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## **FREEDOMS OF ASSOCIATION AND ASSEMBLY AND NGO REGULATION IN GREECE AND ENGLAND**

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### **I. Introduction**

As in other European countries, thousands of nongovernmental organizations (NGOs) have been established and are currently in operation in Greece. Their precise number is not known, not least because Greece, unlike jurisdictions such as England, has no central registry for NGOs and no other public country-wide method to record their creation and dissolution.

There is also no generally acceptable definition of “NGO”. For the purposes of this article, NGO is defined as an association of individuals, who have freely agreed to pursue specific purposes and goals (other than creating syndicates, collective bargaining bodies, trade unions, or political parties) and who carry out the mandate without aiming for direct profit or gains, monetary or otherwise—provided, first, that activities benefit the general public; second, that the organization has been established and is regulated by a constitutive instrument; and third, that it has received some form of official recognition by a competent public authority and is subject to State supervision.

This article compares the NGO regulatory regimes of Greece and England. It concludes by recommending that Greece add the legal entity “nongovernmental organization” to its Civil Code and regulate it according to the role it plays in societal affairs, similar to the special treatment of organizations designated “charities” in English law.

Both Greece and England accept and uphold international and regional human rights law. Both also recognize the competence of multilateral judicial and quasi-judicial organs, including the European Court of Human Rights. Even so, the two countries differ in four pertinent respects. First is the type of legal system. Greece is a civil law or Continental law country, whereas England is a common law country. Second is the duration of a pertinent legal tradition. Charitable institutions are much more firmly embedded in the Anglo-Saxon world than in Continental Europe. Accordingly, when NGOs first appeared there, England already had a long and distinguished tradition of private legal entities known as charities, with a charitable or philanthropic remit to promote the common good. As a considerably more recent State, by contrast, Greece did not have such a tradition, and the founders of NGOs had and continue to have to borrow other types of legal vehicles from the Greek Civil Code in order to establish their organizations. A third difference is in the two countries’ constitutions. Greece has a written

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constitution; England does not. Finally, the two countries differ on the impacts of global and regional treaties. In the Greek legal order, treaties ratified by the Parliament take precedence over domestic law and form part of the domestic legal order without further enactments. In the United Kingdom, by contrast, treaties must be incorporated in a specific legislative instrument before they are deemed domestic law.<sup>2</sup>

## **II. NGOs in the Greek Legal Order**

### **A. The Constitution of Greece**

According to Article 11 of the Constitution of Greece, “Greek citizens have the right to assemble peacefully and without carrying weapons.”<sup>3</sup> The Police are entitled to be present only during public gatherings held outdoors. Such gatherings may be prohibited on the basis of a reasoned decision by the Police if they may cause a serious risk for public safety or if the socioeconomic life in a specific area will be adversely affected. Detailed provisions on when and how public gatherings may be prohibited are to be found in a number of legislative instruments. Despite the fact that the Greek Constitution was promulgated in 1975, some of these instruments, which are still in force, were adopted when the country was under a military dictatorship (April 1967 - July 1974).

As regards the right to association, Article 12 of the Constitution provides that:

Greek citizens have the right to establish associations and not-for-profit organizations by observing the legislation, which, however, may not subject the exercise of this right to a [prior] permit [issued by a public authority].

Such organizations may not be dissolved, save when the legislation has been violated or when crucial provisions of the organizations’ charters or statutes have been breached. Even in these cases, dissolution is not automatic. It requires the prior issuance of a court judgment, which not only must record the infraction but must also conclude convincingly that the infraction is of such importance that it justifies the termination of the activities. In these instances, the dissolution can be understood as the penalty that the NGO must pay because it has breached the legislation or because its members have breached its constitutive instrument. The latter instance might be regarded as an anomaly: why should the NGO be punished and disbanded when it was the members who violated the terms of its charter? The simple answer is that the NGO is so closely knitted with its members that they are almost inseparable and the actions (or omissions) of the latter cannot but have serious and direct consequences on the former. Article 12 further stipulates that the dissolution provisions will be applied by analogy to associations of natural persons not incorporated as organizations. It is of some interest to observe that, while Article 11(2) expressly allows the legislature to lay down rules determining when public gatherings can be curtailed or even prohibited, no such stipulation is to be found as regards the exercise of the right to set up associations and not-for-profit organizations.

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<sup>2</sup> Thus, while the European Human Rights Convention was ratified by the UK in March 1951, it only became part of British law through the promulgation of the Human Rights Act 1998, which came into force in October 2000.

<sup>3</sup> All translations in the present article are the author’s.

