

The legal position of the greek president

The function of the institution of the President in the Greek political system during the 3th Period of Democracy (1974 - ...)

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Abstract

This study is about the institution of the President of the Democracy according to the Greek Constitution. The role of the President of the Democracy in Greece today is rather a politically neutral than a politically active one. He is elected by the Parliament and, in accordance to the parliamentary system of governance which is the political system of Greece till 1975, he is the guarantor of the Constitution. Consequently, the competencies of the President are limited in the frames of a regulatory role and, together with the Government, he is the leading organ of the executive power. These competencies are divided into regulatory, legislative, administrative and judicial. It comes in the discussion whether the President should have a more active role in the Greek political system or it is better to be not a part of it, so he can be the impartial and unbiased leader of the State.

Keywords: greek constitution, greek president, head of the state, election, competencies

Introduction

After the Independence Revolution against the Ottoman Empire and a short period of republican governance (1st Greek Republic, 1827-1832), finally in 1832, under the Convention of London, Greece was recognized as an independent State. The new State was an absolute monarchy, later it was reformed to a constitutional monarchy, which gradually turned into a parliamentary democracy but still under the leadership of the King. The Kingdom of Greece, as it was the constitutional provision of the Greek regime, lasted until 1974, with the exception of short republican governance, the so called 2nd Greek Republic (1924-1935)¹.

The current 3rd Hellenic Republic was declared in 1974, after the collapse of the 7-year long military dictatorship. The new Greek Constitution established (art. 1§1) the Parliamentary Presidential Democratic regime (Republic) founded on the Rule of Law (art. 25§1)². The institution of the President in the Greek Democracy was the necessary and last step towards the complete establishment of Democracy³.

¹ D. Kaltsonis, *Constitutional History of Greece*, p 107 et seq., (esp. p. 109 et seq.), analyzing the political situation and the difficulties of the establishment of an immature and unstable 2nd Greek Republic; F. Spyropoulos, *Constitutional Law in Hellas*, p.19 et seq.

² *The Constitution of Greece 1975/ 1986 /2001/2008* in w.w.w.hellenicparliament.gr; see also Ath. Raikos, *General Theory of the State and Constitutional Law*, Vol. I, p. 427 et seq.

³ E. Nicolopoulos, *Les notions de légitimité et de légalité en Grèce de 1967 à 1974*, p. 322 et seq.

The legal status, the election, the responsibilities and the competencies of the Greek President are defined by the Constitution in the articles 31-50. The President of the Greek Republic is the head of the State and he regulates the function of the institutions of the Republic. In that sense he is both the guard and the guarantor of the democratic form of the regime of Greece⁴.

1. The election of the President

According to the articles 30, 31 and 32 of the Constitution, the President should be a Greek citizen of a Greek descent, having attained the age of forty and the legal capacity to vote, and he is elected for a full five-year term.

The election of the President takes place in a special session in the Parliament. In the ballot, in order a person to be elected a majority of 200 deputies is required, that means the 2/3 of the whole number (300) of the members of the Body. In case that not any candidate gets this majority of votes, then a second ballot follows also requiring the same percentage. If again nobody among the candidates could get 200 votes, at the third ballot following, a majority of 180 votes is needed. In case of no election after the third ballot, then the Parliament is dissolved *ipso jure* and within 10 days the electorate are called to a snap-election. The new Parliament at its first session is called to elect the President. For the election the procedure that follows consists also of three phases, starting from the majority of 180 votes, then the majority of 151, and, finally, the relative majority between the two leading candidates.

This procedure aims to secure the broad acceptance of the President by the Parliament, the representative of the Greek People. The procedure also should guarantee the position of the President as the Head and the leading impartial institutional democratic organ of the State. Many discussions concerning the way of the presidential election have been held and they are still going on, mostly related to the exercise of the role of the President in the frames of the Parliamentary system⁵. We should observe that in the Parliamentary system, the role of the President has a rather symbolic meaning, as he is the person who unites the people and stands beyond the political parties and the parliamentary disagreements. According to the Constitution of 1975, before its first amendment (in 1986), the President had broad competencies, which were leading him to a more active political role, in a quasi semi-parliamentary system⁶. Still, even under that system, the President was also elected by the Parliament and not by the electorate through a direct election. This was the differentiation from other similar systems, like for instance the semi-presidential (or semi- parliamentary) system of governance in France,

⁴ Ath. Raikos, *General Theory of the State and Constitutional Law*, Vol. II, p. 42 et seq. ; F. Spyropoulos, *Constitutional Law in Hellas*, p. 66 et seq.

