THE EUROPEAN LEGAL PROJECT: NEW APPROACHES

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Yesterday

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I will tell you the story of my small country, Greece, striving to crawl out of the deep fiscal, financial, economic, socio-political and identity crisis[*]. To do this, I have to speak also about Europe, in particular the Euro area; my focus however, will stay on Greece.

Soon after September 2009 it was found that Greece is practically bankrupt. But since Greece is part of the Euro area and formal insolvency, for reasons that widely discussed, was not an option. So, the situation we faced was a Greek problem, but not merely a problem of the Greeks. We would not be allowed to bankrupt; a cure would be imposed to us.

This has been done with delicacy. In respect to the country they had to deal with –Greece!- Europeans, before looking into the figures, looked into our century long philosophical glory, and found out that power holders dispose the *instruments* of *persuasion and force; for in dealing with the rude and uneducated multitude* [power holders] *use the one only as far they can; they do not mingle persuasion with coercion, but employ force pure and simple*[1]. Plato, of course.

To overcome (or to contain) the Greek crisis a combination of deep structural measures with a lot of money was needed.

Greece had the institutional instruments to take the decisions deemed necessary, but no money at all. The European Union, and the Eurozone therein, had or could find the money to dump in and ideas on the conditions of its use, but no proper institutional means at all.

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[*]Basically, this presentation consists of further elaborations, with inclusion several new factual elements, in line with a previous text of mine, Yiannis Z. Drossos, *Greece. The sovereignty of the Debt, the Sovereigns over the Debts and some Reflections on law*, IGLP Working paper series, 2011/#7 [= Drossos, IGLP]. It also reflects approaches presented in my texts *Συνταγματικός λόγος και οικονομική κρίση*, Εφημερίδα Διοικητικού Δικαίου, τευχ. 6, 2011, σελ. 764-778 and *Το Μνημόνιο ως σημείο στροφής του πολιτεύματος* σε The Book's Journal τευχ. 6, Απρίλιος 2011, σελ. 41 επ. and in www.consitutionalism.gr

[1] Plato, *Laws*, 722 b, transl. by Benjamin Jowett, Internet Classics Archives

So for the Greek part, I will speak about the process of a far reaching internal transformation, triggered somehow in *persuasion and compulsion*, but, at the end of the day, voluntary surrender to foreign States and institutions of crucial powers usually attached to the essence of national sovereignty. For the European part, it will be about a combined process of decision making and institution building.

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Somehow my description could remind, remotely, analogous histories of wartimes: a violent external element –the Greek crisis for the Europeans, the European politico-financial intervention for the Greeks- disrupts the existing *modi vivendi and operandi* in the parties involved and produces new forms, new subjects and new situations.

Yesterday came suddenly

It took us by surprise.

We first perceived that something of extraordinary importance must be taking place, as we discovered that every finger in the world was pointing at us; every single detail of our political life was made instantly breaking news. Never, since the times of Alexander the Great, such global attention was being paid to deeds of the Greek polity.

And –probably with the exception of a total nuclear catastrophe (or, maybe, the Lehman Brothers incident) - not in their worst nightmares could world leaders imagine that their global economic stability was put in dramatic jeopardy by the financial swindles and the debauches of such an economic dwarf.

What has happened?

The moment of truth came soon after the electoral triumph of the Socialists over a Conservative Party departing in disorderly retreat in September 2009. The new government found out that state money is over and sources for more state money are rapidly expiring. On the 2^{nd} and 21^{rst} of 21 October 2009, Greece transmitted two different sets of complete Excessive Deficit Procedure (EDP) notification tables to the European Commission (Eurostat), covering the government deficit and debt data for 2005-2008, and a forecast for 2009. In the second notification, the Greek government deficit for 2008 was revised from 5.0% of GDP (the ratio reported by Greece and validated by Eurostat in April 2009) to 7.7% of GDP. At the same time, the Greek authorities also revised the planned deficit ratio for 2009 from 3.7% of GDP (the figure reported in spring) to 12.5% of GDP. In simpler English: Greece cannot finance her subsistence in the Euro area without radical external involvement; the Euro area cannot secure its present and future without somehow resolving, or at least containing the Greek crisis.

For Greece, the data of the verdict became final early January 2010, with the submission of the European Commission's Report on Greek Government Deficit and Debt Statistics[2], a Report prepared in response to a Finance Ministers Council requirement of 10 November 2009.

The Report is shocking and dreadful. It reports "*evidence of severe irregularities [...], including submission of incorrect data[...] lack of independence of the* [Greek National Statistics Authority] *from the Ministry of Finance; [...] non-transparent or improperly documented bookkeeping [...] absence of written documentation or certification (in some cases, exchange of data by phone); [...].*" It attributes the lack of quality of the Greek fiscal statistics to two different sets of problems, the first concerning concerns methodological weaknesses and unsatisfactory technical procedures, while the second "*results from inappropriate governance, with poor cooperation and lack of clear responsibilities between several Greek institutions and services responsible for the EDP notifications, diffuse personal responsibilities, ambiguous empowerment of officials, absence of written instruction and documentation, which leave the quality of fiscal statistics subject to political pressures and electoral cycles*."

