



Global Network of Greek Lawyers working abroad (GNGL)

Gutenberg chair at the Centre d'expertise et de recherche administrative (CERA), École nationale d'administration

The modern State: What reforms

Minutes

July 27, 2012

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The Modern State: What Reforms?

Overview

The EPLO and the Global Network of Greek Lawyers working abroad (GNGL) in cooperation with the Institute for Studies in Competition Law and Policy (IMEDIPA) and the Gutenberg Chair of the National School of Public Administration of France (ENA) organized an international meeting on the topic "The modern State: What reforms?". It took place on Friday, 27 July 2012, at the EPLO premises in Sounion (64th km, Athens-Sounio Ave.), Greece.

Chaired by the Director of the EPLO, Professor Spyridon Flogaitis and by Professor Ioannis Lianos, ENA and IMEDIPA, the workshop discussed a range of topics, including open government and transparency, the value of evidence-based policy and impact assessments, judicial reform, public administrative simplification, new public management, and the requisite change for the Greek culture in public

This workshop provided a forum of discussion for experts from a range of interdisciplinary fields, ultimately stressing that a reform-minded culture needs to accompany reform if any progress is to be made. The workshop frequently praised the necessity for a holistic approach to reforms, including several aspects and fields of reform that must be introduced.

In the final session of the day, it was proposed by Ioannis Lianos to create a 'Reform Observatory' for Greece in order to increase the visibility of implemented reforms in a peer monitoring way, as well as provide a channel for civil society, the private sector, and public sector, such as academia from Greece and abroad, to become more involved in and knowledgeable of the reform process currently taking place in Greece. Several of the participants and the participating institutions demonstrated the willingness to support and implement this idea.





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The modern State: What reforms?

Legraina/Sounion, Friday, 27 July 2012

PROGRAMME

1st Session – Reform of the Administration/Changing Administrative Culture 9.30-11.00

Chair: Prof. I. Lianos, ENA/University College London/IMEDIPA

Prof. S. Flogaitis, Director, European Public Law Organization and **Prof. I. Lianos**, ENA/University College London/IMEDIPA, *Presentation of the Global Network of Greek Lawyers working abroad (GNGL) and Introduction to the Topic*

PD Dr. A. Gromitsaris, University of Jena

Prof. P. Karkatsoulis, Hellenic Ministry of the Interior/Head, National School of Public Administration

Prof. M. Jacobides, London Business School

Prof. S. Vlachopoulos, University of Athens

Prof. J. Prevedourou, University of Thessaloniki

Mr. M. Brunner, Deputy Director of International Affairs, ENA (France)

Discussion

Coffee Break 11.00-11.10

2nd Session – The Reform of the Judiciary 11.10-12.30

Chair: Prof. S. Flogaitis, Director, European Public Law Organization

Mr. N. Kanellopoulos, Secretary General, Ministry of Justice

Prof. G. Dellis, University of Athens

Dr. I. Karkalis, Vice Commissioner of the State, Office of the Commissioner General of the State

Mr. M. Brunner, Deputy Director of International Affairs, ENA (France)

Dr. I. Anastassopoulou, President, Hellenic Mediation and Arbitration Centre

Mr. C. Bakouris, Chairman, Transparency International-Greece

Mr. I. Hadjiyiannis, Task Force for Greece

Discussion

3th Session – Evidence-Based Policy 12.30-13.40

Chair: Mr. M. Brunner, Deputy Director of International Affairs, ENA (France)

Prof. I. Lianos, ENA/University College London/IMEDIPA

Mr. D. Loukas, Vice-President, Hellenic Competition Commission

Prof. I. Kokkoris, University of Reading/IMEDIPA

Dr. G. Dimitropoulos, New York University School of Law

Mr. J. Dryllerakis, Dryllerakis and Associates

Discussion

Lunch Break 13.40-14.40

4th Session - New Public Management Principles in State Enterprises and Privatizations 14.40-16.00

Chair: PD Dr. A. Gromitsaris, University of Jena

Mr. A. Syngros, Executive Chairman, Invest in Greece

Dr. V. Lazarakou, Partner, Zepos&Yannopoulos

Dr. G. Papanikos, President, Athens Institute for Education and Research

Prof. C. Hadjiemmanuil, London School of Economics/University of Piraeus

Discussion

Coffee Break 16.00-16.15

5th Session – Structuring Reform in the Long Run: Legitimacy and Cultural Change 16.15-17:30

Chair: Prof. I. Kokkoris, University of Reading/IMEDIPA

Dr. Patrick Baert, University of Cambridge

Prof. N. Vettes, Athens University of Business

Prof. N. Vettas, Athens University of Business and Economics

Mr. D. Karathanassis, University of Friburg

Discussion

6th Session – General Discussion and Concluding Remarks 17.30-18.30

Chair: Prof. S. Flogaitis, Director, European Public Law Organization

Remarks: Prof. G. Katrougalos, University of Thrace/Centre for European Constitutional Law

1st session: Reform of the Administration/Changing Administrative Culture

Prof. I. Lianos

The recent crisis is an opportunity for change. By looking at the crisis, we are able to distinguish the dominant powers as well as the winners and losers. Huge amounts of young unemployed are leaving the country. Private sector workers are suffering from unemployment and precarisation. These vital forces of the nation are groups under-represented in the domestic debate about reform. This is because these groups have never had a strong institutional representation, similar to this from which benefit public sector workers or business interests. The crisis is also an opportunity to see a clear picture of our society. Our society is legalistic. Often this legalistic approach aims to protect historic entitlements, which have been given to certain groups during a specific period of time, because of the specific circumstances of the time, but without any regard to the impact of these entitlements to the welfare and well being of our society now. There should now be an attempt to introduce some economic and social rationality in the action of the State and to establish fora where the under-represented interests in our society, the young, the unemployed and the creative private sector workers, will have a say and would be able to voice their concerns over the choice of priorities and the implementation of reforms.

