GREEK PUBLIC POLICY IN LAND PRIVATIZATION

I. INTRODUCTION

Drastic State interventionism in the sphere of economic activity first appears and starts to expand on an international scale during the 1930s, right after the Depression and becomes a fact during the post World War II era after Keynesian economic principles become universally accepted (Anastopoulos, 1982: 14). State interventionism attempted to fight against economic crises and the consequent economic uncertainty. Added to these economic crises was the destruction that followed in the wake of two World Wars and the overwhelming need for economic restructuring and growth. Thus, it was widely believed by all, with the exception of those countries that had opted for a purely State-driven economy that the State should intervene in the economy, aiming not only at regulating, but also at actively helping to restructure the financial sector (Tsironas, 2006:22)

The specific nature of State interventionism in the economy was mainly based on the idea that certain activities of purely private initiative must, in the general interest of the whole economy, not only be supervised by the State, but also be carried out by it. It is not possible for a modern interventionist State to achieve in goals of this nature by merely regulating and guiding the economy, no matter how systematically this is done. Due to this, the creation of the public business sector became an important instrument in implementing the aforementioned goals of fiscal policy (Tsironas: 2006).

However, the constant and radical changes of the past few years in the international economic and social scene have brought to the limelight new problems afflicting national economies. The difficulties encountered when attempting to solve these financial problems were mainly attributed to State interventionism in the economy. A sweeping series of structural reforms to the State penetration in the economy was suggested as a solution. However, the overall resolution of the problems encountered in entire sectors of industry was not connected to the interventional State per se, but to a specific aspect of it, that of the State as a business entity. Thus, it became evident that there was a need to redefine the public business sector and the gradual reconfiguration of the traditional administrative structure was attempted (Thurow, 1997: 41).

It was these beliefs as well as the past and present plans to put these beliefs into effect that have had a major influence on the administrative structure of the world's developed and developing countries. The adjustment of the State under these new conditions was based on beliefs that held that the main medium for pursuing this goal was the reduction of State business plans and the reduction of the size of State business activity. The suggested solution and the idea behind it led to the formulation of a new concept in the fields of economic and political sciences, namely, that of privatization (Tsironas, 2006).

For the past 20 to 25 years global political and economic developments have significantly affected contemporary approaches to public funds administration, which include public property. Indeed, with the worldwide trend of reducing State business plans, there has been growing awareness of the value of public property as a productive capital good and the attempt to privatize it by adopting the practices of the private sector.

The administration of public property is dependent on the growth model employed by each social organization, which, in turn, is dependent on the set of values employed by the political body governing said organization. Thus, in order to better understand the trends and selected modes of exploiting public property, the study of the prevalent trends in the science of political economy during the execution of State governance is required. Through the application of new theories in the sector of political economy, aspects of political choices of State administration come to light, which, if properly documented and evaluated, can help optimize the process of fulfilling the needs of society.

II. MODERN TRENDS IN PARAMETERS SHAPING POLITICAL EXECUTIVE POWER OPTIONS:

1. THE THEORIES OF PUBLIC CHOICE AND RENT SEEKING AS A REACTION TO THE THEORETICAL MODELS OF CLASSICAL POLITICAL SCIENCE:

For Puritans, the public interest is merely the sum of individuals' wealth, happiness and avoidance of pain. "The "New Right" theory revived these principles in the late twentieth century. The dominant values to be promoted by public administrators must be frugality in the use of public resources and encouraging individuals to provide for themselves. The public interest is thus ensuring that individuals behave rationally, minimizing state interference. Individuals for their part must minimize the demands they make on the state. In consequence, public servants must be trained to adopt and implement a minimalist philosophy of government, including strict frugality and intervening in markets and individuals' pursuit of happiness as little as possible" (Elcock H., 2006 : 103 - 105).

On both sides of the Atlantic, neo – conservatives have adopted this individualistic approach. Individuals must be set free to determine, protect and promote their own interests: Margaret Thatcher famously declared that "There is no such thing as society: only individuals and families". From this individualistic view of the motivations of politicians and bureaucrats has followed a belief that only by adopting commercial practices will governments, ministers and public servants alike achieve the business virtues of economy, efficiency and effectiveness (Pollit, 1990).

The result of the above mentioned view of the public interest is the appearance of theories that reject the existence of a collective interest and consequently, the ability of politicians to act for it. From theses notions derive the theories of public choice and rent – seeking. Theses theories regard all

individuals, including ministers and bureaucrats, as self-interested rational maximisers, whose only motive is to further their individual self – interests in gaining votes, power and money. These theories aim at the critical examination of the factors that shape the choices taken by the political executive power, as these are defined by the traditional models of political science theoreticians. In this manner, the motives of political executive power are questioned and private initiative is highlighted as the most suitable for administering public property.

More specifically, the contemporary theorists of political science question the policy conclusions whose implementation has customarily been treated as the responsibility of a government whose own behavior lies outside the scope of analysis. The basic shortcoming of neo-classical economics lies in the fragmented definition of the decision-making environment within which individual decisions are taken (Jack Wiseman, 1990: 105 – 106).

"The most general and effective destruction of neo – classical economics comes from the development of concepts of public choice, which have evolved since the publication of The Calculus of Consent (Buchanan, J.M. and Tullock, G., 1962), along with the theory of rent – seeking. The essential criticism is the restriction of the area of interest to choice – through – markets generates policy conclusions which are assumed to be implemented by a government whose characteristics lie outside the scope of the analysis. By default, that is, the instrument of policy – implementation is assumed to be omni competent and costless. Emerging from dissatisfaction with this, the fundamental contribution of public choice is the insistence upon the fact that the political process and its institutions (constitutions, governments, bureaucrats) are themselves aspects of a general choice-process and are at least in part substitutable for or complementary to the process of choice – through – markets which is the embracing concern of the neo – classical model. (Jack Wiseman, 1990: 106). This seems to constitute a clear break with the earlier tradition in that it appears to reject the possibility that any useful notions of "social efficiency" or associated recommendations for public policy can be derived from the study of choice – through – markets on the implicit assumption that the functioning of all other choice – related institutions is both costless and flawless."

Besides, having applied micro-economic logic to politics, theorists of rent seeking (Felkins L., http://perspicuity.net/sd/pub-choice.html) have concluded that while individual interest leads to sound results where the market is concerned, where policy is concerned, it might lead to incorrect political decisions. Serving individual interest often creates different groups of voters, politicians, bureaucrats and power lobbies that strive to get the State to pass legislature favorable for them. Serving the individual interest favors public interest where the rights of the individual are concerned, but rarely where the common good is concerned.

The dogmatic constructs of the new theorists of political science further specialize when they try to derive conclusions from the choices made by the political executive power during the

administration of public property. Thus, in an attempt to empower the international trend for privatizing public property, they lay down the ideological background for this process in order to present it as the most suitable means for bolstering a flagging economy. This also justifies the special interest generated by the application of the theoretical constructs of the new political economy in the matter of administrating public property.

2. THE THEORETICAL CONSTRUCTS OF THE NEW POLITICAL ECONOMY CONCERNING THE ADMINISTRATION OF PUBLIC PROPERTY:

Based on the considerable differences in country experiences, it seems plausible that efforts to achieve efficiency gains are not the sole driving force of changes in national property arrangements. In the short run, market forces apparently do not automatically erode those inefficient property structures, which impede the most efficient use of scare resources. This runs counter to the economic approach of institutional change, which assumes that the aim of efficiency gains is the major driving force of institutional change (Demsets 1967, North 1981). That is why it is advisable to look more closely at the political economy of privatization. In this context, it becomes important to identify the societal forces and their respective incentives and constraints that determine the direction and the degree of changes in property rights arrangements. The political theory of institutional change interprets existing institutions as the result of interests and strategies of political decision – makers and major interest groups involved.

According to Libecap (1989), the political negotiation processes are a main element in the creation of property rights. The direction and quality of institutional change are a result of the interaction between the political programs offered by the government and the demand for public goods or transfers from various interest groups. Depending on which actors primarily influence the direction and quality of institutional change, one can further differentiate between considerations based on the public-choice theory and the rent seeking theory. Both theoretical branches are integrated here within one model, assuming that de facto privatization is determined by the interplay between demand and supply of political programs (Opper S., 2004 : 565).

Decisions regarding changes in formal institutions, such as the privatization of state – owned land, are taken at the legislative and executive level, providing politicians and bureaucrats with central decision – making and implementation power. The public choice perspective of institutional change postulates that political decision – makers do not only serve the general public and maximize societal welfare but also tend to pursue rent – seeking activities (Buchanan, James M., Tollison R., Tullock G., 1980) and serve their personal interests (Shleifer, Andrei and Vishny R., 1994 : 111-132). It is in this sense that Shapiro and Willig (1990) assume that politicians maximize a utility function that represents a weighted average of social welfare and personal benefits. Personal benefits can result from patronage

and rent – seeking activities, but can also be achieved by favoring certain interest groups to maximize political support.

State – owned land serve as an important means to redistribute wealth from the common pool to state actors and their preferential subgroups, since direct control rights in enterprise decision – making at the firm offer changes for low – cost state intervention. On the one hand, the transfer of wealth through state – owned land is far less transparent than classical redistributive financial instruments such as taxes and subsidies and therefore meets with less political resistance (Jones, Leroy P. 1985 : 333-348). On the other hand, the transaction costs of intervention are lowered when politicians enjoy direct rights of control in the firm (Sappington and Stiglitz 1987). Overall, divestiture of state – owned land would significantly increase the costs of political intervention and thereby reduce chances for political control and limit potential benefits for state actors and their supporters (Yarrow G. 1998 : 157-168). Building on the observation that "institutions are not usually created to be socially efficient, but are created to serve the interests of those with bargaining power to create new rules" (North D., 1994 : 360), one may assume that politicians have an inherent tendency to avoid out and out privatization. Recent empirical evidence suggests that politicians in transition economies are indeed reluctant to privatize (Boycko M., Shleifer A. and Vishny R., 1995) and try to remain involved in company decision - making (Hellman J. and Schankerman M., 2000). Whether and to what extent privatization programs get started despite this reluctance depends on both economic and political costs and structural determinants of the political system.

From the governments point of view, privatization is connected with two distinct types of costs: 1. A loss of political rents, 2. A loss of voters' support. The cost calculus is dependent upon the government majority. The extent to which politicians can appropriate political rents at the expense of social welfare is determined by the amount of discretion they enjoy within the political system. The more discretionary power politicians hold in decision – making the easier they can pursue opportunistic policies and the higher the potential political rents from SOEs. Governments holding very strong majorities act rather independently and enjoy broader leeway for the discretionary use of SOEs for rent – seeking activities than governments holding only moderate or weak majorities. Privatization therefore means the largest loss of political rents for governments holding very strong majorities. This assumption is consistent with the extreme example of the one – party – regime of the PR of China which – though in general quite liberal and ideologically unconstrained in terms of market liberalization – has been reluctant to divest SOEs (Opper, Wong and Hu 2002). On the other hand privatization often entails a significant loss of jobs in the privatizated enterprises and may thus be costly in terms of voters' support. These costs are the highest for small government majorities as they risk being voted out of office in the next elections.(Sonja Opper, 2004 : 567).

The theoretical view on the best option in administrating public property find practical application in privatization programs in nations all around the world. Thus, it is of great interest for us to examine the Greek institutional framework within which political choices are made.

III. THE LEGAL AND POLITICAL JUSTIFICATION OF PRIVATIZATION ACCORDING TO THE GREEK INSTITUTIONAL FRAMEWORK:

Before the 1900s, the Greek State had never directly intervened in the financial sector. However, at the dawn of the 20th century, it started becoming involved in financial activities, in the sectors where private initiative was lacking, while outsourcing the public utilities such as transport, water supply and electricity to either Greek or foreign companies. In the post-war era until the start of the 1990s, there were periods where the public sector expanded, although at different rates each time.

In the mid-1980s, the public sector had directly or indirectly taken over every area of economic activity. During that time, the constant intervention of the State in shaping the economic reality and, by extension, accepting the practice of the State directly conducting every type of business activity were a given. Thus, even today, in Greece the public sector, as it is defined in its broadest legal sense (Article 1 of law 2000/1991), has taken over sectors of financial activity that operate with strict private sector economic criteria, sectors such as banking credit, insurance, transport, and radio and television broadcasting. At the same time, State interference also retains the regulatory features of a rather extensively administered economic system, since interventionism is strong in such sectors such as industry, tourism and trade. State interference includes virtually all the production sectors, creating conditions that are definitely oriented towards creating a fairly system of interference, without annulling the principles of a free market (Tsironas A.,:18).

It is therefore important to examine the basis on which the policy of intervening is employed by political authority, regarding the statutory framework established by the Greek Constitution. Besides, the issue concerning the constitutional boundaries imposed on administration while implementing privatization is an important tool in the research of the semantics of privatization.

A. THE BASIC CONSTITUTIONAL PRINCIPLES AND DIRECTIONS DETERMINING THE POLITICAL CHOICES DURING THE ADMINISTRATION OF PUBLIC PROPERTY:

Based on the above analysis, it is apparent that privatization is considered worldwide one of the most important tools in administering the State's public property. However, while the ability of the government body to enter into a contract with, as well as bind the society it represents, might seem a given, in reality when privatizing public property, its choices for conventional actions in this matter must be strictly regulated by and based on the current Greek statutory framework. However, in order to

investigate how State interference fits in the context of regulating the economy, what is required is a study of the nature and character of the Greek economic status quo, in relation to the statutes of the Constitution.

The Greek Constitution includes certain principles on which the economic status quo is based. The Greek Constitution prescribes the framework within which the regulatory power of the common lawmaker can move and moreover, the executive jurisdiction of the central government (Tsironas A.: 27). The most basic elements in defining an economic establishment are the range of exercising and developing of private fiscal initiative. Pinpointing the ease and extent to which the State can intervene in financial activities is the basis for defining the economic establishment and classifying it according to traditional models. The economic provisions in the Constitution, therefore, reveal the guidelines that the legislators must not trespass.

It should be noted that from a constitutional point of view, there is an essential difference based on whether it is the State or a private citizen that enters into a contract. When citizens enter into a contract, they are making use of their contractual freedom, which in effect means that they are using their personal right to economic freedom. This action is a manifestation of private autonomy. The State, however, is not a body of constitutional rights or conventional freedoms. Choices made in contractual actions during the administration of public property are not manifestations of private autonomy, but actually are subject to the principle of legality, as is every State action. Private citizens do not need any legal foundation with which to bind themselves through a contract: this freedom derives from a constitutional right. On the other hand, the choices of the State on this matter are defined by the legal and constitutional institutional framework and only if these are allowed by law and are within the boundaries which law stipulates (Kaidatzis A., 2006:65). Since this paper discusses the political economy for privatization, the research will be limited to the constitutional institutional framework that defines and limits the political choices available in administrating public property and will not expand into the particular laws that specialize on the contractual possibilities available to the Greek State.

When considering the institutional framework set by the Greek Constitution, the choices available for administrating public property cannot be used to carry out radical liberal policies. Indeed, fiscal activity is planned and coordinated by the political administration, as defined by the provisions of chapters 1, 2 and 3 of Articles 106 of the Constitution. As a result, the ideological background of the Greek Constitution is more in line with the theoreticians of social contract, than with the neo-conservatives. Public interest, according to the Greek Constitution, is the general will which supersedes the needs of any private economic initiative. From this point of view, the Greek Constitution is closer to the ideals of Rousseau and far from dealing with the issue, according to the theoreticians of the “New Right”.

Moreover, the constitutional restrictions according to which private fiscal initiative are not allowed to engage in activities which would damage national economy do not alleviate the related obligations the State is obliged to respect the field of private economic activities. It only sets certain specific and extreme boundaries on the freedom of such activities, especially in sectors that have aspects of monopoly and serve vital needs of society. Similarly, completely banning the regulatory powers of the legislator in the field of private financial activity is not constitutionally accepted when it leaves the general interest and the national economy unprotected and endangers the fruits of economic freedom with possible irrational choices of private financial initiatives. Thus, the Constitution precludes certain extreme options concerning the overall status quo of the economy, disallowing the total nationalization of the economy, or the full liberalization of all economic activities (Tsironas A.:38).

It should be stated at this point that such constitutional obligations function on two levels: on the one hand, they directly bind administrative bodies, as all the State's activities including its contractual activities are subject to the Constitution; on the other hand, constitutional obligations restrict legislative authority as they require regulation of the contractor's selection procedure in such a way so as to safeguard the principle of equality. This contrast is a direct result of the difference in the constitutional quality between contracts in the public and private sectors. With respect to the latter, legislators are negatively bound by human rights; therefore, they can only intervene externally, setting the limits of private autonomy. The opposite holds true of contracts in the public sector, where contractual liberty is absent and the efficiency of contractual relations requires that choices be made in accordance to constitutional provisions (Kaidatzis A., 2006: 65).

This also influences the options available in managing public property; the State may be forced to yield part of its authority. Nevertheless, according to the relevant case law by the Council of State (CoS), the public sector cannot enter into a contract for activities that according to the Greek Constitution fall under the direct and exclusive jurisdiction of the State. Typical examples include national defense, law enforcement and the execution of justice or the penalties imposed by authorized courts. The Constitution offers more details as to what these activities are. There are three criteria that can help us define the activities that, according to the Constitution, fall under the direct and exclusive jurisdiction of the State: firstly, exercising public authority; secondly, public authority exercised as part of the social state; and thirdly, all those activities referred to in the CoS relevant case law.

All the above, in conjunction with the scope and content of the constitutional protection granted to private economic initiative, lead to the conclusion that the current Constitution does not enforce an exclusively free market economy. The restrictions imposed on business activity by legislation and regulation, as well as the direct intervention in the function of private enterprises, are considered constitutional State intervention. Naturally, these factors are in no way sufficient to define the Greek economic system as a purely public economy. However, they are sufficient to shake the belief that the

Greek constitutional order, that tolerates State penetration in private economic initiative to such a degree, provides for a pure free market economy. Hence, a more consistent view would be to say that the Greek economic system presents several elements characteristic of a mixed economy – a statement supported by the prevailing view as well as case law.

