

A Statistician's Ordeal

The Case of Andreas Georgiou

Miranda Xafa

Key Points

- For the past eight years Andreas Georgiou has been facing prosecution for the way he discharged his duties while he was president of Greece's statistical agency (ELSTAT) in 2010-15.
- His detractors claim that Greece was forced to face harsher conditionality because the deficit was revised upwards, thus helping to justify externally imposed austerity.
- Despite overwhelming evidence that Mr. Georgiou correctly applied EU rules in revising Greece's fiscal deficit and debt figures, and despite strong international support for his case, some Greek courts continued the pursuit.
- The Georgiou case tested the independence of the Greek judiciary, as some senior prosecutors and judges would appear to have repeatedly failed to act in accordance with the rule of law and due process.
- With a solid majority in parliament, the newly-elected center-right New Democracy government has the opportunity to deliver deep institutional and economic reforms. Ensuring the independence of the judiciary should be a top priority.

Executive Summary

For the past eight years Andreas Georgiou, the former head of Greece's statistics agency (ELSTAT), has been prosecuted by powerful elements within the Greek judicial system. In the run-up to euro area membership in 1997–9 and up until the Greek debt crisis erupted in late 2009, successive Greek governments failed to comply with EU statistical rules, understating the fiscal deficit and debt in order to appear broadly compliant with euro area

commitments. The term ‘Greek statistics’ came to mean inaccurate, deliberately massaged statistics. When the Greek crisis erupted, euro area member states demanded accurate statistics as a prerequisite for considering any form of financial support. Mr. Georgiou was recruited from the International Monetary Fund (IMF) and appointed head of the newly independent ELSTAT in August 2010. He brought Greek statistics into full compliance with EU rules for the first time, yet the Greek judicial system has hounded him for years instead of going after those responsible for the previously fudged ‘Greek statistics’.

The Georgiou case tested the independence of the Greek judiciary, as some senior prosecutors and judges would appear to have repeatedly failed to act in accordance with due process. Examples abound: Mr. Georgiou was tried (*in camera*) three times for allegedly ‘inflating’ the deficit of 2009—the year in which Greece plunged into an unprecedented debt crisis that prompted the first of three stabilization programs funded by the EU and the IMF. His detractors claim that Greece was forced to face harsher conditionality and larger loans because the deficit was revised upwards, thus helping to justify externally imposed austerity. The Appeals Court dropped the charges three times, but the first two acquittal decisions were annulled by the Supreme Court.

It would seem that, in annulling the acquittals, the Supreme Court judges ignored the elephant in the room: the methodology and data introduced by Mr. Georgiou were used as the basis for the design and monitoring of successive adjustment programs, were endorsed by Eurostat and continue to be used today. Moreover, the 2009 deficit calculated by Mr. Georgiou happens to match exactly the net amount Greece borrowed from capital markets in that year.

Yet despite overwhelming evidence that Mr. Georgiou correctly applied EU rules in revising the 2009 deficit, and despite strong international support for his case, some Greek courts continued the persecution. In a separate case, Mr. Georgiou was found guilty of ‘breach of duty’ for not asking the (subsequently abolished) board of the statistical agency to approve the revised fiscal data before notifying them to Eurostat, and was sentenced to two years in prison (suspended, unless he gets another conviction). Yet

according to EU rules, decisions regarding statistics are not subject to vote by a board and are explicitly the 'sole responsibility' of the head of the statistical agency.¹ In yet another case, a member of the then existing board of the Greek statistical agency (who hacked Mr. Georgiou's computer) avoided being tried by the Greek courts on the basis of what seem to be intentional procedural obstacles, and his computers were returned to him by the police without deleting the stolen emails.

Although Mr. Georgiou has now been cleared of the charge that he deliberately falsified the 2009 fiscal data, he has been found liable by a first instance civil court for 'simple' slander,² for defending the corrected 2009 deficit statistics, as required by EU statistical ethics rules.³ Two other criminal investigations also remain open. One is about the same issue, the alleged falsification of the 2009 government deficit, for which charges were dropped in the procedure discussed above. Another is about Mr. Georgiou's efforts to have statistical agency staff 'sign legal confidentiality commitments' for the data provided by individuals and corporations, as also explicitly required by EU rules.⁴ All accusations have originated from members of the former ELSTAT board and some staff of ELSTAT who represented the 'old guard' and were disturbed by Mr. Georgiou's technocratic, non-partisan approach. Importantly, however, these critics found strong and active allies among Greek politicians who were eager to shift the blame for the crisis to a technocrat. Mr. Georgiou was a convenient scapegoat on whom to pin the blame for the inevitable austerity imposed by creditors after years of fiscal profligacy. His persistent prosecution appears to be an effort to whitewash the center-right Karamanlis government, during whose tenure in 2004-09 Greece's public debt increased from 101.5% to 126.7% of GDP. When radical left SYRIZA came to power in January 2015, convicting Mr. Georgiou and his colleagues at ELSTAT became an essential

¹ See principle 1.4 in the European Statistics Code of Practice (Eurostat 2017).

² 'Simple slander' in the Greek legal framework means that the statements made by the accused are not false but have the effect of damaging the reputation of the plaintiff.

³ See principle 1.7 in the European Statistics Code of Practice (Eurostat 2017).

⁴ See principle 5.2 in the European Statistics Code of Practice (Eurostat 2017).

part of the government's strategy to renegotiate the debt and to roll back austerity measures.

While Greece has achieved a huge fiscal adjustment, serious doubts remain over successive governments' commitment to reform the Greek state, avoid political interference in the functioning of institutions, and guarantee the rule of law. The erosion of judicial independence in the Andreas Georgiou and other cases testifies to the need for institutional reform.⁵ In its absence, Greece will be the real loser. Investors want assurances that they can enforce contracts in the courts. Greece ranks 132nd for contract enforcement in the World Bank's Doing Business report. Doubts over the rule of law will damage efforts to restore investor confidence. Greek citizens have suffered enormous hardship in the effort to restore public finances. Sustained economic growth can be achieved only if economic reform is accompanied by institutional reform and lasting change in political culture.

In a remarkable turnaround, Greece became one of the first EU countries to reject populism this year. The radical left SYRIZA party was voted out of office, and both SYRIZA's junior coalition partner, the nationalist Independent Greeks party (ANEL), and the neo-Nazi Golden Dawn party were voted out of parliament in the July 2019 elections that were won by center-right New Democracy. With a solid majority in parliament, New Democracy and its new leader Kyriakos Mitsotakis have the opportunity to deliver deep institutional and economic reforms. Ensuring the independence of the judiciary should be a top priority after years of political interference. Former IMF Managing Director Michel Camdessus and other prominent

⁵ The prosecution of the journal *Athens Review of Books* for allegedly defaming Foreign Minister Kotzias in 2017 is such a case (See Financial Times 2017a). The journal published a reader's letter characterizing Kotzias as a fanatic Stalinist, based on books he authored praising the totalitarian Honecker regime in East Germany and Jaruzelski's dictatorship in Poland. Kotzias sued for defamation and won, demanding €250,000 in compensation. The Court rapporteur initially called for the case against the journal to be dismissed for violating decisions of the European Court of Human Rights and the Greek Constitution, but then voted against her own proposal without explanation, only to be later appointed Vice-President of the Supreme Court by the SYRIZA government. The Supreme Court chief prosecutor, Ms. Xenia Dimitriou, did not annul the guilty verdict despite its obvious shortcomings. In contrast, in 2019, shortly before retiring, she annulled the decision of a lower court to refuse the request of Dimitri Koufontinas, a convicted assassin serving several life terms for his role in the deadly November 17 terrorist group, for a six-day leave from prison. The annulment was widely seen as a gesture of support for the leftist 'revolutionary' struggles favored by the SYRIZA government. She was also the prosecutor who brought the case against former FM George Papaconstantinou, who served in the 2009–11 Papandreou government, for his handling of the 'Lagarde list' of Greeks with Swiss bank accounts.

personalities have called on the European Commission to monitor Greece's judicial reform efforts and ensure that Mr. Georgiou's prosecution is terminated (Camdessus et al. 2019).

Introduction

On October 4, 2009, the conservative New Democracy government that had ruled Greece since mid-2004 lost an early election amid warnings of impending doom. By the time the global financial crisis hit in 2008, Greece's large fiscal and external deficits had left the country vulnerable to a sudden stop in the capital inflows that provided the necessary funding. On October 19, 2009, socialist PASOK's new Finance Minister George Papaconstantinou made his first trip to Brussels to attend a Eurogroup meeting. He told his euro area counterparts that the country's fiscal deficit would reach an astounding 12.5% of GDP that year, more than twice the deficit projection announced by the previous government in early October and more than four times the 3% of GDP maximum dictated by EU rules. He accused the previous government of deliberately understating the deficit to retain access to international capital markets and avoid EU sanctions. Ironically, the outgoing New Democracy government had previously accused PASOK, its predecessor, of exactly the same practice in 2004, and revised the fiscal data back to 1997,⁶ but gone on to follow the same obfuscating tactics.

