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***CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW: GREECE***

**Afroditi-Ioanna Marketou and Michail Dekastros**

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\*\*\*General observations:

For the completion of large parts of this questionnaire (TFEU amendment, ESM, Fiscal Compact) only the parliamentary debates in the Parliament Plenum were used as a source. The debates in the special parliamentary committees are only available in video.

# I POLITICAL CONTEXT

## POLITICAL CHANGE

### I.1

WHAT IS THE POLITICAL CONTEXT OF THE EUROZONE CRISIS PERIOD IN GREECE? HAVE THERE BEEN CHANGES IN GOVERNMENT, ELECTIONS, REFERENDA OR OTHER MAJOR POLITICAL EVENTS DURING THE PERIOD OF 2008-PRESENT?

Since 2008, Greece has experienced major social and political developments that are exceptional, if not unique, for a western state. Since the end of the colonels' dictatorship (1967-1974), two parties have traditionally been at the center of the political scene: PA.SO.K. (Pan-Hellenic Socialist Movement, center-left, socialist) and N.D. (New Democracy, center-right). The last decade before the economic crisis, Greece has experienced a period of outstanding economic growth. However, the Greek economy and the State mechanism have always been characterized by important structural deficiencies, mainly caused by the establishment of a clientelist system, corruption, and the constant failure of reforms.<sup>1</sup>

After five years of Government by the center-right N.D., political and social crisis in Greece was already obvious from the violent riots of December 2008, following the murder of a young anarchist by the police in Athens.<sup>2</sup> The center-left socialist party PA.SO.K. won the early elections of October 2009 with the slogan “there is money”, promising that it would not proceed to any austerity measures, even though N.D. warned that such measures were indispensable.<sup>3</sup> However, almost immediately after the elections, Eurostat revealed the real data on the Greek deficit, together with the statistics juggling committed by the N.D. Government.<sup>4</sup> Thus, the Government of PA.SO.K. was taken by surprise and finally decided to proceed to austerity measures in March 2010 (see section X). However, in the autumn of 2009, the credit rate of the

<sup>1</sup> Xenophon Contiades and Ioannis Tassopoulos, “The Impact of the Financial Crisis on the Greek Constitution”, in Xenophon Contiades (ed.), *Constitutions in the Global Financial Crisis* (Ashgate 2013), chapter 7, 195.

<sup>2</sup> Vaios Papanagnou, “December 2008: the hate”, *To Vima*, 6 December 2011, <http://www.tovima.gr/vimagazino/views/article/?aid=433521>.

<sup>3</sup> Giannis Pretenteris, “There is money!” [in Greek], *To Vima*, 27 May 2012, <http://www.tovima.gr/opinions/article/?aid=459615>.

<sup>4</sup> See Xenophon Contiades and Ioannis Tassopoulos, *op. cit.*, 195. N.D. had estimated the deficit of 2009 to be at 5.4% GDP, whereas Eurostat at 15.4% GDP! However, the chairman of the Greek Statistics' Authority, the authority that provided the relevant data to Eurostat, is suspected by the Greek justice for artificially inflating the deficit numbers. Cf. Evangelos Vallianatos, “The Greek Lesson”, *The Huffington Post*, 12 December 2012, [http://www.huffingtonpost.com/evaggelos-vallianatos/the-greek-lesson\\_b\\_2279413.html](http://www.huffingtonpost.com/evaggelos-vallianatos/the-greek-lesson_b_2279413.html).

Greek State was devaluated by the rating agencies. In April 2010, the Greek Government officially asked for financial assistance by the IMF and the EU. A loan agreement of 110bn. was concluded, accompanied by the so-called Memorandum of Understanding, which stipulated measures of unprecedented austerity as a condition for the financial assistance to Greece.<sup>5</sup> Violent protests and general strikes followed.<sup>6</sup> This important shift in the government program was considered approved by the Greek people via the local elections in November 2010, won by PA.SO.K.<sup>7</sup> According to the loan agreement, each disbursement of the loan to Greece would take place by a unanimous Eurogroup decision, depending on the evaluations of the reforms to which the Greek Government has proceeded by the so-called “troika”, composed by a representative of the ECB, the IMF and the European Commission. This new technocrat institution has thus acquired extraordinary powers, and Giannis Drosos, Professor of Constitutional Law, has talked about a new way of functioning of the Constitution.<sup>8</sup>

The reforms agreed between the Government and the “troika” proved to be difficult to implement in practice. The following months many general strikes were called, local crises and conflicts between citizens and the police took place, protests became more and more violent and incidents like political suicides repeatedly shocked the public opinion. In June 2011, after having obtained the vote of confidence by Parliament, the Government, while an enormous and violent protest was unfolding in the center of Athens, voted a new austerity package contained in the Medium term budgetary framework for the period 2012-2015.<sup>9</sup> In July a new bailout of 109 bn. for Greece was

<sup>5</sup> See the questions in the section “Member States receiving financial assistance”.

<sup>6</sup> During one protest three employees of a private bank who could not participate in the general strike died because of a fire in the building where they were working. The fire was put during the protests. This incident shocked the public opinion. Cf. <http://tvxs.gr/news/%CE%B5%CE%BB%CE%BB%CE%AC%CE%B4%CE%B1/%CF%84%CF%81%CE%B5%CE%B9%CF%82-%CE%BD%CE%B5%CE%BA%CF%81%CE%BF%CE%AF-%CE%B1%CF%80%CF%8C-%CE%B1%CF%83%CF%86%CF%85%CE%BE%CE%AF%CE%B1-%CF%83%CE%B5-%CF%84%CF%81%CE%AC%CF%80%CE%B5%CE%B6%CE%B1-%CF%83%CF%84%CE%BF-%CF%83%CF%8D%CE%BD%CF%84%CE%B1%CE%B3%CE%BC%CE%B1>

<sup>7</sup> See the interview of the Prime Minister Giorgos Papandreou to the journal *To Vima* on the 14<sup>th</sup> of April 2010, <http://archive.pasok.gr/portal/resource/contentObject/id/c6d1bb17-ee7b-4a54-a152-2b46216c249f>. In this interview, the Prime Minister conferred clear political character to the local elections.

<sup>8</sup> Giannis Drosos, «Το ‘Μνημόνιο’ ως σημείο στροφής του πολιτεύματος [The ‘Memorandum’ as a turning point of the regime]», [www.constitutionalism.gr](http://www.constitutionalism.gr), published in *The Book’s Journal*, Vol. 6, April 2011, 42.

<sup>9</sup> “Greece austerity vote and demonstrations”, *The Guardian*, 29 June 2011, <http://www.guardian.co.uk/world/blog/2011/jun/29/greece-austerity-vote-demonstrations>.

agreed.<sup>10</sup> Meanwhile, an important social movement that had started through the internet, following the example of mobilizations in Spain, was getting more and more important.<sup>11</sup> In October 2011, a “haircut” of 50% of the Greek debt was agreed between the Greek Government, the European leaders, the IMF and banks, with the voluntary participation of the private sector (PSI).<sup>12</sup> The Prime Minister announced a referendum because new austerity measures were demanded as a condition for the loaning agreement. This decision had been immediately translated by the press as posing to the Greek people the dilemma between Euro and drachma.<sup>13</sup> However, under pressure of European leaders and the criticism by a large part of the political world in Greece, Giorgos Papandreou retired the referendum proposal on the 3<sup>rd</sup> of November.<sup>14</sup> Some days later, he resigned in order for the President of the Republic to form a coalition government.<sup>15</sup>

Indeed, on the 11<sup>th</sup> of November a new Government was formed with the support of PA.SO.K., N.D., and the far right populist LA.O.S. (Popular Orthodox Rally). Loukas Papademos, a technocrat recognized by the European partners for his service as a vice-president of the ECB, was appointed Prime Minister.<sup>16</sup> The main task of the new Government was to make sure that Greece would fulfill its obligations vis-à-vis its European partners and then to lead the country to elections. In February 2012, and

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<sup>10</sup> “EU leaders agree €109bn Greek bail-out”, *The Financial Times*, 21 July 2011, <http://www.ft.com/cms/s/0/952e0326-b3af-11e0-855b-00144feabdc0.html#axzz2WbulS9TY>. The bail-out was extended to 130 bn. with the Eurogroup decision of the 21<sup>st</sup> of February 2012.

<sup>11</sup> The Greek Indignant was a movement without a specific political identity, protesting against austerity and corruption. In this movement people from all the spectrum of the political world participated and thus was accused of increasing the influence of populist parties, and especially the Golden Dawn. See the article Antonis Liakos, “‘Indignants’ and Golden Dawn”, *I Avgi*, 16 September 2012, <http://archive.avgi.gr/ArticleActions/show.action?articleID=713898>.

<sup>12</sup> See section “Member States receiving financial assistance”.

<sup>13</sup> “Papandréou nous impose de choisir entre lui et la drachme”, *Le Monde*, 3 November 2012, [http://www.lemonde.fr/crise-financiere/article/2011/11/03/un-referendum-pour-choisir-entre-papandreou-et-le-drachme\\_1597547\\_1581613.html](http://www.lemonde.fr/crise-financiere/article/2011/11/03/un-referendum-pour-choisir-entre-papandreou-et-le-drachme_1597547_1581613.html).

<sup>14</sup> “Referendum: “Yes” or “No” to the new loan agreement”, *Ta Nea*, 31 October 2011, <http://www.tovima.gr/politics/article/?aid=427794>. For the reactions of European leaders and especially Merkel and Sarkozy, cf. <http://www.tovima.gr/finance/article/?aid=427899>. The referendum was considered by the pro-European parties and certain members of PA.SO.K. as an indication of untrustworthiness of the Government towards the European partners. The left winged parties and other important personalities, on the other side, criticized the choice of the referendum because it would be presented as raising the dilemma of the remaining of the country inside Europe or no, a dilemma which, according to them, was artificial. For the reactions of the Greek political world to the referendum proposal cf. <http://www.cosmo.gr/Epikairoτητα/Ellada/Politiki/epithesh-twn-kommatwn-sthn-apofash-toy-papandreoy-gia-dhmopshfisma.1433995.html>.

<sup>15</sup> “Eurozone crisis: Greek PM George Papandreou to resign”, *The Guardian*, 6 November 2011, <http://www.guardian.co.uk/world/2011/nov/06/greece-george-papandreou>.

<sup>16</sup> Reuters, PROFILE-Greek Prime Minister Lucas Papademos, 23<sup>rd</sup> November 2011, [www.reuters.com/](http://www.reuters.com/).

while another violent protest with a very high participation was unfolding outside the Greek Parliament, another austerity package was voted, in order to satisfy the conditions set by the Memorandum of Understanding for the second bail-out agreement. Many deputies of the Government coalition refused to vote further austerity measures and were suppressed from the parliamentary groups of their parties, thus weakening importantly the parliamentary majority supporting the Government.<sup>17</sup> Restructuring of the Greek debt was concluded in April 2012 and elections were announced for the 6<sup>th</sup> of May.

The elections of the 6<sup>th</sup> of May marked a new era in Greek political life. For the first time, a total of seven parties were elected in Parliament, of which three for the first time (AN.EL. – Independent Greeks, a right wing patriotic party, DIM.AR. – Democratic Left, a left party formed by deputies who had seceded from SY.RIZ.A. and which held a more moderate position than the latter, and Chrysi Avgi – Golden Dawn, the ultra-nationalist party. The rest of the parties in Parliament were N.D., SY.RIZ.A., PA.SO.K., and the Communist Party, K.K.E.). The two traditional big parties, N.D. and PA.SO.K., obtained a very low percentage (32,03% in total combined, instead of 77,39% in the elections of 2009), whereas the third party of the Papademos Government coalition, LA.O.S., did not obtain seats in Parliament. On the other hand, the parties opposed to the governmental austerity policies obtained an important increase of their percentage. It is remarkable that SY.RIZ.A., a left party composed by components ranged from center left to extreme left, quadrupled its 2009 percentage by obtaining the 16,78% of the votes. Chrysi Avgi obtained a 6,68% of the votes, whereas, in the previous elections it had obtained only a percentage that did not exceed the 0,25%.<sup>18</sup>

The results of the elections were interpreted as showing the anger of the Greek people against corruption and the policies of austerity pursued by previous Governments. The social dimension of the crisis was a key factor. Indeed, the political world was literally divided between the Memorandum and the anti-Memorandum forces and so was society.<sup>19</sup> After the shocking results of the May elections, PA.SO.K. and N.D.

<sup>17</sup> <http://www.guardian.co.uk/business/2012/feb/13/eurozone-crisis-greece-austerity-package-vote>.

<sup>18</sup> For the results of the elections of May 2012, cf. the site of the Minister of Internal Affairs, [http://ekloges.ypes.gr/v2012b/public/index.html#%22cls%22:%22main%22,%22params%22:{}".](http://ekloges.ypes.gr/v2012b/public/index.html#%22cls%22:%22main%22,%22params%22:{})

<sup>19</sup> Cf. also Xenophon Contiades and Ioannis Tassopoulos, *op. cit.*, 212. The authors say that the pro and anti Memoranda cleavage has substituted the traditional division between Left and Right.

also integrated in their political programs the renegotiation of the terms of the Memorandum and the adoption of social policy measures.<sup>20</sup>

The great dispersion of votes in the 2012 elections made it impossible to form a government that would enjoy social legitimacy, as SY.RIZ.A. refused to participate in a government that would not renounce the commitment of the country to the Memoranda. The leaders of the two big parties had provided personal letters to the Eurozone partners, where they expressed their personal commitment to the obligations of the Greek state contained in the bailout agreements.<sup>21</sup> Therefore, in the lack of agreement between the two first parties, an interim Government under the Prime Minister Panagiotis Pikrammenos, former president of the Council of State, led the country to new elections on the 17<sup>th</sup> of June. During the pre-election period, European leaders and the media constantly stressed the danger of a “Grexit”. According to the President of the Republic, the German Chancellor Angela Merkel, in a personal conversation, went as far as to propose to him the holding of a referendum about the remaining of the country in the Euro.<sup>22</sup> In the June elections, a polarization of the electoral body was observed and N.D. and SY.RIZ.A. obtained higher percentages (29,66% and 26,89% respectively).<sup>23</sup> Hence, a coalition government was formed with the participation of the three pro-European parties, N.D., PA.SO.K., and DIM.AR, under the chief of the N.D. party, Antonis Samaras. The mandate of the Greek people was interpreted as imposing the remaining of the country in the Eurozone, thus enhancing the necessary structural reforms, while renegotiating the harsh austerity conditions set by the European partners.<sup>24</sup>

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<sup>20</sup> For the program of N.D., cf. “The 18 propositions of N.D. for the economy”, *Ta Nea*, 31 May 2012, <http://www.tanea.gr/news/greece/article/4726301/?iid=2>. For the program of PASOK, cf. [http://www.pasok.gr/portal/theseis\\_index.jsf](http://www.pasok.gr/portal/theseis_index.jsf). It is indicative that Antonis Samaras, for example, has promised the restitution of the lowest pensions and of some allowances to the levels of 2009, the institution of an urgent unemployment allowance, the abstention from the further reduction of salaries in the private sector, the reduction of the taxes and other measures that would improve the economic situation of the middle and the lower class households.

<sup>21</sup> For the exigency of the personal commitment of the Greek political leaders, cf. “Ultimatum Juncker for the 6<sup>th</sup> tranche”, *To Vima*, 22 November 2011, <http://www.tovima.gr/politics/article/?aid=431375>.

<sup>22</sup> “The Presidency insists on the Merkel proposition for a referendum on the remaining in the Euro”, *To Vima*, 18 May 2012, <http://www.tovima.gr/afteromata/elections2012/article/?aid=458414>. This fact was denied by the German Chancellor but the Greek President of the Republic insisted on its truth.

<sup>23</sup> See the official site of the Minister of Internal Affairs

<sup>24</sup> “Greece parties agree coalition government”, *BBC News*, 20 June 2012, <http://www.bbc.co.uk/news/world-europe-18515185>.



From June 2012 until the summer of 2013, the political situation in Greece seemed relatively appeased. Of course, general strikes, protests, and local conflicts between citizens and the police did not cease to exist. Moreover, racist attacks against immigrants became more and more recurrent. Nevertheless, the Greek people seemed to be used to the functioning of the Government, a delicate combination of decisions between the Government coalition and the “troika”. However, a general degradation of the rule of law has been observed and the executive is systematically infringing constitutional rights, such as the freedom of expression.<sup>25</sup> Furthermore, the excessive use of “administrative acts of legislative content”<sup>26</sup> and other emergency legislation procedures have caused a degeneration of the functioning of the Parliament which is unprecedented since the fall of the military *junta* in 1974. On the 12<sup>th</sup> of June 2013, the closure of the public radio and television by the Government authorized with such an act, and despite the disagreement of the Government parties, caused the reaction of the press and the political world in Greece and abroad.<sup>27</sup> On the 21<sup>st</sup> of June 2013, DIM.AR. (Democratic Left, the left party) announced that it does not any more support the Government coalition, which is now only supported by N.D. and PA.SO.K.. The public television issue was the main cause of disagreement between left and the government.<sup>28</sup>

It is important to note that Greece in 2013 was passing its sixth consecutive year of economic recession. Greek employees have suffered a harsh reduction of their

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<sup>25</sup> See for example the press release of the Amnesty International on the 20<sup>th</sup> of June 2013, concerning the prosecution of the conscientious objectors in Greece, available at <http://www.amnesty.org.gr/co-exioglou>. See also the article on Reuters considering the arrest of a Greek journalist after having published the “Lagarde list”, “Greek editor stands trial over Swiss accounts list”, *Reuters*, 29 October 2012, <http://www.reuters.com/article/2012/10/29/us-greece-corruption-list-idUSBRE89S0EP20121029>. Finally, see the public statement of Amnesty International on the 22<sup>nd</sup> of March 2013, concerning the excessive use of police force against the protestants who object to the gold mining operations in the North of Greece, <http://www.amnesty.org/en/library/asset/EUR25/004/2013/en/c81397ca-0895-4f7a-92b5-82370134de8f/eur250042013en.html>. Some of these protestants are now considered by the police to have formed a “criminal organization” and thus their phone calls and their phone conversations with various journalists have been recorded. See <http://tvxs.gr/news/ellada/mazikes-parakoloythiseis-dimosiografon-logo-xalkidikis>.

<sup>26</sup> On this legal instrument and its normally exceptional character cf. question III.1.

<sup>27</sup> “Greek coalition in disarray after state broadcaster's closure”, *The Guardian*, 12 June 2013, <http://www.guardian.co.uk/world/2013/jun/12/greek-coalition-disarray-broadcaster-closure>. Despite the decision of the Council of State, declaring the interruption of public radio and television illegal, ERT remains closed.

<sup>28</sup> Cf. <http://www.reuters.com/article/2013/06/21/us-greece-idUSBRE95K0IJ20130621>, [http://www.lemonde.fr/europe/article/2013/06/25/nouveau-gouvernement-de-coalition-en-grece-pour-garantir-la-stabilite\\_3436423\\_3214.html](http://www.lemonde.fr/europe/article/2013/06/25/nouveau-gouvernement-de-coalition-en-grece-pour-garantir-la-stabilite_3436423_3214.html).



income,<sup>29</sup> while unemployment has reached 27,4% of the population<sup>30</sup> (while it was at 8,3% in 2007)<sup>31</sup> and 62,5% for under 25 years old.<sup>32</sup> According to the statistics of NGOs, Greece was the country in Europe with the highest percentage of increase in suicides.<sup>33</sup>

The socio-economic situation did not change much in the following years, despite the fact that the statistics of the Greek economy slightly ameliorated. In May 2014 the local, regional and European elections took place and were perceived as a victory for SY.RIZ.A., but also for extreme right parties like Chrysi Avgi. This result was confirmed in the elections of January 2015 that took place after an unsuccessful voting for the President of the Republic. SY.RIZ.A. collected 36.3% of the votes, against 27.8% for N.D. Chrysi Avgi was the third party, with 6.3% of the votes. After its victory, SY.RIZ.A. formed a government coalition with the patriot and populist party AN.EL. Shortly after its nomination, the SY.RIZ.A.-AN.EL. Government announced that it will not apply the Economic Adjustment Programme agreed by the previous Government and that it does not recognize the “troika” as an institutional interlocutor. Since, the Government is negotiating with the country’s creditors (the “institutions”) for a new agreement on the Greek debt and a “Grexit” seems possible.

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<sup>29</sup> See Eurostat,

[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php/Living\\_standards\\_statistics](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Living_standards_statistics).

<sup>30</sup> Source: Greek Statistics Authority, <http://www.statistics.gr/portal/page/portal/ESYE>.

<sup>31</sup> Source: Eurostat,

[http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php?title=File:Unemployment\\_rate,\\_2000-2011\\_\(%25\).png&filetimestamp=20120502100338](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Unemployment_rate,_2000-2011_(%25).png&filetimestamp=20120502100338).

<sup>32</sup> “Eurostat: 62,5% youth unemployment in Greece”, *To Vima*, 31 May 2013.

<sup>33</sup> *To Vima*, 8 December 2011, <http://www.tovima.gr/society/article/?aid=433980>. The research concerns the first five months of 2011 in relation to the first five months of 2010.

## II CHANGES TO THE BUDGETARY PROCESS

### BUDGETARY PROCESS

#### II.1

DESCRIBE THE MAIN CHARACTERISTICS OF THE BUDGETARY PROCESS (CYCLE, ACTORS, INSTRUMENTS, ETC.) IN GREECE.

According to article 72 of the Constitution, the Budget and the Annual Report of the State and Parliament is voted in the Parliament Plenary Session. The details of the budgetary process were until recently defined by statute 2362/1995,<sup>34</sup> which was extendedly amended in August 2010, some months following the conclusion of the first loan agreement to Greece, by statute 3871/2010.<sup>35</sup> The amended statute was focused on budgetary stability and discipline,<sup>36</sup> was much more detailed concerning the content of the budget and the calculation methods of the various capitals,<sup>37</sup> and was characterized by the attribution of extended competences to the Minister of Finance, who became responsible for the economic management of General Government.

The Budget of Central Government and the connected budgets of General Government<sup>38</sup> (hereafter Budget) comprise many documents. First of all, the Annual Budget of Central Government defines the revenues, the expenses and the sources of income for Central Government for each economic year. The Medium Term Framework of Budgetary Strategy defines the budgetary objectives and goals for General Government for the year it refers to and the three following years, it defines the main general policies concerning the annual budget, and it announces the main sources of risks for the financial situation of General Government. The Annual Social Budget defines the revenues, expenses, deficit/surplus of the unified system of social

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<sup>34</sup> ΦΕΚ Α' 247/27.11.1995, concerning the accounting of public finances, the monitoring of the expenses of the State, and other provisions.

<sup>35</sup> ΦΕΚ Α' 141/17.8.2010, budgetary management and responsibility.

<sup>36</sup> The new articles 1, 1A and 5 Law 2362/1995 define a large number of general principles which govern the budgetary process.

<sup>37</sup> See the Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2013/pdf/ocp128\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp128_en.pdf).

<sup>38</sup> According to article 1B, General Government comprises the Central Government, first and second degree Local Administration and the Social Security Organizations of. The Central Government comprises the Central Administration (Presidency, Ministries, Decentralized and Independent Authorities), the legal persons of public law and the legal persons of private law that are monitored and financed by the Central Administration.

security and for each one of the main funds of social security and the main hospitals. The unified annual budgets of Local Authorities define the budget of each unified domain of local administration. Finally, the unified annual budgets of the remaining sectors of General Government, define the unified budgets of the sectors of General Government which are not covered by the previous documents.<sup>39</sup>

The Medium Term Framework of Budgetary Strategy is drawn up by the General Accounting Office of the State, under the guidance and surveillance of the Minister of Finance. It is submitted for approval to the Ministerial Council before the 15<sup>th</sup> of April. After its approval, the Minister of Finance submits it to Parliament for voting before the 15<sup>th</sup> of May. During September, if substantial changes have occurred, the Minister of Finance can submit to Parliament an up-to-date Medium Term Framework of Budgetary Strategy, which is voted by Parliament within 10 days from its submission.<sup>40</sup> The various annual budgets must be in conformity with the Medium Term Framework of Budgetary Strategy.<sup>41</sup>

The Annual Budget of Central Government is drawn up by the General Accounting Office of the State, under guidance and surveillance by the Minister of Finance. For its redaction, the method of “top-down budgeting” is employed, which entails the determination of binding maximum limits of expenses per Central Government sector, inside of which the various capitals are allocated.<sup>42</sup> A draft of the Annual Budget is submitted by the Minister of Finance to the competent parliamentary committee on the first Monday of October, before the beginning of the economic year that it concerns.<sup>43</sup> According to the Standing Orders of Parliament,<sup>44</sup> the Permanent Committee of Financial Affairs deliberates on the draft and the proceedings are communicated to the Minister of Finance.<sup>45</sup> The Minister, after taking into consideration the remarks of the Committee, introduces to Parliament the final draft bill of the Annual Budget, at least 40 days before the beginning of the economic year

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<sup>39</sup> Article 6 Law 2362/1995.

<sup>40</sup> Article 6Γ Law 2362/1995.

<sup>41</sup> Article 6Δ Law 2362/1995.

<sup>42</sup> Article 6E Law 2362/1995.

<sup>43</sup> Article 8 par. 1 of the statute. According to article 4, the economic year begins on the 1<sup>st</sup> of January and finishes on the 31<sup>st</sup> of December of the same year. It includes the administrative act and the events that are relative to the management of the public accounts and the movement of the public property of the State.

<sup>44</sup> <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/kanonismos-Thematiko-syntagma%202010.pdf>.

<sup>45</sup> Article 121 of the Standing Orders of Parliament.

that it concerns.<sup>46</sup> The bill is voted during the normal annual parliamentary session, after a second examination by the permanent committee of Financial Affairs.<sup>47</sup> After its approval by Parliament, the Annual Budget is binding. However, the Minister of Finance can submit a proposal for the amendment of the credits of the Annual Budget of Central Government, with a complementary budget; he/she is obliged to do so in certain cases. The Minister of Finance can approve expenses exceeding the amounts of the credits provided for in the Annual Budget, in order to fulfill obligations of the State according to loan agreements, international conventions, and obligations to the European Union.<sup>48</sup>

The execution of the Annual Budget of Central Government is assured by the General Accounting Office of the State, which manages public property and must cooperate in every general act entailing expenses.<sup>49</sup> Moreover, the execution of the Annual Budget is monitored by the Committee of Review and General Balance of the State and of the Monitoring of the Execution of the Budget of Central Government. This Committee is informed by the Minister of Finance every three months on the execution of the Annual Budget and on the management of public finances. Further, the Minister of Finance submits a monthly report on the revenues and expenditure of the Budget.<sup>50</sup> For the collecting of the necessary information, a special Office has been created by the new statute, the Office of the Budget of Central Government to the Parliament, which compiles and submits trimestral and annual reports on public finances.<sup>51</sup> Until the end of July, the General Accounting Office of the State compiles the Review of the execution of the Annual Budget of Central Government and the Balance-sheet, which represents the clear image of the financial status of Central Government, as well as other financial reports. These documents are based on information given by the competent authorities. They are submitted to the Court of Audit, which must scrutinize their correctness within two months. Then, the Minister of Finance introduces them, together with the decision by the Court of Audit and his/her own comments, to Parliament (the same committee is competent) for approval, before the

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<sup>46</sup> Article 8 par. 2 Law 2362/1995.

<sup>47</sup> Article 121 of the Standing Orders of Parliament.

<sup>48</sup> Article 8A Law 2362/1995. The Minister of Finance must submit a report within 60 days for these expenses.

<sup>49</sup> Article 3 par. 8 Law 2362/1995.

<sup>50</sup> Article 31A of the Standing Orders of Parliament.

<sup>51</sup> Article 8B Law 2362/1995. Cf. also <http://www.hellenicparliament.gr/Dioikitiki-Organosi/Ypiresies/Grafeio-Proypologismou-tou-Kratous-sti-Vouli/> and <http://www.pbo.gr/>.

end of November and, in any case, before the introduction of the new Annual Budget.<sup>52</sup>

The annual budgets of the rest of the institutions of General Government are compiled and executed under the guidance and surveillance of the competent Minister or head officer, who are responsible for their correct execution.<sup>53</sup> The drawing up of these budgets is coordinated by the Minister of Finance and the time-line is defined by the General Accounting Office of the State for each economic year.<sup>54</sup> Their execution is monitored and reviewed by the General Accounting Office of the State and the Minister of Finance, with the cooperation of the Head of Financial Services, which is a new organ, appointed in every institution of General Government for the monitoring of the management of its finances.<sup>55</sup> The General Accounting Office of the State must cooperate in any general act entailing expenses to the annual budgets.<sup>56</sup>

Statute 4111/2013 established fiscal rules and practices for General Government institutions and services. Most importantly, every institution or service must set monthly and trimestral budgetary objectives according to the Annual Budget voted by Parliament.<sup>57</sup>

A summary of the rest of the annual budgets of General Government are annexed to the Annual Budget of Central Government, when submitted for approval to Parliament. Also, they are accompanied by a declaration by the Minister of Finance for their conformity to the Medium Term Framework of Budgetary Strategy.<sup>58</sup> Moreover, the Minister of Finance also submits to Parliament the various reports of the competent Directors of taxation services and of the General Accounting Office concerning public revenues and expenses, as well as the report of the General Director of Public Property, which concerns the results of the exploitation of public property. Finally, the Minister of Finance informs Parliament on the total amount of the public

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<sup>52</sup> Articles 72 f.

<sup>53</sup> Article 3.

<sup>54</sup> Articles 2 and 3.

<sup>55</sup> Article 3B.

<sup>56</sup> Article 3 par. 8

<sup>57</sup> Cf. Law 4111/2013, ΦΕΚ 18 Α'/25.01.2013, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=3cde3e1c-d018-4244-af66-c69249f657f6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=3cde3e1c-d018-4244-af66-c69249f657f6).

<sup>58</sup> Article 8.

debt and on any other subject, in order to render public finances transparent and accessible to the public.<sup>59</sup>

Article 98 of the Constitution attributes an important role to the Court of Audit for the monitoring of the management of public finances. According to the first paragraph of this article,

“1. The jurisdiction of the Court of Audit pertains mainly to:

- a) The audit of the State's expenditures, and of local government agencies or other public law legal persons subject to its audit by special laws.
- b) The presentation to Parliament of the financial report and balance sheet of the State.
- c) Advisory opinions concerning statutes on pensions or on the recognition of service for granting of the right to a pension, in accordance with article 73 paragraph 2, and on all other matters specified by law.
- d) The audit of the accounts of accountable officials and of the local government agencies and public law legal persons specified in subparagraph (a).
- e) The trial of legal remedies on disputes concerning the granting of pensions and the audit of accounts in general.
- f) The trial of cases related to liability of civil or military servants of State and local government agency civil servants for any loss, through malicious intent or negligence, incurred upon the State or upon the above agencies and legal persons.

2. The authority of the Court of Audit shall be regulated and exercised as specified by law.

The provisions of article 93 paragraphs 2 and 3 shall not be applicable in the cases specified in (a) through (d) of the preceding paragraph.

3. The judgments of the Court of Audit in the cases specified in paragraph 1 shall not be subject to the control of the Supreme Administrative Court.”<sup>60</sup>

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<sup>59</sup> Article 8.

The comments by the Court of Audit on the financial management of the State, included in its annual report, are communicated to the various Ministers. The responses to the comments are communicated to the President of the Court of Audit who communicates them together with the report to the President of the Parliament. All these documents are published to the Official Gazette of the Government.<sup>61</sup>

The above characteristics were subsequently incorporated into a new systematic text on budgetary process, which entered into force with law 4270/2014 on 28<sup>th</sup> of June 2014.<sup>62</sup>

The public debt is managed by a legal entity in public law (Οργανισμός Διαχείρισης Δημοσίου Χρέους, Public Debt Management Agency).<sup>63</sup>

## GENERAL CHANGE

### II.2

HOW HAS THE BUDGETARY PROCESS CHANGED SINCE THE BEGINNING OF THE FINANCIAL/EUROZONE CRISIS?

Statute 3871/2010<sup>64</sup> introduced important changes to the budgetary process, a few months after the conclusion of the first loan agreement for Greece. The goal of the statute was “the creation of contemporary budgetary rules and principles for the management of public finances” and “the reestablishment of the credibility of the budget of our country”. The statute aimed at the modernization of the budgetary management with rules, principles, and models according to what exists in other developed countries; the modernization of the budgetary monitoring according to the internationally valid monitoring models; the establishment of the responsibility of all the organs which participate to the management of public finances; the amelioration of the effectiveness and the creation of confidence to the economic management of the country; the harmonization of the budgetary process with the respective process of the Member States of the EU; the consolidation of transparency; the strengthening of

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<sup>60</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agliko.pdf>

<sup>61</sup> Article 77 of the legal statute.

<sup>62</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision, public accounting and other provisions.

<sup>63</sup> <http://www.pdma.gr/index.php/en/>

<sup>64</sup> ΦΕΚ Α' 141/17.8.2010, budgetary management and responsibility.



the role of Parliament in the monitoring of the budgetary policy of the government and its execution by the ministries; the strengthening of the role of the Minister of Finance with responsibility and surveillance of the budgetary management of General Government.<sup>65</sup>

The statute established many rules and deontological principles (principle of the prudent budgetary management, of responsibility, of impartiality and justice, of sincerity, and of transparency) concerning the content of the Budget. Moreover, it extended the competences of the Minister of Finance to General Government and the competences of the General Accounting Office of the State, as well as of the various competent Ministers. What is more, it appointed a Head of Financial Service in each institution of General Government. Further, it introduced the instrument of the Medium Term Framework of Budgetary Strategy, which comprises the goals of the government for the whole General Government for the three years following its redaction. The statute also introduced the top-down method for the compilation of the Annual Budget of Central Government and it changed the time-line of the compilation of the Budget. Concerning statistics and accounting, the Statute put in place a double-entry accounting system.<sup>66</sup> It defined in detail the content of the Budget and the various documents constituting it. Moreover, it introduced the complementary budgets, thus regulating the exceeding of the credits provided for in the Budget. The expenses from the Central Government Budget and the Local Authorities Budget, as well as the other annual budgets, are submitted to scrutiny by the Court of Audit, which also exercises a preventive scrutiny in certain cases. Also, a special office in Parliament was created for the better supervision and monitoring of the execution of the Budget and of the Medium Term Budgetary Frameworks. Finally, the statute established certain rules for the enforcement of budgetary stability.

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<sup>65</sup> See the informative note accompanying the bill, [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494). See also the explanatory report to the bill, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494).

<sup>66</sup> See also Presidential Decree 15/2011, ΦΕΚ Α'30/2.3.2011.

The application of the statute met obstacles in the beginning. For example, the first scientific committee of the special budget office in Parliament was dismissed after having concluded that the debt was not sustainable.<sup>67</sup>

Further, statute 4111/2013 established fiscal rules and practices for General Government institutions and services. Most importantly, every institution or service must set budgetary objectives according to the Annual Budget voted by Parliament.<sup>68</sup>

Finally, statute 4270/2014 incorporated these changes in a systematic code of budgetary process and added further changes aiming at the harmonization of domestic law to the precepts of the “six-pack”.<sup>69</sup> Namely, it instituted an Independent Fiscal Council; it established the Medium term budgetary objective procedure and an adjustment path procedure, as well as a corrective mechanism in case of important deviation from these objectives; it harmonized the Greek budgetary time-line with the European semester and it established the legal framework for the fiscal surveillance of General Government sub-sectors. Further, the statute clearly defines the institutional framework of the budgetary process and the competences of the various authorities (articles 18 f.). It states the general principles governing the management of General Government finances (principle of reasonable financial management, of responsibility and reason giving, of transparency and of sincerity –article 33). The statute also enounces some principles concerning pluriannual fiscal planning (article 34): it should give priority to the repayment of the debt and to the consolidation of fiscal and economic stability, it should be unitary and concern all General Government sectors, it should be based on medium term forecasts, it should be transparent and subject to scrutiny by independent authorities.<sup>70</sup>

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<sup>67</sup> Cf. the Interim Report by the Budget Office in Parliament, “The New Economic Governance in the Eurozone and Greece [in Greek]”, January 2014, available at <http://www.pbo.gr/Home/TabId/1081/ArtMID/5211/ArticleID/1092/THE-NEW-EUROPEAN-ECONOMIC-GOVERNANCE-IN-THE-EURO-ZONE-AND-GREECE-Surveillance-mechanisms-and-solidarity-after-the%E2%80%9CMemorandum%E2%80%9D.aspx>.

<sup>68</sup> Cf. Law 4111/2013, ΦΕΚ 18 Α'/25.01.2013, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=3cde3e1c-d018-4244-af66-c69249f657f6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=3cde3e1c-d018-4244-af66-c69249f657f6).

<sup>69</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision, public accounting and other provisions. See the explanatory report to the statute, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/a-apred-eis-olo.pdf>.

<sup>69</sup> On this, cf. questions VII.1 f.

<sup>70</sup> On this, cf. questions VII.1 f.

## INSTITUTIONAL CHANGE

### II.3

WHAT INSTITUTIONAL CHANGES ARE BROUGHT ABOUT BY THE CHANGES IN THE BUDGETARY PROCESS, E.G. RELATING TO COMPETENCES OF PARLIAMENT, GOVERNMENT, THE JUDICIARY AND INDEPENDENT ADVISORY BODIES?

Statute 3871/2010<sup>71</sup> of 2010 (see also question II.2) brought about important institutional changes in the budgetary process. These changes were subsequently incorporated into statute 4270/2014, which instituted a wholly new budgetary process.<sup>72</sup>

First of all, it has importantly increased the competences and powers of the Minister of Finance, who now has the power and competence to exercise the general management of public finances of Central Government, as well as the coordination and surveillance of the General Government finances. Among his/her particular competences are the submission of the Medium Term Framework of Budgetary Strategy and its eventual up-to-date versions to Parliament; the submission of a draft of the Annual Budget of Central Government, the Annual Report and the Balance of the State to Parliament; the surveillance of the redaction and execution of the annual budgets and of the budgetary reports of the institutions of General Government; the submission of a report concerning the budgetary developments of General Government to Parliament and its publication on the internet; the conclusion of loan agreements as a representative of the Greek State; the surveillance and monitoring of programmes which are financed by the EU or other international organizations. The Minister of Finance also determines the models, the regulations and the procedures that govern the economic management of the public sector. Together with the co-competent Minister or head officer, he/she is responsible for the correctness and accuracy of the information and the elements included in all the documents of the Budget and in the various reports. Moreover, ministerial decrees by the Minister of Finance define the procedure and the time-line of the redaction of all the Annual Budgets, except from the unified annual budgets of Local Administration. They also define in detail the competent State organs and the procedure for credits, the major categories of expenses in the Budget of Central Government, the categorization of the

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<sup>71</sup> ΦΕΚ Α' 141/17.8.2010, budgetary management and responsibility.

<sup>72</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision, public accounting and other provisions.

revenues and expenses for the domains of General Government and any other detail for the redaction of the Budget.

The General Accounting Office of the State has also been attributed extended competences. Among them are the following: the General Accounting Office draws up the Medium Term Framework of Budgetary Strategy and its eventual amendments; communicates through circulars to all institutions of General Government the timeline for the redaction of the Budget of the next economic year; compiles the draft of the Annual Budget of Central Government, and proposals for complementary budgets; compiles the Annual Report and Balance-sheet of the State, as well as the rest of the financial reports of Central Administration; manages public property and monitors the execution of the Budget; obligatorily approves the enactment of general acts causing expenses to the expense of the Budget; compiles reports for the execution of the annual budgets of the institutions and services of General Government; exercises review to the financial management of the local authorities and of the legal persons depending on them; monitors the financial management of various legal persons which are financed by the Budget; monitors the management of programs which are financed by the EU or other international organizations; collects the information for the exercise of its competences; enacts directives and circulars concerning the budgetary process and the public financial management.

According to the new budgetary process, the competent Ministers and head officers of the remaining General Government institutions are attributed the following budgetary competences and responsibilities: they manage and execute the budget of their institution according to the legal statute; they compile and present a draft of their annual budget, according to the maximum limits of defined in the Medium Term Budgetary Framework; they execute the annual budget; they supervise and direct the organs under their surveillance for the compilation of the budget in conformity with the Medium Term Budgetary Framework and their correct execution; they manage public property and resources; they work out reports for the execution of the budget of their institution and the institutions under their surveillance; they work out and submit information on the financial situation of these institutions.

Moreover, a new official has been appointed to the financial service of each Minister and each institution of General Government, the Head of Financial Service. He/she is

responsible for guaranteeing a prudent budgetary management of the institution where he/she is appointed and of the institutions financed by it. He/she also supervises the procedures concerning the budget and the accounting information, according to the directives of the General Accounting Office of the State. Law 4270/2014 separated the function of Authorizing Officer from that of the Head of Financial Service and made them incompatible. It also attributed more competences to the Head of Financial Service. Both the Authorizing Officer and the Head of the Financial Service of each institution must sign decisions concerning the assuming of obligations by General Government sectors.

Further, since 2010 (Kallikratis plan, concerning the Local Authorities)<sup>73</sup> the budget of the Local Authorities is monitored *ex ante* by the Court of Audit. The statute of 2010 introduced the *ex post* review of the execution of the budget of these authorities (for the first and second degree), as well as of their enterprises and organizations.

For the better information of the Parliament, the Office of Budget to the Parliament has been created, which assists the various competent committees in their work, especially through the collection of the necessary information.

Statute 4055/2012 charged the Court of Audit with the scrutiny of the new fiscal governance introduced by the 2010 statute.<sup>74</sup>

Finally, statute 4270/2014 instituted an independent Fiscal Council, thus incorporating Directive 2011/85/EU into the domestic order. Among the Council's competences are the evaluation of public macroeconomic forecasts and the monitoring of the State's observance of fiscal rules.<sup>75</sup>

## CHANGE OF TIME-LINE

### II.4

HOW HAS THE TIME-LINE OF THE BUDGETARY CYCLE CHANGED AS A RESULT OF THE IMPLEMENTATION OF EURO-CRISIS LAW?

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<sup>73</sup> Statute 3852/2010, ΦΕΚ Α'87/7.6.2010.

<sup>74</sup> See article 80 of the statute 4055/2012, ΦΕΚ Α' 51/12-3-2012.

<sup>75</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision, public accounting and other provisions.

According to the statute 3871/2010, the time-line of the budgetary cycle is divided in calendrical stages accordingly:

- 1) January-March (1<sup>st</sup> Stage): the General Governmental Strategy is defined and the Medium Term Framework of Budgetary Strategy is compiled.
- 2) April-May (2<sup>nd</sup> Stage): The Medium Term Framework of Budgetary Strategy is approved by the Ministerial Council and is approved by the Parliament.
- 3) June-July (3<sup>rd</sup> Stage): The budgetary process for Central Government begins, together with the preparation of the budget of the rest of the institutions of General Government.
- 4) August-October (4<sup>th</sup> Stage): Negotiations between the Ministry of Finance and the Ministries concerning their budget and timely preparation of the Social Budget.
- 5) November-December (5<sup>th</sup> Stage): Submission and voting of the Central Government Budget by Parliament with a parallel publication of the budget of the remaining institutions of General Government (Social Security Funds, Hospitals, Local Authorities).<sup>76</sup>

Before this statute, no budgetary time-line was legally defined.

Statute 4270/2014 incorporated this time-line into the new budgetary process that it instituted and further harmonized domestic law to the “European semester”.<sup>77</sup> Thus, it provided that the Fiscal Council (an independent administrative authority instituted for the first time by the same statute) will publish twice per year, in conformity with the “European Semester” time-line, a report in which it will elaborate its conclusions concerning the macroeconomic and fiscal forecasts, the fiscal objectives and the fiscal results.<sup>78</sup>

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<sup>76</sup> See the informative note accompanying the bill, [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494). See also the explanatory report to the bill, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494).

<sup>77</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision, public accounting and other provisions.

<sup>78</sup> Article 2 paragraphs 4 f.

## MISCELLANEOUS

### II.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND CHANGES TO THE BUDGETARY PROCESS?

It is important to note that, independently from the legally determined budgetary process, since the first loan agreement on May 2010, a *de facto* process is taking place, under the directives and surveillance of an international formation, the so-called “troika”. The “troika” is composed by one representative of each one of the country’s creditors, that is, the IMF, the ECB, and the European Commission, representing the Eurozone MS. Any important evolution concerning the planning of the budgetary strategy, the execution of the Budget and the Medium Term Budgetary Framework, and the management of public property and finances, is negotiated with and approved by this *sui generis* institution, which functions as an independent technocratic council. The report by the “troika” constitutes the basis of the Eurogroup decision for the disbursement of the tranches of the financial assistance to Greece.<sup>79</sup> Even though the Government formed after the 2015 elections refused to negotiate with the “troika”, negotiations are still taking place with the “institutions” (ECB, IMF and Commission) in order to conclude an agreement as to financial assistance to Greece.

Moreover, according to article 4 of statute 4063/2012,<sup>80</sup> the reimbursement of the public debt has priority to any other expenses. Thus, the revenues of the Budget from the EFSF and other determined revenues are deposited into a special account which is created exclusively to this objective.

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<sup>79</sup> For more information, see the questions relevant to the financial assistance to Greece (X.1 and following).

<sup>80</sup> ΦΕΚ Α’ 71/30.3.2012. With this legal statute the Parliament ratified the TFEU amendment, the Fiscal Compact and the ESM Treaty.



### III CHANGES TO NATIONAL (CONSTITUTIONAL) LAW

#### NATURE NATIONAL INSTRUMENTS

##### III.1

WHAT IS THE CHARACTER OF THE LEGAL INSTRUMENTS ADOPTED AT NATIONAL LEVEL TO IMPLEMENT EURO-CRISIS LAW (CONSTITUTIONAL AMENDMENT, ORGANIC LAWS, ORDINARY LEGISLATION, ETC)?

Ordinary legislation is usually employed for the implementation of Euro-crisis law.<sup>81</sup> For the voting of the legislative statutes a normal procedure is mobilized, that is, one that does not require a qualified majority. This has sometimes raised objections of unconstitutionality of the parliamentary procedure from the part of the opposition,<sup>82</sup> as well as before the Council of State.<sup>83</sup> The legislation is subsequently applied through administrative acts and circulars.

Generally, statutes implementing or ratifying Euro-crisis law often comprise broad authorizations to the executive, especially the Minister of Finance, to take all the necessary measures for their application.<sup>84</sup> In certain cases, the Minister of Finance is authorized to sign any relevant international agreements for the application and effectiveness of the Euro-crisis legal instruments, which are operative from their signature and are only introduced to Parliament for “discussion and briefing”.<sup>85</sup> This expansion of executive powers was necessary in order to accommodate the “troika” review missions<sup>86</sup> and has provoked strong reactions in the legal, political and

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<sup>81</sup> Cf. for example Legal Statute 3845/2010, ΦΕΚ Α 65/6.5.2010 (1st bailout agreement), Legal Statute 3985/2011, ΦΕΚ Α 151/1.7.2011 (Medium term budgetary framework 2012-2015), Legal Statute 4021/2011, ΦΕΚ Α 218/3.10.2011 (EFSF Treaty), Legal Statute 4024/2011, ΦΕΚ 226 Α/27.10.2011 (austerity measures for the application of the Medium term budgetary framework), Legal Statute 4046/2012 (2nd bail out agreement), Legal Statute 4063/2012, ΦΕΚ Α 71/30.3.2012 (136 TFEU amendment, ESM, and Fiscal Compact), Legal Statute 4093/2012, ΦΕΚ Α 222/12.11.2012 (Medium term budgetary framework 2013-2016).

<sup>82</sup> Cf. for example the section concerning the financial assistance instruments (section X) and the question concerning the approval of the 136 TFEU amendment (question V.2), the ESM Treaty (question VIII.2), and the Fiscal Compact (Legal Statute 4063/2012) (question IX.2).

<sup>83</sup> See the decision 668/2012, 20 February 2012, of the Greek Council of State, on the procedure of ratification of the first bailout agreement, in the official site of the Bar Association of Athens, [www.dsanet.gr/Epikairothta/Nomologia/668.htm](http://www.dsanet.gr/Epikairothta/Nomologia/668.htm). See also the relevant question in the section “Member States receiving financial assistance” (question X.8).

<sup>84</sup> See for example article 2 of the statute 3845/2010.

<sup>85</sup> See for example article 1 paragraph 4 of the statute 3845/2010, as amended by the statute 3847/2010. See also article 93 of the statute 3862/2010. Cf. the section concerning the financial assistance instruments and the EFSF/M.

<sup>86</sup> Cf. question X.7.

academic world. It was used as an argument for the unconstitutionality of the relevant statutes before the Council of State.<sup>87</sup>

In many cases, legislative measures implementing Euro-crisis law and measures concerning the conditions set by the loan agreements have been voted according to an emergency procedure, which entails abbreviation of deadlines for parliamentary debate and voting of the statute under consideration, both in the competent parliamentary committees and in the plenary session.<sup>88</sup> This has been the case, most importantly, of the first and second MoU, which was discussed and voted in one day in the Plenum of the Parliament. Members of the Government, later, admitted that they had not had the time to read the MoU, a subject that caused strong reactions in Parliament and the media.<sup>89</sup> The employment of this procedure has provoked reactions by the deputies of the opposition, and sometimes even of those supporting the Government coalition.<sup>90</sup>

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<sup>87</sup> See questions IV.2 and IV.6 concerning the EFSF agreement, as well as the questions concerning financial assistance to Greece (question X.1 and following).

<sup>88</sup> Article 76 paragraphs 4 and 5 of the Constitution: “4. A Bill designated as very urgent by the Government shall be introduced for voting after a limited debate among the rapporteurs involved, the Prime Minister or the competent Minister, the leaders of parties represented in Parliament and one spokesman for each party. The duration of speeches and the time for the debate may be limited by the Standing Orders. 5. The Government may request that a Bill of particular importance or of an urgent nature be debated in a specific number of sittings, not to exceed three. Parliament may prolong the debate through two additional sittings on the proposal of one-tenth of the total number of Members of Parliament. The duration of each speech shall be specified by the Standing Orders.” Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>89</sup> See questions X.1 and following, especially question X.5.

<sup>90</sup> The first and the second Memoranda (Legal Statutes 3825/2010 and 4046/2012) have been voted under this procedure, on the 6<sup>th</sup> of May 2010 and on the 12<sup>th</sup> of February 2012 respectively. See the Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506_1.pdf) and on the 12<sup>th</sup> of February 2012, <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120212.pdf>, where the reactions of the opposition. Also, the Medium term budgetary framework 2013-2016 (Legal Statute 4093/2012) has been voted following this procedure. See the parliamentary debates on the 7<sup>th</sup> of November 2012, where the reactions of the opposition, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20121107.pdf>. For example, the Government tried to insert certain measures concerning over-debited citizens to the Parliament according to the emergency procedure, but finally followed the normal procedure, after reactions of the opposition and of the parties of the Government coalition. See “The Government yielded concerning the urgent character of the Government bill on the loans” [in Greek], <http://tvxs.gr/news/%CE%B5%CE%BB%CE%BB%CE%AC%CE%B4%CE%B1/%CE%BF%CE%BCE%CE%B1%CE%B4%CE%B9%CE%BA%CF%8C-%C2%AB%CF%8C%CF%87%CE%B9%CE%B9%CE%B2%BB-%CF%83%CF%84%CE%BF-%C2%AB%CE%BA%CE%B1%CF%84%CE%B5%CF%80%CE%B5%CE%AF%CE%B3%CE%BF%CE%BD%CE%B2%BB-%CF%84%CE%BF%CF%85-%CE%BD%CF%83-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B1-%CE%B4%CE%AC%CE%BD%CE%B5%CE%B9%CE%B1>.

Especially, Governments during the crisis have made an extensive use of a *sui generis* legal instrument, the so-called “administrative acts of legislative content”. These are executive administrative acts, normally issued under exceptional circumstances, having a content which normally belongs to the competence of the Parliament. These administrative acts are invested with the status of a legal statute, under the condition that they are ratified by Parliament within a certain time period.<sup>91</sup> More precisely, according to article 44 paragraph 1 of the Greek Constitution: “Under extraordinary circumstances of an urgent and unforeseeable need, the President of the Republic may, upon the proposal of the Cabinet, issue acts of legislative content. Such acts shall be submitted to Parliament for ratification, as specified in the provisions of article 72 paragraph 1, within forty days of their issuance or within forty days from the convocation of a parliamentary session. Should such acts not be submitted to Parliament within the above time-limits or if they should not be ratified by Parliament within three months of their submission, they will henceforth cease to be in force.”<sup>92</sup> Administrative acts of legislative content are subject to scrutiny following an action for their annulment before the Council of State. However, after their retroactive ratification by Parliament they are immune from direct judicial scrutiny. Greek courts can still declare their provisions unconstitutional, yet their decisions lack an abrogative effect. What is more, unconstitutionality can only concern the content of these acts, since the fulfillment of procedural conditions is immune from judicial scrutiny, belonging to the *interna corporis* of Parliament.

The Government has used this instrument in order to approve certain financial assistance instruments and to provide authorization to the executive authorities to sign the relevant agreements.<sup>93</sup> The extended use of this exceptional instrument has sometimes caused the reaction of the parties of the opposition, and even of the

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<sup>91</sup> Cf. for example legal statutes 4047/2012, ΦΕΚ 31 Α/23.2.2012, and 4147/2013, ΦΕΚ 98 Α/26.04.2013. It is interesting to note that the public television and radio has been shut down after an act of legislative content, extending the legislative authorization to the administration on the matter. Cf. ΠΝΠ ΦΕΚ Α’ 139/11.6.2013, available at [http://www.dsanet.gr/Epikairothta/Nomothesia/pnp11\\_6.htm](http://www.dsanet.gr/Epikairothta/Nomothesia/pnp11_6.htm). This act was the legal basis of the Decision 02/11.6.2013, “Suppression of the public enterprise Greek Radio - Television, A.E. (ERT-A.E.)”, ΦΕΚ Β 1414/11.6.2013 issued the same day. This measure was presented by the Government as satisfying the exigency of the “troika” for the reducing the number of public employees. However, the Commission denied that they demanded the closure of the public radio and television organization. The act of legislative content was never ratified by Parliament and thus is not valid anymore. However, this has not any *de facto* consequences.

<sup>92</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>93</sup> Cf. the question on the implementation of the financial assistance instruments (section X).

Government coalition, as well as of legal scholarship and public opinion in general, who often stress the degradation of the role and functioning of the Parliament as a consequence of the financial crisis.<sup>94</sup> The public television and radio were closed after the issuing of such an act, which led the left party of the Government coalition (DIM.AR., Democratic Left) to stop supporting the Government in June 2013.<sup>95</sup>

## CONSTITUTIONAL AMENDMENT

### III.2

HAVE THERE BEEN ANY CONSTITUTIONAL AMENDMENTS IN RESPONSE TO THE EURO-CRISIS OR RELATED TO EURO-CRISIS LAW? OR HAVE ANY AMENDMENTS BEEN PROPOSED?

No constitutional amendment in response to the Euro-crisis law has been adopted. The need for a constitutional amendment in order to implement the balanced budget rule of the Fiscal Compact is stressed out by some legal scholars, who consider the statute implementing the Fiscal Compact insufficient and incompatible with the exigencies of the treaty.<sup>96</sup>

Nevertheless, especially since Spring 2012, there is a public debate on the need of a constitutional amendment. In their electoral campaigns for the elections of May 2012, the two main political parties of the bipartisan, until then, political system included propositions for an extended amendment of many parts of the Constitution, or even the creation of a new Constitution from the beginning, in order to respond to the new needs of the Greek State, which were mainly a result of the financial crisis. The Constitution of 1975 was considered outdated and related to the deficiencies of the political process and of the institutional functioning of the Greek State by the main

<sup>94</sup> See, for example, the article “They bring emergency bill following pressures by the creditors” [in Greek], *Eleftherotypia*, 12 January 2013, <http://www.enet.gr/?i=news.el.article&id=335156>. See the reaction of political leaders to the closure of ERT, “Virulent reactions of the parties to the closure of ERT” [in Greek], *Ta Nea*, 11 June 2013, <http://www.tanea.gr/news/politics/article/5023292/sfodres-antidraseis-twn-kommatwn-gia-to-loyketo-sthn-ert/>. See also the reaction of the unions of Administrative Judges and of the Court of Audit for the closure of ERT, “The rule of law is not established through acts of legislative content” [in Greek], *Eleftherotypia*, 14 June 2013, <http://www.enet.gr/?i=news.el.article&id=369551>.

<sup>95</sup> Cf. Act OJ A’ 139/11.6.2013, available at [http://www.dsnet.gr/Epikairothta/Nomothesia/pnp11\\_6.htm](http://www.dsnet.gr/Epikairothta/Nomothesia/pnp11_6.htm). This act was the legal basis of the Decision 02/11.6.2013, “Suppression of the public enterprise Greek Radio – Television, A.E. (ERT-A.E.)”, OJ B’ 1414/11.6.2013, issued the next day. Cf. <http://www.reuters.com/article/2013/06/21/us-greece-idUSBRE95K0IJ20130621>, [http://www.lemonde.fr/europe/article/2013/06/25/nouveau-gouvernement-de-coalition-en-grece-pour-garantir-la-stabilite\\_3436423\\_3214.html](http://www.lemonde.fr/europe/article/2013/06/25/nouveau-gouvernement-de-coalition-en-grece-pour-garantir-la-stabilite_3436423_3214.html).

<sup>96</sup> See the question concerning the implementation of the balanced budget rule in the section “Fiscal Compact” (question IX.4).

political parties. However, after the two consecutive elections in 2012 and the important shock that they bore in the political world, the debate has changed focus. The question is whether the need for a constitutional amendment still persists or if the *de facto* changes in the functioning of the Constitution make this amendment unnecessary. Except from the debate on the inclusion of the Balanced Budget Rule in the Constitution, which mainly takes place in the academic world, changes proposed concern institutional and fiscal matters that would eliminate corruption phenomena and instability of the taxation system, the separation of powers (increase of powers of the President, restriction of the power of the Prime Minister, independence of the judiciary, establishment of a constitutional court), and the form and functioning of the parliamentary system itself (reduction of the number of parliamentarians, popular legislative initiative, changes in the functioning of political parties, transparency of the financial situation of parties, revision of the immunity of Members of the Government from criminal responsibility).<sup>97</sup> The debate is taking place in public fora for the moment and no official proposal has been submitted to Parliament.

Article 110 of the Constitution sets a rigid procedure of revision of the Constitution:

“1. The provisions of the Constitution shall be subject to revision with the exception of those which determine the form of government as a Parliamentary Republic and those of articles 2 paragraph 1, 4 paragraphs 1, 4 and 7 , 5 paragraphs 1 and 3, 13 paragraph 1, and 26.

