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The Greek PSI and the Litigation Surrounding It

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The Greek sovereign debt crisis that erupted soon after the commencement of the global financial meltdown has been haunting the European Economic and Monetary Union, even threatening its very existence, until very recently. A default on the debt issued (or guaranteed) by the Greek government had been considered, in most experts' assessments, that it would give rise to a sequence of adverse events extending from severe disruptions in the operation of the Eurozone to the continuation of the life of the common currency itself. To prevent any negative developments to that effect the Eurozone leaders laid down an, unprecedented in scale, debt restructuring deal for Greece, the private sector involvement, designed to involve two consecutive steps : first, an invitation to holders of eligible Greek debt to offer their securities in exchange for new ones, of different nominal value and maturity and, second, the retroactive introduction into the terms of the Greek bonds governed by Greek law of collective action clauses so as to enforce the participation of private sector holders into the pre-mentioned swap. This article discusses the modalities of the so called PSI deal and, at a second level, elaborates on recent litigation arising out of legislation and regulations implementing both bailout and bail-in initiatives with regard to the Greek public debt. In relevant court decisions the recognition of the prerogative of the State to define the existence of emergency and accordingly to pass, respectful of the principle of proportionality, any measure necessary to safeguard its limited financial resources, arises as a common feature justifying the constitutionality and eventually legality of such measures.

La crise de la dette souveraine grecque qui s'est déclarée peu de temps après le début de la crise financière mondiale a hanté l'Union économique et monétaire européenne, menaçant même son existence, et ce jusqu'à très récemment. La plupart des experts étaient d'avis qu'un défaut sur la dette émise (ou garantie) par le gouvernement grec donnerait lieu à une série d'événements indésirables allant de graves perturbations dans le fonctionnement de la zone euro jusqu'à une possible remise en cause de la monnaie unique elle-même. Pour éviter ces risques, les dirigeants de la zone euro ont organisé la restructuration de la dette grecque par un accord sans précédent à cette échelle, avec la participation du secteur privé et visant à mettre en place deux étapes consécutives : d'abord, une invitation pour les détenteurs de dette grecque éligible d'offrir leurs titres afin de recevoir en échange de nouveaux titres d'une valeur nominale et d'une maturité différentes ; ensuite, l'introduction rétroactive dans les termes des obligations grecques régies par le droit grec de clauses d'action collective destinées à assurer le respect des détenteurs du secteur privé au « swap » mentionné ci-dessus. Cet article reprend les modalités de l'accord dit « PSI » (Private Sector Involvment) et, dans un second temps, apporte des précisions sur les litiges récents résultant de la législation et des règlements mettant en application les initiatives de « bail-out » et de « bail-in » relatives à la dette publique grecque. Les décisions de justice rendues sur ce point reconnaissent à l'État la possibilité d'établir l'urgence et de prendre en conséquence toute mesure nécessaire, dans le respect du principe de proportionnalité, afin de protéger ses ressources financières limitées. Ce trait commun justifie la constitutionnalité et, finalement, la légalité de ces mesures.

I. Historical background

The Eurozone national debt crisis, which immediately followed the global financial meltdown, started in Greece. Between 2009 and 2012 the country faced the most severe economic crisis of its recent history. With a large budget deficit and markets for new financing effectively closed, the Greek state was faced with a disorderly failure : the inability to repay its national debt, due and payable by June 2010.

To prevent defaulting – and creating a related systemic risk in the Eurozone – Greece resorted to a combined European and international financial support mechanism, established *ad hoc* (2-9 May, 2010), following lengthy consultations with both European and international authorities. The Eurozone countries and the IMF, in consultation with national authorities, put together an urgent bail-out and adjustment program and made available €110 billion of funds to help the country meet its obligations, fix the flaws in its economic policy and re-enter the markets as quickly as possible. The strategic orientation of the program focused mainly on the imposition of harsh austerity measures, designed to curb excessive demand and bring about internal depreciation as well as parallel structural reforms to enhance competitiveness and boost productivity.

