

# Institutional Manipulation and Political Control as Methods of Organizing Intergovernmental Relations in Greece

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Received: October 17, 2021 Accepted: December 27, 2021 Online Published: January 19, 2022

doi:10.5539/res.v14n1p14

URL: <https://doi.org/10.5539/res.v14n1p14>

## Abstract

Greek local government is an institution of power. Its power is based on popular sovereignty, as local authorities are elected by universal and secret ballot, and its public policies are based on the country's fundamental law, the Constitution. However, the legislator, disregarding this Constitutional Regulation insists on determining the competences appointed to local government and the areas of its competence, acting often beyond the limits of the Constitution. In addition to local government affairs defined by law, central administration grants to local government affairs which belong to the circle of its competences, ie affairs of the central government. This concession regards affairs that the central administration would like to avoid exercising, because they usually have a political cost, which it does not want to bear. The central administration, even if local governments competences are defined by law, or are granted by it, intervenes during the exercise of these affair either by legislative interventions that the majority of the parliament allows, or by decisions of the governing bodies, where it is permitted. This intervention is usually aimed at limiting the affairs allocated to local government, because central government considers that local authorities exercise political influence over the citizens within their administrative boundaries, or because the local authorities belong to opposite political areas from those of the central administration and aim to limit the exercise of policies at the local level, in a way of organizing and operating differently from that of the central administration.

**Keywords:** local government, competences, local affairs, constitution, central administration, intervention, political control, intergovernmental relations, organization of the administration, administrative levels, distinction not cooperation

## 1. Introduction

Public policies are designed and implemented in parallel at multiple levels, from the national to the local, which are functionally intertwined. It is therefore not easy to distinguish local from central-national jurisdiction. On the contrary, given the interdependence and the need for cooperation between the administrative levels, there is an imperative need for coordination mechanisms. Historically, however, in Greece, the emphasis was not on cooperation between levels but on the distinction of their competencies, jurisdictions and responsibilities.

The Greek administrative system presents, historically, serious coordination problems<sup>1</sup>. The administrative structure of the country is likened to that of a set of isolated watertight silos, because ministries and large legal entities are introverted, operate on their own priorities and do not develop the necessary horizontal communication and coordination networks<sup>2</sup>.

## 2. The Constitutional and Legal Framework

In particular as regards coordination between central government and local government and despite the fact that the Greek Constitution, in its part on the state organization, stipulates the exclusive competence of local self-government in local affairs, other Constitutional provisions explicitly provide for the pro-state competence of important public policy issues, an inconsistency which confuses the actual scope of competencies and responsibilities of local government.

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<sup>1</sup> Spanou C. (2017). EU coordination in Greece: 'Forced' Europeanization under the MoU?. In Ragone S. (Ed.) *Managing the Euro Crisis*, Routledge, pp. 12-37,

Tsekos T. (2013), 'Structural, Functional and Cultural Aspects of the Greek Public Administration and their effects on Public Employees' Collective Action', *Comparative Labor Law & Policy Journal*, Vol 34, No 2, pp 457-477 ,

<sup>2</sup> Langrod G. (1964/2000) 'Report Regarding Administrative Restructuring in Greece', in A. Makrydimitris and N. Michalopoulos (eds) *Expert Reports on Public Administration 1950–1998*, Papazissis Publishers, (in Greek)

Wilson F.M.G. (1966/2000) 'The Government Apparatus in Greece', in A. Makrydimitris and N. Michalopoulos (eds) *Expert Reports on Public Administration 1950–1998*, Papazissis Publishers, (in Greek)

Article 101 of the Constitution refers to the organization of the State administration and adopts the principle of decentralization, ie part of the state competences are delegated to decentralized state bodies, in conjunction with Article 102 of the Constitution, which provides that the administration of local affairs shall be exercised by local government agencies of first and second level and that the range and categories of local affairs, as well as their allocation to each level, shall be specified by law. The legislature is empowered by the Constitution in order to provide for local government levels and determine the scope of responsibilities of each level.

It is noteworthy that until 1994 the competences of local government were distinguished between exclusive and shared. As “exclusive competences” were qualified, mainly, activities related to infrastructure building, water supply, irrigation projects, leisure projects (parks, squares) etc. As “shared” (between the central and local government) responsibilities were considered activities of a social nature such as the establishment of nurseries, retiring and nursing homes, hospitals, cultural activities, etc.

