

# THE LEGAL SYSTEM

by Ioannis A. Tassopoulos

*Assistant Professor, University of Athens*



Greek law belongs to the civil law tradition. The era of modern Greek law began with the National Revolution of 1821 against the Turks, which led to the creation of the Greek State in 1830. The division between civil (private) and public law is important in the Greek legal order. Public law is made up of constitutional, administrative, international and criminal law, criminal and civil procedure. General principles of civil law, law of obligations, property law, family law, the law of succession and the various branches of commercial law. The importance of civil law as the heart of the legal system has diminished, while governmental intervention continues to expand and the state with its administrative regulation covers more aspects of life.

## GOVERNMENT and POLITICS

The most important codifications in Greek law are the following: Civil Code, Commercial Code, Penal Code, Code of Civil Procedure, Code of Criminal Procedure, Code of Private Maritime Law and Military Penal Code.

The Greek Civil Code of 1946 was greatly influenced by Byzantine law, which was applied in Greece before the drafting of the Civil Code. The Civil Code is founded on the principles of personal autonomy, private property and freedom of contract. It also protects the institution of family, with equality between the sexes, being constitutionally proclaimed. It contains, however, general clauses, leaving space for judicial adaptation to changing circumstances as well as for the introduction of elements of fairness.

### THE CONSTITUTIONAL TRADITION

Greece is a country with a long constitutional tradition, which is marked by the existence of a written constitution. The present constitution was enacted in June 1975, after the fall of the dictatorship of 1967 and the re-establishment of democratic government in the country. The origins of the current constitution are traced back to 1864.

Greece is a representative democracy, based on the principle of popular sovereignty. Greece has a parliamentary government and its president is elected by the parliament. The Government (the Prime Minister and the cabinet) is responsible to the democratically elected parliament. It is a multi-party system and the freedom of establishing political parties is

guaranteed by the Constitution. The parliament is elected by direct, secret and universal ballot. The amendments of 1986 abolished the presidential powers granted in the constitution of 1975. The role of the president of the republic has now become more or less ceremonial. As a result, the Prime Minister is the main locus of power. The constitutional revision of 2001 changed a large number of provisions; it explicitly guaranteed the rule of law and the principle of proportionality.

### MAIN SOURCES OF LAW

Despite the codifications of Greek law, custom is still recognised as a source of law, although, today, it is of minimal importance. Judicial decisions do not constitute binding precedent on subsequent similar cases, however they exert their influence through the need for uniform application of the law.

Generally recognised rules of international law as well as international conventions form an integral part of Greek law and will prevail over any contrary provision of law. International conventions are placed below the Constitution and above statutes.

The legislative power is exercised by the parliament and the president of the republic, whose role is limited to the promulgation and publishing of the laws. The Constitution allows delegation of legislative power, except where a statute is required, (e.g. for the imposition of taxes or for acts concerning the exercise and protection of individual rights). Delegation is mainly confined to the president of

the republic and is exercised by presidential decrees, countersigned by the proposing and politically responsible minister, under the following conditions: the statutes on which delegation is based must state the subject, the aim and the limits of the legal provisions for which delegation is granted. Presidential decrees introducing general rules, while they are in draft form are examined, for their legality, by the Council of State, acting as an administrative organ, before they are signed by the president of the republic. Parliament may also delegate legislative power to other branches of the executive, but only for the regulation of specialised, technical, or local matters. On proposal of the Cabinet, the president of the republic has the power to issue legislative acts, without statutory delegation, in extraordinary cases usually in matters of urgent and unforeseen needs. Within forty days after their adoption, these acts must be submitted for Parliament's approval. Failure to seek approval or in case of Parliamentary disapproval, the legislative acts rederived null and void.

### **EUROPEAN COMMUNITY LAW AND THE GREEK LEGAL ORDER**

Greece actively participates in the process of European unification. The accession of Greece to the European Community was signed and ratified by the Greek Parliament in 1979 with a majority of 193 votes out of 300. Article 28 of the Constitution of 1975 provided the legal basis of the incorporation of Community law into the Greek legal order. According to art. 28 par. 2, competencies provided by

the constitution can be vested in agencies of international organisations by treaties or agreements, when this serves an important national interest and promotes co-operation with other states. Art. 28 par. 3 provides that Greece may freely proceed to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, and does not infringe on human rights and the foundation of democratic government, and is effected on the basis of the principle of equality and under the condition of reciprocity. European Community law has pervasive effects upon the Greek legal order and the regulations have direct applicability and effect in Greece. When required, domestic law is adapted to the provisions of Community law.

### **A STATE UNDER THE RULE OF LAW**

Greece is a state under the rule of law. The Greek Constitution guarantees the principle of separation of powers. However, the principle is combined with the notion of legislative supremacy. In fact only the judiciary is genuinely separated from the other state powers. Yet the independence of the judiciary is mitigated by the power of the Government to assign the chief judges of the three supreme courts: Council of State, Areios Pagos and Auditor's Court. Judicial review of the constitutionality of laws is actively exercised by Greek ordinary judges.