Many believe the State and the Market as in opposition to each other, but this acceptance has also been widely contested; there is always a consistent level of interdependence between the State and the Market. The State guarantees that the Market exists and works. Economic rationality also ultimately aids to establish constraints for the use of public power for public interest purposes. Public power should not to promote interests that are in conflict with the well being of the society. What is the role of experts in this case? They are unelected, yet possess significant knowledge in their respective fields, which can provide substantial help to any public institution in order to assist it too understand the impact of its action on social welfare and the well being of our society. Expertise, if neutral or well-organized, may be an instrument to limit the capture of legislation, regulation or judicial decision-making by special interests.

As of yet, these institutions have not opened their methods of operation to experts' knowledge, which has had catastrophic results for our country and our population. In addition, the political system has led to the stifling of small and medium-sized businesses' voices and those of the younger generation, the unemployed, the private sector workers and the Greeks living abroad but always actively interested in the progress of their country. It is time now to change this under-representation and to bring the voice of expertise, and not unrestrained from rationality ideology, in the public debate.

PD Dr. Gromitsaris – Public Management and Administrative Law from a Comparative Point of View. On Describing and Reforming the Public Sector

Greece is in dire need of reforms. Instead of another wish-list, the goal is to discuss how to get over adversity and ultimately reform. Crises are opportunities for change and a possibility of change of structure of society and its priorities.

2 categories of people affected by crisis:

- Unemployed people;
- Private sector employees.

They raise the question of growth without deficit spending within a context of enhanced competitiveness in both the public and private sector.

In Greece, public institutions have never actual listened to the experts. Policies are implemented badly. Experts should take action, criticizing and assessing governmental acts.

Formally, at the level of black letter law, Greece is a "Weberian" State. At the level of legal practices (law in action), Greece has traits of a "Neo-Patrimonial" State. Reform will be successfully implemented if legal practices, not merely legal rhetoric, are taken into account. However, reform measures (that have been successful elsewhere) will count for nothing unless they make sense locally and give incentives for new behavior to real people.

On the one hand, law can be an obstacle to reform: The civil service law is traditionally not open to reform and the independence of the judiciary reduces the possibility of reform of the justice system.

On the other hand, law becomes the tool for change par excellence when:

- It provides for transitional legal arrangements (hardship clauses, provision for variances or exemptions)
- It reduces the costs incurred by opponents if reform is implemented;
- It changes the values of vested interests groups.

Another prerequisite for overcoming resistance to reform is building institutional confidence, these key points are mandatory.

- Post-privatization law;
- Accountability;
- Computerization.

There is a disillusionment with reforms. There is a lot of talk about conspiracies. It must be demonstrated that these reforms actually benefit the public. Independent authorities are the champions for change: independent authorities (for ex. Anti-corruption Authority, Reform Authority, Tax & Revenue Authority) – they are a variant of the enclave approach to reform the modern state and ensure autonomy, as necessary as it is for sustainability.

Ultimately the big-bang approaches to reform are the incorrect approach. There must be a movement towards pockets of reform, which may even counter each other to attract investment in the specific reform. There should be movements toward less bureaucracy with higher competencies, as well as increased numbers of independent agencies to avoid party-political infiltration and resistance to reform. A culture of competition and consensus should also be fostered, through the establishment of trust in the impartiality of institutions and cooperation between the public sector and the unions. People should be used as the facilitators for the reforms; self-government is an effective measure to propel the restructurings because it means people have more individual vested interests to ensure. Finally, the primary objective is to ensure accountability and incentives for change; no public agency should be exempt from public scruitiny, which would be complemented by an efficient incentive structure that could target the whole governing system.

Prof. Karkatsoulis - Public Administration Reform is not only Necessary, but Feasible as Well

Up to the present, there has been a lack of horizontal, coherent policy on public administration reform. Several reasons account for this result such as:

- Clientelistc, autocratic political elites;
- Weak, dispersed reform waves;

- Non-emancipated media, patronaged by political elites;
- Monetarist view of public administration endorsed by the TROIKA.

After 10 years, there have been improvements in regulation, however a general indecisiveness and incapability to implement reforms has largely hindered significant progress. In the past 30 years, 171.500 regulations have been adopted, which has greatly increased the administrative burden.

There is no other place in Europe where a similar number of regulations or legislation has been adopted. Several studies and projects have remained untapped, preventing access to EU funds up to approximately €1 billion.

Notable are the problems of inactivity and over-discussion by ministers; there are tremendous overlaps of competencies (example of the Ministry of the Environment, which has a known 60% overlap with other ministries). Public entities, specifically those of a legal nature, have many overlapping mandates. The role of public employees is often unknown, hugely inefficient, and unnecessary. Expenditures of approximately €21 billion on administrative procedures have led to miniscule improvements and procedures continue to be non-standaridzed.

Finally, there are many misconceptions about the views of civil servants, who often support the organizational reforms, as they will lead to increased efficiency. The politicians are the only ones particularly noted for their continued opposition to reform.