2. The need for revision of the Constitution shall be ascertained by a resolution of Parliament adopted, on the proposal of not less than fifty Members of Parliament, by a three-fifths majority of the total number of its members in two ballots, held at least one month apart. This resolution shall define specifically the provisions to be revised.

3. Upon a resolution by Parliament on the revision of the Constitution, the next Parliament shall, in the course of its opening session, decide on the provisions to be revised by an absolute majority of the total number of its members.

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<sup>97</sup> Xenophon Contiades and Ioannis Tassopoulos, “The Impact of the Financial Crisis on the Greek Constitution”, in Xenophon Contiades (ed.), *Constitutions in the Global Financial Crisis* (Ashgate 2013), chapter 7, 195.

4. Should a proposal for revision of the Constitution receive the majority of the votes of the total number of members but not the three-fifths majority specified in paragraph 2, the next Parliament may, in its opening session, decide on the provisions to be revised by a three-fifths majority of the total number of its members.
5. Every duly voted revision of provisions of the Constitution shall be published in the Government Gazette within ten days of its adoption by Parliament and shall come into force through a special parliamentary resolution.
6. Revision of the Constitution is not permitted before the lapse of five years from the completion of a previous revision.”<sup>98</sup>

Nevertheless, because of the profundity of the constitutional changes proposed, certain political actors have adopted the narrative of the creation of a new Constitution through the exercise of “constituent power”, which would entail the dispensation from the procedural and substantial requirements of article 110.<sup>99</sup>

## CONSTITUTIONAL CONTEXT

### III.3

IF NATIONAL CONSTITUTIONAL LAW ALREADY CONTAINED RELEVANT ELEMENTS, SUCH AS A BALANCED BUDGET RULE OR INDEPENDENT BUDGETARY COUNCILS, BEFORE THE CRISIS THAT ARE NOW PART OF EURO-CRISIS LAW, WHAT IS THE BACKGROUND OF THESE RULES?

National constitutional law did not contain a balanced budget rule before the Euro-zone crisis. Neither did national constitutional law already contain an independent budgetary council. The drafting of the national budget was a competence of the General Accounting Office of the State, a public service coming under the Ministry of Finance.<sup>100</sup>

## PURPOSE CONSTITUTIONAL AMENDMENT

### III.4

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<sup>98</sup> The last Constitutional revision took place in 2008, 8<sup>th</sup> Revisionary Parliament, Resolution of the 27<sup>th</sup> of May 2008, ΦΕΚ Α 102/2.6.2008. Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggluko.pdf>

<sup>99</sup> Xenophon Contiades and Ioannis Tassopoulos, *op.cit.*

<sup>100</sup> Cf. the relevant question II.1 in the section “Changes to the budgetary process”.

WHAT IS THE PURPOSE OF THE CONSTITUTIONAL AMENDMENT AND WHAT IS ITS POSITION IN THE CONSTITUTION?

No formal proposal of constitutional amendment is yet submitted to Parliament. Nevertheless, especially since spring of 2012, there is a public debate on the need of a constitutional amendment. In their electoral campaigns for the elections of May 2012, the two main political parties of the bipartisan, until then, political system included propositions for an extended amendment of many parts of the Constitution, or even the creation of a new Constitution from the beginning, in order to respond to the new needs of the Greek State, which were mainly a result of the financial crisis. The Constitution of 1975 was considered outdated and related to the deficiencies of the political process and of the institutional functioning of the Greek State by the main political parties. However, after the two consecutive elections in 2012 and the important shock that they bore in the political world, the debate has changed focus. The question is whether the need for a constitutional amendment still persists or if the de facto changes in the functioning of the Constitution make this amendment unnecessary. Except from the debate on the inclusion of the Balanced Budget Rule in the Constitution, which mainly takes place in the academic world, changes proposed concern institutional and fiscal matters that would eliminate corruption phenomena and instability of the taxation system, the separation of powers (increase of powers of the President, restriction of the power of the Prime Minister, independence of the judiciary, establishment of a constitutional court), and the form and functioning of the parliamentary system itself (reduction of the number of parliamentarians, popular legislative initiative, changes in the functioning of political parties, transparency of the financial situation of parties, revision of the immunity of Members of the Government from criminal responsibility). The debate is taking place in public fora for the moment. Because of the profundity of the constitutional changes proposed, certain political actors have adopted the narrative of the creation of a new Constitution through the exercise of “constituent power”, which would entail, among others, the dispensation from the procedural and substantial requirements of article 110.<sup>101</sup>

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<sup>101</sup> Xenophon Contiades and Ioannis Tassopoulos, “The Impact of the Financial Crisis on the Greek Constitution”, in Xenophon Contiades (ed.), *Constitutions in the Global Financial Crisis* (Ashgate 2013), chapter 7, 195.



## RELATIONSHIP WITH EU LAW

### III.5

IS THE CONSTITUTIONAL AMENDMENT SEEN AS CHANGING THE RELATIONSHIP BETWEEN NATIONAL AND EUROPEAN CONSTITUTIONAL LAW?

Not applicable. The discussions on an eventual constitutional amendment are for the moment very vague and general and do not take place in Parliament but rather in the media and the public fora.

## ORGANIC LAW

### III.6

HAVE THERE BEEN CHANGES TO ORGANIC LAWS OR OTHER TYPES OF LEGISLATION THAT ARE OF A DIFFERENT NATURE OR LEVEL THAN ORDINARY LEGISLATION, IN RELATION TO EURO-CRISIS LAW OR THE BUDGETARY PROCESS?

After their implementation, Euro-crisis legal instruments have a different status than ordinary legislation. Article 28 of the Constitution states:

“1. The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.

2. Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement.

3. Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>102</sup>

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<sup>102</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

Thus, the debate on the place of these legal statutes in the normative hierarchy of the Greek legal order is closely connected to the question of their function, that is whether they are ratifying supra-national law or not.<sup>103</sup> Especially concerning the relationship of these statutes to the Constitution, scholars accept the possibility of “tacit” constitutional amendment through the application of article 28, when European treaties are amended. However, according to the majority of scholars, in order for this to happen, the special procedure and the substantial conditions set by paragraphs 2 and 3 of this article must be respected.<sup>104</sup> In the case of the implementation of Euro-crisis law, this procedure has never been applied. In any case, there is no constitutional court in Greece with the competence to monitor the procedure of constitutional amendments.

## CONSTITUTIONAL AMENDMENT AND ORDINARY LAW

### III.7

IF ORDINARY LEGISLATION WAS ADOPTED IN CONJUNCTION WITH A CONSTITUTIONAL AMENDMENT, WHAT IS THE RELATIONSHIP BETWEEN THE TWO?

Not applicable.

## PERCEPTION SOURCE OF LEGAL CHANGE

### III.8

IN THE PUBLIC AND POLITICAL DISCUSSIONS ON THE ADOPTION OF ORDINARY LEGISLATION, WHAT WAS THE PERCEPTION ON THE APPROPRIATE LEGAL FRAMEWORK? WAS THE ORDINARY LEGISLATION SEEN AS IMPLEMENTING NATIONAL CONSTITUTIONAL LAW, OR EURO-CRISIS LAW?

Article 28 of the Constitution sets substantial and procedural conditions for legal statutes implementing supra-national agreements that attribute constitutional competences to supra-national institutions and restrict the exercise of national sovereignty.<sup>105</sup> Thus, the appropriate legal framework for the implementation of Euro-crisis legal instruments depends on 1) their character of international/supra-national legally binding agreements, 2) if they attribute constitutional competences to supra-national institutions, or 3) if they restrict the exercise of national sovereignty. Further under the procedural and substantial conditions of this article, scholarship has

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<sup>103</sup> For this question, see question III.8.

<sup>104</sup> On this matter, see question IX.4.

<sup>105</sup> See question III.6.

accepted the possibility of “tacit” constitutional amendment.<sup>106</sup> This would be the case, for example, if the agreements implemented were changing the repartition of constitutional competences.

Most of the Euro-crisis legal instruments have been perceived as part of European law in public debates, and this, despite their intergovernmental character in some cases.<sup>107</sup>

However, the Memoranda of Understanding (MoUs) for the loan agreements have been argued to constitute the political programme of the Government, albeit in the form “staff-level” agreements. Thus, they have not been ratified, nor have the Loan Agreements themselves.<sup>108</sup> Moreover, virtually all statutes containing austerity measures have been perceived as implementing exigencies of the creditors, either they are formally mentioned in a Euro-crisis legal instrument, or they are required by the “troika”, as a precondition for the disbursement of the tranches of the loan.<sup>109</sup> Yet, by virtue of subsequent Council Decisions in the context of the excessive deficit procedure, which reiterate the measures of MoU, the latter also acquire European “garb”. The European nature of the financial assistance instruments has been stressed by many academics. However, the Council of State explicitly negated the formal connection of the MoU to EU law in its decision 1285/2012.<sup>110</sup>

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<sup>106</sup> See question IX.4.

<sup>107</sup> For example, the Fiscal Compact is perceived as a part of European law in the relevant parliamentary debates, and even by academics. Cf. the debates on the 28<sup>th</sup> of March 2012, during the ratification of the Fiscal Compact, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΠΙΣΤ*, Τετάρτη, 28 Μαρτίου 2012, 8004 available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030. See also the newspaper article by Petros Stagkos, Professor of European Law in the University of Thessaloniki, “Constitution and “golden rule”” [in Greek], *Ta Nea*, 19 February 2013, <http://www.tanea.gr/opinions/all-opinions/article/5001990/syntagma-kai-xrysos-kanonas/>.

<sup>108</sup> Though the Government approves and delegates their signature by the Minister of Finance and other executive authorities through administrative acts of legislative content, which subsequently introduces to Parliament for ratification. On this constitutional “acrobatic”, see the question X.3 on the status of the financial assistance instruments.

<sup>109</sup> Usually, before the implementation of austerity measures, there is a “thriller” in the media concerning the negotiations between the Government and the “troika”, who always has very strict requirements. Concerning the negotiations between the new Minister of Administrative Reform, Kyriakos Mitsotakis and the “troika” on the mobility scheme for public sector workers, “Troika deal within reach as talks on public sector reforms get under way”, *ekathimerini.com*, 3 July 2012, [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsitel\\_1\\_03/07/2013\\_507327](http://www.ekathimerini.com/4dcgi/_w_articles_wsitel_1_03/07/2013_507327); “Greece, troika agree to public sector worker dismissal reserve”, *ekathimerini.com*, 9 July 2013, [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsitel\\_1\\_09/07/2013\\_508286](http://www.ekathimerini.com/4dcgi/_w_articles_wsitel_1_09/07/2013_508286).

<sup>110</sup> Cf. the relevant question X.3 on the status of the financial assistance instruments.

Subsequently, in decision 1507/2014,<sup>111</sup> the Council of State refused to introduce a preliminary reference to the ECJ concerning the PSI procedure. The majority of the judges found that, even though the statute determining the PSI conditions was drafted after deliberations between the Greek authorities and EU institutions, the latter had only a consulting function in the “political or technocratic” decisions on the PSI. The relevant statute and the implementing measures were thus sovereignly decided by the constitutionally competent Greek authorities and no application of EU law was at issue. Relevant statements by the Eurogroup or the Euro-area MS’ Heads of State and Government only had a political character (point 19).

In the same paragraph, the Council of State clarified that the EFSF is not an EU institutional authority but a legal entity under private law, constituted by the Eurozone MS for providing financial assistance to the countries that need it and for ensuring financial stability in the Eurozone (point 19).

There has been a heated political debate, inside and outside Parliament, on the appropriate legal framework for the implementation of Euro-crisis law. The public debate in the media has been mainly concentrated on the implementation of the MoU setting the conditions, usually austerity plans, for providing financial assistance to Greece. Political actors from the opposition and public actors,<sup>112</sup> trade unions,<sup>113</sup> bar associations,<sup>114</sup> academics,<sup>115</sup> journalists, NGOs, artists,<sup>116</sup> and even the Scientific

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<sup>111</sup> Plenum decision, 28 April 2014. Cf. question X.9.

<sup>112</sup> Cf. “Al. Tsipras: Memorandum or SYRIZA” [in Greek], *To Vima*, 10 July 2013, <http://www.tovima.gr/politics/article/?aid=521748>; Notis Marias, “Referendum for the Amendment of the Lisbon Treaty” [in Greek], *Epikaira*, 24 March 2011, <http://www.epikaira.gr/epikairo.php?id=15885>

<sup>113</sup> See for example the press release of GSEE (General Confederation of Greek Workers), [http://www.gsee.gr/news/news\\_view.php?id=1757&year=&month=&key=%EC%ED%E7%EC%FC%ED%E9%EF&page=0&limit=10](http://www.gsee.gr/news/news_view.php?id=1757&year=&month=&key=%EC%ED%E7%EC%FC%ED%E9%EF&page=0&limit=10), on the 16<sup>th</sup> of February 2012, concerning the MoU II. See also the site of ADEDY (Confederation of Civil Servants’ Unions), [www.adedy.gr](http://www.adedy.gr).

<sup>114</sup> The Athens Bar Association has organized many conferences on the constitutional questions raised by the MoU. For example, the conference on the 15<sup>th</sup> of June 2010, “Memorandum, Constitution, European Treaty, and ECHR”. The Volos Bar Association is also active in the public debate. See for example, “The Memorandum has been voted through an unconstitutional procedure” [in Greek], *Eleftherotypia*, 12 August 2010, <http://www.enet.gr/?i=news.el.article&id=192485>.

<sup>115</sup> On the academic –which is also political, given the politicization of the constitutional doctrine in Greece- debate concerning the first MoU, see Kostas Botopoulos, “Common sense and gaps in the ‘Memorandum Decision’” [in Greek], *op. cit.* and the bibliography cited. In this debate, many important constitutionalists have defended the unconstitutionality of the MoU. See also Giorgos Katrougalos, “The ‘Paraconstitution’ of the Memorandum and the Other Way” [in Greek], *Nomiko Vima*, February 2011. See also George Katrougalos, The Greek Austerity Measures: Violations of Socio-Economic Rights, Int’l J. Const. L. Blog, January 29, 2013, available at: <http://www.icconnectblog.com/2013/01/the-greek-austerity-measures-violations-of-socio-economic-rights>. Concerning the second MoU, voted in February 2012, five important constitutionalists made a

Service of the Parliament<sup>117</sup> have objected that statutes voted in application of Euro-crisis law were formally and substantially violating the Greek Constitution. Especially in the relevant parliamentary debates, the opposition constantly repeated that a special procedure for the voting of the relevant legal statutes or a constitutional amendment was needed.<sup>118</sup> What is more, many public and political actors have objected to the adoption of this legislation through emergency procedures, and through the *sui generis* legal instrument of the “acts of legislative content”. Also, they have accused the Government of deliberately following opaque nondemocratic procedures.<sup>119</sup>

Many statutes and administrative acts implementing Euro-crisis law, and especially the MoU, have been brought before the Supreme Administrative Court (the Council of State) and other courts, in the context of the diffused constitutionality review. Also, many of the relevant legal statutes have been attacked before international institutions, such as the ECHR, the European Committee of Social Rights and the International Labor Organization.<sup>120</sup> The various recourses have been introduced by trade unions, judges, University professors, bar associations, and private persons.<sup>121</sup> However, despite the almost commonsensical character of the unconstitutionality of at least some of the statutes implementing Euro-crisis law, and the encouraging decisions of

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common statement on its unconstitutionality. See “The Memorandum is unconstitutional” [in Greek], news247, 12 February 2012, [http://news247.gr/eidiseis/oikonomia/antisynagmatiko\\_to\\_mnhmonio.1638556.html](http://news247.gr/eidiseis/oikonomia/antisynagmatiko_to_mnhmonio.1638556.html).

<sup>116</sup> “Personalities from the Left against the Memorandum”, *To Vima*, 7 July 2010, <http://www.tovima.gr/politics/article/?aid=341868>. Concerning the third MoU, voted in November 2012, see the opinion of Kostas Chrysogonos, Professor of Constitutional Law in the University of Thessaloniki, after the question of Alexis Tsipras, President of SY.RIZ.A. in “Chrysogonos: Why the Memorandum III is unconstitutional” [in Greek], news247, 8 November 2012, [http://news247.gr/eidiseis/koinonia/xrysogonos\\_giati\\_einai\\_antisynagmatiko\\_to\\_mnhmonio\\_iii.2001637.html](http://news247.gr/eidiseis/koinonia/xrysogonos_giati_einai_antisynagmatiko_to_mnhmonio_iii.2001637.html).

<sup>117</sup> “Scientific Service of the Parliament: the Memorandum is Unconstitutional” [in Greek], *I Avgi*, 13 February 2012, <http://archive.avgi.gr/ArticleActionshow.action?articleID=669174>.

<sup>118</sup> See the questions concerning the ratification procedure of the various legal instruments.

<sup>119</sup> See question III.1.

<sup>120</sup> See the relevant questions, especially concerning financial assistance to Greece.

<sup>121</sup> Concerning the first MoU, “Deliberation in the Council of State concerning the recourses against the Memorandum” [in Greek], “<http://www.constitutionalism.gr/site/1774-syzitisi-sto-ste-twn-prosfygwn-kata-toy-mnimonioy/>”, “The Memorandum faces the Constitution” [in Greek], <http://www.newstime.gr/?i=nt.el.article&id=50074>. Concerning the second MoU, “The Memorandum 2 sticks to the Council of State” [in Greek], *Eleftherotypia*, 3 April 2013, <http://www.enet.gr/?i=news.el.article&id=354820>. Concerning the third MoU, “The judges make recourse to the Council of State against the Memorandum” [in Greek], *I Kathimerini*, 7 July 2013, [http://www.kathimerini.gr/4dcgi/\\_w\\_articles\\_kathremote\\_1\\_13/01/2013\\_478242](http://www.kathimerini.gr/4dcgi/_w_articles_kathremote_1_13/01/2013_478242); “University professors make recourse to the Council of State against the Memorandum”, in.gr, 10 July 2012, <http://news.in.gr/greece/article/?aid=1231256894>.

certain international institutions,<sup>122</sup> in Greece there is no strong and independent constitutional court that could annul these acts.<sup>123</sup> Nevertheless, some court decisions sanction the unconstitutionality, formal or substantial, of certain specific provisions mainly concerning taxes, collective and individual labor rights, and social security.<sup>124</sup>

Often, when facing legal-procedural arguments of the opposition, the Government has invoked the political and moral responsibility to save the economy of the country, which does not allow for formalism.<sup>125</sup>

When not using moral-political argumentation, people supporting the Government and the austerity policies required by the Eurozone partners, the EU and the IMF, have repeatedly answered that the statutes related to Euro-crisis law are also implementing, and not violating, national constitutional law. More precisely, the main legal argument has been that article 28 of the Constitution provides for European integration. Moreover, the loan agreements, austerity policies, and budgetary discipline are necessary for the reform of the Public Administration, for the efficacious functioning of the State, for the fight against corruption, clientelism, and tax evasion, and for the fulfillment of the country's budgetary needs, so that it can regain its sovereignty, which is lost because of the debt crisis. Thus, the defenders of the Government policies have underlined that the implementation of Euro-crisis law does not restrict the exercise of national sovereignty and does not entail the concession of any constitutional competences to institutions of supra-national organizations.<sup>126</sup> Besides, in the public debate, which is characterized by a constant prediction of impending calamities, it has usually been argued that there is no alternative to the implementation of these measures, if one wants the State and the

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<sup>122</sup> See the report of the High Level Mission of the ILO for Greece, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/missionreport/wcms\\_170433.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/missionreport/wcms_170433.pdf), and the speech of the Director General of the ILO, [http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS\\_216803/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/who-we-are/ilo-director-general/statements-and-speeches/WCMS_216803/lang--en/index.htm)

<sup>123</sup> See Xenophon Contiades, "The return of judges" [in Greek], *Ethnos*, 17 July 2012, [http://www.contiades.gr/index.php?option=com\\_content&task=view&id=1026](http://www.contiades.gr/index.php?option=com_content&task=view&id=1026).

<sup>124</sup> See question X.9.

<sup>125</sup> See the questions concerning the financial assistance instruments (questions X.1 and following).

<sup>126</sup> See the parliamentary debates cited in the questions concerning the implementation of the specific Euro-crisis law instruments.

economy to function. Indeed the non-implementation is presented as a synonym to the exit of the country from the Euro and its bankruptcy which will burden the citizens.<sup>127</sup>

Decision no. 668/2012, 20 February 2012, of the Greek Council of State, concerning the legal statute implementing the first MoU, is characteristic of this argumentation.<sup>128</sup> Indeed, the Council of State argued that, even though it is a result of negotiations and agreement between Greece and certain international authorities, the Memorandum does not constitute an international treaty which is legally binding the Greek Government, but only the governmental program for the confrontation of the economic problems of the country, a compelling public interest and a common interest of Greece's Eurozone partners. Therefore, as a political program, the Memorandum does not result in the transfer of competences to international authorities, it does not create legal norms and it does not possess a direct effect in the domestic legal order, given that, for its application, the constitutionally competent organs have to enact some implementing measures. Thus, no special procedure or constitutional amendment was needed for its enactment.<sup>129</sup>

However, generally the need for a constitutional amendment in order to accommodate the changes brought about by the Euro-crisis has been affirmed by all parties of the political world.<sup>130</sup> Especially since the spring of 2012, there has been a public debate on the need for such an amendment. In their electoral campaigns in May 2012, the two main political parties of the bipartisan, until then, political system included propositions for an extended amendment of many parts of the Constitution, or even the creation of a new Constitution from the beginning, in order to respond to the new needs of the Greek State, which were mainly a result of the financial crisis.<sup>131</sup> The Constitution of 1975 was considered outdated and related to the deficiencies of the

<sup>127</sup> Tryfon Koutalidis, "Unconceivable consequences if the Memorandum is declared unconstitutional" [in Greek], *Forum*, May 2011. See also the interview of the Associate Minister of Finance, Pantelis Oikonomou, to the journalist Nikos Chatzinikolaou, <http://www.minfin.gr/portal/el/resource/contentObject/id/6ad8a79e-6576-47f1-9628-9e5bcd2f1ce4>.

<sup>128</sup> [www.dsnet.gr/Epikairothta/Nomologia/668.htm](http://www.dsnet.gr/Epikairothta/Nomologia/668.htm).

<sup>129</sup> Point 28 of the decision.

<sup>130</sup> Chrysogonos argues that such an amendment would not be possible because of the eternity clause of the Greek Constitution (art. 110) imposing the eternity of the most fundamental constitutional provisions. See Kostas Chrysogonos, «Η χαμένη τιμή της Ελληνικής Δημοκρατίας. Ο μηχανισμός «στήριξης της ελληνικής οικονομίας» από την οπτική της εθνικής κυριαρχίας και της δημοκρατικής αρχής [The lost honour of the Hellenic Republic. The "rescue" mechanism of the Greek economy from the point of view of national sovereignty and of the principle of democracy]», *NoB* 58 [2010] p. 1356

<sup>131</sup> Cf. for P.A.S.O.K. <http://archive.pasok.gr/portal/resource/contentObject/id/81e35a51-16d6-4e6e-bb0f-5acc818085e5>. For N.D. see "The 31 proposals by ND for the Constitutional Amendment" [in Greek], *real.gr*, 29 July 2011, <http://www.real.gr/DefaultArthro.aspx?page=arthro&id=83283&catID=1>



political process and of the institutional functioning of the Greek State by the main political parties. Because of the profundity of the constitutional changes proposed, certain political actors have adopted the narrative of the creation of a new Constitution through the exercise of “constituent power”, which would entail the dispensation from the procedural and substantial requirements of article 110.<sup>132</sup>

After the two consecutive elections in 2012 and the important shock that they bore in the political world, the debate has changed focus. The question is whether the need for a constitutional amendment still persists or if the *de facto* changes in the functioning of the Constitution make this amendment unnecessary. Except from the debate on the inclusion of the Balanced Budget Rule in the Constitution, which mainly takes place in the academic world,<sup>133</sup> changes proposed concern institutional and fiscal matters that would eliminate corruption phenomena and instability of the taxation system, the separation of powers (increase of powers of the President, restriction of the power of the Prime Minister, independence of the judiciary, establishment of a constitutional court), and the form and functioning of the parliamentary system itself (reduction of the number of parliamentarians, popular legislative initiative, changes in the functioning of political parties, transparency of the financial situation of parties, revision of the immunity of Members of the Government from criminal responsibility).<sup>134</sup> The debate is taking place in public fora for the moment and no official proposal has been submitted to Parliament.<sup>135</sup>

## MISCELLANEOUS

### III.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND TO CHANGES TO NATIONAL (CONSTITUTIONAL) LAW?

Even though the Constitution has not been formally amended, one can easily observe

<sup>132</sup> Cf. the propositions of P.A.S.O.K. in June 2012 for a “New Form of Polity” <http://archive.pasok.gr/portal/resource/contentObject/id/81e35a51-16d6-4e6e-bb0f-5acc818085e5>

<sup>133</sup> See question IX.4.

<sup>134</sup> Xenophon Contiades and Ioannis Tassopoulos, “The Impact of the Financial Crisis on the Greek Constitution”, in Xenophon Contiades (ed.), *Constitutions in the Global Financial Crisis* (Ashgate 2013), chapter 7, 195.

<sup>135</sup> See the proposition of N.D. in the stage of public deliberation on the internet [http://www.nd.gr/web/oi\\_protaseis\\_mas\\_gia\\_ti\\_suntagmatiki\\_anatheorisi\\_gia\\_na\\_anoiksei\\_o\\_dromos\\_gia\\_ti\\_nea\\_metapoliteusi](http://www.nd.gr/web/oi_protaseis_mas_gia_ti_suntagmatiki_anatheorisi_gia_na_anoiksei_o_dromos_gia_ti_nea_metapoliteusi) See also, “Proposition by Stylianidis for radical constitutional amendment” [in Greek], *To Vima*, 10 April 2013, <http://www.tovima.gr/politics/article/?aid=507157> . See also for the propositions by SY.RIZ.A., “The propositions of the Opposition for the political system-constitutional amendment”, *I Avgi*, 29 June 2013, <http://www.avgi.gr/article/539667/oi-protaseis-tis-axiomatikis-antipoliteusis-gia-to-politiko-sustima-suntagmatiki-anatheorisi> .



the dramatic change of the way the Constitution is applied since the burst of the Euro-zone crisis. In an academic article, Giannis Drosos argues that the first Memorandum constitutes a “turning point” of the Greek political regime, because it imposes the exercise of some of the most important political powers in cooperation with organs that have an international nature, like the “troika”.<sup>136</sup> Also, Lina Papadopoulou refers to the “normative power of the facts themselves” that overrules the formal Constitution.<sup>137</sup> Kostas Giannakopoulos argues that the Memorandum “has completely substituted the [constitutionally] imposed balancing of constitutional rules and principles” and has fixed the interpretation of the flexible domestic economic constitution as pursuing the EU economic policy.<sup>138</sup> It is true that the interpretation of constitutional rules and rights has importantly changed during the last years, and, in the context of austerity policies implemented by Governments, it has legitimized restrictions in constitutional rights and practices of the executive that would be unthinkable some years earlier.<sup>139</sup> What is more, the upheaval of the political correlations after the elections of 2012, as well as the configuration of the coalition government between left and right pro-European parties, have importantly changed the functioning of Government and has led Antonis Maniatakis to speak about the “collapse” of the post-*junta* political-institutional regime.<sup>140</sup> These substantial changes, without a formal corroboration, are in deep contrast with the superficial

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<sup>136</sup> Giannis Drosos, «Το ‘Μνημόνιο’ ως σημείο στροφής του πολιτεύματος [The ‘Memorandum’ as a turning point of the regime]», [www.constitutionalism.gr](http://www.constitutionalism.gr), published in *The Book’s Journal*, Vol. 6, April 2011, 42.

<sup>137</sup> Lina Papadopoulou, “Can Constitutional Rules, Even if ‘Golden’, Tame Greek Public Debt?”, in Maurice Adams, Federico Fabbrini and Pierre Larouche (eds), *The Constitutionalization of European Budgetary Constraints*, Oxford: Hart Publishing, 2014, 223, 239.

<sup>138</sup> Kostas Giannakopoulos, «Μεταξύ εθνικής και ενωσιακής έννομης τάξης: το «Μνημόνιο» ως αναπαραγωγή της κρίσης του κράτους δικαίου [Between National and EU Legal Order: the “Memorandum” as a Reproduction of the Rule of Law Crisis]», [www.constitutionalism.gr](http://www.constitutionalism.gr), p. 5: «Η αναφορά –έστω και έμμεση- των κυβερνήσεων στην εφαρμογή του ασαφούς, από άποψη κανονιστικής ισχύος, Μνημονίου της 3<sup>ης</sup> Μαΐου 2010, έφτασε να υποκαταστήσει πλήρως την επιβαλλόμενη στάθμιση συνταγματικών κανόνων και αρχών.»

<sup>139</sup> The example of the suppression of the public service of radio and television through an administrative act is a typical example of this case. For the interpretation of the scope and protection constitutional rights before the crisis see, among others, Prodromos Dagtoglou, *Individual Rights*, 2 vols., 2<sup>nd</sup> ed., (Athens-Komotini: Ant. N. Sakkoulas 2005) [in Greek], Kostas Chrysogonos, *Individual and Social Rights*, 2<sup>nd</sup> ed., (Athens-Komotini: Ant. N. Sakkoulas 2002) [in Greek]. For the extended powers of the executive as a result of the economic crisis, see Lina Papadopoulou, *op.cit.*, section “Executive Unbound?”, 236 f.

<sup>140</sup> Antonis Maniatakis, «Η κατάρρευση του μεταπολιτευτικού πολιτικού συστήματος [The collapse of the *Metapolitefsi* political regime]», [www.constitutionalism.gr](http://www.constitutionalism.gr)

constitutional amendments which have been the practice of past Governments.<sup>141</sup>

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<sup>141</sup> The Greek Constitution has been amended in 2001 and in 2008: 7<sup>th</sup> Revisionary Parliament, Resolution of the 6<sup>th</sup> of April 2001 (ΦΕΚ 84 Α/17.4.2001), 8<sup>th</sup> Revisionary Parliament, Resolution of the 27<sup>th</sup> May 2008 (ΦΕΚ 102 Α/2.6.2008).

## IV EARLY EMERGENCY FUNDING

*Prior to 2010, loan assistance to States was made primarily via bilateral agreements (to Latvia, Hungary, Romania, 1<sup>st</sup> round of Greek loan assistance).*

*The European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF) are two temporary emergency funds, both resulting from the turbulent political weekend of 7-9 May 2010. On May 9, a Decision of the Representatives of the Governments of the Euro Area Member States was adopted expressing agreement on both funds.*

*The EFSM is based on a 'Council regulation establishing a European financial stabilisation mechanism' of May 11, 2010 adopted on the basis of article 122(2) TFEU and therefore binding on all 27 member states of the EU.*

*(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:118:0001:0001:EN:PDF>)*

*The EFSF is a special purpose vehicle created under Luxembourgish private law by the 17 member states of the Eurozone. The EFSF Framework Agreement was signed on June 7, 2010. On June 24, 2011, the Heads of State or Government of the Eurozone agreed to increase the EFSF's scope of activity and increase its guarantee commitments.*

*([http://www.efsf.europa.eu/attachments/20111019\\_efsf\\_framework\\_agreement\\_en.pdf](http://www.efsf.europa.eu/attachments/20111019_efsf_framework_agreement_en.pdf) and [http://www.efsf.europa.eu/attachments/faq\\_en.pdf](http://www.efsf.europa.eu/attachments/faq_en.pdf))*

## NEGOTIATION

### IV.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE NEGOTIATION OF THE EFSF AND THE EFSM, IN PARTICULAR IN RELATION TO (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

When the Greek debt crisis burst in 2010, the initial main problem was that there was no existing mechanism in place to provide financial assistance to indebted countries. Therefore, the 1<sup>st</sup> Greek bailout programme consisted of bilateral loans from Euro area member states amounting to 80bn euros and a 30bn euros loan from the IMF. In the meantime, however, the EFSM was set up through Regulation 407/2010 of the 11<sup>th</sup> of May 2010 under the procedure of Article 122§2 TFEU, whereas the EFSF was created by the euro area Member States following the decisions taken on 9 May 2010 within the framework of the Ecofin Council.<sup>142</sup> The EFSF provided financial assistance to Greece under the second Economic Adjustment Programme, while the undisbursed assistance from the Greek Loan Facility was also shifted to the EFSF.<sup>143</sup>

<sup>142</sup> See the chronological account of the Euro-crisis, [http://ec.europa.eu/economy\\_finance/crisis/2010-05\\_en.htm](http://ec.europa.eu/economy_finance/crisis/2010-05_en.htm)

<sup>143</sup> See EFSF, Frequently Asked Questions, p. 18 f., available at <http://www.efsf.europa.eu/attachments/EFSF%20FAQ%2004032013.pdf>.

The negotiations for the EFSF/M thus took place at the same time with the finalisation of the Greek Loan Facility. Therefore, many of the political/legal difficulties concerned this agreement<sup>144</sup> and the EFSF/M was not discussed in Parliament as such during its negotiation. There was no major opposition to the establishment of the EFSF and the general attitude of the Greek MPs throughout the crisis is that EU institutions should do more to address the crisis. In that context, the EFSF was never perceived as problematic from a constitutional perspective. Generally, in the public and parliamentary debates, the Government presented the establishment of a European bailout mechanism as a negotiated success, a proof of the recognition of the European character of the economic crisis and a net of security for the Greek and the Eurozone economy. On the contrary, the opposition parties often objected that this European mechanism is nothing but a mechanism for an orderly default and only serves the interests of the creditors.<sup>145</sup>

## ENTRY INTO FORCE

### IV.2

ARTICLE 1(1) EFSF FRAMEWORK AGREEMENT PROVIDES THAT IT WILL ENTER INTO FORCE IF SUFFICIENT EUROZONE MEMBER STATES HAVE CONCLUDED ALL PROCEDURES NECESSARY UNDER THEIR RESPECTIVE NATIONAL LAWS TO ENSURE THAT THEIR OBLIGATIONS SHALL COME INTO IMMEDIATE FORCE AND EFFECT AND PROVIDED WRITTEN CONFIRMATION OF THIS. WHAT DOES THIS PROCEDURE LOOK LIKE IN GREECE AND IN WHAT WAY DOES IT INVOLVE PARLIAMENT?

It is difficult to say what the procedure is for the obligations of Greece vis-à-vis the EFSF to come into force and effect, as it depends on the nature of the EFSF agreement. This issue provoked many debates in Parliament; from the relevant debates it is obvious that there is uncertainty on the subject.

Article 28 of the Constitution determines the procedural and substantial conditions for the ratification of international agreements:

“1. The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international

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<sup>144</sup> See Questions X.1-X.6.

<sup>145</sup> See for example Minutes of the Greek Parliament, Plenary Session of the 5<sup>th</sup> of July 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100705.pdf>

law and of international conventions shall be applicable to aliens only under the condition of reciprocity.

2. Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement.

3. Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>146</sup>

The interpretive clause of this article states that “Article 28 is the basis for the participation of the Country in the procedures of European integration.” However, for the EFSF agreement, this constitutional procedure was not followed until September 2011.

Article 1 paragraph 4 of the legal statute 3845/2010, containing measures for the implementation of the mechanism for the support of the Greek economy,<sup>147</sup> provided a very broad authorization to the Minister of Finance to represent the Greek State and to sign any memorandum, agreement or loan, bilateral or multilateral, with the European Commission, the Member-States of the Eurozone, the IMF and the ECB, in order to implement the First Economic Adjustment Programme. According to the last sentence of this paragraph, “[t]he memorandums, agreements and conventions are introduced to Parliament for ratification.” Some days later, however, the Government proposed an amendment to this procedure which was voted in Parliament through the emergency procedure: instead of ratification, the relevant texts would be introduced to Parliament for “discussion and briefing.” The amendment added also that these memorandums, conventions and agreements would enter immediately into force with

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<sup>146</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>147</sup> Law 3845/2010, ΦΕΚ Α' 65/6.5.2010.

their signature.<sup>148</sup> In other words, with this amendment, the entering into force of the relevant agreements did not presuppose the substantial and procedural ratification conditions set by the Constitution (articles 36 and 28). Therefore, if the EFSF is considered part of the mechanism for the rescuing of the Greek economy, no ratification procedure is needed.

However, the Minister of Finance submitted a draft law on the 4<sup>th</sup> of June 2010, concerning the ratification of the Greek Loan Facility and the participation of the country to the EFSF. The second article of the draft law habilitated the Minister of Finance to sign any memorandum, agreement and convention in relation to the EFSF.<sup>149</sup>

The explanatory report of this draft is not clear as to the entering into force of the EFSF agreement. It mentions that “[Greece], which has been already financed and will be financed for three years by the loan facility approved the previous month, will not participate immediately in the European mechanism [meaning the EFSF], or, more precisely, it is considered that it has already participated, since [the EFSF] is in continuity with and constitutes an expansion of the Greek support mechanism. [Greece] will of course participate in the legal person that will materialize [the European support mechanism] and will participate integrally in the future, when it will have overcome the crisis and will have fulfilled the obligations that it has assumed.”<sup>150</sup> Nevertheless, this draft law was only discussed in the Permanent Commission of Finance and was never introduced to the Parliament Plenary Session for voting.<sup>151</sup>

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<sup>148</sup> Law 3847/2010, ΦΕΚ Α' 67/11.5.2010, sole article, paragraph 9 (statute readjusting certain allowances for public pensioners). On the parliamentary debates that this provision caused, see questions X.1 and following.

<sup>149</sup> See the draft law, <http://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-ae9dc768f4f7/CDANEIO.pdf>.

<sup>150</sup> See the report, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/K-TAMEIONOM-EIS1.pdf>, 1β.

<sup>151</sup> The draft law was not voted: [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=bcf0f265-06e2-4d43-a1ce-06ce96d27fb1](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=bcf0f265-06e2-4d43-a1ce-06ce96d27fb1). The only information that could be retrieved on the relevant discussions in the Permanent Commission of Finance is available at [http://www.skouzekafilonos.gr/index.php?option=com\\_content&view=article&id=423:h-&catid=55:2010-04-28-12-55-47&Itemid=55](http://www.skouzekafilonos.gr/index.php?option=com_content&view=article&id=423:h-&catid=55:2010-04-28-12-55-47&Itemid=55). According to this information the draft law was not voted, because, according to the laws 3845/2010 and 3847/2010, only an information procedure of the Parliament was institutionalized and not any ratification procedure.

The situation becomes more complicated, as article 93 of the statute 3862/2010, implementing three non-related non-related European directives, habilitates the Minister of Finance “to represent the Greek State in the EFSF and to sign any memorandum, agreement or loan, bilateral or multilateral, with the European Commission, the Member-States of the Eurozone and the ECB and to proceed to any necessary act for the participation of the Greek State in legal persons and authorities constituted for the implementation of the European Support Mechanism.”<sup>152</sup> The same article declares that the relevant agreements and conventions enter into force with their signature and are brought into Parliament for discussion and briefing. Concerning the loan agreements, however, the article requires their ratification by Parliament and provides that they enter into force only after the publication of the ratification statute in the Official Gazette. Finally, article 94 of the same statute attributes a retroactive effect to these provisions, from the 1<sup>st</sup> of June 2010.<sup>153</sup> In her speech in the parliamentary debates on the 5<sup>th</sup> of July, the representative of the majority argued that Greece had signed the EFSF agreement of the 16<sup>th</sup> June under the condition of approval by the Parliament; it was this approval that was asked with the submission of article 93 to vote.<sup>154</sup>

A little more than a year later, however, the EFSF Framework Agreement of the 16<sup>th</sup> of June 2010 (along with its 3 annexes), the amendment of the EFSF Framework Agreement of the 30<sup>th</sup> of June 2011 (along with its 4 annexes), and the amendment of the EFSF Framework Agreement of the 1<sup>st</sup> of September 2011 (along with its 3 annexes) were all ratified by the Greek Parliament through Law 4021/2011, also imposing a property tax and regulating bank supervision.<sup>155</sup> In fact, it is practice in Greece to try and discuss agreements along with the fiscal measures that accompany them in one go, in order to put pressure on MPs to vote in favour of ratification as a package deal. The agreements were introduced verbatim in both English and Greek. For their ratification, the procedure of Article 28§1 of the Constitution was used, which provides the requirement of a simple majority of MPs to vote in favour of its

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<sup>152</sup> See law 3862/2010, ΦΕΚ 113 Α'/13.07.2010. This statute was submitted to Parliament on the 22<sup>nd</sup> of June, was voted on the 5<sup>th</sup> of July 2010.

<sup>153</sup> See the statute.

<sup>154</sup> See the debates of the 5<sup>th</sup> of July 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100705.pdf>, p. 9581 f.

<sup>155</sup> See law 4021/2011, ΦΕΚ Α' 218/03.10.2011.

ratification.<sup>156</sup> The ratification statute was discussed in the Plenum on the 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> and the 27<sup>th</sup> of September 2011 and entered into force with its publication in the Official Gazette on the 3<sup>rd</sup> of October.<sup>157</sup> In the relevant parliamentary debates, it is sometimes implied that it is not the EFSF *per se* that is ratified, but rather *the new role* assumed by the EFSF, which, after the amendment of the Framework Agreement, could provide loans to countries in financial difficulty for the recapitalization of banks, could buy bonds of over-debited countries in the primary and secondary market and could provide preventive loans to countries submitted to pressures by the markets.<sup>158</sup>

## GUARANTEES

### IV.3

MEMBER STATES ARE OBLIGED TO ISSUE GUARANTEES UNDER THE EFSF. WHAT PROCEDURE WAS USED FOR THIS IN GREECE? WHAT DEBATES HAVE ARISEN DURING THIS PROCEDURE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE GUARANTEES FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

Greece stepped out from the obligation to issue Guarantees under the EFSF (See article 2(7) of the Framework Agreement).<sup>159</sup> There was no discussion in Parliament about the issuance of guarantees for the EFSF and possible practical repercussions of this. An extended public discussion took place on the guarantees required by the creditors for the loan agreements with Greece, which is described in the relevant questions. Further, no information could be retrieved on eventual guarantees issued before the stepping-out of Greece.<sup>160</sup>

## ACTIVATION PROBLEMS

### IV.4

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER DURING THE NATIONAL PROCEDURES RELATED TO THE ENTRY INTO FORCE OF THE EFSF FRAMEWORK AGREEMENT AND/OR THE ISSUANCE AND INCREASE OF GUARANTEES?

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<sup>156</sup> This is explicitly provided in the minutes of the relevant Parliamentary session. See Minutes of the Greek Parliament, Plenary Session of the 20<sup>th</sup> September 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110920.pdf>.

<sup>157</sup> [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=96a46802-d7ce-4477-92cf-f845b79275d6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=96a46802-d7ce-4477-92cf-f845b79275d6).

<sup>158</sup> See the speech of the representative of the majority in the debates on the 20<sup>th</sup> of September 2011, cited above, p. 17245 f.

<sup>159</sup> <http://www.efsf.europa.eu/attachments/EFSF%20FAQ%2004032013.pdf>, p. 2.

<sup>160</sup> The representative of the majority in the debates on the 5<sup>th</sup> of July 2010 implied that no such guarantees would be issued. See the relevant parliamentary debates, cited above, p. 9582.



The legal and political difficulties during the national procedures related to the entry into force of the EFSF Framework Agreement did not concern so much the agreement *per se* or the issuance and increase of guarantees but rather the role of Parliament in its application (see question IV.6).

The EFSF Framework Agreement and its amendments were all ratified by the Greek Parliament through Law No 4021/2011.<sup>161</sup> The ratification statute was discussed in the Plenum on the 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> and the 27<sup>th</sup> of September 2011 and entered into force with its publication in the Official Gazette on the 3<sup>rd</sup> of October.<sup>162</sup> However, the debate in Parliament was not focused on the EFSF. This is due to the fact that through the same Act two sets of provisions were introduced that were perceived as more important at the time; first, the rules for bank supervision and for the Fund that would assume responsibility for the recapitalization of the Greek Banking system and, second, a new tax linked to property.<sup>163</sup> In fact, it is practice in Greece to try and discuss agreements along with the fiscal measures that accompany them in one go, in order to put pressure on MPs to vote in favour of ratification as a package deal. Indeed, the statute obtained a broad consensus in Parliament precisely because most political parties perceived the institutionalization of the EFSF and its ratification by Parliament as a positive evolution for the Greek economy.<sup>164</sup>

In general, there was no major opposition to the establishment of the EFSF and the general attitude of the Greek MPs throughout the crisis is that EU institutions should do more to address the crisis. In that context, the EFSF was never perceived as problematic from a constitutional perspective. Relevant objections (e.g. transfer of sovereignty, English law as the applicable law to the agreement) had already been

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<sup>161</sup> See Act 4021/2011 ΦΕΚ 218Α'/2011.

<sup>162</sup> [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=96a46802-d7ce-4477-92cf-f845b79275d6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=96a46802-d7ce-4477-92cf-f845b79275d6).

<sup>163</sup> See the relevant parliamentary debates, on the 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> and 27<sup>th</sup> of September: Minutes of the Greek Parliament, Plenary Session on the 20<sup>th</sup> of September, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110920.pdf>; Minutes of the Greek Parliament, Plenary Session on the 21<sup>st</sup> of September, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110921.pdf>; Minutes of the Greek Parliament, Plenary Session on the 22<sup>nd</sup> of September, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110922.pdf>; Minutes of the Greek Parliament, Plenary Session on the 23<sup>rd</sup> of September, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110927.pdf>.

<sup>164</sup> See the debates on the 20<sup>th</sup>, the 21<sup>st</sup> and the 22<sup>nd</sup> of September, cited above.

raised at an earlier stage when the first bailout agreement went through the Greek Parliament (see questions X.1-X.7). The only objection raised by the opposition parties to the EFSF institutional framework was that it constituted a mechanism of orderly default that only protected the interests of the creditors.<sup>165</sup>

As explained above, the EFSF Framework Agreement and its amendment that concerned the increase of guarantees were ratified through one Act by the Greek Parliament. However, concerning the issuance or increase of guarantees, the question is not applicable to Greece, since the country stepped out from its relevant obligations (see question IV.3). There was some resentment in the Greek Parliament concerning the initial refusal of Slovakia to contribute to the EFSF given that the Greek Parliament has consented to its accession to the Eurozone just a few months earlier (by the LA.O.S. party).<sup>166</sup>

## CASE LAW

### IV.5

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ABOUT THE EFSM OR EFSF IN GREECE?

No, the constitutional court judgment concerns measures implemented under the financial assistance instruments and not the EFSF per se (see question X.9). There is no constitutional judgment concerning the EFSM.

## IMPLEMENTATION

### IV.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE EFSF, FOR EXAMPLE WITH REGARD TO DECISIONS ON AID PACKAGES (LOAN FACILITY AGREEMENT AND MEMORANDUM OF UNDERSTANDING) AND THE DISBURSEMENT OF TRANCHES, BOTH OF WHICH NEED UNANIMOUS APPROVAL BY THE SO-CALLED GUARANTORS, I.E. THE EUROZONE MEMBER STATES?

The role of Parliament in the application of the EFSF is marginal. This provoked heated debates in Parliament, especially during the discussion of article 93 of the law 3862/2010. This article, included in a statute implementing three non-related European directives, habitates the Minister of Finance “to represent the Greek State

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<sup>165</sup> See the Minutes of the Greek Parliament cited above.

<sup>166</sup> See the speech of the LA.O.S. deputy Kostas Aivaliotis in the debates on the 20<sup>th</sup> of September, cited above.

in the EFSF and to sign any memorandum, agreement or loan convention, bilateral or multilateral, with the European Commission, the Member-States of the Eurozone and the ECB and to proceed to any necessary act for the participation of the Greek State in legal persons and authorities constituted for the implementation of the European Support Mechanism.”<sup>167</sup> The same article declares that the relevant agreements and conventions enter into force with their signature and are brought into Parliament for discussion and briefing.<sup>168</sup>

These provisions provoked strong reactions by many deputies during the discussions of the draft law in the competent Permanent Commission of Finance of the Parliament. Most deputies, including some important members of the governing party (V. Papandreou, Geitonas, Magkoufis), objected that this article conceded too broad powers to the Minister of Finance, practically giving him/her a “carte blanche” and making any effective parliamentary scrutiny impossible.<sup>169</sup> The degradation of the role of Parliament through these provisions was also stressed in the Plenum discussion on the 5<sup>th</sup> of July 2010 by deputies of all the parties of the opposition.<sup>170</sup>

As a response to the strong reactions in the Permanent Commission, the Government proposed an amendment concerning loan agreements under the EFSF framework. For their entering into force, article 93 requires their ratification by Parliament and the publication of the ratification statute in the Official Gazette. However, during the Plenum discussion, the representative of N.D. objected that, in these cases, the ratification would only be fictitious and Parliament would be obliged to approve already taken decisions at the European level.<sup>171</sup> The representative of LA.O.S.

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<sup>167</sup> See law 3862/2010, ΦΕΚ 113 Α'/13.07.2010. This statute was submitted to Parliament on the 22<sup>nd</sup> of June, was voted on the 5<sup>th</sup> of July 2010.

<sup>168</sup> This provision, practically identical with the one concerning the Greek Loan Facility (amended article 1 paragraph 4, law 3845/2010) is actually a repetition of the article 2 of a draft law, submitted on the 4<sup>th</sup> of June 2010 and concerning the ratification of the Greek Loan Facility and the participation of the country to the EFSF. However, this draft was never discussed and voted in Parliament. See question IV.2. See also the comment by the N.D. deputy Christo Staikoura, <http://www.cstaikouras.gr/2010/06/dilosi-gia-ti-sizitisi-ke-enimerosi-epi-mnimonion-simfonion-ke-simvaseon/>

<sup>169</sup> See «Νέες αντιδράσεις για το «εν λευκώ» [New reactions for the “carte blanche”]», *Ελευθεροτυπία*, Friday 25 June 2010, <http://www.enet.gr/?i=news.el.article&id=176809>.

<sup>170</sup> See the Minutes of the Greek Parliament, Plenary Session of the 5<sup>th</sup> of July 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100705.pdf>, p. 9581 f.

<sup>171</sup> See the speech of Nikolopoulos in the debates of the 5<sup>th</sup> of July, cited above.

argued that this provision had no sense because Greece would never be able to become a creditor for other countries.<sup>172</sup>

Despite these reactions, article 93 was voted by the majority of deputies and was attributed retroactive effect, from the 1<sup>st</sup> of June 2010.<sup>173</sup>

## **IMPLEMENTING PROBLEMS**

### IV.7

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE APPLICATION OF THE EFSF?

The application of the EFSF was never a major issue in the public debates in Greece, given that Greece was a recipient of the EFSF. Relevant political/legal difficulties only arose during the negotiation and implementation of the specific financial assistance instruments, for which see the relevant questions (X.1 and following).

## **BILATERAL SUPPORT**

### IV.8

IN CASE GREECE PARTICIPATED IN PROVIDING FUNDING ON A BILATERAL BASIS TO OTHER EU MEMBER STATES DURING THE CRISIS, WHAT RELEVANT PARLIAMENTARY DEBATES OR LEGAL ISSUES HAVE ARISEN?

No, Greece was only a recipient of loans on a bilateral basis. It did, however, contribute to the EFSF and the ESM later on.

## **MISCELLANEOUS**

### IV.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND THE EFSM/EFSF?

Greece is a debtor state to the EFSF, so relevant information can be found in the section concerning financial assistance (questions X.1 f.).

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<sup>172</sup> See the speech of Aivaliotis in the debates of the 5<sup>th</sup> of July, cited above.

<sup>173</sup> See article 94 of the statute.

## V TREATY AMENDMENT ARTICLE 136(3) TFEU

*At the 16/17 December 2010 European Council a political decision was taken to amend the Treaties through the simplified revision procedure of article 48(6) TFEU. On March 25, 2011 the European Council adopted the legal decision to amend article 136 TFEU by adding a new third paragraph: “The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.”*

*The process of approval of this decision by the member states in accordance with their respective constitutional requirements as prescribed by article 48(6) has been completed and the amendment has entered into force on 1 May 2013.*

### NEGOTIATION

#### V.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE NEGOTIATION OF THE AMENDMENT OF ARTICLE 136 TFEU?

There were no major political/legal difficulties in the negotiation of the amendment of article 136 TFEU. This was presented by the Greek Government (PA.SO.K.) as the result of a difficult negotiation, as a success in the effort to save the State from bankruptcy and as a symbol of the decisiveness of the European partners of Greece to support the country.<sup>174</sup> However, concerning the concrete structure of the Stability Mechanism, the Prime Minister Giorgos Papandreou emphasized the need to preserve the autonomy and the equality of States, independent of the size of their national debt, as well as the need for growth provisions.<sup>175</sup>

The content of the amendment of the TFEU has been debated shortly in Parliament, on the 28<sup>th</sup> of March 2012,<sup>176</sup> and only in relation with the agreement for the creation of the ESM. Especially concerning the amendment, the main issue debated in Parliament concerned the approval procedure. Indeed, during its negotiation, the

<sup>174</sup> See the press conference of Giorgos Papandreou after the completion of the works of the European Council in Brussels, on the 25<sup>th</sup> of March 2011, available at <http://archive.pasok.gr/portal/resource/contentObject/id/2d87c92c-84a6-411a-a67f-e00197e48071>. See also “G. Papandreou: «No» to a suppression of vote, «yes» to a permanent support mechanism” [in Greek], *Eleftherotypia*, 29 October 2010, <http://www.enet.gr/?i=news.el.article&id=218194>.

<sup>175</sup> See question VIII.1 concerning the ESM negotiations.

<sup>176</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΠΙΣΤ’, Τετάρτη, 28 Μαρτίου 2012, 8004* available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>

deputies of SY.RIZ.A. and other academic and political cycles demanded a referendum in order for this amendment to enter into force.<sup>177</sup> The Prime Minister responded that he had mentioned to the European Heads of State the possibility for him to organize a referendum in case the changes concerning the EU and the Eurozone are very important.<sup>178</sup>

## APPROVAL

### V.2

HOW HAS THE 136 TFEU TREATY AMENDMENT BEEN APPROVED IN GREECE AND ON WHAT LEGAL BASIS/ARGUMENTATION?

The Greek Constitution contains several rules concerning the approval of treaties and treaty amendments.

In particular, article 36 of the Greek Constitution declares:

“1. The President of the Republic, complying absolutely with the provisions of article 35 paragraph 1, shall represent the State internationally, declare war, conclude treaties of peace, alliance, economic cooperation and participation in international organizations or unions and he shall announce them to the Parliament with the necessary clarifications, whenever the interest and the security of the State thus allow.

2. Conventions on trade, taxation, economic cooperation and participation in international organizations or unions and all others containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute, or which may burden the Greeks individually, shall not be operative without ratification by a statute voted by the Parliament.

3. Secret articles of an agreement may in no case reverse the open ones.

4. The ratification of international treaties may not be the object of delegation of legislative power as specified in article 43 paragraphs 2 and 4.”<sup>179</sup>

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<sup>177</sup> See the question of Alexis Tsipras in the parliamentary debates of the 10th of December 2010, in Πρακτικά Βουλής, Συνεδρίαση ΛΘ', Παρασκευή 10 Δεκεμβρίου 2010, 2732 available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101210.pdf>. See also, Notis Marias, “Referendum for the Amendment of the Lisbon Treaty” [in Greek], *Epikaira*, 24 March 2011, <http://www.epikaira.gr/epikairo.php?id=15885>.

<sup>178</sup> See the response of Giorgos Papandreou to the question of Alexis Tsipras in the debates cited above.

<sup>179</sup> Source of the translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>. In general, this source is not used for the translation of the

Moreover, article 28 declares:

“1. The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.

2. Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement.

3. Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>180</sup>

An interpretive statement added with the constitutional reform of 2001 declares that “Article 28 is the basis for the participation of the Country in the procedures of European integration.”

Thus, article 28 of the Constitution in combination with the EU treaties, habilitate the EU institutions to exercise constitutional competences and, under certain conditions, to restrict the national sovereignty of Greece. Therefore, this article is considered by the majority of the doctrine to have a “tacit constitutional reform function”.<sup>181</sup> In the case of the amendment of article 136 TFEU it was the Prime Minister, Giorgos Papandreou, who represented the country by participating in the meeting of the Council where this amendment was decided.

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provisions added or amended with the constitutional amendments of 2001 and 2008, because it is not updated.

<sup>180</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>.

<sup>181</sup> Cf. Antonis Maniatakis and Lina Papadopoulou (eds.), *Η προοπτική ενός συντάγματος για την Ευρώπη [The Perspective of A Constitution For Europe]* (2003 Athina-Thessaloniki: Ant. N. Sakkoulas) 160 ff. See also citations for the relevant literature.

The statute approving the amendment of Article 136 TFEU was voted according to the regular parliamentary procedure of articles 70 f. of the Constitution. The constitutional basis invoked by the Government for the following of this procedure was article 28 paragraph 1 of the Constitution, which states that “The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.”<sup>182</sup> An interpretive statement added to the constitutional reform of 2001 declares that “Article 28 is the basis for the participation of the Country in the procedures of European integration.” The article, however, does not specify the majority required for the vote of the statute ratifying the treaty.<sup>183</sup>

## RATIFICATION DIFFICULTIES

### V.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER DURING THE RATIFICATION OF THE 136 TFEU TREATY AMENDMENT?

There have been no major legal/political problems during the approval of the amendment of article 136 TFEU. This amendment has been presented as a habilitation for the creation of a mechanism for the financial help of countries like Greece. Thus, it has been considered by most political parties (PA.SO.K., N.D., LA.O.S., DIM.AR., DI.SY.) the symbol of enhanced cooperation and solidarity in the European Union, and a step towards the redistribution of budgetary resources between Eurozone member states and towards further European integration. The rest of the parties (SY.RIZ.A. and K.K.E.) have criticized this amendment only in relation to the following Euro-crisis legal instruments (the ESM and the Fiscal Compact).<sup>184</sup>

However, things have been more complicated as far as the approval procedure is concerned, the debates for which took place during the campaign for the elections of

<sup>182</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>183</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΠΙΣΤ', Τετάρτη, 28 Μαρτίου 2012, 8004* available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030.

