

The Architecture of the Emergency Framework of Greece: Inactivity and Second Generation Emergencies

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Introduction

According to materials science and in particular according to the fracture mechanics, which applies the physics of stress and strain and focuses on the damage tolerance and the failure of bodies, materials are characterized by their resistance to fracture. On the one hand, we categorize as brittle, materials such as glass, ceramics and ice that fracture before any plastic reformation. On the other hand we categorize as ductile, materials such as steel that some plastic flow proceeds fracture.¹ Therefore, what distinguishes the materials between brittle and ductile is the ability of the material to undergo plastic deformation before the fracture. In practice, ductile fracture is preferred in most applications, because materials with relatively extensive ability for plastic deformation ahead of crack absorb more energy and tolerate stress before fracture.

Constitutional drafters have a paramount aim to create enduring constitutions, with the ability to absorb shocks, and sustain stress and pressure in order to avoid constitutional mortality.² In other words, constitutions are not simply rulebooks, but they are a fundamental material that defines the structure, performance, properties and the processes of the legal order.³

The Constitution "prescription" usually includes a definition of the state's lawmaking power, institutional guarantees such as checks and balances, and expresses an obligation for human rights. But in times of emergency and stress, an age-old problem, constitutions are in need of flexibility and like materials need to tolerate stress in order to avoid fracture.

Such flexibility is incorporated in a number of constitutional provisions that provide for a special emergency regime that affects the separation of powers, constitutional guarantees and rights. Indeed, constitutional provisions in numerous constitutions prescribe for a deviation from specific rules and procedures, upon several conditions and constrains. At the same time, law makers establish through ordinary legislation permanent agencies which are entrusted with the role to produce in advance emergency plans and to act when it is necessary, while they set the framework of cooperation and partnership between different bodies, such as governmental and regional authorities, non-governmental organization and volunteers.

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¹ For more details about brittle and ductile fracture see Raymond A. Higgins, *The Properties of Engineering Materials* (Industrial Press, 2nd ed) 384 ff.

² On the issue of constitutional mortality, see Zachary Elkins et al, *The Endurance of National Constitutions* (CUP) Ch 6.

³ X Contiades and A. Fotiadou, *On Resilience of Constitutions. What Makes Constitutions Resistant to External Shocks?* (2015) 9 *Vienna J. on Int'l Const. L.* 3

In 20th century Greece, officially Hellenic Republic, which is an independent state from 1830, wars, social unrest, and armed coups informed the drafters of the 1975 Greek Constitution on the issue of emergency. The Constitution of 1975, which established the so-called third Republic, replaced the Constitution of 1952, which was overthrown in 1967 by a military coup that lasted seven years until 1974.⁴ The current constitutional document was amended three times in 1986, in 2001 and finally in 2008. It resembles a palimpsest, which encapsulates the constitutional acquis of the Greek state, and the development of the regime from a constitutional monarchy in 1844 to the current parliamentary democracy.

The first part of this article will show that *de lege lata*, the emergency toolbox of Greece, provides policymakers with a plethora of options to address emergency situations.⁵ But given the fact that policymakers in Greece have such powerful tools at their disposal to address potential threats to national security before these escalate and cause breakdowns, one may wonder why the constitutional system has been unable to respond promptly and efficiently during recent emergencies – like the economic crisis in 2009 and the emerging refugee crisis that began in 2015.

This article will argue that the reason why the Greek constitutional system repeatedly fails to address emergencies in practice is threefold. First and foremost, the emergency framework of Greece is well equipped with numerous provisions, but it still lacks specific provisions on economic emergencies. Suffice to mention here that many newly adopted constitutions contain provisions and regulate economic emergencies explicitly.

Second, the imperfect formulation of the separation of powers makes emergencies initiative monopolized by the cabinet, thus, allowing the Prime Minister, head of the cabinet and leader of the majority party in Parliament, to remain inactive during emergencies. In other words, there is no constitutional mechanism to compel an executive to act during emergencies and activate the emergency tools in order to face the exigency. Due to the nature of economic crises, an asymmetry about the necessity of emergency measures between the government and the people is formed (this is what we call emergency psychology) This asymmetry is partly explained by the different degree of the information and expertise between the government and the people. It can be further explained by the extensive abuse of emergency powers in the constitutional history of Greece that makes the people more skeptical towards emergency measures. For all these reasons, the government was unable to act and reason the necessity of economic emergency measures.

Third, despite the fact that the constitutional drafters have foreseen the need to regulate second generation emergencies when there is an official declaration of the state of emergency (*de jure*), the absence of a specific derivative emergency framework during *de facto* emergencies creates deadens and inefficiencies. In particular, the occurrence of the refugee crisis amidst the economic crisis is a prime example of an emergency within an emergency. In principle, it is apparent that governments rely on the emergency provisions to face second-generation emergencies as well. But given that emergency provisions are drafted on the assumption that an emergency will occur under normal circumstances, one must wonder if the existing emergency provisions will be good enough to address second-generation emergencies.

The article proceeds as follows. The first part will discuss in detail the emergency framework of Greece. It will examine the different provisions that regulate this issue with the aim to support the argument that while the emergency constitution of Greece is in theory well equipped, it still

⁴ For further details about the constitutional history of Greece, see Philippos C. Spyropoulos, Theodore P. Fortsakis, *Constitutional Law in Greece* (Wolters Kluwer 2009) 41 ff.

⁵ While a different point of view can argue that the emergency framework is excessive with many redundant, unnecessary, and overlapping provisions. See Kostas X. Xrysogonos, *Individual and Social Rights* (Ant Sakkoulas Publishing 2002) 67 [in Greek].

lacks emergency provisions about economic crisis. The second part will have a more pragmatic approach. It will substantially evaluate the emergency framework by examining the law in action. Finally, by referring to the ongoing economic and refugee crisis in Greece, it will explain why the emergency constitution of Greece failed to respond promptly and efficiently during the more recent emergencies.

Part 1: Plethora of Emergency Provisions, but there is no provision on economic emergencies.

A. De Jure Emergencies

1. The State of Siege of Article 48

The Greek Constitution is comprised of 4 parts, each of these four parts is divided into multiple sections, some of which are subdivided into chapters and finally 120 detailed provisions flesh out the fundamentals and the principles of the constitutional order. Among the provisions, of Part 3 on the “Organization and Functions of the State”, which encompasses the role of President of the Republic, article 48 (in Section 2, Chapter 2) entitled “state of siege” introduces the de jure state of emergency.⁶

Article 48 with most formality stipulates the framework of the state of siege and without doubt it follows and modernizes the previous patterns of the state of siege under the previous constitutions of 1911, 1927 and 1952.⁷ Generally speaking, this provision contains four emergency conditions, two alternative procedures of emergency declaration, an extraordinary law making process and sets limits to the content of the emergency laws.

i. Four Emergency Conditions

The first paragraph of article 48 sketches out explicitly the substantive conditions giving rise to the activation of the state of siege. The enumerated conditions are divided into two categories: external and internal risks.

