

# *Chapter III*

## *Drug Trafficking*

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### *1. Legal basis: national legal provisions.*

The Greek Penal Code does not provide for the criminalization of illicit trafficking of drugs. All matters regarding the production, possession, transport, storage, supply, circulation and trafficking are governed by Special Penal Laws.

The current legislation in force is ***Greek Law 4139/2013*** (Government Gazette, issue A, nr. 74/20.03.2013) *on dependent substances and other provisions*, as amended.

The first legislation that criminalized the use of drugs in Greece was adopted in 1919 (Law 1681/1919). This law linked use of narcotic drugs with begging and truancy, either directly or indirectly, and punished "those who were using hashish", those who provided room for the use of hashish and those who sold or supplied hashish. A year later, a special law banned the cultivation, marketing and consumption of Indian cannabis (Law 2107/1920). At the beginning of the 1930s, Law

5539/1932 "on the drug monopoly and control of these drugs" was adopted, criminalizing the use of cannabis but did not include heroin among narcotic drugs. Greek Law 6025/1934 and Compulsory Law 2430/1940 adopted in relation to narcotic drugs, including heroin. In 1970, during military junta in Greece, the Law Decree Nr. 743 was issued, regulating drugs' use. At the end of the 1980s, Greek Law 1729/1987 was adopted which dealt extensively and substantially with the trafficking and use of drugs and constituted the core legislation for all subsequent legislation. In 2006, a Code of Laws on Drugs was adopted, codifying all previous legislation (Government Gazette, issue A, Nr. 103/26.06.2006).

## *2. Legal definition of drug trafficking.*

Article 20 paragraph 2 of Law 4139/2013, as amended by Law 4523/2018, stipulates the following definition:

*"2. Subject to provisions of articles 2A and 29, **drug trafficking offense**" shall mean any act by which the narcotic drugs or precursors referred to in the tables of article 1 (2) are being trafficked and especially the import, export, transit, sale, purchase, offer, dealing, distribution, dispatch, delivery, storage, deposit, manufacture, possession, transport, adulteration, the sale of adulterated monopoly drug substances, the cultivation or harvesting of any plant belonging to the genus of cannabis, the plant opium poppy, any kind of plant belonging to the genus of erythrocycle and any other plant from which drugs are produced, the production and extraction of narcotic drugs, the supply of substances to substitute dependence in breach of the relevant*

*provisions, the management of a store where systematic drug trafficking takes place in knowledge of the manager, the financing, organizing or directing drug trafficking activities, the adulteration or the drafting or the use of a falsified medical drug prescription for the purpose of their trafficking, as well as the mediation in any of these acts.”*

Prior to Law 4139/2013, the legal definition of drug trafficking was included in Article 20 par. 1 (e) of Law 3459/2006, which provided for the criminalization only of import, provision, manufacture, production, sale, delivery, transport, possession and distribution of precursors, whereas by virtue of the new law, all forms of commission of the trafficking of precursors, like drugs, is punishable. According to the Explanatory Report of Article 20 of Law 4139/2013, the article was amended based on “the experience from the implementation of the basic provisions on drug trafficking, the guidelines of the Council Framework Decision 2004/757/JHA of the European Union and the need to widen the threatened penalties so as to give the Court the necessary room for measuring the penalty proportionate to the gravity of the crime”.

The notion of drug “trafficking” is tantamount to drug “trade”. Greek law provides for a definition of drug trafficking whereas the jurisprudence provides for a definition of drug trade. All standardized drug trafficking activities aiming to a direct or indirect trafficking of narcotic substances constitute the concept of “trade” (see Supreme Court (Plenary) 34/1994, Supreme Court (Plenary) 1200/1976, Supreme Court 1283/2005, Supreme Court 873/2002, Supreme Court 1577/1995, Supreme Court 90/1994, Supreme Court

177/1987, Supreme Court 569/1984, Supreme Court 911/1982).

### *3. Legal definition of drugs.*

The current legislation on illicit trafficking of drugs provides the following definition in article 1 par. 1 (L. 4139/2013):

*“By the term "drugs", within the scope of this law, are meant substances with different chemical structure and different action on the central nervous system and with common features changing the user's anxiety and causing dependence of a different nature, mental or physical and of varying degrees, as well as alleviating those chronically suffering from the symptoms of a particular disease for which they are considered medically necessary.”*

In paragraph 2 of the same article, there is an explicit reference to paragraph 2 of article 1 of Law 3459/2006 (previous legal regime) whereby the latter remains in force, even after the entry into force of the new law. Paragraph 2 of art. 1 of L. 3459/2006 includes Tables (A, B, C and D) of substances indicatively constituting drugs.

### *4. Soft vs. Heavy Drugs.*

To begin with, we would like to highlight two facts: a) the Greek legislation on narcotic drugs does not draw a distinction between “heavy” drugs and “soft” drugs; and b) there is no general decriminalization or legalization of the use of cannabis

in Greece; rather a partial one regarding industrial and pharmaceutical cannabis.

In general, cannabis and its derivatives fall into the category of drugs for which the possession and use is prohibited. However, the penalties are more lenient towards those who, for their own exclusive use, in any way obtain or possess drugs in quantities justified only for their own use or use or cultivate cannabis plants in number or which is justified only for their individual use. For this category of offenders, law stipulates for an imprisonment of up to five (5) months (article 29 of L. 4139/2013). The determination of the purpose of servicing their own exclusive use shall be made taking into account the type, purity and quantity of the particular drug, in combination with the frequency of use, the time of use, the daily dose and the specific needs of the particular user.

More specifically, regarding the raw materials and substances of cannabis varieties of the Cannabis Sativa L species, the Greek legislation, as it now stands, explicitly provides **for two exceptions**: article 1 par. 3 (industrial cannabis) and article 2A of Law 4139/2013 as amended (pharmaceutical cannabis).