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The revelation of the dark truth emerged as an Apocalypse. Its awareness by us Greeks triggered different feelings, from speechless astonishment to outcries of despair. At the beginning with a sense of uniqueness: we always knew that we were the epicenter of the world, now the world also knows.

Later on, we were administered the first measures. Most we felt the bitter cuts of long lasting social acquis (such as in the health care system and the pension system), the dramatic cut of salaries, the not less dramatic increasing in the loss of jobs in both the public

[2] COM(2010) 1 final, dated 8.1.2010

and the private sector, the overall recession, the social and political destabilization, the even bitterer realization that our political élite was, by and large, a substantial part both of the cause of problem and of the problem itself. Then came the second wave of measures even tougher, then the next and the next, then the open ended preparation of even more measures. And then it was also the news that far too many international mass media, many of them following the steps of some German *völkisch* frontrunners, systematically cultivated the picture of the Greek as fraudulent, lazy, cheater; a worthless creature, living on the industrious sweat of the clean and honest Europeans, the Northerners in particular. A weird feeling that a rather small people (this time not the same one as seventy years ago), ethnically identified, once again, is made responsible for the evils of the whole Universe.

The solidarity gestures, such as movements of the type "We are all Greeks!" gave us a moral consolation. So did also opinions voiced by several politicians, in particular of the Left part of the spectrum, that Europe's brutal austerity medicine is too strong, too bitter, vindictive and malicious and maybe not too effective (if not disastrous) for Greece.

Sweet sounds, but with no real impact on the course of events. Until, all at once, we discovered that all out modes and ways of lives thus far simply belonged to a p past that would never return.

In the end, almost every one of us, thinking for himself, had found that *yesterday all my troubles seemed so far away. Now it looks as though they're here to stay, so I believe in yesterday. Suddenly, I'm not half the man I used to be, there is a shadow hanging over me. Yesterday came suddenly, now I need a place to hide away, now I long for yesterday*.

The complicated ways of the instituted Europe

Neither EU nor the Euro area had the institutional means to treat a defaulted Greece the way the US Federal Government has treated a defaulted California. Also, neither EU nor the Euro area members were entitled to print money, to issue European sovereign bonds, to finance with European state money other Euro zone countries' sovereign debts. Article 125 of the Treaty of the Functioning of the European Union [TFEU] is a simple and pure '*no bail-out clause'*[3].

[3] In the terms of Art. Par. 125 TFEU, "*The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public*

To tackle the crisis the Europeans had to be innovative. They combined, in a complex parallelism of decision making and institution building process and an extremely complicated, but still workable manner, EU-law provisions and institutions with instruments of typical international agreements and all shorts of a-typical international understandings.

The general idea was that the Euro area countries, not the EU or any EU institutions, in cooperation with the IMF, would secure the bail-out of the Greek loans and Greece's refinancing. If necessary other recipients would follow. In exchange, the recipient country should adopt and implement a very tough program of austerity measures and structural reforms, under the most tight surveillance and strict conditionality, and accept payments in tranches adjusted to the pace of the acceptance by the lenders of the country's analogous progress with regard the measures and the reforms. It was a process guided by a Germany assisted by France.

The idea would be materialized through a hybrid construct, combining European Union law and institutions, international agreements among the Members of the Euro area, agreements with IMF, a-typical, but very effective memoranda of understanding with the state in request of the assistance, securing the conditionality of the economic assistance and a very tight surveillance combined with a very detailed advice-giving mechanism on the spot, i.e. in the recipient country. The hybrid would operate whenever a Euro area Member state was "*experiencing or threatened with, a severe economic or financial disturbance caused by exceptional occurrences beyond its control"*. After establishing such support mechanisms, the Euro area countries adopted new rules of strengthened economic governance of the Euro area.

Three kinds of support mechanisms have been created; two of them on May 9th 2010, while the third one was finalized on February 2nd, 2012.

The first one was a "*mechanism*", meant to offer "*a solid safety net for Greece*" and to "*provide stability for the Euro area*". It was called "*European Financial Stabilization Mechanism*" (EFSM). Not an entity in its own, but only a credit line, EFSM was endowed with 110 billion euro, and has been used for Greece only. The second one was a company (a

undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project".

societé anonyme), agreed by the Euro area countries as its shareholders, the EFSF, endowed initially with 440 billion euro which were later raised to 780 billion. It was called "*European Financial Stability Facility*" (EFSF) and was designed to serve the same purposes as EFSM under the same institutional conditions.

The institution of two different forms of one and the same facility adopted in the very same day can only be explained by the obvious purpose to have the Greek case presented as a kind of specific case that was being treated specifically by the EFSF. EFSM was Greek and abnormal; EFSF was European and normal. And it was through EFSF that, some months later, Portugal and Ireland received their corresponding financial assistance. Later on, in return to a situation aspired to be more stable, also Greece applied to EFSF and received her financial assistance received in the framework of its Second Memorandum of Understanding[4].

