

## The “Kallikratis Program”

### The Influence of International and European Policies on the Reforms of Greek Local Government

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#### *Abstract*

*La crisi economica globale esplosa nel 2008 ha colpito fortemente la Grecia, in primo luogo a causa dei suoi insostenibili livelli di spesa pubblica. La reazione principale del governo, sostenuta da misure concordate con il Fondo Monetario Internazionale, la Banca Centrale Europea e l'Unione Europea, è stata l'introduzione di misure di austerità incentrate principalmente sul taglio della spesa della pubblica amministrazione e sul consolidamento delle funzioni di governo nazionale e locale. L'obiettivo delle misure di austerità è tagliare la spesa del governo locale al livello più basso possibile e nel modo più efficace. In questo quadro, il “programma Kallikratis” introdotto nel 2010 ha lo scopo di attuare le seguenti riforme: a) consolidare gli enti locali per raggiungere la loro sostenibilità finanziaria, b) accrescere la trasparenza e la legalità del loro funzionamento, c) migliorare l'efficacia governativa alla luce delle pertinenti norme comunitarie. Poiché le alte Corti hanno tradizionalmente adottato un comportamento deferenziale nei confronti delle riforme del governo locale, si prevede che le riforme Kallikratis superino il vaglio costituzionale.*

#### *Introduction*

The 2008 economic crisis that erupted in the US gradually spread across the globe causing severe repercussions for European economies. Greece was one of the most heavily affected nations, *inter alia*, because of its uncontrolled public spending. Consequently, the principal means of addressing the economic crisis has been governmental austerity measures, which in turn have substantially influenced the public administration functioning and have led to reforms, including in local government operations.

Greece's local government reforms have been an ongoing effort since the early 1990s. The first reform effort, the “Kapodistrias program”, re-

duced the number of local government entities to a very large extent. Nevertheless, it did not transform their structure. The 2010 “Kallikratis” plan brought about more fundamental changes. Greece’s international agreements with its major lending partners have introduced further local government reforms, including both direct reforms and indirect ones concerning the administration as a whole and affecting local government as well. These reforms can be further divided into two types of measures: those aimed to directly cut governmental spending and those aimed to enhance the effectiveness of government’s administrative operations. One of the international memoranda signed recently by the Greek government states that “the bulk of adjustment will be achieved through expenditure cuts that aim at permanently reducing the size of the state and improving government efficiency, including by closing entities that no longer provide a cost-effective public service and by targeted reductions in public employment”<sup>1</sup>.

This article provides a critical overview of the main reforms that the Greek government is implementing in order to reduce its public debt by reforming local government entities. The reform initiative promotes administrative efficacy, modernization, rationalization and adaptation to international and EU standards. Section A presents some of the reforms introduced in order to cut public spending and to create an administrative apparatus structured to operate in an accountable and cost-effective way. These reforms align with a set of international agreements that Greece has signed with its foreign partners. It highlights both the legal and institutional setting under the international adjustment programs focusing on reforms in local government law. Section B examines the meandering path of local government reform in Greece from its beginnings to the current developments. It analyzes the role of local government in the administration of Greece and its relationship with the central government. It illustrates the early EU influences on Greece’s administration of local government and details the main reforms introduced by the 1997 Kapodistrias program.

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(1) Memorandum II, p. 6; see also *ibid.*, p. 4; TFGR/COM, *Second quarterly report of the Task Force for Greece*, March 2012, pp. 15-16; OECD, *Greece: Review of the Central Administration. OECD Public Governance Reviews*, Paris, OECD Publishing, 2011.

Particular focus is on the new administrative structure of the local government based on the 2010 Kallikratis reforms. Section C focuses on Greek courts' judicial review of local government reforms on constitutional grounds. In light of the broader context of judicial review in Greek constitutional law, the courts' interplay between judicial self-restraint and centralism in reviewing local government reforms is discussed. This section then examines the main innovations of the Kallikratis reform from a constitutional perspective.

### *A. The Greek administration in the face of structural reforms*

#### *I. The international framework*

##### *1. Legal framework*

In 2010, Greece resorted to financial assistance in the form of loans by the International Monetary Fund (IMF) and the Euro area member states in order to finance its public expenditure. The disbursement of the amounts takes place every four months. A program of fiscal and structural adjustment accompanies the loan in order to allow the country's external debt to steadily decline and achieve balanced budgets. As a result of this program, the Greek administration has been faced with a tremendous push to reduce its public spending. The lending and structural reform activity is based on Memoranda of Understanding (MoUs) between the Greek government, on the one hand, and the IMF and the member states of the Eurozone, represented by the European Commission and the European Central Bank (ECB), on the other. The parties have signed two sets of MoUs that are divided into three more specific Memoranda<sup>2</sup>: first, the Memorandum of Economic

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(2) The Memoranda have not been endorsed as an international treaty by the Greek Parliament. These international pacts are considered as "private" contracts between the receiving and the lending side. They have been introduced in the national legal order as domestic laws; see Law 3845/2010 "Measures concerning the implementation of the support mechanisms of the Greek economy by the member states of the Eurozone and the International Monetary Fund"; see also Law 4046/2012. On Memorandum I see A. GERONTAS, *The Memorandum and the Law-Making Procedure*, *Efimerida Dioikitikou Dikaiou* (=EfimDD), 5/2010, pp. 705-728 [in Greek]; K. GIANNAKOPOULOS, *The Rule of*

and Financial Policies (MEFP); second, the Technical Memorandum of Understanding (TMU); third, the Memorandum of Understanding on Specific Economic Policy Conditionality. The MoUs are multi-year policy programs with the final aim for Greece to regain market access and at the same time introduce several legal and institutional reforms for the Greek state/administration. Austerity and other measures are attached as conditionalities of the international loan agreements and their implementation is monitored by international observers on a regular basis.

The first MoU set was signed in December 2010 (Memorandum I). Memorandum I aimed at putting the public debt of Greece on a clear downward path. In this vein, it outlined the economic and financial policies that the Greek government and the Bank of Greece would implement during 2010-2012. In March 2012, Greece and its lending partners signed a second Memorandum in order to finance the country for the period 2012-2015 (Memorandum II). Memorandum II insists on the austerity measures that have not been implemented with Memorandum I and introduces a set of additional measures. Moreover, it focuses on structural reforms and on measures to boost development. It places strong emphasis on restoring growth and ensuring an equitable fiscal adjustment. These policies aim to address Greece's balance of payments problems, correct Greece's competitiveness gap, support growth and employment. For example, it aims at improving the business environment and productivity enhancing structural re-

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*Law and National Sovereignty Before the IMF, EfimDD*, 1/2010, pp. 2-3 [in Greek]; P. GLAVINIS, *The Memorandum of Greece in the European, International and National Legal Order*, Athens-Thessaloniki, Sakkoulas, 2010 [in Greek]; G. KATROUGALOS, *Memoranda Sunt Servanda. The Constitutionality of Law 3845/2010 and the Memorandum Concerning the Implementation Measures of the IMF, EU, ECB Agreements, EfimDD*, 2/2010, pp. 151-163 [in Greek]; K. CHRYSOGONOS, *The Lost Honor of the Greek Democracy. The Mechanism of "Support of the Greek Economy" from the Point of View of National Sovereignty and the Democratic Principle, Nomiko Vima (=NoB)*, 58 (2010), pp. 1353-1365 [in Greek]; G. KATROUGALOS, *The "Sub-Constitution" of the Memorandum and the Other Path, NoB*, 59 (2011), pp. 231-241 [in Greek]; K. CHRYSOGONOS, S.-I. KOUTNATZIS, *Die finanzielle Tragödie Griechenlands aus verfassungsrechtlicher und institutioneller Sicht: Feudalistische Grundstrukturen hinter demokratischer Oberfläche?, Jahrbuch des öffentlichen Rechts*, 60 (2012), pp. 401-429.

forms in the labor, product and service markets. Memorandum II has been complemented with a debt-restructuring program for private lenders.

As a result of this legal framework, the aforementioned fiscal consolidation policies place weight on reforming the Greek administration. Adaptation to reduced budgets means cutting down on expenses, enhancing effectiveness and rationalizing the administration. Against this background, Memorandum II makes an explicit reference to restructuring both central and local public administration<sup>3</sup>.

## *2. Institutional framework*

The participation of national states in international and regional organizations leads necessarily to the “delegation” of a large part of their powers to governance levels beyond the state. A large amount of policymaking, rulemaking and planning is delegated to the global and regional levels of governance. In light of this and as a result of the global financial crisis, Greece has taken up the responsibility of introducing fiscal and structural reforms that have been agreed at the level of the IMF and the EU. The Greek parliament and public administration have the primary role of implementing the global policies and rules<sup>4</sup>.

In order to monitor implementation of the MoUs, an international body has been established. The joint IMF/European Commission/ECB staff team is commonly known as the “Troika”. The Troika conducts on-site visits every four months and subsequently makes a recommendation to the Board of Directors of the IMF regarding the approval or disapproval of the relevant disbursement. According to Memorandum II, a new IMF resident advisor shall be sent in 2012 to Athens, in order to make the presence of the IMF in Greece permanent.

In addition to monitoring implementation, the European Commission

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(3) Memorandum II, pp. 8-9.

(4) In the global governance context, the state turns to a very large extent to a “mediating state” (*Vermittlerstaat*) of the supra-state policies and rules; see I. KAUL, *Auf dem Weg zum Weltstaat? Global Governance 3: Am Beginn einer neuen Ära internationaler Kooperation, Internationale Politik*, 2008, pp. 146-153.

in cooperation with the Greek government has launched in 2011 a second body in order to support Greece in the implementation of the adjustment program. The Task Force for Greece (TFGR) is charged with supporting the country in the fields of structural reforms and boosting development with the provision of technical assistance<sup>5</sup>. It is based in Brussels, with a support team in Athens<sup>6</sup> and is under the direct responsibility of its Head, reporting primarily to the President of the Commission and to relevant Commissioners and working under the political guidance of the European Commissioner for Economic and Financial Affairs<sup>7</sup>. It provides quarterly progress reports to the Commission and the Greek authorities for questions like the accelerated take-up of EU funds, including a concrete plan and time schedule. The mandate of the Task Force is broad, covering not only economic adjustments but also administrative reforms.

