

MIGRATION LAW IN GREECE

KONSTANTINOS D. MAGLIVERAS



Wolters Kluwer
Law & Business

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This book was originally published as a monograph in the International
Encyclopaedia of Laws/Migration Law.

General Editor: Roger Blanpain
Associate General Editor: Michele Colucci
Volume Editor: Dirk Vanheule



Wolters Kluwer

Law & Business

Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

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Printed on acid-free paper.

ISBN 978-90-411-3441-7

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Printed in Great Britain.

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expert advice on Greek migration legislation to the International Organization for Migration.

Preface

From the perspective of both immigration and emigration, Greece is a very interesting case. Since ancient times, migration in all its forms has played a role (often an important one) in shaping and in developing the country. In the period commencing from the late nineteenth century and ending in the 1970s, Greece, a relatively small country in all respects, has 'exported' migrants to all five continents *en masse*. This can be best described by a popular Greek saying according to which, 'whichever rock you unearth you will find a Greek underneath it'. However, since the closing years of the 1980s and in a rather brief period of time, Greece has, relatively speaking, become a country with one of the largest percentage of alien population in Europe. This has posed a huge challenge for the country's indigenous population but also for the economy and society. On the whole, it could be argued that the massive influx of migrants has not been handled in a well-organized and efficient manner. The inability to devise an appropriate legislative framework, which would have reaped the benefits of immigration while guaranteeing the orderly participation and integration of aliens has largely contributed to this state of affairs. However, it is also true to say that the situation has become even more complicated due to the very large number of illegal immigrants. They come primarily from African and Asian countries, which are too poor to feed their population and/or are embroiled in conflict. These individuals, who are lured by Greece's unique geographical position allowing them an accessible gateway to prosperous Europe, enter the country illegally either on their free volition or smuggled and trafficked by organized crime groups.

Of course Greece is not the only country (especially in the northern Mediterranean basin) facing such problems and challenges. However, it would appear that other states, which had the benefit of a tradition of being host countries and/or which had in the past absorbed large numbers of foreigners, have been able to adopt apposite legislative and regulatory measures. At the same time, they have contained the pressures from the migratory waves, which, to a certain degree, have been altering the face of Europe and have called into question many traditional aspects of the European society. Given this undisputed reality, an attempt has been made in the present monograph to read the provisions of the relevant Greek legislative framework with a critical eye, to point out any deficiencies or weak points, and comment on their effectiveness and usefulness. Moreover, where pertinent, the monograph elaborates on the particularities and the peculiarities of the Greek public sector in the hope that it will enhance the reader's comprehension of the Greek legislation. Having said that, the reader should be alerted to the fact that the Greek legislation on migration, asylum and refugees is gigantic in terms of quantity and is constantly in

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the process of being revised, amended, completed, and sometimes even substituted by provisions having a completely different scope.

A good example of how the legislator¹ may alter significantly the scope of a legislative instrument is the granting of the status of permanent residence to third country nationals.² In 2007, the Greek legislator took the decision to grant a residence permit of unlimited duration to aliens provided, *inter alia*, that they have continuously and lawfully resided in the territory for a period exceeding ten years. According to Article 91(2) of Act 3386/2005 as amended and completed, this residence permit was also granted to the members of the alien's family under the condition that they have completed their 21st year of age. This was an important development for a number of reasons. First, it meant that the migration process was not for a limited only period of time but aimed at permanent residence. Second, it resulted in a situation whereby third country nationals and the close members of their families were guaranteed to remain in the Greek territory for ever without having to go through any further administrative procedures.

The following year the legislator changed its mind. It regarded that the lack of any future controls does not give to the competent public authorities the ability to ascertain whether the holder of the residence permit remains in the country and has not left it while retaining all the benefits, whether he/she keeps on being economically active, in which specific region of the country he/she resides, etc. In short, what the legislator wanted to ensure (and it was arguably not an unrealistic demand) was that the third country national continued to be under control and that the authorities could periodically check that the conditions which originally allowed him/her to apply for a permanent residence permit were still valid. Thus, Article 39(1) of Act 3731/2008 abrogated permanent residence permits and substituted them by introducing ten-year residence permits, which shall not be renewed if it is proven that the third country national resided outside Greece for more than two years during the ten-year period.

