

UPDATE ON THE COUNTRY REVIEW REPORT OF GREECE FOR THE FIRST CYCLE

Greece ratified the Convention in 2008. The country review of Greece for the first cycle took place in the years 2014-2015 and a country visit took place in November 2014 with the participation of governmental experts from Ireland and Gabon.

The review was concluded with the finalization of the country report at the end of 2015 and its publication on the website of the UNODC where it is freely available. The results, as regards the adequacy of Greece's criminalization and international cooperation efforts were relatively positive, taking into account a significant number of anticorruption measures and initiatives launched during the previous years, including a wide-ranging Law of 2014 (Law 4254/2014) that was designed to eliminate the fragmentation of the relevant provisions and to close any remaining legal gaps. Greece was found to have a solid criminal justice system and to apply in an effective way most of the Convention provisions. All the same, a few challenges in implementation or grounds for further improvement were identified, and a number of recommendations were made to this end.

1. With respect to actions taken in order to address the observations and recommendations contained in the Executive Summary and country report for the first cycle, it would be accurate to say that such recommendations were taken seriously and that concrete steps were subsequently taken to address them at the national level. More specifically, the UNCAC recommendations were communicated to the relevant authorities and were the subject of consultations in the context of the ongoing efforts to ensure compliance with the obligations arising from the international conventions that Greece has acceded to, such as the OECD Convention against bribery in international commercial transactions, the Council of Europe Convention against bribery and of course the UNCAC itself. It should be noted that Greece established successive authorities that were particularly tasked with this work, including a General Coordinator against Corruption (2013-2015), a General Secretariat for Combating Corruption operating in the framework of the Ministry of Justice under a competent Alternate Minister (2015-2019), and currently the National Transparency Authority (since 2019). Accordingly, following the relevant consultations on the results of the UNCAC review and other review mechanisms, a number of initiatives were set in motion as a result of the recommendations made in the Greece country reports.

Three examples of concrete results stand out and demonstrate the impact of the UNCAC country review to the Greek national criminal justice system:

- a) With regard to the effective implementation of Article 29 UNCAC on the *statute of limitations*, Greece was recommended to remove the special provisions of Article 86 of its Constitution, whereby a minister could only be prosecuted within the space of a very limited period for a prior criminal offence committed during the exercise of their duties, including corruption-related offences. It was also

recommended that Greece revise the *scope of immunities and parliamentary privileges*, as well as the measures for their suspension, in line with article 30 par. 2 of the Convention, including in particular the adoption of the above amendment to article 86 of the Constitution.

Having regard among others to these recommendations, on 28 November 2019 Article 86 of the Constitution was amended. The special limitation period within which serving and former members of government could be prosecuted (until the completion of the second regular session of the following parliamentary term commencing after the offence was committed) has been abolished. The previous wording of the Constitution restricted practically the possibility to prosecute serving and former members of the government; the new wording gives more realistic scope for Parliament to take legal action against them for criminal offences committed during the exercise of their duties. Moreover, the Constitution was amended further in order to limit the scope of parliamentary immunity and namely to provide that the immunity is to be lifted mandatorily if the request of the prosecuting authority concerns a crime that is not strictly connected to the performance of the duties or to the political activities of the parliamentarian. In the same spirit, the rate of immunity lifting has significantly increased over the years. Indicatively, while 31,8% of the cases discussed ended with an immunity lifting between October 2015 and October 2017, this rate has reached 46,4% between October 2017 and June 2019 and 64,9% between July 2019 and April 2023.

- b) With regard to the thematic of *Specialized authorities and inter-agency coordination* (Articles 36, 38 and 39) of the UNCAC, the Greece country report pointed out specific areas where it was evident that there was a lack of coordination and overlapping competences and priorities among national authorities involved in the implementation of anticorruption measures. Accordingly, it was deemed necessary, following the UNCAC review, that a mechanism for coordination and information exchange on investigations into corruption and economic crime respectively be established. In this context, the General Secretariat against Corruption prepared a draft law about the establishment of a co-ordination mechanism. The purpose of establishing this mechanism was to coordinate law enforcement and audit authorities effectively, to define priorities and objectives for the action of these authorities and to exchange information between the competent services on investigations into corruption crimes and financial crimes, with the ultimate aim of improving the fight against corruption and financial crime. At the same time, there was an effort not only to coordinate but also to *integrate* inspectorate bodies involved in the fight against corruption, aiming at the enhancement of their efficiency as well as proper management of financial, human and public resources and in order to reduce the overlap between anti-corruption agencies.

