Sonderdruck aus:

DAS ÖFFENTLICHE RECHT DER GEGENWART

JAHRBUCH DES ÖFFENTLICHEN RECHTS DER GEGENWART

NEUE FOLGE / BAND 47

HERAUSGEGEBEN VON

PETER HÄBERLE

1999

Mohr Siebeck

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Entwicklungen des Verfassungsrechts im Europäischen Raum

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Entwicklungen des Verfassungsrechts im Europäischen Raum

The Consensual and Corroborative Revision of the Hellenic Constitution

by

Evangelos Venizelos*

I. Historical and Constitutional Framework

1. Perhaps the most fundamental characteristic of Greek constitutional history after the establishment of the modern Greek state in 1830 has been *profound constitutional insecurity:* an uncertainty pervading political life, the media and public opinion with regard to the condition, stability and future of political institutions. In fact, the view had become entrenched that democratic, representative and parliamentary institutions were either imperfect, or artificial and imported in relation to the real degree of maturity of the political system and the society of citizens, or a luxury in relation to other, more urgent, needs of the situation at a given time.

One of the manifestations of this insecurity was the high degree of rigidity of Greek constitutions, beginning with the monarchical Constitution of 1844 which, in its absolute rigidity, did not set out any procedure for its revision. All subsequent constitutions (that of 1864 as revised in 1911, that of 1925/27, that of 1952 as a continuation of the Constitution of 1864/1911, and even the 1975 Constitution currently in force) call for a complex revision procedure, ranking the Greek Constitution among the world's most inflexible.[1] What makes the Greek revision procedure different from

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[1] From the Greek literature, see indicatively E.V. Venizelos, Lessons in Constitutional Law I, 1991, p. 30 et seq.; A. Manessis, Constitutional Law I, 1980; A. Manessis, The Guarantees for Observance of the Constitution I (introduction) 1956 (reprinted 1991); A. Manitakis, Constitutional Law I, Object Method. Constitution – Constitutional Authority, 1987; D. Tsatsos, Constitutional Law, Vol. I – Theoretical Basis, 1985. Indicative titles from the foreign literature are: First World Congress of the Association Internationale de Droit Constitutionnel (Belgrade, 29 August – 2 September, 1983); Modern Constitution/Constitution Moderne (published by the Institut du Federalisme of Freiburg, 1988); J.-L. Seurin (ed.), L. Constitutionnalisme Aujourd'hui, 1984; D. Rousseau, Une Résurrection: La Notion de Constitution, R.D.P., 1990, p. 5 et seq.; S. Rials, Les Incertitudes de la Notion de Constitution sous la Ve République, R.D.P., 1984, p. 585 et seq. Works regarded as classics in general constitutional theory: see mainly R. Bastid, L'Idée

other corresponding procedures is principally the need for co-action of two successive Parliaments, i.e. the need for intervening general Parliamentary elections, and of course the need in at least one of these Parliaments for a majority of two-thirds of all Members of Parliament, whereas in the other Parliament (the first or alternatively the second) an absolute majority of the total number of Members of Parliament is sufficient.[2]

This may explain the observation that this excessive rigidity often had the opposite effect: it served as a challenge to abolish or violate constitutional order.[3] Apart from that, it is no accident that to date only one revisionary procedure, that of 1985–86, was started, developed and brought to fruition as provided for in the Constitution (Article 110): on every other occasion there were aberrations which in effect reduced the revisionary procedure to a means of exercising a primary constitutional authority.[4]

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de Constitution, 1985; R. Carré de Malberg, Contribution à la Théorie Générale de l'État, Vol. II, 1922/1962; L. Duguit, Traité de Droit Constitutionnel, Vol. III, 1930; G.F. Friedrich, La Démocratie Constitutionnelle, 1985; M. Hauriou, Précis de Droit Constitutionnel, 1929/1965; G. Jellinek, Allgemeine Staatslehre, 1913, (in French translation: L'État Moderne et son Droit, Vols. I and II, 1913); W. Kägi, Die Verfassung als rechtiliche Grundordnung des Staates, 1945; H. Kelsen, Allgemeine Staatslehre, 1925; H. Kelsen, General Theory of Law and State, 1949; K. Loewenstein, Verfassungslehre, 1959; C. Schmitt, Verfassungslehre, 1957; R. Smend, Verfassung und Verfassungslehre, 1928.