⁵ Ath. Raikos, *General Theory of the State and Constitutional Law* Vol. II, p. 69 et seq.; G. Kasimatis, *Democracy, Studies I, 1975-1995* p. 324 et seq.

⁶ Ap. Papatolias, *Constitutional revision and governance system balance*

Austria, Poland, the Russian Federation and other states, where the President is elected directly by the electorate. But looking through the competencies of the President in an authentic semi-presidential system, we come to the conclusion that in these constitutional and political systems the direct election of the President is accompanied by more powers (similar to those that the President of the pure presidential -mainly the American- system has). Nevertheless, the direct election of the President is not a characteristic only of the presidential and the semi-presidential system. In many modern parliamentary democracies (Slovenia, Slovakia, Czech Republic) the President is elected directly by the People, pointing out the significance and the role of the President as a political institution⁷. Recently many discussions are going on in the Greek scientific fora⁸, concerning this issue, trying to contribute to the scientific preparation of the dialogue about a possible constitutional revision in the near future. According these discussions, the election of the President could be either direct or indirect held by the Parliament or by a body of electors or, in case of a failure of achieving the votes needed for the election, both systems can be combined in order to avoid the snap-election following. Another option concerning the election of the President and can be put under discussion, is the indirect election by the parliament or a special electoral body and this election can be ratified by the People through a referendum. To my point of view the direct or indirect election of the head of the state isn't of such a great significance. More important is the legal position and the role, which he is called to play in the political system. In a way on another in democracy the competencies of the President are grounded on the sovereignty of the constituent power⁹, in other words on the legitimacy of the constitution, mainly of the electorate, considering him as their "representative".

2. The competencies of the President

Being the Head of the State in a Parliamentary Democracy, the actual power of the President is rather limited in comparison to that of the Prime Minister. Besides, as in all the parliamentary democracies, the Greek parliamentary system has also its roots in the English political system¹⁰. In England this system aimed to the limitation of the competencies of the head of the executive power of the state, the King or the Queen (as he/she comes to the power

⁷ For remarks and some comparative conclusions about the semi-parliamentary and parliamentary systems and the role of the President in them see also J. Al. Dmitriev, *Problemi teorij gosudarstva i prava* and V. Tsetsojev/ Al. Shvanterova, *Teorija gosudarstva i prava* concerning the President of the Russian Federation and An. Gamper, *Staat und Verfassung*, p. 186 et seq, concerning the President of Austria

⁸ See for example the relative articles in *constitutionalism.gr*

⁹ See also the position, that the limitation of the competencies of the President is compatible to the democratic principle, considering that the presidential system itself is a "declination" of this principle, in G. Kasimatis, *Democracy, Studies I, 1975-1995*, p. 325 et seq. (esp. p. 327)

¹⁰ Ath. Raikos, *General Theory of the State and Constitutional Law* Vol. I, p. 193; F. Spyropoulos, *Constitutional Law in Hellas*, p. 67 et seq.

according the succession line) in favour of the head of the government and namely the Prime Minister.

The competencies of the President of the Republic may be categorized into regulatory, legislative, administrative and judicial and they are restricted only to those set out in the constitution. More specifically, according to the article 50 of the Greek Constitution, the President of the Republic shall have only those powers which are explicitly conferred upon him by the constitution and by such laws as they lay in accordance with it. So the power of the President is strictly described and defined by the constitution, having as consequence that the jurisdiction presumption belongs to the People, in the meaning that all other competencies, which are not clearly granted to any state organ, it is presumed to belong to the People.

The President issues normative decrees, normative and administrative acts, promulgates and publishes the laws, grants pardon to prisoners and reprieves punishments, represents the state internationally, declares war and concludes treaties of peace, alliance and economic cooperation, proclaims referenda under certain circumstances, convokes Parliament in sessions and other regulatory competencies, which will be analyzed below (part 3)¹¹.

