

## The Prosecution of Economic Crime in Hellas

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### Abstract

*Today in Hellas during political and economical institutions crisis, the topical economically, journalistic, communicationally but also politically item is the prosecution of economic crime. The reasons are obvious. With the consequences of economic crisis be perceptible in all, the collapse of the tax revenue mechanism (if never existed an organized tax revenue mechanism in Hellas), the continuously increase of deficits of government funds, the weakness of combating the sovereign phenomenon of tax evasion and underground economy, are seeking ways of combating the economic crime. Ways which will allow in the state to increase incomes, but at the same time as long as this can become reality, via the effective action of competent institutions in this sector, to be discouraged the citizens of committing offences in sectors which related with economic activities.*

**Key words:** Economic and Finance Crime, Economic Public Prosecutor, Economic and Finance Crime Unit (SDOE), Hellenic Police (HP), Hellenic Coast Guard (HCG), Hellenic Financial Intelligence Unit (FIU)

### Introduction

The main Law Enforcement Agencies (LEAs) that are activated in Hellas for combating the phenomenon of economic crime, are the Finance and Economic Crime Unit (SDOE), the service of Economic Police of Hellenic Police (HP) and the Hellenic Financial Intelligence Unit (FIU). It is noted that the Hellenic State has established also and other institutions and authorities that are able to enforce duties of combating the economic crime, as Public Taxes Services (DOY), the Custom Offices, the Controlling Centers, the Economic Inspectors etc. Duties of combating the phenomenon of economic crime have been also assigned to the Hellenic Coast Guard (HGC).

Main characteristics of the Hellenic public administration recommend the inefficiency, the misconduct and the corruptness, (Hellas possesses the 80th place via 180 states according to the annual Report of the international organization INTERNATIONAL TRANSPARENCY). These have led the tax evasion in amounts of 10-13 billion Euros or the 5-6% of Gross National Product (GNP) and the underground economy amounts in 25-28% of GNP or 54-61 billion Euros, rendering Hellas champion in negative economic indicators between the countries of Organization for Economic Co-operation and Development (OECD) (ELIAMEP 2011).

Aim of this present shortly study is the description of the main LEAs that are activated in the combating the economic crime in Hellas and the critical approach of their operation. In this frame, it is essential to be developed the institution of economic public prosecutor that has been established in Hellas in the last few years, as well as the problems that it faces in its operation. It is noted that in Hellas has not been established the institution of Juridical Police (Korontzis, 2011). Finally, the study will be completed with the presentation of conclusions - proposals that was exported from this.

### 1. The economic situation in Hellas. Basic characteristics

As it is has been known, Hellas from spring of 2010 up today is under International Economic Surveillance, since the Hellenic state could not and still cannot, correspond in its economic obligations (excessive public debt and deficits) (O Kosmos tou Ependyti, 2011). The reasons for the current situation are many, have been discussed a lot and they still are discussed extensively [indicatively are mentioned certain texts as for the particular subject exists a capable bibliography and articles (Lygeros, 2011), (Vavouras, 2011), (Markezinis, 2011), (Kefalogiannis, 2010), (Giannakou, 2010)]. Concisely can be said, that further the general international economic crisis, the Hellenic Governments proceeded in the last thirty years in thoughtless lending, did not develop productively - investmently the inflows of Community capitals, they did not face the structural problems of Hellenic economy, they created a enormous public sector with main characteristic the enormous number of the employees and the low quality in the provided services.

The growth for some time was supported by the continuous lending, which was not turned in productive activities but in the consumption. It was not also faced the tax evasion (expenses of 13 billion Euros or 5%-6% of the GNP was loosed by Hellas each year from the tax evasion) (ELIAMEP, 2011), as also the underground economy and the distortions of the Hellenic economy.

All these in combination with the corruptness that dominates in Hellas (Kostarelou, 2011), the opacity which dominates in the processes of the majority of the transactions with the public sector, the complexity of the tax system, which make difficult each familial and professional budget, the overregulation that acts suspensively in the productive investments but also contributes in the corruptness (Mitsios, 2011), (Mpenea, 2012), the slow or even insufficient performance of justice, the penal immunity of politicians who led Hellas to this situation, claiming that they will bring Hellas in the “right street”, those that led this state here, have created explosive situations. Situations that have ejected the unemployment in a percentage of 19% approximately, workforce is escaping in the abroad in order to find work, the shrinkage of wage and pensions etc.

