

F.3230 ICC/17/AS 724

NOTE VERBALE

The Embassy of the Hellenic Republic to the Kingdom of the Netherlands presents its compliments to the International Criminal Court and, with reference to the Courts' document **ICC-ASP/11/SP/PA/12 of 26 June 2012** concerning **implementing legislation questionnaire for State Parties**, has the honour to attach herewith the answer received from the competent Greek Authorities.

The Embassy of the Hellenic Republic to the Kingdom of the Netherlands avails itself of this opportunity to renew to the International Criminal Court the assurances of its highest consideration.

The Hague, 3 October 2012

International Criminal Court
Maanweg 174, 2516 AB
The Hague

Implementing legislation questionnaire
for State Parties

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?

On the initiative of the Ministry of Justice, Transparency and Human Rights, Law 3948/2011 (Government Gazette, Part A’ 71/5.4.2011) “*Adjustment of the Provisions of Domestic Law to the Provisions of the Statute of the International Criminal Court ratified by Law 3003/2002 (A’ 75)*” was adopted.

IF YES

Part B

5. In implementing the Statute, did your Government draft a stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into preexisting law?

By Law 3948/2011, articles or substantive provisions of the Statute were not incorporated into preexisting national law, but this Law introduced new provisions of substantive and procedural criminal law into our national legislation. It should be pointed out, however, that the provisions of the Criminal Code and the Military Criminal Code, as in force from time to time, also apply to the crimes described by articles 7 to 15, Law 3948/2011, unless otherwise stipulated in this law.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

The crimes stipulated by the Statute were directly incorporated by Law 3948/2011 into our domestic law without explicit reference to the Statute.

7. Does the implementing legislation incorporate the following aspects of cooperation with the Court and if yes, how?

(a) Arrest and surrender; (b) Interim release

Law 3948/2011 introduces arrangements on judicial cooperation and regulates matters related to the request for surrender to the International Criminal Court, the arrest of the requested person, the decision on the surrender, the provisional arrest and the provisional surrender to this Court (articles 20-25).

More specifically, article 20 regulates matters relating to the submission of the request for surrender of the requested person to the International Criminal Court and specifies the documents that should accompany it. Paragraph 3 of this article stipulates that, in an urgent case, such documents may also be transmitted by any medium leaving a written or electronic trace and that in any case the transmission of the request follows thereafter, as provided for in paragraph 1. Paragraph 4 thereof deals with competing requests for the surrender of the requested person to the International Criminal Court or other court and stipulates that, in this

case, the procedures provided for in article 90 of the Statute of the International Criminal Court shall apply.

Furthermore, article 21 regulates matters relating to the arrest of the requested person, determines the actions to be carried out by the Public Prosecutor at the Appeal Court of Athens upon transmission to him of the request for surrender of the requested person, establishes the latter's right to appeal before the Council of Appellate Judges in case of dispute of his/her identity, and regulates matters relating to the appeal.

Moreover, article 22 regulates matters relating to the decision on surrender of the requested person to the International Criminal Court. In particular, it specifies the hearing procedure of the request for surrender of the requested person before the Council of Appellate Judges and the matters on which it has to decide; the Council of Appellate Judges may order the production of supplementary evidence related to them (paragraphs 1 and 2). Paragraph 3 establishes the possibility of appeal lodged by the requested person and the Public Prosecutor before the Supreme Court ("Areios Pagos") within three (3) days from the publication of the decision. Paragraphs 4 and 5 deal with the summons for the requested person to appear before the Supreme Court and the pertinent procedure, by analogous application of articles 448 and 450 of the Code of Criminal Procedure, which regulate the issues of hearing and decision on extradition. Paragraph 6 provides for the possibility that the Council of Appellate Judges or the Supreme Court may order, during any stage of the procedure, the interim release of the arrested person, in accordance with paragraphs 3-6, article 59, Statute of the International Criminal Court, by analogous application of paragraph 2, article 449, Code of Criminal Procedure.

In addition, article 23 regulates matters relating to the execution of the decision on surrender of the requested person and stipulates that the person arrested shall be released if, within three (3) months from his/her arrest, no irrevocable decision on his/her surrender has been issued.

