Address

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Presidents, Ambassadors, Colleagues, Ladies and Gentlemen,

I would like to thank my dear friend, Professor Flogaitis for his nice words and I congratulate him and his collaborators at the European Public Law Center for all their initiatives and especially for this initiative which is extremely timely.

As all of you know, the Constitution has great historical and regulatory ambitions. By birth, it has the ambition to regulate the most substantial things, with the greatest possible legal power, for the longest possible period of time. It communicates with history, it is a text which condenses the historical time.

Each one of its words is of particular significance, its silences are of particular significance, its form is of particular regulatory and interpretative significance. Consequently it is very important for us to have complete conscience of our Constitutional *acquis* and when we are called to face the - very often - false dilemma: revisionary activism or constitutional self-conscience and concern for the complete implementation of the Constitution, the answer is self-evidently in favour of the constitutional self-conscience and the implementation and realisation of the Constitution. The Constitution, furthermore, is changing and is changing daily, informally, through its interpretation, through its application, through the change of perceptions, of mentalities, of methods, of the big twists of jurisprudence. The formal change, however, namely the revision of the Constitution, is the evidence of its formal (written and mainly rigid) character. Therefore, when a procedure for the revision of the Constitution is launched, its formal character itself is put on approval under specific conditions. Consequently, we should be particularly cautious and place particular emphasis on what is called constitutional consensus. However, juridically this is nothing else but the obligation to respect specific procedures and specific majorities so as to preserve the rigid character of the Constitution, that is its formal character.

In Greece we have an obsession of historical inferiority because

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our Constitutions were born as extremely rigid constitutions and, as it was very cleverly said in earlier times, this intense rigidity of the Greek Constitutions was a challenge to violate them and very often to revoke them. For this reason the political reform of 1974 assimilated all these historical anxieties and for the last thirty-two years we have made very big steps ahead as a country upgrading the level of our Constitutional, institutional and political civilisation.

However, this Constitutional political reform that started in 1974 as soon as the junta fell, with the elaboration and entry into force of the first democratic Constitution of the country, was actually completed only just in 2001 because that year through the last, almost total revision of the Constitution, the full consensus about the Greek Constitution among the big political powers of the country is formed: everyone accepts the contribution of the Constitution of 1975, everyone accepts the contribution of the revision of 1986 as concerns the organisational part of the Constitution and mainly as concerns the competences of the President of the Republic and the relation between President-Government-Parliament. And everyone co-operates towards the revision of 2001, that is to say to the shielding of the Constitutional rights, which was a revision against the international current. Because at a time when the prevailing subject is the predominance of the right to security probably against all the other fundamental rights, the revised Greek Constitution of 2001 confirms the individual rights, the collective rights, the rights of political participation. At a moment that the discussion in Europe is the dispute of the social state and of the social *acquis*, the Greek revision confirms the principle of the social state and adds some social rights. Likewise, at a moment that a very serious tendency appears again internationally on the reinforcement of the executive power, amendments are introduced in our Constitution that support the consensus and the transparency, institutions are introduced which are new and which are of a major comparative interest. For example, of major comparative interest are the institutions of political consensus such as laws of augmented majority, that is not a very usual phenomenon in the western Constitutions. The electoral law is a law of augmented majority, which requires practically the co-operation of the Opposition in order for it to enter into force. The same applies for the law for the electoral right of the citizens who are located out of the state. The selection of the independent authorities also needs the agreement of the Opposition. These are very important, innovative institutions which show high level of consensus and political civilisation.

Thus, the *acquis* of the revision of 2001 is very important and of course there is no urgent need to revise anything at all. It is, however,

a proof of regularity of our political life the fact that, after the lapse of the constitutionally established five-year time-limit, after which a new revision procedure might start, we are ready to launch it. This affirms the rigid character of the Constitution and confirms the regular function of our political system.

This is the meaning of this discussion and it is a pity to focus on one or two regulations which concern a few people, that is to say the system of ownership, the mass media or the professional incompatibility of parliamentarians. In 2001, one hundred and thirteen stipulations have been revised and of importance are those ones which concern the citizens, those who turn to the Constitution as the last recourse, not the political staff and also those who participate in the distribution of power within the social and political system of the country.

Consequently, under no circumstances should the great *acquis* of personal and social rights be in dispute, nor the great *acquis* of the political civilisation and of the consensus. In no case can a future revision be a conservative refolding, since in 2001 we managed to do a progressive launching on these subjects.

I am not talking about a "left" Constitution. I do not believe in this kind of distinction in the Constitutional level. In Europe, and generally in the western world, there are no "left" and "right" Constitutions. Constitutions are the results of a long-lasting consensus of the big "governmental" political powers: the social-democrat, socialist, labour parties as well as of the conservative, Christian-democrat and liberal parties. The powers of Ecologists, earlier the powers of the Left Communist party exerted their own, very important influence. Therefore, every Constitution is a palimpsest in which many historical moments have been registered and the final result is of paramount importance. This was obvious during the unfortunate process for the so-called European Constitution.