It is, therefore, obvious that the Constitution grants individual legislators a relevant freedom of action, in other words, a wide discriminationary power to tackle economic problems and shape broader economic policies. In this respect, the Greek Constitution could be characterized as neutral, since it does not restrict economic policy makers, but allows them the freedom to choose the policy they consider more appropriate to the given situation (Manesi A.- Manitaki A, : 1204). Given that the constitutional guarantees of individual rights and the social state are not infringed upon, it follows that the Greek Constitution can be characterized as open with respect to economic policy and the economic regime in general (Manitaki A., 1994: 1204).

However, the view that the Constitution is economically neutral is steadily being abandoned (H. – H.Rupp, :101). Even if the Constitution does not include special provisions that enforce a particular economic regime, it cannot be considered economically and politically neutral. Besides, the critical element that defines the character of an economic regime is no longer the balance of relations between production and ownership, as defined by constitutional economic provisions, but the constitutional balance between individual liberties and the corresponding State powers. The constitutionally protected economic regime attempts to strike a compromise between two extremes: on the one hand, there is the legal field pertaining to enjoying economic freedom and expressing private economic initiative, and on the other hand there is the field of State intervention, within which the State attempts to coordinate the economy and safeguard public interest. The State's most important means of imposing power is economic penetration and participation in business activities (Tsironas A., : 43).

Taking into account the particular balance between economic rights and their restrictions, one could claim that the Greek Constitution allows for the enjoyment of economic freedom in a mixed liberal economy. It also makes provisions for exercising private economic initiative in a liberal interventionist economic regime. However, any political position that drastically departs from the current economic regime, regardless of whether it leans towards extreme liberalism or towards an entirely State-run economy, is incompatible with the Constitution. It follows that the management of public property must be practiced within the framework of neither a purely liberal nor a purely interventionist economic policy.

B. POLITICAL RESTRICTIONS ON PUBLIC PROPERTY MANAGEMENT

The Constitution is the main agent of imposing political restrictions on public property management. It is mainly provisions on individual rights that restrict absolute State authority with respect to political strategy development.

In particular paragraph 1 of Article 2 and paragraph 1 Article 5 of the Constitution prescribe respect towards the value of the human being, individuals' rights to freely develop their personalities and participate in the social, economic and political life of the country, provided they do not infringe upon the rights of others, the Constitution and good usages. While not expressly establishing citizens' right to economic freedom, these provisions, nevertheless, force the State to take into account and protect private economic activity while exercising its political power. Indeed, the Constitution does not contain any provisions proclaiming the protection of economic freedom as an individual right against State intervention. However, the aforementioned provisions of the present Constitution clearly establish individuals' participation in the economic life of their country and offer a most solid foundation for the protection of economic freedom.

The Constitution establishes private economic initiative by laying the foundations of and providing for economic freedom. By making a special mention of the freedom of private economic initiative, the constitutional legislator restricts both State interventionism and private initiative itself. Hence, State interventionism is obliged to move within the limits deemed absolutely necessary to safeguard public interest. On the other hand, it may set limitations on economic freedom with the sole purpose of ensuring economic development in all sectors of the national economy.

In addition, according to Article 25, paragraphs 1, 2 and 3 of the Constitution, the rights of man as an individual and as a member of the society, as well as the principle of the social state based on the rule of law are guaranteed by the State. Any constitutionally accepted restrictions on these rights are provided for either by the Constitution or by law, provided that the restriction is subject to statute. The recognition and protection of the fundamental and inalienable rights of man by the State aim at achieving social progress in freedom and justice. The abusive exercise of rights is not permitted.

Furthermore, Article 24, paragraphs 1 and 2 place special emphasis on the determination of planning policy in Greece. According to these provisions, the protection of the natural and cultural environment constitutes a duty of the State and the right of every citizen. In particular, the master plan of the country and the arrangement, development and urbanisation is under the regulatory authority and the control of the State. Hence, when managing public property, policy makers should take into account the established spatial planning policy and protect it against private initiative intervention.

Lastly, Article 17 establishes the human right to own property. In particular, paragraph 2 states that no one shall be deprived of property except for public benefit which must be duly proven, when and as specified by statute and always following full compensation.

The constitutional provisions that directly or indirectly regulate the Greek economic life demonstrate that the constitutional legislator restricts participation in the economic life of the country, without, however, defining the form of this activity. Hence, whereas the dominant view accepts the

constitutional provision of economic freedom subject to statute, legislators retain broad discretionary power to impose certain restrictions. Certain restrictions are based on general, broad and often vague expressions lacking a specific regulatory content; however, these expressions are not without value, as they leave the constitutional provisions open to interpretation according to the prevailing sociopolitical views on social reality (Tsironas A., : 34-35.) In fact, it is often the case nowadays that Greek case law takes into account constitutional mandates and sets further limitations on the management of public property, restricting the latter and demanding respect for private economic freedom. A useful case in point is the example of the Greek National Tourism Organization (GNTO).

The Greek National Tourism Organisation (GNTO) is the most important owner of valuable state – owned tourist properties in Greece. Its 'private' properties are a valuable resource of multi-faceted significance on the national, regional, economic and social level. The issue that arises from the recent legal precedent relating to properties which have come into the property of GNTO after the completion of compulsory expropriation in its favour is particularly important. Several of these properties have not been developed over a long period of time and, as such, it is possible to expect a lifting of the relevant compulsory expropriations, provided this is requested by their initial owners. In this way, however, both GNTO and TD Co (the first state-owned company that has undertaken to manage and develop the numerous assets owned by GNTO founded in 1998) could loose their rights over either an entire property or part of it. Even in the case that TD Co looses its right over a part of a property, its development becomes extremely complicated, as the entire site is broken into pieces because of the existence within it of certain privately owned properties. Serious issues arose during the development of the properties acquired by GNTO through compulsory expropriation. Interpreting the Constitution and the law, the State Council argues that the Administration is obliged to lift a concluded expropriation, when it becomes obvious that an expropriated property has not been used for the purpose for which it was expropriated or for another cause of public benefit. Also, the revocation is enforced when a long time has passed and the public body has unjustifiably remained inactive for the realisation of the initial cause for the expropriation or for another cause of public benefit. In these cases, according to the legislation of the State Council, the Administration is obliged to lift the concluded compulsory expropriation as long as the owner agrees with it or demands it. Already, in several cases, owners have succeeded in Court to lift a concluded expropriation by the GNTO.

It is interesting, moreover, to refer to the judgment of an Adviser (Judge) to the State Council, which was expressed during recommendations made for a case related to the lifting of a completed expropriation (parts of the particular recommendations have been published in the press). The Adviser to the State Council also questioned the constitutionality of TD Co's intention concerning the development of properties which were acquired through compulsory expropriations. In particular, she mentioned that TD Co's aim has shifted, from implementing public tourism policies to an exercise in

profiteering based on the provision of tourist services and the exploitation of tourist properties. The initial objective, therefore, for the expropriation has not only been replaced by another, but this new objective is different from the initial one, since it cannot be accessioned into the framework of public policy by the State but falls into the realm of profiteering. For this reason, according once again to the adviser, the assignment of the management and administration of properties which were acquired through compulsory expropriations to TD Co, is not in keeping with the realization of a public cause. On the contrary, it suggests the Administration abandoned the implementation of public policy for the expropriated properties and decided upon their commercial development.

According to the above, the state is faced with an unintentional and contradictory institutional situation which it created itself, which is as follows: During the 2001 revision of the 1975 Constitution, and particularly the modifications to article 17 concerning ownership and expropriations, the legislator's intentions are clearly in favour of greater protection of the right to private ownership by setting down stricter rules for the process of expropriation. At the same time, the state wishes to by-pass these statutory problems and the more general approach concerning the protection of private interests, in order to proceed with investments in properties acquired through expropriations. All the above are idiosyncrasies of the Greek political reality, and for this reason, an analysis through examples of the decisions made in Greek political economy is of special interest.

IV. GREEK POLITICAL ECONOMY'S EMPIRICAL APPROACH TO THE ADMINISTRATION OF PUBLIC PROPERTY:

A. ADMINISTERING GNTO PUBLIC PROPERTY WITHOUT ZONING OR TOWN PLANNING:

The state and the agencies which represent it, in this case GNTO and TD Co, are planning the implementation of investments without them falling under a regional plan which would offer further sanctioning to this policy. Concerning urban planning, most of the country's regions are not covered by urban plans which would anticipate the appropriate uses for properties owned by GNTO and would support the intentions for their development. There was an unsuccessful – for many reasons - attempt to by-pass this obstacle for some large areas already by 1993 through the implementation of law 2160/1993. Finally, it is a characteristic example that the establishment of the National Tourist Plan was only assigned in 2006. Consequently, the impression is created that the development of GNTO's larger properties adheres solely to financial aims. The aforementioned facts support – to a great extent – the political, intergovernmental clashes related to the ways of developing GNTO's land assets.

Besides, Law 3270/2004 outlines the ways of developing GNTO's property assets under TD Co's management, after recommendations by the Privatizations Committee. At this point the law is vague as it doesn't define which properties are to be developed through this process. Thus, TD Co is rendered a purely executive body which implements the Committee's decisions, which – it must be

noted – has hired its own independent financial advisor to study the means for the development and the terms for the privatization of the properties. Consequently, the Ministry of Finance will be given – potentially – a regulating role connected to the development process of the properties and the management of the financial proceeds which will occur.

It is therefore apparent that even though there is a pressing need to integrate public property related to the tourism sector in the productive procedure, such a privatization in Greece is a difficult undertaking. The problems are considerable and many and cause intense political and judicial controversies. Through this maze of conflicting interests, the Tourist Development Co. has managed to institute the privatization of specific public property, without however being able to reach the goals set by its creators and always in the shadow of the legislature we have previously mentioned.

B. PRIVATIZATIONS ATTEMPTED BY THE TOURIST DEVELOPMENT CO.:

As already said, by the end of 1990s GNTO was looked into the mobilization of its large and diversified portfolio in real estate assets. The first state-owned company that has undertaken to manage and develop the numerous assets owned by GNTO was initially founded in 1998 (L. 2636/1998). TD Co aims at managing and developing assets by mobilizing both international and national funds, and converting it into a company for administrating subsidiary companies and rental contracts. This public sector company initially adopted innovative financing techniques such as Public-Private Partnership schemes to attract international capital, real estate and development expertise. Results are rather poor to date, as only few following notable projects have been completed.

More specifically:

▪ 2001 saw the beginning of the privatization of “Mont Parnes”, the sole operating casino in Attica, there was an international invitation to tender for transferring 49% of the subsidiary company of TD Co, which managed it, and the management of the casino to a private investor.

▪ Also in 2001, international invitation to tender were extended for the development of the Attica’s two marinas. These tenders were completed in 2002 with the signing of the relevant contracts. In the new joint ventures, in the companies that were created, TD owned 25% of the company shares.

▪ In 2003, another attempt for privatization was made, concerning the 150-hectare golf course on the island of Rhodes. The development program included the modernization of the 18-hole golf course, the construction of high-class hotels with a capacity of 1,000 beds, and 250 tourist residencies. Two consortiums of domestic and foreign enterprises were dealt in. One of the two consortiums pulled out and the property was awarded to the Rhodes Riviera Hotel Estate and Golf Development, but the contract was never signed. Following the Greek national elections in 2004, the new government decided

to cancel the original tender and issue a new invitation to tender. Till today, this new invitation to tender has not been issued.

Finally, a few months following the national parliamentary elections in 2004, TD Co was preparing to floater on the Athens Stock Exchange. Its floatation was cancelled. The two reasons that were publicized most were: The ethics of granting private individuals the management of public properties mainly acquired by expropriations with public funds, and illegalities concerning TD Co management of GNTO properties.

There is a direct link between the dismal results achieved up to today and the theories of public choice and rent seeking. The Tourist Development Co. is living proof of the viability of these two theories, and could easily be used by theorists of the new political economy as a case study for the privatization of public property. The face-off of the two dominant Greek political parties, which do not aim at achieving the best possible utilization of public property, but rather at garnering influence over the citizens, initially corroborate the points of the theorists of the new political economy. It could be said, therefore, that the institutions are not usually put into place for the betterment of society, but rather to serve the interests of those that seek the power to enforce new rules.

V. CONCLUSION

As has been already discussed, privatization is a new mechanism aimed at fulfilling the duties of the State, which is characterized by increased participation of private citizens. The cooperation of the State with the private citizen in order to fulfill the duties of the State is part of the greater trend in which the State is in transition from possessing the role of producer to a role of guarantor and regulator. This is proof of the modern trend to adopt the theories of political economy, as they are expressed by the neo-conservatives. The State entrusts private citizens with carrying out part of its duties – in this case the administration of public property – without however transferring its responsibility and so without alienating itself from said duties. The division of labor between the State and citizen also entails the division of responsibilities between them. Thus, the responsibility for achieving the goals is transferred to the private citizen, but the State retains its role as a guarantor for the public, safe-guarding goods or services. At the same time, the State also takes on the responsibility of regulating the private citizens that are its partners, so as to ensure public interest during the execution of works or the provision of services.

On the other hand, as far as the Greek reality is concerned, the policy and implementation of the development of land and of privatizations cause serious and well-grounded objections. These objections are based on the constitutional right to property which is being violated by state practices even in cases where the state works in partnership with private individuals, as in the case of the Public-Private Partnerships. It is however noteworthy than on the issues concerning the means of development

of these properties, no solution acceptable to the judicial authority has yet been reached by the public services and TD Co. So, the process of development of these properties remains in abeyance.

It is for this reason that privatization of public property in Greece is progressing at such a slow rate. The only exception to this is the privatization of public property in the tourism sector, for the advancement of which the Tourist Development Co. was created. Even in the case of this company, however, the results are particularly poor. The reason behind these problems can be traced back to the lack of a coherent centralized policy concerning privatization in general. The opportunistic approach to privatization is blocked by the Greek constitutional framework, since it lacks research and planning. It is at this point that there is a possible field of application for the theoretical premises of the new political economy, and more specifically the theories concerning public choice and rent seeking. These theories can partially explain the currently feeble results of privatization of public property. It is deemed therefore of the utmost importance that a centrally organized policy on privatization is put into effect, so that the problems arising from decisions being taken without planning or cognizant policy can be dealt with.

The inclusion of public tourist property in the productive process is, these days, a necessity, but also a difficult venture. The issues which arise are numerous and important on social, financial, political and moral levels and often cause serious friction in Greek society. The present paper is a simple examination of the institutional aspect of this broad subject. Its importance does not only lay in the practical difficulties concerning the development of public property. To the extent that the Constitution forms the country's statutory map and reflects society's attitude towards the fundamental right to property, public or private, the constitutional difficulties which were examined are only part of the difficulties encountered in the process of the social and financial restructuring of the Greek state and of Greek society. This is the real point of questioning put forward by this paper.

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Effective dispute regimes for large infrastructure projects in Greece

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Synopsis

Construction dispute resolution in Greece stands at a watershed. The underlying partnering spirit of BOT-PPP schemes in the delivery of large infrastructure projects has not prevented disputes from occurring. Analysis will report upon the institutional and legal environment of two dispute regimes: domestic litigation and international arbitration. This comparison will reveal their strengths and weaknesses and help resolve the perennial practice question: which is the most effective. The aim is to distil the essence of arbitration in a new transient commercial and investment field and disseminate some developing perspectives for the industry and national growth. It is hoped that the implementation of the ensuing propositions will direct private and public bodies involved in the construction process to fathom their competitive advantages of the arbitral regime.

Keywords: Arbitration, BOT, Construction, Disputes, Litigation, PPPs.

Introduction

The recent economic policy of extroversion has paved the way for a flourishing construction practice. The performance and operation of large infrastructure projects has prompted alliances between foreign and domestic parties, through the channels of BOT-PPP schemes. Amidst this internationalised environment, conflict will unavoidably arise. The current dealing of disputes through the channels of domestic litigation is parochial and heavily detrimental to the parties interests. While international arbitration is a dispute regime with competitive advantages over Courts, domestic law-makers and construction industry policy-makers have paid very little attention to the legal environment in which this operates. Unfortunately, the academic interest is also weak.

With a conspicuous lack of intellectual challenge, present analysis draws upon the legal and institutional framework of litigation and arbitration in a comparative way. A discussion of the level-playing field of these dispute regimes will result in suggestions about the useful development perspectives in law and construction practice. Also, construction researchers, practitioners and lawyers involved or ready to venture this field will be alert to informed choices regarding dispute resolution.

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[1] d.athanasakis@qmul.ac.uk. I am heavily indebted to His Honour Judge Humphrey Lloyd QC for supervising my Thesis and debating my research ideas. Furthermore, I wish to devote this paper to my compatriot Epirotes, in celebration of their unrelenting inspiration to construction excellence in Greece and the greater South-eastern Mediterranean basin.

1 Practice of large infrastructure projects

1.1 Institutional background

There are four domestic mainstream construction industries: engineering, building, energy and regeneration. These currently involve large infrastructure projects for the construction of highways, plants, oil-pipes and hazardous waste treatment facilities.[1] Their institutional background is linked with the concept of development. Between the 1950s and the 1990s, development was characterised by excessive protectionism. Considerable time and money was spent by the State to retain the monopoly and intra-regulatory structures of the mainstream construction industries.

The State viewed construction industry as an individualist political tool and constrained the access of foreign contractors and investors to large infrastructure projects. The result of this opaque business environment was that the importation of foreign funds was conditional upon the scrutiny of the Greek Government. Also, agreements between the Greek State and international contractors were subjected to the Greek law of dispute resolution and the scope of claims was delimited for disputes arising out of administrative acts. In this institutional environment, the Greek construction industry was fraught with incoherence of investment policies, protracted procurement and tendering techniques and lack of flexibility in dispute resolution.

The concept of development has entirely changed over the 1990s. The new economic policy of extroversion in the direction of enhanced productivity now allows international project companies to venture dynamically in the Greek construction market. One of the obvious reasons for this liberalisation was that the public deficit, caused by extensive borrowing from domestic and international financial institutions, had reached sky-rocketed levels. Nowadays, the participation of domestic and foreign banks in infrastructure projects means that the State will decrease borrowing and relocate other sources of funding, e.g. funds stemming from the European Fund, for other projects. It is in the interests of the State to create a diversified portfolio of assets that will maximise the levels of return and minimise project financing risks; as long as it does not sacrifice the quality of performance.

