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WORKING PAPER [September 25th, 2011]

GREECE. THE SOVEREIGNTY OF THE DEBT, THE SOVEREIGNS OVER THE DEBTS AND SOME REFLECTIONS ON LAW

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Alack, I love myself. Wherefore? for any good
That I myself have done onto myself?
O, no! alas, I rather hate myself
For hateful deeds committed by myself! [...]

My conscience hath a thousand several tongues,
For every tongue brings in a several tale,
And every tale condemns me for a villain.
[Shakespeare, Richard III, Act V, Scene III]

I. The (notorious in these days) importance of being Greek

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This is a working and discussion paper. I have presented, in previous forms, some of its subjects in conferences, seminars or discussion panels. I mention here my classes in the post-graduate program of Constitutional Law in the fall semester 2010 in our University, my lectures on "*The 'Memorandum' as a turning point in the (Greek) form of government*", (Athens, November 2010 and February 2011, Volos, March 2011), a version of which has been published under the same title in the Greek "*Journal of Books*" (April 2011) and my presentation in an international Conference on "*The Sovereign Debt Crisis and the New Boundaries of the State*" organized by the European Public Law Organization (Valetta, Malta, July 2011).
Several people have contributed to this text with valuable support and assistance. Elisavet Kotzia has read and commented all its versions and forms with patience and affection. I have to thankfully mention, among others, Georgette Lalis, Antonis Trifyllis, Stavros Tsakyrakis, Dimitris Anastasopoulos, Rena Dourou, Antonis Manitakis, Spyros Flogaitis and many of my post-graduate students, of course. I owe particular thanks and appreciation to Professor Giuliano Amato, former Prime Minster of Italy for his most encouraging comments on my presentation in the Malta Conference. Not least, David Kennedy's invitation to prepare "something on Greece and the crisis" for IGLP's electronic forum was the vivid stimulus to prepare the present form of this text.

It’s not just our creditors. Never, since the times of Alexander the Great, such global attention has been paid to the deeds of the Greek polity. Not in their wildest sweetness of their fantasies could the Members of our Parliament imagine the live televising of their speeches on adopting or dismissing the most severe, critical and unpopular austerity measures taken in Greece in the 100 years or more, and this in breaking news emissions, by all major global mass media, Al Jazeera, BBC News, France 2, CNN, Deutsche Welle and others. Billions of people from the rest of Europe, from the US, the BRICs, the PIGs, from everywhere are staring us in the face.

It came upon us suddenly and took us by surprise. Just a few days after the electoral triumph of the Socialists over a Conservative Party departing in disorderly retreat in September 2009, the revelation of the dark truth emerged as an Apocalypse: state money is over, sources for more state money are over. But because of the currency we have and our position in the Euro zone we cannot bankrupt either. Our entanglement with the rest of the Euro zone and Euro zone’s interconnection with the rest of the world, although without depriving our crisis of its specific Greek features, are giving it the European and global impact and dimension that it has. In short, it’s a Greek problem, but not merely a problem of the Greeks.

Our awareness came with different levels of surprise, from speechless astonishment to flabbergasting. And with a sense of uniqueness: we always knew that we were the epicenter of the world, now the world also knows. And with different feelings, form dubious pride –*we did it to them!* - to extreme horror -*what are they going to do to us*?

As usual in every major crisis, deepest and most fundamental elements of our nature, our collective social and historical identity and culture, our virtues and vices are being brought into surface. The crisis is by far not over and is constantly evolving and developing, creating in a very rapid tempo, almost day by day, new realities and new conditions, new situation to come up with. What a treasure for scholars to study! What an Aladdin's cave for PhDs and *theses memoirs*!

II. <u>The sovereignty of the Greek debt</u>

The way to the Measures

At a certain point it became more than clear that Greece cannot repay her government debts at market price and, as a result, further loans from the "markets" became prohibitively expensive. Greece entered deep in an inferno of financial, fiscal and economic crisis. Therefore the dilemma: either Greece will be given the chance of new loans or a bail out at a supportable interest rate or Greece will go bankrupt. Yet, bankruptcy, although widely discussed, is not an option, because the Greek crisis is a much wider issue than Greek fiscal crisis, and, at least for the moment and for the predictable future, there is no political, legal or technical possibility for a Euro zone member either to quit the Euro or to be expelled from the Euro.

Greece is assisted because the Euro had to be assisted.

Now, since the market price of new Greek loans became prohibitive, to avoid bankruptcy an administrative fixed interest rate, much lower than the market price, became necessary. By "administratively fixed" I mean that the bail out – i.e. the new loan- would be designed and decided by a political body capable to finance its obligations and impose its decisions.

What could be such a body? At the moment of the outburst of the crisis it became more than obvious that neither the EU nor the Euro -zone were able or willing to foresee situations like this; no corresponding measures or procedures were even envisaged. And when the crisis arose, the EU and Euro area leaderships, to their unjustified surprise, found themselves in an institutional vacuum. Something novel had to be devised and devised it was.

It took several steps.

Initially, on May 9th, 2010, in the dark light of a crisis that, at the moment, looked primarily Greek, the two first measures were decided. The first was the establishment by the 17 Members of the Euro zone (the "Eurogroup") of the European Financial Stabilization Mechanism ("EFSM"). This was an instrument designed specifically to provide Greece with the necessary financial assistance, in the form of a 110 billion Euros loan at supportable interest rate, much lower than the one offered by the markets, and on strict conditions of economic policy. The second, European Financial Stability Facility ("EFSF"), was a more general instrument, designed to financially support any euro-area Member State in difficulties caused by exceptional circumstances beyond such Member States' control. The EFSF took the form of a *societé anonyme* incorporated in Luxembourg. Its support would be given in the form of Loan Facility Agreements and Loans up to a total of 440 billion Euros within a limited period of time. The availability of such Loan Facility Agreements would be conditional upon the relevant euro-area Member States which request such loans entering into memoranda of understanding with the European Commission, acting on behalf of the euro-area Member States, in relation to budgetary discipline and economic policy guidelines and their compliance with the terms of such memoranda. In the way put in the Preamble of the Framework Agreement of June 7th, 2010 between the EFSF and the Member States of the Euro zone, it is envisaged that "*that 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*". By virtue of this Framework Agreement –an international agreement and not a piece of EU legislation- the EFSF "*shall finance the making of such loans by issuing or entering into bonds, notes, commercial paper, debt securities or other financing arrangements which will be backed by irrevocable and unconditional guarantees of the euro-area Member States which shall act as guarantors in respect of* *such funding instruments*." To enter into force and become binding, the Agreement needed to pass through the respective national procedures ensuring that the obligations under the Agreement shall come into immediate force and effect of no less than 5 euro-area Member States comprising no less than 2/3 of the total Guarantee Commitments – the already mentioned sum of 440 billion Euros- set out in the respective Annex of the Agreement.