The task of bringing forward the above plans was taken over by the National Transparency Authority (NTA) that was established in August 2019 under Law 4622/2019 on the Organization, Operation and Transparency of the Government, Government Institutions and Central Government Administration as an Independent Administrative Authority, subject only to parliamentary control. The key tasks of the NTA, as provided in Article 82(1) of the above Law,

are (a) to enhance transparency, integrity and accountability in the action of government bodies, administrative authorities, state institutions, and public organizations, (b) to prevent, deter, detect, and respond to fraud and corruption in public and private bodies and organizations and c) to raise awareness regarding these actions. Indeed, the NTA established the proposed coordination mechanism (named National Coordinating Body for Audit and Accountability-ESOEL), which is tasked with coordinating the fight against corruption (article 103 Law 4622/2019), with respect to all cases under investigation by investigative bodies such as the Financial and Economic Crime Unit (SDOE), the Financial Police, and tax administration investigation units. The ESOEL has nationwide competence, is chaired by the Governor of the NTA, and meets once a month. It is composed of the Heads or the Directors, with their deputies of all inspection, control and anti-corruption bodies which are not part of the Authority, including the Head of the Financial Police, the Head of the Security Forces of the Internal Affairs Service of Article 21 of Law 4613/2019, the Heads of the Inspection and Control Services of the Ministry of National Defense with their deputies, as well as the Head of the Directorate of Inspections of the Ministry of Foreign Affairs together with his/her alternate, and the Head of the Directorates of Internal Audit and of Internal Affairs of the Independent Authority for Public Revenue together with their deputies. According to the rules of procedure that govern ESOEL's operation, the Governor of NTA may decide the addition of further participants. During 2020, at the ESOEL also participated the General Directorate of the Financial Crime Unit, the General Directorate of Financial Audits of the Ministry of Finance, the Committee of Financial Audit of the Ministry of Finance, the Agency for the Control of Health Expenses of Social Security Bodies of the National Organization for the Provision of Health Services and the General Directorate of the Environmental Auditors Body of the Ministry of Environment and Energy. During 2021, the Directorate for Cyber Crime of the Hellenic Police also participated in ESOEL. As of today, 17 bodies participate in ESOEL (G.G.4196B'/2023). To support the collaboration of relevant authorities in the context of ESOEL, the NTA has developed an intranet that can be accessed by all ESOEL members aiming to support the exchange of expertise and best practices and serve as a basis for further decision making and collaboration.

The 2020 ESOEL report is available (in Greek):

https://aead.gr/images/essays/esoel_ekthesi_apologismou_2020.pdf.

The 2021 ESOEL report is available (in Greek):

https://aead.gr/images/essays/ekthesi_apologismou_esoel_2021.pdf

Given the above, it would be accurate to say that the establishment of the NTA has – to a significant extent – given an end to overlapping competences, coordination impediments, and fragmentation of audit bodies. To the same direction, the Evaluation Report of the Greco (5th Evaluation Round) identifies the establishment of the NTA as a milestone to boost the anti-corruption framework and provide for a more holistic and streamlined approach by significantly stepping up cooperation and coordination among the different audit authorities and inspection bodies.

- c) The third example of the impact of the UNCAC report in national law, has to do with the thematic of *Protection of Witnesses and Reporting Persons* (Articles 32 and 33). The Greece country report pointed out significant problems and inadequacies of the existing system, including its limited reach and practical ineffectiveness. Accordingly, in order to improve the existing whistleblower protection system based on international standards, concrete proposals were made for legislative amendments, taking into account also Art. 9 of the Council of Europe Civil Law Convention against Corruption and recommendation CM/Rec(2014)7 adopted by the Committee of Ministers of the Council of Europe on 30 April 2014.

