

## Manifestations of emergency in Greek eurocrisis law: The statute 3845/2010.

Law 3845/2010<sup>1</sup> is certainly an atypical piece of legislation. Its particularity lies firstly in the substantial changes it brought about concerning austerity and social rights protection. Under the title “Measures for the implementation of the support mechanism for the Greek economy by the Eurozone MS and the IMF”, the statute includes annexed the Memoranda of Understanding (MoU) signed by the Greek Ministry of Finance and Greece’s creditors, as well as relevant Statements by the Euro-area MS’ Heads of State and Government. The policies announced in these texts are partly implemented in the main part of the law. Article 3 imposes severe cuts on the revenues of public employees and pensioners. This article also affects employees with a private law contract and declares that it prevails over any contrary provision, be it in collective agreement, arbitral award or individual contract. Article 4 imposes consumer tax increases, while article 5 imposes an exceptional “social responsibility” levy on the profits of moral persons and a tax on TV advertisements. It is not exaggerated to say that law 3845/2010 is the legal event that divided the Greek society and political world into two camps: pro-memorandum and anti-memorandum forces.<sup>2</sup>

As in the media, during the parliamentary discussion of the statute, economic emergency was invoked by the Government to face the strong reactions to austerity.<sup>3</sup> Left wing parties accused the Government of violating social rights and *acquis* in order to serve the interests of the capital and the country’s creditors. They invoked the report by the Scientific Service of the Parliament, expressing doubts as to the constitutionality of certain provisions in the statute.<sup>4</sup> The Government in response claimed to have been taken by surprise as to the gravity of the economic situation of the country. The governmental representative argued that the activation of the support mechanism and the onerous measures agreed in the MoU were an “action of responsibility and an historical obligation faced to the danger of collapse of the Greek economy.” The goal pursued by the law was “a compelling public interest that, under the current exceptional and unfortunate circumstances of the Greek economy, also constitute[d] a national

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<sup>1</sup> OJ 65 A/6.5.2010. Cf. [http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law\\_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5](http://www.hellenicparliament.gr/Nomothetiko-Ergo/Anazitisi-Nomothetikou-Ergou?law_id=d7ec2044-faa2-4a09-a9e8-cd0240b98bf5)

<sup>2</sup> On the content of the financial assistance instruments to Greece and on the general political context during the crisis, cf. the report on Greece, in <http://eurocrisislaw.eu.eu/greece/>, part I (Political Context) and part IV (Early Emergency Funding), forthcoming.

<sup>3</sup> Cf. Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, available at [http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506\\_1.pdf](http://www.hellenicparliament.gr/UserFiles/a08fc2dd-61a9-4a83-b09a-09f4c564609d/es20100506_1.pdf), p. 6714 f.

<sup>4</sup> Cf. the report, available at <http://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/m-dnt-epistimoniki.qxp.pdf>

interest.” The measures were necessary in order for the Greek state to exist and to be able to comply with its constitutional obligations towards its citizens, “without mortgaging the future of next generations”. They were the sole possible response to the social, political and moral crisis in which the country was in. The only alternative to these measures would be “collapse and destruction”.<sup>5</sup>

This argumentation was translated in more legal terms by the Council of State, when called to state upon the constitutionality of law 3845.<sup>6</sup> The Court, reiterating the exceptional circumstances the country was facing, found that the attacked measures were justified by the compelling public interest of consolidation of public finances, which also constituted the common interest of Eurozone MS. Until recently, the Court had constantly rejected the nature of a “cash interest of the State” as a legitimate reason justifying fundamental rights’ restrictions. Yet, since the beginning of the crisis, the way to decision 668/2012 had been paved by the Court in previous cases: the financial public interest had been progressively qualified a “compelling national interest”.<sup>7</sup> Thus, in decision 668, deferring to governmental policy choices, the administrative judges stated that no consideration of less-restrictive alternatives was required, since the attacked measures were part of a general programme for facing the economic crisis.

The crisis left no place to parliamentary discussion on the policies pursued in the statute or on the specific measures enacted. Despite its historical importance, law 3845 was brought to Parliament under the emergency procedure. The Government repeatedly stated that its voting was urgent, in order for the relevant loan agreement to be concluded before the 19th of May. On this date, a 10bn bond loan matured and, if the country was unable to repay its creditors, it would face bankruptcy and isolation from its Eurozone partners. The representative of the Government repeatedly compared the situation of the country to a state of war.<sup>8</sup> Deputies had less than 3 days to read the statute and its annexes, and only one day to discuss it in Parliament. Even members of the Government later admitted that they had not had the time to read the MoU. The support mechanism and the measures it implied were approved as a whole in one single article; this rendered any amendments to specific austerity provisions contained in the MoU’s 80 pages impossible. Partisan discipline was imposed to the members of the two

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<sup>5</sup> Cf. the introductory report to the statute, available at <http://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/AOIKONOMIKVN.pdf>, pp. 1-3.