External and internal factors derailed this first economic adjustment program. The policy mixture proved to be inadequate : implementation was asymmetric (harsh austerity measures were fully enforced, while structural reforms lagged significantly behind) and generic faults in the policy design underestimated the fiscal results of a prolonged recession. In other words the program

backfired.[1] Efforts to consolidate public finances and reduce the deficit led to a harsh recession and, as a result, fiscal revenue fell even further while public debt as a percentage of GDP increased.

During two consecutive Summits (11 and 25 March 2011) and further to the *ad hoc* decision taken during the Summits of 21 July and 26 October 2011 regarding Greece, the Eurozone invited private investors to contribute to a solution in order to resolve the debt viability of Greece through the so called "Private Sector Involvement" or "PSI" program. At the same time, the financially robust States of the Eurozone were called to contribute further to the financing of the Greek economy. This principle of tripartite financing for the restructuring of Greek debt was adopted during the Summit of 26 October 2011.

The Greek national debt restructuring included (a) the bail-in leg, carried out through the Greek Government Bonds' (GGBs) haircut (PSI), that started in February and was completed in March 2012, and (b) the refinancing of Greece through the official route of the EU and the IMF. To this end, a company, the EFSF (later replaced by the ESM), owned by the Eurozone members, was established in Luxembourg.

> "The GGBs haircut was carried out via a voluntary GGBs exchange, by adoption and activation of Collective Action Clauses (CACs). The exchange was made by an exchange offer for GGBs and bonds guaranteed by the Hellenic Republic."

The exchange of bonds was determined by Law No. 4050/2012 (the "Greek Bondholder Act") dated 23 February 2012. This included (a) an invitation by the Hellenic Republic to bondholders for the exchange (swap) of their bonds against new securities, (b) the conditions under which the modification of the terms of the eligible bonds could be adopted by bondholders, including the introduction of CACs, and (c) the terms under which the bonds' exchange against new securities could be determined and effected. Bonds governed by Greek Law totaled approximately 177 billion Euros and bonds governed by foreign law some 28 billion Euros.

The Hellenic Republic's *Invitation Memorandum*, promulgated under Law No. 4050/2012, invited bondholders of the designated bonds to tender any and all of them in exchange for new, GDP-linked Bonds, GGBs and PSI Payment Notes, in accordance with the terms and subject to the conditions set out in the *Memorandum*. Simultaneously, other invitations were launched covering altogether GGBs and titles guaranteed by the Hellenic Republic, but governed by foreign law.

For GGBs governed by Greek Law (the "Eligible Titles"), and subject to the modification / swap process, bondholders were called to decide collectively, within the deadline specified by the *Invitation Memorandum*, on the proposed modification of the Eligible Titles, *i.e.* on *the modification or the addition of terms in respect of one or more eligible titles or the exchange of one or more eligible titles with one or more new titles*. Recipients of the Invitation were the bondholders acting through the participants registered with the System for Monitoring Transactions in Securities in book-entry form operated by the Bank of Greece (account providers).

The Greek Bondholder Act also provided an optional Collective Action Clause (CAC), to be activated with the bondholders' consent, in order to restrain the free rider / holdout problem in the restructuring effort. CACs could be activated by a *quorum* of at least ½ of the aggregate outstanding principal of all Eligible Titles specified in the *Invitation* (the "Participating Principal") and a supermajority of at least (2/3) of the Participating Principal. The Act did not impose new terms on the bondholders and an exchange of bonds was not compulsory. Modification was voluntary : the decision for modification and/or exchange rested solely with the bondholders. But the Act provided for the bond loans' terms to be amended by a qualified majority and a specific *quorum* : the previous requirement of bondholder unanimity was abandoned.