Parallel to this change, Law 1892/1990 has superseded past laws, restricting the import of funds. The Bank of Greece has liberalised the allocation of funds to borrowers to launch projects within or outside the borders. It has also opened up the administration of funds coming from social security organisations towards infrastructure projects.[2] Domestic credit institutions were now allowed to issue letters of guarantee for projects to be carried out in Greece or abroad, both in domestic or foreign currency. Amidst this favourable banking environment, new opportunities for growth were presented.

The fast Greek banking sector involvement in infrastructure projects has enticed foreign contractors to team up and engage Greek banks in the construction game, in exchange for the banks' share of the operating profits. Moreover, the mobility of new funds is unparalleled. While a strong Euro currency prevents banks from raising interest rates on loans, the opportunity for Greek banks is their engagement in cross-Balkan investments. The strong Euro currency creates stability in pricing and payment methods, as well as an early incentivisation for completion. The

participation of domestic commercial banks in injecting loans for the execution of public works is desirable.

There is an obvious benefit for foreign contractors in their teaming up with Greek banks. The latter will use their background network with the Public Sector and domestic contractors in order to speed up the project phases. Also, contractors are expected to apply wider market knowledge to achieve innovation of product. The gain is also huge for the State: public enterprises are in search of international parties to cover the nation's needs for infrastructure e.g. the Public Power Corporation S.A.

Ultimately, the coming in of the private sector into the funding and administration of a concession has brought relief to domestic contractors. Following the restructure of the GDP towards surge of expenses and the call for refinancing practices for public infrastructure, the Greek State has been slow in paying contractors. The participation of banks and financiers into the BOT-PPP vehicle will increase the contractors' prospect for timely payment. This will also work to the benefit of the State which will minimise the financial risks, and the political cost.

1.2 Contractual features of BOT-PPP schemes

The BOT-PPP scheme throws in the life-cycle of the concession project multiple parties: state agencies, institutional developers, private specialised contractors and banks. The pre-requisite contractual structures are interworking in a chronological and hierarchical order. In international construction practice, after a successful bid of a private consortium, public and private sector participants will form a project company, or else a special purpose vehicle (SPV). This will be established through a project performance contract.

The project company is a strong business, financial and legal instrument. Its success pre-supposes adequate cashflow throughout the construction phase of the concession project. Partners will make their funding contributions by way of equity or loan participation. In the latter case, they may enter into third, secondary agreements with investment and banking institutions. Also, in the normal course of contract negotiation, the loan agreement between the SPV and the third party lenders will contain provisions for subsidiary loan agreements. These agreements will further provide for a range of monitoring procedures for banks. Next, it is expected of the Managing Director of the SPV to provide a detailed breakdown of works to be carried out with cost and time estimates in exchange for the bank's comments.

The legal nature of the SPV deserves some scrutiny. In general contract law this is a partnership. For most developed legal systems, this is an unincorporated, more relaxed, joint venture. In Greece, the SPV is expected to take the legal calibre of a société anonyme, in accordance with Law 2190/1920. After the set up of the SPV, its Managing Director signs a concession agreement with the Government, which, depending upon the terms of the latter agreement, may take over operations, after the execution of the works. Its life normally expires with the end of the concession period. He also enters into distinct substantive construction [sub-]contracts with individual contractors or engineering companies and further maintenance and operation contracts. All these contracts bind the SPV partners.

The separate contracts are positioned in a downstream binding order: the concession contract, the project performance contract, the substantive construction [sub-]contracts and operation and maintenance contracts. The expiration of the latter contract signals the end of the concession period. The concession project is then passed on to the State with the accompanying operation risks. Compliance with this order will ensure that the BOT-adjacent contracts will operate symmetrically for a longer time-period. Still, the most important feature of the BOT-PPP scheme is that it has relieved the State from taking substantial construction execution risks. The Employer of the project is not the State-Grantor, but the SPV partners, who contract the project on a turnkey basis and abstain from the early design and work execution stages. But, the State has a shared control, through its participation in the SPV.

The novelty of infrastructure policies in Greece is the creation of a Ministerial Committee on PPPs, led by the Minister of Economy and Economics and seconded by the Minister of Urban Planning and Public Works, and the Minister of Development. This is taking decisions upon the underlying purpose of the State participating in the financing mechanisms for a SPV. In its work, it is assisted by a Ministerial Special Secretariat. The work of the latter is to collate information about future application of the PPP scheme and speculate on alliances with the private sector. Law 3389/2005 gives the Ministerial Committee on PPPs the power to determine the procedure of fee collection, at the operating stages.[3]

Last, the modern business dimension in BOT-PPPs is that partnering creates a spirit of relational contracting. Parties should resolve conflict through the channels of project management and not arbitration or litigation. The essence of relational contracting is that there should be no loss of control and no shifting, or “dramatic transfer” of risks onto the Employer. There is “an obligation to serve-everyone’s mentality”. The importance of risk sharing and the concomitant adherence of corporate structures to this pattern indicate that the parties create “their law/ their arrangements”. Therefore, the SPV embraces an exceptional relational contract model, with its “own law” and a reciprocal base level of commitments and flexibility.

However, there is an esteemed lacuna to this model: the law is still unsettled as to whether there are enforceable and direct rights as among partners or from partners to stepping down contractors. The contractual structures of the BOT-PPP scheme are based on a lack of a binding structural and risk-divisional framework, as happens with substantive contracts. This integrated approach supports that the parties’ responsibilities will remain integral, no matter who bears the risk. Therefore, there is a binding risk assumption and undertaking. However, in the real world, where disputes arise, partners will wish to push risks in all different directions, but share the risk. Unresolved conflict among partners will taint the work environment and protract the adversarial nature of the industry.

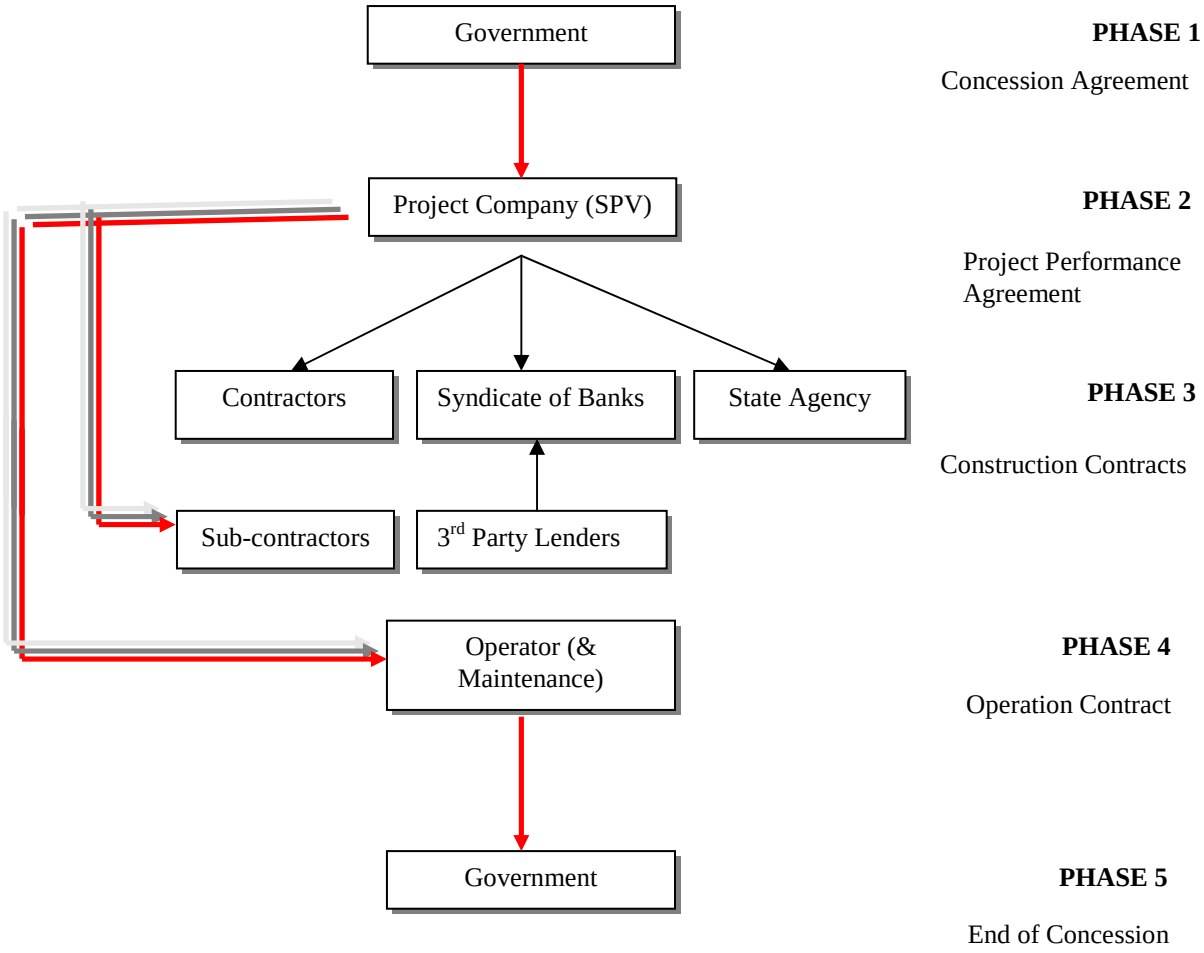

Figure 1: Schematic diagram displaying the sequence of the concession phases & the contractual structures

2 Dispute regimes

2.1 Legal framework

The effectiveness of the dispute regimes heavily depends upon the support of operating legal system. In Greece, the legal landscape is obscure. There is a clear lack of an autonomous branch of substantive construction law. Construction dispute resolution has been stretched between public and private law. Greece has not yet enacted a Construction Act which applies to public and private works. The law relating to public works is largely fragmented. Unlike the leading trends in developed legal systems for autonomy of this branch of law, the perception in Greece is that this is part of Civil law.

The relevant applicable provisions are couched in the Greek Civil Code, Book I (General Principles), Articles 173, 200, 288 and 388. These provisions consolidate the essence of the Civil Code in the interpretation of the parties' true intentions in accordance with the overall spirit of the contract and the principles of good faith. Book II (Law of Obligations), Articles 681 to 702 refer to 'Contracts for Work' and approach these from the specific relational viewpoint of debtor and creditor of the service/obligation. Articles 343 and 383 regarding overdue obligations apply by analogy. Furthermore, while the Civil Code applies, Legislative Decrees (L.D.) or

Presidential Decrees upon construction projects are issued from time to time. Still, this fragmentation cannot be said to promote good business practice.

While the legal background is hampered by the lack of concrete substantive construction law, construction dispute resolution for public works has been traditionally practiced by the Administrative Courts. Disputes arising out of public works contracts will fall within the jurisdiction of the Council of State (Department of Administrative Disputes). The Court of Auditors will act as a second-degree appeal body. Up until the 90s, the dominant perception was that public works contained a basic element: the participation of the state to realise the national interest. This is also encapsulated by Law 2229/1994.[4] For years, this has finely served the Government's political agenda. In many cases, this incumbent practice has lead to compromises. The notorious delays in decision-making has lead parties to settle their cases with the State out-of-court. Furthermore, the appointment of President and the Vice-President of these Courts is made by the Government.[5] Thus, Government would have some control over the outcome of the dispute.

Nowadays, the Public Works Act, Law 2229/1994 is the basic body of law governing public works. This Act has succeeded the Public Works Act, Law 1418/1984 and the Presidential Decree 609/1985. While the applicability of the Civil Code is not ousted, where issues of interpretation arise, the latter will be the fall-back legal instrument. The dispute resolution procedures were rather novel: disputes arising under government contracts will be resolved by the Court of Appeals, escaping the process of first instance litigation.[6]

Nowadays, it is somehow unrealistic to consider that public works exclusively fall within the national interest. The engagement of foreign financiers and contractors has meant that the dispute barometer has moved from the Administrative Courts to arbitration. There is a range of laws which refer to arbitration. Emphatically, some investment laws, at this time, not only are they supportive of arbitration, but would also impose this as the only means of dispute resolution between the State and the foreign investors.[7] Law 2052/1990 on Concession Agreements refers to arbitration as the preferred method of dispute resolution.

This law has introduced two important changes. First, while arbitration had not been made compulsory, there was a clear message to the Courts that in the event that arbitration was chosen, they ought not to intervene in the selected dispute resolution. Second, the arbitration agreement need not be endorsed by the Minister of Economy and Economics and the Minister of Urban Planning and Public Works and be subjected to the approval of any other Minister that has a say in the project. Prior to this law, this consent was given for projects where the State or a public entity entered into relevant contracts. But the new law has scrapped these requirements, and arbitration is now being made a mandatory dispute regime.[8]

The recent BOT-PPPs for large infrastructure projects have adopted multi-tiered dispute resolution procedures.[9] This is also in line with the standard judicial policy of implying a good faith effort by all parties entangled in the dispute.[10] The particularity of these procedures is that prior to referral of the dispute to arbitration the place of proceedings and applicable law will be Greece, while where the dispute

reaches the stages of arbitration, this will be dealt with in London, under the LCIA Rules.[11]

The enactment of Law 3389/2005 on the 'Co-operation of the Public and Private Sector' is expected to bring some changes in future construction dispute resolution in Greece. Disputes arising under the project-performance agreement will be dealt with by arbitration.[12] Its scope of application extends beyond large infrastructure projects and the mainstream industries operating in Greece. If arbitration is the parties' means of dispute resolution, and Greek law applies, then there is a distinction to be made. The domestic arbitration provisions in Greece are part of the Code of Civil Procedure, Articles 867-903. If parties are international, then the UNCITRAL Model Law of 1987 on international arbitrations will apply.

2.2 Genesis of disputes & associated risks

The contractual relationships of BOT-PPP schemes suggest that project parties will get involved in the performance of the project, from various roles and responsibilities. Undoubtedly, this situation will create a changing and dynamic environment. Further to this, uncertainty of contract terms and the bearing of risk will create disputes. No matter the degree of sophistication of the contractual structures, there are four identifiable levels of dispute which SPV partners will be faced with: upstream, intra-partes, downstream and third-party disputes.

Upstream disputes may occur at any project phase and will affect the way SPV partners will resolve their issues with the Grantor. To give an example, unilateral actions of the Government by way of changes to the legislative framework i.e. the issuance of ministerial decisions which result in project delays and variations. This change will impact upon the consistency of the BOT network of contracts: it will cause the project company to restructure the downstream substantive contracts, as well as its loan agreements with third-party financiers.

Intra-partes disputes relate to the project performance agreement. Partners may disagree over each partner's financial contributions to the financing of the SPV, or, one partner may go insolvent, and the financial burden falls in the arms of the remaining partners. Downstream disputes occur from defaults of contractors, e.g. where sectional completion is not certified for reasons of contractors using materials different from the ones specified in their contracts. Risks in the BOT-PPP scheme may occur by actions of third parties to the scheme. Financiers often resort to overburdened unilateral change of interest rates affecting the process of repayment loans. This financial reform brings along a specific risk: Refinancing the project will amount to pursuance of further deals which may be negotiated on much more burdened terms than the previous agreements. Clearly, time overruns will amount to lower levels of profitability, as returns will be at less percentages and start at a later stage.

Whatever the level of arising disputes, these will have a domino effect upon the progress of the parties' contracts and lead to some interfacing level of liability. But, there is a common decisional thread: the determination of causation and liability. For the Grantor of the concession, this means that the flow of funds may be slow and the projected cash flow ineffective. The quality and intensity of risk is also multifarious, ranging from construction, operation, commercial and to political

risks. Disputes will be very difficult to separate and multiple parties will be engaged. Still, the financial loss for the participating party is the common issue which must be once and overly resolved. When these are brought in the litigation or arbitration regime, the lack of clear administration of risk strategy and resources may be revealed. This signifies the fragility of the BOT-PPP scheme, as a relational web of risks and contracts: the Grantor's and Employer's trade off of risks to contractors in exchange of a conclusive price that they bear no loss of potential project breakdown.

The BOT-PPP scheme has exonerated the State from a variety of risks. However, the structure of the SPV financial vehicle suggests that there are long-term financial risks which will surface, once disputes arise. The State may risk losing money returns where the project does not reach its target profits, and lose considerable amounts of its equity, which may underperform over the years. It is expected that where project breakdown occurs, it will be extremely difficult for the Government to relocate that proportion to other contractors or concessionaires.

3 Level-playing field, synergies & arbitration

The quality of interfacing disputes, the number of parties involved and severity of financial risk will determine the level-playing field and affect the parties' decision on the suitability of the two dispute regimes. BOT-PPP disputes are not ordinary administrative disputes, nor are they traditional public works disputes between the State and domestic contractors. Internationalisation of Greek infrastructure projects means that dispute regimes will be heavily influenced. Commercial relationships can be soured and parties may find their "normal" contractual rights to be unexpectedly altered.

The level-playing field will heavily influence the affected parties' mindset to proceed to arbitration. This decision will be contingent on the amount of disputes and the parties' control over the dispute regime. Furthermore, the parties' success of claims in a dispute regime will depend on their common or divergent interests. The effectiveness of construction dispute resolution may connote the need to sideline with other project parties. Synergies are always imminent in arbitration.

The Greek State, as Grantor or SPV partner, is a strong player on the dispute resolution terrain and can exert an indirect control over the regime. The most obvious case is where the State uses national lenders to fund projects. In Greece, the State or the Bank of Greece are shareholders in domestic banks that partially fund investment projects. Therefore, the aggregate amount of control over the project and the dispute regime increases. A more direct method of increasing control is where the State buys more shares in the SPV in order to change the synthesis of the directors' board; with a view to enhancing national interest in the SPV's decision or vice-versa. In the case where multiple parties participate in an arbitration, the State will wish to take financiers on its side. Domestic banks may be inclined to sideline the State which is a very good customer. The State can be the chicken with the golden egg for Banks, as it borrows each year around € 35 billion.