The Constitution limits the application of the rights and freedoms laid down in Articles 11 and 12 to “Greek citizens,” seemingly excluding all aliens who live lawfully in Greece.<sup>4</sup> While this restriction could have been upheld when the Constitution was first promulgated in 1975, it is now rather obsolete, at least as it applies to a specific group of aliens: the nationals of the other Member States of the European Union who have exercised the rights and freedoms conferred on them by EU law<sup>5</sup> and reside in the Greek territory. Thus it can be argued that Articles 11 and 12 of the Constitution have been *de facto* amended, and the rights and freedoms enshrined therein apply by analogy to those EU nationals (i.e., the citizens of another Member State) living in Greece pursuant to the applicable rules of the European Union.

Given that the Constitution has been revised repeatedly since Greece acceded to the (then) European Economic Community in January 1981, there have been ample opportunities to harmonize its text with the compulsory rules of EU law. However, this has not happened, while there exist EU Member States which have introduced a more favorable regime for EU citizens, compared to other aliens. For example, Article 146 of the Constitution of Croatia, which was promulgated in 1990 and last amended in 2013, provides: “In the Republic of Croatia, all rights guaranteed by the European Union *acquis communautaire* shall be enjoyed by all citizens of the European Union.”<sup>6</sup>

The need to harmonize the text of the Greek Constitution with EU law is further supported if one were to invoke the Charter of Fundamental Rights of the European Union, which entered into force on December 1, 2009.<sup>7</sup> The Charter, which was initially proclaimed as a political declaration by European leaders at the Nice European Council on December 7, 2000, became legally binding on EU institutions as well as on national governments with the coming into force of the Treaty of Lisbon (also known as “the Reform Treaty”) in December 2009. The Charter has the same legal validity as the EU’s constitutive instruments—namely, the Treaty on European Union and the Treaty on the Functioning of the European Union. The provisions of the Charter are addressed to the national authorities of Member States and are binding upon them when implementing EU law in the domestic legal order. The freedoms of assembly and association are expressly protected by Article 12(1) of the Charter, which reads:

Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

By using the word “everyone,” Article 12(1) arguably covers the following three categories of individuals: (a) the citizens of a Member State residing in the State of nationality (e.g., a Greek citizen living in Greece); (b) the citizens of a Member State residing in a Member State other

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<sup>4</sup> The Greek Constitution is not the only one in Europe that limits these rights solely to its own citizens. Cf. Articles 8(1) and 9(1) of the German Constitution: “All Germans shall have the right to assemble peacefully ...” and “All Germans shall have the right to form corporations and other associations.” [www.btg-bestellservice.de/pdf/80201000.pdf](http://www.btg-bestellservice.de/pdf/80201000.pdf)

<sup>5</sup> Principally, the free movement of persons, including the right of establishment. See Article 3(2) of the Treaty on European Union; and Articles 26(2), 45 et seq., and 49 et seq. of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, C 83, March 30, 2010.

<sup>6</sup> The text of the Constitution is available at <http://www.sabor.hr>. The term “*acquis communautaire*” denotes the totality of primary and secondary EU law, including the constitutive instruments of the European Union.

<sup>7</sup> *Official Journal of the European Union*, C 83, 30.3.2010, p. 389.

than that of their nationality (e.g., a Greek citizen living in Croatia); and (c) the citizens of all non-Member States residing in any Member State (e.g., a citizen of South Sudan living in Croatia).

There are no known cases where the Greek State has deliberately violated the right to assemble and the freedom of association enjoyed by citizens of other Member States, as guaranteed by the rules of EU law, including the Charter of Fundamental Rights. For purposes of legal clarity the Constitution ought to be revised in order to state that these rights extend to all EU nationals<sup>8</sup> and, in keeping with the aforementioned interpretation of the Charter, to all aliens residing lawfully in Greece as well. However, because the Greek Constitution subscribes to the principle of reciprocity in its relations with other States, it could be argued that the express enjoyment of these rights and freedoms by third-country nationals could require that the same rights are enjoyed by Greek nationals within their jurisdictions, a fact that is extremely difficult to ascertain.

## **B. Multilateral Human Rights Treaties Binding Greece<sup>9</sup>**

As regards the global and regional treaties for the protection and promotion of human rights which have been ratified by Greece, reference will be made to the International Covenant on Civil and Political Rights (ICCPR), adopted under the auspices of the General Assembly of the United Nations in 1966,<sup>10</sup> and to the aforementioned European Human Rights Convention (ECHR), adopted by the Council of Europe in 1950.<sup>11</sup>

### ***1. Treaty Enforcement***

As noted above, international conventions which have been duly ratified by Parliament, enter into force automatically, and without any further procedure form an integral part of the Greek legal system while taking precedence over any conflicting legislative provision, pursuant to Article 28(1) of the Constitution. Given the important role that the rules of public international law play today, not only in intrastate relations but also in interstate dealings (both bilateral and multilateral), the wording of Article 28(1) begs the question whether it could be interpreted to mean that ratified treaties also take precedence over the Constitution as well. While this question as it relates to the freedoms of assembly and association is theoretical—the corresponding rights are defined quite precisely—it is clear that the Constitution cannot be used as a vehicle to negate the right to establish NGOs, if their creation is protected by treaties already ratified by Greece.