This distinction was abolished in 1994 by law 2218/1994 and a “presumption of general competence” is stipulated in favor of the local self-government for all kind of local affaires. The provision was included in the Constitution during the 2001 revision.

In particular law 2218/1994 abolished the distinction in local government competences to exclusive and shared, and provided that the administration of local affairs shall be exercised by municipalities and communities (or local government), in order to support the social and economic, as well the cultural and intellectual interests of its inhabitants. Indicatively mentioned, competences in infrastructure projects, in creating cultural and intellectual centers and centers for social services, in protecting the natural environment, in exploiting local natural resources, in studies of industrial parks and competences related to cleaning services, licensing Food Service Establishments and regulating vehicle traffic.

The revised Constitution of 2001 provides that for the administration of local affairs, there is a presumption of competence in favour of local government agencies ie that every case is considered local.

In 2010 a law (3852/2010) provides for two levels of local self-government: the first tier which consists of municipalities and the second tier which consists of regions. Currently there are 332 municipalities and 13 regions.

The number of the local authorities of the first-tier was formed after three administrative reforms since the formation of the New Greek State. In particular: A law of 1832 provided only for municipalities. The first reform took place in 1912 (law DNZ) establishing two different entities, municipalities (over 10.000 inhabitants) and communities, as the first level of local government. The prerequisites for the recognition of a settlement as an administratively independent community (at least 300 inhabitants, financial autonomy and the operation of a primary school) were quite reduced and thus contributed to the establishment of a large number of communities, resulting in the creation of 5,600 municipalities and communities.

Although both the 1912 Act and relevant laws adopted later provided for voluntary mergers, such mergers did not take place. In 1997, the first compulsory amalgamation was implemented (Law 2539/1997), which resulted in 1033 municipalities and communities (901 municipalities and 102 communities). In 2010, after the MoU between Greece and the institutions of the European Union and the International Monetary Fund and the undertaking by Greece to reduce public spending<sup>3</sup> a second compulsory amalgamation took place (law 3852/2010), which initially resulted in 325 municipalities and finally, after an amendment in 2018 (law 4555) providing for the creation of more municipalities in the island areas, 332 municipalities were established. Law 3852/2010 provided for the compulsory combination of municipalities and abolishes communities. Based on this, 325 municipalities emerged. According to the above law, each Greek island is a municipality regardless of its population. Law 4555/2018 amended law 3852/2010 and provided for the division of populated island areas into smaller municipalities. Thus, 5 more municipalities emerged from the division of the islands of Samos (2 municipalities), Lesbos (2 municipalities), Corfu (3 municipalities).

A second level of local government is introduced for the first time in 1994 after several legislative attempts (1896, 1926, 1986, 1990<sup>4</sup>). Law 2218/ 1994 provides for 51 prefectural self-governments. In 2010 (law 3852) compulsory

<sup>3</sup> Tsekos, T. Hlepas N. (2018), “Greek Municipalities Before and During the Austerity Era: Imposed Policies, Local Resistance and Unsuccessful Reforms” , in Lippi, A., Tsekos T. (eds), *Local Public Service in Times of Austerity across Mediterranean Europe*, London, Palgrave Macmillan Publishing, pp 49-71

<sup>4</sup> The provisions of Law 1622/1986 provide for local government of second level in prefectures. The Greek territory is geographically divided into 51 prefectures and Mount Athos as a distinct prefecture. The above law was never implemented. Law 1878/1990 amended Law 1622/1986 and in large prefectures of the Greek territory, (Larissa, Evros,) local government of second level is provided at provincial level, i.e smaller geographical divisions, into which prefectures are divided.

amalgamation is foreseen for the local self-governments of second level and, thus, prefectural self-governments were replaced by 13 regions.

According to the Constitution, local self-government benefits from a “presumption of competence” in the exercise of all kind of local affairs. The legislation, however, lists restrictively specific areas of responsibility for both the first and second tier of local government. Such areas of responsibility of the first level of local government are: economic development, social protection, environmental protection, culture, sports, education, employment, civil protection as well as the proper overall functioning of cities and settlements. To the second level of local self-government belong the tasks of spatial and health planning. In addition to the responsibilities that are characterized by the legislation as local, the central administration agencies and other public bodies, have the competence to delegate their own responsibilities to the local government, accompanied by the corresponding funding.