At the press conference that followed the Eurogroup meeting, President Juncker said: 'The game is over; we need serious statistical data' (Papaconstantinou 2016). The revelation that the deficit was much higher than expected led to a sharp widening of credit spreads and in sequence the credit rating agencies downgraded Greek government bonds to junk status, triggering the Greek crisis. The evolution of the 2009 deficit figure reveals a serious political and institutional failure, both at the Greek and the EU levels. The EU was unprepared for the crisis, not least owing to Eurostat's lack of access to the detailed data underlying member countries' deficit and

⁶ Characteristically, the revised data for 1997–2003 produced in 2004 by the New Democracy government still were not fully consistent with EU national accounts rules, thus continuing to understate the fiscal imbalance in Greece.

debt figures. The Greek statistical service—then a directorate of the Ministry of Finance—had adopted a practice of calculating the deficit through reverse engineering, i.e. deciding the level of the deficit that was politically acceptable and working backwards to validate it, typically by excluding certain expenditure items from the calculation.

A three-year economic adjustment program was formally agreed to in early May 2010, supported by official financing of €110 billion (48% of GDP) provided by the euro area countries and the IMF—the largest-ever financing package to be provided to a single country, both in absolute terms and relative to GDP. A Memorandum of Understanding (usually referred to as the first Memorandum), signed by the Greek government and its creditors, detailed the conditionality linked to the loan. One of the conditions was that the statistical service would be separated from the Ministry of Finance to become an independent entity run by a professional statistician with no party affiliation. Mr. Georgiou was recruited from the IMF to help restore the credibility of Greece’s discredited statistical office. He took over as president of the newly independent ELSTAT on August 2, 2010, three months after the start of the adjustment program.

Trouble started almost immediately after his appointment. First, Mr. Georgiou’s email account was hacked by the deputy chairman of the then existing board of ELSTAT, Nikos Logothetis, a political appointee. The police confirmed the hacking and confiscated Mr. Logothetis’ computers. Mr. Georgiou, who filed a lawsuit against him, was subsequently charged with a number of civil and criminal lawsuits. Some of these were initiated by Mr. Logothetis and his board colleague Ms. Zoe Georganta. Others were initiated by the former director of national accounts from the period 2006–10, Mr. Nikolaos Stroblos. The following intertwined cases were brought against Mr. Georgiou:

- (a) a criminal case was initiated in 2011, alleging false statements by artificially ‘inflating’ the 2009 deficit and debt figures, thus imposing a heavy cost on the Greek state and the Greek people;
- (b) a second case based on the same allegation was opened by the chief prosecutor, Ms. Xenia Dimitriou, years later, in 2016;

- (c) a criminal case was initiated in 2011 alleging breach of duty, for not seeking approval of the revised deficit and debt figures for 2009 and previous years before notifying the European statistical office, Eurostat, of these figures;
- (d) a set of cases was initiated in 2013 alleging sinister intentions behind Mr. Georgiou's attempt to have the staff of ELSTAT sign legal commitments to observe the confidentiality of household and private enterprise data collected by the authority, as required by the European Statistics Code of Practice;
- (e) a criminal lawsuit for alleged slander was brought in 2014 by Mr. Stroblos, who had helped produce the unreliable 'Greek statistics' before Mr. Georgiou took office;
- (f) a companion civil suit for alleged slander was brought in 2014 by the same plaintiff.

Instead of focusing on the production of the 'Greek statistics' that had concealed the magnitude of the fiscal deficit before the crisis, some Greek judges seemed eager to put the blame for the crisis on a single individual: Andreas Georgiou, the head statistician. Mr. Georgiou has denied any wrongdoing and has received strong backing from international organizations and statisticians.⁷ In contrast to Greek statistics produced before his time at the statistical agency, the statistics he produced were fully validated by Eurostat. He was nevertheless subjected to an eight-year ordeal in the Greek courts, and maintains that he was wrongly convicted of breach of duty based on an erroneous interpretation of the European Statistics Code of Practice. Other cases against him are still at various stages in the Greek court system. His ongoing ordeal is difficult to explain as anything other than a politically motivated and orchestrated effort to shift the blame for the crisis from the politicians who ruled Greece before the crisis to a technocrat who took office after it erupted. Early assessments in the international press speculated that, given ELSTAT's European support, the case would not make it past

⁷ See American Statistical Association (2017), Brau (2018), Camdessus et al. (2017); the website of the Friends of Greece, a dedicated advocacy group, also contains several articles published in the international press <https://thefriendsofgreece.wordpress.com>.

preliminary hearings (*Economist* 2011). But the cases have endured and multiplied.

The 2009 Deficit Saga

At the request of the ECOFIN, the council of EU finance ministers, Eurostat conducted a detailed examination of Greek statistics and published a scathing report in January 2010, which pointed to ‘severe irregularities’ in the compilation and reporting of statistics, leading to lack of independence, integrity, and accountability of the national statistical authorities (Eurostat 2010). It noted that the deficit estimates reported by the Greek authorities had been subject to unusually large revisions: on October 2, 2009, the outgoing New Democracy government had revised its estimate of the 2009 deficit from 3.7% of GDP (the figure notified in April 2009) to 6.0% of GDP. The incoming PASOK government further revised this estimate to 12.5% of GDP on October 21, 2009, based on Bank of Greece estimates that the cash deficit amounted to 10% of GDP in the first nine months of the year and would reach 12–13% by year-end. The actual 2009 deficit figure, estimated at 13.6% of GDP, was first published by the statistics office in April 2010 and transmitted to Eurostat in the context of the semi-annual Excessive Deficit Procedure (EDP) notification. However, ‘Eurostat [expressed] a reservation on the quality of the data reported by Greece, due to uncertainties on the surplus of social security funds for 2009, on the classification of some public entities and on the recording of off-market swaps.’⁸ Further enhanced quality assessment procedures were introduced in July 2010 by EC Regulation 679, which amended Regulation 479 and enabled Eurostat to access primary data sources. The European Parliament subsequently concluded that Greece’s deep crisis ‘was also due to statistical fraud in the years preceding the setting-up of the program’ and welcomed ‘the decisive action by the Greek government to urgently and effectively address these problems, including by establishing the independent Hellenic Statistical Authority in March 2010’ (European Parliament 2014).

⁸ Retrieved from <https://ec.europa.eu/eurostat/documents/2995521/5046142/2-22042010-BP-EN.PDF/0ff48307-d545-4fd6-8281-a621cbda385d?version=1.0>, accessed September 6, 2019.

It fell on Mr Georgiou to resolve the pending issues and revise the fiscal figures accordingly. Soon after his appointment as President of ELSTAT in August 2010, it became clear that some members of the existing board,⁹ notably Ms. Georganta and Mr. Logothetis—both of whom had unsuccessfully applied for Mr. Georgiou's job—wanted to get directly involved in the compilation of deficit and debt statistics. They also expected to negotiate the figures with Eurostat¹⁰ and eventually vote on the figures and approve them before their transmission to Eurostat in the context of the semi-annual EDP notification. Mr. Georgiou refused, on the ground of the European Statistics Code of Practice that assigns sole responsibility for all decisions regarding the production and dissemination of statistics to the head of the national statistical authority. After considerable work to ensure data quality and to allow Eurostat to carry out a further methodological visit to check and validate Greece's statistics, on November 9, 2010 Mr. Georgiou transmitted to Eurostat annual public finance statistics for 2006–9. The 2009 deficit, which had been estimated at 13.6% of GDP in the April 2010 EDP notification, was further revised to 15.4% of GDP. The 2006–9 figures were published by Eurostat without reservations in contrast to what had usually occurred in previous years,¹¹ as were all nine subsequent notifications by Mr. Georgiou during his five-year tenure.

In the months that followed, members of ELSTAT's board publicized their claim that the 2009 deficit had been inflated, leading to harsh austerity measures. Ms. Georganta argued that this was done in cooperation with the head of Eurostat, Mr. Radermacher, Finance Minister Mr. Papaconstantinou, and ELSTAT President Mr. Georgiou, concluding that 'we have a new German occupation.' Mr. Georgiou stopped convening the ELSTAT board after his computer was hacked, and eventually the PASOK government

⁹ The board consisted of political appointees from outside the statistical office and one appointed by the labor union of ELSTAT, and was chaired by the president of ELSTAT.

¹⁰ See <http://zoe-georganta.co.uk/wp-content/uploads/2012/09/Illegal-swelling-hospitals-SWAP.pdf>, accessed September 6, 2019.