Despite the forceful and painful measures for the Hellenic population, who is called to survive in difficult conditions and was led in this position by the disability of the Hellenic political leaderships in the last forty years, the main characteristics of this crisis in Hellas remain as follows:

- A. - the dynamic of debt remains unfavorable,
- B. - the dynamic of competitiveness regarding mainly the “structural” competitiveness that is connected with the creation of friendly environment to the enterprising activity is negative,
- C. – there are existing problems in the operation of public sector, with enormous number of employees, low efficiency and excessive expenses,
- D. - problems in the promotion of structural changes in closed professions, in the system of health etc
- E. - increase of recession,
- F. - losses of jobs (composition of Governor of Hellenic Bank, 2011).

The underground economy and the tax evasion, as have mentioned before dominate, and the Competent Authorities of Hellas via the responsible controlling mechanisms show feeble and incompetent to face them (To Vima, 2011). The economic crime also dominates, despite the establishment of special services but also entrusting of special duties to other services in order to combat the various forms of economic criminality.

## ***2.- Law Enforcement Agencies***

### **2.1 Finance and Economic Crime Unit (SDOE)**

SDOE according to the legal practice that characterizes the public policies of Hellenic governments during the last thirty eight years (38), for instance overregulation, changed title but no and duties via four acts in the last fifteen years.

More specifically, SDOE was established by the article 4 of Law 2343/1995 (A' 211) and was under the supervision directly by the minister of Finance. It was also created a position for a Special Secretary in order to direct this service.

Flowingly, according to the article 30 of Law 3296/2004 (A' 253), was established a new service with the title “Service of Special Controls” (YPEE - YIIEE), which was independed directly by the minister of Economy and Finance (now ministry of Finance). With the beginning of operation of the last one, automatically was stopped the operation of SDOE (mainly as far as concern the name of the institution) as it had been established basically according to article 4 of Law 2343/1995. In this new service head was a Special Secretary [article 28 Law 1558/1985 (A' 137)].

The organization of this service (YPEE - YIIEE) of the Ministry of Finance and Economy (now ministry of Finance) was regulated by the provisions of Presidential Degree (PD) 85/2005 (A' 122). Flowingly with the article 88 & 1 of the Law 3842/2010 (A' 58), the Service (YPEE) which had been established with the article 30 of Law 3296/2004 were renamed as SDOE. Substantives and formally, after fifteen years (1995-2010) from the establishment of this service and after changes of titles without meaning, legally this service in question turned there from where had started.

The mission of SDOE according to article 2 &1 of PD 85/2005, is “the revelation and fighting of centers of economic crime, big tax evasion and smuggling, competence of ministry of Economy and Finance, the control of capitals movement, the control of goods and services distribution, as well as the possession and distribution of prohibited or under special arrangement types and substances, the control of the right enforcement of the provisions that are related with the national and European Union (EU) subsidies, as well as provisions that are related in the protection of public property, aiming at the prevention of relative infringements and illegal actions, the willing conformity of juveniles, the prosecution of responsible perpetrators, as well as the protection of the general economic interests of Hellenic State, national economy and EU”

The personnel of SDOE according to paragraph 2.[i] of the above mentioned article, can make arrests and interrogations of persons and searches of means, goods, persons, shops, deposits, residences and remaining spaces, as well as in the realization of special interrogative action, according to the special provisions which are in force each time and the provisions of Hellenic Code of Penal Procedure, for the offences that are forecasted by the relative legislation and are in its competence (article 5&c, of Law 3296/2004).

Its territorial competence is extended in the all Hellenic territory and their competences are exercised by the Central and the Regional Services as fixed in the provisions of PD 85/2005.

It must be mentioned that recent cases of juvenile were realized in leading and maximum executives of it (Mpenea, 2011), (Ministry of Citizen Protection, press release, 2012)

## **2.2 Hellenic Police/ Economic and Cyber Crime Unit**

With the PD 9/2011 (A’ 24) was established the Economic and Electronic Crime Unit of Hellenic Police. The service in question is a self-existent Central Service, of Police division level, under the supervision of the Hellenic Police and is overseen and checked by its Head.

It is located at the prefecture of Attica and practices its competences in the all the Hellenic territory, apart from the spaces which special provisions forecast competence of HCG.

Its mission is the prevention and repression of economic crimes, as well as crimes that are committed via the use of internet or other means of electronic communication (article 1& 2 and article 4).