A judgement of unconstitutionality regarding of a legislative act is binding solely between the parties. Only the Supreme Special Court

## GOVERNMENT and POLITICS

has the power to declare null and void the provisions of a statute having effect erga omnes in case of conflicting judgements pronounced by the Council of State, the Areios Pagos or the Auditor's Court.

The Greek Constitution guarantees enumerated individual, political and social rights. Greece has also ratified the European Convention for the protection of Human Rights and Fundamental Freedoms of 1950 as well as the majority of its Protocols.

The Constitution proclaims that respect and protection of the value of the human being constitutes the primary obligation of the state. Personal liberty is inviolable. According to art. 5 par. 3, no one shall be prosecuted, arrested, imprisoned or otherwise confined except when and as the law provides. The Constitution guarantees for all persons living within Greece full protection of their life, honour and freedom. The extradition of aliens prosecuted for their action as freedom fighters is prohibited. Arrest or imprisonment is prohibited without a reasoned judicial warrant, which must be served at the moment of the arrest or detention pending trial. Such warrant is not required in the case of arrest while committing a criminal act. Within twenty-four hours after the arrest, the suspect must be brought before the examining magistrate, who has three days to decide whether the suspect will be released or imprisoned pending trial. Detention is ordered in exceptional cases for grave offences. Pre-trial detention cannot exceed one year for felonies and six months for misdemeanours. Under exception-

al circumstances this time limit may be extended for six and three months respectively.

Art. 7 par. 1 of the Constitution recognises the principle "Nullum Crimen, nulla poena sine lege". According to this principle, a penal law must be written and precise. Penal laws do not accept application by analogy and cannot be given retroactive effect. The defendant has the right to be heard, to be represented by counsel both at the pre-trial phase (interrogation) and during the trial, to review his/her file, and to obtain copies of the documents, and to remain silent.

Intellectual freedoms are secured in the Greek legal order. Freedom of expression is guaranteed as well as freedom of information. Censorship and all other preventive measures are expressly prohibited. Seizure of the press is permitted after circulation by order of the public prosecutor, on limited occasions provided by the Constitution. The protective provisions for the press are not applicable to films, sound recordings, radio, television etc. Radio and television, are by constitutional mandate under direct state control. This is to ensure the objective transmission on equal terms of news reports and information, as well as works of literature and arts. State control is entrusted to and exercised by an independent administrative authority, the Radio and Television Council. Freedom of assembly, of association and of correspondence is also guaranteed.

Freedom of conscience and religious freedom are constitutionally

## THE LEGAL SYSTEM

secured. In Greece there is neither complete separation between state and church nor established religion. The Constitution recognises the Eastern Orthodox Church as the prevailing religion.

The Greek Constitution guarantees the principle of equality of all Greeks before the law. The principle is justiciable and concerns both the application of the law as well as the substantive provisions of legislation.

The Greek Constitution guarantees the right to privacy. Recently, an independent administrative authority for the protection of personal data has been established for the first time in the Greek legal order.

The Constitution guarantees private property, which is interpreted by the courts to include real property, excluding rights in personam. A special clause secures the protection of foreign investments in Greece. Expropriation of private property is constitutionally permitted for the public benefit when and as specified by law and always following full compensation determined by the civil courts. Expropriation is distinguishable from the imposition of regulations on the use of private property, which sometimes may be severe. Nevertheless such regulations can not amount to expropriation, and must be consistent with the principle of proportionality.

Economic liberty (liberty of trade, free competition, free choice of profession) is constitutionally protected. All persons have the right to develop freely their personality and to participate in the social, economic and political life of the coun-

try insofar as they do not infringe upon the rights of others, or violate the Constitution. However, the Constitution allows state intervention in the free market economy mainly by declaring that private economic activity shall not be permitted to develop at the expense of freedom and human dignity or to the detriment of national economy.

### THE PROTECTION OF THE ENVIRONMENT

The Constitution contains important provisions for the protection of the environment. The protection of the environment is duty of the state, which is bound to adopt special preventive or repressive measures for environmental preservation. Art. 24 of the Constitution provides for urban planning as well as for the protection of forests. The environmental provisions of the Constitution have been broadly interpreted by the Council of State, whose jurisprudence has greatly contributed to the development of environmental law in Greece.

### SOCIAL JUSTICE

The Constitution guarantees social rights. The development and promotion of arts and sciences, research and teaching are obligations of the state. The Constitution protects family, motherhood, childhood, youth, and poor members of society. According to the Constitution, education is a basic mission of the state and all Greeks are entitled to free education, on all levels, at state educational institutions. Education at the university level is provided exclusively by fully self-governed legal persons of public law. The establishment of

## GOVERNMENT and POLITICS

private universities is constitutionally prohibited in Greece.

The Constitution proclaims the right to work. All working people are entitled to equal pay for work of equal value, irrespective of sex or other distinctions. Trade union freedom enjoys constitutional protection. The right to strike is constitutionally protected if exercised by lawfully established trade unions, for the promotion of the financial and general labour interests of the working people. Collective bargaining and collective agreements have become the regular instrument for fixing a minimum wage. If collective bargaining proves to be ineffective, the law provides for arbitration. Greece has also ratified many international conventions on labour law such as e.g. European Social Charter of 1961, the UNO Convention. The Constitution also provides for social security, which is recognised as a social right for working people. Care for the health of the citizens is a goal of the state. Greece has a national health system, established during the 1980s.