A priori is the case of war given that it is formally declared according to national and international standards. This category also includes the existence of war actions or the threat of an imminent war regardless of a formal declaration. Second is the case of mobilization combined with an external threat. Mobilization is decided by the supreme decision-making body on issues of foreign policy and national defense of the Greece War Council,⁸ which empowers the Prime Minister to propose to the President of the Republic the publication of the relevant decree.⁹

⁶ On the classification between de jure and de facto state of emergency see Joan Fitzpatrick, *Human Rights in Crisis: The International System for Protecting Human Rights during States of Emergency* (University of Pennsylvania Press) 11 ff.

⁷ The Constitution of 1911 for the first time adopted the state of siege in Article 91. For a short history of the state of siege provision see A. Manesis, *Constitutional Theory and Practice II* (Sakkoulas Publications, 2007) 419-420 [in Greek].

⁸ See Article 19 Presidential Decree 63/2005 Article 19 . (alternatively called in times of peace Government Council for Foreign Affairs and Defence usually known by its acronym KYSEA)

⁹ Article 2 para 2 Law 2292/1995. Currently in the War Council participate among other the Prime Minister, as chairman, the Minister for Foreign Affairs, the Minister for Finance, the Minister for National Defence, the Minister for the Interior, the Minister for the Environment, Energy and Climate Change, the Minister for Public Order and Citizen Protection. see Art 18 Presidential Decree 63/2005.

In addition the current Constitution recognizes two conditions caused by internal risks, in the case of an imminent threat against national security and in the case of an armed coup aiming to overthrow the democratic regime. The latter condition is considered more clear and specific.¹⁰ It is noteworthy that the condition regarding the national security is very broad and it implies imminent threats against the national sovereignty that does not derive from external risks. Interestingly, this was an amendment made in 1986, which modified and replaced the condition of public order originally mentioned in the constitution of 1975. The condition of public order was criticized as very broad giving broader discretion to policy makers to activate the state of emergency.¹¹

The combination of internal and external risks is explained by reviewing the past provisions on the state of siege. In particular, article 91 of the Constitution of 1911 prescribed two conditions: the case of war and the mobilization. It associated the state of siege with events objectively verified that cannot be in dispute, and caused by an external risk. However, the political turmoil and the National Schism between King Constantine I and Prime Minister Venizelos led to the adoption of a Constituent Act in 1917 when the latter took control of the government and with this Act suspended a number of constitutional provisions which is the first reference to the condition of "internal risk", as a reason to activate an emergency.¹²

That said, the Constitution of 1952¹³, explicitly provided in article 91 that the emergency can be activated due to war or mobilization caused by external risks or serious disturbance and obvious threat to public order due to internal risks.¹⁴ Thus, the new Constitution of 1952 introduced the condition over internal risks with the aim to address the socio-political reality after the civil war which threatened the civil status quo in Greece.

ii. Two Alternative procedures

Article 48 prescribes two procedures according to which a state of emergency is declared given that the substantive conditions prescribed explicitly in this article are met.¹⁵ First, Parliament activates in one sitting the state of emergency with a resolution approved by a supermajority of three-fifths majority of the total number of members - 180 out of 300 votes - upon a proposal of the Cabinet.¹⁶ The resolution is published at the Gazette of the Government of Greece by the President of the Republic. Having said that, the role of the president is restricted to review whether the procedural condition of this article are met, without having the authority to review or raise any objection on the substantial content.

¹⁰ A. Manesis, *Constitutional Theory and Practice II* (Sakkoulas Publications, 2007) 426 [in Greek].

¹¹ A. Manesis, *Constitutional Theory and Practice II* (Sakkoulas Publications, 2007) 424 [in Greek].

¹² Gazette of the Government of Greece 115/A/1917. Later on in 1935 another Constituent Act was issued that suspended a number of major constitutional provisions such as the Parliament which was also caused by internal incidents. See Gazette of the Government of Greece A/113/1.4.1935. About the Constituent Acts see Philippos C. Spyropoulos and Theodore P. Forsakes. *Constitutional Law in Greece* (Wolters Kluwer 2009) 64-65.

¹³ the text of which was drafted by a committee of the Fourth revising House during the civil war (1946-1949)

¹⁴ Article 91.

¹⁵ 48 para 1. the substantive conditions according to which state of siege is activated are enumerated explicitly in the first paragraph. A priori is the case of war given that it is formally declared according to national and international standards but also regardless the formal declaration, suffice the existence of war actions or the threat of an imminent war. Second is the case of mobilisation ... and finally is the case of an armed coup aiming to overthrow the democratic regime

¹⁶ 48 para 6.

However in case Parliament is not sited, because its term lapsed or it is dissolved¹⁷ or even because it is impossible to be summoned, the state of siege is activated upon the proposal of the Cabinet that specifies the content of the emergency measures. Accordingly, the declaration of the state of siege is published at the Gazette of the Government of Greece by the President also known as Presidential Decree. As soon as the Parliament's convocation is possible, but under no circumstances no later than 15 days, which includes the possibility to reassemble an already dissolved parliament,¹⁸ the Cabinet has to submit the decree to Parliament for approval.¹⁹ In this occasion there is no need for a supermajority, as a simple majority suffices.²⁰

iii Limits to the Emergency Measures

The resolution on the activation of the state of siege, shall prescribe the duration of the emergency measures which shall not exceed the period of 15 days.²¹ But the duration of the emergency measures may be extended upon a resolution of the parliament.²² However, there is no need for supermajority as para. 6 requires a simple majority of 151 votes.

The activation of the state of siege enables number of measures enumerated in paragraph 1. In particular, extraordinary courts can be established and a number of constitutional rights are suspended,²³ such as the prohibition of individual measures that restrict the free movement and establishment in the country and of the free exit and entrance (5 paragraph 4), the warrantless arrest and the suspension of habeas corpus (article 6), the natural judge - judicial committees and extraordinary courts (article 8), the protection of home and right to privacy, home search (article 9), the right to associate (article 12 paragraphs 1 and 2), freedom of speech and freedom of the press (article 14), the secrecy of letters and the free correspondence (article 19), the suspension of the prohibition of compulsory work (article 22 para 4),²⁴ the freedom to unionize (article 23), and the institutional guarantees of articles 96 and 97 about the suspension of ordinary courts, the establishment of military, naval and air force courts over civilians and the suspension of jury courts.

