

LEGAL PERSONALITY AT LOCAL LEVEL:

GREECE Country Case



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Following the request of the Ukrainian Specialised Parliamentary Committee on Local Self-Government, the Council of Europe is providing extended and comprehensive support on the issues concerning legal personality at local level in Ukraine. The present report was prepared by the Council of Europe’s Centre of Expertise for Good Governance in the framework of the Programme “Enhancing decentralisation and public administration reform in Ukraine”, based on contributions from its expert Mr Charalampos Koutalakis. The document is structured in accordance with the questionnaire formulated by the Specialised Parliamentary Committee.

GREECE

1	Population	10.423 millions
2	Size	128 900 km ²
3	National Day	25 March; 28 October
4	Form of state government	Parliamentary Republic
5	Administrative-territorial system, quantity of municipalities	Unitary 13 regions – 332 municipalities
6	Parliament, quantity of Members of Parliament, term	Unicameral parliament: 300 MPs (for 4 years)
7	GDP (USD)	189 467 millions ¹
8	Human Development Index	0.888

PRELIMINARY REMARK

According to Art. 102§1 of the Greek Constitution, the administration of local affairs shall be exercised by local government authorities of the first and second tier. For the administration of local affairs, there is a presumption of competence in favour of local government authorities. The range and categories of local affairs and their allocation to each level shall be specified by law. Law may assign to a local government authority the exercise of State competencies. First and second-tier local authorities enjoy administrative and financial independence. Their bodies are elected by universal and secret ballot, as specified by law.

After several reforms, the Greek local authority system is consolidated into 332 municipalities and 13 regions. This was essentially the outcome of two major reforms that changed the administrative and political map of Greece. In 1997, the so-called Kapodistrias program (Law 2539/1997) included a radical amalgamation of 5775 local government entities (441 municipalities and 5382 communes) into 1033 (900 municipalities and 133 communes). In 2010, the so-called Kallikratis reform (Law 3852/2010) included compulsory amalgamations of the 1033 municipalities and communes into 325 municipalities. Moreover, the 54 prefectures were replaced by 13 directly elected regions. This law consolidated municipal enterprises and other legal entities of private law from 6.000 to approximately 2.000. Law 4555/2018 provided for the increase of the number of municipalities from 325 to 332.

¹ Source : <https://unctadstat.unctad.org/countryprofile/GeneralProfile/en-GB/300/index.html>

1. ***Who has legal personality (is a legal entity and hence recognised as subject of legal rights and responsibility) in your country at local level, the community (or “administrative territorial unit”) or the authority (council, executive...)?***

Municipalities and regions in Greece are legal entities of public law subject to all responsibilities and rights that emanate from general principles of public law and the specific legislation for the organisation and functioning of municipalities and regions. Their bodies are directly elected and enjoy administrative and financial autonomy. According to the Greek legal system, a Legal Entity of Public Law (N.P.D.D.) is any self-governing public organisation that exercises public authority in order to achieve a specific public interest. The N.P.D.D. differ both from the state bodies, which belong to the legal entity of the State, and from the Legal Entities of Private Law (N.P.I.D.), which aim at the promotion of private interests.

The N.P.D.D. are established and abolished only by law and exercise whatever responsibilities are assigned to them by the state, together with the corresponding financial resources and certain tax privileges. Thus, they enjoy fiscal and administrative autonomy, as they are governed, in the case of local authorities, by the municipal and regional councils which are the decision-making bodies, and the executive bodies which are the mayors and heads of region. For this reason, the acts, which they issue after a special legislative authorisation, are subject only to the control of legality by the supervising ministry. In addition, they can establish their own public or private law entities under their supervision.

According to the law, municipalities and regions are legal personalities represented in front of courts and any other public authority by the mayor or the head of region.

2. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), does the State possess a similar legal status?***

Yes. In Greece, the State’s legal entity is proclaimed in the Greek Constitution. According to Art. 101 “the administration of the State is organised according to the decentralised system” and therefore the organisation of the State includes both central and decentralised bodies. Central bodies are the Government, the Prime Minister as a single member body of the State, the Ministries with their ministers, the Independent Authorities, and the Legal Counsel of the State. Decentralised bodies are the 7 Decentralised Administrations and various issue-specific decentralised structures of the ministries that exercise competencies that are not assigned to municipalities and regions in a specific territory.

