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# Inhaltsverzeichnis

## *Abhandlungen*



## *Berichte*

### *Entwicklungen des Verfassungsrechts im Europäischen Raum*

### *I. Die Entwicklung des Verfassungsrechts in den deutschen Bundesländern*

# The 2001 Revision of the Greek Constitution and the Relevance of the Constitutional Phenomenon

by

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## I. The 2001 Revision of the Greek Constitution: Substantive and Procedural Scope of the Amendment Process

1. The newly amended Greek Constitution came into force on April 17, 2001. This was the first comprehensive revision of the Greek Constitution of 1975, adopted after the fall of the 1967–1974 dictatorship.[1] Previously, there had only been, in 1986, a partial amendment of the provisions concerning the constitutional status and responsibilities of the President of the Republic (articles 32, 35, 37, 39, 41–44, 47–48), which confirmed the parliamentary character of the regime by abolishing all provisions allowing, under certain terms and conditions, the Head of State to play a more active political role, close to that found in a semi-presidential regime.[2]
2. The 2001 amendment of the Greek Constitution *extends to all facets of the constitutional material*: constitutional rights; the prospect of European integration; new guarantees for the transparency that must govern the relations of the political power with influential holders of informal power (such as the mass media and the financial institutions) and with the judicial power; the operation of the parliamentary system; the responsibilities and role of Parliament; and the modernisation of the administrative system and local government.[3]
3. The formal amendment process started in 1995, on the initiative of both the parliamentary majority, and the official opposition, but it was interrupted by the early

[1] See, *A. Pantelis*, Les grands problémes de la nouvelle Constitution Hellénique, 1979, *N. Alivizatos*, Political Institutions in crisis (1922–1974), Aspects of the Greek experience, (in Greek), 1983.

[2] See, *Ev. Venizelos*, Lessons in Constitutional Law, (in Greek) 1991, page 525.

[3] See, *Ev. Venizelos*, The revision of the Constitution: A global plan for 21st century Greece, Consensual Revision II, (in Greek) 1998, id., The plan for the revision of the Constitution. The General Proposal of the majority to the 7th Revisionary Parliament (in Greek), 2000.

general elections of 1996. It was resumed by the 1996 Parliament, which drew up the required list of the provisions to be revised, and was continued after the general elections of 2000 by the new Parliament, which, acting as a "revisionary" Parliament, completed the procedure by formulating, passing and putting into force the amendments.

The revision list included 89 provisions – in some cases, entire articles, in others, crucial particular paragraphs; the current Constitution consists of a total of 120 articles, to which four articles were added (articles 5A, 9A, 100A, and 101A), while one article (article 39) was eliminated. Of the 89 provisions under amendment, 82 required an absolute majority, while the amendment of the remaining seven required a qualified majority (three fifths of the total number of members of Parliament), which meant in practice that the co-operation of the opposition was necessary. From the first list of 82 provisions, 78 were eventually amended (the remaining 4 were not amended on the initiative of the parliamentary majority), while from the second list of 7 provisions, only 3 were amended (the remaining 4 did not secure the necessary three-fifths majority).

Nevertheless, and with few exceptions, even the 78 provisions whose amendment required only an absolute parliamentary majority – which the ruling party possessed – secured a majority exceeding three fifths of the plenum; in most cases the amendments were voted by more than 270 of the 300 deputies. Only 6 provisions were amended by an absolute majority of less than three fifths.

4. Greek constitutional tradition strongly favours *rigorous constitutions*.[4] Article 110 of the Constitution determines the substantive and procedural scope of the amendment process. In *substantive terms*,[5] a hard core of provisions is established which cannot be revised at all; these include the provisions that determine the basis and form of the political regime as a presidential parliamentary democracy, along with a few others: article 2, para. 1 (respect and protection for human value), article 4, para. 1 (principle of equality), art. 4, para. 4 (only Greek citizens qualify for public office, apart from exceptions introduced by means of special laws, e.g. European citizens), art. 4, para. 7 (prohibition of the award and recognition of titles of nobility or of distinctions), art. 5, para. 1 (free development of personality), art. 5, para. 3 (personal freedom), art. 13, para. 1 (religious freedom) and art. 26 (separation of powers).
5. The *procedural scope*[6] of revision involves many levels: First, the authority for revising the constitution lies solely with Parliament. The government does not formally participate, while the amended provisions come into force through a vote of Parliament and are published by the Speaker of the House. The President of the Republic neither issues, nor publishes the amendments.

   Secondly, the process of revision requires the participation and co-operation of two consecutive Parliaments. Thus the electorate empowers the second Parliament to enact the revision.

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[4] See, *Ev. Venizelos*, The limits of the 1975 Constitution revision (in Greek), 1984, p. 19.
[5] See, *Ev. Venizelos*, op. cit., p. 47.
[6] See, *Ev. Venizelos*, op. cit., p. 203.

Thirdly, the amendment procedure is structured in two phases, one in each of the two consecutive Parliaments: The first phase consists of drawing up a catalogue of the provisions to be amended; the relevant decision requires a qualified majority of three fifths of the plenum. In the second phase, the substance and exact language of the provisions under amendment are determined and the amended provisions are voted into force by an absolute majority of the plenum. However, the required majorities may be reversed. If the first Parliament has decided by a majority of less than three fifths that a provision must be amended, the procedure continues and the second Parliament may proceed to its amendment, but only by a qualified majority of at least three fifths of the plenum.