Interestingly, paragraph 4 of Article 48 explicitly regulates the expiration of the state of siege. It prescribes that emergency expires with the non-renewal of the emergency measures or with termination of the war, if this was the reason of the emergency. In addition, it is argued that in case the state of siege is activated according to the alternative procedure, if Parliament is not convoked within 15 days, e contrario the emergency measures lapse.²⁵

2. Permanent Emergency legislation and Institutions

¹⁷ See Constitution of Greece, Articles 32 Para 4, and 41 Para 1.

¹⁸ The President of the Republic is responsible to convoke Parliament (Constitution of Greece, Article 48, Para 2 and Article 40 Para 1).

¹⁹ Constitution of Greece, Article 48, Para 2

²⁰ Constitution of Greece, Article 48, Para 6.

²¹ Thus the provision contains an indirect sunset clause. On the classification of sunset clauses see Antonios Kouroutakis, *The Constitutional Value of Sunset Clauses* (Routledge) forthcoming.

²² Constitution of Greece, Article 48, Para 3.

²³ Kostas X. Xrysogonos, *Individual and Social Rights* (Ant Sakkoulas Publishing 2002) 66 [in Greek].

²⁴ The original text refers to paragraph 3 but due to the amendment of 2001, paragraph 3 became paragraph 4. See Euaggelos V. Venizelos, *Constitutional Law Lessons* (Ant Sakkoulas Publishing 2008) 605 [in Greek].

²⁵ For example, the General Secretariat for Civil Protection Euaggelos V. Venizelos, *Constitutional Law Lessons* (Ant Sakkoulas Publishing 2008) 606 [in Greek].

A Latin maxim which encapsulates the value of preparedness is the “Si vis pacem, para bellum”. A well-established state of readiness is highly important to face emergencies and therefore policy and law-makers have formed with ordinary legislation a permanent emergency framework. A plethora of ordinary legislation is enacted and provides policy makers with permanent tools to tackle emergencies, on a local or the national level.

In particular, special agencies are established, such as the General Secretariat for Civil Protection,²⁶ and given core responsibility regarding natural disasters. According to the organic Law 3013/2002 the General Secretariat for Civil Protection has overarching responsibility for incidents such as earthquakes, landslides mudslides, forest fires, floods, volcanic eruptions, chemical- biological radiological and nuclear accidents, anthrax incidents, technological hazards and severe weather phenomena.²⁷ In charge for the strategy design is the Inter-ministerial Committee for the National Planning of the Civil Protection,²⁸ the Central Coordinating Body for Civil Protection,²⁹ and the General Secretary for Civil Protection.³⁰

The same law, 3013/2002,³¹ also delegated the power to the Minister of Interior to issue an emergency plan through secondary legislation. This plan was first issued in 2003 with the code name “Xenocratis”.³² The emergency framework regarding civil protection is fueled with the most modern concepts such as the decentralization with local authorities having a forefront role in the implementation stage,³³ and the integration of volunteers’ initiatives.³⁴

Depending on the scale and the magnitude of the emergency there is a distinction on the authority to declare a state of emergency. In principle, the emergencies are categorized as emergencies of large and small magnitude and criterion of distinction is the impact on the lives, properties, infrastructure and natural resources in a given area,³⁵ while they are also categorized as general, peripheral and local depending on the geographical boundaries.³⁶

In case of a general emergency that affects multiple peripheries, the Minister of Citizen Protection is authorized to declare it,³⁷ and for the rest, the General Secretary for Civil Protection declares the state of emergencies.³⁸ In addition, the General Secretary for Civil Protection may delegate the power to local authorities to declare a state of emergency given it is local and of small magnitude.³⁹

The duration of the state of emergency expires ipso jure after 6 months, but if there is a need, the General Secretary for Civil Protection may extend it.⁴⁰ If the state of emergency was

²⁶ Law 2344/1995, Art 4. But it was reestablished and upgraded with the Law 3013/2002, Art 6 and was further amended by the Law 4249/2014, Art 104.

²⁷ Law 3013/2002, Art 1.

²⁸ Law 3013/2002, Art 4 as it was amended by the Law 4249/2014 Art 111.

²⁹ Law 3013/2002, Art 5 as it was amended by the Law 4249/2014, Art 112.

³⁰ Law 3013/2002, Art 8 as it was amended by the Law 4249/2014, Art 115.

³¹ Law 3013/2002, Art 17.

³² Ministerial Decision 1299/2003 which was further amended with the Ministerial Decision 3384/2006.

³³ Law 3013/2002, Art 10.

³⁴ Law 3013/2002, Art 14 as it was amended by the Law 4249/2014, Art 117.

³⁵ Law 3013/2002, Art 2 para 1b.

³⁶ Law 3013/2002, Art 2 para 3. General is the emergency that affects more than three peripheries, and local is the emergency that affects a single prefecture.

³⁷ Law 3013/2002, Art 8 para 1b as it was amended by the Law 4249/2014, Art 115 para 1. Before the amendment of Art 115 para 1 Law 4249/2014 the Minister of Interior had the authority to declare a state of emergency. See for more details Presidential Decree 184/2009: constitution and competences of the Ministry of Citizen Protection

³⁸ Law 3013/2002, Art 8 para 1d.

³⁹ Law 3013/2002, Art 8 para 1d as it was amended by the Law 4249/2014, Art 110 para 2.

⁴⁰ Law 3013/2002, Art 3 as it was amended by the Law 4249/2014, Art 110.

declared by the local authorities, the General Secretary for Civil Protection has to authorize its extension.⁴¹ That said, the law is silent and does not clarify the case of an emergency being declared by the Minister of Citizen Protection. Overall, the decision on the extension of the state of emergency has to be reasoned explicitly on why the measures implemented during the previous period were not sufficient to tackle the emergency.⁴²

Consequently, the nexus of emergency framework is enriched with permanent bodies and permanent emergency planning arrangements that are founded on the premises that preparedness and acquired experience are invaluable tools. Besides that, the foundation of permanent bodies allows the redistribution of functions to peripheral and decentralized bodies which is of paramount importance in case of local emergencies and for the “trickle down” effect of the measures,⁴³ while it creates an ideal condition for the strengthening of the nexus between public administration and non-governmental organizations. Such permanent emergency tools shield the administration with foresight and preparedness, protocols and procedures.