3. ***In case in your country local communities or “administrative territorial units” are granted legal entity status (and hence recognised as subjects of legal rights and responsibilities), who has the legal personality at other levels (region, sub-region, county...)?***

A. Municipalities

In Greece, local communes as the first tier of local government are abolished. They are all amalgamated to form the 332 municipalities. The territorial area of each municipality established by law consists of the territorial areas of the merged municipalities and communes. Former municipalities and communes constitute the municipal units of the new municipalities and bear the name of the former municipality or community.

In 2018, all former territorial units of current municipalities were renamed into communes, regardless of their population. According to law, municipal communes are not separate legal entities. The legal entity is the municipality, within which they

operate as intra-municipal decentralisation structures. Although municipal councils have no legal authority to abolish them, they lack fiscal and administrative autonomy. These entities do not have their own budget. However, the municipality is obliged to set a minimum amount of expenses for each municipal commune in separate codification credits, for their operating expenses and small-scale projects.

Municipal communes have their own directly elected councils and presidents. However, these councils have only consultative functions to the mayor and the municipal council. The presidents of municipal communes have only delegated competencies assigned to them by the mayor. The municipal council, with a decision taken by an absolute majority, may also delegate specific responsibilities to the presidents or the councils of the municipal communes. The decisions of municipal communes are transmitted to the mayor. The mayor ensures that they are immediately brought to the attention of the competent bodies of the municipality, which must study them and inform the communes about each issue within one (1) month. The competent bodies of the municipality can: (a) return the decision to the commune with comments for reconsideration of the matter; b) refer it to the municipal council, c) forward it to the competent services of the municipality in order to take the necessary actions. In any case, the competent bodies of the municipality must inform the president of the commune, about the measures taken to promote the issues included in the decisions of the commune. Given these legal provisions, municipal communes have no legal personality.

B. Regions

As already mentioned above, regions as the second tier of local government are new. They were established in 2010 with Law 3852, which abolished the prefectures and amalgamated them to form the regions. The territorial units of the former prefectures are acknowledged by law as regional units of their corresponding regions. In each of these regional units, there is a vice-head of region. Vice-heads of region have only ancillary and advisory responsibilities to the head of region. The latter can also delegate to them executive functions. However, regional units have not legal personalities. The legal entity is the region.

4. ***In case intermediate-level communities (regions, sub-regions, counties...) are not granted legal entity status, which authority has such a status at these levels?***

In Greece, regions have the legal personality of a Public Law Entity. Their regional units (former prefectures) do not have this status.

5. ***Which act stipulates the legal personality/status of the State, local communities and, as the case may be, other levels of government (region, subregion, county...): the Constitution or the Law? In case it is stipulated by law, is it a general or special law? Please indicate the title of this law and provide a link to it, if available.***

The legal personality of the state and first and second tier local authorities are directly stipulated by the Greek Constitution (Art. 101 and 102).

An official English version of the Greek constitution can be found here:

<https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf>

Special local authority legislation also provides very important elements of the legal personality. It is very often subject to modifications and additions and unfortunately is not fully codified in a single text.

There are three very important legal texts:

An initial Code of Municipal and Communal law (Law 3463/2006) can be found here (in Greek):

<https://www.eetaa.gr/kodikas/>

The Code was altered by two legislative acts which have added and modified certain provisions. These are:

Law 3852/2010: New Architecture of Self-Government and Decentralised Administration – Kallikratis Program (Νέα Αρχιτεκτονική της Αυτοδιοίκησης και της Αποκεντρωμένης Διοίκησης – Πρόγραμμα Καλλικράτης).

Law 4555/2018: Reform of the institutional framework of Local Government – Strengthening Democracy – Enhancing Participation – Improving Economic and Developmental Functioning of the Local Authorities. [«Kleisthenis I» program] Regulations for modernisation (Νόμος 4555/2018: Μεταρρύθμιση του θεσμικού πλαισίου της Τοπικής Αυτοδιοίκησης Εμβάθυνση της Δημοκρατίας Ενίσχυση της Συμμετοχής Βελτίωση της οικονομικής και αναπτυξιακής λειτουργίας των Ο.Τ.Α. [Πρόγραμμα «ΚΛΕΙΣΘΕΝΗΣ I»] Ρυθμίσεις για τον εκσυγχρονισμό).