To measure the compatibility of Constitutional provisions protecting fundamental freedoms to international human rights standards, one could make use of two modes. The first is the domestic one: the competent State organs, principally the courts of justice, rule on the compatibility. The second is the external or multilateral one: judicial organs or semi-judicial

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<sup>8</sup> Cf. Article 23(1) of the German Constitution, which refers to the establishment of the European Union and stipulates that the changes to the EU founding treaties will lead to the amendment of the Constitution.

<sup>9</sup> The content of this sub-chapter applies, *mutatis mutandis*, to the English legal system as well.

<sup>10</sup> Greece ratified it by virtue of Act 2462/1997, Official Gazette of the Hellenic Government (FEK) 1997 (Issue) A' (No.) 25.

<sup>11</sup> Originally Greece had ratified it under Act 2329/1953, FEK 1953 A' 68. However, the military dictatorship renounced it in 1969 and withdrew from the Council of Europe. It was ratified again under Legislative Decree 53/1974, FEK 1974 A' 256, when Greece acceded anew to the Council of Europe.

entities with an international remit rule on the compatibility—in the case of the ICCPR, the Human Rights Committee; in the case of the ECHR, the European Court of Human Rights (the so-called Strasbourg Court).

Greece has recognized the jurisdiction of both the Human Rights Committee and the Strasbourg Court. Accordingly, once domestic courts have ruled on complaints, these multilateral entities have the right (and the mandate) to determine if the respondent State (Greece) has breached its duties under the relevant treaty. For purposes of these transnational entities, the domestic legal system is unified, so it makes no difference whether the violation stems from actions by a State official (e.g., a judge), an act of Parliament, a ministerial decision or by the Constitution itself. Should the respondent State be found in violation of the respective treaty, it must take all necessary actions to rectify the violation and ensure that it will not recur. The judgment may also entitle the complainant party to compensation (depending on the specific provisions of each treaty).

## ***2. Treaty Provisions***

The rights of assembly and association are guaranteed under Article 11 of the ECHR as well as under Articles 21 and 22 of the ICCPR. Their text runs as follows:

*ECHR:*

### *Article 11 – Freedom of assembly and association*

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

*ICCPR:*

### *Article 21*

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

### *Article 22*

1. Everyone shall have the right to freedom of association with others.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

(References to the right to form and to join trade unions as well as to the freedom of association as it applies to the armed forces and to the police have been omitted, because they are outside the ambit of the present article.)

The wording of these two multilateral instruments is almost identical, with the exception that the drafters of the ICCPR separated the right of assembly (Article 21) from the freedom of association (Article 22). In essence, these provisions stipulate that everyone (i.e., not only the citizens of contracting States but anyone who resides in their territory) shall enjoy them with no restrictions other than those expressly stipulated; contracting parties are not allowed to add other limitations. Those States wishing to curb their exercise may do so only by invoking specific restrictions contained in the treaties themselves (e.g. to invoke a domestic state of emergency suspending certain rights and freedoms). But even then, the Human Rights Committee and the European Court of Human Rights, acting as supervisory mechanisms of the ICCPR and the ECHR, are competent to rule on whether the imposed limitations are compatible with their provisions. If they are found to be in violation, the respondent State must correct them, regardless of the consequences in domestic affairs.

Finally, it is of some interest to compare the above clauses with the Universal Declaration on Human Rights (UDHR), which was adopted in December 1948 by the UN General Assembly.<sup>12</sup> The UDHR is not the first multilateral (non-binding) instrument for the protection and promotion of human rights and fundamental freedoms (this honor goes to the American Declaration on the Rights and Duties of Man<sup>13</sup>), but it is the most important one. Over the years, it has immensely influenced not only global and regional human rights conventions but also national Constitutions around the world.<sup>14</sup>

Article 20 of the UDHR stipulates that everyone shall have the right to freedom of peaceful assembly and association and that no one shall be compelled to belong to an association.<sup>15</sup> The UDHR thus has a wider scope than the ECHR and the ICCPR; it does not include the limitations envisaged in the ECHR and the ICCPR. Further, in stipulating that a State cannot force the population to participate in specific associations, the UDHR again differs from the ECHR and the ICCPR. Under the UDHR, for example, a state could not establish a single environmental NGO and require all citizens who wish to work on environmental issues to join it.