Clearly, the BOT-PPP structure has brought a change for the Greek state, upgrading it to a key business player impacting upon the effectiveness of invoking sovereign and protectionist theories. The participation of the State in the arbitral

dispute regime presupposes a decision of political and strategic character and is viewed under the given political climate. There is an obvious hidden risk that this may cause some administrative crisis. On the other hand, the strategic interests of a Government may overlap with the ones of its partners.

In the normal course, the SPV partners have the strongest say and control over the selection of dispute regime. Private partners of the SPV are much more litigious than Governments and may see that arbitration is a unique means to offload risk and gain more economic benefit, than their original projections. Generally, Governments are hungry for risk avoidance and try to pass down the risk to the 'downstream' parties. Once disputes arise the question goes back to risk allocation. There are three critical factors, which will impact upon the SPV's decision in pursuing disputes by way of arbitration: whether multiplicity of parallel arbitral and court proceedings, as a tactful game is overly beneficial; if they run a considerable risk of being exposed; and more importantly how these can be aligned to their cash flow anticipations.

But in general, the SPV partners would wish to fight their disputes with all affected parties in a sole regime. In reverse, if partners choose to fight their case solely on the SPV basis, this would mean that the winning partner would have to initiate separate arbitrations or litigations against downstream contractors, as there is no straightforward law regarding the enforceability of intra-SPV awards upon the downstream contracting parties. Alternatively, the parties could include pertinent clauses in the downstream contracts, that any award stemming from higher up the joinder scale should be binding on downstream contractors.

Domestic contractors may view Governments as allies, expecting the latter to lobby on their behalf. Contractors will be also tempted to join forces with the Grantor/ Government in order to delimit partners of the SPV to waive their rights under the concession agreement and then require equivalent benefits to be passed to it under the construction contract. This may also give contractors some political benefit in that the Grantor may engage them in future projects. The participation of the State as a shareholder with a strong percentage may create some incentive for the State to engage domestic contractors; often in exchange for their political support. This denotes a clear political agenda that each government will seek to advance through the BOT-PPP schemes.

There is also a view that contractors will be particularly desirous of arbitration, as this will increase their chances of getting paid. For disputes that fall strictly within the purview of substantive contracts e.g. defects or materials, and are not intra-SPV issues, partners of the SPV may wish not to engage in arbitration, and leave these issues to be resolved on a separate litigation level. However, their pursuing of such arguments cannot be entirely asserted in law or contract, but will also entail a large degree of fact. Contractors can benefit from arbitration, in that they can set forth all their claims, defenses and fight their entitlements for payment. Arbitration offers them a ground to overthrow the parties' contentions that they have accepted risks by conduct. This clearly outlines the remedial nature of this dispute regime.

Lastly, the level playing field will be influenced by third parties. An example is where the project is breaking down, and the project company must produce extra

equity in order for the concession to survive. The risk is great. SPV partners may bring in foreign contractors, who may offer lower prices especially at the operating stages, but gain increasing control over the project. Also, imagine where before the termination of the concession, a partner company merges with another one or is being taken over by another one. Buyouts and mergers will also give access to international contractors in the Greek market. However, it may increase the amount of control of the project in the hands of a Greek contractor or State Agency. And these will have a say upon the selection of the dispute regime.

In this continuum, parties with strong financial uptakes will seek to carry issues forward and maintain control over the regulatory and causal links of the ensuing disputes. Parties are always determined to put forward their objections with vigour. The amount of control each individual party has over a part of the works is for the most part not adequately determined, and clear lines of responsibility and liability do not exist. Affected parties parties will form all sorts of synergies, as arbitration hearings subvert some degree of alliancing. Therefore, the arbitrator must capture the larger BOT contractual picture and manage across the complexities of BOT commercial and management structures, by looking into the parties' competitive demands. In the assertion of liability, parties are expected to resort to strategic moves, and the arbitration request may be considered as one.

4 Arbitration or the Courts?

The strongest parameter for a selection between arbitration and litigation is this: which one deals with high-value and complex disputes in a timely, cost-effective and fair manner? Certainly, this is also a question of the legal system where these dispute regimes take place, and the practice of the peculiar industry. There are five main reasons why international arbitration may gain the parties preference, compared to domestic litigation.

First, arbitration under the BOT-PPP scheme will involve multiple parties and multiple interrelated, or not, claims. The issues encountered within the overall scheme of BOT-PPP arbitrations are multifarious: legal, technical, and socio-political. Too many parties may have a blurred understanding of the legal and factual issues involved. A priori arbitration will become a more reactive and dynamic dispute regime. However, it can be a unique reference where the parties' interests converge. Arbitration is a concrete dispute regime, where these interests are not viewed in isolation, but in the framework of analysis for liability determination. The majority of claims under large infrastructure projects rely upon their factual and not legal basis. Compared to litigation, arbitration can be a far better fact-finding procedure.[13]

Second, in the same line of argument, the parties' freedom to select their arbitrator, and not a state-imposed judge, implies a certain agreement: the parties have vested the dealing of their disputes with experts in technical and legal issues. Arbitrators are expected to make a more rounded appreciation of the dispute situation and may direct parties more easily to reach early agreement on how disputes should be best resolved. Parties in BOT-PPP arbitrations can select a single arbitrator, who can timely proceed with proceedings. The bringing of their disputes before the Multiparty Court of First Instance (Polymeles Protodikeio, *Πολυμελές*

Πρωτοδικείο), will prompt the set up of a three-member tribunal, who may heavily disagree on the underlying issues.

Third, arbitration allows the parties to organise the proceedings as they see fit. Procedural issues e.g. submission of claims, taking of evidence, examination of witnesses etc will be more swiftly determined. Where parties and Counsel are co-operative, arbitration will be a more flexible procedure. The arbitrator, as opposed to Courts can take on more initiative in the event of procedural deadlocks. Greek judges very rarely take on the role of an 'activist' judge in the direction of autonomously administering the proceedings. Judges do not take on initiatives to overcome procedural and substantive law impossibilities, while they could make a mark to the evolution of the law.[14] Therefore, construction dispute resolution through litigation remains stagnant.

Fourth, the confidential nature of arbitral proceedings will offer an added incentive for project parties to favour arbitration. Long-term commitments and relationships with favoured and important clients may be exposed in [public] court proceedings. Furthermore, non-transparent mechanism of project financing sources, as well as project financing techniques, could be revealed. This will further cause profound implications for various investment lenders. Banks, are partners with the most confidentiality reservations: their lending activities in the area of investment could go public, not to mention that the internal negotiations with lenders from different parts of the world and the State could be disclosed. Also, where disputes occur at the operation stage, sensitive information relating to the SPV's interim profits or margin and turnover expectations may go public.

Lastly, Arbitration offers the extra advantage of arbitrating in a neutral language e.g. English and the dealing of the case by technically and legally progressed practitioners. In the antipode, arbitration offers another incentive for the State: relieving the GDP from providing for additional provisions e.g. the Courts' requiring more time and expenses over challenging procedures.[15] All these costs and time could be saved, if parties resorted to an experienced arbitrator. For a more sophisticated project which consists of international players with a diversity of contracting skills, it takes great effort to achieve communication. Such uncertainties may impact upon the outcome cost.

On the negative side, the most obvious weakness of arbitration is its consensual basis. The Public Sector in Greece has for years retained the perception of holding the upper hand in arbitral dispute resolution. The Greek State, from its position as a Grantor or through its participation in the SPV may play by state immunity rules and refuse to participate in any form of arbitration.[16] There is a peradvertent advantage of litigation over arbitration: the judge has power in joining third parties to an existing litigation. These powers are provided in the Code of Civil Procedure, Articles 74-78 and 86-90.

Furthermore, arbitration may not be the most economically viable solution for BOT-PPP disputes. The costs of litigation in Greece are relatively small, compared to the levied arbitral expenses. But, lack of efficient court proceedings means that parties will incur additional costs: they may need to engage financial executives, technical experts, legal advisers. However, for foreign contractors, there is no

incentive to resort to Greek Courts for the resolution of their disputes, as the time and costs may be far greater than the arbitrating costs e.g. costs of translating documentations into Greek, employing translators for examination of witnesses etc.

5 Developing perspectives

Construction dispute resolution in Greece needs a qualitative upgrade. The following propositions could be considered in a future agenda for effective construction dispute resolution.

First, State enterprises must become more active business players: they must enjoy the freedom of selecting the dispute regime that best suits their interests. In practice, this means that this choice should be left upon the Board of Directors. Any subsequent ministerial control, even for reasons of controlling formality, should be ousted.

Furthermore, a continuous flow of construction law researchers and practitioners is necessary for sustaining responsive dispute regimes. The set up of a Construction Industry Council, by the private sector, is necessary for lawyers and engineers to acquire the desirable cross-skilling in construction dispute resolution. This should be an institutional body, with a mission to improve construction practice and excellence, by feedbacking into the current construction process, as well as offering a consultative reference on domestic construction practices for Greek and international clients. The creation of such a body would swipe away administrative costs incurred in the set up of ad hoc Agencies, at the inception of infrastructure projects. Presently, these are commonly formed by the Ministry of Environment, Physical Planning and Public Works, the Ministry for Development and the Ministry of Economy and Finance.

Moreover, the State could consider establishing a permanent Construction Development Agency. Thereafter, the Construction Industry Council and the State Construction Development Agency should jointly work towards a range of goals: the production of government standard forms of contract conditions for the national mainstream industries. Standard forms of contract will reflect good business practice. This could easily lead to the creation of a substantive law by way of statute of construction dispute resolution.

Third, a pertinent solution would be the establishment of a permanent specialist Court division of the type of Technology and Construction Court of England and Wales. This could be part of a Court of First Instance, located outside the country's leading and congested Courts of Athens, Thessaloniki and Pireaus.

Fourth, the perspective of institutional arbitration must be courageously addressed. It is a great hurdle to invest in a country, where arbitral institutions have minimal activity. For, if project parties wish to consult a professional dispute body, they must seek assistance from abroad. Even to present day, the establishment of specialised tribunals of arbitration is subject to the joint agreement of the Minister of Justice and the Minister of the Ministry which supervises the Institution.[17] While, Greece has adopted one of the most liberal international arbitration laws, the UNCITRAL Model Law of 1987, this remains untested, by pure lack of practice by specialised international arbitration institutions. These could also apply their own

rules on International Arbitration and improve their facilities. There is an intermediate working target to promote arbitration, ad hoc or institutional. In its negotiation of BOT-PPP schemes, the Government should press on with arbitration before the Athens Chamber of Commerce and Industry, with a view to enhance the latter's industry appeal domestically and internationally.

6 Closing remarks

There are three pointers which flow directly from the previous discussion. The current structure of the judicial mechanism combined with lack of modernisation of Greek construction law may divert project parties to seek more viable dispute regimes abroad. Construction policy-makers should press ahead for dispute resolution through the channels of arbitration. This is a dispute regime that can set forth unique opportunities for project parties to address their issues in a finite and creative manner.

Arbitration may become the scapegoat for politically and economically vexed issues. The level-playing field is formed by a series of competing demands cropping up in arbitral hearings. Therefore, fairness and justice come second to the parties' expectations. With these considerations in mind, an arbitrator or judge are faced with composite decisions, which must reflect credit back on the project and the users of the infrastructure facility: the public. Effectiveness connotes that an arbitrator will be more flexible in the structure of proceedings. While he must elicit solutions in law, his value lies in re-organisation powers, in case the arbitration regime breaks down.

Third, the success of arbitration is premised on a desirable convergence of the applicable substantive law, the letters of the parties' contracts, and the arbitrator's organisational skills. But, the importance of communication and agreement of parties in the set up of a dispute regime cannot be underestimated. The most essential ingredient in this is the parties' co-operation and avoidance of tactics, which will lead to the breakdown of the regime. Still, the effectiveness of dispute regimes may on occasions be minimal, as litigation and arbitration may not make a marked difference to the outcome of the dispute. Every dispute regime may suffer from imperfections and questions left unanswered. And also, parties are not clear on the selection of the appropriate dispute regime, because the nature of their disputes is not straightforward, once they decide to litigate or arbitrate.

7 Conclusions

The construction industry is slow in accepting changes in the dispute resolution arena. The success of dispute regimes will depend upon their acceptance by the practice barometer. The current prediction is that Greek construction practice is a long way from facilitating arbitration. If this environment does not improve, then the domestic construction sector will fail to take its place in the European market as a competitive force. Certainly, strong dispute regimes are a key market indicator, capable of substantially conferring national growth. Young Greek researchers must harness the merits and demerits of the current development policies in order to produce better guidance for domestic and international clients, interested in the domestic market.

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Abbreviations

BOT	Build-Operate-Transfer
GCCP	Greek Code of Civil Procedure
ICLR	International Construction Law Review
L.D.	Legislative Decree
P.D.	Presidential Decree
PPP	Public Private Partnership
Rev Hell Dr Int'l	Revue Hellenique de Droit International
SPV	Special Purpose Vehicle
UNCITRAL	United Nations Convention on International Trade Law

[1] Indicatively, large infrastructure projects currently underway are: the Thessaloniki Metro and Underwater Artery, the Italo-Greco-Turkish oil-pipe project, the Kifisos urban regeneration project etc

[2] See L.D. 2687/1953 and Director's Act 2345/3.3.1995 respectively.

[3] See Article 19.

[4] See Article 1.

[5] See Greek Constitution 1975/1986, Article 90(5).

[6] See Article 13.

[7] See L.D. 2687/1953, Article 12.

[8] See Law 2052/1990, Article 9(4n) & 6. These provide as follows: "For the settlement of disputes deriving from the construction agreement or due to it, an agreement of international or internal arbitration may be stipulated, as long as it is provided in the invitation to tender".

[9] See e.g. Law 2338/1995 (Government Gazette FEK A' 202/14.09.1995), "The Athens International Airport/ Eleftherios Venizelos", Article 44, headed "Settlement of Disputes".
[10] See Katsantonis, Vivian/ Georgiadis, Stavros & Tieder, John B. Jr, "An Overview of Construction Contracting under Greek Law", 15(3) ICLR (1998) 453, 470.
[11] See multi-tiered procedure provided for the concession of the Athens International Airport in Law 2338/1995, Article 44
[12] See Article 31(1).
[13] See e.g. Verveniotis, George, "The Concession Agreement (BOT) Legislation-Recent Developments", 11(1) ICLR (1994) 55, 61.
[14] See Yessiou-Faltsi, Pelayia & Tamamidis, Anastasios, "Recent tendencies in the position of the judge", 52 *Rev Hell Dr Int'l* (1991) 459, 479.
[15] See Yessiou-Faltsi & Pipsou, Maria-Lyda, "Access to Justice in Greece: Costs and legal aid", 59 *Rev Hell Dr Int'l* (2006) 152, 179. There is a high 5.8 % of the GDP, i.e. € 528 million spent on justice administration for the year 2006.
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Public –Private Partnerships: an innovative tool for decentralizing the production of public goods in contemporary Greece

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Abstract

Although the classic mechanisms for delivering public goods and services have exhibited a number of weaknesses, institutional partnerships between the public and the private sector in Greece had, until recently, been mainly limited to the materialization of large scale concession agreements. The new legislative framework has, however, attempted to set new terms for the adoption of smaller scale public private partnerships (PPPs) by central as well as local public authorities. Taking into account the structural weaknesses of the country's highly centralized administrative system, the present paper intends to form a more concrete theoretical argument on benefits and threats engaged by a, potentially, wider application of local PPPs for promoting a "bottom-up" form of governance, in Greece. Contemporary practice will be illustrated through brief examination of a government initiative for the promotion of local partnerships.

Key words: *Public Private Partnerships, Greece, public goods, local government, decentralized governance*

Introduction

One can argue that existing literature on contemporary Greece has widely covered the need to proceed in decentralization of state governance, as a major promoter of regional development. It has also been clarified that activating private initiative and, consequently, private capital, constitutes a key factor in achieving economic growth (Barro & Sala- i-Martin, 1995; Repas, 1991). However, the importance of using the private sector as a partner in the process of materializing projects of public interest has not yet been thoroughly analysed in the context of contemporary Greece's economic as well as administrative status.

Private financing of public works is not a new trend in the international arena: even since the 19th century concession agreements were quite common for the delivery of various projects (Trova & Koutras, 2001). Even so, until the late 1970's the public sector has been considered responsible for the development of public infrastructure and services through state budget financing (MEF, 2004). Public private partnerships (PPPs) have been developing, in their contemporary forms, since the 1980's, as an answer to poor public sector performance, state budgetary constraints as well as increased international competition, demanding for means to promote new opportunities for private capital (Boix, 1997). A basic element in PPPs' development has been the promotion of "new public management" and the reforming of central administration (Hebson et al, 2003). In this process, local government partnerships with private actors has played a key role both in introducing innovative forms of bottom-up governance, as well as in promoting local development (Andersen, 2004, Pichierri, 2002;Xie & Stough, 2002)

Greece, also, has recently begun to exploit the potentials of implementing partnerships. First came the adoption of concession agreements for materialization of three large scale projects during the 1990's, later through the implementation of a legal and institutional framework in 2005. It is important, however, to see how PPPs can be integrated in the Greek system of delivering public works, especially regarding the adoption of partnerships by local governments, who try to function in a highly centralized environment.

First we will describe in short the context in which public interest projects have been materializing in Greece (EU funding, classic public procurement) during the last decades, on central and local level and, next, try to identify its weaknesses (delays in delivery, insufficient absorption of EU's funds, "top-down" programming and management). Next, we will present public private partnerships and try to identify their basic general advantages. This paper will then attempt to connect the above mentioned characteristics to the existing needs of Greek local authorities. Emphasis will be placed on theoretical opportunities as well as potential threats of using partnerships as a tool for promoting local development, strengthening local authorities and achieving decentralized governance. Finally, before concluding, we will

briefly examine a central government initiative, which aims to the promotion of local PPPs, as well as how Greek municipalities are currently responding to this challenge.