The unofficial codification of both laws can be found here (in Greek):

<https://www.kodiko.gr/nomothesia/document/132966/nomos-3852-2010>

6. ***In case in your country a notion “municipality” or its analogue is stipulated in the legislation, is this notion applied to a community or a territorial unit? Or does this notion apply only/also to a local self-government authority (councils or their executive bodies)?***

The term commune in Greece was first acknowledged as a legal entity in 1912 by the first Municipal and Communal Code (ΔΝΖ 1912). Specifically, all settlements with a population of more than “300 inhabitants and a primary school” were designated communes, while even settlements with less than 300 inhabitants with a primary school could become communes after the request of more than 50% of the resident electorate, and settlements with less than 300 inhabitants, without even a school, as long as more than 50% of the inhabitants demanded it and at the same time had a property that yielded more than 2,000 drachmas at that time. Nowadays, legal personality of public law are only the municipalities which are the result of amalgamated communes or municipalities. The term communities is used for sub-municipal units with no legal personality.

7. ***May bankruptcy proceedings be instituted against a local community or “administrative territorial unit” in your country? (yes or no)***

No. Greek Bankruptcy Law 3588/2007 explicitly provides that “Legal entities under public law, local authorities and public bodies are not declared bankrupt”. However, there are legal provisions for over-indebted municipalities and regions.

8. ***If you answered “yes” to question No.7, please answer the following question. Do general bankruptcy proceedings applicable to other legal entities apply to local communities or “administrative territorial units” in your country? If any special proceedings are in place, what are key criteria of bankruptcy of a local community or “administrative territorial unit” and three to four special aspects that make bankruptcy proceedings against local communities or “administrative territorial units” different from bankruptcy proceedings against other legal entities?***

9. **Do the laws of your country provide for suspension of local self-government authorities of a local community or “administrative territorial unit” (local councillors or executive bodies) from the management of affairs when the local community or “administrative territorial unit” enters into voluntary administration? (yes or no)**

No.

10. **If you answered “yes” to question No. 9, please elaborate what are conditions for introduction of the voluntary administration, what government authority is responsible for the voluntary administration, and what is the period of voluntary administration?**

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11. **Do claimants, both legal entities and individuals, lodge their claims with a local community or “administrative territorial unit” in regard to any and all local issues? Do the laws of your country allow that a person may file a lawsuit directly with a local self-government authority or its official, but not with a local community?**

Citizens and legal entities have the right to appeal to administrative courts against decisions of single-member and collective bodies of municipalities and regions. The most important remedy is the application for annulment of decisions. The municipal communes of the municipalities have only advisory responsibilities. They do not make enforceable decisions. So practically no one can appeal against them. Therefore, the claims may be filed only against the public authorities (mayor, council, and corresponding regional bodies), not against the local community that represents a sub-municipal unit as such.

In addition to the legal remedies, the legislation provides for the preventive control of the legality of the decisions of the municipalities and the regions by an Independent Supervisory Service that reports to the Ministry of Interior.

Citizens and legal entities can request the revision of decisions that affect their interests. They can do so by applying directly to the decision-making bodies of the municipalities and regions. Moreover, citizens and legal entities with an active legal interest may challenge the decisions of the collective or single-member bodies of the municipalities, regions, and their legal entities for reasons of legality, before the Independent Supervisory Service, within a period of 15 days from the publication of the decision or from its notification. An appeal is also allowed against the omission of legal action due.

12. **Does your country hold officials of local self-government authorities disciplinarily or financially (civilly) liable for ineffective or unlawful decisions (where such decision results from a political position, error or incompetence, but is not a criminal offence)? If so, may damages be recovered from the property of the official at fault rather than from the property of the local community or “administrative territorial unit” (for example, joint and several liability of the local community/“administrative territorial unit” and the official or recovery from the official by recourse)?**

a) Civil liability

According to Art. 232 of Law 4555/2018 the heads of region, the vice-heads of region, the regional councillors, the mayors, the deputy mayors, the municipal councillors, the presidents of the communes, and the members of the community councils, must compensate the municipality or the region, for any positive damage, they have caused to them by deceit or gross negligence. The above are not liable for compensation to third parties. The damage is attributed to these persons by a special audit committee. The committee examines the cases at the request of the municipality or the region or at the

request of the Head of the Independent Supervisory Service or the Inspector General of Public Administration or at the request of any citizen. The decisions of the special audit committee may be appealed to the Administrative Court of Appeal.

