

# Constitution, social rights and economic crisis

The case of Greece

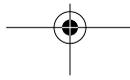
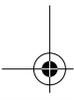
Patrina Paparrigopoulou-Pechlivanidis<sup>1</sup>

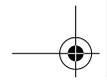
The issue under contemplation is whether the Constitution is able to prevent – and in what ways – the creation of huge fiscal deficits in such a manner as to ensure the economic and social rights of the citizens. Although it has a particularly onerous impact on the population, the issue of limitation of social rights due to financial crunch and economic recession is not under contemplation here since it emerges at a subsequent time. In a certain sense it is less interesting from a legal perspective because the limitations on social rights, particularly in view of their financial nature, are addressed through a set of provisions pertaining to legislative and judicial assessments on the presence of grounds of public interest and of compliance with the principles of equality, proportionality and the protection of human value.<sup>2</sup>

To this end, the example used in this essay is the Greek Constitution. The views supported below are the following: First, the way that the Constitution has been interpreted to date is not consistent with fundamental rules and views of the EU and the IMF, which is why there are delays in taking the measures that were agreed upon with these international organizations and why there are shortcomings in their implementation. Second, the constitutional provisions regarding the economy, public finance and financial control do not suffice at a quality or a quantity level for the prevention of crises, such as the one which the country currently faces.

<sup>1</sup> Professor, Athens University, Lawyer.

<sup>2</sup> However, it cannot be overlooked that in the event of extreme conditions of financial crunch, the eloquent maxim, «ουκ αν λάβοις παρά του μη έχοντος», is applicable. – This stereotypical phrase, meaning «I can't, if I haven't got it», comes from Lucian's «Dialogues of the Dead»; it is the answer given by Menippus to Charon when the latter asked Menippus for a fare for bringing him across to the Underworld.



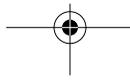
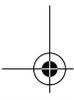


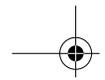
## I NON-CONSISTENCY IN THE INTERPRETATION OF THE CONSTITUTION, THE LEGISLATION, THE CASE LAW AND THE PREVALENT IDEOLOGY WITH BASIC EU ASSUMPTIONS

1 The Greek Constitution is a legal text encompassing the values of the Greek society, human rights and the organization of the political system. The basic constitutional choices with regard to economy, public finance and financial control are the following:

- Being part of the EU and the Eurozone as well as of other international organizations (pursuant to laws with increased formal power based on article 28 of the Constitution).
- Free participation of individuals in the social and economic life (article 5, par. 1 of the Constitution) and protection of ownership (article 17, par. 1) whereas, at the same time, the social nature of economic freedom and ownership is established (articles 5, par. 1 and 106, par. 3-5), followed by the capability of imposing limitations on ownership on grounds of public interest (article 17, par. 2 et seq., article 18 and other provisions, e.g. provisions on the environment, etc.). However, the free-market system and free competition as its fundamental component are not directly established in the Constitution; rather, they are inferred from the provision that private economic initiative may not grow at the expense of freedom or human value or to the detriment of state economy.
- The State has an obligation to plan and coordinate the economic activity in the country, aiming to a balanced economic growth and social development in all the sectors of state economy and the establishment of social peace and justice (articles 106, par. 2 and 25, par. 2). Indicatively, the state or other public entities may acquire enterprises or force their participation in such enterprises provided that these are monopoly enterprises or of crucial importance to the exploitation of national wealth resources. In addition, the state may prepare economic growth and social development programs (article 79, par. 8).
- Financial control (mainly articles 78-80 and 98 of the Constitution) pertains to imposing taxes, voting on the state budget, balance sheet and financial report in the Parliament as well as to the auditing of state expenditure by the Court of Auditors.
- The separation of powers into legislative, executive and judicial (article 26 of the Constitution) so that any abuse of power in the representative system can be prevented.
- (Sustainable) social protection (see in particular articles 21, 22 and 25 of the Constitution).