<sup>6</sup> Cf. decision 668/2012, on the 20<sup>th</sup> of February 2012.

<sup>7</sup> Decision 1620/2011; See Iakovos Mathioudakis, “Transformations of the cash interest of the State in a period of intense economic crisis [in Greek]”, <http://www.constitutionalism.gr/site/2146-metashimatismoi-toy-tameiakoy-symferontos-toy-dimo/>

<sup>8</sup> Cf. Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, cited above, for example, p. 6728.

biggest parties in Parliament. Errors in the Greek translation of the MoU further poisoned the national debate. The marginal role of Parliament and the lack of information provoked strong reactions by opposing parties.<sup>9</sup>

From a legal scholars' point of view, yet, law 3845/2010 is even more impressive in formal terms, that is, as far as legal norm production is concerned. What was the Parliament actually *doing* when voting the statute? Was the MoU an international agreement, needing ratification? Should it then be voted by a qualified majority as article 28 of the Constitution imposes in some cases? Or was it just the political programme of the Government, attached to the statute as part of its explanatory report? These questions have raised important academic and judicial debates. In its first article, law 3845 contains a description of the steps taken for the constitution and activation of the support mechanism. In the introductory report to the draft law it is stated that the annexed MoU are an "integral part of the statute".<sup>10</sup> Against procedural objections raised by left wing parties, the Government appealed to a "democratic and national responsibility" to vote the statute.<sup>11</sup> And, though the Council of State in its relevant decision found the MoU to be the political programme of the Government,<sup>12</sup> the Prime Minister repeatedly stated that the MoU and the statute were not the Government's political choice but had been imposed by the creditors.<sup>13</sup> Economic emergency, thus, dilutes constitutional forms and procedures and blurs the boundaries of national sovereignty.

Deconstruction of constitutional forms and procedures becomes permanent in the main body of the statute. Article 1 paragraph 4 delegates the Minister of Finance to sign future MoU and agreements for the application of the programme. It provided though that the relevant agreements must be brought into Parliament for ratification. This provision was amended two days later, through the emergency procedure again: the term "ratification" was substituted by the terms "discussion and briefing", rendering the relevant agreements operative from their signature. This amendment was necessary in order for the Loan Agreement, signed some days later, to be valid immediately, and thus before the 19<sup>th</sup> of May. Further, article 2 of the statute contains broad delegations to the executive to take the necessary measures for the application of the economic adjustment programme. These provisions, exceeding the commonly accepted constitutional limits to the delegation

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<sup>9</sup> Cf. the report on Greece, in <http://eurocrisislaw.eu.eu/greece/>, part IV (Early Emergency Funding), forthcoming.

<sup>10</sup> Cf. the introductory report, cited above, p. 3.

<sup>11</sup> Cf. Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, cited above, p. 6762.

<sup>12</sup> Cf. decision 668/2012, cited above.

<sup>13</sup> Cf. Minutes of the Greek Parliament on the 6<sup>th</sup> of May 2010, cited above, p. 6766 and the report on Greece, in <http://eurocrisislaw.eu.eu/greece/>, part IV (Early Emergency Funding), forthcoming.

of legislative power, render emergency norm production a permanent possibility.<sup>14</sup>

Since, emergency has been the major legal and political “actor” in Greece. No loan agreement has ever been brought to the Greek Parliament for ratification. Recommendations by the troika determine (or are claimed to do so) every aspect of governmental policy. Parliament is often called only *a posteriori*, to ratify administrative acts of legislative content, a more and more often used emergency legal instrument.<sup>15</sup> It is “the normative power of the facts”<sup>16</sup> that regulates political life in Greece, since the Constitution proves ineffective faced to economic rules and European economic integration.

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<sup>14</sup> Cf. the report on Greece, in <http://eurocrisislaw.eui.eu/greece/>, part IV (Early Emergency Funding), forthcoming.

<sup>15</sup> Cf. the report on Greece, in <http://eurocrisislaw.eui.eu/greece/>, part II (Constitutional Law Changes).

<sup>16</sup> Lina Papadopoulou, “Can Constitutional Rules, Even if ‘Golden’, Tame Greek Public Debt?”, in Maurice Adams, Federico Fabbrini and Pierre Larouche (eds), *The Constitutionalization of European Budgetary Constraints*, Oxford: Hart Publishing, 2014 (forthcoming), 223, 239.