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HELLENIC REPUBLIC

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MINISTRY OF JUSTICE, TRANSPARENCY

AND HUMAN RIGHTS

GENERAL DIRECTORATE OF JUSTICE

ADMINISTRATION, INTERNATIONAL

LEGAL RELATIONS AND

HUMAN RIGHTS

DIRECTORATE OF LEGISLATIVE WORK,

INTERNATIONAL LEGAL RELATIONS

To the:

AND INTERNATIONAL

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JUDICIAL COOPERATION

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SUBJECT: Questionnaire on the legal framework of enforced disappearances

Rel. Doc.: Your document under ref. no. 71824/17-12-2008.

In reply to the above relevant document, and as regards to the questionnaire on the legal framework of enforced disappearances, you are hereby informed of the following:

1.- The United Nations International Convention for the protection of all persons from enforced disappearance was adopted by the General Assembly of the United Nations on 20 December 2006 in New York, USA, and a prejudgment of that convention was the Declaration on the Protection of all

Persons from Enforced Disappearance that was adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992. Law 4268/2014, as is usual, included the entire context of the said International Convention under ratification, in its first section (article one) and its next sections (articles) adjustment regulations in the Hellenic legislation are mentioned. From article 4 of that International Convention emerges that our country is obligated to enact a relevant criminal regulation that will define the enforced disappearance as a criminal offence. The Penal Code, prior to the above law 4268/2014, did not comprise a corresponding crime. The new article 322 A of the P.C. that was introduced by that law (4268/2014) prescribes the basic special status of the new crime of enforced disappearance, with general reference in paragraph 1 (“Whoever commits an enforced disappearance is punished by incarceration”), in correspondence with article 6 par.1 case (a) of the International Convention, while paragraph 2 of the same article sets the definition of enforced disappearance, pursuant to article 2 of the International Convention that also describes precisely the way of committing the crime. The choice of incarceration as a penalty for committing this principal crime (penalty framework between 5 and 20 years’ incarceration) and including it in the category of felonies, is consistent with article 7 par.1 of this International Convention that strictly prescribes the existence of appropriate penalties into the national legislation, taking into account its extreme seriousness and the protected legitimate right (personal freedom).

Apart from committing this crime, the acts of ordering, soliciting, inducing, attempting, participating and being an accomplice to the crime as

equally mentioned in article 6 par.1 case (a) of the said International Convention, are covered by the provisions of the P.C. on attempt and involvement (articles 42 and 45- 49 of the P.C.), while particularly an order from a superior is prescribed as an aggravated case of crime by article 322 B par.1, case a' of the P.C. In this aggravated case the minimum penalty limit is increased from 5 to 10 years incarceration (and penalty framework between 10 and 20 years' incarceration). Article 6 par.1 case (b) of the International Convention is transferred to paragraph 3 of article 322 A of the P.C., according to which paragraph the superior person is equalized to the perpetrator(offender) of the crime, who: a) knew, or consciously disregarded information on committing (or about to commit) that crime; b) exercised effective control and responsibility over activities concerning that crime, and c) failed to take all necessary and reasonable measures to prevent or repress that crime from being committed, or did not report it to the competent authorities for investigation.

2.- There is no answer for the 2nd question since the crime of enforced disappearance has been introduced into the Hellenic legislation according to those mentioned above in the 1st question.

3.- The crime of enforced disappearance is continuous, as mentioned in the ratifying law 4268/2014 (article 8 of the International Convention), as well as in the explanatory report accompanying the said law. The limitation time for the crime of enforced disappearance (as to its basic form) is 15 years since it was committed, and it may be suspended (provided the case is at the main

proceedings before a court by serving a summons to the defendant) for another 5 years. In the case of aggravated crime of enforced disappearance where life imprisonment is prescribed (article 322 B par.2 of the P.C.) the limitation period is 10 years since the crime was committed (articles 111 par.2 and 113 of the P.C.), with five years' suspension. As a continuous crime, its limitation time commences the day that the illegal status of enforced disappearance ceased and not before (articles 17 and 112 of the P.C.). In order to extend that limitation time however, a regulation was added to article 322 C par.4 of the P.C., namely that when the crime of enforced disappearance of a person is committed under the regime of expropriation of the democratic system, the deadline for limitation commences as soon as legal power is restored. That regulation is necessary because that crime is committed mainly in illiberal regimes and generally during abnormal state times, during which state arbitrariness is observed and increased insult of the legal right of personal freedom. A relevant provision is included in article 137 D par.3 of the P.C. regarding tortures.