¹¹ Reservations had been expressed by Eurostat on the Greek deficit and debt statistics in relation to six out of the eleven semi-annual publications between March 2005 and April 2010: March 2005, September 2005, April 2006, April 2008, October 2009, April 2010. Eurostat had also commented in its January 2010 Report on Greek Government Deficit and Debt Statistics: 'When the Greek EDP data have been published without reservations, this has been the result of Eurostat interventions before or during the notification period in order to correct mistakes or inappropriate recording, with the result of increasing the notified deficit.'

submitted to parliament an amendment that removed the members of the board. This caused an uproar among both center-right New Democracy and radical-left SYRIZA MPs. Opposition leader Antonis Samaras, in his major annual speech at the Salonica fair in September 2011, warned that ‘New Democracy would be relentless if an organized forgery of the truth and of the real data were revealed.’¹² SYRIZA leader Alexis Tsipras, speaking on a TV program, said ‘...fortunately Ms. Georganta found the courage to come out and denounce things that are unheard of. Which is what? That they appointed as director of ELSTAT a man of the IMF, who inflated the deficit so that our country can have the largest deficit among all the other European countries so that it becomes an experimental guinea pig fully certified. And you know what it means to have a larger deficit by 1–2 percentage points? Tough measures that carry blood and tears...’¹³

One of the adjustments Mr. Georgiou made to bring the deficit and debt figures into compliance with Eurostat’s methodology was to include 17 public enterprises and entities within the definition of the general government. Under EU rules, state enterprises are classified as government entities if revenues from sales cover less than half their costs. In Greece 17 such entities failed the 50% rule and were included in the deficit. Correction of inappropriate recording decisions in a number of other areas also contributed to revising the deficit upwards by 1.8% of GDP, from 13.6% to 15.4% of GDP.

Starting in 2012, in various articles in the Greek media, Mr. Georgiou’s main accusers Ms. Georganta and Mr. Logothetis were quoted as saying that they had calculated the 2009 deficit at 3.9% of GDP.¹⁴ Ms. Georganta’s website carried an article that explained their methodology:¹⁵ Using Eurostat’s data, she calculated the deficit as the increase in the debt from €263.3 billion at end-2008 to €299.7 billion at end-2009, i.e. €36.1 billion (15½% of GDP)—identical to the figure calculated by Mr. Georgiou.¹⁶

¹² See <https://www.youtube.com/watch?v=RIKL.OYXk0m0>, 6:30’ into the speech.

¹³ See <https://youtu.be/olycghFJvJE>

¹⁴ For example, <http://epikaira.orgfree.com/home6.html>, accessed September 6, 2019.

¹⁵ Retrieved from <http://zoe-georganta.co.uk/wp-content/uploads/2012/09/Greek-Deficit-Revisited.pdf>, accessed September 6, 2019.

¹⁶ Excluding a stock-flow adjustment of €0.3 billion.

However, she then decided to subtract a few items from the 2009 debt, arguing incorrectly that they should be netted out. These items were the debts of state enterprises (€18.2 billion), hospital arrears (€3.8 billion), and the now-infamous 'Goldman off-market swap' concluded in 2001 (€5.4 billion).

Netting these out, the 2009 debt amounted to just €272.3 billion. To compare apples with apples, these same items should also have been subtracted from the 2008 debt, as they were present in 2008 and affected the total debt figure that year. But Ms. Georganta did not consider this necessary: she calculated the deficit as the increase in the debt from the (unadjusted) 2008 level of €263.3 billion to the 'adjusted' 2009 debt level of €272.3 billion, i.e. €9 billion (3.9% of GDP)—among the lowest in the EU!

The accusations that Mr. Georgiou fought for eight years, i.e. that as head of ELSTAT he inflated the 2009 budget deficit forcing the country into deeper austerity, were based on this simplistic and faulty accounting. The Appeals Court Council decided to drop this charge in 2015, but the Supreme Court ordered the case to be reopened on two occasions, in 2016 and 2017. In March 2019 Georgiou was acquitted for the third and final time. Before discussing his prosecution, it is worth explaining briefly how the Greek court system works.

The Greek Court System

The Greek Constitution distinguishes three categories of courts: civil courts, criminal (penal) courts, and administrative courts. The supreme court of the first two categories is the Supreme Civil and Criminal Court of Greece (Areios Pagos), while the Supreme Court for administrative justice is the Council of State.

Areios Pagos (henceforth 'Supreme Court') is composed of a President, Vice-Presidents, the Prosecutor and Vice-Prosecutors, and the members of the court. The President, Vice-Presidents, Prosecutor, and Vice Prosecutors are chosen by the Cabinet, while the members of the court are promoted to the corresponding rank by decision of the supreme judicial council. If the Supreme Court concludes that a lower court has violated the law or the

principles of a procedure, then it can order the case to be reheard by the lower court. It examines only legal issues, not factual ones, and it is the court of highest judicial resort. Its decisions are irrevocable, but cases decided by the Greek Supreme Court can still be brought before the European Court of Human Rights. Also, the Court of Justice of the European Union answers questions on EU law that are referred to it by a court of a member state. In exercising this function, it issues binding advice to national courts on how EU law ought to be interpreted.

Case 1: The ‘false statements’ case

This is by far the most important—criminal—charge against Mr. Georgiou and at the same time the most preposterous. Based on the allegations of former ELSTAT board members Ms. Georganta and Mr. Logothetis, in September 2011 the Prosecutor for Economic Crimes initiated a preliminary criminal investigation into the alleged artificial inflation of the 2009 government deficit and notified Mr. Georgiou and two of his senior staff that they would be questioned as suspects (rather than as witnesses). Politicians affiliated with the New Democracy party, leading the opposition at the time, fueled the controversy. In a formal statement Yiannis Michelakis, the party’s spokesperson, recalled a statement by his party’s leader Mr. Samaras about the need for a Parliamentary Investigative Committee that would focus on ‘how Greece got to the Memorandum [of Understanding] with official creditors, how the spreads exploded, when the involvement of the IMF was decided and what happened with ELSTAT.’¹⁷ The President of the Athens Bar, Ioannis Adamopoulos, elected to his post on the New Democracy ticket, submitted a legal complaint to the Supreme Court, noting *inter alia*:

With the accusations of renowned academicians, such as professor Georganta, whom the government itself put in her position at ELSTAT, that the statistics were manipulated by Greek civil servants, who [...] ‘inflated’ the deficit, lied to the Greek people in order to trap them in the IMF with a program of tough

¹⁷ Retrieved from <https://dexiextrem.blogspot.com/2011/09/spreads.html>, accessed September 6, 2019.

austerity, while they were aware that through their action they would harm our national sovereignty, in violation of the provisions in the Constitution.¹⁸

With the EU/IMF program off track and Greece's credit spreads widening, Prime Minister Papandreou and his PASOK government resigned in mid-November 2011 and were replaced by a government led by former European Central Bank (ECB) Vice-Chairman Lucas Papademos, a former Bank of Greece governor and academic. The new government, made up of representatives of the center-left PASOK, the center-right New Democracy, and the smaller right-wing LAOS party (Popular Orthodox Rally), was mandated to negotiate a new program with official creditors and a debt restructuring agreement with private bondholders. In January 2012 the Prosecutor for Economic Crimes forwarded the conclusions of his preliminary criminal investigation of the alleged inflation of the 2009 deficit to Parliament, which was tasked with assessing possible responsibilities of former Prime Minister Papandreou and members of his cabinet. The Prosecutor did so without first requesting testimony from Mr. Georgiou or his co-accused ELSTAT staff. Mr. Georgiou had to submit a direct petition to the Chief Prosecutor of the Supreme Court to accept his testimony for inclusion in the court file; his request was eventually accepted. SYRIZA leader Tsipras commented about the criminal investigation case:

I believe this case needs to be investigated. And I believe—I have declared so in all my speeches—that going to the IMF [for a program] was methodically set up. And I believe that in the critical areas of debt management and of the Statistical Office two persons were installed, who had commitments at the same time with other supranational organizations [...] When we are the only country in the Eurozone that includes in the debt of general government the debt of hospitals and government enterprises, and the deficit increases by two percentage points, and this [increases] our deficit above both Portugal and Ireland, then there are responsibilities here.¹⁹

As part of the prior actions under the second EU/IMF adjustment program agreed in late February 2012, the Parliament authorized Prime Minister Papademos to sign the Commitment on Confidence in Statistics which binds

¹⁸ Retrieved from www.newsbomb.gr/politikh/story/171790/apokalypsi-h-minytiria-anafora-toy-dsa-gia-ti-elstat, accessed September 6, 2019.

¹⁹ Retrieved from www.youtube.com/watch?v=4h_McR1rZVQ, starting at 1:21, accessed September 6, 2019.

the current and future Greek governments. Key commitments concern guaranteeing, defending, and publicly promoting the professional independence of ELSTAT, and supporting ELSTAT in upholding confidence in Greek statistics and defending them against any efforts to undermine their credibility. These commitments were adopted as law.²⁰

In early March 2012, a Parliamentary Investigative Committee was constituted to address the allegations of artificial inflation of the 2009 government deficit and possible responsibilities of politicians. New Democracy and the Communist Party boycotted the Committee's proceedings from the start, while radical-left SYRIZA eventually withdrew its participation. Mr. Georgiou and other witnesses testified under oath, including the members of the former ELSTAT Board. The Committee found no artificial inflation of the deficit, no errors or inaccuracies in the application of Eurostat's methodology, nor any intervention in the work of ELSTAT. In contrast, it concluded instead that political responsibilities lay with the former New Democracy Minister of Finance, Yannis Papathanasiou, for not taking early action to prevent the fiscal derailment obvious since early 2009 and 'for concealing the true fiscal condition of the country.' New Democracy spokesperson Michelakis responded by insisting on the 'criminal responsibilities of Papandreou and Papaconstantinou for the inflation of the 2009 deficit.'