For the effective implementation of its mission, has been hired stuff with special scientific and concrete academic background in sectors like economic, financier services etc (Astynomiki Anaskopisi, 266 and 269).

Regarding the prosecution of electronic crime, it is pointed out that according article 2, paragraph c, of PD 85/2005, SDOE has also competence in the search, revelation and combating of illegal transactions, frauds and activities that are held with use of electronic means, internet and new technologies (article 30&2c of Law 3296/2004) (Psarra, 2011).

It is must be noted that publications of press have reported that between the two above mentioned economic services exist conflict and competition (Staurakakis 2011)

## **2.3 Hellenic Coast Guard**

Regarding the HCG (Korontzis, 2011), which practices its competences in the rest of Hellenic Territory - in consequence of HP competences - in article 19 under the title “Division of Public Security” of PD 67/2011 (A’ 149) and more specifically in the paragraph 3a, exists forecast for the combating of the economic and electronic crime.

In the HCG according to the article 22 of the aforementioned PD has been established “Division of Drugs Prosecution and Contraband”. The division in question and according to the paragraph 1 of the same article, is responsible for the handling of economic crimes affairs that have relation with narcotics and for the prosecution of crimes that concerns the illegally import and export of virtuous and other products. In the particular sectors the HCG have demonstrated remarkable activity (Ministry of Citizen Protection/HCG, press release, 18-11-2011).

## **2.4 Hellenic Financial Intelligence Unit**

Basic legislation related on the prevention and repression of legalized the incomes from criminal activities and financing of terrorism recommends Law 3691/2008 (A’ 166).

Object of this specific law is the prevention and repression of offences of legalized incomes from criminal activities and financing of terrorism, as these offences are fixed below, as well as the protection of financier system from the dangers it includes.

As legalized of incomes according to the article 2& 2 of the above mentioned law, from criminal activities (money laundering), that are forecasted in the article 3 of the same law, constitutes the following actions:

- a) the transformation or the transfer of property knowing the fact that it emanates from criminal activities or from action of attendance in such activities, aiming at the dissimulation or the cover-up of its illegal origin or the benefit of subscription in anyone who is involved in these activities, so that he/she will avoid the legal consequences of his/her action,
- b) the dissimulation or the cover-up of truth with any means or way, as far as concern the nature, origin, disposal, distribution or use of property or in the place where it was acquired or is or the ownership of the property or relatives with this rights, knowing that this property is emanated from criminal activities or from transaction of attendance in such activities,
- c) the acquisition, possession, management or use of property knowing that at the time of the possession or the management, that the property emanates from criminal activities or from action of attendance in such activities,
- d) the utilization of financier sector with the placement in that or with the distribution via this sector of incomes that emanate from criminal activities, with purpose to anticipate legalized to this income,
- e) the constitution of organization of two at least individuals for the perpetration of one or more from the action that are reported above to the elements [a]’ until [d]’ and the participation in such organization or team.

In the paragraph 3, of the same article is fixed that legalized of incomes from criminal activities exists also when the activities from which emanates the legalization of property took place in the territory of other state, provided that these would be basic offence if they were committed in Hellas and are considered as criminal actions according to the legislation of this state.

In the paragraph 4 is fixed that financing of terrorism constitutes the offence that is forecasted in the paragraph 6 of article 187[A] of Hellenic Penal Code (HPC), as this is replaced with the paragraph 1, of the article 53 of the same law.

In article 3 are fixed the criminal activities - basic offences. More specifically as criminal activities are meant the perpetration of one or more from the following offences that are called hereinafter “basic offences”:

