GREECE

An Introduction to Greek Public Law

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Ever since the Greek Revolution in 1821, the Greek legal order has been based on a written constitution which is the superior source of law for every branch of law in the country, including, of course, public law.

Since 1981, however, when Greece joined the European Communities, public law obtained a new source of higher law, Community law, which under Article 28 of the Greek Constitution has supralegislative authority.

What follows is a brief introduction to some of the essential features of Greek constitutional and administrative law.

Constitutional Framework

The Constitution of 1975/1986 is the main source of internal public law. It is important in terms of its protection of both freedom and democracy. The position of the Constitution on top of the hierarchy of legal rules means that the lower legal rules are valid only if they agree with the Constitution, and that the administration is bound only by those legal rules which are issued by constitutionally elected or appointed agents and which conform in their content with the Constitution. The Greek Constitution is rigid, that is, it sets out sovereignly in Article 110 the conditions for modification or abolition of its rules. These conditions are different and more rigid than those for the enactment, modification or abolition of ordinary law. Thus, there are provisions that cannot be revised, such as those which designate the form of government as a parliamentary republic, chaired by the President of the Republic; the provision of Article 2, para. 1, which states that 'respect and protection

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of the value of the human being constitutes the primary obligation of the State'; Article 4, para. 5, establishing the equality of all citizens before the law; Article 5, para. 1, which states that all persons shall have the right to develop their personality freely and to participate in the social, economic and political life of the country in so far as they do not infringe upon the rights of others or violate the Constitution and moral values, etc.

Like most constitutions, the Greek Constitution of 1975 defines in its first provision the characteristic conceptions of the regime which it establishes. These are the democratic, parliamentary and presidential character of the regime. Though they are not stated *expressis verbis* in the Constitution, one must add to these conceptions the multiparty principle, the rule of law principle, the principle of the division of powers as well as the principle of the social state.

With regard to the last principle, which was developed through the crises, inefficiencies and consequences of liberalism, it is interesting to mention some constitutional provisions which prove that the latter principle was considered by the drafters of the Constitution:

(1) Article 17, para. 1 states: 'Property is protected by the State; rights deriving therefrom, however, may not be exercised contrary to the public interest.'
(2) Article 17, para. 2 provides for the expropriation of property which serves for the public benefit.
(3) Article 21 protects the institution of family, motherhood, childhood, families of many children, and the disabled, promotes health and establishes the obligation on the part of the state to provide proper homes for the inadequately sheltered.
(4) Article 22 protects the right of work and obliges the state to seek and create conditions of employment for all citizens.
(5) Article 23 protects the freedom to have unions and the right to strike.
(6) Article 24 supplies the state with the power to take measures for the natural and cultural environment.
(7) Article 25 obliges all agents of the state to ensure the unhindered exercise of human rights and liberties, stating that the human being is an individual member of the social entity, subject to these rights.
(8) Perhaps the most important point of the Greek Constitution with respect to the social state principle are the provisions of Article 106. Thus, in order to consolidate the social peace and to protect the general interest, the state has the power to plan and coordinate economic activity. Also, it is stated that 'private economic initiative shall not be permitted to develop at the expense of freedom and human dignity or to the detriment of national economy'.

In the second part of the Constitution (Articles 4–25), the principle of the rule of law is consolidated through a long catalogue of individual and social rights. The Constitution includes all the guarantees that traditionally are subjected to the rule of law principle either formally or substantively. Consequently the following principles are established:

(1) the legality of administration (Articles 95 (1) and 50);
(2) the right to judicial protection (Article 20 (1));
(3) the limits imposed on the legislature concerning the rule-making power of the executive, as well as the guarantees that safeguard the respect of those limits (Article 43);
(4) the division of functions (Article 26);
(5) the independence of the judiciary (Article 87);
(6) the right to be heard before the taking of an administrative action against those administered (Article 20);
(7) the acknowledged duty and the right of judges to examine the constitutionality of laws, and also the right and duty of citizens to resist whenever the abolition of the Constitution is attempted, even if it is apparently presented as legal (Article 120).