[2] E.V. Venizelos, Lessons in Constitutional Law I, 1991, p. 54 et seq.; D. Tsatsos, Constitutional Law, Volume I, Theoretical Basis, 1985. In particular, on the provision of Article 108 of the 1952 Constitution and the revision procedure, A. Manessis, The Revision of the Constitution. Contribution to the Interpretation of Article 108, 1966.

[3] K. Lowenstein, Verfassungslehre, 1969, p. 42 et seq. and ad hoc; K. Lowenstein, Constitutions, Constitutional Law in: Comparative Encyclopaedia, Vol. 9, p. 329, who remarks: "Greece seems to have achieved the limit of Constitutional perfection (1952): not only was the whole revision declared illegal, but also those provisions which designate Greece as a "monarchical democracy" and all the others which are considered "fundamental" are immutable. Constitutional arrogance reached the point of an open challenge to revolution. The practical value of such proscriptive clauses can easily be questioned. In normal times they can act as a red light for violations inspired by the political parties. In time of crisis, however, they would unavoidably be disregarded or ignored. The immutable clauses could and would never prevent a coup, as proved by the Greek military movement of 1967. Even the emergency measures provided for in West Germany (1968) are not a guarantee of non-violation of the immutable clauses; in the event that a state of emergency arises, neither the federal structure nor the "core" of civil liberties is necessarily respected." The same K. Loewenstein, Über Wesen, Technik und Grenzen der Verfassungsänderung, 1961, p. 45 (footnote 75), again in reference to Article 108 of the Greek Constitution of 1952, remarks: "hier Werden die Totalrevision und die Antastung der Normen, die sich auf die demokratische Monarchie beziehen, ausdrucklich verboten und, da doppelt genäht besser hält, alle "grundsätzlichen" Bestimmungen für irrevisibel erklärt. Dazu wäre anzumerken, dass Griechenland, zusammen mit Frankreich, den europäischen Rekord in der Zahl seiner Verfassungen hält". The concept of violation of the Constitution (chiefly in view of a constitutional change) is dealt with by X. Giataganas, Violation of the Constitution, The Constitution (in Greek), 1975, p. 629 et seq. (especially p. 636). C. Liet – Veaux. La "Fraude à la Constitution". Essai d'une analyse juridique des révolutions communautaires récentes: Italie, Allemagne, France, R.D.P., 1943, p. 116 et seq. and especially p. 141 et seq. with the annotation there, especially the references to the work by the same author: La Continuité en Droit Interne. Essai d'une Théorie Juridique des Révolutions, 1943, as well as in the paper by G. Burdeau, Essai d'une Théorie de la Révision des Lois Constitutionnelles en Droit Positif Français, 1930, pp. 1 et seq. and 293 et seq.

[4] On the 1986 revision, see E.V. Venizelos, Lessons in Constitutional Law, I, 1991, pp. 54 et seq., 64 et seq., 69 et seq., 525 et seq. E.V. Venizelos, The Limits of Revision of the 1975 Constitution, 1984, pp. 22 et seq., 226 et seq. G. Kassimatis, On the Fundamental Principles of the Constitution, The Constitution, 1975, p. 5 et seq. Also on the 1986 revision, A. Manessis, The Constitutional Revision of 1986, 1989 (=Law and Policy, 13–14, p. 5 et seq.); K. Mavrias, The Ability to Revise Paragraphs 2–6 of Article 110 of

2. The situation changed radically after the fall of the dictatorship in 1974 and the introduction of the current Constitution of the presidential parliamentary democracy in 1975. Despite the strong opposition caused by the original draft Constitution (drawn up by the then government of K. Karamanlis), the final text which came out of the first post-dictatorial Parliament of 1974 was a text that gradually attained the widest possible acceptance and consent of the country's major political powers.