- a) Criminal organization (article 187 of HPC).
- b) Terrorist action and financing of terrorism (article 187 of HPC).
- c) Passive bribery (article 235 of HPC).
- d) Energetic bribery (236 of HPC).
- e) Bribery of judge (237 of HPC).
- f) Trafficking of human beings (article 323 of HPC).
- g) Fraud with computer (article 386 of HPC).
- h) White slavery (article 351 of HPC).
- i) Forecasted in articles 20, 21, 22 and 23 of Law 3459/2006 “Code of Law on Narcotics” (A’ 103).
- j) Forecasted in the articles 15 and 17 of the Law 2168/1993 “Arms, munitions, explosive matters etc” (A’ 147).
- k) Forecasted in articles 53, 54, 55, 61 and 63 of Law 3028/2002 “For the protection of antiquities and in general the cultural heritage” (A’ 153).
- l) Forecasted in article 8 paragraphs 1 and the 3 of the LD 181/1974 (A’ 347).
- m) Forecasted in article 87 paragraphs 5, 6, 7 and 8 and in the article 88 of Law 3386/2005 “Entry, stay and social integration of nationals of third countries in the Hellenic Territory” (A’ 212’).
- n) Forecasted in the articles 3,4 and six of the Law 2803/2000 “Protection of economic interests of European Communities” (A’ 48).
- o) Bribery of alien public employee (functional), as it is forecasted in the article 2 of the Law 2656/1998 “for the fighting of bribery of alien public functional in international enterprising transactions” (A’ 265).
- p) Bribery of employees of European Communities or of Member States of European Union, as it is forecasted: a) in articles 2, 3 and 4 of the Convention of fighting of bribery in which are included employees of European Communities or Member States of European Union, which have been ratified by the article 1 of Law 2802/2000 (A’ 47) and b) in the articles 3 and 4 of the Law 2802/2000.

- r) Forecasted in the articles 29 and 30 of the Law 3340/2005 “For the protection of Capital market from transactions of persons that possess preferential information and transactions of guidance of market” (A´ 112).
- s) Each other offence that is punished with sentence of deprivation of freedom, which the minimal limit is up to six months and from which results financial profit.

It should not be overlooked that for the prevention and repression of legalized of incomes from criminal activities also have been established a responsible Committee, with the name “Committee of fighting of legalized of incomes from criminal activities and financing of terrorism”, based in Attica and is under the supervision of the Minister of Economy and Finances. With decision of this Minister is determined the place of installations of this committee.

The committee is constituted by the Chairman and eight members, whose their service is biennial and can be still renewed for one time. Chairman of the Committee is fixed with his/her assistant a Public Prosecutor by decision of the Higher Juridical Council and is complete employment.

The members of Committee are named with common decision of Ministers of Economy and Finance (now ministry of Finance) and Justice, which is published in the Newspaper of Government. As members are named: a) an executive from General Management Economic Political Directorate and one of the Service of Special Controls that is proposed by the Minister of Economy and Finances (now ministry of Finance), b) a executive from the Ministry of Justice that is proposed by the Minister of Justice, c) an executive from the Headquarters of Hellenic Police that are proposed by the Minister of the Ministry of Citizen Protection, d) an executive from the Bank of Hellas that is proposed by the Governor of Hellenic Bank, e) an executive from the Committee of Capital market that is proposed by the Administrative Council of Committee of Capital market, f) an executive from the Committee of Monitoring of Private Insurance that is proposed by the Administrative Council of Committee of Monitoring of Private Insurance and g) an executive from the Committee of Accountant Standardization that is proposed by the Administrative Council of Committee of Accountant Standardization and Controls. At the same process is proposed and named a assistant for each regular member.

The members of Committee should be distinguished for their scientific training, their morals and their professional faculty and experience in banking, economic or legal sector.

The chairman and the members constitute the Plenary of the Committee which is found in quorum when is attended the Chairman and at least five of its members, decides at absolute majority of its present members and in the event of tie of votes prevails the vote of the Chairman. In the decisions of Plenary are always registered and the existing opinion of minority.

According to the paragraph 11 of the same article, the Plenary of the Committee can decide the conducting of preliminary investigation and to determine in any case the employee or the member of the Committee that will conduct the preliminary examination according to the provisions of Hellenic Code of Penal Procedure. The effectiveness of constitution of this Committee in question is judged at least as insufficient, despite the broadness of competences that has been assigned to it.

### **3. Economic Public Prosecutors**

For the assistance of employee’s work of the Ministry of Finance, the State determined the institution of Public Prosecutor, which practices concrete duties. More specifically in the article 2 and 3 of the Law 3943/2011 (A´ 66), titled “Public Prosecutor of Economic Crime” are fixed that “in the duties of Public Prosecutor of Economic Crime, whom his/her competence is extended in the all the Hellenic Territory, belong the surveillance, the guidance and the co-ordination of the actions of the general preliminary examination employees according to article 33&1 of the Hellenic Penal Code of Criminal Procedures, referring also to specialized preliminary examination employees, especially employees of SDOE, Custom Offices, ELYT and of tax evasion and control mechanisms of ministry of Finance in general, during the conducting of searches, preliminary examination or preliminary investigation for the verification of performance of all kinds .....”.