<sup>184</sup> See question V.1. See the parliamentary debates of the 28<sup>th</sup> of March 2012.



the 6<sup>th</sup> May 2012. The amendment of the TFEU treaty was part of a more general draft bill, which also contained the ratification of the ESM and the Fiscal Compact. Therefore, debates concerning the constitutionality of the bill, and especially of the procedure of voting, were sometimes focused on these texts (see also questions VIII.2, VIII.3 and IX.3). The bill approving the Treaty amendment was drafted on March 15<sup>th</sup>, 2012 and was debated and voted in Parliament on March 28<sup>th</sup>, 2012.<sup>185</sup> It was voted in one day, with a majority of 194 deputies out of the 253 present voting in favor (total of deputies is 300). The deputies of PA.SO.K. and N.D., the two parties of the government coalition at the time, voted in favor. The members of SY.RIZ.A., DIM.AR., LA.O.S., and DI.SY. voted against. However, the members of DIM.AR. did not disapprove the treaty amendment itself, for which they declared “present”. Instead they voted against the statute in principle. It is interesting to note that LA.O.S. had participated in the government at the time of the decision of 9 December 2011 (the political decision leading to the 136 TFEU amendment and the Fiscal Compact).<sup>186</sup>

During the parliamentary debates on 28 March 2012, the deputies of the opposition accused the PA.SO.K./ND Government of hiding these treaties from the Greek people, through the concise parliamentary procedure mobilized for their ratification. In general, especially the deputies of SY.RIZ.A. and LA.O.S., repeatedly criticized the functioning of the Parliament and the negligence to the parliamentary procedure and monitoring by the Government. In response, the deputies of PA.SO.K. claimed that they were “not acting in absentia of the Greek people because, by voting these treaties, [they were] supporting the basic choice of the Greek people, which is that the country remains in the Eurozone.”<sup>187</sup>

More precisely, deputies from LA.O.S. objected that the statute in question, because of its crucial importance for Greece and for Europe in general, and because of the fact that it attributes constitutional competences concerning fiscal and budgetary policy to organs of international organizations, should be voted according to the procedure defined in paragraph 2 of article 28. According to this paragraph, “Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and

<sup>185</sup> Legal Statute 4063/2012, ΦΕΚ Α’ 71, published on 30 March 2012.

<sup>186</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, 8030.

<sup>187</sup> See the speech by Konstantinos Geitonas in the parliamentary debates of the 28<sup>th</sup> of March 2012, 8043.

promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement.”<sup>188</sup> (180/300). The members of LA.O.S. argued that it was the Fiscal Compact that imposed a qualified majority for ratification in order to enter into force. They argued that the treaties under ratification change the structure and the decision-making procedure inside the Eurozone, and thus constitute a concession of constitutional competences to the Eurozone organs.<sup>189</sup> Thus, in order to preserve the validity of the voting procedure and to prove that the statute had been adopted by the qualified majority required, they demanded the procedure of nominal vote, which was followed at the end.<sup>190</sup>

The members of SY.RIZ.A. rejected the competence of Parliament to amend the treaties of the European Union. Reiterating objections already raised during the *negotiation* of the amendment of article 136 TFEU (see question V.1),<sup>191</sup> they argued that this amendment, as well as the ESM and Fiscal Compact entailed an amendment of the Constitution. Thus, a constitutional reform or a referendum was required, following the example of other European countries, like Ireland. In order to support the argument, the deputies invoked article 3 paragraph 2 of the Fiscal Compact. Thus, they invited the government to proceed to a referendum for the ratification of these provisions, or, at least, to wait for the elections, which were scheduled for the 6th of May. In any case, they argued that the government did not want to follow the special procedure of article 28 paragraph 2, even though it possessed the qualified majority needed, because it did not want to create a precedent for future voting procedures.<sup>192</sup> Mobilizing these arguments, the deputies of SY.RIZ.A. raised an objection of unconstitutionality before the Parliament, which was rejected by a raising vote, according to article 100 paragraph 2 of the Standing Orders of Parliament.<sup>193</sup>

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<sup>188</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agliko.pdf>

<sup>189</sup> See the parliamentary debates, 8020, 8030, 8037, 8057.

<sup>190</sup> *Ibid*, 8063.

<sup>191</sup> See the question of Alexis Tsipras in the parliamentary debates of the 10<sup>th</sup> of December 2010, in *Πρακτικά Βουλής, Συνεδρίαση ΛΘ', Παρασκευή 10 Δεκεμβρίου 2010*, 2732 available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101210.pdf>

<sup>192</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, cited above, 8020, 8032, 8050, 8058, 8063.

<sup>193</sup> *Ibid*, 8035. Traditionally there is no judicial review of the procedure followed by the Parliament, which is considered *interna corporis*. However, especially concerning the application of article 28 of the Constitution, the Supreme Administrative Court (Council of State), in its decision 668/2012

Finally, the deputies of DIM.AR. emphasized the fact that the majority required was the absolute majority of the total number of deputies (151/300), according to paragraph 3 of article 28. According to this paragraph, “Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>194</sup> The deputies of DIM.AR. alleged that paragraph 1 of article 28 of the Constitution, invoked by the government, was only interpretive and did not require a specific procedure for the ratification of European treaties, which have been always voted according to the third paragraph of this article. Indeed, according to them, the European Union is not an international organization but a union which they would like to be federal.<sup>195</sup>

The deputies of the governing parties (PA.SO.K. and N.D.) argued, however, that the Treaty amendment, the Fiscal Compact and the ESM do not expand the competences of the European Union. To support their argument they invoked the simplified procedure of Treaty revision followed.<sup>196</sup> In addition, the deputies of N.D. argued that European Union is not an international organization, according to the terms of article 28 paragraph 2 of the Greek Constitution, but a *sui generis* state organization.<sup>197</sup>

The Greek constitutional doctrine has been divided on the subject.<sup>198</sup> Most scholars, however, before the Eurozone crisis, considered that for the ratification of European Treaties and their amendments in general (and not with the simplified procedure followed), the Constitution requires a combined application of the procedural

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accepted to review the ratification of the Memorandum of Understanding by the Parliament. Cf. question X.9.

<sup>194</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>195</sup> *Ibid.*, 8033, 8038, 8060, 8063.

<sup>196</sup> See the parliamentary debates.

<sup>197</sup> *Ibid.* 8037. See also the parliamentary debates of the 25<sup>th</sup> of October 2006, in the Commission for the Constitutional Reform, in *Πρακτικά Επιτροπής Αναθεώρησης του Συντάγματος*, Συνεδρίαση ΣΤ', Τετάρτη 25 Οκτωβρίου 2006, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/25102006.pdf>. In fact, the vagueness of article 28 concerning the European Treaties has led to discussions on its amendment in 2006. However, also because of the disagreement between parties, the amendment was abandoned.

<sup>198</sup> It is interesting to note that constitutional lawyers are very often political personalities in Greece. For example, the president of PA.SO.K. is Professor of Constitutional Law in the University of Athens. Similarly, the Minister of Administrative Reform and Electronic Governance is Professor of Constitutional Law in the University of Thessaloniki.

conditions of paragraph 2 and the substantial conditions of paragraph 3. Nevertheless, they emphasized that “the solution will not become definitive, until the broad until now parliamentary majority for the support of the European course of the country breaks.”<sup>199</sup>

## CASE LAW

### V.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT IN GREECE ON THE 136 TFEU TREATY AMENDMENT?

No, there is no court judgment on the 136 TFEU Treaty amendment. Indeed, in Greece there is no general possibility to directly attack legal statutes before the court.<sup>200</sup> Instead, judicial review of the legislator is diffused among all jurisdictions of the civil and administrative order, and is finally concentrated in the Supreme Administrative and Judiciary Courts (Council of State – “Symvoulío tis Epikrateias” and Areios Pagos respectively). Each justiciable possessing a legitimate interest, in the occasion of a litigation before a judge, can raise an objection of unconstitutionality of a legal statute applied in the case, both in case this statute is applied directly, and in case it is the legal basis of another act. According to article 93 paragraph 4 of the Constitution, “The courts are obliged to preclude the application of a legal statute, whose content is contrary to the Constitution.” Courts apply the same constitutional basis, in combination with article 28 paragraph 1, in order to monitor the compatibility of ordinary law with international conventions. Indeed, article 28 paragraph 1 declares: “The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only

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<sup>199</sup> See Cf. Antonis Maniatakis and Lina Papadopoulou (eds.), *Η προοπτική ενός συντάγματος για την Ευρώπη*, [The Perspective of A Constitution For Europe](2003 Athina-Thessaloniki: Ant. N. Sakkoulas) 160 ff., esp. 173. See also citations for the relevant literature. In the same direction are the arguments of Theodora Antoniou, especially as far as the TFEU amendment is concerned, in «Η απόφαση της Ολομελείας του Συμβουλίου της Επικρατείας για το Μνημόνιο – Μια ευρωπαϊκή υπόθεση χωρίς ευρωπαϊκή προσέγγιση [The Decision by the Plenum of the Council of State on the Memorandum – A European Affair Without A European Approach]», *ΤοΣ*, 1/2012, 197.

<sup>200</sup> There is, however, the High Special Court, instituted according to article 100 of the Constitution, which can monitor the constitutionality of a statute, in the case of contrary decisions on the matter by the two supreme courts, Council of State (administrative) and Areios Pagos (judiciary).

under the condition of reciprocity.”<sup>201</sup> The result of unconstitutionality/unconventionality is the non-application of the statute in the concrete case before the judge. Courts in general refuse to examine the respect of the rules of parliamentary procedure, which is considered *interna corporis* of the legislator.<sup>202</sup> In any case, given that the TFEU amendment was approved in 2012 and given the time-consuming character of Greek judicial procedures, there is no court judgment on the 136 TFEU Treaty amendment.

## MISCELLANEOUS

V.5

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND THE 136 TFEU TREATY AMENDMENT?

Not applicable.

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<sup>201</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>202</sup> However, in the case concerning the ratification of the Memorandum of Understanding, the judge accepted to enter into the examination of the procedure of ratification. See the relevant question.

## VI EURO-PLUS-PACT

*On March 11, 2011 the Heads of State or Government of the Eurozone endorsed the Pact for the Euro. At the 24/25 March 2011 European Council, the same Heads of State or Government agreed on the Euro Plus Pact and were joined – hence the ‘Plus’ - by six others: Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania (leaving only the UK, Czech Republic, Sweden and Hungary out). The objective of the pact is to foster competitiveness, foster employment, contribute to the sustainability of public finances and reinforce financial stability. In the Euro-Plus-Pact the Heads of State or Government have entered into commitments on a number of policy areas, in which member states are competent.*

*([http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/120296.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/120296.pdf))*

### NEGOTIATION

#### VI.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE NEGOTIATION OF THE EURO-PLUS-PACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE PACT FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

The issue of the Euro-plus pact was not extensively debated in Parliament. In general, in Greece, most of the relevant constitutional and political issues have been raised in the context of the bailout agreements and their implementation measures. These measures were often perceived as intrusive and/or in violation of the Constitution. Otherwise, increased supervision from Brussels was never perceived as a major issue by the mainstream political world and by the media, as long as it is accompanied by more help.

Concerning the Summit on the Euro-plus Pact, on the 1<sup>st</sup> of April 2011, the President of the Parliamentary Group of SY.RI.ZA. raised a question to the Prime Minister in the context of the Parliamentary scrutiny of the Government. In his speech Alexis Tsipras criticized Giorgos Papandreou for establishing long-term commitments that burden the Greek people, without even introducing them to Parliament for ratification according to article 28 of the Constitution. Papandreou responded that Tsipras’s objective was to terrorize the public opinion and that the Euro-plus Pact only contained policy objectives which were espoused by the Government and in some cases already adopted by it.<sup>203</sup>

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<sup>203</sup> See the Minutes of the Greek Parliament, Plenary Session of the 1<sup>st</sup> of April, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110401.pdf>.

No other discussion on the legal/political nature of the Pact could be retrieved. The general idea that is given from the public debate on the issue is that the Euro-plus pact has been perceived as another step in the financial integration of the Eurozone. It has always been closely connected to the establishment of a European financial support mechanism, as the fulfilment of its provisions has been perceived as a condition for the support of the Greek economy.

## MISCELLANEOUS

VI.2

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND THE EURO-PLUS-PACT?

Not applicable.

## VII SIX-PACK

*The ‘Six-Pack’ is a package of six legislative measures (five regulations and one directive) improving the Economic governance in the EU. The Commission made the original proposals in September 2010. After negotiations between the Council and the European Parliament, the package was adopted in November 2011 and entered into force on December 13, 2011. Part of the ‘Six-Pack’ measures applies only to the Eurozone member states (see the individual titles below).*

*The ‘Six-Pack’ measures reinforce the Stability and Growth Pact (SGP), among others by introducing a new Macroeconomic Imbalances Procedure, new sanctions (for Eurozone member states) and reversed qualified majority voting. Also, there is more attention for the debt-criterion.*

*([http://ec.europa.eu/economy\\_finance/economic\\_governance/index\\_en.htm](http://ec.europa.eu/economy_finance/economic_governance/index_en.htm))*

## NEGOTIATION

### VII.1

WHAT POSITIONS DID GREECE ADOPT IN THE NEGOTIATION OF THE ‘SIX-PACK’, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE ‘SIX-PACK’ FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

The position of the Government during the negotiations of the “six-pack” was not much discussed in public debates or in Parliament. Negotiations took place at the same time with the Greek bail-out negotiations and thus the latter monopolized public and parliamentary discussion. The “six-pack” enhanced budgetary surveillance and discipline was generally perceived by the Greek Government as a necessary step for further European integration.

The position of the Government was clarified by Papandreou, the Prime Minister at the time of the negotiations, in an interview given immediately after the September 2010 Euro-Summit. According to Papandreou, Greece was not opposed to a European mechanism of fiscal surveillance and to sanctions; he observed that, if such a mechanism existed some years before, it would have prevented the Greek crisis. However, he accentuated issues of justice and other aspects of economic governance, such as issues concerning fiscal paradises, sanctions against banks, growth and competitiveness. He stressed that austerity should be replaced by responsibility concerning macroeconomic figures, growth strategy and transition to a “green”



economy. Papandreou proposed three tools to this direction: issuing of “green bonds”, imposition of the Tobin tax and of CO2 taxation.<sup>204</sup>

## DIRECTIVE

C

Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States

## IMPLEMENTATION

### VII.2

WHAT MEASURES ARE BEING TAKEN TO IMPLEMENT DIRECTIVE 2011/85/EU ON REQUIREMENTS FOR BUDGETARY FRAMEWORKS (REQUIRED BEFORE 31 DECEMBER 2013, ARTICLE 15 DIRECTIVE 2011/85/EU)?

Statute 4270/2014 implemented Directive 2011/85/EU into the Greek legal order.<sup>205</sup> The statute was introduced to Parliament on the 3<sup>rd</sup> of June 2014 and was discussed and voted on the 26<sup>th</sup> of June 2014. It entered into force on the 28<sup>th</sup> of June.<sup>206</sup> Apart from the implementation of the Directive, the statute aimed at the systematization of the Greek budgetary process, until then dispersed in various legal texts.

## IMPLEMENTATION DIFFICULTIES

### VII.3

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE IMPLEMENTATION PROCESS, IN PARTICULAR IN RELATION TO IMPLICATIONS OF THE DIRECTIVE FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No serious political/legal difficulties were encountered during the implementation of Directive 2011/85/EU. Since Greece was subject to an Economic Adjustment

<sup>204</sup> Cf. the reportage on Papandreou’s speech after the Summit, *To Vima*, 16 September 2010, available at <http://www.tovima.gr/finance/article/?aid=354834>.

<sup>205</sup> ΦΕΚ Α’ 143/28-6-2014, principles of fiscal management and supervision (incorporation of Directive 1176/2011), public accounting and other provisions. For the situation before this statute, cf. European Commission, Occasional Paper on the European Economy, no 128, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States, February 2013, available at [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2013/pdf/ocp128\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/pdf/ocp128_en.pdf).

<sup>206</sup> Cf. [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=9be63580-976a-4580-a440-8bb787a2c0bc](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=9be63580-976a-4580-a440-8bb787a2c0bc).

Programme already providing for stringent economic supervision rules, the Directive was hardly a matter of public discussion. The Directive was implemented with statute 4270/2014.<sup>207</sup>

During parliamentary debates for the voting of the statute, the Directive was presented by the Government as a move for the consolidation of Euro-area Member States' economies through the adoption of common rules and principles. It was also perceived as a proof that the Eurozone functions within the EU legal framework. In substance, the Government representative argued that the statute implementing the Directive would modernize the Greek budgetary procedure in order to avoid the deficits of the past.<sup>208</sup>

The representative of SY.RIZ.A. objected that the statute was imposing more stringent economic governance and was further removing issues from the political forum, in order to subject them only to evaluation according to technocratic standards. He contested the effectiveness of the measures from the point of view of economic rationality and he reproached the limited participation of Parliament to the choice of the members of the Fiscal Council instituted by the statute.<sup>209</sup>

The representative of PA.SO.K. responded that the adoption of growth policies would be only possible at a European level, while the political will of European leaders is absent.<sup>210</sup>

## MACROECONOMIC AND BUDGETARY FORECASTS

### VII.4

WHAT INSTITUTION WILL BE RESPONSIBLE FOR PRODUCING MACROECONOMIC AND BUDGETARY FORECASTS (ARTICLE 4(5) DIRECTIVE 2011/85/EU)? WHAT INSTITUTION WILL CONDUCT AN UNBIASED AND COMPREHENSIVE EVALUATION OF THESE FORECASTS (ARTICLE 4(6) DIRECTIVE 2011/85/EU)?

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<sup>207</sup> Cf. question VII. 2.

<sup>208</sup> Cf. Minutes of the Greek Parliament, 26 June 2014, <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20140626.pdf>, 290 f.

<sup>209</sup> Cf. the relevant debates, cited above, at 295 f.

<sup>210</sup> Cf. *ibid*, 297 f.

According to article 21 of statute 4270/2014, the General Accounting Office of the State (a service under the Ministry of Finance) is competent for producing macroeconomic and budgetary forecasts. The same statute instituted an Independent Fiscal Council according to the provisions of Directive 2011/85/EU, which is charged with the evaluation of these forecasts.<sup>211</sup>

## FISCAL COUNCIL

### VII.5

DOES GREECE HAVE IN PLACE AN INDEPENDENT FISCAL COUNCIL (ARTICLE 6(1) DIRECTIVE 2011/85/EU: ‘INDEPENDENT BODIES OR BODIES ENDOWED WITH FUNCTIONAL AUTONOMY VIS-À-VIS THE FISCAL AUTHORITIES OF THE MEMBER STATES’)? WHAT ARE ITS MAIN CHARACTERISTICS? DOES GREECE HAVE TO CREATE (OR ADAPT) A FISCAL COUNCIL IN ORDER TO IMPLEMENT DIRECTIVE 2011/85/EU?

Greece instituted a Fiscal Council (called Hellenic Fiscal Council) with statute 4270/2014,<sup>212</sup> in order to implement Directive 2011/85/EU. This Council is an Independent Administrative Authority; its main characteristic is its functional independence and the personal independence enjoyed by its members.

The Council’s Board of Directors (President and four members) is staffed following an open call: a committee composed by the Minister of Finance, the Governor of the Bank of Greece and the President of the Court of Audit select the most competent candidates (according to objective and predetermined criteria). The final selection of the members of the Board among these candidates belongs to the discretion of the Government. The selected persons must be subsequently approved by the special permanent parliamentary committee for Institutions and Transparency. They are nominated by the Minister of Finance for 5 years. Technocratic economic knowledge is the main criterion for being eligible as a member of the Council.

The Council is financed by the Budget and is responsible for managing its revenues and expenses.<sup>213</sup>

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<sup>211</sup> Cf. Part A’ of the Statute.

<sup>212</sup> Cf. question VII. 2.

<sup>213</sup> Cf. Part A’ statute 4270/2014.

**REGULATION NO 1176/2011 ON THE PREVENTION AND CORRECTION OF  
MACROECONOMIC IMBALANCES**

([http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1176:EN:NOT))

## **MEIP DIFFICULTIES**

### VII.6

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS?

No serious political/legal difficulties were encountered by Greece about the implications of Regulation No 1176/2011. Generally, debates at the time were focused on the Economic Adjustment Programme. However, the “six-pack” was perceived by the opposition as a prolongation of budgetary surveillance and discipline in EU Member States. Chountis, an MEP of SY.RIZ.A. (at the time in the opposition), in a relevant question to the European Commission in September 2013, argued that the “six-pack” and the “two-pack” limit Member States’ sovereignty and democratic rights. He further argued that these EU legal instruments “institutionalize unprecedented interventions by EU institutions and by strong Member States to the sovereign exercise of economic and fiscal policy at the domestic level, and render permanent a stringent austerity regime to the detriment of European peoples”.<sup>214</sup>

**REGULATION NO 1175/2011 ON STRENGTHENING BUDGETARY SURVEILLANCE  
POSITIONS**

([http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:20111213:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:20111213:EN:  
PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1466:20111213:EN:PDF))

## **MTO PROCEDURE**

### VII.7

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<sup>214</sup> Cf. the relevant question by N. Chountis, available at <http://www.europarl.gr/el/greek-meps/meps-activity/meps-activity-2013/september/sepmp14.html?jsessionid=5AD5723EAD20226EBB639DF77A7880C4>.

WHAT CHANGES TO THE RULES ON THE BUDGETARY PROCESS ARE MADE TO ACCOMMODATE THE AMENDED MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) PROCEDURE?

Law 3871/2010 first established the obligation to draw up a Medium term budgetary framework.<sup>215</sup> Subsequently law 4270/2014 incorporated the rules concerning the medium term framework into the new budgetary process that it instituted and further harmonized Greek law to the precepts of the “six-pack” and especially to Directive 11/85/EU.<sup>216</sup>

Article 14 of the statute defines the MTO as “the medium term budgetary objective, according to what is defined in paragraph 1 of article 3 of the Treaty on the Stability, Coordination and Governance in the EMU”. Article 35 of the statute announces the Budgetary Position Rule, according to which the annual General Government structural balance should correspond to the MTO. Further, the same article defines maximum and minimum limits for the MTO, following Section 1-Aa of the consolidated Regulation (EC) No 1466/97. Article 35 provides that the MTO is mentioned in the Medium term budgetary framework and in the introductory report to the Annual Budget; the Minister of Finance re-examines the MTO at least every three years, according to the Stability and Growth Pact procedures.

Temporal deviation from the MTO is allowed only in exceptional circumstances, and only under the condition that such deviation will not endanger medium term fiscal sustainability, or in times of implementation of major structural reforms. Finally, article 35 defines for the first time a MTO on structural balance. Article 36 sets the MTO concerning the debt/GDP ratio according to the precepts of Directive 11/85/EU and article 2 of the consolidated Regulation (EC) No 1466/97. Article 37 announces the adjustment path rule, according to the precepts of amended Section 1-Aa of Regulation (EC) No 1466/97 and allows for deviations from this rule only in exceptional circumstances, and only under the condition that such deviation will not endanger medium term fiscal sustainability, or in times of implementation of major structural reforms.

Articles 38-40 regulate the corrective mechanism procedure, activated after initiative of the Minister of Finance, the Fiscal Council, or automatically after recommendation

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<sup>215</sup> See question II.2.

<sup>216</sup> Cf. Part B' statute 4270/2014.

by the European Council, in case of important deviations from the MTO or the adjustment path. They describe the procedure and the content for the adoption of a corrective action plan, whose implementation is monitored by the Fiscal Council with the regular publication of relevant reports. Finally, article 41 provides that, if the country is under an economic adjustment programme (which is the case of Greece), the fiscal rules of articles 35 f. and their adjustment path are defined in this programme, in which the corrective action plan is incorporated as well.<sup>217</sup>

## EUROPEAN SEMESTER

### VII.8

WHAT CHANGES HAVE TO BE MADE TO THE RULES AND PRACTICES ON THE NATIONAL BUDGETARY TIMELINE TO IMPLEMENT THE NEW RULES ON A EUROPEAN SEMESTER FOR ECONOMIC POLICY COORDINATION (SECTION 1-A, ARTICLE 2-A CONSOLIDATED REGULATION 1466/97)?

Law 3871/2010 for the first time defined a specific budgetary time-line, before the “six pack”.<sup>218</sup> According to this statute, the timeline of the budgetary cycle is divided in calendrical stages accordingly:

- 1) January-March (1<sup>st</sup> Stage): the General Governmental Strategy is defined and the Medium Term Framework of Budgetary Strategy is compiled.
- 2) April-May (2<sup>nd</sup> Stage): The Medium Term Framework of Budgetary Strategy is approved by the Ministerial Council and is approved by the Parliament.
- 3) June-July (3<sup>rd</sup> Stage): The budgetary process for Central Government begins, together with the preparation of the budget of the rest of the institutions of General Government.
- 4) August-October (4<sup>th</sup> Stage): Negotiations between the Ministry of Finance and the Ministries concerning their budget and timely preparation of the Social Budget.
- 5) November-December (5<sup>th</sup> Stage): Submission and voting of the Central Government Budget by Parliament with a parallel publication of the budget of the

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<sup>217</sup> See the explanatory report to statute 4270/2014, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/a-apred-eis-olo.pdf>.

<sup>218</sup> Cf. question II.4.

remaining institutions of General Government (Social Security Funds, Hospitals, Local Authorities).<sup>219</sup>

Statute 4270/2014 incorporated this time-line into the new budgetary process that it instituted (article 54) and further harmonized domestic law to the “European semester”.<sup>220</sup> Thus, it provided that the Fiscal Council (an independent administrative authority instituted for the first time by the same statute) will publish twice per year, in conformity with the “European Semester” time-line, a report in which it will elaborate its conclusions concerning the macroeconomic and fiscal forecasts, the fiscal objectives and the fiscal results.<sup>221</sup>

## MTO DIFFICULTIES

### VII.9

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

The regulation was not particularly discussed during public or parliamentary debates. The MTO was perceived as a rule imposed by Directive 11/85/EU. During parliamentary debates for the voting of the statute 4270/2014, which harmonized Greek budgetary process with the “six-pack” precepts, the representative of SY.RIZ.A. objected that the statute was imposing more stringent economic governance and was further removing issues from the political forum, in order to submit them only to technocratic standards. He contested the effectiveness of the measures from the point of view of economic rationality and he reproached the limited participation of Parliament to the choice of the members of the Fiscal Council.<sup>222</sup> The representative of PA.SO.K. responded that the adoption of growth

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<sup>219</sup> See the informative note accompanying the bill, [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494). See also the explanatory report to the bill, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=22cdbbfe-ed73-4fe5-8f49-d6a1c6f88494).

<sup>220</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision, public accounting and other provisions.

<sup>221</sup> Article 2 paragraphs 4 f.

<sup>222</sup> Cf. the relevant debates, cited above, at 295 f.

policies would be possible only at a European level, while the political will of European leaders is absent.<sup>223</sup>

## RESPECT MTO

### VII.10

HOW IS RESPECT OF THE MEDIUM-TERM BUDGETARY OBJECTIVE INCLUDED IN THE NATIONAL BUDGETARY FRAMEWORK (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)?

Statute 4270/2014 harmonized the Greek budgetary process with the “six-pack” precepts and introduced the MTO procedure.<sup>224</sup> Article 35 provides that the MTO is mentioned in the Medium term budgetary framework and in the introductory report to the Annual Budget; the Minister of Finance re-examines the MTO at least every three years, according to the Stability and Growth Pact procedures. Temporal deviation from the MTO is allowed only in exceptional circumstances, and only under the condition that such deviation will not endanger medium term fiscal sustainability, or in times of implementation of major structural reforms. Finally, article 35 defines for the first time a MTO on structural balance. Article 36 sets the MTO concerning the debt/GDP ratio according to the precepts of Directive 11/85/EU and article 2 of the consolidated Regulation (EC) No 1466/97. Article 37 announces the adjustment path rule, according to the precepts of Section 1-Aa of the consolidated Regulation (EC) No 1466/97 and allows for deviations from this rule only in exceptional circumstances, and only under the condition that such deviation will not endanger medium term fiscal sustainability, or in times of implementation of major structural reforms. Articles 38-40 regulate the corrective mechanism procedure, activated after initiative of the Minister of Finance, the Fiscal Council, or automatically after recommendation by the European Council, in case of important deviations from the MTO or the adjustment path. They describe the procedure and the content for the adoption of a corrective action plan, whose implementation is monitored by the Fiscal Council with the regular publication of relevant reports. Finally, article 41 provides that, if the country is under an economic adjustment programme (which is the case of

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<sup>223</sup> Cf. *ibid*, 297 f.

<sup>224</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision (incorporation of Directive 1176/2011), public accounting and other provisions, Part B'.



Greece), the fiscal rules of articles 35 f. and their adjustment path are defined in this programme, in which the corrective action plan is incorporated as well.<sup>225</sup>

## CURRENT MTO

### VII.11

WHAT IS GREECE'S CURRENT MEDIUM-TERM BUDGETARY OBJECTIVE (SECTION 1A, ARTICLE 2A CONSOLIDATED REGULATION 1466/97)? WHEN WILL IT BE REVISED?

Greece was expected to increase its primary surplus from 2.5% GDP in 2015 to 5.3% GDP in 2018. The debt/GDP ratio was expected to gradually decrease from 168.3% GDP in 2015 to 139.1% GDP in 2018.<sup>226</sup> In 2013 and 2014, Greece achieved its MTO. The objective, announced in the Medium term budgetary framework, should have been revised by April 30; however, though the procedure for its revision was initiated in March, the lack of agreement with Greece's creditors has perturbed the process.<sup>227</sup>

## ADOPTION MTO

### VII.12

BY WHAT INSTITUTION AND THROUGH WHAT PROCEDURE IS GREECE'S MEDIUM-TERM BUDGETARY OBJECTIVE ADOPTED AND INCORPORATED IN THE STABILITY PROGRAMME (EUROZONE, ARTICLE 3(2)(A) CONSOLIDATED REGULATION 1466/97)?

According to article 35 of statute 4270/2014, the MTO is mentioned in the Medium term budgetary framework and in the introductory report of the Annual Budget. These documents are drawn up by the General Accounting Office of the State, a service of the Ministry of Finance (articles 20 and 21). The same article imposes that the

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<sup>225</sup> See the explanatory report to statute 4270/2014, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/a-apred-eis-olo.pdf>.

<sup>226</sup> Cf. the Medium term budgetary framework (Law 4263/2014), ΦΕΚ 117 Α'/14.05.2014, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=b65768b8-fbd9-42c8-ab30-627e8c36bdf1](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=b65768b8-fbd9-42c8-ab30-627e8c36bdf1).

<sup>227</sup> Cf. circulars 2/16590/ΔΠΔΣΜ/6.3.2015 and 2/17310/ΔΠΓΚ/10.3.2015, published on 11/3/2015, available at <https://diavgeia.gov.gr/>.

Minister of Finance re-examines the MTO at least every three years, according to the procedures set in the Stability and Growth Pact.<sup>228</sup>

**REGULATION NO 1177/2011 ON THE EXCESSIVE DEFICIT PROCEDURE**  
(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1997R1467:20111213:EN:PDF>)

## **EDP DIFFICULTIES**

### VII.13

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No serious political/legal difficulties were encountered by Greece about the implications of Regulation No 1177/2011. Generally, debates at the time were focused on the Economic Adjustment Programme. However, the “six-pack” was perceived by the opposition as a prolongation of budgetary surveillance and discipline in EU Member States. Chountis, an MEP of SY.RIZ.A., in a relevant question to the European Commission, argued that the “six-pack” and the “two-pack” limit Member States’ sovereignty and democratic rights. He further argued that these EU legal instruments “institutionalize unprecedented interventions by EU institutions and by strong Member States to the sovereign exercise of economic and fiscal policy at the domestic level, and render permanent a stringent austerity regime to the detriment of European peoples”.<sup>229</sup>

**REGULATION NO 1173/2011 ON EFFECTIVE ENFORCEMENT OF BUDGETARY SURVEILLANCE**

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1173:EN:NOT>)

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<sup>228</sup> ΦΕΚ Α' 143/28-6-2014.

<sup>229</sup> Cf. the relevant question by N. Chountis, available at <http://www.europarl.gr/el/greek-meps/meps-activity/meps-activity-2013/september/sepmp14.html;jsessionid=5AD5723EAD20226EBB639DF77A7880C4>.

## SANCTIONS

### VII.14

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER AND WHAT DEBATES HAVE ARISEN, IN PARTICULAR ABOUT IMPLICATIONS OF THE REGULATION FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No serious political/legal difficulties were encountered by Greece about the implications of Regulation No 1173/2011. Generally, debates at the time were focused on the Economic Adjustment Programme. However, the “six-pack” was perceived by the opposition as a prolongation of budgetary surveillance and discipline in EU Member States. Chountis, an MEP of SY.RIZ.A., in a relevant question to the European Commission, argued that the “six-pack” and the “two-pack” limit Member States’ sovereignty and democratic rights. He further argued that these EU legal instruments “institutionalize unprecedented interventions by EU institutions and by strong Member States to the sovereign exercise of economic and fiscal policy at the domestic level, and render permanent a stringent austerity regime to the detriment of European peoples”.<sup>230</sup>

## GENERAL CHANGES

### VII.15

WHAT FURTHER CHANGES HAVE TO BE MADE TO THE RULES ON THE BUDGETARY PROCESS IN ORDER TO COMPLY WITH THE SIX-PACK RULES?

Law 3871/2010 brought about important amendments to the Greek budgetary process, some months after the agreement of the First Economic Adjustment Programme (cf. questions II.1 f.). These amendments overlap with the “six-pack” rules. Subsequently, statute 4111/2013 established fiscal rules and practices for General Government institutions and services. Most importantly, every institution or service must set budgetary objectives according to the Annual Budget voted by Parliament.<sup>231</sup>

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<sup>230</sup> Cf. the relevant question by N. Chountis, available at <http://www.europarl.gr/el/greek-meps/meps-activity/meps-activity-2013/september/sepmp14.html;jsessionid=5AD5723EAD20226EBB639DF77A7880C4>.

<sup>231</sup> Cf. Law 4111/2013, ΦΕΚ 18 Α'/25.01.2013, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=3cde3e1c-d018-4244-af66-c69249f657f6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=3cde3e1c-d018-4244-af66-c69249f657f6).

Statute 4270/2014 incorporated these changes into a systematic text and further harmonized the Greek budgetary process with the “six-pack” rules. Apart from the particular changes discussed in the previous questions (creation of an independent fiscal council, harmonization with the European semester, MTO and medium term budgetary framework etc.), the statute established the legal framework for the fiscal surveillance of General Government sub-sectors. Thus it imposes the adoption of specific fiscal rules at the level of General Government combined with clear economic objectives and with a clearly defined adjustment path for their achievement, as well as with a corrective mechanism in case of deviation from these objectives. The function of Authorizing Officer is separated from and incompatible with that of the Head of Financial Service of General Government institutions and the Head of Financial Service acquires more competences. Both the Authorizing Officer and the Head of the Financial Service of each institution must sign decisions concerning the assuming of obligations by General Government sectors (articles 24 f.). Further, the statute clearly defines the institutional framework of the budgetary process and the competences of the various authorities (articles 18 f.). It states the general principles governing the management of General Government finances (principle of reasonable financial management, of responsibility and reason giving, of transparency, of sincerity (article 33). The statute also enounces some principles concerning pluriannual fiscal planning (article 34): it should give priority to the repayment of the debt and to the consolidation of fiscal and economic stability, it should be unitary and concern all General Government sectors, it should be based on medium term forecasts, it should be transparent and subject to scrutiny by independent authorities.<sup>232</sup>

## MISCELLANEOUS

### VII.16

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND THE SIX-PACK?

No information retrieved.

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<sup>232</sup> See the explanatory report to the statute, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/a-apred-cis-olo.pdf>.

## VIII ESM TREATY

*The European Stability Mechanism (ESM) Treaty was signed on July 11 2011. It was later renegotiated and a new ESM Treaty was signed on February 2, 2012. The Treaty provides a permanent emergency fund that is intended to succeed the temporary emergency funds. It entered into force on September 27, 2012 for 16 contracting parties (Estonia completed ratification on October 3). The 17 contracting parties are the member states of the Eurozone, but the ESM Treaty is concluded outside EU law.*

[\(<http://www.european-council.europa.eu/eurozone-governance/esm-treaty-signature?lang=it>](http://www.european-council.europa.eu/eurozone-governance/esm-treaty-signature?lang=it)

and

<http://www.esm.europa.eu/pdf/FAQ%20ESM%2008102012.pdf>)

## NEGOTIATION

### VIII.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE NEGOTIATION OF THE ESM TREATY, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

No major political and legal difficulties were encountered by Greece in the negotiation of the ESM Treaty. PA.SO.K. (the Government party during most of the time of the negotiations, namely until the 11<sup>th</sup> of November 2011) sees the creation of a permanent support mechanism as a success against the hesitations of European partners, especially Germany, as a proof of the tough negotiations carried out by Greece at the European level, and as a personal success of the Prime Minister, Giorgos Papandreou, who was the first to propose such a mechanism.<sup>233</sup> More

<sup>233</sup> See the parliamentary debates on the national budget of 2011, on December 2010: *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΜΕ', Σάββατο, 18 Δεκεμβρίου 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101218.pdf> ; *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΜΣΤ', Κυριακή, 19 Δεκεμβρίου 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101219.pdf> ; *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΜΖ', Δευτέρα, 20 Δεκεμβρίου 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101220.pdf> ; *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΜΗ', Τρίτη, 21 Δεκεμβρίου 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101221.pdf> ; *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΜΘ', Τετάρτη, 22 Δεκεμβρίου 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101222.pdf> ; see also the debates after the European Council of the 11<sup>th</sup> of March, where the ESM is discussed: : *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση Ρ', Τετάρτη, 16 Μαρτίου 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110316%20%28proi%29.pdf> ; *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΡΑ', Τετάρτη, 16 Μαρτίου 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110316%28apog.%29.pdf> . Cf. also the debates on the 14<sup>th</sup> of July 2011, after the signing of the first ESM Treaty, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΡΟΣΤ', Πέμπτη,

precisely, PA.SO.K. presents the ESM as a political victory, and as a step towards the completion of the deficient EMU and European integration. ESM is perceived as a mechanism of protection of Eurozone countries from asymmetric risks, as the admission of the European dimension of the financial crisis, and as a reorientation of Europe towards a more political union. It shows recognition of the sacrifices of the Greek people, and the decisiveness of the Eurozone partners to support Greece after 2012.<sup>234</sup> In the negotiations, the official position of the Government was thus positive about the creation of the ESM, a discussion which has been connected with the creation of Eurobonds, with the buying of national bonds by the ECB, and with the taxation of financial transactions. The Government, however, has been negative about the imposition of political sanctions to members with a high debt, a German proposal that was in the end not adopted.<sup>235</sup> However, the deputies of PA.SO.K. have emphasized their hope for more courageous decisions by Europe and criticized the political indecisiveness and hesitation of European leaders.<sup>236</sup> Moreover, the negotiations of the ESM Treaty have provoked the criticism of certain members of the Government party, who perceived the ESM as a default mechanism for the protection of creditors.<sup>237</sup>

N.D., which participated in the Government coalition during the final negotiations of the treaty and during its ratification, namely since the 11<sup>th</sup> of November 2011, also sees the ESM as a progress. However, it criticizes the participation of the IMF and the fact that the ESM has been created too late.<sup>238</sup> In addition, the deputies of N.D.

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14 Ιουλίου 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110714.pdf>. Finally, cf. the debates on the 7<sup>th</sup> of February 2012, after the signing of the final version of the ESM Treaty, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΟΗ', Τρίτη, 7 Φεβρουαρίου 2012, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120207.pdf>;

<sup>234</sup> Debates on the national budget and the debates on the 14<sup>th</sup> July 2011. See also the debates on the 16<sup>th</sup> of March 2011, and on the 7<sup>th</sup> of February 2012.

<sup>235</sup> See the parliamentary debates on the 18<sup>th</sup> of November 2010, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΚΒ', Πέμπτη, 18 Νοεμβρίου 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101118.pdf>, esp. 1367. See also the debates on the national budget of 2011, cited above, and the debates on the 14<sup>th</sup> of July 2011.

<sup>236</sup> Debates on the national budget of 2011, and debates on the 19<sup>th</sup> of October 2011, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΙΔ', Τετάρτη, 19 Οκτωβρίου 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20111019%20%28apog%29.pdf>.

<sup>237</sup> See the speech of Pantelis Oikonomou, in the debates on the 21<sup>st</sup> of December 2010, cited above, 3131.

<sup>238</sup> Cf. the debates on the national budget of 2011 date? Reference?.

criticize the strict conditionality under which financial support is given by the ESM and emphasize the need for growth.<sup>239</sup>

The most virulent criticism against the ESM came from the parties K.K.E. and SY.RIZ.A. Indeed, for these left wing parties the ESM is seen as a continuation of the EFSF, the Memorandum, and the austerity measures. More precisely, Alexis Tsipras has strongly criticized the implication of the IMF in the Eurozone, institutionalized through the ESM Treaty. He accused the Government of not effectively negotiating and of not listening to the propositions of the Left.<sup>240</sup> He also underlined that the ESM does not bring about any substantial changes to the deficient structure of the Eurozone, but consists only in an admission that Greece will not be able to borrow from the markets in 2013. According to SY.RIZ.A., the decision to create the ESM has as a major goal to protect creditors and is positive only for them and not for the Greek people.

K.K.E. follows a more radical line of reasoning. According to its members, the participation of Greece in imperialistic organizations such as the EU serves only the capital and business groups, and not the lower classes. The ESM is a proof of the unpopular character of the EU and the Eurozone, as it is an imperialistic mechanism of bankruptcy, which cannot counter the real causes of the crisis of capitalism, and which only protects creditors. The activation of the ESM is submitted to strict conditionality which undermines social and labor rights. Moreover, this conditionality entails considerable limitations to national sovereignty.<sup>241</sup>

## RATIFICATION

### VIII.2

HOW HAS THE ESM TREATY BEEN RATIFIED IN GREECE AND ON WHAT LEGAL BASIS/ARGUMENTATION?

Things have been complicated as far as the ratification procedure is concerned, the debates for which took place during the campaign for the elections of the 6<sup>th</sup> May 2012. The ratification of the ESM treaty was part of a more general draft bill, which also contained the amendment of article 136 TFEU and the ratification of the Fiscal

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<sup>239</sup> See the debates on the 16<sup>th</sup> of March 2011.

<sup>240</sup> Cf. the debates on the national budget of 2011 date? Reference? and the debates on the 16<sup>th</sup> of March 2011.

<sup>241</sup> Cf. the debates on the national budget of 2011. Date/reference?



Compact (see questions V.3 and IX.3). The bill ratifying the ESM treaty was drafted on March 15<sup>th</sup>, 2012 and was debated and voted in Parliament on March 28<sup>th</sup>, 2012.<sup>242</sup> It was voted in one day, with a majority of 194 deputies out of the 253 present voting in favor (total of deputies is 300). The deputies of PA.SO.K. and N.D., the two parties of the government coalition at the time, voted in favor. The members of SY.RIZ.A., DIM.AR., LA.O.S., and DI.SY. voted against. It is interesting to note that LA.O.S. had participated in the government at the time of the decision of 9 December 2011 for the (the political decision leading to the 136 TFEU amendment and the Fiscal Compact).<sup>243</sup>

The statute was voted according to the regular parliamentary procedure of articles 70 f. of the Constitution. The constitutional basis invoked by the Government for the following of this procedure was article 28 paragraph 1 of the Constitution, which states that “The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.”<sup>244</sup> An interpretive statement added with the constitutional reform of 2001 declares that “Article 28 is the basis for the participation of the Country in the procedures of European integration.” Although the ESM has been characterized by the government as “an inter-state mechanism that does not expand the competences of the EU”,<sup>245</sup> its concrete legal status has not been discussed and the terms “Eurozone stability mechanism”, “European Stability Mechanism” and “stability mechanism of the European Union” are used as synonymous in the parliamentary debates. During the negotiations of the ESM treaty in the past, PA.SO.K. defended that it possessed the status of EU primary law.<sup>246</sup> The article

<sup>242</sup> Legal Statute 4063/2012, ΦΕΚ Α’ 71, published on 30 March 2012.

<sup>243</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΠΙΣΤ’, Τετάρτη, 28 Μαρτίου 2012, 8004* available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030.

<sup>244</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>245</sup> See the same parliamentary debates, 8022.

<sup>246</sup> See the speech of Evangelos Venizelos, in *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΡΟΣΤ’, Πέμπτη, 14 Ιουλίου 2011, 13728*, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110714.pdf>.



invoked by the Government as a basis for the ratification, however, does not specify the majority required for the vote of the statute ratifying the treaty.<sup>247</sup>

During the parliamentary debates on the 28<sup>th</sup> of March 2012, the deputies of the opposition accused the PA.SO.K./ND Government of hiding these treaties from the Greek people, through the concise parliamentary procedure mobilized for their ratification. In general, especially the deputies of SY.RIZ.A. and LA.O.S., repeatedly criticized the functioning of the Parliament and the negligence to the parliamentary procedure and monitoring by the Government. In response, the deputies of PA.SO.K. claimed that they were “not acting in absentia of the Greek people because, by voting these treaties, [they were] supporting the basic choice of the Greek people, which is that the country remains in the Eurozone.”<sup>248</sup>

More precisely, deputies of LA.O.S. objected that the statute in question, because of its crucial importance for Greece and for Europe in general, and because of the fact that it attributes constitutional competences concerning fiscal and budgetary policy to organs of international organizations, should be voted according to the procedure defined in paragraph 2 of article 28 of the Constitution. According to this paragraph, “Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement.”<sup>249</sup> (180/300). The members of LA.O.S. argued that it was the Fiscal Compact that imposed a qualified majority for ratification in order to enter into force. They argued that the treaties under ratification were changing the structure and the decision-making procedure inside the Eurozone, and thus they constituted a concession of constitutional competences to the Eurozone organs.<sup>250</sup> Thus, in order to preserve the validity of the voting procedure and to prove that the statute had been adopted with the qualified majority required, they demanded the procedure of nominal vote, which was followed at the end.<sup>251</sup>

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<sup>247</sup> *Ibid.* 8030.

<sup>248</sup> See the speech of Konstantinos Geitonas in the parliamentary debates, 8043.

<sup>249</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>250</sup> See the parliamentary debates, 8020, 8030, 8037, 8057.

<sup>251</sup> *Ibid.*, 8063.

The members of SY.RIZ.A. rejected the competence of Parliament to amend the treaties of the European Union. Reiterating objections already raised during the negotiation of the amendment of article 136 TFEU for the creation of a stability mechanism (see question V.1),<sup>252</sup> they argued that the treaty amendment, as well as the ESM and Fiscal Compact entailed an amendment of the Constitution. Thus, a constitutional reform or a referendum was required, following the example of other European countries, like Ireland. In order to support the argument, the deputies invoked article 3 paragraph 2 of the Fiscal Compact. Thus, they invited the government to proceed to a referendum for the ratification of these provisions, or, at least, to wait for the elections, which were scheduled for the 6th of May. In any case, they argued that the government did not want to follow the special procedure of article 28 paragraph 2 of the Constitution, even though it possessed the qualified majority needed, because it did not want to create a precedent for future voting procedures.<sup>253</sup> Mobilizing these arguments, the deputies of SY.RIZ.A. raised an objection of unconstitutionality before the Parliament, which was rejected by a raising vote, according to article 100 paragraph 2 of the Standing Orders of Parliament.<sup>254</sup>

Finally, the deputies of DIM.AR. emphasized the fact that the majority required was the absolute majority of the total number of deputies (151/300), according to paragraph 3 of article 28 of the Constitution. According to this paragraph, “Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>255</sup> The deputies of DIM.AR. alleged that paragraph 1 of article 28 of the Constitution, invoked by the

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<sup>252</sup> See the question of Alexis Tsipras in the parliamentary debates of the 10<sup>th</sup> of December 2010, in *Πρακτικά Βουλής, Συνεδρίαση ΑΘ’, Παρασκευή 10 Δεκεμβρίου 2010*, 2732 available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101210.pdf>

<sup>253</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, cited above, 8020, 8032, 8050, 8058, 8063.

<sup>254</sup> *Ibid*, 8035. Traditionally there is no judicial review of the procedure followed by the Parliament, which is considered *interna corporis*. However, especially concerning the application of article 28 of the Constitution, the Supreme Administrative Court (Council of State), in its decision 668/2012 accepted to review the ratification of the Memorandum of Understanding by the Parliament. Cf. the relevant question.

<sup>255</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf>

government, was only concerning the place of international treaties in relation to domestic law and did not require a specific procedure for the ratification of European treaties, which have been always voted according to the third paragraph of this article. Indeed, according to them, the European Union is not an international organization but a union which they would like to be federal.<sup>256</sup>

The deputies of the governing parties (P.A.S.O.K. and N.D.) argued, however, that the Treaty amendment, the Fiscal Compact and the ESM do not expand the competences of the European Union. To support their argument they invoked the simplified procedure of Treaty revision followed.<sup>257</sup> In addition, the deputies of N.D. argued that European Union is not an international organization, according to the terms of article 28 paragraph 2 of the Greek Constitution, but a *sui generis* state organization.<sup>258</sup>

The Greek constitutional doctrine has been divided on the subject.<sup>259</sup> Most scholars, however, before the Eurozone crisis, considered that for the ratification of European Treaties and their amendments in general (and not with the simplified procedure followed), the Constitution requires a combined application of the procedural conditions of paragraph 2 and the substantial conditions of paragraph 3. Nevertheless, they emphasized that “the solution will not become definitive, until the broad until now parliamentary majority for the support of the European course of the country breaks.”<sup>260</sup>

## RATIFICATION DIFFICULTIES

### VIII.3

<sup>256</sup> *Ibid.*, 8033, 8038, 8060, 8063.

<sup>257</sup> See the parliamentary debates.

<sup>258</sup> *Ibid.* 8037. See also the parliamentary debates of the 25<sup>th</sup> of October 2006, in the Commission for the Constitutional Reform, in *Πρακτικά Επιτροπής Αναθεώρησης του Συντάγματος*, Συνεδρίαση ΣΤ', Τετάρτη 25 Οκτωβρίου 2006, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/25102006.pdf>. In fact, the vagueness of article 28 concerning the European Treaties has led to discussions on its amendment in 2006. However, also because of the disagreement between parties, the amendment was abandoned.

<sup>259</sup> It is interesting to note that constitutional lawyers are very often political personalities in Greece. For example, the president of P.A.S.O.K. is Professor of Constitutional Law in the University of Athens. Similarly, the Minister of Administrative Reform and Electronic Governance is Professor of Constitutional Law in the University of Thessaloniki.

<sup>260</sup> See Cf. Antonis Maniatakis and Lina Papadopoulou (eds.), *Η προοπτική ενός συντάγματος για την Ευρώπη*, [*The Perspective of A Constitution For Europe*] (2003 Athina-Thessaloniki: Ant. N. Sakkoulas) 160 ff., esp. 173. See also citations for the relevant literature. In the same direction are the arguments of Theodora Antoniou, especially as far as the TFEU amendment is concerned, in «Η απόφαση της Ολομελείας του Συμβουλίου της Επικρατείας για το Μνημόνιο – Μια ευρωπαϊκή υπόθεση χωρίς ευρωπαϊκή προσέγγιση [The Decision by the Plenum of the Council of State on the Memorandum – A European Affair Without A European Approach]», *ΤοΣ*, 1/2012, 197.

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER DURING THE RATIFICATION OF THE ESM TREATY?

Despite the virulent criticisms that the ESM Treaty provoked from the part of the opposition, there were no major difficulties during its ratification, because of the broad parliamentary majority that supported the Government at the time. The legal statute ratifying the Treaty, as well as the amendment of article 136 TFEU and the Fiscal Compact, was debated and voted in one day, on the 28<sup>th</sup> of March 2012, with a majority of 194 deputies out of the 253 present voting in favor (the total of deputies is 300). The deputies of PA.SO.K. and N.D., the two parties of the government coalition at the time, voted in favor. The members of K.K.E., SY.RIZ.A., DIM.AR., LA.O.S., and DI.SY. voted against. It is interesting to note that LA.O.S. had participated in the Government at the time of the decision of 9 December 2011 for the (the political decision leading to the 136 TFEU amendment and the Fiscal Compact).<sup>261</sup>

According to the deputies of PA.SO.K. and N.D., the institutionalization of the ESM is an extremely positive development for Greece, even though the conditionality of the application of the ESM Treaty is very strict. In the parliamentary debate of 28 March 2013, the deputies supporting the Government defended that there is a need for economic stability in Europe. Moreover, claiming that Greece will be autonomous only if it does not need to borrow money, they maintained that there is no other way but to ratify the treaty. Finally, they admitted that Europe is oriented to neoliberal policies and they expressed hopes that, in case the socialist Hollande would win the French Presidential elections of May 2012, together with other politicians, they would work in order to change this. They emphasized the need for growth in the EU and especially in countries struck by the financial crisis and they criticized the one-sided character of the treaty ratified, focused only on competitiveness.

In general, the ESM Treaty has been criticized more because of the conditionality that it sets, than for the creation of the ESM itself. The Government has been also accused by the opposed parties of hiding the conventions ratified from the Greek people, through the mobilization of opaque procedures. A deputy of the majority responded that “[they] are not acting in absentia of the Greek people because, by voting these

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<sup>261</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΠΙΣΤ’, Τετάρτη, 28 Μαρτίου 2012, 8004* available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030.

treaties, we are supporting the basic choice of the Greek people, which is that the country remains in the Eurozone.”<sup>262</sup>

The Communist Party (K.K.E.) claimed during the parliamentary debate of 28 March 2012 that the treaties under ratification showed the real face of the EU, which is an imperialist organization, against labor and social rights. In response to other parties’ claims on the unconstitutionality of the parliamentary procedure, they defended that the matter is not procedural and that inside the EU there is no possibility of democracy. They emphasized that the treaties ratified are limiting national sovereignty for the benefit of an imperialist organization and that there is no possibility of renegotiation of the Euro-crisis measures; instead, there is a need to exit the Eurozone and the EU, because the crisis is a crisis of capitalism. Concerning the ESM in particular, they stressed that this mechanism is not enough and that it is full of incoherences. They claimed that, at the end, the ESM Treaty, because of the asymmetry in the EU, benefits strong Germany and serves the capital against the working class. They characterized the ESM as a mechanism of controlled bankruptcy, which will bring about new memoranda and anti-popular measures, in the effort to protect creditors and the banking system at the European level.

During the same parliamentary debate, the deputies of LA.O.S criticized the time-consuming action of the EU, and expressed their hope that the socialist François Hollande would renegotiate the treaties under ratification, in order for them to contain growth provisions. Concerning the ESM in particular, they emphasized the incoherence of the treaty because of the need for countries with financial problems to participate in the saving of their own economy. They stressed that it would be difficult for the Greek government to find the money that it has to contribute to the ESM. Moreover, they claimed that the ESM Treaty raises sovereignty problems, among others because of the governance rules of article 4 of the Treaty, and provokes an “abdication of the Ministry of Economics”,<sup>263</sup> in the profit of Germany.

According to SY.RIZ.A., the ESM Treaty, together with the Fiscal Compact, demonstrate the commitment of the Greek Government to the neoliberal policy of Germany, which leads inevitably to economic decline. The ESM is a mechanism of

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<sup>262</sup> See the debates cited above, 8043.

<sup>263</sup> See the speech of the leader of LA.O.S., Georgios Karatzaferis, in the parliamentary debates cited, 8039.

controlled default, under conditions which benefit only the creditors and Germany. Indeed, an eventual uncontrolled default would have an immense cost for the European North. Furthermore, the deputies of SY.RIZ.A., invoking also press publications in internationally well-known journals, observed that the capital provided for the ESM is not enough in order to face the debt crisis of Eurozone Member States. They emphasized the need for taxation of financial transactions, and for a mechanism of financial redistribution between countries of the European North and South. Moreover, they stressed the fact that the ESM Treaty involves the IMF as an institutional counterpart of EU integration. According to them, the ESM Treaty undermines the equality between Member States, because the participation of each Member State in the decision-making procedure of the mechanism depends on the number of stakes it holds. Finally they highlighted that the ESM constitutes an admission of the failure of the monetary union and a turn to a permanent search of competitiveness, through austerity.

The deputies of DIM.AR. held a rather moderate position, accepting the ESM, but not the conditionality which complements it. They emphasized the need for a change of policy in the EU and the need for a political and social union.

## CASE LAW

### VIII.4

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE ESM TREATY?

No, there is no court judgment on the ESM Treaty. Indeed, in Greece there is no general possibility to directly attack legal statutes before the court.<sup>264</sup> Instead, judicial review of the legislator is diffused among all jurisdictions of the civil and administrative order, and is finally concentrated in the Supreme Administrative and Judiciary Courts (Council of State – “Symvoulío tis Epikrateias” and Areios Pagos respectively). Each justiciable possessing a legitimate interest, in the occasion of a litigation before a judge, can raise an objection of unconstitutionality of a legal statute applied in the case, both in case this statute is applied directly, and in case it is the legal basis of another act. According to article 93 paragraph 4 of the Constitution, “The courts shall be bound not to apply a statute whose content is contrary to the

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<sup>264</sup> There is, however, the High Special Court, instituted according to article 100 of the Constitution, which can monitor the constitutionality of a statute, in the case of contrary decisions on the matter by the two supreme courts, Council of State (administrative) and Areios Pagos (judiciary).

Constitution.”<sup>265</sup> Courts apply the same constitutional basis, in combination with article 28 paragraph 1, in order to monitor the compatibility of ordinary law with international conventions. Indeed, article 28 paragraph 1 declares: “The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.”<sup>266</sup> The result of unconstitutionality/unconventionality is the non-application of the statute in the concrete case before the judge. Courts in general refuse to examine the respect of the rules of parliamentary procedure, which is considered *interna corporis* of the legislator.<sup>267</sup> In any case, given that the TFEU amendment was approved in 2012 and given the time-consuming character of Greek judicial procedures, there is no court judgment on the ESM Treaty.

## CAPITAL PAYMENT

### VIII.5

WHAT IS THE ROLE OF PARLIAMENT IN THE PAYMENT OF THE (FIRST INSTALMENT OF) PAID-IN CAPITAL REQUIRED BY THE ESM TREATY (ARTICLE 36 ESM TREATY)? WHAT RELEVANT DEBATES HAVE ARISEN IN RELATION TO THIS PAYMENT?

Parliament has a marginal role in the payment of the installments of paid-in capital required by the ESM Treaty. This payment, prefigured to 450.672.000 euros per year in five installments,<sup>268</sup> is included in a chapter of the national budget, which has not at all been discussed during the parliamentary debates for the approval of the budget.<sup>269</sup> Thus, with the approval of the national budget, Parliament has habilitated the Government to take the necessary measures in order to assure the payment of this

<sup>265</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agliko.pdf>

<sup>266</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agliko.pdf>

<sup>267</sup> However, in the case concerning the ratification of the Memorandum of Understanding, the judge accepted to enter into the examination of the procedure of ratification. See the relevant question.

<sup>268</sup> See the Preamble of the Legal Statute 4063/2012, ΦΕΚ Α' 71, published on 30 March 2012, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/k-slee-eis.pdf>.