The Task Force is composed of a continuously increasing number of Commission officials, and national experts stemming from the national administrations of EU member states<sup>8</sup>. It coordinates the provision of transnational technical assistance<sup>9</sup>, and is currently working with Greek authorities on over twenty projects in nine policy domains<sup>10</sup>.

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(5) COM, *Questions and Answers on the Task Force for Greece*, MEMO/11/599, Brussels, 13 September 2011, p. 1. The TFGR has been endorsed by the European Council during its meeting on June 23/24 and July 21, 2011.

(6) COM, *Questions and Answers on the Task Force for Greece*, MEMO/11/599, Brussels, 13 September 2011, p. 2.

(7) COM, *Questions and Answers on the Task Force for Greece*, MEMO/11/599, Brussels, 13 September 2011, p. 2. A former vice-President of the European Bank for Reconstruction and Development (EBRD) and former Director-General of the European Commission has been appointed as Head of the Task Force.

(8) COM, *Questions and Answers on the Task Force for Greece*, MEMO/11/599, Brussels, 13 September 2011, p. 2.

(9) On drawing on external assistance see also Memorandum II, p. 93: "The Government will request technical assistance to be provided by the EU Member States, the European Commission, the IMF or other organisations in priority areas. These technical assistance actions will be coordinated by the Commission's Task Force for Greece according to its mandate. The Greek administration will ensure continuity of technical assistance launched".

(10) TFGR/COM, *Second quarterly report of the Task Force for Greece*, Brussels, March 2012, p. 2.

For example, French officials are involved in the reform of the evaluation system of public officials whereas German officials are involved in the reorganization of tax administration<sup>11</sup>. As far as administrative reform efforts as a whole are concerned, the French government is the “domain leader” in central administration reform, while the German government is responsible for the provision of technical assistance for administrative reform at decentralized, local and regional levels. Accordingly, German officials in cooperation with Greek officials shall agree on a concrete roadmap for future reforms at this level<sup>12</sup>.

## ***II. General administrative reforms with effects on local government***

Under this novel legal and institutional framework for Greece, reform of the administration is one of the major goals of the international activity in Greece. Significantly, reduction of public spending is closely related to the need for a reduced state. The international texts include a plethora of administrative provisions and rules with new bodies, structures and procedures introducing new governance mechanisms and abolishing old ones. In an attempt to identify rules, trends and tendencies in the MoUs and the other international efforts that apply also to local government, this section presents a summary of some of the measures adopted in the Greek public administration in order to reduce public spending and increase effectiveness of the administration as a whole.

### ***1. The Ministry of Administrative Reform and e-Governance***

The 2009 established Ministry for the Interior, Decentralization and Electronic Governance has been responsible for the reform of the Greek administration and the supervision of local government. One of its first actions was the adoption of the Kallikratis program on local government reform<sup>13</sup>. This Ministry has also pursued the creation of an inventory of public entities and a second inventory of the public

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(11) See, e.g., TFGR/COM, *Second quarterly report of the Task Force for Greece*, Brussels, March 2012, pp. 9, 12 and Memorandum II, p. 12.

(12) See TFGR/COM, *Second Quarterly Report of the Task Force for Greece*, Brussels, March 2012, p. 15.

(13) See in more detail *infra*, B.IV.

sector personnel, including local government officials, for the first time in the history of Greek administration.

Further, in 2011, in an effort to advance public administration reform, the Ministry for the Interior, Decentralization and Electronic Governance has been divided into a Ministry for the Interior and a new separate Ministry for Administrative Reform and e-Governance. The latter is now responsible for the reform at the central level of government whereas the former is responsible for reform at the decentralized, local and regional levels. The new Ministry for Administrative Reform has recently adopted a set of guidelines for the appropriate conduct of civil servants that are applicable to all civil servants, including those of local government<sup>14</sup>.

Memorandum II sets rigid goals for personnel reduction and a hiring cap on new personnel. This will affect local government as a great number of the working force of the local entities is working under the status of temporary and seasonal employment. The rule of 1 recruitment for 5 exits applies also to local government<sup>15</sup>, such as the extension of the working schedule. Against this backdrop, an assessment of all public service structures shall be conducted before the end of 2012, with a view to improving the efficiency, strengthening prioritization and clarifying decision-making processes. Moreover, the scope of authority of all civil servants, including local government officials, shall be evaluated and assessed.

In addition, the change in procurement policies (*e.g.*, through the e-procurement platform)<sup>16</sup> and the adoption of the “Better Regulation Law”<sup>17</sup> aim at bringing about sustainable changes in local government structures and processes.

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(14) MINISTRY FOR ADMINISTRATIVE REFORM AND E-GOVERNANCE, GREEK OMBUDSMAN, *On the relationships between civil servants and citizens: Guidelines for appropriate administrative behavior. The civil servants in the service of public good and the citizens*, Athens, 2012 (available at: [www.ydmed.gov.gr/wp-content/uploads/20120405\\_oods54\\_odigos\\_orthis\\_dioikitikis\\_siberiforas.pdf](http://www.ydmed.gov.gr/wp-content/uploads/20120405_oods54_odigos_orthis_dioikitikis_siberiforas.pdf)).

(15) Memorandum II, p. 59. The overall staffing plan target is the reduction of public employment by 150.000 until end-2015.

(16) Memorandum II, pp. 60-61.

(17) Law 4048/2012.



## 2. *Transparency*

A further fundamental aspect of the reform efforts concentrates on enhancing public sector transparency. Transparency is related to the reduction of public spending and the rationalization of administrative activities through the mobilization of civil society. Also the international texts include several measures that aim at improving administrative transparency<sup>18</sup>.

In particular, in order to introduce transparency principles into the activity of the public sector, the initiative OpenGov has been introduced in 2009 – already before signing Memorandum I.<sup>19</sup> OpenGov introduces an embryonic notice-and-comment procedure in the pre-parliamentary drafting process of a statute. Moreover, it makes several calls for open positions in the public sector online accessible<sup>20</sup>. A second very innovative effort operable since October 1, 2010 is the “Diavgeia program”<sup>21</sup>. Diavgeia – meaning “transparency” in Greek – is an effort to make all acts of government and public administration officials available online. The administrative acts receive an identification number for their online publication. Without the identification number and the online availability, the act is considered invalid. As a third step in enhancing Greek government’s transparency, the Greek Parliament passed recently Act 3979/2011 for e-governance. This statute includes several obligations for the restructuring of the administration and the creation of e-governance structures<sup>22</sup>. All these efforts apply equally to local government entities.

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(18) See, e.g., Memorandum II, p. 82 on the plan for a Business-Friendly Greece.

(19) [www.opengov.gr](http://www.opengov.gr).

(20) As of April 9, 2012, according to [opengov.gr](http://opengov.gr), there have been 239 consultations/notices, 76.601 comments, 140 invitations, 2.010 placements to be covered and 38.866 applications.

(21) Online available at: <http://diavgeia.gov.gr>.

(22) On e-governance with comparative analyses of several states, see M. EIFERT, J.O. PUSCHEL, *National Electronic Government. Comparing Governance Structures in Multi-Layer Administrations*, London, Routledge, 2004.

### *3. Reinforcing the independence of the administration*

Memoranda I and II place significant focus on the introduction of new and reinforcement of existent independent authorities and, more generally, on the reinvigoration of the independence of administrative bodies towards political and other influence. Thus, the international texts reinforce the trend of governance through independent authorities that has been on the rise in the last years in Greece<sup>23</sup>. For example, an independent authority for quality checks of impact assessments shall be established<sup>24</sup>. Because of the disparities of the statistical data provided by the Greek government, Memorandum I listed as one of its priorities the transformation of the division for statistics of the Ministry of Interior into an independent authority in order to increase its credibility<sup>25</sup>. Memorandum II is also concerned with further increasing independence and effective operation of the newly established Hellenic Statistical Authority (ELSTAT)<sup>26</sup>. The autonomy and insulation from political pressures of the Hellenic Competition Authority<sup>27</sup>, the Hellenic Financial Stability Fund (HFSF)<sup>28</sup>, the privatization fund (Hellenic Republic Asset Development Fund – HRADF)<sup>29</sup> shall also be guaranteed, such as Bank of Greece's autonomy from external influence from shareholders<sup>30</sup>.

In order to increase independence of tax and revenue administration from political influence, the control over core business activities and human resource management shall be delegated from the ministerial to the administrative level<sup>31</sup>. Moreover, the government with the tech-

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(23) On the independent authorities in Greece, see generally G. LAZARAKOS, *Independent Authorities. Their Role and Significance*, Athens, Nomiki Vivliothiki, 2010 [in Greek].

(24) Memorandum II, p. 88.

(25) See Table 2 annexed to MEFP of Memorandum I.

(26) Memorandum II, pp. 13, 61.

(27) Memorandum I, pp. 16, 41.

(28) See the changes proposed in Memorandum II, pp. 17-18.

(29) Memorandum II, pp. 20-21.

(30) Memorandum II, p. 19.

(31) Memorandum II, pp. 11, 57.

nical assistance of the TFGR will set up new regulatory frameworks for policy fields like water, ports, airports and motorways<sup>32</sup>.

#### 4. *A smaller state*

##### a) *Privatizations*

In the effort to create a “smaller” state, the Memoranda have adopted a large privatization plan. The initial very ambitious objectives have been set aside for more modest goals. Memorandum II includes a detailed list of assets, including public corporations and organizations, concessions and real estate that have to be privatized and sold, whereas some privatizations have already been conducted<sup>33</sup>. These plans do not include local government enterprises<sup>34</sup>. The privatizations shall be conducted by the HRADF that is composed of experts delegated by different political parties.

##### b) *Creation of strong decentralized units*

A commission established under the Vice-President of the Government has been charged with the reduction of public entities, including universities, hospitals and potentially independent authorities<sup>35</sup>. In this frame, a new health fund, the National Organization for the Provision of Health Services (EOPYY), has been created with the target of gradually merging all health funds with this organization<sup>36</sup>. The unification of all existing funds is also the target in the public pension system<sup>37</sup>.

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(32) Memorandum II, p. 20.

(33) Memorandum II, pp. 19-21.