The third support mechanism is conceived to be of more permanent character. Based on the political decision of by the European Council of October 28-29, 2010, it has been instituted by an intergovernmental Treaty among the Euro area members, signed in its final version on February 2nd 2012. It went together with a limited change in the TFEU, permitting the Euro area members to create this mechanism but not touching the untouchable non bail-out clause. It is named the "*European Stability Mechanism*" (ESM), it is meant to operate as a "*permanent crisis mechanism to safeguard financial stability of the euro area as a whole*"[5], and it has been given the form of an "*international financial institution*" with proper authorized capital stock of 700 billion euro was created. Under the terms of its constitutive Treaty, in 2013 ESM "*will assume the tasks currently fulfilled*" by the EFSF and EFSM[6].

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[4] In more detail, *infra*.

[5] Conclusions of the European Council in EUCO 25/1/10, REV 1, CO EOU 18 CONCL 4, dated 30 November 2010.

[6] In some more detail: Operating under the pressure of the imminence of the Greek crisis, the Euro area leaders, in a statement "*on the support to Greece by the Euro area Member states*", issued on March 25th, 2010, (to be found in www.europa.eu) have set from the very beginning the institutional foundations for their actions.

EFSM which, in Commission's President Manuel Baroso's inconsiderate but enthusiastic wording, "*offered a solid safety net for Greece and provides stability for the Euro are*" to accommodate the initial needs of financial assistance to Greece, which, on 23 April 2010, asked for this assistance and stepping out of the financial markets. The "mechanism" was more or less a modus operandi of the basic concept for the assistance: international agreements among the Euro area countries, participation of the IMF, loan facilities administered by the ECB, conditionality expressed in and by the Memorandum of Understanding signed with Greece. On May 9th 2010, the "mechanism" was institutionalized and was given the name "European Financial Stabilization Mechanism", EFSM. EFSM was not an entity in its own, but only a credit line, operating in the general framework just described. ESFM was endowed with 110 billion euro, and was used for Greece only.

Apart from financial support mechanisms, the crisis has produced also economic governance structures. These have been initiated on December 9th 2011, when the Heads of State or Government of the Euro area decided to proceed to "*a new fiscal compact*" for the Euro area, open to the rest of the EU Member states, and towards a strengthened economic policy coordination and the development of stabilization tools. This new fiscal compact was realized in the form of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, an international treaty signed by 25 out of the 27 EU Member states on March 2nd, 2012 and under ratification in accordance with the respective constitutional provisions of the signatories. The United Kingdom and Czech Republic did not sign.

Unlike EFSM, EFSF and essentially also ESM, it is not an instrument designed to face crisis situations, but an operational framework, in which, due to the new by far tighter rules of central economic governance and the correspondent withdrawal of its signatories from their corresponding national –sovereign?- competences, no such crises are anticipated. The whole concept of this Treaty is based on the assumption –a heavily questioned assumption- that strict economic policies secure development and full employment.

EFSF the structure was decided the very same day with the first. In the form of a company (a *societé anonyme)*, agreed by the Euro area countries and incorporated in Luxembourg, the EFSF, endowed initially with 440 billion euro which were later raised to 780 billion, was designed to serve the same purposes as EFSM under the same institutional conditions. As worded in the Preamble of the Framework Agreement concluded by EFSF (the company) and the Member states of the Euro area (its "shareholders") on June 7th 2010, the "*financial support to euro-area Member States shall be provided by EFSF in conjunction with the IMF and shall be on comparable terms to the stability support loans advanced by euro-area Member States to the Hellenic Republic*".

ESM has been decided by the European Council of October 28-29, 2010 as a "*permanent crisis mechanism to safeguard financial stability of the euro area as a whole*"[6] and went together with a limited change in the TFEU, permitting the Euro area members to create this mechanism but not touching the untouchable non bail-out clause of the Treaty. By a Treaty signed by the Euro area members initially on July 11th, 2011 and then, in a more elaborate form, on February 2nd 2012 the "European Stability Mechanism", the ESM was created. ESM in an "*international financial institution*" located in Luxembourg with a liaison office in Brussels. ESM "*will assume the tasks currently fulfilled*" by the EFSF and EFSM. Its proper authorized capital stock will be 700 billion euro. ESM capitalizes, in a more elaborate form, the ways and experiences acquired by the bail-outs so far offered to Greece, Portugal and Ireland. Procedures and conditionality are formalized. Also, the ESM Treaty takes seriously into account the possible participation of private sector in processes of financial assistance (PSI), so it provides for Collective Action Clauses (CACs) to be included in the new euro area government securities.

The case "Greece"

The finances

In the critical year 2009 the Greek sovereign debt was as high as 298.706 billion Euros. It became 328.588 € in 2010 and 365.638 in 2011 € and is still raising. Economists generally admit that a sovereign debt is unsustainable with a lending rate higher than about 6%. Before the outbreak of the crisis, e.g. on September 15th, 2009 Greece could borrow from "the Markets" at about 3.3% interest rate. At the beginning of May 2010 it was already about 9%. On July 21rst it was 16.5% for the Greek 10 years bonds (while for the German it was just 2%). The very same day the European Council fixed Greece's lending rate under EFSM at approximately 3.5% for the whole agreed period of time[7]. Notwithstanding the measures adopted by Greece under EFSM in the summer of 2011, the interest rate kept skyrocketing: On September 7th, 2011 Greece's lending rate offered by "the Markets" was raised as high as 20.07%, while early March 2012, the days when the Greek Parliament was discussing the Memorandum II and PSI, the country's lending rate was about 35%![8] So, without entering into a kind of mechanism securing the Greece's financing not in market terms, Greece could simply not sustain her economic survival in the Euro area.