The main ambiguous point remained until 1986 the question of the so-called increased competencies of the President of the Republic. The head of state, albeit indirectly elected by the Parliament, was able to dissolve Parliament, despite the wishes of the government which enjoys the confidence of Parliament. He also had the ability to intervene effectively in the procedure to appoint the Prime Minister, when no express majority large enough to provide a vote of confidence in the government was attained in Parliament.

These two marginal competencies were never exercised before 1986, but as potentialities they influenced the development of political affairs in the period 1980–85, i.e. the first period of coexistence of K. Karamanlis as President of the Republic with the PASOK government. Therefore, these considerations, together with other, secondary but independent (not dependent on the agreement and approval of the government), competencies of the President of the Republic, were the exclusive object of the 1985–86 revisionary process.[5]

Despite the political and constitutional tension of that period, the revised Constitution of 1975/1986, which introduces a purely parliamentary system of government, has been widely accepted by all the political powers. Although there is constant talk

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the Constitution for the Purpose of Simplifying the Procedure and Shortening the Time of Revision, Law and Policy, 13–14, p. 211 et seq.; A. Peponis, The Constitutional Revision of 1985–1986, 1986. The first stage of preparatory work for the 1986 revision is contained in the Volume: Parliament of the Hellenes, Records of the Meetings of the Special Parliamentary Committee for Revision of the Constitution and the Plenary Session of Parliament on the Proposal to Revise Provisions of the Constitution, 1985, and the second stage in: Parliament of the Hellenes – Sixth Revisionary Meeting, Fourth Period (Presidential Democracy), First Meeting – Parliamentary Records, p. 3618 et seq.

[5] In constitutional practice for the period 1981–1985 and the relations of the President of the Republic with the government, especially revealing are the contents of the recently published archives of Konstantinos Karamanlis (Volume 12, Ekdotiki Athinon, 1997). Also E.V. Venizelos, Lessons in Constitutional Law, I. 1991, pp. 69 et seq., 461 et seq. and 525 et seq.; E.V. Venizelos, Political Tension and Constitution (Articles 1984–1986) The Road to Revision of the Constitution 1986, p. 73 et seq. From the relevant literature published after the 1986 revision, see G. Kassimatis, The PASOK Proposal for Revision of the Constitution, Socialist Theory and Practice, 1985, p. 18 et seq.; A. Manessis, The Constitutional Revision of 1986. A Critical Assessment of its Legal and Political Significance, 1989 (=Law and Policy, 13–14/1987, p. 5 et seq.); A. Manitakis, The Easy Revision of Powers Difficult of Implementation, Armenopoulos, 1986, p. 565 et seq.; G. Papadimitriou, The "Non-transparent Re-designation" of the Form of Government in the Constitutional Revision of 1986, Law and Policy, 13–14/1987, p. 137 et seq.; W. Skouris, The Interpretation of the 1975 Constitution after the 1986 Revision, Law and Policy, 13–14/1987, p. 125 et seq.; also K. Zoras, The Revision of the 1975 Constitution, No. 1, 1987, as well as the Doctoral These of I. Kamtsidou, Pratique et Révision Constitutionnelles dans la République Hellénique (1975–1986), Paris – Nanterre, 1989. F. Spiropoulos, The President of the Republic as "Regulator" of the System of Government, 1990. From the foreign literature see, purely as an indication, P. Albertini, Le Droit de Dissolution et les Systèmes Constitutionnelles Français, 1977; P. Avril, in: F. Luchaire/G. Conac (eds.) La Constitution de la République Française, 1982, p. 318 et seq., Ph. Lauvaux, La Dissolution des Assemblées Parlementaires, 1983; V. Markesinis, The Theory and Practice of Dissolution of Parliament, 1973.

about the "Prime Minister-centered" character of the Constitution and the need for institutional counterweights to this dominant role of the Prime Minister, such counterweights were virtually never sought for by reinforcing the competencies of the President of the Republic, but by reinforcing the role of Parliament. (See below II 1).