6. The very rigorous character of the Greek constitution and the time-consuming amendment procedure prevent frequent amendments of individual provisions and prompt global, or rather comprehensive and systematic revisions. The 2001 revision is the first such revision in the last 26 years, and it coincides with the turn of the century and with a set of problems preoccupying all European (or rather western-oriented) countries: from the new standards of the digital era and the moral problems of biotechnology to the prospects of enhanced European integration.
The major issue, of course, is the relevance and function of the Constitution itself.[7] In other words, the question is whether a phenomenon that is a product of the 18th century can correspond to the needs of countries, societies, and various forms of regional and international co-operation of the 21st century. In this respect, the systematic and comprehensive revision of the Greek Constitution of 2001, i.e. the revision of the Constitution of a European Union member state, functions *de facto* as *a workshop testing the elements of constitutional theory and the endurance of the very notion of constitutionality.*

## II. The revision as a procedure of overall reassessment of the Constitution

1. Every effort at constitutional amendment must confront the fundamental questions of constitutional theory, i.e. the problems concerning the relations between Constitution and politics, between Constitution and history, and between the Constitution and the common law.[8]
I shall try to show in this article, from my own perspective, the manners in which the Greek constitutional legislator of the year 2001 realised, if he did, and confronted, to the degree he did confront, these major problems. I had the honour and responsibility of being reporter for the majority in the parliamentary debate on the amendment of the Constitution; since I was unable to divest myself of my scholarly status and conscience, I always felt doubly responsible, since no excuse would ever be allowed to me.

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[7] See, *Ev. Venizelos*, Lessons, op. cit., p. 25, *D. Tsatsos*, Constitutional Law, Vol. I, Theoretical Base (in Greek), 1994, p. 177, *A. Manitakis*, Constitutional Law, (in Greek) 1987, p. 51.

[8] See, *Ev. Venizelos*, The limits of the 1975 Constitution revision, op. cit., p. 30, also compare *X. Contiades*, The revision of the Constitution (in Greek), 2000, p. 61.

2. My first observations would thus be that *the revision constitutes de facto* a procedure for the overall reassessment of the constitution. Regardless of its exact scope, the initiation of the process of revision lays the entire subject-matter of the Constitution on the table, even though with the aforementioned exclusion of the hard core of provisions that cannot be amended.

   The fact that the entire subject matter of the Constitution is being reassessed shows that *the amendment process is a high-risk enterprise*. While it may be analysed in many ways, its risky character is its most important element, and it has to be borne in mind not only by the legislators engaged in amending the Constitution, but also by those who will interpret and apply the revised Constitution.

   The revision process is so perilous, because, while it occurs, *all guarantees ensuring the Constitution's rigorous character are temporarily removed,* that is to say, the very element to which the Constitution owes its existence, as an historical phenomenon and as a political and legal point of reference, is removed.[9] Indeed, in cases such as the 2001 revision the situation was even riskier, since, as already discussed, the 1996 parliament decided in 1998 to draw up a rather comprehensive catalogue of provisions that would be subject to amendment. Moreover, by deciding on the preparation of this catalogue by majorities which in all but seven cases exceeded the three-fifths threshold, it had provided limitless potential to the absolute majority of the next Parliament, which was eventually elected in April 2000 by securing a marginal electoral, albeit clear, parliamentary majority[10]. The situation could easily have taken a different turn, i.e. the will of the electorate and the actual composition of the 2000 Parliament could have been different.

   Considering the number and importance of the provisions the need for an amendment of which had been ascertained by the 1996 Parliament by qualified majority of more than 3/5 of the plenum, we can see that *everything was at stake in the revision:* all the guarantees for the rule of law and for a social state, the rules for interpreting the Constitution, the way all direct state bodies are constituted and organised, the regulation of the electoral system, the organisation of Administration and Local Government, the organisation of Justice, the allocation of jurisdiction, everything was subject to revision.[11]

   The Constitution's rigorous character, which is linked to its legal pre-eminence over common law, acts as a restraint on any majority, both from a historical and a legal aspect. It also acts as a major constitutional rule, which requires the formation of political consensus, i.e. wider majorities, for the achievement of long -term institutional settlements.[12]

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[9] See, *Ev. Venizelos,* Lessons, op. cit., p. 25.

[10] For the 2000 elections see *M. Mendrinos,* Electoral policy in the Greek political system: domestic and European parameters, 1974–2000 (in Greek), 2000, p. 131.

[11] For the extended scope of the 2001 constitutional revision see *Ev. Venizelos,* The plan for the revision op. cit., p. 17, 2000, id., Proposal of the majority speaker, in: Minutes of the sessions and report of the committee for the revision of the Constitution (in Greek) Athens, 2000, p. 609. See also *G. Kasimatis – K. Mavrias,* Interpretation of the Constitution (in Greek),1999, p. 25.

[12] See, *Ev. Venizelos,* The limits of the 1975 Constitution revision, op. cit., compare *X. Contiades,* The revision of the Constitution (in Greek), p. 67.

The obligation to form such a consensus bears proof of the ever crucial and active relevance of the constitutional phenomenon, more specifically, of a written and rigorous constitution. In this sense, the Constitution sometimes acts as a decelerator, and sometimes as an accelerator, of social and political developments, thus controlling their pace by subordinating them to the procedures of constitutional interpretation and implementation. These procedures refer to the competence of the various bodies, and more specifically the relation between political and judicial bodies, and, of course, the function of the Constitution as a text.[13]

3. It is very important, therefore, to start our approach to an interpretation of the amendment effort accomplished by pointing out that the amendment process consisted of a scrupulous and very careful overall reassessment of the prevailing Constitution. And, particularly, of the prevailing Constitution in its fullest sense, not just the text of the Constitution that is currently in force.