### **C. Greek Civil Code**

In Greece, NGOs are formed as various legal vehicles under the Civil Code, which largely match the types of organizations established by the Civil Codes of other European

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<sup>12</sup> General Assembly Resolution 217 A (III) of 10 December 1948. There are currently 438 different translations of the UDHR, see <http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>

<sup>13</sup> Adopted by the Ninth International Conference of American States in April 1948, see <http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm>

<sup>14</sup> See H. Hannum, "The Status of the Universal Declaration of Human Rights in National and International Law" [1995-96] 25 *Georgia Journal of International & Comparative Law* 287.

<sup>15</sup> Arguably the corresponding provisions in the American Declaration of the Rights and Duties of Man (Article XXI and Article XXII) were more eloquently drafted, as they talked about the right to assemble "in connection with matters of common interest of any nature" and the right of association as a manifestation of protecting one's "legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature."

states.<sup>16</sup> Four forms of organization are relevant: societies or associations (*somateio*); associations of individuals pursuing a specific purpose but not regarded as societies or associations; foundations (*idryma*); and civic non-profit companies or corporations (*astiki mi kerdoskopiki etaireia*).

### ***1. Society or Association***

Based on empirical research, societies or associations are the most common legal vehicle employed to set up NGOs in Greece. A lot of the stipulations affecting a *somateio* center on the court system. The procedure to establish them is straightforward and relatively inexpensive. Under Article 79 of the Civil Code, the founders or the persons entrusted with its administration must apply for registration with the Court of First Instance in whose jurisdiction the seat of the *somateio* will be located. The application, which need not be notarized,<sup>17</sup> must be accompanied by the organization's constitutive instrument. The instrument must be in writing, in compliance with the requirement in Article 63 of the Civil Code that the charters or statutes of all legal persons be drawn up in writing. Under Article 78 of the Civil Code, the organization acquires legal personality once it has been entered into the relevant court registry. On the whole, courts enter organizations in these registries without closely examining their constitutive instrument. Indeed, registration is rarely refused and it is a more or less rubber stamp procedure. When it is refused, the founders can seek review before the competent court of justice and upon appeal the case could be heard by Areios Pagos, the highest civil court in the country.

The Civil Code regulates a *somateio* extensively.<sup>18</sup> The regulations take precedence over provisions of the organization's constitutive instrument. For example, under Article 88(2) of the Civil Code, members who believe that they have been improperly expelled from the organization are entitled to file within two months a judicial review of the expulsion before the competent court of justice<sup>19</sup>. In addition, the legality of any decision adopted by the assembly of members may be challenged again before the competent court by anyone with a legitimate interest, including those members who dissented from the decision, within six months of the decision's adoption. Under Article 101 of the Civil Code, further, if the court of justice voids the decision, the ruling affects all members, not just those who had contested its legality. Finally, Article 89 of the Civil Code proclaims the equality of all members participating in a *somateio*. Additional rights may be conferred on specific members only if the totality of members consents, acting through the assembly.

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<sup>16</sup> The Greek Civil Code entered into force in February 1946. It was considerably influenced by the German Civil Code (Bürgerliches Gesetzbuch - BGB), originally adopted in the 19th century. Subsequent revisions in the Greek Civil Code were also influenced by the BGB.

<sup>17</sup> By contrast, commercial companies which operate as *sociétés anonymes* or as companies with limited responsibility must have the constitutive (founding) instrument or charter drawn up by a notary public. Greek commercial law was influenced by French law, although nowadays there is a large corpus of European Union law in this area.

<sup>18</sup> See Articles 78 to 106 of the Civil Code.

<sup>19</sup> Invariably this will be the court of first instance in whose jurisdiction the NGO has its registered seat.

## **2. Organizations of Individuals Not Regarded as Societies or Associations**

The second type of legal vehicle is envisaged in Article 107 of the Civil Code: organizations which are composed of individuals (i.e. natural persons) drawn together to pursue a specific purpose but which are not regarded as societies or associations. Such entities are obliged to have their constitutive instrument in writing. The Civil Code does not contain any further provisions on this type of legal vehicle other than to stipulate that its provisions dealing with companies or corporations (*etaireia*) shall apply by analogy.<sup>20</sup>

## **3. Foundations**

Article 108 of the Civil Code defines a foundation (*idryma*) in the following terms: if, by virtue of a founding act, property (estate) was designated to serve a specific purpose, the foundation will acquire legal personality by virtue of a presidential decree approving its establishment. If the act creating the foundation takes the form of a legal transaction while the owner of the property is alive, then under Article 109 of the Civil Code, the transaction must be a legal document drawn up by a notary public.<sup>21</sup> Foundations, as opposed to *somateio*, have no members and, accordingly, no general assembly. An *idryma* is run by its administration.