Bondholders of approximately €172 billion principal issued or guaranteed by the Hellenic Republic tendered their bonds for exchange or consented to the proposed amendments in response to the invitations and consent solicitations announced on 24 February 2012. Of the approximately €177 billion of bonds governed by Greek law and subject to the invitation, the Hellenic Republic received tenders for exchange and consents from holders of approximately €152 billion face value 85.8 % of the outstanding face value. Bondholders of 5.3 % of the

1. Structural reforms in labour and product markets, privatisation, and measures to combat tax evasion were either not implemented or implemented with delay and, at the same time, fiscal policy over-relied on tax increases instead of expenditure cuts, while the fiscal multiplier was underestimated.

outstanding face value participated in the consent solicitation and opposed the proposed amendments. The Hellenic Republic notified its official sector creditors that, upon confirmation and certification by the Bank of Greece as the process manager, it intended to accept the consents received and to amend the terms of its Greek-law governed bonds in their entirety, including those not tendered for exchange pursuant to the invitations, in accordance with the terms of the Greek Bondholder Act (Article 1 par. 9 of Law 4050/2012).

In view of the above, the Hellenic Republic announced that it had completed the exchange of approximately €177 billion outstanding principal amount of bonds governed by Greek law pursuant to its invitation of 24 February 2012. All bondholders became bound by the proposed amendments pursuant to the Greek Bondholder Act pursuant to the respective Council of Minister's Act on Friday 9 March 2012, for the acceptance of the consents received by the Hellenic Republic by 9.00 pm CET on 8 March 2012. By paying the consideration set out in the invitations, the Hellenic Republic discharged in full its obligations to the holders of the amended bonds governed by Greek law.

We refer below to three significant cases relating to the above measures being challenged before the (Greek) Supreme Administrative Court ("Council of State"), one of which (the second in the series) was also brought before the European Court of Human Rights (ECHR).

II. The decision of the Council of State relating to the Memorandum (Plenary Session, Decision No. 668/2012)

The Council of State ruled on constitutional issues regarding Law 3845/2010, by virtue of which the Greek Parliament enacted the "*Memorandum* of Understanding" as well as the three partial *Memoranda*,[2] concluded between the Hellenic Republic, on the one hand, and the Member States of the Eurozone, the ECB and the International Monetary Fund (the so called "troika") on the other hand.

The Council of State rejected the application for the annulment of legislative provisions providing for cuts for public sector employees' wages and benefits, in addition to pension cuts. The decision of the Council of State regarding the *Memorandum* comprised two parts. The first is related to the issue of its ratification by the Greek Parliament and the second to the constitutionality of the substantive measures envisaged.

First of all, the Council of State held that the *Memorandum* did not constitute an international agreement, which had been concluded between the Hellenic Republic, on the one hand, and the "troika" on the other hand, and did not fall within the scope of Article 28 (2) of the Constitution, since under the terms of the above law there is no transfer of powers for which, under the Constitution, the Greek State (the government, the legislature and the executive) is the only competent authority for granting powers to institutions of international organizations. As a result, the law should not have been voted by a three-fifths majority of the Parliament : a simple majority would have been sufficient.

In the second key part of its decision, the Court assessed the constitutionality of the measures enacted by Laws Nos 3833/2010 and 3845/2010, and considered that the adopted cuts of public sector employees' wages and benefits in addition to pension cuts, formed part of a wider program of fiscal adjustment and structural reform of the Greek economy. This entire program, in the Court's view, was intended to address the country's economic emergency as well as its future fiscal and financial position.

The Court held that the imposition of such measures was justified on the grounds that the aim was not merely to remedy the immediate acute budgetary problem, but also to strengthen the country's financial stability in the long run. The Council of State referred also to case law regarding reductions in salaries and pensions in several States against the same backdrop of economic crisis. In addition, it observed that the applicants had not thoroughly claimed that their situation had deteriorated to such an extent that their very subsistence was at risk.

The Court in essence held that the measures were of pre-eminent public interest ; in particular, it held that they served, in principle, both substantial national public interest and the common interests of the Members of the Eurozone at the same time (given the obligations under EU law to maintain fiscal discipline and to safeguard the eurozone's stability as a whole). Such measures, by their very nature, had an effect on the levels of public expenditure of the Member States. Given the prevailing circumstances when these measures were adopted, such measures could not be considered as inappropriate or unnecessary, taking into consideration that they would only be subject to marginal judicial review.

