I. Introductory remarks

The arrest and the pre-trial detention of persons follow the rules proclaimed in the Constitution (Arts. 6 et seq.) and the Code of Criminal Procedure (Arts. 275 et seq.). These provisions meet the requirements set out in Art. 5 ECHR. It should be noted that the provisions of the Code of Criminal Procedure with regard to the pre-trial detention have been amended repeatedly since 1981, when Act 1129/81 liberalized certain stipulations, which in some respects did not conform with the principles enshrined in the ECHR. In their current wording the statutes in question are adequately liberal, though their enforcement by the judicial authorities is now and again criticized of being abusive in some cases.

II. The Warrants of Attachment and Arrest

A. The Warrant of Attachment

Under Arts. 270 and 272 CCP, the Investigation Judge can issue a warrant of attachment against the defendant who, though duly summoned, does not appear without good reasons. The warrant of attachment is enforceable in the entire territory of the State, and all police authorities have a duty to bring the defendant before the Investigating Judge using reasonable force, if he refuses to comply with the warrant. After being brought before the Investigating Judge the defendant, has all the rights and the Investigating Judge all the powers. Art 270(2) allows the Investigating Judge to close the ordinary investigation after issuing the warrant of attachment, i.e., without awaiting its enforcement, if there is sufficient evidence against the defendant.

B. The Warrant of Arrest

Art. 6 of the Constitution and Art. 276 CCP state that no person shall be deprived of his liberty unless upon a duly issues warrant of arrest. An arrest without a warrant is allowed only in case of flagrant criminal offence. The warrant of arrest is issued by the Investigating Judge only in cases where pre-trial detention of the person would be justified, that is to say on reasonable suspicion that the person

to be arrested committed a serious crime and that his arrest is absolutely necessary to prevent him from committing criminal offences or from fleeing. The Investigating Judge has to consult the Public Prosecutor before issuing the warrant of arrest. The warrant of arrest must contain the name, the residence and a description of the person to be arrested, the criminal offence he is charged with as well as the reasons which justify the arrest. The warrant is enforceable by all police authorities in the whole territory of the State under the orders of the Public Prosecutor (Art. 277). Those who enforce the warrant of arrest must threat politely and respect the honor of the arrested person; reasonable force may be used only if necessary and putting off handcuffs is allowed on reasonable suspicion that the arrestee would escape (Art. 278(2)). The details of the arrest (the place, the date, the hour etc.) are laid down on a record drawn up by the police officers who carried out the arrest.

The arrest of a person is not allowed during a religious ceremony in a church or other place of worship, nor during the night in someone's residence unless the requirements of Art. 254 are met (presence of a jugde or a public prosecutor is required).

Within twenty four hours from his arrest or, if arrested outside the judicial district of the Investigating Judge, within the absolutely necessary time for his transport, the arrested person shall be brought before the Public Prosecutor who refers him to the Investigating Judge (Art. 6 of the constitution, Art. 279 CCP). The latter acts in accordance to Art. 273. After the examination of the defendant and three days after him being brought before the Investigating Judge, the latter decides with the Public Prosecutor upon pre-trial detention of the defendant or upon his release under or without conditions.

III. Pre-Trial Detention

A. Conditions and procedure

Art. 282 (3) states that the pre-trial detention of the defendant shall be an exceptional measure allowed in serious cases, if no other restrictive conditions can secure the defendant's presence in the proceedings or prevent him from committing crimes. Notably, the defendant can be remanded in pre-trial detention

on reasonable suspicion that he committed o serious crime (pre-trial detention is not allowed in cases of misdemeanors) and only in the following cases: i) if the defendant has no domicile or ii) he has made preparations to flee or iii) he has been a fugitive from justice in the past or iv) he has been convicted for escaping from prison or v) he has violated restrictions with regard to his residence. Pre-trial detention is also allowed to prevent the defendant from committing new crimes in view of his past or of the particular characteristics of the criminal offence under investigation. Art. 282(3) stipulates that the seriousness of the alleged crime alone can never justify the pre-trial detention of the defendant. This latter principle, promulgated by Act 2207/1994, is a clear legislative attempt to minimize the misuse of pre-trial detention to inflict an anticipated punishment upon defendants charged with capital or other serious crimes which often attract the interest of media and the public.