A year later, on July 11th 2011, when the much more general character of the European financial crisis made the threat against Euro clear and imminent, a more permanent instrument was adopted, the European Stability Mechanism ("ESM"). The ESM was created by a Treaty among the 17 Members of the Euro zone (called for the purpose of the Treaty also "ESM-Members"). In the wording of the Treaty, the ESM "*will assume the tasks currently fulfilled by the European Financial Stability Facility ('EFSF') and the European Financial Stabilization Mechanism ('EFSM') in providing, when needed, financial assistance to euro area Member States after 2013 [...]. In line the IMF, ESM will provide financial assistance to an ESM Member when its regular access to Market financing is impaired*". This assistance is to be provided "*under strict economic conditionality*". An initial capital stock of 700 billion Euros is authorized with the Treaty, divided into 7 million shares, distributed to the Members of ESM according to a contribution key, equally set in the Treaty. The ESM is open to participation also to non Euro-area Member States of the European Union and will be governed by a Board of Directors, an institution modeled to a typical EU Council of Ministers. Each ESM Member will appoint one freely revocable Governor, member of the government of the appointing State "*who has responsibility for Finance*." The ESM "*will cooperate closely*" with the IMF, while "*a euro area Member State requesting financial assistance from the ESM is expected to address a similar request to the IMF*." To enter into force, the Treaty needs ratification of signatories whose initial subscriptions represent no less than the 95% of the initial capital stock.

All extreme technical complexities apart, a political instance was created, able to take decisions on financing of euro-zone Member States in insurmountable financing difficulties, to fix the level of interest rate of this financing at a much lower scale than the relevant market interest rate, to work out and if necessary amend, and to impose to the borrower State a program of economic policy and its exact implementation as precondition for the financing, to periodically control whether this program was being respected or not and, finally to release the money in installments and on the condition than the economic program progressed as designed by the EMS and agreed by the borrower, or not to release it.

The general idea is rather simple: a three headed conglomerate, composed by the Member States of the Euro zone (represented by the European Commission), the European Central Bank and IMF take over to fix in detail and under the ultimate supervision of the Heads of State of the Eurogroup the conditions –

interest rate for the loan, stability program for the country- of this assistance. We call them "the Troika". A Troika for every Euro zone country asking for this support. Each time the Troika reports that the assisted Member has achieved the "milestone" and met the preset objectives, it gets the pre-decided tranche. Greece was the first to get her Troika (on the basis of ESFM), together with a strict policy program and a dowry of 110 billion Euros loan at an interest rate considered supportable. So far five tranches have been released, the last on July 8th, 2011. In a climate of extreme political pressure on the Greek government to achieve timely and full implementation of the undertaken measures – a pressure risking to put in jeopardy the remains of the coherence of the Greek political system- a sixth tranche is expected within October 2011.

The Troika isn't just three persons. An increasing number of European and IMF officers are setting foot in the Greek administrative bodies. 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. They discuss everything; they propose administrative and financial structures, they comment on draft laws, Presidential Decrees and even Ministerial Decisions; they propose or oppose wordings; they accept or dismiss figures. A kind of economic occupation squadron, with the difference that they formally take no decision enforceable in Greece –there are just our helpers and Europe's and IMF's reporting agents. And with the more substantial difference that they are because we have summoned them. We call the "the Troikans."

And it's not just them. On September 14th a squadron of about 20 EU officers (assisted by about 10 more in Brussels) has been installed in Athens –on the basis of the European Summit's decision, taken in response to request of the Greek government for "technical assistance" in the implementation of the Measures. Their main task is to make the sluggish, reluctant and obscure machinery on the Greek government swift, flexible, transparent and effective in the implementation of the Measures. Questioned by the press as he was leaving the Finance Minister's office, their Head, Herr Horst Reichenbach, said they will assess for how long their presence will be needed not earlier than after two years. They are called "the Task Force."

Some months later, this time on the basis of the EFSF, Ireland and then Portugal got their Troikas and their dowries as well. Most probably they will have their Task Forces as well.

Noteworthy point: the Euro area assisters *lend* money, they don't *lose* money. In the example of Germany, as calculated by the European Commission on 21rst July 2011, the yield of the 10-years' Greek government bonds was 16.5%, while the yield of the German 10-years' German bonds was only 2.9%. This, in simpler English, means that on July 21rst Greece's lending rate as offered by "the Markets" was as high as of 16.5%, while Germany's as low as 2.9%. On September 7th, 2011 Greece's lending rate raised as high as 20.07% while the German one dropped below 2%. On July 21, 2011, in the statement of the European Council, Greece’s lending rate –as fixed in the framework of the Measures- was fixed at approximately 3.5% and so it will remain for the whole agreed period of time. 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, like mentioned, for the moment, such a development remains theoretical.

Nevertheless this loan is still assistance, because otherwise Greece would have to pay an interest almost seven times as high the one fixed by the European Council –an unbearable interest rate equalizing to bankruptcy. It is assistance in the sense that Greece (or Portugal or Ireland) is permitted to utilize the other Euro zone states’ high credibility -and not her own inexistent credibility- to borrow at such a low interest rate, but, not to forget, it’s a loan, not a donation.

The form of the Greek Measures

The Eurogroup Ministers agreed on an Economic Policy Program for Greece as condition for offering the financial assistance. This agreement, not an international agreement in the legal sense, has been substantiated in the form of the Memorandum of Economic and Financial Policies, adopted by the Greek Parliament in the form of Law 3845 of May 6th, 2010 and the further implementing legislation. We call it "the Memorandum". In the beginning of 2011, less than a year after the adoption of the Memorandum, it was found that major objectives thereof were not and could not be met. Conceptual mistakes and formalistic naivety of the often too sure about themselves international executives? Structural inability or political unwillingness of the Greeks? Whatever. The Greek fiscal, economic and financial crisis was still rapidly leading to a catastrophic situation.