(It should be noted that, over and above the *idryma*, the Greek legal system acknowledges the existence of another vehicle, the *koinofeles idryma*, which largely corresponds to the English institution of “charity”, at least as far as the notion of charitable purpose or goals is concerned. By contrast to a Civil Code *idryma*, a *koinofeles idryma* does not serve a private aim or purpose. Rather, its fundamental aim is to be “charitable”, a term that includes religious and philanthropic purposes and, generally, any goal which is for the benefit of the public at large. This type of organization is regulated by special legislation.<sup>22</sup>)

The requirement of a presidential decree to set up an *idryma* demonstrates that compared to the other legal entities that can be used for establishing NGOs, foundations are subject to heavier intervention by the state. Unlike laws which are deliberated in Parliament, agreed by Parliament and promulgated by the President of the Hellenic Republic (the proper name of Greece),<sup>23</sup> presidential decrees must be signed by the President, reviewed by the Council of State (the highest-ranking administrative court in the country), and then issued by the competent ministers.<sup>24</sup> The Council of State, when exercising its advisory role, can recommend to the competent ministers not to proceed because, for example, clauses in the foundation’s constitutive instrument violate the legislation or go against morality (*bonos mores*).

The State, however, does not have absolute discretion. If it refuses the creation of a foundation, it must give proper reasons. The founders can seek review by the courts by arguing

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<sup>20</sup> See Articles 741 to 784 of the Civil Code.

<sup>21</sup> Note that a foundation can also be set up by a will. In this case, the legal form of the will must follow the relevant stipulations of the Civil Code. Generally, see K. Magliveras, “The Greek Law of Succession,” in D. Hayton (ed.), *European Succession Laws* (3d ed.) (Bristol: Jordans, 2002), 271.

<sup>22</sup> Until the promulgation of Act 4182/2013 (FEK 2013 A’ 185), which has been amended by Article 32 of Act 4223/2013 (FEK 2013 A’ 287), it was regulated by virtue of Act 2039/1939.

<sup>23</sup> See Article 42 of the Constitution.

<sup>24</sup> See Article 43 of the Constitution.



that the refusal violates the rights conferred by the Greek Constitution and ratified international treaties. In this instance, the competent court will be the Council of State, which will rule on whether the grounds furnished by the State are valid. By the same token, if the presidential decree has been issued, any other person who can show a legitimate interest in the case can apply for its annulment before the Council of State.

A foundation can also be dissolved by a presidential decree, under Article 118 of the Civil Code, in the following three broad situations: (a) when its aim has already been attained or has become unattainable; (b) when the foundation has deviated from its stated aim; (c) or when its operation is immoral or violates the applicable laws or breaches public order.

In some respects, Greece regulates foundations differently from other European countries. The WWF<sup>25</sup> supplies an illustration. WWF was registered as a foundation (*fondation, Stiftung*) in Switzerland in 1961, pursuant to Articles 80 et seq. of the Swiss Civil Code.<sup>26</sup> In Greece, a WWF International Program Office was created in 1991 under the name Global Fund for Nature—WWF Greece. Three years later, the Greek national organization was established with the legal status of a charitable foundation. Its statute was ratified by the Presidential Decree of January 11, 1994.<sup>27</sup> It was then amended by the Presidential Decree of June 5, 2001,<sup>28</sup> and by Article 18 of Act 2443/1996.<sup>29</sup>

Even though an *idryma* and a *fondation* are essentially the same legal vehicle, their regulation differs in a number of respects.<sup>30</sup> Article 84 of the Swiss Civil Code stresses the role played by the supervisory authority, which has to be a public law entity operating at the level of the Confederation, a canton, or a commune. The supervisory authority, which is determined according to the goals of the foundation, ensures, inter alia, that the resources given to the *fondation* are used for the intended purposes with no deviation. Under Article 88, moreover, the supervisory authority can dissolve a *fondation* on its own, without applying to a court for a dissolution order, if it deems that the organization's objectives have become unattainable and cannot be maintained by modifying its constitutive instrument or that its objectives have become unlawful or immoral.<sup>31</sup> Additional requirements can depend on whether the competent body is at the level of the Confederation or of a canton. For example, the Federal Supervisory Board for foundations requires a minimum initial capital of 50,000 Swiss francs (about 49,000 Euro).<sup>32</sup> Another notable difference is that whereas Greek foundations have a single mandatory organ,

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<sup>25</sup> WWF is globally referred to by the abbreviation of its original name, World Wildlife Fund, which was later changed to World Wide Fund for Nature.