1. Producing public goods in Greece: problems and prospects

In order for one to understand the background of producing and delivering public goods in Greece, a brief presentation of the administrative Greek system is needed. According to Photis & Koutsopoulos (1996), Greece has a government system characterized by a centralized, strictly hierarchical top-down structure and a pseudo – decentralized administration, where local and regional authorities are not offered the necessary competences so as to function autonomously. In brief, the Greek system fails to offer all echelons of authority the necessary political, administrative and economic functions as well as adequate infrastructure, which would allow them to actively participate in governing processes. In this context, the delivery of public infrastructure and services has mainly been the responsibility of the central government.

Classic Public Procurement and EU funding

Public works in Greece have been traditionally materialized through the method of classic public procurement. In this case the public sector selects a private contractor through competitive tendering procedures. The project is financed, operated and owned by public authorities while the private sector is solely responsible for the constructing phase. Up to the beginning of the 1990's public works had been awarded to private contractors according to the "lowest price criterion". This, along with the absence of reliable control mechanisms, offered the private sector strong incentive to present artificially low bids and limit construction costs after being awarded the project. Otherwise, constructors had the legal option to demand refund of the difference in costs after the completion of the project (Dimitrakopoulos, 2001). As a result, public works materialized through this method often presented poor construction quality and very low value for money.

The public procurement legislation reforming during the 1990's partly solved the above mentioned weaknesses and finally the "mathematical type criterion" replaced that of the "lowest price". However, it has been generally acknowledged that classic public procurement presents weaknesses with regard to cost overruns as well as late delivery, which are mainly due to poor planning as well as ineffective allocation of risks (BEI, 2005; NAO, 2004; 2003;Ganuza, 2003).

It must, also, be pointed out that the central government has institutionally controlled all public procurement schemes mainly through the Ministry for the Environment, Planning and Public Works (MEPPW), which has often caused coordination problems with other central government institutions and ministries involved in implementation procedures. Another

aspect of the same problem is the fact that sectoral actions had been promoted while ignoring the wider policy goals that should be pursued (TCG, 2005; Dimitrakopoulos, 2001).

Furthermore, data on procurement markets in OECD countries indicates that Greece has one of the, comparatively, highest ratios (0.56) in central government to general government spending (Evenett & Hoekman, 2004). This implies the low involvement of local government to procurement procedures. To sum up, one could generally conclude that the MEPPW, as representative of the Greek central government, has been playing the major role in classic procurement processes, leaving relatively behind regional and local authorities on the financing and decision - making level.

Since the 1980's the country has also benefited from EU grants and funding that have significantly contributed to the materialization of more decentralized projects, aiming to the reduction of regional disparities. There have, however, been problems regarding Greece's, as well as other member countries', capacity to successfully absorb and distribute Community funding.

Even since the first Community Support Framework (CSF), the weak and problematic structure of Greek public administration led to poor management of EU funding. The main problems, during the period 1989-1993 seemed to arise from the incapability to support the delivery of public infrastructure projects (Getimis & Marava, 2002). Weak absorption of Community funding, delays in implementation procedures and problems in negotiations continued through the next programming periods (see indicatively: www.hellaskps.gr; Court of Auditors & EC, 1998; "To Vima", 24/12/2005; "Kathimerini", 03/01/2007). By the end of 2006, 30.197 projects had been approved for funding by the EU (through the 3rd Community Support Framework (CSF), the Cohesion Fund or Community Initiatives), for a total budget of about 42.644 billion €, of which only 4.31% had been absorbed[1] (KEDKE , 2007).

In all cases, the Greek central government kept the main role in monitoring the Community programme's allocation to local authorities (Getimis & Grigoriadou, 2004). It is indicative that during the programming period 2000-2006 local governments benefited only of 12.13% of total EU funding in Greece. It is also worth noticing that by 31/12/2006 the absorption rate for local government projects equaled 42.66% while 30% of approved projects hadn't concluded with contractual arrangements.

Nowadays, given the increased interregional inequalities that followed the inclusion of new member countries, together with the persistence of budgetary constraints, EU has started to set in motion new types of support frameworks that will attempt to promote the use of private capital as a tool for continuing its cohesion strategies. For the next programming period (2007-2013) 350 billion € will be invested by the Community in new regional policy

[1] Absorption= percentage of spending to budget of approved projects.

programs. It has been made clear, though, that it would not be wise to rely solely on public expenditure. That's why Initiatives such as JESSICA[2], are based on non-grant development funds, promoting recyclable and recoverable financial mechanisms, thus allowing the recovered funds to be reinvested in the future (Inforegio, 2006; EC, EIB & CEB, 2006; Hübner, 2006).

All these mentioned, it becomes clear that contemporary Greece has long been in need to search for new instruments, in order to adequately answer the country's needs for public infrastructure and services. The use of private capital as well as "know-how" seems to offer a solution to long lasting budgetary constraints as well as to unsuccessful classic public procurement methods.

Public private partnerships in Greece

The "trend" of public private partnerships (PPPs) has first been introduced in Greece through the form of "concession agreements"[3], which, at the time, have been said to form a kind of "legal paradox"(Trova & Koutras, 2001). Taking into account Greek administrative culture as well as lack of relevant experience, PPPs' implementation began through central government partnerships with the private sector. The main result has been the materialization of three large scale infrastructure projects: the Athens Ring-Road "Attiki Odos", the Athens International Airport "E. Venizelos" and the Rio-Antirrio bridge. When briefly presenting these first PPPs that have been implemented in Greece during the 1990's, one can make three basic observations:

Firstly, all three cases concern long planned projects, which were given considerable notice during the pre-contractual phases, which lasted for 4 to 5 years. At the end, the contractual agreements have been legally supported through the voting of separate laws by the Greek Parliament[4], which seemed indispensable, considering both the lack of explicit legislation on PPPs as well as prior relevant experience (Koutras et al, 2005).

Secondly, the Ring-Road, the Athens Airport and the Rio-Antirrio bridge have been partly financed by the EU and the European Investment Bank. (EDEXY, 2003).

Thirdly, they concern long term (23 years for "Attiki Odos", 30 years for "E.Venizelos" and 42 years for the Rio-Antirrio bridge) concession agreements, where the private contractor has the right to collect tolls ("Attiki Odos" and Rio-Antirrio bridge) or charges (Athens Airport) from users.

[2] JESSICA: Joint European Support for Sustainable Investment in City Areas. EU is parallely promoting JASPERS and JEREMIE initiatives for the improvement of access to finance as well as technical assistance in planning, programming and preparation of projects in member states.

[3] With PD 23/1993.

[4] More specifically, Law 2338/1995 concerned the "E. Venizelos" International Airport, Law 2395/1996 concerned the Rio-Antirrio bridge and Law 2445/1996 concerned "Attiki Odos".

Apart from the above mentioned infrastructure projects, few preliminary forms of PPPs have been implemented on local level, either through the forming of Municipal Enterprises (Getimis & Grigoriadou, 2004) or by engaging private funds in order to perform small scale urban interventions (Kyvelou & Karaiskou, 2007; EDEXY, 2003)

In September 2005 the Greek Parliament voted law 3398/2005, which concerns relatively small to medium budget PPP schemes (of less than 200 million €). The law also implemented the Special Secretariat for Public Private Partnerships, a central unit under the Ministry of Economics and Finance, for the promotion, support and observation of Greek partnerships. In any case the importance of this new law lies in that it regulated the terms and conditions under which partnerships between the public and the private sector can be developed in Greece while explicitly permitting local authorities to use PPPs as a tool for promoting their proper goals (see Koutras et al, 2005).

At this point, it seems necessary to briefly present some of the basic principles and general advantages of public private partnerships in order to justify their worldwide application in national or local level.

2. Main characteristics of public – private partnerships

Relevant literature offers an impressive variety of definitions for public private partnerships. It can be accepted that one narrow definition for PPPs will not be of practical value, since partnerships take a variety of forms and expressions across different countries and depend largely on the nature of schemes (PriceWaterhouseCoopers, 2004;Xie & Stough, 2002). In any case, a public private partnership is formed when public and private actors decide to collaborate in order to answer to public needs in the most effective possible way, by sharing resources, risks and benefits (Caisse des Dépôts, 2003). Otherwise, PPPs have been identified by the European Commission as forms of collaboration of public authorities with the world of enterprises, aiming to guarantee the financing, construction, renovation, management or maintenance of infrastructure or the allocation of a service (EC, 2004)

When referring to PPPs one must outline the basic principles that distinguish this innovative form of delivering public goods and services. This is considered important since many authors fail to separate partnerships from other public private interactions, such as privatization and contracting out, thus enhancing PPPs with characteristics that deprive them of their basic notions. Indeed, public private partnerships could be identified by three major principles: durability, synergy and complexity (van Ham & Koppenjam, 1999).

In this context we should stress that public private partnerships are long term commitments between actors, at least one of which is public (Sack, 2004). These co operations usually extend from 25 to 35 years, depending on the nature of the project and are supported either through a clearly contractual relationship or by the creation of a special

mixed capital legal entity –usually referred to as Special Purpose Vehicle (SPV)-, mutually controlled by all actors (EU, 2004).We should, note that PPPs can also take the form of finite or infinite time contracts. In this case the difference lies on the incentives of the private sector, whish are based on the salvage value of the investment at the expiration of the operating phase (Mulder, 2004).

Taking into account the above, the basic principle of PPPs is the sharing of responsibilities. Public and private partners undertake a public interest project by attempting to identify all risks involved and then assign all actors with the responsibilities each is best fit to handle. This aspect underlines the mutual contribution of resources, which takes a variety of forms, always in accordance to the type of project and the agreed goals (McQuaid, 1994). An important aspect of risk sharing, however, is that different actors exhibit differentiated perception of the same risks (Gallimore et al, 1997). In any case a general overview demonstrates that usually, the private sector assumes partly or wholly the financial risk of a PPP scheme[5], while the public sector undertakes risks concerning the framework in which the project will be materialized and operated successfully[6].

Complexity is another main characteristic of schemes materialized through public private partnerships. Alternatively said, PPPs usually concern projects with a number of aspects and of which the outcomes will affect a variety of interests. The State, thus, chooses to cooperate with private parties because it realizes that it is in no position to define all the conditions required to achieve the desired output (van Ham & Koppenjam, 1999).

Additionally to the above, PPPs follow two rules. The fist rule dictates that in a partnership the public sector's main role is setting strict conditions in order to defend public interest. Secondly, when involved in a PPP, the private sector is compensated according to its performance and the duration of the cooperation (MEFI, 2005). This last remark is crucial for achieving a long term balanced relationship between the involved sectors and avoid conflict of interests within the partnership.

Consequently to the above mentioned characteristics, a number of positive effects have been reported to derive from public private partnerships. It can be argued that PPPs present financial advantages in the production and delivery of goods, advantages for the development of entrepreneurship and, finally, positive effects to the national/local economy and society. We will present these advantages in the next part of this paper.

[5] In any case any financial contribution of the public sector should be sufficiently justified in a PPP. The World Bank suggests that public financing is justified if social welfare gain exceeds the amount of public money invested multiplied by the cost public funds: $\mathbf{W_{PC}-W_{NPC} \geq C_P*MCPF}$ (World Bank, 2005).

[6] For example, the public authority usually assumes the risk of acquiring land and construction permits, of possible shifts in the political scene and of early project devaluation due to public sector activities (see MEFI ,2005; EC, 2003).

3. General positive effects of PPPs

It is generally recognized that the main incentive for adopting PPPs is achieving better "Value for Money" (VFM). By this term we refer to the reduction of the construction, operating and, in some cases, maintenance cost of the project, compared to achieving the desired outcome through alternative financing and procurement methods (DPL, 2002).

Partnerships achieve VFM due to the participation of the private sector, under the specific conditions set by the PPP contract. Contrary to public organizations, the private sector operates in a competitive environment, where effective planning and management is crucial for its survival. Therefore, a private company's main incentive is maximization of profit and market leadership. In the case of public private partnerships, these principles work in favor of a project of public interest in two ways:

Firstly, there is evidence for PPPs to achieve increased efficiency in terms of budget and time delivery. A long experience with budget excesses of public works shows that the profit motive of the private sector is a more effective factor in controlling costs than the legal and ethical obligations of public authorities to protect the taxpayers' money. Secondly, during the operation period, taking advantage of the private's sector managerial know-how and market placement leads to better whole – of – life asset management and, thus, better performances for the project. These two remarks mainly derive form the fact that in classic procurement for the construction of a public work, the contractor has every reason to blow up the budget so as to expand profit margins, whereas in a PPP the private partner is not compensated according to costs but according to performance (Plaskovitis & Karaiskou, 2007). Indeed, evidence from the United Kingdom reveal that about 78% of PPPs have respected the initial budget set by the contract and only 24% of such schemes presented late delivery[7] (NAO, 2003).

Achieving better VFM is also connected to PPPs risk sharing and compensation policy. In public private partnerships, the private sector usually undertakes the risks of financing, planning and delivering the project while having to respect the output specifications set by state authorities, in order to be adequately compensated. This factor is in itself an important incentive to any entrepreneur for minimizing costs and maximizing quality (Poschmann, 2003; APCC, 2002).

Public private partnerships offer another important advantage: the possibility of achieving economies of scale and gains in terms of increased productivity. Indeed, the State can cooperate with more than one private company for the materialization of a series of

[7] A relevant survey of the European Investment Bank in PPPs has shown that the success of PPPs regarding the respect on the initial budget and time of delivery is mainly due to the detailed nature of contracts adopted in such schemes (see BEI, 2005).

supplementary projects through one single contract (BEI, 2005; MEFI, 2005). This kind of programming, on the one hand allows authorities to save time by initiating one tendering process for more than one schemes and secondly, offers the chance for parallel coordination of activities between partners, so that the ratio of used resources to the produced output is digressive.

Apart from the VFM factor, partnerships can have positive effects to the development of private sector and entrepreneurship. This partly lies on the opening of new markets, traditionally controlled by the public sector (Sturgess, 2006). By developing creative partnerships, the State can still control output quality and, at the same time, open paths for the creation of mixed economy markets of public goods and services that offer new opportunities to private initiative.

In many cases, state authorities, also offer their partners incentives and facilitations in order to improve the financing conditions of the project (Gligorijevic, 2004; JRF, 1998). Taking into account that PPPs are based on "non-resource" financing (MEF, 2006), where cash flows occur at the operation stage, these incentives usually take the form of tax reductions or state guarantees and intend to facilitate the effort of the private partner in securing the necessary funds during the construction period. Moreover, the public sector, whenever possible, further reduces the financing cost of the project by granting state owned land to the private sector. In this manner it is made easier for private companies to enter the PPP market and improve their placement.

Other important advantages of PPPs originate from the very concept of the word "partnership". Indeed, most authors agree that creating partnerships between the public and the private sector, in a more vast sense, benefits social justice and empowers the creation of participative procedures open to all interested parties. Networking is crucial in the development of cooperation between sectors and, in this context, actors such as NGOs and other social partners are often given place to participate in schemes with increased social impact. Such procedures improve transparency and may lead to better securing public interest through the embedment of specific contractual terms (UNDP, 2000).

All the above mentioned advantages of public private partnerships can apply to national as well as local level, depending on the nature of PPP schemes. For the purpose of the present paper we will focus on the positive effects of public private partnerships in local economies and decentralization processes.

4. PPPs and local development

Local development could be defined as the participatory process that encourages and facilitates partnership between the local stakeholders, enabling the joint design and

implementation of strategies mainly based on the competitive use of local resources (Canzanelli, 2001). This definition has been chosen in order to stress the importance placed in recent literature on the creation of partnerships for developing local economies. In the case of Greece, where strategies for local economic development seem to lay principally on central government guidelines and policies, the promotion of "local partnering" seems to be even more crucial. Based on the advantages mentioned in the former part of this paper, it is helpful to outline some possible positive effects of public private partnerships, this time in the context of local economies.

PPPs have been primarily developed in order to attract private funds to public interest projects at times of state budgetary constraints (Mohr, 2004; Poschman, 2003; Spackman, 2002; Bhat, 2000). In any case taking advantage of private financing means saving public money which could be used as public investment in other sectors, where partnerships or other forms of private financing are not considered desirable or even feasible. Local authorities can, thus, use PPPs supplementary to other public sector schemes for the delivery of infrastructure and services[8]. In this context, we could state that this overall increased investment activity as well as public infrastructure[9] in the region favors local economic growth, productivity, and competitiveness (Regan, 2005).

We have also stated that public private partnerships favour the development of the private sector in a number of ways. Facing this from the local economic development perspective, we should also refer to the fact that, by enabling the private sector to be activated in local markets of public goods and services, PPPs improve local productivity. Furthermore, Silva & Rodriguez (2005) have recognized the value of PPPs in empowering local cooperations, not only between the public and the private sectors, but also between private organizations themselves. "Collective entrepreneurship" is one aspect of this kind of cooperations, where companies of the same or complementary sectors can coordinate their decision - making processes. This sectoral or intersectoral coordination may offer positive outcomes such as

[8] It has been noted that, due to the market environment formed in contemporary mixed economies, public and private actors are often coordinated in their activities. Public and private capital may not only be considered as complementary but also as substitute "goods". In this sense, productivity curves for one product may be identical, independently to whether it is being financed by public or private capital (CRC, 2001; Da Vezies & Prud'Homme, 1994). At the same time, though, the hypothesis of "substitution" raises the question of whether increased public investment creates "crowding-out" phenomena, thus having negative effects on private investment (see Apergis, 2000). Since this discussion lies beyond the scope of the present paper, we integrate the effects of private and public capital to overall increased investment, which is considered as a positive factor of productivity, competitiveness and economic development.

[9] However, the contribution of infrastructure capital to economic growth is a rather controversial issue. There are reported empirical analyses that found no statistically significant association between the two components. We can state, though, that in the short term increased employment in the infrastructure sector presents positive effects to the economy while increased infrastructure capital leads to increased productivity in the long term (Plaskovitis, 2004).

diffusion of new technologies, development of innovation and specialization of human resources.

We could state that there are two ways of instigating the positive effects of partnerships to local development (Pichierri, 2002): it could be based on processes triggered either purely by actors and resources from inside the area in question or by a combination of endogenous and exogenous actors and resources. In this sense, to achieve endogenous local development, municipal authorities attempt to organize a PPP strategy by partnering with local companies that meet the desired standards and using local investment opportunities productively. Otherwise, local authorities could aim to attract economic actions from other territories, thus stimulating a direct or indirect competition, as a way for achieving economic development (Metaxas & Kallioras, 2004; Godard, 1996). Local competitiveness could be instigated by the cooperation between local actors as a base for the attraction of further investment in the region, while ensuring the functional survival and development of local businesses. In this context, forming a decentralized type of governance remains crucial for the empowerment of local decision – making processes.