The Council of State held that the provisions under review were not contrary to Article 1 of the First Additional Protocol nor to the principle of proportionality enshrined in Article 25 (1)(d) of the Constitution. More specifically, the Council of State held that the permanent nature of the cuts in wages and pensions was justified, since the aim of the legislature was not only to cope with the immediate severe financial crisis, but also to establish a sustainable basis for the entire financial apparatus of the State. It was further held that the property right protected by Article 17 of the Constitution was not breached, nor was the protected principle of

2. *I.e.* a) the "*Memorandum* of Economic and Financial Policies", b) the "*Memorandum* of Understanding on Specific Economic Policy Conditionality" and c) the "Technical *Memorandum* of Understanding".

trust, since the right to a given level of wages and pensions was not regulated by any constitutional provision or any other provision, and the potential for differentiation in the level of wages and pensions depending on circumstances was not ruled out.

As regards the alleged breach of the principle of equality in respect of the public burdens, the Court held that, in the prevailing circumstances at the time of publication of Law 3845/2010, the imposition of measures cutting the pensions and wages of active employees did not breach the principle of equality enshrined in Article 4(5) of the Constitution, in the context of introducing a resolution for outstanding tax affairs pursuant to Law 3888/2010.

The Council of State was further invited to rule on decisions of European Union bodies relating to the "bailout package" of Greece, as well as on the creation of a European stability mechanism to preserve financial stability in Europe. In its decision, the Council of State cites substantial sections of the text constituting the so-called Greek "bailout package" but makes no reference to the European Financial Stability Facility and expresses no concern as to whether or not a *de facto* amendment of the Treaty has occurred as a consequence of the Greek measures and the related establishment of the Fund.(3)

III. The Decision of the European Court of Human Rights in the case of *Koufaki and Adedy v. Greece* (57665/12 and 57657/12) / Decision 7.5.2013 [Section I]

The European Court of Human Rights addressed the issue of a possible breach of Article 1 (1) of Additional Protocol No. 1 of the European Convention on Human Rights relating to the peaceful enjoyment of possessions as a result of the reduction in remuneration, benefits, bonuses and pensions for civil servants. Two applicants challenged the above (under I above) austerity measures enacted by Laws 3845/2010 and 3888/2010 in order to reduce public spending and react in relation to the country's economic and financial crisis before the ECHR,(4) including reductions in remuneration, benefits, bonuses and pensions of civil servants. The first applicant, Loanna Koufaki, applied to Court in order to have her pay-slip reduction from EUR 2,435.83 to EUR 1,885.79 annulled ; the second applicant – the Civil Service Trade Union Confederation – sought judicial review due to the detrimental effect of the measures on the financial situation of its members.

> "The European Court of Human Rights addressed the issue of a possible breach of Article 1 (1) of Additional Protocol No. 1."

The European Court of Human Rights considered that the reduction of the first applicant's salary was not such that it would cause difficulties of subsistence as envisaged under the provisions of Article 1 of Additional Protocol No. 1. Within the framework of particular economic hardship in which the above occurred, the interference at issue could not be considered to have placed an excessive burden on the applicant. As regards the second applicant, the removal of the thirteenth and fourteenth months' pensions had been offset by a one-off bonus. Substitute grounds alone did not render the disputed legislation unjustified. So long as the legislature did not overstep the limits of its margin of appreciation, it was not for the Court to say whether they had chosen the best means of addressing the problem or whether they could have used their powers differently. Therefore, the European Court of Human Rights rejected the petition as inadmissible (manifestly ill-founded).

IV. Legal proceedings regarding the Greek PSI program before the Greek Council of State

On 22 March 2013, the Council of State discussed in plenary session 28 petitions of minority bondholders requesting the annulment of the decision of the Council of Ministers for the enactment of the Private Sector Involvement (PSI) program, *i.e.* the Council of Ministers' decision for the approval of the Greek Government Bonds' (GGBs) swap, implementing also the applica-

3. Th. Antoniou, "The decision of the Plenary Council of State for the Memorandum of Understanding – A European affair without European approach," *To Syntagma*, Issue 1 of 2012.
4. Previously judged before the Greek Council of State by the above mentioned Decision No. 668/2012, which rejected several arguments based on the alleged breach of the principle of proportionality by the disputed measures, considering that the salary and pension reductions were not purely provisional measures.

tion of CACs and the Bank of Greece Act confirming the results of the GGBs' holders voting process.