   Because *what the Greek constitutional legislator reassessed in both the 1996 and the 2000 Parliaments, was not the constitutional text, but the Constitution of the country in its material sense*, as it results through the interpretation and implementation of the Constitution, through the interaction of the latter with the common law, the case-law, the administrative practice, legal doctrine, and with public opinion, which affects interpretation by influencing the perception of the Constitution by all state bodies competent to interpret and to implement it, i.e. Parliament, the civil service, judicial bodies, and independent authorities.[14]

   The subject, therefore, of the Greek amendment effort of 2001 was the entire constitutional material, meaning the country's entire Constitution in its material sense. Because, prior to amending the prevailing Constitution, the competent legislator approached it with full awareness of the context in which it operates and from which it draws its full regulatory content. It is a complex context, which was explicitly and implicitly recorded during the preparatory debates for the 2001 constitutional revision.[15] This is why the amendment process developed into a demanding, concrete and, in many occasions, very heated debate between, on the one hand,

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[13] For the problem concerning the interpretation of the Constitution see *D. Tsatsos*, (editor), The interpretation of the Constitution, (in Greek), 1995, *Ev. Venizelos*, The interpretation of the Constitution and the limits of judicial control on the unconstitutionality of laws (in Greek), 1994, *A. Manitakis*, Interpretation of the Constitution and operation of the regime, (in Greek) 1996, *K. Mavrias*, Constitutional Law I, (in Greek), 2000, p. 206, *P. Spyropoulos*, The interpretation of the Constitution, 1999. From international literature, see e.g. *E. W. Böckenförde*, Die Methoden der Verfassungsinterpretation in: of same, Staat, Verfassung, Demokratie, 1991, p. 53 et seq., *P. Häberle*, Verfassungsinterpretation als öffentlicher Prozess- Ein Pluralismus Konzept, in: of same, Die Verfassung des Pluralismus, 1978, p. 122 et seq. , *M. Rosenfeld*, Just Interpretations. Law Between Ethics and Politics, 1998, *G. Zagrebelsky*, Il diritto mite, 1992, p. 11 et seq.

[14] For the concept of the "constitution in its material sense" ("costituzione in senso materiale") see *T. Martines*, Diritto Costituzionale, 2000[10] (revised edition, edited by *G. Silvestri*).

[15] For the context, e.g. of article 24 of the Constitution (overall change of environmental perceptions internationally and domestically, which led to the justification of the environmental protection principle as one of the Constitution's fundamental principles; empirical and fragmentary handling of environmental issues by the common legislator; judicial activism, which had led to an advanced protection of the overall environmental balance that in many cases had, nevertheless, gradually been converted to substitution by the judiciary in relation to the responsibilities of the common legislator) see *Ev. Venizelos*, Proposal of the Majority speaker op. cit., p. 620, and X. Contiades, Constitutional Revision and Enviromental protection (in Greek), Revue Hellenique des Droits de l'Homme, 10, 2001, p. 431.

the constituent legislator amending the Constitution, and on the other hand the common legislator, the judiciary, the electorate and civil society.[16]

## III. The political character of the revision

1. And so we come to the second major point. The Greek revision of 2001 is first and foremost a *political initiative, a political event.* To be more precise, it comprises a *large set* of crucial political decisions.
   First of all, it is historically and theoretically obvious that everything that has to do with the Constitution, and everything that becomes the subject of a constitutional arrangement, acquires the greatest possible political importance due to this reason only. Even the most indifferent, the most technical, the most innocent, the most neutral constitutional arrangement is politically crucial, just because it is a constitutional arrangement. This is even more the case, whenever the constitutional legislator –whether the primary constituent one or the secondary, amending legislator, with all the procedural and substantive constraints under which he operates, is faced with great dilemmas.
   All major political and institutional fronts[17] which are present, not only in Greece, but in all other European countries, had to be dealt with in a specific manner, i.e. the amending legislator had to affect various interests and concerns, to converse with the political, social, and communicative balances of power, and to provide answers:
   a. In the first place, the legislator had to answer the major question *whether the rule of law would be further protected and reinforced*, in view of the fact that, both internationally and in Greece, the overall climate is in 2001 totally different from that obtaining in 1974–1975 period, when the memories from the dictatorship were fresh and acted as a catalyst in favour of the rule of law.
   b. The legislator also had to answer the question of whether, within an international climate of low esteem for and degradation of the welfare state on the pretext of its fiscal crisis, the guarantees of the welfare state would be reinforced and specified and the principle of a socially equitable rule of law would be explicitly introduced in the text of the Constitution.
   c. An answer had to be given as to how the *function of democracy* is perceived in 2000–2001, i.e., whether in the eyes of the constituent legislator of the year 2001, democracy is identified with the formal application of the majority principle, or its meaning extends beyond majority, and the *principle of consensus* has to be added to the democratic principle.
   d. The legislator had to provide answers to major questions concerning the *terms of the political contest, i.e.,* questions concerning the electoral system, the use of television during election periods, etc.

[16] See, *Ev. Venizelos,* The relevance of the constitutional phenomenon and Greek revisionary effort of 2001, in: *D. Tsatsos – Ev. Venizelos – X. Contiades* (editors.), The new Constitution (in Greek), p. 37.

[17] See, *Ev. Venizelos,* The revision,op.cit., page 33, id., The 1975/1986/2001, Constitution (in Greek), 2001 p. 5.

e. The legislator had to provide an answer to the question on whether *the Parliament still has a role in our times*, and to specify this role. In particular, he had to address the issue whether political neutrality, or better the neutralisation of great areas of public life (e.g. through the proliferation of independent authorities), is the appropriate reply to the credibility crisis of political life.

The list is endless, and it brings political power, in its extreme legal dimension, when acting as a constitutional legislator, face to face with all other formal forms of power, such as the judicial power, and all informal forms of power: financial power, the power of the Media, the power of knowledge.