<sup>269</sup> See the Preamble to the national budget for 2013, available at <http://www.minfin.gr/content-api/f/binaryChannel/minfin/datastore/23/78/55/23785536b0ff793c788edcb81129a634e74727d7/application/pdf/%CE%95%CE%B9%CF%83%CE%B7%CE%B3%CE%B7%CF%84%CE%B9%CE%BA%CE%AE+%CE%88%CE%BA%CE%B8%CE%B5%CF%83%CE%B7+2013.pdf>

capital. That is because the application of the ESM Treaty is rather seen from the point of view of the beneficiary than that of a creditor to the ESM. The financial contribution of the country to the capital of the ESM has only been underlined during the parliamentary debates for the ratification of the ESM Treaty. In these debates, deputies of LA.O.S. objected that it would be difficult for the Government to provide the resources needed and that this would lead to new austerity measures against the Greek people.<sup>270</sup>

## APPLICATION & PARLIAMENT

### VIII.6

WHAT IS THE ROLE OF PARLIAMENT IN THE APPLICATION OF THE ESM TREATY, FOR EXAMPLE WITH REGARD TO DECISIONS TO GRANT FINANCIAL ASSISTANCE AND THE DISBURSEMENT OF TRANCHES, WHICH BOTH REQUIRE UNANIMOUS ADOPTION BY THE BOARD OF GOVERNORS COMPOSED OF THE NATIONAL FINANCE MINISTERS.

Parliament has a marginal role in the application of the ESM Treaty, which is a competency of the Government. Indeed, the application of the ESM Treaty is rather seen from the point of view of the beneficiary than that of a creditor to the ESM. However, during the parliamentary debates, parliamentary monitoring is exercised to the position of the Government in the negotiations for financial assistance to third countries and the disbursement of tranches.<sup>271</sup> In general, there is not much transparency concerning the position of the Minister of Finance in the Eurogroup and the negotiations on the application of the ESM Treaty. Nevertheless, after the demand of the President of the Special Permanent Commission of European Affairs together with the Permanent Commission of Economic Affairs of the Parliament, a procedure of information of the Commission by the Minister of Finance concerning Eurogroup meetings has been institutionalized, albeit informally.<sup>272</sup>

## APPLICATION DIFFICULTIES

### VIII.7

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<sup>270</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΠΙΣΤ', Τετάρτη, 28 Μαρτίου 2012, 8004 available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030, 8032.

<sup>271</sup> See the next question.

<sup>272</sup> See the video of the session of the Commission on the 15<sup>th</sup> of May 2013, available at <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#3b32b0de-43dd-41f2-b7f6-5a489117fa6a>.



## WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE APPLICATION OF THE ESM TREATY?

As far as the application of the ESM Treaty is concerned, Spain and Cyprus are perceived by the press and the political world as suffering from the same problems as Greece, as cases that demonstrate the generality and the systemic nature of the Euro-crisis problem. The financial assistance to these countries is perceived and discussed more in a comparative perspective to the Greek case. Thus, the examples of Spain and Cyprus are used by all political parties in order to show errors in the financial assistance programs for Greece, the weakness of the negotiating capacities of Government officials or, on the contrary, in order to demonstrate the success of the negotiations effectuated by the Greek Government.

Concerning the financial assistance to Spain, it is important to note that a part of the negotiations coincided with the transitional period between the two Greek elections of 2012. The discussions in Parliament show that the Greek Government was not perceived as participating and having a say in the discussions at the European level. Even when European decisions have been criticized, it is Europe itself and rarely the position of the Greek government that is considered. After the elections of the 17<sup>th</sup> of June, all political parties expressed their hopes for the renegotiation of the Greek debt in order to obtain a solution similar to the one that was to be adopted for Spain, and thus, a transfer of part of the Greek debt (corresponding to 25% GDP) to the European financial support mechanism. Deputies from PA.SO.K. and DIM.AR. defended that the Greek case is similar to the Spanish one, and that this solution would be a result of an equal treatment of Eurozone Member States.<sup>273</sup> The Communist Party (K.K.E.), however, objected that the buying of state bonds by the ESM would be combined with memoranda and austerity measures.<sup>274</sup> In general, at the beginning, the deputies of SY.RIZ.A. and AN.EL. were criticizing the Government for not negotiating a similar solution for Greece as the Spanish did.<sup>275</sup> N.D. responded to the criticisms that this

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<sup>273</sup> See the parliamentary debates on the 7<sup>th</sup> of July 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση Ε', Σάββατο, 7 Ιουλίου 2012, 50, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120707.pdf>

<sup>274</sup> See the parliamentary debates on the 8<sup>th</sup> of July 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΣΤ', Κυριακή, 8 Ιουλίου 2012, 103, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120708.pdf>

<sup>275</sup> See the parliamentary debates on the 8<sup>th</sup> of July, cited above and on the 12<sup>th</sup> of September 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΚΕ', Τετάρτη, 12 Σεπτεμβρίου 2012, 886, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120912.pdf>

solution was conditioned by onerous measures, notably the control of Spanish banks by the EFSF.<sup>276</sup> After the adoption of the final solution for Spain, SY.RIZ.A., lamenting the lack of political union in the EU, criticized the fact that, at the end, it was the Spanish people that would be held responsible for the debts of banks, through the imposition of austerity measures.<sup>277</sup>

Concerning the case of Cyprus, the matter was a more sensible one because of the strong national, historic and cultural bonds between Greece and Cyprus. Almost all political leaders criticized the solution adopted with the first decision of the Eurogroup on the 15<sup>th</sup> of March.<sup>278</sup> During the debates on the 19<sup>th</sup> of March 2013, deputies from all parties characterized the rejection of the Eurogroup decision by the Cypriot Parliament courageous and expressed their solidarity to the Cypriot people. More precisely, deputies from PA.SO.K. (participates in the Government) characterized the Eurogroup decision as a “crime”,<sup>279</sup> and said that neoliberal policies in Europe are exclusively based on political decisions, emphasizing the need for change of orientation for Europe. They defended that the Greek Parliament should respect every decision of the Cypriot Parliament. Finally, they said that the Eurogroup decision was a wrong decision, which put Euro and Europe into danger, and which provoked division inside the Eurozone and has been criticized by the press. However, they maintained that the Greek government could not but accept this decision, which was already approved in the Eurogroup of the 15<sup>th</sup> of March, stressing out the need for more information on the position of the Government during the formation of the decision. DIM.AR. (participates in the Government) also condemned the decision of the first Eurogroup, which it characterized a “historical mistake”<sup>280</sup> that expresses the neoliberal forces prevailing in Europe.

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<sup>276</sup> See the parliamentary debates on the 11<sup>th</sup> of September 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΚΔ’, Τρίτη, 11 Σεπτεμβρίου 2012, 832, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120911.pdf>.

<sup>277</sup> See the parliamentary debates on the 8<sup>th</sup> of November 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΞΣΤ’, Πέμπτη, 8 Νοεμβρίου 2012, 4272, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20121108.pdf>.

<sup>278</sup> See the reactions of political parties to the decision of the Eurogroup, at <http://www.megatv.com/megagegonota/article.asp?catid=27371&subid=2&pubid=30809493>

<sup>279</sup> See the parliamentary debates on the 19<sup>th</sup> of March 2013, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση PMZ’, Τρίτη, 19 Μαρτίου 2013, 9151, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130319.pdf>, 9166.

<sup>280</sup> See the parliamentary debates on the 19<sup>th</sup> of March 2013, cited above, 9174.

N.D. and the Government tried to justify their position by saying that the agreement on the taxation of bank deposits was a sovereign political decision of the President of the Cypriot Republic together with the IMF, the ECB, the Commission and the Eurogroup partners. Indeed, they explained that in the Eurogroup a concrete decision is presented, on which the state representatives have to express themselves. Given the European correlation of powers, Greece could not oppose to the Eurogroup decisions by itself. They defended that, by agreeing to this decision, they showed their support and solidarity to Cyprus, and they maintained a responsible position. They held that the Greek Government could not intervene in the internal matters of another state. Also, they emphasized that, with the Eurogroup decision for Cyprus, Greece is protected from eventual consequences of the Cypriot crisis, through the transfer of the branches of the Cypriot banks operating in Greece to a Greek bank. Even though they admitted that this decision is a step back from the banking union and a turnover of the previous flexibilization of the position of the ECB, they pointed out that Cyprus is a particular case, because of its huge and problematic banking sector.<sup>281</sup> Finally, the Minister of Finance imputed the adoption of this onerous solution to the inexistence of a banking union between the Member States of the Eurozone.<sup>282</sup>

However, the deputies of the opposition exercised virulent criticism to the position of the Government during the negotiations and they demanded further explanations. They emphasized that the Greek Minister of Finance participated to the unanimous Eurogroup decision, showed no solidarity to the Cypriot people, and supported the disastrous decision on the “haircut” of bank deposits.<sup>283</sup> More precisely, deputies from SY.RIZ.A., using the term “colonization”,<sup>284</sup> criticized the role of the Eurozone and of Germany, who only promote the interests of bankers. They stressed the incoherence of the Eurogroup decision, causing leak of capitals and instability to the profit of banks owned or controlled by German banks, with the foundations and the justification of the existence of the monetary union itself. Moreover, SY.RIZ.A. representatives demanded the resignation of the Government. They emphasized that the “no” of the Cypriot Parliament is a proof that there is an alternative to austerity

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<sup>281</sup> See the parliamentary debates on the 19<sup>th</sup> of March 2013, cited above.

<sup>282</sup> See the information meeting on the 20<sup>th</sup> of March 2013 between the Minister and the Special Permanent Commission of European Affairs and the Permanent Commission of Financial Affairs of the Parliament, available at <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtiro/Fotografiko-Archeio/#5ae38d11-7e8f-4470-9ad3-1c01cd2adb55>.

<sup>283</sup> See the parliamentary debates on the 19<sup>th</sup> of March 2013, cited above.

<sup>284</sup> See the parliamentary debates on the 19<sup>th</sup> of March 2013, cited above, 9197.

and economic recession as a way to face the crisis, that negotiation is possible. They added that Greece needs to support the European South and, as long as it does not, it undermines its own economy because of the insecurity provoked. Finally, they pointed out the consequences that the economic crisis in Cyprus may have at the level of the exploitation of the natural resources of the island, which are close to the ones belonging to Greece.

The rest of the opposition parties also criticized the Government. On the one hand, the deputies of AN.EL. held a similar position to SY.RIZ.A., saying that the Eurogroup decision destroys the confidence in the EU, that it is a crime, and that it violated the right to privacy and the Charter of Fundamental Rights. They emphasized the political responsibility of the Government because of its participation to such an illegal decision. Further, they demanded either the resignation of the Minister of Finance, or the resignation of the whole Government that supported the decision for Cyprus. On the other hand, the deputies K.K.E. defended that the first Eurogroup decision on Cyprus is a demystification of the role of Europe and of capitalism as a whole, as it shows the character of EU and the policies it promotes.<sup>285</sup>

The second Eurogroup decision on Cyprus on the 25<sup>th</sup> of March 2013 also provoked intense reactions by the political parties. The President of the Republic went as far as to characterize this decision as “intolerable”, because it constituted a discrimination against Cyprus.<sup>286</sup> The opposition talked about a “German hegemony”.<sup>287</sup> SY.RIZ.A. criticized the Greek Government for not supporting the decision of the Cypriot Parliament. They accused the Government of participating in the “attacks” to Cyprus for borrowing from a non EU state (Russia), and in the “blackmailing” by the ECB, the IMF and the Commission.<sup>288</sup> Moreover, they emphasized the geopolitical matters at stake. They said that the second Eurogroup decision undermines the European Union and creates problems to all Member States, including Germany. The deputies

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<sup>285</sup> See the parliamentary debates on the 19<sup>th</sup> of March 2013, cited above.

<sup>286</sup> “The reactions of the political world to the Eurogroup decision on Cyprus”, *skai.gr*, 25 March 2013, <http://www.skai.gr/news/politics/article/227369/oi-adidraseis-tou-politikou-kosmou-gia-tin-apofasi-eurogroup-gia-tin-kupro/>

<sup>287</sup> See the parliamentary debates on the 27<sup>th</sup> of March 2013, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΠΝΒ*, Τετάρτη, 27 Μαρτίου 2013, 9614, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130327.pdf>, and on the 28<sup>th</sup> of March 2013, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΠΝΓ*, Πέμπτη, 28 Μαρτίου 2013, 9667, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130328.pdf>.

<sup>288</sup> See the debates on the 28<sup>th</sup> of March 2013, cited above, 9701.

of AN.EL. defended that the new disastrous decision of the Eurogroup shows that European partners do not respect the European values of democracy, solidarity, and human rights. Invoking press publications, they emphasized that this decision undermined the confidence of deposit holders in the whole Europe and mined the image of Germany. They added that it was absurd that the EU morally condemned a model of economic growth of a Member State, and they imputed this model to the incidents between Cyprus and Turkey, and thus the division of the island, which did not permit any other economic growth. Finally, they accused the Greek Government for not participating in a “plan B” for Cyprus, even though the Cypriot crisis is largely caused by the Greek one. The deputies of K.K.E. criticized the decision for Cyprus, and they defended that no negotiation that would be beneficial for the people is possible inside the neoliberal European Union. They also expressed fears about eventual evolutions concerning the problem with Turkey and the exploitation of natural resources of the island.

The Government parties, even though they recognized that the Eurogroup decision was very onerous for Cyprus, emphasized the need for Cyprus to remain Member of the Eurozone. PA.SO.K. and DIM.AR. however criticized the lack of political union in the EU and expressed hopes for a reorientation of European policies to this objective. Finally, the Government parties used the disastrous consequences of the Cypriot “no” to the first Eurogroup decision as a proof of the negotiation power of the Eurozone partners.<sup>289</sup>

Greece was particularly concerned by the decision on the bailout of Cyprus because of the agreement between Cyprus and Greece on the Greek branches of Cypriot banks.<sup>290</sup> “In order to protect the stability of the Greek and the Cypriot banking sector”, the “troika” set as a condition the sale of these branches to a Greek bank in order to approve the financial support programme for Cyprus.<sup>291</sup> The Greek parties of the opposition doubted the promotion of the public interest and of the interests of Cyprus by this decision, they accused the Government of serving the interests of Pireus bank, which is the buyer, and demanded further information on the subject.

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<sup>289</sup> See the parliamentary debates on the 27<sup>th</sup> and 28<sup>th</sup> of March, cited above.

<sup>290</sup> See press release of the Eurozone on the agreement: <http://eurozone.europa.eu/newsroom/news/2013/03/eg-statement-cyprus-25-03-13/>.

<sup>291</sup> See the press release of the Central Bank of Cyprus on this transaction: [http://www.centralbank.gov.cy/nqcontent.cfm?a\\_id=12677&lang=en](http://www.centralbank.gov.cy/nqcontent.cfm?a_id=12677&lang=en).

The Minister of Finance alleged that it was the only solution. The Government claimed that it acted with the exclusive goal of the guarantee of deposits, the maintaining of working posts and the stability of the Greek financial sector.<sup>292</sup> For the transfer of the branches of the Cypriot banks to Pireus bank, an amendment of a legal statute was inserted at first on the 11<sup>th</sup> of April 2013. However, because of its irrelevance to the content of the bill in which it was added, and after the objections of many deputies provoked by the lack of information from the part of the Government, the latter retired the amendment<sup>293</sup> and inserted it into another –still irrelevant– bill on the 17<sup>th</sup> of April 2013.

The statute regulates *ad hoc* the transfer of the Cypriot banks, providing that the increasing of the Greek bank's property is not included in the calculation of the capital needs of the bank, the 10% of which must be covered by private parties' contribution for the recapitalization of the bank. Also, it excludes the transaction from taxes.<sup>294</sup> During the parliamentary debates, SY.RIZ.A. and AN.EL. alleged that the transfer under consideration was increasing the property of the Greek buyer bank. Thus, it had to be done according to the already existing legal framework, with transparency concerning the value of the branches and following the rules concerning banks' capital and recapitalization. Also, it should be submitted to taxes. The Government responded that a special rule was necessary because no framework for the improvement of foreign banks existed at the time. They claimed that the existing legal framework was respected in principle and that the benefits accorded to the Greek bank were a result of the agreement with this bank. Besides, these benefits were justified by the fact that no other buyer was found for the Cypriot branches, which needed to be saved in order to assure deposits of Greek people and of social security funds. However, the opposition did not finally vote the amendment, fearing

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<sup>292</sup> See the parliamentary debates on the 8<sup>th</sup> of April 2013, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΡΕ', Δευτέρα, 8 Απριλίου 2013, 10122, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130408.pdf>.

<sup>293</sup> See the parliamentary debates on the 11<sup>th</sup> of April 2013, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΡΕΓ', Πέμπτη, 11 Απριλίου 2013, 10667, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130411.pdf>.

<sup>294</sup> See the amendment concerning the transfer of the Cypriot branches to Greek banks, available at <http://www.hellenicparliament.gr/UserFiles/bbb19498-1ec8-431f-82e6-023bb91713a9/%CE%88%CE%B3%CE%B3%CF%81%CE%B1%CF%86%CE%BF%20%288035923%29.pdf>.

that the privileged treatment of the Greek private bank would become a general practice in the future.<sup>295</sup>

## IMPLEMENTATION

### VIII.8

HAVE THERE BEEN ANY RELEVANT CHANGES IN NATIONAL LEGISLATION IN ORDER TO IMPLEMENT OR TO COMPLY WITH REQUIREMENTS SET BY THE ESM-TREATY?

No, there are no changes in national legislation for the implementation of the ESM Treaty in particular. Relevant legislation has been adopted for the implementation of measures concerning the financial assistance to Greece and the EFSF.<sup>296</sup>

## MISCELLANEOUS

### VIII.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND THE ESM TREATY?

What is interesting is precisely the lack of information concerning the role of Parliament in the application of the ESM Treaty. After its ratification, its application seems to be an exclusive competency of the executive branches, whose exercise is not transparent and is rarely debated in Parliament.

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<sup>295</sup> See the parliamentary debates on the 17<sup>th</sup> of April 2013, *Πρακτικά Βουλής (Ολομέλεια), Συνεδρίαση ΡΕΖ'*, Τετάρτη, 17 Απριλίου 2013, 10845, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130417.pdf>.

<sup>296</sup> For this legislation, cf. the relevant questions in the section “Members receiving financial assistance” and the EFSF section. For the implementation of article 12 paragraph 3 of the ESM Treaty, at the administrative level, there has been a ministerial decree which defines certain “Rules of Collective Action concerning titles issued by the Greek State, with initially determined date of maturity in more than one year.” ΥΑ 2/25248/0023Α, ΦΕΚ Β' 583, 13 March 2013.

## IX FISCAL COMPACT

*The Fiscal Compact (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) was signed on March 2, 2012. Negotiations on this Treaty began between 26 member states of the EU (all but the UK) after the 8/9 December 2011 European Council. 25 contracting parties eventually decided to sign the Treaty (not the Czech Republic).*

*After ratification by the twelfth Eurozone member state (Finland) in December 2012, the Fiscal Compact entered into force on 1 January 2013. For several contracting parties the ratification is still on-going.*

*(<http://www.european-council.europa.eu/eurozone-governance/treaty-on-stability?lang=it>)*

## NEGOTIATION

### IX.1

WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER IN THE NEGOTIATION OF THE FISCAL COMPACT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

No legal and political difficulties concerning the negotiation of the Fiscal Compact were encountered in Greece. The signing of this international treaty was practically debated in Parliament only during the ratification procedure.<sup>297</sup> Indeed, the signing of the Fiscal Compact coincided with discussions at the European level on the conditions of the agreement on the restructuring of the Greek debt with the participation of the private sector (P.S.I.) and of the new loan agreement for Greece. Thus, debates were focused on these matters, as well as the proposition of the German Minister of Finance for the setting of an economic commissioner for Greece. The signing of the Fiscal Compact by Greece was perceived and presented as necessary in order for the Greek State to avoid bankruptcy.<sup>298</sup> In the meeting they had the day before the agreement of the European leaders on the Fiscal Compact, the three political leaders supporting the technocrat government during the negotiations (PA.SO.K., N.D. and LA.O.S.) declared “absolute convergence” concerning the additional obligations and conditions set by the European partners. Thus, the Prime Minister participated in the negotiations following this position.<sup>299</sup> The former PA.SO.K. minister and

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<sup>297</sup> See the relevant question.

<sup>298</sup> See the blog <http://tvxs.gr/news/ellada/dimosionomiko-symfono-kai-esm-sto-epikentro-tis-synodoy-koryfis>

<sup>299</sup> See the blog <http://tvxs.gr/news/ellada/mprosta-stis-prosthetes-desmeyses>



independent deputy at the time of the ratification, Mariliza Xenogiannakopoulou, said that the Government has made a systematic effort to promote the interests of Greece, through propositions of amendments of the treaty. According to her, it is a success of the negotiations by the Government that in the Preamble of the Treaty there is a special provision concerning the respect of the role of social partners, even though some days later Commission and “troika” imposed the abdication of labor negotiations and labor law in Greece. Furthermore, the Government obtained the restriction of the role of ECJ to the implementation of the Fiscal Compact and not to its application. Finally, it is a success as well the fact that the Fiscal Compact does not alter the economic policy conditions of countries receiving financial assistance.<sup>300</sup>

## RATIFICATION

### IX.2

HOW HAS THE FISCAL COMPACT BEEN RATIFIED IN GREECE AND ON WHAT LEGAL BASIS/ARGUMENTATION?

Things have been complicated as far as the ratification procedure is concerned, the debates for which took place during the campaign for the elections of the 6<sup>th</sup> May 2012. Greece was the first country to ratify the Fiscal Compact. The ratification of the Fiscal Compact was part of a more general draft bill, which also contained the amendment of the TFEU and the ratification of the ESM treaty. The bill ratifying the ESM treaty was drafted on March 15<sup>th</sup>, 2012 and was debated and voted in Parliament on March 28<sup>th</sup>, 2012.<sup>301</sup> It was voted in one day, with a majority of 194 deputies out of the 253 present voting in favor (total of deputies is 300). The deputies of PA.SO.K. and N.D., the two parties of the government coalition at the time, voted in favor. The members of SY.RIZ.A., DIM.AR., LA.O.S., and DI.SY. voted against. It is interesting to note that LA.O.S. had participated in the government at the time of the decision of 9 December 2011 (the political decision leading to the 136 TFEU amendment and the Fiscal Compact).<sup>302</sup>

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<sup>300</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΠΙΣΤ', Τετάρτη, 28 Μαρτίου 2012, 8004 available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030, esp. 8047.

<sup>301</sup> Legal Statute 4063/2012, ΦΕΚ Α' 71, published on 30 March 2012.

<sup>302</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής (Ολομέλεια)*, Συνεδρίαση ΠΙΣΤ', Τετάρτη, 28 Μαρτίου 2012, 8004 available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030.

The statute was voted according to the regular parliamentary procedure of articles 70 f. of the Constitution. The constitutional basis invoked by the Government for the following of this procedure was article 28 paragraph 1 of the Constitution, which states that “The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.”<sup>303</sup> An interpretive statement added with the constitutional reform of 2001 declares that “Article 28 is the basis for the participation of the Country in the procedures of European integration.” The status of the Fiscal Compact has not been discussed concretely. However, the discussions during the parliamentary debates, give the impression that all the treaties ratified are considered as part of EU primary law, albeit binding only for the contracting Member-States. The article invoked by the Government as a basis for the ratification, however, does not specify the majority required for the vote of the statute ratifying the treaty.<sup>304</sup>

During the parliamentary debates, the deputies of the opposition accused the Government of hiding these treaties from Greek people, through the concise parliamentary procedure mobilized for their ratification. In general, especially the deputies of SY.RIZ.A. and LA.O.S., repeatedly criticized the functioning of the Parliament and the negligence to the parliamentary procedure and monitoring by the Government. In response, the deputies of PA.SO.K. claimed that they were “not acting in absentia of the Greek people because, by voting these treaties, [they were] supporting the basic choice of the Greek people, which is that the country remains in the Eurozone.”

More precisely, deputies from LA.O.S. objected that the statute in question, because of its crucial importance for Greece and for Europe in general, and because of the fact that it attributes constitutional competences concerning fiscal and budgetary policy to organs of international organizations, should be voted according to the procedure defined in paragraph 2 of article 28. According to this paragraph, “Authorities

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<sup>303</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggloliko.pdf>

<sup>304</sup> *Ibid.* 8030.

provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement.”<sup>305</sup> (180/300). The members of LA.O.S. argued that it was the Fiscal Compact that imposed a qualified majority for ratification in order to enter into force. They argued that the treaties under ratification change the structure and the decision-making procedure inside the Eurozone, and thus they constitute a concession of constitutional competences to the Eurozone organs.<sup>306</sup> In any case, according to them, the Fiscal Compact and the ESM entail the concession of national sovereignty to international organizations. Thus, in order to preserve the validity of the voting procedure and to prove that the statute had been voted with the qualified majority required, they demanded the procedure of nominal vote, which was followed at the end.<sup>307</sup>

The members of SY.RIZ.A. rejected the competence of Parliament to amend the treaties of the European Union. Reiterating objections already raised during the negotiation of the amendment of article 136 TFEU (see question V.3),<sup>308</sup> they argued that the treaty amendment, the ESM, and especially the Fiscal Compact, because of the commitment for many decades of the national economic and fiscal policy – through the balanced budget rule- that it contained, entailed an amendment of the Constitution. Thus, a constitutional reform or a referendum was required, following the example of other European countries, like Ireland. In order to support the argument, the deputies invoked article 3 paragraph 2 of the Fiscal Compact. Thus, they invited the government to proceed to a referendum for the ratification of these provisions, or, at least, to wait for the elections, which were scheduled for the 6th of May. In any case, they argued that the government did not want to follow the special procedure of article 28 paragraph 2, even though it possessed the qualified majority needed, because it did not want to create a precedent for future voting procedures.<sup>309</sup>

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<sup>305</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf>

<sup>306</sup> See the parliamentary debates, 8020, 8030, 8037, 8057.

<sup>307</sup> *Ibid*, 8063.

<sup>308</sup> See the question of Alexis Tsipras in the parliamentary debates of the 10<sup>th</sup> of December 2010, in *Πρακτικά Βουλής, Συνεδρίαση ΛΘ', Παρασκευή 10 Δεκεμβρίου 2010*, 2732 available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20101210.pdf>

<sup>309</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, cited above, 8020, 8032, 8050, 8058, 8063.

Mobilizing these arguments, the deputies of SY.RIZ.A. raised an objection of unconstitutionality before the Parliament, which was rejected by a raising vote, according to article 100 paragraph 2 of the Standing Orders of Parliament.<sup>310</sup>

Finally, the deputies of DIM.AR. emphasized the fact that the majority required was the absolute majority of the total number of deputies (151/300), according to paragraph 3 of article 28. According to this paragraph, “Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>311</sup> The deputies of DIM.AR. alleged that the paragraph 1, invoked by the government, was only concerning the place of international treaties in relation to domestic law and did not require a specific procedure for the ratification of European treaties, which have been always voted according to the third paragraph of this article. Indeed, according to them, the European Union is not an international organization but a union which they would like to be federal.<sup>312</sup>

The deputies of the governing parties (PA.SO.K. and N.D.) argued, however, that the Treaty amendment, the Fiscal Compact and the ESM do not expand the competences of the European Union. To support their argument they invoked the simplified procedure of Treaty revision followed.<sup>313</sup> In addition, the deputies of N.D. argued that European Union is not an international organization, according to the terms of article 28 paragraph 2 of the Greek Constitution, but a *sui generis* state organization.<sup>314</sup>

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<sup>310</sup> *Ibid*, 8035. Traditionally there is no judicial review of the procedure followed by the Parliament, which is considered *interna corporis*. However, especially concerning the application of article 28 of the Constitution, the Supreme Administrative Court (Council of State), in its decision 668/2012 accepted to review the ratification of the Memorandum of Understanding by the Parliament. Cf. the relevant question.

<sup>311</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>312</sup> *Ibid.*, 8033, 8038, 8060, 8063.

<sup>313</sup> See the parliamentary debates.

<sup>314</sup> *Ibid.* 8037. See also the parliamentary debates of the 25<sup>th</sup> of October 2006, in the Commission for the Constitutional Reform, in *Πρακτικά Επιτροπής Αναθεώρησης του Συντάγματος*, Συνεδρίαση ΣΤ', Τετάρτη 25 Οκτωβρίου 2006, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/25102006.pdf>. In fact, the vagueness of article 28 concerning the European Treaties has led to discussions on its amendment in 2006. However, also because of the disagreement between parties, the amendment was abandoned.

The Greek constitutional scholarship has been divided on the subject.<sup>315</sup> Most scholars, however, before the Eurozone crisis, considered that for the ratification of European Treaties and their amendments in general (and not with the simplified procedure followed), the Constitution requires a combined application of the procedural conditions of paragraph 2 and the substantial conditions of paragraph 3. Nevertheless, they emphasized that “the solution will not become definitive, until the broad until now parliamentary majority for the support of the European course of the country breaks.”<sup>316</sup>

## RATIFICATION DIFFICULTIES

### IX.3

#### WHAT POLITICAL/LEGAL DIFFICULTIES DID GREECE ENCOUNTER DURING THE RATIFICATION OF THE FISCAL COMPACT?

Despite the virulent criticism that the Fiscal Compact provoked from the part of the opposition, there were no major difficulties during its ratification, because of the broad parliamentary majority that supported the Government at the time. The legal statute ratifying the Compact, as well as the amendment of article 136 TFEU and the ESM Treaty, was voted in one day, with a majority of 194 deputies out of the 253 present voting in favor (total of deputies is 300). The deputies of PA.SO.K. and N.D., the two parties of the government coalition at the time, voted in favor. The members of K.K.E., SY.RIZ.A., DIM.AR., LA.O.S., and DI.SY. (a center-right party, which was principally formed by seceded members of N.D. and which supported the latter in the elections of June 2012) voted against.<sup>317</sup> It is interesting to note that LA.O.S. had participated in the Government at the time of the decision of 9 December 2011 (the political decision leading to the 136 TFEU amendment and the Fiscal Compact).

<sup>315</sup> It is interesting to note that constitutional lawyers are very often political personalities in Greece. For example, the president of PA.SO.K. is Professor of Constitutional Law in the University of Athens. Similarly, the Minister of Administrative Reform and Electronic Governance is Professor of Constitutional Law in the University of Thessaloniki.

<sup>316</sup> Cf. Antonis Manitakis and Lina Papadopoulou (eds.), *Η προοπτική ενός συντάγματος για την Ευρώπη*, [The Perspective of A Constitution For Europe] (2003 Athina-Thessaloniki: Ant. N. Sakkoulas) 160 ff., esp. 173. See also citations for the relevant literature. In the same direction are the arguments of Theodora Antoniou, especially as far as the TFEU amendment is concerned, in «Η απόφαση της Ολομελείας του Συμβουλίου της Επικρατείας για το Μνημόνιο – Μια ευρωπαϊκή υπόθεση χωρίς ευρωπαϊκή προσέγγιση [The Decision by the Plenum of the Council of State on the Memorandum – A European Affair Without A European Approach]», *ΤοΣ*, 1/2012, 197.

<sup>317</sup> See the parliamentary debates of the 28<sup>th</sup> of March 2012, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΠΙΣΤ', Τετάρτη, 28 Μαρτίου 2012, 8004 available at <http://www.hellenicparliament.gr/Praktika/Synedriaseis-Olomeleias?search=on&DateFrom=28%2F03%2F2012&DateTo=28%2F03%2F2012>, 8030.

According to the deputies of PA.SO.K. and N.D., the institutionalization of the ESM is an extremely positive development for Greece, even though the conditionality of the application of the ESM Treaty, which presupposes the ratification of the Fiscal Compact, is very strict. The deputies supporting the Government defend that there is a need for economic stability in Europe. Moreover, claiming that Greece will be autonomous only if it does not need to borrow money, they maintain that there is no other way but to ratify the Fiscal Compact. Finally, they admit that Europe is oriented to neoliberal policies and they express hopes that, in case the socialist Hollande wins the French elections, together with other politicians, they will work in order to change this. They emphasize the need for growth in the EU and especially in countries struck by the financial crisis and they criticize the one-sided character of the treaty ratified, focused only on competitiveness.

The Government has also been accused by the opposition parties of hiding the conventions ratified from the Greek people, through the mobilization of opaque procedures. A deputy of the majority responded that “[they] are not acting in absentia of the Greek people because, by voting these treaties, we are supporting the basic choice of the Greek people, which is that the country remains in the Eurozone.”<sup>318</sup>

The Communist Party (K.K.E.) claimed that the treaties under ratification showed the real face of the EU, which is an imperialist organization, against labor and social rights. In response to other parties’ claims on the unconstitutionality of the parliamentary procedure, they defended that the matter is not procedural and that inside the EU there is no possibility of democracy. They emphasized that the treaties ratified are limiting national sovereignty for the benefit of an imperialist organization and that there is no possibility of renegotiation of the Euro-crisis measures; instead, there is a need to exit the Eurozone and the EU, because the crisis is a crisis of capitalism. Concerning the Fiscal Compact in particular, they see it as a continuation of the Maastricht Treaty. They claimed that, at the end, the Fiscal Compact, because of the asymmetry in the EU, benefits strong Germany and serves the capital against the working class. Indeed, the balanced budget rule will lead to the cut of expenses for salaries and pensions, health, education, social security, and infrastructures, in order to

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<sup>318</sup> See the parliamentary debates cited above, 8043.

save money, which will be used for the profit of business groups and monopolies. The growth for which the Government parties are fighting cannot undo the infringement of labor rights. The Fiscal Compact focuses on competitiveness, and even imposes sanctions to countries with financial difficulties. Thus, it leads to a multi-speed European Union, according to the economic power and interests of each Member State.

The deputies of LA.O.S criticized the time-consuming action of the EU, and expressed their hope that the socialist François Hollande will renegotiate the treaties under ratification, in order for them to contain growth provisions. Concerning the Fiscal Compact in particular, they observe that it is closely connected to the ESM, but that it is impossible for the Greek State to comply with its provisions. Moreover, using a terminology evoking the Second World War, they claim that the Fiscal Compact raises sovereignty problems and provokes an “abdication of the Ministry of Economics”,<sup>319</sup> in the profit of Germany.

According to SY.RIZ.A., the ESM Treaty, together with the Fiscal Compact, demonstrate the commitment of the Greek Government to the neoliberal policy of Germany, which leads inevitably to economic decline. The Fiscal Compact and the ESM are equivalent to the submission of the country to a controlled default, under conditions which benefit only the creditors and Germany. Indeed, an eventual uncontrolled default would have an immense cost for the European North. SY.RIZ.A. observes that the Fiscal Compact sets asphyxiating, unrealistic goals, which demonstrate the focus of the EU on competitiveness through austerity. They emphasize that, if Europe does not change its policy in order to obtain growth, it will be divided. Finally, they criticize the incoherence of the position of the Government, who is voting a treaty that it would like to see changed some time later, under the influence of the French socialists.

The deputies of DIM.AR. hold a rather moderate position, accepting the ESM and the amendment of article 136 TFEU, but not the conditionality which complements it, that is, austerity and budgetary discipline. They accuse the Government of not negotiating for the profit of Greek people. They criticize the unrealistic character of

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<sup>319</sup> See the speech of the leader of LA.O.S., Georgios Karatzaferis, in the parliamentary debates cited, 8039.

the goals set by the Fiscal Compact, observing that even Germany was not respecting them under the previous treaties. They emphasize the need for a change of policy in the EU, with the complementation of the provisions concerning fiscal discipline, which they consider necessary, with provisions for growth, given that the Greek people cannot stand any more austerity. They express the hope that things will change after François Hollande wins the elections in France. Moreover, they express their hopes for a political and social union.

## **BALANCED BUDGET RULE**

### IX.4

ARTICLE 3(2) FISCAL COMPACT PRESCRIBES THAT THE BALANCED BUDGET RULES SHALL TAKE EFFECT IN NATIONAL LAW THROUGH “PROVISIONS OF BINDING FORCE AND PERMANENT CHARACTER, PREFERABLY CONSTITUTIONAL, OR OTHERWISE GUARANTEED TO BE FULLY RESPECTED AND ADHERED TO THROUGHOUT THE NATIONAL BUDGETARY PROCESSES.” HOW IS THE BALANCED BUDGET RULE (INTENDED TO BE) IMPLEMENTED IN GREECE? WILL THERE BE AN AMENDMENT OF THE CONSTITUTION? IF NOT, DESCRIBE THE RELATION BETWEEN THE LAW IMPLEMENTING THE BALANCED BUDGET RULE AND THE CONSTITUTION. IF THE CONSTITUTION ALREADY CONTAINED A BALANCED BUDGET RULE, DESCRIBE THE POSSIBLE CHANGES MADE/REQUIRED, IF ANY.

The Fiscal Compact and the Balanced Budget Rule that it contains have been ratified by a legal statute, which entered into force the 30<sup>th</sup> of March 2012 and implements them into the Greek legal order.<sup>320</sup> Even though there is a conversation and many propositions by almost all parties for a constitutional amendment in Greece, none of these discussions mentions the inclusion of the Balanced Budget Rule in the Constitution. According to article 28 paragraph 1 of the Greek Constitution, “The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.”<sup>321</sup> An interpretive statement added with the constitutional reform of 2001 declares that “Article 28 is the basis for the participation of the Country in the procedures of European integration.” The status of the Fiscal Compact has not been

<sup>320</sup> Legal Statute 4063/2012, ΦΕΚ Α’ 71, published on 30 March 2012. Concerning the procedure followed for the ratification see question IX.2.

<sup>321</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>



discussed concretely during the parliamentary debates. However, the discussions give the impression that all the treaties ratified with the legal statute under consideration were considered as part of EU primary law, albeit binding only for the contracting Member-States. Thus, the relationship between the law implementing the Fiscal Compact and the Balanced Budget Rule and the Constitution raises the well-known debate in the Greek legal doctrine on the possibility of “tacit” or “opaque” constitutional amendment via the provisions of article 28 of the Constitution, deviating from the formal procedure required by article 110. The majority of scholars accepts the possibility of such an amendment, contrary to the traditional dualist doctrine.<sup>322</sup> However, the subject was not discussed during the parliamentary debates on the ratification of the Fiscal Compact.

Nevertheless, things are even more complicated as far as the concrete legal statute is concerned. That is because, even if we accept that a “tacit” amendment of the Constitution is possible, this amendment should be normally done according to the procedure of paragraphs 2 and 3 of article 28, as it is only these paragraphs that are conferred a function of amendment of the Constitution.<sup>323</sup> These paragraphs declare: “2. Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement. 3. Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>324</sup> However, the Government, in the ratification procedure of Legal Statute 4063/2012 invoked only the first paragraph of article 28, which does not

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<sup>322</sup> For this debate cf. Antonis Manitakis and Lina Papadopoulou (eds.), *Η προοπτική ενός συντάγματος για την Ευρώπη*, [*The Perspective of A Constitution For Europe*] (2003 Athina-Thessaloniki: Ant. N. Sakkoulas), 175 ff. and relevant citations.

<sup>323</sup> *Ibid.*

<sup>324</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agliko.pdf>

prescribe any parliamentary majority. The statute was finally voted under the normal parliamentary procedure of articles 70 f. of the Constitution.<sup>325</sup>

According to Petros Stagkos, Professor of European Law, with the ratification of the Fiscal Compact, Parliament has not amended tacitly the Constitution, because it did not follow the required procedure. Instead, the State has assumed the supra-national responsibility to amend the Constitution, in order to comply with the Balanced Budget Rule and the concession to the ECJ of the constitutional competency of scrutinizing its implementation. The author defends that the Greek State does not have the possibility to implement the Balanced Budget Rule via a normal legal statute, as this possibility is only open to States that recognize a supra-legislative force to the law approving the national budget.<sup>326</sup> In the same order of thought are the observations of Panagiotis Mantzoufas, Professor of Constitutional Law, who, nevertheless, raises the question of the compatibility with the Constitution of a legal statute that imposes the obligation to amend it.<sup>327</sup>

In any case, it is important to note that there is no constitutional court, and even more, no constitutional court with the competency to monitor the constitutionality of the procedure of constitutional amendments in Greece. Thus, as Lina Papadopoulou neatly put it, it is the “normative power of the facts themselves” that prevails.<sup>328</sup> The supranational obligations of Greece to respect the Balanced Budget Rule and the tight fiscal surveillance by the European partners prove more effective than any formal amendment of the Constitution would be, even if we accept that it is politically possible.<sup>329</sup>

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<sup>325</sup> See question IX.2.

<sup>326</sup> Petros Stagkos, “Constitution and “golden rule”” [in Greek], *Ta Nea*, 19 February 2013, <http://www.tanea.gr/opinions/all-opinions/article/5001990/syntagma-kai-xrysos-kanonas/>.

<sup>327</sup> “The “golden” fiscal rule in the Constituion” [in Greek], <http://www.constitutionalism.gr/html/ent/598/ent.2598.asp>. The author however observes that the scrutiny of the implementation of the Balanced Budget Rule will be a competency of the European institutions, and thus, the question does not have much practical importance. The author is contrary to the constitutionalization of the Balanced Budget Rule.

<sup>328</sup> Lina Papadopoulou, “Can Constitutional Rules, Even if ‘Golden’, Tame Greek Public Debt?”, in Maurice Adams, Federico Fabbrini and Pierre Larouche (eds), *The Constitutionalization of European Budgetary Constraints*, Oxford: Hart Publishing, 2014, 223.

<sup>329</sup> The Memoranda of Understanding, concerning the conditions of the loan agreements to Greece, as well as the Medium term budgetary frameworks impose similar rules of fiscal discipline.

Statute 4270/2014 established the obligation to set MTO, according to the rules set out in the consolidated Regulation No 1466/97 and according to article 3 of the Fiscal Compact.<sup>330</sup> This statute has the status of ordinary law.

## DEBATE BALANCED BUDGET RULE

### IX.5

DESCRIBE THE NATIONAL DEBATE ON THE IMPLEMENTATION OF THE FISCAL COMPACT/BALANCED BUDGET RULE, IN PARTICULAR IN RELATION TO THE IMPLICATIONS OF THE TREATY FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS.

The Balanced Budget Rule and, in general, fiscal discipline and austerity, have been presented from the beginning by the press as an obsession of the German Government. Debates on the substantial legal problems raised by the implementation of the Balanced Budget Rule and the Fiscal Compact at a supra-legislative level, mainly took place during the parliamentary session of the ratification of the Fiscal Compact, on the 28<sup>th</sup> of March 2012. During this procedure, the parties of the opposition (mainly LA.O.S., SY.RIZ.A., DIM.AR., and K.K.E.) objected that the Fiscal Compact binds the economic policy of the Government for decades, and puts at stake the national sovereignty. This was one of the reasons for which they demanded the following of a special procedure with a qualified majority for the ratification of the Treaty. The parties of the opposition also alleged that, by imposing balanced and exceeding budgets and sanctions in case of noncompliance, the Fiscal Compact was imposing neoliberal policies which entail austerity, infringement of labor and social rights, and cuts on public services, for the profit of business groups and the capital in general. The Government, invoking the employment of the simplified procedure of Treaty revision at the European level (which proves that the competences of the Union are not extended) responded that the Fiscal Compact does not further restrict national sovereignty and that it does not extend the competences of the European institutions.<sup>331</sup>

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<sup>330</sup> ΦΕΚ Α' 143/28-6-2014, principles of fiscal management and supervision (incorporation of Directive 1176/2011), public accounting and other provisions; articles 14 and 35 f.

<sup>331</sup> See questions IX.2 and IX.3. See the parliamentary debates of the 28<sup>th</sup> of March 2012, 8022.

The implementation of the Fiscal Compact and of the Balanced Budget Rule has not been further discussed in following parliamentary debates. This can be explained by the fact that Greece had already assumed the international obligation of fiscal discipline before the signing of the Fiscal Compact, in the Memoranda of Understanding determining the conditions of the loan agreements to Greece, as well as in the Medium term budgetary frameworks required according to the Stability and Growth Pact. Besides, the Preamble of the Fiscal Compact stipulates that the Treaty does not alter the obligations of countries receiving financial assistance, according to the stabilization programs of each.<sup>332</sup> The only additional element brought by the Fiscal Compact provisions, and criticized by the opposition, is the fact that it imposes policies of balanced or exceeding budgets at a constitutional level, thus binding future parliamentary majorities on the long term.<sup>333</sup> Therefore, in the parliamentary debates, but also in the public discussions, it is usually the Memoranda of Understanding and implementing laws that are perceived as imposing fiscal discipline and restricting the economic sovereignty of the Greek State.

As far as it concerns fiscal discipline and stability in general, Government officials and deputies supporting the Government emphasize that it is the only solution in order for the State to remain in the Eurozone and to respect its international obligations, to preserve its sovereignty and to obtain competitiveness and economic growth.<sup>334</sup>

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<sup>332</sup> According to the Preamble of the Fiscal Compact, “no provision of this Treaty is to be interpreted as altering in any way the economic policy conditions under which financial assistance has been granted to a Contracting Party in a stabilisation programme involving the European Union, its Member States or the International Monetary Fund;”

<sup>333</sup> 18 April

<sup>334</sup> See the debates on the national budget of 2013: cf. debates on the 7<sup>th</sup> of November 2012, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΞΕ', Τετάρτη, 7 Νοεμβρίου 2012, 4027, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20121107.pdf>. Also, the parliamentary debates on the 8<sup>th</sup> of November 2012, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΞΣΤ', Πέμπτη, 8 Νοεμβρίου 2012, 4272, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20121108.pdf>. Also, the debates on the 10<sup>th</sup> of November 2012, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΞΗ', Σάββατο, 10 Νοεμβρίου 2012, , available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20121110\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20121110_1.pdf). Also, the debates on the 11<sup>th</sup> of November 2012, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση ΞΘ', Κυριακή, 10 Νοεμβρίου 2012, 4467, available at Finally cf. the parliamentary debates on the 7<sup>th</sup> of July 2012, *Πρακτικά Βουλής* (Ολομέλεια), Συνεδρίαση Ε', Σάββατο, 7 Ιουλίου 2012, 50, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120707.pdf>. As to Government officials, cf. for example, the interview of the Minister of Finance at the time, Giorgos Papakonstantinou (now implicated in a scandal of tax evasion), *Ta Nea*, 31 January 2011, <http://www.gpapak.gr/enimerosi/media/interviews/sinentefxi-stin-efimerida-%C2%ABta-nea%C2%BB-ke-sti-dimosiografo-irini-chrisolora-gia-ti-stili-%C2%ABi-anagnostes-rotoun%C2%BB-2/>. See also the article of a member of the General Counting house of the State, Stavros Karvounis,

Despite the lack of interest by the political world, the implementation of the Balanced Budget Rule at a constitutional level has provoked an interesting academic debate.<sup>335</sup> There are some members of the doctrine who defend the implementation of the “golden rule” in the Greek Constitution as the only way for Greece to respect its international obligations and to obtain a “fiscal civilization” that would counter populist and clientelist practices of the political world.<sup>336</sup> Nevertheless, most scholars reject the inclusion of such a rule in the Greek Constitution in particular, even though they do not reject its opportunity in general. The main arguments advanced are that the adoption of the Balanced Budget Rule is a purely political choice of economic governance that neglects the asymmetries and inequalities within the Eurozone and the European Union, and limits the sovereignty of the Member States and the margin of manoeuvre of the democratically elected parliamentary majorities. Most scholars stress that the rigid respect of such a rule is difficult and sometimes even inopportune, especially in times of economic crises, and would thus undermine the normative power of the Constitution. The Balanced Budget Rule is equivalent to the imposition of a specific model of economic governance and symbolizes the prevalence of economics over politics. Moreover, scholars express their fear that such a rule would constitute a constitutional base for the restriction of fundamental rights, and especially social rights, and would excessively extend the powers of the technocrat executive. Some scholars defend that the insertion of this rule in the Constitution would thus lead to an amendment of principles concerning the foundations and the form of the polity, which is forbidden by article 110 paragraph 1 of the Constitution.<sup>337</sup> Finally, certain members of the doctrine underline that the adoption of such a rule via constitutional

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“The “golden rule” and the national particularities”, *To Vima*, 10 September 2011, <http://www.tovima.gr/opinions/article/?aid=418854>; the author defends that fiscal discipline is the only solution, in order for Greece to respect its international obligations and brings as an example other States that have implemented the Balanced Budget Rule. He also states that it is a precondition of healthy growth, sustainable fiscal policy, in periods of crisis there will be deficits which will be counterbalanced during periods of economic growth.

<sup>335</sup> It is interesting to note that constitutional lawyers are very often political personalities in Greece. For example, the president of PA.SO.K. is Professor of Constitutional Law in the University of Athens. Similarly, the Minister of Administrative Reform and Electronic Governance is Professor of Constitutional Law in the University of Thessaloniki.

<sup>336</sup> Petros Stagkos, “The “golden” fiscal rule in the Constitution” [in Greek], <http://www.constitutionalism.gr/html/ent/598/ent.2598.asp>.

<sup>337</sup> Article 110 paragraph 1 of the Constitution: “The provisions of the Constitution shall be subject to revision with the exception of those which determine the form of government as a Parliamentary Republic and those of articles 2 paragraph 1, 4 paragraphs 1, 4 and 7, 5 paragraphs 1 and 3, 13 paragraph 1, and 26.” Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf>

amendment would be impossible under the current political situation in Greece, provided that a qualified majority in parliament is required for such an amendment.<sup>338</sup> It would be unnecessary as well, given that fiscal discipline is *de facto* imposed, without a constitutional change. Besides, such a change would add nothing to the justiciability of the Balanced Budget Rule, because of the absence of constitutional court in Greece.<sup>339</sup>

## RELATIONSHIP BBR AND MTO

### IX.6

WHAT POSITIONS, IF ANY, ARE TAKEN IN THE NATIONAL DEBATE ABOUT THE RELATIONSHIP BETWEEN THE BALANCED BUDGET RULE OF ARTICLE 3(1)(B) FISCAL COMPACT AND THE MEDIUM-TERM BUDGETARY OBJECTIVE (MTO) RULE IN THE SIX-PACK (SECTION 1A, ARTICLE 2A REGULATION 1466/97, ON WHICH SEE ABOVE QUESTION VII.10)?

There is no important national debate about the relationship between the Balanced Budget Rule of article 3(1)(b) Fiscal Compact and the Medium-term Budgetary Objective (MTO) rule in the Six-Pack (section 1A, article 2a Regulation 1466/97).<sup>340</sup> Actually, article 14 of statute 4270/2014, implementing the “six-pack” rules, defines the MTO as synonymous to the rules set out in article 3 paragraph 1 of the Fiscal Compact.<sup>341</sup> During the debates for the implementation of the MTO, however, Tsakalotos, an MP of SY.RIZ.A. (at the time in the opposition) implied that the “golden rule” implemented in Spain, Portugal or Italy was less restrictive than the MTO: contrary to the MTO, the “golden rule” allows the states in question to spend in investments and education, which will later lead to the growth of the GDP, whereas the MTO does not take this factor into account.<sup>342</sup>

<sup>338</sup> Article 110 imposes a majority of 3/5 of the members of Parliament in two voting procedures with a time interval of 1 month between them.

<sup>339</sup> On the academic debate on this subject, cf. mainly to the contributions by Lina Papadopoulou, “Can Constitutional Rules, Even if ‘Golden’, Tame Greek Public Debt?”, in Maurice Adams, Federico Fabbrini and Pierre Larouche (eds), *The Constitutionalization of European Budgetary Constraints*, Oxford: Hart Publishing, 2014, 223. Panagiotis Mantzoufas, “The “golden” fiscal rule in the Constitution” [in Greek], <http://www.constitutionalism.gr/html/ent/598/ent.2598.asp>. Vasilis Tzemos, “Democratic *Etat de droit*, difficult economic situations, and the constitutional clause of the “debt-hold”” [in Greek], <http://constitutionalism.gr/html/ent/978/ent.1978.asp>.

<sup>340</sup> This conclusion is based on a keyword search in the proceedings of the Plenum of the Greek Parliament.

<sup>341</sup> ΦΕΚ Α' 143/28-6-2014.

<sup>342</sup> See Minutes of the Greek Parliament on the 26<sup>th</sup> of June 2014, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20140626.pdf> at 295.

## CASE LAW

### IX.7

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON THE FISCAL COMPACT/IMPLEMENTATION OF THE BALANCED BUDGET RULE?

No, there is no court judgment on the Fiscal Compact. Indeed, in Greece there is no general possibility to directly attack legal statutes before the court.<sup>343</sup> Instead, judicial review of the legislator is diffused among all jurisdictions of the civil and administrative order, and is finally concentrated in the Supreme Administrative and Judiciary Courts (Council of State – “Symvoulío tis Epikrateias” and Areios Pagos respectively). Each justiciable possessing a legitimate interest, in the occasion of a litigation before a judge, can raise an objection of unconstitutionality of a legal statute applied in the case, both in case this statute is applied directly, and in case it is the legal basis of another act. According to article 93 paragraph 4 of the Constitution, “The courts shall be bound not to apply a statute whose content is contrary to the Constitution.”<sup>344</sup> Courts apply the same constitutional basis, in combination with article 28 paragraph 1, in order to monitor the compatibility with international conventions of ordinary law. Indeed, article 28 paragraph 1 declares: “The generally recognised rules of international law, as well as international conventions as of the time they are sanctioned by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.”<sup>345</sup> The result of unconstitutionality/unconventionality is the non-application of the statute in the concrete case before the judge. Courts in general refuse to examine the respect of the rules of parliamentary procedure, which is considered *interna corporis* of the legislator.<sup>346</sup> In any case, given that the Fiscal Compact was ratified in 2012 and

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<sup>343</sup> There is, however, the High Special Court, instituted according to article 100 of the Constitution, which can monitor the constitutionality of a statute, in the case of contrary decisions on the matter by the two supreme courts, Council of State (administrative) and Areios Pagos (judiciary).

<sup>344</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>345</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>346</sup> However, in the case concerning the ratification of the Memorandum of Understanding, the judge accepted to enter into the examination of the procedure of ratification. See the relevant question.



given the time-consuming character of Greek judicial procedures, there is no court judgment on the Fiscal Compact.

## **NON-EUROZONE AND BINDING FORCE**

### IX.8

HAS GREECE DECIDED TO BE BOUND BY PARTS OF THE FISCAL COMPACT ON THE BASIS OF ARTICLE 14(5) FISCAL COMPACT ALREADY BEFORE JOINING THE EURO AREA, OR HAS THIS OPTION BEEN DEBATED?

Not applicable, since Greece is a Euro area member state.

## **MISCELLANEOUS**

### IX.9

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND THE FISCAL COMPACT?

It is interesting to note that, according to the Preamble of the Fiscal Compact, “no provision of this Treaty is to be interpreted as altering in any way the economic policy conditions under which financial assistance has been granted to a Contracting Party in a stabilisation programme involving the European Union, its Member States or the International Monetary Fund;”

Concerning the European Commission proposal on the coordination of major economic policy reforms, it was discussed in the Greek Parliament together with the evolutions concerning the Banking Union, and the Convergence and Competitiveness Instrument. The Minister of Finance, on the 15<sup>th</sup> of May 2013, informed the Permanent Commission of Financial Affairs of the Parliament on the Eurogroup meeting where the Commission proposal was discussed.<sup>347</sup>

In this information meeting, the matters discussed concerned essentially the structural deficiencies of the EMU and of the EU. Namely, the parties of the opposition (SY.RIZ.A. and AN.EL.), as well as certain deputies of parties supporting the Government (N.D., PA.SO.K., and DIM.AR.) emphasized that the extended competences of the European Commission on the economic policy of Member States raise the problem of its democratic deficit. Many deputies of the opposition exercised general criticism to the structure and the inertia of EU and EMU institutions. They

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<sup>347</sup> See the speech of the Minister of Finance, available in the official site of the Ministry of Finance <http://www.minfin.gr/portal/el/resource/contentObject/id/d3e83fa2-041c-41d8-9959-7b7834af5591>



emphasized that the new propositions, together with the strict financial policy imposed by the Eurozone partners in general, degraded the role of national parliaments. According to them, this lack of political union makes any effort of coordination ineffective. Moreover, they claimed that further convergence in economic policy would be in contrast with the important economic and social differences characterizing the various Member States. They objected that any further union between Eurozone Member States would be one-dimensional, and would undermine the equality between States, as it would neglect the needs of countries facing economic difficulties. They also criticized the focus on competitiveness and the absence of provisions on social cohesion and the environment.

The Minister of Finance admitted that EMU has important structural disadvantages, and that there is a need to change the one-sided emphasis of European leaders on competitiveness, in order to obtain a political union. He emphasized that in the discussions at the European level concerning this subject, the opinion of Greek officials is heard.<sup>348</sup>

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<sup>348</sup> See the video of the session, the only official document available, <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#3b32b0de-43dd-41f2-b7f6-5a489117fa6a>

## X QUESTIONS ABOUT MEMBER STATES RECEIVING FINANCIAL SUPPORT

*A number of member states have received direct financial assistance through balance of payments support (Hungary, Rumania, Latvia), bilateral agreements/IMF (Greece), the temporary emergency funds/IMF (Ireland, Portugal, Greece), and the permanent emergency fund (Spain and Cyprus).*

*([http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/index\\_en.htm](http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm))*

*Several member states have (also) indirectly benefited through the Securities Markets Programme (SMP) created in May 2010, a bond-buying programme of the European Central Bank that was replaced in September 2012 by the Outright Monetary Transactions (OMT) programme (Greece, Ireland, Portugal, Italy, Spain).*

*(<http://www.ecb.int/mopo/liq/html/index.en.html#portfolios>)*

### CONTEXT

#### X.1

IF RELEVANT, DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE MOMENT OF THE FORMAL REQUEST OF DIRECT FINANCIAL ASSISTANCE.

In the early-mid-2000s, Greece's economy was strong and the government took advantage by running a large structural deficit, partly due to high defence spending and to the organization of the 2004 Olympic Games. In 2004, the Council engaged the excessive deficit procedure against Greece, due to the noncompliance of the country's economic situation to the requirements of the SGP. However, in 2007 the procedure was closed since the situation of excessive deficit had been corrected.<sup>349</sup> After the burst of the 2007 financial crisis, Greece was hit especially hard because shipping and tourism, two important sectors of the domestic economy, were affected by the economic situation. In March 2009 the Council, in its opinion on the revised stability program for 2008-11 submitted by Greece, assessed that there were serious dangers of deterioration of the economic situation of the country because of the general deficiencies of the Greek state to impose fiscal discipline, but also because of the general economic situation. Therefore, the Council called the Greek authorities to reinforce fiscal discipline, through cuts in current expenditures and structural reforms.<sup>350</sup> Greece was put under the excessive deficit procedure in 2009.<sup>351</sup> In several recommendations and opinions under this procedure, the Council and the Commission suggested to the Greek Government austerity measures, cuts in

<sup>349</sup> [http://europa.eu/rapid/press-release\\_IP-07-672\\_en.htm](http://europa.eu/rapid/press-release_IP-07-672_en.htm)

<sup>350</sup> 2009/C 64/02.

