

# Veto Player and the Greek Constitution, Part 3

**VB** [verfassungsblog.de/veto-player-greek-constitution-part-3-2/](http://verfassungsblog.de/veto-player-greek-constitution-part-3-2/)

For part 2 of this series click [here](#), for part 1 [here](#).

## 3. Barking up the wrong tree

From the previous analysis follows that if there is something wrong with the Greek Constitution is that it is too restrictive, too long, and too locked. I do not have an exhaustive list of excessive restrictions. I have argued that the inclusion of the definition of “forest” is an excess, I have argued that the principle of proportionality should not be included, not because it should be replaced, but it should not enshrined and give to activist judges a free pass to get involved in every subject. The European Union has forced us to ignore article 14 about the major shareholder. In a comparative perspective, there are constitutions that speak about "conflict of interest" and define what should be done in order to be avoided (like turn over stock to some managing firm) but no other constitution in the world goes into such detailed restrictions.

Here I will talk just about one example that I know for professional reasons. Article 16 of the Greek Constitution precludes the existence of private universities. Greece is the *only* OECD country with such a constitutional restriction. Elimination of this article was aborted in the previous round of revisions. There are two issues concerning article 16. The first one is: should we permit private education at the university level or not? The second, whatever our decision, should we eternalize it by including it in the constitution? The answer to the second is an emphatic NO. We are not the smartest OECD country in the world to have this restriction while the others do not. I would also argue that even a legal (as opposed to constitutional) prohibition is seriously misplaced because if higher education is a lever in the progress of a country restricting the institutions that provide it, and therefore restricting competition among them is a fundamentally wrong. The idea that private education is supporting the rich (in the Greek context) is fundamentally misguided because rich kids will get their education outside Greece and it is good students without enough means who will be deprived of it, while the very existence of private institutions would enable them to have a better education. Although I have been in public institutions most of my life in the US, I have to tell you not only that the best institutions in the US are private, but also that these private institutions are redistributing income through scholarships for the financially deserving students they admit.

How about the constitution’s length of 27000 words? Panagiotis Tsyilas and Stavros Tsakyrakis (Athens University) make a proposal that reduces the words of the 25 first articles of the 1975 constitution from 5236 to 2263 (reduction by 57%) (Tsakyrakis 2013). This operation involved the elimination of ambiguous terms («χρηστα ηθη»); duplications (article 5A on right to be informed); elimination of articles that in their judgment (and mine) have no place in a constitution like religion. Their main argument is that the Greek constitution is garrulous, it involves minor issues that should not be included in a constitution, and therefore their first priority was to eliminate them.<sup>[1]</sup>

However, the public debate, instead of focusing on these issues, is trying to modify specific articles about the organization of powers on the basis that since a crisis of monumental proportions was manifested in the Greek society, it must be the fault of institutions. The people who propose institutional modification propose a series of measures that essentially increase the number of veto players. As we observed above, the necessary (but unfortunately by no means sufficient) condition for change is *reducing* the number of veto players, and the reduction of the distance among them (if possible). This is why I claim that these modifications are barking up the wrong tree. What are these wrong-headed ideas? Popular election and increase of the powers of the President; creation of a new Senate; elections in fixed intervals (4 years); referendums; proportional electoral system in the constitution. I take these ideas one at a time:

President. While the popular election of the President seems in the eyes of its proponents to be a “democratic” idea asking the people to decide, what is overlooked is that any nominal authority of the President included in the constitution becomes his proper right, since he is a directly elected representative of the people. This is what