Remarkable of this legal regulation in question, is the fact that the Public prosecutor of Economic Crime according to the paragraph 4 of the above mentioned article has the surveillance only of the services that are reported in paragraph 3 (as were analyzed above) and as a consequence has no responsibility about the services of Hellenic Police.

The service of the Economic Police of Hellenic Police was recently established, but it does not exist forecast of legal provision so that it will under the guidance and monitoring of the responsible economic public prosecutor. Besides above it must be mentioned that in Hellas the juridical and legislative power are completely controlled by the executive power and concretely by the Government. The last one legislates and also selects the juridical leadership's in order to control the imposition of justice in critical sectors that it is interests.

Recently the topicality in Hellas was occupied by the submission of resignations of the responsible economic public prosecutors, which finally recalled. The public prosecutors in question invoked interventions and indications from various factors in critical affairs/cases that they handled, with regard to the perpetration of serious economic offences. This incident is indicative about the situation and the mentalities that prevail in Hellas in particular and not only sectors (Kalarrytis, 2012) (Kalampaliki, 2011), (Aulonitis A., 2012)

It is marked that the Hellenic Justice has asked from the Hellenic Government to take measures against the tax evasion and more specifically the modification of article 99 that concern the bankruptcy (Bankrupt Code), changes in the legal regime of custodies that concerns the tax evasion (Kathimerini, 2011) etc.

### **Conclusions**

From the above legal provisions result the following interesting elements:

In Hellas are existing three big administrative formations (SDOE, HP and HCG) for the prosecution of the economic and electronic crime. The first has competence of action in all the Hellenic Territory and rest two in concrete territorial places, as they are determined by the familiar legal provisions. Obviously is created the known phenomenon that characterizes the pathogenic of Hellenic public administration, the overlapping of the competences.

While exists - has been determined - responsible public prosecutor for economic crime, as results from the legislative framework which was described above, he/she directs and survey only the actions and searches that are conducted by the executives of SDOE as well as the rest of the staff of the responsible controlling mechanisms of Ministry of Finance. There is no relative legal provision for subordination of the Economic and cyber Crime Unit of HP in his/her jurisdiction, as also happens for HCG, in case where executives are conducting searches for economic crimes prosecution. Something which would ensure the unique searches in combating the phenomenon of economic crime. The executives of HCG and HP when acting as referring to preliminary examination/investigation are under the surveillance and guidance of public prosecutors of common /penal justice and under the surveillance of the specialized Economic Public Prosecutor as was mentioned before.

In periods where the Hellenic economy is deprived of resources, creates query what kind of needs led to the establishment of a new service for the combating/prosecution of the phenomenon of economic criminality. Needs which mean crewing of service with individuals from the existing personnel, engagements of new specialized personnel and supplies of suitable equipment, in order the specialized executives to enforce effectively their competences that have been assigned to them by the State. And if existed these sources why they were not been disposed for the crewing of SDOE services;

As results from the being legislation, controlling mechanisms for the combating of the economic crime exist and they are enough. What is asked each time is their effectiveness.

The creation or even the fusion of all institutions and services in one only service, staffed with worked and specialized executives under the surveillance and guidance of responsible economic public prosecutor, could lead to most optimal practices for the combating of economic crime. It would also in a large extent if this institution could take place under the political surveillance of permanent official undersecretary (which would allocate the suitable know-how and experience), institution that even if it is forecasted in the Constitution is inactive. His/her placement would ensure constantly in the application of concrete policies and avoid spending time for briefing each time of special secretaries. Furthermore his/her permanent permanence would ensure that would not exist furthermore the Hellenic political practices of executive power innervations, in order to achieve favorable treatment in specific issues economic crime.

The argument that the establishment of new services with relevant prosecution work which depend by different institutions, leads via the rivalry in combating completely criminality is not valid.

Beyond the fact that there are no elements that confirm the particular statement also creates confusion to the citizens the existence of many similar in a way services, Hellas allocates many controlling mechanisms, however their results in the combating the phenomenon of criminality cannot be considered as satisfactory. It does not remain than to be evaluated the action of controlling institutions for the prosecution of economic crime in the following years - as requires a right staff planning of public policy - and in particular under unfavorable economic conditions for the citizens and Hellas, and then in case that the results are not efficient, to rebuilt the area of prosecution of economic crime in the direction was reported, which possibly is the better holistic approach for the achievement of most optimal results.

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