Basic Features of Administrative Law

Since the establishment of the Greek state in 1828, a multitude of successive provisions have been made regulating the organization and functions of the administrative agents and local government. Furthermore, administrative courts of limited jurisdiction were established. This development, however, was discontinued by the Constitution of 1844, which abrogated the administrative courts and settled the system of a 'common jurisdiction' that subjected the judicial control of the administration, with some exceptions, to the civil courts.

The development of administrative law as a separate branch of law started in 1929, when the 'Council of State' was established according to the French prototype. By the jurisprudence of this Court special rules concerning public administration were systematically interpreted and general principles of law were recognized and applied in order to check the legality of the acts of administrative agents.

This was the result of the fact that, as quite often occurs in the field of administrative law, there was no specific developed legal doctrine in existence which could provide a legal solution to cases involving administrative matters before the courts. Nevertheless, a judge cannot for that reason refuse to judge the case. This principle is reinforced in Greece in a variety of ways. For instance, it is provided by Article 20, para. 1 of the Constitution, which establishes the right of judicial protection, as well as by Article 99, which concerns 'mistrial suits'.[1] The jurisprudential rules of the Council of State adjust the compulsory conditions of

[1] A 'mistrial suit' is a special lawsuit, a legal action against judges, by which a person seeks legal protection from a special court to restitute the damage suffered from a judge judging that person's case, due to the judge's negligence or denial of justice. This special court is composed by members of the Council of State, of the Supreme Court and the Court of Auditors plus two law professors and two lawyers/barristers.

the actions of administrative agents. Any infringement of these rules constitutes therefore a reason for annulment of the administrative acts, because they are not issued in compliance with the jurisprudential rules which determine their legality.

The most important principles that have been acknowledged by the Council of State are the presumption of the legality of administrative acts, the principle of hierarchical control, the principle of proper administration, the proportionality principle, the rules regarding the revocation of administrative acts, the non-retroactivity of administrative acts, the duty to give reasons, the duty to examine whether discretionary power is exercised within its limits, the impartiality principle, the principle of legitimate expectation, the principle of good faith, and the equality principle.

According to the principle of legality, all administrative actions must be in compliance with Community law, with the Constitution, with statutes, as well as with any other legal norm which has higher or equal validity with them. So the principle of legality in the Greek perception of this doctrine has two different meanings: on one hand, the administrative acts must not be opposed to the rules mentioned above; on the other hand, these acts must be in accordance or comply with those rules.

In the first case the administration can proceed with every action that is not prevented by these rules or is not opposed to them. In the second case, the administration can or must only proceed to actions that are permitted or dictated by the legal rules. That is, while the individual can do whatever is not prohibited, public administration can only perform what it is permitted to do. Legal rules determine also whether the administration has discretionary or obligatory competence. When the administration has discretionary competence, the administrative courts or the Council of State will examine whether proper use of that discretion has been made, whereas when the administration has obligatory competence, the courts are entitled to examine whether the act fulfils the conditions and precise terms provided by the governing rule.

The principle of legality is a consequence of the constitutional principle of the sovereignty of the people, of the representative system and of the presumption of competence of the legislative body. The scope of the subjection of the executive power to legal rules established by legislative acts is intended to render public administration subject to the electoral body. Also fundamental for Greek administrative law is the definition of the term 'administrative act' and its distinction from regulatory and individual administrative acts. A regulatory act is that by which the administration establishes abstractly expressed and generally binding legal rules. In fact, we are talking about a substantive law which is not promulgated by parliament, like the formal law and which is distinct from the individual administrative act in that is contains legal rules of a regulatory character.

The consequences of this distinction are essential:

(1) The competence to issue regulatory acts (rule-making acts) does not imply competence for issuing individual acts and vice versa.