2. During the course of the amendment process, the political objective was not merely to seek the necessary formal majorities, but to achieve the widest possible consensus. *Political consensus in the amendment process is not just an element of the rigorous character of the Constitution*, since the Constitution itself provides for qualified majorities, and therefore, a high degree of consensus for its revision. It is also a constitutional-political method for dealing with the entire subject matter of the revision, regardless of the exact qualified majority required. It was not accidental that – as already mentioned – very few provisions did not secure a majority of more than three-fifths in the Parliament, despite the fact that in all but seven cases an absolute majority of the plenum of the Parliament would suffice.
3. Nor is it an accident that the amendment process brought forth *its own parliamentary and collective character.* The Greek Parliament of 1996, and the Parliament of 2000, in particular, acted, more than any other Parliament of the post-dictatorship era, as an Assembly not only of parties and parliamentary factions but also, and mainly, an Assembly of deputies. As a result, it was the Parliament itself that shaped the text of the amended Constitution. Its role was thereby significantly enhanced. This is closely related to the fact that, especially during the final stage of the amendment process, the revision became the subject of an extended and heated social debate. The debate, of course, was fragmentary and focused on particular topics, since each non-government organisation and each pressure group has its own sensibilities and perspectives. Even in the modern representative democracy of the digital era, there is only one body that is entitled and able to put together separate items, to pursue the general interest in its supreme interpretation, namely, in a country's Constitution. This body is, of course, the Parliament when acting to revise the Constitution, with the explicit, albeit indirect, mandate of the electorate.
4. It follows from all this that the search for consensus was not an act of generosity or a stratagem of the parliamentary majority. It reflected the subordination to the main rule of the amendment process, and was, of course, the only method compatible with the modern version of representative democracy. For this reason, it is no accident that, as we will see, one of the basic products of the amendment process is the elevation of the consensus principle as a fundamental principle of the Constitution, added to the democratic principle.
5. This is of particular importance for the *renewal of the political legitimacy of the 1975–1986–2001 Greek Constitution.*[18] The fact that the legislator amending the Con-

[18] It should be reminded that in the 5th Revisionary Parliament the opposition parties abstained from voting the entire Constitution during the June 7th , 1975 session, and that in the 6th Revisionary Parliament

stitution has the procedural discretion and the political option to reassess the entire subject matter of the Constitution, and uses such discretion in many ways, in conjunction with the fact that consensus became a pivotal procedural and political option, led, for the first time, I believe, in Greek constitutional and political history, to such a comprehensive and explicit renewal, and broadening, of the political legitimacy of the Constitution in force. Greece has never had before a Constitution enjoying such a wide and solid base of political acceptance and legitimacy. Communication between the Constitution and the nation's social and political forces had never been so fully restored. This, I believe, is the main element of the 2001 revision.

The broadening and reinforcement of the overall political legitimisation of the Constitution, including its amended and preserved provisions, is the first element of the historical reserve of the 2001 Constitution and the first rule for interpreting the new Greek constitution.

## IV. The legal character of the amendment effort

1. Coming now to my third observation, concerning the legal character of the amendment effort, I wish to stress that, while the amendment effort is a great political initiative, it is also the *greatest legal enterprise that can be undertaken in the context of a legal order.* It must therefore be perceived, not only in terms of the Constitution in force, but in the broader context of the legal order. A legal order, in fact, which is in constant interaction both with international law, recognising the latter's increased formal validity in many respects, and with the European Community legal order, by reference to which it determines its scope of application.
2. We must consider, therefore, the manner in which the legal aspect of the amendment process was handled by the Greek constitutional legislator, that is to say, how the process was incorporated in the overall context of the legal order. This is worth considering, because the legal supremacy of the Constitution, which emanates from its increased formal validity within its field of enforcement, is associated with a fact that, although self-evident, has to be stressed: It is associated with the *priority and autonomy of the legal concepts used by the constituent legislator.*[19]

A Constitution is not interpreted according to the law. Accordingly, the legal concepts, and especially the indefinite concepts used by the constituent legislator, act as predominant and autonomous rules of interpretation. Most rules concerning the allocation of final competence for the interpretation and implementation of the Constitution are accommodated and based within these indefinite concepts. Nothing is immaterial. The degree of vagueness of these concepts answers in practice the question as to who has been assigned final authority by the Constitution; whether the most competent interpretation and implementation lies with the Parliament, or with the Courts,

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the leading opposition party (New Democracy) walked out of the final ballot for the 1986 constitutional revision proposal.

[19] See *Ev. Venizelos,* Lessons op. cit., p. 211.

given that the provisions that are subject to judicial control, as well as those that are not, retain their constitutional character.

It is important to consider whether the Greek constitutional legislator of the year 2001 exhibited *interpretative foresight*, whether, that is, the legislator was aware of the problems of interpretation that may arise from the various political or technical/legal options. In my view, looking at the results of the revision in retrospect, the 7th Revisionary Greek Parliament exhibited a high degree of interpretative foresight: It was very well aware that any reference to interpretation methods is useless where there is a decision-making body, which is not subject to further judgement. Therefore, it had to shift from this such useless methodological considerations to certain rules of interpretation.[20] These rules of interpretation are found, in the first place, in the existing stock of the Constitution's historical interpretation. The legislative history of the 2001 amended Constitution includes a multitude of explicit interpretative references, a fact that indicates the high degree of interpretative awareness exhibited by the 2000 Parliament.