<sup>351</sup> OJ L 135/30.5.2009.

expenditure and structural reforms.<sup>352</sup> In early 2010, as concerns about Greece's national debt grew, policy makers suggested that emergency bailouts might be necessary.

The event that set things in motion can be located in 2009 just a few months after the autumn 2009 elections when the newly-elect centre left (P.A.S.O.K.) government announced that the official deficit figure for 2009 would be 12.5% of the GDP whilst the officially predicted figure according to the Council decision for the excessive deficit procedure against Greece was 4.4% of the GDP.<sup>353</sup> This was when the term “Greek statistics” was first coined.<sup>354</sup> Though the P.A.S.O.K. government had been elected on the basis of a programme which did not contain austerity, its Prime Minister, Giorgos Papandreou, claimed to have been taken by surprise because of the real situation of the Greek economy and announced that austerity measures would need to be taken. This change of policy delayed the promoting of reforms and increased the Greek bond yields.

Things deteriorated rapidly since the beginning of 2010 when a series of credit rating agencies downgraded *en masse* the creditworthiness of the Greek economy (from A- to BBB+). In March 2010, the Greek government adopted an austerity package, containing tax increases and wage and pension cuts (something which was considered a taboo in the Greek modern economic history).<sup>355</sup> Market confidence was not, however, restored, despite these measures having been adopted. Negotiations between European leaders and Papandreou were not fruitful in the beginning and Papandreou announced that, if Eurozone partners did not support Greece in this difficult situation, Greece would make recourse to the IMF, with which he claimed to already be in

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<sup>352</sup> See 2010/291/EU (OJ L 125), 2010/190/EU (OJ L 83), 2010/182/EU (OJ L 83).

<sup>353</sup> Xenophon Contiades and Ioannis A. Tassopoulos, *The Impact of the Financial Crisis on the Greek Constitution* in Xenophon Contiades (ed) “Constitutions in the Global Financial Crisis: A Comparative Analysis”, p. 195.

<sup>354</sup> P.A.S.O.K. has been constantly accused by the rest of the political parties of artificially inflating the deficit. See the speech of Samaras in the Minutes of the Greek Parliament on the 22<sup>nd</sup> of March 2010. The chairman of the Greek Statistics' Authority, the authority that provided the relevant data to Eurostat, is suspected by the Greek justice for artificially inflating the deficit numbers. Cf. Evangelos Vallianatos, “The Greek Lesson”, *The Huffington Post*, 12 December 2012, [http://www.huffingtonpost.com/evangelos-vallianatos/the-greek-lesson\\_b\\_2279413.html](http://www.huffingtonpost.com/evangelos-vallianatos/the-greek-lesson_b_2279413.html).

<sup>355</sup> *Ibid.*, p. 196.

contact.<sup>356</sup> In their Statement of the 15<sup>th</sup> of March, the Heads of State and Government of the Euro area announced their support to Greece and the creation of a mechanism, with the participation of the IMF, to provide financial assistance in case of emergency.<sup>357</sup> In their Statement on the 11<sup>th</sup> of April, the Heads of State and Government of the Euro area Member States agreed that they would support the Greek economy through a 3-year-period rescue package which would include bilateral loans of € 110 bn, pooled by the Commission (KfW represented Germany) and the participation of the IMF. Loans were granted on non-concessional interest rates (5.5%) and under strict conditionality.<sup>358</sup> However, uncertainty and panic in global financial markets further augmented and, as a consequence, the Greek creditworthiness was further downgraded, the euro lost a lot of its value and markets started perceiving an eventual default of the Greek economy as inevitable.<sup>359</sup> The Greek Government officially requested the activation of the financial support mechanism on April 23<sup>rd</sup>.<sup>360</sup>

Though the economic situation seemed to have calmed down for a while, political and social unrest increased. Soon it became apparent that the first rescue package would be insufficient and the Eurozone leaders approved a preliminary second rescue package at an EU summit on 21 July 2011.<sup>361</sup> Later, it was agreed that the aid package would reach the amount of €130 billion, it would be provided through the newly created European Financial Stability Facility (and the IMF) whilst the repayment period was extended from seven to 15 years and the interest rate was lowered to 3.5%.<sup>362</sup> Furthermore, for the first time, this also included a private sector involvement (PSI), meaning that the private financial sector accepted a voluntary

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<sup>356</sup> See Nikos Lionakis, “G. Papandreou plays with the IMF, begs for European help” [in Greek], *Avgi*, 17.03.2010, available at <http://archive.avgi.gr/www.myspace.com/blog.syriza.eu/2009/06/ArticleActionshow.action?articleID=530414>

<sup>357</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/113563.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/113563.pdf)

<sup>358</sup> [http://www.eurozone.europa.eu/media/368751/statement\\_on\\_support\\_to\\_greece\\_11\\_april\\_2010.pdf](http://www.eurozone.europa.eu/media/368751/statement_on_support_to_greece_11_april_2010.pdf)

<sup>359</sup> Ewing, Jack, “Cuts to Debt Rating Stir Anxiety in Europe”, *The New York Times*, 27 April 2010; Katie Martin and Terence Roth, “S&P downgrades Greek debt to junk”, *Dow Jones Newswires*, 28 April 2010. Retrieved 6 May 2010; “Greek bonds rated 'junk' by Standard & Poor's”, *BBC*, 27 April 2010. Retrieved 6 May 2010.

<sup>360</sup> [http://ec.europa.eu/economy\\_finance/crisis/2010-04\\_en.htm](http://ec.europa.eu/economy_finance/crisis/2010-04_en.htm)

<sup>361</sup> See IMF Executive Board Fifth Review for Greece available at <http://www.imf.org/external/np/sec/pr/2011/pr11440.htm>.

<sup>362</sup> See “Eurozone agrees second bailout”, *Financial Times*, 21 February 2012, available at <http://www.ft.com/intl/cms/s/0/a3445f64-5c4c-11e1-911f-00144feabdc0.html#axzz2qHuzPVcl>.

haircut.<sup>363</sup> The procedure was completed in spring 2012.

Though the Greek debt crisis was mainly a result of bad public administration, the weakness of the domestic banking system, which is closely connected to the corrupt political class, also played an important role. At the outburst of the global financial crisis the Greek government at the time (N.D.) and the Prime Minister Kostas Karamanlis reassured the Greek people that the domestic banking system had not been affected and provided guarantees to private banks at the amount of 28bn euros.<sup>364</sup> The issuing of guarantees to the banks continued during the following years. Greece has issued 168bn of guarantees during the crisis (and has provided 50bn for the recapitalization of banks, following the PSI agreement).<sup>365</sup>

After the 2015 elections and the formation of a government coalition between SY.RIZ.A. and AN.EL., the Greek Minister of Finance refused to negotiate with the “troika”, since this formation has no institutional status. The agreement on the Greek debt is at the moment the object of hard negotiations between the newly elected Left Greek Government and the creditors of the country, the “institutions”.

## NEGOTIATION

### X.2

DESCRIBE THE PUBLIC AND POLITICAL DEBATE DURING THE NEGOTIATIONS ON THE FINANCIAL ASSISTANCE INSTRUMENTS, NOTABLY THE MEMORANDUM OF UNDERSTANDING (MOU) AND FINANCIAL ASSISTANCE FACILITY AGREEMENT, IN PARTICULAR IN RELATION TO THE IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW, SOCIO-ECONOMIC FUNDAMENTAL RIGHTS, AND THE BUDGETARY PROCESS.

#### *First bailout*

After it became clear that the situation of the Greek economy was not sustainable, debates were to a large extent focused on who was responsible for the situation with accusations being thrown between party officials, especially between those of

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<sup>363</sup> [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/greek\\_loan\\_facility/](http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/)

<sup>364</sup> Law 3723/2008, ΦΕΚ 250-9.12.2008

<sup>365</sup> Panagiotou, P. “World record in public assistance to the banks for Greece?”, *tvxs.gr*, 2 August 2014, <http://tvxs.gr/news/egrapsan-cipan/pagkosmio-rekor-kratiki-enisxysis-pros-tis-trapezes-gia-tin-ellada>

PA.SO.K. and N.D., the rest of the parties accusing both. PA.SO.K. has been generally accused for “touting” the financial weakness of the country, thus making access to markets more difficult and deepening the debt crisis. Parliamentary debates often took place in a climate of political tension, with huge protests and violent incidents taking place outside the Parliament. Generally, it can be said that the Government perceived its negotiation position as very weak.<sup>366</sup>

Considering the stance of the Government during the negotiations and the policy measures that had to be taken, these were discussed at many occasions in Parliament. In a discussion concerning the Stability and Growth Programme submitted by Greece in March 2010, the strategy for facing the crisis was extensively discussed.<sup>367</sup> Papandreou said that the austerity measures were necessary to face the crisis but also to show to Europeans and to the world that Greeks were responsible and capable and willing of promoting reforms. These reforms were needed anyway, according to the Prime Minister, in order to fight corruption and the long term pathologies of the Greek state mechanism. The ongoing discussions at the time on the institutionalization of a European mechanism for facing the crisis showed, according to Papandreou and to members of the Government, the solidarity of the European partners and the recognition that the problem is not only Greek.

The opposition reacted strongly to the policy choices of the PA.SO.K. Government. Tsipras (SY.RIZ.A.) defended that austerity would lead to more recession and that an eventual recourse to the IMF was inopportune, because of the destructive consequences that this would have for the Greek economy and for the Greek people, as past examples of its intervention in other countries had shown. Tsipras also suggested that Greece had a negotiating advantage because the Greek debt was mainly at the hands of European banks and that the Prime Minister could use this advantage and could collaborate with other Southern European countries. The President of SY.RIZ.A. stressed that, though reforms were indeed needed in order to fight

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<sup>366</sup> The press representative of the Government stated that they were “not in the position of drawing red lines”, Minutes of speech of G.Petalotis in a radio Station, Eleftheros, 27 April 2010, p.9, cited by Ioanna Vlachou, “Memoranda sunt servanda? The legal status of the Memorandum of Understanding for the Greek bailout in the Hellenic, European and International legal order”, LL.M. Thesis University of Leiden, October 2012, [http://studentthinktank.eu/wp-content/uploads/2012/11/THESIS\\_I.Vlachou-11.pdf](http://studentthinktank.eu/wp-content/uploads/2012/11/THESIS_I.Vlachou-11.pdf)

<sup>367</sup> See Minutes of the Greek Parliament, Plenary Session of the 22<sup>nd</sup> of March 2010, p. 5265 f., available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100322\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100322_1.pdf)

corruption and the pathologies of public administration, the reforms promoted by PA.SO.K. were only affecting the vulnerable members of society and damaged the long-term interests of the country and social rights without really fighting corruption. Samaras (N.D.) also reacted to the implication of the IMF in the rescuing of the Greek economy; he accused Papandreou for not fighting for a purely European solution to the problem. As an alternative, Samaras proposed the issuing of guarantees for the Greek debt by the European partners, in order to decrease the spreads of the Greek bonds. He also contested the merits of certain specific austerity measures promoted by the Government. The members of K.K.E. sustained that all this was a normal consequence of the politics of the previous governments and of the capitalist system, whose interests had been served by the EU, the IMF and the Greek Governments. Members of LA.O.S. expressed concerns about the loss of sovereignty that the recourse to the IMF implied.

As the following discussions show, the support by the European/IMF mechanism was generally perceived by the Government as a success and a web of protection for the Greek economy, whereas the opposition constantly stressed the anti-popular measures and the loss of sovereignty that it implied, especially because of the role of the IMF in the rescue plan. On the 22<sup>nd</sup> of April, while the negotiations for the rescue plan were taking place, the representative of PA.SO.K., responding to the accusations of the opposition, suggested that it was the European Right that had imposed the participation of the IMF in the rescue plan, due to the lack of expertise of the Eurozone institutions on the matter and due to the lack of a European mechanism which could be based on the Treaties. The representative of SY.RIZ.A. required that the IMF representatives leave from the Greek Ministries. The representative of LA.O.S. underscored the need for time extension of the debts and the need for briefing of Parliament on the situation.<sup>368</sup>

On the 23<sup>rd</sup> of April, Giorgos Papandreou announced the recourse to the rescue mechanism.<sup>369</sup> In his message the Prime Minister defended that recourse to the

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<sup>368</sup> See Minutes of the Greek Parliament, Plenary Session of the 22<sup>nd</sup> of April 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100422.pdf>, p. 6079 f. especially the speech of Papoutsis, Lafazanis and Rontoulis.

<sup>369</sup> See the message of Papandreou, sent from the most isolated Greek island Kastelorizo at [http://www.youtube.com/watch?v=4pC\\_d1M82uQ](http://www.youtube.com/watch?v=4pC_d1M82uQ)

mechanism was needed due to the lack of access of the country to the markets. He suggested that Greece's rescue would send a message to the markets and to the world that Greece was supported by its European partners. According to the Prime Minister, this was the only way to face the crisis, to return to economic stability, to promote reforms and to make proud the Greek people. The IMF was not at all mentioned in his speech.

During the negotiations on the conditions of the Loan Facility Agreement and the elaboration of the MoUs, the representatives of the IMF consulted the Government, parties of the opposition and trade unions.<sup>370</sup> The Government also negotiated with representatives of the ECB and the Commission. The content of the negotiations is not exactly known.

During the parliamentary debates of the 30<sup>th</sup> of April, a member of LA.O.S. referred to the high interest rates with which financial assistance would be provided to Greece, referring also to certain comments by Martin Schultz and Daniel Cohn-Bendit in the European Parliament, as well as to some comments by then Spanish Prime Minister Zapatero. According to the MP of LA.O.S., the European partners would make profit to the detriment of the Greek state. The representative of the Government and Vice-Minister of Finance, Filippos Sachinidis answered that indeed the interest rates were higher than the ones imposed to other European states, but the IMF assistance would be provided with lower interest rates. In any case, according to the Vice-Minister, this was the only way for Greece to avoid bankruptcy.<sup>371</sup>

The implications of the measures to socio-economic rights were also debated in Parliament in many occasions. Generally, the Government presented the harsh austerity measures as necessary for the fiscal consolidation of the country and for the fight against corruption. On the contrary, members of the opposing parties denounced these measures as violating fundamental social rights, concerning labor, pension, and health and welfare services. During the Parliamentary debates of the 30<sup>th</sup> of April, the

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<sup>370</sup> See the declaration of the President of the GSEE, the General Confederation of Greek Workers, after the meeting with the "troika" at [http://www.gsee.gr/news/news\\_view.php?id=1332&year=2010&month=04&key=&page=0&limit=10](http://www.gsee.gr/news/news_view.php?id=1332&year=2010&month=04&key=&page=0&limit=10)

<sup>371</sup> See Minutes of the Greek Parliament, Plenary Session of the 30<sup>th</sup> of April 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100430\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100430_1.pdf), p. 6477 f.



President of SY.RIZ.A. raised a question concerning the presence of representatives of the IMF in the Ministry of Health. According to Alexis Tsipras, the measures required by the IMF in the health sector (containing cuts on wages, on functional expenses and on public financing) were destructive for the national health services. The Prime Minister responded that the pathologies of the National Health System were not connected to the IMF and that a better management should be imposed in any case without compromising the needs of Greek citizens. Tsipras responded that these measures were contrary to the ones announced in the political programme according to which PA.SO.K. had been elected and that they were required by the IMF, as the Prime Minister himself had informed the trade unions the day before.<sup>372</sup>

In the discussion on a draft on security of labor, the Ministry of Employment informed the Parliament that the negotiations with the IMF concerned the 13<sup>th</sup> and 14<sup>th</sup> salary, the minimum wage, the collective bargaining rights and the possibility of unilateral recourse to arbitration by trade unions. The Minister of Employment said that the Greek Government had convincing arguments against the propositions of the IMF, referring also to the European *acquis* on these matters. The members of SY.RIZ.A. reacted strongly to the fact that these issues were under negotiation and suggested that, if the Government was sovereign, it should refuse any discussion on these matters. They accused the Government for leading the country into a “labor Middle Age”. They proposed that the Government should negotiate an advantageous interest rate from the ECB as the one applied to private banks and for an extension of the existing bonds’ maturation date. They also reacted to the fact that the Greek state would provide 17bn to private banks, who would obtain loans from the ECB with a much more advantageous interest rate.<sup>373</sup>

The content of the Memoranda of Understanding was also discussed during their implementation. The measures included in the MoU were implemented with the law 3845/2010. This statute, imposing, among others, cuts on revenues of employees in the public sector, a VAT increase and other tax increases, was submitted on the 4<sup>th</sup> of

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<sup>372</sup> See Minutes of the Greek Parliament, Plenary Session of the 30<sup>th</sup> of April 2010, cited above, p. 6468 f. On the meeting with the trade unions, see the declaration of the President of the GSEE at [http://www.gsec.gr/news/news\\_view.php?id=1334&year=2010&month=04&key=&page=0&limit=10](http://www.gsec.gr/news/news_view.php?id=1334&year=2010&month=04&key=&page=0&limit=10)

<sup>373</sup> See Minutes of the Greek Parliament, Plenary Session the 28<sup>th</sup> of April 2010, p. 6343 f., available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100428\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100428_1.pdf)

May, discussed in one day in the competent Parliamentary Committee and discussed and voted on the 6<sup>th</sup> of May in Parliament, under the emergency procedure of article 76 par. 4 of the Greek Constitution.<sup>374</sup> Generally, the discussion in Parliament was perceived by all parties as a “historical moment”, which would determine the future of the country.<sup>375</sup>

The scientific service of the Parliament, in its report on the draft law, pointed out many legal and constitutional problems. Most importantly, the report expressed doubts as to the constitutionality of the provisions allowing the enterprise collective agreement to derogate from the sectorial and from the national collective agreement (and the sectorial to derogate from the national). This, according to the report resulted in a lack of guarantee of a minimum wage. Such lack is contrary to the principle of a social state (art. 25 par. 1 C), to the right to labor (art. 22 par. 1) and to the right to collective bargaining (art. 22 par. 2 and 3 C). As far as these measures were not temporary, the report expressed doubts as to their compatibility to the principle of proportionality. Concerning the cuts on revenues of public sector employees, the scientific service noted that it constituted an infringement of the right to property (art. 1 Additional Protocol of the ECHR) which could be justified by reasons of public interest. It noted however that the benefits for the public should be specified in the explanatory report and their existence and calculation should be based on law or on general principles of international law, or at least the infringement of the rights should be accompanied by compensation measures.

Concerning the paragraph declaring that the provisions of the draft law prevail over any collective agreement, the scientific service underscored that it interfered with articles 22 and 23 of the Constitution on collective bargaining and collective autonomy, interpreted in the light of several provisions contained in international labor agreements ratified by Greece as well as of the European Social Charter. However, according to the report, these interferences could be justified by reasons of

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<sup>374</sup> [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5)

<sup>375</sup> The same day, the discussion in Parliament also concerned the violent protests of the day before, in which 3 people died. It was consumed in a large part by the effort of MPs to impute responsibilities to their political adversaries for the economic situation of the country. See Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506_1.pdf), p. 6714 f.

public interest, due respect being paid to the principle of proportionality. Finally, concerning the private law working contracts of employees in the public sector, their posterior legislative amendment infringed the economic freedom of the contracting parties (art. 5 par. 1 C). However, according to the case law of *Areios Pagos* (Supreme Civil and Criminal Court), this infringement could be justified, if it served a public interest and it was compatible with the principles of proportionality, equality and legal certainty. The report, citing the case law of national and international courts, as well as influential Greek scholars, did not provoke many discussions in Parliament. This can be explained by the fact that the emergency procedure followed did not leave a lot of margin for discussion or even for reading the report.

The representative of the Government defended that the austerity measures that the MoU implied were necessary for the rescuing of the country and that the only alternative to the cuts on wages and pensions would be the bankruptcy of the Greek state, which would mean non-payment of wages and pensions. He compared the country's situation to a state of war. In case Greece ran bankrupt, this would be destructive for the Greek society and would lead to the isolation of the country by its partners.<sup>376</sup> He also stressed that these measures should be accompanied by a social "network of protection", which he called upon the society and the local authorities to put into place, as well as by a policy of price control, which he admitted was missing from the Government planning at the time.

A similar stance was followed by the representative of LA.O.S., who, referring to the European tax payers, said that Greece could not deny this rescue plan, nor could it only accept its favorable parts concerning social protection and growth. He also stressed that these measures should be accompanied by an investigation into the responsibilities for the situation and the punishment of those responsible. The MPs of LA.O.S. generally criticized the provision on the cuts on pensions and allowances of pensioners, because it was too inflexible and did not take into account the special needs of certain categories. The Government expressed its commitment to render this provision more flexible in subsequent legislation.

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<sup>376</sup> On the position of the Government, see also the explanatory report to the draft law, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/M-DNTAMEIO-eis1.qxp.pdf>

The representative of N.D. expressed the opposition of his party to the draft law, except from some provisions concerning social cohesion, welfare for the unemployed, and the liquidity of the banking system. The party of the Opposition disagreed with the management of the crisis by PA.SO.K. and with the fact that the MoU left open the possibility for new austerity measures in the future. The President of N.D. also criticized the fact that these measures would be taken through ministerial decrees, without consulting the Parliament. They criticized mainly the cuts on allowances, on indemnities for lay-offs and the deregulation of labor contracts. The MPs of N.D. stressed that there are alternative measures for the boosting of the economy, more focused on sustainable growth and on the utilization of public property. They stressed that the measures taken would be ineffective and would lead to more economic recession. These measures, moreover, would not even be able to compensate for the increase of the debt because of the high interest rate. They specified, though, that they would comply with the agreements of the country if the loan convention was signed. They rejected any negotiation for restructuring the debt, which would lead to more recession. The MPs of N.D. accused the Government of not having the legitimacy for imposing such measures, which were not included in the political programme on the basis of which it was elected.

K.K.E. and SY.RIZ.A. maintained that the draft law consisted in a violation of fundamental social and labor rights and contained large concessions of constitutional competences to international, imperialistic organizations. Thus, they proposed the application of article 28 par. 2 of the Constitution, which requires a qualified majority of 3/5 of the deputies for the voting of the statute. Their proposition was rejected by the majority of MPs.<sup>377</sup> They proposed that the fiscal problem of the country should be resolved with taxation of the big capital, fight against corruption and cuts in military expenses. They also referred to the European dimension of the problem and that harsh austerity only served the interests of the creditors and of the capital, and not of the Greek state, nor of the Greek people.

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<sup>377</sup> See the following questions.

The representative of K.K.E., more precisely, said that the measures contained in the draft law constituted the worst attack to the right to life and to decent employment since 1974. These measures, according to the Communist party, served only the interests of the bourgeoisie and of the creditors and were destructive for the Greek popular families and for young people. Mostly, the Communist party reacted to the provisions concerning fiscal discipline, implying cuts on civil servants', employees' and pensioners' revenues, tax increases, massive layoffs in the public sector and privatization of public services, as well as to the structural reforms of the welfare and social security systems. The measures led to a serious infringement of social and labor rights and *acquis*, to a degradation of public services, to a serious interference with the rights to pension and social security. The representative of K.K.E. also criticized the creation of a Fund of Financial Stability, to which the Greek state would provide 10bn euros according to the Loan Facility Agreement. He suggested that these policy decisions were a necessary result of the capitalist system and were already contained in the Maastricht Treaty; the crisis was only a pretext for their implementation. Other MPs of K.K.E. strongly criticized the fact that the Government cut the allowances for the "heavy and unhealthy" employments.

The representative of SY.RIZ.A. maintained that, with the measures proposed in the draft law, the Greek people was asked to pay for the crisis created by the corrupt political system. He stressed that the MoU, imposing "loan shark" conditions, did not contain any measure for the fight against corruption and tax evasion nor for the taxation of the big capital, for the lowering of prices, for the fight against the cartels or for the public investments. It imposed a neo-liberal policy with the signature of a socialist party, which would lead to deeper recession and to increased unemployment and poverty. He criticized the Government for not negotiating lower interest rates and more time for the debt reimbursement. Finally, he raised an objection of (substantive) unconstitutionality of the draft law. During the discussion, the MPs of SY.RIZ.A. also criticized the fact that the ECB financed private banks with an advantageous interest rate, though under the guaranty of public bonds. They stressed that the Government should propose the same interest rate for public debt as well and it should not provide 10bn of the financial assistance to the Financial Stability Fund. They also suggested that the Government should renegotiate the public debt, which was irrational and odious for the Greek people. They accused the Government of being driven by the

markets and the EU, of violating collective agreements and constitutionally guaranteed social and labor *acquis*, of deregulating the employment contracts, of selling out the country to private enterprises and of transforming it into a protectorate. They characterized the MoUs as “extreme ideological manifesta” of the IMF representatives which violate the Constitution. Finally, they criticized the Government for not bringing the provisions of the MoUs for extended discussion in Parliament and for imposing partisan discipline to the MPs of the Government party, obliging them to vote the law. Generally, they defended that the broad delegations to the executive contained in art. 2 of the draft law circumvented democratic and constitutional legality.

The Minister of Finance responded that the voting of the measures was urgent because the country was under an emergency economic situation, as it needed 10bn for the reimbursement of mature bonds on the 19<sup>th</sup> of May. He stressed that all over Europe, parliaments were voting to support Greece and that the Greek Parliament should fulfill its duty as well. The onerous measures accompanying the Loan Agreement were required by the creditors in order to guarantee their money. He mentioned that the alternative to the rescue programme was the bankruptcy of the country, which would be irresponsible and destructive. However, the Government chose the difficult way, which would also imply the resolution of the economic and structural problems of the country. This meant that other countries, also running deficits and being attacked by the markets, would lend money to Greece. Thus, according to the Minister, creditors were severe vis-à-vis a country that systematically lied and did not implement reforms. The Government chose, however, despite the political cost, to include in the programme structural reforms concerning the public administration, the tax system, the structural funds, the public expenditure, the budgetary process and the competitiveness of the economy. The MPs of PA.SO.K. further stressed that the mechanism instituted by the EU and the IMF was a negotiating success of the Government. They mentioned that, during the negotiation, they managed to guarantee the 13<sup>th</sup> and 14<sup>th</sup> salary in the private sector, as well as certain collective bargaining rights, by using fiscal arguments (on how profitable these measures would be for the revenues of the state), but also legal arguments (especially the ECHR, the European Charter of Fundamental Rights, the case law of the ECJ and the ECHR). They also committed to submit the implementation of the

measures to public deliberation with the social partners. The Prime Minister, after strongly accusing N.D. for destroying the economy of the country, said that these emergency measures were imposed in order to gain time for the structural reforms that the country needed, despite the political cost.

Generally, the Government MPs repeatedly stressed the fact that the measures contained in the MoU were not their political choice. Even more, the Prime Minister mentioned that it was not PA.SO.K. that had written the draft law and the accompanying reports, but the “troika”. This was criticized by the MPs of SY.RIZ.A., as well as the deputies of LA.O.S. the next day.<sup>378</sup> The MPs expressed concerns about the loss of sovereignty of the Greek Government and complained for the impossibility of parliamentary scrutiny to the “troika” and the creditors. The MPs of N.D. inversely expressed their doubts and alleged that this policy was also chosen by the Government. The ex-President of the Parliament (member of PA.SO.K.) criticized the fact that public policy was largely determined by the markets. The fact that the private company “Lazard” was hired by the Government for counseling during the negotiations was also criticized by MPs of N.D. and SY.RIZ.A.

The discussion continued the following day, on the occasion of an austerity package included in law 3847/2010, voted following the emergency procedure as well.<sup>379</sup> This package contained cuts on allowances of public pensioners under 60 years old. This draft law was debated in the context of the MoU and the negotiations for the Loan Agreement, since it was presented as a response to the compelling public interest of the effectiveness of the programme agreed with the “troika” as a condition for the rescue package.<sup>380</sup> According to the PA.SO.K. representative, no one wanted to take onerous measures, but it was the only way to save the country. The creation of a rescue mechanism, from which other European countries could benefit as well in the

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<sup>378</sup> See Minutes of the Greek Parliament on the 7<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507_1.pdf), p. 6858 f.

<sup>379</sup> ΦΕΚ 67 Α'/11.05.2010. The draft was submitted on the 5<sup>th</sup> of May and discussed and voted in one day on the 7<sup>th</sup> of May. See Minutes of the Greek Parliament on the 7<sup>th</sup> of May 2010, cited above. See also [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=6bbd12ab-52f9-4356-9cca-b70913429d9a](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=6bbd12ab-52f9-4356-9cca-b70913429d9a)

<sup>380</sup> See the explanatory report, available at <http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/e-epidias-eis.qxp.pdf>

future, was a success of the Prime Minister. He also mentioned that the stance of Germany showed that there is no social cohesion in Europe.

N.D. criticized the Government for the bad management of the crisis, for not excluding certain vulnerable categories from the cuts, for not ensuring the minimum pensions and wages according to the national general collective agreement. According to the representative of N.D., the provisions of this agreement, should be a “red line” that the state should not trespass nor negotiate with the IMF. LA.O.S. held a similar position.

The representative of K.K.E., criticizing the emergency procedure employed by the Government, said that PA.SO.K. was promoting a harsh policy, violently suppressing vital rights. These were economic and social rights, but also political-democratic rights, which had been conquered with the struggles of the people against authoritarian regimes. The Government, according to K.K.E., served the interests of banks, investment groups and others who had bought Greek bonds with excessive yields and who were lending money to Greece in order to buy their arms. Moreover, the banks were making profit, since Greece was indebted with a 5% interest rate; this money was used partly as a guarantee for private banks that put out from the ECB with a more advantageous interest rate, in order to buy Greek bonds. Further, the Communist Party referred to the report of the Advocate General to the Court of Audit concerning the debated draft law. The Advocate General, though politically supporting the voting of the draft law, mentioned that the measures contained in it possibly infringed constitutional, ECHR and ICCPR rights and could provoke massive contestations before national and international courts. Moreover, the Communist Party stressed that, in the Court of Audit report, the Vice-President of the Court and other members expressed the opinion that the age criterion was arbitrary and aleatory and its imposition infringed the principle of equality and legal certainty. The MPs of K.K.E. also criticized the non-exclusion of certain vulnerable categories from the cuts, as well as the projects of lay-offs in the public sector and of privatization of public services. Finally, they criticized the fact that no onerous measures were imposed to ship-owners and other powerful businessmen.



According to the representative of SY.RIZ.A., the measures voted with the MoUs would mean a loss of 20 to 30% of their income for the most vulnerable members of society. This would provoke social and political unrest. He criticized PA.SO.K. and N.D. for not respecting the Constitution and the freedom of conscience of deputies by imposing partisan discipline to their MPs. Referring to the opinion by the Court of Audit and to the report of the scientific service of the Parliament on the MoUs law, he accused the Government of not being sovereign, since even the explanatory report of the law and the content had been written by the “troika”, according to the Prime Minister. Another MP of SY.RIZ.A. later accused the Government of imposing an informal dictatorship, of making the country a colony and a protectorate of its creditors.

The representative of PA.SO.K. repeated the main points of the Government argumentation and added that the proposition of the Left for renegotiation and readjustment of the Greek debt would actually mean bankruptcy that would profit hedge funds and speculators.

The statute was finally voted with a majority of 172 deputies. The MPs of PA.SO.K. and N.D. who did not obey to partisan discipline were deleted from their respective parliamentary groups.

The Loan Agreement was signed with the Eurozone MS on the 8<sup>th</sup> of May and with the IMF on the 10<sup>th</sup> of May. They were not discussed in Parliament, since the law 3845/2010 habilitated the Minister of Finance to sign the relevant agreements.<sup>381</sup> Soon, however, it emerged that English law governs the loan facility agreement, something that caused a lot of contention. In the debates on the 25<sup>th</sup> of June 2010, Alexis Tsipras, the President of SY.RIZ.A. raised a question concerning the content of the loan agreement in the context of parliamentary scrutiny. He asked the Prime Minister if he knew the content of the agreement, why he did not inform the Parliament, if he had given these instructions to the Minister of Finance for the

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<sup>381</sup> Article 1 par. 4 of the law.

negotiation of the agreement and if he was contemplating of taking initiatives in order for the unacceptable provisions of the agreement to remain inapplicable.<sup>382</sup>

More precisely, he mentioned that the agreement provided for the possibility of concession by the creditors to third parties of rights resulting from the agreement, without providing this possibility to the Greek state. The Prime Minister responded that this provision, which also required the approval of the European Commission, was guaranteeing the Greek interests, in case one state was not able to provide the agreed amount of money. Another matter that provoked the reactions of SY.RIZ.A. is the fact that, according to article 14.5 of the Loan Facility Agreement, Greece resigned from immunities that it might have concerning the forced execution of its obligations under the agreement. According to Tsipras, this provision was putting in danger public property of an invaluable economic and cultural importance. Papandreou responded that this was a provision common to loan agreements, that it allowed forced execution only as far as mandatory law did not exclude it and that it only concerned private property of the Greek state and not property that serves a public objective.

Generally, the Prime Minister criticized Tsipras of being “lost in translation” and said that the agreement was purported to guarantee the interests of all contracting members and that no conspiracy against the interests of the Greek state existed. Note that no official translation of the agreement in Greek existed at the time. Tsipras responded that since the agreement was governed by English law, Greek public property, even serving public purposes, was subject to forced execution, in case Greece could not honour the agreement or its creditors terminated it. He also referred to a relevant article in *The Guardian*, claiming that it confirmed his allegations.<sup>383</sup> Moreover, he criticized the fact that the expenses for the conclusion of the agreement (lawyers’ payments etc.), reaching an amount of 400mn euros, were charged to the Greek state. The Prime Minister responded by mentioning a Greek law provision that excluded the public property of the state as *imperius* from forced execution and mentioned that he

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<sup>382</sup> See the Minutes of the Greek Parliament, Plenary Session of the 25<sup>th</sup> of June 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100625.pdf>, p. 9309 f.

<sup>383</sup> Elena Moya, “Greece starts putting island land up for sale to save economy”, *The Guardian*, 24 June 2010, <http://www.theguardian.com/world/2010/jun/24/greece-islands-sale-save-economy>

had already responded to the foreign press and to Angela Merkel that Greek islands were not for sale.

### ***Second bailout***

Later on, it became clear that the first bailout agreement was not sufficient, and that a second bailout agreement would have to be agreed between the group of creditors and Greece. Generally, the Government and, after November 2011, the Government coalition perceived every step towards the new rescue mechanism as a negotiation success and a manifestation of European solidarity.<sup>384</sup> The members of PA.SO.K. and N.D. considered that the most responsible political position was one of consensus among the political powers of the country, in order to give a strong message of political stability and decisiveness to the markets and to the creditors.<sup>385</sup> The national debate, at least in the Plenary Sessions, was not developed because there was no thorough information of the Parliament. In several speeches he gave in a central park of Athens, the President of N.D. proposed an alternative economic programme for the country. His propositions focused on possible renegotiations of the agreements and MoUs, in order to obtain less austerity and to obtain growth.<sup>386</sup>

In the summit meeting on the 21<sup>st</sup> of July 2011, it was decided that the second financial assistance programme would be provided to Greece through the EFSF and the IMF, while the debt already incurred by Greece in the context of the first bailout agreement was shifted to the EFSF.<sup>387</sup> The new Loan Agreement provided for a loan of € 130 bn and for the voluntary contribution of the private sector (Private Sector Involvement, hereinafter PSI).<sup>388</sup> The same day the ECB reassured the liquidity of Greek banks, since it would accept Greek bonds as guarantees for private banks.<sup>389</sup> These issues were discussed the next day in Parliament. According to the members of

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<sup>384</sup> See for example the Minutes of the Greek Parliament, Plenary Session of the 27<sup>th</sup> of July 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110727.pdf>, p. 14546 f.

<sup>385</sup> See, for example, Minutes of the Greek Parliament, Plenary Session of the 26<sup>th</sup> of August 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110826.pdf>, p. 15887.

<sup>386</sup> Cf. <http://antonis-samaras.gr/node/970>

<sup>387</sup> See EFSF, General Questions, p. 18 available at [http://www.efsf.europa.eu/attachments/faq\\_en.pdf](http://www.efsf.europa.eu/attachments/faq_en.pdf).

<sup>388</sup> See the Statement by the Heads of State and Government of the Euro Area and EU Institutions, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/123978.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/123978.pdf).

<sup>389</sup> See Luke Baker and Julien Toyer, "Europe agrees sweeping new action on debt crisis", *Reuters*, 21 July 2011, available at <http://www.reuters.com/article/2011/07/21/us-eurozone-idUSTRE7615X620110721>

the (P.A.S.O.K.) Government, this summit meeting was a “big step” towards the exit from the “nightmare of loan instalments”, a success in the hard and painful negotiations, owing to the efforts of the Government, but also to the sacrifices of the Greek people. It ensured stability and security for the Greek economy and it provided for growth investments. The solidarity of the Eurozone partners showed that Greece needed to be saved because the Eurozone needed to be saved. According to the representative of N.D., the “selective default”, as he characterized the PSI, as well as other technicalities, were rather dangerous and not a success, but as he submitted, his party would not criticize the content of the statement and would support what is good for the Greek citizens. However, he made clear that his party disagreed as to the effectiveness of the austerity measures imposed by the policy of the MoUs and included in the Medium Term Budgetary Framework voted some days before. The rest of the opposition parties sustained that the statement meant nothing more than a new loan agreement and austerity package for the Greek people.<sup>390</sup>

In a later discussion on the matter, on the 26<sup>th</sup> of August, the opposition parties accused the Government of being weak in the negotiations during this meeting, since very important obligations of the country had been already adopted with the voting of the MTBO. They accused the Government of not negotiating like the Irish Government and of accepting to negotiate bilaterally with Finland the possibility of imposing guarantees, as paragraph 9 of the statement on the 21<sup>st</sup> of July shows. The Vice-President of the Government responded that the problems of Ireland were not structural, whereas Greece needed structural reforms. On the possibility of guarantees for the EFSF, the Vice President said that it was impossible to avoid negotiations with Finland and that, in the end, the result of these negotiations (equal treatment of all MS) was not detrimental to the Greek interests.<sup>391</sup>

On the 26<sup>th</sup> of October 2011, a Euro summit took place, where the details of the Greek programme were discussed.<sup>392</sup> After this summit, the Prime Minister decided to proceed to a referendum in order to advise the Greek people on the forthcoming

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<sup>390</sup> Cf. Minutes of the Greek Parliament, Plenary Session of the 22<sup>nd</sup> of July 2011, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20110722.pdf>, p. 14181 f.

<sup>391</sup> See Minutes of the Greek Parliament, Plenary Session of the 26<sup>th</sup> of August 2011, cited above.

<sup>392</sup> See the relevant statement, at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/125644.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/125644.pdf)

measures. This decision of Papandreou provoked very strong reactions, both by Eurozone leaders<sup>393</sup> and in the domestic political world. It was criticized by deputies of both P.A.S.O.K. and N.D. Thus, Papandreou was obliged to scrap the referendum and to step out of the Government.<sup>394</sup> A coalition Government was formed under the Prime Minister Loukas Papademos, supported by P.A.S.O.K., N.D. and L.A.O.S.<sup>395</sup>

The positions of the political parties were expressed during the plenary session of the 12<sup>th</sup> of February 2012, when the second bailout agreement, together with the relevant MoUs, was submitted for discussion and adoption in the Greek Parliament.<sup>396</sup> The debate was very heated and, except from the content of the financial assistance instruments, it also considered their procedure of ratification (again the Government mobilized an emergency procedure and no qualified majority) and the violent protests taking place outside the Parliament.

Several issues regarding the substantive constitutionality of the agreement were raised by the parties of the opposition, in an objection of (substantive) constitutionality. The representative of S.Y.R.I.Z.A., the party who raised the objection, defended that the agreement violated Article 22§2 of the Constitution which safeguards the freedom of collective bargaining, since the government would have the competence to invalidate or amend a collective agreement between social partners. He also defended that the very essence of democracy, the principle of popular sovereignty contained in Article 1§2 of the Constitution, was violated, since these measures, agreed between the Government and the “troika”, were profoundly against public sentiment and had no popular legitimacy. In that context, he also submitted the opinion of several distinguished constitutional law professors who agreed that the agreement constituted a “constitutional deviance” and violated several constitutional provisions.<sup>397</sup> He also referred to the acquittance from any criminal responsibility of persons proceeding to

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<sup>393</sup> See Peter Spiegel, “How the Euro was Saved”, *Financial Times*, <http://www.ft.com/intl/cms/s/0/f6f4d6b4-ca2e-11e3-ac05-00144feabdc0.html#axzz38xzFDKDI>. This analysis, describing the negotiations at the time, provoked strong reactions in the Greek press.

<sup>394</sup> See Helena Smith and David Gow, “Papandreou scraps Greek referendum as open warfare erupts in his party”, *The Guardian*, 3 November 2011, available at <http://www.theguardian.com/world/2011/nov/03/papandreou-scraps-greek-referendum-euro>

<sup>395</sup> Reuters, PROFILE-Greek Prime Minister Lucas Papademos, 23rd November 2011, [www.reuters.com/](http://www.reuters.com/)

<sup>396</sup> See Minutes of the Greek Parliament, Plenary Session of the 12<sup>th</sup> February 2012, available at [www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es120212.doc](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es120212.doc)

<sup>397</sup> Ibid, p. 4579 f.

the bond exchanges, saying that these provisions were not proper to a democratic regime. The same stance was generally adopted by the MPs of K.K.E. and LA.O.S. The latter also referred to a negative European *acquis* that these measures were creating for other countries that would subsequently have recourse to a rescue package.

The MPs of the Governing parties (PA.SO.K. and N.D.), referring also to the scientific report of the Legal Service of the Parliament, invoked reasons of national public interest which allow, according to certain decisions of the Council of State, infringement of the collective labour rights invoked by the members of SY.RIZ.A. They considered that there was no issue of violation of the principle of popular sovereignty. Evaggelos Venizelos, the Minister of Finance at the time, further referred to the historical responsibility of the Parliament to vote in favour of the agreements. None of the unconstitutionality objections was upheld at the end since the majority of MPs voted against.

Generally, concerning the content of the financial assistance instruments, the representatives of the Government defended that the new rescue package and the measures it implied were necessary for the country not to run bankrupt and it was the least worse scenario for the Greek economy. They imputed the situation of the economy to the unwillingness to promote necessary reforms during the *Metapolitefsi* (period after the fall of the military junta). They referred to the delays and hesitations of the European partners of their country and accused them of having a neo-liberal agenda and of not realizing that there can be no common money without a European state or a Eurobond. According to them, however, no better negotiation was possible in the present situation.

The Government coalition parties suggested that voting in favour of the measures was the only solution for the country to gain again its financial stability and to remain part of the “European family”.<sup>398</sup> The measures had to be voted before the opening of the financial markets the next day. If not, the MPs of PA.SO.K. and N.D. described with dramatic images what the situation of the country would be: no money to the banks,

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<sup>398</sup> See the speech of Karagkounis, *ibid*, p. 4592.

nor food, nor medicines, nor salaries, nor pensions. They accused the opposition parties of populism and they stressed that the choice of the policy of austerity was not one of the European partners but of the domestic political parties. They imputed the responsibility for the situation of the country to the pathologies of the domestic political system but also to the Greek citizens who, in their majority, according to them, had benefited from it. They also referred to the need for structural reforms in order to enhance growth, competitiveness, while at the same time to ensure vital public services to the citizens and the correct allocation of responsibilities for the past.<sup>399</sup>

Certain MPs of PA.SO.K. referred to the policy followed by the Eurozone partners, lacking solidarity and addressed to their national electorate. Recalling the sacrifices of the Greek people, they declared that they would not allow the loss of sovereignty and national dignity, for example through the appointment of a Commissioner for Greece or of supervisors to the Ministries.<sup>400</sup> The Minister of Labour and Social Security referred to the negotiations for the rescue package which was “hard and painful”.<sup>401</sup> According to him, the creditors required more harsh austerity and the Government, especially the Prime Minister in the summit meetings, finally obtained less painful measures (concerning cuts on wages, pensions and the validity of collective agreements).

The parties of the opposition accused the Government of terrorizing the people and of abolishing the social state, public education and health services, of infringing collective and individual labour rights and of “selling out” invaluable property of the country, among others, through the privatization of vital public services. They also referred to the harsh stance of the Eurozone partners. The Communist Party MPs accused the Government of posing false dilemmas: the money devaluation, be it internal to the Euro or external, would be to the detriment of the people and to the benefit of the rich. They accused the Government for imposing severe cuts on salaries, especially for those under 25 years old, and for leading to the replacement of collective labour agreements by individual ones. The MPs of LA.O.S. also criticized

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<sup>399</sup> See the speech of the Minister of Labor and Social Security, p. 4600 f.

<sup>400</sup> Cf. *ibid*, 4599 f.

<sup>401</sup> Cf. *ibid*, 4600 f.

the measures and especially the consequences that the PSI would have for small bond owners, among which were many Greek enterprises. According to the MPs of SY.RIZ.A., the new rescue package would be ineffective and, just as the first one, would lead to more recession. The money from the loan, in majority, would go to the creditors and to banks. The PSI could be considered as a credit event. The austerity imposed infringed rights and *acquis* conquered by the people and sold out public goods. According to them the measures adopted by the Government had no popular legitimacy and the Government should lead the country to elections before adopting them.

The parties of the opposition generally referred to the loss of sovereignty imposed by the measures, comparing the country to a “colony”<sup>402</sup> and the political situation as a “dictatorship of the markets”.<sup>403</sup> Concerning the content of the Loan Agreement particularly, the MPs of SY.RIZ.A. complained about the loss of national sovereignty because it was the English law that applied to the Agreement (L.A.O.S. also criticized this point) but also because the Luxembourgish courts were defined as competent for any relevant litigation. They also stressed, invoking an opinion of a Legal Advisor of the State, that Greece and the Bank of Greece waived any immunity they enjoyed concerning their property, even their public property. Finally, concerning the PSI, the MPs of SY.RIZ.A. criticized the Government for “robbing” the social security funds (who had bought Greek bonds some days before) and for acquitting the responsible ones from any criminal responsibility. The Minister of Finance and Vice-President of the Government, Evaggelos Venizelos, responded that English law was the dominant law concerning economic agreements and that Greece could not choose its domestic law, since it was in a weak negotiation position. According to him, after having made a “drastic” use of Greek law in the PSI “haircut”, they could not say to the bond owners that Greek law applied again. Finally, he rebutted fears expressed by some that invaluable cultural sites and goods would be subject to forced execution: it is generally accepted that in matters concerning forced execution it is the law of the country where the execution takes place that applies. Thus Greek law would apply in that case and the Greek jurisdictions would be competent. Finally, he suggested that the matter generally was not legal-technical but a matter of historical responsibility.

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<sup>402</sup> See for example, *ibid.*, p. 4628 f.

<sup>403</sup> See for example, *ibid.*, p. 4579 f.



The President of SY.RIZ.A. proposed the alternative of moratorium of payments (to the creditors), suppression of a part of the debt and payment of the rest with growth clauses and without MoUs, like it happened with Germany in 1953. He said that money should be dedicated to growth and not to the creditors nor to the banks. The President of LA.O.S. referred to the German indemnities for the 2<sup>nd</sup> World War.

The Prime Minister, Loukas Papademos, said that what was at stake was the European integration strategy followed during many decades by the country. According to him, the programme had economic growth as a goal, with three intermediary objectives: the fiscal consolidation of the country (structural reforms in the public sector and decrease of public expenditure, tax reform, reform in the social security funds in order for them to become sustainable, while protecting lower pensions); the competitiveness of the country (structural reforms in the labour market and in the market of services and goods, amelioration of the business environment, brief court procedures); and the enforcement of the financial sector, at the same time serving the public interest but also the autonomy of private banks. Then the Prime Minister referred to the lack of alternatives and to the detrimental consequences of a default of the country. He thus called upon the MPs to vote in favour of the statute, despite their political or moral hesitations.

The statute was finally voted and adopted with a majority of 199 deputies. The MPs of PA.SO.K. and N.D. who did not vote in favour were deleted from their respective parliamentary groups. The same was done by LA.O.S. for the MPs who voted in favour of the statute.<sup>404</sup>

The second rescue programme was also discussed on the 20<sup>th</sup> of March 2012, some days after its signature.<sup>405</sup> Similar arguments were expressed by all the party representatives. Yet, certain new issues were discussed. More precisely, K.K.E. and SY.RIZ.A. raised the subject of the priority of the fulfillment of financial obligations vis-à-vis the creditors. Indeed, the agreement provided for the creation of a special fund to this purpose. LA.O.S. and SY.RIZ.A. raised the issue of an agreement with

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<sup>404</sup> See Law 4046/2012, ΦΕΚ 28 Α'/14.02.2012.

<sup>405</sup> See the next question X.3.

Finland, hidden by the Government, on the guarantees provided by the Greek state in order for Finland to participate to the rescue programme. The Minister denied the existence of any such agreement.<sup>406</sup>

The content of the amended agreement was also discussed on the 14<sup>th</sup> of January 2013, with the parties reiterating the main points of their argumentation. SY.RIZ.A. raised an objection of unconstitutionality supported by AN.EL. and Golden Dawn. According to them the Agreement, accepting the application of English law, the waiver from immunities of the Greek state and the jurisdiction of Luxembourgish courts, was abolishing national sovereignty. Moreover, they submitted that the provision of the Loan Agreement, imposing the content of the opinion of the Legal Advisor to the State concerning the legality of the Agreement, was against democratic legality. As far as the agreement was concerned, the deputies of SY.RIZ.A. invoked article 120 of the Constitution. This article declares: “4. Observance of the constitution is entrusted to the patriotism of the Greeks who shall have the right and the duty to resist by all possible means against anyone who attempts the violent abolition of the Constitution.”<sup>407</sup>

The Government parties (N.D., PA.SO.K. and DIM.AR.) responded that UK law was applicable in almost all loan agreements and financial assistance programmes. They argued that it only regulated the obligations of the Greek state vis-à-vis its creditors, but not the enforcement of these obligations, on which Greek law applied and Greek courts are competent. Finally, concerning the opinion by the Legal Advisor to the State, they answered that this was nothing but an “opinion letter”, common in loan agreements. The MPs of SY.RIZ.A., however stressed that the Greek state was not a private company. In any case, the invocation of article 120 provoked a strong reaction by the Governing parties, which did not consider that the democratic regime was violently abolished.<sup>408</sup>

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<sup>406</sup> See Minutes of the Greek Parliament, Plenary Session of the 20<sup>th</sup> of March 2012, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=6f964116-22f9-42cf-b3c0-72c6ebe763c2](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=6f964116-22f9-42cf-b3c0-72c6ebe763c2).

<sup>407</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>408</sup> See Minutes of the Greek Parliament, Plenary Session of the 14<sup>th</sup> of January 2013, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=3cde3e1c-d018-4244-af66-c69249f657f6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=3cde3e1c-d018-4244-af66-c69249f657f6).

Finally, on the 23<sup>rd</sup> of February 2012, the details of the PSI were introduced before Parliament for discussion and voting under the emergency procedure, since the programme would start the next day.<sup>409</sup> While the Government considered the PSI a great success in the effort of saving the Greek economy, the rest of the parties were more moderate and stressed that it would be difficult to regain the confidence of the markets, that Greek enterprises and especially the social security funds were affected by the PSI, that no compensatory provisions were included in the draft law and that, generally, the PSI only served the creditors and the capital without leading to growth or ameliorating the situation of the Greek people.<sup>410</sup>

After the 2015 elections and the formation of a government coalition between SY.RIZ.A. and AN.EL., the Greek Minister of Finance refused to negotiate with the “troika”, since this formation has no institutional status. The agreement on the Greek debt is at the moment the object of hard negotiations between the newly elected Left Greek Government and the creditors of the country, the “institutions”. The Government is facing important problems. First of all the creditors require more stringent austerity measures than the ones it proposes to implement in order to conclude to a deal. Secondly, the Parliament opposition wants to prevent a “Grexit” at every cost. Most importantly, an eventual agreement would meet significant objections from within SY.RIZ.A., since many MPs and members of the party disagree with the concessions that the Government is ready to make to the creditors.

## STATUS INSTRUMENTS

### X.3

WHAT IS THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS IN THE NATIONAL LEGAL ORDER (POLITICAL AGREEMENT, INTERNATIONAL TREATY, ETC.)?

The financial assistance instruments are the Memorandums of Understanding, containing the conditionality for the signing of the Loan Agreements, the Loan Agreements themselves (between Greece and the Eurozone partners/the EFSF) and

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<sup>409</sup> See the statute 4050/2012, ΦΕΚ Α' 36/23.2.2012.

<sup>410</sup> See Minutes of the Greek Parliament, Plenary Session of the 23<sup>rd</sup> of February 2012, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120223.pdf>

the Stand-by Arrangements between Greece and the IMF. There has been an intense debate about the nature of these instruments, which has been repeatedly discussed in Parliament, judicial decisions and scholarship, especially concerning the first rescue programme. To the above instruments, one should add the decisions 210/320/EU<sup>411</sup> and 210/486/EU<sup>412</sup> by the Council which, adopted under the excessive deficit procedure, are however closely connected to the financial assistance programme for Greece, as they reiterate the majority of the measures mentioned in the MoUs and specify certain details.<sup>413</sup>

**The status of the MoUs** has been debated in Parliament during their “implementation” in the national legal order by law 3845/2010 and during the voting for the law 3847/2010 the next day.

On the 6<sup>th</sup> of May 2010, the statute “Measures for the implementation of the rescue mechanism for the Greek economy” was debated and voted in Parliament.<sup>414</sup> The MoUs signed on the 3<sup>rd</sup> of May 2010 were attached to this statute, which contained other harsh measures for the implementation of the economic adjustment programme. In the parliamentary debates, K.K.E. raised a procedural objection concerning the voting of the relevant statute. This objection was supported by SY.RIZ.A. The nature of the MoUs was thus discussed, since it determined the procedure required by the Constitution. According to the Communist Party, the Memoranda constituted international agreements which implied the concession of constitutional competences to organs of imperialistic organizations. Thus, their ratification should be voted by a qualified majority of 180 deputies, according to article 28 paragraph 2 of the Constitution.<sup>415</sup> SY.RIZ.A. also defended that the draft law implementing the MoUs conceded essential parts of national sovereignty to international organizations. Indeed, according to the MPs of the Left, these agreements determined the government and

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<sup>411</sup> Decision of the 8<sup>th</sup> of June 2010, EU L 145.

<sup>412</sup> Decision of the 7<sup>th</sup> of September 2010, amending the previous decision, EU L 241.

<sup>413</sup> According to Giannakopoulos, these secondary European law instruments, insofar as they are not contrary to EU law, render inoperative any complaint against national acts implementing the MoUs, since their application is rendered an EU law obligation. See Kostas Giannakopoulos, «Μεταξύ εθνικής και ενωσιακής έννομης τάξης: το «Μνημόνιο» ως αναπαραγωγή της κρίσης του κράτους δικαίου [Between National and EU Legal Order: the “Memorandum” as a Reproduction of the Rule of Law Crisis]», [www.constitutionalism.gr](http://www.constitutionalism.gr)

<sup>414</sup> Cf. statute 3845/2010 (ΦΕΚ Α' 65/6.5.2010), [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5)

<sup>415</sup> See the next question X.4.

social policy of the country for 3-5 years and would constitute a precedent which would apply for decades. They contained a pension draft demolishing the social security system, a freeze of the minimum wages for 3 years, increases in taxes and in prices of public services, freeze of expenditure and lay-offs for local authorities. According to the MPs, the MoUs were nothing but an ideological manifesto violating the Greek Constitution and imposing a special economic and social policy, without the approval of the Greek people. The MPs of SY.RIZ.A. also mobilized a more juridical argument: they stressed the fact that the draft law itself declared that subsequent agreements and MoUs concerning the application of the rescue programme should be submitted to Parliament for *ratification*.<sup>416</sup> Thus, logically, according to them, the draft law itself ratified the MoUs (which meant that the MoUs were international conventions needing ratification).

PA.SO.K., in Government at the time, responded that we should not stick to procedures and technicalities. According to the Prime Minister, the voting of the MoUs was not a matter of qualified majority but of political responsibility. The draft law should be voted with the normal majority of 151 deputies, in order for the MPs to have a clear conscience and to fulfil their international obligations. The members of PA.SO.K. seemed thus to consider that the political legitimacy of the Government and the Parliament were at stake, that the voting of the statute reflected a historical responsibility vis-à-vis the creditors and the Greek people. Thus, according to them, there was no space for formal democracy but only considerations of substantial democracy should count.

According to LA.O.S., the MoUs did not imply any concession of constitutional competences, since it was nothing but an agreement with the support mechanism adopted through a draft law; thus, it was an economic agreement, just like the ones concluded between the country and its market creditors, when the country had still access to the markets. A similar argumentation was presented by N.D., which did not consider that the relevant agreements had a legal nature at all.<sup>417</sup>

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<sup>416</sup> See article 1, paragraph 4 of the statute.

<sup>417</sup> See Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506_1.pdf), p. 6714 f.

The next day, on the 7<sup>th</sup> of May 2010, in an austerity package affecting public pensioners, the Government brought a last-minute amendment to the statute voted the day before. This amendment concerned the validity and procedure for the adoption of agreements and memoranda: it delegated their signature to the Minister of Finance and provided that these instruments were valid from their signature and that they were brought to Parliament only for discussion and briefing.<sup>418</sup> This amendment, as well as the fact that it was brought the last minute before voting, provoked strong reactions by all the parties of the opposition (including N.D. and L.A.O.S. whose MPs had disagreed as to the nature of the financial assistance instruments as legal international conventions). The Government defended that it concerned only the “legal-technical formulation” of the provision voted the day before. According to them, the amendment was necessary in order for the Loan Agreement, signed some days later, to be valid immediately and in order for Greece not to run bankrupt. The MPs of the opposition, however, considered that this amendment demonstrated the legal nature of the international agreements voted the day before, and that they should thus have been ratified.<sup>419</sup> Even more, according to the MPs of SY.RIZ.A. and K.K.E., they were international agreements conceding constitutional competences to international organizations; this implied that they should have been voted under the procedure of article 28 par. 2, thus with a qualified majority of the 3/5 of the deputies.<sup>420</sup>

**The nature of the First Loan Agreement** itself was not discussed in Parliament at the time. Statute 3845/2010 delegated to the Minister of Finance its signature, together with other agreements and memorandums concerning the application of the rescue programme.<sup>421</sup> During the debates on the 7<sup>th</sup> of May 2010, the Minister of Finance committed that the Loan Agreement would be brought to Parliament for voting, despite the amendment which provided only for discussion and briefing.<sup>422</sup> The Agreement was indeed brought for ratification in a draft on the 4<sup>th</sup> of June,<sup>423</sup> but

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<sup>418</sup> See new article 1 paragraph 4 law 3845/2010, as amended by law 3847/2010, ΦΕΚ 67 Α'/11.05.2010.