A very important provision of the Constitution is considered to be the definition of the limits of the authority and the legal responsibility of the President. According to the article 35 §1, no act of the President of the Republic is valid or may be executed unless it has been countersigned by the Prime Minister or the competent Minister(s). In the case of proclaiming a referendum, according to the article 44§2, the decree should be issued after a relative decision, accepted by the absolute majority of the deputies in the parliament¹². This follows a proposal made by the Cabinet (for referendum concerning matters of crucial national interest). The decree proclaiming referendum concerning bills about serious social problems (articles 35§1 and 44§2) should be countersigned by the President of the Parliament. In other words, the role of the President is rather restricted, as the responsibility for all his competencies is assumed to belong either to the Prime Minister or to the Ministers who shall countersign all the decrees and acts issued by him.

The President has the power to exercise the veto¹³. This is a legislative competence of the President and it belongs to his exclusive jurisdiction in the meaning that no countersign by

¹¹ The presidential competencies referred here are similar to the competencies of the head of any parliamentary state. In the pure parliamentary monarchical regimes (i.e. in Un.Kingdom, Belgium, Denmark, Spain et c.,) the king or the queen has exactly the same competencies

¹² Proposals to transfer this competence to the people in the coming constitutional revision are widely discussed in the scientific community and in the political dialogue for the revision; This will enforce the role of the People and limit the role of the Government; See also El. Nicolopoulos, *The people's initiative in legislative and constitutional procedure*, p.56 et seq.

¹³ Ath. Raikos, *General Theory of the State and Constitutional Law*, Vol. II, p. 50 et seq., 53. The writer considers the veto as a power coming from the right of the king in the monarchy to ratify the laws, adopted by the parliament. To my opinion, the origin of the veto should have led the democratic states not to establish it as a right of the president. I must observe that the veto is a competence of almost all the head of the states in the

a Minister is needed. The President, in opposition to his former (till 1986) “absolute” right to ratify the draft laws, he has now only the power of exercising veto to a draft law, adopted by the Parliament, strictly on the reason of unconstitutionality. The Parliament though can override the presidential veto with 151 votes (the absolute majority of its members). The veto of the President is under the criticism, that in a democracy the Parliament is the main representative of the People and the President should accept and no object to its resolutions and decisions. The conditions, though, under which the President can exercise his veto against a draft law adopted by the Parliament, are strictly defined by the constitution (article 42§§1 and 2). The article causes no doubt concerning the reasons (only claiming an opposition to the constitution) and the procedure (absolute majority needed to override it). Additionally, the legislative function of the state, according to the article 26§1, belongs to both the Parliament and the President. Consequently, the legal base of the legislative competence of the President is not and cannot be under doubt. Still the issues, which can be under discussion, are: a) Should the President object to draft laws, which in general are proposed by the Government, having in mind that the Government enjoy the confidence of the Parliament? And b) can we consider this act of the President as an expression of his (political) opinion about the proposed draft law?

In fact, the veto is one of the few (five) constitutional exceptions of the countersign rule and it is rather a reminder of the role of the Head of the State and not his power, as it used to be under the previous monarchical regime. Till now, in a 40-years period of the function of this institution, not any Greek President has exercised a veto, although during this time, there were Presidents, who came from an opposite political party or were of different political ideas against the governing party.

3. The President as the Head of the State and regulator of the regime

The President of Democracy, as mentioned above, regulates the function of the democratic regime and the institutions of the Greek Republic. In that sense he is both the guard and the guarantor of the popular power and sovereignty in Greece¹⁴. His regulatory competencies concern the formation of the government after the elections or in case that the government lose the confidence of the Parliament and aims to secure the elimination of any possibility of a governmental crisis.

world. See also Ant. Pantelis, *Handbook of Constitutional Law*, p. 382; F. Spyropoulos, *Constitutional Law in Hellas*, p. 68

¹⁴ See previous footnote (13)

