

## REPORT



### 1. Rome Statute

Greece is a state party to the International Criminal Court. Greece signed the Rome Statute on 18 July 1998 and deposited the instrument of ratification of the Rome Statute on 15 May 2002.<sup>1</sup> Upon ratification, Greece filed a notification according to article 87 (1) and (2) of the Rome Statute, indicating the diplomatic channel as a means of transmission of requests for cooperation by the Court. Additionally, Greece notified the Court that any documents supporting the request should be accompanied by a translation into Greek. The notification states as follows:

‘....pursuant to article 87 paragraph 1 (a) of the Rome Statute, the Hellenic Republic declares that, until further notice, requests by the Court for cooperation shall be transmitted through the diplomatic channel.

Furthermore, pursuant to article 87 paragraph 2 of the Rome Statute, the Hellenic Republic declares that requests for cooperation and any documents supporting the request shall be accompanied by a translation into the Greek language.’<sup>2</sup>

No other reservations or declarations were made by Greece to the Rome Statute.

The Rome Statute was incorporated in the national legal order with the no. 3003/2002 Greek Law (‘Nomos 3003/2002’ in Greek). The legal status of this act in the national legal order is postulated in Article 28, par. 1, of the Greek Constitution, according to which:

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<sup>1</sup> United Nations, Treaty Series, vol. 2187, p. 3.

<sup>2</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en#EndDec)

‘The generally recognised rules of international law and the international conventions, as soon as they are ratified by a statute and become operative according to their respective conditions, shall constitute an integral part of national legal order and shall prevail over any other contrary provision of national laws. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.’<sup>3</sup>

As the Rome Statute was ratified by the Greek Law 3003/2002, it became an integral part of the national legal order. Furthermore, any provision of the ratifying law prevails over any other contrary provision of law, thereby, having a hierarchically higher position than any other national law in the Greek legal order.

In 2011, Greece adopted a revision to its criminal code and code of criminal procedure. The Greek law 3948/2011 (‘nomos 3948/2011’ in Greek) was adopted, under the title: ‘Adaptation of the provisions of domestic law with the provisions of the Statute of the International Criminal Court, which was ratified by Law 3003/2002’. Following the basic distinction of substantive and procedural criminal law in national legal order, the provisions of this law are also divided in two parts: general part, referring to provisions of substantive criminal law and special part, encompassing the provisions of procedural criminal law and judicial cooperation.

The Greek legislator did not adopt the universality principle for bringing accused persons of international crimes before national courts. Rather, the national law opted for the principles of territoriality and of passive nationality. Although the universality principle appeared in the initial draft, the parliament decided to adopt the principles of territoriality and of passive nationality instead, after taking into consideration the comments by experts and NGO’s. According to the preamble of the Law 3948/2011, the main reason for this choice is the attempt to limit the jurisdiction of national courts over international crimes when there is absolutely no link with the country. Additionally, the legislator intended to prevent the overload of national courts, which

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<sup>3</sup> I provide the translation in English. Another translation in English may be found at the website: <https://www.constituteproject.org/>

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could potential become targets of ‘forum shopping’ for the prosecution of any international crimes, committed by foreigners anywhere in the world. Therefore, the national law prescribes that the provisions of criminal law, which incorporate the Rome Statute articles, shall be applicable to Greeks and foreigners, when the relevant crimes (including international crimes) are committed either in Greece, or against Greece or a Greek citizen.

Furthermore, the national law establishes that there are no statutory limitations for international crimes or for the penalties imposed thereof. Regarding the jurisdiction, the Three-Judges Appeals Court in Athens is competent to try any international crimes, regardless of their gravity.

Finally, according to the Law 3948/2011, none of the implementing provisions regarding the Rome Statute cannot result in the infringement of the fundamental rights and principles recognized and protected by the Constitution, the European Convention for Human Rights and the International Covenant on Civil and Political Rights.

## **2. Amendments to the Rome Statute**

Greece has participated in the Review Conference in Kampala, having been an active member of the Working Group on the definition of the crime of aggression. During the negotiation period leading to the Review Conference, Greece and Portugal submitted a proposal on the relationship between the Security Council and the ICC and contributed to overcoming an impasse during the negotiations. Specifically, during the third session of the Preparatory Commission (29 November-17 December 1999) of the Working Group on the Crime of Aggression, Greece submitted the following proposal:

‘Proposal submitted by Greece and Portugal

1. For the purposes of the present Statute, aggression means the use of armed force, including the initiation thereof, by an individual who is position of exercising control or directing the political or military action of a State, against the sovereignty, territorial integrity or