3. Throughout this period (1975–1997) there have of course been serious political and constitutional crises such as that in 1985 in relation to the procedure to elect the President of the Republic, and that of 1989–94 in relation to the penal responsibility of Ministers. None of these crises, however, was transformed into a strong, overbearing demand for revision of the Constitution. The political problems were posed as problems of interpretation and implementation of the Constitution, particularly in those areas of constitutional content which concern the functioning of Parliament and are governed by constitutional provisions not subject to judicial control.[6]

Moreover, during the same period serious differences of opinion were expressed concerning the means of exercising judicial control, in particular judicial control of the constitutionality of laws. But once again the relative questions were posed as questions of delimitation of the judicial interpretation of the Constitution and judicial control of the constitutionality of laws, and not as an urgent and politically overbearing demand for revision of the Constitution. In fact, with regard to the two main fields of judicial activism in Greece, the principle of equality and environmental protection, a question of revising the Constitution is posed in a very judicious manner.[7]

4. In contrast with most countries of Europe, in Greece the process of European integration has as yet never been transformed into a problem of constitutionality. The original provision of Article 28 of the Constitution (with very few objections or nuances of opinion) was considered an adequate constitutional foundation for the sanction of the treaty of Greece's accession to the then European Communities (Treaty of Athens, 1979), for ratification of the Single European Act (1977) and for ratification of the Maastricht Treaty (1992). No questions have as yet been posed with regard to the Amsterdam Treaty, either.[8] Perhaps the only exception on this point would appear to be the contestation, lacking continuity, by certain Members of Parliament of the ratification process of the Treaty of Schengen. I say lacking continuity, because according to the case law of the Greek courts the parliamentary process of passing laws (including the laws ratifying international treaties) is not subject to judicial control as an element of Parliament's interna corporis.

5. Thus the basic characteristic of the revisionary process under way in Greece (a process which began in March 1995, was interrupted due to the elections in September 1996 and was resumed in June 1997) is that it extends across a large number of pro-

[6] E. V. Venizelos, Lessons in Constitutional Law, I, 1991, p. 510, and more generally on the impact of the revisionary process of 1985/86, op. cit., p. 525 et seq.; E.V. Venizelos, The Dissolution of Parliament from the 1975 Constitution to the Revision of 1986, 1986, passim. From the post-1986 revisional Greek literature, see A. Manessis, The Constitutional Revision of 1986. A Critical Assessment of its Legal and Political Significance, 1989, p. 49 et seq. (in Law and Policy, 13–14/1987, p. 5 et seq.); F. Spiropoulos, The President of the Republic as "Regulator" of the System of Government, 1990, see also footnote 5.

[7] E.V. Venizelos, The Consensual Revision. Revision of the Constitution and Revival of Politics, 1996, p. 35 et seq.

[8] E.V. Venizelos, The Treaty of Maastricht and the European Constitutional Area, 1994, p. 9 et seq.

visions, but does not touch upon any of the basic characteristics of constitutional order or the system of government.

The proposals of the two major parties (the PASOK parliamentary majority and the "New Democracy" party, the chief opposition party) create broad scope for convergence and open up very restricted fronts of disagreement.

II. The Major Axes of Revision of the Constitution

1. *Insistence on the Constitutional Nature of the System of Government*

Without exception, everyone agrees on the need to retain the *constitutional nature of the system of government.* The government, which depends on the confidence of the majority of Parliament, has the competency to map out the country's general policies; the Prime Minister (when he happens also to be the head of the single-party parliamentary majority) is the central political figure in the system of government. The small additions to the President's competencies proposed by the chief opposition party have more to do with his symbolic role and not with the institutions lying – historically and theoretically – at the heart of the parliamentary system, that is, the appointment of the Prime Minister and the dissolution of Parliament.[9]

During the first stage of the revision process, per contra, a major problem appeared to be the proposal of the Parliamentary majority (PASOK) on revision of *the procedure to elect the Head of State by Parliament.* According to the relevant provision (Article 32) regarding the election of the President of the Republic, a majority of two-thirds of the total number of Members of Parliament (180 /300) is required in the first and second votes. If this increased majority is not reached, Parliament must dissolve, parliamentary elections must be held, and the new Parliament must elect the President in the first vote with an increased majority of three-fifths (180/300); if this is not achieved, in the second vote an absolute majority of the total number of Members of Parliament (151/300) is required. The third and final vote is taken to elect one of the two persons who won the majority in the previous vote.