The Investigating Judge issues a pre-trial detention order after the examination of the defendant and with the consent of the Public Prosecutor (Art. 283). A disagreement between the Investigating Judge and the Public Prosecutor is finally resolved by the Judicial Council. The defendant stays free pending the Judicial Council's decision.

The pre-trial detention order of the Investigating Judge or the decision of the Judicial Council must state the reasons which justify pre-trial detention of the defendant. The latter can appeal against the Investigating Judge's order before the Judicial Council within five days from notification. The appeal does not suspend the execution of the order (Art. 285). The procedure with regard to the lifting of substituting of the restrictive conditions imposed on the defendant by the Investigating Judge or the Judicial Council applies also to the pre-trial detention.

Art. 286(1) states that the Investigating Judge can request of the Judicial Council of the Misdemeanor's Court to lift the pre-trial detention or the restrictive conditions, if he is of the opinion that the reasons which justified them no more exist. Against the Judicial Council's decision which rejected the Investigating Judge's request, the defendant can appeal before the Judicial Council of the Court of Appeal. After referral of the case to trial and until the trial hearing the pre-trial detention can be substituted with restrictive conditions by the Judicial

Council of the competent Court (Art. 291(1)). The trial court has also the same power whenever it adjourns the trial hearing.

B. Continuation and Time limits to Pre-Trial Detention

Art. 6.4 of the Constitution and Art. 287(2) CCP stipulate that the pre-trial detention can under no circumstances exceed eighteen moths in cases of serious crimes and nine months in case of misdemeanors. These are strict time limits which cannot be exceeded irrespective of the complexity of the case involved or other circumstances. In other words, the defendant, who has been detained for the abovementioned periods of time shall be released even before or during the trial hearing. This rule complies with the exceptional character of the pre-trial detention stated in Art. 282(3) and the right of the defendant to a trial hearing within reasonable time (Art. 6(1) ECHR).

The Code of Criminal Procedure not only sets strict time limits to the pre-trial detention but also provides for the control of its continuation by the Judicial Council of the Misdemeanor Court during the ordinary investigation or by the Judicial Council of the Court of Appeal if the case is pending before it or has been referred to trial before the Mixed (Jury) Criminal Court or the Court of Appeal. Notably, Art. 287 (1) dictates that six months after remanding the defendant to pre-trial detention the Judicial Council has to decide on its own motion upon continuation of it.
The once prolonged pre-trial detention shall be reviewed again *ex officio* after six months by the Judicial Council following the same procedure discussed above and can be prolonged only in cases of serious crimes. The Judicial Council's decision ordering prolongement can be appealed before *Areios Pagos* (the High Court of Greece) by the Public Prosecutor and the defendant for an error of law.

IV. An example of the strong relation between a Greek arrest warrant and a E.A.W.

1. As mentioned above, according to the Greek Code of Criminal Procedure (Articles 270 and 276), during an investigation the Investigating Judge issues a

summons which is served on the suspect in order for him/her to appear and to be examined. In case the duly summoned defendant fails (or denies) to appear the Investigating Judge has the right to issue an arrest warrant against him/her only in cases where pre-trial detention is justified. The issuance of the same prior to (or even without) summoning the defendant is also justified under certain exceptional circumstances (which are in fact the same conditions under which pre-trial detention is excused).