<sup>26</sup> An official translation of the Swiss Civil Code, which was also influenced by the German Civil Code, is available at [www.admin.ch/ch/e/rs/2/210.en.pdf](http://www.admin.ch/ch/e/rs/2/210.en.pdf)

<sup>27</sup> FEK 1994 B' 22 of January 18, 1994.

<sup>28</sup> FEK 2001 B' 790 of June 22, 2001.

<sup>29</sup> FEK 1996 A' 265 of December 3, 1996. The purpose of this amendment was to exclude it from the provisions of the aforementioned Act 2039/1939 on account of its operational and administrative autonomy.

<sup>30</sup> See L. R. Arrivillaga and G. von Schnurbein, "The Swiss Legal Framework on Foundations and Its Principles About Transparency," *International Journal of Not-for-Profit Law*, Vol. 16, no. 1, September 2014, 30.

<sup>31</sup> See Article 88 of the Swiss Civil Code.

<sup>32</sup> Note that since July 1, 1999, all *fondations* must be entered in an electronic registry, which is open and available to the public (<http://www.edi.admin.ch/esv/05263/index.html?lang=de>).

Swiss foundations have two: the council (the supreme governing body) and the board of trustees (audit board); the latter appoints the external auditors.

#### **4. Civic Not-for-Profit Organizations**

Articles 741 et seq. address the fourth type of legal vehicle envisaged in the Greek Civil Code, civic not-for-profit companies, corporations, and organizations. These are entities set up by at least two natural persons or legal persons who make joint contributions and commitments to carry out a particular social or economic aim. The founders of NGOs have often used the *astiki mi kerdoskopiki etaireia* to pursue philanthropic aims.

Given the wide-ranging scope of the type of entity, it has also been used for a variety of other purposes and activities, including commercial and scientific. In addition, the Greek government has used these vehicles for programs financed by the European Community and the European Union and undertaken by different legal entities. Article 8 of Act 2372/1996, “Establishment of operators to accelerate the development process and other provisions,” requires the formation of civic not-for-profit companies for those seeking to implement EC- and EU-financed programs dealing with, among other things, the economic and social inclusion of less privileged groups.<sup>33</sup> Arguably, these companies do not meet the criteria of an NGO.

#### **5. NGOs as Legal Persons**

Finally, it should be clarified that the Greek Civil Code treats societies and associations as well as foundations as legal persons in order to distinguish them from the natural persons who act as their founders or members.<sup>34</sup> The Civil Code does not seem to allow the organizations to participate in other legal persons, whether new or preexisting. Article 62 stipulates: “The capacity of a legal person does not extend to legal relationships, which require the faculty/status of a natural person.” Thus, legal persons do not have the capacity to establish other legal persons even in collaboration with natural persons.

### **III. NGOs in the English Legal Order**

England has a long and distinguished tradition in NGOs. It can boast of many important and successful NGOs, and a good share of them are active on the international plane. Philanthropy is deeply rooted in the Anglo-Saxon world, which has no doubt contributed considerably to establishing NGOs as a trusted institution in England.<sup>35</sup> The creation of the Oxford Committee for Famine Relief in 1942 marked a fresh way of looking after the interests of those most in need, irrespective of the country where they are located. Initially the Oxford Committee, which is now internationally known as Oxfam, aimed at ensuring the supply of vital relief to civilians in European countries occupied by the Axis powers during World War II, principally Belgium and Greece. Today, Oxfam, as an international confederation comprising 17

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<sup>33</sup> FEK 1996 Issue A’ 29 of February 28, 1996. The Act is apparently still in force.

<sup>34</sup> Note that the provisions examined here form part of the third chapter of the Civil Code, which is titled “Legal Persons.” The legal provisions on natural persons (individuals) are contained in the second chapter of the Civil Code.

<sup>35</sup> Generally, see W.K. Jordan, *Philanthropy in England, 1480-1660: A Study of the Changing Pattern of English Social Aspirations* (London: G. Allen & Unwin, 1959).

organizations,<sup>36</sup> is active in more than 90 countries and works alongside local partners.<sup>37</sup> Its main objectives are to address the root causes of poverty and to respond to humanitarian emergencies.<sup>38</sup>

Oxfam considers itself part of the so-called “non-profit sector.” It is one of the signatories of the INGO (international nongovernmental organization) Accountability Charter, which was concluded in 2005 and further developed in 2014 as a voluntary commitment to high standards of transparency, accountability, and effectiveness.<sup>39</sup>