<sup>419</sup> See Minutes of the Greek Parliament, Plenary Session of the 7<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507_1.pdf).

<sup>420</sup> See the next question X.4.

<sup>421</sup> Article 1 paragraph 4 of the law 3845/2010.

<sup>422</sup> See Minutes of the Greek Parliament on the 7<sup>th</sup> of May, cited above, p. 6886.

<sup>423</sup> See [http://www.minfin.gr/content-api/f/binaryChannel/minfin/datastore/ca/4a/db/ca4adb5f44b22c68aff898e47ba1da428aacf791/application/pdf/sn\\_kyrwtikoimf\\_2010\\_06\\_04\\_B.pdf](http://www.minfin.gr/content-api/f/binaryChannel/minfin/datastore/ca/4a/db/ca4adb5f44b22c68aff898e47ba1da428aacf791/application/pdf/sn_kyrwtikoimf_2010_06_04_B.pdf) The explanatory report of the draft law explicitly refers to *ratification* of the Loan Agreement.

was never discussed in the Plenum because the relevant Parliamentary Commission considered that ratification was not necessary, according to the amended article 1 paragraph 4 of law 3845/2010.<sup>424</sup>

Paradoxically, article 93 of the law 3862/2010, voted on the 5<sup>th</sup> of July 2010, explicitly provides for the legal nature of loan agreements as international conventions which are brought to Parliament for *ratification* and are valid only after the publication of the relevant law in the Official Gazette.<sup>425</sup> Yet, according to article 94 of the same law, this provision is retroactively valid only from the 1<sup>st</sup> of June 2010; it thus does concern the First Loan Agreement.<sup>426</sup> The same article reiterates that the rest of the agreements and memoranda of understanding relevant to the participation of the country in the EFSF are brought before Parliament only for discussion and briefing. According to the representative of the Government, this provision allowed the Minister of Finance to sign any MoUs, conventions and loan agreements with the Commission, the MS of the Eurozone and the ECB and to proceed to any necessary act for the participation of the country in any legal person created with the EFSF agreement. The MPs of the Government party, PA.SO.K., stressed that the provisions of article 93 were required by the “troika” in order to ensure a political consensus on the loan agreements.<sup>427</sup>

During the voting of the **second rescue plan**, certain information on the decision of the Council of State (declaring the constitutionality of statute 3845/2010) had leaked in the press.<sup>428</sup> Therefore, the debate did not so much concern the nature of the instruments but their content.<sup>429</sup> The title of the statute implementing the financial assistance instruments illustrates the uncertainty and incoherence of practice on the subject: the statute is entitled “Approval of the Drafts of Loan Facility Agreements

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<sup>424</sup> Cf. the declaration by the MP of N.D., Christos Staikouras, referring to this subject: <http://www.cstaikouras.gr/2010/06/dilosi-gia-ti-sizitisi-ke-enimerosi-epi-mnimonion-simfonion-ke-simvaseon/>

<sup>425</sup> See Law 3862/2010, ΦΕΚ 113 Α'/13.07.2010.

<sup>426</sup> See Question IV.2. It is interesting to note that the same provisions had been included in the draft law ratifying the First Loan Agreement, which was never discussed or voted in Parliament.

<sup>427</sup> See Minutes of the Parliament, Plenary Session of the 5<sup>th</sup> of July 2010, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100705.pdf>

<sup>428</sup> See the criticism to the press publications by Kostas Chrysogonos, “The Truth on the Memorandum” [in Greek], *Eleftherotypia*, 24<sup>th</sup> of June 2011, [www.constitutionalism.gr](http://www.constitutionalism.gr). This is a common practice in Greek politics.

<sup>429</sup> Still, the MPs of LA.O.S. referred to the nature of the MoUs and of the Loan Agreement as international legal conventions conceding constitutional competences to international organizations.

between the EFSF, the Hellenic Republic and the Bank of Greece, the Draft Memorandum of Understanding between the Hellenic Republic, the European Commission and the Bank of Greece and other urgent provisions for the decrease of the public debt and the saving of the national economy”.<sup>430</sup> Thus, its voting took place *before* the signature of the relevant agreements and the statute habilitated the Minister of Finance and the President of the Bank of Greece to represent the country and to sign the approved agreements, which were valid from their signature.<sup>431</sup> The Minister of Finance argued in the competent Parliamentary Committee that the approved agreements were “staff level” agreements.<sup>432</sup> However, article 1 paragraph 6 of the statute 4046/2012 declares that certain provisions of the Memorandum of Understanding on the Specific Conditions of Economic Policy “are perfect legal rules of direct application”.

On the 14<sup>th</sup> of March 2012, the day before the signing of the second Loan Facility Agreement, the Greek Government enacted an administrative act of legislative content,<sup>433</sup> again approving the draft of the agreement and delegating to the Minister of Finance, the President of the Bank of Greece and the President of the Hellenic Financial Stability Fund its signature. After its signature, the Minister should introduce the agreement to Parliament “for briefing”.<sup>434</sup> The act was voted in Parliament on the 20<sup>th</sup> of March 2012.<sup>435</sup> Thus, in this way, the Parliament retroactively voted the approval of the agreement and the delegation to the Minister to sign it. The voting took place after the actual signing of the agreement. The same procedure was followed for the Amendment of the Agreement, which was finally voted in Parliament on the 14<sup>th</sup> of January 2013.<sup>436</sup> The use of legislative decrees and its ratification through an emergency procedure provoked strong reactions by the

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<sup>430</sup> Statute 4046/2012, ΦΕΚ 28 Α’/14.02.2012, <http://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/e-dancio-pap.pdf>

<sup>431</sup> Article 1 paragraphs 3 f.

<sup>432</sup> Cf. the speech of Venizelos, Minister of Finance in the competent parliamentary committee on the 11<sup>th</sup> of February 2012, <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#a9f345a6-5cad-40e9-b36a-0a416f376a8c>

<sup>433</sup> On this instrument, see the section “Changes to National Constitutional Law”.

<sup>434</sup> ΠΙΝΠ ΦΕΚ 55 Α’/14.03.2012, articles 1 and 2.

<sup>435</sup> See Minutes of the Greek Parliament, Plenary Session of the 20<sup>th</sup> of March 2012. See also Law 4060/2012, ΦΕΚ 65 Α’/22.03.2012, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=6f964116-22f9-42cf-b3c0-72c6ebe763c2](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=6f964116-22f9-42cf-b3c0-72c6ebe763c2)

<sup>436</sup> The relevant statute included the ratification of six legislative decrees, certain austerity measures, as well as certain irrelevant measures. It was introduced and voted with the emergency procedure. See next question X.4.



parties of the opposition. Especially concerning the circumvention of the procedure for the ratification of the agreement, the strongest reactions came from the MPs of AN.EL.<sup>437</sup>

The nature of the MoUs has been discussed thoroughly in the **decision 668/2012** by the *Symvoulio tis Epikrateias* (Council of State), published on the 20<sup>th</sup> of February 2012.<sup>438</sup> According to the plaintiffs, this statute ratified an international treaty that transferred constitutional competences to international organizations. Thus, it should have been voted by a qualified majority of at least 180 deputies in the Greek Parliament, a condition that had not been satisfied by the majority of 172 deputies that had actually voted in favour of the law (article 28 paragraph 2 of the Constitution). The Court replied that, even though a result of negotiations and agreement between Greece and international or supranational institutions, the Memorandum (meaning the MoUs) did not constitute an international treaty binding the Greek Government, but only the **political programme of the Government** for the confrontation of the economic problems of the country through the European rescue mechanism. This programme defined certain general goals for the next three years, the means for their achievement and the time-line of the measures that had to be taken; **this, independently from the obligations that the country assumed with the subsequent Loan Facility Agreement.** With its attachment to statute 3845/2010, the Government only solemnly publicized the content of this program, already contained in the Stability and Growth Programme 2010-2013. Therefore, as a political program, the Memorandum did not result in the transfer of competences to international authorities, it did not create legal rules and it did not possess a direct effect in the domestic legal order, given that, for its application, the constitutionally competent organs had to enact some implementing measures. Indeed, some of the measures announced in the Memorandum were enacted with other provisions of statute 3845/2010. The fact that the Memorandum had been written in English and signed by the representatives of the Greek state and by the representatives of the MS of the Eurozone, moreover, did not mean that it was a convention. Even more, the IMF did

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<sup>437</sup> See Minutes of the Greek Parliament, Plenary Session of the 14<sup>th</sup> of January 2013. See also Law 4111/2013, ΦΕΚ 18 Α'/25.01.2013, [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=3cde3e1c-d018-4244-af66-c69249f657f6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=3cde3e1c-d018-4244-af66-c69249f657f6). See also the relevant administrative act, ΠΝΠ ΦΕΚ 240 Α'/12.12.2012.

<sup>438</sup> See Question X.8.

not sign the Memorandum and, generally, the settlements for the financial assistance to states by the IMF are not international conventions. Moreover, the signatory states did not assume legal obligations and no legal measures or sanctions were contained in the MoUs in order to enforce their application. Finally, the subsequent Council decision 210/320/EU, enacted in the framework of the excessive deficit procedure, which determines which measures should be taken by the Greek Government, was an indication that the signatory parties of the MoUs did not want to assume legal responsibilities through its signature: the Eurozone creditors wanted the Council to enact a relevant decision before they provided financial assistance to Greece. Thus, according to the majority, any legal obligations for the Greek state did not result from the MoUs themselves but from the Loan Facility Agreement or from the Council decision. However, statute 3845/2010 had been published before the signing of the Agreement and the Council decision, and thus provided the legal basis for the administrative acts attacked by the plaintiffs (point 28).

According to a concurring opinion of three judges, the Memorandum **produced legal consequences and was an international treaty**, since it had been concluded between international law subjects, who had the intention to assume binding responsibilities. More precisely, the contracting parties had agreed on some conditions, whose fulfillment would be monitored by a special organ, on which the reimbursement of tranches of the loan provided to the Greek state depended. These conditions constituted a political programme and covered a wide range of public policies. On all the subject matters that they covered, the MoUs defined measurable goals that would be achieved through the adoption of concrete measures under a specific time-line. The Greek state had assumed the obligation to adopt these measures with acts issued by its authorities. This programme had been attached to and ratified with statute 3845/2010, which had provided a secure legal framework for the contracting states, in order to sign subsequently the Loan Agreement. However, the Greek state had not conceded constitutional competences to international or supranational authorities through the MoUs, nor did it result from the agreements that this had been the intention of the contracting parties. Thus, the qualified majority of article 28 par. 2 of the Constitution was not required for ratification of the statute (point 28).

Another concurring opinion of three judges concludes to the same result but distinguishes itself as to the nature of the agreements. According to this opinion, the MoUs produced legal consequences. They had been written with the objective to correct the financial imbalances of the Greek economy, and in order to obtain the loan that the MS of the EU had bound themselves to provide (through the statements and declarations of the Heads of States and Government), though they had no such obligation under EU law. Thus, according to these judges, the MoUs constituted a **preliminary agreement for the subsequent bilateral loan agreements** (point 28).

Three dissenting opinions were expressed on this matter - nine judges (out of a total of 55). According to one of the Vice Presidents of the Council of State, the legal nature of the Memorandum was indicated by what preceded it and what succeeded it, as well as by its content itself. First of all, according to this judge, one must take into account official declarations by the creditors and especially by Germany, having a *de facto* hegemonic role among them. Generally, the legal nature of an agreement does not depend on the will of the contracting members or on the fulfillment of the procedure defined in the Vienna Convention, this convention not being hierarchically superior to future conventions. It only depends on whether there has been a concurrence of will between subjects of international law and on whether this will contains the production of binding rules. Besides, the use of the term Memorandum was not even an indication that no will to create obligations existed. Concerning the stage before the signing of the Memorandum, the judge mentioned the most important events and stressed that the MoUs had been required in order for the creditors to provide financial assistance to Greece. The Memorandum was concluded between the representatives of the contracting parties. The day of its conclusion, the Minister of Finance and the President of the Bank of Greece provided written confirmation that Greece would fully comply with the policies defined in the relevant Council Decision and the MoUs. Therefore, the Memorandum constituted an **intergovernmental convention** (despite the role of the Commission), which contained specific terms, on which the reimbursement of the tranches of the bilateral loans depended. In order to support his opinion, the judge provided as evidence the explanatory report of the relevant German statute of the 8<sup>th</sup> of May 2010 and a declaration made by Merkel in the Bundestag on the 5<sup>th</sup> of May 2010. According to the judge, the conditions defined in the MoUs contained obligations for the Greek state, which concerned a very broad

range of matters in economy but also in public policy, as well as the structure of public administration, the scope and quality of the social state and the property rights of the Greek state. The MoUs imposed actions by the legislative power in all these domains and a specific time-line for these actions. The fulfillment of these conditions would be certified by the “troika” and their non-sufficient fulfillment would result in the suspension of the financing of the Greek state. This “programme” was attached to and ratified with law 3845/2010 and thus ensured a secure legal framework for the signature of the subsequent Loan Facility Agreement. This agreement explicitly declared that its application depended on the compliance by Greece with measures defined in the MoUs. Moreover, the judge referred to many assertions, found in introductory reports to statutes implementing the MoUs, but also to the statute ratifying the 2011 budget, as well as in parliamentary debates. These assertions showed the conviction of the legislator that the Memorandum created binding obligations for the Greek state as an international treaty. This conviction of the political world was also manifested in subsequent “adjustments” to the program and in letters sent by the Minister of Finance and the President of the Bank of Greece to the President of the Eurogroup, to Commissioner Olli Rehn and to the President of the ECB, where they enumerated in detail the measures already taken for the application of the program and they announced the measures that would be taken in the future (point 29).

Another dissenting opinion was supported by 6 judges, who sustained that the Memorandum was an **international convention which created specific binding obligations and whose non-application incurred legal consequences**. Its binding character, according to this opinion, was explicitly mentioned in many excerpts of the Memorandum. With this text Greece was obliged to enact measures in broad domains of state action and with exceptional detail on the content and the time-line of these measures. The Memorandum itself referred to “obligations”, “close observation of the program”, “measures” that would be taken if needed for its observance, “application” of its provisions. Moreover, the financing of the Greek state depended on the fulfillment of these conditions. Finally, the binding legal character of the MoUs was also indicated by the fact that the Greek Parliament voted successively many statutes to their application. The signature of the Memorandum shows that there was a concurrence of will between the contracting parties. Therefore, the Memorandum was

an international convention. Besides, the eventual will not to attribute legal consequences by the contracting parties or the lack of sanctions was of no importance as to the legal nature of the agreement, nor was the subsequent Council Decision, since the EU is not part of the convention. According to this opinion, then, the convention containing the three MoUs referred to taxation, economic collaboration or concessions, thus matters personally burdening the Greek people and should have been ratified according to article 36 par. 2 of the Constitution. Since these conventions were not part of EU law, they should have been ratified by a legal statute. Even more, since the Memorandum conceded constitutional competences to international institutions, it should have been voted with a qualified majority of the 2/3 of the deputies (180 votes). The attachment of the draft of the Memorandum to law 3845/2010 (without the signatures of the contracting parties) did not constitute ratification. Besides, the statute was not voted with the required majority. Therefore, the relevant obligations had not been validly assumed by the Greek state and the enactment of measures for their application was contrary to the Constitution (point 29).

Finally, using similar arguments to the above opinion, two judges defended that the Memorandum had all the characteristics of international agreements: A) it had been concluded between subjects of international law. However, according to them it was between Greece and the EU that the MoUs had been concluded, since the only legal existence of the Commission is that of an EU institution (the eventual incompetence of the Commission to conclude such an agreement is a matter of EU law and cannot be monitored by Greek courts). B) It had recognized constitutional competences to the Commission as an EU institution. These were especially the determination of the general policy of the state, which according to article 82 of the Constitution is a competence of the Government. The MoUs determined compulsively and in detail measures that should be enacted by the Greek state. These measures concerned taxation, social security, health, structural reforms etc. and did not enter the scope of competences of the EU, but belonged to the exclusive competences of the MS. The provisions of the Memorandum exceeded thus the Council Decision, also because the consequences of its non-fulfilment exceeded the measures available to the EU institution in case of noncompliance under the excessive deficit procedure. Thus the **MoUs constituted an expansion of the EU competences which was isolated and**

**concerned only the Greek state.** Independently from their validity from an EU law point of view, these agreements should have been ratified by law (article 36 par. 2) voted by a qualified majority (article 28 par. 2). Thus, statute 3845/2010, not voted under this procedure, as well as all administrative acts having this statute as a legal basis, was unconstitutional and invalid (point 29).

The question of **concession of sovereignty** with the MoUs was also thoroughly discussed in the decision. Article 28 paragraph 3 of the Constitution declares that “Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.”<sup>439</sup> The judges examined if this article had been respected in the voting of the statute 3845/2010. The majority of judges rejected the claim of the plaintiffs, even if the provision of article 28 paragraph 3 does not only concern territorial restrictions of sovereignty, but also substantial restrictions. According to them, the MoUs were a political programme of the Government and did not result in the concession of constitutional competences concerning financial and economic policy to supranational/international institutions, nor did they result in restrictions to national sovereignty. The Greek government retained its competence to determine the general policy of the state, according to article 82 paragraph 1 of the Constitution (point 32).

According to the concurring opinion of two judges, the Memorandum, being a preliminary agreement for the subsequent intergovernmental loan conventions (see above), did not result in a restriction to national sovereignty. These judges considered that the granting of a loan of 80 bn was not connected to any concession of national sovereignty. More precisely, they submitted that the creditors had reasonably connected the reimbursement of tranches to the fulfilment of certain goals, whose achievement would be monitored on a three month basis. The matter of an eventual *de facto* limitation of national sovereignty was not a legal matter and fell out of the competence of the Council of State to examine (point 32). Two other judges

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<sup>439</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

expressed the concurring opinion that article 28 paragraph 3 refers only to territorial concessions of sovereignty and thus was not applicable in the case at hand, which concerned constitutional competences (point 32).

Three minority opinions were expressed on this matter. According to the opinion of one of the Vice-Presidents of the Court, the Memorandum, being an international convention (see above the minority opinion by the judge on this matter) which set calculable objectives, specific measures and a specific time-line for their enactment and for the achievement of the objectives, imposed to the legislator to act, especially to vote legal statutes, which would execute the MoUs and would be subordinate to it. The content and the application of these statutes would be monitored by the “troika”, with the non-reimbursement of loan tranches as a sanction. This content and consequences of the Memorandum convention infringed, according to the judge, the autonomy of the legislator, by determining the content and the time-line of legislative initiatives. The autonomy of the legislator is a fundamental democratic principle, resulting from articles 3 par. 3 (principle of popular sovereignty), 26 par. 1 (legislative power), 60 par. 1 (freedom of conscience, opinion and vote of deputies) and 110 (eternity clause) of the Constitution. This principle imposes the freedom of action of the legislator and of the particular institutions having legislative power. According to this judge, this principle is particularly important when programmatic commitments are agreed by the executive with other countries and create obligations to the Greek state. Thus, the MoUs and their ratification statute were invalid, as infringing on fundamental democratic principles in violation of article 28 paragraph 3 Constitution (point 33).

According to the minority opinion of 6 judges, the Memorandum was an international convention (see above the opinion by the same judges), through which the Greek state had assumed the obligation to enact specific measures, according to a specific time-line. These measures concerned a wide range of domains of state action and their content and deadlines for implementation were described with exceptional detail. Though this convention had not been ratified by a legal statute (see above the opinion of the same judges) and had not acquired the supra-legislative status according to article 28 par. 1, some of its provisions were implemented through statute 3845/2010. Thus, according to these six judges and one judge (who agreed with the opinion only

on this point), Greece had not “freely” conceded parts of its national sovereignty as article 28 par. 3 Constitution imposes, since the content of the legal statute was dictated by the Eurozone partners. Further, nor had the substantial conditions set by paragraph 3 been respected, since the attacked provisions were violating human rights, especially the principle of equality (the same judges expressed a minority opinion on the compatibility of the substantive content of the statute and the MoUs to fundamental rights.) Therefore, statute 3845/2010 was in violation of article 28 paragraph 3 of the Constitution and was invalid (point 33).

Finally, according to the minority opinion of one judge,<sup>440</sup> article 28 par. 3 of the Constitution refers to territorial concessions, especially of temporary nature. However, the power to freely exercise public policy by the constitutional authorities of the state is also, *a minore ad maius*, part of national sovereign powers. When article 28 par. 2 Constitution is not applicable, the constitutional legislator set very strict substantial conditions for the concession of such sovereign powers, whose fulfilment is subject to judicial review. Since, according to the majority opinion, statute 3845/2010 did not concede constitutional competences according to article 28 par. 2, it entered the scope of article 28 par. 3. Indeed, according to this judge, this statute was limiting the exercise of national sovereignty by conceding to the Commission, the Member States of the Eurozone, the IMF and the ECB constitutional competences concerning the planning and implementation of the general policy of the state in crucial matters, like economic and financial policy, but also in domains affecting fundamental rights, like human dignity, social security, health and welfare. According to the judge, the measures included in the statute were infringing the core of these rights, since they were endangering the decent way of life of the weaker economic classes and their right to vital public services. Though the legislator invoked the compelling public interest of correcting the deficit of the Greek state and of preserving the economic and financial stability of the Eurozone, it was not clearly and in detail demonstrated why recourse to a loan agreement under these conditions was the only solution for avoiding bankruptcy, neither why these measures were appropriate and necessary, following the principles of equality and proportionality.

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<sup>440</sup> The same judge had expressed another opinion concerning the status of the MoUs, together with another judge, who, on this point, considered that article 28 par. 3 was not applicable to the case at hand, since it concerns only territorial concessions of sovereignty.



Such an analysis would require a comprehensive economic study. Therefore, statute 3845/2010 conceded national sovereign powers without proving that the substantial conditions set by article 28 par. 3 were respected and was thus invalid as unconstitutional (point 33).

The **European nature** of the texts was discussed in another decision by the Plenum of the Council of State, published some days later.<sup>441</sup> In this case, the plaintiff alleged that the pension and allowance cuts imposed by law 3845/2010 were violating article 34 of the European Charter of Fundamental Rights. The Court responded that this text is applicable only when Member States are applying EU law; thus it was not applicable to the case at hand, since the contested measures were measures of purely internal policy, taken by the national authorities according to domestic law provisions. The participation of the EC or the ECB in the drafting of the domestic economic programme did not incur the application of the Charter (points 20-1).

**Academic opinions** on the matter diverge considerably as well. Concerning the **Memorandums of Understanding**, Chrysogonos has argued that they constitute “simplified agreements” in the sense of article V statute IMF. Therefore, they are not binding legal texts, since Greece has the possibility to opt-out, nor are they restricting national sovereignty.<sup>442</sup> Katrougkalos comes to the same conclusions; according to this author, the MoUs are not international conventions, because of the lack of creation of binding rules and of the will for legal consequences by the signatory parties. They are often characterized as a “draft programme” or an “action plan” in their text itself. In the IMF legal order, they are preparatory texts, which are not part of the loan agreement. Their attachment to law 3845/2010 gives them a formal legal status, though they do not produce substantial legal rules, since they only contain

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<sup>441</sup> Decision 1285/2014, 2 April 2014.

<sup>442</sup> Kostas Chrysogonos, «Η χαμένη τιμή της Ελληνικής Δημοκρατίας. Ο μηχανισμός «στήριξης της ελληνικής οικονομίας» από την οπτική της εθνικής κυριαρχίας και της δημοκρατικής αρχής [The lost honour of the Hellenic Republic. The “rescue” mechanism of the Greek economy from the point of view of national sovereignty and of the principle of democracy]», *ΝοΒ* 58 [2010] p. 1356. However, Antoniou says that the possibility of coping-out does not mean that concessions of national sovereignty have not taken place and she gives the example of the Lisbon Treaty. See Theodora Antoniou, «Η απόφαση της Ολομελείας του Συμβουλίου της Επικρατείας για το Μνημόνιο – Μια ευρωπαϊκή υπόθεση χωρίς ευρωπαϊκή προσέγγιση [The Decision of the Plenary Session of the Council of State on the Memorandum - A European Affair Lacking a European Approach]», *ΤοΣ* 1 [2012], p. 197.

programmatic declarations.<sup>443</sup> However, Katrougkalos submits that it would be compatible with the spirit of the Constitution to apply article 28 par. 2 as regards the voting procedure, since they impose important *de facto* limitations to national sovereignty.<sup>444</sup> According to Gerontas, the MoUs constitute the explanatory reports to law 3845/2010, justifying the measures contained in this statute. Their voting is part of the *interna corporis* of Parliament and is not subject to judicial review.<sup>445</sup> On the contrary, Marias accepts the legal nature of the MoUs as international conventions.<sup>446</sup>

Concerning the **Loan Agreements**, on the contrary, most authors agree on their legal nature and consequences. According to Chrysogonos, they are international conventions, which need to be ratified under article 36 of the Constitution. Since they infringe upon the core of national sovereignty and the foundations of democracy, however, they do not respect the conditions set by article 28 of the Constitution. Their ratification would not be possible even after a constitutional amendment, since article 110 Constitution forbids the infringement of national sovereignty and of fundamental democratic principles (eternity clause).<sup>447</sup> Katrougkalos also submits that the Loan Agreement is an international convention, which has a binding legal force and should be ratified by law, according to art 36 par. 2. Pavlopoulos stresses that, “even under the strictest legal view”, the Loan Agreements are “a complex of rules and future international conventions”, entering the scope of article 36 Constitution, thus needing ratification. The same opinion is expressed by Giannakopoulos. However, concerning the loan agreement with the IMF, this scholar defends that it is not a convention that should be ratified, but an activation of rights and obligations resulting from the already ratified participation of Greece to the IMF.<sup>448</sup> Bredimas considers that the

<sup>443</sup> See also Prokopis Pavlopoulos, «Παρατηρήσεις ως προς τη νομική φύση και τις έννομες συνέπειες του «Μνημονίου» [Comments on the legal nature and the legal consequences of the “Memorandum”]», [www.constitutionalism.gr](http://www.constitutionalism.gr).

<sup>444</sup> Giorgos Katrougkalos, «Memoranda sunt servanda? Η συνταγματικότητα του ν. 3845/2010 και του Μνημονίου για τα μέτρα εφαρμογής των συμφωνιών με το ΔΝΤ, την ΕΕ και την ΕΚΤ», *Εφημερίδα*, 3 [2010], [www.constitutionalism.gr](http://www.constitutionalism.gr).

<sup>445</sup> Apostolis Gerontas, «Το Μνημόνιο και η δικαιοπαγωγική διαδικασία [The Memorandum and the Norm-Creating Procedure]», *Εφημερίδα* [3] 2010, p. 712.

<sup>446</sup> Epameinondas Marias, «Η Δανειακή Σύμβαση Ελλάδας - κρατών Ευρωζώνης υπό το πρίσμα των θεσμών και του δικαίου της ΕΕ [The Loan Agreement between Greece – Eurozone states under the institutional and legal framework of the EU]», *ΝοΒ* [4] 2010, p. 2204.

<sup>447</sup> Cf. Kostas Chrysogonos, *op. cit.*

<sup>448</sup> Kostas Giannakopoulos, «Μεταξύ εθνικής και ενωσιακής έννομης τάξης: το «Μνημόνιο» ως αναπαγωγική της κρίσης του κράτους δικαίου [Between National and EU Legal Order: the “Memorandum” as a Reproduction of the Rule of Law Crisis]», [www.constitutionalism.gr](http://www.constitutionalism.gr) See also Panagiotis Gklavinis, *Το Μνημόνιο της Ελλάδος στην ευρωπαϊκή, τη διεθνή, και την εθνική έννομη τάξη [The Greek Memorandum in the*

agreement with the IMF is not legal, since the IMF at least does not consider it binding, but it could be a “soft law” instrument.<sup>449</sup>

Kasimatis, **not distinguishing** between the agreements and the MoUs, defends that these texts are international conventions entering the scope of article 36 par. 2 Constitution. Thus, they should have been ratified by law. According to this author, this is a condition for their validity from an international law point of view. However, he also mentions that in international practice the condition of ratification is often not fulfilled. Independently from their international law validity, article 28 Constitution declares that ratification is needed in order for the agreements to be valid in the domestic legal order. Kasimatis mobilizes many arguments to support that the agreements concede constitutional competences of all branches of power to supranational institutions. Since these powers belong to the exclusive competences of MS, they should have been ratified with the qualified majority defined in article 28 par. 2 Constitution.<sup>450</sup>

Certain scholars propose a more holistic view of the “**web of texts**” constituting the rescue programme for the Greek economy.

Manitakis says that this web of texts has both EU and international character and a public international economic character. The rescue mechanism is a *sui generis formation*, a precursor of the European financial integration, at the boundaries of EU and international legality. The MoUs constitute an “informal international convention”, a simplified agreement with programmatic character which does not create legal rules, nor does it provide for legal sanctions for its enforcement. According to this author, even after their attachment to law 3845/2010, the MoUs were not ratified, since they do not need ratification. However, they have a legal nature; they are “soft law” rules oriented to the achievement of certain goals. Independently, the MoUs also constitute the programme of the Greek Government

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*European, International and National Legal Order*], Sakkoulas, 2010 ; Antonis Manitakis, «Τα συνταγματικά ζητήματα του Μνημονίου [The Constitutional Matters of the Memorandum]», *ΑΤΑ* 51 [2011], 689.

<sup>449</sup> Antonis Bredimas, «Η «συμφωνία» δανεισμού της Ελλάδας από το ΔΝΤ: Θεσμικά και νομικά ζητήματα [The loan “agreement” between Greece and the IMF: Institutional and legal matters]», [www.constitutionalism.gr](http://www.constitutionalism.gr)

<sup>450</sup> Giorgos Kasimatis, «Οι συμφωνίες δανεισμού της Ελλάδας με την ΕΕ και το ΔΝΤ [The Loan Agreements between Greece and the EU and the IMF]», Athens Bar Association, Athens 2010, [www.constitutionalism.gr](http://www.constitutionalism.gr)

and an explanatory report to law 3845/2010, justifying the austerity measures that it contains. This author submits that, despite their “**soft law**” and programmatic character from an internal point of view, the MoUs are binding for the Greek state vis-à-vis the signatory states, from an international law point of view. Their respect is also a condition for the Loan Agreement, thus their validity in international law is associated to their application in national law.<sup>451</sup>

As far as the Loan Agreements are concerned, Manitakis defends that they are *sui generis international agreements* with a European and international nature. According to constant constitutional practice, economic agreements are not ratified by law. However the Loan Agreements create burdens for Greek citizens and thus they might enter the scope of article 36 par. 2 Constitution. In any case, the matter is contested; therefore the agreements are not invalid. Besides, the obligation for ratification is a *governmental* obligation, not subject to judicial review and not affecting the legal bindingness of the texts. That is, except from certain provisions which would be applied by Greek courts, such as the waiver of any immunity by the Greek state.

Botopoulos defends that the Memorandum is a “**sui generis international convention**”. He considers, however, that no matter of application of article 28 par. 2 Constitution is raised, since there is no concession of constitutional competences. The MoUs, according to this author, create a national obligation to fulfil the generally agreed rules of international law.<sup>452</sup>

Antoniou, finally, accentuates the **European dimension** of the matter and maintains that the “web of texts” constituting the first rescue mechanism is part of an on-going transformation in the process of European integration and of the creation of a European rescue mechanism. Thus, the MoUs and the Loan Agreements were *de facto* amending the European treaties and lead to a further concession of constitutional competences and sovereign powers to the EU. This, she submits, should have been approved by the Greek Parliament according to par. 2 and 3 of article 28 of the

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<sup>451</sup> Cf. Antonis Manitakis, *op. cit.*, referring to the report by Sarp to the decision 668/2012 by the Council of State. Cf. also Panagiotis Gklavinis, *op. cit.*.

<sup>452</sup> Kostas Botopoulos, «Κοινός νους και κενά σημεία στην «απόφαση του Μνημονίου» [Common Sense and Logical Gaps in the “Memorandum Decision”]», [www.constitutionalism.gr](http://www.constitutionalism.gr)

Constitution, thus respecting both the qualified majority requirement and the substantial conditions set by this article.<sup>453</sup> The European dimension of the texts is also stressed by Marias<sup>454</sup> and Giannakopoulos.<sup>455</sup>

## TRANSPOSITION NATIONAL LEGAL ORDER

### X.4

CONSIDERING THE STATUS OF THE FINANCIAL ASSISTANCE INSTRUMENTS, WHAT PROCEDURE DOES THE CONSTITUTION PRESCRIBE FOR THEIR ADOPTION/TRANSPOSITION INTO THE NATIONAL LEGAL ORDER?

The procedure required by the Constitution for the adoption and transposition of the financial assistance instruments into the national legal order depends on their nature.

Concerning their **signature**, article 36 declares:

“1. The President of the Republic, complying absolutely with the provisions of article 35 paragraph 1, shall represent the State internationally, declare war, conclude treaties of peace, alliance, economic cooperation and participation in international organizations or unions and he shall announce them to the Parliament with the necessary clarifications, whenever the interest and the security of the State thus allow.

2. Conventions on trade, taxation, economic cooperation and participation in international organizations or unions and all others containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute, or which may burden the Greeks individually, shall not be operative without ratification by a statute voted by the Parliament.

3. Secret articles of an agreement may in no case reverse the open ones.  
4. The ratification of international treaties may not be the object of delegation of legislative power as specified in article 43 paragraphs 2 and 4.”<sup>456</sup>

Thus, the Constitution declares that the representation of the country and the signature of treaties is an exclusive competence of the President of the Republic. However, a general simplified practice has prevailed (a constitutional custom), according to which

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<sup>453</sup> Theodora Antoniou, *op. cit.*, citing German literature and political speeches.

<sup>454</sup> Marias, *op.cit.*

<sup>455</sup> Giannakopoulos, *op.cit.*

<sup>456</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

the representative of the state in the relevant negotiation can also sign the treaties.<sup>457</sup> This simplified procedure was also employed in the signing of the MoUs (if one accepts their legally binding nature) and the Loan Agreements (most scholars accept their legally binding nature; decision 668/2012 by the Council of State also seems to accept this): the agreements were signed by the Minister of Finance and the President of the Bank of Greece (and, in the second rescue programme, by the President of the Hellenic Financial Stability Fund).<sup>458</sup>

Concerning the **ratification**, article 36 requires, in order for a treaty to be *operative*, a statute voted by the Parliament for all “[c]onventions on trade, taxation, economic cooperation and participation in international organizations or unions and all others containing concessions for which, according to other provisions of this Constitution, no provision can be made without a statute, or which may burden the Greeks individually”.

Article 28 defines the **validity and (hierarchical) status** of international and supranational law in the national legal order. It declares:

“1. The generally recognised rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the condition of reciprocity.

2. Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-

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<sup>457</sup> Giorgos Kasimatis, «Οι συμφωνίες δανεισμού της Ελλάδας με την ΕΕ και το ΔΝΤ [The Loan Agreements between Greece and the EU and the IMF]», Athens Bar Association, Athens 2010, [www.constitutionalism.gr](http://www.constitutionalism.gr); See also Emmanouil Roukounas, *Διεθνές Δίκαιο* [International Law], A, 3<sup>rd</sup> ed., Athens-Komotini, Sakkoulas, 2004.

<sup>458</sup> See the previous question X.3. According to the majority of scholars, signature by the competent authority entails the validity of the agreement in international law, independently of its validity in the national legal order. This is not the case when the simplified procedure is used and the Constitution requires ratification (see article 36 par. 2). Kasimatis also argues that this is not the case when the parties have associated the international law validity of an agreement to its application in the national legal order, as is the case with the Loan Agreement, whose validity depends on the application of the terms of the MoUs by the Greek authorities.

fifths of the total number of Members of Parliament shall be necessary to vote the law ratifying the treaty or agreement.

3. Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity.

\*\* Interpretative clause: [added in the 2001 constitutional amendment]

Article 28 constitutes the foundation for the participation of the Country in the European integration process.”<sup>459</sup>

When European treaties are amended, scholars accept the possibility of “tacit” constitutional amendment through article 28 of the Constitution. However, according to the dominant opinion, in order for this to happen, the special procedure and the substantial conditions set by paragraphs 2 and 3 of this article must be respected.<sup>460</sup>

The obligation for ratification of the financial assistance instruments, the procedure that must be followed and the normative status of these instruments in the national legal order, depends on their nature (legally binding or not, European or not) and legal consequences (affecting domains for which a statute is required – like fundamental rights or taxation, creating burdens for Greek citizens, conceding competences, restricting the exercise of national sovereignty, infringing fundamental rights, the principle of equality or fundamental democratic principles etc.). This subject and the consequences of an eventual lack of ratification of an agreement are debated in Greece.<sup>461</sup>

Another procedure for the signature and ratification of agreements and memoranda for the application of the support mechanism has been instituted by crisis legislation. Article 1 paragraph 4 of statute 3845/2010 delegated to the Minister of Finance the

<sup>459</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>460</sup> Cf. Antonis Maniatis and Lina Papadopoulou (eds.), *Η προοπτική ενός συντάγματος για την Ευρώπη [The Perspective of a Constitution for Europe]* (2003 Athina-Thessaloniki: Ant. N. Sakkoulas) 160 ff. See also citations for the relevant literature.

<sup>461</sup> See the previous question X.3.

power to sign conventions and agreements relevant to the support mechanism. It declared that they should be brought to Parliament for ratification.<sup>462</sup> However, law 3847/2010, voted the next day, amended this provision, which now declares that these conventions and agreements are “operative from their signature” and that they are brought to Parliament for “discussion and briefing”.<sup>463</sup>

This amendment, as well as the fact that it was brought in the last minute before voting, provoked strong reactions by all the parties of the opposition (including N.D. and LA.O.S. whose MPs had disagreed as to the nature of the financial assistance instruments as legal international conventions). The Government defended that it concerned only the “legal-technical formulation” of the provision voted the day before. According to them, the amendment was necessary in order for the Loan Agreement, signed some days later, to be valid immediately and in order for Greece not to run bankrupt. The MPs of the opposition, however, considered that this amendment demonstrated the legal nature of the international agreements voted the day before, and thus they should have been ratified.<sup>464</sup> Even more, according to the MPs of SY.RIZ.A. and K.K.E., they were international agreements conceding constitutional competences to international organizations; this implied that they should have been voted under the procedure of article 28 par. 2 Constitution, thus with a qualified majority of 3/5 of the deputies.

The same provision, as far as the MoUs are concerned, is reiterated in article 93 of statute 3862/2010, voted on the 5<sup>th</sup> of July 2010.<sup>465</sup> However, the same article provides for the ratification of Loan Agreements by Parliament after their signature, thus recognizing their legal nature. This provision, having a retroactive force from the 1<sup>st</sup> of June 2010,<sup>466</sup> and thus not encompassing the First Loan Agreement, was asked by the creditors in order to ensure consensus in the Greek Parliament on future Loan Agreements.<sup>467</sup>

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<sup>462</sup> See article 1 par. 4 of the Law 3845/2010, ΦΕΚ Α' 65/6.5.2010.

<sup>463</sup> See Law 3847/2010, ΦΕΚ Α' 67/11.5.2010, sole article, paragraph 9. See the reactions in Parliament during the voting of this amendment, in the previous question X.3.

<sup>464</sup> See Minutes of the Greek Parliament, Plenary Session of the 7<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507_1.pdf).

<sup>465</sup> ΦΕΚ 113 Α'/13.07.2010.

<sup>466</sup> Article 94 of the same law.

<sup>467</sup> See previous question X.3.



This procedure was discussed in the Council of State decision on the First Memorandum (668/2012).<sup>468</sup> A point raised by the plaintiffs was the broad delegation to the Minister of Finance to represent the Greek state and to sign memoranda and loan agreements for the application of the rescue program. According to them, this delegation was invalid, because it was contrary to article 36 par. 2 of the Constitution. The majority of judges rejected the cause as inadmissible, as the attacked administrative acts were not connected to this provision, which referred to future conventions and agreements (point 30). A minority of two judges, on the contrary, accepted to consider the complaint. According to them, the Memorandum and the Loan Agreement were international conventions and entered the scope of article 36 Constitution. Thus, the President of the Republic was competent for their signature (article 36 par. 1) and they should have been ratified by law. They maintained, thus, that article 1 par. 4 of law 3845/2010 set rules that were contrary to the Constitution for the signature and ratification of international treaties and was invalid. Further, the MoUs, which had been signed and ratified according to article 36 Constitution, were invalid and so were their implementation provisions in the statute 3845/2010 (point 31).

Constitutional law scholars agree as to the unconstitutionality of this provision, which circumvents the constitutional procedure for the ratification of international conventions, since article 36 par. 3 Constitution explicitly forbids delegation of the power to ratify treaties by the legislator.<sup>469</sup>

## ROLE PARLIAMENT

### X.5

WHAT IS THE ACTUAL ROLE OF PARLIAMENT WITH REGARD TO THE ADOPTION/TRANSPPOSITION INTO THE NATIONAL LEGAL ORDER OF THE FINANCIAL ASSISTANCE INSTRUMENTS?

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<sup>468</sup> See Question X.9.

<sup>469</sup> Giorgos Kasimatis, «Οι συμφωνίες δανεισμού της Ελλάδας με την ΕΕ και το ΔΝΤ [The Loan Agreements between Greece and the EU and the IMF]», Athens Bar Association, Athens 2010, [www.constitutionalism.gr](http://www.constitutionalism.gr); Prokopis Pavlopoulos, «Παρατηρήσεις ως προς τη νομική φύση και τις έννομες συνέπειες του «Μνημονίου» [Comments on the legal nature and the legal consequences of the “Memorandum”]», [www.constitutionalism.gr](http://www.constitutionalism.gr): according to this author, the procedure of article 1 par. 4 of the statute could only apply to not simplified agreements. However, the latter regulate only technical or administrative matters or details concerning the application of already ratified international conventions. The MoUs obviously regulate matters which are more important. Cf. also Giorgos Katrougkalos, «Memoranda sunt servanda? Η συνταγματικότητα του ν. 3845/2010 και του Μνημονίου για τα μέτρα εφαρμογής των συμφωνιών με το ΔΝΤ, την ΕΕ και την ΕΚΤ», *Εφημ.ΔΔ*, 3 [2010], [www.constitutionalism.gr](http://www.constitutionalism.gr)

Generally, none of the financial assistance instruments has been ratified by a legal statute. Concerning the first rescue programme, the MoUs have been argued to be the political programme of the Government. They were attached to law 3845/2010, containing also some implementation measures, and voted through the normal procedure on the 6<sup>th</sup> of May 2010. The Loan Agreement has been argued to be an economic agreement for the financing of the country, not needing ratification according to constant constitutional practice. Yet, the First Loan Agreement was introduced to Parliament for ratification on the 4<sup>th</sup> of June 2010. However, this procedure was considered unnecessary by the competent parliamentary commission, since article 1 par. 4 of statute 3845/2010, as amended by the statute 3847/2010, provided that loan agreements are brought to Parliament only for discussion and information.<sup>470</sup>

Concerning the second rescue programme, argued to be a simplified (“staff level”) agreement,<sup>471</sup> the signature of the relevant texts had been preceded by statute 4046/2012, voted on the 12<sup>th</sup> of February 2012. The voting of this statute constituted their approval by Parliament and delegated their signature to the Minister of Finance, the President of the Bank of Greece and the President of the Hellenic Financial Stability Fund.

For the adoption and implementation of the financial assistance instruments the frequent use of **emergency instruments and procedures** has been justified by the Government as connected to the saving of the economy or the regular application of the rescue programmes.

The day before the actual signing of the Loan Agreement and the MoUs the Government issued an administrative act of legislative content, again approving the draft of the agreement and delegating to the Minister of Finance, the President of the Bank of Greece and the President of the Hellenic Financial Stability Fund its

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<sup>470</sup> See questions X.3 and X.4.

<sup>471</sup> Cf. the speech of Venizelos, Minister of Finance in the competent parliamentary committee on the 11<sup>th</sup> of February 2012, <http://www.hellenicparliament.gr/Vouli-ton-Ellinon/ToKtirio/Fotografiko-Archeio/#a9f345a6-5cad-40e9-b36a-0a416f376a8c>

signature. After its signature, the Minister should introduce the agreement to Parliament “for briefing”.<sup>472</sup>

Article 44, paragraph 1, of the Greek Constitution declares:

“1. Under extraordinary circumstances of an urgent and unforeseeable need, the President of the Republic may, upon the proposal of the Cabinet, issue acts of legislative content. Such acts shall be submitted to Parliament for ratification, as specified in the provisions of article 72 paragraph 1, within forty days of their issuance or within forty days from the convocation of a parliamentary session. Should such acts not be submitted to Parliament within the above time-limits or if they should not be ratified by Parliament within three months of their submission, they will henceforth cease to be in force.”<sup>473</sup>

The act was voted in Parliament on the 20<sup>th</sup> of March 2012.<sup>474</sup> Thus, in this way, the Parliament retroactively voted the approval of the agreement and the delegation to the Minister to sign it, *without however ratifying the agreement*. The voting took place after the actual signing of the agreement.

The same procedure was followed for the Amendment of the Agreement, which was finally voted in Parliament on the 14<sup>th</sup> of January 2013.<sup>475</sup> In the same draft law, except from the act approving the second rescue package, the Government proposed the ratification of another five non-related acts of legislative content, as well as certain other provisions, not related among them. Some of the acts and provisions of the statute imposed new austerity measures. The emergency procedure was employed, implying a one-day discussion in the competent committee of the Parliament and one day of discussion and voting in the Plenary Session (3 days between the first submission and the final vote).<sup>476</sup> The use of a legislative decree and its ratification through an emergency procedure provoked strong reactions by the parties of the

<sup>472</sup> ΠΙΝΠ ΦΕΚ 55 Α'/14.03.2012, articles 1 and 2.

<sup>473</sup> Source of Translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>474</sup> See Minutes of the Greek Parliament, Plenary Session of the 20<sup>th</sup> of March 2012. See also Law 4060/2012, ΦΕΚ 65 Α'/22.03.2012, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=6f964116-22f9-42cf-b3c0-72c6ebe763c2](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=6f964116-22f9-42cf-b3c0-72c6ebe763c2)

<sup>475</sup> See Law 4111/2013, ΦΕΚ 18 Α'/25.01.2013, ratifying the act ΠΙΝΠ ΦΕΚ 240 Α'/12.12.2012.

<sup>476</sup> Cf. *infra*. The MPs complained that the draft had been submitted on Friday night, the Parliament committee met on Saturday and they had to discuss and vote the relevant agreements, together with the rest of the draft, more than 300 pages, on Monday.

opposition. They accused the Government of degrading the role of the Parliament and of circumventing democratic procedures, the Constitution and the Standing Orders. Especially concerning the circumvention of the *procedure for the ratification* of the agreement, the strongest reactions came from the MPs of AN.EL., who stressed its unconstitutionality.<sup>477</sup> The use of this atypical procedure allowed the rebuttal of arguments concerning the application of article 28 of the Constitution.<sup>478</sup>

Even when legislative decrees have not been employed, emergency procedures were still mobilized by the Government. It is illustrative that both the statutes 3845/2010 and 4046/2012, introducing for the first time in Parliament the MoUs for the first and the second rescue package respectively, were discussed following the emergency procedure of articles 76 par. 4 of the Constitution and 109 of the Standing Orders of Parliament. So was statute 4050/2012, introducing the details of the PSI, where the Government invoked the “national responsibility” to proceed rapidly to the procedure.<sup>479</sup> Article 76 par. 4 declares: “4. A Bill or law proposal designated by the Government as very urgent shall be introduced for voting after a limited debate in one sitting, by the Plenum or by the Section of article 71, as provided by the Standing Orders of Parliament.”<sup>480</sup> According to article 109 of the Standing Orders, the competent Parliamentary Committee, if it accepts the bill’s urgent character, discusses and votes on it in one sitting. Therefore, no more than three days separated the submission and voting of the relevant statutes.<sup>481</sup>

The mobilization of the emergency procedure has caused strong reactions by the opposition parties. MPs have constantly complained about not having the time to read the discussed texts, which are long and contain many technical details. Moreover, the

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<sup>477</sup> See Minutes of the Greek Parliament, Plenary Session of the 14<sup>th</sup> of January 2013, available at [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=3cde3e1c-d018-4244-af66-c69249f657f6](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=3cde3e1c-d018-4244-af66-c69249f657f6).

<sup>478</sup> See Minutes of the Greek Parliament, Plenary Session of the 14<sup>th</sup> of January 2013, cited above, speech by Vouridis, p. 6397.

<sup>479</sup> See Minutes of the Greek Parliament, Plenary Session of the 23<sup>rd</sup> of February 2012, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120223.pdf>, speech by Protopoulos.

<sup>480</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>481</sup> Cf., on the statute 3845/2010, [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5); on the statute 4046/2012, [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=d9259d98-e056-443e-8cc8-761522dc6f88](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=d9259d98-e056-443e-8cc8-761522dc6f88).

opposition parties and independent MPs have complained about not having the time to express the opinion in the 10 hours provided for discussion by article 109 of the Standing Orders.<sup>482</sup> They generally accused the Government of artificially creating the urgent character of these measures in order to silence parliamentary opposition. MPs of SY.RIZ.A. have referred to a “dictatorship of the markets”.<sup>483</sup> Even a Minister of the PA.SO.K. Government of 2010 admitted that he had not had the time to read the First Memorandum, something that caused a lot of criticism inside and outside the Parliament.<sup>484</sup> The Government has responded to these accusations by repeating the economic emergency in which the country is and by invoking the political and moral responsibility of the Government as opposed to the procedural issues raised by the opposition parties. On the 12<sup>th</sup> of February, the Minister of Finance (and professor of Constitutional law) Venizelos argued that this procedure has been commonly used for very important issues that have been discussed for many days in the media and of which the MPs should be aware.<sup>485</sup> The complaints of the opposing parties have had as only consequence the nominal ballot at the end of the procedure, since it is the Government, with the approval of the competent Parliamentary Committee, who decides on the urgent character of the bill.<sup>486</sup>

The role of Parliament is further degraded by the common practice of voting the relevant issues in one article. This actually equalizes the general discussion on the statute to its article by article discussion and imposes the acceptance or rejection of

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<sup>482</sup> In the voting of the Statute 4046/2012, because of the numerous independent MPs, it was agreed that only two of them, chosen by lot, would speak. Note that the independent MPs came from various political parties. See Minutes of the Greek Parliament, Plenary Session of the 12<sup>th</sup> of February 2012, <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120212.pdf>.

See also the complaints by various MPs in the parliamentary debates on the PSI, Minutes of the Greek Parliament, Plenary Session of the 23<sup>rd</sup> of February 2012, available at <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20120223.pdf>

See also Minutes of the Greek Parliament, Plenary Session of the 14<sup>th</sup> of January 2013, cited above, the complaints expressed by Lafazanis, who proposed an expanding interpretation of the relevant Standing Order article, so that more speakers from each party have the possibility to express their opinion in the discussion.

<sup>483</sup> See especially the Minutes of the Greek Parliament on the 12<sup>th</sup> of February 2012, cited above.

<sup>484</sup> <http://www.skai.gr/news/politics/article/192569/m-hrusohoidis-den-diavasa-to-mnimonio/>

<sup>485</sup> See Minutes of the Greek Parliament, Plenary Session of the 12<sup>th</sup> of February 2012, cited above, p 4574. There is a more general tension to substitute parliamentary debates by the media: see also the speech by Dendias (N.D.) referring to the opinions of an independent MP who had not had the time to participate in the discussion, Kouvelis, as they were known to him by the media (p. 4611 f.).

<sup>486</sup> See *ibid.* In this sitting, the independent MP Fotis Kouvelis (later President of DIM.AR.) complained to the President of the Parliament for not suggesting the employment of the normal procedure. He argued that this possibility of the President is customary. Lafazanis from SY.RIZ.A., who had participated in the relevant parliamentary committee, argued that there had been no voting concerning the emergency procedure.

the relevant text as a whole. This practice, oriented to avoiding disagreements internal to the Governing parties, is connected to the partisan discipline imposed by the Presidents of the parties before the voting of the relevant statutes. Partisan discipline is a more general characteristic of the Greek parliamentary regime. During the voting of the financial assistance instruments it has led to the suppression of many MPs of the governing parties from their parliamentary groups. The parties of the opposition have argued that partisan discipline violates article 60 of the Constitution, ensuring the freedom of conscience of deputies.<sup>487</sup> To these “informal” constraints to parliamentary discussion, one should add the frequent departure of the discussion from the financial assistance instruments themselves, since, usually, the voting of the relevant statutes takes place during or after violent protests and terrorist events.<sup>488</sup>

The fact that there had been no extended discussion in Parliament raised a lot of suspicion and poisoned the national debate on some financial assistance instruments. In many cases, MPs have been informed about the content of these instruments, especially the First Loan Agreement, by international media (*Financial Times* or *The Guardian*).<sup>489</sup> Finally, the MPs of SY.RIZ.A. accused the Government that there had been some errors in the translation of the MoUs as annexed to law 3845/2010. These errors had resulted in the omission in the Greek version of certain austerity provisions which existed in the English original, as published on the IMF website. The Prime Minister denied the existence of these translation errors.<sup>490</sup>

## ADJUSTMENT REQUIREMENTS

### X.6

DESCRIBE THE RELEVANT CONTENT OF THE FINANCIAL ASSISTANCE INSTRUMENTS.

The financial assistance instruments of the **first bailout programme** for Greece are a Loan Facility Agreement between Greece and the Euro area Member States (80

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<sup>487</sup> See Minutes of the Greek Parliament, Plenary Sessions of the 6<sup>th</sup> of May 2010 and of the 12<sup>th</sup> of February 2012, cited above.

<sup>488</sup> Violent protest of the 5<sup>th</sup> of May 2010, violent protest of the 12<sup>th</sup> of February 2012, terrorist attack to the Offices of N.D. on the 14<sup>th</sup> of January 2013.

<sup>489</sup> See the debates on the question raised by SY.RIZ.A. on the content of the First Loan Facility Agreement, Minutes of the Greek Parliament, Plenary Session of the 25<sup>th</sup> of June 2010, <http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100625.pdf>, p. 9285 f.

<sup>490</sup> Ibid.

bn),<sup>491</sup> a Stand-by Arrangement between Greece and the IMF (30 bn)<sup>492</sup> and an annex containing three Memoranda of Understanding.<sup>493</sup> The MoUs “are living documents and are modified at every programme review, based on implementation of previous commitments and identification of new ones.”<sup>494</sup> They are drafted jointly by the “troika” and the Greek authorities. In 2010, the MoUs have been accompanied by letters of intent written by the Minister of Finance and the President of the Bank of Greece, expressing their commitment to full compliance with the programme. (An Intercreditor Agreement regulates the relationship between creditors). The policies described in the MoUs are subsequently adopted in Council Decisions, after recommendation of the Commission, under the excessive deficit procedure of article 126 TFEU.

The Memorandum of Economic and Financial Policies describes the recent developments leading to the burst of the Greek debt crisis, sets the general objectives of the programme: to correct fiscal and external imbalances and restore confidence and competitiveness after an adjustment period. In its third part, the MoU defines specific economic policies in order to achieve the objectives declared in the second part. These are important tax increases including housing taxation, wage and pension cuts, reform of the social security and pension system, bank supervision and structural reforms in the public sector and in the job market, loosening labour law protection. Among the specific austerity measures provided by the MoU are the elimination of the 13<sup>th</sup> and 14<sup>th</sup> pensions and salaries in the public sector, while protecting the lowest incomes; the replacement of only 20% of the retiring employees in the public sector; the financial consolidation of local authorities; reforms in the health sector (accounting and management); cuts in the discretionary public spending; changes in the budgetary process (with the technical support of the IMF and the Commission); structural reforms concerning the Greek Statistics Authority; the creation of a Financial Stability Fund for the banking sector; modernization of the administration (reorganization of the recruitment procedures, introduction of a simplified remuneration system, independent and external functional review); flexibilization of

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<sup>491</sup> In English: <http://www.irishstatutebook.ie/2010/en/act/pub/0007/sched2.html>

<sup>492</sup> Cf. <https://www.imf.org/external/pubs/ft/scr/2010/cr10111.pdf> and <https://www.imf.org/external/pubs/ft/scr/2010/cr10110.pdf>

<sup>493</sup> Cf. <https://www.imf.org/external/pubs/ft/scr/2010/cr10111.pdf>

<sup>494</sup> [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2014/pdf/ocp192\\_en.pdf](http://ec.europa.eu/economy_finance/publications/occasional_paper/2014/pdf/ocp192_en.pdf), p. 9.

labour protection and reform of the protective framework for wage bargaining; opening up of restricted professions; tariff increases in public transportation. The MoU sets very detailed quantitative targets (the impact of the measures on the budget) and a specific time-line for their implementation. An explanation of every measure along with its “logic” and its aim was also included in the annex of the agreement. At the end of the annex there was a schedule of all the actions needed to be taken by the government or the legislator along with the deadline for their implementation. The text also provides for the review of the implementation of the programme on a three-month basis.

The Technical Memorandum of Understanding contains definitions of the technical terms of the first MoU and defines the methods and criteria for monitoring the implementation of the programme.

Finally, the Memorandum of Understanding on Specific Economic Policy Conditionality declares that “[t]he quarterly disbursements of bilateral financial assistance from euro area Member States will be subject to quarterly reviews of conditionality for the duration of the arrangement.” It also imposes the consultation of the IMF, Commission and ECB, and their information considering government policies covered by the programme. The authorities provide a “compliance report” prior to the disbursement of the loan instalments. Then the text enumerates the specific legislative and administrative measures that should be taken on a three month period basis (until the end of 2011) in each of the economic policies mentioned in first Memorandum (tax increases, structural reforms etc.), as well as their expected financial impact. It also includes more specific provisions concerning the data that should be provided by the Greek authorities and the time-line for their provision, and the structure and functioning of the Financial Stability Fund.