If the defendant is a national of a state member of the European Union (not Greek), the domestic arrest warrant is 'transformed' to a European one (through the Public Prosecutor of Appeal who is the competent authority in Greece for the issuance of a E.A.W.) and he will be surrendered to Greece (according to Law Nr. 3251/2004 with which the Council Framework Decision of June 2002 on the E.A.W. – 2002/584/JHA was implemented in Greece).
To that extent the lawfulness (or unlawfulness) of the Greek arrest warrant definitely affects the validity and enforceability of the European Arrest Warrant, since fundamental rights of the accused person are in stake (i.e. his rights to be informed on the charges against him, to appear before the competent judicial authority, to present his defence e.t.c.). This is clearly stated in the Preamble (under point 12) of the Framework Decision on the European Arrest Warrant which reads as follows :
"This Framework Decision respects fundamental rights and observes the principles recognized by Article 6 of the Treaty of the European Union and reflected in the Chapter of Fundamental Rights of the European Union, in particular Chapter IV thereof".

2. There have been cases in Greece where the Greek judicial authorities issued an arrest warrant against persons, whose permanent address is outside Greece, prior to (or even without) legally summoning them.
The authorities' 'excuse' for this treatment is that these persons are supposed to be *fugitives* (just because they live outside Greece!) and therefore the issuance of an arrest warrant (prior to their summoning) is 'justified'.
As it is easily understandable, there are certain provisions describing the term of fugitive in the Greek Criminal Procedure Law which all lead to the same evident

(under a legal but also a logical point of view) conclusion: The legal status of the fugitive presupposes that the person has the status of a defendant or suspect. If a person is not a suspect or a defendant in a criminal case in Greece, he/she can not be regarded as fugitive.

It follows that the issuance of an arrest warrant under the aforementioned conditions can not be lawful.

Nevertheless, in case an arrest warrant is this way issued the consequences for the defendant, especially if he is resident of the E.U., may be huge and namely for the following reasons :

The GCCP provides a wide range of legal remedies (Arts. 477 *et seq.*). The so-called ordinary legal remedies, i.e. appeal and appeal by way of cassation may be employed against the decisions of the judicial councils as well as against the decisions of the courts. There are also various special legal remedies, such as the appeal against the writ of summons or against the decision of pre-trial detention.

Though each legal remedy is governed by specific rules, some general principles (enshrined to Arts. 463-476 of the GCCP) apply to all of them.

Especially, Arts. 462-463 of the GCCP stipulate that a legal remedy is available only when it is expressly provided by the law and can be lodged only by whomever has a lawful interest in challenging the decision.

In the case of an issuance of an arrest warrant though, no legal remedy is (expressly) provided in the GCCP. For that reason any attempt to challenge it (i.e. appeal etc.) will be rejected as *inadmissible*. The reason for this is that within 24 hours from his arrest or, if arrested outside the judicial district of the Investigating Judge, within the absolutely necessary time for his transfer, the arrested person shall be brought before the Public Prosecutor who refers him to the Investigating Judge (Art. 6 of the Constitution, Art. 279 of the GCCP). After the examination of the defendant and three days after him brought before the Investigating Judge, the latter decides with the Public Prosecutor upon the pre-trial detention of the defendant or upon release with or without conditions. If an order for pre-trial detention of the defendant is issued, the latter can appeal against it within five days. This appeal (against the pre-trial detention order) is expressly provided in Art. 285 of the GCCP.

From the abovementioned it follows that no legal remedy against the arrest warrant is provided in the Greek Code of Criminal Procedure.
It follows from the above that if the domestic arrest warrant is invalid (defective) the defendant is definitely deprived of his fundamental rights without any opportunity to challenge this deprivation.
To this extent the EAW, which is based on the domestic one, is impugned since the fundamental rights of the defendant have been were disregarded, but there is no opportunity to annul it (while the domestic one remains valid).

A simple solution for this kind of cases would be (prior to the issuance of an arrest warrant and, following to it, of a E.A.W.) the triggering of the well established mechanism of mutual assistance between the European countries (Strasbourg Treaty 20-04-59, implemented in Greece with Act Nr. 4218/61), which, for no obvious reason, seems to be abandoned.

George Pyromallis