



NATIONAL AND KAPODISTRIAN UNIVERSITY OF ATHENS
FACULTY OF POLITICAL SCIENCE AND PUBLIC ADMINISTRATION

SCIENTIFIC REPORT

SHORT TERM SCIENTIFIC MISSION

“Enforcement of national court judgements against local authorities in Greece”

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Introduction

In the framework of COST-Action IS1207, I went on a “Short Term Scientific Mission (STSM)” to Queen Mary University in London from 16 to 25 of March 2014. The hosting Professor was Prof.Martin Laffin, Scholl of Business and Management.

Central questions-reflection

The aim of my STSM was expanding my dissertation, to include an extended comparative law research on the enforcement against local authorities. The English legal system provides a very interesting comparison, since there are numerous differences between the English and the continental law, I had examined so far. It produces a remarkable comparison and the conclusions drawn on local authorities’ liability, lead to conclusions about the differentiated legal treatment of different legal cultures throughout the EU, demonstrating in particular local authorities liability according to the English legal system, compared to the continental legal system of Greece.

Methodology

During my STSM mission, I was able to proceed to an extended comparative law research on the enforcement against local authorities throughout different legal systems in the EU. Particularly, I was able to study the case of England, noting the numerous differences between the English common law and the continental law I've examined so far (the Greek, German, French and Austrian case). This included literature review as well as writing. During my work at Queen Mary University of London, I had the opportunity to consult the libraries of London and exchange views on the research topic with experts. Overall, it can be said that this STSM was very valuable for my scientific work and for networking with scientists of the host institution and I am very grateful for this experience.

Conclusions:

The major conclusions that arose from my STSM came as follows:

In the United Kingdom, unlike those countries which have a separate system of administrative law and separate courts to administer such law, there is no separate system of administrative courts exercising a broad and exclusive jurisdiction in administrative matters. All disputes involving the Crown, local authorities and other public bodies come before the ordinary courts and are dealt with according to ordinary law. Thus, when acting illegally, public authorities are liable for their actions in precisely the same way as private individuals. As early as 1866 in the case *Mersey Docks and Harbor Board Trustees v Gibbs* the House of Lords held that statutory bodies are liable for the wrongful acts of their servants.

- Until 1947 the Crown was in a rather anomalous position, very largely due to historical reasons and the theory that the Crown could do no wrong and in part to the feudal principle that the king could not be sued in his own Courts. This immunity has now been abolished by the Crown Proceedings Act 1947, which put an end to such procedures as the Petition of Right, and made the Crown for most purposes liable in tort and for breach of contract in the same way as a private individual.

- In the last 20 years many specialized tribunals have been set up, and though the procedure in general follows that of the ordinary courts, although there is a noticeable relaxation in the Rules of Evidence.
- The general principle is that all public authorities, thus local authorities as well, are liable in damages for all torts such as negligence, nuisance, trespass etc committed by them, their servants or agents. This general principle was affirmed in the classic case of *Cooper v. Wandsworth Board of Works* (1863). Moreover, the local authority is vicariously liable for wrong-doing of its servants, committed within the scope of their authority. The servant is also liable and in theory both can be jointly sued. If the local authority is acting under statutory authority, it is liable to pay damages or compensation for injury caused if it can be reasonably avoided acting within a wide area of discretion. This means that while local authorities are not liable in tort for doing what Parliament has authorized them to do, they must exercise their powers reasonably, so as to avoid unnecessary encroachments on private right, otherwise they may be liable in negligence, nuisance or trespass. It also seems that a local authority can be made liable in damages for malicious abuse of power, deliberate maladministration and perhaps knowledge that it is acting without authority. Moreover, local authorities are under a duty to use reasonable care in carrying out their statutory duties, and failure to exercise such care which causes damage or injury to another, will make them liable in damages for the tort of negligence.
- Also, before 1954 the local authorities enjoyed an immunity more favorable than that enjoyed by private individuals, in the period within which an action could be brought against them. By the Law Reform (Limitations of Act etc) Act, actions in tort against local authorities and their servants or agents are now governed by the same limitations applicable to all actions in tort, namely three years for actions based on personal injury and six years in other cases. This is a radical difference with the Greek law where different statute of limitation against the State and local authorities still exists.
- Unlike in Greek law, in England there is no separate code of rules governing contracts made by public authorities. Until 1947 the Crown occupied a special

position, but now for most purposes the ordinary law of contract applies to contracts made by public authorities.

- Local authorities often have to pay damages or compensation where no tort or breach of contract has been committed, and where all the acts or omissions complained are lawful namely: compensation on compulsory purchase of land, compensation for "injurious affection", compensation for nuisance and disturbance, etc.
- So far as legal liability is concerned, until recently the King could not be sued in his courts, and no writ or execution would issue against him because there was no way of compelling submission to it. The courts though had found a way of evading this rule to a limited extent and although the Crown could not be made liable in contract, the "Petition of Rights" existed. The petition was tried by the ordinary law and if the plaintiff was successful, the Crown honored the judgment and voluntarily paid the damages. This procedure was not available in tort, and therefore the Crown could not be made liable for the torts of its servants and agents. The Crown was immune from liability: the King could, in theory of law, do no wrong.

This position had long been felt to be unsatisfactory and was completely altered by the Crown proceedings act 1947. Archaic forms of procedure advantageous to the Crown were abolished and the Crown was at last made liable in tort. Under the Crown Proceedings Act 1947 the Crown is made liable in tort to the same extent "*as if it were a private person of full age and capacity*". It has to be noted that public corporations are not considered to be servants or agents of the Crown and therefore cannot make the Crown liable. At the same time the Crown is liable in contract to the same extent as other public authorities.

- By Section 28 of the Crown Proceedings Act 1947, the courts could make an order for discovery of documents against the Crown and request the Crown to answer interrogatories on the grounds that disclosures or answers would not be injurious to the public interest (Crown privilege). Such a provision, limiting the right to judicial protection in favor of the public interest, is found diametrically different compared to the greek provisions about of "*equality of arms*".

- Due to the special position of the Crown, no execution or similar process may be issued for enforcing payment by the Crown of any money or costs. An injunction may not be granted against the Crown, but the court may in lieu make a declaratory order. Such a provision, limiting the right to enforce, due to the special position of the Crown, is diametrically different compared to the Greek provision about the enforcement against the State, even after the limitations in favor of public interest.
- In contrast execution can be issued against local authorities, such as in *Anns v Merton London Borough Council* (1978) where a writ was issued against the Borough Council, though such cases are not usual.

The major conclusion of my STSM is that even though Crown's liability does not differ to local authorities' liability, judgements can only be indirectly enforced against the Crown (due to its special position), when on the contrary judgements can be directly enforced against local authorities treated such as private individuals.