B. De facto Emergency

Given that the state of siege is activated under specific and extraordinary circumstances, the constitutional drafters have empowered policy makers and legislators with plethora of means to face emergencies that are excluded from the scope of the state of siege. Such provisions permit law-makers to deviate from ordinary and standard procedures, and also permit law makers to curve constitutional protections without a formal declaration of a state of emergency.⁴⁴

1. The Executive Law Making of Article 44

The most frequently used provision is Article 44 of the constitution which grants law making power to the executive under extraordinary circumstances of an urgent and enforceable need.⁴⁵ The use of this provision is independent from the de facto declaration according to article 48. The Cabinet of Ministers proposes the content of the acts and the President promulgates them at the Official Government Gazette. Protagonist in this process is the Cabinet and the role of the President is restricted. The President does not have discretion to issue or not such acts and he cannot intervene in the content. But the President has a margin of appreciation to evaluate the exigency of the situation.⁴⁶

In reality, this law-making procedure is an exception to the legislative power of Parliament and is excused in extraordinary circumstances that deprive the time to the ordinary procedure to legislate.⁴⁷ Ex post, Parliament has a decisive role as such acts shall be submitted to Parliament for ratification, within forty days of their issuance or within forty days from the convocation of a parliamentary session.⁴⁸ And in the event of failure to table before Parliament such acts within

⁴¹ Ibid.

⁴² Law 3013/2002, Art 3 as it was amended by the Law 4249/2014, Art 110.

⁴³ It is noteworthy that since 1974 there is a provision about the role of the Peripheries in the emergency framework. See for instance Art 9 of the Legal Decree 17/1974.

⁴⁴ Kostas X. Xrysogonos, *Individual and Social Rights* (Ant Sakkoulas Publishing 2002) 67 [in Greek].

⁴⁵ Constitution of Greece, Article 44, Para 1.

⁴⁶ Philippos C. Spyropoulos and Theodore P. Forsakes. *Constitutional Law in Greece* (Wolters Kluwer 2009) 77.

⁴⁷ In reality the constitutional drafters aimed to replace the executive law making framework of the Constitution of 1952 and tight it upon certain conditions within a specific framework. See Euaggelos V. Venizelos, *Constitutional Law Lessons* (Ant Sakkoulas Publishing 2008) 176 [in Greek].

⁴⁸ Constitution of Greece, Article 44, Para 1.

40 days or if Parliament does not ratify them within three months of their submission, then they lapse *ex nunc*.⁴⁹ Interestingly the period of three months for the ratification is extended in case the parliamentary session is suspended.⁵⁰

Given that the constitutional provision does not provide any restriction regarding the content of such acts, *e contrario* any measure relevant to the exigency can be adopted, including economic measures in order to face an economic crisis. In theory it was questionable whether with such executive law-making, there can be delegation of powers.⁵¹ However in 2013 the Government adopted the Act of Legislative Content dated 10.6.2013 which incorporated a provision delegating powers and when such act was challenged before the courts, the Council of State circumvented the issue.⁵²

An early example of the acts of legislative content was the prompt response of the government to set up the Earthquake Restoration Service of Northern Greece with an Act of Legislative Content after the earthquake of Thessaloniki in 20.6.1978,⁵³ and later on in 1982 the issue of another act due to the unprecedented air pollution in Athens.⁵⁴ Recently such acts were used extensively during the economic crisis.⁵⁵

All in all, the significant rise of the use of such acts exemplifies the utility that they can have to tackle emergencies. From environmental crisis to natural disasters and recently on economic emergencies Acts of legislative content have proven to be a useful and chameleon tool on a variety of topics. Therefore article 44 of the Greek Constitution is a one size fit all provision that can accommodate different nature of emergencies.

2. The Specific Framework of articles 22 (4) and 18 (3)

The provisions of article 22 para 4 and 18 para 3 address respectively the issues of requisition of property⁵⁶ and of personal services⁵⁷ in times of stress and these provisions are similarly independent from the provision of the article 48 of the Constitution.

Both provisions are associated with core constitutional rights, recognized at an international level, the former with the right of property (Art 18) and the latter with the prohibition of compulsory work (article 22). Both provisions provide an exhaustive list of conditions in times of war and peace that allow the requisition of personal services and of property and in both provisions constitutional drafters choose to defer the detailed substance of the emergency provision to law makers to fill the regulatory framework with ordinary law.

Although the wording of the aforementioned provisions are similar and their regulatory scope is comparable, they are not identical. The grounds justifying the requisition and the limitation to each right respectively differ. The limitation of the right to property which caused by national security challenges is justified for the needs of the armed forces, while in times of peace the

⁴⁹ Council of State (3612/2002 Plenary Session, 3636/1989 Plenary Session, 2289/1987 Plenary Session)

⁵⁰ See Council of State 1901/2014 [14].

⁵¹ P. Pararas, *The Acts of Legislative Content of the President of the Republic* (Ant Sakkoulas Publishing 1981) 53 [in Greek].

⁵² For further details see Council of State 1901/2014.

⁵³ Act of Legislative Content dated on the 28.7.1978 ratified by the Law 867/1979. Interestingly this Act of Legislative Content was complemented by another Act of Legislative content adopted after an earthquake in Athens in 1981. See Act of Legislative Content dated on the 26.3.1981 ratified by the Law 1190/1981. Based on this law 860 ministerial decrees are enacted (secondary legislation)

⁵⁴ Act of Legislative Content dated on 18.06.1982 ratified by the Law 1327/1983.

⁵⁵ See... an issue that will be discussed in detail in Part 2

⁵⁶ Constitution of Greece, Article 18, Para 3.

⁵⁷ Constitution of Greece, Article 22, Para 4.

requisition of property is justified for facing an immediate social emergency that may endanger public order or health. The requisition of personal services which is also associated with national security challenges and social emergencies liable to endanger the public health is also associated with natural disasters without any reference to public order.

The provision does not contain any time limitation to signal the temporary nature of the emergency measure of requisition but it goes without saying that the requisition must be temporary and in accordance with the duration of the exigency. The Council of State has clarified that the administration has an obligation to remove the requisition when the exigency lapses.⁵⁸

As it was mentioned above, the regulatory framework of both constitutional provisions is complemented with ordinary legislation which is common for both constitutional provisions. This is partly explained by the fact that the requisition of property and of personal services can be combined. Suffice to mention here article 22 of the Law 17/1974 providing that “the requisition include in general tangible personal property, real property, industrial and commercial enterprises and in general their facilities with or without the workforce...”.