The substantial content

The best introduction to measures imposed to Greece in exchange for the financial assistance it has received and is receiving under EFSM and EFSF are the titles of the relevant Council's Decisions as they figure in the Official Journal of the EU. They are quite impressionistic: "*on the excessive deficit of Greece*[9]", "*establishing whether effective action has been taken by Greece in response to the Council Recommendation of 27 April 2009*[10]", "*making public Recommendation 2010/190/EU with view to ending the inconsistency with the broad guidelines of the economic policies in Greece and removing the risk of jeopardizing the proper functioning of the economic and monetary union*[11]", "*giving notice to Greece to*

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[7] Noteworthy point: the Euro area assisters *lend* money, they don't *lose* money. So, in the example of the Germans, it's still a loan, they make some profit out of it, however it is a loan that could entail risks even for Germany, in the occurrence of a highly improbable at the present day, but theoretically always possible Germany's negative the evaluation by "the Markets" in the future, leading Germany to borrow at interest rate higher than 3.5% and lend Greece at only 3.5%. But, as mentioned, for the moment, such a development remains theoretical.

[8] In thankful appreciation to the Bank of Greece for the statistical figures made available to me YZD

[9] Decision 415/2009 of the Council of 27 April 2009, O.J. L 135/21, 30.5.2009

[10] Decision 2010/291/EU of the Council of 19th January 2010, O.J. L 125/50, 21.5.2010

[11] Decision 2010/181/EU of the Council of 16th February 2010, O.J. L 83/12, 30.3.2010,

take measures for the deficit reduction judged necessary in order to remedy the situation of extensive deficit[12]", "*addressed to Greece with view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit*[13]", "*amending Decision 2010/320/EU addressed to Greece with view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit*[14]".

It should not be very difficult to imagine what lies beneath such titles: a very important for our size loan facility –ultimately more than 200 billion euro- and a very tough austerity and reform program under a very tight control. The general idea is to give us some a real breathing time and space so as to have a fair chance of getting back in line. Otherwise, how would our common currency be secured and our debtors have their money back?

The first set of measures was the Economic Adjustment Program for Greece of May 2010. It consisted of an articulated package of measures and a 110 billion euro loan at a quite convenient 3.5% interest rate. We remember it as Memorandum I[15]. Notwithstanding its five Reviews of the measures (not affecting the amount of the loan), within less than a year, the measures provided in Memorandum I proved to be unrealistic. Conceptual mistakes? Formalistic naivety of the often too sure about themselves international executives? Structural inability plus political unwillingness of the Greeks? Whatever.

On October 2011 a Second Economic Adjustment Program was decided. It was formally finalized early March 2012. It is known as Memorandum II[16]. It largely substitutes Memorandum I, replacing its already specific commitments by even more elaborate ones, up to, in most of the cases, minute details and exact time schedules.

The financial assistance has taken the form of a Voluntary Liability Management Transaction with private investors' involvement [PSI], better known as "haircut". 54,3% of Greek debt

[12] Decision 2010/182/EU of the Council of 16th February 2010 O.J. L 83/13, 30.3.2010
[13] Decision 2010/320/EU of the Council of 10th May 2010, O.J. L 145/6, 11.6.2010
[14] Decision 2010/486/EU of the Council of 7th September 2010, L 241/12 14.9.2010
[15] For a first outline of the first generation of the Measures, see Drossos, IGLP, p.10, f.f., 13 f.f.
[16] The integral text of the Second Memorandum can be found in the official IMF website, under "*Greece: Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, March 9, 2012*". It can be also found as Annex in Law 4046/2012, published in the Greek Official Gazette A 28, of 14th February 2012 in English, which is the official language and in Greek.

was “haircut” combined with an additional loan facility amounting about of 108 billion Euros, 80 billion through the EFSF and 28 through IMF[17].

The Memorandum II has been made binding Greece by the Law 4046/2012 of 14th February 2012. Law 4046/2012 as such is a very short piece of legislation; its value lies in the approval of the about 580 pages annexed set of four agreements plus their many Annexes and Schedules, a Memorandum of Understanding consisting in three sub-memoranda plus their Annexes and several letters of intent. Half of these pages are in English, which is the only official language of this *corpus*; the rest if the Greek translation.

I will now try to give you some indicative pictures of the content of the structural reforms as they figure in the Memorandum II. It’s definitively not a full account; it’s rather introductory examples for to the remarks that will follow.