At the same time, Oxfam is a registered charity in England and Wales as well as in Scotland. The notion of a “registered charity” denotes that an organization with charitable purposes and aims is under the supervision of the Charity Commission (if registered in England and Wales) or the Office of the Scottish Charity Regulator (if registered in Scotland). Since these two entities operate as “non-Ministerial Government Departments,” they form part of the wider public administration system in Great Britain. Even so, they are completely independent of ministerial influence. To that extent, they can be considered as regulatory authorities enjoying budgetary and administrative independence. These two entities act under the principal legislative instruments covering “charities”: the Charities Act 2011 (England and Wales) and the Charities and Trustee Investment (Scotland) Act 2005.<sup>40</sup>

The Charities Act 2011, which came into effect on March 14, 2012, sets out how charities in England and in Wales are to be registered and regulated. According to section 1 of the Charities Act 2011,<sup>41</sup> “charity” means an institution that meets the following two conditions: first, it has been established for charitable purposes only; and second, it falls into the ambit of the control of the High Court.<sup>42</sup> What constitutes “charitable purposes” is laid down in sections 2 and 3 of the Charities Act 2011:

- (a) the prevention or relief of poverty;
- (b) the advancement of education;

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<sup>36</sup> Most of these organizations are in countries of the so-called First World and not in the countries where Oxfam implements its programs: Oxfam America; Oxfam Australia; Oxfam-in-Belgium; Oxfam Canada; Oxfam France; Oxfam Germany; Oxfam Great Britain; Oxfam Hong Kong; Oxfam India; Oxfam Intermón (Spain); Oxfam Ireland; Oxfam Mexico; Oxfam New Zealand; Oxfam Novib (Netherlands); Oxfam-Québec; Oxfam Italy; and Oxfam Japan.

<sup>37</sup> For the list of countries, see <http://www.oxfam.org.uk/what-we-do/countries-we-work-in>.

<sup>38</sup> For the current Oxfam Strategic Plan (2013-2019), which is titled “The Power of People Against Poverty,” see <http://www.oxfam.org/en/about/accountability/oxfam-strategic-plan-2013-2019>.

<sup>39</sup> For the current text of the Accountability Charter, see [http://www.ingoaccountabilitycharter.org/wpcms/wp-content/uploads/INGO\\_CHARTER\\_web.pdf](http://www.ingoaccountabilitycharter.org/wpcms/wp-content/uploads/INGO_CHARTER_web.pdf).

<sup>40</sup> It should be noted that even though the United Kingdom of Great Britain and Northern Ireland is a unitary State, there exist three separate legal regimes covering, respectively, England and Wales, Scotland, and Northern Ireland. This divergence of legislation also applies in the case of regulating charities. For purposes of convenience only the provisions of the Charities Act 2011 will be examined here.

<sup>41</sup> Note that the English legislation is broken down into “sections” and not into “articles,” as is the case with Continental European legislation.

<sup>42</sup> The High Court (the full title is “Her Majesty’s High Court of Justice in England”) is one of the senior British courts with territorial jurisdiction in England and Wales. Its principal function is to consider important legal cases. But it has also been endowed with other juridical tasks.

- (c) the advancement of religion;
- (d) the advancement of health or the saving of lives;
- (e) the advancement of citizenship or community development;
- (f) the advancement of the arts, culture, heritage or science;
- (g) the advancement of amateur sport;
- (h) the advancement of human rights, conflict resolution or the promotion of religious or racial harmony or equality and diversity;
- (i) the advancement of environmental protection;
- (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services; and
- (m) any other aim, which may reasonably be regarded as analogous to any aims falling within any of above (a) to (l).<sup>43</sup>

If one were to argue that some of the above should not be regarded as activities usually promoted by NGOs (e.g., the advancement of citizenship or the promotion of the efficiency of the British armed forces), it should be remembered that “charity” in the English legislation has a specialized meaning.<sup>44</sup>

Section 2 of the Charities Act 2011 stipulates that all activities must be “for the public benefit,” a term not expressly defined in the legislation but rather left to be interpreted by the Charity Commission. Thus, the Charity Commission has described the term “public benefit” as follows:

Public benefit is an essential part of what it is to be a charity. But it is not just a legal requirement that charities have to meet and that we regulate. It also provides charities with a positive opportunity to demonstrate the benefits they bring to the public, in return for the financial and other benefits that come from being a charity, such as public support.<sup>45</sup>

Moreover, it has acknowledged that there can be no precise definition of “public benefit.” Rather, it must be examined on a case-by-case basis.<sup>46</sup>

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<sup>43</sup> For analysis, see J. Garton, *The Regulation of Organised Civil Society* (Oxford: Hart Publishing, 2009), 147-154.

<sup>44</sup> See N. Malik, “Defining ‘Charity’ and ‘Charitable Purposes’ in the United Kingdom,” *International Journal of Not-for-Profit Law*, Volume 11, Issue 1, November 2008, available at [http://www.icnl.org/research/journal/vol11iss1/special\\_2.htm](http://www.icnl.org/research/journal/vol11iss1/special_2.htm).