(34) On public enterprises owned by local government entities see *infra*, B.IV.1.

(35) On a similar trend in Germany, see M. LUDWIGS, *Die Bundesnetzagentur auf dem Weg zur Independent Agency? Europarechtliche Anstöße und verfassungsrechtliche Grenzen*, *Die Verwaltung*, 44 (2011), pp. 41-74.

(36) Memorandum II, p. 8, 62. Its responsibility shall be transferred to the Ministry of Health.

(37) Memorandum II, p. 61.

The same tendency is to be traced in tax and revenue administration reform activity<sup>38</sup>. Some tax offices have been abolished and under Memorandum II the government shall continue to centralize and merge tax offices<sup>39</sup>. Lastly, in order to reduce their number and improve their effectiveness, several courts shall be merged<sup>40</sup>.

### III. *The reform of local government*

#### 1. *Identifying general trends in local government reform*

The Kallikratis program can be better understood under the prism of the reform tendencies taking currently place in the Greek administration and identified above. It is embedded into the general effort to create a smaller state with less and at the same time more powerful and more effective decentralized units. Memoranda I and II and the texts accompanying the TFGR make several explicit references to local government. Memorandum II identifies the fundamental role of local government in the structural reform efforts and includes more provisions for the local government than Memorandum I. Both Memoranda include a definition of “local government” for their purposes as part of “general government”: “Local government comprising municipalities, prefectures, and regional governments including their basic and special budgets, including all agencies and institutions attached thereto, which are classified as local governments according to ESA 95”<sup>41</sup>. The second quarterly report of the TFGR underlines further that “the same kinds of reforms needed in the Greek central administration will also be required in the decentralized, local and regional administration, taking into account their specific character and responsibilities”<sup>42</sup>.

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(38) Memorandum II, pp. 9, 10-14.

(39) 200 local tax offices, identified as inefficient, will be closed by the end of 2012; see Memorandum II, p. 56; see also TFGR/COM, *Second quarterly report of the Task Force for Greece*, Brussels, March 2012, p. 12.

(40) Memorandum II, p. 25.

(41) Memorandum I, p. 20; see also Memorandum II, p. 36. ESA is the European System of Accounts and ESA95 rules are the “ESA95 Manual on Government Deficit and Debt”.

(42) TFGR/COM, *Second quarterly report of the Task Force for Greece*, Brussels, March 2012, p. 16.

Moreover, in the description of the measures concerning the public administration's modernization, Memorandum II highlights the need for a specific roadmap in order to implement coherence and efficiency principles of the central level to the decentralized, the regional and local levels as well<sup>43</sup>.

Moreover, cutting down on public spending affects local administration in several ways. The Memoranda introduce a very tight fiscal policy and supervision procedures for the municipalities and regions with the objective of achieving an overall reduced state budget. First of all, the Memoranda provide for several direct budget cuts<sup>44</sup>. Taking into account the reforms adopted by the Kallikratis program, Memorandum II provides as a prior requirement for the first disbursement – through a supplementary budget or other legal acts – to reduce wages of all political officials at local level, *i.e.* elected and related staff, by 10 percent, with effect on January 1, 2012, and a reduction in the number of deputy mayors and associated staff in 2013 with the aim of saving at least € 9 million in 2012 and € 28 million in 2013 and onwards<sup>45</sup>. Additionally, according to Memorandum II, the number of fixed term contracts needs to be reduced, such as the number of employees paid from state budget. Overall, operational expenditure by local government needs to be reduced with the target of saving at least € 50 million<sup>46</sup>.

## ***2. Supervision***

The expenditure commitments of local government are under the “tight supervision” of the Ministry of Finance in order to secure the program's numerical goals/quantitative criteria<sup>47</sup>. Memorandum II places its emphasis on the supervision and control of fiscal policies and spending including budgetary procedures, commitment-based

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(43) Memorandum II, p. 58.

(44) Memorandum II, pp. 12-13.

(45) Memorandum II, p. 52 and Annex II.

(46) Memorandum II, p. 52.

(47) Memorandum II, p. 53.

spending controls and fiscal reporting and budget monitoring, including processes at the local government level<sup>48</sup>. Commitment-based spending controls and an overall operational framework shall deter the decentralized units from overspending their budgets. Commitment registers shall be established in the form of an e-portal reporting system of the Ministry of Finance. Progressively, local government units shall report to this e-portal their whole expenditure cycle, including investment budgets, other commitments, invoices received, and payments made at the end of each month. The government shall introduce sanctions in case of non-compliance with the reporting obligations.

The Ministry of Finance, in collaboration with the Ministry of Interior, will provide monthly data on revenues and expenditures and the Bank of Greece will provide detailed monthly data on assets and liabilities for local governments, as collected in the Ministry databank, within four weeks after the closing of each month<sup>49</sup>.

### 3. *Future reforms*

In addition, the country's international commitments push for further local government reforms<sup>50</sup>. The TFGR plays a very important role in this respect. Next to the EU officials, EU member state officials, and primarily the German government as the domain leader in this area, will provide the respective technical assistance for administrative reform at the decentralized, local and regional levels<sup>51</sup>. For this purpose, the Greek government, the TFGR and the German officials will adopt a concrete "roadmap for reform". The second quarterly report of the TFGR presents six priority areas for the administrative reform at this level that have been determined by the Greek authorities:

1) definition of methods and procedures to improve the effectiveness of municipalities and regions;

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(48) Memorandum II, pp. 12-13; see also Memorandum I, p. 34.

(49) Memorandum II, p. 36.

(50) Memorandum II, p. 53.

(51) TFGR/COM, *Second quarterly report of the Task Force for Greece*, Brussels, March 2012, pp. 15, 16, 17-18.

- 2) design and implementation of public policy in the field of real estate of municipalities and regions, to achieve local development;
- 3) improving the capacity of local authorities to utilize structural funds;
- 4) waste management;
- 5) empowering the design and implementation of central policies for the evaluation of local government entities, to improve services provided to the citizens, taking into account issues of efficiency and highlighting existing spatial variations;
- 6) supervision of municipalities and regions.

## ***B. Reforming Local and Decentralized Government in Greece***

### ***I. The early beginnings and historical development***

The Constitutions of the Greek Revolution of 1821, before the modern Greek State was founded, reflected the ideal of a state organized according to the principles of local self-governance and popular participation<sup>52</sup>. These principles were adapted to the pre-revolutionary regime of limited autonomy that the Ottoman Empire assigned to the ethnic populations living under its occupation. This regime was merely a system of local administration on the basis of self-governed *communities* and was well adapted to the rural character of the local economies<sup>53</sup>. However, while the revolutionary Constitu-

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(52) Among the extensive constitutional production of the revolutionary period in Greece the most characteristic is the Constitution of 1823 – known as the “Act of Epidaurus” – which was adopted in the National Convention of Astros and was considered as a temporary constitutional agreement among the revolutionary political forces of the time. The Act of Epidaurus included the “Organization of the Greek Provinces”, which established as local administrative entities the “towns” and the “villages” under the authority of the *elders* (= δημογέροντες).

(53) See on the subject G.D. KONTOGIORGIS, *Social Dynamic and Political Self-Governance: The Greek Communities during the Ottoman Occupation*, Athens, New Horizons-A.A. Livanis, 1982 [in Greek], pp. 23-25 (34); see also G.D. KONTOGIORGIS, *Community System and Political Autonomy: On the Origins of the Greek Local Self-Governance, Law and Politics*, 1/1982, pp. 49-64 (53-55) [in Greek]; G.D. KONTOGIORGIS, *The Evolution of the Institution of Local Self-Governance*, *Local Self-Governance Review*, 6/1982, pp. 21-29 (22-23) [in Greek].

tions preserved this administrative model<sup>54</sup>, the Decree I° of Ioannis Kapodistrias, the first appointed Governor of Greece, cut off the early Greek state from this long tradition. Kapodistrias organized the newly founded Greek state according to the French model of administrative concentration, aiming to weaken the political influence of the former local aristocracy (*the elders*)<sup>55</sup>.

A system of decentralized administration with a partial and strictly advisory popular participation prevailed during and after the Monarchy of King Otto who succeeded Kapodistrias<sup>56</sup>. This system, which consisted of *municipalities*, *prefectures* and *provinces*, remained largely in effect until well into the twentieth century, despite several subsequent legislative interventions and modifications (1836, 1845, 1899 and 1909)<sup>57</sup>. The tipping point towards an administrative system based on the principle of self-government was made by Prime Minister Eleftherios Venizelos<sup>58</sup>. Venizelos' system consisted of one level of self-governed local administration entities, municipalities and communities, operating under the umbrella of districts known as prefectures, which were administered by a *prefect* appointed by the central government. Furthermore, the liberation of the *new countries*<sup>59</sup> after

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(54) The exemption was the Last Revolutionary Constitution, the Constitution of Troizina (1827), known as "Political Constitution of Greece", which regulates in Art. 3 the system of decentralization and the division of the Greek State in *provinces*.

(55) See G.D. KONTOGIORGIS, *The State of I. Kapodistrias: Ideological Foundations and Social Components*, *Bulletin of the Association of Modern Greek Culture and General Education*, 9/1986, pp. 108-111 (108-109) [in Greek].

(56) Act of 27<sup>th</sup> December 1833. See C. BABOUNIS, *The Local Self-Governance during the Otobonian period (1833-1862): Institutional Framework, Organization and Function*, Athens, Gutenberg, 2009 [in Greek].

(57) *Ibid.*, p. 34

(58) With Act Δ. NZ' of 1912 (and later by Legislative Decree of 13<sup>th</sup> September 1926). After their legislative recognition the systems of local and decentralized government were also constitutionally acknowledged. Thus the Constitution of 1926 provided that the Greek state was organized according to the systems of local and decentralized government and specifically referred to municipalities and communities (Art. 104, 105), a provision which was included also in the Constitution of 1927 (Art. 107 and 108) and in the Constitution of 1952 (Art. 99).

(59) Epirus, Macedonia, Thrace and East Aegean Islands.



the Balkan wars (1912-1913) led to the creation of *general administrations*, a system of decentralization specifically adapted to the administrative needs of the new territories<sup>60</sup>.