Prof. M. Jacobides – Greece: The Organizational Foundations of Macroeconomic Tragedy

Why Greece is stalling? The problem is not about cost-savings. It is efficiency. Looking at the resultant effects of the cuts, output increases have been relatively negligible, despite the important cuts in labor costs. Wage cuts and poor public regulation have led to price stickiness, through collusive behavior of firms.

Greece continues to import 7% more than it exports; most of the country's production is in non-tradeables (thus not open to international trade and to exports), which has provided a poor starting line toward the road to recovery. Additionally, antiquated structures hinder recovery rates.

What is more, we could point out the following drawbacks:

- Price stickiness;
- Current account balance;
- Lack of real adjustments and sectorial skewness;
- The Southern European problem is a problem of governance not just macroeconomics;
- Focus on outputs, but inefficient output for input;
- Lack of ownership. Lip service. No account of incentives;
- Visibility and monitoring. Portugal is an example for students looking into that.

What is to be done? Focus on public services, not public servants. Emphasize better ownership and governance. Start looking at outputs, not inputs. The inability to fire public employees prevents a "cleaning of the house." The public sector is protected versus the private sector, which has endured the brunt of the cuts. There are a significant number of mid-level employees in the public sector without properly defined roles and missions.

It is impossible for entirely corrupt institutions to reform themselves, demonstrating that there a need to start again from scratch. Several reforms need to be implemented: much more aggressive monitoring, to note the value of methods to report and bypass the excessive bureaucracy, and there is need for new actors that are passionate about reform.

Prof. S. Vlachopoulos - State Reform and Personal Liability of Public Servants

According to Art. 105 of the Introductory Law to the Greek Civil Code, when a state organ, acting in its public authority, behaves unlawfully and damages a citizen, then the Greek State has to compensate the citizen and repair his damage. This state responsibility is 'objective' and not 'subjective', that means that it does not depend on the fault of the state organ.

Civil liability, however, according to Art. 105 of the Introductory Law to the Greek Civil Code, does not mean that the public servant is free from any responsibility. The same provision determines that, together with the State, also the public servant who acted with dolus or negligence is responsible against the damaged citizen. This provision is successful and in favor of the citizen because it combines the advantages of both possible systems: objective state liability and the subjective liability of the public servant.

The provisions of Art. 105 of the Introductory Law to the Greek Civil Code, as far as the liability of the public servants is concerned, are not in force. In a country where the public servants constitute a respectable percentage of the population, perhaps because of this fact, all the Greek Public Servants' Codes determine that the public servants are not responsible against the damaged citizen, who can seek compensation only from the State. The public servant remains responsible only against the State and only in the cases of dolus and gross (heavy) negligence. If this is the case, the State can seek the compensation which was given to the citizen through a procedure before the Court of Auditors.

This traditional provision of the Greek legal order seems to be unsuccessful for several reasons: The public servant remains responsible only against the State and only in the cases of dolus and gross (heavy) negligence. However, the relevant procedures last for many years, sometimes decades, and only in very few cases the State has asked the money given to the damaged citizen from the responsible civil servant. The latter knows that he has practically no economic consequences for its unlawful behavior. This situation is contrary to the principle of administrative legality. It also raises a more general question of justice. Why does the State, which means all of us, has to pay for the unlawful action of the public servant, taking into account that he was appointed to act lawfully and not unlawfully?

Prof. J. Prevedourou – E-Government in Greece

In the first half-decade of the new millenium, the priority for most administrations was to modernise the back office and to be online, whereas now the emphasis is shifting toward interoperability and user-driven public services. The relative merit of e-governance is great, because it is a means to reduce costs and streamline tasks. It also promotes competitiveness, effectiveness, efficiency, and transparency. The issue of personal-data protection must be noted, however.

Recent, rather ambitious legislation to improve (or create) websites for the different ministries and sectors has been introduced. Furthermore, all draft laws should also be submitted electronically to increase the accessibility of the document. More progress needs to be done on this front becuase the cost of migrating to e-Government remains relatively high, paper-based transactions persist as standards for many governmental affairs, lack of access to computers has continued to plague the sucess of legislation, and strategies for e-Government have not been based upon identified and assessed needs and objectives. Ultimately, the benefits from the ambitious e-Government legislation are much lower than what could have been expected.

Mr. M. Brunner - The Situation of the French Public Administration

France is acting within a tense budgetary context - A recent report of the Court of auditors highlighted the necessity of saving 5/6 billion Euros in 2012 and almost 40 billion in 2013.

The 2006 reform (RGPP and RéATE)was implemented to increase the role of the Parliament, increase the transparency and visibility of public policies, and to bring changes to the work methodology of the governement. Organic budgetary laws (LOLF) monitored several alterations, by going from a philosophy of means, to more proactive approaches.

It allows both a larger role for the parliament and more transparency and visibility.

RGPP and RéATE led to the modernization of public services and of their functions. LOLF led to the modernization of budgetary management. Our goal is to do better with what you already have or even with less. Notably, a reform of parliamentary initiative is inscribed in the long term.

There is a need for the modernization of budgetary management of the state and the pursuit of performance. There was an effort to reduce spending, whilst remaining in accordance with public policies – "change while maintaining continuity." To achieve the modernization of the state, the aim is to become more strategist and more decentralized.

In order to change administrative culture the reforms emphasize the need to implicate the highest level of the hierarchy (politicians, senior administrative executives, etc.). The French reform also included salary reduction for both the President and the Prime Minister as an example to follow for all public servants. Improved and more streamlined legislative procedures led to improvements in the dissemination of information from projects and funding, and ultimately to positive results so far.