Thus, the 7th Revisionary Greek Parliament created a reserve of historical interpretation of the Constitution, which consists of the following principal elements:

a. *Explicit and formal statements concerning the interpretation of the Constitution*, adopted in Parliament either unanimously or by a broad consensus. For example, the interpreter of the new article 86 of the Constitution, on the criminal liability of ministers, cannot either interpret it, or implement it, without consulting the minutes of Parliament and without locating the explicit interpretative statements made by consensus of the majority and the official opposition. Entire sections, entire paragraphs of the Revision Committee's proposal were deleted in the Plenum, to ensure that the overall constitutional text would be simple, elliptical and economical; these were recorded in the minutes as explicit interpretative statements, since they were considered as self-evident and widely acceptable.
b. The second element is the *explicit rejection, explicit withholding and explicit abandonment of proposals concerning the amendment of constitutional provisions*. The fact that article 3, on the relations of the Greek State and the Greek Orthodox Church with the Ecumenical Patriarchate, was not revised, sparked a debate that constitutes in retrospect the material for the interpretation of this article.[21]
c. The same stands a fortiori for the *language of the Revision*. First and foremost, the Constitution is a text. From an historical point of view, the constitutional phenomenon is integrally connected to the existence of a text, i.e. to linguistic arrangements that simultaneously act as political, historical and legal arrangements.[22] Therefore, the language of the revision had to comply with the

[20] Compare *Ev. Venizelos,* The legal limitation of the judge's political judgements in: The interpretation of the constitution (in Greek) op. cit., pages 135–136: "The problem concerning the boundaries of judicial interpretation and implementation of the Constitution is first and foremost a problem of interpretation rules, and secondary a problem of interpretation method and theoretical backround and discretion of the judge."

[21] See *Ev. Venizelos*, The relations between the State and the Church as constitutionally arranged relations (in Greek), Thessaloniki, 2000. See also id., Parliament minutes, Session 89, Wednesday, January 17th 2001, p. 3769.

[22] See *Ev. Venizelos*, Lessons op. cit., p. 25.

context of the amendment process. There were constraints related to the language of the existing Constitution and the language of the common, international and European Law. For this reason, technical terms and concepts of legal and scientific origin, are used with great caution: e.g. the principle of proportionality of article 25, paragraph one, is used in the light of the theoretical and legal debate that has taken place until today.[23] The constitutional legislator's choice of such terms as the "public sector" or the "wider public sector" or "enterprises, whose management is appointed directly, or indirectly, by the state, by means of an administrative act or as a shareholder" is of great importance, since it constitutes in fact a frame of reference for the systematic interpretation of the Constitution.[24]

3. The very text of the Constitution, therefore, that is to say, *the palimpsest that contains the legal mapping of the amended provisions*, is the field against which the parliamentary consensus for constitutional revision, i.e. the constitutional decision for the revision of the Charter, was reached. As a result, the *grammatical or literal interpretation of the Constitution has an overwhelming advantage*, which is overcome only whenever the stock of historical interpretation is perfectly clear. In the Greek Constitution of 2001, this overwhelming advantage of the grammatical interpretation assumes three specific aspects:
   First, constitutional concepts are defined. I have already mentioned the examples of the principle of proportionality and the concept of the public sector.
   Second, there are new provisions, which intersect interpretative disputes; i.e. they intervene in an open debate on interpretation. The provision of article 13 para. 3, concerning the total prohibition of the use of illegally obtained evidence, provides an answer to such a question. The wording of paragraph 4 of article 6, concerning the prohibition of abuses of the upper limits of the confinement period, provides an answer to such a question of interpretation.
   Third, there are new interpretative statements: for example, one under article 4 concerning conscientious objectors, another under article 24 concerning the concept of the forest and forest areas, yet another under article 101 concerning islands.
   These elements, namely the definitions of constitutional concepts, the intersections of the debate on interpretation with *ad hoc* provisions and the new interpretative statements that are equivalent to constitutional rules, are the three pillars of the overwhelming predominance of grammatical interpretation.
4. In my opinion, though, the most crucial fact is that the 2001 Constitution introduces a multitude of *new rules of interpretation*. There is no reason to start discussing methods of interpretation when we are bound to comply with rules of interpretation. Such rules are, first and foremost, the general principles that govern the Constitution. Nevertheless, there are also more specific interpretative provisions, such as article 14 para. 9 concerning the legal status of the media, where abuse is pro-

[23] See *Ev. Venizelos* The general interest and the limitations of constitutional rights (in Greek), 1990, p. 205, *K. Chrysogonos*, Individual and social rights (in Greek) 1998, p. 87., *Ch. Anthopoulos*, Aspects of constitutional democracy in the example of article 25 § 1 of the Constitution, in: *D. Tsatsos-Ev. Venizelos-X. Contiades* (editors.), The new Constitution (in Greek), 2000, p. 170.

[24] Compare *Ev. Venizelos*, Minutes of the sessions and report of the Committee for the revision of the Constitution, (in Greek), 2000, p. 10.

hibited by an explicit interpretative provision. I should also mention, article 25 para. 1, as a whole, each section of which constitutes a rule of interpretation, concerning such matters as, the unhindered and effective exercise of constitutional rights; the applicability of constitutional rights, in the appropriate cases, with respect to relations between private persons; the principle of proportionality; the reservation in favour of the law; and the concept of limiting restrictions.[25] And, of course, the same may be said about the capacity to impose constraints on electoral campaigns, by prohibiting high-cost forms of electioneering (article 29, para. 2), the execution of court judgements against the State (article 94, para. 4) etc.

5. The issue of *the relation between the Constitution and common law* is posed in the same manner. The overall economy of the constitutional text is primarily a political and historical matter, not one of legal technique. Because the answer to the question concerning the overall economy of the Charter depends on the degree of distrust towards the common legislator, i.e. the majority at any given time, the degree of distrust towards the judicial power, towards the power of the media, and towards concentrated financial power.

*Distrust is a synonym of the Constitution. Historically, the Constitution is the offspring of distrust.* Distrust means that, whenever explicit answers are required due to political, historic, coincidental or legal reasons, these answers are provided by the Constitution itself. However, complete answers can never be provided. There is always room for various interpretations of the Constitution, and final responsibility always lies with some organised body. Very often final responsibility lies with the judge. Therefore, the Constitution must also embody distrust towards the judge.[26]

## V. The revision of the Greek Constitution and the constitutional phenomenon at the dawn of the 21st century

1. The Constitution resulting from the 2001 revision had to be able to provide an answer to a major question: Can the constitutional phenomenon, a 17th–18th century phenomenon, which fully developed all its features during the 18th century, correspond to the demands and the legal order of post-industrial society? Can one word, the word "Constitution," comprise the history, politics, institutions, society, and economics of three centuries and how can this be achieved? Is there room in contemporary post-modern society for the Constitution's function?[27]

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[25] Compare the arguments of *Ch. Anthopoulos*, Aspects of constitutional democracy, op. cit., p. 176.