The choices of the legislature regarding the division of responsibilities between state bodies and local government often lead to friction between the state and local government, as each institutional level claims a greater share of power.

A long tradition and practice of centralism in the Greek public administration<sup>5</sup>, pushes often the lawmakers to treat the local self-government beyond the limits which the Constitutional framework provides, expanding the scope of the central government’s involvement in the action of the local government.

The Constitutional guarantee of the administrative autonomy of the local self-government and the delegation of the local affairs to it, often remains practically powerless and is distorted by confusion as to the meaning of Constitutional provisions that regulate specific competencies of the state. Despite the fact that the full competence of local self-government on local affairs is declared in the part of the Constitution on state administration, other Constitutional provisions explicitly provide for the competence of the state in important matters, without taking into account the distinction between general and local affairs. Such inconsistency of Constitutional provisions binds the “common” (i.e. non Constitutional) legislator in determining the scope and categories of responsibilities of the local government, but also the judge, when dealing with cases of exercise of such responsibilities by the local government.

This is because:

- a) Many public policies are functionally intertwined and exercised simultaneously at multiple levels, from local to national. It is therefore not easy to split up the national from the local dimensions of these activities in order to separate the local competence from the regional and national, respectively.
- b) The conceptual separation of state and local government within the framework of a single political system, in both political science and law, is not uncomplicated. Especially if we take into account an entire tradition that has its origins in the authoritarian state, but also in the state perception of the Enlightenment, in which the local self-governments since their establishment and for a long period of time remained as political-administrative institutions, integrated in the unified political-administrative system of the state.

In the light of this tradition, when the Constitutional legislature defines a certain policy field (education, health, etc.) as a competence of the state it does not specify, in the text of the respective Constitutional provisions, whether the state is understood in the broader sense of the public sector or in the narrow concept of central administration. However, taking into account the Constitutional requirement of delegating the exclusive competence of "local affairs" to the local government, both the drafting legislator and the jurisprudence should explore the levels of competence, such as education, health, environment, development etc., and considering that the Constitutional wording on the assignment of these to the state refers to the state in a broad sense, which includes the local self-government bodies, to assign these functions, to the extent that they refer to the local level, to the local self-government.

A similar spirit governs the legislature, but also the central administration in practice, in relation to the limits and forms of state supervision over local government. The Constitutional principle of only controlling the legality and not the expediency (i.e. the appropriateness and usefulness) of the actions of local self-government, although it is a milestone in terms of decentralizing the structure of the Greek administrative-political system, leaves however significant room for state intervention that exceeds the limits of strict legality control.

The dialogue on the character and forms of administrative autonomy of local self-government does not only concern the division of responsibilities between the central state and the local self-government, but acquires special weight to the extent that the functions of local self-government and state are not identical. Indeed, ensuring the administrative

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<sup>5</sup> Triantafyllopoulou A, (2012), Local government and local economy. Local economy as local affair, Lambert

Hlepas N. K. Getimis P (2011) Impacts of Local Government Reforms in Greece: An Interim Assessment, *Local Government Studies*, 37:5, pp 517-532

independence of local government is not based solely on the decentralized nature of state organization. After all, the Greek state, according to Article 101 of the Constitution, is governed according to the decentralized system. The administrative autonomy of local government is mainly based on the different nature of the local affairs, the proximity of local government institutions to citizens and the greater ability of citizens to access and participate in local policymaking. All these elements of proximity, direct accountability and participation are specific to the character of the local government and do not relate to the management of general affairs and the relevant functions of the central state.

Therefore the nature of the policies implemented is, or should be, different at the level of state or that of the local government. The top-down, centralized management of the state administration is contrasted with the decentralized policymaking of the local self-government and the participatory dynamics that are developed, under certain conditions, within it. The possibility of citizens (and their right) to participate in the decision-making processes of local government, through local referendums, local and district councils, citizen's panels and other tools for co-creation and co-production of local policies and services, are aspects of the strengthened citizen involvement and increased transparency and accountability of local government.