After the second EU/IMF-funded adjustment program was agreed and a massive debt restructuring successfully concluded in March 2012, elections were called. The elections resulted in a hung parliament and a repeat election took place in June. The center-right New Democracy won the election and formed a coalition government with Antonis Samaras as Prime Minister and the center-left PASOK as junior partner, led by Evangelos Venizelos.

In January 2013, the Prosecutor for Economic Crimes pressed criminal charges against the President of ELSTAT and two senior ELSTAT managers 'for making false statements regarding the calculation of the 2009 deficit, causing damage to the Greek state under the especially aggravating

²⁰ Law 4051 of 2012.

circumstances of the exceptionally large value of the object of the crime', calculated at €171 billion, and against the President of ELSTAT for 'repeated violation of duty.' Interestingly, the Prosecutor's proposal reveals how the €171 billion figure for the damages to the Greek state was calculated: based on the claims of Mr. Georgiou's detractors, this figure includes amortization payments on short- and long-term debt of €46.2 billion and €119.5 billion respectively, and corresponding interest payments of €0.8 billion and €4.8 billion respectively. These amounts correspond to Greece's total gross borrowing in the context of the first and second adjustment programs during the period from December 2010 to November 2012. The only way that Greece could have avoided the need to borrow these amounts would have been by securing a budget surplus large enough to repay maturing debt without tapping international capital markets! Besides being false, this outrageous claim failed to relate the alleged mammoth 'loss' to the Greek state to any action taken by the statistical service.

A few days after the Prosecutor pressed criminal charges against Mr. Georgiou, the ranking New Democracy parliamentarian Prokopios Pavlopoulos—a former senior minister in the Karamanlis government of 2004–9 and the future President of Greece—gave a radio interview in which he asserted that Mr. Georgiou had 'weakened the board of ELSTAT' and not allowed it 'to decide collectively [on the deficit] and protect the interests of the country', so that ELSTAT would 'become a one-person authority and include in the deficit all that Eurostat wanted.' He claimed that ELSTAT and Eurostat had wrongly inflated the 2009 deficit by 3.4% of GDP [actually it was 1.8%] by including entities in the general government that 'nowhere else in Europe are included,' with the agreement of the PASOK government. Georgiou was responsible as he 'did not object' to what Eurostat wanted, 'did not negotiate' the matter, and 'did not defend the interests of the country.'²¹ Underlying these views was the belief that fudging the statistics is in the national interest.

In mid-July 2013 the investigating judge assigned to the case concluded there was no basis for any of the charges against Mr. Georgiou and his two

²¹ Retrieved from www.youtube.com/watch?v=efsc2yKRjrc, accessed September 6, 2019.

staff. Soon after, various politicians from different parties publicly called for the case to remain open. They were joined by New Democracy-affiliated Mr. Adamopoulos who, in his capacity as President of the Coordinating Committee of the Bar Associations of Greece, sent publicized letters to the Prosecutor of the Supreme Court, arguing *inter alia* that Mr. Georgiou had not followed the hitherto ‘established national practice of negotiating the figures’ and ‘resisting’ Eurostat.²² The pressure probably accounts for the Supreme Court instructing the Prosecutor of the Appeals Court to continue the criminal investigation. After examining further witnesses, in early May 2014 the Prosecutor concluded that there was no basis for any of the charges against Mr. Georgiou and his two staff members and proposed that the case be dropped, including the charges against Mr. Georgiou for repeated violation of duty.

In response, politicians from various political parties called for the case against Mr. Georgiou to go to trial. Prominent among them was New Democracy’s Mr. Pavlopoulos who stated:

Regarding the case of ELSTAT for the arbitrary and illegal inflation of the 2009 government deficit that imposed huge sacrifices [on] the Greek people, justice must be pursued to the very end. Regarding the unacceptable position of PASOK and George Papandreou, who do not seem to want to comprehend the magnitude of their responsibility, it renders especially pressing the need to set up a Parliamentary Investigative Committee on how we arrived at the Memorandum.²³

A few days later, on July 10, 2014, the Council of the Appeals Court decided against the Prosecutor’s recommendation to drop all charges, and ordered the continuation of the criminal investigation against Mr. Georgiou ‘for making false statements regarding the calculation of the 2009 deficit’ and for ‘repeated violation of duty.’ It also specified that Mr. Georgiou should be interrogated and that the former head of the National Statistical Service and the former Director of the National Accounts Division (both of whom were

²² Retrieved from

<https://olympia.gr/2013/08/26/%cf%80%ce%b1%cf%81%ce%b5%ce%bc%ce%b2%ce%b1%cf%83%ce%b7-%ce%ba%ce%bf%ce%bb%ce%b1%cf%86%ce%bf%cf%83-%cf%84%ce%bf%cf%85-%cf%83%cf%85%ce%bd%cf%84%ce%bf%ce%bd%ce%b9%cf%83%cf%84%ce%b9%ce%ba%ce%bf%cf%85/>, accessed September 6, 2019.

²³ Real News, 29 June 2014 <http://media.enikos.gr/data/files/263f1c82a0fbf2f388c164d17fd0e830.pdf>.

in positions of responsibility regarding the 'Greek statistics' that Eurostat had not been able to validate) should be called as expert witnesses.

In response, Mr. Georgiou issued a press release in which he expressed his concern at yet another rejection of the recommendation to drop all charges against him. He noted that he had been investigated since 2011 for statistics that had been validated as accurate and reliable on eight consecutive occasions, over four years, by Eurostat, while there was no investigation of the period before he took office—a period of recurring reservations concerning statistics that two reports by the European Commission and European Parliament had characterized as frauds. He also expressed his surprise at the Court's decision to request the testimony as expert witnesses of individuals who had been responsible for compiling official statistics during that period.

Greek politicians reacted immediately and forcefully to Mr. Georgiou's press release. On July 29, Prime Minister Samaras' office commented that 'it is inappropriate for a civil servant to express such views,' while Mr. Pavlopoulos organized a vote in the parliamentary Committee on Institutions and Transparency to denounce Mr. Georgiou. The Committee's statement expressed concern 'regarding the continuation of Mr. Georgiou in his position as head of ELSTAT while criminal charges have been pressed against him for the inflation of the 2009 deficit; and denounces the statements of A. Georgiou which are directed directly or indirectly against Justice, especially at the time the latter is judging his case.' PASOK members of the Committee were absent from the otherwise unanimous vote of the Committee, where New Democracy, SYRIZA, ANEL, and Communist Party representatives were present. Soon after, on September 14, in a press conference at the Thessaloniki Fair opposition leader Alexis Tsipras stressed the need for a Parliamentary Investigative Committee on how Greece got to this state and the role of ELSTAT's potentially 'manipulated figures.'

In October 2014, the former Director of the National Accounts Division of the National Statistical Service during the 2006–10 period, Mr. Stroblos, filed complaints for slander against Mr. Georgiou in both criminal and civil courts. This case is discussed separately below.

On December 29, 2014 snap elections were called after Samaras' government failed to gain parliamentary support for his nominee for the Presidency of the Republic. On the same day, SYRIZA leader Tsipras announced that if he came to power he would investigate 'why ELSTAT inflated the government deficit and placed the country in the eye of the hurricane.' He won the January 2015 election and formed a coalition government with Panos Kammenos, leader of the nationalist, right-wing Independent Greeks party (ANEL) as junior partner. During his election campaign in early January 2015 Kammenos declared:

They cooked the statistics of the country and they essentially led the country, fully conscious they were doing it, to the IMF and the Troika [...] How did we get into the European support mechanism? The reason [this is worth pursuing] is not only to punish those responsible but the main reason is to prove that Greece was put into the support mechanism with deceit and thus to demand debt write-off. We ask for debt write-off because this is not the debt of the Greeks but is the debt that was cooked up by the bankers and those who wanted to put our country under foreign occupation.²⁴

In March 2015, the SYRIZA-ANEL government proposed Pavlopoulos for the position of President of the Republic. He was approved by Parliament and took office immediately. In early April, the Chair of Parliament, Zoe Konstantopoulou of SYRIZA, in the presence of President Pavlopoulos, Prime Minister Tsipras, and coalition partner Kammenos, opened the proceedings of the parliamentary Committee for the Accounting Control of the Debt, promised by SYRIZA, with the motto 'understand it, erase it.' Early in the Committee's proceedings Mr. Stroblos was invited to address it and stated *inter alia* that 'part of the debt is accounting debt and was imposed by Eurostat on our country in a selective manner, with methodologies that are applied only to our country and only for a specific period.'²⁵ ELSTAT was not invited to present its views. On June 18, 2015 the Committee publicized its preliminary conclusion that 'Greece not only is in no position to pay its debt but also must not pay it, notably because the debt, which was

²⁴ See <http://anemosantistasis.blogspot.gr/2015/01/41201.html> starts at 9:20' into the speech.