The 28 petitioners were individuals (Greek and foreign bondholders), public legal entities and Social Security Funds, private companies, suppliers of the Greek State (notably pharmaceutical companies) as well as former employees of Olympic Airways, who received GGBs as a "compensation" within the meaning of labor law, after the termination of their employment contracts during the privatization of the national airline.

As mentioned above, the exchange of bonds governed by Greek Law was affected by Law No. 4050/2012 (the "Greek Bondholder Act"), enacted on 23 February 2012. This Law stipulated (a) an Invitation from the Hellenic Republic to the bondholders in respect of the exchange (swap) of their bonds for new securities, (b) the conditions under which the modification of the terms of the eligible bonds could be adopted by the bondholders, including the introduction of CACs, and (c) the terms under which the bonds' exchange for new securities could be decided and implemented. Upon the Hellenic Republic's invitation, bondholders of the designated bonds were invited to tender any and all of them in exchange for new, GDP-linked Bonds, GGBs and PSI Payment Notes in accordance with the terms and subject to the conditions set out in the Invitation *Memorandum*. Simultaneously, other invitations were launched covering, together, GGBs and securities guaranteed by the Hellenic Republic but governed by foreign law.

Concerning GGBs governed by Greek Law (the "Eligible Titles"), being subject to the modification / swap process, the Bondholders were called to decide collectively, within the deadline specified by the Invitation, on the proposed modification of the Eligible Titles, *i.e.* on *the change or the addition of terms to one or more eligible titles or the exchange of one or more eligible titles with one or more new titles.* Recipients of the Invitation were the bondholders acting through the participants registered with the System for Monitoring Transactions in Securities in book-entry form operated by the Bank of Greece (account providers).

The main legal reason put forth for the annulment was the breach, by virtue of the Greek Bondholders Act introducing the Collective Action Clauses (CACs), of : (1) individual rights under the Greek Constitution and, explicitly, infringement of the right to property, the principle of equality, the justified reliance on a fair public sector, the proportionality principle and the freedom of contract ; (2) individual rights arising from the European Convention of Human Rights (ECHR) and the EU Charter of Fundamental Rights (EUCFR) ; (3) ill-use of discretionary power (in conjunction with the breach of the principle of equality). The Court decision for some of the petitions has only recently been published and is presented in the paragraphs hereunder.

With respect to the jurisdictional grounds of appeal presented to the Court, the first issue raised was the disputed competence of the Council of State. The basic arguments were the private – as opposed to the administrative – legal nature of the acts being challenged, namely the fact that the Hellenic Republic as GGB issuer was no different from any other corporate issuer in distress, and was not in the exercise of its public power, and the role of the Bank of Greece, which acted in the whole PSI process as a treasurer (*fiscus*)[5] (as any other private sector CSD) and not as an authority (*imperium*) exercising public power (BoG received orders of participation to the PSI program, ownership percentages calculated and confirmed, initial bonds erased from the accounts of its System and New Bonds registered).

As to the petitioners' argument regarding the breach of freedom of contract and the breach of economic freedom, the question is in this instance whether or not the CACs' activation should be regarded as a measure of state intervention or as a recovery measure in the context of the restructuring procedures.

The bondholders' arguments were the illegal intervention by the legislator by the retroactive insertion of CACs in pre-existing contracts (bonds) without the consent of the bondholders and the CACs changing the terms of pre-existing contracts retrospectively.

The counter arguments were the non-retroactive imposition of CACs and their voluntary nature. The exchange of old bonds for new bonds was not compulsory since the holders of Eligible Titles were invited to tender any and all Eligible Titles in exchange of New Titles. The bondholders voted for the modification of the bonds' terms through the insertion of CACs ; they decided to accept the majority rule and exchange the old bonds for new bonds in accordance with the majority principle. CACs were necessary and, from this point of view, in conformity with the proportionality principle (*sensu stricto*), in the context of coping with the free rider/holdout and challenges of moral issues. The CACs therefore updated old-fashioned loan schemes and framed possible speculative actions. In that sense, it has been argued that, without CACs, the bondholders would have had to pay a higher price.

