PERMANENT MISSION OF GREECE
GENEVA

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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, following the latter's Note Verbale, dated 17 June 2013, on the questionnaire of the Working Group on arbitrary detention relating to the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty, has the honour to submit the attached response, by the Greek Ministry of Justice, Transparency and Human Rights.

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.

Geneva, October 9, 2013

To: **The Office of the High Commissioner for Human Rights**
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PERMANENT MISSION OF GREECE

CONTRIBUTION BY THE MINISTRY OF JUSTICE, TRANSPARENCY AND HUMAN RIGHTS TO THE QUESTIONNAIRE BY THE WORKING GROUP ON ARBITRARY DETENTION

I. (Question 1a of the Questionnaire). **Law 2462/1997** (Official Gazette, A' 25, 26/2/1997), "Ratification of the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty", incorporated the International Covenant on Civil and Political Rights into Greek domestic legislation.

II. (Question 1a of the Questionnaire). Especially concerning provisions of Article 9 of the Covenant, they find their general application on **Article 6 of the Greek Constitution**, which provides that "**1.** No person shall be arrested or imprisoned without a reasoned judicial warrant which must be served at the moment of arrest or detention pending trial, except when caught in the act of committing a crime. **2.** A person who is arrested in the act of committing a crime or on a warrant shall be brought before the competent examining magistrate within twenty-four hours of his arrest at the latest; should the arrest be made outside the seat of the examining magistrate, within the shortest time required to transfer him thereto. The examining magistrate must, within three days from the day the person was brought before him, either release the detainee or issue a warrant of imprisonment. Upon application of the person brought before him or in case of force majeure confirmed by decision of the competent judicial council, this time-limit shall be extended by two days. **3.** Should either of these time-limits

elapse before action has been taken, any warden or other officer, civil or military servant, responsible for the detention of the arrested person must release him immediately. Violators shall be punished for illegal detention and shall be liable to restore any damage caused to the sufferer and to pay him a monetary compensation for pain and suffering, as specified by law. **4.** The maximum duration of detention pending trial shall be specified by law; such detention may not exceed a period of one year in the case of felonies or six months in the case of misdemeanours. In entirely exceptional cases, the maximum durations may be extended by six or three months respectively, by decision of the competent judicial council".

III. (Questions 6-7 of the Questionnaire). Furthermore, issues on detention or arrest are regulated in details by the **Code of Criminal Procedure** (articles 274 – 287 "arrest and temporary custody" and 533 – 535 "compensation of those who were detained and were irrevocably acquitted afterwards"), as following:

Article 275

Flagrant offences

1. In flagrant felonies and misdemeanours, the investigating officers referred to in articles 33 and 34, as well as any police officers, are obliged, while any citizen is entitled, to arrest the perpetrator in compliance with the provisions of the Constitution and article 279 of the Code with an aim to be handed over to the prosecutor.
2. In offences prosecuted by indictment, no arrest is allowed, unless the indictment has been previously submitted, even orally, to the person entitled to arrest the perpetrator (articles 42 and 46).
3. In flagrant felonies and misdemeanours, the competent prosecutor at the magistrate court is entitled to issue an arrest warrant for the perpetrator under prosecution, pursuant to articles 276 and 277. Such warrant may be revoked or abolished by the prosecutor.

Article 276

Arrest by warrant

1. Except for the cases referred to in article 275, no person can be arrested without a special and fully justified warrant issued by the investigating judge or decree issued by the judicial board, which shall be served at the time of arrest, including by producing to the arrested person of the relevant section of the Criminal Search Bulletin or the special search circular, when they mention the identity particulars of the prosecuted person, the number and date of the decree or arrest warrant, the investigating judge who issued it and the offence they relate to and the printed signature and seal of the director of the Central Criminal Services Office at the end.
2. The investigating judge shall issue the arrest warrant after the prosecutor has expressed his opinion and only in cases when detention is

allowed under article 282. In such cases, arrest and detention may also be ordered by the judicial board.

3. The arrest warrant shall comprise the name, surname, residence and an accurate description of the person arrested, a note about the offence with which he is charged and a reference to the article that provides for such offence. It shall also have the official seal and signature of the investigating judge and the court clerk.

Article 277

Enforcement of the arrest warrant

1. The arrest warrant issued legitimately shall be enforceable throughout the country. The prosecutor shall procure its enforcement by the authorities assigned with the enforcement of warrants.

2. If the defendant is situated at another judicial region, the prosecutor may transmit the arrest warrant directly to the local authority assigned with the enforcement of warrants.