2nd Session: The Reform of the Judiciary

Mr. N. Kanellopoulos – Recent Initiatives of the Ministry of Justice, Transparency and Human Rights aiming at the Radical Reform of the Greek Judicial System

There is a moral crisis of institution. Justice, one of the three pillars of government, is charged with providing justice and transparency. Past attempts to reform the system have been insufficient. Structural problems have led to a dead-end of inefficiency and malfunctions. This phenomenon is systemic; there has been a failure to standardize an objective way to train lawyers.

Recently, however, there has been legislation to reduce backlogs and expedite the courts' cases. There is a need to revise legal texts in order to improve and re-organize proceedings. Statistics could also be utilized to improve evaluations. Finally, there is a necessary change of mentality to improve dispute resolution, including alternative dispute resolution, which would reduce the number of cases taken to the courts.

Prof. G. Dellis – Sleeping Beauty. Judicial *intertia* and the recent attempts to modernize the Hellenic administrative justice

The European Court of Human Rights has identified structural problems in the Hellenic legal order, consisting of the excessive length of the proceedings before administrative courts. The problem is endemic and historical, yet also somewhat common in Europe, particularly the considerable delays, which lead to systemic violations of art. 6.1 EconvHR which establishes also a temporal aspect of the right to a fair trial. Greece should evaluate the context of other states and solutions taken, to see if similar procedures can be applied to Greece (such as the similar French system.) The resemblances to other

countries will be helpful to solve the problems all over the EU, coming up with one solution, and then adapt it to national conditions.

Special provisions should be put in place to expedite decisions in lower courts. What also needs to be reformed are the organization and mentalities of justices. The constitutional provisions regarding the outdated system must be refuted.

One should not be too enthusiastic when it comes to the acceleration and the rationalization of the Hellenic juridical processes. The constitutional provisions regarding the outdated system must be refuted. Greece has good judges who render good judgements, whenever they render them - Greek justice "is a beauty, but a sleeping one."

Dr. I. Karkalis - Reforming Justice: An Agenda that Never Was; Five Plus One Steps to Disengagement

Greece remains under the same judicial structures as it was 179 years ago, despite having grown by more than 100% in size since then. The speaker proposed a five-steps program of disengagement from the past: Constitutional revision, increased mobility within the judiciary, an alteration of the Supreme Court appointment process, financial autonomy of the judiciary, and more of an open justice system.

"It is in Justice that the ordering of Society is centered"

Aristotle (384 - 322 BC)

- I. After the end of the Greek Revolution of Independence against the Ottoman Empire (1821 1829), the then three Great Powers (Britain, France and Russia) which had provided their help to the revolutionaries negotiated and concluded on the establishment of a New Greek State (London Protocol, 3 February 1830).
- II. Further to this initial decision and irrespective of any complications on its evolution, the New Greek State continues until today its sovereign existence as such. Its normative architecture has been based on eight Constitutions (1832, 1844, 1864, 1911, 1925, 1927, 1952, and 1975/1986/2001). All Greek Constitutions referred to the Judiciary providing explicitly for a certain model of dispensation of justice:
- 1. Constitution of 1832: Articles 264 291.
- 2. Constitution of 1844: Articles 86 96, 97, and 101.
- 3. Constitution of 1864: Articles 87 98.
- 4. Constitution of 1911: Articles 82 98.
- 5. Constitution of 1925: Articles 91 103.
- 6. Constitution of 1927: Articles 94 106.
- 7. Constitution of 1952: Articles 87 98.
- 8. Constitution of 1975/1986/2001: Articles 87 100.
- III. This presentation argues that a comparative reading of the abovementioned provisions clearly reflects the image of a well maintained traditional system of rendering justice based on an initial norm that has never been abandoned. If true, wouldn't it be a paradox that some constitutional norms remain the same within a time period of 182 year of existence of a state within which the latter managed to double itself in size, went into wars, faced bankruptcies, changed in mentality and population, and yet, stayed the same in terms of dispensation of justice?
- IV. A comparative reading of the above referred constitutional provisions would easily provide us with examples supporting such a hypothesis:
- 1. Courts are divided already in 1832 into criminal and civil ones. Later on, in 1911, the Constitution of 1925 provides for the Council of the State as an administrative court. The Constitution of 1864 (which had already provided for the Council of the State) hadn't attributed yet to it anything more than consulting competences. Thus, a dual judicial order model (civil & criminal administrative) is progressively initiated

and established. In the second (administrative) branch, the Supreme Court of Audit and the Administrative Tribunals and Courts of Appeal were gradually included. The norm exists unaltered today.

- 2. Judges are not allowed to practice any other profession already in 1844 until today, apart from them allowed to be university professors. According to the Constitution of 1975/1986/2001, in addition to the abovementioned they can represent the country in international organizations and teach at the National School for the Judiciary the last one not being a fulltime profession though! It doesn't seem to be of importance or at least of influence of some kind to the Constitutional Legislator that in other European and not only countries, administrative judges often are attributed in parallel or not administrative tasks and competences as a twofold advantage; for them, as they gain experience, and for both the Judiciary and the Administration which receive the gained experience and view.
- 3. No constitutional court is provided for. This is more like a tradition in Greece. Inexplicable who is more afraid of constitutional courts! No matter what the reasons and the arguments for or against are, no matter what is the stake, at the end of the day we conclude that we do not need or trust a constitutional court at least no more than we trust the old, good system!
- 4. The leadership of Justice is always connected with the executive. The executive norm may have changed, yet the bond remains strong and existent.
- IV. There are many other cases that can be used as examples. Only recently, the Ministry of Justice, Transparency and Human Rights tried to readjust the judicial system with law 4055/2012. It was a very good attempt. Yet, it has to be said that it was just one more attempt to modernize a system that is full of problems. What are perceived as problems in this case are only the symptoms of a basic anachronism that hasn't been dealt with. Probably, continuing to walk on thin ice we soon shall be in need of one more law to again readjust the system, and then, after a shorter or longer period of time another one, and so on...