<sup>45</sup> See Charity Commission, *Public Benefit: An Overview*, September 2013, 3, available at [http://www.charitycommission.gov.uk/media/535041/public\\_benefit\\_an\\_overview.pdf](http://www.charitycommission.gov.uk/media/535041/public_benefit_an_overview.pdf).

<sup>46</sup> See Charity Commission, *Analysis of the Law Relating to Public Benefit*, September 2013, available at <http://www.charitycommission.gov.uk/media/94849/lawpb1208.pdf>.

Pursuant to section 30 of the Charities Act 2011, every charity must be entered in the register kept by the Charity Commission,<sup>47</sup> except for those whose annual gross income does not exceed GBP 5,000 (about 6,500 Euro). Section 37 stipulates that an institution is conclusively presumed to be a charity when it appears on the register. Registered charities must reveal their total income. Larger charities must also submit a financial profile disclosing, inter alia, their long- and short-term investments.

#### **IV. Conclusions**

Greece and England have followed different models for the regulation of NGOs. Greece has de facto allowed individuals to endow their organizations with legal personality by using the private law entities envisaged in the Civil Code (other than commercial enterprises and companies), but so far it has not drafted a regulatory framework specific to NGOs. In England, by contrast, the longstanding existence of charities, as a separate and regulated legal entity, arguably obviated the need for NGO-specific legislation. Any interested NGO could become a registered charity, so long as its activities fell within the broadly worded permissible purposes, and gain the advantages that this status entails.

Lacking the legal category of “charity,” Greece ought to adopt a regulatory framework tailored to the ever increasing number of NGOs. The ordinary operation of the very large number of NGOs currently active in Greece demands the existence of a framework, which would not have to be elaborate. It will be submitted that small changes to the Civil Code would allow adding NGOs as another tailor-made legal vehicle available to individuals seeking to pursue their legitimate interests together, especially interests that are protected by the Constitution. The Civil Code ought to recognize the NGO as a separate entity with legal personality, distinct from the other legal vehicles.

In particular, the Civil Code ought to allow a group of individuals, regardless of citizenship (i.e. both Greek citizens and aliens), to set up a legal person specifically categorized as a “nongovernmental organization” and enjoying full juridical personality, separate from associations, (charitable) foundations, and not-for profit undertakings. As for regulatory details, the Civil Code could stipulate that the elaborate provisions on associations (*somateio*) will apply by analogy.

In Greece, as in other Continental European countries, the codification of rules and custom is a guiding principle of the legal culture. Civil Codes, as the principal regulatory instrument governing private-to-private dealings and transactions, should keep pace with societal changes and trends. There is no doubt that the establishment and operation of thousands of NGOs in Greece in the past 25 years has been such a trend. England, having no such tradition in codification, has perhaps been more flexible by adopting purposely-drafted legislation whenever the need arose.

Arguably, the Greek Civil Code has been allowed to lag behind societal developments. The last overhaul concerned family law and took place in the early 1980s. The addition of NGOs to the list of legal vehicles in the Civil Code will offer a tailor-made entity to those wishing to exercise their freedom of association. It will also increase the number of international NGOs operating on Greek territory.

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<sup>47</sup> The Register of Charities is available at <http://www.charitycommission.gov.uk/find-charities>.

One author has described the power of the NGOs in the following terms:

As norm entrepreneurs, [NGOs] advocate substantive constitutional principles, human rights, the rule of law and democracy. Furthermore, NGOs strengthen these principles in situations where state organs or agencies fail to fulfil their essential functions and, in exceptional situations, even act as surrogates of state officials where state institutions have broken down.<sup>48</sup>

A type of organization that might have the potential to play such an instrumental role cannot be left without customized regulation, especially in today's Greece, where traditional legal principles such as the rule of law have arguably been traumatized while the enemies of the rule of law such as corruption have become the order of the day. Although proper regulations cannot guarantee that NGOs will successfully take over where the State has failed, segments in society expect them to pursue the wider good.

Finally, it is high time that Greece harmonized its Constitution with EU law and institutions. The Constitution ought to state clearly that the rights guaranteed by Articles 11 and 12 extend to the citizens of all EU member states, rather than, as now, only to Greek nationals. England, lacking a written Constitution, has not had to face this issue.

These are urgent issues that must be addressed. The sooner they are dealt with, the greater the benefits that NGOs and their members can confer on Greek society.

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<sup>48</sup> T. Kleinlein, "Non-State Actors from an International Constitutionalist Perspective: Participation Matters!" in J. d'Aspremont (ed.), *Participants in the International Legal System. Multiple Perspectives on Non-State Actors in International Law* (Abingdon: Routledge, 2011), 41, 44.