Under these conditions, the first thing that must be done is to respect the augmented majorities. No one can play with these things allowing the next Parliament to form, with simple majority, the text of the new Constitutional provisions. Hence, since there are no "constitutional agreements" and eventually the revisionary Parliament acts on its own, the procedural guarantee of augmented majority is of great importance. Good intents are not enough.

And now a few words on the essence of the matter. I am glad because my dear friend Mr. Procopis Pavlopoulos mentioned these examples but, on purpose, he did not mention all the others which I think we should finally stop discussing about. I am referring to various rumours and discussions regarding the prolongation of the parliamentarian service, the incompatibility of parliamentarian and Minister, the

temporary replacement of the ministers in their parliamentarian seats according to the French model, the establishment of a Council of the Republic which will complement the task of the President of the Republic etc. I do not consider all the above as objects of serious politics and therefore of scientific discussion.

What I think we should discuss first, is the relationship between State and Church in Greece and I have suggested a solution which can persuade the New Democracy Party without offending anyone. Neither the citizen who is sensitive on these matters nor the Church either in the form of the Oecumenical Patriarchate or in the form of the Church of Greece; this is the introduction of an interpretative statement under Article 3 of the Constitution, which will agree with science saying that the predominant religion is the religion of the majority and not the State's "official" religion. That Article 3 does not in any case limit, neither excuses constraint of religious freedom and equality. Do we not all say that scientifically? Let us write it down then. No symbolism is touched upon and we will have thus intervened on the point, which solves the problem in a complete, horizontal and laconic way.

Second, the so-called state Universities. There is a reality here, this reality cannot be confronted by a Constitutional provision for the non-State even, institutional, non-profit Universities with medical, physics, mathematics, polytechnic and philosophy schools. The problem of the Workshops of Free Studies and the provision of services by Universities of EU Member States, is not solved in this way. The big issue is the emancipation of the public University by the Ministry of Education, the funding, the research, the multiformity of the Greek University etc.

Third subject actually is, according to my opinion, the Constitutional justice. In the last issue of the review *The Constitution*, I have presented my viewpoint in writing, so I will not talk further on this. After taking this into serious consideration, because I was a hot supporter of the diffused system, I think that we should go a step forward if we want to solve huge problems of the rule of law in Greece. Subjects of politics on land and development, subjects of decentralisation, subjects of "discussion" of the Greek Courts with the European jurisdictional bodies, subjects of validity and transparency of the electoral jurisprudence cannot be solved with the existing structure. The manner with which justice handled the latter case of counting the blank ballot papers or the case of the "basic shareholder" is preoccupying me to a great extent as well as the judicial reaction to the transfer of competences to the municipal authorities. Another kind of institutional "discussion" is necessary for the formation of land politics, with much respect to the environment, the sustainable

development and the invariable Article 24, which we do not want to be revised. I am however opposed to a Constitutional Court of random composition, by lot. My perception is a Constitutional Court selected by a two-thirds majority of the Parliament that can "discuss" with all Courts which maintain the competence of incident control. I am also opposed to the judicialisation of the political life. A political life under prosecutorial control is ominous, this is not the way to persuade people but other kinds of measures should be used, *e.g.* the complete prohibition of private funding of parties and political persons.

And a word about the famous incompatibility of parliamentarians. I must say that I do not know any serious professional or scientist who wants to enter the Parliament in order to just become parliamentarian. All of them want to exercise serious political duties, to become Ministers. They do not want to abandon anything in order to sit on the chairs of the Parliament, among 300 colleagues, as Ministers however they have full professional incompatibility. Also big categories of parliamentarians: the civil servants or servants of the broader public sector, most private employees, many professionals have always also had full professional incompatibility. To whom was extended this incompatibility in 2001? To medical doctors and lawyers. I do not consider correct the fact that when someone is a lawyer- parliamentarian, and becomes Minister, he is subject to professional incompatibility, but when he is a lawyer- parliamentarian and representative of the Opposition he is not and may be adjacent to the private sector and the conflicting interests, the fate of which he/she regulates legislatively.

I do not either consider it rational, concerning parliamentary immunity, to try to achieve normative regulation and not to trust parliamentarian practice, while as concerns incompatibility, to try to revoke the regulation and to relegate to practice. Either we trust ethics or want regulations.

We will discuss all these matters. And it is for me a great disadvantage that I will not be able (because the Parliamentary Group of PASOK is convening at the same time) to listen to the reports to follow. I am sure that Professor Flogaitis will see to it so that all this material will come to our hands so as to be assimilated and elaborated on and I wish we will be able to participate to an analytical discussion, point by point, on these subjects among an audience so numerous and of such high level as the one of today.

Thank you very much.