First of all, some limited protection is available under article 47 of the Code of Criminal Procedure (CCP). Under this provision, a prosecutor in a corruption case may designate an individual as a “public interest witness”, if the individual (a) provides information that contributes substantially to the uncovering and prosecution of corrupt acts, (b) was not involved in any way in the corrupt acts in question, and (c) did not aim to benefit by providing information about the corrupt act. This designation affords protection against prosecutions for perjury, false accusation, slander or violation of official secrecy. Some additional protection (e.g. protection by the police, deposition with technical means and not in person, non-disclosure of the person’s identifying information, change of identity) is available under article 218 CCP. When it comes to measures against discriminatory or disciplinary action, Greek civil servants who have been designated as “public interest witnesses” cannot be identified or excluded from promotion or be subject to any disciplinary proceedings or be punished, dismissed or otherwise discriminated against directly or indirectly, in particular regarding career development and placement matters (articles 26(4) and 125(4) Law 3528/2007). Additionally, measures to protect from discriminatory or disciplinary action have also been introduced recently with regard to private sector employees, in the context of Law 4990/2022 which transposed the EU Whistleblower Protection Directive. Accordingly, NTA developed the external reporting channel for whistleblowers that allows the agency to receive incoming complaints while protecting the anonymity of the complainant. The platform is fully operational since August 2023. Within the framework of the 87th International Exhibition of Thessaloniki, on September 10th, 2023, NTA organized a hybrid informative discussion to support the launch of the whistleblowers’ platform (*external reporting channel*) and to raise awareness.

Corruption allegations in Greece may be reported not only internally but also to the Economic Crime Prosecutor as well as to all other prosecutors’ offices in writing or via email. Moreover, the NTA is established as the central reporting channel for all relevant matters, and provides a platform to submit complaints through its website. Incoming complaints are assessed following a standardized evaluation procedure in order to increase audit effectiveness and enhance the prioritization of audits in high - risk sectors. The assessment methodology is based on a set of on/off criteria and weighted variables.

The audit scope of NTA extends to all bodies and services of the general government, including legal persons governed by public law, first- and second-

tier local authorities, their enterprises and the supervised legal entities governed by private law, legal persons governed by public law and private-law bodies governed by public law, state legal persons governed by private law and public undertakings or undertakings whose management is directly or indirectly designated by the State by way of an administrative act or as a shareholder, even where such undertakings are expressly exempted from public sector rules, in accordance with their founding laws. The competence of the Authority shall be extended to private bodies concluding any type of contract with public sector bodies.

In 2019, the NTA received 629 reports of corruption (15.96% of the total reports) predominantly via mail, while in 2020 it received 439 reports (6.15% of the total reports) with the majority of them submitted via the new NTA online platform. Within the framework of its competences NTA received in total, 3.940 complaints for 2019, 7.135 for 2020, 5.128 for 2021 and 3.513 for 2022.

In the view of the above, it is evident that significant steps have been taken to comply with the relevant recommendations, even if efforts are still needed to complement the existing legislation, support implementation and raise awareness on the issue of whistleblower protection.

2. With respect to the benefits drawn from the participation in the review mechanism for the first cycle, the following should be noted:

A particular feature of the country visit that took place in November 2014 was that it was conducted in parallel with the corresponding visit by experts of the OECD Working Group on Bribery, which took place in the context of the phase 3 review of Greece by that Organization. While it was a particular challenge to organize the visit and the agenda of meetings in a way that would satisfy the needs of both reviews and would not allocate more weight to one review at the expense of the other, all the same it was not only time-efficient but also quite rewarding and beneficial for the quality of the review to be able to interact with all governmental experts and members of both secretariats at the same time, to consider their sometimes different approaches and methodologies and to profit from their comments and observations. Such a parallel on-site review could be thus considered a good practice in the context a country's participation in multiple review mechanisms that include the Implementation Review Group of the UNCAC.

Apart from the above, it is the common impression of national representatives having participated in the UNCAC review of Greece, that the relevant process did not constitute a temporary burden or a momentary, passing challenge that lasted solely for the duration of the review, but an opportunity for national authorities to have their systems tested by independent external governmental experts and identify concrete problems that needed to be addressed in the immediate future. We believe that this is the way the UNCAC review should be presented and received in the national context, and that an effort should be made to highlight it as a positive (and not in the slightest intrusive) experience, from which national authorities could derive significant and lasting benefits.