The basic structure and philosophy of this organizational system remained in place until the restoration of democracy in Greece (July 24, 1974) and influenced the provisions of the 1975 Constitution. However, the *Code of Municipalities and Communities* (introduced by Legislative Decree 2888/1954 pursuant to Art. 99 of the 1952 Constitution) diluted the self-government features of this regime to a considerable extent. During the twenty-five years in which this Decree was in effect, central administration closely monitored local self-government, thus repressing/tending to repress its dynamic and democratic potential/initiative<sup>61</sup>.

## II. *The first phase: The constitutional recognition of local and decentralized government in Greece and its early EU influences*

The 1954 Code of Municipalities and Communities remained in force after the restoration of democracy, but with modifications influenced by the principles of the 1975 Constitution regarding the democratic role of the local government. The most pertinent constitutional provisions are: (a) Art. 101 which provides for a system of decentralized government which is legislatively specified in the form of 54 prefectures under the control and supervision of the central government<sup>62</sup> and (b) Art. 102 which provides for a system of democratic self-government recognizing expressly municipalities and communities and leaves to the legislator the option to establish more than one level of local government<sup>63</sup>. According to Art. 102 of the 1975 Greek Constitu-

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(60) See S. FLOGAITIS, *The Greek Administrative System*, Athens-Komotini, Ant. Sakkoulas, 1987, pp. 153-157 [in Greek].

(61) See K. PSYCHOPAIDIS, *The Local Self-Governance as a Political Institution*, *Local Self-Governance Review*, 6/1982, pp. 13-20 (16) [in Greek].

(62) See E.P. SPILIOPOULOS, *Textbook of Administrative Law, Part I*, Athens, Legal Library, 2010, p. 297 [in Greek].

(63) See A. MAKRYDEMETRES (with the collaboration of M.I. PRAVITA), *Public Administration: Elements of Administrative Organization*, Athens-Thessaloniki, Sakkoulas, 2010,

tion there is a rebuttable presumption in favor of local government as far as their competence over *local affairs* is concerned. Until today the self-governed entities lack an independent legislative authority/capacity. Furthermore, although with the 2001 constitutional revision a specific provision (Art. 102 para. 5)<sup>64</sup> concerning their economic autonomy has been constitutionally enshrined, until now their main budget funds have been mediated by the central government. While the system of local government reflects the ideal of popular sovereignty, direct participation and self-governance of local affairs and thus the two levels of local government enjoy a high level of independence, the system of decentralized government merely represents a form of local subdivision of the central government and therefore remains under its direct supervision. This administrative regime was improved by Act 1065/1980, which provided detailed provisions concerning the internal administrative structure of the local *communities* and *municipalities* and their geographic distribution. Nevertheless, this legislative intervention did not expand their competences and retained the prefectures' control and supervision over the communities' and municipalities' actions until the introduction of Act 1416/1984, which recognized their administrative autonomy<sup>65</sup>. The decentralized administration also included 19 provinces with merely symbolic competences<sup>66</sup>.

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p. 236 [in Greek]. See also M.G. VENETSANOPOULOU, *The institutional route of the Greek Public Administration*, Athens-Thessaloniki, Sakkoulas, 2002, pp. 137-139 [in Greek].

(64) Which states that: "The State shall adopt the legislative, regulatory and fiscal measures required for ensuring the financial independence and the funds necessary for fulfillment of mission and exercise of the competence of local government agencies, ensuring at the same time the transparency in the management of such funds ... Every transfer of competences from central or regional officers of the State to local government also entails the transfer of corresponding funds. Matters pertaining to the determination and collection of local revenues directly by local government agencies shall be specified by law".

(65) The Law 1416/84 along with the Presidential Decree 22/1982 abolished the dependence of the *municipal* and *community council* decisions from the *expediency control* of the *prefecture*, thus permitting them to acquire administrative autonomy. Nowadays and according to Article 102 of the 1975 Constitution only the accordance of those decisions to the law can be controlled by the decentralized administration (*control of legality*). See SPILIOTOPOULOS, *supra* note 62, p. 329.

(66) See MAKRYDEMETRES, *supra* note 63, pp. 315-316.

However, Greece's accession to the European Economic Community (currently EU) in 1981 was bound to affect this regime. The need for a more systematic overhaul of the Greek administrative infrastructure became pressing in order for the common European policies to be adopted and effectively implemented. Responding to this need, Act 1588/1986 established thirteen new entities, the *regions*, thus reshaping decentralized government in Greece<sup>67</sup>.

In turn, the presence of two entities (prefectures and regions) with overlapping competences forced the Greek legislator to adopt the first innovative substantial change in the field of local self-government. Thus, Act 2218/1994 transformed the fifty-four existing prefectures from merely decentralized entities to truly self-governed units administered by directly elected authorities<sup>68</sup>.

### III. *The first substantial reform: The Kapodistrias program*

The limited reform of 1994 was necessary but hardly sufficient. In order to effectively implement the EU policies and obligations and keep pace with the rest of EU member states, the reorganization of Greek local self-government and decentralization systems was imperative<sup>69</sup>. The previous system was complex, sluggish, inelastic and expensive. It consisted of a large number of underfunded entities with overlapping competences, an insufficiently trained staff with a bureaucratic mindset unable to adapt to the demands of the modern technocratic and electronic governance. A response to these problems has been Act 2539/1997, which introduced the "Kapodistrias" program<sup>70</sup>. *Inter*

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(67) See N. SKANDAMIS, *The EU Operation of National Administration*, Athens-Komotini, Sakkoulas, 1990, pp. 58, 63.

(68) See P. CHRISTOFILOPOULOU, *Prefectural Administration and Local Self-Governance in the Greek Political System*, *Greek Review of Political Science*, 7/1996, pp. 124-153 [in Greek].

(69) See N.K. HLEPAS, *Multilevel Self-Governance – Theoretical Searches and Institutional Transformations*, Athens-Thessaloniki, Sakkoulas, 1994, pp. 43-44 [in Greek]. For a general overview, see A. MAKRYDEMETRES, A. PASSAS, *The Greek Administration and the Coordination of the European Policy*, Athens-Thessaloniki, Sakkoulas, 1994 [in Greek].

(70) MINISTRY OF INTERIOR, PUBLIC ADMINISTRATION AND DECENTRALIZATION, *Program "Ioan-*

*alia*, Kapodistrias reduced through consolidation the number of entities belonging to the first level of local government (communities and municipalities), enlarged their competences, reinforced their internal administrative structure, and enabled them to create economies of scale.

After an initial period of voluntary consolidation of communities and municipalities, the adoption of the Kapodistrias program became compulsory. As a result, the 5.700 communities and three hundred municipalities that existed before the Kapodistrias program were reduced to a total of 1.034 municipalities and communities<sup>71</sup>.

Despite the dramatic reduction in the number of local entities, the system remained complex and inelastic. The system of local government consisted of two levels completely independent of each other. The first level encompassed 900 municipalities and 134 communities enjoying full administrative autonomy. The second level encompassed 50 self-governed prefectures, 3 of which were *supra-prefectures* encompassing larger geographic clusters (e.g., the Athens-Piraeus supra-prefecture). These entities were supervised by the regions as far as the legality of their decisions and actions was concerned.

With regard to the first self-government level, the remaining communities were administrated by a president, a vice-president and the council of the community elected every four years by the citizens registered in the local registers. The president of the community was elected with a 50% of the total votes. The municipalities were managed by a *mayor*, a *vice-mayor* (or in the case of larger municipalities vice-mayors), a *municipal council* and the *mayor's committee*. In order to transition from the former system of self-government, the Kapodistrias program provided for the subdivision of municipalities into *municipal districts* where the local communities could be represented by an elected *local council* and *municipal deputies*. As far

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*nis Kapodistrias" for the Modernization of the Greek Public Administration and Local Self-Governance*, Athens, National Printing House, 1997 [in Greek].

(71) Among the preserved ones were 134 preexisting communities that had a historic character (e.g., the community of Ampelakia in which the first co-operative society was founded during the Ottoman occupation).

as the service and the election procedure of these authorities were concerned, the relevant provisions were similar to those concerning the *president* and *community council*.

The mayor and the president of community exercised the executive authority, whilst the municipal and community council enjoyed the decisive authority over all decisions and actions concerning local affairs with the exception of the mayor's exclusive authorities and constituted from eleven to forty-one councilors according to the entity's size. The municipal committee had the competence along with the mayor to manage the municipality's economic affairs whilst the local council and the municipal deputies had merely consultative authorities.

Nevertheless, there is no comprehensive legislation specifying the constitutional notion of "local affairs." As a result, in many cases it is a matter of judicial interpretation whether a specific authority will be assigned to the central or the local administration. However, the 2006 revision of the Code of Municipalities and Communities (Act 3463/2006) made a big step in this direction, listing seven categories of local affairs: *a*) development, *b*) environment, *c*) quality of life, *d*) labor, *e*) social protection and solidarity, *f*) education, culture and sports, *g*) civil protection.

As far as the second level was concerned, Kapodistrias organized the self-governed on a similar basis. They were constituted of an elected *prefect*, the *prefectural council* and the *prefectural committee* with similar provisions regarding their election procedure and competences. The three supra-prefectures were charged with the coordination of prefectures and had a slightly different administrative structure<sup>72</sup>. All in all, the self-governed prefectures' scope of authority remained limited and could not justify their necessity as an essential part of the local administration. In fact, their few existing competences were overlapping either with those belonging to the municipalities or the regions<sup>73</sup>.

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(72) Athens-Piraeus, Kavala-Xanthi-Drama and Rodopi-Evros. The supra-prefectures were constituted by a *president* (the *supra-prefect*), a *vice president* and a *secretary*.

(73) See MAKRYDEMETRES, *supra* note 63, p. 316. For a general overview see M. Mous-

At the same time, the structure of the 13 regions belonging to the system of decentralized government<sup>74</sup> was quite different. The regions' highest authority, the *general secretary of the region*, was appointed by the Council of Ministers based on the recommendation of the Minister of Interior<sup>75</sup>. Furthermore, the regions were constituted by the *regions' council* and the *regional development fund*. The *regions' council* was a multimember authority with representative character and included representatives from the fields of self-government, industry and commerce and had decisive authorities as far as the *regional operational projects* were concerned which were funded under the supervision of the *regional development fund*. The *region* enjoyed administrative and budgetary autonomy but differed from local government in the sense that it lacked independence from central government. In fact, the *region* and the general secretary of the region were the administrative representatives of the Council of Ministers at the regional level.