In 2013, by virtue of Law 4139/2013, **industrial cannabis** was **legalized** in Greece. The initial paragraph 3 of art. 1 of the above Law stipulated that the raw harvested products resulting from the cultivation of cannabis varieties of Cannabis Sativa L species containing up to 0.2% of tetrahydrocannabinol (THC) shall be exempted from the list of drug substances, in accordance with the relevant provisions of the EU law (par. 3 of article 1 of L. 4139/2013). In 2016, the Joint Ministerial

Decision Nr. 1750/39224/31.03.2016 was issued to regulate the details on the terms and conditions for cultivating the cannabis varieties of *Cannabis Sativa L* containing up to 0.2% of THC, in accordance with EU Regulation nr. 1307/2013 of the EU Parliament and the Council and the EU Regulations 809/2014 and 639/2014 of the EU Commission. This Ministerial Decision is still in force. However, the wording of paragraph 3 of art. 1 of L. 4139/2013 has changed and it now reads as follows: *“The above substances do not include the raw harvested products resulting from the cultivation of cannabis varieties of Cannabis Sativa L species containing up to 0.2% of tetrahydrocannabinol (THC). Also, with the exception of baby foods, foodstuffs within the meaning of Article 2 of Regulation (EC) No 178/2002 are not included, cosmetic and dietary supplements containing tetrahydrocannabinol (THC), which will be defined with the corresponding decisions of the following paragraphs.”* (par. 3 of article 1 of Law 4139/2013 as amended by Law 4554/2018).

In 2018, by virtue of Law 4523/2018 (Government Gazette, issue A, nr. 41/07.03.2018) amending Law 4139/2013, a **second exception** was introduced in the Greek drug law regarding the legalization of **medical cannabis**. *“By way of exception, it is approved by single act the production, possession, transport, storage, supply of raw materials and substances of cannabis varieties of the Cannabis Sativa L species containing more than 0,2%, of tetrahydrocannabinol (THC) as well as the establishment and operation of a manufacturing unit for the processing and producing of pharmaceutical final cannabis products for the sole purpose of either supplying them to the State monopoly for distribution for medical purposes or exporting them.”* A couple of months

later, the Ministerial Decision nr. 51483/700/F.15/14.05.2018 was issued to regulate the terms and conditions for cultivating and processing pharmaceutical cannabis. The pharmaceutical cannabis is being cultivated under controlled circumstances from the approved industries. Approvals have a duration of 5 years, whereas the approved industries have to renew their supportive documents on an annual basis. By April 2019, three industries have received an installation approval (Biomecann, Bioprocann, Tikunolam).

*5. Relevant international law provisions applicable in Greece.*

Greece is a party to all major international treaties regarding drug trafficking, organized crime and corruption. More analytically, it has ratified: a) the Single Convention on Narcotic Drugs in 1972 and its Amending Protocol in 1985; b) the Convention on Psychotropic Substances in 1977; c) the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1992; d) the UN Convention against Transnational Organized Crime in 2011 and its three Additional Protocols;<sup>8</sup> and the) the UN Convention against

<sup>8</sup> Greece ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2011 with the following reservation: “The Greek State ratifies Article 13 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, ... without prejudice to Articles 9A of the Constitution, 19(3) of the Constitution, 8(1) of the European Convention on Human Rights, 436-457 of the Code of Criminal Procedure and 352B of the Criminal Code, as added by Article Second (12) of Law 3625/2007 (Government Gazette 290A), Law 2472/1997, as amended by Articles 8 of Law 2819/2000 (Government Gazette 84A), 10 of Law 3090/2002 (Government Gazette 329A) and Eighth of Law 3625/2007, Law 3471/2006 (Government Gazette 133A) and Presidential Decree 47/2005 (Government Gazette

Corruption in 2008. According to Article 28 para 1 of the Greek Constitution, the treaties that have been ratified by the Greek Parliament and have entered into force, as applies to all the above treaties, are part of the Greek legal order and prevail over any contrary provision of Greek legislation.

*6. Relevant EU law provisions applicable in Greece.*

The EU Directive 2017/2103 (of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of ‘drug’ and repealing Council Decision 2005/387/JHA) is applicable in Greece.

By virtue of Ministerial Decision D3c/81508/24.10.2018 (Government Gazette, issue B’, nr. 4838/30.10.2018) the annex of “Directive (EU) 2017/2103 of the European Parliament and of the Council of 15 November 2017 amending Council Framework Decision 2004/757/JHA in order to include new psychoactive substances in the definition of

64A).” Greece has ratified the Protocol Against the Smuggling of Migrants by Land, Sea and Air in 2011 with the following reservation: “Article 13 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, without prejudice to Articles 9A of the Constitution, 19(3) of the Constitution, 8(1) of the European Convention on Human Rights, 436-457 of the Code of Criminal Procedure and 352B of the Criminal Code, as added by Article Second (12) of Law 3625/2007 (Government Gazette 290A), Law 2472/1997, as amended by Articles 8 of Law 2819/2000 (Government Gazette 84A), 10 of Law 3090/2002 (Government Gazette 329A) and Eighth of Law 3625/2007, Law 3471/2006 (Government Gazette 133A) and Presidential Decree 47/2005 (Government Gazette 64A). The Greek State makes use of Article 20(3) of the Protocol against the Smuggling of Migrants by Land, Sea and Air, and declares that it is not bound by para. 2 of this article.”



‘drug’ and repealing Council Decision 2005/387/JHA” was incorporated in L. 4139/2013.

### *7. Criminal offence and the protected interest.*

The protected interest been offended by the acts of drug trafficking is life, health and physical integrity of an indeterminate number of people (L. Kotsalis, M. Margaritis, I. Farsedakis, *Drugs. Interpretation article by article of L. 4139/2013*, Nomiki Vivliothiki, 2013, p. 48).

### *8. Analysis of the elements of the crime.*

According to the Greek Courts, “any act by which the circulation of such substances (narcotic drugs or precursors) is either effected or facilitated, under any cause” constitutes drug “trafficking” (see Supreme Court 1200/1976, Supreme Court 1283/2005, Supreme Court 873/2002, Supreme Court 246/1999). The basic offense is a multiple acts crime, meaning that there are different conducts which might constitute a drug trafficking crime. Law 4139/2013 as amended provides an indicative list:

1) the **import, export, transit**: The import is defined as the illegal entry of drugs in the Greek territory, through its land, sea or air borders (see Supreme Court 951/2006). There is an extensive jurisprudence on different ways of illegal entry, such as by a vehicle (bus, car), through the airport, by mail, by a commercial or private ship or within the body of the perpetrator. The crime of illicitly exporting drugs is committed by trafficking narcotic substances outside of Greece, through its borders, abroad. The “transit” of drugs is a continuing

offense and occurs when drugs are trafficked within Greece, with a third country destination. The transit of drugs differs from the transport of drugs which is being committed by moving drugs from one place to another within the Greek territory, by any means of transport (see for instance Supreme Court 1677/2007).