²⁵ Retrieved from www.youtube.com/watch?v=933R7ycRQLE&list=PLJLw1tG9H3CVOmWiQhhGnWgUqinq1ywtT&index=5, starts at 57:10 into the video, accessed September 6, 2019.

caused by the measures that were imposed by the Troika, directly violates the human rights of the inhabitants of Greece.' It also noted that 'the Committee assigns significant responsibilities to George Papandreou for his approach but also to ELSTAT and its president Andreas Georgiou, who are said to have manipulated the deficit figures so that Greece could fall into the nets of the IMF.'²⁶

In April 2015, Mr. Georgiou was called in and interrogated for several hours by a new investigating judge who had been assigned to the reopened case. Based on the results of this interrogation, the new Prosecutor who had been assigned to the case proposed to the Council of the Appeals Court that it drop all charges against Mr. Georgiou for 'making false statements' and for 'repeated violation of duty.' The media coverage of the Prosecutor's leaked proposal included mostly expressions of surprise and in many cases outrage against the efforts of 'MOU forces' to cover up and bury the case against Georgiou. The new Prosecutor was considered part of the plot.

Finally, in mid-July 2015 the Council of the Appeals Court decided to accept the Prosecutor's recommendation to drop the criminal charges against Mr. Georgiou and his two senior staff members for the 'false statements' allegations. By contrast, Appeals Court Council decided to refer Mr. Georgiou to open trial for the charge of 'repeated violation of duty.' In early August 2015 Mr. Georgiou's five-year term at ELSTAT ended, and he decided to return to the USA, where he is a permanent resident, rather than seek a second term.

But the charges for 'false statements' were revived after Mr. Georgiou's acquittal. In mid-September 2015, the Deputy Prosecutor of the Supreme Court, Xenia Dimitriou, submitted a proposal to annul the decision by the Appeals Court to acquit Mr. Georgiou of the 'false statements' charge, and noted that life imprisonment was the punishment for crimes of this sort. She also recommended increasing the alleged damage to Greece from €171 billion to €210 billion, based on revised estimates provided by Ms. Georganta and Mr. Logothetis of additional costs to the Greek state, primarily attributable to the impact of the haircut on Greece's debt (PSI) agreed by the

²⁶ Retrieved from www.newsbomb.gr/politikh/story/597705/ayta-einai-ta-porismata-tis-epitropis-alitheias-gia-to-xreos, accessed September 6, 2019.

Papademos government in March 2012. Nine months after hearing the case, in August 2016 the Criminal Section of the Supreme Court accepted Ms. Dimitriou's proposal—she meanwhile had been promoted to Chief Prosecutor by the SYRIZA government—and returned the case to the Appeals Court Council (with a different composition of judges) for re-examination.

A flurry of public statements by both SYRIZA and New Democracy officials ensued. The SYRIZA government's Minister of State Nikos Pappas publicly stated: 'With the referral of the former head of ELSTAT Andreas Georgiou a wound is opened up that we must investigate in depth... How and if the deficits were inflated so as to take preplanned decisions, so as to subjugate our country to the memorandum.'²⁷ The SYRIZA party newspaper *Avgi* published an editorial that concluded: 'They cheated Greece and the Greeks with fake statistical data, collaborating with foreign interests, enjoying the benefits of power even as this power was one of great horror.'²⁸ Minister of Foreign Affairs Nikolaos Kotzias retweeted a tweet by Evripidis Stylianidis, a New Democracy MP and former cabinet minister, that included the cover of the weekly magazine *Epikaira*²⁹ entitled: "'THE SCANDAL OF ELSTAT COST US 210 BILLION EURO/The report of Dimitriou to the Supreme Court that led to the annulment of Mr. Georgiou's acquittal is revealing/Zoe Georganta: How the 'cooking' of the statistics of 2009 under the guidance of Eurostat pushed us to the Memoranda'. Mr. Stylianidis' tweet went on to say: 'A revealing publication for the case of ELSTAT-Georgiou. At the end the truth is tough for those who scorn the homeland.' Press reports commented that 'the Karamanlis faction [of New Democracy] considers that the Supreme Court decision to refer Georgiou to trial constitutes a vindication for the Karamanlis period of governance—a period for which PASOK is asking for the constitution of a parliamentary

²⁷ Retrieved from www.newsbomb.gr/politikh/story/717634/pappas-gia-georgioy-elstat-anoigci-mia-pligi-poy-prepei-na-diereynithe-se-vathos#ixzz4GZv2wQsp, accessed September 6, 2019.

²⁸ Retrieved from www.avgi.gr/article/10811/7335983/o-ektelestes-georgiou-kai-oi-entolodotes-tou, accessed September 6, 2019.

²⁹ Retrieved from <https://mobile.twitter.com/DemocracyTrue/status/761651503115436032>, accessed September 6, 2019.

investigative committee regarding how we arrived at the first Memorandum.’³⁰

Against this background, the European Commission put out a statement saying, *inter alia*, ‘[a]lthough the Commission will not, as a matter of principle, comment on individual national legal proceedings, it is concerned about these statements as they call into question the validity of the fiscal data underpinning the Stability Support Program for Greece.’ Marianne Thyssen, Commissioner for Employment, Social Affairs and European Statistics, said:

The independence of the Hellenic Statistical Authority ELSTAT and the quality of its statistics are essential. For the Commission and Eurostat it is absolutely clear that data on Greek Government debt during 2010–2015 have been fully reliable and accurately reported to Eurostat. The Commission now calls upon the Greek authorities to actively and publicly challenge the false impression that data were manipulated during 2010–2015 and to protect ELSTAT and its staff from such unfounded claims.³¹

These points were reiterated in a letter that Vice-President Valdis Dombrovskis, Commissioner Thyssen and Commissioner Pierre Moscovici sent to SYRIZA Minister of Finance Euclid Tsakalotos. In response, Mr. Tsakalotos expressed surprise that the Greek government was asked to take a position on whether the 2010 statistics were valid, while the case was still being investigated by the Greek justice system. According to government spokesperson Ms. Olga Gerovasili, the Finance Minister, in his letter, “expressed the view that if the European Commission has privileged epistemological position to judge the case, then it has a moral obligation to submit it to the Greek Justice to facilitate its work”.³² Former Alternate Minister of Finance of the 2012–14 New Democracy government Christos Staikouras said:

New Democracy had made proposals in 2010 and again in 2012 for setting up an investigative committee, bearing the signatures of the totality of its parliamentary representatives. In those proposals it documents how the 2009

³⁰ See <https://nonpapernews.gr/download-now/2012-08-14-15-41-31/item/21262-ymnoi-kai-veli-gia-ton-kosta-karamanli-apo-nees-aities-i-dioksi-georgiou-i-osmosi-karamanlikon-kai-syriza-ta-senaria-epistrofis-i-eptaxroni-siopi-i-xthesini-epithesi-g-papandreou-kai-pasok>

³¹ See <https://audiovisual.ec.europa.eu/en/video/I-125329>, starting at 4:32’.

³² See <https://balkan.eu.com/european-commission-disturb-circles/>

deficit was formulated... It records the actions and omissions of the PASOK government which inflated an existing and long-standing debt problem of the country, and which it converted into a debt crisis. Meanwhile also the leadership of ELSTAT changed the methodologies of recording (reclassification of accounts etc.).³³

Statements along the same lines were made during August and September 2016 by several New Democracy MPs.

In early September 2016, the Greek government relented and tasked Deputy Minister of Finance George Houliarakis with making a statement about its confidence in the statistics compiled by ELSTAT. However, the ambiguous text he read out in Parliament avoided referring to the 2010 revisions of deficit and debt statistics covering 2009 and previous years. Instead, the statement just confirmed the government's confidence in the data used for the third adjustment program, agreed by the SYRIZA government in August 2015, without recognizing that the methodology was the same as for the 2009 deficit and debt statistics compiled under Mr. Georgiou's guidance.

Simultaneously, however, Ms. Dimitriou, now Chief Prosecutor of the Supreme Court, ordered a new criminal investigation into the same allegations against Mr. Georgiou and his two ELSTAT staff, as well as the IMF and its resident representative in 2010, and Eurostat leadership and staff. She instructed the Prosecutor of the First Instance Court, Ilias Zagoraios, to conduct a preliminary criminal investigation in light of two articles that appeared in *Democratia* newspaper under the headlines 'The emails of treason/the orders of the IMF and of Eurostat to George Papaconstantinou: "Distort the deficit quickly and quietly"' and 'The Mafia of the deficit/The deficit was inflated to justify the adjustment program/The two burglaries to make the emails of treason disappear'. The status and outcome of this investigation remains unknown; there is no evidence that it has been terminated.