According to the article 37 and 38 of the Constitution, the President appoints the Prime Minister after the parliamentary elections. Prime Minister is nominated the leader of the political party that gain the absolute majority of the (300) seats of the Parliament. In case that no political party gain the majority of the seats, then the President gives an exploratory mandate to the leader of the party which has the relative majority, in order to ensure the possibility of forming a government enjoying the confidence of the Parliament. The mandate is valid for three days. If this possibility cannot be ascertained, the President gives this mandate, also for three days-time, to the leader of the second party in order to form a government. If again the possibility of formation of the government cannot be achieved, he gives the third and last mandate to the leader of the third party in Parliament. In case that, despite the three attempts made by the leaders of the major parties, a government enjoying the confidence of the parliament cannot be formed, the President summons all party leaders, in an attempt to discuss about the possibility of the formation of an all party government. The role of the President is to persuade all the leaders to come to an agreement and form a government through a political compromise. The political parties can instead agree to form a government, only in order to proceed to elections. If this last attempt of the President is unsuccessful, then he appoints as Prime Minister the President of one of the three supreme courts of Greece, but only in order to dissolve the Parliament and carry elections. This system aims to exhaust all possibilities of forming a government, which will be of the trust of the Parliament, in order to avoid the repetitive elections, especially when it is obvious that the Electorate intends to remain stable to its political opinion¹⁵.

Another competence of the President, which plays a significant role in the function of the parliamentary system in Greece, is that of the dissolution of the Parliament. Before the amendment of the constitution in 1986¹⁶, the President could dissolve the Parliament without the agreement of the Prime Minister, if Parliament was in obvious discord with the public opinion, or if its composition could not ensure governmental stability. These conditions are no more valid. The dissolution of the Parliament is obligatory after a governmental proposal. That means that, if the Prime Minister asks the President to proceed to the dissolution of the Parliament, the President is obliged to do so, issuing a presidential decree, signed by the Prime Minister. Other cases of dissolution of the Parliament are: a) the dissolution of the Parliament after the expiration of the 4-years parliamentary term. This is a case of obligatory dissolution; b) in the case that the Parliament fail to elect President. This is also an obligatory dissolution. In the case of the substitution of the President for the reasons mentioned at the article 34§1, the dissolution is declared by the organ, which substitutes him. c) In the case that two Cabinets

¹⁵ Ath. Raikos, *General Theory of the State and Constitutional Law*, Vol. II , p. 31 et seq. ; Ant. Pantelis, *Handbook of Constitutional Law* p. 371 et seq.

¹⁶ Ap. Papatolias, *Constitutional revision and governance system balance* , in constitutionalism.gr

have already resigned or they have been voted down by the Parliament and its composition cannot guarantee the governmental stability (presidential dissolution). It belongs to the judgement of the President whether this condition of dissolution is fulfilled (article 41 §1). The President is called in this case to be objective, to exercise his “power” only if necessary.

4. Some thoughts about the function or the malfunction of the presidential parliamentary system

The institution of the President in the democratic regime of Greece has historical and political roots. Indeed, in many periods of time in the political history of Greece, the Head of the State played an important and significant role. As mentioned above, the Greek People, after the Independence Revolution of 1821, had at first place decided that the Head of the State should be elected by them, as a further strength of the Democracy and consequently of their role¹⁷. The most powerful European states of those times, England, France and Russia (the so-called Great Powers), contributed a lot to the creation of the new state after the revolution. They allowed the formation of the Greek State only under the condition that the regime will be monarchical. As we can see through the Greek constitutional history, the role of the kings, who ruled Greece for almost 140 years, was not always in accordance to the Greek national interests¹⁸. During many difficult and critical periods for the Greek history, the interventions of the king and the members of the royal family, attempting to press the Prime Minister and the Government to a favourite to them situation, led to a dissatisfaction of the people and a mistrust towards the institution of the king. In the 190 years of the existence of the Greek independent state, the Greek People rebelled several times against the tyrannical rule of the monarchs. In the last century Greece suffered three times under a dictatorship. After the re-establishment of the democracy in 1974, following the fall of the last dictatorship, the Greek people were called to decide whether Greece would be a kingdom or a republic. At the referendum, which took place in the same year, Greeks voted pro republic and against any kind of monarchical governance¹⁹. The new constitution of 1975 at the article 1§1 defines the form of Government as a “Parliamentary Democracy with a President as Head of State” and at the second paragraph of the same article the sovereignty of the People is named as the source and the base of the democratic regime.