#### ***IV. The current reform: The Kallikratis program***

The following governments (Karamanlis Government of 2004, 2007) declared the goal to introduce a more comprehensive administrative reform, including the reorganization of self-government and administration in a general and ambitious political program entitled "Re-foundation of the state"<sup>76</sup>. However, this policy was never fully implemented but it led to the revision of the Code of Municipalities and Communities (Act 3463/2006) that introduced innovative regulations in the field of local participation, namely local referenda, rights to information and petition, the municipality's citizen charter and the an-

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TAKAS, *The Competences of the Prefectural Self-Government*, Athens-Thessaloniki, Sakoulas, 2000 [in Greek].

(74) East Macedonia and Thrace, Central Macedonia, West Macedonia, Epirus, Thessaly, Ionian Islands, Western Greece, Sterea (Inland) Greece, Peloponnesus, Attica, North Aegean, South Aegean, Crete.

(75) Nowadays Minister of Interior, Public Administration and Decentralization.

(76) See A. MAKRYDEMETRES, *Citizens State: Problems of Reformation and Modernization*, Athens, A.A. Livanis, 2006, pp. 23-25, 46-47 [in Greek].

nual accountability of the local authorities. Finally, it was the Papan-dreou government (2009) that, under pressure by the augmenting economic crisis, introduced the “Kallikratis” program (Act 3582/2010)<sup>77</sup>, named after Kallikratis, one of the two Parthenon architects, a name that captures the notion of “fine state”.

### ***1. Restructuring local government: improving effectiveness and cutting down on spending***

Even though the Kapodistrias program has been a step towards a more flexible and well organized local and decentralized government, nevertheless, the remaining problems were many and pressing. The existing system of local and regional administration retained its complexity, its ineffectiveness and its preservation was costly. Therefore even since the beginning of its enforcement, the Kapodistrias program<sup>78</sup> was considered to be a transition to a much more radical reform, the “Kapodistrias II program”, which was nevertheless never implemented by the political forces (Simitis Government of 1996) that introduced Act 2539/1997 (Kapodistrias program).

The Kallikratis program bravely reduces the entities of local and decentralized government. It trims irrational public spending and aims at strengthening local government and maximizing its effectiveness. Even though substantial steps were taken in this direction, at the same time the Kallikratis program preserved a rather complex system in the internal organization of local entities. The Kallikratis program has been fully in effect after January 1, 2011. The novel legislation reduces the 1034 municipalities and communities to 325 municipalities, thus abolishing entirely the institution of communities in the first level of local government. The ‘Kallikratis’ program also abolished the institutions of the self-governed prefectures and the remaining *provinces*, transferred the 13 regions from the system of decentralized government to the system of local government and founded in their place 7 *decentralized administrations*.

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(77) See MAKRYDEMETRES, *supra* note 63, pp. 239-240.

(78) Act 3852/2010, “New Architecture for Self-Governance and Decentralization – Kallikratis Program”.

The Kallikratis program increased the service of the local elected authorities from 4 to 5 years, thus synchronizing them with the European parliament elections and reduced the age of election for the municipal and regional councilors to the age of 18 and for the mayor and the general secretary of the region to the age of 21, thus permitting the active participation of the young to the local affairs. Moreover, it reinstated the elective percentage to 50% (from 42% since 2006) and extended the right to vote and be voted as municipal councilors and vice-mayors to the legal immigrants, thus promoting their integration in the local communities. An important organizational rationalization in the direction of reducing public spending was accomplished with the reduction of approximately 6.000 community, municipal and prefectural enterprises to a total of 1.500<sup>79</sup>.

At the first level of self-government, the Kallikratis program introduced 325 municipalities<sup>80</sup> divided into *local communities* (communities with population of less than 2.000 citizens) and *municipal communities* (communities with population of more than 2.000 citizens with the exception of the islands where a 1.000 citizens limit is set). Under the new legislation the *municipalities* are administered by the mayor and vice-mayors, the municipal council (from 13 to 47 members according to the municipality's size), the economic affairs committee, the *quality of life committee* and the *executive committee*. In those municipalities whose population exceeds the number of 10.000 citizens a *deliberation committee* with the authority to represent the local social groups has been introduced<sup>81</sup>.

According to the Kallikratis program the party that wins 50% of the votes in the municipal election acquires the 3/5 of the municipal council seats. According to the former legislative regime the mayor appointed the members of the *economic affairs committee* (former mayors' committee) exclusively from the municipal council majority.

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(79) See MAKRYDEMETRES, *supra* note 63, pp. 242, 261-265.

(80) A basic rule for municipality for each island (to avoid their geographic seclusion) with the exemption of Crete and Evvoia and *one* for each secluded mountainous area was introduced in the Kallikratis Program.

(81) See MAKRYDEMETRES, *supra* note 63, p. 270.



In an attempt to improve the financial transparency in the field of local administration the Kallikratis program provides that this committee should consist of members belonging both to the majority and the minority of the municipal council. Moreover, the executive committee consists of the mayor and the vice-mayors with executive competences, the municipal council which has the decisive authority over all the municipal affairs except for those belonging to the exclusive authority of the mayor and the executive committee and the quality of life committee which has recommendation competences in matters concerning environmental protection, quality of life, urban and land planning<sup>82</sup>.

In each municipality a *council for immigrants integration* is founded as well as a local *Ombudsman* for the businesses and the citizens, with a five-year service and with the authority to examine petitions for mal-administration and to draft an annual report concerning citizens' rights protection by the municipal authorities<sup>83</sup>. Aiming at further cost reduction and rationalization of the local governments' functions the Kallikratis program provides that all municipal enterprises should be consolidated and reduced to *two* for each local entity: one concerning the citizens' social protection and one for cultural and sports issues. Finally, a central aim of the first level of local government is the enhancement of small and medium scale enterprising.

On the second level of local government, 13 self-governed regions are introduced, transferred from the field of decentralized government. Each self-governed region is constituted of the former prefectures, which are redefined as *regional units*. The self-governed *region* is administrated by the elected *general secretary* of the region, the *vice-general secretaries* of the region (elected in each former prefecture), the *regional council*, the *executive committee*, the *committee of economic and social affairs*, the *regional committee of deliberation* with members from commerce, enterprise and labor groups and the *regional Ombudsman* for the businesses and the citizens. Central

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(82) *Ibid.*, pp. 271-272.

(83) *Ibid.*, pp. 273-274.

administrative goals of the self-governed regions are the implementation of the EU development policies, the enforcement of the *Regional Development Projects* and projects concerning green development and competitiveness<sup>84</sup>. Two *metropolitan regions* in Attica and in Thessaloniki/Central Thessaloniki with the objective of promoting environmental protection, quality of life, urban and land planning are introduced. Both the first and the second level of self-government are completely independent of each other<sup>85</sup>.

## *2. Transforming decentralized government: legality and supervision*

At the level of decentralized government, seven decentralized administrations are introduced<sup>86</sup>. Thus the decentralized entities are reduced to almost a half, with the reform aiming not only at substantial budget reductions, but also at addressing the problems generated by their overlapping competencies with the local government entities. The *general secretary* is the highest authority of the decentralized administrations appointed by the Council of Ministers with the recommendation of the Minister of Interior. It is also constituted of a *council* in which the municipalities and the self-governed regions are represented with merely consulting role. Competences that belonged to the former decentralized regions were transferred to the decentralized administrations. Their main goal is to supervise all actions and decisions of the first and second local government levels and especially to enforce legality and transparency principles in their administration. For this purpose, in each entity a separate *independent service for the supervision of local government* is introduced, administered by the auditor, with the task of controlling the legality of all actions and decisions taken at the two self-government levels. The complete abandonment of the system of decentralization has been proposed

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(84) *Ibid.*, pp. 329-334.

(85) *Ibid.*, pp. 354-356.

(86) Attica, Thessaly-Inland Greece, Epirus-West Macedonia, Peloponnesus-West Greece and Ionian, Aegean, Crete and Macedonia-Thrace.

via the abolishment of its constitutional foundation (Art. 101) in the forthcoming revision process of the 1975 Constitution which is expected to begin in 2013 in order to further reduce cost spending and rationalize the functions of decentralized government.

### *C. Judicial review of local government reforms*

Several Greek local government reforms illustrated above have raised objections on constitutional grounds. The scope of authority of local government agencies is based upon the judicial interpretation of Article 102 para. 1 Const., which provides that the administration of local affairs shall be exercised by local government agencies. Based on the 2001 amendments, the Constitution explicitly recognizes a presumption of competence in favor of local government agencies for the administration of “local affairs”, stipulating, however, that the range and categories of local affairs, as well as their allocation to each level, shall be specified by statute, while a statute may also assign to local government agencies competences constituting a state mission (Article 102 para. 1 alinea 2-4 Const.). Furthermore, Article 102 Const. stated explicitly – before the 2001 amendments – that municipalities and communities are the organizational form of the first local government level. This prompted the question of whether the 1975 Constitution encompasses all municipalities and communities that existed at the time of its enactment. If so, this would constitutionally bar all compulsory consolidation schemes including those provided in the Kapodistrias reforms of 1997. While the Kallikratis reforms as such pass constitutional muster in light of the Constitution’s 2001 amendments, the establishment of 13 self-governed regions to replace the former prefectures as the second level of local government raises constitutional concerns as well.

In order to identify the available judicial options to scrutinize Greek local government reforms vis-à-vis the Greek Constitution, Section I of this part outlines the system of judicial review in Greek constitutional law. Section II provides an overview of the doctrinal developments on the constitutionality of local government reforms, and focuses on the establishment of second-level self-governed units under the Kapodistrias program. Section III examines issues of constitutionality of

the latest (2010) Kallikratis reform project (III). Particular emphasis is placed on the appropriate extent of judicial intervention in questioning the policy choices of the political branches of government, in both substantive and procedural terms.