happened with the constitutional amendment in the French Vth Republic. For example he may or may not issue Presidential decrees to promulgate laws. In this sense a new veto player may be included in the political game.[2] On the other hand, if the powers of the president revert to the original provisions of the 1975 constitution, it is not a serious revision (and not worth fighting over). The election of a president is currently the only way that the opposition party can become a veto player, because if a person nominated for president does not receive 3/5 of the votes, there is a new election. I suggest a different way of electing the president that will reduce the externalities of the 3/5 threshold, and will lead to the selection of a widely accepted individual. Each party proposes one candidate, and the members of parliament have the right to select up to three candidates using a secret ballot. The person with the most votes (provided he or she has more than 3/5) wins. A president elected with this procedure will have the respect of the Parliament, and the electorate, and will be able to carry out extended authorities to appoint candidates above party conflicts for important positions either as the primary officer, or as the default solution in case of failure of existing mechanisms to fulfill their duties in a reasonable time frame, say 3 months (judiciary, independent organization presidents etc.).

Senate. It is not clear whether people who propose this idea want a second legislative body, or simply an institution that will be “above” parties and make proposals for important independent agencies. In the first case, it will be an additional veto player which will delay or abort legislation, in the second, such authority could be very well be offered to the president, particularly if elected by the procedure I just proposed (Tsebelis and Money 2007).

Elections in fixed intervals. While the people that propose this idea are tired of the constant electoral climate prevailing in the country they are proposing a cure far worse than the disease. If the government fails in a vote of confidence, or the opposition succeeds in a censure vote, this indicates that the agreement that generated the government has expired, and the people should decide about what is to be done. While this is obvious, what is not very well understood by the proponents of fixed election intervals is that the threat of dissolution (existing in the hands of the prime minister) is the major reason for the existence of party discipline in parliamentary systems (Diermeier and Feddersen 1998, 611-621). Indeed, without this threat, the different MPs would vote on every issue according to their preferences, and the government would not be able to have a program, or pass legislation that it considers necessary. Similar situations existed in the Weimar Republic, and at the end of the French IV Republic with destructive consequences. A thought experiment would persuade the reader that no legislation would have been possible without party discipline in Greece the last two years.

Referendums. The institution already exists, thanks to the Papandreou government, and therefore is not necessary to be enshrined in the Constitution. Proponents of referendums argue (correctly) that referendum outcomes are closer to the preferences of the public than solutions adopted by the political system. One thing that is not understood is that the most important question about referendums is who controls the agenda. Actually, in most countries the question is divided in two components: who asks the question, and who “triggers” the referendum. These distinctions generate four different types of referendums (a required referendum, a veto player referendum, a popular veto referendum, and a popular initiative referendum) (Tsebelis 2002, Chapter 5 and Hug and Tsebelis 2002). Roughly speaking, each step in this process increases the democratic credentials of a referendum, but even in the last one (popular initiative) what is not taken into account is the collateral consequence of a referendum. For example, think what would happen if we had a referendum by popular initiative if we want to increase taxes, or cancel the memorandum, and what would be the consequences. Before you answer the hypothetical, think of the faith of Papandreou after he proclaimed the referendum.

Pure proportional representation in the constitution. This would be the worst proposal of all, both in terms of its goal (pure proportional representation), and in terms of the means used (eternalize the system). I will discuss it more in detail in the third part of this talk.

The Greek Constitution is locked, and requires 3/5 majority to be modified. Consequently, none of the above-discussed measures is remotely feasible under the current conditions. The only feasible amendments are the ones that achieve almost unanimity of the existing actors, like ministerial responsibility (art 86), parliamentary immunity (art 62), independent authorities (art 101A), principle shareholder (art 14). This is the suggestion of legal experts like Alivizatos (2013) and Pararas (2014). Even with these restricted goals, we run the risk of a restrictive interpretation of Article 110, which specifies that a period of five years must pass before any other

amendment is undertaken (Pararas suggests a non-restrictive interpretation of this article to permit amendments in areas that have not been already amended within the period).

It would be highly desirable to reduce the number of MPs to 200. Luckily, this does not require a constitutional amendment. It does require significant political courage, since it asks of 100 incumbents to commit political suicide. Depending on the evolution of the political game, it could become an exit gambit for the current government.

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