V. This presentation argues that it is high time that our judicial system underwent some serious reform; a constitutional one. Five plus one steps to disengagement from the past; the last step just being a step to the future where we - should long to - belong.

Step one: Constitutional Reform: The Constitution of 1975/1986/2001 is reformed and Justice provisions are included in the accepted proposal.

Step two: We realize that a judge is the only stable society's ultimum refugium only when his/her status is guaranteed as unthreatened, and not only as protected, by any external or internal source of threat. Leadership of the Judiciary is an issue that should not be connected to any political or other source of influence. Among the many possible solutions, one that would better guarantee such a result would be a twofold change: (a) Rotation of leadership between a large number of - if not all - supreme judges for a limited, not long period of time, in connection to (b) a system where all competences of leading judges would be of strictly managerial nature.

Step three: Mobility within and out of the Judiciary. Too much expertise in any scientific field creates in many cases a kind of scientific isolation. On the contrary, variety is refreshing and can lead to whole new approaches. All judges should be able - and obliged for at least a small period of their career - to practice law in different branches of the Judiciary (civil - criminal - administrative - military, etc.).

Step four: In due time and when mentality is altered, building of a holistic judicial system. Abolishment of the differentiation of branches to an important degree. Such a step would enable the at the same time abolishment of judicial tardiness in the degree that one case wouldn't be chased and hidden in different jurisdictions, often deciding paradoxically different on the same issues on the basis of having viewed the case from a different angle and decided on a different legal base.

Step five: Introduction of a golden flexibility rule in rendering justice, a kind of silver bullet against anachronism. The Judiciary must - moreover than anybody else - be able to live in the modern era. E-Justice and E-Government are necessities that must be able to be adapted immediately as soon as they are developed by the overall system in no time's time. That can only happen if judicial effectiveness and

efficiency is based on the assumption that every new technological necessity cannot be left aside waiting just because the judicial system needs time to absorb it.

One more step: Justice is not a national issue at an international era. Judges act locally, yet they have to think globally. It is true that rendering justice remains an issue that has to do with the minimum accepted ethical mentality that we call law in a given society and time. It is also true that we shouldn't be prompt to take any international innovation and put in on just because somebody else did it. Yet, nowadays nations and states remain different in as many issues as they are the same. Justice may not be public policy or politics and it exists always primarily for the private interest of every citizen in need of it. Nevertheless, in an internationalized environment Justice cannot disregard any supranational principle under the cover of a national legal shell. The last step to disengagement would be the corner stone of any incoming change: Justice is mainly a global issue. As Martin Luther King said "injustice anywhere is injustice everywhere" ("A letter from Birmingham jail, 1963). It may be true in principle that our legal civilization is created by the peoples through politicians and parliaments via actions of political meaning, will and statutes. Yet, judges do not work in a politically neutral, safe environment with no pressure originating from sources of international nature. The only legitimate answer to that pressure is judicial cooperation and self-regulation capacity so that the impact of any external change can be absorbed in due time and ways. This is directly connected to a legal competence of the judiciary to undertake judicial obligations directly in order to be able to be really independent. Which brings back the discussion to the possible need of a constitutional court as the acting heart of the new system and to the necessity of financial autonomy of courts and judges.

Mr. M. Brunner – Justice reform in France

Nowadays, justices need somewhat of an expertise or knowhow to properly analyze cases and effectively rule. There is a French goal to decrease expenses by standardizing definitions of requests to address suppliers and the automatic sending of requests, which also increases the capabilities for requests. Also, they should not take amiss of a comparison of prices between private suppliers (e.g. telecommunications operators). The standardization of the definition for the requests addressed to suppliers (inter-ministerial cooperation) and operators should be promoted and a system should be put in place in order to decrease the task of invoicing and automatization.

Dr. I. Anastassopoulou – Mediation and the Possibilities it offers to a Lawyer's Toolkit

About one million judgments are made every year. Reform needs to be made to raise and promote awareness of the possibilities for mediation and arbitration, both methods of which are significantly underutilized and unknown. Although mediation is known to some as the "privatization of justice," it would greatly aid the court system.

Mr. C. Bakouris - Report on justice by Transparency International - Greece

Report of public institutions being under the average level of transparency accepted.

The sustainability of economy and the violent events recently have tensed the interactions between institutions.

Poverty also creates tensions.

Accountability raises issues as well.

The shortcomings of the Greek judicial system also keep investors away from Greece. The reform of the judicial system should be the priority.