2) the **sale** and **purchase**: For the determination of the terms “sale” and/or “purchase”, the relevant provisions of the Greek Civil Code on sale of goods apply (see article 513 et seq. of the Greek Civil Code). Therefore, only three elements are important: the transfer of ownership, the delivery of the narcotic drugs to the buyer and the payment of the agreed price to the seller. In relation to the above, according to solid jurisprudence by the Greek Courts, the identification of the exact quantity of drugs, the specific place and time of sale, the identity of the seller or buyer, the specific price agreed and the payment method are not necessary for the fulfillment of the constituent elements of the crime.

3) the **offer**: This act is related to the trafficking and delivery of drugs, in most cases of small quantity of drugs, to specific persons free of charge.

4) the **dealing**: It refers to distribution and delivery of small quantity of drugs in more than one person, even if the dealer does not collect or keep the money (price).

5) the **distribution**: This term covers all other acts which are not specifically mentioned in law.

6) the **dispatch** and **delivery**/ the **production** and **extraction** of narcotic drugs: These acts were not included in the initial text of Law 4139/2013 but were later on added (by virtue of Law 3727/2008) in order to harmonize the relevant Greek legislation with the EU Council Framework Decision 2004/757/JHA provisions.

7) the **storage**: This act differs from the act of simple possession given that it requires an additional act of securing their possession.

h) the **deposit**: The notion of the “deposit” is the same as deposit being defined in article 822 of the Greek Civil Code. “By a depository's agreement, the custodian receives from another a movable property to guard it, with the obligation to return it when requested”.

8) the **manufacture**: This constitutes a preparatory act of trafficking which is being criminalized under the Greek law in force.

9) the **possession**: This act usually coincides with other acts of trafficking. There is an extensive jurisprudence related to the notion of “possession”. Among them, two significant decisions: a) The Supreme Court has interpreted the provision in order to include the possession of narcotic drugs in the hands of the perpetrator with the sole purpose to deliver them to the purchaser by the person indicated to him/her (Judgment Nr. 39/2000), b) The shipowner is considered as a perpetrator of the crime of drug trafficking through possession even if the act of possession is committed by the captain or the crew of the ship, given that the shipowner knew and accepted the loading of drugs into the ship (Court of Appeal of Piraeus 118/1996).

For the justification of the commission of the crime, the identification of the specific quantity, the identity of seller or buyer, the specific date of the commission of the crime, the reference of the motive of the perpetrator's conduct are not necessary (see Supreme Court 723/2011, Supreme Court 182/2008, Supreme Court 76/2007, Supreme Court 669/2005, Supreme Court 1187/2005).

10) the **adulteration** and sale of adulterated substances: For the commission of this crime, the narcotic substances must have been bought by the state monopoly agencies and then been adulterated and sold in the market.

11) the **cultivation** or **harvesting** of cannabis: See also article 19 of the UN Convention against illicit trafficking of drugs. The term “cultivation” is defined as act related to the agricultural production of cannabis, without permit from the state, such as the planting of seeds, the gardening of plants, the supervision of their growing, the giving of instructions as to their care etc.

12) the **supply** of substances to substitute dependence in breach of the relevant provisions: see also article 22 of L. 4139/2013 which applies in relevant cases.

13) the **management of a store** where systematic drug trafficking takes place in knowledge of the manager: For the commission of such a crime, the offender must, in addition to mens rea, have a purpose of producing a certain additional effect. Offences with such a double subjective element are called offences with an “overflowing” subjective element.

14) the **financing, organizing** or **directing** drug trafficking activities: By virtue of this provision, preparatory and participatory acts of instigators or accomplices are treated equally to the physical perpetrators of the crime.

15) the **adulteration** or the **drafting** or the **use** of a **falsified medical drug prescription** for the purpose of their trafficking: The offender of such a crime must act with a purpose of producing a certain additional effect, i.e. trafficking. This provision constitutes lex specialis in relation to the provisions of the Greek Penal Code on adulteration (see article 216 GPC) and therefore, if the adulteration is

committed with the purpose of drug trafficking, it is only Article 20 of L. 4139/2013 that applies.

16) the **mediation**: Mediation usually occurs in the sale and purchase of drugs. A mediator brings in contact the seller and the buyer. Whether the sale or purchase have indeed taken place is irrelevant for the criminalization of this act (see Supreme Court 249/2005). However, the conviction must specify the exact date and means by which the offender attempted to bring in contact or communication the other persons for the purpose of drug trafficking in order to be fully and duly justified.

Drug trafficking requires an intention by the offender to produce the prohibited result (or an acceptance of the result), knowing that is either certain or probable to occur. Meaning that the offender must at least have acted with intent (*dolus eventualis*, see Supreme Court 1722/2008) and have accepted to distribute the drugs. The element of “intention to further distribute the drugs” distinguishes the offense of drug trafficking under article 20 of L. 4139/2013 to the misdemeanor of supply and possession of drugs for personal use only (article 29 L. 4139/2013).

*9. Sanctions: criminal penalties, administrative sanctions, accessory penalties, security measures, users/small quantity, aggravating circumstances.*

Article 20 par. 1 of L. 4139/2013 reads as follows: “1. Notwithstanding articles 21, 22 and 23, whoever illegally traffics drugs is punished by imprisonment **for at least eight (8) years** and by a fine of **up to three hundred thousand**

**(300.000) Euros.**”. In view of the above, the Greek legislator has categorized the crime of drug trafficking as a felony. According to article 18 of the Greek Penal Code “every act punishable by the death penalty or imprisonment is a felony”. In addition, article 52 par. 3 of the same Code stipulates that “the duration of the non-permanent imprisonment shall not exceed twenty (20) years nor be less than five (5) years...”. Taken all the above into consideration, the **drug trafficking offense is punishable cumulatively with an imprisonment of minimum eight (8) to maximum twenty (20) years and a fine of maximum 300.000 Euros.**

For the calculation of the punishment, the Court will take into consideration the gravity of the act (e.g. the quantity and the category of drugs), the defendant’s character and other criteria, stipulated in article 79 of the Greek Penal Code, including the principle of proportionality.

There are **no administrative sanctions** in the Greek legislation regarding drug trafficking.