Following the Supreme Court ruling in August 2016 that overturned his acquittal by a lower court, Mr. Georgiou warned that if the court ruled against

³³ Retrieved from <http://newpost.gr/politiki/555894/sta-koyras-h-nd-exei-zhthsei-eksetastikh-gia-thn-elstat-apo-to-2010>, accessed September 6, 2019.

him Greece would have difficulty convincing its European partners of the need for debt relief. 'If the calculation of the government debt is judged to be wrong, can there be any discussion on debt sustainability and debt alleviation for Greece by the European partners?' he said in an interview (*Financial Times* 2016). The Greek government made a sheepish attempt to dissociate the two issues. At his annual press conference at the Thessaloniki Fair in September 2016, Prime Minister Tsipras made the following statement:

The conflict over the statistics of 2009 concerns New Democracy and PASOK, not SYRIZA [...]. We were forced to reach an agreement without any possibility to dispute the statistics, nor do we dispute the statistics that concern the agreement that we reached. They are statistics that have been validated by Eurostat. However, this does not mean that Greek Justice does not have the right, or the obligation I would say, to investigate all these dark aspects of a case that raises questions, not in order to vindicate one or the other side, but in order for us to be able to see exactly what happened at that point in time [...] The fact that the accused Mr. Georgiou rushed to raise issues, saying that if Justice goes forward with the investigation the country will not receive what it should receive regarding debt relief, made a big impression on me. Greek Justice is independent. I cannot prejudge anything but I say that there will be clarity. Besides, this case cannot concern the discussion [about debt relief] that is taking place at this moment in Europe.³⁴

For all the talk about the independence of the judiciary, SYRIZA's coalition partner Panos Kammenos, leader of ANEL—an 'anti-memorandum' group that splintered off New Democracy—went so far as to prejudge the outcome of the judicial investigation. At the Thessaloniki Fair in September 2016 he stated:

The Georgiou case, the case of manipulation of statistical data, has to do precisely with the effort to nullify the work of the Karamanlis 2004–9 government. And, in fact, I have been very disappointed by the stance of today's New Democracy party. The current stance of New Democracy, which avoids at all costs referring to the ELSTAT legal case, shows that unfortunately, after Mr. Samaras, Mr. Mitsotakis has chosen to follow the same policy, the 'alliance of terror', so that PASOK can be given cover for the problems that it created, and especially the problems created by the

³⁴ See <https://youtu.be/Rg8bkmwEsg> starting at 27 minutes into the press conference.

government of George Papandreou [...]. I consider it unacceptable to have interventions on the Georgiou issue, so as not to investigate the case of the first Memorandum, the reason for which we entered into this hellish economic crisis. Justice must be allowed to do its work. And, of course, after they are convicted for the criminal aspects, the economic and political consequences that resulted must be investigated. And then, I believe, it will be proved who allied with whom and for what reason in order to support what some planned outside Greece. The Georgiou legal case is the top case. I am glad that Greek Justice is continuing the investigation.³⁵

In January 2017, supporters of former Prime Minister Karamanlis, still an influential figure within the New Democracy party, presented a study entitled *The Greek Political Economy: 2000–2015*,³⁶ aiming to ‘shoot down the myth of fiscal derailment during his government.’ The event was attended by several New Democracy MPs and party members, including Karamanlis himself. The coordinator of the event, New Democracy MP and Vice-President of the Greek Parliament Nikitas Kaklamanis, noted in his speech:

ELSTAT added the most important piece of the puzzle, with protagonists the then Minister of Finance George Papaconstantinou and the then president of ELSTAT Andreas Georgiou, who was the Trojan horse to let [IMF mission chief] Mr. Thomsen and his companions set foot in Greece [...] The interventions of Eurostat and ELSTAT are still being investigated by the Greek justice and the European Parliament.³⁷

In May 2017, the Appeals Court Council, with a different bench than the one in 2015, decided again to accept the Appeals Court Prosecutor’s recommendation to drop the criminal charges against Mr. Georgiou for allegedly making false statements about the 2009 deficit. However, following a formal request by Ms. Georganta and Mr. Logothetis, in July 2017 Ms. Dimitriou submitted for the second time a proposal to annul the Council’s decision. Her proposal was eventually accepted by the Supreme Court and the case was returned to the Appeals Court Council to re-examine the

³⁵ See <http://www.avgi.gr/article/10842/7442749/p-kammenos-koryphaia-e-ypothese-georgiou-prepei-na-aphethei-e-dikaioyne-na-kanci-te-doulcia-tcs>

³⁶ Available from www.amazon.com/Greek-Political-Economy-2000-2015-ebook/dp/B01N1H8OTH, accessed September 6, 2019.

³⁷ Retrieved from <http://newpost.gr/parapolitika/586557/paroysia-karamanlh-h-ekdhlwsh-katarripshs-toy-mythoy-dhmosionimikhs-ektrophs-epi-prwthypoyrgias-toy>, accessed September 6, 2019.

decision to acquit for the third time. SYRIZA party newspaper *Avgi* carried an editorial claiming that Mr. Georgiou was obviously guilty and should be held responsible for the Memoranda the country had signed since 2010.³⁸

At that point pressure from Greece's European partners intensified. Legislation was enacted by Parliament to indemnify current or former ELSTAT officials for legal expenses incurred in defending lawsuits against them related to the performance of their functions. But the law provided for only partial reimbursement of legal costs, and only if the official were acquitted. In the parliamentary debate, Alternate Minister of Finance Mr. Houliarakis reassured parliamentarians and the public that Mr. Georgiou would pay back any reimbursement if he were convicted. In September 2017, euro area finance ministers and senior officials from the ECB and the European Stability Mechanism meeting in Tallinn warned that the continued prosecution of Greece's former statistics chief could dent international confidence in the country and put at risk Greece's return to capital markets (*Financial Times* 2017b). In response, Greek Finance Minister Tsakalotos said that 'there are no concerns about the independence of ELSTAT... The only court ruling against the former head of ELSTAT is on a procedural issue, whether or not he held meetings of the board of directors'—a statement that overlooked Mr. Georgiou's potential to be given a jail sentence on criminal charges for allegedly falsifying the Greek statistics. Only some small political parties defended the former head statistician, notably the center-left Potami party, which said that 'the Georgiou case constitutes a representative example of the deficient institutions in our country. Ultimately, this case does not concern strictly the person of Mr. Georgiou and the hardship that he is subjected to, but it constitutes an index of the quality of our democracy.' International associations of statisticians have strongly backed him, warning that politically driven prosecutions of statisticians undermine the credibility of official data (American Statistical Association 2017). According to press reports, some EU countries have considered freezing further loans and debt relief until Greece backs its statisticians (*Wall Street Journal* 2017a).

³⁸ Retrieved from www.avgi.gr/article/10811/8321375/ti-ennooume-otan-leme-apodeixeis-, accessed September 6, 2019.

In June 2018, just before the Eurogroup met to decide on the final disbursement under the third bailout program and on official debt relief measures for Greece, Prime Minister Tsipras gave an interview to the German newspaper *Die Welt*. In response to a question about Mr. Georgiou's irreversible conviction for violation of duty, Mr. Tsipras said: 'You touch upon a very hot topic. However, Greece abides by the rule of law and the separation of powers. As prime minister I do not comment on the work of the Supreme Court. Nevertheless, I would like to say something. The trial against Mr. Georgiou concerned the infringement of his duty *vis-à-vis* his supervisory board. And ELSTAT is independent. Nobody is challenging the credibility of the Authority.'³⁹ Asked why the government has not testified in Mr. Georgiou's defense, Tsipras said: 'We never concealed the fact that we recognize his figures. But justice and the courts are independent. It is exactly this independence that we want to preserve. However, if the court asks us to testify in his defense, we will do it.' On June 21, the Eurogroup approved the last disbursement of €15 billion to Greece as well as debt relief measures, but the accompanying press release expressed concern about the ongoing prosecution of Mr. Georgiou and senior ELSTAT staff and called for ongoing monitoring of developments in this case as part of Greece's post-program surveillance. A few days later, an IMF statement in the context of the annual Article IV consultation noted that 'ensuring adequate protection for officials—such as those in charge of statistical reports—is essential to increase confidence in public finances and ensure data integrity' (IMF 2018).

In September 2018, the new Prosecutor assigned to the case by the Appeals Court formally proposed to the Appeals Court Council to refer Mr. Georgiou and his two co-accused ELSTAT senior staff to open trial for making false statements about the 2009 deficit and thus causing extraordinarily large damage to the Greek state. However, in March 2019, the Athens Appeals Court acquitted Mr. Georgiou for the third time, concluding after eight years of investigations that there was no evidence of a crime.