3. All civil and military authorities, on production of the warrant, must assist the arrest without delay and within the limits of their powers.

4. An arrest warrant relating to a military officer shall be enforced pursuant to the relevant provisions of the Military Penal Code.

Article 278

Mode of arrest

1. No arrest can be made: a) for the duration of the function in a building intended for divine worship, b) at night in a private residence, unless the resident so requests explicitly or unless the formalities of article 254 are observed. If such provision is not observed, disciplinary penalties shall be imposed upon the arresting authorities.

2. The arresting authorities must treat the arrested person with all possible courtesy and respect his honour. This is why they must not use force, unless there is such need, and cannot constrain him, unless the person resists arrest or is suspect of fleeing.

Article 279

Handing over of the defendant

1. The person arrested in flagrant offence or by warrant shall be handed over to the competent prosecutor within twenty four hours of the arrest and, if the arrest was made outside the prosecutor's seat, within the period that is absolutely necessary for his transportation. In case of felony or when the arrest was made by warrant of the investigating judge, the prosecutor shall refer the arrested person to the investigating judge and, in case of misdemeanour, he shall act pursuant to articles 43, 47, 246§3 and 417.

2. If the arrested person questions the attributed identity or claims that the arrest warrant or decree has ceased to be valid, he shall be taken to one of the investigating officers of the place of the arrest, as referred to in article 33. The investigating officer shall examine the identity and seek information, using the fastest medium, on the validity of the warrant or decree. If the identity was not proved or if the arrest warrant or decree has ceased to be valid or if the warrant has not been issued according to the required formalities, the arrested person shall be released immediately. In any other event, the investigating officer shall hand him over, along with his report, to the authority that requested the arrest, which may also examine his identity.

Article 280

Seizure of evidence

All documents and other items found on the arrested person that relate to the offence shall be seized and surrendered, along with the arrested person and the relevant report, to the competent prosecutor or investigating judge.

Article 281

Detention of the arrested person

The arrested person shall be detained in prisons for persons awaiting trial or in police detention facilities or, according to the circumstances, in his house under guard (however, at his own cost in such case), until the detention warrant is issued or until he is released.

Article 282

Detention and restrictions

1. For the duration of the preliminary proceedings, when there are serious indications that the defendant is guilty of a felony or misdemeanour punished by a custodial sentence of no less than three months, restrictions may be ordered, if they are considered absolutely necessary to achieve the objectives referred to in article 296.
2. Restrictions include bail, the obligation of the defendant to appear before the investigating judge or another authority at certain intervals, the prohibition of traveling to or residing at a specific place or abroad, the prohibition of associating with or meeting certain persons. In case of minors, one or more of the reforming measures laid down in article 122 of the Penal Code may also be ordered as restrictions.
3. Detention in lieu of restrictions may be imposed – when it is justifiably considered that the latter are not sufficient – if the requirements referred to in the first paragraph of this article are met, only if the defendant is being prosecuted for a felony and has no known residence in the country or has made preparations to facilitate his fleeing or has been fugitive in the past or has been found guilty of prisoner escape or violation of residence restrictions, when the foregoing shows his intention to flee, or

if it is justifiably considered that, if released, it is very probable, as shown by prior irrevocable convictions for similar offences, that he will commit more offences.
If life imprisonment or a custodial sentence of no more than twenty years are threatened by law for the offence with which the defendant is charged or if the offence was committed repeatedly or in the context of a criminal or terrorist organisation or if there is a large number of victims, detention may also be imposed when, on the basis of the specific features of the offence, it is justifiably considered that, if released, it is very probable that he will commit other offences. The severity alone of the offence under the law is not sufficient to impose detention.
In very exceptional cases and when it is justifiably considered that restrictions are not sufficient, detention may also be imposed to the misdemeanour of recurrent homicide by negligence when it is established that the defendant intends to flee, on the basis of the criteria referred to in the first sentence of this paragraph. In such case, the maximum length of detention shall be no more than six months,
4. If the defendant violates the restrictions imposed to him for a felony or misdemeanour, such restrictions may be substituted with detention under article 298.
5. Paragraph 3 shall also apply to minor defendants older than fifteen years of age, provided that the law threatens a custodial sentence of no less than ten years for the offence with which he is charged. In such case, the period of detention cannot be more than six months and it may be prolonged for only three months by the court in the case referred to in the second sentence of paragraph 1 of article 291. The violation alone of restrictions imposed to a minor cannot lead to detention.