The First Loan Agreement declares in its Preamble: “Measures concerning the coordination and surveillance of the budgetary discipline of Greece and setting out economic policy guidelines for Greece will be defined in a Council decision on the basis of Article 126(9) and 136 of the Treaty on the Functioning of the European Union (the “TFEU”), and the support granted to Greece is made dependent on compliance by Greece with measures consistent with such decision and laid down in



[the Memorandum] ... (as may amended and/or supplemented from time to time).” (para 6). The release of the first installment was conditional on the signing of the MoUs and on the entering into force of the agreement. The release of following installments was defined conditional on the favorable decision of the Eurozone partners, after consultation of the ECB and the Commission (following an evaluation report by the “troika”, as determined in the MoUs). The terms that provoked public discussions were:

- The possibility for the lenders to assign or transfer their rights and obligations to third parties, under certain conditions (art. 2(4)-(6)), while such a possibility is excluded for the Greek state (art. 2). See also art. 13 (information of the Commission, no need of prior consent of other lenders).
- The fact that the lenders’ obligations have been defined as subject to the reception by the Commission of the legal opinion which is satisfactory to the lenders (concerning the conformity of the programme to national law). This opinion is issued by Legal Advisors to the State and its specific form and content is described in Annex 4 (a model-opinion is provided) (art. 3(4)(a)). The Greek state should confirm the opinion (art. 3(5)(a), art. 4(2)). A similar opinion is needed in order for the agreement to enter into force (art. 15(1)(a)).
- The fact that the lenders’ obligations have been defined as subject to “the Commission having received confirmation from the Lenders (i) that they are satisfied that the conditions to drawdown under this Agreement are satisfied, and (ii) of the terms on which they are willing to make a Loan to the Borrower;” (art. 3 (4)(e)).
- The guarantees to the creditors provided in article 4, especially the obligation not to undertake securities on public property and not to grant priority to any other lender.
- The high interest rates and the service fee payable to all creditors in order to cover operational costs under article 5.
- The fact that any prepayment shall be made together with accrued interest on the amount prepaid and subject to the Borrower indemnifying Lenders in respect of any costs, expenses or fees they suffer (including broken funding and broken hedging costs) as a consequence of such prepayment. Accrued

interest shall be payable at the Interest Rate determined for the relevant period; (art. 6)

- Article 7(6) declares: “If the Borrower shall pay an amount in relation to any of the Loans which is less than the total amount due and payable under this Agreement, the Borrower hereby waives any rights it may have to make any appropriation of the amount so paid as to the amounts due.”
- The matter that caused the most of contention is the application of English law and the jurisdiction of the ECJ. Article 14 also declares that the enforcement of the agreement is a competence of Greek courts and that Greece “irrevocably and unconditionally waives all immunity to which it is or may become entitled, in respect of itself or its assets, from legal proceedings in relation to this Agreement, including, without limitation, immunity from suit, judgement or other order, from attachment, arrest or injunction prior to judgement, and from execution and enforcement against its assets to the extent not prohibited by mandatory law.” (art. 14(5)).

The agreement further provides that, in case the ECJ or a national constitutional court declares the agreement illegal, though the agreement is immediately and irrevocably cancelled, it does not accelerate the payments of the outstanding loans (art. 6(6)). Moreover, the lenders may cancel the loan and declare the disbursed amounts immediately due and payable in cases where the borrower is in default to comply with its obligations, included the case where a national court declares the agreement illegal (art. 8). In such a case the Greek state must reimburse all interest rates. The Greek state must generally provide information on the application of the programme and the Commission has control and audit rights in relation to the management of the loan (art. 9-10)

A similar format and content was followed for the **second economic adjustment programme**. The undisbursed tranches of the previous loan, as well as a new 130 bn aid was provided by the EFSF (in financial assistance or in other facilities) and the IMF.<sup>495</sup> This time, the ‘Master Financial Assistance Facility’ provides for the jurisdiction of Luxembourgish courts, which has been set for the benefit of the EFSF

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<sup>495</sup> See [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/greek\\_loan\\_facility/](http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/)

only (art. 15(2)).<sup>496</sup> The parties gave a lot of importance to the non-complication of the programme implementation by Greek national law: according to article 4(3)(g), in order to provide financial assistance, the EFSF must be “satisfied that no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which may prejudice the Beneficiary Member State's performance of the MoU, this Agreement or the transactions contemplated herein ... or which, if adversely determined, would be reasonably likely to have a material adverse effect on the Beneficiary Member State's ability to perform its obligations ... have been started or threatened in writing against the Beneficiary Member State;”<sup>497</sup> Under paragraph 10 of the same article, in case the EFSF has no access to market funding, it is not under an obligation to disburse any instalment of the loan. The Hellenic Financial Stability Fund (HFSF) irrevocably and unconditionally guarantees the payment of the loan if the Greek state does not pay, or if the loan becomes “unenforceable, invalid or illegal” (art. 13). Article 5(4) declares that, under request of the EFSF, the HFSF grants to the EFSF valid first ranking security over all of the HFSF's rights and interests in and in relation to the Greek Bank Instruments.

The second adjustment programme was accompanied by the voluntary participation of private bond owners (PSI), who exchanged their bonds for new ones at 31.5% of their nominal value, governed by English law, and having a maturity of up to 30 years.<sup>498</sup> The procedure was completed in spring 2012 and led to the exchange of 197 bn of bonds.<sup>499</sup> An additional 15% of the nominal value of bonds was paid by the Greek state to the bond owners in notes. For the costs of the PSI, 35.5 bn of the EFSF loan was used. Another 35 bn was used in order to put in place a buy-back scheme of Greek debt instruments from national central banks, in order to avoid default because of the PSI. Finally, another 23 bn was used by the Hellenic Financial Stability Fund in order to ensure the stability of the banking sector. For each of these amounts, a separate agreement, with separate maturity period and interest rate, was signed.<sup>500</sup> All this was agreed in a MoU, followed by letters of intent by the Presidents of the two

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<sup>496</sup> [http://www.efsf.europa.eu/attachments/efsf\\_greece\\_fafa.pdf](http://www.efsf.europa.eu/attachments/efsf_greece_fafa.pdf)

<sup>497</sup> See also art. 5(1) and 5(2)(e).

<sup>498</sup> Cf. the relevant MoU [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-03-01-greece-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-03-01-greece-mou_en.pdf)

<sup>499</sup> [http://ec.europa.eu/economy\\_finance/assistance\\_eu\\_ms/greek\\_loan\\_facility/](http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/)

<sup>500</sup> Cf. the relevant MoU, under B., [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-03-01-greece-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-03-01-greece-mou_en.pdf)

most important (at the time) political parties, PA.SO.K. and N.D.<sup>501</sup> The rest of the political parties were pressured to provide such letters as well, but refused.

After the 2015 elections and the formation of the SY.RIZ.A.-AN.EL. government coalition, the Minister of Finance refused to cooperate with the “troika” and required an institutional interlocutor. In the Eurogroup of February 20, 2015, Greece asked for an extension of the Master Financial Assistance Facility Agreement, in order to obtain the remaining tranche of 7.2 bn. and time for the negotiation of a new arrangement between Greece and its creditors.<sup>502</sup> Negotiations are still ongoing.

## MISSIONS

### X.7

WHAT LEGAL CHANGES, IF ANY, HAD TO BE MADE TO ACCOMMODATE ‘TROIKA’ REVIEW MISSIONS, POST-PROGRAMME SURVEILLANCE MISSIONS, ETC?

No specific legal changes had to be made to accommodate “troika” review missions. Indeed, the role of the “troika”, defined in the financial assistance instruments, has been informally accommodated by the Greek legal order, constituting a new “turning point” of the Greek political regime, without the need of constitutional or even legal change.<sup>503</sup> It could be mentioned to this respect, however, that statute 3845/2010, implementing the support mechanism, contains broad authorizations to the executive and especially to the Minister of Finance and other competent Ministers to take the measures required for the application of the programme.<sup>504</sup> This is related to the “troika” missions, since it is the executive who participates in meetings with the “troika” and negotiates existing and future policies of the Government.<sup>505</sup> The opposition parties and especially the MPs of LA.O.S. objected to this broad authorization in the relevant debates and did not vote this article, though they voted in

<sup>501</sup> [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-03-01-greece-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-03-01-greece-mou_en.pdf)

<sup>502</sup> Cf. the Eurogroup statement on Greece: <http://www.consilium.europa.eu/fr/press/press-releases/2015/02/150220-eurogroup-statement-greece/>

<sup>503</sup> See Giannis Drosos, «Το ‘Μνημόνιο’ ως σημείο στροφής του πολιτεύματος [The ‘Memorandum’ as a turning point of the regime]», [www.constitutionalism.gr](http://www.constitutionalism.gr), published in *The Book’s Journal*, Vol. 6, April 2011, 42.

<sup>504</sup> See Article 2 of the Law 3845/2010.

<sup>505</sup> See Lina Papadopoulou, “Can Constitutional Rules, Even if ‘Golden’, Tame Greek Public Debt?”, in Maurice Adams, Federico Fabbrini and Pierre Larouche (eds), *The Constitutionalization of European Budgetary Constraints*, Oxford: Hart Publishing, 2014, section: “Executive Unbound?”

favour of the MoUs.<sup>506</sup> The constitutionality of this provision has been contested by constitutional law scholars. Article 43 of the Constitution delimits the delegation of powers to the executive. It declares:

“1. The President of the Republic shall issue the decrees necessary for the execution of statutes; he may never suspend the application of laws nor exempt anyone from their execution.

2. The issuance of general regulatory decrees, by virtue of special delegation granted by statute and within the limits of such delegation, shall be permitted on the proposal of the competent Minister. Delegation for the purpose of issuing regulatory acts by other administrative organs shall be permitted in cases concerning the regulation of more specific matters or matters of local interest or of a technical and detailed nature.

\* 3. [Paragraph 3 repealed by the 1986 Amendment].

4. By virtue of statutes passed by the Plenum of the Parliament, delegation may be given for the issuance of general regulatory decrees for the regulation of matters specified by such statutes in a broad framework. These statutes shall set out the general principles and directives of the regulation to be followed and shall set time-limits within which the delegation must be used.

5. Matters which, as specified in article 72 paragraph 1, belong to the competence of the plenary session of the Parliament, cannot be the object of delegation as specified in the preceding paragraph.”<sup>507</sup>

The Memorandum, affecting broad domains of governmental policy, cannot be considered “more specific matters or matters of local interest or of a technical and detailed nature” as par. 2 imposes (since the delegation is not made to the President of the Republic; note that presidential decrees require a more complicated procedure, including an opinion of the Council of State). Nor is statute 3845/2010 valid as a “framework-statute”, as defined in par. 4, because according to constitutional law scholars, the formal conditions for such a statute to be valid are not fulfilled.<sup>508</sup>

<sup>506</sup> Cf. Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506_1.pdf) p. 6788 f..

<sup>507</sup> Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>508</sup> See for example Prokopis Pavlopoulos, «Παρατηρήσεις ως προς τη νομική φύση και τις έννομες συνέπειες του «Μνημονίου» [Comments on the legal nature and the legal consequences of the “Memorandum”],

Moreover, the same statute, in its article 1 par. 4 delegates the Minister of Finance to sign any memorandum of understanding and agreement for the application of the economic adjustment programme. The same delegation is reiterated in article 93 of law 3862/2010. On this issue and the reactions it provoked, see the previous question X.6.

The MoUs and the “troika” recommendations are invoked in order to justify virtually all measures having economic and fiscal consequences proposed by the Government. They are also invoked for the justification of the use of emergency procedures and instruments.<sup>509</sup> In general, the “troika” review missions have not been welcomed by the public opinion. At least during the first review missions of the “troika”, the trade unions were organising massive protests and rallies in the centre of Athens. Newspapers have been frequently reporting on incidents that involved Ministers and members of the missions that demonstrated –in their view- the arrogance and/or disrespect of the “technocrats” in charge of the programme.<sup>510</sup> In Parliament, the loss of national sovereignty, the loss of legislative autonomy, the degradation of the role of Parliament caused by the “troika” review missions, as well as the lack of political responsibility and parliamentary scrutiny of the members of the “troika”, are constant

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[www.constitutionalism.gr](http://www.constitutionalism.gr); Giorgos Kasimatis, «Οι συμφωνίες δανεισμού της Ελλάδας με την ΕΕ και το ΔΝΤ [The Loan Agreements between Greece and the EU and the IMF]», Athens Bar Association, Athens 2010, [www.constitutionalism.gr](http://www.constitutionalism.gr); Kostas Chrysogonos, «Η χαμένη τιμή της Ελληνικής Δημοκρατίας. Ο μηχανισμός «στήριξης της ελληνικής οικονομίας» από την οπτική της εθνικής κυριαρχίας και της δημοκρατικής αρχής [The lost honour of the Hellenic Republic. The “rescue” mechanism of the Greek economy from the point of view of national sovereignty and of the principle of democracy]», *NoB* 58 [2010] p. 1356; Giorgos Katrougkalos, «Memoranda sunt servanda? Η συνταγματικότητα του ν. 3845/2010 και του Μνημονίου για τα μέτρα εφαρμογής των συμφωνιών με το ΔΝΤ, την ΕΕ και την ΕΚΤ», *Εφημερίδα*, 3 [2010], [www.constitutionalism.gr](http://www.constitutionalism.gr). The authors observe that generally frameworks consider homogenous subject matters, specifically defined objectives and define the time limit of the delegation. None of these conditions is fulfilled by the statute at hand. Moreover, the statute provides the possibility to the Ministers to sub-delegate other authorities, which is forbidden by the Constitution. Finally, it is generally accepted that, in order for a statute to be a framework, it must be introduced to Parliament as such. These observations are valid, always according to the scholars cited above, even if one considers that the delegations enter the scope of article 78 par. 5 of the Constitution, which does not introduce a new procedure for framework statutes. This provision declares: “It shall, exceptionally, be permitted to impose by means of delegation granted in framework by statute, balancing or counteractive charges or duties, and to impose, within the framework of the country’s international relations to economic organizations, economic measures or measures concerning the safeguarding of the country’s foreign exchange position.” Source of translation: <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

<sup>509</sup> These measures are usually presented as required by the “troika” in order for it to issue its report on the application of the programme. See for example in.gr: “The preconditions are introduced to Parliament next week”, 25<sup>th</sup> of July 2014, <http://news.in.gr/economy/article/?aid=1231337007>

<sup>510</sup> See e.g. Ethnos, “Provoqing behaviour by the troika members: obviously new fiscal measures will be taken” [in Greek], <http://www.ethnos.gr/article.asp?catid=22770&subid=2&pubid=63911564>.

sources of contention. Academics also agree on the loss of national sovereignty caused by the “troika” review missions, others accepting that Greece had already agreed to it with its participation in the Eurozone, while others strongly objecting to it.<sup>511</sup>

## CASE LAW INTERNATIONAL INSTRUMENTS

X.8

HAVE THERE BEEN DIRECT OR INDIRECT LEGAL CHALLENGES AGAINST THE FINANCIAL ASSISTANCE INSTRUMENTS BEFORE A NATIONAL (CONSTITUTIONAL) COURT?

There is no constitutional Court in Greece. Review of constitutionality is diffusely exercised by all the Courts, but actually concentrated into the Supreme courts, *Areios Pagos* (civil and criminal jurisdiction), the Council of State (administrative jurisdiction) and the Court of Audit. The Council of State’s case law is more important in the constitutional review of legislation, especially because of the possibility of direct demand of annulment of general administrative acts executing legal provisions. It is under this procedure that most matters of constitutionality of the financial assistance instruments have incidentally arisen. Note that the claimants cannot actually seek to annul any piece of legislation directly, but they can ask the Court to annul the specific administrative decisions and declare that their legal basis does not produce any legal effect in this specific case because it is unconstitutional (it would cause an *inter partes* and not an *erga omnes* effect). However, an eventual unconstitutionality decision would be important for the general application of the statute as well, as it would create a precedent, which, albeit not legally binding (in Greece there is no *stare decisis* rule), would be likely to influence subsequent case law.

The argumentation of the parties is accessible only through the judicial reasoning, except from rare cases where it is published. The Council of State in many cases refers to the argument to which it responds.

**Decision 668/2012 by the Council of State Plenum, 20 February 2012<sup>512</sup>**

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<sup>511</sup> See Chrysogonos, *op.cit.*, Kasimatis, *op.cit.*, Giannakopoulos, *op.cit.*

<sup>512</sup> <http://www.dsanet.gr/Epikairothta/Nomologia/668.htm>

1. Name of Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: Athens Bar Association (DSA) and several individual lawyers, the Supreme Administration of the Public Employees' Unions (ADEDY), the Greek Confederation of the Civil Pensioners (POPS), the Journalists' Union (ESHE), the Technical Chamber of Greece (TEE), the Federation of Workers' Executives and many other trade union associations, together with private individuals (32 applicants in total) **against** the Minister of Finance and the Minister of Employment and Social Security.
3. Type of action/procedure: Action for annulment of several (regulatory, general and individual) administrative decisions legally based on law 3845/2010, implementing the measures under the Memorandum of Understanding. Incidentally, the claimants contest the constitutionality of statute 3845/2010, as a statute ratifying the MoUs, as well as the austerity measures included in this statute.
4. Admissibility issues: Many of the requests were declared inadmissible, either because it was judged that the decisions attacked were enacted by private moral persons on which the Court was not competent (point 5), or because the attacked decisions were considered as not introducing a new rule and thus not being enforceable (point 15-6), or because the attacked decisions did not create legal consequences affecting personally the claimants, since they only contained directions to the competent authorities for the application of the relevant provisions (point 17), or because the plaintiffs-trade unions did not have the necessary legal interest in bringing the proceeding as far as it regards certain acts, since they did not affect their members (point 25 and 26). Some plaintiffs asked the direct examination of the relevant legal provisions, since, according to them, they were directly applicable without needing the intervention of executive acts. They invoked article 20 par. 1 of the Constitution (access to court) and article 6 par. 1 of the ECHR. The Court rejected their claims as inadmissible, since the statutes were regulating issues of legislative nature and needed execution through administrative acts (point 18). –



For the rest, the legal interest of the trade unions and associations was accepted by the Court (points 21 f.), that decided to issue a judgment even on matters of the competence of ordinary administrative courts (point 20).

5. Legally relevant factual situation: The attacked administrative acts were imposing cuts on the revenues (wages and pensions) of the plaintiffs in application of statute 3845/2010 (point 3).
6. Legal questions: Voting procedure of the statute 3845/2010, containing measures for the implementation of the support mechanism; delegation to the Minister of Finance to sign memorandums of understanding, conventions and loan agreements for the application of the economic adjustment programme; procedural and substantial conditions for according restrictions to the exercise of national sovereignty – applicability in the case at hand; violation of constitutional rights and principles and of ECHR rights (\*\*note that fundamental rights claims were addressed against *national measures implementing the MoU* policies and included in specific articles of law 3845/2010. The MoU was attached to law 3845/2010); delegation to the executive and conditions set by article 43 par. 2 of the Constitution (\*\*note that this issue concerns the *national measures implementing the MoU*)
7. Arguments of the parties: The recourse of the plaintiffs is published by the Athens Bar Association.<sup>513</sup> The plaintiffs alleged that: statute 3845/2010, ratifying the MoUs and recognizing constitutional competences to international organizations, should have been voted under article 28 par. 2 of the Constitution (qualified majority of 180 deputies); that the delegation to the Minister of Finance to sign memoranda and agreements violated articles 36 par. 2 and 28 par. 1 of the Constitution on the ratification of international treaties; that the measures were disproportionately infringing article 1 of the First Additional Protocol ECHR; that the measures were violating articles 22 par. 2 and 23 of the Constitution (collective bargaining and collective labour rights), International Labour Conventions ratified by

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<sup>513</sup> <http://documents.scribd.com/s3.amazonaws.com/docs/5i7vlw898g1ob0k3.pdf>

Greece, as well as article 8 of the International Covenant for Economic, Social and Cultural Rights, in combination with the principle of proportionality; that the measures were contrary to article 2 par. 1 (human dignity), 4 par. 1 (principle of equality) and par. 5 (equality before public charges), 5 par. 1 (economic liberty), 17 par. 1 (right to property) and 25 par. 1 (principle of proportionality) of the Constitution and the legitimate expectations of the plaintiffs. The plaintiffs generally reproached the general and automatic character of the measures, their retroactive force in some cases, the fact that they had a permanent nature, the fact that it was not sufficiently established that they serve the general interest and the fact that they were putting in danger the elementary conditions of decent life of the affected persons. They alleged that the delegation to the executive included in law 3845/2010 did not respect the conditions of article 43 par. 2 of the Constitution, since it concerned the restriction of fundamental social rights. Finally, they demanded a preliminary ruling by the ECJ on the compatibility of the national measures and of the Council Decision 2010/320/EU to European law.<sup>514</sup>

8. Conclusion and reasoning of the court: The reasoning of the Court starts with a very long exposition of the European treaties and of the process of European integration of the country until the economic crisis, as well as of the relevant international conventions (especially IMF). The examination of the arguments of the plaintiffs only starts at point 27. Concerning the violation of **article 28 par. 2** of the Constitution, the Court replied that, even though it was a result of negotiations and agreement between Greece and certain international authorities, the Memorandum did not constitute an international treaty binding the Greek Government, but only the program of the Government for the confrontation of the economic problems of the country. Therefore, as a political program, the Memorandum did not result in the transfer of competences to international authorities, it did

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<sup>514</sup> This was demanded in case the Court considered that the obligations assumed with the statute 3845/2010 were already an obligation under EU law, and especially by virtue of the Council Decision. The Court did not respond.

not create legal norms and it did not possess a direct effect in the domestic legal order, given that, for its application, the constitutionally competent organs had to enact some implementing measures (point 28) [minority opinions].<sup>515</sup> Concerning the **obligation of ratification** of international treaties, the Court replied that the delegation to the Minister of Finance was not connected to the issuing of the contested administrative acts and rejected the claim as inadmissible (point 30-1).<sup>516</sup> The Court also examined the eventual restriction to the exercise of national sovereignty, which would require the procedural and substantial conditions of **article 28 par. 3 of the Constitution**. According to the majority, even if this article applies to non-territorial concessions, the MoUs do not have legal consequences, thus they cannot result to such restrictions (point 32) [minority opinions].<sup>517</sup> Concerning the disproportionate violation of their **right to property**, guaranteed by the First Additional Protocol to the ECHR and by article 17 par. 1 of the Constitution, as well as of the principle of **legitimate expectations**, the Court referring to the Strasbourg case law, stated that, even though the right to an income and to a pension is protected by the rules and principles invoked, these provisions do not nevertheless guarantee any right to a certain income or a certain pension, except of the case where the decent way of living of the citizens is at risk. Thus, the legislator can adjust the amount of pension according to the circumstances and can impose, through general legislative or administrative rules, restrictions to pension rights, when it is justified by a general public interest, such as the sustainability of social security funds or the facing of a particularly serious financial problem. Judicial review on the assessment of the public interest or on the policy choices of the legislator for its achievement is marginal. The restriction to property must be appropriate, necessary and not disproportional to the interest pursued. The Court engaged in a proportionality test and concluded that the cuts in the salary, the

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<sup>515</sup> See question X.3 on the status of the financial assistance instruments.

<sup>516</sup> See question X.3 on the status of the financial assistance instruments for the minority opinions.

<sup>517</sup> See question X.3 on the status of the financial assistance instruments.

allowances and the pensions of the public sector employees were justified by the compelling public interest of consolidation of the public finances, which was also the common interest of the Eurozone member-states. The judges considered that these cuts were not manifestly inappropriate or unnecessary for this purpose, according to the reasonable appreciation of the legislator. The measures were part of a general economic programme planned by the Government for the confrontation of the present economic crisis, thus the complaints of the applicants for the lack of any study concerning less onerous measures were rejected. In addition, the contested measures did not result in an elimination of the rights invoked but only to a restriction to their protection, respecting the **principle of proportionality** (art. 25 par. 1) (point 35). Concerning the alleged violation of the right to the respect of **human dignity** (article 2 par. 1 of the Constitution), the Court rejected the claims of the plaintiffs because they did not invoke or prove any risk for their decent way of living caused by the questioned measures, which would constitute an offense to human dignity (point 35) [minority opinions]. Concerning the **equality before public charges**, and the principle of **national and social solidarity** (article 25 par. 4 of the Constitution), the Court found that these principles were not violated by the 'fiscal amnesty', instituted by law 3888/2010, which stipulated the conclusion of certain fiscal differences between the state and private persons, since it led to a short term augmentation of the public incomes (points 37-38) [minority opinions]. The Court further declared the conformity of the contested measures to the **principle of equality** (article 4 par. 1 of the Constitution), since the application of the allowance cuts to all the public sector employees whose monthly income does not exceed 3000 euros, and to all the pensioners of less than 60 years old whose monthly income does not exceed the amount of 2500 euros, did not result in an equal treatment of different situations. According to the Court, the increased needs that justified the adoption of such allowances existed for all the employees and pensioners, independently of their monthly income. The age threshold of 60 was justified by the need of social welfare towards the aged

persons. Besides, statute 3845/2010 had a quasi-transitional character, by virtue of a subsequent statute defining the 65<sup>th</sup> year as retirement age and the 60<sup>th</sup> year as early retirement threshold age (point 40) [minority opinions]. Concerning the **delegation to the executive**, the Court rejected this argument as inadmissible, because presented for the first time at the discussion of the case, while it declared that the matters covered by the delegation were matters of detail, for which delegation was allowed by the Constitution (point 42). Finally, concerning the alleged **violation of economic freedom and collective bargaining and labour rights**, the Court replied that the relevant claims were inadmissible, since the contested provisions had not been applied through the attacked administrative acts (point 43).

9. Legal effects of the judgment: The judgment rejected the claims of the plaintiffs and confirmed the constitutionality of statute 3845/2010 and of the implementing administrative acts. Though the statute can be incidentally attacked again in a subsequent decision, the relevant administrative acts enjoy a presumption of legality, since the deadline for their contestation has expired.
10. Main outcome and broader implications: The content of the judgment was “leaked” to the press long before its official publication.<sup>518</sup> It has been used by the governing parties in order to constitutionally justify new austerity measures, as well as the non-ratification of agreements and conventions under the second economic adjustment programme.<sup>519</sup> It creates a non-binding precedent followed by lower administrative courts and by civil jurisdictions. The judgement also stressed the deficiencies of the incidental judicial review from the point of view of the rule of law and of the right of access to court.<sup>520</sup>

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<sup>518</sup> It leaked at the end of June 2011, when the medium-term fiscal framework had been introduced to Parliament for voting. See the criticism by Kostas Chrysogonos, «Η αλήθεια για το μνημόνιο» [The Truth about the Memorandum], *Eleftherotypia*, 24<sup>th</sup> of June 2011, <http://constitutionalism.gr/site/wp-content/mgdata/pdf/rysogonos.pdf>

<sup>519</sup> See, for example, Minutes of the Greek Parliament, Plenary Session of the 12<sup>th</sup> of February 2012, cited above; see also Minutes of the Greek Parliament, Plenary Session of the 14<sup>th</sup> of January 2013, cited above.

<sup>520</sup> See Akritas Kaidatzis, «Μεγάλη πολιτική’ και ασθενής δικαστικός έλεγχος. Συνταγματικά ζητήματα και ζητήματα συνταγματικότητας στο ‘Μνημόνιο’ [‘Big policy’ and weak judicial review. Constitutional matters and matters of constitutionality in the ‘Memorandum’]», [www.constitutionalism.gr](http://www.constitutionalism.gr)

The text of decisions 1283/2012, 1284/2012, published on the 2<sup>nd</sup> of April, is identical to decision 668/2012. The decisions were discussed in the Plenum on the 23<sup>rd</sup> of November 2010, the same day with decision 668/2012, after recourse by other professional associations.

## **CASE LAW IMPLEMENTING MEASURES**

X.9

IS THERE A (CONSTITUTIONAL) COURT JUDGMENT ON NATIONAL POLICY MEASURES ADOPTED IN RELATION TO THE MEMORANDA OF UNDERSTANDING?

There is no constitutional Court in Greece. Review of constitutionality is diffusely exercised by all the Courts, but actually concentrated into the Supreme courts, *Areios Pagos* (civil and criminal jurisdiction), the *Symvoulia tis Epikrateias* (Council of State - administrative jurisdiction) and the Court of Audit. The Council of State's case law is more important in the constitutional review of legislation, especially because of the possibility of direct demand of annulment of general administrative acts executing legal provisions. It is mainly under this procedure that matters of constitutionality of the financial assistance instruments have incidentally arisen. Note that the claimants cannot actually seek to annul any piece of legislation directly, but they can ask the Court to annul the specific administrative decisions and declare that their legal basis does not produce any legal effect in this specific case because it is unconstitutional (it would cause an *inter partes* and not an *erga omnes* effect). However, an eventual unconstitutionality decision would be important for the general application of the statute as well, as it would create a precedent, which, albeit not legally binding (in Greece there is no *stare decisis* rule), would be likely to influence subsequent case law.

The argumentation of the parties is accessible only through the judicial reasoning, except from rare cases where it is published. The Council of State in many cases refers to the argument to which it responds.

Since the majority of austerity and structural measures since 2010 have been justified by the Government as imposed by the economic adjustment programmes, it is impossible to include here a complete analysis of all the cases brought before the

Greek courts contesting their constitutionality. Only *the most important* among the cases *in direct relation* to the Memoranda of Understanding will be examined.<sup>521</sup>

**A. Decisions 668/2012, 1283/2012 and 1284/2012 by the Council of State Plenum** examined in the previous question X.8, concerned partly the compatibility of national policy measures with the Constitution and international conventions.

**B. Decision 1285/2012 by the Council of State Plenum, 2 April 2012**

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: A union of pensioners of the Public Electricity Enterprise (DEH AE) as members, against the Minister of Finance and the Minister of Employment and Social Security.
3. Type of action/procedure: Action for annulment of a common ministerial decree, legally based on law 3845/2010. Incidentally, the claimants contested the constitutionality of austerity measures contained in the law.
4. Admissibility issues: The recourse was rejected as inadmissible for some of the claimants that did not appear or nominate a representative before the Court.
5. Legally relevant factual situation: The pension rights of the members of the association were negatively affected by the administrative decision, issued in application of law 3845/2010 (note that the decision concerns the same provisions as decision 668/2012).
6. Legal questions: Principle of equality (4 par. 1 C); principle of equal participation before public charges (4 par. 5 C); especially in the fulfilment of the principle of social security (22 par. 5 C); economic burdening of categories of citizens in an economic crisis; respect of

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<sup>521</sup> See on this issue, Matina Yannakourou, “Legal Challenges to Austerity Measures Affecting Work Rights at Domestic and International Level”, *forthcoming*; Evangelia Psychogiopoulou, “Welfare Rights in Crisis in Greece: The Role of Fundamental Rights Challenges. The Case of Greece”, *forthcoming*.

human dignity (2 par. 1 C); duty of social and national solidarity (25 par. 4 C)

7. Arguments of the parties: The claimant alleged that the **principle of equality** (4 par. 1 C) was infringed, since the criterion of age (60 years old) under which beneficiaries were deprived of their pension allowances was **manifestly arbitrary**, since it was not connected to any characteristic of the affected persons or with any public interest reason; that the legislator should have proceeded to a **gradation** of pension cuts for the beneficiaries over 60 years old, according to the amount of their pension; that the principle of **equal contribution to public charges** (4 par. 5) was infringed since the contested measures transposed the burden of fiscal consolidation of the economy to a specific group of citizens without demanding from other groups to contribute as well according to their means; that the principle of **social security** (22 par. 5 C and 70 par. 3 Part XII of the 1964 Convention on the European Code of Social Security) was infringed since the legislator did not take into account the specific economic situation of each social security fund through scientific studies when generally imposing the cuts on pensions and allowances, and thus did not ascertain the necessity of the measures and the lack of less harmful alternatives; that the **right to property** (art. 1 First Additional Protocol ECHR and 17 par. 1 C) of its members was infringed, since already established rights to pension revenues were affected, without being justified by real reasons of public interest, assessed through a determined procedure and without being accompanied by compensatory measures; that the need for confrontation of the economic crisis, be it acute and urgent, cannot justify the restrictive measures, since it is part of the accounting interest of the state (not accepted as a public interest under constant previous case law) and since this interest could have been achieved through other less restrictive measures; that the **principle of proportionality** (art. 25 par. 1) was infringed, since the measures did not have a temporary character, since the application authorities did not have the possibility to strike a fair balance in every individual case; that the measures were



contrary to the prohibition of inhuman and degrading treatment (article 3 ECHR) and the **principle of human dignity** (art. 2 par. 1 C); that articles **12, 30 and 31 of the European Social Charter** were infringed; that articles **2, 9 and 11 par. 1 of the International Covenant of Economic, Social and Cultural Rights** were infringed; that article **34 of the European Charter of Fundamental Rights** was infringed; that the delegation to the executive by law 3845/2010 to regulate the matters at hand was unconstitutional (art. 43 par. 2 C) since it concerned restriction of fundamental rights; that **collective bargaining rights** (22 par. 1 C) were infringed.

8. Conclusion and reasoning of the court: The Court generally repeatedly stressed the broad powers of the legislator on the matters and the exercise of a marginal judicial review. Concerning the **principle of equality** (art. 4 par. 1 C), the Court responded that the *criterion* of age was objective and relevant to the subject matter. It was justified by the concern of welfare to more aged persons as well as by the objective of sustainability of the social security system through the restriction of early pensions. The subsequent statute 3863/2010 had imposed 60 as the age limit for early pension. In virtue of the new rules on the matter, the provisions of law 3845/2010 had acquired a quasi-transitional character (point 10). Moreover, concerning the *lack of gradation*, the Court responded that the increased needs that justify the adoption of such allowances existed for all pensioners, independently of their monthly income. Concerning the principle of **equal contribution to public charges** according to each citizen's means (art. 4 par. 5 C), the Court rejected the claim of the plaintiff as indeterminate (point 10) [minority opinions]. Concerning the principle of **social security** (art. 22 par. 5 C), the Court responded that this principle imposes the right of citizens to social security and the sustainability of social security funds; it imposes scientific studies before imposing burdens to such funds but it does not presuppose such studies before imposing cuts of general application in pension revenues. Law 3845/2010 was not restructuring the pension system as a whole but rather imposing cuts on allowances in the framework of a complex of measures for the

fiscal consolidation of the country. It was thus a measure included in the economic adjustment programme of the country, justified by the compelling public interest of preserving the sustainability of social security funds, achieving determined financial targets and of restricting the deficit of general government. Concerning the Convention on the European Code of Social Security, the Court responded that the invoked articles contain orientations for adjusting domestic legislation to the Convention, through the provision of periodical scientific studies ensuring the sustainability of social security funds. They impose such studies in case of modification of the contributions through which these funds are financed. The contested measures were not violating the relevant articles because they were not violating article 22 par. 5 of the Constitution, which was in conformity with the Convention (points 12-3) [minority opinions]. Concerning the **right to property** (17 par. 1 C and 1 First Additional Protocol ECHR), the Court, referring to the Strasbourg case law, stated that, even though the right to an income and to a pension is protected by the rules and principles invoked, these provisions do not nevertheless guarantee any right to a certain income or a certain pension, except for the case where the decent way of living of the citizens is at risk. Thus, the legislator can adjust the amount of pension according to the circumstances and can impose, through general legislative or administrative rules, restrictions to pension rights, when it is justified by a general public interest, such as the sustainability of social security funds or the facing of a particularly serious financial problem. Judicial review on the assessment of the public interest or on the policy choices of the legislator for its achievement is marginal. The restriction to property must be appropriate, necessary and not disproportional to the interest pursued. The Court engaged a proportionality test and concluded that the cuts in pensions and allowances of the public sector employees were justified by the compelling public interest of consolidation of the public finances, which exceeded the accounting interest of the state and was also a common concern of the Eurozone member-states. The judges considered that these cuts were not manifestly inappropriate or

unnecessary for this purpose, according to the reasonable appreciation of the legislator and rejected the claims of the plaintiff to the contrary since it had not provided relevant evidence. The measures were part of a general economic program planned by the Government for the confrontation of the present economic crisis, thus the complaints of the applicants for the lack of any study concerning less onerous measures were rejected. Concerning the **principle of proportionality** (art. 25 par. 1 C), the Court responded that it was not infringed by the permanent character of the measures because the legislative purpose consisted not only in the facing of the economic crisis but also in the fiscal consolidation of the country for the future. Further, a balance had been achieved, since the measure had not completely deprived the plaintiffs from their pension rights, while at the same time the legislator had provided for certain allowances to lower pensioners, and had exempted persons aged over 60 and vulnerable groups from the application of the measures. Given the public interest pursued, the legislator was not obliged to leave the striking of a fair balance to the discretion of the implementing authorities. Since no total deprivation of the right had taken place, the lack of indemnity was not infringing constitutional or ECHR provisions. Thus, since the claimant did not allege that the measures put in hazard the decent way of life of its members, the Court rejected the claims of violation of the right to property and of the principle of human dignity (art. 3 ECHR and art 2 par. 1 C) (points 15-6) [minority opinions]. Concerning the **European Social Charter**, as well as the **International Covenant of Economic, Social and Cultural Rights**, the Court rejected the claims of the plaintiff as indeterminate, since it had not invoked specific errors of the attacked acts (points 18-9). Concerning the **European Charter of Fundamental Rights**, the Court responded that this text was applicable only when MS were applying EU law; thus it was not applicable to the case at hand, since the contested measures were measures of purely internal policy, taken by the national authorities according to domestic law provisions. The participation of the EC or the ECB to the drafting of the domestic economic programme did not

incur the application of the Charter (points 20-1). It declared inadmissible the allegations of the claimant for **unconstitutionality of the delegation** to the executive (43 par. 2 C), because they were presented for the first time at the discussion of the case, while it declared that the matters covered by the delegation were matters of detail, for which delegation was allowed by the Constitution. For the same reason, it declared inadmissible the claims for violation of **collective bargaining rights** (art. 22 par. 1 C), while it declared that they were not connected to the attacked ministerial decree, imposing cuts on pension rights (point 22).

9. Legal effects of the judgment: The judgment rejected the claims of the plaintiffs in their totality and confirmed the constitutionality of statute 3845/2010 and of the implementing administrative acts. Though the statute can be incidentally attacked again in a subsequent decision, the relevant administrative acts enjoy a presumption of legality, since the deadline for their contestation has expired.
10. Main outcome and broader implications: The judgment did not change importantly the national political debate. It only confirmed the constitutionality of the policy measures connected to the economic adjustment programme in light of constitutional social state provisions. It also stressed the deficiencies of the incidental judicial review from the point of view of the rule of law and of the right of access to court.<sup>522</sup>

**C. Decision 1286/2012, Council of State, 2 April 2012**, issued following an action concerning the same administrative act. The text of this decision is identical to the one of 1285/2012; the only difference concerns the legitimate interest of the applying trade union, because its members were not pensioners: the majority accepted however a legitimate interest to introduce the proceedings, since the purpose of the union was to protect and promote the

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<sup>522</sup> See Akritas Kaidatzis, «Μεγάλη πολιτική’ και ασθενής δικαστικός έλεγχος. Συνταγματικά ζητήματα και ζητήματα συνταγματικότητας στο ‘Μνημόνιο’ [‘Big policy’ and weak judicial review. Constitutional matters and matters of constitutionality in the ‘Memorandum’]», [www.constitutionalism.gr](http://www.constitutionalism.gr)

“general economic, labour, social security and professional interests” of its members, thus also their pensions rights (point 3) [minority opinion].

**D. Decision 1972/2012 by the Council of State Plenum, 25 May 2012**

1. Name of the court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: An individual citizen against the Minister of Finance.
3. Type of action/procedure: Action for annulment of a ministerial decree in application of law 4021/2011; incidentally the plaintiff contested the constitutionality of the legal statute.
4. Admissibility issues: No.
5. Legally relevant factual situation: The statute (art. 53) had imposed a tax on property supplied with electricity, the amount of which depended on the size of the property. The ministerial decree concerning its execution declared that this tax was collected through electricity bills and that in case of non-payment, the Public Electricity Company (or alternative suppliers) cut off electricity supply.
6. Legal questions: Legal character of the levy; urgent character of the measure; principle of tax certainty, determination of the elements concerning the tax by legal statute (art. 78 par. 1 and 4 C); reference of the statute to other statutes and administrative acts for the exact determination of elements of the tax; principle of equality before the law and of equality before public charges (art. 4 par. 1 and 5 C); real property taken as taxable good, without taking into account revenue or profit; right to property and principle of proportionality (1 First Additional Protocol ECHR and 17 par. 1 C, 25 par. 1 C); multiple taxation of the same object because of the series of financial measures since 2009; principle of separation of powers and exclusive power of the state to ascertain the liable person and the amount of tax obligations and to collect taxes (art. 26 par. 1 and 3 C); delegation to the Public Electricity Company or alternative providers of the competence to draft the lists of liable persons and to collect the tax through electricity bills; economic freedom (art. 5 par. 1 C) and human dignity (art. 2 par 1); cutting off of electricity in case of non-payment of the tax.

7. Arguments of the parties: The claimant alleged that the principle of **tax certainty** was infringed, since legal statute 4021/2011 did not sufficiently define the elements of the tax; that the principle of **equality** and of equal contribution to the **public charges** according to one's means was infringed, since it was not revenue or profit that was taken into account for the calculation of the tax, but the value of property as this had been determined according to general administrative acts for every district; also, since the legislator had not followed for this levy the same form and principles as for other real property taxes; that his/her right to **property** had been infringed, since the levy resulted in the multiple taxation of the same object and constituted a disproportionate burden; that the principle of **separation of powers** was infringed by the delegation of the power of the state to ascertain the liable person and the amount of tax obligations, as well as the collection of the tax, to private persons (the Public Electricity Enterprise DEH, a joint-stock company, and alternative suppliers); that the cutting off of electricity supply in case of non-payment of the levy was infringing his/her **economic freedom**, since it constituted an intervention in a private contract; also, that it did not respect his/her **human dignity**, since it deprived him/her from a vital good.
8. Conclusion and reasoning of the court: Concerning the **legal characterization** of the levy, the Court stated that its imposition was dictated by the imperative need to take exceptional and urgent measures in order to achieve the targets of correcting the deficit for 2011 and 2012. Thus, it did not constitute retribution for a specific service but a general public purpose. Therefore, the levy had the character of a tax and not a retributory character, even though, according to the explanatory report to the statute, the real value of the burdened property completely depended on the achievement of the financial targets mentioned (point 7). The Court further considered that the rules contained in the attacked statute, including the temporary character of the measure, as well as the explanatory report and the relevant parliamentary debates, show its **urgent** character (point 8) [minority opinion]. Concerning the **principle of tax certainty**, the Court rejected the arguments of the plaintiffs and responded that the elements of the tax were sufficiently determined by the statute (points 9-13) [minority opinion]. Concerning the principle of **equality** before the law and equal distribution of public charges, the Court stated that the legislator is

free to determine the various forms of economic charges for the covering of public expenses, while it must respect certain general constitutional principles. In the present situation, the legislator had adopted a series of financial measures since 2009 for correcting the deficit. Real property is by itself a source of richness and thus taxable, without it being necessary that it be profitable. Besides, the levy did not constitute a new fixed tax but an urgent measure and thus the legislator was not obliged to follow the form and principles established in other real property taxes. Therefore, the legislator applied general and objective criteria (area of the property, value of the district, age of the property) and did not violate the principle of equality (points 14 and 16) [minority opinion]. Concerning the infringement of the right to **property**, and the principle of proportionality, the Court stated that the relevant articles recognize a very broad power to the legislator to interfere with the right to property by imposing taxes, while they imply the fair balance between the public interest and the infringed right, a proportionate relationship between means and ends. Taxation should not constitute an excessive burden or result in the radical deterioration of burdened citizens (point 15). In the present case, the tax was imposed as an urgent measure for the pursuing of a very compelling public interest according to the assessment of the legislator. It could not be judged as disproportionate, taking into account its temporary character, its amount, the provision of exceptions for vulnerable groups, the repeated taxation of revenue, the value of private real property (mentioned in the explanatory report of the statute) and the urgent goal of covering the additional deficit in a context of financial crisis. Moreover, it did not result in a seizure of property together with the other taxes and levies imposed though indeed it resulted in the impoverishment of the tax payers (point 15 and 16) [minority opinions]. Concerning the principle of separation of powers, the judges considered that the statute preserved the exclusive competence of the state to ascertain and collect taxes, since the Head of the Local Financial Service was competent, even though the relevant lists were drafted by DEH and the tax was collected through electricity bills. This was because, according to the judges, the public authorities were still competent to exempt persons from the levy and because the code of collection of public revenues was applicable. The collection of taxes by private persons, like banks, is possible

insofar as these persons are not invested with the power to enforce the relevant tax obligations (points 19-20 and 22) [minority opinion]. Concerning the mode of collection of the tax and especially the sanction of cutting off of electricity, the Court stated that it constituted an inadmissible infringement of **economic freedom** and of contractual freedom. The principle of proportionality could justify such an intervention only if it was connected to a compelling public interest connected to the object of the contract, which was not the case in the litigation. A concurrent opinion of 14 judges also found a violation of the principle of **human dignity**, since a vital good was used as a means of pressure for the fulfilment of tax obligations (points 24-25).

9. Legal effects of the judgment: The Court annulled the provisions of the ministerial decree concerning the collection of the tax and declared unconstitutional the relevant statutory provisions.
10. Main outcome and broader implications: The judgment was discussed in the media since it was the first judgment by a Supreme Court declaring unconstitutional a policy measure connected to the crisis. It was used by both the government and the opposition in political speeches. The 4<sup>th</sup> Section of the Supreme Civil Court (*Areios Pagos*) judged on February 2014 that the same tax was unconstitutional, not only for the way it was collected but also for its particular elements.<sup>523</sup> The final decision will be taken by the Plenum of the Court. In case of contradictory decisions between the Council of State and *Areios Pagos*, the Supreme Special Court is competent (article 100 of the Constitution).

**E. 1<sup>st</sup> Special Sitting of the Plenum of the Court of Audit on the 20<sup>th</sup> of February 2012<sup>524</sup>**

1. Name of the court: Court of Audit (Elegktiko Synedrio, *Ελεγκτικό Συνέδριο*), Plenum.
2. Parties: N/A
3. Type of action/procedure: Obligatory opinion by the Court of Audit to bills proposed by the Minister of Finance concerning pensions before

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<sup>523</sup> Decision 293/2014.

<sup>524</sup> [www.elsyn.gr](http://www.elsyn.gr)



their submission to Parliament, according to article 73 par. 2 of the Constitution.

4. Admissibility issues: N/A
5. Legally relevant factual situation: The draft law “Cuts on public pensions” contained a single article imposing a 12% cut on monthly pensions, with a retroactive effect from the 1<sup>st</sup> of January.
6. Legal questions: Concerning the content of the bill, the legal question was whether the relevant article was compatible with the right to property, as guaranteed by art. 1 First Additional Protocol (FAP) ECHR.
7. Arguments of the parties: N/A
8. Conclusion and reasoning of the court: The Court stated that the retroactive imposition of the cuts might create a matter of compatibility with hierarchically superior provisions and especially article 1 FAP ECHR (point 5) [minority opinion].
9. Legal effects: Legal opinions of the Court of Audit are not binding under this procedure.
10. Main outcome and broader implications: The bill was finally introduced to Parliament with certain unimportant modifications, together with “other urgent measures implementing the MoU of law 4046/2012”. The relevant statute was voted under the emergency procedure.<sup>525</sup>

#### **F. 4<sup>th</sup> Special Sitting of the Plenum of the Court of Audit on the 31<sup>st</sup> of October 2012<sup>526</sup>**

1. Name of the court: Court of Audit (Elegktiko Synedrio, *Ελεγκτικό Συνέδριο*), Plenum.
2. Parties: N/A
3. Type of action/procedure: Obligatory opinion by the Court of Audit to bills proposed by the Minister of Finance concerning pensions before

<sup>525</sup> Law 4051/2012, ΦΕΚ Α' 40/29-02-2012, [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=39ad1843-d490-42c4-baa4-3ed3ff53915a](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=39ad1843-d490-42c4-baa4-3ed3ff53915a)

<sup>526</sup> [www.elsyn.gr](http://www.elsyn.gr)

their submission to Parliament, according to article 73 par. 2 of the Constitution.

4. Admissibility issues: N/A
5. Legally relevant factual situation: The draft laws “Public pension matters” and “Modifications to pension schemes” regulated matters of pensions for elective offices when concurring with other pensions or salaries, increased the threshold age for retirement and for eligibility for certain pension allowances, starting from the 1<sup>st</sup> of January. These measures also affected judges and Legal Advisors of the State. Further, they imposed severe cuts on public pensions (gradation of cuts, starting from 5% on lower pensions, reaching 15% to pensions over 2.000 euros), abolished Christmas and Easter allowances for public employees, and imposed cuts on the pensions of “unmarried and divorced daughters” of army pensioners.
6. Legal questions: Compatibility of the measures concerning the retirement age with the principle of legitimate expectations; compatibility of the measures concerning judges with article 87 C and with the principle of functional and personal independence; compatibility of the cuts with art. 1 FAP ECHR, with the principle of human dignity (art. 2 par. 1 C), with the principle of equality in the distribution of public charges (art. 4 par. 5 C), with the principle of proportionality (art. 25 par. 1 C) and with the duty of social security (art. 22 par. 4).
7. Arguments of the parties: N/A
8. Conclusion and reasoning of the court: The Court stated that matters concerning the pensions for elective offices when concurring with other pensions or salaries, as well as the cuts on the pensions of “unmarried and divorced daughters” of military servants were justified, in view of the explanatory report of the law, invoking the exceptional financial situation of the country [with certain minority opinions on specific matters]. Concerning the increase of the retirement age the Court declared that it was contrary to the principle of legitimate expectations, especially since no transition measure was applied for persons close to their moment of retirement (the measure was

applicable immediately from the 1<sup>st</sup> of January). Concerning the application of the increased age threshold to judges, the judges stated that it was contrary to their functional and personal independence. When already established pension rights were affected, the Court declared the measure contrary to art. 1 FAP ECHR. Concerning the cuts on public pensions, the Court observed that the Constitution and the ECHR do not guarantee a concrete amount of pension or salary. However, legislative cuts in revenues should not endanger the decent way of life of economically weaker classes and should pursue a legitimate aim and should respect the principle of equal distribution of public charges and proportionality. The cuts examined by the Court, being the fifth time cuts were imposed to public pensions since 2010, without a temporary character and without taking into account the rest of economic burdens imposed in the meantime, could affect the decent way of life of a broad category of affected pensioners. Moreover, though it could not be contested that the measures pursued the public interest of restricting financial deficits, no specific elements were brought before the Court to justify or prove the appropriateness or the necessity of the imposed restrictions, or the lack of alternative measures, in order to avoid the burdening again of the same category of citizens. Further, no gradation was provided inside the defined legal categories of pensioners, causing a disproportionate burden in some cases. Concerning the complete deprivation of the Christmas and Easter allowances, the Court observed that it might be incompatible with art. 22 par. 4 (social security) and 2 par. 1 (human dignity) of the Constitution, especially since it did not provide measures for lower pensions [with minority]. The same was observed for the increase of the age threshold in order to receive the social solidarity allowance to lower pensioners from 60 to 65 years.

9. Legal effects: Legal opinions of the Court of Audit are not binding under this procedure.
10. Main outcome and broader implications: The opinion provoked a lot of reactions in the press, since it was the first time a Supreme Court

declared the unconstitutionality of the *content* of austerity measures.<sup>527</sup> The bill was finally introduced to Parliament with certain modifications, sometimes concerning matters that the Court had considered justified. The cuts in pensions and allowances remained as they were despite the above opinion. The bill “Approval of the Medium Term Budgetary Framework 2013-2016 – Urgent Measures for the Implementation of the law 4046/2012 and of the Medium Term Budgetary Framework 2013-2016” was finally voted under the emergency procedure.<sup>528</sup>

#### **G. 2<sup>st</sup> Special Sitting of the Plenum of the Court of Audit on the 27<sup>th</sup> of February 2013<sup>529</sup>**

1. Name of the court: Court of Audit (Elegktiko Synedrio, *Ελεγκτικό Συνέδριο*), Plenum.
2. Parties: N/A
3. Type of action/procedure: Obligatory opinion by the Court of Audit to bills proposed by the Minister of Finance concerning pensions before their submission to Parliament, according to article 73 par. 2 of the Constitution.
4. Admissibility issues: N/A
5. Legally relevant factual situation: The draft law “Provisions for the modification and amelioration of pension, financial, administrative and other provisions by the Minister of Finance” contained a chapter on public pensions, especially imposing retroactive cuts on special wage-scale pensions (judges, army and police servants, Legal Advisors of the State, university professors et al.) and on artists.
6. Legal questions: Compatibility with article 1 First Additional Protocol ECHR, with the principle of equality and equal contribution to public charges (article 4 par. 1 and 5 C), with the principle of proportionality (article 25 par. 1 C) and with the principle of human dignity (article 2 par. 1); retroactive character of the measure.

<sup>527</sup> <http://web.archive.org/web/20121102215249/http://www.tanea.gr/ellada/article/?aid=4764399>

<sup>528</sup> Law 4093/2012, ΦΕΚ Α' 222/12-11-2012; cf. [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=7f3c54cd-82e0-407c-a348-71c4491651fb](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=7f3c54cd-82e0-407c-a348-71c4491651fb)

<sup>529</sup> [www.elsyn.gr](http://www.elsyn.gr)

7. Arguments of the parties: N/A
8. Conclusion and reasoning of the court: The Court stated that the retroactive imposition of the cuts was contrary to article 1 FAP ECHR, since they violated the already established and legally recognized right of the affected pensioners to non-restriction of their pension, without justifying the retroactivity of the measure by reasons of public interest. Nor was it invoked that the measure respected the principle of equality and of equal distribution of public charges (art. 4 par. 1 and 5 C) or the principle of proportionality, while the measures only affected a specific category of citizens. Concerning the artists more particularly, the retroactive limitation of their pension to the amount of 720 euros, apart from the fact that it might endanger the decent way of life of the beneficiaries, interfered with article 1 FAP ECHR. However, there was no obvious imperative reason of public interest justifying this violation, given the limited number of pensioners of this category and the small financial profit expected from this measure. Nor was the appropriateness and the necessity of the relevant cuts justified, thus violating the principle of proportionality.
9. Legal effects: Legal opinions of the Court of Audit are not binding under this procedure.
10. Main outcome and broader implications: The opinion provoked reactions in the press. The provisions were however adopted. The Court of Audit is expected to issue a decision as a jurisdiction on the matter (according to article 98f: the trial of disputes concerning the granting of pensions is within the competence of this Court). The report of the Advocate General of the Court has suggested the unconstitutionality of the statute.<sup>530</sup>

## BOND PURCHASES ECB

X.10

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<sup>530</sup> See Gianna Papadaku, “Judicial bombs with the special wage-scales” [in Greek], *To Vima* 22 June 2014, <http://www.tovima.gr/politics/article/?aid=608319>

DESCRIBE THE POLITICAL, ECONOMIC AND LEGAL SITUATION LEADING UP TO THE MOMENT WHERE THE EUROPEAN CENTRAL BANKS STARTED BUYING GOVERNMENT BONDS ON THE SECONDARY MARKET (THROUGH THE SECURITIES MARKETS PROGRAMME, SMP).

The creation of the SMP was actually a result of the Greek debt crisis and of the fears of contagion to other Eurozone countries.

The rise of Greek bond yields is connected to the burst of the global financial crisis and started in September 2008. The lack of liquidity in the market led to the rise of the Greek bond yields and to their decoupling from those of other Eurozone countries (the rise of the “spread”). This situation was aggravated from November 2009 and the Greek state became unable to access credit in financial markets in April 2010, when it requested the activation of the Commission/ECB/IMF rescue package. Financial assistance was provided through the Loan Facility Agreement, signed on the 8<sup>th</sup> of May and imposing strict conditions agreed between the Greek authorities and the representatives of the creditors.<sup>531</sup> Eurozone leaders agreed to create the EFSF on the 9<sup>th</sup> of May, as a mechanism for facing subsequent economic shocks.

One day after the agreement on the creation of the EFSF, on the 10<sup>th</sup> of May, the ECB announced the creation of the SMP as a way to address “severe tensions in the financial markets”.<sup>532</sup> In the press release, the ECB noted: “In making this decision we have taken note of the statement of the euro area governments that they *“will take all measures needed to meet [their] fiscal targets this year and the years ahead in line with excessive deficit procedures”* and of the precise additional commitments taken by some euro area governments to accelerate fiscal consolidation and ensure the sustainability of their public finances.”<sup>533</sup> In general, the ECB’s intervention had been expected by the Greek political parties and was considered necessary for facing the crisis and for creating a stronger fiscal union in the Eurozone. Members of SY.RIZ.A. proposed at the time that the ECB should finance directly the Greek state with interest rates comparable to the ones imposed to private banks.<sup>534</sup>

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<sup>531</sup> See questions X.1 and following.

<sup>532</sup> See the press release, <https://www.ecb.europa.eu/press/pr/date/2010/html/pr100510.en.html>

<sup>533</sup> See the press release, cited above.

<sup>534</sup> See Minutes of the Greek Parliament, Plenary Session of the 7<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100507_1.pdf)

Initially the SMP purchases were mainly composed of Greek debt purchases, with Portugal and Ireland being the next biggest beneficiaries. Spanish and Italian bonds were also purchased in smaller amounts.<sup>535</sup> This, however, changed over time and Italy and Spain became the biggest beneficiaries by the end of 2012.<sup>536</sup>

This operation was not sufficient to lower the borrowing costs of Greece, due to the severity of the country's debt crisis. Instead, according to *The Financial Times*, in 2013 the ECB had a 9bn profit from the purchase of Greek bonds.<sup>537</sup> This information was reproduced in the Greek press<sup>538</sup> and led to criticism in Parliament.<sup>539</sup> Reactions were also raised to the fact that the bonds bought by the ECB were not subject to "haircut", during the second bail-out programme.<sup>540</sup>

## CONDITIONALITY BOND PURCHASES ECB

### X.11

WHAT NATIONAL POLICY MEASURES HAVE BEEN REQUESTED BY THE ECB IN EXCHANGE FOR THE ACQUISITION OF GOVERNMENT BONDS ON THE SECONDARY MARKET? HOW HAVE THESE REQUESTS BEEN SUBJECT TO DEBATE IN LIGHT OF THEIR IMPLICATIONS FOR (BUDGETARY) SOVEREIGNTY, CONSTITUTIONAL LAW AND THE BUDGETARY PROCESS?

No known additional policy measures have been publicly requested independently by the ECB. The ECB was an indispensable member of the "troika" and, as such, it has the opportunity to participate in the design of the bailout programme for Greece and insist on the inclusion of several measures. In the press release concerning the creation of the SMP, the ECB states: "In making this decision we have taken note of the statement of the euro area governments that they *"will take all measures needed to meet [their] fiscal targets this year and the years ahead in line with excessive deficit*

<sup>535</sup> Ansgar Belke, "Driven by the Markets? ECB Sovereign Bond Purchases and the Securities Market Programme", Ruhr Economic Papers, p. 5, available at [http://www.rwi-essen.de/media/content/pages/publikationen/ruhr-economic-papers/REP\\_10\\_194.pdf](http://www.rwi-essen.de/media/content/pages/publikationen/ruhr-economic-papers/REP_10_194.pdf).