In view of the approaching dead end another more detailed and hopefully more realistic program has been worked out by us and the Troika (we call our participation in the structuring of the program euphemistically "negotiation"). It was a plan of actions undertaken by the Greek government and put to vote before the Greek Parliament. In exchange, the Members of the Euro zone and EU institutions agreed to a new financial supporting program, "*together with the IMF and the contribution of the private sector*" of "*total official financing*" amounting an estimated 109 billion Euro. The maturity of future EFSF loans to Greece would be lengthened form the current 7.5 years to a minimum of 15 years and up to 30 years, the interest rate of the existing loans was substantially lowered and their maturity lengthened. In addition, the commitment to mobilize EU funds and institutions such as the European Investment Bank towards the goal to relaunch the Greek economy was undertaken, as well as the mobilization of "*technical assistance to help Greece implement its reforms*". The whole excersise is designed to give to the Greek economy a vital breathing space "*notably through lower interest rates and extended maturities, to decisively improve the debt sustainability and refinancing profile of Greece.*" Its official name is "Medium Term Fiscal Strategy", it is designed for the years 2010-2015, and we call it "the Medium Term Program." We have given the Memorandum, the Medium Term Program and the evolving corpus of their implementation legislative and administrative acts the all inclusive denomination "the Measures".

In the last days of June 2011 the Medium Term Program has been adopted in the Greek Parliament by a very narrow vote. It took the form of two pieces of legislation: an act adopting the Medium Term Fiscal Strategy (law 3985/2011), a law adopted for its implementation (law 3986/2011). On July 21rst, 2011, it has been ultimately sanctioned by a statement of the Heads of State or Government of the Euro area and EU Institutions, together with their commitment to release the corresponding financing of 109 billion Euro.

But it is not yet over. In their meeting of July 11th, 2011, the Ministers of Finance of the Eurogroup discussed "*the main parameters of a new multi-annual adjustment program for Greece*". They didn't fail to observe that "*the responsibility for resolving the crisis in Greece lies primarily with Greece*" but they also "*recognized the need for a broader and* *more forward-looking policy response to assist the government in its efforts to bolster debt sustainability and thereby safeguard financial stability in the euro area*" and, in this context, they tasked a Eurogroup Working Group "*to propose measures to reinforce the current policy response to the crisis in Greece*". So, a Long Term Program is ahead.

The general idea is to give Greeks a real breathing space so as to have a fair chance of recovering. Otherwise, how can they pay their debts back?

The content of the Greek Measures

The May 2010 Memorandum encompasses chapters for fiscal policies, financial sector policies, structural reform policies, safeguard assessment; in general it sets policy targets and is complemented by a Technical Memorandum. For the June 2011 Medium Term Program policy targets are too vague; it includes a detailed sequence of concrete actions to be taken within preset time limits.

Some indicative examples from the 2010 Memorandum: the Greek Government undertakes to limit the annual general government fiscal deficit to 18.5 billion € - a figure of gigantic dimensions for our seize; to fully realize the fiscal measures, including pension and wages cuts, within the second half of 2010; to under-execute state budget primary spending by 5.6 billion € and, at any time, should performance run short of these objectives, or revenue drop below schedule, to stand ready to take corrective actions;

to present the pre-budget of 2011 to the Parliamentary Committees in early October 2010 consistent with a general government fiscal deficit target of € 17 billion in 2011. The Government undertook also to adopt measures of restructuring tax administration and fighting tax evasion in the months ahead. The relevant measures include measures to ensure prompt implementation of the new tax legislation, to collect tax arrears, to reorganize the large tax payers unit, to strengthen the audits for high-wealth and income individuals, to strengthen filing and payment controls, and to improve tax payer services. With regard to public administration reform to establish a single payment authority and simplified remuneration system. With regard to strengthening expenditure control in sub-national entities, the government undertook to pass measures for the Health Sector, the Local Government and the State enterprises, for which even specific measures are provided, like the restructuring of the rail-road company or the obligation for the 10 largest loss-making enterprises to publish their financial statements. In the chapter of structural reform policies, the privatization of state owned energy and rail-road enterprises was undertaken as well, as also the parliamentary approval of a substantial pension reform, introducing a new system consisting of a contributory pension to top-up a non contributory, means tasted, basic pension, aiming to control the increase in pension spending.

A much more elaborate, tight and detailed plan of action, the Medium Term Program of 2011 could remotely remind a kind of a Soviet five years plan, with the important difference that it does not provide for any development measures. Again indicatively, it includes a detailed list of public assets (land and assets in State enterprises) that have to be privatized, named one by one, establishes an Agency (called "the Fund") empowered to proceed to these privatizations, transfers, *uno actu* the property rights of these assets to the Fund, provides for the participation in its Board of Directors (with a consultative vote, but with full rights of information) of two representatives of the Eurogroup to be named by the European Commission, while three of the seven members of an important consultative body of experts are proposed by those two representatives. It also imposes new taxes; restricts even more the recruitment of personnel in the Public Sector; introduces strong elements of flexibility in the labor market; radically changes the rules for adopting the budget of revenues and expenditures: formally annual, the budget is now triennial, with detailed figures and allocation of the resources for each particular expenditure for each one of the years 2012-2015.

The radical change to the presumed substance of our constitutional structures, but not to their appearance.

The Measures have smashed the essence of our constitutional structures, while at the same time they have solidified their forms. Formally, nothing has changed in our Constitution; on the contrary, the constitutional procedures were even strengthened, because our international partners/creditors/guarantors have required the formal adoption of any of the Measures by the Greek constitutional institutions.

Thus, the Measures have set the *constitutional* agenda. The Government does not *propose* to the Parliament the most critical pieces of legislation; it only *submits* the drafts already pre-agreed with the Troika. Apart from the legislative procedures, also the administrative structures and ways of are also altered to accommodate the requirements of the Measures.

The Measures have set the *political* and agenda. Government and Opposition Parties are not divided along the lines of *their* programs, but along the lines of the Measures. It’s the pro-Memorandum trend against the counter-Memorandum one. The Measures have also altered the political subject: the “Troikans” are consulting with all the Greek actors of the political and social scene, such as political parties, Ministries, Trade Unions, interest groups, mass media and then they declare their truth. The Task Force has already started to do the same.

The Measures have set the *social* agenda. Social behaviors, ways of life, orientation of social relations, even cultural and entertainment habits, jokes and bitterness are being developed around the imposition and the impact of the measures. Trade Unions are rather reacting to the impact of the Measures and less acting to enforce an agenda of their own, social groupings are being formed to face the Measures and the situations created by them.

The Measures are also setting *personal and family* agendas. What should I do to secure that my family and myself will survive the Measures? Should I sell my little vegetable plot in Macedonia to spare some money for my daughter’s studies, or should I count on keeping my job? Should I try for a job opportunity elsewhere? Or, maybe I can profit from the Measures?