2 The Constitution establishes economic freedom provided that such freedom is not exercised against society. The state intervenes in, plans and coordinates economic life in order to develop the necessary requirements for economic growth and social development. However, since 1975, the Constitution's year of enactment to date, both legislation





and case law seem rather distrustful of the market and indifferent to the monitoring of financial management and the sustainability of social protection. Indicatively, although the Constitution establishes (albeit indirectly) free market economy and, consequently, the competition, utility services (electric power, telecommunications, etc.) were provided until recently by public utility enterprises (DEKO). Moreover, many occupations continue to be 'closed' notwithstanding the country's specific commitments in this aspect in «Memorandum 1»<sup>3</sup> and «Memorandum 2».<sup>4</sup> This prevailing distrust is reflected by the Council of State's case law, which from 1983 interprets the Constitutional provisions in favor of state intervention in a way that promotes the provision of public and welfare services almost exclusively by the public sector and also accepts the over-regulation of the private sector (for example the creation of a multitude of «protected» professions).

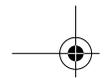
This tendency may be seen in particular with regard to the relationship between the public and the private sector in welfare services. According to said case law, the Constitution requires that public healthcare and social insurance services be organized as public entities. Namely, public service is not accepted in its functional sense.<sup>5</sup> As a result, public hospitals which have been part of the National Health System (ESY) had no contact with private hospitals and, in fact, the Constitution permitted, if not imposed, the compulsory inclusion of non-profit private hospitals in ESY.<sup>6</sup> This long-standing lack of cooperation between the public and the private healthcare sector has resulted in a great loss of resources, since, for example, expensive pieces of equipment such as CT scanners, were separately supplied to the public and the private sector whereas both sectors could have very well cooperated and shared them. Similarly, the change of mutual assistance funds (private entities) into public entities is considered to be consistent with – if not required by –

3 The term «Memorandum 1» means the bill on the *Memorandum on Economic and Financial Policy and the Memorandum of Understanding on Certain Conditions for Economic Policy* with the EU, the ECB and the IMF, currently Law 3845/2010 *Measures on the application of the support mechanism of the Greek economy from Member States of the euro area and the IMF*.

4 The term «Memorandum 2» means Law 4046/2012 regarding the Approval of Draft Finance Agreements between the European Financial Stability Facility of 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 on public debt reduction and national economy bailout, and the respective implementation laws.

5 In its functional sense, public service is defined as a public interest activity, which involves the provision of goods or services to the citizens and is exercised by a public entity or is under the control of a public entity, according to a special legal status. The concept of public service has been mostly developed in the French administrative law. It is also found in other laws of continental Europe but not to the same extent as in the French law. French jurists grasp the concept of public service in its functional sense as an objective limitation on state power. According to Duguit, *social solidarity* and, according to Hauriou, the *social contract* are the foundation for the limitation of state power in contrast with German theorists (Laband, Jhering, Jellinek) who believe that state powers are self-limited. In the Anglo-Saxon law, the only similar concept is *public utilities*, which, however, defines the public sector in general, not public service, as is the case with laws in continental Europe. See *J. Chevallier*, «Regards sur une évolution» and *J. Bell*, «L'expérience britannique», *AJDA*, June 1997, pages 10 et seq., 130 et seq.

6 Council of State (Plenary Session) 400/1986.



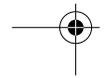
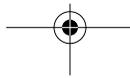
the Constitution, based on the rationale that social insurance is provided by the state and public entities. However, this does not arise from the Constitution, which merely states that the state cares for the social insurance of employees, without binding the simple lawmaker as to whether social insurance organizations may be private or public entities.<sup>7</sup> As such, the expanded public sector<sup>8</sup> has ensured employment for about half of the working population. Note that, unfortunately, recruitment in the public sector has not always taken place based neither on the needs of government agencies nor on merit. Being employed in the public sector has very often been a way for governing parties to «reward» their voters.

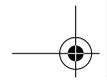
3 The Greek legislation, politics, case law and ideology reflect the views that were prevalent until the late '80s in the majority of the first 15 member states of the EU in connection with the methods and the extent of state intervention in economic life. Since then, however, things have changed and the prevalent view, currently, is that the state is limited to exercising public power, staying away from productive activity and the provision of social and welfare services. It is now accepted that the needs of society in general can be met through the operation of the market. Competition is the main tool of market regulation and anything standing in its way, for example, 'closed' occupations, must go. Within the framework of these views, the European law on the free movement of persons, services and capital has been enacted. Of course, the EU does not require member states to organize their economies based on a specific standard. However, the fact that, for years, EU member states have had a different orientation compared to Greece is very important.