³⁹ See <https://www.dropbox.com/s/eded6f7gd0dh5yd/tsipras%202018%202017%20interviews%20welt.pdf?dl=0>

Case 2: The 'breach of duty' case

As mentioned above, in July 2015 the Appeals Court accepted the Prosecutor's recommendation to drop the criminal charges against Mr. Georgiou and his two senior staff 'for making false statements regarding the calculation of the 2009 deficit.' However, contrary to the Prosecutor's recommendation, the court decided to refer Mr. Georgiou to open trial on the charge of 'repeated violation of duty.'

On December 6, 2016, Mr. Georgiou was tried for violation of duty at the First Instance Court in Athens and was unanimously found innocent on all three charges, as the three-judge Court concurred with the Prosecutor's proposal for acquittal. The three charges were: (i) not putting up the 2009 EDP deficit and debt figures for approval by the ELSTAT board; (ii) not convening the board after October 2010 (after the hacking of his emails by a board member); and (iii) not being fully and exclusively occupied at ELSTAT for the initial three months of his term of office pending the formal termination of his employment at the IMF in November 2010.

Ten days later, on December 16—surprisingly, before the full decision and its rationale were available—a new Prosecutor appealed the decision, with a view to annulling the First Instance Court decision to acquit Mr. Georgiou of violation of duty. The Prosecutor's appeal was based on a request for annulment of the acquittal by Ms. Georganta and Mr. Logothetis, who had testified against Mr. Georgiou in the trial and whose claims the Prosecutor reproduced in her decision. Mr. Georgiou pointed out to the Appeals Court that the filing of the appeal before the full decision and its rationale were available was a severe irregularity, but his view was rejected by the court. Mr. Georgiou was accordingly retried in August 2017 by the Appeals Court, which ruled that he should have submitted the revised fiscal data to ELSTAT's board for approval before notifying them to Eurostat in November 2010. The court thus found Mr. Georgiou guilty of the breach of duty charge in his handling of the 2010 revision of fiscal data and handed him a two-year suspended jail sentence. The trial was attended by angry mobs shouting insults against him. The court cleared him of the charge that he was simultaneously working for the IMF and ELSTAT during the first three months of his appointment and of the charge that he had broken the law in

not convening the board after he had found that his emails had been hacked by one member of the board and provided to other members.

Mr. Georgiou's defense was based on the European Statistics Code of Practice (COP), adopted in 2005 and explicitly referred to in both the European statistical law (Regulation 223/2009) and the Greek statistical law (3832/2010). The COP states that '[t]he heads of the National Statistical Institutes and of Eurostat and, where appropriate, the heads of other statistical authorities have the *sole responsibility* for deciding on statistical methods, standards and procedures, and on the content and timing of statistical releases' (Principle 1.4). European statistics are produced not only by national statistical institutes such as ELSTAT, but also by other agencies—typically the central bank and ministries. These are the 'other statistical authorities' referred to in the COP; Greece has nine of these.⁴⁰ The interpretation of the COP was clarified in the court proceedings by the oral testimonies of defense witnesses, who were experts on account of the positions they had held as heads of national statistical institutes in the European Statistical System (Ireland and Iceland), as well as by written testimonies from the head of Eurostat and the EU Commissioner for Economic and Monetary Affairs that had been submitted to the 2012 Parliamentary Investigative Committee.

The way the Court of Appeals was able to reach a guilty verdict is remarkable. It seems to have disregarded both exculpatory evidence and the plain language of the COP. It relied on its own Greek translation of the relevant paragraph instead of the official Greek translation published on the Eurostat website, to reach the conclusion that *sole responsibility* essentially means the responsibility of the heads of statistical divisions *within* ELSTAT (instead of the other statistical authorities outside ELSTAT). Based on this misinterpretation, the court decision concluded that COP principle 1.4 'does not prevent the legislator of the member state from approving... the delegation of the relevant decision-making to a collective body as in this case

⁴⁰ As noted on ELSTAT's website:

www.statistics.gr/documents/20181/1196143/National_Authorities_HSS_23102018_EN.pdf/f33c0ed9-3822-416c-82b7-447a1674d830, accessed September 6, 2019.

the seven-member board' of ELSTAT. This verdict may therefore be seen as an escalation of the campaign against Mr. Georgiou by Greece's politicians and certain judges (*Wall Street Journal* 2017b).

Following his conviction in the double jeopardy trial at the Appeals Court level, Mr. Georgiou sought to have his conviction annulled by lodging a further appeal with the Greek Supreme Court. The prosecutor assigned by the Supreme Court to make recommendations on the case agreed with the case put by Mr. Georgiou, on the basis that filing the appeal against the decision of the First Instance Court before the full decision and its rationale were available had been a severe irregularity. However, the Supreme Court that considered the annulment request rejected it, along with the proposal by the prosecutor assigned to the case.

To support his annulment request, Mr. Georgiou both explained how the European and Greek legal framework had been evidently misinterpreted, and submitted to the Supreme Court letters from the sitting presidents of the Austrian, Finnish, French, Italian, and Irish national statistical offices stating that on account of Principle 1.4 of the European Statistics Code of Practice they had sole responsibility and independence to decide (a) the statistical methodology and professional statistical standards used in their offices, (b) the content of statistical releases and publications issued, and (c) the timing of and methods by which statistics compiled by their respective offices would be disseminated. These letters were neither taken into account by the Supreme Court, nor acknowledged in its decision. Moreover, Mr. Georgiou had also requested that (according to the EU Treaties) the Supreme Court pose a pre-trial question to the Court of Justice of the European Union regarding the meaning of principle 1.4 of the European Statistics Code of Practice, which specifies the responsibility of the head of the National Statistical Institute. However, the Supreme Court did not put such a pre-trial question to the European Court and its decision did not address this request at all.

In all, not unreasonably, Mr. Georgiou considers that he did not get a fair trial in Greece on the breach of duty charge, and that he was wrongly convicted to two years in prison for following the EU and Greek laws in producing official European statistics. His unfair conviction cannot but have

a strong negative effect on the production of official statistics in Greece and elsewhere.

Case 3: The ‘statistical confidentiality declaration’ case

The European Statistics COP requires staff to sign legal confidentiality agreements on appointment (paragraph 5.2), and statistical offices to prescribe penalties for any willful breaches of statistical confidentiality (paragraph 5.3). With ELSTAT under review for compliance with COP rules, Mr. Georgiou asked his staff to sign confidentiality agreements in May 2013. First the labor union objected, and then Ms. Georganta and Mr. Logothetis, who had already filed ‘false statements’ and ‘breach of duty’ lawsuits, brought a new lawsuit against Mr. Georgiou even though they had been removed from ELSTAT’s board in 2011. The accusation was that Mr. Georgiou was trying to gag the staff of ELSTAT so that they could not reveal how he had manipulated statistics, and also to prevent them from giving private data to the tax authorities and the courts if asked. Obviously, the first accusation was an attempt to back up the previous two lawsuits, while the second one was precisely the purpose of the confidentiality agreement: private household and enterprise data are collected solely for statistical purposes. A criminal investigation against Mr. Georgiou was initiated on these grounds in mid-2013.

After the above process commenced, seven MPs of the opposition SYRIZA party submitted a question to Justice Minister Charalambos Athanassiou of the ruling New Democracy party, who referred the issue to the public prosecutor without giving ELSTAT the opportunity to answer the question. The prosecutor initiated a criminal investigation against Mr. Georgiou in the fall of 2013. The two criminal investigations were joined at a later stage and they are still pending, so far as anyone is aware.

Case 4: The prosecution for slander

As mentioned above, the July 2014 decision of the Council of the Appeals Court to reject the Prosecutor’s recommendation to drop all charges against Mr. Georgiou also specified that he should be interrogated and that the former head of the National Statistical Service Manolis Kontopyrakis and the

former Director of the National Accounts Division Mr. Stroblos should be called as expert witnesses in the case against Mr. Georgiou, even though both had helped compile the deficit statistics that Eurostat did not validate prior to Mr. Georgiou's appointment. As also mentioned above, Mr. Georgiou immediately issued a press release expressing his dismay at being prosecuted for producing statistics that had fully and repeatedly been validated as accurate and reliable by Eurostat, while no investigation had been undertaken of the faulty statistics produced in the period before he took office. He expressed surprise at the Court's decision to call as expert witnesses people who had been in charge of producing the statistics that Eurostat had not validated. In response, Mr. Stroblos brought an action for slander against Mr. Georgiou in the criminal court, and also sued him in civil court for €73,000 in damages and a public apology by Mr. Georgiou on account of alleged slander. In both cases he used the July 29, 2014 statement of the parliamentary Committee on Institutions and Transparency initiated by Mr. Pavlopoulos and the prosecution of Mr. Georgiou for the 2009 deficit to support his complaint.