Trends and impacts

After the first moments of frozen silence, new trends in Greek society emerged, along the lines of the Measures, of course.

One trend is characterized by a self-whipping and dramatizing lament for our misdeeds and a loud denounce of the ways of life and politics we have been adopting for years and years. Popular among people who had a role to play in the sequence of political developments that brought us here, this trend is expressed mainly by parts of the actual Greek élites, in agony for the fate of the country. Economists, journalists and other personae of the mass media, bankers and businessmen, former office holders of almost all political tendencies (retired or not), academics, politicians (even some Members of the Government), in general rather well-off people and not among the losers of the denounced past, are shouting their truths in what they think is a powerful display of courage. They condemn, contempt, deplore the structural opportunism of our Greek political leaderships, and of our business communities, the mediocrity of our academic and cultural élites, the monumental inefficiency of our monstrously swollen state in the last 35 years, the bad habits of the man on the street etc., etc. They defend fanatically the imposed austerity measures to strictly observe the Measures is becoming the quintessence of their ideological agenda. Let, at last!, the developed and well functioning heirs of the civilized Enlightenment come and bring some order to the oriental mess that we vulgar Balkanians have indulged in. In its extreme expressions, this trend nullifies whatever institutional, developmental, cultural or social achievements –and t here where good achievements, too- of the 35 years after the collapse of the Greek military junta. Sometimes –this is not meant for all the representatives of this trend- it leaves me with the acrid aftertaste quite a few of the protagonists of the era that passed away are striving to preserve a role in the era that comes.

The contrary trend is defending the social condition of the era before the outburst of the crisis. All types of weaponry are used: the Measures are attacked as unconstitutional (an argument dismissed by our Supreme Administrative Court); echoes of our historical resistance spirit are animated, newspapers call the Task Force "*Kommandatur*", their Head "*Gauleiter*", the IMF representative "*Roman proconsul*"; the Measures, brutally imposed by money-thirsty international speculators constitute a cynical assault on our national sovereignty and a heavy insult to our Greek pride (the Measures, not the loans that preceded or follow them...). The (undeniably) negative impact of the Measures on the everyday life of millions of Greeks is magnified and exaggerated. This trend takes the results as causes: we suffer because of the Measures, not because e of the reasons that have brought us there. It expresses (and capitalizes on) the defensive attitude of a society neither willing nor ready to face the decomposition of a very convenient social status quo. In its leftist expression, this trend underlines more the imperialist and capitalist feature attributed to the EU and IMF; in its rightist, it underlines more our offended nationalism; in its opportunistic form (expressed, unfortunately, to a large extend, by the main opposition party which is the Conservative party) it underlines the inaptitude, experimentalism and unprofessionalism of the Government, trying to pave the way for a return of the Conservative party to power, after somebody else has done the dirty job.

Neither of these main trends, at least in their actual format, seems to be credible enough to become majority or capable to advance an important alternative political agenda. In short, at least up to this point, both the blind support to the Measures and blind oppositions to them are originating from the political system, the personnel and the methods of thinking of before. *La Ballade des Dames de jadis...*[1]

Although these two trends still dominate the public attitudes, after about two years from the outburst of the crisis some space is being created for analytical, and, in general, more sober thinking. Criticisms are voiced from eminent economists against the Measures not on an ideological basis, but on a different estimation of their assumptions and strategy. The limits of the austerity policies as means for escaping depression and reaching

[1] After the title of a poem by the late medieval poet Francois Villon.

economic recovery are widely discussed. There is need for structural changes, for stabilization programs, including austerity measures, definitively yes. But not the adopted ones, because they are wrong. Attention is drawn to the long European inertia and the expected role of Europe for the future, but it is not overemphasized. Attention is also drawn to Greek shortcomings, but they are not overemphasized either: we may be unique, but not that unique so as to escape the overwhelming wave sweeping away Europe and almost the rest of the globe.

The Measures entail important social cost. Unemployment has reached unprecedented numbers; huge numbers of businesses have stopped working; emigration, especially of skilled young people, towards is raising or pursued; the Department of Immigration and Citizenship of Australia is planning to host a "*Skills Australia Needs*" information session in Athens on October 8^{th} and 9^{th} 2011, and vivid interest is already obvious in the press. Savings, even relatively small ones, are flowing outside the country, while a generalized anxiety over the immediate future touches most of the Greek families. At the same time, deep structural defects of both the private and public sector of the economy and the mal functioning of the state come to surface to produce a kind of generalized pessimism, unwillingness for initiative, even fatalism. Or violence.

However, in general, Greeks, so far, seem to show more patience than social unrest. There are protests, strikes and demonstrations, clashes on the streets, but, either because the fatigue of the pressure for securing the sustenance of the family deprives many Greeks the readiness to a major political fight, or because most Greeks have still some savings left, no fundamental shaking of the social cohesion has yet occurred. It may occur in the near future if there will be no tangible signs of recovery and the unavoidable additional measures will prove unbearable and the political personnel void of whatever authority is still left.

The movement of the "indignant ones", the young demonstrators that have been flocking in anger and despair every day and night, for long-long days and long - long nights this summer, in the Constitution Square, before our Houses of Parliament, probably the most innocent movement of opposition to the Measures, has failed to create a nucleus of a new political subject, not even some elements of new political personnel, capable to enter into the perspective of taking over the fates of the nation.

The outburst of blind violence, experienced mainly but not only in the center of Athens at several instances, rather confirms than refutes the lack of an alternative political agenda.

The last wave blind violence has recently taken place in Volos, a rather big province city in the center of Greece, because the football team of the city has been disqualified from the Greek Super League as a sanction for proved fraud on football games committed by its incriminated and imprisoned Chairman. The dimension of the unrest, the clashes on the streets, the Molotov bombes, the fires put on cars, shops, houses, the destruction and pillage of the offices of the majority Members of Parliament elected in Volos did not, even remotely, resemble to Volos's active participation in the demonstrations against the Measures.

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. Earlier 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 recent Dominique Strauss-Can case. 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.*" The comments should be made from the points of view of human dignity, freedom of information, freedom of opinion and the presumption of innocence. In their effort to balance between constitutional norms and values, case law and public interest, several dozens of the candidates expressed the opinion that *les péripéties de la vertue* of Mr. Strauss-Can justified a malevolent satisfaction of the Greek public opinion, eager to actually *see* him suffering, because of the misfortunes the IMF, under his leadership, 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

Strauss Can. A sentiment of just punishment of an evil guy? A sentiment of unconscious solidarity to a suffering dignity?