The idea to reduce the necessary majority in order to achieve the election of a President, already from the third vote in the first Parliament, met with opposition. On the contrary, the idea to dissociate the process of electing the President of the Republic from the threat to dissolve Parliament for reasons not related to the work of government is meeting with broader acceptance. Consequently, on this basis it is very probable that the relevant provisions will be revised so as to achieve the election of the President of the Republic without an intervening dissolution of Parliament and premature elections, due to failure to elect him. Moreover, this is the scheme which is implemented in all the European -parliamentary systems (e.g. Germany, Italy).

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[9] E.V. Venizelos, The Consensual Revision. Revision of the Constitution and Revival of Politics, 1996, pp. 77 et seq., 85 et seq.

2. *Reinforcement of the Role of Parliament, Introduction of Measures of Transparency and Additional Guarantees.*

Without exception, everyone is seeking methods to modernise the political system, increase the authority of politics and provide a counterweight to the power of each government in the *reinforcement of the role of Parliament* and the introduction of additional guarantees of transparency with regard to the functioning of the party system. In this context *everyone remains true to the unicameralist tradition* (which has prevailed in Greece, where there never was an "aristocratic" tradition or a need for federal states to be represented, since the Greek state is unified). Everyone also proposes the rationalisation of parliamentary procedures: both the legislative procedure (new division of competencies among committees and the plenary session of Parliament, fewer amendments introduced during the discussion of a bill, etc.,) and the process of parliamentary control (with the emphasis on hearings before parliamentary committees, etc.)

By the same logic, all the Greek political parties are agreed on the need to impose stronger measures of transparency as regards the *management of finances of parties* and of policy-makers (Members of Parliament, prospective Members of Parliament, etc.). The same agreement exists with regard to the safeguarding of conditions of stability and transparency during a possible modification of the *electoral system* (which can be changed only during the first session of a Parliament, otherwise it will be valid for the next two elections).

One particular side of the problem of transparency is the question of *independent administrative authorities.*[10] The overwhelming majority of the Parliament tends to accept a large number of independent administrative authorities, a phenomenon which to a large degree constitutes a manifestation of the unease of modern democratic political systems in the face of the phenomenon of the crisis of credibility of politics and policy-makers. At this point perhaps a distinction should be made between those independent authorities which accompany as institutional guarantees an individual right, and those independent authorities which are armed with competencies of a political nature, thus restricting not only the competency of the executive power but also the controlling competency of the Parliament and ultimately of the electoral body itself.

3. *Insistence on the Principle of the Rule of Law and Reinforcement of Individual Rights – Insistence on the Principle of the Social State*

All the political parties proclaim their insistence on the *principle of the rule of law* and in the need to broaden *individual rights*. No proposals to restrict constitutional rights

[10] In relation to the independent executive authorities, see M. Anagnostopoulos, National Radio and Television Board, the First Independent Administrative Authority in Greece, No. 2, 1991, 1193; P.D. Dagloglou, General Administrative Law, 1997; N. Koulouris, The Independent Administrative Authorities, Administrative Reforme (in Greek) 1988, 5; N. Koulouris, The "Independent Administrative Authorities"? Foreign Models and Poor Domestic Copies, DD Administrative Trial (in Greek) 1993, p. 1140; also by the same author, The Adventures of the "National Radio Board" and the "National Telecommunications Committee": The Twilight of the Greek Independent Authorities?, Review of Public Law, (in Greek) 1996, p. 29.

have been made; on the contrary, parties agree on the need to add new explicit guarantees of protection of the individual against the threats currently emanating from the society of citizens and from technology (electronic data processing, biomedical experiments, etc.). Perhaps the only disagreement under this heading is to be found in the constitutional regime of higher education in the framework of academic freedom and total self-administration of the Universities which in Greece are guaranteed in the Constitution. Article 16, paragraph 5 of the Constitution calls for higher education to be provided exclusively by public entities, thus ruling out the establishment and operation of private institutions of higher education.

The parliamentary majority insists on this wording, whereas the opposition proposes to introduce a provision on the possibility of creating private not-for-profit institutions of higher education.

The question is connected inter alia with the operation in Greece of foreign universities, often affiliated to private for-profit educational enterprises.