However, Law 4136/2013 provides for **accessory penalties and security measures** imposed to drug trafficking offenders, as per the case. Article 36 (in line with article 67 of the Greek Penal Code) grants the Court the right to impose an interdiction of exercising a profession, as an accessory penalty to the convicted, for a period of 1 to 5 years following the completion of his/her prison time and the expiry of the security measure, if any. Furthermore, another accessory penalty is the confiscation of drugs as well as the confiscation or seizure of assets related to the crime (see articles 40 and 41 of L. 4136/2013 in line with article 76 par. 1 of the Greek Penal Code). Moreover, article 37 (in line with article 73 of the

Greek Penal Code) gives the Court the right to order a 1 to 5 years' ban against the convicted for staying in certain places, as a security measure.

In addition to the above specific provisions of L. 4136/2013, the general provisions of the Penal Code on accessory penalties and security measures apply, such as article 68 on the publication of the conviction, article 60 on the deprivation of political rights and article 74 on the expulsion of aliens.

### **Mitigating circumstances**

Greek law provides for a reduction or an increase of the penalty depending on special circumstances. Article 84 of the Greek Penal Code provides an indicative list of general mitigating circumstances, such as: a) that the perpetrator has lived, until the date of the crime, an honest, individual, family, professional and general social life; b) the fact that his/her act was driven by not humble causes or by great poverty or suffering under the influence of serious threatens or under threat from a person to whom he/she is obedient or with which he/she is in a relationship of dependence; c) that in his/her act, he/she was incited by improper behavior of the victim or was led by anger or violent sadness following an unfair behavior against him/her; d) the fact that he/she showed sincere remorse and sought to eliminate or reduce the effects of his/her act and e) that the perpetrator behaved well for a relatively long time after the act.

### **Special treatment**

Article 21 par. 1 of L. 4139/2013 imposes a more lenient penalty, an imprisonment of **up to three (3) years** to: a) whoever distributes small quantities of drugs to meet the needs of everyday use and is addicted; b) whoever disposes drugs without profit to his / her family, in order to meet their immediate needs for use; and c) whoever, from the quantity of drugs he has purchased for his personal needs, disposes, without profit, part of to another for his / her own exclusive use.

Similarly, under paragraph 1 of Article 29 of L. 4139/2013, whoever, **for his own exclusive use**, in any way obtains or possesses drugs in quantities justified only for his own use or makes use or cultivates cannabis plants at a number or extent justified solely for his individual use is punishable with **imprisonment of up to five (5) months**. In order to delimitate the purpose of “servicing his/her own exclusive use”, Greek Courts take into account the type, purity and quantity of the drug in question, together with the frequency of use, the time of use, the daily dose and the specific needs of the user. Even more, the perpetrator may go unpunished if, considering the circumstances of the act and the personality of the perpetrator, the Court concludes that the offense was entirely incidental and is unlikely to be repeated. Under the same article (par. 4), whoever makes false, distorts or uses a fake medical prescription for the purpose of his/her own exclusive use, shall be punished with an imprisonment of up to two (2) years.

Moreover, the element of **addiction** constitutes a ground for requesting an abatement or waiver of penalty by the offender if proven that due to his/her addiction, at the time of



the commitment of the offense, he/she had a diminished mental capacity. Therefore, if these conditions are fulfilled, a user found guilty of a drug trafficking offense under article 20 of L. 4136/2013 will be punished by imprisonment for at least one (1) year. Whereas if the user is found guilty of a drug trafficking offense under the special circumstances provided for in article 21 of the same law (small quantity, for personal use or use of family members etc), he/she will be punished by imprisonment for up to one (1) year (article 30 par. 4 (b) and (c) of L. 4136/2013). In such context, drug trafficking is designated by the Greek legislator as a misdemeanor. Furthermore, if a user commits the aggravated crime of drug trafficking under article 22 of the same law, he/she will be punished by non-permanent imprisonment for up to ten (10) years (article 30 par. 4 (d)). Regarding the aggravated crime of article 23 of L. 4136/2013, there is no differential treatment reserved to users, since, these crimes cannot relate to his/her addiction.

If the person responsible for one of the acts referred to in articles 20 to 22, **provides**, prior to his/her final conviction and on his/her own initiative, **information** for the arrest or dismantling of a drug trafficker or a criminal drug trafficking organization and given that the gravity of the defendant's act is manifestly less than the gravity of the acts of the persons in whose arrest he/she have contributed, the Court may recognize mitigating circumstances in his/her benefit. At the same time, the Court may order the suspension of execution of the sentence for a period of two (2) to twenty (20) years.

### **Aggravating circumstances**

Article 22 imposes more severe penalties, an imprisonment of **at least ten (10) years** and a fine **from fifty thousand (50.000) euros to five hundred thousand (500.000) euros** to “an offender of article 20 and article 21 par. 1 (a) in case he is a civil servant, who, due to his service, deals with drugs, and in particular by protecting or prosecuting the offender of the present law, or belonging to the staff of the centers or institutions referred to in article 2 (a) or in case his purpose is to facilitate or conceal other felonies committed”. The same penalty applies also to: a) doctors prescribing drugs use where, knowingly there is no real and specific medical indication or supplying drugs, containing any form of narcotic drugs, knowing that they will be used for the manufacture or trafficking of drugs, and b) pharmacists or distributors of drugs in general, supplying, as directors or employees of the pharmacy, drugs knowing that there is no medical prescription meeting the requirements of law or that the prescription is inappropriate.

Other aggravating circumstances besides the offender’s profession is the place of the crime (in sensitive areas such as military camps, police departments, prisons, youth centers of any kind, school establishments of all levels, other units of training, in sporting areas, camps, private training centers, in social service facilities, in places where pupils or students are concentrated for educational or sporting purposes), the profile of the offender (recidivist) or his/her acting **as a member of a criminal organization**. Articles 187 and 187A of the Greek Penal Code provide whoever forms part of a structured group, with sustained action, comprising of three or more persons and aiming at committing more than one felonies is considered a member of a criminal organization. Moreover, regarding

**recidivism**, the provisions of L. 4139/2019 deviate from the general provisions of the Greek Penal Code. According to article 88, a recidivist is the person convicted for a felony with intent for which the law provides for an imprisonment of at least three months, who has already been convicted, in the past 10 years, of a felony, by a penalty of imprisonment exceeding six months. On the other hand, article 22 par. 2 (c) of L. 4139/2013 defines as a “recidivist” the defendant who, without being judged as an addicted, has already been convicted irrevocably for the felony of drug trafficking in the last 10 years.