3rd session: Evidence-based Policy

Mr. A. Syngros – Changes Cannot Wait

It is imperative that a simply uniform, fair, business-friendly and investment-friendly tax system is put into force. Unlike what many believed in Greece, in well-governed states straightforward communication leads to effective business operations; when you feel that paying your taxes is an obligation both to society and yourself, then tax evasion is a disgrace. In various forums in which I participate, many investors tell me that the absence of a stable and competitive tax system is, among other factors, a key factor to attract investment. In addition, it creates suspicion for the possibility of non-transparent relations between the state and citizens and a sense that avoiding our tax obligations is a perfectly rational act, since the state "does not respect us." Greece is a country with vast opportunities. Ten Fast Track investment projects, totaling 7,1 billion Euros, have already been included to the special legislation framework of Fast Track, and there are still projects pending totaling 5.5 billion Euros. We now have the tools to proceed: the new Fast Track law further simplifies procedures and creates an investment "friendly" environment. Problems still exist, but fewer than before. We also have a vision and strategy, supported by a society that wants growth and investment that will create jobs, result in prosperity, and provide hope.

Mr.I. Symplis- Council of State

A significant overlap of laws has created contradictions in administrative processes such as the two sets of environmental laws. The old laws and the EU laws are implemented parallelly, making it supremely difficult to retain any sense of efficiency. Contradictions also make it more difficult for courts to rule effectively.

Prof. I. Lianos – ENA/IMEDIPA, Impact Assessment in Europe: Lessons for Greece

Discussed the ROAMEF cycle (Rationale, Objectives, Appraisal, Monitoring, Evaluation, and Feedback) as a method for evidence-based policy to be implemented. Impact assessment is a necessary tool, which is useful in many sectors, in order to understand the effects of regulations/legislation on unemployment, distributive justice, health, the environment, the economy.

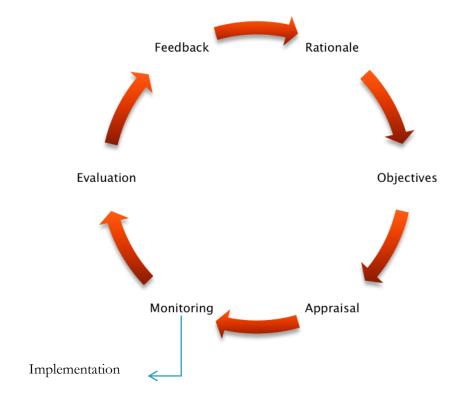
This type of assessment started in the United States of America in the 1970s (following the establishment of the Environmental Protection Agency [EPA].) and gained prominence in the 1980s in the US, which organized a specific procedure of cost benefit analysis, under the authority of the Office for Information and Regulatory Affairs (OIRA), part of the Office for Management and Budget at the White House (the US President's cabinet). Regulatory Impact Assessment was also transposed in Europe, first in the United Kingdom, at the EU level (with the constitution of the Impact Assessment Board) in 2006 and other Member States of the EU. In France, the discussion for impact assessment began in 1994, first with soft law tools, such as guidelines and decrees adopted by the Prime Minister, with poor results, but was only effectively implemented by 2009 with a modification of the Constitutoo, ultimately providing for a more effective institutional approach.

The different ministries were staunchly opposed to the imposition of this type of assessment, as it leads to some form of centralisation at the cabinet of the primer minister or the Secretary General of the Government level. The Parliament is also subject to impact assessment, as the impact of all amendments proposed by MPs needs to be assessed before voting. The introduction of the impact assessment tool leads to a change in the way lobbying is done: the civil society or business interests prefer to intervene through the commissioning of counter-impact assessments, rather than through bribles or other illegal means. The debate is public, more transparent and evidence-based, as opposed to ideological and based

on rhetorics. There are indications that the introduction of such a procedure also led to a transformation of politics from conflict-based to more evidence-based, thus improving the level of the discussion. In Greece, there has been some recent improvements in the institutional framework, with the establishment of a proper impact assessment procedure and institutions and the linkage of the impact assessment units with the Hellenic Competition Commission. However, this has not been effectively implemented yet. In addition, the analysis by the Gutenberg project team at the ENA, which I have the pleasure to chair, of the Greek Impact assessments that are public, following a number of qualitative indicators, shows that the quality of impact assessments in Greece are relatively poor, mostly qualitative and there is not attempt to quantify or monetize the impact of the policy adopted on various dimensions of social welfare.

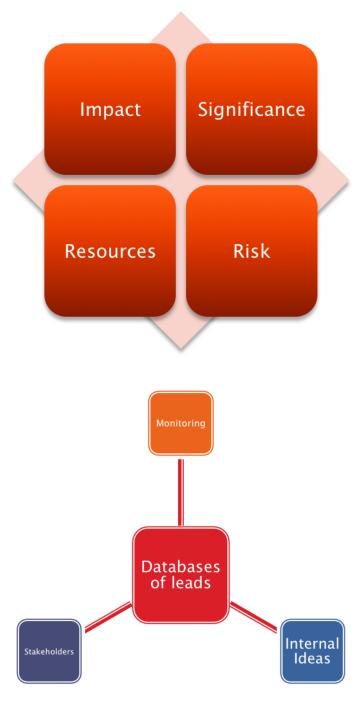
Competition policy is an area where these evidence-based policies have been adopted in order to enable the authority to set priorities and improve the effectiveness of its action.

ROAMEF Cycle



Prof. I. Kokkoris – High Impact Competition Enforcement

When one thinks of an effective competition policy, he should have in mind the impact of the case, its significance for legal doctrine, the existing human resources, and the risk that the case will be appealed. Also important are the databases of leads, which include information from stakeholders, from the Competition authority's market monitoring, and internal ideas.