As to the petitioners' argument regarding the *infringement of the right to property* in breach of a) the principles of the Constitution, demanding full compensation in a Court ruling, and of b) the Human Rights Convention, the submissions were as follows :

a) No deprivation of property as a result of a public act occurred, other than a change of GGB's terms contractuallly upon the Bondholders' qualified majority decision to change the structure of the contractual relationship of the bondholders with the issuer as well as the bonds' terms.
b) The fact that the haircut was not harmful for the bondholders' interests, given the slightly slim

5. D. Tsatsos, *Constitutional Law, Fundamental Rights*, Athens-komotini 1988, 178 : "The term 'fiscus', which in latin means public purse, reflects the managerial activity of the state and constitutes the first legal concept on which have been founded the procedural and substantial requirements for the civil liability of the monarch within the field of transactional activities."

chances of the issuer fulfilling its obligations without such restructuring and, also, the fact that, in case of a restructuring failure, the bondholders would probably lose most (if not all) of the value of their bonds, especially in the likely event of a Greek "bankruptcy" or exit from the Eurozone.

c) New Bonds delivered to the bondholders constituted adequate, prompt and effective compensation because the property of the bondholders had not been reduced or unfairly reduced: new bonds had, in essence, at least the same market value as the old ones on the day when the exchange took place, as well as a better rating.
d) The valuation method and procedure was reasonable, since the respective decision was taken by the supermajority of bondholders and, thus, had to be considered fair, taking into account the circumstances.
e) Bondholders' interests were protected, considering the consequences of a possible disorderly insolvency on the value of the old bonds.

Therefore, the counter arguments were that PSI and CACs procedure were fully balanced and justified taking into account the pre-eminent public interest involved, prevailing over individual rights to property.

A further petitioner's argument was the *breach of the principle of equality*, since the Greek Government excluded from the PSI the Treasury Bills and, indirectly, provided different treatment for GGBs held by the Eurosystem ; the invitation to bondholders as regards the exchange of bonds did not include bonds held by the ECB and the National Central Banks, since those bonds were previously substituted by other bond series. The Greek State and the Bank of Greece argued as follows on these points :

a) The exclusion of Treasury bonds of a duration of six and three months was essential, since these titles constitute money market instruments and are intended to cover short-term cash needs for the issuer. They differ in qualitative terms, as to their maturity, from the other titles with a maturity of over one year, which are identified as capital market instruments. This differentiation is reflected in secondary EU law, in relation to the risk level of titles depending on their duration. Furthermore, the exclusion of treasury bills from the exchange program was necessary for practical reasons : their inclusion in the exchange program would have meant that nobody would acquire treasury bills of three or six months length in the last six months prior to the restructuring of the public debt, announced as an option in July 2012. As a result, the public would have been unable to cover short-term needs. It is, moreover, an international practice for short-term money market instruments, such as treasury bills, to be excluded from restructuring programs.

b) It was also argued that the separate treatment of GGBs held by Eurosystem NCBs was justified by the very purpose of GGBs' acquisition by the Eurosystem : serving the public interest and fulfilling the objectives of the European Union, in the form of monetary policy conduct within the Eurozone. By contrast, the investments of other bondholders were profit driven. There was, thus, an essential difference between the rationale behind the Eurosystem's GGBs purchases in the secondary market and those of the other bondholders, which justified different treatment.

"The Greek Council of State in its decision 1116/2014, published on March 31 and addressing some of the petitions for the annulment of the PSI, upheld the legality of the program."