5. Forming a new type of decentralized governance in Greece through local public private partnerships: prospects and threats

As stated earlier in the present paper, Greece has a rather centralized administrative system, where local authorities handle centrally controlled funds and enjoy relatively limited decisive competences. In this context, it should be interesting to investigate, on the one hand, the way in which local authorities can use partnerships in order to overcome the obstacles placed by the existing administrative Greek system, as well as how PPPs might, in the long term, encourage decentralization of the decision-making process, regarding the delivery of public goods and services.

Strengthening Local Authorities

Greek municipalities mainly finance their regular activities through a centrally controlled budget (Central Independent Revenues – CAP) and limited tax revenues or can seek for irregular revenues through public borrowing or disposing of municipal property (law 1828/1989). Taking into account that about 58% of their revenues derive from the central government budget (Lalenis & Liogkas, 2002), local authorities, by not being able to plan their own resources, simply lack the flexibility to finance more ambitious local schemes. PPPs, on the other hand, can be based on the use of private capital, thus relieving municipalities of the immediate financial burden of the project. In this sense, partnerships offer local authorities a new financial tool for overcoming their increased dependency on the central government

Another issue on the Greek administrative system lies on the structural and operational weaknesses of local authorities. Inefficient bureaucratic mechanisms are a main characteristic of Greek municipalities. Inadequate infrastructure and unskilled staff conclude the image of local self-governments who are often unable to efficiently support some of their basic functions (Photis & Koutsopoulos, 1996; Michael, 1994; KEPE, 1991; 1990). By initiating PPP schemes, local authorities take advantage of their partner's technical and managerial "know-how", in order to materialize a wide range of public projects.

Close contact with entrepreneurial culture is one more aspect of PPPs that could prove to be beneficial to local government. More specifically, cooperation with private institutions could help municipalities in identifying their weaknesses and adopting basic principles of private sector management and efficiency, in local administration. Productivity, total quality management and "customer – oriented" services are an example of new public management principles that derive from private organizations' practices (Michalopoulos, 2003; Hebson et al, 2003; Kim, 1997). Going even further, Riege & Lindsay (2006) refer to knowledge management partnerships, where public and private organizations form strategic alliances in order to improve the quality of public policy implementations. In this context, PPPs are not simply a mechanism for "employing" the private sector for the production of public goods: they are a potential tool for improving public sector efficiency.

Potential drawbacks of Greek local PPPs

Although PPPs are reported to present a number of positive effects and advantages, which can prove to be beneficial to Greek local governments, they, also, engage certain important threats. These threats derive both from the nature and characteristics of Municipal authorities in Greece as well as general features of public private partnerships.

One could state that the basic conditions for the successful implementation of a local PPP lay in the preliminary phases of forming the partnership. Ensuring the project's economic viability together with protecting public interest are necessary in order to ensure that a PPP is justified. Political and social priorities must be clarified and alternative financing and constructing methods should be comparatively examined before deciding to proceed to a partnership with the private sector (MEFI 2005; EC, 2003; Tsenkova, 2002; NAO, 1999). Ensuring competitive tendering is also crucial. Private investors must, however, expect financial returns in order to file a bid. Careful selection of the project's nature as well as effective planning could, therefore, contribute in making sure that a good number of alternative bids will be gathered (Fayard, 1999). Finally, it is the government authority's duty to impose contractual terms that will ensure the private's sector contribution in public goals, such as environmental protection and serving social as well as economic local needs (Lewis, 2003; Adair et al, 2000).

In this context, structural and operational weaknesses of Greek local authorities could pose important obstacles. As we have already stated, the lack of financial resources, as well as experienced and skilled staff, which could effectively handle the preliminary phases of a partnership, are a major drawback in ensuring that a PPP will have the intended positive effects. Conducting a partnership contract is a rather complicated, timely and costly procedure. The existence of opposing interests between the potential partners, as well as imperfect information on their intentions raises the need for careful setting of contractual conditions and increases transaction costs (Hall, 2005; Parker & Hartley, 2003). There is, also, the threat that, during this process, the private sector can benefit from the local government's structural weaknesses and take advantage of its own increased experience and negotiation capacity to the expense of general public interest (Bloomfield, 2006).

Clientelistic relations are, unfortunately, another feature of the local political system in Greece (Getimis & Grigoriadou, 2004), thus encouraging opportunistic behaviours and discriminatory selection procedures during the planning and tendering stages of partnering with a private company. One aspect of this problem lays on the fact that local representatives tend to act as agents of Greek political parties (Lalenis & Liogkas, 2002) and therefore disregard true local needs so as to serve central political goals. However, without competition and employment of VFM-criteria during the selection of bids, the local society fails to ensure that long lasting commitments, such as PPPs, will not prove to be more costly than classic procurement methods.

Taking into account that contractual relationships with the private sector normally last 25-35 years, long-term planning is a basic need in order to successfully implement a PPP. It is, however, possible for local governments' budgetary constraints to lead them in an overuse of private capital, as a short-term financing solution. PPPs usually support projects based on "non – resource" financing by the private partner, who will be compensated through payments during the operation period, while covering the cost during the construction phase (MEF, 2006; Sorge, 2004). Therefore, it should be made clear that partnerships do not offer a "magical solution" to every local problem and there is certainly a need to foresee that future financial cost will not disturb social justice –or else, that the price paid by the user/tax-payer will be socially acceptable. Apart from budgetary constraints, short –term political goals of local representatives engage a similar threat. More specifically, the adoption of private financing may be used to materialize projects by transferring operation cost – together with the political cost- to future electoral periods. It is clear that this kind of short-term financial programming may lead to social injustice through the transferring of responsibilities to future users and tax-payers, while it fails to serve the purpose of long-term saving of public resources (Pitt et al, 2006).

Finally, it may be proven difficult to secure local public opinion acceptance for the involvement of private, profit- driven organizations to the provision of public goods and services. The dominating Greek political culture and the weak civil society seem to render citizens suspicious of private – public cooperations (Getimis & Grigoriadou, 2004), which may pose significant obstacles to promoting partnerships, by fear of "selling-out" public property. In the eyes of the wider public, private management and charging users is not far from privatization and this may not be acceptable in the realm of public goods and social services (Plaskovitis & Karaiskou, 2007).

Promoting decentralization and bottom-up governance through local partnerships

When using the term *decentralization* we tend to refer to some kind of power and responsibilities transfer to local governments (Kim, 1997). The issue of decentralizing the production of public goods and services in Greece lies in fact to the transfer of resources and local policy-making capability and not so much to the institutional transfer of responsibilities.

Taking into account Greek administrative and government culture, we could state that formalized institutional decentralization processes could begin to take place when local communities are made ready to assume further responsibilities. In this context, two factors can be said to be of vital importance in order to trigger a bottom-up restructuring of the decision-making process: reinforcing accountability of local governments as well as reducing regional economic and social isolation phenomena. Partnerships between local public and private actors can play a key role in reaching these goals.

Public private partnerships are mentioned to set ground for decentralization of decision – making processes by allowing local actors to use their intimate knowledge of local needs in order to achieve better results (McQuaid, 2000). On a first level, implementing successful PPPs in traditional local public schemes may allow municipalities to productively exploit local resources and create a healthy competitive environment for private actors who wish to get involved in this new local "market" of public infrastructure and services. Through this networking between local government and private for-profit organizations opens the path for contractual relationships of a larger sense, between wider variations of local players expressing local interests. As Godard (2002) puts it "*…this enables us to go beyond the monocentered conceptions of the local political scene and the strictly institutional approaches of the political government ….",* by activating negotiation mechanisms between groups "*…whose relationships can be defined both by competition and cooperation.*".

Reinforcing accountability and sustainability of actions of municipal authorities in Greece, as we have extensively stated, is not an easy task. Clientelistic relations and party-dominated networks create major obstacles in ensuring healthy cooperations. However, expanding partnerships between local government and various social partners of the local community, including non-profit and non-governmental organizations, may well lead to

restricting individualistic phenomena, avoiding short-term planning and establishing a more open form of local governance (Silva & Rodriguez, 2005). At this stage we should also clarify that "partnering" is not limited to the simple passing of resources between the public and the private sectors (Pichierri, 2002), but may refer to the forming of productive social dialogue for the achievement of common goals. In this context, Getimis & Grigoriadou (2004) are noticing the emergence of new social movements in contemporary Greece. Contrary to the past, these contemporary movements do not appear to be dominated by individualistic and confrontational culture, but encourage civic participation. Therefore, their involvement in local PPPs, of a wider sense, may reinforce accountability of local actions.

Finally, partnerships may be formed between several local governments and local private actors as a way to implement larger scale local projects. Taking into account that Greek perfectural authorities practically act as central government's agents (Photis & Koutsopoulos, 1996), unable to coordinate local actions and promote decentralized project implementation, intermunicipal PPPs can fight territorial isolation and permit more complete and efficient approaches to the provision of public goods in neighboring territories or in urban centers with similar needs[10]. Furthermore, the sharing of relevant experiences and best practices between local governments can, prospectively, improve the implementation of partnerships for the delivery of local goods and provide the "know-how" for "self-governing" local needs.

The purpose of the above mentioned theoretical considerations has been to present new prospects for the use of Public Private Partnerships in Greece at a time when operational case-studies of such local cooperations in the country are quite limited. Next we will briefly see what is being currently implemented in the field of local PPPs through a specific central government initiative.

6. From theory to practice -"Thisseas": an instrument for promoting Greek local PPPs

As we have already mentioned, the introduction of law 3389/2005 offered local authorities the chance to proceed with local partnerships through a more concrete institutional framework. At the same time, though, the Ministry of Interior, Public Administration and Decentralization (MIPAD) has introduced "Thisseas" (law 3274/2004), a 5 year program for the development of local self-governments that also aims at promoting the adoption of local PPPs. "Thisseas" supports 34 local actions, grouped in the following three sub-programs:

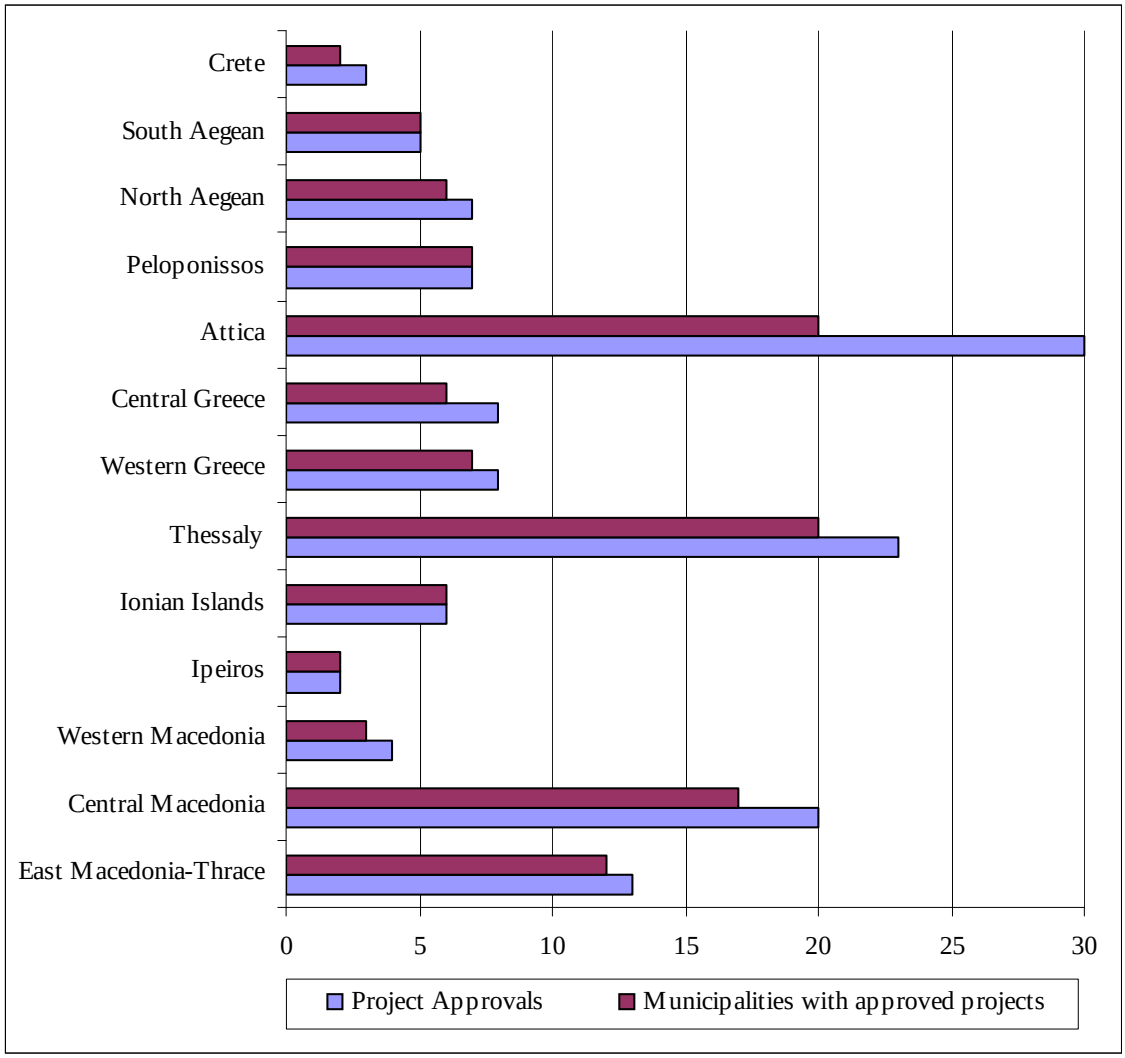
[10] This kind of governance may be linked to Metropolitan Administration systems, whose application in Greece is being strongly discussed since the 1990's. For more on this subject see: Papadimitriou & Makridimitris (ed.), *Administration Systems of Metropolitan Areas*, A.N.Sakkoulas Publ., Athens-Komotini, 1994 (in Greek); Hellenic Regional Scientists Association (SEP), *Metropolitan Municipalities and elected Regional authorities- Scientific Conference Proceedings*, SEP, 2006 (in Greek).

- Organization and development of municipal public services
- Local development and environmental protection
- Social and cultural infrastructure and activities

All three sub-programs involve financial granting of the elaboration of Masterplans, in order to investigate the potentials of implementing proposed partnerships and, in selected cases, the funding of the municipality's financial contribution in a PPP. A rather important aspect of "Thisseas" is that it encourages the creation of local networks and partnerships between local authorities, a crucial factor in potentially enabling a more holistic approach in facing urban needs of the same region.

Until May 2007, municipalities filed 219 PPP proposals, 136 of which have been approved for funding by "Thisseas", with the average budget of each approved proposal to be estimated to 100,728 €.

Figure 1
Regional distribution of PPP Schemes approved through "Thisseas"



(***Source:*** Elaboration of data provided by the Ministry of Interior, Public Administration & Decentralization, May 2007*)*

In Figure 1 we present the regional distribution of approved PPP projects. Attica, where the main body of central administrative bodies is situated, concentrates the higher number of approved local partnership schemes, representing 22% of the total, followed by Thessaly (16.9%), Central Macedonia (14.7%) and East Macedonia and Thrace (10%). The nine remaining Greek regions' local authorities haven't yet extensively benefited from the "Thisseas" initiative, but one could state that it is encouraging to see that initiatives for planning and implementing local actions are being put forward all around the country.

Table 1
Nature of PPP projects approved through "Thisseas"

Category of Approved Projects	Number of Approved Projects	Percentage (%)	Budget of Approved Projects (€)
Tourism (conventional and alternative)	29	21.32	172,180,000
Planning and Construction of Parking Spaces	28	20.59	150,683,762
Municipal Real Estate development	16	11.76	248,600,000
Culture, Sport, Education and Conference spaces	10	7.35	67,454,722
Primary Sector Infrastructure	8	5.88	14,696,029
Energy Infrastructure	7	5.15	329,650,000
Municipal - Social Infrastructure and Services	7	5.15	3,700,000
Water and Waste Infrastructure	7	5.15	344,500,000
Urban development and regeneration	6	4.41	318,700,000
Masterplan on the Potential of Implementing a PPP	6	4.41	382,000
Planning & Construction of Commercial Centers	5	3.68	85,000,000
Construction and Operation of Marinas	4	2.94	13,000,000
Implementation of Industrial/Technology Parks	3	2.21	19,500,000
TOTAL	**136**	**100**	**1,768,046,513**

(Source: Ministry of Interior, Public Administration & Decentralization, May 2007)

As far as the nature of local PPP projects approved by "Thisseas" is concerned, they can be categorized as shown in Table 1. There, we notice that local governments seem to consider tourism infrastructure development (21.32 % of approved projects) as a priority PPP project. This can be justified given the fact that tourism represents a traditional promoter of Greek economy[11]. Otherwise, Greek municipalities mostly prefer to put forward rather "conventional" types of projects such as the construction of parking spaces and real estate development (32.35% of approved projects). It is however important to note that sustainable actions, such as energy infrastructure or urban regeneration schemes (9.56% of approved

[11] According to the World Travel and Tourism Council, tourism accounts for 15.1% of Greece's GDP and 15.9% of the country's employment (World Travel and Tourism Council, *Greece: the impact of travel and tourism on jobs and the economy, preliminary findings*, WTTC, 2006)

projects) are within the municipalities' general goals. We should also note that, until May 2007, only one intermunicipal PPP has been approved through the "Thisseas" initiative[12].

Conclusions

Greece has long been in need to renew its institutional tool case for providing public goods and services. Classic public procurement and management of EU's funding have, on the one hand, acted as "alibi" for ineffective public policy practices (Spanou, 2001) and have, in practice, also reflected the structural weaknesses of the highly centralized Greek administration system. Large scale concession agreements during the 1990's have, also, provided a useful experience, justifying the promotion of an explicit legislation for public private partnerships.