The importance of ensuring the autonomy of local self-government against the central state is not limited to local or regional management, but becomes also significant for the restructuring and qualitative progress of the democracy in general. At a time when the democratic functions are under the suffocating pressure of strong economic and social interests and the media, politics shrink into processes of pure communication and generation of impressions, while the citizen is limited to the role of passive spectator and recipient of policies which he cannot influence, the direct and mutual relationship between local society and local self-government, is a starting point for rethinking and reshaping the contemporary Republic.

### **3. Central Administration vs Local Government: A continuous Tug of War**

While Greek local government tradition is longstanding the setting up of the administrative apparatus of the new Greek state, in the early nineteenth century, created disputes over the role of pre-existing (pre-revolutionary) self-government structures<sup>6</sup>. Traditional local self-governing forms are integrated a century later, by the 1925 Constitution, while the 1952 Constitution<sup>7</sup> stipulates that the administrative organization of the state is based on the decentralized system of government. The current Constitution acknowledges a "presumption of competence" over all kind of local affairs in favor of local self-government.

Both, central administration and local self-government are institutions of power that are based, according to the Greek Constitution, on popular sovereignty. Still some key issues remain as points of friction between the two institutions: the distribution of competencies, the autonomy of decision making at the local level, the extent of local government supervision by the central state and the financial autonomy of the local administration, also introduced by the Constitution, have been repeatedly regulated with frequent changes and regressions, and without to date the relationships between the two institutions having yet normalized. The local self-government raises constantly the above issues through its collective bodies, whereas the central administration, using its executive power, backslides repeatedly on these basic questions that guarantee the self-government.

### **4. Local and General Public Policies**

All policies carried out by both the central and the local government are public affairs, as the European Charter of Local Self-Government stipulates. They aim at promoting the public interest, and can be distinguished into general, in the sense that they concern the citizens nationwide, and local, which refer to the geographical boundaries of each local government organization. The practice followed, however, in the Greek administrative system, insists on the definition of specific policies, even if they are indicatively described and specified by law, to be assigned to the local government, a practice that exceeds the Constitutional limits, because it is inconsistent with the Constitutional provision of the "presumption of competence" in favor of the local self-government. Policy-making at the local level is, or should be, carried out by the local government, and the central government has to keep to its own affairs, those that are of a supra-local nature and are

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<sup>6</sup> Hlepas, N. (2003) Local government reform in Greece. In: Kersting N., Vetter A. (eds) *Reforming Local Government in Europe*. Urban and Research International, vol 4. VS Verlag für Sozialwissenschaften, Wiesbaden pp 221-239. [https://doi.org/10.1007/978-3-663-11258-7\\_11](https://doi.org/10.1007/978-3-663-11258-7_11)

<sup>7</sup> The Constitution of 1925 provides for the division of the Greek Territory into regions in which the citizens directly administer local affairs, local government at first level constitutes from municipalities and the communities, while law may provide for more level of local government. The 1952 Constitution (Article 99) provides that the administrative organization of the state is based on decentralization and self-government and that the election of municipal and community authorities is by universal suffrage

not open to differentiated ways of policy-making related to local specificities, such as national defense, justice, public order, civil protection etc.

The routine of the central administration to consider all public affairs as its own competence, and to "assign" part of them to the local government, has the nature of an "employer-contractor" relationship, which cannot be applied on the interactions of two institutions of power, and this practice proves to be problematic, since, such competency assignments are revoked or abolished, when and whenever the central administration changes its opinion.

The way of exercising public policies at the local level has also to be a matter of local decision making. According to the European Charter of Local Self-Government, local authorities should have the power to conduct public affairs with procedures and structures to be decided by themselves. The local governments in Greece do not have the ability to decide on the structures, procedures and methods that are the most appropriate for policy making under specific local conditions. The central administration determines the organization and operation of the local self-government, the agencies that it utilizes for designing and implementing local policies as well as for cooperating with the state and the different sectors of the economy. These organizational and procedural arrangements are modified or changed by the central administration at will, and this approach generates negative impacts on the local government, driving it to become inefficient and, therefore, untrustworthy towards local communities.

### **5. State Supervision**

Another issue linked to the administration of local affairs is the supervision of the state over the decisions of the collective (councils etc.) and single-member bodies (mayors etc.) of the local self-government. According to the Constitution, the supervision of the state concerns only the control over the legality of the decisions while the policy initiative of the local self-government bodies should not be hindered. However, there are many cases where the control reaches and even exceeds the limits of expediency, thus interfering in the competencies of local governments. This combined with the financial control of the central government over local public spending, control which is regulated by different legal provisions which leave room for the controlling authorities to investigate the appropriateness of the expenditure in question, hampers the policy initiative of the local government. This dual control obstructs for the most part the action of the local self-government.

