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PERMANENT MISSION OF GREECE
GENEVA

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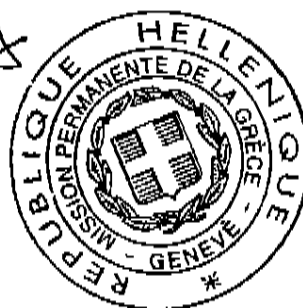
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NOTE VERBALE

The Permanent Mission of Greece to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and reference made to the latter's Note Verbal GVA-0198 dated 10.5.2013 (concerning information on independence of judges and lawyers, military justice) has the honor to convey a relevant reply provided by the competent Greek authorities (Ministry of National Defense)

The Permanent Mission of Greece to the United Nations Office at Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

AA



Geneva, 11 June 2013

To:
-The Office of the High Commissioner for Human Rights
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Attached: 3 pages



**HELLENIC MINISTRY OF NATIONAL DEFENCE
MILITARY JUSTICE DIRECTORATE**

Athens, 10 June 2013

Questionnaire on military justice

The answers to the questionnaire concerning the Greek Military Justice System:

- 1) The military justice system of Greece is based on the provisions of the Greek Constitution (article 96 §4) and also in the provisions of the Law 2287/1995 (Greek Military Penal Code) and the Law 2304/1995 (Code of the Judicial Corps of the Greek Armed Forces).
- 2) The Greek Military Justice is autonomous from the rest of the Greek Judicial system and administratively attached to the Ministry of Justice. However, the Military Justice is independent from the executive power as the independence of the members of the Judicial Corps of the Greek Armed Forces is explicitly foreseen by the provisions of the Greek Constitution and Laws. There are autonomous Councils deciding on promotions and generally on any alteration of the status of the members of the Judicial Corps of the Greek Armed Forces, which are subject only to the Constitution and Laws regarding their judicial duties.
- 3) The Greek Military Courts are mainly consisted by members of the judicial Corps of Armed Forces, which have a solid legal education, and also by members of the armed Forces, from the rank of Captain and above, as a minority. Specifically, the Military Courts sit either with five judges (3 members of the Judicial Corps who have legal education and 2 officers of the Armed Forces, who actually have the role of the jury) or with three judges (2 members of the Judicial Corps and 1 officer of the Armed Forces). The Prosecutor is always a member of the Judicial Corps with a legal education. The secretary of Military Courts is an officer who has received a special training. The advocates of the defendants are lawyers and the defendants have exactly the same rights as the defendants before the ordinary Greek Criminal Courts.

- 4) The Greek Military Justice has jurisdiction only over the military personnel and never over citizens according to an explicit provision of the Greek Constitution (article 96 §4a) and the Greek Military Penal Code (Law 2287/1995, article 193: "under the jurisdiction of the military courts are subject all the members of Armed Forces at the time the offense was committed and the prisoners of war"). A civilian can never be regarded as a military if he hasn't acquired by any lawful way its military capacity.
- 5) Even in times of war, there are no different provisions in the military penal code regarding the civilians' subject to the military courts jurisdiction, unless they are prisoners of war.
- 6) The jurisdiction of the Greek Military Courts depends only on the status of the offender as a military person. All the members of the Greek Armed Forces are subject to the Military Courts not only for crimes related to the service execution but for all criminal offenses.
- 7) The same answer applies from above. Regardless of the status of the victim, the crucial factor for the jurisdiction of the Greek Military Courts is the status of the offender as a military person.
- 8) The guarantees of personal and operational independence of judges apply also to the members of the Judicial Corps of the Greek Armed Forces. The only difference is that they are paid as officers of the armed forces and not as judges, although they have the same duties and obligations under the Constitution and the Laws. The recruitment of the members of the Judicial Corps (military judges and prosecutors) is done by unbiased examinations on legal courses, while they must already have the status of a lawyer. Their promotions and transfers are approved by special and independent Councils and not by the Councils related to the military personnel. The military judges and prosecutors are subject to independent disciplinary rules, contained in a special Law (2304/1995) and not to the disciplinary provisions concerning the other members of the Greek Armed Forces.
- 9) The Prosecutor, as a member of the Judicial Corps of the Armed Forces, has legal education, stands outside the chain of command of the army and is hired after his successful participation in an examination procedure, with the former identity of a lawyer like all members of Judicial Corps of Armed Forces as well. The Prosecutor is subject only to the Constitution, the Laws and his conscience, without having the obligation in obeying orders in any way, for the performance of his duties. Both military judges and military prosecutors are members of the Judicial Corps of the Armed Forces and have the same guarantees of personal and operational independence as the other judges in Greece.

- 10) The defendant, who is always a military person and not a civilian, has always the right to hire a civilian lawyer to defend its rights. The same happens with the civil plaintiff, who may be either a military person or a civilian. The defense counsel (who is a civilian lawyer) may accompany the accused military person at every stage of the criminal proceedings. The provisions of the Greek Code of Criminal Procedure, which are applicable to the ordinary criminal courts are also applied to the military Courts under an explicit provision of the Greek Military Penal Code (article 213) and therefore the accused military person tried by military courts has the same rights as any civilian accused and tried by the ordinary courts of Greece.
- 11) The military prosecutor is bound by the provisions of the Code of Criminal Procedure applied to the ordinary criminal courts and by the Greek Constitution as well. In case he violates his duties in any way, he/she is not subject to the disciplinary jurisdiction of the army, but to an independent Disciplinary Council, according to the provisions of the Disciplinary law applied to members of the Judicial Corps of the Armed Forces (Law 2304/1995). Therefore, whether a prosecution or interrogation e.t.c. shall be ordered, is specified by laws and not by the chain of command.
- 12) The defendant has the same civil and political rights as any other defendant tried by the ordinary courts, such as the right to a fair and quick trial and all of the rights set out in article 9 of ICCPR.
- 13) The victim of a criminal act, can bring an action for damages before a military Court. He/she can exercise the right to civil law suit for the restoration of the crime, both in military courts (with the reservation of the amount to be claimed by the civil courts) and in civil courts, under the provisions of the Greek Code of Criminal Procedure.
- 14) The convicted military person may submit an appeal to the Supreme Military Court of Athens (Military Court of Appeal) consisted only by members of the Judicial Corps of Armed Forces and – in case the decision on the appeal is dismissive – he has the right to turn to the Supreme Court of Greece (Areos Pagos) requesting for cassation, in accordance with the provisions of the Greek Code of Criminal Procedure.