- political independence of a State in violation of the Charter of the United Nations.
2. The Court shall exercise its jurisdiction with regard to this crime subject to a determination by the Security Council, in accordance with article 39 of the Charter of the United Nations.
  3. When a complaint related to the crime of aggression has been lodged, the Court shall first seek whether a determination has been made by the Security Council with regard to the alleged aggression by the State concerned and, if not, it will request, subject to the provisions of the Statute, the Security Council to proceed to such a determination.
  4. If the Security Council does not make such a determination or does not make use of article 16 of the Statute within 12 months of the request, the Court shall proceed with the case in question.’<sup>4</sup>

An amended version of this proposal was finally adopted at the Review Conference. The amendment refers to the time limit (from 12 months to 6 months), within which the Security Council has the possibility to determine an act of aggression, before the International Criminal Court starts an investigation on the crime of aggression. The final text of the Resolution on the crime of aggression at Kampala concerning this issue reads as follows:

‘Article 15 bis

Exercise of jurisdiction over the crime of aggression

(...) 6. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary -General of the United Nations of the situation before the Court, including any relevant information and documents.

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<sup>4</sup> Proposal submitted by Greece and Portugal, Doc. PCNICC/1999/WGCA/DP.1, <http://legal.un.org/icc/documents/aggression/aggressiondocs.htm>

7. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

8. Where no such determination is made within six months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression, provided that the Pre-Trial Division has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15, and the Security Council has not decided otherwise in accordance with article 16.<sup>5</sup>

Greece did not propose any new crimes to be inserted in the Rome Statute and has voted in favor of including the crime of aggression in the Rome Statute. However, until today, Greece has not ratified the amendments to the Rome Statute. According to the Global Institute for the Prevention of Aggression and informal information, Greece is among the countries that are currently actively working on the ratification of the amendments on the crime of aggression.<sup>6</sup>

### **3. National case-law regarding international crimes after the ratification of the ICC Statute**

Following the ratification of the ICC Statute and the adoption of the two aforementioned national Laws, no trials of international criminals have taken place before national courts in Greece until now.<sup>7</sup> Given the jurisdictional clauses provided in national law, such a development is understandable, since national courts have jurisdiction to try international crimes either committed in Greece or against Greece or Greek citizens.

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<sup>5</sup> Resolution RC/Res.6, Adopted at the 13th plenary meeting of the ICC Review Conference, on 11 June 2010, by consensus. [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf)

<sup>6</sup> <http://crimeofaggression.info/the-role-of-states/status-of-ratification-and-implementation/>

<sup>7</sup> My research focused on the following databases: 1) Oxford Reports on International Law in domestic courts (thematically and by jurisdiction) 2) Nomos, the biggest legal database of national case-law in Greece (on the basis of the articles of the two relevant national laws and 3) the Athens Bar legal Database of national case-law, dsanet.gr.

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There is case law on civil claims against Germany brought before national courts in Greece by victims of international crimes committed by Nazi Germany during the Occupation. However, these cases are not criminal cases and do not concern the prosecution of individuals accused of international crimes.

There were a few trials of war criminals in Greece after the World War II during the 1940's before the Special Military Court of Athens. However, the analysis of these trials, as they took place long before the adoption of the ICC Statute, escapes the scope of this report.

#### **4. Contribution to international criminal law**

The relationship between domestic law and international law in Greece is determined by a strong deference to international law. The Greek Constitution is a relatively 'open' Constitution towards international law, since it accords a higher legal status to national laws implementing international treaties and international customary law than to other national provisions. Pursuant to Article 2 of the Constitution, Greece adheres to the generally acknowledged rules of international law and pursues the strengthening of peace. Article 28 (1) provides that generally accepted rules of international law and international treaties, once ratified and incorporated into the national law, are an integral part of the domestic law of Greece, and prevail over any contrary statutory provision. Therefore, treaties and generally accepted rules of international law are superseded only by the provisions of the Constitution itself. The Rome Statute, as it has been ratified and become integral part of the domestic law, prevails over any other contrary statutory provision.

Among the first ever members of the International Law Commission was Jean Spyropoulos, who has written extensive reports on the issue of aggression under international Law. He served as Special Rapporteur on the issue of definition of aggression since 1951.

Greece's role during the negotiation period leading to the Review Conference was crucial and it is highlighted above under section 2 'Amendments to the Rome Statute'. By proposing that the Security Council may deal with an act of aggression within a specific deadline, before the ICC

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can initiate an investigation, Greece and Portugal contributed to overcome the stillness of the negotiating procedure. Greece's proposal was amended with regards to the period of time that the Security Council has from 6 months to 1 year, and it was finally adopted by the Review Conference in 2010.