4.- In Greece, no one has been sentenced yet for the crime of enforced disappearance.

5.- There is no special body in the prosecuting or police authorities to investigate crimes of enforced disappearance that might be committed. In that case, the general provisions of the Criminal Procedure Code (CPC) are applied and the prosecuting authorities are dealing initially with this crime, ex officio, as soon as they receive relevant information from any source, usually following

a complaint from the victim, or a report from a third party (articles 42 et seq. CPC), and they order a preliminary examination (article 31 CPC), or police authorities are dealing initially as part of a preliminary inquiry on a flagrant crime (article 243 par.2 CPC) and they submit the case files to the competent prosecutor as soon as possible. After the preliminary examination or police preliminary inquiry is completed, the competent prosecutor files criminal charges (as per article 43 of the CPC) and the case is assigned to a regular investigating magistrate, namely a judge in the rank (usually) of a first instance court judge who conducts a main interrogation (articles 239 et seq. of the CPC) that in the Hellenic CPC is prescribed initially, only on felonies (such as the enforced disappearance).

6.- The investigations to identify an enforced disappearance committed (even as an attempt) are being conducted by the prosecuting, police or investigation authorities, pursuant to the general provisions of the CPC as mentioned above (as part of a preliminary examination, police preliminary inquiry or main interrogation).

7.- The witness, as per article 209 of the CPC, is in general obligated to testify whatever he/she knows. Furthermore, the above law 4268/20174 modified article 187 of the PC (criminal organization) and the crime of enforced disappearance of a person, in its basic and in its aggravated form (articles 322 A and 322 B) is included in the list of basic felonies of par.1, article 187 that found the offence of criminal organization. Integrating the crime of enforced disappearance of a person into article 187, par.1 of the PC means, apart from

imposing one more penalty, also applying to that crime regulations that facilitate the crime to be solved, regulations such as special investigating acts as per article 253 A of the CPC (particularly the investigating infiltration), or witnesses' protection (articles 9 and 10, Law 2928/2001 as effective). Seizing documents as part of an investigating act, is conducted as per articles 260 et seq. of the CPC, and originally regards all documents, public or private ones. Exceptionally, an employee who faces the seizure of documents may, according to article 261 of the CPC, state that the said document refers to professional secrecy (in exceptional cases as per article 212 of the CPC), to diplomatic or military secret, therefore it is not seized unless if the interrogator is not convinced of the truth of that statement and therefore the special procedure prescribed by article 262 of the CPC regarding its seizure is applied.

8.- Apart from the increased (primacy) validity of the provision of article 18 of the relevant International Convention on enforced disappearance, which directly establishes a right to relevant information for the relatives or advocates of enforced disappearance victims, the general provisions of articles 10 par.3 of the Constitution, and 5 of the Administrative Procedure Code (law 2690/1999 as effective), granted them the right to acquire the relevant information and access the relevant administrative documents by giving them copies. In case the authorities deny to give access to these documents, which should be justified and within a 20 days deadline (article 5 par.6 of the same law), there is the possibility to appeal within 10 days to the General Inspector of Public

Administration and upon his denial, an annulment request may be filed by any person bearing a legal interest before the Three-Member Administrative Court of Appeal (article 5 par.3-5 of law 3448/2006, and 5 par.1 of law 4305/2014. Moreover, at the same time, following a prosecutor's order (article 25 par.4 of law 1756/1988), it is prescribed that the person interested may be granted access to and may be informed of these administrative documents.

Furthermore, the offended party and relatives of the victims may take part in the criminal trial and have access to the entire relevant criminal case files, already since the criminal preliminary proceedings, as well as in the relevant main trial, via an application for civil action within criminal proceedings and the appointment of an advocate as per articles 63-70 and 82-88 of the CPC.

A special legislation on the psychological-social support for enforced disappearance victims, during the interrogation, is not prescribed apart from the protection prescribed by article 9 of law 2928/2001 as mentioned below.

9.- People involved in any way in committing the felony of enforced disappearance are not allowed to participate under any capacity (even the one of a secretary) during the criminal preliminary proceedings (preliminary examination, filing criminal charges, interrogation), the intermediate proceedings of judicial councils and the main proceedings before a court, pursuant to article 14 of the CPC and the relevant proceedings as to their exception as prescribed by articles 15 et seq. of the CPC.