(2) Motivation and notification are required for individual acts, while they are not required for regulatory ones – unless of course the law so demands. What is compulsory with regard to regulatory acts is the elaboration of decrees of a regulatory character by the Council of State in its advisory capacity, along with their publication.
(3) A regulatory act is revocable only in future *ex nunc*, while an individual act is revocable only on certain conditions and retroactively as well (*ex tunc*).
(4) Unlike individual acts, the regulatory act can be challenged even if the time limit for commencing proceedings has expired during the proceedings against another act (i.e. indirect challenge).
(5) Regulatory acts cannot be reviewed for misuse of discretionary powers; the courts must ascertain whether the scope and limits of the legislative authorization have been observed.
(6) The right to a prior hearing, which is a constitutional right, is applicable only with regard to individual acts, not the regulatory acts or statutes.
(7) Although proceedings for annulment against certain individual acts have been transferred to the jurisdiction of administrative courts of appeal, challenges against regulatory acts remain within the exclusive competence of the Council of State.
(8) The Constitution (Article 111, para. 1) declares void any provision of law or of an administrative act of a normative character which is unconstitutional, while individual administrative acts based on unconstitutional and therefore void regulatory acts, are not automatically invalid and void, but may be challenged before the Council of State.

The issuing of legal rules is primarily and mainly a task of the legislative body, the Parliament. Our Constitution, as opposed to the French Constitution (Article 34), does not regulate the matters of formal laws. Neither does it differentiate them according to whether they are enacted by Parliament or issued within the regulatory power of the executive. This has been brought about because according to the Greek Constitution, the Parliament has general and universal legislative competence. However, as in all other democratic countries, a part of the legal norms is issued by the administration – by the President of the Republic with the counter-signature of the relevant ministers or by other administrative agents. Thus, the Constitution of 1975 provides for the 'primary' and the 'secondary' regulatory power of the administration. First, it entrusts directly (Article 3, para. 1) the President of the Republic with the power to issue certain decrees containing normative rules. Secondly, it provides for the legislative authorization of the administration, so that the latter may issue regulatory acts, with certain exceptions. The Constitution does not define the matters which can be covered by regulatory decrees, while it expressly states what cannot become the object of legislative delegation. The 'secondary' delegation may be of two kinds: first, there is the specific delegation under Article 43, para. 2, which in order to be legal, must be 'specified' in content, purpose and extent. Secondly, there is the 'general' delegation which is related to the new institution of

the framework law (*loi-cadre, rahmengesetz*). According to the Constitution, 'these laws shall outline the general principles and directives of the regulation to be followed and shall set time limits within which the authorization must be used'. This new institution, introduced in 1975, undoubtedly broadens greatly the power of the executive, and therefore some safeguards should be in place in order to avoid the removal of the publicity which characterizes the legislative process in Parliament, a removal which would benefit secretive executive action. Thus the Constitution provides three important limitations: first, framework laws may be enacted only by a plenary sitting of Parliament; secondly, these laws must provide time limits within which the regulatory power must be exercised; and thirdly, these framework laws may not authorize the executive to regulate matters which according to Article 72 of the Constitution are reserved for Parliament sitting in full session. It is important to note that among these matters are the exercise and protection of individual rights. A framework law infringing one of the above limitations and conditions is unconstitutional and therefore the regulatory decrees are voidable.

Greece has no Administrative Procedure Act at this moment in time. However, both the Constitution and certain legal provisions give rights to the individual in the field of administrative procedure. The most important ones are the right to a prior hearing and the right to have access to administrative documents. According to Article 20, para. 2 of the Constitution 'The right of an individual to a prior hearing shall also be enforced in any administrative action or measure adopted at the expense of his rights or interests.' This acknowledges first of all a civil right which corresponds to an obligation on the part of the administration, and secondly declares a fundamental rule of administrative procedure. According to law no. 1599/1986, 'Every person, under the reservation of para. 3, has the right to have access to administrative documents (either by studying them locally or by obtaining a copy) except of course to those which refer to the private or family life of third persons.'

Concluding Remarks

As elsewhere, public law in Greece is under constant and ever-increasing development. The reasons for that development are well known: first, the development of the social and regulatory state, and secondly, the demands of the rule of law and the need to protect the rights of the individual effectively. By good practice, and by being fully equipped with the necessary checks and balances and successful institutions, one hopes Greek public law can significantly contribute to the realization of the human-centred state, the ideal of which is declared by the Constitution.