[26] Some Greek authors, recently affected by the perceptions of the American constitutional tradition, seem to believe that the judge is the "natural" keeper of fundamental rights, forgetting that judicial power is first and foremost a form of state power. Therefore, the Constitution must protect the citizen against any constitutional misinterpretation by the judge. For the fact that the stereotype of the menacing and strict legislator and the ever-protective judge is a simplification that does not correspond to the Greek constitutional reality see *Ev. Venizelos*, The legal limitation of the judges' political decisions, op. cit, p. 128.

[27] For this debate see *G. Zagrebelsky, P.P. Portinaro, J. Luther* (editors.) Il futuro della costituzione, Torino, 1996. See also *E. Denninger*, Menschenrechte und Grundgesetz, 1994 as well as same author, "Security, Diversity, Solidarity" Instead of "Freedom, Equality, Fraternity", in: Constellations,7, issue 4, 2000, p. 507. *Denninger's* views are commented on by *J. Habermas*, Remarks on *Erhard Denninger's* Triad of Diver-

This question also has a much more concrete aspect. The revision of the Greek Constitution, during its last stage, took place at the same time as the Intergovernmental Conference that led to the Nice Treaty, and the sessions of the Convention charged with drawing up the Charter of Fundamental Rights of the European Union. Therefore, all these processes had to be moving on a parallel basis and their objectives and results had to be compared.[28]

The question, therefore, is the following: did the Greek revision of 2001 respect and reinforce, or did it undermine and downgrade, the main functions of the Constitution?

2. In historical order, the main functions of the Constitution are the following: an organising function, a guaranteeing function, a symbolic function and an ideological function, and nowadays, I would add, a function of contributing to the prospect of European integration.[29]

   I shall try to show in what follows, through brief references to the principles governing the 2001 revision, that this revision reinforced all functions of the Constitution. Besides, the entire discussion about the functions of the Constitution raises questions concerning the nature and functions of the state, since the essential subject matter of the Constitution, i.e. what may become a subject of the Constitution and how, always refers to the question about the nature and functions of the modern state.[30]

   In my view, the Greek revision of 2001, which resulted in the first comprehensively amended Constitution of a European Union member state in the new century, brings forth *the capacity of the Constitution to incorporate institutional innovations and, therefore, to adapt itself to the conditions of our times.*

## VI. The comparatively interesting novelties of the 2001 constitutional revision

1. If we focus on the amendments of the 2001 Constitution that may be of particular interest from the perspective of comparative constitutional law, then we can draw up a rather extensive list of innovations.[31]
2. In the field of *constitutional rights* such innovations would include:
   a. The explicit provision on the competence of the common legislator to provide for alternative (unarmed or social) service for individuals with substantiated *conscientious objections* concerning the assumption of armed, or in general military duties (article 4 –interpretative statement).
   b. The explicit introduction of a specific constitutional right for the protection of the *genetic identity* of each individual, assigning at the same time to the common

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sity, Security, Solidarity, in: Constellations, 7, issue 4, p. 522. and *M. Rosenefeld,* American Constitutionalism confronts *Denninger's* new constitutional paradigm, in: Constellations, 7, issue 4, p. 529.

[28] More specifically, for the Nice Charter see *G. Papadimitriou,* The Fundamental Rights Charter: A landmark in the institutional maturity of the European Union (in Greek), 2001.

[29] See *Ev. Venizelos,* Proposal of the majority speaker, op. cit., p. 624.

[30] Compare *Ev. Venizelos,* Lessons, op. cit., p. 34.

[31] See *Ev. Venizelos,* Proposal of the majority speaker, op. cit., p. 611.

legislator the competence to regulate questions of *biomedical intervention* (article 5 para. 5).

c. The enactment of a new right of participation *in the information society*, with a simultaneous obligation of the state to facilitate access of all individuals to electronically transmitted information (article 5A).
d. The explicit and absolute prohibition of the *death penalty*, with the sole exception of crimes that are committed during wartime, are war-related and are provided for by the Military Penal Code (article 7, para. 3).
e. The introduction of an explicit and specific right for the protection of *personal data* and the constitutional provision concerning the creation of a corresponding independent authority (article 9A).
f. The establishment of the *right to reply* and of the corresponding obligation of the media to proceed to rectification, or at least to publish the reply to a libellous or insulting publication or broadcast (article 14, para. 5).
g. The explicit and absolute constitutional *prohibition of the use of illegally obtained evidence*, i.e. evidence obtained through violation of the constitutional provisions protecting privacy, personal data and the confidentiality of communications.
h. The introduction in the Constitution of a specific right of *individuals with physical disabilities* to autonomy, as well as of their right to participate in the social, professional, economic, cultural and political life (article 21 para. 6).
i. The explicit provision that allows the common legislator to take *positive measures* in favour of women, as well as any other group of individuals living under conditions of real inequality, in order to secure the actual implementation of the principle of equality (article 116, para. 3).
j. The *new general principles*, new rules of interpretation and new "horizontal" guaranteeing clauses that govern all constitutional rights, are even more important. The main such principles are:
   - the explicit extension of constitutional rights to cover, in appropriate cases, *relations between private persons* (article 25, para. 1 section c), that is to say, the explicit introduction of the principle concerning the *effect of constitutional rights towards third parties*.
   - the introduction of the principle of *unhindered and effective exercise of all constitutional rights*, which constitutes a corresponding obligation of all organs of the State (article 25, para. 1, section b).
   - the straightforward and explicit establishment of the *principle of proportionality*, which acts as a constraint on restrictions of constitutional rights (article 25, para. 1, section d).