4 In the light of the unprecedented fiscal and economic crisis and whilst examining the legality of the country's commitments in the context of Memorandum 1, the Plenary Session of the Council of State has issued ruling 668/2012, which makes reference to the need to support the crumbling national economy with austerity measures, particularly through reductions in pensions, benefits and salaries. The legality of the measures taken, although they have been taken for the purpose of addressing the crisis, is not only founded on the state of emergency. The approach followed by the Council of State is more complex, as it interprets the Constitution by putting forward the bailout of national economy and the need to ensure sustainable social protection based on the European law and within the Eurozone. Metaphorically, the 'drunken ship' of the republic (Greece) that faces the storm and is in danger of crushing into the rocks needs a captain and a crew (primarily the politicians and, then, the people) in order to find its course again and be guided to safety and such a captain and crew need to be knowledgeable of the position of

<sup>7</sup> Council of State (Plenary Session) 5024/1987.

<sup>8</sup> As to what the public sector comprises, refer to Law 3871/2010.





the stars (Constitution and European law) and the winds (economy). The ruling issued by the Council of State does not only make reference to the ‘storm’ but, also, to the Constitution and the European law which play the role of a ‘compass’.<sup>9</sup>

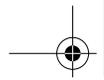
5 In Greece, political relationships have been based for long on intensity and arguing. Historically, when faced with major national crises, the country was divided. Indicatively, in connection with its participation in the First World War and, subsequently, the launch of the Asia Minor expedition and the following disaster, the country was divided into supporters of the King (i.e. the Germans) and supporters of E. Venizelos (i.e. the Entente). Later, in the Second World War, the country’s division into rightists and leftists resulted in a painful civil war.

Today, the country is divided into supporters of the Memorandum and the EU and those against the Memorandum and the EU. However, due to the fact that the country is part of the EU, the intensity of this division is much milder and less extensive. Therefore, a rational-technocratic approach on the basis of mitigating the clash of contrasting viewpoints is not a characteristic of political life in Greece. This explains the inability to form a ‘national salvation’ government consisting of politicians from all parties or a government of technocrats so that the decisions required in order for the country to emerge from the crisis can be taken based on consensus – this, also, explains the significant delay in nominating as Prime Minister the technocrat (trusted by both the EU and the IMF) Loukas Papadimos<sup>10</sup> and also requiring two elections (May 2012 and June 2012) for the parties to decide to cooperate in forming a coalition government. This may be a sign that finally the Greek political system is slowly changing attitude. Young people who are, currently, under 30 years of age have not experienced dictatorship but a long (and in recent Greek history unprecedented) period of stability; as a result, they are more receptive of collaborations in and out of the country.

6 Candid politicians who introduced restrictive measures were short lived on the Greek political stage. A typical example is the Minister of Labor and Social Insurance in Simitis’s government, Mr. Tasos Giannitsis, in the early 2000’s, who prepared a bill which would ensure sustainability of the pension system by means of cuts and provisions that would be far less painful compared to the current ones. As a result, the Minister was removed from office and, in the end the Simitis administration lost the following elections. Greek people tend to prefer politicians that sound reassuring even by making use of deliberately

9 Plato, ‘The Republic’.

10 A cabinet with Ministers from the parties of PASOK and NEW DEMOCRACY and, initially, of LAOS. Contrary to Greece, the neighboring Italy responded promptly to the crisis challenge by appointing a government of technocrats (not just a technocrat Prime Minister), with all parties expressing their agreement to this end.



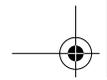
false promises and do not punish these politicians when their promises fail. The first thought that comes to mind is that Greek people are prone to populism. Although this seems to be partly true, in order to give a better explanation of this occurrence, we need to consider its association with the widely accepted, yet obviously wrong view which decouples welfare rights from the state's economic capabilities. This view has long been fostered by politicians, unionists, and some theorists in the name of a social state (even when they knew that this state is funded with loans) and of the priority given to the principle of equality over the principle of freedom.

7 «Because the troika demands so», rushed, fragmentary and insufficiently contemplated law provisions are enacted. These fragmentary provisions are riddled with legal-technical problems and cannot be assimilated or implemented by the administration, mostly because they are not followed with studies as to how they will be implemented, by whom, based on which procedures and what their social and economic consequences are expected to be.<sup>11</sup> What is the point, for example, in imposing a tax on real estate by means of submitting returns through the Internet if the respective web page is out of order? Another example is the consolidation of social insurance organizations which has failed to contribute to cost saving as it has failed to solve the issue of diverse social insurance laws and unjustifiable differentiations among the insured who are treated differently although they are in a similar state as regards contributions, contribution record and age. Therefore, it is no accident that despite extensive restructuring, costs saving targets have not been achieved. On the contrary, a climate of legal uncertainty is further created.