This is only an example of how the legislator acted in one aspect of the immigration policy without perhaps the necessary foresight and without having properly balanced the situation. As will be argued in the present monograph, the legal principle of acquiring legitimate expectations from the Greek State applies to law abiding third country national as well. To that extent, it is not unreasonable to submit that a migrant may take life's decisions based on these and similar expectations. Judged by how the Greek immigration policy has been devised and has so far been implemented, it could be argued that it is wanting. However, this is not tantamount to saying that the relevant legislation does not meet international standards and benchmarks and is not in compliance with global human rights norms. On the contrary, in many respects the Greek legislation is more liberal than the legislation of other comparable states which have become significant host countries. At the same time, it should be emphasized that any legislation on migration cannot function properly until and unless the main addressees of its provisions, namely those third country nationals participating in the migration process, are prepared to adhere to its provisions, follow its rules and, on the whole, comply with the legal system of the host country. The large number of illegal immigrants living in Greece show how this equation is not functioning properly.

To the best of the author's knowledge, the present monograph constitutes the first comprehensive examination and analysis of the currently applicable Greek legislation of migration and asylum in a foreign language. By and large, the domestic and foreign bibliography on the legal aspects of the Greek immigration and asylum policy and legislation is rather limited. Considering that the question of migration (both in its legal and illegal manifestations) but also the issue of asylum have for many years now been one of the most hotly debated matters in the country, that they have apparently figured prominently in elections (including the June 2009 elections for the European Parliament), etc., it is interesting that there have been only few academic writings on the subject. One particular aspect that has not attracted much attention is the compliance with the multilateral global and regional treaties which, on the one hand, deal with migration and in particular with the protection to be afforded to migrant workers and, on the other hand, lay down the generally accepted regime for guaranteeing the human rights and fundamental freedoms of people, including aliens of all descriptions.

A point of clarification: as Greece acceded in 1981 to what was then the European Economic Community and has now become the European Union, there are two principal categories of aliens residing in the country according to their citizenship. The first is those who have the nationality of another Member State of the European Union (the so-called Union (previously Community) nationals). The second is those who do not have the nationality of a Member State and are generally referred to as aliens, foreigners or, to use the EU jargon, third country nationals. Both categories should be treated as migrants having Greece as their host country and this exactly what they are. However, there is a fundamental difference between them that separates their legal status. The first category is regulated by European Union Law pursuant to the rules on the free movement of persons. Moreover, it has the unique feature that, no matter in which Member State they choose to establish themselves and reside, the same rules will apply to them and the host country cannot discriminate against them. On the contrary, the second category is subject to the national legislative framework, which is of course different from that existing in other Member States. The present monograph examines and analyses primarily the entry and residence of only third country nationals. It covers the European Union Law to the extent that, as is later explained, it strives to create a migration policy, which will be common for all the current 27 Member States and for any other state/s that may accede to the European Union in the future.

Even though the European Union (and its predecessor the European (Economic) Community) is all about common policies and harmonization of principles, rules and regulations, it will be argued that by pursuing a common policy in the area of immigration the Member States have been attempting to prevent third country nationals from exercising forum shopping techniques, in other words strategies where immigrants attempt to access the territory of Member State X because it is easier to enter and to reside and/or because it offers more social rights, etc. compared to Member State Y or Z.³ This phenomenon, *inter alia*, distorts migratory waves, makes a number of Member States transit countries, and allows organized crime to take advantage of the different immigration regimes.

It can only be hoped that the present monograph will introduce the Greek legislative framework on migration and on asylum to a wider audience and will benefit

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researchers and professionals alike. The law is stated as the author understood it to be in February 2010. Regarding the Treaty of Lisbon, which overhauled the European Community/European Union institutions, considering that it entered into force on 1 December 2009, the monograph has not taken into account its provisions but refers to the provisions of the Treaty Establishing the European Community and the Treaty on European Union as last amended by the Treaty of Nice.⁴ However, a number of references to the Treaty of Lisbon have been included where it was thought to be pertinent.

1. It should be noted that with only one exception there has never been a coalition government in Greece since 1975 and therefore the each time policies and wishes of the government are almost always converted into legislation. It follows that the divisions between political party in power – government – parliament can become blurred.
2. Note that this status also applies to those individuals who are nationals of one Member State of the European Union, who have established themselves in another Member State and who have resided therein for at least five years, see Articles 16–18 of European Union Directive 2004/38/EC, *infra* paragraph 29.
3. See also S. Barbon des Places and H. Oger, 'Making the European Union Migration Policy: Decoding Member States' Legal Strategies', *European Journal of Migration and Law* 6 (2004): 353.
4. The Treaty of Lisbon was officially signed by the Heads of the EU Member States on 13 Dec. 2007. For the founding instruments of the European Union, as revised and completed by the Treaty of Lisbon, see Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, *Official Journal of the European Union* C 83, 30 March 2010, 1.

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General Editor: Roger Blanpain
Associate General Editor: Michele Colucci
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Law & Business



Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
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Printed on acid-free paper.

ISBN 978-90-411-3441-7

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Printed in Great Britain.

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