3. In the field of the *organisation and operation of the regime*, as well as of the guarantees governing the relations between the political power and vital pockets of financial and communication power, the interesting points are the following:
   a. The new, specific constitutional status of the *independent authorities*. Five independent authorities (the National Radio and Television Council, the National Commission for the Protection of the Confidentiality of Communication, the Data Protection Agency, the agency that supervises civil service recruitment and the Ombudsman) are explicitly established. Their members are appointed

by the Conference of the Presidents of Parliament by a qualified majority of 4/5, while their special relationship with the Parliament and the parliamentary control process is guaranteed by the Constitution (article 101A).

b. The new special *constitutional status of the media*, governed by the principle of transparency; the prohibition of the accumulation of more than one communication media of the same, or of different, types, and at any rate of more than one electronic media of the same type; the establishment of the incompatibility between the status of owner, shareholder, executive etc. of communication media and the corresponding status in enterprises engaging in public works or public procurement involving the State and the broad public sector. These restrictions cover any intermediaries as well, while mechanisms are also established for the detection of any abuse (article 14, para. 9).
   Especially in the case of *radio and television*, the special regime of direct state control assumes a number of forms: first, the supervision exercised by the National Radio-Television Council; secondly, the need for licenses for broadcasting a radio or television program; thirdly, the programmatic obligation of broadcasters etc. to respect quality, childhood etc.; and fourth the specific obligation to secure free access of political parties during election periods as well as the coverage of the Parliament's proceedings (article 15, para. 2).
c. The introduction of the *principle of consensus*, in the form of qualified majorities, or special time constraints, concerning the change of the electoral system and the regulation of other relevant issues, such as the electoral rights of Greeks abroad. Any change in the *electoral system* is applied in the second election after it is enacted, unless it is passed by a qualified majority of two-thirds of the plenum of Parliament. The same qualified majority is required for the passing of the law regulating all issues related to the electoral rights of Greeks abroad (articles 54, para. 1 and 51 para. 4).
d. The Constitution stipulates the general rule of *professional incompatibility of the deputies*, with exceptions to be provided for by law (article 57, para 1).
e. The *Financial and Social Committee*, as a forum for social dialogue, and the National *External Affairs Council*, are established as constitutional bodies (article 82, paras 3 and 4).
f. The role of *parliamentary committees* is reinforced, as regards both the legislative process and parliamentary control. Thus, two legislative processes are formed. A "major" process, according to which draft laws and proposals are discussed and voted in principle, by article and in total by the Plenum (or the summer sessions of Parliament), after being scrutinised by the competent parliamentary committee; and a "minor" process, according to which, the competent committee discusses, and votes for, the draft laws or proposals, and then the Plenum, in one session, briefly discusses and passes the draft law or proposal in principle, by article and then in total (articles 68–78).
g. The role of Parliament in the *elaboration of the budget* is reinforced, since the draft budget, prior to its final formulation and presentation, is discussed by the competent parliamentary committee, which makes observations to be considered by the Ministry of Finance (article 79, par. 3).

4. In the field of *judicial power*, the main novelties of the revision are the following:

a. A *four-year term of office is established for the presidents of the High Courts*, the Attorney General of the Supreme Court, the General Commissioner of the State Audit Council and the General Commissioner of the administrative courts. The cabinet retains the competence to appoint the presidents and vice-presidents of the High Courts (Supreme Court, Council of State, State Audit Council), of the Attorney General of the Supreme Court and the General Commissioners, by selecting from among the members of the relevant bodies. The members of judicial bodies, however, are promoted from the introductory rank to the rank of a member of a High Court member by decision of the relevant judicial council, i.e. within the context of the full self-government of the judiciary (article 90, para. 5).
b. The system of the *diffuse control of the constitutionality of laws* is further rationalised. Whenever the individual sections of the three High Courts have to decide on the constitutionality of a specific legal provision, they must refer the issue to the Plenum. This introduces the obligation of all three High Courts to reach a final decision on the constitutionality of provisions of formal laws only by the Plenum (article 100 para. 5).
c. *Common courts are prohibited from judging cases related to the earnings or pensions of judicial functionaries*. These cases are forwarded to a special court (articles 88 para. 2, and 99).

5. In the field of *public administration* and local government, the following are of particular importance:
   a. The constitutional rule, according to which all *recruitment in the public and the wider public sector is effected in a transparent manner*, under the supervision of an independent authority (article 103, para. 7), while temporary personnel cannot be made permanent by special law (article 103, para. 8).
   b. There is an obligation for the legislator and the public administration to take into consideration the special conditions prevailing in *islands* (article 101 –interpretative statement).
   c. The financial self-sufficiency of local governments, and especially their competence to impose and collect *local taxes* is reinforced (article 102, para. 5).
6. Finally, in the crucial field of *European integration* there are three important new items:
   a. The interpretative statement of article 28, according to which this constitutional provision provides the *constitutional support for the participation of Greece in the process of European integration*. This new provision, with its explicit mention of European integration, provides a clear basis for the participation of Greece in European processes, regardless of the problems posed by the interpretation and implementation of the three individual paragraphs of article 28, each one of which requires a different parliamentary majority (simple, absolute, three-fifths).
   b. The interpretative statement to article 80, which, in a classic formulation, provides that the law determines all issues related to the minting of coins or issuance of notes, now makes explicitly reference to the participation of Greece in the *Economic and Monetary Union and the Euro-zone*.
   c. The new paragraph 8 of article 70, provides that *the Parliament is to be kept in-*

*formed of legislative processes within the European Union, especially on the Council's level*, in the context of the relevant provisions of protocol 132 of the Maastricht Treaty.