8 The contents of the law provisions are certainly not imposed by the troika, which primarily sets the targets and, then, leaves it to the Greek government to find the most appropriate way to achieve them. So, for example, the troika stated right from the start that based on their experience in countries where fiscal and economic restructuring measures were implemented these measures pertained by 2/3 to cost reductions and by 1/3 to tax increases. There can be no cost reduction without reducing the number of civil servants, since payroll is one of the largest, if not the largest, public expenditure. In 2010-2012, the government did not make any dismissals because of their high 'political

11 A typical example of the lack of preparation and coordination is reflected on the statement of the General Secretary of the Ministry of Labor and Social Insurance, Ms. Anna Stratinaki, who, at an event organized by the Labor Law and Social Insurance Association in the premises of Athens Bar Association, in Athens, on 27.3.2012, spoke of the recent developments in labor law saying that troika representatives are technocrats who come here with a piece of paper and some figures on it and are not interested in any legal issues that may arise. If this is the case, the question that arises is why the government has failed to form a team of technocrats that would accompany the troika and would be present at its meetings with Ministers, Deputy Ministers, General Secretaries, etc. in an effort to coordinate meetings and support the government at a technocratic level, too, with the appropriate figures and information.





cost'. They have tried, instead, to buy 'political time' so that the concept can grow in the minds of the public who will, then, be able to accept dismissals at a later stage. As a result, the measures taken were not successful and the worst is that they created further issues.

Specifically, compulsory retirement was used and the concept of 'pre-retirement redundancy' was invented, according to which, every person who has completed 35 years of service and 55 years of age by 31.12.2013 would be subject to compulsory retirement (instead of retiring at the age of 60 with 35 years of service) and their job positions would cease to exist. Employees who, by the said date, would complete 35 years of service and 55 years of age and whose jobs would cease to exist would remain in pre-retirement redundancy until completion of the required service and age, receiving 60 % of their basic salary.<sup>12</sup>

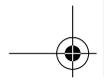
It is estimated that less than 15,000 employees left in this manner. The number is small given the desired reduction in the number of civil servants (estimated at 250,000). However, what is worst is that this reduction was implemented based only on age and service time standards, which resulted in the administration being deprived of experienced employees and public service being suddenly left without leaders, which had an extremely negative impact on the coordination and implementation of reforms – not to mention other legal issues that arise, such as age discrimination etc., which will not be further commented upon in the present. Obviously, the intent of the law is to dismiss individuals close to retirement in an effort to minimize intense public reaction, since those employees would retire anyhow in 5 to 7 years. However, if dismissals need to be made, the public interest demands that they be made based on how useful each civil servant is to the state on the basis of an evaluation on the work produced by their agencies, on the one hand, and the work produced by the said employees, on the other hand.

In addition, part of the problem has been transferred to social insurance funds, which had already presented deficits and have not estimated through actuarial studies the consequences from a sudden increase in the number of pensioners, in particular where these pensioners receive full pension for a longer amount of time (5 to 7 years).

The fact is that it takes a reasonable amount of time in order to prepare both the public and the provisions themselves, most of which are adopted 'overnight'. However, in a period of crisis, time is running out and the country's bailout is based on correct decisions being taken quickly notwithstanding their political cost. Politicians of the caliber of Eleftherios Venizelos and his Liberal Party<sup>13</sup> have yet to show on the country's political stage. In a nutshell, legal provisions should have had a long-term vision; they should have been better prepared in their financial and legal aspects, accompanied with a cost-benefit analysis so that the need of enactment could be justified financially and socially and

<sup>12</sup> Law 4024/2011 article 33 par. 1b and 1c and par. 2.

<sup>13</sup> The party founded by Eleftherios Venizelos, which was dominant on the country's political stage under his leadership between 1910 and 1932, a very crucial period for Greeks.



followed with a semi-annual report on their implementation and results. However, the main reason for the inability to take proper measures and the delay in taking and implementing such measures is due to the difference of opinion between the Greek legislation, the case law and the prevalent view on the role of the state, the relationship between the public and the private sector, financial sustainability and governance, fiscal regulations, etc. The country is called to make adjustments within a very short time and its economic salvation largely depends on its ability to adjust.