***Excursus*: A personal feeling of mine**

I'm trying to offer you as sober and not biased an analysis as I can. But I have personal feelings, as well. I have a weird feeling of uneasiness. Like always, when in difficulty, I seek refugee to the Classics. It's not the Greek Classics this time. Face to face with reasons for joy and for sorrow, for joy over the good perspectives of a profound improvement of my country by utilizing the crisis as a vehicle for positive change, and for sorrow for realizing lost chances and the toughness and bitterness required for the effort, I prefer the more practical Latin ones. So, it's Catullus:

> *Odi et amo. quare id faciam, fortasse requiris?*
>
> *nescio, sed fieri sentio et excrucior.*

Or, as translated in English

> *I hate and I love. Wherefore would I do this, perhaps you ask?*
>
> *I do not know. But I feel that it happens and I am tortured.*[2]

The radical change of our past

The Measures are shaping our past, as well. Light is being shed on corners of our past, which we used to consider unworthy of serious attention. 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.

[2] Poem 85

A democratic *ivresse* had captured all and every one of us in that summer of 1974: the fascist military dictatorship had collapsed (although at the heavy cost of Turkish military occupation of 37% of the territory of the Republic of Cyprus), as well as the right oriented and US guided semi-democracy of first decades after the War and the Civil War. Democracy was restored and a progressive liberal and social Constitution framed and fortified this precious achievement. The *noblesse* of the politics encapsulated all our good hopes: if democracy –and its constitutional foundations- will function, then prosperity will come. By itself. In happy addition to all this, Europe opened a hospitable bosom to the heirs of her democratic cradle; 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. The 35 years of smooth constitutional normalcy and our adherence in the EU –crowned with our participation in the Euro zone- seemed a never lasting nirvana. What went wrong?

In the course of the years our faith in politics democracy degenerated into a lust for whatever could be attributed to the "people". It happened gradually and imperceptibly. Anything attributed to the "people's" express demands or presumed aspirations was considered democratic, and, as democratic, socially acceptable, politically defendable, ideologically respectable and constitutionally protected. A reversal of the relation between the political leadership and their electorate happened: at least during the last two decades it's the polls about the people's whimsies and preferences that set the critical actions and the even more critical omissions in the political agenda, not the substantial proposals of the political leaderships.

As a result the notion of "public interest", as a fundamental notion in the democratic deliberation, has been corrupted and undermined by the overwhelming dominance of seemingly contradictory, but in essence complementary and converging "liberal" and "populist" trends: the cult of all sorts of egotistic situations (often loudly professed in the language of individual rights by some former Communists, probably to fill the deep gap opened by the departed vision of their earlier youth) went in pair with a kind of collective sub-egoisms expressed in the rhetoric of a social *acquis*, where every possible grouping presented its idiosyncrasy as a "people's demand", only to find the easy support from the main opposition party of the day and from the Left's formations anyway.

As a further result, the difference between the political forces, at least the major ones, faded away, until finally it almost disappeared. Now it was all about the style of the political persona, not his or her (proved or assumed) statesmanship. The good look of the politician, his or her life style, his or her achievements in sport or show business, the frequency of his or her appearance on TV and his or her relations with powerful extra political centers, like economic milieus, influential football teams, and, of course the media, his or her (real or fake) scientific skills or titles, sometimes even the politically comical but personally deplorable televised screaming started to count more and more.

The goldmine “Europe” yet did not lead to a conversion of mentalities. In particular it didn’t lead to a conversion with the mentality that, at least up to a certain extent, it is part of the historical tradition of the developed Europe and it’s good, ethical and wise to keep some logical proportion between what you produce and what you spend. It is the huge public moneys (European moneys or, largely lent, Greek moneys) that have set our consumption standards and life-style ethics, not our productivity. At a strategic depth, the absorption of the European mega-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. In particular the endless, until relatively recently, flow of money for agricultural subsidies and the Community Support Frameworks, the tricks and frauds with pricing and billing created the ideal of megalomaniac spending, both at makro-level (such as the vulgar lavishness in the preparation of the Olympic Games of 2004) or at mikro-level (such as the purchase of branded goods as both concrete need and social ideal of the everyday Greek). A society of consumers arrogantly squandering opportunities while imprudently wasting wealth and resources, spending more and more, and encouraged to do so, rewarded a political class promising the continuation of the parasitic prosperity, and borrowing accordingly. The plethora of parasitic giving (also including massive employment of superfluous personnel in the state apparatuses) has lead the county's sovereign debt to strategic dimensions, transformed it to a selling out of the country and, further on, turned this selling out of the country into a democratic request of the people. As remarked by 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.*"[3]

No constitutional or other legal disposition has imposed this outcome; but not impeded it either. It was the Greek governments who took the decisions, the Greek society who welcomed them, and they were all legally impeccable.

The explanation I have just narrated may be right or wrong, I don't know. But what I know is that the Troikans and the Task Force, every time they set foot on Athens remind me that, at the end of a 35 years' long day, the equation democracy + Europe = happiness + prosperity simply didn't work.

III. **The Sovereigns over the debt**.

If it's not just our creditors, who else?
We, as many-many other countries, have the experience of the reactions of unpaid international creditors. In 1898, for instance, all our import duties and the taxes on the monopolies of matches,

[3] 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.

petrol, playing cards, salt and the emery produced in the island of Naxos were directly collected by an ad hoc instituted company (a kind of SPV -Special Purpose Vehicle- of the time) put under the absolute control of a Commission of six representatives of the sovereigns who were our creditors. We called it "the International Financial Control", and it took over by virtue of the law ΒΦΙΘ'of 26th February 1898; it was formally dissolved only in 1978. No further international fuss, if any fuss at all.

In the year 2009 the integration of finances and economies at global level gave a tiny state –us- the power to provoke a globalized impact. Greece is a Euro zone country, and, as long as she remains there, she cannot recover the archetypical sovereignty feature of the *iura cudendae monetae*, i.e. Greece cannot return to a national currency and to her authority to devaluate it, exercising a redeemed sovereign power in that matter. Hence we dispose no monetary instruments of our own. While our currency is fully integrated to the currency of the 16 other Euro zone states, our economy isn't because the economies of the Euro zone countries are not as integrated as their currencies. Due to the lack of instruments of economic policy at Euro zone level and the incoherence in conceiving an applying economic policies in the Euro zone, each end every country's mistakes or misdeeds can easily lead to other countries' problems; important fiscal difficulties in one country are a disease of the currency of 16 other Euro zone countries, including some of the biggest economies in the world.