<sup>536</sup> See [http://www.ecb.europa.eu/press/pr/date/2013/html/pr130221\\_1.en.html](http://www.ecb.europa.eu/press/pr/date/2013/html/pr130221_1.en.html)

<sup>537</sup> Andreas Uterman, "Central banks can profit from bailouts", *Financial Times*, 22.07.2013

<sup>538</sup> See for example the article in *To Vima*, 'Financial Times: 9bn euros profit for the ECB from Greek bonds', 23.07.2013

<sup>539</sup> See Minutes of the Greek Parliament, Plenary Session of the 25<sup>th</sup> of July 2013, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130725\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20130725_1.pdf), p. 348 f.

<sup>540</sup> See the question raised by the MEP, Nikos Chountis, member of SY.RIZ.A. to Mario Draghi concerning this issue and the response of the ECB President, <http://www.europarl.gr/el/greek-meps/meps-activity/meps-activity-2012/march2012/marc61.html;jsessionid=34A4D40EF25E1FCA9280B3362C283F7A>

*procedures*” and of the precise additional commitments taken by some euro area governments to accelerate fiscal consolidation and ensure the sustainability of their public finances.”<sup>541</sup>

## MISCELLANEOUS

### X.12

WHAT OTHER INFORMATION IS RELEVANT WITH REGARD TO GREECE AND FINANCIAL SUPPORT?

Trade unions, associations and private persons have introduced proceedings against measures implementing the financial assistance instruments before international authorities and courts.<sup>542</sup> To this respect, the decision *Koufaki et ADEDY c. Grèce* by the ECHR<sup>543</sup> has been the sequence of decision 668/2012 by the Council of State. In this decision, the Strasbourg court largely adopted the reasoning of the Greek Supreme Administrative Court to reject the claims of the plaintiffs as manifestly unreasonable. The General Court of the EU was also asked to assess the legality of the Council Decisions 210/320/EU and 210/486/EU, through an action for annulment brought by ADEDY and two civil servants.<sup>544</sup> However, it refused to do so, declaring the action inadmissible, since the Council Decisions were not of direct concern to the plaintiffs.

Yet, institutions specialized in the protection of social rights have been more aggressive. See for example the 365<sup>th</sup> Report by the ILO Committee on Freedom of Association,<sup>545</sup> the Report by the ILO High Level Mission to Greece on September 2011,<sup>546</sup> the Mission Statement of the UN Independent Expert on debt and human rights on April 2013<sup>547</sup> and the decisions of the European Committee of Social Rights,

<sup>541</sup> <https://www.ecb.europa.eu/press/pr/date/2010/html/pr100510.en.html>

<sup>542</sup> See on this issue, Matina Yannakourou, “Legal Challenges to Austerity Measures Affecting Work Rights at Domestic and International Level”, *forthcoming*; Evangelia Psychogiopoulou, “Welfare Rights in Crisis in Greece: The Role of Fundamental Rights Challenges. The Case of Greece”, *forthcoming*.

<sup>543</sup> Requête n<sup>os</sup> 57665/12 et 57657/12.

<sup>544</sup> GCEU, T-541/10, *ADEDY, Papaspyros and Iliopoulos v. Council*, 27 November 2012.

<sup>545</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_193260.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_193260.pdf)

<sup>546</sup> Case no. 2820, available at

[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@normes/documents/missionreport/wcms\\_170433.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@normes/documents/missionreport/wcms_170433.pdf)

<sup>547</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13272&LangID=E>



declaring the violation of certain articles of the social charter by austerity measures adopted by the Greek state during the crisis.<sup>548</sup>

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<sup>548</sup> Cf. among others, Complaint No. 78/2012, *ISAP v. Greece*, [https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC78Merits\\_en.pdf](https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC78Merits_en.pdf); Complaint No. 76/2012, *IKA-ETAM v. Greece*, [https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC76Merits\\_en.pdf](https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC76Merits_en.pdf); Complaint No. 66/2011, *GENOP-DEI and ADEDY v. Greece*, [https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC65Merits\\_en.pdf](https://www.coe.int/t/dghl/monitoring/socialcharter/complaints/CC65Merits_en.pdf)

## ANNEX I.: JUDICIAL DECISIONS ON IMPLEMENTING MEASURES

### H. Decision 1507/2014 by the Council of State Plenum, 28 April 2014

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: Individual citizens, holders of Greek public bonds, against the Prime Minister and the Minister of Finance.
3. Type of action/procedure: Action for the annulment of administrative acts concerning the PSI procedure. Incidentally, the plaintiffs contested the compatibility of statute 4050/2012, defining the terms of the PSI.
4. Admissibility issues: The explanatory report accompanying law 4050/2012 declared that the subsequent administrative acts for the application of the statute and for the more precise determination of the PSI terms and conditions were “government acts”, since they concerned the management of political power, and were thus immune from judicial scrutiny. The Council of State, after stating for itself the competence to define “government acts”, disagreed with this characterization, since the relevant administrative acts concerned the redetermination of the terms and conditions of legal relations (point 6).
5. Legally relevant factual situation: The plaintiffs were holders of Greek public bonds which were submitted to the PSI procedure. The majority of bond holders had consented to the PSI terms and conditions. This consent was binding for bond holders who had not participated to the procedure or who had dissented to the majority vote.
6. Legal questions: Whether the PSI terms and conditions were compatible with article 5 par. 1 C on economic freedom, with the rule of law, the principle of legitimate expectations and the security of law, with the principle of equality (article 4 C), with the right to property (article 17 C and ECHR) in combination with the principle of proportionality and the protection of the substance of the right (articles 25 and 2 C) and with the principle of equal contribution to public burdens (article 4 par. 5 C). The Court also examined *ex officio* the question of whether the measures were in application of EU law, which would lead it to engage a preliminary reference procedure to the ECJ.
7. Arguments of the parties: The plaintiffs claimed that, at the time of issuing of the bonds, there were no clauses for their amendment and that the PSI, constituting an intervention to the terms and conditions of purchasing of the bonds causing damage without the consent of the bond-holders, infringed their **economic freedom** (article 5 par. 1) in a way contrary to the **rule of law** and to the **principle of security of law**, to the principle of **legitimate expectations** (the State presented illusory data on the

Greek economy and incentives for investors to place their money on this risky investment) –point 21. Further, they claimed that their submission by law to the same terms with banks constituted a violation of the **principle of equality**, since other types of investors, like banks or individuals possessing bank deposits, were enjoying tax exemptions, compensations or guarantees for their investments on the basis of other legal texts. Even more, they claimed that they should be treated more favourably compared to other groups of citizens since they had economically supported the Greek State by purchasing public bonds –point 24. Moreover, the plaintiffs claimed that the impugned legislation **disproportionately infringed their right to property** since it was inappropriate, unnecessary and it violated the substance of their right –points 28 f.. Finally, the plaintiffs claimed that the PSI measures violated the principle of **equal contribution to public burdens**, since they imposed an exceptional burden, analogous to a tax, on a certain group of citizens without taking into account their tax-giving capacity. The cumulative effect of these measures with other austerity measures recently implemented by the Government, according to the claimants, violated their **human dignity** (article 2 par. 1 C) since it did not allow them to afford a decent way of life –point 33.

The arguments of the public authorities are accessible only through the decision dicta and through the reports accompanying the public measures (introductory report to law 4050/2012, introductory reports to the impugned administrative acts etc.). The Prime Minister and the Minister of Finance argued that the relevant measures were justified by the public interest of reducing the public debt in the exceptional circumstances that the economy of the country was facing.

8. Conclusion and reasoning of the court: The Court **refused to send a preliminary reference to the ECJ**. Even though the statute determining the PSI conditions was drafted following deliberations between the Greek authorities and EU institutions, the latter had only a consulting function in the “political or technocratic” decisions on the PSI. The relevant statute and the implementing measures were thus sovereignly decided by the constitutionally competent Greek authorities and no application of EU law was at issue. Relevant statements by the Eurogroup or the Euro-area MS’ Heads of State and Government only had a political character [point 19 –dissenting minority].

**The Court dismissed all the claims of the plaintiffs.**

Concerning the principles of the **rule of law, legal security and legitimate expectations**, the **economic freedom** of the plaintiffs and the principle of **proportionality**, the judges concluded that the purchasing of bonds is an investment that entails certain risks, due to the impossibility of the consecration of a principle of absolute solvency of States as debtors. Therefore, the conditions under which the bond repayment takes place are subject to the principle “rebus sic standibus”, which qualifies the general principle “pacta sunt servanda”. Under the important change in the economic circumstances since the issuing of the bonds under consideration, and especially the danger of insolvency and of collapse of the Greek economy, it was permitted to the Greek State to change the terms of repayment of these bonds, since the PSI was expected to have a positive effect on the Greek economy. The Court

further referred to the “wholly exceptional circumstances” faced by the legislator. Moreover, according to the Council of State, this conclusion was not rebutted by an eventual unlawful transactional behavior of the Greek State at the time of purchasing of the bonds. Further, the Court observed that the procedural rights of the plaintiffs had been respected, since they had been called to participate in the procedures relevant to the PSI and they had had the possibility to oppose to the relevant decisions [points 22-23 -dissenting minority].

Concerning the principle of **equality**, the Court observed that transnational transactional mores did not impose to the State-issuer of bonds the differentiated treatment of its creditors according to their personal circumstances. On the contrary, since bonds are an anonymous title, the principle of “pari passu” imposes that the process until the final resolution of the legal relationship proceeds “on an equal footing” for all creditors of the State. On the other hand, the plaintiffs were not in a situation similar enough to individuals in possession of bank deposits, since bonds are another type of investment. Therefore, the Court rejected the claims of the plaintiffs [points 25-27 -dissenting minority].

Concerning the right to **property**, the Court decided that the “haircut” on the bonds did not constitute an expropriation according to article 17 C and thus the special conditions set by this article should not necessarily have been fulfilled [point 28-29, with opposite minority]. Infringement of the right to property is permitted for pursuing a compelling public interest and especially in case of exceptional circumstances requiring general measures of economic and social policy, as was the case of law 4050/2012. The Court deferred to the appreciations of the legislator on the appropriateness of the measures and considered that their necessity was proven by the fact that measures had been taken at the level of taxation, salary and pension cuts etc. as well. After proceeding to complex calculations on the damage suffered by the claimants, the judges concluded that the Government had struck a “fair balance” between the claimants’ right to property and the compelling public interest of reducing the public debt and saving the Greek economy from the danger of insolvency and collapse under the current “wholly exceptional circumstances”. According to the judges, an eventual suspension of payments from the part of the Greek State, would have unpredicted economic and social consequences and would seriously endanger the enjoyment of rights by the creditors of the Greek State [point 30-32 -dissenting minority].

Concerning the principle of **equality towards public burdens** (article 4 par. 5 C), the Court decided that due to the austerity policies included in the Economic Adjustment Programme, important burdens had been imposed to other members of society as well, so as to exclude violation of the principle. Further, the PSI could be qualified as “taxation” but rather constituted in a limitation, after relevant negotiation, of the claims of the plaintiffs against the State resulting from an investment which was not without risks. The PSI-related measures were part of the more general legislative intervention aiming at facing the exceptional economic circumstances [points 33-35 – dissenting minority].

9. Legal effects: The claims of the plaintiffs were rejected and their action for annulment dismissed. The attacked administrative acts are thus valid and not anymore subject to direct judicial scrutiny.
10. Main outcome and broader implications: The plaintiffs were not compensated for the losses they suffered from the PSI by the Greek courts and thus exhausted domestic remedies on the matter. Bond holders initiated proceedings before the ECHR for violation of article 1 of the First Additional Protocol to the ECHR.<sup>1</sup> Further, the claims of foreign investors on Greek bonds who had initiated proceedings before an arbitration judge were dismissed as well.<sup>2</sup>

**J. Decisions no. 1116-7/2014 and 239/2015 by the Council of State Plenum, 21 March 2014 and 28 January 2015 respectively** having a similar content.

**K. Decision 1906/2014 by the Plenum of the Council of State, 4 June 2014<sup>3</sup>**

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: Individual citizens against the Minister of Finance; the Minister of Growth, Competitiveness, Infrastructure, Transport and Networks; the Minister of the Environment, Energy and Climate Change; the Minister of Labor, Social Security and Welfare; the Minister of Education and Religions, Civilization and Sports; the Minister of Tourism; the Minister of Shipping and Aegean. The Fund for the Exploitation of the Private Property of the Greek State (TAIPED) and the public water company of Athens and Piraeus intervened in favor of the public authorities.
3. Type of action/procedure: Action for the annulment of an administrative act according to which the Greek State transferred -without exchange and without any possibility of retransfer- to TAIPED its shares in the public water companies of Athens and Piraeus, and Thessaloniki, in the public gas companies and in the ports companies of Piraeus and Thessaloniki. Further, action for the annulment of the authorization provided to the Minister of Finance in order to sign agreements with TAIPED concerning the exercise of voting rights resulting from the possession of shares in the public vehicle industry, the international airport of Athens and the public electricity company. These voting rights according to the administrative acts would be exercised by TAIPED in the name of the Greek State.
4. Admissibility issues: The action was rejected as inadmissible as far as it concerned the public water company of Thessaloniki, the public gas company and the port

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<sup>1</sup> See the relevant statement by the Union of Individual Bond Holders of the Greek State, available at <http://www.fpoed.gr/pirhoomicronsigmaphiupsilongammaeta-sigmatauomicron-epsilonupsilonrhoomegapiialphaiotakappaomicron-deltaiotakappaalphasigmatauetarhoiotaomicron-alphanuthetarhoomegapiiotanomega.html>

<sup>2</sup> Cf. “Recourse against Greece on the PSI rejected [in Greek]” *To Proto Thema*, 11 April 2015, <http://www.protothema.gr/economy/article/467148/aporrifthike-prosfugi-kata-tis-elladas-gia-to-psi/>

<sup>3</sup> See the decision on the Athens Bar Association official website [http://www.dsnet.gr/Epikairothta/Nomologia/ste%201906\\_2014.htm](http://www.dsnet.gr/Epikairothta/Nomologia/ste%201906_2014.htm)

companies of Piraeus and Thessaloniki, due to the lack by the claimants of a direct interest to act in justice. Indeed, the Court decided that their quality of Greek citizens, interested in the legal situation and property of public utility companies, does not ground a sufficient interest to introduce legal proceedings, since this would render the action for annulment to a popular action (point 13). Thus, since the plaintiffs did not prove any direct and personal relationship with the above companies and since they did not prove any danger that the services ensured by these companies would not be provided to them, the Court rejected their action (point 14).

However, some of the plaintiffs proved a legitimate interest as far as the public water company of Athens and Piraeus (EYDAP) was concerned, due to the contractual relationship that they had with this company. This fact, in combination with the vital importance of water and drainage services and the fact that EYDAP is the exclusive provider of these services in the area where the claimants resided, had as a consequence that the privatization of the company could endanger the continuous and satisfactory provision of these services (points 15-16).

5. Legally relevant factual situation: Shares corresponding to more than 1/3 of the public water company of Athens and Piraeus were transferred to TAIPED in order to be sold to private companies.
6. Legal questions: Whether the alienation of the Greek State from the last EYDAP shares that it possessed was compatible with the right to the protection of health (5 par. 5 C) and the duty of the State to protect health (21 par. 3 C).
7. Arguments of the parties: Not accessible.
8. Conclusion and reasoning of the court: The Court observed that, even though public utility services are not part of the hard core of State functions and thus can be provided by legal entities functioning under private law, their character as public companies would be reversed, if the public was alienated by the percentage of shares providing it with property rights and the power to vote in the management board. The transformation of a public company to a private one, driven by profit, would render uncertain that the company would continue to provide accessible and high quality public utility services. This would not be ensured by public supervision either. The water and drainage services in Attica had been exclusively provided by EYDAP through special networks adapted to the local conditions. These services were necessary for healthy living and especially for the provision of potable water, which is a progressively scarcer vital public good. Uncertainty as to the continuity of the provision of accessible public utility services which are so vital would be contrary to articles 5 par. 5 and 21 par. 3 of the Constitution protecting the public good of health and establishing a relevant individual right (point 22).
9. Legal effects: The administrative act transferring to TAIPED the EYDAP shares owned by the Greek State was annulled.

10. Main outcome and broader implications: The public water company of Athens and Piraeus was not privatized; the decision was discussed in the press and constituted a precedent for other public water companies.<sup>4</sup>

#### **L. Decisions 2192-2196/2014 by the Council of State Plenum, 13 June 2014<sup>5</sup>**

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: pensioners and officers of military and security forces against the Minister of Finance.
3. Type of action/procedure: Action for the annulment of a general administrative act concerning the payment of salaries and pensions to officers of the armed forces. Incidentally, the plaintiffs were contesting the constitutionality of the relevant provisions of statute 4093/2012.
4. Admissibility issues: The Court considered that the administrative act attacked by the plaintiffs had partly only an interpretative character, concerning the application of statute 4093/2012, which imposed cuts on public sector employees' revenues (point 3). Thus, the Court also rejected the plaintiffs' claim that the cuts of certain allowances were unconstitutional and contrary to the ECHR, since they concerned the inexecutable act mentioned above (point 6). The Court rejected the action introduced by the Council of Coordination of Retired Army Officers Unions, since the objective of this legal entity, according to its statute, is only the coordination of the unions formed by retired army officers, and not the protection of the interests of the members of these unions themselves (point 4). Finally, it rejected an intervention by an individual retired army officer for procedural reasons (point 5).
5. Legally relevant factual situation: A ministerial act in application of statute 4093/2012 commanded the payment of reduced remuneration to the plaintiffs and obliged them to reimburse already received revenues, due to retrospective salary and pension cuts.
6. Legal questions: Whether retrospective cuts on salaries and pensions of army and police officers and pensioners were compatible with the constitutional provisions ensuring the special status of Greek armed forces.
7. Arguments of the parties: The plaintiffs claimed that the retrospective cuts on their revenues were incompatible to the principle of special payment position of officers and retired officers of the armed forces, as well as to the principle of equality concerning public charges (articles 4 par.5 and 25 par. 4). The arguments of the Greek authorities are mentioned in the decision through the introductory reports

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<sup>4</sup> See "Council of State: "The privatization of EYDAP is unconstitutional" [in Greek]", *To Vima*, 25 May 2014, <http://www.tovima.gr/society/article/?aid=599651&h1=true#commentForm>

<sup>5</sup> See the official summary of the judgment, available in English at <http://www.ste.gr/images/StE/content/deltia/Judgment%20Summaries.pdf>

accompanying the relevant legislation and administrative acts. The Minister of Finance invoked the wholly exceptional economic circumstances faced by the country, which created a compelling public interest of reducing public expenses.

8. Conclusion and reasoning of the court: The Court interpreted the constitutional and legal provisions concerning the armed forces as establishing a special status, since the armed forces are among the core sovereign functions of the State and cannot be delegated to private organisations (points 7 f.). It concluded thus that the Constitution ensures an institutional guarantee for the effective functioning of these forces, and thus a **special remuneration status** for their members, in order to avoid corruption and to compensate for limitations to their fundamental rights. Further, the special remuneration status constitutes a right of the members of the armed forces, which should be balanced to other public interests, and especially the fiscal interest of the State. Limitation of this right in the context of a certain economic and fiscal legislative policy should respect the principle of proportionality (point 12). The Court went on to describe the austerity policies which had been imposed by the Economic Adjustment Programme and which entailed cuts in the revenues of armed forces officers and retired officers (points 13 f.).

In times of prolonged economic depression, the legislator can enact legislation that burdens specific social groups in order to pursue the fiscal interest of the State. However, when doing so, it should respect the **principle of proportionality, equality and of human dignity**. Further, according to the **principle of solidarity (article 25 par. 4 C)** the legislator should allocate evenly the burdens among social groups so as to avoid a manifestly disproportionate burdening of a specific group.

In the case of public officers subject to special payment conditions (the “special payroll”), the legislator imposed cuts on the revenues without taking into account differences among them. According to the Court, the lawmakers “relied exclusively upon a purely mathematical, thus profoundly inappropriate, measure, namely the average reduction of public spending on payments”,<sup>6</sup> without taking the special status of the armed forces officers and the importance of their function into account. Further, the lawmakers ignored the impact of the attacked measures on the revenues of the plaintiffs and the availability of less restrictive measures, contrarily to the principle of special remuneration. The cumulative effects of austerity measures adopted during the last years on the plaintiffs renders the attacked cuts on their revenues “profoundly ill-proportionate and unequal”.<sup>7</sup> This was even more so, due to the fact that the State was unable to promote other structural and tax reforms and that the “the fiscal interest of the state was no longer preeminent”.<sup>8</sup>

9. Legal effects: The attacked administrative acts were annulled.
10. Main outcome and broader implications: The armed forces officers and pensioners were no longer required to refund salaries and pensions already paid to them. Further, the State was obliged to pay the salaries and pensions as calculated before

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<sup>6</sup> See the summary of the judgment cited above.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.



the issuing of the annulled acts. Finally the State was obliged to reimburse the officers and pensioners as to the parts of their salary and pension that had been withheld according to the annulled acts before the publication of the Council of State decision. The financial cost of the decision, calculated to 150mn euros, was extensively discussed in the press.<sup>9</sup>

**M. Decision no. 4327/2014 by the Court of Audit, 23 June 2014<sup>10</sup>**

1. Name of the Court: Court of Audit (Ελεγκτικό Συνέδριο), Plenum.
2. Parties: an individual citizen, retired judge, against the Greek State, represented by the Minister of Finance and a member of the Legal Counseling Service of the State.
3. Type of action/procedure: Preliminary question on the constitutionality of legislation, arisen in an action for the annulment of an individual administrative act concerning pension payment and all administrative acts or omissions connected to it. The act retroactively imposed cuts on the plaintiff's pension, in application of statute 4093/2012. Incidentally, the plaintiff contested the constitutionality of the relevant provisions of the statute. The preliminary constitutionality question was introduced to the Plenum of the Court. The case was decided according to the pilot case procedure (the final decision concerns a matter of general interest and is binding for other annulment actions concerning individual acts in application of the statutory provisions retroactively imposing cuts on the remuneration of "special payroll" functionaries).
4. Admissibility issues: Article 88 par. 2 C imposes that matters concerning the remuneration of judicial functionaries are decided by a special court and not by the Court of Audit. However, since the matter under consideration (statutory provisions retroactively imposing cuts on the remuneration of functionaries subject to the "special payroll" and their application) did not concern only judicial functionaries but all employees subject to special remuneration conditions, and since the plaintiff did not only ground his application on the constitutional provisions concerning judicial independence, the Court of Audit decided that it was competent to decide the matter (point 12 –dissident minority).
5. Legally relevant factual situation: The individual administrative act, issued by the General Accounting Office of the State, readjusted the amount of the individual's pension retroactively since 2012, according to the cuts imposed by statute 4093/2012.
6. Legal questions: Whether the statutory provisions in application of which the attacked administrative act was issued were compatible with the Constitution and the ECHR.

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<sup>9</sup> See for example Eva Karamanoli, "Council of State: the cuts imposed on the revenues of members of the armed forces are unconstitutional [in Greek]", *I Kathimerini*, 16 June 2014, <http://www.kathimerini.gr/771597/article/epikairothta/ellada/ste-paranomes--oi-perikopes-stoys-enstoloys>

<sup>10</sup> Cf. the decision at the official website of the Athens Bar Association, [http://www.dsnet.gr/Epikairothta/Nomologia/elsynol4327\\_2014.htm](http://www.dsnet.gr/Epikairothta/Nomologia/elsynol4327_2014.htm).

7. Arguments of the parties: The plaintiff claimed that the individual administrative act imposing retroactive cuts on his pensions was contrary to the **principle of sustainable growth** due to its direct consequences to the detriment of the social capital, and especially the protection of the elderly; to the principle of **human dignity**; to his **right to property** protected by the Constitution and the ECHR; to the separation of powers and to the constitutional **guarantees concerning the judicial branch**; and to the principle of **proportional equality** (point 11).
8. Conclusion and reasoning of the court: The Court first described the economic and legal situation leading to the contested legislative and administrative acts, as well as the content of these acts, imposing cuts on the special payroll wages and pensions. The Court further observed that these cuts were sovereignly imposed by the Greek authorities and were pursuing the compelling public interest of reducing the debt and deficit. The measures were decided according to the Economic Adjustment Programme in the wholly exceptional economic circumstances the country was facing. Like legislation and austerity measures preceding them, they were directly leading to the reduction of public expenses by burdening a special group of citizens, those submitted to the special payroll rules. The cuts were imposed to all employees and pensioners belonging to the special payroll, without taking into account the rationale behind their special payment conditions, which differs among the various groups subject to them. The only criterion taken into account was a purely mathematical one, that is, the consequences of the cuts on public expenses and deficit (points 3-10).

The Court went on to announce the relevant constitutional provisions: the principle of **equal contribution to public charges** (article 4 par. 5 C); the principle of effective protection of fundamental rights, which are limited only by legal statute and in accordance with the principle of **proportionality** (article 25 par. 1 C); the principle of **social and national solidarity** (article 25 par. 4 C); the competence of Parliament to decide the Annual Budget (article 79 par. 1 C) and the competence of the State to programme and coordinate economic activities in the country, in order to ensure the growth of all sectors of national economy, in the pursue of social peace and protecting the general interest (article 106 par. 1 C). According to these provisions, in cases of prolonged economic crisis, the legislator can impose economic burdens on certain social groups, in order to reduce public expenses. Especially those receiving a remuneration from public funds might be affected the most, due to the direct effect of measures concerning them on the public deficit. However, this possibility is not unlimited; rather, the legislator should respect the principle of proportionality, equality towards public burdens and human dignity, which impose that the burden of economic adjustment be distributed among employees both in the public and private sector, as well as those who exercise a liberal profession, since financial sustainability is to the benefit of all. These precepts are contrary to the continuous burdening of a certain category of groups, like public sector employees, who are generally respectful of their tax obligations, instead of promoting structural reforms or fighting against tax evasion (points 14-15).

In the following paragraphs, the Court referred to austerity measures imposed on “special payroll” functionaries and calculated the cumulative impact of these measures on their revenues (points 16-23).

The Court went on to observe that the reports accompanying the relevant legislative statutes do not show that criteria other than the purely mathematical and “profoundly inappropriate” one of the amount of public expenses reduction, were taken into account. Further, the consequences of the measures were not investigated, nor was their cost compared to the benefit that they would result in, nor were alternative measures investigated. Finally, it was not examined by the competent authorities whether the remuneration resulting from the above measures was sufficient for the living expenses of judicial functionaries and pensioners and corresponding to their mission. Instead, the only reason mentioned to justify the new cuts was the impossibility for the State to fight against tax evasion. The cumulative effect of austerity measures imposed on “special payroll” functionaries exceeded what would be allowed under the principles of proportionality, equality towards public burdens. The reasons of public interest invoked by the legislator were not as important as in the beginning of the economic crisis in order to justify new measures affecting the same category of citizens. The fact that the measures were part of a more general programme of economic adjustment containing other policies and reforms was not sufficient to justify the burdening of this group of citizens, nor was the fact that the financial crisis had proved to be more serious and long than forecasted, since the State could have imposed measures of equivalent financial effect without affecting this group. Finally, though the Council decision 2012/211/EU provided for 12% cuts on “special payroll” employees, the national legislator when exercising financial policy to the respect of the international obligations of the country should also respect the above constitutional principles (points 24-27 –dissident minority).

Concerning the plaintiff’s right to **property**, as protected by the Constitution and the ECHR, the Court decided that, although it does not guarantee a right to a wage or pension of a certain amount, pension or wage rights which are already constituted enter its protective scope. Therefore, even though the readjustment of pensions for the future does not infringe the relevant supra-legal provisions, the provision on the retroactive effect of such readjustment, in a way as to affect already constituted pension rights does and is contrary to the principles of proportionality and of equality towards public charges (point 30).

9. Legal effects: The provisions of statute 4093/2012 imposing cuts on the pensions of judicial functionaries and retroactively were declared unconstitutional and contrary to article 1 of the First Additional Protocol to the ECHR.
10. Main outcome and broader implications: After the decision by the Plenum on the preliminary constitutionality issue, the case was referred to the competent 2<sup>nd</sup> section of the Court of Audit, which annulled the individual administrative act. The case was a pilot case, thus binding the resolution of similar cases arising from the application of the provisions of statute 4093/2012, which retroactively imposed cuts on “special

payroll” wages and pensions. The decision was extensively discussed in the press.<sup>11</sup> After the decision and in order to limit its financial consequences, the Minister of Finance issued a circular defining that the application of the Court of Audit decision would not be horizontal but would only benefit the individuals who had made recourse to justice. This circular determines the interpretation of other supreme court decisions declaring unconstitutional the imposition of taxes, levies or cuts on citizens’ revenues.<sup>12</sup>

#### **N. Decision 2307/2014 by the Council of State Plenum, 27 June 2014<sup>13</sup>**

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: trade unions of several banks’ employees; the Panhellenic Federal Union of Editors; the General Workers’ Confederation of Greece (GSEE); the Union of Drivers in the Electric Train of Athens and Piraeus; the Union of Drivers in the Metro of Attica; the Federation of Bank Employees’ Organizations of Greece; unions of several banks’ pensioners; against Ministers of the Greek Government and a private company that intervened in the proceedings, having made use of the relaxation of labor protection against layoffs.
3. Type of action/procedure: Action for the annulment of a regulatory administrative act in application of statute 4046/2012, implementing the second Economic Adjustment Programme. Incidentally, the claimants were contesting the constitutionality of the relevant provisions of statute 4046/2012.
4. Admissibility issues: Certain interventions against the administrative act were rejected as inadmissible, since intervention during the annulment proceedings is possible only in favour of the attacked administrative act (point 13).
5. Legally relevant factual situation: Law 4046/2012 and the administrative act implementing it contained austerity provisions affecting the labour law rights, as well as the collective bargaining rights of the members of the claimants and of the claimants themselves. More precisely, the administrative act imposed, in application of the law, a 22% (32% for young workers under 25 years old) reduction in the minimum wages and payments in comparison to the 2010 National Collective Labour Agreement; it further provided that the duration of the validity of collective agreements could not exceed 3 years and reduced the duration and scope of their aftereffect; the same act excluded the possibility of trade unions to unilaterally

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<sup>11</sup> See “Court of Audit: the cuts on judicial functionaries pensions were declared unconstitutional [in Greek]”, *in.gr*, 23 June 2014, <http://news.in.gr/greece/article/?aid=1231329333>

<sup>12</sup> Cf. Nikos Filippidis, “Circular-directive issued by the Ministry of Finance following judicial decisions on judicial functionaries [in Greek]”, *skai.gr*, 24 June 2014, <http://www.skai.gr/news/greece/article/260731/eguklio-odigo-meta-tis-dikastikes-apofaseis-gia-dikastikous-evgale-to-upoik/>

<sup>13</sup> Cf. Matina Yannakourou, “Labour measures of Memorandum II before the Greek Council of State: Decision 2307/2014 (Plenum)”, [http://eurocrisislaw.eu.eu/wp-content/uploads/2015/04/Greek-Council-of-State-2307\\_2014.pdf](http://eurocrisislaw.eu.eu/wp-content/uploads/2015/04/Greek-Council-of-State-2307_2014.pdf)

recourse to labour arbitration in case of failure in the bilateral negotiations between social partners and limited the scope of arbitration; it further suspended the effect of legislation, regulatory acts, collective agreements or arbitration awards providing for wage increases according to work experience or seniority until unemployment was reduced to lower than 10%; finally, it abrogated the “tenure clauses”, that is, protective provisions against layoffs for employees under an indeterminate period contract (point 4).

Article 1 par. 6 of the same law declared that certain MoU provisions were “perfect legal rules of direct application” and delegated the Council of Ministers the enactment of any necessary decisions for their application.

Subsequently, law 4093/2012 reiterated the provisions of the administrative act concerning minimum wages reductions, thus rendering them immune from judicial scrutiny (there is no possibility in Greek law of direct contestation of the compatibility of statutory legislation with the Constitution). The object of the proceedings was thus restricted, since the subsequent legislation tacitly abrogated the attacked administrative act provisions concerning the cuts on minimum wages.

6. Legal questions: Whether the reiteration of the minimum wages reductions in statutory legislation was compatible with constitutional provisions concerning equality under the law, the principle of separation of powers, the right to access to court, the separation of powers and the institutional guarantee of the Council of State (articles 4, 20 par. 1, 26 and 95); whether the MoU was a public international law agreement, binding for the Greek State; whether the delegation of article 1 par. 6 law 4046/2012 was compatible with article 43 par. 2 C; whether the rest of the austerity provisions contained in the attacked administrative act were compatible with the constitutional provisions on labour rights, collective bargaining (22 par. 2 and 23 par. 1 and 2 C) and the principle of proportionality (25 par. 1 C).
7. Arguments of the parties: The plaintiffs claimed that the enactment of **law 4093/2012, containing identical provisions on minimum wages cuts** with those attacked, was an impermissible intervention to the judicial proceedings at hand, contrary to equality under the law, the principle of separation of powers, the right to access to court and the guarantee of the autonomy of the Council of State (**articles 4, 20 par. 1, 26 and 95**).

Some of the plaintiffs further claimed that the **MoU was a public international law agreement**, ratified through statute 4046/2012 (which accords to certain provisions of the MoU the status of ordinary legislation). Others, on the contrary, emphasized the character of the MoU as a political programme and contested **the normative validity of article 1 par. 6 of the statute**, which accords legal status to programmatic provisions. All plaintiffs argued that the **delegation provided to the Council of Ministers** to issue administrative acts in application of the MoU normative provisions was **contrary to article 43 par. 2 C**, which imposes that administrative authorities are generally delegated to regulate matters on which the general directions are previously defined by statutory legislation (point 20).

The trade unions further claimed that the attacked provisions of the administrative act were contrary to constitutional provisions on **labour rights, collective bargaining (22 par. 2 and 23 par. 1 and 2 C) and the principle of proportionality (25 par. 1 C)**, since they were not appropriate and necessary and were violating the core of these rights (point 21).

They also claimed that the provisions abrogating clauses on wage increases were leading to a serious deterioration of their living standards contrary to the principle of **human dignity (article 2 par. 1 C) and of free development of the personality (article 5 par. 1 C)** (point 35).

Concerning the invalidation of “**tenure clauses**” in particular, the plaintiffs claimed that the relevant administrative act was invalid as **exceeding legislative delegation** (point 37).

The plaintiffs further claimed that the impugned administrative act contained provisions that, taken as a whole, were contrary to the principle of **equality** (article 4 par. 1 C), since they burdened a certain social group, namely private sector employees, in order to face the economic crisis, while no such measures were implemented against other social groups and other pieces of legislation institutionalized a system of tax settlement favourable to the debtors (point 39).

Finally, the plaintiffs claimed that the contested austerity measures were contrary to **EU fundamental freedoms**, as well as to article **11 ECHR**, ensuring the trade union rights and freedoms; to the **ILO International Agreements no. 87, 98 and 154** concerning collective autonomy and collective bargaining, as well as to the **European Social Charter**; to article **1 of the First Additional Protocol to the ECHR** (point 40).

The Government, whose arguments are accessible through reports accompanying the relevant legislation, claimed that the attacked measures pursued the public interest of reducing the public debt and deficit, making the labour market more flexible, promoting structural reforms and rendering the Greek economy more competitive, according to the precepts of the Economic Adjustment Programme. They also claimed that these measures were respecting the principle of proportionality, in view of the exceptional economic crisis faced by the country and the historic responsibility to keep the country in the EU and the Eurozone.

8. Conclusion and reasoning of the court: The Court described the economic and legal situation preceding statute 4046/2012, with a focus on labour and collective bargaining rights. It concluded that, though some of the attacked administrative acts were abrogated by subsequent legislation with an equivalent effect, it could not be argued that it was the will of the legislator to substitute the relevant administrative provisions with legislation in order to render them immune from judicial scrutiny. Therefore **articles 4, 20 par. 1, 26 and 95 were not violated** (point 16 –dissenting minority).

Concerning **the nature of the MoU**, the Court followed its 668/2012 decision, according to which the MoU is the political programme of the Government for the

facing of the financial crisis, which sets political objectives and a time-line for their achievement. The fact that some of the provisions of the MoU were attributed legal status by law 4046/2012 did not change anything to this respect (point 19).

Concerning the **delegation provided by article 1 law 4046/2012** to the Council of Ministers, the Council of State concluded that, since article 1 attributed legal status to certain MoU provisions, it sufficiently defined certain general directions on the matters that the Council of Ministers was delegated to regulate.

Concerning the **austerity provisions** contained in the impugned administrative act, the Court admitted that they infringe workers' rights and deteriorate their negotiation power towards employers. It concluded however that they were part of a more general reform programme, described in the MoU, a document of technical nature not submitted to judicial scrutiny. This programme aimed at reducing the public debt and deficits, making the labour market more flexible, promoting structural reforms and rendering the Greek economy more competitive. The contested measures, taken under wholly exceptional circumstances, namely the danger of bankruptcy and of collapse of the Greek economy with unpredictable economic and social consequences, did not seem manifestly inappropriate or unnecessary to the Court, in the cadre of its marginal judicial scrutiny. Further, they did not violate the core of collective bargaining and labour rights of the claimants, since the institutions of collective bargaining, as well as the employees' rights to negotiate and to strike remained (point 23 –dissenting minority).

As to the **limitation of the duration of the aftereffect** of collective agreements, the Court concluded that it did not infringe collective autonomy rights, since it did not modify the content of collective agreements or arbitration awards; further, the limited duration of three months (from six months) was sufficient, according to common experience, to allow to trade unions to organize themselves and negotiate with employers (points 24-30 –dissenting minority).

As to the **exclusion of the possibility of unilateral recourse to labor arbitration**, the Court observed that article 22 par. 2 C guarantees the institution of labor arbitration. This guarantee would not be effective if recourse to arbitration was only consensual and if social partners had the possibility to deny it, thus perpetuating social contrasts. This would inevitably lead to the regulation of labor terms and conditions at the level personal agreements and would favor employers, who usually have a negotiation advantage at this level. Therefore the relevant administrative provisions, excluding the possibility of unilateral recourse to labor arbitration were contrary to article 22 par. 2 C (point 31-32 –dissenting minority).

As to the **limitation of the scope of arbitration**, the Court concluded that it was contrary to the Constitution, since article 22 par. 2 prohibited the exclusion of collective bargaining matters from labor arbitration (point 33 - dissenting minority).

As to the **provisions invalidating collective agreement or award clauses on wage increases** until unemployment is less than 10%, the Council of State referred to its constant case law, according to which, the regulation of employees' revenues belongs to the core of collective autonomy and cannot be exclusively left to statutory

regulation, except if reasons of public interest impose the contrary, and only for as long as these reasons exist. According to the judges, the reports accompanying the relevant legislation sufficiently justified these provisions by invoking reasons of compelling public interest and by limiting the effect of these provisions to the duration of the Economic Adjustment Programme (point 36 –dissenting minority).

As to the **provisions invalidating “tenure clauses”**, the Council of State concluded that they were enacted according to the relevant legislative delegation of article 1 par. 6 law 4046/2012 and were not contrary to the constitutional rights of the workers. Despite the fact that they infringed labour rights, the principle of collective autonomy, and the contractual freedom of individuals (modifying already existing labour contracts), they did not violate the core of constitutional labour rights, since basic protective rules against layoff, like the obligation to provide notice and compensation, remained. Further, like the rest of the austerity provisions contained in the administrative act, they were justified (point 38 –dissenting minority).

Concerning the **principle of equality**, the Court rejected the claims of the plaintiffs since it concluded that the impugned measures were part of Government efforts to face the crisis, which had negatively affected a broad category of citizens, among which businessmen and employers. The judges considered that the object of judicial scrutiny was not the correctness of the measures and the relevant measures did not manifestly violate the principle of equality. Further, since they did not impose burdens or taxes to the plaintiffs, the principle of equality towards public burdens was not in question (point 39 –dissenting minority).

Finally, concerning **EU law and the ECHR**, the Court concluded that, since the contested provisions did not affect the core of the invoked rights or the principle of proportionality, they were not contrary to EU law or the ECHR. As far as the **ILO Agreements** were concerned, the Court considered that these agreements only contained directions to the signatory States, which Greece had implemented through constitutional provisions protecting collective autonomy and negotiations. Since these constitutional provisions were not violated, the ILO Agreements were not either (point 40).

9. Legal effects: the legal nature of the reductions on minimum salary wages was confirmed; the MoU’s nature as a political document was confirmed; the MoU provisions on structural reforms and on the labour market were recognized as complete and valid legal rules of a statutory nature; the administrative provision excluding the possibility of unilateral recourse to labor arbitration was declared contrary to article 22 par. 2 C and was annulled; the rest of austerity measures implemented with the impugned administrative and legislative acts were declared constitutional and valid.
10. Main outcome and broader implications: The decision was the first to declare measures implementing the MoU unconstitutional and it was extensively discussed in



the press.<sup>14</sup> Even though unconstitutionality concerned only part of these measures, it was perceived as a victory for the trade unions.

#### **O. Decision 4003/2014 by the Council of State Plenum, 14 November 2014<sup>15</sup>**

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: Individual citizens, real estate property owners, against the Minister of Finance.
3. Type of action/procedure: Action for annulment of due action omission.
4. Admissibility issues: Generally it is admitted that, in case of administrative discretion to issue regulatory acts, no action for annulment of the omission of such acts is possible. However, this is not the case when the Constitution or the law prescribes to the administration to act within certain time limits or after the fulfilment of certain objective conditions. This was the case in the particular situation at hand.
5. Legally relevant factual situation: The plaintiffs, real estate property owners, were subjected to taxation according to objective real estate values calculated by the administration. These values had not been readjusted since 2007, despite the plaintiffs' demand to the contrary and despite the fact that a 1982 statute requires the readjustment of the values every 2 years. The plaintiffs were thus subjected to taxation according to objective property values which were much higher to the actual market values of their property, decreased due to the economic crisis.
6. Legal questions: Whether the administration had illegally omitted to readjust the objective values of real estate property, thus violating the right of the taxpayers to pay taxes according to the actual market value of their property.
7. Arguments of the parties: The plaintiffs claimed that the administration had illegally omitted to readjust the objective values of real estate property, thus violating their right to pay taxes according to the actual market value of their property.
8. Conclusion and reasoning of the court: The Court accepted the arguments of the plaintiffs and annulled the administrative omission to readjust the objective real estate property values since 2007.
9. Legal effects: The Court made use of a new procedural possibility according to which it has the power to give a deadline to the administration for compliance with the judicial ruling, instead of retroactively annulling the administrative omission. The

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<sup>14</sup> See for example, Christina Kopsini, Ioanna Mandrou, "Labor arbitration is restituted with a Council of State decision [in Greek]", *Kathimerini*, 25 June 2014, <http://www.kathimerini.gr/773233/article/oikonomia/ellhnikh-oikonomia/epanerxetai-h-diaithsia-sta-ergasiaka-me-apofash-toy-ste>

<sup>15</sup> See the official summary of the judgment, available in English at <http://www.ste.gr/images/StE/content/deltia/Judgment%20Summaries.pdf>

Court thus issued an interlocutory judgment and postponed the definitive resolution of the case for a reasonable 6 months period. In its reasoning, the Court referred to “the need to strike a fair balance between the applicants’ legal interest on the one hand and on the other hand the overriding public interest to avoid a sudden disorder of public revenues –under the current fiscal circumstances.”<sup>16</sup>

10. Main outcome and broader implications: The Court gave to the administration a 6 months deadline to readjust the objective real estate values. It is the first time that the Court made use of this procedural possibility.

#### **P. Decision 4741/2014 by Council of State Plenum, 29 December 2014<sup>17</sup>**

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), Plenum.
2. Parties: Individual citizens, members of the academic staff of the University of Athens, against the University of Athens and the Minister of Finance.
3. Type of action/procedure: Claim for compensation for damage provoked by an illegal act. Pilot case (binding for the resolution of similar cases). Incidentally, the plaintiffs were contesting the constitutionality of the relevant provisions of statute 4093/2012.
4. Admissibility issues: No issues.
5. Legally relevant factual situation: The plaintiffs suffered cuts on their salary, according to the policies agreed in the MoU for cuts of 10% to the special wages in the public sector. These measures were implemented with statute 4093/2012 on which the payment of reduced revenues to academic staff was based.
6. Legal questions: Whether the cuts were respecting the duty for special treatment of academic staff of public universities (article 16 C), the principles of proportionality, equality concerning public burdens and human dignity.
7. Arguments of the parties: The plaintiffs claimed that their revenues were reduced at a level which rendered impossible for them to respond to their living expenses and academic duties. They claimed thus that the measures were unconstitutional as contrary to article 16 C, guaranteeing free and public education and a special treatment to the academic staff of public universities; to the principle of equality in general and in the distribution of public burdens in particular; to their economic freedom (article 5 par.1 C); to their right to property (guaranteed by article 17 of the Constitution and by the ECHR) in combination with the principle of proportionality (article 25 C); and to articles 74 and 80 C concerning parliamentary procedures for voting cuts on public servant salaries (point 22 of the decision).

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<sup>16</sup> See the summary of the judgment cited above.

<sup>17</sup> See the official summary of the judgment, available in English at <http://www.ste.gr/images/StE/content/deltia/Judgment%20Summaries.pdf>

The public authorities claimed that the measures were pursuing the public interest of reducing the deficit and were justified, in view of the exceptional economic situation in which the country was and of the fact that the academic staff often pursues a parallel profession. They also claimed that the measures were imposed by the Council decision 2012/211/EU, requiring the 12% reduction in average to the special wages of the public sector.

8. Conclusion and reasoning of the court: Article 16 C, guaranteeing free and public higher education, ensures the functional and personal independence of academic staff of public universities, as well as their special payment status, in view of their position and the importance of their function. Several articles of the Constitution habilitate the legislator to impose cuts on the revenues of public servants (among which the academic staff) for the purpose of reducing the public deficit in times of economic crisis. However, when imposing such cuts, the law-makers must take into account the principles of equality, proportionality and human dignity. By imposing 10% cuts to the revenues of all academic staff without differentiation, the legislator treated them as equal without taking into account their specific position or qualifications. The only criterion used was a “purely mathematical” and “profoundly inappropriate” one, namely the results of the measures on public service expenditure.<sup>18</sup> The legislator thus ignored the need to preserve the status of academic staff and to attract competent scientific personnel to the Greek universities. It further did not take into account the consequences that the cuts would have on the living standards of academics. Finally, the Court declared the measures “profoundly ill-proportionate and unequal” in view of their cumulative effect with previous and subsequent austerity cuts.<sup>19</sup> The fact that the Council decision imposed cuts of 12% to the public sector special wages did not dispense the public authorities from their duty to respect the above principles (point 23) [dissenting minority].
9. Legal effects: The Court declared the provisions on the cuts of academic staff revenues unconstitutional and thus illegal. This decision did not have an abrogative effect but engaged the responsibility of public authorities for compensation. The Court decided that the unconstitutionality (and thus the obligation of the universities to pay the previous salary amounts) took effect only after the publication of the decision, in view of its important financial consequences and the acute financial crisis faced by the State (point 26).
10. Main outcome and broader implications: The plaintiffs obtained compensation, together with other plaintiffs having already introduced proceedings before the administrative courts prior to the publication of the judgment. The unconstitutional provisions of statute 4093/2012 ceased to apply. The decision was cited in the press<sup>20</sup>

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<sup>18</sup> See the summary of the judgment cited above.

<sup>19</sup> See the summary of the judgment cited above.

<sup>20</sup> Eva Karamanoli, “The cuts on academic staff salaries were declared unconstitutional [in Greek]” *Kathimerini*, 30 December 2014, <http://www.kathimerini.gr/797594/article/epikairothta/ellada/antisntagmatikes--oi-perikopes-mis8wn-twn-panepisthmiakwn>

and constitutes a precedent for subsequent Council of State decisions on pension cuts.<sup>21</sup>

#### **Q. Decision 1031/2015 by Section A' of the Council of State, 23 March 2015**

1. Name of the Court: Council of State, A' Section.
2. Parties: the Panhellenic Federal Union of D.E.H. Pensioners (public electricity company pensioners) and individual citizens, pensioners, against the Minister of Finance and the Minister of Labor and Social Security.
3. Type of action/procedure: Action for the annulment of a common ministerial decision concerning the payment of pensioner allowances and benefits, issued according to law 3845/2010. Incidentally, the plaintiffs were contesting the constitutionality of the legal statute itself.
4. Admissibility issues: No issues.
5. Legally relevant factual situation: The administrative act regulated matters relative to the payment of the plaintiffs' pensions and imposed cuts on pension allowances according to statute 3845/2010.
6. Legal questions: Whether the delegation provided to the administration by statute 3845/2010 was compatible with article 43 par. 2 of the Constitution. Whether the statutory provisions in application of which the attacked administrative act was issued were compatible with the Constitution, with the ECHR, with the European Code of Social Security, with the European Social Charter, with the European Fundamental Rights Charter, with the International Covenant for Economic, Social and Cultural Rights (ICESCR) and with the ILO International Labour Agreement no. 102.
7. Arguments of the parties: The plaintiffs claimed that the impugned administrative act had been illegally issued, since the relevant delegation to the administration by statute 3845/2010 was contrary to article **43 par. 2 C**. This is because the relevant measures were restricting their constitutional and legal labor and pensioner rights and thus referring to a matter which could not be subject to delegation. They also claimed that the contested statutory provisions were contrary to the principle of **proportionality**, since the law-makers did not prove the effectiveness of the measures to the pursue of the public interest of reducing public debt and of making the Greek economy more competitive. Further the law makers did not examine eventual alternative measures of economic adjustment which would be less restrictive for the claimants' rights and did not restrict the time extent of the measures to the existence of the circumstances that were justifying them. Further the plaintiffs claimed that the impugned measures were contrary to article 22 par. 5 C concerning the principle of **protection of social security** and to article 70 par. 3 C of the European Code of Social Security.

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<sup>21</sup> See for example Gianna Papadakou, "The decision-bomb by the Council of State on the unconstitutionality of pension cuts "explodes" [in Greek]", *To Vima*, 30 April 2015, <http://www.tovima.gr/society/article/?aid=699744>

According to the claimants, these provisions imposed the drafting of impact studies in case of reduction or readjustment of social security allowances, in order to ensure the necessity of the relevant measures. Moreover, the plaintiffs claimed that the cuts on their pension allowances were contrary to **articles 22 par. 5 C and 1 of the First Additional Protocol to the ECHR**, ensuring a right to social security and prohibiting the substantial reduction of pension allowances, especially of those provided in the cadre of distributive social security systems such as the Greek one. The right can only be restricted in cases where this is imposed by a compelling public interest in respect of the principle of **proportionality**. In any case the relevant measures should not affect **the core** of the right, which protects the peaceful enjoyment of social security allowances which ensure a decent way of life, conformingly to the principle of **human dignity**. However, according to the plaintiffs, the only public interest invoked by the public authorities was the cash interest of the state, which was not a compelling public interest. The plaintiffs also claimed that the deprivation of pension allowances to pensioners under 60 years old constituted an **unjustified discrimination** against them. The criterion used for the differentiation of the treatment of these particular pensioners was manifestly arbitrary, since it was not connected to a particular quality of these citizens nor to a specific public interest. The plaintiffs further claimed that the impugned statute was contrary to **article 12 par. 3 of the European Social Charter**. To this respect the invoked relevant decisions by the European Committee of Social Rights (in procedures initiated among others by the claimants themselves), in view of the cumulative consequences of the 2010 and 2011 austerity measures and of the procedure followed for their enactment. Therefore the plaintiffs alleged that the contested statutory provisions, interpreted in view of the subsequent legislative developments, which imposed new austerity measures to them, had become *ex poste* unconstitutional. Finally, they claimed that the impugned statutory provisions were contrary to **articles 2, 9 and 11 ISESCR** concerning social security and imposing to all UN MS to ensure a decent way of life to everyone residing in their territory; to **article 34 of the European Charter of Fundamental Rights** establishing a right to social security and to social assistance; to **article 65 par. 1 of the International Labor Agreement no. 102 and to article 10 of the European Social Charter**, imposing a progressive readjustment of pensions to the continuously increasing inflation, and to **article 66 par. 4 and 7 of the same Agreement**, which establishes minimum thresholds for senility pensions. (point 6)

8. Conclusion and reasoning of the court: The Court observed that the issues delegated to the administration by statute 3845/2010, concerning the payment of pensions and allowances of the concerned pensioners, were detailed issues and the delegation of their regulation to the administration was **conforming to article 43 par. 2 C** (point 7).

Concerning the plaintiffs' allegations on the **right to social security** and on the violation of the principle of **proportionality**, the Court adopted a reasoning quasi identical to that in decision 668/2012 on the matter. Referring to the relevant Strasbourg case law, the Court engaged in a proportionality test and concluded that the cuts in pension allowances of the claimants were justified by the compelling public interest of consolidation of the public finances, which was also the common interest of the Eurozone member-states. The judges considered that these cuts were

not manifestly inappropriate or unnecessary for this purpose, according to the reasonable appreciation of the legislator. The measures were part of a general economic programme planned by the Government for the confrontation of the acute economic crisis, thus the applicants' complaints on the lack of any study concerning less onerous measures were rejected. In addition, the contested measures did not result in an elimination of the plaintiffs' pension rights but only in a restriction to their protection, according to the principle of proportionality (point 9 –dissenting minority).

Further, concerning the plaintiffs' allegations on the violation of article **22 par. 5 C** and of the **European Code of Social Security** the Court adopted a reasoning which was quasi identical to that in decision 1285/2012 on the matter. It thus stressed that Law 3845/2010 was not restructuring the pension system as a whole but rather imposing cuts on allowances in the framework of a complex of measures for the fiscal consolidation of the country. It was thus a measure included in the economic adjustment programme of the country, justified by the compelling public interest of preserving the sustainability of social security funds, achieving determined financial targets and of restricting the deficit of general government. Therefore, the invoked articles of the European contain directions for harmonizing domestic legislation to the Convention, through the provision of periodical scientific studies ensuring the sustainability of social security funds. They impose such studies in case of modification of the contributions through which these funds are financed. The contested measures were not violating the relevant articles because they were not violating article 22 par. 5 of the Constitution, which was in conformity with the Convention (point 10 –dissenting minority).

Concerning the **principle of equality**, the Court adopted a reasoning which is quasi identical to that in decision 668/2012 on the matter. Therefore, it stated that the increased needs of the elderly justified their different treatment from those who are under 60 years old. The age threshold of 60 was objective and relevant. Besides, statute 3845/2010 had a quasi-transitional character, by virtue of a subsequent statute defining the 65<sup>th</sup> year as retirement age and the 60<sup>th</sup> year as early retirement threshold age (point 11 –dissenting minority).

Concerning the plaintiffs' claims on the violation of article **12 par. 3 of the European Social Charter**, the Court observed that the European Committee of Social Rights had indeed found a violation of this article, due to the cumulative effect of the 2010 and 2011 austerity measures, in combination with the procedure followed for their enactment. However, according to the Court, it was clear from these decisions that the Committee did not consider that the cuts under consideration, in themselves, constituted a violation of the European Social Charter. Therefore, independently of the bindingness of the invoked Committee decisions, an eventual violation of the European Social Charter due to the cumulative effect of the contested measures and of subsequent ones, would only concern the latter measures which were not the object of the proceedings before the Court (point 12-13).

Finally, the Court rejected the plaintiffs' claims concerning the **ICESCR and the rest of the supra-national texts** invoked by them as ungrounded or indeterminate (point 14).

9. Legal effects: The cuts on pension allowances of the claimants were upheld as compatible with the invoked supra-legal provisions.
10. Main outcome and broader implications: The decision was discussed in the press.<sup>22</sup>

#### **R. Decision 59/2014 by the Council of State Interim Measures Committee, 1 April 2014**

1. Name of the Court: Supreme Administrative Court (Council of State, Συμβούλιο της Επικρατείας), interim measures committee.
2. Parties: the legal entity under public law "Medical Union of Athens" against the Minister of Health and the National Organization for the Provision of Health Services (EOPYY).
3. Type of action/procedure: Application for interim measures in the context of an action for the annulment of a general administrative act concerning the definition of maximum monthly cost limits per doctor for medical prescriptions.
4. Admissibility issues: No issues.
5. Legally relevant factual situation: Following delegation by the Minister of Health, the President of the EOPYY issued a general administrative decision setting maximum monthly cost limits per doctor for medical prescriptions. This measure was taken in the cadre of the effort to reduce social security expenses, according to the provisions of the draft of MoU for the Second Economic Adjustment Programme "ratified" by law 4046/2012 (point 4).
6. Legal questions: Whether reasons of public interest imposed the suspension of the imposition of maximum monthly cost limits per doctor for medical prescriptions.
7. Arguments of the parties: The plaintiff legal entity claimed that the application of the impugned administrative decisions would cause to its members an irreversible moral, professional and economic damage, since it would impede them from exercising their profession after reaching the arbitrary monthly limit of medical prescription. Further the plaintiffs claimed that no reason of public interest imposed the application of these measures, since the adoption of prescription protocols, a measure introduced for the first time with the impugned decisions, was sufficient to achieve the aimed reduction of medical expenses. On the contrary, they claimed that reasons of public interest imposed the suspension of the application of the contested decisions, since such application would substantially perturb the normal provision of health services to Greek citizens. Indeed, health services would consequently only operate

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<sup>22</sup> Cf. "Council of State: The cuts on Christmas, Easter and leave allowances are constitutional [in Greek]", *To Vima*, 27 March 2015, <http://www.tovima.gr/society/article/?aid=689681>

under logistic-economic criteria and not according to scientific criteria, thus denaturing the relationship between patient and doctor.

The Minister of Health invoked the need to further reduce public expenses on medicines and social security, “in order to comply with the country’s obligations” assumed through law 4046/2012 and in view of the risk that the financial objective in the domain of health would not be achieved, despite other policy measures to this respect (point 7).

8. Conclusion and reasoning of the court: The Court recognized the reasonable objective of reducing medical expenses, in view of the problematic situation of public finances. However, it stressed that the impugned measures could lead to a deterioration of the level of public health services, since it would impede doctors having reached the set limit to prescribe medicines adapted to their situation, according to the precepts of medical science. Besides, the above measures, applied horizontally, could equally affect doctors who respected the -imposed by law-prescription of off-patent medicines and doctors who did not respect the relevant legislative provisions. Therefore, after balancing the public interest of reducing public expenditure in the health sector and the public interest imposing the prevention of probable damage to the citizens’ health, the Court suspended the application of the impugned administrative acts.
9. Legal effects: The application of the attacked administrative acts was suspended.
10. Main outcome and broader implications: The decision and its financial consequences was discussed in the press.<sup>23</sup> The outcome of the main proceedings is still unknown.

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<sup>23</sup> See Penny Bouloutza and Eva Karamanoli, “Council of State: Suspension of prescription plafond [in Greek]”, *I Kathimerini*, 2 April 2014, <http://www.kathimerini.gr/760747/article/epikairothta/ellada/ste-anastolh-plafon-syntagografshs>