Interestingly law-makers preserved a law of 1974 to substantiate the constitutional provisions on requisition that predates the Constitution.⁵⁹ However a new law adopted in 2007⁶⁰ limited the scope of the 1974 law to war periods and the new law henceforth regulates the requisition in times of emergency during peace periods.⁶¹

The requisition of personal services which is also termed as civil mobilization became an issue of controversy as this mechanism was used as means to limit the right to strike. Eventually, the Government in 2015 adopted a new law that prohibited the use of this emergency framework against strikes.⁶² However, it is debatable whether this law limits the power of the executive to implement the mobilization of workers who are on strike in case of an emergency.⁶³

Article 18 paragraph 3 prescribes a deviation from the right to property.⁶⁴ In particular it provides that requisitions of property are lawful either for the needs of the armed forces in case of war or mobilization, or for the purpose of facing an immediate social emergency that may endanger public order or health.

Ordinary legislation defined that the term “property” is perceived having a wide scope including real and personal property, tangible and intangible such as property rights.⁶⁵ In addition, in 2012 electronic communications operators were also included within the scope of “property”.⁶⁶

C. No provision on economic emergencies

⁵⁸ Council of State 3742/1977. In case the administration considers that the requisition of the property serves permanent needs then there is an obligation for expropriation. see Art 65 of the Law 4442/1929 and Council of State decisions’ 3385/1995, 1063/1998, 1488/2009.

⁵⁹ Law 17/1974.

⁶⁰ Law 3536/2007, Art 41 as amended by the Law 4325/2015, Art 1.

⁶¹ See Legal Council of State, Legal Opinion 350/2007.

⁶² Law 4325/2015, Article 1.

⁶³ Panos Kapotas and Horen Voskeritsian, “Civil Mobilisation and Constitutional Legality: Thoughts about the Article 1 of the Law 4325/2015” (2015) *Labor Law Review* 863 [in Greek].

⁶⁴ Constitution of Greece, Article 18, Para 3.

⁶⁵ Law 17/1974, Art 22 para 1.

⁶⁶ Law 4053/2012, Art 3 para 2. The requisition shall be ordered by the Minister of Infrastructure, Transport and Networks and the duration of the requisition shall be defined explicitly.

The previous part has explored the positive framework relating to emergencies in Greece. It was shown that the Constitutional document distinguishes emergencies into three types, external emergencies that threaten the nation and the statehood, internal emergencies that threaten the national security and the Republic, and social emergencies that threaten the public order and wellbeing of the people.

On paper, constitutional provisions and ordinary legislation cover a wide range of emergency situations, provide distinct emergency response frameworks, and bestow a wide range of executive powers upon policymakers so they may respond accordingly. The emergency constitutional provisions also use vague terms, such as “public order,”⁶⁷ national security,⁶⁸ extraordinary circumstances of an urgent and unforeseeable need,⁶⁹ disasters,⁷⁰ thereby giving policymakers further discretion and flexibility to act.⁷¹

Furthermore, the Greek Constitution contains both “generic” and “specific” provisions for emergencies.⁷² The emergency toolbox also incorporates procedures of parliamentary review aimed at limiting executive power.⁷³ Depending on the magnitude of the natural disaster, the emergency framework may delegate power to centralized entities, such as the Minister of Citizen Protection in case of large-scale disasters⁷⁴ or to local authorities in case of small-scale disasters.⁷⁵

On top of that, the emergency framework set forth by the constitutional provisions is supplemented with permanent mechanisms policymakers rely on during emergency situations, such as the General Secretariat for Civil Protection,⁷⁶ the Center for the Control and Prevention of Communicable Diseases,⁷⁷ and the plan with the code name “Xenocratis.”⁷⁸ After all, preparedness and experience are invaluable in emergency situations.

Remarkably, the Greek emergency framework does not include special provisions to regulate financial and economic emergencies. But as I will further discuss, the Greek Government has extensively used the executive law making (based on the generic emergency provision of article 44 of the Greek Constitution) to tackle the economic crisis of 2009.

However, some recently drafted constitutions include specific provisions on economic emergencies. For instance the Constitution of Nepal which was adopted in 2015, it provides safeguards for the remuneration of the members of the Judiciary⁷⁹ and state officials⁸⁰ provided that such safeguards ‘shall not apply in situation of a declaration of state of emergency due to severe economic breakdown.’ In addition, Article 273 explicitly includes ‘extreme economic breakdown’ among the causes of the activation of a state of emergency.⁸¹

⁶⁷ Constitution of Greece, Article 18, Para 3.

⁶⁸ Constitution of Greece, Article 48, Para 1.

⁶⁹ Constitution of Greece, Article 44, Para 1.

⁷⁰ Constitution of Greece, Article 22, Para 4.

⁷¹ For more details about the utility of vague expressions, see R. Dixon and T. Ginsburg, ‘Deciding Not to Decide: Deferral in Constitutional Design’ 9 I.J. Con. L. 636 (2011).

⁷² For instance executive law making of article 44 of the Constitution of Greece is a generic provision, while the state of siege of article 48 is a specific provision.

⁷³ See for instance Constitution of Greece, Article 44.

⁷⁴ Article 8, Para 1b, Law 3013/2002, as it was amended by Article 115, Para 1, Law 4249/2014.

⁷⁵ Article 8, Para 1d, Law 3013/2002, as it was amended by Article 110, Para 2, Law 4249/2014.

⁷⁶ Article 4, Law 2344/1995 reestablished and upgraded through Article 6, Law 3013/2002 and further amended by Article 104, Law 4249/2014.

⁷⁷ Article 20, Law 2889/2001.

⁷⁸ Ministerial Decision 1299/2003, which was further amended through Ministerial Decision 3384/2006.

⁷⁹ See Constitution of Nepal, Articles 130, 141, 149.

⁸⁰ See Constitution of Nepal, Articles 248, 250, 255.

⁸¹ See Constitution of Nepal, Article 273.