Article 283

Detention warrant

1. In the cases referred to in article 282, the investigating judge may, immediately after the plea of the defendant, either release him or issue an order setting restrictions or other conditions or, if the requirements of the preceding article are met, issue a special and justified detention warrant against him, in any event with the written consent of the prosecutor. Before expressing his opinion, the prosecutor is obliged to hear the defendant and his attorney. "In case of dispute about detention or requirements to be set, the three-member magistrate court shall decide within twenty four hours of the defendant's plea; it shall meet as a board and shall decide after hearing the prosecutor and the defendant. If the interrogations are conducted at the court of appeal, the three-member court of appeal shall be competent. In case of dispute about detention, the investigating judge is obliged to immediately issue an arrest warrant for the defendant, which shall remain in force until the said court issues its judgment".
2. The detention warrant or the order setting restrictions, as referred to in article 282, shall comprise, in addition to the particulars laid down in article 276§3, an accurate note about the felony or misdemeanour. The

prosecutor shall procure the enforcement of the detention warrant by the authorities assigned with the enforcement of warrants. In case of military officers, the relevant provisions of the Military Penal Code shall also be complied with.

Article 284

Detention of the defendant

1. The person against whom a detention warrant has been issued shall be taken to prisons for persons awaiting trial and shall be delivered to the warden along with the detention warrant. The relevant report to be prepared shall be included in the case file. The period of detention shall begin on the date of delivery. If, however, such person had been detained before such date, either because he was arrested in the act or by warrant, the period of detention shall begin on the date he was detained. Such date shall be specified in the detention warrant. A report shall also be prepared on the release of the detained person.
2. The prison warden shall not accept any person without a detention warrant or a decree of the judicial board ordering such detention.

Article 285

Appeal by the detained person

1. The defendant may appeal before the magistrate board against the detention warrant or the order of the investigating judge that imposed restrictions. Such appeal may be lodged within five days of detention and the clerk of the magistrate court or the prison warden shall prepare a report pursuant to article 474§1. The appeal shall be transmitted to the prosecutor at the magistrate court and shall be immediately introduced by him, along with his proposal, to the board, which shall make an irrevocable decision thereon.
2. The appeal shall not have any suspending power.
3. If the detention warrant was issued following a decree of the judicial board deciding on a relevant disagreement between the investigating judge and the prosecutor, no appeal may be lodged.
4. The magistrate board may, when processing the appeal, cancel detention or replace it with restrictions at its discretion or replace it with other conditions.
5. The investigating judge shall continue with the investigations without any interruptions, even after an appeal was lodged.

Article 286

Cancellation or replacement of detention and restrictions

1. If the investigations show that the reason for which detention was ordered or restrictions were imposed is no longer valid, the investigating judge may, ex officio or by motion of the prosecutor, cancel such

measures or submit to the board an application for the cancellation thereof. The defendant may appeal to the court of appeal board against such decision.

2. The detained person or the person to whom restrictions have been imposed may apply to the investigating judge for the cancellation of these measures or the replacement of detention with restrictions or the replacement of restrictions with other conditions. An appeal may be lodged against the order of the investigating judge before the council within five days of the delivery of such order to the applicant.

3. The investigating judge may, with the written opinion of the prosecutor, issue a justified order to replace detention with restrictions or restrictions with detention (article 298). In the latter case, the investigating judge shall also issue an arrest warrant. The investigating judge may also, under the same formalities, change the imposed restrictions to more favourable or unfavourable ones. Both the prosecutor and the defendant may appeal against this order of the investigating judge before the magistrate board within ten days. Such period shall begin on the issuance of the order (for the prosecutor) or the delivery of the order (for the defendant). The appeal and the period within which it may lodged shall not suspend enforcement.

Article 287

Length of detention

1. If the length of detention is six months or, in the very exceptional case of recurrent homicide by negligence, three months, the judicial board shall decide, by a special justified decree, whether the defendant shall be released from prison or whether detention shall continue. To this end:

"a) If investigations continue, five days before the expiry of such period, the investigating judge shall state to the prosecutor at the court of appeal, in a justified report, the reasons why investigations were not concluded and shall transmit the case file to the prosecutor at the magistrate court, who shall immediately introduce it to the magistrate board with a written and justified proposal. The clerk of the board shall notify by any means (document, telegraph, telex or fax) the defendant or his attorney in order to submit his opinion in a written memorandum, within a period determined by the chairman of the board. The defendant shall be entitled to take knowledge and a copy of the prosecutor's proposal. The prosecutor, the defendant and his attorney shall not appear before the board, but the board may, if necessary, order the defendant to appear before it, in which case the prosecutor is also summoned. The board shall then irrevocable decide whether the defendant shall be provisionally released or whether his detention shall continue. If investigations are conducted by an appeals judge, pursuant to article 29, the court of appeal board shall be competent to make this decision.