Mr. D. Loukas – The Recent Reform of the Greek Competition Act and the Impact of the Financial Crisis on Strategic Planning, Case Prioritization and Resources

There is a plan to increase the consultative and advocacy functions of the Hellenic Competition Commission (HCC) in order to promote much needed structural reforms. To be noted was the recently revised Greek Competition Act. Nevertheless, many of the competition regulations are outdated and seriously overcomplicated, making it largely difficult for companies to produce and compete to the best of their ability. The HCC has developed an innovative system of prioritization of its activity, according to a list of variables developed internally, in order to commit its scarce resources where they are needed the most and ensure an effective competition policy.

Dr. G. Dimitropoulos – Governance by Experiment

Currently we are living in a complex and uncertain world. Several states are trapped in outdated regulatory techniques, which results in the very large problem of implemenation for public administration. "Experimentalist Governance" should be introduced – a collective framework of rules would be set out to be implemented by local and private actors, essentially by decentralizing power. This would be accomplished by several steps: the involved actors would collectively set framework goals, which would then be further elaborated and implemented by local actors. In return for the autonomy of local implementation, the decentralized actors provide data and feedback on the goals and their implementation, aided by essential instruments of quantification. Furthermore, a system of monitoring and peer review shall be set in place. Finally, a reflexic element of periodic revision of the goals, in light of knowlege gained, will play an integral part in the system. Local experiences could be utilized in order to determine policy and certification systems could be arranged to ensure a standardized level of products and public services. Additionally, indicators can be introduced to evaluate the relative effectiveness of policies.

There should be a revision of the principles of state action toward horizontality, cooperation, and measurabilty. These three principles would be informed by governance by experiment, and would facilitate the continued sustainability of this innovative method of governance.

Mr. J. Dryllerakis – Greece's Tax system – Expected Reform

An ideal tax system would be simple and fair, with proper mechanisms for assessment and collection. In reality, however, taxes are complicated and predatory, leading to tax evasion and delayed collection. The existence of equivocal regulations and untrained employees have led to significant delays restricted access to evidence has also led to tax evasion. To remedy these issues, the state must first demonstrate that it is fair and can honestly handle the tax system, wich involves more adequate training and knowledge for the tax authorities and effective supervision.

Discussion

- On competition and what is required to achieve goals
- On a disagreement over the possibility of "simple" tax codes

On the necessity for judges to have more of an economic and financial audit understanding to rule effectively.

4th Session - New Public Management Principles in State Enterprises

Dr. V. Lazarakou – Privatizations: Assessment and the Way Forward

The presentation started with an historic background of the denationalisations in Greece and continued with a description of the latest developments, including the reference to the adoption of the Law on Medium Austerity Measures which set forth a privatization program for the years 2012 – 2015 and the law on the Implementation Measures for the years 2012-2015 (hereinafter the Fund Law) which among others, provided for the establishment of the "Hellenic Republic Asset Development Fund S.A." ("the Fund"). The presentation included a description of provisions of the Fund Law relating to the transfer of assets to the Fund by the Hellenic Republic, the exploitation methods allowed under such Fund law as well as on some main legal issues encountered in the privatizations further to the adoption of such Fund Law. For example, following the adoption of the Fund law, the Denationalization Law (3049/2002) may be considered as applicable to extent referred to or allowed by the Fund Law.

Furthermore, the presentation described the procedure that is commonly used for privatizations currently (eg phase 1 with the expression of interest and the selection of the shortlisted participants and phase 2 or/and 3- depending on whether the bidders will be required to submit non-binding and thereafter binding offers (e.g. DEPA) or directly binding offers (e.g. Hellenic Lotteries) - further to the due diligence). Finally, the presentation set forth certain proposals for the privatizations moving forward in Greece. In this respect, it was argued that it needs to be an effective combination of political will and efficient preparation of the assets before privatization. Another proposal was that the provisions of the fast track legislation should be used for the privatization of state owned assets as well. Also, in cases of sectors where there is no regulated market (eg water), the establishing of regulatory authorities and regularising the market should precede privatizations in order to test the operation of such market. Another important measure is to clarify prior to the privatization attempts the status of employees of such state owned enterprises so that the investors are aware of the relevant status beforehand and make the relevant assessments. Also, motives to employees to participate in the relevant privatizations could be considered on the basis also of international examples. Furthermore, from a strategic point of view, it would be advisable for the privatization program to start with attractive commercial assets or touristic assets (such as concessions of marinas, etc) instead of assets that may have political implications, always of course taking into account the local and international market conditions.

Dr. G. Papanikos – How to attract foreign investments in Greece and the role of public administration

It would be supremely difficult to reform the Greek public administration, and in fact the Greek public administration should be left to wither away; it cannot be rebuilt piece by piece by promoting incremental reforms at a time.

There is also a need to rewrite the Greek Investment Scenario. Potential investors must be identified, particularly those with a cultural and geographical proximity.

One investment law which will give the choice of any Eurozone country's legal and institutional framework is a possible solution to the lack of investments. Subsidies, tax concessions, and the existence of public agencies that promote investment should be abolished to improve the attractiveness for investment of the Greek market.

Prof. C. Hadjemmanuil – New Public Management

The essential notion is modernization, which would complement the effective execution of new public management. It seeks the modernization of public organizations so that they apply management principles in a more efficient way.

It relies on speculative practices, both in the public and private sectors. If instruments cannot be transferred, at least the modes of operation can be. Common motives, but not environments lead to new public management. The private sector seeks to profit-maximize. In the public sector, this is not possible as such, as there is essentially one ruling shareholder. An ideal situation would be if a complex combination of the two could be formed, utilizing the most effective capabilities of both types of institutions.