¹⁷ D. Kaltsonis, *Constitutional History of Greece* p. 30 et seq. The period of the governance of Count I. Kapodistrias, the first governor of Greece, was named “democratic caesarism” by many writers, to criticize the autarchic way of his governing, see Ant. Pantelis, *Handbook of Constitutional Law*, p. 196 et seq.

¹⁸ D. Kaltsonis, *Constitutional History of Greece*, in many citations

¹⁹ D. Kaltsonis, *Constitutional History of Greece*, p.216 et seq., especially 221 et seq.

The articles which define the form of the government cannot be amended by any revisionary parliament²⁰. That means that the main principles of the presidential parliamentary democracy cannot be changed. The constitution doesn't put any prohibition to the widening of the competencies of the President or to limit them in favour of the electorate, either directly (via a referendum) or indirectly by establishing for instance a second representative body, as it functions in many democratic states in the world and in Europe more specifically (bicameral system). The competencies of the President in the constitution before the amendment of 1986 were more wide and similar to the competencies of the king under the previous constitution of 1952. We can observe that the historical circumstances, which led to the adoption of the constitution of 1952²¹, were completely different from those existing under the adoption of the constitution of 1975: The first one was adopted after the II World War and the Greek civil war, which followed. Greece came out of the war conflicts divided into two parts and suffering economically. The King as the head of the State ought to play the role of the mediator and the peacemaker²². In 1974, after the end of the military dictatorship, Greece also needed a transmission to a modern European state²³. The aim of the new constitution was to secure the democratic form of government, the rule of law and the human rights. The multi-party political system and the parliamentary system combined with the institution of the (elected by the People) President as the Head of the State could function as the guarantee of a modern democracy.

The President in Greece is a direct organ of both the legislative and the executive power. Compared to the other similar parliamentary systems, although his competencies are not so extended, still his role is of a great significance. Firstly, the institution of the presidency is based on the popular sovereignty²⁴ and not on the succession of the throne as in monarchic regimes. No matter whether he is directly or indirectly elected, he comes to the power by election, usually for a short period of time (the terms vary extending for instance from the 4-year term valid in the U.S.A. and Iceland, a 5 year-term in Greece, Slovakia and Poland, a 6-year term in the Russian Federation and Austria, to the 7-year term in Ireland)²⁵ and without the right of a third election. To my opinion there is no "ideal" term for a presidential tenure, there is only

²⁰ Ath. Raikos, *General Theory of the State and Constitutional Law*, Vol. I, p. 428, 437 et seq.; Ant. Pantelis, *Handbook of Constitutional Law* p. 427 et seq.

²¹ D. Kaltsonis, *Constitutional History of Greece*, p. 209 et seq.

²² The role of the king was rather the opposite, causing many problems and leading the country to political crisis in 1965 see and

²³ El. Nicolopoulos, *Les notions de légitimité et de légalité en Grèce de 1967 à 1974*, p. 323 et seq.

²⁴ Ath. Raikos, *General Theory of the State and Constitutional Law*, Vol. I, p. 430 et seq, Vol. II, p. 42 ; J. Habermas, *Three normative models of democracy*, in *Constellations*, 12; G. Kasimatis, *Democracy, Studies I, 1975-1995*, p. 326 et seq.

²⁵ See the articles of the relative constitutions in *World Constitutions*

an indication that the more often election, the more democratic participation of the people to the procedure is. In the parliamentary system, as we mentioned above, in almost all the countries, in which is this system applicable, the president has a rather ceremonial role. Normally he doesn't and he shouldn't face any sharp problems concerning the executive power and the administration. One problem, in which he is called to participate and give a solution in the frames of his competencies, is when the country is under the threat of non-governance. The role of the President in such circumstances is to act like a leader, trying to give solutions. As the guarantor of the constitution, he is awarded the "permission" to intervene.