Part II: The emergency framework in practice; emergency inactivity and second generation emergencies

A. Pragmatic application and the role of the Courts

Each cause of emergency activates a different procedure and similarly, the role of the Courts varies and depends on the specific emergency framework. In particular, the role of the courts regarding executive law making (article 44 of the Greek Constitution) is limited. Verbatim the Council of State with an early decision, which was later confirmed a number of times,⁸² held that “the decision [of the executive] as to the special circumstances and the exceptionally urgent and unpredictable need is not subject to judicial review, within the meaning of Art. 44 paragraph 1 of the Constitution, because it is connected with the assessment of the necessity of the measure, which is within the sphere of political responsibility of the legislative institutions.”⁸³

That said, it is worth mentioning that the courts’ deference towards the executive’s decision on the exigency is not unchallenged. In 2012 the minority of the Supreme Administrative Court, also known as Council of State (of the Session competent for the provision of temporary judicial protection – the “Suspensions Committee”) has ruled that because the Acts of Legislative content, an executive law making, depart from the principle of the separation of powers (Art 26 para 1) the executive shall explicitly reason the exigency in the explanatory memorandum and this is subject of review by the Courts.⁸⁴

Similarly, the Courts defer to the considered opinion of the executive on the issue of the requisition of personal services (article 22 paragraph 4 of the Greek Constitution). The Courts have repeatedly approved the mobilization orders against workers who were on strike and upheld the civil mobilization orders for the workers of the Urban Rail Transport of Athens⁸⁵ and for high school teachers in the public school system,⁸⁶

But the courts show more activism pertaining to measures of requisition of property (article 18 paragraph 3 of the Greek Constitution). In an early decision, the Supreme Administrative Court has clarified that it is competent “to order the removal of restrictive measures of economic activity and property held more than is absolutely necessary to serve a specific social need time.”⁸⁷ In particular, the Supreme Administrative Court held that it has the power to review the conditions of the emergency⁸⁸ and order compensation in case the requisition of property has an unreasonable duration.⁸⁹ However the Courts lack jurisdiction to review such measures in case they have expired.⁹⁰

⁸² See Council of State 2291/2015, 1250/2003, 3636/1989.

⁸³ Council of State 2289/1987.

⁸⁴ Council of State, “Suspensions Committee”, 737-738/2012 [7].

⁸⁵ see Council of State, 1764/2014 (Plenary Session) 1765/2014 (Plenary Session).

⁸⁶ Council of State, 1766/2014 (Plenary Session) About criticism on the decision see Panos Kapotas and Horen Voskeritsian, “Civil Mobilisation and Constitutional Legality: Thoughts about the Article 1 of the Law 4325/2015” (2015) Labor Law Review 863 [in Greek].

⁸⁷ STE 566/2007 [10].

⁸⁸ STE 3385/1995 and STE olom 3456/1998.

⁸⁹ STE 2921/2004.

⁹⁰ Council of State, 957/2011 (Plenary Session).

Pertaining to the state of siege (article 48 of the Greek Constitution) Parliament has a crucial role in the declaration of the state of siege. According to the first procedure, Parliament has the role of the protagonist while in the alternative procedure its role is central *ex post*.⁹¹ Having said that, the original provision of the Constitution of 1975 granted a more central and decisive role to the President of the Republic, which was widely criticized,⁹² however, the amendment of 1986 fostered the position of the Parliament.⁹³ This change was not a simple change in procedure but it also reflected the crystallization of the typology of the Greek Constitution into a parliamentary democracy and confirmed the popular saying of Carl Schmitt that “Sovereign is he who decides on the exception”.⁹⁴

Given that this article was never activated, the role of the courts remains a mystery and only hypothesis can be drawn. The constitutional provision refers to the role of the court only in regards to the establishment of extraordinary courts⁹⁵ and the immunity of the members of the parliament.⁹⁶ The historical practice has shown that the courts were reluctant to evaluate the decision to declare a state of siege. Therefore, when the framework of the state of emergencies was triggered, it was abused.

Interestingly, the courts undertake a more active role in relation to the actions of permanent emergency bodies. In particular, courts review acts of such bodies with the standard procedures prescribed in administrative, penal and civil code. Suffice to mention here the case of the massive forest fires in 2007 that broke out in several areas across Greece. The extent of the disaster provoked a state of emergency which was declared by the Minister in charge of the General Secretariat for Civil Protection.⁹⁷ In the end, 84 people died including several fire fighters.

The courts review the responsibility of the authorities and in the Supreme Penal Court (Areios Pagos) convicted the local officials for negligence,⁹⁸ while there is an ongoing trial about the compensation of the victims.⁹⁹

That said, the courts role is central at the aftermath of emergencies regarding the restoration and the compensation stage. For instance in case of terrorist attacks victims may seek compensation based on special laws enacted for the compensation of victims from terrorism but also from general laws about the civil liability of Public Authorities.¹⁰⁰

Overall, Courts have shown a consistent stance of deference over emergency policies. In particular, about the acts of legislative content based on article 44 of the Greek Constitution the Courts repeatedly denied their jurisdiction to review whether the occurrence of extraordinary circumstances of an urgent and unforeseeable need are real and emphatically the Council of State hold that it is a political decision within the scope of political accountability of the political

⁹¹ Hence, para 7 of Art 48, repeats an institutional guarantee for the MP about the non-prosecution for their opinion expresses or for their vote however the regulatory framework of this provision is not redundant because it vests with guarantees the MPs in case Parliament is dissolved. See Constitution of Greece, Articles 61 and 62.

⁹² See Philippos C. Spyropoulos and Theodore P. Forsakes. *Constitutional Law in Greece* (Wolters Kluwer 2009) 299

⁹³ About the criticism to the first version see A. Manesis, *Constitutional Theory and Practice II* (Sakkoulas Publications, 2007) 420, fn 99 [in Greek].

⁹⁴ Carl Schmitt, *Political Theology; Four Chapters on the Concept of Sovereignty* (George Schwab tr, University of Chicago Press 1985) 5ff.

⁹⁵ Constitution of Greece, Article 48, Para 1.

⁹⁶ Constitution of Greece, Article 48, Para 6.

⁹⁷ See Ministerial Decision 478/2007 (Gazette of the Government of Greece B 1706/2007).

⁹⁸ See Supreme Penal Court (Areios Pagos) 54/2015.

⁹⁹ First Instance Administrative Court of Pyrgos 94/2014.

¹⁰⁰ See Council of State 648/2008.

branches of the government,¹⁰¹ and the only responsible body to review them is Parliament itself.¹⁰² A fortiori, it can convincingly be argued that courts will also defer the intervention regarding the state of siege based on article 48, which is an hypothesis given that there has been no activation so far, regardless of the possibility that international courts intervene and review the conditions of the emergency.¹⁰³

B. Emergency breaks down due to Inactivity

The reason why the Greek constitutional system failed to address promptly the recent economic and immigration emergencies in practice is the imperfect formulation of the separation of powers which allows the Prime Minister, head of the cabinet and leader of the majority party in Parliament, to remain inactive during emergencies.¹⁰⁴ This is because the emergency initiative is monopolized by the cabinet.¹⁰⁵ In other words, there is no constitutional mechanism to compel the executive to act during emergencies. For instance, in 2009, the Government in Greece did not adopt any measures to reduce the excessive primary budget deficit despite the fact that its economy had been under surveillance since 2005¹⁰⁶ and that many European countries fell into recession as a result of the 2008 global economic crisis.