This agreement with regard to political liberalism is also accompanied by a corresponding agreement with regard to the need to insist on the constitutional bases and the possibilities of development of the *social state.* Of course, this is not a financial and economic agreement but a symbolic act whose political content is not a negligible one. No political party can propose restriction of social rights, whereas everyone reiterates – regardless of the degree of ideological credibility existing for each party – their verbal will to reinforce them.

4. *Unimpeded Participation in the Process of European Integration*

The overwhelming majority of the Parliament confirms the country's will to participate unimpeded *in the process of European Unification* through a fundamental addition which guarantees better information and greater participation of Parliament in the relevant processes, in view also of the low degree of transparency observed in intra-Community processes both of the European Commission and of the Council.[11]

5. *Full Guarantee of Religious Freedom without Changing the Relations of Church and State*

The overwhelming majority of Parliament also leave the relations of Church and State outside the scope of the revision. They regard as given the position of the Greek

[11] E.V. Venizelos, The Treaty of Maastricht and the European Constitutional Area, Athens-Komotini, 1994; P. Dagtoglou, European Community Law 1, 1985; N. Skandamis, European Community Law of Adaptation I/B. More generally on the regulations of primary and derivative Community law and the relation of Community with national legal order: E.V. Venizelos, Lessons in Constitutional Law I, 1991, p. 148 et seq., and also the collective volume: P.N. Stangos/G. Moutsiou (ed.), Accession and Participation of Greece in the European Communities. The constitutional consideration. E.V. Venizelos, The Limits of the 1975 Revision of the Constitution, 1984, pp. 136 et seq. and 237 et seq.; G. Papadimitriou, The Constitution and the Process of European Unification, Volume I, 1982; G. Drossos, Greek Constitutional Order and European Communities in International Relations, 1987; and M. Kipreos, Relationship of the Constitution and European Community Law, 1987; G. Papadimitriou, The Long-Drawn-Out Road to European Federation, 1997.

Orthodox Church, not as the official religion of the state, but as the prevailing religion of the overwhelming majority of the Greek people. In view of this, the two biggest parties agree on the need to clarify constitutional provisions on religious freedom, so that they operate on a higher level than that shaped by the European Treaty on Human Rights which in any case is also valid in Greece and overrides ordinary law.[12]

6. *Selection of the Presidencies of the Supreme Courts and Control of the Constitutionality of Laws*

The organisation and functioning of Justice is one of the privileged fields of the revision, since the possibilities for an ordinary lawmaker to intervene in this field are few and becoming even fewer due to judicial control of the constitutionality of laws. In this framework, all the parties are agreed on the need to regulate in a more restrictive manner the procedure and criteria for selection of the president and vice president of the three supreme courts [i) Supreme Court / highest court of civil and penal justice, ii) Council of State / highest administrative court, iii) Audit Office / highest court for matters of fiscal audit] as well as of the Public Prosecutor of the Supreme Court. There is similar – although still inchoate – agreement on the need to clarify subjects, acute in practice, of judicial control of the constitutionality of laws: of the organisation and delimitation of control. The Greek system of judicial control of constitutionality falls under the category of systems of diffuse and obiter control exercised by all the courts of all degrees and jurisdictions for the needs of each case they try. In practice, however, control is basically exercised by the three supreme courts and ultimately by their plenary sittings, whereas in the event of disagreement the Supreme Special Court (of mixed composition, with the participation of the presidents of the three supreme courts, four members of the Supreme Court, four members of the Council of State and two Professors of Law)[13] assumes control.

