

## Court proceedings against Andreas Georgiou, former President of ELSTAT (the Hellenic Statistical Authority)

### Background

Andreas Georgiou took up his position as President of ELSTAT in August 2010, having been appointed in accordance with the Hellenic Statistical Law (no. 3832 of 9 March 2010). ELSTAT itself had just been established, under the same law, as an independent statistical authority to replace the National Statistical Service of Greece (NSSG), which previously had responsibility for statistics as part of the Ministry of Finance. Prior to the establishment of ELSTAT, the compilation of official statistics in Greece had been the subject of several serious controversies regarding their accuracy and freedom from political influence. These issues principally related to the government debt and deficit figures reported to Eurostat, as part of the EU Excessive Deficit Procedure (EDP). The first major controversy had arisen in 2004 and, despite commitments by the Greek authorities, serious reservations continued to be placed by Eurostat on the annual debt and deficit figures produced for Greece. This was summed up in a Eurostat [report](#), published in January 2010, where it was shown clearly that the Greek statistical authorities had been continuously understating the public deficit and debt figures over a number of years. This report specifically names instances that Eurostat considered to be cases of deliberate misreporting of figures.

The Greek economy was experiencing severe problems in 2009 and from early 2010 the Greek government had no longer access to international capital markets and had to seek assistance from the EU and the IMF. The first Memorandum of Understanding between the Greek government, the European Commission, The European Central Bank, and the IMF, covering a bailout loan of €110 billion, was signed at the beginning of May 2010, approximately three months before Mr Georgiou took up his position.

The deficit figures for 2009 (which were prepared by the Ministry of Finance in 2009) were already problematic prior to his arrival, with the forecasts of the deficit to GDP ratio having to be increased from an initial 3.7% to a final 12.5%. In April 2010, the first statistical estimate of the actual outcome increased the ratio to 13.6% but still Eurostat had concerns with the methodology used and published the statistics with reservations. After taking office in August 2010, the new President of ELSTAT addressed the outstanding methodological issues as a matter of the highest priority and ultimately submitted a revised estimate of 15.4% to Eurostat in October 2010. Following a rigorous examination of the revised figures, and the methodology underpinning them, in November 2010 Eurostat published the statistics lifting all reservations on them – something it has continued to do in respect of all subsequent annual EDP submissions over the following nine years.

The new Board of ELSTAT (the “Collective Body”), which was also set up in the middle of 2010, objected to the figures being submitted to Eurostat without its prior approval. The President refuted this on the grounds that the Statistical Law stipulated that the production and dissemination of statistics must be undertaken in strict compliance with the European Statistics Code of Practice. Specifically, Indicator 1.4 of the Code states that the Head of the National Statistical Institute (in this case the President of ELSTAT) should have “*sole responsibility for deciding on statistical methods, standards and procedures, and on the content and timing of statistical releases*”. In October 2010, trust broke down completely

within the Board when an investigation by the Greek Police revealed that the Vice President of the Board had for almost three months been hacking the email account of the President and had made some confidential material available to other members of the Board. In these circumstances, the President refused to convene any further meetings of the Board. The Vice President of the Board was made to resign in early 2011 and the rest of the members of the Board (Collective Body) were removed by Parliament later in 2011, while the Board as an institution was ultimately abolished by law in 2012.

Public accusations, mainly articulated by some former members of the Board but also involving some senior political figures, were made against the ELSTAT President and two other senior ELSTAT managers claiming that they had conspired among themselves, and with international agencies (i.e. Eurostat and the IMF), to artificially inflate the public deficit figures in order to justify the bailout programme and the imposition of austerity measures on the Greek population. These accusations quickly resonated with wider political disputes and populist public sentiment against the bailout and austerity programmes. The latter appears to be based on the mistaken premise that the programmes were unnecessary and actually caused the crisis while the Greek governments and institutions prior to 2009 bore no responsibility for what subsequently ensued.

The extent of the public controversy that took hold in second half of 2011 was such that the Prosecutor of Economic Crimes launched an investigation in September 2011, which commenced the court proceedings that continue to this day almost seven years later. Mr Georgiou retired as President of ELSTAT at the beginning of August 2015, having completed his five-year term of office. However, the court cases are continuing against him, which he has been forced to face as a private citizen.

In the following paragraphs, a chronology of the court proceedings to-date is given while a background note on the European Statistics Code of Practice, including its incorporation into the Hellenic Statistical Law, is presented in the Annex

## **Chronology of Court Proceedings 2011-2018**

September 2011: The Prosecutor of Economic Crimes initiated an investigation to examine accusations that Andreas Georgiou and two senior ELSTAT managers conspired to artificially inflate the 2009 government deficit figures to the detriment of Greece.

January 2013: The Prosecutor of Economic Crimes concluded that charges should be pressed against Mr Georgiou and his two senior managers for allegedly inflating the 2009 deficit, thereby causing damage amounting to €171 billion to the Greek economy, and against Mr Georgiou for repeated violation of duty. An Investigating Judge was appointed to advance the process, including the taking of evidence and statements from witnesses and the defendants.

