

# Why the Greferendum IS NOT a Problem under Greek Constitutional Law

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Amongst [mounting controversies](#) surrounding the Greek bailout program and the referendum called by the Greek government, questions about the constitutionality of the initiative have been raised. The matter is of great importance, [since the Council of the State will rule on the constitutionality of the bill this Friday](#). Given what is at stake, this might seem to be a totally peripheral question. That said, we will attempt a response, so as to clarify certain legal questions and also to point at the uses and abuses of constitutional arguments.

To begin with, it is essential to point out that referenda do not form part of Greek political culture. It is indicative that the last one was held in 1974 to decide on the abolition of the monarchy. In the absence of relevant practice, we can only rely on the text of the Greek Constitution and on scholarly opinions on the topic. The relevant Article is 44 para 2 and it [reads as follows](#):

*The President of the Republic shall by decree proclaim a referendum on crucial national matters following a resolution voted by an absolute majority of the total number of Members of Parliament, taken upon proposal of the Cabinet.*

*A referendum on Bills passed by Parliament regulating important social matters, with the exception of the fiscal ones shall be proclaimed by decree by the President of the Republic, if this is decided by three-fifths of the total number of its members, following a proposal of two-fifths of the total number of its members, and as the Standing Orders and the law for the application of the present paragraph provide. No more than two proposals to hold a referendum on a Bill can be introduced in the same parliamentary term.*

What becomes clear from the above excerpt is that the Constitution distinguishes between two types of referenda. First, it is possible to call for a referendum on a serious national issues with a simple majority of the MPs. Secondly, an enhanced majority can call for a referendum on an already voted bill concerning a serious social issues. In this case, bills concerning public finance are expressly excluded from being the process. Accordingly, the real question here is whether an agreement like the one at stake can be said to be a national issue of imperative importance and therefore fall under the first category. The counterargument here is that the first option is solely reserved for 'hard-core' national issues, such as questions of foreign policy or national defence. Nonetheless, we maintain that reality is much more complicated. To begin with, let us give the stage to Evangelos Venizelos, a leading constitutional scholar who later became the leader of PASOK (one of the opposition parties). Even though last week he claimed the referendum to be unconstitutional on the basis that it concerns a fiscal matter, in his textbook he offers a much more nuanced approach. After arguing that the 'core' of the provision is about matter of foreign policy and national security, he goes on to clarify:

*Of course, reality complications can well give rise to a link between national economy and matters of foreign policy, international relations and national security. Provided that the prevailing element in these circumstances is indeed the issue of foreign policy, international standing and defence of the state, then these cases could be considered to fulfil the substantive requirements of Section a' para 2 of Article 44 (crucial national matter)[1]*

Thus, the argument that public finance issues cannot be put to vote under any circumstances is an unnecessary generalisation not supported by the actual text of the Constitution. Professor Gerapetritis, who otherwise argues that the decision is politically mistaken on a number of levels, [also adopts this position](#).

Our take on the question is the following: last week the Greek government tabled a proposal that suggested that it would collect 8 billion Euros by predominantly raising taxes especially from successful businesses, while public spending would amount to roughly 30% of the package. The Institutions challenged this and demanded an altogether different approach to money saving focused on a VAT increase and public spending cuts. What is essentially challenged here is the sovereign decision of an elected government on how to save the resources necessary to repay its debts. Therefore, what is put to vote is whether the Greek people consider acceptable that international actors such as the EC/ECB/IMF can totally overhaul the elected government's approach on how it can save the resources it was asked to save. By consequence, the question contains a strong and undeniable element of international relations and concerns the status of the Greek state, whilst containing a clear financial dimension. Indeed, and given that the Institutions operate in a complicated legal framework that does not coincide with EU law, a potential acceptance of their reversal of the government's general methodology would mean that Greece would internationalise the prerogative of the government to decide even on the most abstract level on the general policies of the state. One could claim that this is politically necessary given the overall situation in Greece, but this does not negate the fact that this is a matter of imperative national importance as required by Article 44 of the Constitution.

Finally, we wish to put forward two arguments, a teleological and a historical one. Firstly, the idea that a constitution prohibits altogether referenda on financial matters resonates with the ongoing trend of separation between politics and economics, as exemplified by the establishment of independent central banks, privatisations and the rise informal organs of transnational governance (the Eurogroup being a good example). This was not the case though in 1974 when the Greek Constitution was drafted. Without going as far as arguing that the Constitution embraces a social democratic model, we can nonetheless argue that it is a fairly 'open' document able to accommodate policies ranging from a free-market economy, which nonetheless guarantees social rights, to a 'mixed' system that would combine market forces with a degree of state planning. If we accept this openness, it becomes implausible that the drafters of the Constitution intended to institutionalise such a sharp distinction between popular sovereignty and economic decisions. Rather, this is a rigid divide that resonates with current models of thinking and economic governance, which are nonetheless open to political contestation. Secondly, it is imperative that we detect the purpose of the drafters as for the prohibition of referenda on financial matters regarding an already voted bill. Arguably, the concern was to preclude the people from cancelling, for example, tax legislation after it has been voted in by the Parliament. In our view this political consideration is fundamentally different than the one in hand when an elected government asks its people to pronounce on a question that is indeed related to financial question but its core is about allocation of decision-making between this government and international actors that as we have stressed already do not coincide with the EU.

To conclude, neither the actual text of the Constitution nor its history and its context appear to support the view that the decision was unconstitutional. Political arguments against its wisdom are of course still open to debate, but anchoring these objections to the Constitution does not appear to be a plausible strategy.

[1] Βενιζέλος Ευ., Μαθήματα Συνταγματικού Δικαίου (Αναθεωρημένη έκδοση), Αθήνα-Κομοτηνή, 2008, σελ. 359-361 (original in Greek)

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