## II OUTDATED AND INSUFFICIENT CONSTITUTIONAL PROVISIONS WHICH FAILED TO PREVENT THE ECONOMIC AND FISCAL CRISIS

The Constitution is the framework within which politicians are allowed to act. It is supposed to reflect the needs of the society. If the social and political environment changes, so must the Constitution adapt to the new needs that were not foreseen. Unfortunately the Greek Constitution has not been changed in order to adapt to fundamental economic facts. Instead very often changes have been introduced for minor issues that should have been dealt with by ordinary law.

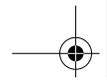
The Constitution currently in force was enacted in 1975 after the fall of the junta of the colonels. It was revised in 1986 and, again, in 2001 and has 120 articles in total. The revisions failed to enhance constitutional provisions of economic and fiscal nature. In addition, in several cases, they undermined the nature of the Constitution as the fundamental law of a state since they added detailed and special provisions, which could and should have been enacted by means of simple laws.<sup>14</sup>

The main problems in relation to the economic and fiscal life of the country which are also problems related to the function of the republic arise from the following constitutional provisions and deficiencies:

1 Governments should not be allowed to saddle with huge debts the current and next generations without any sanctions being imposed against them. This applies not only to over-borrowing but to the depletion of natural wealth as well. For example, if oil resources are discovered, the depletion of such natural wealth in the life span of the current generation should not be allowed as this should be preserved for future generations as well. Although this view seems obvious, the Constitution does not include any direct provisions to this end.

<sup>14</sup> For example art. 10 par. 3 of the Greek Constitution provides that «A request of information [by a citizen] shall oblige the competent authority to reply provided that the law thus stipulates». This provision should be part of the Code of Administrative Procedure and not of a Constitution. Another example: Art. 92 par. 5 of the Constitution, providing a compulsory retirement age for notaries, should be part of an ordinary law on social security and not of the Constitution.





2 The criminal liability of Ministers subject to article 86 of the Constitution and other special laws provides for an exceptional procedural treatment for Ministers, essentially establishing their immunity of criminal liability. Specifically, the preliminary examination is conducted by the Parliament, not the Prosecutor, and only if the Parliament decides to press criminal charges, a case is indicted to a criminal court. In addition, actions are no longer punishable upon completion of the second regular session of the parliamentary term starting after the punishable act was committed if, by that time, the Parliament has not pressed criminal charges (statute of limitations for politicians). At the same time, a five-year statute of limitations applies to misdemeanors and felonies committed by Ministers during their term of office.<sup>15</sup> Practically, this means that Ministers are not held liable.

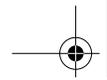
Based on the provisions on ministerial liability, the governments which unwisely increased the provision of benefits by means of borrowing funds have neither parliamentary liability (as they did so based on law provisions that were very gladly and consensually voted by the majority of political parties) nor criminal liability (as the Parliament would never give permission for indictment) and, in any case, their actions have ceased to be punishable based on the statute of limitations. Similarly, the governments that would decide to deplete the country's natural wealth, thus leaving the future generations without resources, would not be held liable. Surprisingly, the Constitution fails to address these crucial issues and tends to address secondary issues such as e.g. the land registrar's status or the method in which the rate for expropriated real estate is determined.<sup>16</sup> The silence is deafening.

3 The Parliament has failed to adopt and implement an appropriate economic and fiscal policy in order to control expenditure and deficit. Further, it has failed or rather avoided to control corruption by not imposing sanctions on politicians who violated their oaths of office. The President of the Republic does not play a leading role in political life since he is not elected by the people and has limited responsibilities. The Courts could not overcome constitutional limitations in terms of their jurisdiction, e.g. bringing Ministers to trial. In a few words, in addition to the fact that there are no specific provisions or limits in the Constitution with regard to the management of national wealth and no prohibition against governments in terms of exceeding certain limits in their borrowing agreements, the basic check-and-balance principle between the legislative, the executive and the judicial power does not work effectively.

The absence of accountability and the inexistence of provisions that will set limitations in terms of foreign indebtedness and natural wealth management are major consti-

<sup>15</sup> A. Pantelis, *Constitutional Law*, Livanis publishing house, 2007, pages 379–384.