In September 2015, the assigned prosecutor rejected the application by Mr. Georgiou for his trial for criminal slander of Mr. Stroblos to be struck out, so the trial had to proceed. In June 2016, a three-judge court tried Mr. Georgiou for criminal slander of Mr. Stroblos. Mr. Georgiou argued that, as required by the European Statistics COP (Principle 1.7),⁴¹ in his July 2014 press release he had been defending the fully validated European statistics produced on his watch against a barrage of slanderous attacks. He also argued that he was exercising his right of free speech and of defending himself against years of rampant slander from all sides, including Mr. Stroblos.⁴² The Prosecutor proposed that he should be acquitted of all charges. However, the court found Mr. Georgiou guilty of the crime (only in Greece!) of defaming Mr. Stroblos by making true statements, i.e. of 'simple' slander rather than 'criminal' slander, which involves defaming someone by making false

⁴¹ Indicator 1.7 under the Principle of Professional Independence of the European Statistics COP states that '[t]he National Statistical Institute and Eurostat and, where appropriate, other statistical authorities, comment publicly on statistical issues, including criticisms and misuses of statistics as far as considered suitable.'

⁴² See <https://crashonline.gr/wp-content/uploads/2016/09/STROBLOS-KOTTAKHS.pdf>

statements. He was convicted to 12 months in jail, in a sentence that was suspended for three years if there are no other convictions.

In response to Mr. Georgiou's conviction for 'simple' slander Yiannis Michelakis, former Minister of Interior in the 2012–14 New Democracy government, published an article entitled 'First conviction of A. Georgiou for the "inflated" deficit of 2009.'⁴³ The article states: 'The story of the inflated deficit of 2009 that was reported by George Papandreou and led our country to the Memoranda is beginning to be revealed through court proceedings, effectively vindicating the government of Kostas Karamanlis.' Several articles along the same lines have appeared in the media, both on the right and the left.

Mr. Georgiou appealed his conviction for 'simple slander' but his appeal was rejected. It is noteworthy that this trial, which finally took place in March 2017, was unexpectedly postponed three times at the cost of significant inconvenience to defense witnesses for Mr. Georgiou coming from abroad and creating a real risk that these defense witnesses might not keep showing up. Moreover, this trial featured new witnesses against Mr. Georgiou (in addition to those who had also appeared before the First Instance Court): they were high-level political appointees in past New Democracy governments (George Kouris, General Secretary of the Ministry of Finance under the 2004–9 Karamanlis government and Stefanos Anagnostou, who had served as spokesperson for the 2012–14 Samaras government). Mr. Adamopoulos, who was affiliated with New Democracy and had been active in the initiation of investigations against Mr. Georgiou, served as the plaintiff's new lawyer.

Mr. Georgiou requested the Supreme Court to annul his conviction for 'simple slander', and his request was accepted because the Supreme Court accepted that there had been errors in the decision to convict him. Specifically, although the Appeals Court had explicitly recognized that Mr. Georgiou had not defamed Mr. Stroblos 'through the printed press' (he had issued an electronic press release), it had still gone ahead to convict Mr. Georgiou for defaming Mr. Stroblos through the printed press. The Supreme

⁴³ Retrieved from www.thepressroom.gr/politiki/proti-katadiki-toy-georgiyou-gia-foyskomeno-elleimma, accessed September 6, 2019.

Court ordered a retrial of Mr. Georgiou but the date of the trial was set after the statute of limitations had expired. Accordingly, no further trial took place, the charges were dismissed and the conviction was finally quashed.

After the conviction by the Criminal Appeals Court in March 2017, in August 2017 the First Instance Civil Court had found Mr. Georgiou liable to indemnify Mr. Stoblos for 'simple' slander, i.e. making true statements that he should not have made as they damaged the honor and the reputation of the plaintiff. The court decided that Mr. Georgiou should pay €10,000 in damages to Mr. Stoblos and €500 towards his legal expenses. The court also ordered Mr. Georgiou to publish the court decision at his own expense in the Greek newspaper *Kathimerini*, along with the passage from his 2014 press release that the court considered to amount to simple slander. A fine of €200 would be payable for each day publication in the newspaper is delayed, after all appeals are finalized. Mr. Georgiou appealed the conviction, and the appeal is slated to be heard by the Appeals Civil Court in January 2020.

Case 5: The hacked emails

In October 2010, two months after Mr. Georgiou's appointment at ELSTAT, it transpired that his personal email account had been hacked. A police investigation revealed that the hacker was the vice-chair of ELSTAT's board Mr. Logothetis, and that the hacking had been done continuously since Mr. Georgiou's first day on the job. The emails taken had been provided to members of the board and others within ELSTAT. Following the police identification of Mr. Logothetis as the hacker, Mr. Georgiou, who had filed a lawsuit against whoever was responsible, suspended the monthly meetings of the board. Both criminal and misdemeanor charges were pressed by the prosecutor against Mr. Logothetis in January 2011. After years of inactivity in the case, in July 2016 the Appeals Court Council decided not to refer Mr. Logothetis to trial as the statute of limitations had been passed. The court decision clearly stated that Mr. Logothetis had indeed hacked Mr. Georgiou's emails, but considered that he was defending the interests of the Greek state. Mr. Georgiou was never notified of the decision (although he was the plaintiff), and thus missed the opportunity to request the Supreme

Court to annul the decision of the Appeals Court Council within the set deadline.

In early March 2017, the First Instance Misdemeanor Court decided that Mr. Logothetis would not be tried even on the misdemeanor charges that had been pressed against him. The judge threw out the case on the basis that no receipt for payment of a €20 fee, payable when the legal complaint was issued in 2010, could be found in the court file. Finally, in April 2019 Mr. Logothetis requested the Court's permission to receive back the two computers and a hard drive confiscated by the police when they raided his home in 2010. Mr. Georgiou asked the Court, in writing, not to provide the hacker with his emails and files but to erase them first, as they contained private and professional information. The Court did not accept his request and returned the equipment without erasing the stolen material, on the basis that Mr. Georgiou, who participated in the proceedings only as witness, lacked the standing to make his application to that court.

Conclusion

The eight-year ordeal faced by Greece's first independent head statistician has done enormous damage to Greece's credibility as an EU country with an independent judiciary. More importantly, it has cast doubt on the country's ability and willingness to comprehend the origins of the deep crisis it has endured and to avoid recurrence. The victim of these Kafkaesque prosecutions was Mr. Georgiou. Until recently, he faced life imprisonment following Supreme Court prosecutor Ms. Dimitriou's annulment of two decisions by the Appeals Court Council to acquit him. Nevertheless, a criminal investigation of the same issue of the falsification of the 2009 deficit, initiated by Ms. Dimitriou in 2016, appears to still be proceeding. Moreover, Mr. Georgiou's appeal against a verdict for 'simple slander' in civil court for defending ELSTAT's Eurostat-validated statistics is still pending and is slated to be heard in January 2020. Finally, an investigation into the 'statistical confidentiality declaration' requested from ELSTAT staff, initiated in 2013, has not been formally closed by the court. All these cases

are linked with Mr. Georgiou's efforts to apply EU statistical principles and rules in Greek statistics, as required by the laws of the EU and of Greece.

The troubling conclusion concerning this eight-year legal farce is that the Greek courts have repeatedly upheld the unreasonable claim of some members of the ELSTAT board that the 2009 deficit was among the lowest in the EU, against the judgement of Eurostat and Greece's creditors. The figures produced by Mr. Georgiou have formed the basis of the successive adjustment programs from 2011 to 2018 and of Greece's annual budgets, which would suggest that the proceedings against him are illogical, to say the least.

The Greek statistician's persecution continued after several investigators concluded that he had correctly applied EU accounting law in revising the deficit figures. Moreover, the prosecutions multiplied, covering not only the deficit figures themselves but also the statistical processes and ethics Mr. Georgiou followed in arriving at the figures. He is being prosecuted for not allowing voting on the figures, for defending figures that have repeatedly been fully validated by Eurostat, and for aiming to safeguard the confidentiality of data provided by individuals and private entities. These 'satellite' prosecutions have served to feed political narratives about the deficit figures and have been intertwined with the prosecutions about the figures. They have effectively served as 'surrogate' prosecutions for the deficit figures. Significant irregularities in these prosecutions suggest that they are not the outcome of fair trials. Mr. Georgiou's legal ordeal will deter qualified and principled Greeks from serving their country in senior positions in the public administration.

Despite considerable international support for Mr. Georgiou, no Greek government so far has fully exonerated him. The election of a pro-reform New Democracy government, which defeated SYRIZA in the July 2019 general election, suggests this may happen sooner rather than later. The new government has distanced itself from the blame game and made a strong start toward addressing weaknesses in the country's governance that contributed to its deep economic crisis. It seems that Greece's political establishment and voters are beginning to accept that the country's gigantic fiscal imbalance was real, rather than a conspiracy to impose austerity on Greece under the terms

of successive bailouts. Hopefully the Greek state will stop the persecution of official statisticians for doing their job according to the rules and ethics of the statistical profession and wipe the slate clean.

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