The Greek Council of State in its decision 1116/2014, published on March 31 and addressing some of the petitions for the annulment of the PSI, upheld the legality of the program. The decision of almost one hundred pages long, reaches a number of conclusions in support of the program, which, among its other peripheral judgments, are as follows :

a) An investment in national debt by means of acquisition of government issued bond titles shall not be seen as different from any other investment in third parties' risk since, above all, it constitutes a legal relationship based on the provision of credit. In this respect, upon truly unforeseen and extraordinary events that completely destroy a government's capacity to repay its debts, a right to re-negotiate such government's debt, based on the "rebus sic standibus" principle (or "things standing thus") which sets boundaries to the general principle of law "pacta sunt servanda" (or "agreements must be kept") shall not be excluded. This thought is further supported by the ECB opinion of 17 February 2012 regarding the terms of securities issued or guaranteed by the Greek State,[6] which confirms that even financially robust states rejected as early as 2002 for the state to be a debtor of the whole and complete creditworthiness of the state. Thus, in light of the financial tsunami threatening the Greek economy prior to the ap-

6. See https ://www.ecb.europa.eu/ecb/legal/pdf/en_con_2012_12_f_sign.pdf.

plication of the PSI and within the framework of the above mentioned arguments, the Greek Bondholders Act and the PSI cannot specifically be found as contravening Articles 5 and 25(1) of the Greek Constitution (free development of one's personality and proportionality principle respectively) or generally the legal principles deriving from the Greek Constitution, the EU Law and the ECHR as the claimants have argued.

b) The decision of the Greek Council of State also deals in an *obiter dictum* with the fact that the Bank of Greece Central Securities Depository is an indirect securities' holding system where only the participating financial institutions are registered and not the end-investors. It highlights such holding patterns' characteristics and assesses the legal relationship between the end-investors and the issuer of the securities (*i.e.* the Greek State) as regards the rights attributed through the GGBs as intermediated dematerialised securities to the bondholders, in order for them to assess whether a possible breach of overarching rights does exist, caused by ministerial decisions and the Greek Bondholders Act. In this respect the court accepts that the negation, in the context of the PSI proceedings, of any direct contractual relationship between the Greek State and the BoG on the one hand and the end-investors as bondholders on the other hand does not contravene any constitutional or international law overarching principles; the court, thus, negates any liability of the Greek State as to the proceedings applied on the cancellation and exchange of the GGBs. The court's argumentation on this specific issue does not seem to be grounded to a thorough extent, as it tends to overlook legal developments in this specific field, notwithstanding that the Council of State does not actually reach an erroneous conclusion.

c) Pursuant to Articles 5 (1), 17 (1) and 25 (1) of the Greek Constitution, in case of imperative public necessity, any limitation of contractual property rights is permissible provided that it is deemed necessary under specific circumstances, adequate in the public interest whose fulfillment needs to be served and which must be compliant with the principle of proportionality. In addition, pursuant to the first additional protocol of the ECHR, under extraordinary circumstances, reasons of public interest may justify public intervention and the decrease of private property provided that such intervention in not contrary to the principle of proportionality. Moreover, public authorities themselves are generally competent to judge whether or not such public intervention is necessary and proportionate to the aim to be achieved, while their discretionary powers are rather large. In the case of the PSI the cancellation of the GGBs and their substitution for new securities, although severe and harsh in nature, cannot be deemed inadequate or disproportionate as, in their absence, the most likely result would have been a Greek default and the total collapse of the Greek economy, which in turns would have had unpredictable repercussions and undoubtedly would have jeopardized the fulfillment of all the investors' rights as far as the Greek public debt was concerned.

d) The principle of equality does not mean that the Greek State should reserve a special treatment for some categories of its creditors on the basis of personal features and other subjective data and especially for individuals with limited financial resources and life expectancy (sic), who perceive their own transactional attitude as being one of a depositor and not an investor. On the contrary, said principle, as applied in the relations between multiple creditors with the same debtor (*pari passu* principle) imposes the finding of a solution for all creditors "on an equal footing" (*sic*), so as to allow, where default will indeed incur, the *pro rata* repayment of all creditors. Hence, in accordance with the principle of equality (Article 4 par. 1 of the Greek Constitution) individuals are not entitled to any privileged treatment *vis à vis* the rest of the creditors of the Greek State no matter how small the amount of the GGBs they hold.

The above judgment by the Greek Council of State, apart from its judges ruling in favor of the constitutionality of the Greek Bondholders Act, was given by a strong minority judgment by seven out of the twenty eight judges of the Court who found the Act as being contrary to the Greek constitution and the ECHR, in essence accepting the arguments projected by the claimants and their counsels.