In the essentially identical estimates of the IMF, the World Bank and the CIA World Fact book, in the year 2010 the World Gross Domestic Product [=GDP], calculated in million US Dollars, was about 63,000,000, the GDP of the EU about 16,000,000, the GPD of the Euro zone about 12,175,000[4], while the Greek GDP about 305,000. In the European estimates of same year Greek GDP was only 2,5% of the Euro zone GDP; Greek debt no more than a humble 4,2: out of the 7.837 billion Euros of the Euro zone total sovereign debt, only 328 billion were Greek; as per the weight of the Bank of Greece, Greece's share at the European Central Bank's capital share (also called Greece's "capital key") is only 2,808%[5]. Figures speak with a sardonically clear voice: the global economic system is not depending on us Greeks. Why, then such a global interest about the Greek crisis?

Possibly, because it was the first to reveal the threatening magnitude of the European financial crisis and the consequences of lack of a political authority, strong and willing enough to impose its rules of the game to "the Markets". Possibly, because, to put it in military terms, Greece is the most vulnerable frontline in the fight against the crisis. The cacophony, in the cradle of symphonic music, of the uninspired bunch of the politicians in office can hardly justify the title "leadership". Compared with the USA (and taking into full account the internal American political complexities on the matter), and even after the recent ESM, EFSF and EFSM decisions already mentioned, the Euro zone

[4] This figure as calculated by the World Bank
[5] Greece's debt share in the Euro zone is bigger than her GDP share because of her General Government debt is 143% while the same at Euro zone level is only 85% (figures o 2010). This explains why the Greece's debt share is bigger than her GDP share in the Euro zone.

disposes only a shadow of the institutional and political arsenal needed to face the financial crisis and its collateral damages. So, we are all deep in the hands of “the Markets.”

“***The rebel of the Markets***”

Within the limited reach of my analytical tools of a lawyer writing on economic matters, I understand the actual condition as “the Markets”’ power versus the state powers; this is “the rebel of the Markets”. The globalized financial and economic crisis becomes a threatening phenomenon, destabilizing state power because a force, uncontrollable by the power of one state acting alone or of more states acting collectively, creates its own realities to serve its own priorities. Who is this force?

Well, I don’t know. What I presume, is that it definitively includes the financial institutions of global dimensions, presence and activity and the rating agencies. In the assessment of an expert observer a new world order is gradually being established in the world economy. It includes some “*few notables, implacable and tough”*: Goldman Sachs, Crédit Suisse, G.P Morgan, Deutsche Bank, Barclays, followed by “*the survivors of the tsunami*” –meant the financial crisis of 2008- which includes several French, Spanish, German, Canadian, Australian and Scandinavian banks, plus some newcomers, arriving from emerging economies, while the rest of the financial institutions are focused in their local environment.[6]

The "Markets" excersise considerable control over the world finances by accumulating gigantic amounts of stateless money, in many changing forms and transfer it in many changing places, all the day long, all the year round, escaping any effective state control. They construct products, such as subprimes, collateralized debt obligations, credit default swaps they commercialize them and earn and accumulate huge amounts of money. These products are called poisoned if and to the extent that they are not covered. It has been calculated that this bank bubble is about ten times bigger than the overall global GDP and sovereign dept. In essence, "the Markets" exploit to their limits the possibilities and philosophy of the liberal globalized capitalism, in the form inaugurated since the eighties. They usually don't break the law, because they are the law. State and political authority, governance and regulation are dismissed as enemies of progress and development and political power is useful only to the extend it serves the unhampered their operations, which they call "the economy." A monstrous accumulation of gigantic amounts of money coldly indifferent about and fully dissociated from any productive basis.

Here is the story of an experience of us with "the Markets", as told by a *connoisseur* of the matter.

[6] Marc Roche, *La Banque. Comment Goldman Sachs dirige le monde*, 2010, Greek edition, 2011, p. 296. Roche is the correspondent of the French newspaper "Le Monde" in the City of London. The translation of the cited passages translated from Greek by me with the valuable assistance of Angeliki Kokkini, whom I thank for this.

"In 1999, when the creation of the euro was decided, Greece was not in a position to join the common currency. At that time, French and German power holders, determined to establish the reputation of the common currency by introducing as many states as possible in the mechanism […]
The Greek Government seeks Goldman Sachs' assistance to find tricks, in order to enter the Euro zone shortly after the creation of the common currency. Athens mainly wish is to conceal the extent of its deficits. To make it happen, the Socialists, led by Costas Simitis, intend to get rid of the burden of [the considerable] military expenditure, in a way that these expenses will not be included in the public expenditure. [...] Why should Goldman Sachs refuse such a mandate, against a high fee, and not proceed to a lawfully appearing artificial make-up?? [...] Italy did exactly the same with the U.S. bank, JP Morgan.
For Goldman Sachs, Greece becomes all of a sudden manna from Heaven. How could they not see that a small country, with a weak banking infrastructure, only elementary financial statistics and a flourishing black economy, which makes it difficult to collect taxes and duties, is in fact a bargain? For a financial colossus the ground is even more convenient, since in Greece the Stock Exchange has no deterrent rules, the state blurs the economic game and the daedalean shareholders' agreements are the rule.
The Goldman [Sachs]' empire is particularly interested in Greece for an additional reason as well: the nature of its debt. It is about bonds [...] suitable for speculation. [...]
In 2006, Goldman Sachs, takes distances from Greece. In order however to keep some access, it becomes consultant of the National Bank of Greece, the first commercial bank in the country. [Goldman Sachs] had a powerful ally in the National Bank, named Petros Christodoulou. This expert on derivative products had been working as a stock broker at Goldman Sachs in London before coming to Athens in 1998 to undertake a leading position in the Greek bank. Through an offshore company in an U.S. tax heaven called Delaware, a part of the Greek public debt is transferred, without anybody noticing it, in the account of the National Bank, so as to trouble the waters. [...]
In October 2009, after five years of Conservatives' government, the Socialist George Papandreou wins the elections. A month later, Gary Cohn, number two in Goldman Sachs, arrives in Athens accompanied by investors. Among them also John Paulson, head of the American speculative fund bearing his name [...]. Cohn and Paulson propose to the new government to

rearrange the budget of the Health Sector in the same manner as they did with regards to the military expenditure. Moreover, Goldman offered to sell part of the Greek debt, unnoticed by the investors, outside of the stock market and unnoticed by the investors, to [other] investors based in China [...]. The investment bankers [...] left empty handed. This time their trap didn't work.
The Greek crisis proved to be a gift Heaven for the "djinns of New York". [Goldman Sachs] has received the commissions for the assistance she offered to the Greek government. She speculated shamelessly in the difficulties of Greece and against Euro.
By attacking Greece and Euro, the markets address an important - and beneficial-message to politicians: the budget deficit is not controlled anymore. In this respect, they play a useful role, in their own way."[7]

Rating agencies complement the picture of the Markets. Their power to downgrade and upgrade governments and financial institutions proved able to produce much more practical outcomes that state regulation or other political activity. With one exception: the public assets, constituted out of taxpayer's money, given to secure the survival of some of the collapsing banks or businesses or even of states in danger of insolvency.