July 2013: The Investigating Judge concluded that the case should be “put to file”, in other words that it should be discontinued and all charges should be dropped. However, following many objections by political and other interest groups it was decided to re-open the case and a Prosecutor of the Appeals Court was assigned to conduct further investigations.

May 2014 – August 2014: The Prosecutor assigned to the case recommended to the Appeals Council in May 2014 that the case should be “put to file” and all charges be dropped. This again resulted in forceful public objections from political and other interest groups, who demanded that the Prosecutor’s recommendation be rejected and that the case be referred to open trial. The Council of the Appeals Court saw fit not to accept the recommendations of the Prosecutor and instead issued an Ordinance ordering a further major interrogation “... *to exhaust every possibility to investigate all aspects of the case on the basis of which a sufficiently founded judgement of the court could be formed*”.

May 2015 – July 2015: Following a further detailed investigation by a new Investigating Judge, a new Prosecutor assigned to the case recommended to the Council of the Appeals Court to “put the case to file” and drop all charges. This again resulted in public protestations. The Council of the Appeals Court issued an Ordinance acquitting Andreas Georgiou and his two co-accused of the criminal charge of conspiring to falsify the deficit figures and of causing damage of 171 billion euro to the Greek economy. However, the Ordinance decreed that Mr Georgiou should be put on trial for the misdemeanour charge of violation of duty on three counts, namely:

Not putting up the 2009 EDP figures for approval by the ELSTAT Board;

Not convening the Board after October 2010; and

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 in the IMF in November 2010.

September 2015: The Deputy Prosecutor of the Supreme Court issued an annulment against the Appeals Court Ordinance in respect of its dropping of the criminal charges of falsifying the deficit and causing damage to the Greek economy against Mr Georgiou and his co-accused. In summary, the reasons advanced by the Deputy Prosecutor for her decision were “*lack of specific and evidence-based reasoning and the erroneous implementation of substantive provisions of the criminal law*”.

November 2015 – August 2016: The Supreme Court examined the annulment proposal of the Deputy Prosecutor of the Supreme Court and eventually instructed the Council of the Appeals Court to re-examine its acquittal ordinance thus re-opening the entire proceedings to fresh investigations.

September 2016: The Chief Prosecutor of the Supreme Court (formerly the Deputy Prosecutor) ordered a new (parallel) preliminary criminal investigation, akin to the one initiated in September 2011, to examine media allegations that there was a conspiracy between EU, IMF and Greek officials to artificially inflate the 2009 government deficit figures.

November 2016: The new Prosecutor appointed by the Council of the Appeals Court to re-examine the case in the light of the Supreme Court decision recommended once again to the Appeals Court that the charges be dropped.

December 2016: The three misdemeanour charges of violation of duty against Mr Georgiou were unanimously rejected by three judges of the Court of First Instance at a trial on 6 December, with the concurring recommendation of the trial prosecutor.

December 2016: The decision of the Court of First Instance to acquit Mr Georgiou in respect of the misdemeanour charges was annulled by another prosecutor and the case was referred to the Appeals Court for re-trial at the higher court level.

May 2017: Once again the Council of the Appeals Court acquitted Andreas Georgiou, and his co-accused, of the criminal charges of falsifying the 2009 deficit figures and causing the Greek State damage amounting to 171 billion euro.

July 2017: For the second time, the Chief Prosecutor of the Supreme Court proposed to annul the acquittal decision of the Council of the Appeals Court and recommended that the case be re-examined again by the Council of the Appeals Court with a different composition.

May 2017–July 2017: An Appeals Court sat on three occasions to try the misdemeanour charges of violation of duty on three counts against Mr Georgiou. The Court (on 1 August) acquitted him on two counts, namely: for not convening the Board of ELSTAT after October 2010; and of not being fully and exclusively occupied at ELSTAT for the initial three months of his term of office. The Court, however, convicted him on the third count of not putting up the 2009 EDP figures for approval by the former ELSTAT Board and imposed a two-year suspended prison sentence.

May 2018: The Supreme Court accepted the proposed annulment by its Chief Prosecutor of the acquittal ordinance of the Council of the Appeals Court and referred the ordinance back to the Council for re-examination. This means that the Council of the Appeals Court, must now initiate a full review for a third time of the criminal charge against Mr Georgiou and his two former colleagues.

June 2018: In a separate development, the Supreme Court rejected Mr Georgiou's appeal against his conviction, and two-year suspended prison sentence, by the Appeals Court on the misdemeanour charge of not putting up the 2009 EDP figures for approval by the former ELSTAT Board. This decision by the Supreme Court rendered the conviction and prison sentence irreversible.

March 2019: For the third time, the Council of the Appeals Court recommended the acquittal of Andreas Georgiou, and his co-accused, on the criminal charges of falsifying the 2009 deficit figures and causing the Greek State damage amounting to over 200 billion euro (the latter figure was revised upwards as the proceedings continued).