### THE CITIZEN AND PUBLIC ADMINISTRATION

Greece is a unitary state. The administration of the Greek state is organised on the basis of the principle of decentralisation. According to art. 101 par. 3 of the Constitution, regional state agencies have general decisive authority on matters concerning their region. As a consequence, competencies once transferred by law to regional agencies may not be given back to central agencies. Local self government is constitutionally guaran-

teed. Municipalities and communities form the first level of local government agencies. The administration of local affairs belongs to the decisive competence of local governmental authorities. A second level of local self-government, the prefectural local self government, was recently established. Local government agents of both levels are elected by universal and secret ballot every four years.

Administrative action must comply with the rules of law. The Greek legal system traditionally recognises parliamentary control of administrative action, administrative self-control (hierarchical control of superior authorities to subordinate ones) and the judicial control. The institution of Ombudsman (Commissioner) was recently introduced into the Greek legal order. The office of the Ombudsman is an independent administrative authority, that mediates between citizens and administrative authorities in cases of administrative malfunction. The Constitution guarantees the right to petition in writing to public authorities and the right to a prior hearing before any administrative action or measure is adopted at the expense of one's rights or interests. Every citizen has the right of access to administrative documents, as long as they do not refer to the private or family life of third persons. However, the administrative authorities may bar access to secret documents.

### COURT STRUCTURE AND THE LEGAL PROFESSION

The right of access to the courts is constitutionally guaranteed. According to art. 20 par. 1 of the Con-



*Areios Pagos (Supreme Court)*

stitution, every person is entitled to legal protection by the courts and may plead before them his views concerning his rights and interests “as specified by law”.

Greece has three levels of courts: Civil and criminal courts have jurisdiction over civil and criminal matters, where the same judges sit and judge either category of cases; and administrative courts have jurisdiction over administrative controversies. There are also special courts.

There are three types of ordinary civil courts: District courts (justice of the peace, one-member district

court and three-member district court), twelve courts of appeal and the Areios Pagos (supreme court). The subject-matter jurisdiction of the civil courts depends on the amount in controversy. An appeal usually leads to a trial de novo, extending to factual and legal matters.

Ordinary administrative courts have jurisdiction over all substantive administrative disputes. There are one-member and three-member administrative district courts as well as administrative courts of appeal. The supreme administrative court is the Council of State, formed along the model of the French Conseil d’

## GOVERNMENT and POLITICS

Etat. The Council of State reviews the legality of administrative acts and has the power to annul them. It has general jurisdiction on annulment disputes. As a rule, the Council of State reviews the decisions of the administrative courts of appeal.

The Auditor's Court has jurisdiction over cases arising from pension grants and from the audit of accounts in general, cases related to the liability of civil servants, military officers and local government agency employees and disputes for any loss through fraud or negligence, of the state or the above agencies and corporate bodies.

Finally, the punishment of crimes belongs to the jurisdiction of ordinary criminal courts, which are classified with respect to the seriousness of the offence. As a rule, felonies are tried by the mixed court composed both of judges and jurors, and of the court of appeal (mixed one, three-member and at second instance five-member); misdemeanours are tried by the two misdemeanour courts (one- and three-members, depending on the seriousness of the offence) while petty-violations are judged by the petty-violation court. Normally, the Areios Pagos stands also as Supreme Court reviewing the decisions of most of the lower criminal courts.

The Supreme Special Court, in addition to the aforementioned review of the constitutionality of laws, has jurisdiction over disputes arising from parliamentary elections, or referenda; disputes from conflicts of competence; controversies related to the designation of rules of international law as generally ac-

knowledged and cases regarding the incompatibility or the forfeiture of office by a member of parliament.

Basic legal education is offered by the three law schools of the country at the undergraduate level and covers four years. There are however graduate programs as well. After graduation there is a period of practical training. Judicial officers are career lawyers enjoying personal and functional independence. Judges after a probationary period acquire life tenure. Their promotions, assignments, transfers and detachments are effected after prior decision by the Supreme Judicial Council. Functional independence concerns the independence of the judiciary as a separate branch of government. Lawyers who want to become judges must attend the National School of the Judiciary. Public prosecutors are parties in the criminal proceedings. They represent the state throughout all stages of the proceedings; however they are supposed to be objective authorities and their goal is to find the truth and correctly apply the law. As a consequence, they may plead in favour of the defendant. Most lawyers follow a career as private practitioners (attorneys at law). Their promotion to the higher ranks of courts (Court of Appeal and Supreme Court) takes place after covering specified periods of time. They have to be members of one of the Bar Associations of Greece.

### USEFUL LINKS

Ministry of Justice  
[www.ministryofjustice.gr](http://www.ministryofjustice.gr)

Areios Pagos Hellenic Supreme Court of Civil and Penal Law  
[www.areiospagos.gr](http://www.areiospagos.gr)