Regarding to the fiscal policy, the Greek government will undertake “*bold structural spending reforms*”, the “*bulk of adjustment*” to be achieved through expenditure cuts aiming at permanently reducing the size of the state and improving government efficiency. Key reforms, include public sector wage bill reductions, reform of the public sector employee compensation, personnel reductions, pension reform entailing lower and more difficult pensions, cuts in the health spending in order to bring pharmaceutical spending closer to levels in other European countries.
Tax system reforms are prioritized as well, and so does the strengthening of fiscal institutions since Greece is considered “*to have has for many years suffered from a widespread problem of nonpayment of taxes, eroding the fairness of the system and forcing less growth-friendly policy measures, such as high tax rates*”. Anti-money laundering tools into the Greek anti-tax evasion strategy are envisaged.
A long range privatization program is undertaken with the aim “*to accomplish a fundamental shift of public assets to private sector control*”. The assets are identified, one by one, and the preparations undertaken for the offers for sale or concessions are set in the utmost detail, we the remark that the Greek government remains “*committed to a process insulated from political pressures*”. Other “*structural reforms*” include a “*package of labor market*

[17] Details in Law 4046/2012 (above annot. 19), Annex I, PSI LM Facility Agreement, Annex II, Co – Financing Agreement, Annex III, ECB Credit Enhancement Facility Agreement, Annex IV, Bond Interest Facility and the Annexes and Schedules attached thereto.

measures", all of them around the idea of "*leveling the playing field in collective bargaining*", and substantial cuts in the wages of the private sector.

The Memorandum finds that "*Greece's judicial system is highly inefficient, with significant backlogs despite a relatively large number of courts and judges. Complex judicial procedures, cumbersome execution of court decisions, lack of transparency, and disconnect between court performance and budgeting, have negatively affected FDI, other private investment, entrepreneurship, exports, and employment*" and, in this regard, government undertakes to focus its efforts on addressing the case backlog in the courts, speeding up civil and administrative case processing, improving the effectiveness and transparency of magistrate courts, reforming the Code of Civil Procedure.

The measures are heavily criticized under several angles: They are too bitter, even brutal, they are leading the country's economy in a vicious circle of recession with no visible way out, some of them are nothing more than naïve transpositions of dogmatic ultra-liberal conceptions, in no touch with Greek reality etc. The discussion on the merits of the measures is an ongoing discussion, to be resolved not only by exchange of arguments, but also with the practical outcome of the measures after some more time of their implementation. I will not enter this discussion here, since my main task is to present the measures; I have to mention, however, that all the criticisms of them taken into account, the measures are still the only real political project of transformation of the country in real process of application. This is not a compliment to a yet untasted set of policies but a criticism to our inability to have a political project of our own when we most needed it.

<u>A set of multiple systems of control and surveillance</u>

Greece has undertaken not to change her commitment not only to the measures enumerated in the Memorandum, but also to additional ones, if deemed necessary. The Program provides for 16 structured quarterly reviews for the four years of its duration, which will "*reach understandings on any additional measures that may be needed to achieve its objectives*", a euphemism for the clear threat: do or starve! Possible new measures will not have to be adopted by the Greek Parliament: law 4046/2012 empowers the Minister of Finance to transmit them to Parliament just "*for information*[18]." In addition, top European

[18] Art. 1 par. 5 of Law 4046/2012

figures, like Merkel, Sarkozy, Schaeuble, Junker and others have insisted and obtained written commitments, taken in person by the leaders of the main political parties, i.e. the Socialists and the Conservatives, that their parties will the honor the commitments undertaken by Memorandum under any circumstances, including any electoral result. To that extent, elections don't matter.

But also law doesn't matter. Annexes 5 of PSI LM Facility Agreement, and 4 of European Central Bank Enhancement Stability Facility Agreement and of the Bond Interest Facility, adopted by the already mentioned Law 4046/2012 include rather elaborate forms of legal opinions to be issued "*on official letterhead of the Legal Advisor to the State at the Ministry of Finance*", stating that all Greek authorities are "*validly and irrevocably committed to fulfill*" all their obligations under the relevant Agreements and that the relevant Agreements have been "*duly executed*" and the relevant obligation undertaken by the Greek side are "*valid, binding and enforceable*".

The Troika, a three headed *directoire*, composed by one officer of the European Commission (representing the Member States of the Euro zone), one of the European Central Bank and a representative of the IMF, settled in Athens with their numerous staff, are following, literally day by day, the implementation of our commitments. It's on the basis of their reporting that the tranches of our loans are or are not disbursed.
Sometimes competent, other times dogmatic, sometimes arrogant and impolite, other times flexible and polite, a legion of technical advisors or controllers are throwing deep roots. A kind of economic occupation squadron, with the difference that they formally take no decision enforceable in Greece –there are just Europe's little helpers. In addition, since September 2011 a few dozens of EU officers, situated in Athens and in Brussels are offering extensive (and effective) technical assistance" in the implementation of the Measures. They are "the Task Force."

Further on a system of benchmarks, dates to achieve and tasks "prior to disbarment" is installed. The Program includes not only the measures, but also the consequences for not meeting them.

Some glosses on the Greek case

Sovereignty and Constitution

The developments in the years after 2009 have smashed our constitutional substance, while strengthening our constitutional forms. A reversal of the traditional functioning of our national sovereignty, as expressed in and by a Constitution (and ours is not an exception) has taken place.