The financial control should be carried out only as a precaution, under the form of preventive audits, in order to identify possible errors in the legality of the budget, guiding therefore the competent agencies of the local self-government to consider and apply correctly the existing regulations on each project or service that is included in the budget. The principle of the presumption of legality in favor of the competent administrative agency is an established notion of administrative law. According to this principle legality has to be considered valid until a given decision and action is challenged before the courts or abolished by the issuing authority. Decisions, therefore, of local authorities, that are public authorities, should be considered to be issued in accordance with the law, and in case of incorrect application only the competent courts should have the jurisdiction to review the legality of the decision and/or action. In any case it is necessary to integrate the control of legality with the financial control to be exercised by a single authority, so that the issuance of contradictory decisions by two different control mechanisms is not anymore observed.

### **6. Financial Autonomy**

Another point of friction between the central administration and the local self-government is the financial autonomy of the latter, guaranteed by the Constitution. Despite the Constitutional provision and the constant demands of the local government, financial autonomy has not been regulated by a specific law, as required.

The refusal of the central government to regulate the finances of the local government can be considered neither as an implementation failure nor as a knowledge gap. The solutions provided each time by the central administration in response to the requests of the local self-government, are limited to the design of a special financing program of the local self-government, either from national resources or from the financial programs of the European Union. It should be noted that, according to the law, the actions of the local government have to be aligned with the European and national policies. This means that the funding of the local government programs must be integrated in the relevant European or national funding programs, often without taking into account the economic and social needs of the local communities.

The financial autonomy of the local government, therefore, is a synthesis of many factors, including mostly the needs of local communities, the projects local governments carry out and the services they provide as well as the option of the central administration to respect the relevant Constitutional provisions.

Local governments, as already mentioned, implement public policies, linked to those of the central government, within their relevant geographical boundaries. Policies pursued at the local level cannot be distinguished from the general policy of the state. The promotion of the public interest is the main goal of both central and local government and therefore their respective action has to be considered as integral part of the overall state policy.

In this sense, the financing of the locally provided services and the local projects must be included in the general budget of the state. It is therefore an obligation of the state to allocate the global budget in a proportional manner to central and local policies and thus to distribute a substantive part of the common financial means to local governments, depending on the local needs, in addition to operating expenses, which have to be covered according to specific legal provisions. Optional state funding for specific local government projects and services and the compulsory enactment of local government revenues in order to cover part of local expenditures is just a way of making local governments dependent on central government's discretionary decisions and subjective evaluations, particularly in geographical areas with insufficient economic activity and, therefore, low local income.

## 7. Political Dependence

During the first period of the development of the local self-government in Greece, the local authorities were elected in a way which guaranteed their control by the ruling party at the national level, so that the central policies to be implemented at the local level without any objections and problems. Nevertheless the responsibilities of the local government during this period were limited to those with a purely local character (water supply, sewerage, lighting of public spaces, garbage collection, local road construction, etc.) without any potential disputes on overlapping tasks with the central government. Under such conditions the local governments did not have much room to emphasize their social and developmental role. Social services belonged to the central administration and their exercise by the local self-government required the approval of the supervisory body of the central administration. The mayor was the executive body and the council was the mayor's advisory body. In the reform of 1912, the mayor was transformed to an executive organ obliged to execute the decisions of the municipal council, even if he disagrees, while the responsibilities of the local government have not changed substantially. After 1980, when the local self-government acquires the exercise of important policies, mainly at the developmental area, the interest of the central administration to control the local self-government grows.

According to the law, candidacies for the municipal elections are nominated only by local citizens associations while political parties are excluded because local elections must remain unaffected by the stakes of the national political scene and focus on local problems. In practice, this reasoning does not prevail. Political parties intervene unofficially promoting their own candidates, people who are close to or politically affiliated with them, mainly for the mayors' post, in order to enhance their political power at the local level. This is reinforced by the electoral system designed, and from time to time redesigned, by the executive.

