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“Can the Constitution of Greece be amended via a referendum? Some thoughts”



“The enactment of a referendum policy is of the highest importance. It certainly increases the level of democracy and promotes the substantial sense of popular sovereignty. However, the institutional balance as contained and described in the Constitution shall be taken into account as a possible referendum on a constitutional amendment will end up being anti-constitutional by nature.”

Greece is facing a tremendous period, maybe the worst in its modern history. Institutional changes need to be expedited – changes that will make the public sector more functional and will raise the political system’s credibility. It was announced by the previous government that those changes would be advanced through referenda. The rationale was the enhancement of democratic legalization by applying more directly the principle of popular sovereignty.

Some of the above mentioned institutional changes demand a constitutional amendment. Examples could be the establishment of private Universities which demands revision of article 16, paragraph 5 and the annulment of permanent tenure of civil servants that would require revision of article 103, paragraph 4 of the Constitution. Thus, the issue that rises is whether a referendum is able to “legalise” a revision of the ultimate piece of the internal legal system, the Constitution. In this article, we will try to answer that question by applying a principal classification regarding the establishment of Constitutions as seen in Europe, based on political stability.

Background

Constitutions can be classified into two main categories, revolutionary and evolutionary. The first category implies a Constitution as a result of a major political change. As pointed out by the name itself, this political change is of revolutionary character, a fact that leads the Constitution to be the social expression of the new era, the backbone of the new institutional framework that the revolutionary event wanted to bring. The way that a revolutionary Constitution could be established makes it more vulnerable and therefore needs some solid ground to exist. As a result, it contains a special procedure under which it can be amended or supplemented.

The second category includes Constitutions that were not established because of a political change and/or as a result of this change, but more were the historical continuation of the same regime. In that sense, they do not change the course of history but rather assist on its further establishment (for more on the distinction, see L. F. M. Besselink, *The Notion and Nature of the European Constitution after the Reform Treaty*, January, 18, 2008, available at SSRN: <http://ssrn.com/abstract=1086189>, pp. 3-5).

The current Constitution of Greece definitely belongs to the first category. It was established in 1975 after the fall of the military junta government as a result of a huge struggle of the Greeks against a severe regime. Hence, it includes the provisions that guide a possible amendment. Those provisions are presented bellow.

The formal constitutional process

Article 110 of the Constitution describes the formal process that needs to be followed for the completion of an amendment. According to paragraph 2, at least 50 Parliamentarians propose on a need for a revision which is ascertained by a 3/5 majority resolution of the Parliament. This resolution defines the specific provisions to be revised. The next step is described in paragraph 3 which sets that the next Parliament shall decide on the provisions to be revised by an absolute majority of the total number of its members. Paragraph 4 gives a second chance to the proposals for revision that obtained majority in the first Parliament, but not the necessary 3/5, by stating that the second Parliament decides on those provisions to be revised by a 3/5 majority of the total number of its members. Finally, paragraph 6 demands a 5-year period to pass since the completion of a previous revision.

From the above mentioned, it becomes very clear that the Constitution of Greece is quite strict as far as the revision process is concerned. A Constitution can be described as strict when its provisions, as superior to the other rules of the internal legal order, are revised, supplemented or abandoned under a special procedure which is harder compared to the one used for other acts.

Some comments on constitutional amendment through referendum

As a revolutionary Constitution, the Greek Constitution shall stay focused on the formal amendment process. Its reason of establishment and existence signals stability of the political system and should not be changed at will. This is why article 110 has been connected to the nature of the regime of Greece and cannot be itself amended. Hence the amendment process cannot change.

A very obvious example of violating the formal amendment process is the time limit of paragraph 6. The last constitutional amendment was concluded in 2008, thus every official discussion and proposal for future amendments shall take place, at least, in 2013, i.e. after 5 years of the last revision.

Another comment derives from the revolutionary nature of the Greek Constitution itself. Being established as a response to a previous regime, the Constitution of Greece represents a new social and political status quo as demanded by the people of Greece that had overthrown the military junta. By being asked to guide a possible constitutional amendment via referendum, people of Greece are given constitutional power. This power was expressed in a similar way at the time of the establishment of the Constitution, which means that people may express this power once again in case of a regime change, i.e. another revolution. Therefore, the idea of giving constitutional power to the people, power they already have and asking them to implement it in a different way contradicts the idea of a revolutionary Constitution as the one of Greece.

From a more technical perspective, there is no legal basis for constitutional amendment via referendum. According to article 44, paragraph 2 of the Constitution, a referendum may be proclaimed for two reasons, crucial national matters and important social matters. Crucial national matters are issues related to the national identity or national sovereignty of Greece. For example, a referendum for the participation of Greece in the European Union could have fallen into this category.

The second reason for a referendum, i.e. that of important social matters, is more complicated. One may argue that a constitutional amendment appertains to this category. Nevertheless, according to article 44, the referendum for social matters applies only in Bills that have already passed through Parliament. The purpose of this type of

referendum is to give people the power to either confirm or decline a normal piece of legislation. In that sense the nature of the Constitution as the norm of highest power within the Greek legal system excludes it from this referendum process as it strictly applies to legal acts of lower power. The opposite would weaken the position of the Constitution which substantially leads to improper function of the republic.

To conclude, the enactment of a referendum policy is of the highest importance. It certainly increases the level of democracy and promotes the substantial sense of popular sovereignty. However, the institutional balance as contained and described in the Constitution shall be taken into account as a possible referendum on a constitutional amendment will end up being anti-constitutional by nature.

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