The present paper has attempted to overview the basic features of PPPs, which seem to offer important advantages on economic as well as social level. More specifically, reported theoretical considerations show that partnerships between local governments and private institutions can prove to promote local development, strengthen local public authorities and instigate forms of bottom-up governance. It is, however, important to stress the need to secure that PPP schemes will not be undermined by the weaknesses of Greek local authorities, which have to use this innovative tool with a sense responsibility and long term planning. Accountability is a major issue for any local partnership and as Bloomfield (2006) puts it: *"…when laypersons, without legal and engineering training cannot readily understand the key provisions of a public contract, simply making the contract documents public will not suffice to insure transparency…"***.** In this context, public authorities have to maintain their leading role in terms of establishing and controlling the fulfillment of strict specifications in the production of local public goods through PPPs, which will also assist them in ensuring public approval.

The success of any partnership depends on the capacity to act according to specifically identified priorities and, thus, produce the desired results (OECD, 1997). Greece's experience in operational local partnerships remains limited, which doesn't allow the expression of definitive conclusions, concerning the effectiveness of chosen actions. The presented "Thisseas" initiative has been chosen, though, as it is the only up-to-date reported coordinated action for the promotion of local PPPs in the country. The examined relevant data have shown that Greek municipalities are willing to proceed with privately financed local projects but are still, for the larger part, choosing rather conventional, small scale interventions. Time will show if local authorities will explore the possibility of using the private sector as a useful

[12] This intermunicipal PPP project is being put forward by the Municipalities of Kardamila and Amani in the island of Chios. It concerns the production of electricity through wind power (Ministry of Interior, Public Administration & Decentralization, May 2007).

partner for productively activating local networks and, thus, claim a more active role in decentralizing governing processes.

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Aspects of an evolving national regulatory regime: The case of the market for petroleum products in Greece.

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Introduction

Within the last two decades a significant number of privatization and liberalization projects have been put forward with the aim of modernizing Greek Economy. These attempts stem from a political consensus aiming to redefine the interdependence and balance between state and market (Pagoulatos, 2005)[1]. Further projects of this kind are currently under way (energy, postal services) while a few more are to follow in the near future. At the same time a great number of already competitive, oligopolistic or monopolistic structures in the private sector of the market were forced either to reformulate or to adapt to new competitive rules, as a result of EU harmonization. Although this regulatory process reflects deeper and powerful socioeconomic pressures and necessities (Jordana & Levi-Faur)[2], it has so far moved with a certain degree of hesitation, if not haphazardly. The main question of this paper is whether there is a pattern of governmental involvement in the economy, revealing a distinct national pattern of regulation (Coen & Heritier, 2006)[3], as well as to locate the economic and political core-values driving the liberalization process. In other words is there a national regulatory regime and if so what are its main characteristics? Who are

the agents and stakeholders influencing the entire process? And finally what are the directions towards which regulation is moving (Moran, 2002)[4] in the context of the modern Greek economy?

Focusing on the domestic market for petroleum products, in the period since 1989, we wish to present empirical evidence suggesting that there exists a distinct national regulatory regime. It will hopefully be of interest that the market is structured in a unique layered fashion through which the different stages in the process of commodity formation (production, reselling, retailing) form hierarchical tiers accommodating different interest groups. Thus government regulation is calibrated in different ways depending on which segment of the market its particular regulatory measure aims to regulate. The evidence presented seems to lend support to the argument that a significant part of the regulatory core is the result of a balance between strong private and state interest. This results in a powerful bond between the government itself and a limited but extremely powerful group of members (Coen, 2005)[5] of the regulated industry. However regulatory density appears to differentiate sharply as we move away from the nucleus to the outer tiers of the regulatory regime.
By defining the way economic regulation is being implemented in Greece and by analyzing the emerging national regulatory regime, this paper will hopefully fill a gap in the relevant literature and offer food for thought concerning the particular ways in which peripheral regulatory regimes can address common challenges in a unified European economic space (Geradin, Munooz, Petit, 2005)[6].

As Majone stated, "*Privatization and deregulation have created the conditions for the rise of the regulatory state to replace the dirigist state of the past. Reliance on regulation –rather than public ownership , planning or centralized administration– characterizes the methods of the regulatory state"* (Majone, 1994). With this statement, Majone defined the meaning of the "regulatory state" and provided a new outlook concerning the matters related to economic regulation. The validity of such a claim, when it comes to describe the Greek case, is what we wish to discover by going through the empirical data concerning the domestic market for petroleum products.

An overview of the domestic market for petroleum products.

The Greek market for petroleum products is structured in a unique layered fashion through which the different stages of commodity production form correspondingly distinct segments of the market for petroleum products. In short we can distinguish three distinct sub-markets: a) *"the refining submarket"* (which sells to wholesalers*), b) "the reselling submarket"* (where in wholesalers buy from refiners) , and c) the *"retailing sub market"* (through which petroleum products reach the final consumer. Each one is characterized by its own particularities, problems, trends and prospects. These particularities are generated by the structures specific to each submarket as well as the value added in both the national economy and the wholesale market for petroleum product. A central thesis of this paper is that "governmental regulation is calibrated in different ways depending on which segment of the market its particular regulatory measure aims to regulate". By looking at the peculiarities of the structure specific to each submarket market, the situation prior to the launch of regulatory reform, and the existing institutional framework over that period, will allow us a better insight on the way governmental regulation is being implemented.

The structure of the refining submarket is distinctly duopolistic , consisting of the formerly state owned, HELLENIC PETROLEUM S.A and the private company Motor Oil Hellas . Between them these two companies cover approximately 86% of the domestic demand for refined oil products. The four refining installations operating on Greek soil share a total output of approximately MT 19 million[7], in response to an estimated total of around MT 21 million domestic demand for refined oil products. With the exception of a small number of customers – the armed forces , DEI (Public Electricity Corporation), Olympic Airlines and Hellas Aluminum[8]– who get their supplies directly from the premises of the above mentioned refineries, nineteen (20) private concerns make up the domestic reselling market. The new "Oil Law 3335/2005" may now typically allow major reselling companies to proceed with imports of oil products, yet the commitment to store 60 days emergency stocks (Law 3054/2002) practically vanishes such a possibility. Space for storing safety reserves is provided by the refineries who therefore take up the legal obligation to keep the necessary safety stock instead of the resellers, who in exchange sign a supply contract with the refineries. Separated in three different "blocks" according to their proprietorship, business cycle, market share, and cross-shareholding ties, these

companies form a peculiar competitive environment of some sort of "fragmented oligopoly". Greek subsidiaries companies of British Petroleum and SHELL as well as EKO , herself a subsidiary of HELLENIC PETROLEUM Group, share a total of approximately 68%[9] of the market, leaving the rest for sixteen (16) smaller, domestically owned firms. Last but not least, there are more than 7500 petrol stations [10] which make up the domestic retailing market. Even though competition has evolved[11] quite sufficiently, the relatively low rate of outlet per consumer[12] accompanied by the geographic diversity of Greece, tend to favor anti-competitive phenomena such as local collusion practices and monopolistic abuses.

Greece has a high dependency on energy imports, with oil accounting for most of total imports. Saudi Arabia, Iran and the Russia are the main suppliers of crude oil[13], while the indigenous production covers only a tiny amount of the necessary demand[14], barely reaching 1,3% of total refinery intake [15]. Oil demand is forecast to grow by about 40% between 2000 and 2010[16], as it dominates the energy consumption chart. The new oil pipeline between Burgas (Bulgaria) and Alexandroupoli (Greece) will certainly ease pressures on oil supply. Even though the demand for natural gas has increased within the last few years[17] oil dependency will continue to move at high levels. Forms of renewable energy production are being intensively funded by the EU in order to change the above described energy balance. Imports on refined oil products account for approximately 14% of total demand (2001 data). This level of energy dependence has serious ramifications and is indicative of the fiscal and economic burden it entails. Any rise or fall on the international oil prices, results in both vertical and horizontal effects on the national economy. The trade balance is also seriously affected by any disorders of that kind. The infrastructure and peculiarities of the Greek economy, as it will be further explained, tend to enlarge the malfunctions following such disorders. In that case both inflation and the trade balance, among other fiscal figures, tend to be seriously affected. Public revenue is one of those figures, since approximately 9,5% [18] of the tax revenue, according to OECD estimations, results from the direct or indirect taxation of fuels and other oil products. Furthermore, tax policy concerning oil products has been used more than once as a part of proactive measures in order to increase the competitiveness of Greek industries or other social objectives[19]. The excise tax for heavy fuel oil (€ 38.15 per tonne)[20] was decreased by half (to € 19.00 per tone) in

the beginning of 2002 for that cause, especially in those industries operating in regions without natural gas supply.

The above mentioned energy dependence led to the passing of the Civil Emergency Planning Law 17/1974 (valid as subsequently amended), a statute which set the foundations of the current market structure. The "Oil Laws" 1571/19853054/2002 and the new "Oil Law 3335/2005" that followed, as well as a number of regulations, acts, ministerial decrees etc now provide the legal framework for the operation and development of the domestic wholesale market for petroleum products. The core values of this legal framework, until their recent revision (Law 3335/2005), as a result of EU harmonization,[21] maintained a clear orientation towards, on one hand, the preservation of emergency stocks, and on the other, a strict license policy concerning new entries on each segment of the market[22]. Due to the emphasis placed, a) on oil related issues of national security, b) the use of energy pricing and taxation as a measure to control inflation as well as to secure budgetary targets and c) the pursuit of social objectives, the regulatory regime that guided the structural development of the domestic market derived strictly from state induced policies. This placed the government in the position of the sole speaker, opposite to the representatives of private interests in the oil business. As a result the foundations for an immediate and long lasting bond between the two parts were strongly initiated. The diffusion of the EU completion law and the implementation of the new Oil Law, following the wide harmonization program, resulted in the redistribution of regulatory power, the rise of new actors, both state and private, and eventually a new form of "statism".

The existing framework governing the domestic wholesale market for petroleum products continues to display a state-centered orientation that favours concentration and large-scale operations.

Yet through the operation of new institutions, regulations and a new mode of governmental intervention in the economy, it eventually expresses the core values and characteristics of the currently evolving national regulatory regime. As Coen notices *"the changing nature of markets and technological innovation are clearly at the forefront of many of the developments we observe in the management of markets and the style of regulation. However institutional interests, political goals and ideologies also play a large part in how the broader liberalization agenda is implemented and regulated"* (Coen, 2005)[23].

The Refineries Sector. An area of utmost regulatory density.

"*Where competitive conditions did not yet exist, only public regulation could ensure that privatization did not mean the replacement of public monopolies by private ones*"(Majone, 1994). With regard to the Greek refineries sector, privatization meant a symbiotic relationship between the public monopoly and two large private firms enjoying long-standing political favours, a process which gradually resulted in a "peculiar" duopoly closely monitored by the state. Under the pressure of the EU Treaty, a number of laws were issued, starting in 1985 and reaching 2005, that gradually led to the liberalization of the market. The model followed required the replacement of the public owned company by a private. The former public company that was then appointed by the state to set the pricing, imports, distribution and function of the entire wholesale market, is now a floated company –still highly influenced by the state– that continues to lead the industry by possessing a dominant position in the refining sector. Nowadays the formerly state-owned HELLENIC PETROLEUM S.A and the private company Motor Oil Hellas make up the refining sector and share the domestic production of oil products that reaches approximately 19 MT of crude oil per year[24].

HELLENIC PETROLEUM S.A owns and operates three of the four refineries in Greece[25] and covers 73% of domestic demand for products. Its storage facilities reaches 6.560.000m^3, when the total storage facilities in the country in all four refineries is estimated around 8.760.000 m^3 . The Group includes a number of subsidiaries, associated and affiliated companies[26], and is the largest industrial and commercial company in Greece (in the year ended 31/12/2006 net sales reached EUR 8.122 million, total assets EUR 4.363 million and 5,425 employees[27]). It also shares 23% of the domestic reselling market through its subsidiary EKO-ELDE, a parentage of 85% of the oil refinement requirements in FYROM by an acquisition of 54% of the OKTA refinery , while it also possesses a 35% stake in the Greek Natural Gas Company (DEPA). Its activities date back in 1958 as HELLENIC ASPROPYRGOS REFINERIES S.A (ELDA), when the government decided to establish the first oil refinery in the country and until 1998 it remained fully controlled by the state, appointed to run the domestic wholesale market for petroleum products. At that time the company changed its name to HELLENIC PETROLEUM SA,

proceeding in a number of acquisitions and mergers while it also floated 23% of its share capital in the Athens and London stock markets. In 2003 PETROLA HELLAS SA – a third, smaller, participant in the oligopolistically structured refineries market- merged with HELLENIC PETROLEUM therefore creating today's characteristic duopoloy with MOTOR OIL. The Greek state has retained 35,48% of company stock and by statute it may not reduce its share below 35% of the company voting shares regardless of any increase in share capital. Of the rest, 35,89% is held by Pan European Oil and Industrial Holdings S.A (an interest of the powerful Latsis family who owned the merged PETROLA), while the remaining part is floated on the Athens Stocks Exchange. Seven (7) members of the Board of Directors are appointed by the Greek state, with the six (6) remaining members coming from the Paneuropean Oil and Industrial Holdings S.A as well as the minority shareholders and the representatives of the company's employees.

MOTOR OIL HELAS is the second crude oil refining company in Greece, with a share of approximately 25% of the domestic market and 50% of total exports. The company owns one large refining installation unit. near Athens unit. The refinery with its ancillary plants and offsite facilities consists one of the largest industrial complexes in Greece and is considered one of the most modern refineries in southeast Europe. The refinery holds stock storage capacity of 2.200.000m^3 correlated to the estimated 8.760.000m^3 total stock facilities .The company operates since 1972, but during the 1980s a new era of aggressive business activity was initiated. This resulted in 1996 to the purchase of 50% of company's shares by Armco Overseas Company BV –a subsidiary company of Saudi Arabian Oil Company– and the launch of its business plan. In 2002 the Company acquires 100% of AVIN OIL which is one of the five biggest companies in the reselling sector. Petroventure Holdings Limited (an interest of the Vardinogiannis family) possesses 51,0 % of the company's capital , Petroshares Limited 10,5% and the remaining 38,50% is floated in the Athens Stock market. Hellenic Petroleum is since May 2006 a constituent of the MSCI GREECE INDEX, employees 1157 persons and its turnover is estimated approximately EUR http://www.statbank.gr/companydata.asp?CD=60434.290.860.000 (Motor Oil Annual Report 2005) .

The legal framework that runs the domestic market for petroleum products and in particular the refining sector, is mainly centred around the law 3335/2005 and a number of previous relevant acts and regulations that date back in 1985 (law

1571/85, law 1769/1988, law 2008/1992 , 3054/2002) etc. According to the national law a strict licence policy has been put forward concerning a) environmental and personnel safety, b) the technical specifications of the storage facilities, c) the quality of the output, d) the ability to proceed with imports, e) the timing concerning the public announcement of the refinement prices (rule 334/V/2007 of the Hellenic Competition Commission) and f) mainly the obligation to maintain a 60 days stock of the entire range of the produced petroleum products, within the Greek soil (law 3054/2002). What the new framework came to replace (among others) is the monopoly power of the former utility company. This company had the unique privilege, to define the refinement price, to import any amount of refined petroleum products needed and in general to rule the entire market. The liberalization of the market meant that each participant in the refinement sector –at that time DEP , Petrola and Motor Oil– will be able to proceed with imports, configurate its own commercial policy (prices, discounts and returns) and proceed with short term commercial agreements with the reselling companies. The reselling companies would also be able to proceed with imports of refined oil products at any quantity they decide for themselves. Yet the limited storage facility of the reselling companies, compared to the refineries, forms an actual barrier to such a widening of competition. The marketing companies have the right to transfer their stock storage obligation to refineries operating in Greek soil , in proportion to the quantity of the petroleum products bought from the latter during the previous year. The merger by absorption of Petrola Hellas S.A, in 2003, from HELLENIC PETROLEUM SA (with the timely approval of the Hellenic Competition Committee) limited even further the possibilities of a strong competitive environment that would lead to lower prices.

Both, the sequence of amendments resulting in today's legal framework, and the economic fermentation among the participants of the refinement sector, are indicative of the regulatory process followed and the gradual stabilization of the incentives provided by an evolving national regulatory regime. What characterises the domestic market for refining oil and this "peculiar" duopoly that actually materializes it, is a) the persistence on the certainty of supply by reassuring the 60 days emergency stock in Greek territory b) the replacement of the former utility company by a private one, that is still strongly connected to the state and at the same time is leading the market, c) a consolidated stability concerning the market participants and d) the absolute power of the government (ministry of Development,

Ministry of Economy and Finance) as the sole regulatory authority. These principles actually illustrate the core values of the bond between the state and the specific group of economic interests and outline the interdependence and bargaining among the two parts. Through the dominant position of the previously public owned company, the state continues to rule the market and to promote the private interests. On the other hand, the regulations concerning the keeping of safety reserves, in practice possible to be fulfilled only by the refineries, allows the market participants to preserve their already sustained market shares. In that case, the locus of competition is being transferred from the refinement price, to other identities of the commodity, such as the quality, etc. Since new entries in the refinement sector are therefore discouraged, the curativeness of the business guarantees expected profits. Therefore through this "peculiar" duopoly, based on a long lasting bond of interdependence and bargaining between the two, both state and private interests are being successfully carried. At the same time a relative compliance with the EU legal framework is being accomplished approaching rather superficially a satisfactory level of harmonization.

The Reselling Sector. Widening the regulatory arena.

Whereas in the refinement sector the regulatory strategy followed is based on the leading position of the former utility company, in the case of the reselling sector the regulatory mode is substantially differentiated. The core values, though, that provide the impetus for such a governmental intervention in the economy appear to remain in any case the same. Common are as well, some of the regulatory measures implemented, since both the principal laws and the core regulatory agents (Ministry of Development, Ministry of Economy and Finance) are identical. The regulatory framework in the domestic reselling sector , therefore, is also based on the interdependence and bargaining between the state and a specific group of representatives of private interests. That which differentiates the regulatory strategy consists in , a) the subject of the state interest pursued -as defined by the government- and b) the configuration of the participants of the regulated industry. In actual fact what alters the regulatory pattern concerning the reselling sector results from, the political activism that the recently established national regulatory agencies are demonstrating and the already sustained market structure that registers a significant number of participants and therefore favours competition. According to Coen "*the*

political activism of ministries , the legacy on embedded legal traditions and administrative culture, as well as sectorall differences, will all ensure that individual regulatory regimes will remain distinct." (Coen, 2005)[28].