Discussion

- On whether new public management is neo-liberal
- On the dynamic sense of the private sector, and if those same management styles can be applied to the public sector
- On how to value public sector assets such as schools; even if uneconomical, they cannot be shut down
- (Prof S. Flogaitis) New public management was produced by economists. "We are in an era of privatization." An economic outlook for private sustainability will drive the firms to continue successfully
- (Prof. M. Jacobides) On public enterprise: Look at the economic drivers and rationales. There is a need for an appropriate organizational analysis.
- On the introduction of new public management in France

5th Session: Structuring Reform in the Long Run: Legitimacy and Cultural Change.

Dr. Patrick Baert - Transforming Administrative Cultures

There is a crisis over the state-run organizations, leading to new critiques of the state, particularly its inefficiency. This lack of efficiency is highlighted when adapting to rapidly changing political and socio-economic environments and climates. The structures of public organizations are inappropriate, particularly with guaranteed long-term positions. Furthermore, organizations continuously run internal audits and performance reviews to preemptively act before viewings from external sources.

Prof. N. Vettas – The Macroeconomic Environment

Greece will be a completely different country by next year. Either it will rise among the nations of Western Europe, or it will be out of the Eurozone and in the Balkan periphery. It needs to significantly improve its public sector if ever to operate outside of the EU, and if it remains then it will also continue to experience large changes.

Incentives are the key within the public sector; for workers, government, civil servants...etc. With the slashes in pensions and wages, there is a great incentive at the moment to work illegally to avoid the major taxes. There needs to be a proactive approach of built-in incentives, rather than the passive approach of letting specific agencies to prevent the illegal work.

The faults in the system are by choice and design, as seen by the initial macro incentives at the top. There are also faults with the vertical integration of the political system, whose many layers prevent effective responses and discussion.

The pension's system suffered drastic modifications in the past years and had a great impact on Greek economy. Tax collection done poorly also affects it through its bureaucratic nature, along with delays.

Mr. D. Karathanassis – Giving the Power back to the People: Notes on Colin Crouch's Post-Democracy

There should be participation in NGOs that represent various interests. The political system should copy the structure, concerns, and characteristics of multinational firms.

Problems with post-democracy:

- Alienation between the government and the governed;
- Elected politicians and a small business elite shape the course of the state;
- Decisions behind closed doors;
- Complexity of the world/society;
- Overstrained governments;
- Apathy of the citizens.

Solutions:

- Limit lobbyism;
- Limit power of big businesses;
- Strengthen the state;
- Limiting privatizations;
- Split in different, legally independent units;
- Heterarchy instead of hierarchy;
- Common, controlled strategy.

For democracy, the hierarchy should be broken and given to local governments. This would encourage participation and investment in the political arena. Also, the relief of power for one person means that the responsibilities are spread to more people, providing a collective investment in political outcomes.

Dr. George Anglițoiu: Public Administration Academy, Bucharest, Romania

Corruption, public administration failure characterize post-democracy.

Tendencies are not militaristic, but in the over-capitalistic Europe, they seek personal gain. Where to? America? EU? China? The fate of the EU? Mini-EUs in the Union. The euro, a unifier, what about it?

The economic outputs have to be more than inputs, but the case of Turkey affects the European policies – the issue of the hegemonic versus the weaker states. There is the concern of becoming a rogue state by the continued trajectory of the country. Greece must privatize. Is downsizing public administration a viable solution? (Reference to the financial collapse of Rome) Radical reform are to be considered.

Prof. Spyridon Flogaitis Replied:

Greece never paid attention to the international relations. Concessions are the best way to privatize public assets. There are big differences between Greece and Turkey – culturally, on a level of mentality and in organization processes with finances as well.

Public services, such as tourism and education, are privatized but they are strictly structured by the constitution and law. There is also a major difference between the Greek and Turkish mentality, including organizational methods of finances.

Discussion

- With cuts, isn't the greatest incentive to turn to corruption, as it is currently prevalent in the system?
- (P. Baert) Multinational corporations can move/ decentralize. How can this be extended into the public sphere?
 - o (Reply from Karathanassis) Example of Switzerland and its Cantons. Decentralized power and relative autonomy.
- There need to be institutional and psychological incentives to change the system and expectations.

6th Session – General Discussion and Concluding Remarks

Prof. G. Katrougalos – Remarks

Madness comes from the desire to summarize life. And we face a paradox. In the 60's Greece had a very good administration. The problem remains as usual. We cannot reform justice or public administration with ease.

This is a generalized crisis that cannot be reformed or cured through incremental and piecemeal legislation. There are two basic problems that Greece currently faces: corruption and bureaucracy. Further levels of audit add to the formalities and burden the administrative processes.

The Greek justice system faces the prolonged length of decision-making, but the lack of trust is the worst problem of them all. People, as well as investors, do not trust the system.

One has to question whether the medicine given may also be more lethal than the injuries. Greece is at the tipping point, as General De Gaulle was in 1958. We need to adopt a new constitution, as France did in 1958, a constitution that will mark a symbolic parting as well as a real break with the past.

Prof. S. Flogaitis

There have been no major reforms since 1912, only adaptations. The present is the correct time to make these necessary major reforms, but not resulting from pressure from abroad. This change should come as a message to reassert the country as it is and was. It is a question of historical pride: Greece has successfully endeavored through many crises before.

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