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Direct Democracy in Greece & the 2011 Referendum

Introduction

During a parliamentary debate on austerity measures in June, the Greek Prime Minister announced a national referendum on “major changes” to be held in the fall. Details as to the exact scope or timing have yet to be released. If held, it will be the first referendum since 1974, when in the aftermath of the military junta (1967-1974) the Greek people were called to decide between a constitutional democratic monarchy and a constitutional democracy, opting for the latter with close to 70% majority.

Historically, forms of direct democracy have been limited to national referenda, which are a rare and particular species in modern Greek history. Out of the total seven national referenda organized in Greece during the 20th century,¹ six have been almost exclusively related to the very same question of monarchic rule (*i.e.* 1920, 1924, 1935, 1946, 1973, 1974); three out of seven were organized by the then ruling dictatorships failing to meet basic democratic and transparency requirements (*i.e.* 1935, 1968, 1973), and all were conducted in periods of great military and political upheaval.

Current Legal Framework.

Contemporary Greek institutions of direct democracy in principle comprise national, and more recently, local referenda. Neither type of referenda having actually been organized since the restoration of constitutional democracy in 1974.

National referenda are regulated by the Greek Constitution (Article 44(2)), which provides for two categories:

- 1) Referenda on “crucial national issues,” following a proposal by the government and approved by the absolute majority of the Parliament, or
- 2) Referenda on passed laws regulating “serious social issues,” upon a vote by 3/5 of the Parliament following a proposal submitted by 2/5 of the Parliament. A maximum of two proposals for such referenda can be submitted during the same parliamentary term (normally of four years),² and they cannot concern the State’s fiscal issues.

What constitutes a “crucial national issue” or a “serious social issue” is a political question left at the complete discretion of the abovementioned organs of the State.

Local referenda have been introduced relatively recently into the Greek legal order by the Code of Municipalities (Law 3463/2006). Accordingly, municipalities are entitled to organise local referenda for important issues which fall within their competences, but not concerning their finances. A local referendum is organized upon a decision taken by 2/3 of

¹ Some researchers include as well the “personal referendum” of 1926, whereby people were called to elect their President amongst two politicians.

² Referenda are not provided for any constitutional amendments.

the respective Municipal Council, and a new referendum on the same issue cannot be held within a year. The result of the local referendum is valid and binding, only if the voters' participation has reached at least 50%.

Interestingly, the Code provides for a citizens initiated referendum but on very limited grounds, whereby 1/3 of the residents of the municipality can trigger a referendum only as it relates to the annexation of their municipality to another one. However, and more expansively, a minimum of 25 residents can bring proposals on which to the Municipal Council has the obligation to deliberate.

To the best of our knowledge, no local referenda have been held. On one occasion in 2010, the supervising regional authorities of Sterea Ellada repealed the decision of a municipality to hold a referendum on the basis that the Presidential Decree which would determine the procedural details of local referenda had not yet been adopted. This strict interpretation has not yet been confirmed by the judiciary, while it has been followed by other regional authorities. Such administrative practice implies that the provisions of the Code on local referenda are currently and until the Presidential Decree has been adopted inoperative.

A unique opportunity for democracy and a great responsibility for the government.

The envisioned 2011 referendum poses a unique opportunity not only regarding the substantive questions (yet to be revealed), but also for democracy itself.

First, the envisioned referendum can redefine the concept of direct democracy in the consciousness of the Greek demos to pertain not only to decisions on drastic constitutional changes (monarchic rule or not) as Greek referenda historically have, but also on important policy-making issues.

Second, depending on the content of the proposals, the referendum can potentially transform the Greek political discourse. During the deepening financial crisis, Greeks have been assigning (in many cases rightfully so) blame, ill-motives, and ineptitude to ex or current governing politicians. As much as these criticisms are necessary and often justified, they are usually backward looking and have little potential to resolve Greece's challenges. A referendum on key policy reforms can shift the focus from the people to the issues, from the past to the future, and from assigning to assuming responsibility for important choices. The less straightforward and uncontroversial these choices are, the more opportunity there will be for a real democratic debate. Limiting the referendum to questions on already popular (albeit necessary) proposals such as reducing the size of the Parliament from the existing 300 seats to 200 seats (the Constitution only sets a 200-300 seat range) will be a missed opportunity. Even if the recently passed austerity measures cannot be subjected to a referendum (under the second category of Article 44(2)), there is still room for referenda on general policy questions regarding Greece's financial problems (not yet crystallised in a law) or substantial debates surrounding other areas that outright affect Greece's economic problems (e.g., management of the public sector, liberalization of access to certain professions, etc).

With the referendum's unique potential for Greece comes great responsibility for the government in designing and implementing an appropriate referendum process. In early July, the government announced that a new legislative framework will be introduced "soon," in order to amend the existing 1976 law governing the procedural aspects of referenda (which currently inter alia provides for at least 20 days waiting period after the declaration of the referendum and before the vote and a vote by a binary "yes/no" or "any other specified

way.”) The proximity of the government’s self-imposed deadline for the referendum (fall 2011), the absence to this day of any information on the legal framework under which it will be undertaken (or the referendum’s precise scope), is at the very least worrying. Although any procedural amendments to the existing framework would inevitably need to be in line with the abovementioned requirements of Article 44(2) of the Constitution, there is room for improvements. To state the obvious, given the high stakes, it is important that there will be a satisfactory level of transparency and open deliberation in formulating the proposals, so people will not be surprised or cornered by the available options. At the same time, there needs to be enough time for people to become informed and exchange views. Guarantees that differing opinions will be heard and respected during and up to the actual vote are necessary.

The envisioned referendum can and should signal the beginning of a new era of civic participation in policy-making, facilitated by greater use of existing institutions (national and local referenda), but also through the introduction of institutions new to Greek politics, but successfully tested around the world, such as citizens’ initiatives on broad issues that can either set the legislator’s agenda or trigger referenda either at the local or national level. Such new institutions would in principle be consistent with the current constitutional framework, and thus they could be established through the standard legislative procedure. For a more solid and continuous protection of participatory democracy in the long-run, such institutions should be also enshrined in an amended Constitution. The upcoming 2013 window of constitutional reform provides a unique opportunity to that effect.³

Antonios Bouchagiar, Attorney, Kerkyra (Greece) registered with the Brussels Bar.

Mihalis Gousgounis, Attorney, New York (U.S.) registered with the Brussels Bar.

³ According to the constitution itself, the earliest such amendment could take place is in 2013, five years after the last constitutional reform.