### ***I. Judicial review under Greek constitutional law***

Greek courts generally follow a *diffuse, incidental* and *concrete* system of judicial review<sup>87</sup>. Generally, all courts of all levels are charged with examining the constitutionality of statutes to the extent necessary for adjudicating a particular case. Despite adopting a diffuse approach to judicial review as a matter of principle, in fact, the availability of legal remedies against judicial decisions, the lower courts' standard practice of following the pronouncements of the high courts, and the constitutionally based option for individuals to directly challenge executive acts before the Council of State (Greece's supreme administrative court), have all resulted in substantial concentration of judicial review. Consequently, some scholars consider the Council of State as Greece's constitutional court *par excellence*<sup>88</sup>. In addition,

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(87) See generally E. SPILIOPOULOS, *Judicial Review of Legislative Acts in Greece*, *Temple Law Quarterly*, 56 (1983), pp. 463-502; A. MANITAKIS, *Fondement et Légitimité du Contrôle Juridictionnel des Lois en Grèce*, *Revue internationale de droit comparé*, 1 (1988), pp. 39-55; W. SKOURIS, *Constitutional Disputes and Judicial Review in Greece*, in: C. LANDFRIED (ed.), *Constitutional Review and Legislation. An International Comparison*, Baden-Baden, Nomos, 1988, pp. 177-200; J. ILIOPOULOS-STRANGAS, G. LEVENTIS, *Der Schutz der sozialen Grundrechte in der Rechtsordnung Griechenlands*, in: J. ILIOPOULOS-STRANGAS (ed.), *Soziale Grundrechte in Europa nach Lissabon – Eine rechtsvergleichende Untersuchung der nationalen Rechtsordnungen und des europäischen Rechts*, Baden-Baden/Athens/Brussels/Vienna, Nomos/Ant. Sakkoulas/Bruylant/Facultas, 2010, pp. 249-323 (294-297); P. SPYROPOULOS, T. FORTSAKIS, *Constitutional Law in Greece*, Alphen aan den Rijn, Kluwer Law International, 2009, pp. 206-207; J. ILIOPOULOS-STRANGAS, S.-I. KOUTNATZIS, *Constitutional Courts as Positive Legislators – Greece*, in: A. BREWER-CARIAS (ed.), *Constitutional Courts as Positive Legislators. A Comparative Law Study*, New York, Cambridge University Press, 2011, pp. 539-573.

(88) Cf., e.g., E. VENIZELOS, *The Particularities of the Greek System of Judicial Control of the Constitutionality of Legislation: A Factor of Intensive or Limited Scrutiny?*, in: E. VENIZELOS (ed.), *The Interpretation of the Constitution and the Limits of Judicial Review of the Constitutionality of Legislation*, Athens-Komotini, Ant. Sakkoulas, 1994, pp. 13-32 (15-18) [in Greek]; A. MANITAKIS, *The Establishment of a Constitutional Court*, Athens-Thessaloniki, Sakkoulas, 2008, p. 30 [in Greek]; for an illustrating comparison

while, as a matter of principle, the diffuse system of judicial review had no exceptions under the previous Greek Constitutions, the 1975 Constitution and the 2001 constitutional revision directly qualified this approach to foster legal certainty and consistency. For executive acts, Greek administrative courts are empowered to review the constitutionality and the legality of administrative actions<sup>89</sup>, including individual and general measures (in Greek administrative law terminology, “individual” and “normative” administrative acts).

While Greek courts generally exercise judicial review of statutes only on an incidental basis and do not apply unconstitutional statutes, but leave the statutes in force, the Greek Constitution established the direct jurisdiction of the Council of State “to annul upon petition enforceable acts of administrative authorities for excess of power or violations of law” (Art. 95 para. 1 alinea a Const.). However, recent Council of State decisions have qualified the usual dichotomy between judicial review of legislative and executive acts. Responding to the political branches’ occasional tendency to enact planning regulations of an individual nature per statute in order to bypass direct judicial review, the Council of State has emphasized that this practice is constitutionally permissible *only exceptionally* and subject to judicial scrutiny<sup>90</sup>. Courts lack the power to directly challenge legislative acts that include individual measures (e.g., urban planning regulations

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between the Greek Council of State and the U.S. Supreme Court, see G. GERAPETRITIS, *Balance of Powers and Judicial Interventionism: Comparative Thoughts on the Function of the Greek Council of State and the United States Supreme Court*, in: *Jubilee Book for the Council of State – 75 Years*, Athens-Thessaloniki, Sakkoulas, 2004, pp. 197-227 [in Greek].

(89) See generally E. SPILIOPOULOS, *The Judicial Review of Administrative Action*, in: E. SPILIOPOULOS, A. MAKRYDEMETRES (eds.), *Public Administration in Greece*, Athens-Komotini, Ant. Sakkoulas, 2001, pp. 119-134; P.-M. EFSTRATIOU, *Die gerichtliche Kontrolle administrativer Entscheidungen im griechischen Bau-, Umwelt- und Wirtschaftsverwaltungsrecht*, in: J. SCHWARZE, E. SCHMIDT-ASSMANN (eds.), *Das Ausmaß der gerichtlichen Kontrolle im Wirtschaftsverwaltungs- und Umweltrecht*, Baden-Baden, Nomos, 1992, pp. 111-202.

(90) Council of State (Full Bench) no. 1847/2008, *To Syntagma* (=ToS), 2008, pp. 708-721 (715-716).

that do not require executive acts to implement them)<sup>91</sup>. Nevertheless, in order to avoid bypassing constitutional guarantees, the Council of State reviews executive acts issued in the implementation of statutes even if they do not strictly meet the criteria of an “enforceable” act in terms of Art. 95 para. 1 alinea a Const.<sup>92</sup>. In view of the fact that parliamentary statutes have included comprehensive reforms in the administration of local government that are not subject to further regulation, this doctrinal development has considerable potential implications for judicial scrutiny of local government law as well.

Moreover, ingrained in a civil-law tradition, Greek judges have long deferred to the legislative and executive branches of government, regularly privileging parliamentary sovereignty and scrupulously protecting state interests at all costs<sup>93</sup>. Despite Greece’s longstanding recognition of judicial review of legislation as a matter of principle, traditionally, Greek courts have failed to meaningfully and consistently scrutinize the constitutionality of legislation; instead, emphasizing the need to respect legislative prerogatives, the courts have effectively considered the *mere existence of legislation* that restricts constitutional norms as a sufficient basis to uphold the legislation’s constitutionality. In the last two decades, the courts and constitutional scholars have pursued constitutional considerations more often. However, vestiges of the courts’ longstanding deference to the legislative and executive branches remain and recently have taken on renewed importance vis-à-vis state measures to control Greece’s financial crisis<sup>94</sup>. Against

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(91) See Council of State no. 3976/2009 (Full Bench), *EfimDD*, 6/2010, pp. 863-866 (863). For a different approach, cf. the Council of State section’s preliminary ruling, no. 391/2008, *EfimDD*, 2008, pp. 184-188 (185).

(92) Cf., e.g., Council of State no. 3976/2009 (Full Bench), *EfimDD*, 6/2010, pp. 863-866 (863).

(93) See, e.g., N. ALIVIZATOS, *The Presidency, Parliament and the Courts in the 1980s*, in: R. CLOGG (ed.), *Greece 1981-89. The Populist Decade*, London, Macmillan, 1993, pp. 65-77 (71) (pointing out that the Greek judge acts “more as an agent of the state than as an independent arbitrator”); see also K. YANNAKOPOULOS, *Rights in the Council of State’s Case Law*, in: M. TSAPOGAS, D. CHRISTOPOULOS (eds.), *Rights in Greece 1953-2003*, Athens, Kastaniotis, 2004, pp. 439-468 (456) [in Greek].

(94) Cf. Council of State no. 1620/2011, *EfimDD*, 4/2011, pp. 491-494 (493-494) (upholding differential interest rates in favor of the state).

this background, both the structural particularities of the Greek judicial review system and the courts' deferential tradition highlight the inherent complexities for making a comprehensive judicial ruling on the constitutionality of Greek local government reforms. However, in defining "state interests" as interests of the central state against local government agencies, Greek courts have become embroiled in a controversy between two strong competing tendencies – judicial self-restraint and centralism.

## ***II. Council of State and local government reforms: between judicial self-restraint and centralism***

In reviewing the constitutionality of local government reforms the Council of State has forcefully intervened to protect the central government's scope of authority over local government agencies. Consistent with the very limited role of subsidiarity considerations in Greek constitutional law<sup>95</sup>, the traditional attitude of Greek courts has been to support the central government's position. At the same time, when the central state's authority has not been at stake, Greek courts have rarely called into question the substantive policy choices of the political branches (e.g., with respect to compulsory consolidations of local government agencies).

Against this backdrop, the 1994 reforms that transformed the prefectures from merely decentralized entities to truly self-governed units and established *second-level local government agencies*<sup>96</sup> posed a threat to the central state's traditionally wide scope of authority<sup>97</sup>. In fact, Act 2218/1994 *in toto* transferred all powers of the preexisting

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(95) For an instructive overview, see G. KASSIMATIS, J. ILIOPOULOS-STRANGAS, *Le Principe de Subsidiarité Comme Principe de Droit Constitutionnel*, *Revue Hellénique de Droit International*, 47 (1994), pp. 327-339 (e.g., at 328).

(96) On the theoretical discussion as to whether the 1975 Constitution, before the 2001 amendments, included a guarantee of second-level local government, see, e.g., HLEPAS, *supra* note 69, pp. 258-263.

