HELENIC REPUBLIC
THE COUNCIL OF STATE

The Influence of the Democratic Nature of the Court on its First Instance Proceedings and on its Role in Model / Pilot Trials

1. The powers and jurisdiction of the Court are based on the written Constitution, according to which the control of legality of the Administration is inextricably linked with the control of the constitutionality of statutes. This was already declared in the Court’s first decision 1/1929.

2. The link between control of legality and control of constitutionality has shaped the role and position of the Court as the institution that defines the rules that bind political power. Examples are found in its jurisprudence on human value and individual rights, on the principle of equality and non-discrimination, on the principle of social solidarity and on the state’s guarantee of social welfare.

3. Already in 1945 the Council of State extended the notion of standing in order to facilitate and enhance democratic participation in the control of legality of administrative acts by citizens who prove a special interest, recognized by law, to uphold administrative legality in a particular case.


5. In the recent times of severe economic crisis the Court acknowledged that the commitments undertaken by the Greek State against its European and international creditors with the first Memorandum Agreement of 2010 did not violate fundamental democratic principles. At the same time, already in its first Plenary Decision 668/2012, the Court set the limits to the future legislator of austerity measures, by invoking fundamental democratic values.

6. The Court does not interfere with matters of government (decision to hold a referendum on the economic agreement offered to Greece by the EU in 2015 / international agreement between Greece and North Macedonia) or with legislative choice. At the same time the Court does not abandon its jurisdiction to control administrative action even when the legislator tries to interfere with the Court’s jurisdiction by using parliamentary law to replace administrative action.
7. The pilot trial serves the essence of the rule of law which is legal certainty and at the same time allows for the broadest participation in the pilot trial of citizens who are parties to other cases in which the same legal issue is posed (Plenary Decision 819/2019 et al.).

8. The Council of State is cognizant that it is neither a government of judges nor the national legislator. Taking into account the fact that at present times the state’s fiscal interests form the essence of the public interest, the Court uses procedural tools to restrict the eventual retroactive effects of its decisions, especially in pilot trials.

9. The Court controls the conformity of the Administration to pilot judgments only when asked to do so by the citizens who were parties to the case decided and not by other parties with identical interests or by the public at large (Decision 15/2019 of the Council for the Conformity of the Administration taken in plenary session).

10. Realizing that upholding democracy and the rule of law is no more a purely national issue, the Court is adamant in applying European law (whether EU law or ECHR law) even if this means changing its own previous decisions and jurisprudence in order to conform to the rulings of the ECJ and the ECHR.

Dr. Theodora Ziamou
Judge, Hellenic Council of State