b) If investigations are concluded, the prosecutor of the court that will hear the case or the prosecutor at the court of appeal (if an appeal has been lodged against the degree), five days before the expiry of such period, shall introduce the case file with a justified proposal to the competent board pursuant to the following paragraph. The provisions of

indent (a) as regards the notification of the defendant to submit a memorandum, the receipt of a copy of the prosecutor's proposal, the non-appearance thereof before the board and the latter's decision shall apply to all other matters.

2. In any event and until a final decision is issued, detention for the same offence cannot exceed one year. In very exceptional cases and provided that the charges relate to offences punished by life imprisonment or custodial sentences of no more than twenty years, detention may be prolonged for no more than six months by a special justified decree:

a) of the court of appeal board, if the case is pending before such court following an appeal against a decree or if the case has been introduced before the court of appeal or before the mixed sworn court or if such board is competent at first and last instance; and

b) of the magistrate board in any other instance.

If the case is pending before the investigating judge and detention continues under paragraph 1, the investigating judge shall, thirty days before the expiry of maximum detention pursuant to the paragraph, transmit the case file to the prosecutor who shall introduce it along with his proposal to the board within fifteen days. In any other instance, the competent prosecutor shall, no less than twenty five days before the expiry of maximum detention pursuant to this paragraph or before the expiry of the extension already granted, submit to the competent board a proposal to extend or not the detention. "The provisions of the preceding paragraph as regards the notification of the defendant to submit a memorandum, the receipt of a copy of the prosecutor's proposal, the non-appearance thereof before the board and the latter's decision shall apply to all other matters".

3. If detention is not extended within thirty days after the expiry of the three (3) or six (6) months laid down in paragraph 1, the warrant or decree that had ordered it shall cease to be valid and the competent prosecutor shall order the release of the detained person. Release shall also be ordered on expiry of the period of extension of detention, decided by decree.

4. The provisions of paragraph 5 of article 285 and article 282 on restrictions or other conditions shall also apply to the instances referred to in this article.

5. Any doubt or dispute as regards the extension or expiry of maximum periods of detention shall be settled by the competent judicial board under paragraph 2 and the provisions of paragraph 1.a on hearing the defendant and the prosecutor shall also apply here.

Article 533

Persons entitled to compensation

Compensation to persons detained and subsequently acquitted

1. The following persons shall be entitled to seek compensation from the State:

(a) detained persons who were irrevocably acquitted by a court decree or judgment;

(b) persons detained under a sentencing judgment, which was subsequently eliminated irrevocably following the exercise of a remedy; and

(c) persons sentenced and detained who were acquitted by court judgment following a revised procedure. Moreover, any of the foregoing persons who later received a shorter sentence than the one they initially served shall also be entitled to compensation.

2. Persons who were detained by sentencing or detained under paragraph 1 shall be entitled to seek compensation even if they were acquitted because, although they committed the offence, no sentence was imposed for any reason.

Article 534
Other persons entitled to compensation

An independent claim for compensation under the same conditions can be made by the persons towards whom the sentenced or detained person had a statutory obligation of alimony.

Article 535
No right to compensation

The State shall not be obliged to compensate when the sentenced or detained person was intentionally responsible for the sentencing or detention.

IV. (Question 6 of the Questionnaire). Concerning other persons than the detainee who can initiate the procedure on behalf of the detainee, the **Code of Civil Procedure** provides for the possibility of an attorney (articles 94-105), who can represent his client before the Court, after written statement of the client.

V. (Question 4 of the Questionnaire). Greek legal system also provides for compensation in case of unlawful detention, based on the general principle of article 914 and following of the **Civil Code**, which stipulates that "the responsible of the damage of someone else, has the obligation to compensate him". The beneficiary of the upper provisions have also the right to invoke article 57 of the Civil Code which provides that "if the personality of a person is unlawfully insulted, the offended has the right to demand the cessation of the infringement and its non- repetition in the future".

VI. (Question 8 of the Questionnaire). There are no Decisions nor Opinions of the Supreme Court concerning the right of anyone deprived of his/her liberty by arrest or detention to bring proceedings before court.