Article 23 of L. 4139/2013 deals with the most serious types of drug trafficking, resulting to maximum penalties (such as life imprisonment). Whoever commits the offense of article 20 or 22 of L. 4139/2013 with the involvement of drugs that have caused or are able to cause serious injury (article 310 par. 2 of the Greek Penal Code) or death to a third person or dangerous harm to the health of many people is sentenced to **life imprisonment or imprisonment of at least ten (10) years and a fine from 50.000 euros to 600.000 euros**. Likewise, if an adult offender is a professional drug trafficker who incites minors to drug use or uses minors in his/her business is sentenced to the same penalty above. Furthermore, if a professional drug trafficker commits or finances illicit trafficking of drugs with the intention to earn more than 75.000 euros and/or uses weapons during the trafficking act or his/her arrest is sentenced to **life imprisonment and a fine from 50.000 euros to 1.000.0000 euros**. These heavier penalties are justified by the high risk that the particular offender entails and the infringement of public order due to the illegal use of weapons. Two elements contribute towards the

characterization of a particular offender as “extremely dangerous”: his/her acting as a professional and the large quantity of drugs (specified by the expected profit from the illicit trafficking act).

However, these penalties are higher than the EU average. In accordance with the EU Council Framework Decision 2004/757/JHA, the above aggravating circumstances may lead to penalties of a maximum of at least between 5 and 10 years of imprisonment.

Finally, it should be noted that recently the Drafting Committee for a new Penal Code has concluded its work and handed over a Draft Code to the Government. The Government launched an open public consultation on the proposed Code. The deadline for the open public consultation has expired and currently, the new Draft Code is pending at the Ministry for Justice. According to Article 463 “1. Where, in special laws, a prison sentence is threatened, a pecuniary penalty shall be added alternatively, as provided for in Article 57 of this Code. 2. Where, in special laws, an imprisonment of up to ten years is threatened, it shall be converted into imprisonment of at least three years and a pecuniary penalty. 3. Where, in special laws, only life imprisonment is threatened, a temporary imprisonment of at least 10 years shall be added alternatively.”. Relating to drug trafficking, whoever is found guilty with the aggravating circumstances of Article 23 par. 2 of L. 4139/2013, is sentenced only to life imprisonment. If, however, the new Penal Code is adopted, an alternative punishment of imprisonment from 10 to 15 years will be offered.

Note: The new Greek Penal Code was adopted by Law 4619/2019 (Government Gazette, issue A’, nr. 95/11.06.2019) which entered into force on 01/07/2019.

### *10. Corporate liability.*

Article 26 of L. 4139/2013 provides for the responsibility of legal persons, to the benefit of which, the offenses of articles 20, 22 and 23 of that Law have been committed. The criminalization of corporate acts is irrespective of the individual liability of physical persons which represent the legal person and are involved in the same illicit trafficking act either as perpetrators or instigators or accomplices. To the above legal entities are imposed by decision of the head of the relevant regional directorate of the Financial Crime Investigation Corps of the Ministry of Finance: a) an administrative fine from 100.000 euros to 1.000.000 euros; b) a temporary - or in case of repeated offense a permanent - ban on commercial activity and temporary - or in case of repeated offenses under Article 88 et seq. of the Penal Code, definitive - exclusion from tax and other benefits as well as public benefits or aids; c) a temporary or final closure of the shop, office or other, in general, facilities which were used to commit the crime; d) a dissolution of the legal person by judicial decision; e) a confiscation of drugs and/or a confiscation or seizure of assets related to the crime.

### *11. Concurrence with other crimes.*

The Greek penal system makes a distinction between ‘real’ and ‘ideal’ concurrence with other offences. For the former to occur the offender needs to inflict (with one or more acts or omissions) - at a given time – several legal interests, resulting in multiple crimes and thus in true concurrence. As for the

latter case, when the offender inflicts one legal interest, but more than one punishment is enforceable, there is an ideal concurrence of crimes.

Under the previous legislative framework (Law Decree Nr. 743/1970 and Law Decree Nr. 1729/1987), each illicit act constituted an autonomous crime, the trafficking of drugs being a multiple acts crime. Therefore, if an offender committed multiple illicit acts, even if those acts referred to the same quantity of drugs, the Greek Penal Courts acknowledged that there has been a true concurrence of crimes. For instance, the Supreme Court stated that the possession, for personal use and the use of drugs truly concur (1633/2009). However, since the supply, possession and cultivation are preparatory acts to the use of drugs, the majority of the Greek legal doctrine agreed that this is a case of an ideal concurrence of crimes.

Finally, the national legislator opted for the ideal concurrence of crimes, by explicitly providing, in Article 20 paragraph 3 of the current law in force (L. 4139/2013), that “If more trafficking acts refer to the same amount of drugs, one only drug offense occurs. For the computation of the punishment, it is taken into account the total number of trafficking acts, the kind, the total quantity and the purity of the drug, as well as the severity of the relevant health effects.”. In fact, the legal interested protected under the criminalization of all the above acts is health of an indefinite number of people.

The offense of drug trafficking may indeed concur with other offenses prescribed by the Greek Penal Code or Special Penal Laws, such as illicit possession of weapons and weaponry and resistance to the authorities (see Supreme Court 542/2005, 1585/2005, 124/2004, 1429/2004), (see Supreme

Court 861/1998), possession of weapons (see Supreme Court 1585/2005), falsification of certificates (see Supreme Court 642/1998), transportation of an illegal migrant (see Supreme Court 706/2004), cultivation and harvest of cannabis, grievous bodily harm and resistance (see Supreme Court 861/1998).

## *12. Jurisdictional issues.*

For the drug trafficking offenses of article 20 and 22 of L. 4139/2013, the Court of Appeal (single judge formation) is competent at first degree. The Court of Appeal for Felonies (three membered panel) is seized after appeal, at second degree. According to the Greek Code of Penal Procedures (articles 211A together with article 171 par. 1 (d)), only the testimony or accusation of a co-defendant for the same act is not sufficient to convict the accused. Moreover, the proceedings are considered null if the following categories of persons testify as witnesses before the audience: (a) those who have exercised prosecution or investigative duties or worked as a secretary of the interrogation in the same case; (b) those who have been found guilty of the act being tried, even if they have not been punished.

For the drug trafficking offenses of Article 21 of L. 4139/2013, the Criminal Court of First Instance is competent both at first degree (single judge formation) and second degree (three membered panel), in case of an appeal.