(97) Cf. also C. CHRYSANTHAKIS, *Local Democracy On Trial: The Statutory Realization of Second-Level Self Government*, *Epitheorissi Dimossiou kai Dioikitikou Dikaiou*, 39 (1995), pp. 334-349 (345) [in Greek] (identifying a relation of competitive cooperation between state and local government agencies).

decentralized prefectures to the newly established prefectures as local government agencies, initially without distinguishing between state and local affairs and providing only narrow exceptions (Article 3 para. 1 alinea 1)<sup>98</sup>. Some scholars found this massive transfer of power to be incompatible with the constitutional guarantee of regional authorities and with the constitutional distinction of public affairs in public and local matters<sup>99</sup>. Initially, a Council of State section pointed out that the constitutionally guaranteed supervision of local government agencies (Article 102 para. 5) establishes a priority of public administration vis-à-vis local government, thus setting considerable limits on legislative expansion of local government competences<sup>100</sup>. Accordingly, the legislature is required to catalogue the competences of second-level local government agencies based on objective criteria, without merely transferring the competences of preexisting prefectures (as decentralized units) into competences of the newly established second-level local government agencies. In contrast, the Council of State's plenary session in 1998 dismissed this line of reasoning. It emphasized the broad legislative leeway to restrict or expand the spheres of competences of the central government, decentralized administration, first- and second-level local government agencies that includes reversing previous policy decisions provided that the decentralized administration maintains a minimum of powers<sup>101</sup>. However, while facially upholding the constitutionality of Article 3 para. 1 alinea 1 of Act 2218/1994, the Council of State's full bench reserved its competence to review on an *ad-hoc* basis as to whether a transfer of authority complies with the state's unitary nature and with constitutional

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(98) See also Article 5 para. 1 Act 2240/1994 (limiting the transfer of authority to all "relevant" competences, namely the decentralized prefectures' competences of local nature).

(99) See, e.g., P. DAGTOGLOU, *Constitutional and Administrative Law*, in: K.D. KERAMEUS, P.J. KOZYRIS (eds.), *Introduction to Greek Law*, 3<sup>rd</sup> ed., Alphen aan den Rijn, Kluwer Law International, 2008, pp. 23-64 (42, 45).

(100) See, e.g., Council of State no. 263/1997, *ToS*, 1/1998, pp. 181-189 (183-185, 188-189). See also Council of State no. 888/1997, *ToS*, 1/1998, pp. 189-198.

(101) See, e.g., Council of State nos. 3441/1998 (Full Bench), *ToS*, 1/1999, pp. 163-168 (165-166), 3413/2001 (Full Bench), *ToS*, 1/2001, pp. 151-156 (152-153).



norms that explicitly guarantee “state” authority in a particular policy field<sup>102</sup>.

Following this reasoning, the Council of State subsequently deduced from several constitutional provisions constitutional barriers on transferring competences to local government agencies. Such provisions have included Article 16 para. 2 Const., which provides that education constitutes a basic mission of the state<sup>103</sup>, Article 16 para. 9 Const., which states that athletics shall be under the protection and the ultimate supervision of the state<sup>104</sup>, and Article 24 para. 1-2 Const., which renders the state responsible for protecting the natural and cultural environment and stipulates that Greece’s master plan, and the arrangement, development, urbanization and expansion of its towns and residential areas shall be under the state’s regulatory authority and control<sup>105</sup>. In so doing, the Council of State not only adopted an extremely narrow definition of the constitutional concept of “state”, but also equated substantive constitutional references to state duties with an allocation of competences in favor of the central state and against local government agencies. Consistent with its longstanding narrow interpretation of the notion of “local affairs” in terms of the scope of authority of first-level local government agencies<sup>106</sup>, the

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(102) On the scholarly reception of the Council of State’s case-law, see in detail Moustakas, *supra* note 73, pp. 149-271.

(103) See, e.g., Council of State no. 2237/2001, *ToS*, 3/2002, pp. 470-473 (472-473). But see Council of State no. 3413/2001 (Full Bench), *ToS*, 1/2002, pp. 151-156 (155) (distinguishing the local government competence on issuing permits for the establishment of private preparatory or foreign language schools).

(104) See, e.g., Council of State no. 1960/1999, available at [www.dsnet.gr](http://www.dsnet.gr) [Isokratis Database] (16 June 2012).

(105) See, e.g., Council of State no. 552/2000 (Fifth Section), *ToS*, 1/2001, pp. 185-188 (186-187). For an early critique of the narrow construction of the “state” concept in Art. 24 Const., see K. REMELIS, *Environment and Local Government*, Athens-Komotini, Ant. Sakkoulas, 1989, pp. 33-34, 60 [in Greek]. See also G. GIANNAKOUREOU, *The Role of Prefectural Self Government in Urban Planning*, in: UNION OF PREFECTURAL GOVERNMENTS OF GREECE (ed.), *Prefectural Self Government and State*, Athens-Komotini, Ant. Sakkoulas, 2000, pp. 271-323 [in Greek].

(106) For a comprehensive overview and critique, see D. KONTOGIORGA-THEOCHAROPOULOU, *The Institution of Prefectural Self Government and the Administrative Organization of the State*, in: UNION OF PREFECTURAL GOVERNMENTS OF GREECE (ed.), *Prefectural Self*

Council of State followed a similar path with respect to second-level local government agencies, albeit not always consistently<sup>107</sup>. Accordingly, the judicial tradition of centrism seems to counterbalance the Council's deferential approach to local government reforms. After the 2001 constitutional amendments, given that any statute can also assign local government agencies with competences that constitute a mission of the state<sup>108</sup>, the importance of the constitutional definition of "local affairs" diminished<sup>109</sup>. Nonetheless, the Council of State has continued to oppose the delegation of general interest legislative powers to local government corporations. To support its stance, the Council of State has relied on the constitutional limits of statutory delegation to the executive branch, noting that such powers can only be delegated to the President of the Republic<sup>110</sup> and must be exercised by presidential decree on proposal by the competent minister (Article 43 para. 2 alinea 1 Const.)<sup>111</sup>.

On the other hand, as long as the state purview of authority remains unaffected, the courts continue practicing the deferential approach. Although the Greek Constitution, before the 2001 amendments, explicitly designated "municipalities" and "communities" as the first level

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*Government and State*, Athens-Komotini, Ant. Sakkoulas, 2000, pp. 21-208 (121-140) [in Greek].

(107) Cf., e.g., Council of State no. 2579/2000, *ToS*, 3/2001, pp. 637-641 (generally construing the term "state" in substantive constitutional provisions broadly so as to allow the delegation to local government agencies of power to issue permits for industrial facilities).

(108) See critically P.-M. EFSTRATIOU, *The Exercise of Competences Constituting Mission of the State by Local Government Agencies*, in: *Transparency and Effectiveness in the Control of Public Funds – Essays in Honour of the Court of Audit*, Athens-Komotini, Ant. Sakkoulas, 2004, pp. 185-202 (194-196) [in Greek].

(109) For a theoretical critique, see, e.g., S. FLOGAITIS, *Local Self Government*, in: *Administrative Law*, 2<sup>nd</sup> ed., Athens-Thessaloniki, 2010, pp. 155-164 (156) [in Greek].

(110) Council of State no. 3661/2005 (Full Bench), *Dikaiomata tou Anthropou* (=DtA), 8 (2006), pp. 709-734.

(111) According to Art. 43 para. 2 alinea 2 Const., delegation for the purpose of issuing regulatory acts by other administrative organs shall be permitted only in cases concerning the regulation of more specific matters or matters of local interest or of a technical and detailed nature.

of self government (Article 102 para. 1), the Council of State had ruled that compulsory consolidations of *local government agencies* pass constitutional muster. At the instance of an early modest step in this direction<sup>112</sup>, the Council of State's plenary session dismissed in 1990 the existence of a constitutional guarantee of the current status of municipalities and communities<sup>113</sup>. Rather, it held that the maintenance of a municipality or community or its abolishment as a separate administrative entity, as a result of its consolidation with other local government agencies, does not fall within the constitutional ambit of "local affairs", and instead is an issue of general importance that falls within the purview of state competence. As a result, from a constitutional perspective a consolidation of local government agencies does not require the agreement of the preexisting entity's citizens, inhabitants or administrative organs nor should this determination necessarily rest on the non-viability of existing agencies.

As previously illustrated<sup>114</sup>, the *Kapodistriasi* statute, enacted in 1997, directly and comprehensively followed this path. In fact, it consolidated most preexisting municipalities and communities into larger entities and abolished the overwhelming majority of communities, which raised questions as to its constitutionality<sup>115</sup>. First, in a pair of 1999 holdings<sup>116</sup>, a Council of State section majority reiterated the main argument of its aforementioned 1990 ruling and at the same time extended its applicability to a blanket consolidation plan. Moreover,

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(112) Cf. Article 3 para. 17 Presidential Decree 323/1989 (providing not only a set of incentives for the voluntary consolidation of municipalities and communities, but also a compulsory consolidation provided that a qualified majority of local government agencies so wishes within a particular region).

(113) Council of State no. 3194/1990 (Full Bench), *ToS*, 4/1991, pp. 643-651.

(114) See *supra*, B.III.

(115) For a positive appraisal, see, e.g., C. CHRYSANTHAKIS, *In Lieu of an Introduction: The Restructuring of First-Level Local Government*, in: C. CHRYSANTHAKIS (ed.), *The Institutional Reform of First-Level Local Government – The "Ioannis Kapodistriasi" Project*, Athens-Komotini, Ant. Sakkoulas, 1998, pp. 11-31 (23-26) [in Greek]. For a critical approach, cf. C. BACCOYANNIS, *Establishment of Other Levels and Categories of First-Level Local Government Agencies in Art. 102 Const.*, *ToS*, 4/1998, pp. 640-688 [in Greek].

(116) Council of State nos. 699/1999, 700/1999, available at [www.dsanet.gr](http://www.dsanet.gr) [Isokratis Database] (16 June 2012).

according to the Council, the judiciary's lack of authority to assess the constitutionality of legislation before its implementation did not impede the legislature from directly ordering the consolidation of local government agencies, thus rendering judicial review possible only on an incidental basis. Nonetheless, to pave the way for an incidental review, the Constitution sets a high jurisdictional threshold: an "application for annulment" before the Council of State is admissible only for "enforceable" acts of administrative authorities (Art. 95 para. 1 alinea a Const.), and these acts are not the administrative authorities' mere interpretation of the Kapodistrias statute. Addressing the same issue, the Council of State's full bench dismissed the complaint as inadmissible without ruling on its merits<sup>117</sup>. Emphasizing that the Kapodistrias statute exhaustively listed all local government agencies to be included in the consolidation project and left no leeway for its implementation by the executive branch, the 1999 plenary session's majority abstained from ruling on the constitutionality of the Kapodistrias reform in substantive terms.