<sup>16</sup> Surprisingly, even after detailed regulations, the country still holds the first place in convictions by the European Court of Human Rights for violations of the First Additional Protocol to the European Convention on Human Rights regarding real estate expropriations.



tutional deficiencies, which have contributed to the present crisis and in an unprecedented lack of trust towards institutions on the part of citizens.<sup>17</sup> Hence, there is a need for measures that will allow Ministers to be held accountable by balancing the relationship and control of the three powers. What these measures will be needs to be discussed at great length and will not be contemplated presently.<sup>18</sup>

4 The Greek Constitution indirectly recognizes that the economic system is a market system and indicates, even more indirectly, that this system functions based on competition. In the global market, competition encompasses states themselves given that states are competing with each other in order to offer the most favorable conditions for attracting capital and know-how so that they may achieve economic growth. Favorable taxation, political stability and work safety conditions combined with high-level scientific resources and workforce are economic growth factors. Despite global market risks, which can be briefly described as the absence and/or lack of respect for the institutional framework for the protection of employees, in the past years, countries that lagged considerably at a financial level, have stepped up in this manner as leaders of the international financial stage, e.g. China.

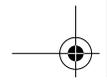
The EU is a regional union, able to influence international markets. However, the EU has not taken any decision to adopt a single economic policy and, subsequently, single fiscal governance. For this reason, measures for stabilizing the economies of member states with high deficits, such as Greece, Italy, Spain, and Ireland are fragmentary, thus making the EU economy and the economies of its member states more vulnerable to international markets. This, in any case, is not under examination in the present study. What must be underlined here, however, is that market economy and competition are dominant at a global level and that the EU and Greece (as a member state) function within a global market based on the rules of competition.

5 In a market economy, the state ought to intervene in order to ensure that competition works. Individuals or one or more social groups may not take advantage of the public. All financial power may not be accumulated in the hands of one or a few persons/entities through the establishment of monopolies or oligopolies. The aim of this intervention is the satisfactory function of supply and demand. Indicatively, to this end, a competitive public sector may be necessary, which would be established and operate in parallel with the private sector. In Greece, however, as mentioned before, public service is viewed on the basis of the organic criterion. Competition between the public and the private sector

17 The church was the less damaged institution since it was the only one to meet the needs of the socially and economically excluded, e.g. with soup kitchens.

18 The role of the President of the Republic could be enhanced or the number of MPs could be reduced from 300 to 150 so that a Senate with e.g. 50 senators could be formed, etc.





## CONSTITUTION, SOCIAL RIGHTS AND ECONOMIC CRISIS

is considered a taboo in areas of social value and public utility services. A typical example is higher education, which, according to the Constitution, should be solely and exclusively provided by the State, thus having made very difficult the implementation of provisions on the establishment and operation of private colleges and universities.

In addition to the foregoing, the monitoring of competition in the country has failed to convince of its effectiveness, primarily due to the lack of competition culture and consumer unions. Public service viewed on the basis of the functional criterion could contribute to the establishment of a relationship of cooperation and competition between the public and the private sector and to the gradual transition towards a more competitive economy.

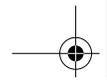
6 For the implementation of any government program, especially a demanding program filled with reforms in these hard times for the country, there is undoubtedly a need for efficient economic governance. This means utilizing modern technologies and the highest level of human resources and organizational structure available so that reforms can be implemented.

As regards human resources, the country has, indeed, a number of civil servants that is disproportionate to its needs, the said civil servants have not always come to occupy their job positions based on merit nor do they serve actual needs. Evaluation efforts are faced with huge reactions on any pretext, e.g. many universities invoke their constitutional autonomy. The problem grows worse as the Constitution establishes the permanence of civil servants, namely, in principle, they may not be dismissed unless their positions cease to exist or due to reasons that pertain to them at a personal level. Hence, a constitutional provision is necessary that would allow, under requirements, the dismissal of civil servants on the grounds of public administration restructuring.

Existing computerization systems are not, in general, interconnected and as such, they are not very useful. Although this issue does not fall within the scope of the Constitution but that of the simple lawmaker, things would have been a lot better, in terms of the planning and monitoring of economic policy, had there been three data bases – specifically, one data base for natural persons, a second one for legal entities and a third one for real estate (land register), with such data bases communicating with each other and allowing for secondary data bases to be ‘built’ on them.