Examining in detail the political behaviour of the Greek Presidents we come to the conclusion that, in generally, they accept their non-political role²⁶. During the first six years (1975-1981) of the function of the new constitution, the President came from the same political party, which was in the power, so the possibility of a conflict or a dispute between the two leaders of the executive power (President and Prime Minister) was eliminated. But even after the period of the revision of the constitution, the conflict which led the President Karamanlis to resign, showing his objections against the governmental actions and the limitation of the presidential competencies was practically the last one. The following Presidents in general didn't came in a confrontation with any Prime Minister or other Ministers although there have been circumstances for a conflict on constitutional issues. Recently, under the economic crisis, in which Greece has fallen, the President is acting in the frames of the objectivity and on the base of the equal distance from all political parties and theses. Here one can observe that the constitution, although it doesn't allow a political expression of the head of the state, still it gives him, together with the people, the role of the guard of the regime. The role of the Greek President in other words is, to my opinion, not only to be neutral, but, in critical situations, to undertake responsibility to help the state overcoming the difficult position. Without forgetting that the constitutional provision of his non political role prevents him acting this way, he could though dare to be a leader in favour of the Greek people and stand more critically to the social and economic conditions, which led to the Greek crisis. I think that people would like to see the head of the state to try to contribute to the solution of the problems and secure the constitutional principles of the social state and the rule of law. For example, that could be the denial at first place of signing the extraordinary decree, with which the executive power was free to exercise legislative power under the status of emergency. That constitutes an excess of his formal responsibilities, but it can be under his discretion to deny or not to undersign such acts. In other words, the economical crisis affecting all the Greek citizens could be the beginning of a presidential political behaviour, worthy to his role as a symbol of the popular

²⁶ Ath. Raikos, *General Theory of the State and Constitutional Law*, Vol. II, p. 43 et seq.

sovereignty, next to the Greek People. This can be put in the discussion on the constitutional revision, combined with the proposal of the direct election of the president. A direct election could enforce the democratic justification of the presidential institution, in the meaning that could also be accompanied by the institution of the recall of the people's representatives. This way the constitution can give wider competencies to both the People and the President and secure the democratic regime.

References

- The Constitution of Greece 1975/ 1986 /2001/2008*, in www.hellenicparliament.gr.
- The Constitution-Government and Politics*, in [www.mfa.gr/.../en/about-greece/.../the-constitution.html](http://www.mfa.gr/en/about-greece/.../the-constitution.html)
- World Constitutions*, in www.2.lib.uchicago.edu/~llou/conlaw.html
- P. DAGTOGLOU, *Constitutional and Administrative Law, Introduction to the Greek Law*, ed. by K. Kerameus and P. Kozyzis, Deventer, Kluwer/Sakkoulas, 1993
- J. AL. DMITRIEV, *Problemi teorii gosudarstva i prava, Utsebnik*
- AN. GAMPER, *Staat und Verfassung*, Facultas, Wien 2010
- J. HABERMAS, *Three normative models of democracy*, in *Constellations* 12. 1994
- D. KALTSONIS, *Constitutional History of Greece (in Greek)*, Athens 2017
- G. KASIMATIS, *Democracy, Studies I, 1975-1995*, Athens-Komotini 1996
- A. MANESIS, *Constitutional Theory and Praxis, 1954-1979, (in Greek)*, Vol. I, Athens 1980
- EL. NICOLOPOULOS, *Les notions de légitimité et de légalité en Grèce de 1967 à 1974*, PhD Thèses, Paris 1980
- EL. NICOLOPOULOS, *The people's initiative in legislative and constitutional procedure (in Greek)*, Athens 1997
- ANT. PANTELIS, *Handbook of Constitutional Law (in Greek)*, Athens 2016
- AP. PAPATOLIAS, *Constitutional revision and governance system balance in constitutionalism*.[gr/wpcontent/uploads/2017/10/2017.10](http://www.constitutionalism.gr/wpcontent/uploads/2017/10/2017.10)
- ATH. RAIKOS, *General Theory of the State and Constitutional Law (in Greek)*, Vol. I & Vol. II, Athens 2011
- F. SPYROPOULOS, *Constitutional Law in Hellas*, 1995, Kluwer Law International-The Hague/London/Boston Sakkoulas-Athens
- F. SPYROPOULOS/TH. FORTSAKIS, *Constitutional Law in Greece*, Athens - Austin, 2009
- V. TSETSOJEV/ AL. SHVANTEROVA , *Teorija gosudarstva i prava*, Litres 2017

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