However, subsequent Council of State's rulings adopted a broader reasoning for upholding the Kapodistrias reform. Since 2000, based on a historical overview the Council of State has regularly found the distinction between "municipality" and "community" to be rather vague, as it relies primarily on quantitative, population criteria<sup>118</sup>. Accordingly, Art. 102 para. 1 Const. merely describes the local government agencies that existed at the time of 1975 Constitution's framing, without providing either a constitutional status guarantee of these entities or indicating that the community is the mandatory organizational structure of first-level local government agencies<sup>119</sup>. On the other hand, according to the Council of State, the Constitution proscribes the establishment of overly broad first-level local government

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(117) Council of State no. 1484/1999 (Full Bench), *DiA*, 5/2000, pp. 209-211.

(118) Council of State no. 1333/2000, *DiA*, 23/2004, pp. 990-997.

(119) On the inherent inconsistencies of this approach that tends to disregard an explicit constitutional provision, see, e.g., I. KAMTSIDOU, *The Constitutional Guarantee of First-Level Local Government Agencies*, *DiA*, 23/2004, pp. 985-989 [in Greek].

agencies that roll back the constitutional notion of localness and resemble higher-level government structures. Consequently, while the comprehensive consolidation scheme of municipalities and communities provided under the Kapodistrias project passed constitutional muster as such, the Council of State qualified its deferential posture on an *ad-hoc* basis. It allowed judicial review in borderline cases to decide whether a particular consolidation meets the socioeconomic, social and transportation criteria established in Article 102 para. 2 Const. and is geared towards a more effective administration of local affairs in accordance with the constitutional equality principle. In sum, in accordance with its fundamentally deferential posture vis-à-vis the political branches of government as well as the structural deficits of the Greek system of judicial review outlined above, the Council of State upheld the constitutionality of the Kapodistrias project, allowing judicial intervention only in exceptional circumstances. Contrary to case law on prefectural self-government, the courts' centralistic tradition did not influence the internal structure of local government agencies. In contrast, within the state apparatus, the Council of State has undertaken a more active role in allocating competences between the central and decentralized administration<sup>120</sup>. Accordingly, relying on a transitional provision of the Greek Constitution<sup>121</sup>, the Council of State has allowed the modification of existing competences between the central and decentralized administration only in favor of decentralized entities, not vice versa<sup>122</sup>.

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(120) On the institutional guarantee of administrative decentralization on the basis of Art. 101 para. 3 Const., cf. D. FILIPPOU, *The Evolution, Function and Configuration of the Institution of Administrative Decentralization in the Context of Modern Greek State*, Athens-Komotini, Ant. Sakkoulas, 1994, pp. 104-106 [in Greek].

(121) See Article 118 para. 3 Const. (stipulating that provisions in force pertaining to the distribution of authority between central and regional services shall continue to be applied and may be amended by the transfer of special authority from central to regional services).

(122) See, e.g., Council of State no. 1306/2000, *NoB*, 49 (2001), pp. 1224-1226 (1226). For an overview, see also G. SIOUTIS, *Decentralisation*, in: E. SPILIOPOULOS, A. MAKRYDEMÈTRÉS (eds.), *Public Administration in Greece*, Ant. Sakkoulas, Athens-Komotini, 2001, pp. 45-59 (56). But see also Council of State no. 279/2005, *Efarmoges Dimossiou Dikaiou*, 2005, pp. 617-622 (620-621) (allowing the transfer of competences from de-

### III. *Constitutional aspects of the Kallikratis reform*

The Greek Constitution's 2001 amendments revised Article 102 to stipulate that the administration of local affairs shall be exercised by local government agencies of first and second levels, thus striking out the explicit reference to municipalities and communities as being on the first local government level. In light of this, the compulsory consolidations brought about by the Kallikratis project, including the wholesale abolishment of communities, generally comply with the standards of Greece's Constitution<sup>123</sup>. While some scholars have argued that a substantial reduction of local government agencies as such would undermine their constitutionally guaranteed localness, even the principle of popular sovereignty<sup>124</sup>, existing constitutional doctrine justifies such an approach only on an *ad-hoc* basis. In fact, consistent with previous case law, the facial upholding of the Kallikratis project does not necessarily rule out a verdict of unconstitutionality with respect to particular consolidations. More specifically, constitutional constraints stem from the constitutional concept of localness as they relate to the goals of effective, appropriate and transparent functioning of local government corporations. The geoeconomic, social and transportation criteria provided in Article 101 para. 2 Const., in conjunction with the principle of local self-government<sup>125</sup> under the European Charter of Local Self-Government<sup>126</sup>, provide the textual basis for a marginal judicial review in the case of an obvious violation of constitutional

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centralized to central administration if particular grounds are at hand and in compliance with the order of competences provided in Article 101 para. 3 Const.).

(123) Cf., e.g. E. BESSILA-VIKA, *Local Government*, Vol. I, 3<sup>rd</sup> ed., Athens-Thessaloniki, Sakkoulas, 2010, p. 324 [in Greek].

(124) See A. TACHOS, *Greek Administrative Law*, 9<sup>th</sup> ed., Athens-Thessaloniki, Sakkoulas, 2008, pp. 283, 285 [in Greek], A. MARINOS, "Kallikratis" and the Constitution, *Review of Public and Administrative Law*, 54 (2010), pp. 561-567 (564-565) [in Greek].

(125) See, e.g., Article 2: "The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution", Article 3 par. 1: "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population".

(126) Greece has approved by statute (Act no. 1850/1989) and ratified the Charter that "shall prevail over any contrary provision of the law" (Article 28 para. 1 Const.).

and international law standards<sup>127</sup>. However, as was the case with Kapodistrias reforms, the Kallikratis statute exhaustively provides all details on the consolidation of local government agencies and thus precludes any further executive regulations. In light of this, the lack of any mechanism to directly challenge the constitutionality of statutory legislation in the Greek system of judicial review results in a substantial gap in terms of the legal protection of local government agencies and individuals. A far-reaching attempt to close this lacuna identifies therein a violation of the European Convention on Human Rights (Articles 6 para. 1, 13) and the European Charter of Local Self-Government (Article 11)<sup>128</sup>. Recent Council of State case law offers a modest alternative; it considerably broadens the notion of “enforceable” acts of administrative authorities, thus enabling judicial protection without challenging the fundamental structure of the Greek system of judicial review<sup>129</sup>. The constitutionality of the consolidations provided under the Kallikratis reforms is currently pending in the Council of State (June 2012) and it remains to be seen whether the Court will follow its own deferential tradition.

The revised Art. 102 Const. does not entrench the existing structure of the local government’s second level either. Despite abolishing the self-governed prefectures and the remaining provinces and transferring the 13 regions from decentralized government to the system of local governments, the Greek state remains unitary<sup>130</sup>. While powers are delegated to regional or local administrators, there is “no splitting in the atom of sovereignty”<sup>131</sup>. Nonetheless, the constitutional notion of localness limits the legislative restructuring of local government

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(127) See, e.g., A. PAPACONSTANTINOU, *The Constitutional Delimitation of the Legislator’s Leeway in Reorganizing Local Government Through Consolidations and Abolishment of First-Level Local Government Agencies. The Example of the Kallikratis Program*, *Theoria kai Praxi Dioikitikou Dikaiou*, 3 (2010), pp. 625-636 [in Greek].

(128) PAPACONSTANTINOU, *supra* note 127, at 635.

(129) See *supra* notes 90-91 and accompanying text.

(130) But see MARINOS, *supra* note 124, at 567, arguing that the Kallikratis project results in Greece taking the form of a federal state.

(131) N. DORSEN, M. ROSENFELD, A. SAJO, S. BAER, *Comparative Constitutionalism – Cases and Materials*, St. Paul, West Group, 2003, p. 386.

agencies. According to Art. 102 Const., both first- and second-level local government agencies are primarily charged with the administration of local affairs. A third intermediary concept, “supra-local” affairs, is alien to the Constitution, which merely distinguishes between “local affairs” and “competences constituting mission of the state”. On the other hand, the explicit guarantee of two local government levels results in the constitutional entrenchment of two “local affairs” levels of varying extent. Accordingly, whether the 13 broader regions reflect a constitutionally appropriate setting for the administration of local affairs depends on the definition of the “local affairs” concept<sup>132</sup>. However, consistent with Greek courts’ longstanding deferential approach of vis-à-vis local government reforms, provided that the state’s purview of authority remains unaffected, the Kallikratis reforms are widely expected to pass constitutional muster.

### *Conclusion*

Against the background of an absolutely centralistic tradition, in the last two decades, Greek local government law has undergone considerable changes. In light of an international trend toward governmental decentralization and the creation of a smaller, flexible, ‘thinner’ state, the two major consolidations of first-level local government agencies have aimed to reinforce their administrative effectiveness. At the same time, the establishment and growth of second-level local government agencies has been promoted as a significant step in enhancing government’s closeness to citizens. However, much remains to be done to ensure full implementation of the reforms, while structural inadequacies of decentralized bodies and local government agencies persist. In addition, while generally exercising a lenient judicial scrutiny of local government reforms, Greek courts have been reluctant to question the central state’s prerogatives in policymaking. Rather than resulting solely from the current financial crisis, Greece’s recent local govern-

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(132) For an early attempt to identify the relevant constitutional criteria, see N.K. HLEPAS, *The Constitutional Status of Prefectural Self Government*, in: UNION OF PREFECTURAL GOVERNMENTS OF GREECE (ed.), *Prefectural Self Government and State*, Athens-Komotini, Ant. Sakkoulas, 2000, pp. 209-269 (237-238, 262) [in Greek].



ment reforms are embedded in a broader range of political reforms. Certainly, in light of international and EU responses to the Greek debt crisis, reform efforts have taken on renewed urgency but simultaneously seem to have limited potential because of extremely limited financial means. It has been beyond the scope of this paper to delve into the current political debate in Greece between supporters and opponents of fiscal consolidation measures and their implications for constitutional law and national sovereignty. Nonetheless, the need for structural reforms in public administration and local government remains imperative in order to improve their functioning and also to reduce government expenditures. It remains to be seen whether Greek public authorities and civil society alike will be able to overcome both structural deficiencies and financial malaise in implementing reform pledges and ensuring effective and transparent decision-making across all governance levels.