As regards the organization of the State, the Constitution follows a long tradition of promoting local governments, firstly, so that local interests can be expressed and, secondly, because, due to the mountainous and island geography of a large part of the country, central administration used to be far too remote, thus failing to meet local needs at a technical level. This system could have worked well if local governments had been monitored effectively, which, admittedly, was not the case. As a result, municipalities and communities are considered to be the most corrupt organizations, establishing





customer relationships with citizens and at times promoting local interests over the national interest.<sup>19</sup>

Today, due to the advances of technology, central administration can be very close to local society and meet their needs. For example, not every municipality needs to have a city planning office since a central city planning agency could exist and all building permit applications could be submitted electronically. In this sense, central administration is ‘decentralized’ in a different way and the organization system of the state can be reviewed and become more functional.

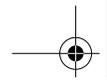
7 Until 2010, financial control was conducted based on Law 2362/1995 *on public accounting* and was restricted to a formal preventive control of the legality and properness of expenses. However, what was required was an evaluation of the internal systems of managing and controlling public sector expenses in general as well as monitoring the effectiveness of these systems and the return on such expenses. This was introduced for the first time with Law 3871/2010. Also responsible for the public deficit increase are lawmakers who failed to introduce a modern institutional framework with regard to controlling the expenditure of the state and the public sector, in general. Indicatively, the public sector which manages Greek people’s money does not use a double-entry system where even the smallest private enterprise does use it.

The Constitution does not make any special reference to financial control. Similarly, it does not provide for any restrictions in the amount of loans that the country can take, which resulted in extreme increase in the deficits. The issue of borrowing funds also pertains to what was mentioned above regarding the need to prohibit the excessive saddling of future generations with the current generation’s indebtedness. The adoption of such provisions that will apply in a uniform manner to EU member states has concerned other EU member states from time to time. Germany has included a provision of this nature in its Constitution whereas so far, the majority of other European countries have not. However, most of these states have not exceeded certain reasonable limits and seem to apply common sense when exercising politics in comparison to Greece. Greece has failed to address this issue; therefore, a Constitutional revision is needed so that the respective restrictions can be included in the Constitution.

8 Social rights are intended to protect people from welfare needs and risks so that the country’s social cohesion can be ensured. This is achieved through income redistribution either based on national solidarity (taxation) or on stricter forms of solidarity (e.g. social insurance solidarity). In order for social rights to be able to perform their social mission,

<sup>19</sup> Examples are found in the Ombudsman’s reports, available at <http://www.synigoros.gr>.





they must operate according to the rules that govern the various institutions (e.g. the economic viability of social insurance organizations must be ensured through annual actuarial studies and monitoring by the National Actuarial Authority). This was not the case in Greece. On the contrary, social insurance organizations granted benefits that were disproportionate to the contributions received based on the rationale that the state will subsidize them, if necessary. Trade unions which could also have safeguarded this institution were among the first to propagate the view that a welfare state ‘guarantees’ social insurance and that ‘the state will not go bankrupt by granting welfare benefits’.

9. In any case, all redistribution methods, either pertaining to social insurance or welfare or to the national health system etc., require compliance with objective standards so as to ensure equality, non-discrimination, transparency and proportionality. The Greek welfare system is riddled with inequalities that cannot be justified based on objective standards. For example, unions that are active in monopoly or oligopoly fields have succeeded, through indirect taxes, in ensuring for their union members insurance benefits that are much higher than their contributions.<sup>20</sup> Within the context of social justice, at this period of economic and social crisis, social benefits should be reviewed.

## CONCLUSIONS

The Greek legislation, case law and prevalent ideology have not adapted to basic assumptions of the European law and to the prevailing view on the role of competition in particular, the relationship between the public and the private sector, transparency and accountability, especially with regard to economic governance, the adoption of reforms based on the widest possible political and social consensus, the sustainability of the economy and welfare systems etc.

The Constitution needs to be supplemented with articles covering the existing voids, particularly with regard to competition, economic sustainability, controlling the fiscal and economic function of the state and, in general, economic governance, and ensuring the balance and control of powers.

The problem is not just economic; it extends to the separation and control of powers and the saddling of next generations to a disproportionate extent. It is, therefore, a problem associated with the function of the republic and the need to regain the citizens’ trust in the institutions.

<sup>20</sup> E.g. the levy in favor of ETAP-MME (media employees’ insurance fund).