Our European counterparts interfere as strongly and as deeply as I have just described. To the extent of this interference, our Constitution is preempted of its substance as the legal foundation of our power to take and implement democratically legitimated decisions in the fields covered by the Memorandum. However our constitutional *forms* are strengthened.

Typically, Olli Rehn, the Vice President of the Commission, responsible for Economic and Monetary Affairs and the Euro, repeated in the European Parliament a phrase taken up from the official texts:

> "*The program of the economic reform is a program owned by Greece. The troika has helped in its design […] on behalf of those who finance the Greek state by loans of vast magnitude [...] the EU-IMF troika can facilitate, enable and support –but at the end of the day, it is Greeks themselves who need to take the action to reform their country and curry the responsibility for it.*[19]"

In short, the external features of the excersise of our sovereign powers –the garments of our sovereignty- intact, protect somebody else's prerogatives form the internal value –the body- of our sovereignty. A fascinating reversal, isn't it?

Trends, feelings and political impacts

In a previous text of mine, which, in view of the present Workshop, has been made available to you, I discuss the trends generated by the change of 2009[20]. Generally, the Measures have set the political agenda –ultimately, it's a yes or no-, the social agenda and personal and family agendas.

The Measures could not be sustained by the Socialist majority in Parliament, but the Conservative opposition, initially in fierce struggle against them, had to change their

[19] Press release of the European Commission on European Parliament's the Joint Hearing on Greece, held in Brussels, March 27, 2012, to be found through www.europa.eu
[20] Drossos, IGLP, p. 15 f.f.

attitude, and support them. Mid-December 2011, the Socialist Party had to give up the office of the Prime Minister and accept early elections –just after the completion of the necessary steps to put the Measures and the correspondent financing in motion.

The Measures have set new division lines transcending the whole of the political spectrum: it's pro-Memorandum and anti-Memorandum. Last March 2nd, 45 Members of the Parliament belonging to the Socialist and Conservative Parties supporting the Government coalition under the highly respected banker Lucas Papadimos, did not vote for Memorandum II and where ousted from their parties. One of the three major Left Parties, although not voting for the Measures, sent the clear message that it considers them a binding fact, on the basis of which it does not exclude post-electoral governmental cooperation.

The new division line creates new affinities, sometimes odd ones. The people is meeting the nation: democracy meets populism and nationalism meets patriotism.

Several elections are scheduled for months to come, in Greece (next month) and elsewhere. It makes more sense to continue this part of the discussion after.

Our feelings oscillate. Sometimes we identify ourselves with victims of a cruel injustice (expecting the compassion and solidarity due to such victim), sometimes with the perpetrator of an atrocious crime (in fear of the just punishment), sometimes with both. Last this year I happened to be one of the examiners for the Greek administrative Judiciary. The subject I proposed for the written exams was about the well known Dominique Strauss-Can sex incident in New York. The 337 candidates competing for 95 posts (including posts for our Supreme Administrative Court) were asked to present legal and general comments on the publishing of pictures of the former General Secretary of the IMF, charged for felony caught in act and walking his perp-walk to a New York Court "*in handcuffs and in miserable condition.*" They have been asked to comment from the points of view of human dignity, freedom of information, freedom of opinion and the presumption of innocence. In their effort to balance the in-balanceable several dozens of the candidates expressed, in plain words, the opinion that *les péripéties de la vertue* of Mr. Strauss-Can justified a malevolent satisfaction of the Greek public opinion on his suffering, because of the misfortunes the IMF had imposed to us. Most of the same candidates however –in line with a widely European approach of the matter- disapproved the publication of the pictures in clear compassion to a victimized Monsieur Strauss-Can. A sentiment of just punishment of the evil one? A sentiment of solidarity to a suffering dignity?

Why?

The Measures have shaped our past, as well. Light is being shed on corners of our past, darkness is brought into light, and light does not show beauty. It's not just corruption (with regard to which, he who is without sin, let him first cast the stone); it is a whole social and political system that proved to have worked perverse.

Basically, the Constitution of 1975 has functioned efficiently. A product of the democratic explosion following the collapse of the US and NATO supported fascist military junta in the 1974, our democratic Constitution of 1975 endorsed and incorporated all the imperatives of a constitutional state of art of the time. Modeled and in line with the most respectful traditions of the classical European republicanism, highly influenced in particular by the Italian and German Constitutions of the late forties, our Constitution has offered everything needed and expected to host the democratic *allegrésse* of this happy year 1974. We started to enjoy of freedoms that we were deprived of not just during the seven junta years, but also, although at different level, decades before. In happy addition, we swiftly and proudly introduced, translated properly in Greek language, the whole universe of the endless thousands of pages of primary and secondary European legislation. Side by side to our blue and white flag we proudly raised the Star-spangled Banner, the good one, that in navy-blue color with the yellow stars inside. 35 years of smooth constitutional and European normalcy passed and seemed to us an everlasting nirvana.

What happened then?