For the drug trafficking offenses of article 22 of L. 4139/2013, the Court of Appeal for Felonies is competent both at first degree (three membered panel) and second degree (five membered panel), in case of an appeal.

Under article 82 par. 10 of the Greek Penal Code, penalties imposed in case of drug trafficking convictions as felonies (articles 20, 22 and 23 of L. 4139/2013) shall not be converted. However, the penalties imposed under articles 21 and 30 par. 5 of L. 4139/2013 may be converted since, in such cases, the offenses are categorized as misdemeanors. In addition, the penalties imposed under articles 21 and 30 par. 5 of L. 4139/2013 may be also suspended (in accordance with article 99 of the Greek Penal Code).

### *13. Jurisprudence.*

Of all the illicit products trafficked by organized crime, drug trafficking is the most famous and it has received systematic attention over the last decades. The dockets of the Greek Criminal Courts are full of drug trafficking cases since, as already stated, drug trafficking is widespread. Moreover, the great majority of these cases reach “Areios Pagos”, the Supreme Civil and Criminal Court of Greece.

#### *13.1. Conduct (s).*

In order to understand how actus reus and mens rea of drug trafficking offenses are interpreted by Greek courts, we will present in full the consistent case law on the interpretation of the above in relation to one of the basic offenses, which is stipulated under Article 20 of L. 4139/2013. The aforementioned article refers to three different forms of offenses: a) the import of narcotic drugs into the Greek territory; b) the export of narcotic drugs from the Greek territory and c) the transit of narcotic substances. The common



feature of the above cases is the crossing of the country's borders.

With regard to actus reus of the crime, according to the consistent case law of the Greek courts, a decisive element in the first form of the offense, is the entry of narcotic drugs on the borders of Greek territory from the territory of another state (Key Case: Supreme Court 1535/2002). In order to establish the objective element of the drug import offense in Greek territory, an objective act of importing narcotic drugs is required, in any way and means, (Supreme Court 65/2005, 1994/2002, 1535/2002, 1865/2001), i.e. 1) by land (Supreme Court 422/1996) in a tourist bus (Supreme Court 132/2016), in a car (Supreme Court 1204/1984) from Albania (Supreme Court 1090/2010, 1770/2008, 1645/2008, 2545/2005) or Turkey (Supreme Court 1/2008, 460/2007, 1034/2003), in a human body (Supreme Court 1357/1989), 2) by sea (Supreme Court nos. 520/2003, 1122/2006, 1812/1997) in commercial ships from Latin America (Supreme Court 110/2003, 226/2003), in private high speed boats from Albania (Supreme Court 1160/2007), Lebanon (Supreme Court 60/2006), Turkey (Supreme Court 2394/2005), 3) by mail in an envelope from Chili (Supreme Court 1190/2006) or Netherlands (Supreme Court 2259/2002), 4) by air (Supreme Court 1637/1997 and more recent no. 776/2016 – import of cannabis by a non-addicted person). The crime occurs with the entry of the narcotic drugs into Greek territory (Supreme Court 1882/1994), even by sending them by mail (Supreme Court 1328/1993 - the crime is considered complete once the recipient acquires the possession of the sent narcotic drugs). The factual background requires a specific and detailed justification which does not lead to contradictions and

ambiguity, otherwise the decision is rejected (Supreme Court 1287/1998).

The crime of drug export from the Greek territory is carried out by the movement of narcotic drugs outside the borders of the state (Supreme Court 615/1987, 1014/1984).

Transit of drugs is to be distinguished from transport of drugs within the Greek territory. The crime of drug transit requires the transport of drugs through Greece with a third country destination. For the interpretation of the term ‘transit’ see Supreme Court 1084/2007, 873/2002). Given that the air space above Greece is part of the Greek territory, the objective element of the drug trafficking crime is fulfilled even if the plane did not land in Greece.

The crime of drug trafficking also occurs in case of illegal transport of drugs within the Greek territory, by bus (Supreme Court Judgment 1078/2016 - defendant of Albanian nationality), by car (Supreme Court 1687/2016 – multiple defendants), by ship (Supreme Court 1429/2008).

With regard to mens rea of the crime concerned, the perpetrator's intent is required, in all the above cases, consisting either in the attempt to produce the illegal result or in knowledge (sure or possible) and acceptance of this result. That is, the perpetrator must have at least the knowledge of a potential (*dolus eventualis*, Supreme Court 1722/2008) and accept, either to import from a foreign state to Greek territory narcotic drugs, either to export them from the Greek territory to a foreign state or finally to use the Greek territory as a passage of the drugs coming from and going to different countries (Supreme Court 48/1999). Furthermore, it is accepted that it is necessary to diagnose and specifically justify the purpose of the drug trafficking and at the same time exclude the offender's purpose for personal use (Supreme

Court nos 1947/2010, 802/2010, 1664/2009, 2365/2008, 1626/2008, 902/2007, 17/2007, 921/2003 and Court of Appeal of Athens nos 1502/2004, 1143/2004, Court of Appeal of Patras no 269/1996, Council of Misdemeanours Judges of Kastoria no 118/1992). L. 4139/2013 adopted the above jurisprudence of Greek courts (see Art. 20 par. 2) and henceforth, all forms of drug trafficking may legitimately be characterized as fulfilling the purpose of “servicing his own exclusive use” in accordance to art. 29 of L. 4139/2013 (lawful alteration of charges).

### *13.1. Definition of trafficking.*

The notion of trafficking is equal to distribution, according to Greek jurisprudence. Greek law does not provide a definition for the term “trafficking”. However, Greek courts have ruled that all standard drug trafficking acts aiming to a direct or indirect distribution of drugs formulate the notion of “trafficking” (see Supreme Court Judgments nos 34/1994, 1200/1976, 1283/2005, 873/2002, 1577/1995, 90/1994, 177/1987, 569/1984, 911/1982).

### *13.2. Participation in a criminal organization.*

According to Greek law, participation in a criminal organization is an aggravating circumstance in drug trafficking offenses (see art. 22 L. 4139/2013). In practice, this type of offense usually concurs with the felonies of art. 187 and 187A of the Greek Penal Code relevant to setting up and participating into a criminal organization of three or more persons with sustained action, seeking to commit more than one crimes. Paragraph 3 of Art. 187 of the Greek Penal Code

stipulates that whoever is organizes with other persons to commit a misdemeanor seeking financial gain risks imprisonment of up to three years. See relevant caselaw on import, transit and possession of narcotic drugs from members of a criminal organization (Supreme Court 973/2015, 1043/2015, 176/2017, 796/2017, 1174/2017).