Instead of adopting emergency measures, the Government called for snap elections just a few months before the collapse of the economy. The Government was not of the view that the developing economic difficulties warranted emergency status. This is partly explained due to the asymmetry in emergency psychology between the feeling of the people and the information about the exigency of the situation acquired by the members of the government.¹⁰⁷ In particular, emergency in essence is comprised of the three conditions; the unexpected threat, the need for an urgent response and the temporary nature of the risk that demands extraordinary measures. But all these conditions are subjective and depend on the ability of the government to convince the people about the existence of the unexpected threat, about the necessity of the urgent adoption of extraordinary measures and finally about their transitory character. This very interesting analysis can benefit from further elaboration. In what way did the government fail to earn the public's trust? Why did it fail? Where the three conditions mentioned above met? Or is it a result of a history of abusing the power of emergency legislation?

The asymmetry in the emergency psychology, without doubt is exacerbated by the abuse of the emergency powers. In the past the framework of the state of siege was used as an excuse to implement coup for instance in 1925, in 1936 and in 1967.¹⁰⁸

During the current economic crisis, the Greek Government eventually and with severe delay has extensively used executive law-making power granted by Article 44. But such emergency tools were used in order to circumvent the open procedures in parliament so as to avoid criticism from the opposition.

¹⁰¹ Council of State, 2291/2015

¹⁰² Council of State, 3636/2015 citing the Minutes from the debates on the drafting of the Constitution. But the minority for the Court had argued that if the Act of Legislative Content is not submitted before the Parliament for ratification then the Courts have the power to review them.

¹⁰³ European Commission of Human Rights, Greek case (1969) 12 YB 170.

¹⁰⁴ I use the term "inactive" instead of the term "inertia" because inactivity implies intention.

¹⁰⁵ See Greek Constitution, Article 44, Para 1, and Article 48.

¹⁰⁶ Council decision under Article 104.9 (IP/05/390). See http://europa.eu/rapid/press-release_IP-05-390_en.htm?locale=en (last accessed on June 20, 2016).

¹⁰⁷ For more details on psychology during emergency see Eric A. Posner and Adrian Vermeule, "Accommodating Emergencies" (2003) 56 Stanford Law Review 605.

¹⁰⁸ Kostas X. Xrysogonos, Constitutional Law (Sakkoula Publishing 2014) 165 [in Greek].

To exemplify that, before the ongoing economic crisis, the use of Acts of legislative Content was limited, suffice to say that from 1975 to 2009, less than 60 are recorded. However, the breakup of the economic crisis¹⁰⁹ in Greece since 2009 has spurred the use of executive law making. It is noteworthy that in the period between 2009 up to date, 80 acts of legislative content were issued. For instance, the Greek Government shut down the Greek Broadcasting Corporation (in Greek abbreviated as ERT) without prior notice,¹¹⁰ even though there were no extraordinary or emergency circumstances that could justify such a decision. Therefore the abuse of the emergency powers caused a significant clash between the government's perspective and of the people on what deserved emergency treatment. You mention a disproportional use of emergency powers between the years 1975-2009 and after 2009 (60-80). These numbers indicate, indeed, that a shift in policy has accrued. Yet, is the number of cases in which emergency powers were used is the ultimate or even dominant criteria? Theoretically speaking, a single excessive use of emergency powers can be more significant and provoke a more extreme public reaction than multiple cases in which the impact is minor. If the main argument refers to public response, it can benefit from specific examples or a substantial overview of the cases in which emergency powers provoked a negative public response.

In addition, the Greek government has forcibly mobilized workers as a reaction to major strikes.¹¹¹ In particular, since 1975, the government has activated the emergency framework on the requisition of personal services to limit the right to strike, with a broad interpretation of the emergency of public health, more than ten times.¹¹² And more recently, during the economic crisis, in 2013 the Government has issued civil mobilization orders for the workers of Urban Rail Transport of Athens who were on strike and reasoned its decision on the risk and the impact that this strike might have on the health of the people.¹¹³

These decisions were challenged before the Council of State among other grounds because there was no emergency as described in article 22 para 4. However the Court showed deference to the administration and upheld the civil mobilizations orders.¹¹⁴

In the same year, when high school teachers in the public school system carried out a strike just before the university entry exams, the Government has also issued civil mobilization orders and the Education Minister justified the ban by arguing that students had a right to take exams without disruption which might cause a risk to the students' health.¹¹⁵ Likewise the civil mobilization orders were challenged before the courts and once again the courts approved them.¹¹⁶

¹⁰⁹ About economic crisis see Bernadette Meyler, *Economic emergency and the rule of law*, (2007) *DePaul Law Review* 56 539; William E. Scheuerman, *The economic state of emergency*, (2000) 21 *Cardozo Law Review* 1869

¹¹⁰ See Official Gazette of the Greek Government B' 1414/11.6.2013.

¹¹¹ On the interaction between the right to strike (Art. 23 para 2) and the requisition of personal services (Art 22 para 4) see Council of State 1764/2014 (Plenary Session) [12].

¹¹² Explanatory Memorandum of the proposed bill entitled "Democratization of the Administration, Combat of Bureaucracy, eGovernment, Restoration injustices and other provisions" cited at <http://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/9199215.pdf> (last date accessed 1.03.16). For further details about the history of the requisition of personal work in relation to strikes see Panos Kapotas and Horen Voskeritsian, "Civil Mobilisation and Constitutional Legality: Thoughts about the Article 1 of the Law 4325/2015" (2015) *Labor Law Review* 863 [in Greek].

¹¹³ See Gazette of the Government of Greece B' 101/24.1.2013, Gazette of the Government of Greece B' 105/24.1.2013 and Gazette of the Government of Greece B' 106/24.1.2013.

¹¹⁴ see Council of State 1764/2014 (Plenary Session) 1765/2014 (Plenary Session).

¹¹⁵ Gazette of the Government of Greece B' 1140/11.5.2013.

¹¹⁶ Council of State 1766/2014 (Plenary Session) About criticism on the decision see Panos Kapotas and Horen Voskeritsian, "Civil Mobilisation and Constitutional Legality: Thoughts about the Article 1 of the Law 4325/2015" (2015) *Labor Law Review* 863 [in Greek].