This type of question is not new to us. Early enough, Pavlos Kalligas, one of the brightest Greek legal scholars of the mid 19th Century wonders

> *"[...] is it possible while always turning towards the adored prototypes, without also examining the society which you are working for, [...] is it possible to ripen a fruit that can be tasted by that society?"*[21] *"[T]he word Constitution and all its translations, which the Greek mind has not substituted with original elaborations, mean nothing to the Greek; he does not see anything in these but the interest of*

[21] *Pavlos Kalligas*, I exandlisis ton kommaton, iti ta ithika gegonota tis koinonias mas [=The exhaustion of the parties, namely the moral facts of our society], Athens 1842 (reprinted, Athens, 1993), (in Greek) [=*Kalligas*], p. 42, see also *Drossos*, p. 175

> *those who propose them [...] [w]hatever* [the translator] *translated he considered it immediately also Greek, while only the translator and his colleagues understood it [...]* [he] *transposed the Constitutions and the political régimes, and after that he could not understand how come and they were not implemented, while neither in the orthography nor in the vocabulary was there any mistake*"[22].

<u>If the translation was correct, what was wrong?</u>

It's premature and unwise to offer certainties; so just one remark.

In a democratic *ivresse* that had captured all and every one of us in that summer of 1974 the *noblesse* of the politics encapsulated all our good hopes: if democracy will function –and then Europe!-, prosperity will come. By itself. But it didn't.

Due to easy public money, a full reversal of the relation between the political élite and their electorate occurred, at least during the last two decades: it's the people's whimsies that set the critical actions and omissions in the political agenda, not the substantial proposals of the political leaderships.

In the course of the years our faith in politics and democracy degenerated into a lust for whatever could be attributed to the "people". Gradually and imperceptibly. The cult of all sorts of individual egotistic situations (often loudly professed in the language of 'human rights') emerged and went in pair with a kind of collective sub-egoisms (often loudly dressed in the Left looking rhetoric of a social *acquis*).

This affected also our generalized attitude towards the state. In *Borges*'s refined terms, the Argentinean (the citizen of another country assisted under IMF recipes), does not identify himself with the state, because the state is for him an unthinkable abstraction:

> "*The state is impersonal; the Argentinean is able to conceive only personal relations; hence for him the theft of public money is not a crime. I am affirming a fact. I' m neither justifying not forgiving it*."[23]

So do I, for us Greeks.

Mega-money, consisting in European or, largely lent, Greek public moneys has set, in a plethora of parasitic giving, our consumption standards and life-style ethics; not our

[22] *Kalligas*, p. 43-44, 29, see also *Drossos*, p. 175-6
[23] *J. L. Borges*, The history of tango, (1930), quoted from *J.L.Borges*, Essays, translated into Greek and commented by Achilles Kyriakidis, Athens 2007, p. 38. The quoted text is retranslated into English by me –Y.Z.D.

production. At a strategic depth, the absorption these moneys has been taken mainly as a result of the shrewd astuteness of the Greek since the times of the cunning Ulysses and not as a result of a participation in a producing Community of global dimensions. So we didn't lose any sovereignty by singing the Memoranda; we gave it away gradually, tacitly, by not producing, by arrogantly squandering opportunities while imprudently wasting wealth and resources.

In the wording of one of our best contemporary political philosophers, Panajiotis Kondylis,

> "*the concrete functioning of the Greek political system [...] ended up to constitute the basic impediment for the national and economic development; and not only: it became a vehicle of selling out the country, in exchange for the ability* [of the political system] *to proceed to material givings in exchange for givings in votes.*"[24]

Is it only our fault?

No, it is not. To consider the Greek case as a kind of uniquely specific one is wrong. The financial crisis is global, and it would affect Greece anyway. After all, in absolute figures, the Greek debt in 2009 was about 300 billion euro; a non negligible amount of money. But compared with the overall Euro area debt, it was about 24 times smaller and compared with the EU debt more than 29 times smaller. In percentage, it was only 4.3% of the Eurozone's sovereign debt while Greece was producing 2.6% of the Euro area GDP. As part of the world sovereign debt, the Greek debt was less than 1%, just a tiny 0.98%[25]. So, what's the big in the deal? There must be something huge in the deal, otherwise how can we explain Obama

[24] Panajiotis Kondylis, *The cachexia of the bourgeois element in the modern Greek society and ideology* (in Greek). Introduction to the Greek edition of his book "*Der Niedergang der buergerlichen Denk- und Lebensform*" (1991). Posthumously published also separately under the editors' title "*The reasons of decay of Modern Greece*" (in Greek, 2011). Cited passage translated by me.

[25] In the critical year 2009, the Greek sovereign debt was 4.3% of the sovereign debt of the 17 countries Eurozone, 3.51% of the sovereign debt of the 27 countries European Union and 0.98% of the sovereign debt of all the countries of the world. The Greek sovereign debt was 426,723 billion dollars (298,706 billion €), while the Eurozone's 17 countries' 9.919,965 billion dollars (7.125.818,90 billion €), the EU 27 countries' 12.158,206 billion dollars (8.779.319,10 billion €) and the world's 43.625,198 billion dollars.