Further, article 24 deals with the provisional arrest of the requested person in urgent cases, upon request by the International Criminal Court and prior to submission of the request for surrender. It is explicitly stipulated that the person provisionally arrested shall be released if, within thirty (30) days, no request for surrender, as provided for in article 20, has been submitted, and also that the procedure of paragraphs 2-3, article 21 shall apply to this case as well.

Finally, article 25 regulates the issue of provisional surrender of the arrested person to the International Criminal Court for the purposes and on the terms described thereby, provided that the same person consents to it, while article 27 deals with the transfer of the person surrendered through the Greek territory. More specifically, it stipulates that such transfer may be permitted by the Minister of Justice, Transparency and Human Rights, as long as the requirements of paragraph 3, article 89, Statute of the International Criminal Court are met.

(c) Cooperation with OTP investigations;

Article 28, Law 3948/2011 regulates matters relating to the requests for performance of investigation acts submitted by the International Criminal Court or its Prosecutor and defines the organs and manner of performance of the investigation acts pursuant to the Greek law; persons designated in the request may exceptionally appear and assist in the performance of the above.

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

Law 3948/2011 does not include special provisions on judicial cooperation at the stage of tracing of proceeds and instrumentalities of crimes. However, according to paragraph 4, article 31 of the said Law, if the International Criminal Court, pursuant to article 103 of its Statute, designates Greece as the place of enforcement of the sentence, then, the Three-member Appeal Court of Athens shall recognize and order, inter alia, the execution of seizure measures.

(e) Enforcement of sentences;

Article 31 (paragraphs 1 to 5) regulates in detail matters relating to the enforcement of sentences, where the criminal court, pursuant to article 103 of its Statute, designates Greece as the place of enforcement of the sentence. Paragraph 6 of the same article stipulates that a sentenced person detained in Greece shall not be subject to prosecution or punishment or to extradition to a third State for any punishable conduct committed prior to that person's surrender to the Greek authorities, unless such prosecution, punishment or extradition has been approved by the International Criminal Court at the request of the Hellenic Republic, as further stipulated in article 108 of the Statute of the International Criminal Court. Finally, paragraph 7 explicitly stipulates that the communications between a sentenced person and the International Criminal Court shall be unimpeded and confidential.

(f) Other forms of cooperation (see in particular article 93 of the Rome Statute)

Article 26, Law 3948/2011 designates the Minister of Justice, Transparency and Human Rights in cooperation with the Minister of Foreign Affairs, as the organ responsible for the consultations with the International Criminal Court, in all cases where this is stipulated by the Statute of the International Criminal Court or required by the special circumstances of a particular case and, more specifically, in the cases referred to in the above provision including, but not limited to the following:

“(a) where the disclosure of information or documents at any stage of the procedure before the International Criminal Court or provision of judicial assistance to it would prejudice the national security interests, as stipulated in articles 72 and 93, paragraph 4, Statute of the International Criminal Court ratified by Law 3003/2002 (Government Gazette 75 A’);

(b) where the execution of a particular measure of assistance requested by the International Criminal Court would contravene a fundamental legal principle of general application of Greek public order, as stipulated in paragraph 3, article 93 of the Statute of the International Criminal Court;

(c) where a request for surrender of a person to the International Criminal Court or for judicial assistance to it is inconsistent with the obligations of the Hellenic Republic with respect to a third State or diplomatic immunity of a person or property of a third State, as stipulated in article 98 of the Statute of the International Criminal Court;

(d) where the person sought for surrender to the International Criminal Court brings a challenge on the basis of the principle of ne bis in idem, as provided for in paragraph 2, article 89, Statute of the International Criminal Court;

(e) where the person sought for surrender to the International Criminal Court is being proceeded against by the Greek authorities or is serving a sentence for a crime different from that for which surrender to the Court is sought, as provided for in paragraph 4, article 89, Statute of the International Criminal Court.”

Finally, article 30, Law 3948/2011 establishes the obligation of the Greek authorities to provide the International Criminal Court with criminal record certificates and any other

relevant information requested by the latter for a particular criminal case, on the same terms as those on which such information is provided to the Greek judicial authorities.

8. Does the implementing legislation designate a channel of communication with the Court?

Those mentioned in question 7 above shall apply.