Without doubt, the abuse of the emergency powers exacerbates the problem of the asymmetry in the emergency psychology. Governments who abuse the emergency framework and adopt extraordinary measures although there is no crisis face the faith of the Liar Shepard of Aesop.¹¹⁷

C. Second Generation Emergencies

As the economy worsened and the government's dysfunction became a permanent feature of the constitutional system, the refugee crisis developed. It was clear that the Greek Government was unable to handle the sudden and overwhelming influx of people and, therefore, additional measures were necessary. It is estimated that in 2015 more than 750,000 nationals of third countries entered Greece.¹¹⁸ On December 30, 2015, the Government invoked its power under Article 44 and enacted an executive law in order to provide and regulate temporary accommodations for refugees.¹¹⁹

However, the Greek Government's response came too late, as the emergency had already spun out of control. The Alternate Immigration Policy Minister – the minister responsible for immigration – stated that there was nothing the Government could do until the refugees filed for asylum and acquired legal status.¹²⁰ The minister added that there is no legislative framework for migrants who “use Greece as a crossing.”¹²¹

The occurrence of the refugee crisis amidst the economic crisis is a prime example of an emergency within an emergency, or a “second-generation emergency”. The Greek government was already under pressure due to the limited resources and the sudden influx of immigrants, refugees and asylum seekers into the country exacerbated the problem.

The Greek constitution makers had foreseen the possibility of second generation emergencies during the state of siege of article 48. In particular, paragraph 5 provides that: “From the time that the measures referred to in the previous paragraphs come into effect, the President of the Republic may, following a proposal of the Cabinet, issue acts of legislative content to meet emergencies, or to restore as soon as possible the functioning of the constitutional institutions. Those acts shall be submitted to Parliament for ratification within fifteen days of their issuance or of the convocation of Parliament in session. Should they not be submitted to Parliament within the abovementioned time-limit, or not be approved by it within fifteen days of their

¹¹⁷ The Liar Shepard is well known story about a shepherd boy who cried out, "There are wolves.! There are wolves! Please ... please ... please...!" "The wolf will eat our goats" and when villagers back rushing to save the goats, the shepherd boy came back roaring with laughter. But when a pack of wolves actually came over, nobody believed the shouts of the shepherd boy.

¹¹⁸ See Commission Implementing Decision, amending the work program for 2016 and the financing for the emergency assistance within the framework of the Asylum, Migration and Integration Fund at http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/union-actions/docs/c_2015_9534_f1_annex_en_v5_p1_837717_en.pdf (last accessed on June 20, 2016).

¹¹⁹ See Act of Legislative Content, Article 10, dated December 30, 2015, entitled “Regulating Urgent Issues, etc.” Accordingly, the Ministerial Decision on the infrastructure of the temporary accommodation of third country nationals was adopted in 2016. See Official Gazette of the Greek Government B 24 2016.

¹²⁰ Minister mulling ‘open’ facility for migrants in city at <http://www.ekathimerini.com/199881/article/ekathimerini/news/minister-mulling-open-facility-for-migrants-in-city> (last accessed on June 20, 2016).

¹²¹ Minister mulling ‘open’ facility for migrants in city at <http://www.ekathimerini.com/199881/article/ekathimerini/news/minister-mulling-open-facility-for-migrants-in-city> (last accessed on June 20, 2016).

submission, they cease henceforth to be in force. The statute on the state of siege may not be amended during its enforcement”.¹²²

This provision is a prime example of a second-generation emergency framework, giving more options to policy makers in case of unforeseen emergency needs and in essence regulating the possibility of second-generation emergencies during the state of siege. In reality the provision of article 48 in paragraph 5 resembles the executive law making of article 44 but the time limit is stricter and the “content is broader”.

Once the emergency is activated, the President following a proposal from the Cabinet, may issue acts of legislative content either to meet emergencies or to restore the functioning of the constitutional institutions. The “ordinances” issued in accordance with this procedure shall be submitted to Parliament for ratification within 15 days of its convocation. If they are not tabled before the Parliament for consideration within 15 days and if parliament does not ratify them, they cease henceforth to be in force.¹²³

But on the occasion of emergencies regulated by different emergency frameworks, the Greek Government was short of emergency tools to handle a second-generation emergency. In the absence of a second-generation emergency toolbox, it is apparent that governments rely on the existing emergency provisions to face second-generation emergencies as well. Accordingly, the Greek government has implemented the executive law making of article 44 to tackle the new emergency.¹²⁴

Given that emergency provisions are drafted on the assumption that an emergency will occur under normal circumstances, one must wonder if the existing emergency provisions will be good enough to address second-generation emergencies.

Conclusions

In conclusion, the complexity of the ongoing crises in Greece shed light on some neglected aspects of emergencies. First is emergency inactivity, which was the case during the recent economic crisis. Without doubt the inaction from the executive to adopt emergency measures to tackle the crisis exacerbated the problem. Despite the fact that the emergency framework is complete and provides policy makers with plethora of options, the power to declare emergencies is the monopoly of the executive. This raises the question of whether constitutional drafters should innovate and bestow the power to declare an emergency upon two distinct institutions.

The second neglected aspect of emergencies is the emergency psychology. Emergency in essence is comprised of three conditions; unexpected threat, the need for an urgent response and the temporary nature of the risk that demands extraordinary measures. But all these conditions are subjective and depend on the ability of the government to convince the people about the existence of the unexpected threat, about the necessity of the urgent adoption of extraordinary measures and finally about their transitory character. If the government fails to convince the people about the existence of the emergency conditions, then it is in front of a

¹²² Constitution of Greece, Article 48, Para 5.

¹²³ There is a caveat regarding their content, as with such acts, the executive cannot amend the statute of siege. It is also argued that the courts have the power to review their content as long as it is not in relation with any suspended constitutional provisions. See Euaggelos V. Venizelos, *Constitutional Law Lessons* (Ant Sakkoulas Publishing 2008) 407.

¹²⁴ Act of Legislative Content dated on 30.12.2016, article 10. According to this provision, the administration was able to build the hot spots for the refugees according to a fast track procedure.

deadlock, emergency usage would not be accepted by the people prompting disobedient behavior.

The third neglected aspect of emergencies is the existence of second-generation emergencies that occur during an emergency. Interestingly, the Greek constitutional drafters had foreseen this possibility at the state of siege emergency framework. However the complexity of the ongoing crises in Greece, the combination of an economic crisis with an immigration crisis raises the question of whether a specific emergency framework is required when dealing with second-generation emergencies.