The domestic reselling market for petroleum products consists of 20 companies, representing both international and local interest, appointed to proceed with the distribution of oil products in the gasoline outlets, the industry, and the households. With the exception of the DEI (Public Power Corporation), the Armed Forces and the Alunium of Greece, for which product supply is performed directly, the reselling companies are the only actors allowed to fulfill the domestic demand for oil products. Only recently, under the law 3054/2002, the big gasoline outlets consortia are now permitted to purchase their supplies directly from the refineries, yet under the condition that they have reassured the proper stock storage facilities According to their proprietorship, market share, cross-shareholding ties and price variation, these companies can be separated into three groups. The first group consists of the subsidiary companies of international corporations, like BP and SHELL, operating in Greece since 1951 and 1926 respectively. The second group consists of the former state owned EKO-ELDE, subsidiary company of HELLENIC REFINERIES SA and AVIN OIL subsidiary company of Motor Oil Hellas. Finally the third group consists of small and medium companies operating in a limited national or in most cases regional range. In the last group belong companies such as AEGEAN OIL, SILK OIL, DRACOIL, ELINOIL, JETOIL, CYCLON etc and share in total approximately 27,8% of the relevant market[29]. According to 2006 data[30] EKO-ELDA, BP and Shell share an approximate 53% of the market of the reselling sector and lead the competition race. What provides those three companies with their leading advantage are a) their storage capacities which allows them to proceed into imports at a low cost, b) a large outlet network, and c) their long lasting presence in the sector that provides them with a strong "bargaining chip" with regard to the refining companies. In the case of EKO-ELDA, the connection to the mother-company HELLENIC PETROLEUM enables the firm to maintain its dominant position vis a vis the international trademarks, that are benefited by worldwide advertisement. Under these circumstances the reselling market, considered as one of a sufficient competition, it in actual fact describes a three core oligopoly structure. Relative data concerning their market share, outlet network, price variations etc,

separate those 20 companies operating on the reselling market into three sectors with respectively common structural characteristics and business presence.

What characterizes the legal framework concerning the reselling sector is the persistence on the maintenance of the shares imposed for each one of the market segments, and the preservation of competition among the participants. These principals materialize a twofold regulatory framework which enables both legal and regulatory measures. On one hand, the above mentioned Oil Laws and the recently implemented competition law form the legal boundaries among which the reselling companies operate. On the other, the decisions, propositions, convictions, imposed penalties,etc of the Hellenic Competition Commission and the Regulatory Authority for Energy make up a set of targeted rules and measures that eliminate the development of anticompetitive behavior. The actual boundaries of the sector as well as the interpretation of the competition law, in other words what is actually described as an anti competitive behavior, results from a consensus among regulators and the members of the regulated industry. The representatives of the above mentioned companies, both leading and subordinate, meet with the "state" in an actual negotiation arena, made up around the Hellenic Competition Commission and the Regulatory Authority for Energy. Since the reselling companies are restricted (if not banned) to expand their business activity beyond the limits of the sector, the subject of the regulatory measures are related to the competitive strategies adopted and result in influencing both the market configuration and the final price of the oil products.

Ever since 1992 the already sustained market structure, concerning the reselling sector, had undergone a significant number of internal changes that pushed down the profit margins and reassigned the market shares. Small and medium size companies, that used to posses a significant market share in particular regions gradually lost their force, contrary to the subsidiary companies of international groups that actually absorbed their dividends. The competitive forces that at that time were developing helped a number of market inefficiencies to flourish, such as extended tax evasion, anti-competitive price discriminations and returns, dishonest speculations concerning the final price, abuse of dominate position, etc. Therefore the implementation of particular regulatory measures was considered necessary. The subject of regulation implemented had as a main objective to control, or eliminate those fallacies, by maintaining both the number of the participants and the efficiency of the supply system. The Hellenic Competition Commission and later on the

Regulatory Authority for Energy were to serve both intentions, by imposing a relative activism and gradually fulfilling their commitments as regulators, -as those derive from their institutional framework. In that case the cooperation of the companies sustaining the sector was considered necessary. This new regulatory framework meant for the development of a restrained participation network able to safeguard both the regulatory objectives and the private interests of those consisting the market.

The regulatory strategy concerning the reselling sector is based on the already implemented legal framework (Oil laws) and the results of the interdependence and bargaining among the participants of a restraint regulatory arena. This arena consists of particular representatives of the reselling companies, the state and the independent regulatory authorities. The value added of each participant is indicative of their already sustained position in the sector. The internal conflicts or coalitions and the political activism expressed are a part of the regulatory procedure since they seriously effect or rather consist the regulatory outcomes. More specifically, a relative limited number of decisions of the Hellenic Competition Committee[31] referring to cases of concentrations, of abuse of dominant position, etc and the relative imposed penalties fill in the already existing regulatory boundaries. The political activism of the recently established Regulatory Authority for Energy[32], reporting frequently on the market and supervising the activities of KEDAK -a team of authorized experts to proceed with market controls[33] - is also indicative of the regulatory strategy followed. On their behalf, the reselling companies are gathered around the regulatory arena, since this enables them to rule the developments that actual influence the market structure. In that way the companies themselves both, set the competitive limits of the sector, and maintain their market share, under the approval of the government. This regulatory arena is therefore identical to, the common ground where both regulators and regulatees meet up and develop the regulatory measures, by mutually promoting their self interests.

The Retailing Sector.

The domestic retailing market for petroleum products consists of more than 7500 gasoline outlets, spread all over the Greek mainland and the islands, and is considered to function under the premises of clear competition. What characterizes

the particular market structure is the geographical distribution[34] of those outlets and the number of participants that operate them. The reliance on the reselling companies[35], which are considered necessary for obtaining the petroleum products, is an additional characteristic of the specific market structure, imposed by the existing legal framework. The governmental interference in the specific sector is limited to monitoring and control functions, when the control powers are divided among the Hellenic Competition Committee, KEDAK, and the local authorities (Commerce departments of the Prefectures) .The forces driving the lucrativeness of the industry are those of free market, all products are characterized by demand inelasticity and the estimated profits vary from 12% until 16% according to the fuel type. The inefficiencies and problems dominating the sector stem from those characteristics and are detected as phenomena of fuels smuggling, huge price variations in the regions, coordinated local practices etc. The regulatory measures imposed are limited to the maintenance of the three layer structure of the wholesale market and the elimination of the above mentioned inefficiencies.

The regulatory strategy concerning the retailing sector appears to emerge as a result of the regulations and boundaries imposed to the refinement and reselling segment of the wholesale market of petroleum products. At the last end of the different stages of commodity formation and therefore of the already imposed competitive tiers, the retailing sector resulted in acquiring the competitive principles that are driving its function. Ever since 1992 any barriers related to a strict license policy, mainly concerning the opening of a retailing business (mainly related to the distance between competitive gasoline stations etc) lead to an even further widening of the market and the predominance of competition. Regulatory density would in that case be considered unneeded since the competitive forces will be able to eliminate any malfunctions or fallacies. An attempt to strongly interfere with the operation of the market would only mean the disturbance of the competitive forces and would end up against the consumer's interest. A monitoring function was at that time and continues to be, considered best imposed. The development of anti competitive phenomena though brought out the need for additional measures.

What nowadays differentiates the regulatory strategy is the intensity of this monitoring and control function and an intention to loosen a number of imposed fragments, which is in the offing. The diffusion of monitoring and control powers to local authorities is considered to have been of some help, since controls are being

carried more often. Additional an open dialogue procedure initiated from the Hellenic Competition Commission during the last 6 months resulted in, among others, the possibility of permitting to supermarkets and department stores the operation of gasoline stations. This would seriously effect competition since not only new competitors would enter the market but the company profile would be substantively altered. This premise though is still under discussion since it is not yet been accepted how this would ease competition. For the moment the regulatory strategy concerning the retailing sector is being imposed by the market forces and the maintenance of the three layered structure of the wholesale market for petroleum products.

Conclusion:

Analyzing the empirical data concerning the domestic market for petroleum products a significant number of conclusions have been able to be drown, indicating some of the basic *aspects o*f the emerging national regulatory *pattern …at quest*. Already at a stage of regulatory maturity the domestic market for petroleum products enables as not only to decode the way economic regulation is being implemented by those involved at a national level, but far and foremost the gradual formation of the policy core and means that conceptualize the now evolving national regulatory regime. By increasing the validity of those claims, through similar case studies from the Greek experience, one can eventually define with certainty the economic and political core-values sustained, the distribution of power among agents and stakeholders involved and finally the value added in the entire program of the modernization and development of the Greek economy, that utterly describe the national and distinct regulatory regime.

The domestic markets for petroleum products is structured in a unique layered fashion through which the different stages in the process of commodity formation (distilling, reselling, retailing) form hierarchical tiers accommodating different interest groups. Those hierarchical tiers consist different regulatory arenas and are indicative of both the identity of the market structure and the density of competition activity. Each arena results in producing a particular consensus among regulators and regulatees by which the regulatory goals as well as the means, methods and time frame of implementation are being specifically defined. Thus government regulation is calibrated in different ways depending on which segment of the market its

particular regulatory measure aims to regulate The number of the participants is therefore indicative of the political and economic equivalents those agents represent, while mutually recognized as members of the market specific regulatory arena. This correlation depicts a similar climax of regulatory power among agents involved and reviles the hierarchy of power existing among political and administrative institutions. Therefore both the regulatory-core underlying the entire market structure and the subject specific regulatory measures or guidelines, are eventually a result of a political and economic "treaty" emanating from those wide or narrow participation arenas.

Government through the Ministry of Development, continues to preserve its status and safeguard from that privileged position the state interest. Yet this time not as a utility provider (by owning the distilling companies or defining the prices for petroleum products) but as a centralized and powerful regulator, in all the three layer structured market. Evidence presented seems to be in favor of an argument that identifies the national regulatory mode for the market for petroleum products with that of "a restrained competition, of a low level of market openness and of a rather inefficient deregulation efficiency". Competition density appears to increase where already functioning competitive market structures have favored economic activity. Evidently the national liberalization program implemented at the Greek market, with sustained both the already existing competitive structures and the stakeholders that actually support them. A radical regulatory program would mean the redistribution of market shares, power and stakeholders and would utterly change the status of the state itself in the new economic environment. Under that scope the policy core of the governmental involvement in the domestic market for petroleum products, through economic regulation, continue to remain the same even if the national privatization and liberalization program deprives the state from its identity as commodity supplier or producer. What consist of this market specific regulatory regime may indeed describe a new form of state intervention, yet the rational behind such intervention hasn't altered significantly. The regulatory core is therefore the result of an already long-lasting balance between specific strong private interests and the state. New regulatory institutions, measures, laws, guidelines and the diffusion of regulatory experience, may reinforce the regulatory toolbox and induce competition at the national level, yet they appear unable to penetrate to the inner values of the regulatory regime and the prevailing economic and political interdependence and balance that sustain it.

What the particular case study suggests is that the basic structure for a distinct national regulatory regime already exists and is indicative of a political consensus reached between the main political stakeholders, during early '90s in Greece. An already long-lasting bond, between particular economic and political interest, penetrating the Greek political system, resulted at that time in a "treaty" for the pursue of the modernization of Greek economy, that would guarantee simultaneously with the participation on the Maastrich Treaty wider investment opportunities. A shift on the mode of governmental intervention in the economy, through an intensive liberalization and privatization program, was therefore considered necessary and evidently it was enclosed in an evolving national regulatory regime. The privatization of utility markets and the implementation of an excessive set of new regulations favoring competition, were in any case only a limited part of the obligations the government had to meet as a part of EU harmonization. What consists of this national regulatory regime is therefore -in the most part- a result of this political and economic consensus and of its ability to maintain the interdependence and balance that sustains it, while implementing both governmental and private aims. The "politics of regulation", the structural characteristics of the Greek economy and the power structure of the agents that sustain it, participate as well strongly in the formation of its main characteristics.

Resuming the above we conclude that what at the present status characterizes the national regulatory regime are: a) a slow and rather haphazard regulatory activity b) a lack of foresight and governmental activism , regardless of the maintenance of the principal values of governmental intervention on the economy –yet under a different mode–, d) the regulatory dominance of the government compared to the rest of the regulatory authorities and institutions, –mainly through the ministry of Economy and Finance and the Ministry of Development–,e) an intense differentiation of the regulatory density according to the regulated industry and the value added on the national economy, f) the maintenance of the power structure among representatives of strong private interests, and finally g) a poor effective regulatory toolbox , a disability to defeat the disjoined administrative culture and a tolerance on non compliance . Further research on the Greek case will simultaneously increase in number and in depth and confirm the above arguments, and will define with certainty the character, principal values and political affiliations of the emerging national regulatory regime.

Endnotes

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[2] Jordana, J. and Levi-Faur , D. (eds) , (2004) , The Politics of Regulation .

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[5] Coen, D. (2005), Business– Regulatory Relations: Learning to Play Regulatory Games in European Utility Markets. Governance, 18, (3), 347-373.

[6] Geradin, D. Munoz, R. Petit, N (eds), (2005), Regulation through Agencies in the EU. A New Paradigm of European Governance. Edward Elgar .

[7]International Energy Organization. Country Profile. 2005

[8] N.1571/85 «Oil Law»

[9] OECD: Energy Policies of IEA Countries. GREECE 2002 REVIEW. International Energy Agency

[10] EU Oil Bulletin 2007

[11] OECD: Energy Policies of IEA Countries. GREECE 2002 REVIEW. International Energy Agency. The Greek oil markets were liberalised in 1992 and competition has evolved in the retail sector. However, competition in the other sectors is still limited. Several policies have created barriers to competition. For example, most consumers and retailers still cannot import petroleum products directly, and the current emergency stockholding obligation practically forces importers to hold stock in the existing four refineries.

[12] EU Oil Bulletin 2007: In Spain approximately 8700 petrol stations & outlets have been registered and in Italy the same number is estimated around 26000. Greek petrol stations serve average 1500 pax and 800 vehicles per outlet, when in Spain the same numbers are 4700 and 2600 correspondingly, and in Italy 2600 and 1600.

[13] For example Crude Oil supplies of HELLENIC PETROLEUM SA during 2005 were supplied on the basis of term contracts with : Saudi Arabia 13%, Iran 35%, Libya 9% . The remaining 42% was from Russia (URALS) 36% and Kazakstan 6%, most of which were quarried through TERM deals (55%) and SPOT deals (45%). Source Hellenic Petroleum S.A

[14] In 2004 , oil imports accounted for 88% of total imports, with the share of natural gas increasing in recent years.

[15] Energy Balances of OECD Countries , IEA/OECD Paris . Domestic data estimate the domestic production varying between 1% and 2% of total refinery intake.

[16] OECD:Energy Policies of IEA Countries. GREECE 2002 REVIEW. International Energy Agency

[17] The share of natural gas has been increasing since 1997, although remaining below the EU-27 average of 20%. Source: http//ewea.org

[18] In 1989 approximately 9,5% of the total tax revenue resulted from the taxation of fuels and other oil products. Source OECD, Revenue Statistics of OECD Member Countries ,

[19] Mpikos , P. (2004) The wholesale market for petroleum products in Greece. Third Edition . IOBE .

[20] Greek Ministry of Economics and Finance.

[21] "Greek legislation on emergency stocks of petroleum products is incompatible with community law . The Court of Justice holds that the compulsory maintenance of stocks of petroleum products, linked to advantages in obtaining supplies from refineries established in Greece, is not compatible with the principle op the free movement of goods." Press Release No 54/01. October 2001. Judgment in Case C-398/98. Commission of the European Union v Hellenic Republic

[22]Mpikos , P. (2004) The wholesale market for petroleum products in Greece. Third Edition . IOBE

[23] Coen, D. and Heritier, A (eds), (2006), Refining Regulatory Regimes. Edward Elgar.

[24] International Energy Organization. Country Profile. 2005

[25] Aspropyrgos Refinery , with an annual refining capacity of 7.5 million tons of crude oil and normal capacity of 45 thousand barells per day. Thessalonoiki refinery with annual refining capacity of 3,4 tons of crude oil and Elefsina Refinery with annual refining capacity of 5.0 million metric tons of crude oil and annual capacity of 800 thousand tons of diesel . Source : Hellenic Petroleum SA

[26] ibid

[27] ibid

[28] Coen, D. and Heritier, A (eds), (2006), Refining Regulatory Regimes. Edward Elgar.

[29] HELLENIC COMPETITION AUTHORITY decision 5/III/2001 concerning the domestic wholesale market of petroleum products

[30] National Bank of Greece. 2006 Report

[31] Between 1995 and 2003 only 11 out of 395 decisions were related to the domestic oil market.

[32]Established on the basis of the provisions of Law 2773/1999) the Regulatory Authority for Energy (RAE) is an independent administrative authority, which enjoys, by the provisions of the law establishing it, financial and administrative independence. RAE was established on the basis of the provisions of L. 2773/1999, which was issued within the framework of the harmonisation of the Hellenic Law to the provisions of Directive 96/92/EC for the liberalization of the electricity market. Source: Regulatory Authority for Energy

[33] KEDAK established on the basis of the provisions of Law 3054/2002 and were submitted to the Ministry of Development. Yet ever since February of 2003, when they were first activated they operate under the command of the Regulatory Authority of Energy. Due to an extremely limited number of staff and facilities, until 2005, they had run through a small number of controls only in the broader Athens area and even fewer in the area of Thessalonica.

[34] Most of the outlets are concentrated in the big cities and urban areas where in the islands and districts the number is small.

[35] According to the Law 3335/2005 gasoline outlet consortiums or partnership companies may supply directly from the refineries, yet they are obliged to posses the necessary storage facilities for 60 days stock in all kinds of petroleum products they obtain.