Here is the story of an American experience with the rating agencies, as told by an even greater *connoisseur* of the matter. Paul Krugman fiercely attacked Standard & Poor's credibility after their recent downgrading the U.S. for their government debt. He chose a Yiddish world, "chutzpah":

"If there's a single word that best describes the rating agency's decision to downgrade America, it's chutzpah — traditionally defined by the example of the young man who kills his parents, then pleads for mercy because he's an orphan."In Krugman's view,

[7] Roche, op.cit. (Greek edition), p. 23,24,27,28,29,30. Former Prime Minister Simitis has denied this Goldman Sachs role in Greece's adhesion to the Euro zone.

> *"America's large budget deficit is, after all, primarily the result of the economic slump that followed the 2008 financial crisis. And S.& P., along with its sister rating agencies, played a major role in causing that crisis, by giving AAA ratings to mortgage-backed assets that have since turned into toxic waste.*
> *Nor did the bad judgment stop there. Notoriously, S.& P. gave Lehman Brothers, whose collapse triggered a global panic, an A rating right up to the month of its demise. And how did the rating agency react after this A-rated firm went bankrupt? By issuing a report denying that it had done anything wrong. [...]*
> *More broadly, the rating agencies have never given us any reason to take their judgments about national solvency seriously. [...]."*
> "*Yet America does have big problems.*" Their nature is political: "*These problems have very little to do with short-term or even medium-term budget arithmetic. [...]*
> *No, what makes America look unreliable isn't budget math, it's politics. And please, let's not have the usual declarations that both sides are at fault. Our problems are almost entirely one-sided — specifically, they're caused by the rise of an extremist right that is prepared to create repeated crises rather than give an inch on its demands.[...]*
> *The real question facing America, even in purely fiscal terms, isn't whether we'll trim a trillion here or a trillion there from deficits. It is whether the extremists now blocking any kind of responsible policy can be defeated and marginalized."*[8]

In view of the novelty of the matter, I feel inclined to try to understand its nature by comparing it with phenomena, familiar to me because abundantly discussed, taken from the historical pasts and presenting some analogous characteristics. For instance, the Plague and the Black Death in the Middle Ages: it started somewhere and diffused everywhere. A tiny village, even an individual household, since fallen in the plague, became a matter of much wider relevance. The Plague is more

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[8] Paul Krugman, *Credibility, Chutzpah and Debt*, New York Times, August 7th, 2011.

or less coming from the nature; its diffusion may be caused by the lack of adequate medical science, but the source of its destructive power is not a social construct. The fight against the Plague was not primarily a fight for power. On the contrary, religion is a social construct and so it the religious might and impact. The power of the Papacy was the power of the Catholic Church, which was not of state power; it was, however, a force strong enough to penetrate power structures and human souls, to ignore state borders and limits, and to make mighty emperors succumb. This fight was a struggle for power.

It seems that a kind of *bras de fer* is actually taking place between "the Markets" and the political instances of national and international governance. Speaking about the European leaderships, either because of naivety or of opportunism, or, maybe, for other reasons, they have not calculated that such a moment of clash over the power to take the economic decisions of global relevance would come. The outcome of such a clash is not a matter of intellectually or scientifically resolving a complex issue. In the Nazi films "The Golden City" ("*Die goldene Stadt*" -1942) and "Prague Baroque" ("*Prager Barock*" -1943], the Czech capital Prague was presented as an essentially German city. There is, of course, an enormous space for historians, anthropologists, sociologists, political scientists, even lawyers to debunk the Nazi masquerade and reveal this gross lie. But, under the particular circumstances of the day, the ultimate means to refute that fallacy was rather the armies chasing those who professed it out and away; not the argument. Hopefully our actual political leaderships –and ourselves- will react rather like Churchill after September 1939 and less like Chamberlain in Munich 1938.

IV. Some reflections on Law

The shift from rights and terror to economy

For about two decades a general trend of the legal theory in the countries of our legal culture was preponderantly focused on human rights and, after September 11th, on terrorism. Philosophical diatribes, essays, fierce public discussion, scholarly work, elaborate case law and even more elaborate dissenting opinions underlined the importance of the human rights' and humanitarian imperatives, their value for the most intimate moments of our lives, for the construction of our polities and for their international relations. Rights were taken very seriously. No political or philosophical effort was spared to scrutinize state's against the solid ground of human rights. After September 11th a new wave has been added, namely the fight against the international Islamist terrorism, the legal limits a free and democratic state should observe in fighting terrorism without losing its free and democratic nature.

Now, it seems that the climate of international legal discussion, practical, jurisprudential and scholarly has shifted to the global financial and economic governance. A shift from rights and terror to economy is happening.

The shift from rights to economy is also a shift of the attention from the individual freedom and the political liberty to the social condition. The shift from terror to economy is also a shift from the general and political to the socio-economic. For as long as a particular individual does not fall victim of a terrorist activity, the terrorist terror is rather abstract. It affects people as a general menace hanging over their heads, affects the climate in which individuals live, but, as long as no terrorist attack has actually affected them individually, they can keep on with their quiet sleep in their houses and with their lives as usual. On the contrary, the global economic crisis may not show the brutality of a terrorist attack, but affects people in their individual life in many concrete and practical forms. It does not affect the forms of their freedoms and liberties: the well established freedom of choice to keep on sleeping in their houses and lead on their lives as usual is always constitutionally protected. But this freedom is largely preempted if there is no money to pay the mortgage of the house or if the job or a substantial part of the income is lost. The general, but not individualized feeling of the terrorist threat is giving place to a multitude of millions individual anxieties.

To fight Islamist terrorism, traditional and well known means such as political decision, intelligence and force seemed to be enough. The type of the enemy

–an armed out-law constellation waging war against us- has been experienced before; what has changed was the magnitude of the menace and sophistication of the armed forces.