April 2019: There was no dissenting response by the Chief Prosecutor of the Supreme Court, or the Court itself, to the latest recommendation for acquittal by the Council of the Appeals Court within the one month allowed for such a reaction. Accordingly, the case is formally deemed to be closed with the full acquittal of the defendants.

## **Summary of Position in November 2019**

After almost eight years of detailed deliberations, the very serious criminal charge against Mr Georgiou and two senior staff of ELSTAT of falsifying the 2009 deficit (and debt) figures and thereby causing Greece extraordinary damage was finally dismissed by the Greek courts at the highest level in April 2019. This outcome brings to an end the unprecedented and prolonged court proceedings where earlier acquittal decisions by investigating judges, prosecutors and the Council of the Appeals Court were overturned on six separate

occasions. The most serious reversals were the proposals by the Chief Prosecutor of the Supreme Court to annul on two separate occasions (September 2015 and July 2017) the acquittal orders issued by the Council of the Appeals Court. The final decision of the Courts exonerates Andreas Georgiou and his two colleagues of the very serious charges that were levelled against them and, by extension, confirms the professionalism and integrity with which they undertook their duties.

The status of the criminal investigation ordered by the Chief Prosecutor of the Supreme Court in September 2016 to examine media allegations that there was a conspiracy between EU, IMF and Greek officials to artificially inflate the 2009 government deficit figures is unknown. These allegations substantially overlapped, and were linked to, those that underpinned the dismissed criminal charge against Andreas Georgiou and his two colleagues.

On the 1<sup>st</sup> of August 2017 the Appeals Court acquitted Mr Georgiou on two of the three misdemeanour charges of violation of duty but convicted him on the third charge of not obtaining prior approval for the release of the 2009 EDP figures from the Board of ELSTAT. The court sentenced him to two years in prison, suspended for three years. The Supreme Court in its rejection in June 2018 of an appeal by Mr Georgiou has now rendered this conviction and sentence irreversible. On the basis of this confirmed verdict and sentence, it would appear that the fact that Mr Georgiou was acting in accordance with the European Statistics Code of Practice was not taken into account by either Court in reaching their decisions. Indeed, the Appeals Court, in its written verdict, put forward an analysis of the relevant indicator from the Code that is seriously at variance with the intention of the drafters of the Code and its interpretation throughout the EU. Moreover, in rejecting Mr Georgiou's request for annulment of the conviction, the Supreme Court simply asserted, without any comment, that the Appeals Court had correctly applied the law.

Mr Georgiou was also convicted in 2016 of defaming the former Director of National Accounts in NSSG/ELSTAT (2006-2010) when he issued a statement regarding his legal prosecution on the ELSTAT website in July 2014. In convicting Mr Georgiou of defamation, the court did not find that what he said was untrue but that he should not have said it! He was given a one-year prison sentence, suspended for two years. An appeal against this defamation conviction was rejected in March 2017. Mr Georgiou submitted a request to the Greek Supreme Court to annul the conviction on grounds that the lower courts did not apply the law properly. As a result, the Supreme Court annulled the conviction in December 2017 and ordered that a new trial be held. However, the statute of limitations on the alleged offence had expired and this criminal case against Mr Georgiou was closed. However, in August 2017 Mr Georgiou had also been found guilty on the same grounds in a civil lawsuit brought by the former Director of National Accounts, who is claiming damages for being defamed by the above noted statement. Mr Georgiou has also appealed this conviction and the trial, which was postponed twice (in October 2018 and May 2019), is now scheduled for January 2020. If his conviction is confirmed, Mr Georgiou will have to pay 10,000 euro in damages to the plaintiff. He will also have to publish under his name and at his own expense as "public rectification" an extensive text of the convicting court decision in the major Greek newspaper Kathimerini. The court ordered stiff financial penalties to accumulate daily for any delays in carrying out the above reparations.

## Annex

### European Statistics Code of Practice

As the European Union has developed and expanded over its 60-year existence so too has the need for a more comprehensive and integrated system of high quality and comparable European Statistics, which are required for the development and monitoring of EU common policies. This became very much apparent following the adoption of the Single Market in 1987 and the EURO in 2002.

In response to this, the production of European Statistics has moved from being largely based on harmonised statistics provided, ex post on a voluntary basis, by the national statistical services to a mandatory and integrated system which is underpinned by a wide range of sectoral and general EU statistical legislation.

As is the case in many countries, statistical legislation needs to be complemented by the adoption of instruments such as codes of good practice, which provide guidance on best practice in the production and dissemination of official statistics. The European Statistics Code of Practice fulfils this role at EU level and was promulgated for the first time in 2005 and slightly extended and amended in 2011 and 2017. The current version of the Code, which contains 16 Principles covering the institutional environment, the statistical production processes and the output of statistics, can be found at

<http://ec.europa.eu/eurostat/web/products-catalogues/-/KS-02-18-142>

Many of the indicators are laid down in national and EU statistical legislation. In the case of Greece, the Hellenic Statistical Law (no. 3832 of 9 March 2010) requires that all statistical agencies (including ELSTAT) “*implement the European Statistics Code of Practice, as in force from time to time*” (Article 1.5 of the Law).