Under the majoritarian system that has been habitually applied at the local elections until today, ( with the exception of the law of 2018, which implements a proportional system ) the electoral list that gets the majority of the votes elects the mayor and holds the majority of seats in the city council (and the regional council respectively). The law gives the mayor the binding responsibility for the compulsory execution of the decisions of the municipal council. The real power game, however, depends on the personality and the political influence of the mayor as well as on other elements that may define him as a leader. It becomes therefore the rule that the council takes the decisions guided or even manipulated by the mayor or the regional governor.

In practice it's the faction adjacent to the mayor or regional governor that has the majority in the council and defines the policy content and the implementation modalities. Therefore, the decisive competence only nominally belongs to the collective body (municipal or regional council) as a whole, actually it belongs to the majority faction. In theory a co-decision procedure involving both the executive organ and the decision-making body could be an option. The potential differences of policy orientation between these two governing bodies may even improve the decision-making and the policy implementation, according to the terms and conditions set by their respective competencies. However, this option requires accepting the possibility that the executive body, ie the mayor or the regional governor, may not agree politically with the majority of the collective body, ie the municipal or regional council. That is, they may belong to different political groups. This is very important in local affairs, which require consensus rather than confrontation. Consensus-based decision-making is sounder for local government efficiency.

The solution of local problems and the satisfaction of the citizens' needs are better served through wider consensus. Even in the case of disagreements, improved policies can be produced, since organized and systematic dialogue departing from contradictions and divergences can generate consent. The majoritarian system, on the contrary, limits policy alternatives to those which comply with the priorities of the faction that controls the council and thus reduces the rationality of decisions and the quality of policies, compared to the system of proportional representation that guarantees a wider spectrum of alternatives and a more multifactorial rationale.

The mayor, or regional governor, represent the legal entities of the Municipality or the Region as a whole and therefore require, indeed, a broad consensus. In the case of a proportional electoral system and given that the mayor is the executive body of the legal entity, its separate election would ensure the consent of the citizens. So it would be reasonable for the mayor and the regional governor to be elected with a separate ballot, so that the citizens can select the executive officer

based chiefly on his implementation capacities without taking into account his political power i.e. the number of seats which he will “control” in the council.

## 8. Conclusions

As a result of the above institutional and political gaps and inconsistencies, the Greek political-administrative system, instead of providing mechanisms for cooperation between levels, is led to legal, financial procedural and political restrictions of the responsibilities and initiatives of the self-government, essentially seeking to limit its power. This choice, on the one hand, conflicts from an institutional point of view with the Constitutional requirement on the management of local affairs, on the other hand, by explicitly separating responsibilities, it breaks down the homogeneity and consistency of policy areas, creating therefore additional coordination problems.

Within this vague and contradictory institutional framework, the long centralist tradition of the Greek state and the relevant practices of the central administration to claim as much power as possible are marginalizing the local self-government’s role, neutralizing its decisive competence and minimizing its participation in the distribution of the overall political power, turning it finally into a simple executive gear of centralized decision making mechanisms.

Thus the central government ends up exerting a constant pressure on the local authorities, both in terms of the scope of power that allows them to manage, determining, most of the time, even the way it will be managed, as well as in terms of supervision, which in numerous cases goes beyond the control of legality and turns out to be a barrier to initiatives of the local government. Finally, the central government uses its legislative power with the aim of making the local authorities’ dependent, not only at the administrative, but also at the political level.

Political dependency is generated due to the fact that the governing political parties seek to impose at the local level friendly authorities, so as to ensure the consent of the local self-government in their priorities and decisions. From the 90’s onwards, central parties organize affiliated municipal groups headed by local party representatives and nominate partisan candidates for the municipal elections. In this way the central clientelist state penetrates the local one as well.

Legal and procedural arrangements such as

- The establishment of consensual decision-making forms in the municipal and regional councils by instituting a simple proportional system for electing their members
- The introduction of participatory procedures to enhance citizen involvement in local policies
- The rupture of the political identification of the mayor or regional governor with the majority of the councils, thus implementing the Constitutional provision that the former does not lead or direct but executes the latter’s decisions, and, last but not least
- The financial autonomy of local self-government institutions without the introduction of new local taxes and without local authorities to be obliged to maintain costly tax collection mechanisms,

could be steps towards enhancing political autonomy and strengthening the developmental and social role of the Greek local government.

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\* This article was presented at the ECPR General Conference held online 30 August to 3 September 2021.

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