#### *14. Literature*

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## *15. Criminal Procedure Law*

### *15.1. International and European judicial and police cooperation*

Greece has concluded a large number of Conventions and bilateral agreements on judicial and police cooperation against drug trafficking. Within the UN framework, Greece has ratified the **United Nations Convention against Transnational Organized Crime**. Article 1 of the Convention provides for the following: “The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively”. The main provisions regarding cooperation can be found in articles 7 par. 4, 13 (international cooperation for purposes of confiscation), 16 par. 5 (cooperation on extradition), 26 (measures to enhance cooperation with law enforcement authorities), 27 (law enforcement cooperation). Greece considers the United Nations Convention against Transnational Organized Crime (ratified by Law 3875/2010) as a basis for the provision of mutual legal assistance in corruption cases involving transnational organized crime. Although there are no instances of its implementation in

relation to the Mutual Legal Assistance applications submitted under the above Convention, **Greece has conducted a joint legal investigation based on it for a drug trafficking case in the past** (United Nations Office for the Control of Drugs and Prevention of Crime, Country Survey Report for Greece, p. 11.)

Furthermore, in 1992, Greece ratified the **United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** (1998). According to article 5, par. 4 (g), of the abovementioned Convention, ‘the Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article’.

With respect to Multilateral Cooperation Agreements Greece has concluded the Trilateral Cooperation Protocol among Greece- Bulgaria- Romania (Place/ Date of signing: Sofia, 08/09/1998, Ratification Law 2814/2000, Official Gazette Nr 69 A /10-3-00)

Moreover, Greece signed 20 bilateral agreement providing for police and judicial cooperation within the drug trafficking framework with different countries.

### *15.2. Right of hot pursuit.*

There is no specific provision in the Greek Code of Criminal Procedure regarding hot pursuit. However, in terms of this research, reference should be made to the right of hot pursuit in public international law. Article 111 of the United Nations Convention on the Law of the Sea (‘UNCLOS’) regulates the right of hot pursuit. The hot pursuit of a foreign ship may be undertaken when the competent authorities of the coastal State have good reason to believe that the ship has violated the laws and regulations of that State. Such pursuit

must be commenced when the foreign ship or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State, and may only be continued outside the territorial sea or the contiguous zone if the pursuit has not been interrupted. It is not necessary that, at the time when the foreign ship within the territorial sea or the contiguous zone receives the order to stop, the ship giving the order should likewise be within the territorial sea or the contiguous zone. If the foreign ship is within a contiguous zone, as defined in article 33, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established. 2. The right of hot pursuit shall apply *mutatis mutandis* to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones. 3. The right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State. 4. Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship 64 pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf. The pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship. 5. The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on

government service and authorized to that effect. 6. Where hot pursuit is effected by an aircraft: (a) the provisions of paragraphs 1 to 4 shall apply mutatis mutandis; (b) the aircraft giving the order to stop must itself actively pursue the ship until a ship or another aircraft of the coastal State, summoned by the aircraft, arrives to take over the pursuit, unless the aircraft is itself able to arrest the ship. It does not suffice to justify an arrest outside the territorial sea that the ship was merely sighted by the aircraft as an offender or suspected offender, if it was not both ordered to stop and pursued by the aircraft itself or other aircraft or ships which continue the pursuit without interruption. 7. The release of a ship arrested within the jurisdiction of a State and escorted to a port of that State for the purposes of an inquiry before the competent authorities may not be claimed solely on the ground that the ship, in the course of its voyage, was escorted across a portion of the exclusive economic zone or the high seas, if the circumstances rendered this necessary. 8. Where a ship has been stopped or arrested outside the territorial sea in circumstances which do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.

*Decision No. 584/2009 of the Supreme Court of Greece (Criminal Section) → Pursuit by Greek border guards. Essential facts of the case: During a pursuit by border guards, drugs were found in the perpetrators' car trunk and in particular Indian cannabis. The defendants jointly held 35,323kg of Indian cannabis packed in 53 parcels and placed them in the luggage compartment of the car. During the pursuit of the border guards, the first defendant threw out of the car the aforementioned quantity of drugs, which was*



*placed in two bags. The drugs were found on the road, and there is no doubt that the drugs were the same as the remains of cannabis found in the trunk of the car that the first defendant drove. Furthermore, it was proved that the defendants at the same place and time when driving their vehicles did not comply with a stop sign police officers (border guards) in uniform, but they fled and that resulted in their pursuit.*

*15.3. Patrimonial investigations and confiscatory measures.*

**Confiscatory Measures**

Article 40 of L. 4139/2013 reads as follows:

In the event of a conviction for a violation of Articles 20, 22 and 23, subject to the last subparagraph of this paragraph, the court shall order the confiscation of all property arising from the transaction, their price, the movable and immovable property that were acquired at that price or by their acceptance and disposal, as well as the means of transport and all the objects which served or were intended for the commission of the act, whether they belonged to the perpetrator or to any of the participants. For the rest, the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, ratified by Law 1990/1991 (A 193) and in particular those of Article 5 of the Convention on confiscation of assets, apply. Any of the technical means confiscated by a final judicial decision is deemed to be indispensable to meet the needs of drug-related services, it is preferably allocated to the services that have confiscated the above at the request of the competent Ministries.

Moreover, article 41 paragraph 1 of L. 4139/2013 regulates seizure and confiscation of drugs and reads as follow: ‘Drugs

are seized and confiscated in any case. During the pre-trial stage, as well as in the case of no prosecution or abstention for any reason whatsoever, confiscation shall be ordered by the Council of Misdemeanors Judges’.

*15.4. Undercover operations: procedural handling of undercover agents, issues on the gathering of evidence and testimony/witnessing of the undercover agent.*

Article 28 of L. 4139/2013 and Joint Ministerial Decision 83509/18.12.2015 regulates undercover operations in the context of drug trafficking.