The parliamentary majority insists on the need to introduce provisions for the rationalisation and more transparent procedural organisation of control, on the level of the plenary sessions of the three supreme courts. The chief opposition party proposed

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[12] See E.V. Venizelos, Lessons in Constitutional Law I, 1991, p. 140 et seq. On the place of the rules of international law in the Greek legal order, see K. Ioannou and A. Fatouros in: K. Ioannou/K. Oikonomidis/C. Rozakis/A. Fatouros, Public International Law – Relationships of International and Domestic Law, 1990, pp. 19 et seq., 113 et seq., 163 et seq. and 67 et seq., respectively. E. Roukounas, International Law I, 1982, pp. 21 et seq., 95 et seq. See also F. Arnaoutoglou, Is a Law which is Contrary to an International Treaty Unconstitutional?, The Constitution 1982, p. 536 et seq.; F. Vergelis, The Human Rights Treaty and the Constitution, 1977, pp. 17 et seq., 56 et seq., 84 et seq., 119 et seq.; On rules of primary and derivative Community law and the relation of Community and national legal order, see, as an indication only, P. Dagtoglou, European Community Law, Vol. I, 1985, A. Fatouros, op. cit., p. 67 et seq.

[13] E.V. Venizelos, Lessons in Constitutional Law I, 1991, p. 167 et seq., and presentation of relevant bibliography p. 193 et seq., where among others W. Skouris / E.V. Venizelos, The Judicial Control of the Constitutionality of Laws in Greece, 1985; W. Skouris, Systems of Control of the Constitutionality of Law, The Constitution 1982, p. 507 et seq.; W. Skouris, Constitutional Disputes and Judicial Review in Greece, in: Ch. Landfried (ed.), Constitutional Review and Legislation. An International Comparison, 1989, p. 177 et seq.; E.V. Venizelos, The General Interest and the Restrictions of Constitutional Rights – a Critical Approach to Trends in Jurisprudence, 1990.

reinforcing the role of the Supreme Special Court so that when a court of substance has a tendency not to apply the provision of a law as unconstitutional, it should have to refer the matter for final judgement to the Supreme Special Court. This would result in the reinforcement of the role of a court of mixed, temporary and fortuitous composition, and the delay of many trials due to such referrals.

At any rate, no political party has proposed introducing the institution of the constitutional court with competencies extending to regions now existing outside judicial control, e.g. implementation of constitutional clauses governing the functioning of Parliament or the election of the President of the Republic.

III. An Overall Evaluation

1. If one were to attempt an overall evaluation of the procedure to revise the Greek Constitution on the basis of the political parties' discussions and proposals to date, then I think one could assert with quite a bit of certainty that this is a *consensual revision*. A revision that, at least as far as the essential questions are concerned, has become a watercourse into which the constitutional policies of the parties participating in the Parliament of the Hellenes all converge.

Moreover, it is obvious that of much greater importance than the amendments being proposed is the *general, official reconfirmation of the basic characteristics of the system of government and the political system.*

Naturally, this should not cause us to underestimate the many secondary amendments that touch on open questions (in relation to jurisprudence), restrict the power of the legislator, i.e. the parliamentary majority at a given time, and usher in additional guarantees with regard to the status of Parliament, transparency of the political system and the rule of law.

2. An outside observer could perhaps maintain that such a revision is unnecessary, or in any case that it is not radical – that the Greek revisionary process is rather "conservative in nature".

If insistence on the parliamentary system and the guarantees of the rule of law, safeguarding of social rights and constitutional safeguarding of the participation of the country in European integration are "conservative" choices, then the Greek revisionary process is "conservative". But if this is a negative political evaluation, then I must stress that I prefer the present Greek view of the Constitution and its revision, over a view that would like, via the Constitution, to alter political reality and the conditions in which the political system functions.

The view that the text of the Constitution, as the highest manifestation of a legally organised political voluntarism, can intersect with the country's real constitution, its constitutional tradition, its political practices, or even more the social interrelations and ways of thought of society, is au fond a peremptory view of society, which has been tested many times up to now, usually without success.

The great interventions in the institutional composition of a state, particularly radical changes to the system of government (e.g. the transition from the parliamentary Fourth to the semi-presidential Fifth French Republic, or the introduction of semi-presidential systems of control of the constitutionality of laws in many Eastern Euro-

pean states) have come about through preceding ruptures in the body politic itself and through the profound crisis or collapse of the existing political system. They have not been imposed deliberately through amendment of the text of the Constitution.

These straightforward declarations of constitutional theory appear to have been well assimilated by all the institutional and political contributors to contemporary Greek parliamentary Democracy.

Entwicklungen des Verfassungsrechts im Außereuropäischen Raum

I. Amerika

II. Afrika

III. Asien