Citizens and legal entities can appeal to the Court against any illegal decision of regions and municipalities that causes damage to their interests. In such cases, the compensation awarded by the court is determined as the difference between the present property of the injured party and that which the party would have had if the illegal decision had not been taken. In addition, citizens and legal entities can claim compensation for non-pecuniary damage, mental suffering, and defamation. Damages can only be recovered by the legal entity i.e. the municipality or the region and not from the private property of the mayors or heads of region or municipal and regional councillors as members of decision-making bodies. In cases where the mayor executes decisions of collective bodies, he is not subject to civil, criminal, and disciplinary liability, as long as they have not been annulled, revoked, or suspended. The municipality or the region can only recover these damages from mayors or heads of region or other elected officials in cases of deceit or gross negligence.

b) Disciplinary proceedings

According to Art. 125 of Law 4555/2018, the disciplinary jurisdiction over the heads of region, vice-heads of region, regional councillors, mayors, deputy mayors, municipal councillors, community presidents, and community councillors, which concerns violations of their duties, is exercised by the Head of the Independent Supervisory Service that reports to the Ministry of Interior. Disciplinary penalties can be a temporary (up to 6 months) and a permanent suspension from duties for the following disciplinary offenses:

- a. Serious breach of their duties or exceeding their competence by deceit or gross negligence.
- b. Breaches of the tasks assigned to them in accordance with specific legal regulations.
- c. Suspension of duties due to serious reasons of public interest.

c) Penal

The heads of region, the vice-heads of region, the mayors, the municipal and regional councillors, the presidents of the communes and the members of the community councils are automatically removed from office:

- a. If they are placed in judicial/legal aid with a final court decision.
- b. If they are deprived of their political rights by an irrevocable court decision.
- c. If convicted by an irrevocable court decision, as perpetrators or participants in a crime or in any punishment for forgery, false testimony, bribery, extortion, theft, embezzlement, infidelity, fraud, oppression, incest, violation of the legislation on the fight against drugs, smuggling, as well as for breach of duty, if the above offenses cause financial damage to the municipality, the region or their legal entities.

13. ***What legal status do the local self-government authorities have if the local community or "administrative territorial unit" is a legal entity and hence recognised as subject of legal rights and responsibility? How is the scope of the legal personality of local self-government authorities defined in this case?***

The elected municipal councils and the mayors are elected organs representing the municipality, which is the only legal person in sight.

14. ***Who can act on behalf of a local community or “administrative territorial unit” directly in court? On what grounds? Do the laws of your country allow that a local community or “administrative territorial unit” is represented in external relations (in court, for example) by the State or a government authority?***

Mayors and heads of region can act on behalf of municipalities and regions respectively. They represent the legal entities in front of all public authorities and courts. They may delegate this responsibility to deputy mayors and vice-heads of region or specially commissioned councillors. Regarding external relations, the law provides for the right of municipalities or regions to conduct external relations with corresponding entities abroad, for example related to the participation in international networks or twinnings, only after the approval of a special committee of the Ministry of Interior.

15. ***If in your country the State or a local community “administrative territorial unit” has changed their legal personality over the past thirty years, please indicate how long did the transformation take and what were the milestones of the transformation?***

Greece’s borders were consolidated in 1945. As mentioned above, the country has undertaken several territorial consolidation reforms during the last 30 years. They included amalgamation of municipalities and communes in 1997 and 2010 and prefectures to form larger regions in 2010. Apart from amalgamations, these reforms included significant changes in the status, competencies, structures, and finances of municipalities and regions. The comprehensive approach to local government reform was particularly helpful to gain political consensus among political parties and local communes in favour of the reform. In all cases, the outcomes of the reforms were negotiated with the Association of Municipalities and Regions (former Prefectures). However, a weak point of Greek reforms was that they provided only limited transition periods for the new municipalities and regions to reorganise their internal structures and service provision. The respective laws were applied after one year of their parliamentary approval with new local elections.

16. ***If in your country the State or a local community/“administrative territorial unit” changed their legal personality amid external or internal armed conflicts, were any risks identified for the territorial integrity or national security as a result of this change? If so, what preventative actions were taken to avoid these risks?***

N/A for Greece.

FOR NOTES

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The present layout of the report was produced in the framework of the Council of Europe Programme
“Enhancing decentralisation and public administration reform in Ukraine”