10.- The Hellenic legislation has no special provisions that award pardon, exempt or have a special favorable criminal treatment for the perpetrators of the crime of enforced disappearance.

11.- The relevant regulation of article 7 par.2 case (a) of the International Convention was transferred unaltered into article 322 C par.1 of the P.C., since it is not identified with the mitigating (general for each crime) circumstances written in article 84 of the P.C., while the penalty (in this case as well) is determined based on (general) article 83 of the P.C., with a penalty framework between 2 years' imprisonment and 12 years' incarceration.

12.- The crime of enforced disappearance is initially tried by common criminal courts and especially by the Mixed Jury Court at the place where the crime was committed (articles 109 and 122 of the CPC), unless if the perpetrator is a military or a prisoner of war, so that person is tried by military courts (article 193 of law 2287/1995 as effective – Military Penal Code –MPC (SPK)). If the perpetrators (offenders) are military as well as civilians, then they are all tried by the above Mixed Jury Court (article 195 of the SPK).

13.- A truth commission of similar truth telling mechanism is not involved in investigations as to the crime of enforced disappearance in our country.

14.- Paragraph 1, case (a) of article 9 of the relevant International Convention on enforced disappearance, introduces the principle of territoriality (corresponding article 5 of the PC); par.1 case (b) and par.1 case 1(c) of the same article mentions the criterion of nationality (corresponding articles 6 and 7 of the PC, under a clearly limited wording and scope); par.2 of the same article prescribes a permissive connection of the offender with the country's

territory (it is sufficient that the offender is present in any territory under its jurisdiction), while par.3 (of the same article) grants a country any additional criminal jurisdiction and protection that may be exercised in accordance with national law. Having as basic thought that the crime of enforced disappearance is under specific circumstances a crime against humanity, and aiming at a maximum protection (even greater than the one prescribed by article 9 of the said International Convention), the solution of integrating that crime into the provision of article 8, case h (η) of the PC was legislatively approved (principle of world justice), namely for the case to be heard by the Hellenic courts regardless of the above criteria, and to that above provision other crimes against humanity were included as well (as per article 8, par.1, Law 3948/2011), such as slave trade (article 323 of the PC) and human trafficking (article 323 A of the PC).

A case of enforced disappearance and particularly with foreign elements has not been tried yet by Hellenic courts.

15.- Incorporating the crime of enforced disappearance of a person into article 187 par.1 of the P.C. (criminal organization) also means that the regulations on protection of witnesses and their families also applies to that crime with an order from the competent prosecutor; particularly, it means that they should be systematically guarded by the police, separately detained if they are prisoners, change their identities, transfer them (if they are public servants), non-disclose their identity during criminal proceedings, as well as protect the trial officers accordingly, such as the prosecutor, the investigating magistrate, and judges of

the case (articles 9 and 10 of law 2927/2001 as effective). As to the rest, mistreatment, extortion or retaliation against them is punished based on the general crimes committed against life and health prescribed by the P.C., as well as by the special crime prescribed by article 187 par.4 of the P.C. (felony).

16.-The provision of article 14 of the relevant International Convention on enforced disappearance as to legal assistance in cases of crimes of enforced disappearance, following its ratification by the above mentioned law 4268/2014, has increased typical validity (primacy). In addition, the general provisions of articles 457 et seq. of the CPC are applied (legal assistance in interrogation), and the competent bodies for legal assistance is the Minister of Justice and the Prosecutor of the Appeal Court, while concerning the unified European area (as per the Schengen Agreement – law 2514/1997), the requests for legal assistance of member states are made directly between them (articles 48 et seq. of law 2514/1997). Furthermore, as to the rest, the European Convention of mutual assistance in criminal cases signed in Strasbourg in 1959 is also applied (ratifying law 4218/1961).

17.- Pursuant to article 13 of the CPC, police authorities must execute orders from judicial and prosecuting authorities without any delay. According to article 35 of the CPC, the Prosecutor of the Court of Appeal is the officer with the highest rank to lead the interrogation (under a broader sense).

18.- There are no impediments or in general challenges that must be faced as to the investigation on crimes of enforced disappearance in our country.

For Minister

HEAD, GENERAL DIRECTORATE

E. KATSIGARAKI

Exact copy

For Minister

Head of Section

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Aik. Daskalopoulou

Exact translation from the attached document in Greek.

Athens, 14/03/2019. The Translator, Eleni A.Liakoura