7. It is my belief that this long list demonstrates the degree of the doctrinal and political importance of the revised Greek Constitution in the beginning of the 21st century.

## VII. The revision of the Constitution as the implementation of a single constitutional policy

1. The Greek legislator that effected the constitutional revision of the year 2001, had to provide an answer to a final question, repeatedly posed during the process of revision, namely whether the 2001 revision constitutes either an *ex ante*, or an *ex post*, implementation of a single constitutional policy.
   My answer is that the 2001 Constitutional revision, not only *ex ante*, but also most importantly *ex post* implements a single constitutional policy. This is illustrated by the methodical and deliberate character of the choices made by the amending Parliament, but is shown in particular through the functions of the amendment process.
   Which are the functions performed by an amendment process? In my opinion, this process performs a *recapitulative* function, since, as discussed above, it proceeds to perform an overall reassessment, and, as far as possible, a re-legitimisation of the country's Constitution. It performs a *confirmatory* function, either through the newly amended provisions or through institutional changes already made by the case-law which are now elevated to constitutional level. And, of course, it performs an *amending* function, whenever real changes of the constitutional material occur. Through these three amending functions, the recapitulative, the confirmatory and the amending, the five principal political-legal choices of the 2001 Revision are brought forth.
2. The first of these principal political-legal choices is the establishment of *the principle of the safety of the individual*. This signifies a strong reinforcement of social equity and of the guarantees of the Constitution. This is effected –as discussed above– through the incorporation of many regulatory novelties in the Greek Constitution.
3. The second principle, is *the principle of citizen participation*, both social and political. Article 10, para. 3 on the right to petition and the relation between citizens and the administration, article 21, para. 6 on the right of individuals with physical disabilities to participate in the social, economic, and political life, the right of collective independence of civil servants, the new establishment of the electoral rights of Greeks abroad, are very important innovations that increase the potential for political and social participation.
4. The third principle is *the principle of transparency*. It involves new institutional guarantees both in relation to the protection of constitutional rights, and with respect to the functioning of the regime. The transparency principle is set between the chapter on constitutional rights and the organisational part of the Constitution, and it links the two main functions of the Constitution, the organisational and the

guaranteeing, in the context of a renewed basis for legitimisation. Of course, I am referring to the entire article 14, on the constitutional status of the media, article 29, para. 2 on the the finances of the parties and politicians, article 98 on the responsibilities of the State Audit Council, the new parliamentary incompatibilities of article 57, and many other examples.

5. The fourth principle is *the principle of consensus*, which as discussed above, is added to the democratic principle and lends new dimensions to the formation of the institutional framework for political confrontation. The introduction of qualified majorities in the revised Greek Constitution is an institutional innovation of great importance. The fact that the direct amendment of the electoral law requires a majority of three-fifths of all deputies, is a very important element of political and institutional culture. The fact that the passing of the law specifying the persons entitled to vote as overseas Greeks requires also a 2/3 majority is an equally important guarantee, since it is a rule concerning the formation of the electorate itself. The methods for appointing the members of the independent authorities, as well as the very institution of independent authorities, are most important elements of the functioning of the regime, notwithstanding the huge doctrinal and political problems posed by the political neutrality of such pockets of state power.
6. And, of course, the fifth principle is the *principle of European Integration*. The constitutional decision reached by the 7th Revisionary Parliament concerning the basis for the country's participation in the European Integration process, is Greece's simple answer to this question; other member states have provided an answer through repeated revisions, have not provided any final answer, or have provided a negative answer (Ireland is a recent example). The interpretative statement of article 28 and the interpretative statement of article 80 –already discussed above– constitute a substantial contribution to the debate concerning the process of European Integration.[32]
7. As I mentioned from the very start –and this will be my final comment– any amendment effort runs many risks. The greatest risk, though, is the risk of *revisionary maximalism*. I.e. the illusion that major political, social, economic, mentality-related, or moral, problems can be resolved by means of new constitutional provisions. This is a form of constitutional legalism, which can lead to great political and judicial errors and which is deeply ignorant of history. It is also subject to the pressure exercised by the usual "revisionary rhetoric," i.e. a oversupply of notions and proposals to the effect that everything should be dealt with on the constitutional level, because the law has been debased and does not possess the necessary validity, and everyone looks up to the Constitution and demands immediate and complete answers from it.

   Thus, despite these pressures, the 7th Revisionary Greek Parliament stood its ground, it did not succumb to any revisionary maximalism, albeit without, of course, totally avoiding it. Nevertheless, it avoided revisionary maximalism when dealing with vital issues. It did not lay down its arms, especially in those cases where

[32] See *B. Skouris, in D. Tsatsos-Ev. Venizelos-X. Contiades* (editors.), The New Constitution, (in Greek), op. cit., p. 457.

political power had to have the final say against other forms of power, formal or informal.

Therefore, through the Greek 2001 amendment experience the Constitution is shown to be what it has been from its very beginning, i.e. a field of confrontation between History and conjuncture. *To be more precise and perhaps more graphic, the Constitution acts like a membrane that intervenes between the grand movements and long durations of History and the small movements and short durations of conjuncture.* The amount of circumstantial influence that will penetrate this membrane and will be incorporated each time into the historical body of the Constitution depends on many factors, especially the balance of power, including ideological and doctrinal power. There are moments when time condenses and conjuncture penetrates the membrane and is turned into History. There are indifferent moments, when time is lax and passes quickly. These moments remain without the historicity of the Constitution. The "moments" are those that penetrate the membrane. However, one moment is enough to create a new situation. I believe that the 2001 Greek revision brings forth this exact function of the Constitution.

*II. Asien*