In billions dollars the same year Greece's gross domestic product [GDP] was 327.331, the EU 27 countries 16.242,027, the Eurozone 17 countries 12.442.416 and the world's 57,722.086. In percentage, the Greek GDP was 2.63% of the Eurozone countries, 2.00% of the European Union countries and 0,57% of the world. [Source: IMF]

In 2009 Greece's sovereign debt was 127,1% of her GDP while the Eurozone's only 79,727%. [Source: BoG] discussing Greece, with Merkel, on TV, in front of the White House, and reassuring the Congress (and the demonstrators in front of it) that, no, US is not Greece.

But, like I said, I'm here to talk about Greece. Apart from this rather presentational aspect, there is another, more substantial one: for us Greeks, to seek refuge in the global character of the crisis and avoid looking at frightening sights of our collective social and political self is a mistake that we are too small to afford.

However, I have one last point to draw your attention on. The *quality of fiscal statistics* might have been left *subject to political pressures and electoral cycles*, Commission says, yes. In the year 2004 the Council Decision 2004/917/EC had put Greece in the position of excessive deficit under Art. 104 par. 6 of the Treaty establishing the European Community[26]. Three years later, by the Council's Decision 2007/465/EC[27], following the recommendation IP/07/97 dated 16th May 2007[28], has found that "*the excessive deficit situation in Greece has been corrected*" and abrogated the previous decision. In the Commission's recommendation is written that "*the Greek statistical authorities have improved their procedures, which led to an overall higher quality of the data. As a result, the Commission (Eurostat) has withdrawn its reservations on the quality or the reported data*."

Junker has congratulated us for the recovery of our economy, Merkel declared that Greece's growth rate, was "*a dream for the Germans.*[29]"

Two months after elections were held in Greece and the party friendly to Baroso, Junker, Sarkozy, Merkel etc scored an glorious victory on the basis that yes, we have restored economy, yes we can spend for the people because yes, "the Markets" –rating us with a A+ or A or A- do trust us. And between 2007 and 2009 we did borrow a hell of money[30].

Let's take the Commission's statement and the Council's decision seriously. Either the Greek authorities, statistic or other, have changed, between 2007 and 2009, their code of ethics, and turned upside down, and became the bunch of cheaters the Commission has found out two years later 2010. Or, which seems more convincing to me, it is our main accusers of today –the very same people, in person , who praised us then- that are nothing more than an irresponsible bunch of incompetents of just cheap liars.

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[26] O.J. L 389, 30.12.2004, p. 25
[27] O.J. L 176, 5.7.2007, p.21
[28] To be found in www.europa.eu
[29] As reported in the press, 4th and 5th June, 21rst July 2007
[30] See Fitch, Complete Sovereign Rating History, Greece, November 13, 1995- 13 March 13, 2012, in thankful appreciation to the Bank of Greece for making it available to me YZD

This does not even slightly alter the fact that we have been spoiled, imprudent, maybe the jerk of the day and that we have a price to pay for that. However, an easy prey doesn't turn the vulture that devours it anything less than the beast that it was before.

***

Hans Castorp

That was our story. We, now matters settled, seem to withdraw into the dusk of normalcy, into the oblivion of the world-relevant TV channels, to feed studies, cases, PHDs, novels and even some films. Thank you for your attention!

But what was the type of your attention. Trying to elaborate on this matter of the utmost importance to me I stumbled on Thomas Mann's *The Magic Mountain*. There we follow, minute by minute, step by step, point by point, page by page in the long more than 750 dense pages of the German edition, young Hans Castorp's illness and recovery in a world class sanatorium in the Davos, in the Highlands of Switzerland. Brought back is in the way of health, he has left the sanatorium and he is gradually losing our attention. Suddenly we see him, once again for a last time. With his health restored, he is been sent to the front. He fights.

> "*There is our friend, there is Hans Castorp! We recognize him at a distance [...] Like all the others he is wet through and glowing. He is running, his feet heavy with mould, the bayonet swinging in his hand.[…]. What? [He is] Singing? As one sings, unaware, staring stark ahead, yes, thus he spends his hurrying breath, to sing, half soundlessly:*
>
> *'And loving words I've carven*
> *Upon its branches fair-'*
>
> *He stumbles. No he has flung himself down, a hell-hound is coming howling, a huge explosive shell, a disgusting sugar – loaf from the infernal regions. He lies with his face in the cool mine, legs sprawled out, feet twisted, heel turned down. The product of a pervert science laden with death […]*
>
> *Farewell, honest Hans Castorp, farewell, Life's delicate child! Your tale is told. We have told it to the end, and it was neither short nor long, but hermetic. We have told it for its own sake, not for yours, for you were simple. But after all it was your story, it befell you, you must have more in you than we thought; we will not disclaim the pedagogic weakness we conceived for you in the telling; [...]*

Farewell –if though livest or diest! Thy prospects are poor. The desperate dance, in which thy fortunes are caught up, will last yet many a sinful year; we should not care to set a high stake at the time it ends. We even confess that it is without great concern we leave the question open [...]"[31]

[31] Thomas Mann, The Magic Mountain, [*Der Zauberberg*] transl. by H.T. Lowe-Porter, Vintage books, London, 1999, last page.