enrichment of appellate review and the judges' evaluation process, a criterion of which must be the exercise of criminal justice functions.

In the same context, it is urgent to successfully delineate the supervision of judges' sentencing tasks, both through the appellate review and other institutional initiatives. The ESYAPD could, inter alia, periodically process and publish detailed figures on imposed penalties by correlating the characteristics of individual crimes.

Perhaps more critical is the enhancement of the system of evaluation and promotion of judges via qualitative criteria, accessible to all. More frequent evaluations (i.e. not only annual) of judges, abandoning the practice of judges under assessment selecting their decisions for evaluation, the equal representation of criminal decisions in the evaluation process, and the crucial co-assessment of further studies or substantial participation in training opportunities are all individual proposals that could contribute to the improvement of an evaluation system that could release promotion lists from a lack of incentive for improved performance. It is vital to disengage the assessment from purely quantitative criteria, which –albeit essential– cannot by definition monopolize the evaluation. A typical negative example is the recent amendment of Art. 85 § 2 1756/1988 of Law 4139/2013, according to which "an essential element in promoting [judges]" is the observance of the deadlines of Law 4022/2011 and the GCCP in carrying out the relevant juridical deeds.

In accomplishing the same goals, a discussion could initiate on the random selection of more decisions via the e-archiving of all rulings, by which the inspector may assess on their own initiative and sample (e.g. one for each type of case), the obligatory reference to the reports of the trial inspections that evaluate the hearing, or even the possibility to directly review relevant statistics (e.g. adjournments to hearings).

It would be wise for the judges themselves to take initiatives, so that the evaluation, inspection, and disciplinary control procedures become elementarily open to society, even by disclosing –as a first step–the relevant promotion or evaluation criteria.

While respecting privacy rights, thorough annual evaluation reports of all justice-related institutions, in the model of independent agencies and monitoring bureaus, could promote transparency. In this context, it might even be useful to periodically circulate anonymous questionnaires to all those involved in serving justice (judges,

lawyers, clerks, jurors, and civil society). Their meticulous consideration could prove a valuable adviser for a safer depiction of the system quality and the articulation of proposals for its improvement.

Similar initiatives to enhance meritocracy and improve quality must necessarily be undertaken between attorneys, as upgrading advocacy affects in many ways (directly and indirectly) the quality of judicial work.

IV. The role of administrative investigations in upgrading criminal proceedings

It is undeniable that an integrated system of prevention and repression of financial criminality and corruption in the public sector can only be based on effective control mechanisms. This applies both to Greece and foreign legal orders. For such a plan to work, especially in an area where individual perpetrations are often countered by means of administrative law, adequate coordination is required between monitoring administrative agencies and the criminal justice authorities, which in a way assume the "continuation" of the administrative investigation, which often leads to a criminal hearing.

In this field, quality is a key challenge. For example, comprehensive and explicit tax findings decisively facilitate the focus of investigative and judicial functions on the crucial issues, decisively contributing to the acceleration and efficiency of processes.

Despite improvements in investigating relevant cases (mainly tax-related) in recent years, the key problem seems to be that control mechanisms do not effectively approach financial criminality and corruption as behaviours against the public sector.

Priority should be given to organizational measures, and specifically:

- The rational delegation of authorities between existing agencies should be the basis of an effective system. It would also be suitable to clarify competences within each agency, by creating separate divisions for administrative and criminal investigations as happens abroad, and avoid splitting investigations by establishing a central coordinating body that will be updated for each complaint filed. This shall prevent multiple filings of the same complaint to more agencies that do not even communicate with each other.

- Staffing the relevant agencies with officials that have financial and legal education, and also support them with a legal department. Moreover, it is necessary to overcome the traditional mistrust against employees of inspection services, which has led to frequent replacements. A special "bonus" (fixed and not linked to case volume) could help attract accomplished employees from other agencies.

- Different agencies use different methods to record information. Even in tax cases, each IRS office (even within the same region) uses different methods to "present" data, and even different terminologies in otherwise similar cases. It would therefore be advisable to adopt uniform "protocols" of case-file keeping for each agency.

- The ability to choose from all cases subject to administrative investigation those that are indeed of penal interest plays an important role for criminal procedural efficiency. Strengthening the system's effectiveness would require a "bridge" that smoothly links the administrative and criminal proceedings, under the principles of the Greek penal procedural system. The relevant competence could be entrusted to a special agency under, e.g., the Office of the Prosecutor of Financial Criminality and Corruption proposed later herein, to which all cases considered "mature" after the conclusion of the administrative investigation will be forwarded. The investigations could be structured in three stages: first, a check for file completeness, with the possibility to refer it back to the administrative authorities for additions or, if necessary, to order preliminary investigation; second, a "legality" check for mature cases to verify possible criminal offenses; third, a "feasibility" check based on the criteria discussed in the relevant section, especially for tax cases. The specialization of this single agency on the relevant material would help competent administrative investigation agencies to gradually adapt to the criminal investigation requirements (e.g. through manuals-guidelines on evidence sought and criteria of referral to the Prosecutor). However, the critical importance of adopting and applying rational criteria in case "selection" should be emphasized (i.e. not involving defunct corporations and deceased taxpayers, providing some discretion for the "clearance" of cases under evaluation with priority given to those involving operational companies).

- A "central" case selection process to support prosecution could contribute against the fragmentation of relevant material, a phenomenon much observed in tax offenses. This purpose could be served particularly through electronic databases.

- It is obvious that administrative investigations are considerably undermined if the criminal justice system is unable to exploit their findings. However, the qualitative improvement of administrative investigations in a manner allowing for the use of their findings within (and) the criminal procedure requires recognition of the strenuous position of those under investigation, which must be expressed through envisaging enhanced rights in relation to those (not) enjoyed in the current system. It would make sense here to incorporate a clause in the GCCP, according to which the mere consideration of evidence provided by administrative authorities without the concurrent observance of rights befitting (at least) to suspects may not back a criminal conviction. Inversely, the potential to practically utilize evidence of the administrative procedure should be reinforced. Uniformity in drafting findings reports and the factual adherence to the rights of taxpaying citizens (future defendants) will help defuse issues concerning the (criminal procedural) system.