Article 28 of L. 4139/2013, titled as ‘Acts of controlling bodies’, reads as follows:

The act of a police officer, customs official, fraud squad officer (Body for the Prosecution of Economic Crimes) and a member of the Hellenic Coast guard, who is instructed by the chief of police responsible for the prosecution of drugs and with a view to detect or arrest a person committing a crime as referred to in Articles 20, 22 and 23, following the procedure of Article 253A (3) of the Code of Criminal Procedure, and acts as a purchaser or mediator or carrier or guardian of narcotic drugs or other means that do not create or aggravate risks to third parties, is not unjust. The same applies to the individual who, for that purpose, is doing so on a proposal from the authorities responsible for the prosecution of drugs.

The aforementioned control bodies or the private individual may act in accordance with paragraph 1 and deal with covert identity, tax or other evidence, and conduct transactions

imposed solely by the covert activity. The procedure for issuing the covert elements of the control bodies or the private individual, the procedure for the approval of transactions with these elements, the process of approving the funds to be disposed of for the purpose of the undercover action, and any other relevant are defined by a joint ministerial decision of the Ministers of Finance, Justice, Transparency and Human Rights and Public Order and Citizenship and Maritime and Aegean Protection. The Minister of Infrastructure, Transport and Networking also participates in the adoption of this joint ministerial decision.

The abovementioned procedure is determined by the Joint Ministerial Decision No. 83509/18.12.2015. Essential points of the Joint Ministerial Decision can be identified in the following: According to article 1, undercover agents, who act in accordance with Article 28 par. 1 of Law 4139/2013, are issued on a case-by-case basis and are issued to them: a) Police Identity Card b) Personal Identification Card c) Greek Passport d) Tax Registration Number e) High Speed Craft Driving License and Maritime Capability Certificates and g) Driving License for all categories of road vehicles. In particular, the no. (e) and (g) shall be granted only if the persons in question are already holders of the corresponding supporting documents and certificates. Moreover, article 3 regulates the details on the terms and conditions for the transactions, such as the opening a bank account and engagement in any kind of relationship with a credit institution.

Generally, regarding testimony/witnessing, article 224 of Greek Procedural Criminal Code provides the following: 1. The witness must reveal how she/he was informed. If her/his testimony is a fact that she/he has heard from others, she/he

must in all cases name those at the same time. 2. If the witness does not name the source of her or his information, her/his testimony is not taken into account.

Furthermore, article 253A provides for the investigating and evidence-gathering acts in relation to criminal organizations. Pursuant to paragraph 1, especially for the offenses referred to in Article 187 par. 1 and 2 (criminal organizations) and for the offenses referred to in Article 187A (terrorist acts) of the Penal Code, the investigation may also include the following:

a) investigative intrusion, subject to the safeguards and procedures set out in the following paragraphs and, as in the rest, the penetration is provided for in Article 25B (1) of Law No. 1729/1987 "Combating the proliferation of drugs, protecting young people and other provisions" as in force, and paragraph 1 of Article 5 of Law No. 2713/1999 "Internal Affairs Division of the Hellenic Police Force and other provisions", provided that the investigative intrusion is limited to the acts strictly necessary for the identification of crimes, that had been previously decided by the members of the organization;

(b) controlled transport, subject to the same safeguards and procedures as those provided for in Article 38 of Law No. 2145/1993 "Regulation of matters of accelerated punishment and modernization of procedures for the administration of justice and other matters";

(c) lifting of confidentiality, subject to the same safeguards and procedures as those provided for in Articles 4 and 5 of Law No. 2225/1994 "For the protection of freedom of communication and other provisions";

(d) the recording of activity or other events outside the home with audio or video devices or other special technical

means, subject to the same safeguards and procedures as those provided for in paragraph 4 of Article 6 of Law No. 2713/1999; and

(e) the association or combination of personal data, subject to the same safeguards and procedures and under the substantive terms and conditions of Law No. 2472/1997 "Protection of individuals from the processing of personal data".

In paragraph 2 of the same article we find the two following conditions: The investigative acts referred to in the preceding paragraph shall only be carried out: (a) whether there are serious indications that an offense has been committed in accordance with paragraphs 1 and 2 of Article 187 or an offense under Article 187A of the Penal Code, (b) whether the dismantling of the criminal organization or the detection of the terrorist acts referred to in Article 187A is otherwise impossible or particularly difficult.

According to paragraph 3, for the purposes of carrying out the investigative measures referred to in paragraph 1 and for the time necessary to achieve the objective pursued, the competent judicial council shall, on a proposal by the Public Prosecutor, decide on a special reasoned order. In extremely urgent cases, the prosecutor or the investigating magistrate may order the investigation. In this case, the prosecutor or the investigating magistrate shall be obliged to bring the matter to the competent judicial council within three days. Otherwise, the validity of the relevant provision ceases automatically upon the expiry of the three-day time limit. Moreover, according to next paragraph of the same article, any evidence or knowledge gained in the conduct of the investigative measures referred to in paragraph 1 may be used only for the reasons set by the Judicial Council. Exceptionally, such

information or knowledge may be used to establish a crime, arrest of perpetrators and the dismantling of another criminal organization, provided that the court has specifically ruled on it. Lastly, paragraph 5 of article 253A provides that “the provisions of this Article shall also apply to the conduct of the respective investigations provided for in Special Penal Laws, the provisions of which remain in force, provided that they do not conflict with the provisions of the present.

For the purposes of these provisions, investigative intrusion is the covert action of investigators and police officers who appear to be citizens and act as undercover agents, that is to say, as instigators of crime or of parties involved in committing criminal offenses, in the event of the unlawfulness of such acts, provided that they are made by order of their superior.

However, the acts of police officers acting as undercover agents for the detection or arrest of a person committing a crime as referred to in Articles 20, 22 and 23 of Law No. 4139/2013 shall not exceed the limits of the above-authorized covert activity. Specifically, the undercover agents should be limited to the acts strictly necessary for the identification of crimes of No. 4139/2013, the commission of which the perpetrator had previously decided and would have committed in any case. Otherwise, there is a breach of the principle of fair trial, and in particular a breach of a fair procedure required by Article 6 of the European Convention on Human Rights. In the event that the investigative acts, including the investigative intrusion, were not performed under the conditions set out in the above law, they become null and thus the data collected from them cannot be used before the court.

However, when it turns out that the offense was predetermined by the perpetrators and would have been

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committed even if the intervention and intrusion of the police bodies had not occurred, the latter are not considered agents provocateurs and it is not necessary to observe the above formalities. Therefore, in this case, the testimony/witnessing of undercover agents are legitimate means of proof and their statements are admissible. (Key Case: Supreme Court 1122/2014).