But to fight the global economic and financial crisis? Factors crucial for the creation, continuation and aggravation of the financial and economic crisis seem to be situated somewhere in the outer globe, beyond the effective reach of political power. Are they within the reach of law? The positivist fundaments of my legal understanding lead me to believe that enforcement is, generally, inherent to the form of legal norm. Without a real enforcement possibility the legal norm degenerates into an ethical-philosophical postulate. Not to mention that some of the most influential global actors are well identified, but still not yet recognized as friends or as foes.
Who, and why, will enforce a law on "the Markets"?

The bulk of legal literature, legislation and case law produced under the eras of the humanitarian wars and the fight against terrorism still keeps value and relevance, but is not any more on the edge. The magnificent legal elaborations starting from the American Patriot Act and the debates about it, the scholarly and political discussions and the evolution of the case law on the detainees of Guantanamo have already a scent of *passé*. So does Rawls' categorization of the particles of this world in "*Reasonable Liberal Peoples*", "*Decent Peoples*", "*Outlaw States*", "*Societies burdened by unfavorable* *conditions*" and "*Benevolent Absolutisms*"[9]: would it not be more timely to categorize states and peoples according the ratings of the rating agencies? The fierce discussion over the relatively recent emblematic decision 1 BvR 357/05 of February 15th, 2006 of the German Constitutional Court, invalidating on the grounds of human dignity a law permitting the German Minister of Defense to order the shooting down of a hijacked airplane aiming – like the planes of September 11th- at an inhabited target seems also to fade away.[10]

It rather gives place to other emblematic decisions of the same Court permitting or invalidating Germany's participation in financing the problematic Greek economy. The German Federal Constitutional Court has already twice denied to issue preliminary injunctions against German Acts, adopted on May 2011 assisting Greece in the framework of the relevant European mechanisms adopted the same month[11], until it, finally, "*rejected as unfounded three constitutional complaints which were directed against German and European legal instruments and other measures in connection with the euro rescue*

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[9] John Rawls, *The Law of the Peoples, 1999*

[10] BVerfG, 1 BvR 357/05 , dated 15.2.2006. For a short in English account see Leicht, *German Constitutional Court Strikes down Aviation Security Act*, in World Socialist Web Site, in http://www.wsws.org/articles/2006/feb2006/germ-f28.shtml. For the integral text of the decision (in German), see http://www.bverfg.de/entscheidungen/rs20060215_1bvr035705.html .

[11] Decisions 2 BvR 987/10 and 2 BvR 1099/10. I owe this information to Prof. Dr. Michael Brenner, of the University of Jena, to whom I express my thankful appreciation. He presented these developments in his very informative paper "Dealing with the European debt crisis from the perspective of the German constitutional law" in the Conference "*The Sovereign Debt Crisis and the New Boundaries of the State*", in Valetta, Malta, on July 8th 2011.

package."[12] The Court resolves the issue as a matter of application of Art. 38 of the Constitution, which by warranting voting rights to the German citizens protects them against a loss of substance of their constitutionally inherent sovereignty. The European and German legislation regarding to the Measures is constitutional because (and to the extent) that the competent committee of the German Federal Parliament has been consulted and consents. In clear contrast to the reasoning of the decision of the Greek Supreme Administrative Court, which dismissed the correspondent allegations for unconstitutionality of the Measures essentially on the grounds of the supremacy of the European Community Law[13], the German decision is an overt step of retraction from the European supra-nationalistic approach: you can do it, but not at the expense of German people's national sovereignty.

We have definitively to enrich the background of our jurisprudence with vocabulary including words like "per capita income", "GDP", "CDO", "CDS", "Private equity", "Subprime", "Hedge Fund". The vocabulary coming from freedom and liberties' discourse, from bioethics, privacy, public security etc., always useful, isn't enough any more.

[12] In its judgment on the cases 2 BvR 987/10, 1485/10 and 1099/10, issued on September 7th 2011 by majority of 7 to 1. For a short presentation in English, see Press release no 55/2011 of the Federal Constitutional Court, in http://www.bverfg.de/pressemitteilungen/bvg11-055.html.For the integral text (in German) see http://ww.bverfg.de/entscheidungen/rs20110907_2bvr098710.html.

[13] As expressed in the opinion of the Judge *rapporteur* to the Court. [See this opinion (in Greek) in www.constitutionalism.gr.

Can the Constitution sustain non sustainable acquis?

In the perplexity and embarrassment of the first moments, our defensive reflexes reacted first. We sought something solid to lean upon, in the hope not to lose the essentials. So we turned to the law, and more specifically to its supreme form, which is the Constitution. It's law that will protect us from the radical deterioration of our social condition. The Constitution is the ultimate guarantor of our positive social *acquis* –our civil freedoms are not at stake- like social security, guaranteed minimum of wages, health care, public education, jobs, working conditions etc. So the Measures are unconstitutional. Hundreds of passionate pages have been exchanged on the issue until our Supreme Administrative Court, in my view convincingly, dismissed the case of their alleged unconstitutionality.

Still, a reversal of the traditional functioning of our national sovereignty, as expressed by and in our Constitution has taken place. Our Constitution is preempted of a good deal of its *substance*, while its *forms* are reinforced. Because we are in deep debt our creditors/guarantors interfere strongly and decisively in fields where the decisions were such interference was neither sought nor tolerated. So the Constitution cannot protect our power to decide what we would like to decide. But, at the same time, our constitutional *forms* are strengthened, because our creditors/guarantors insist that, ultimately, the decisions asked for as precondition for a tolerable further financing of the country must pass through our constitutional institutions, mainly the

Parliament and the government, so that Greece will bear the ultimate political and legal responsibility for them. Thus, we offer to our creditors/guarantors warranties of constitutional eminence; they don’t need to come and occupy the country. In the case under discussion, the legal and political consequence of preserving the external features of a traditionally sovereign country is to reinforce the power of our creditors/guarantors to interfere in our internal affairs, and not our power to decide by ourselves.

Recourse is being made to the Constitution also to protect us from analogous situations in the future. What if we accept the famous German clause -109 par. 3, 115 par. 2 of the German Fundamental Law- and put a constitutional debt ceiling by prohibiting the government to borrow in excess of 0.35% of the GDP? Spain has already adopted such a clause, under the applause of Sarkozy and Merkel. Others are considering such a clause, while others, like the President of Portugal decline the idea. Again, the general idea is that law, in the form of its supreme appearance, is apt to be the warrant to all good things that can be achieved. I cannot share this metaphysical approach. Our Constitution –the law- did not provoke the crisis and is not enough to overcome it.

V. **Epilogue**

Like I said, what an Aladdin’s cave!

September 25th, 2011