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A NEW CONSTITUTIONAL SETTLEMENT
FOR
THE EUROPEAN PEOPLE

With a foreword by
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The European Constitution as an "intergovernmental" Constitution and the political deficits of the European Union

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I. The great symbolisms of the concept "Constitution" and its durability in the post-modern age

The Constitution, and therefore the constitutional state, is historically tied with the institutional constructions of the modern age, that is, with all the great political and institutional achievements of the last three centuries.[1] One would therefore expect the constitution to be severely tried and potentially weakened by its transition into the post-modern age. Even though the basic concepts with which the Constitution is historically linked are undergoing a crisis, the importance of the Constitution has remained the same, or is even arguably increasing.

The constitution is foremost an important political symbol. Firstly it refers to the concepts of the state and sovereignty, then to the concepts of democracy, the rule of law and the social state. It refers to meanings that have been severely tested, and been the object of intense pressure and serious contestation. Despite this, the concepts of the Constitution display both durability and adaptability, suggesting that it has the capacity to survive independently of sovereignty, as much in the sense of internal as well as external sovereignty of the nation state[2] and of course functions on an international level, or at least on the level of regional cooperation, as in the case of the European Union.

This I think is based on the fact that the basic functions of the Constitution

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continue to be crucial not only for the State, but also for every regional and international organization, for every intergovernmental initiative and development: the symbolic function of the Constitution- its function as the matrix of the legitimacy of political power, as this is organized and expressed every time[3] – as well as its two fundamental and substantive functions, the organizing function and that of the guarantor, continue to be irreplaceable.[4]

The Constitution also contains a large linguistic and textual advantage, given to no other legislative text : its elliptical style, the solemnity of its formulation, and simultaneously its capacity to narrate an on-going and evolving story, assure its durability even in this present age.[5] This great advantage of the Constitution is inevitably appealing to such a dynamic body as the European Union.

In the past ten years, we are seeing a revival of the interest around the Constitution, as the number of Member States is increasing and we are witnessing the transition of many states from socialism to the conditions emerging globally as a result of the break down of the bipolar system. Therefore, a new wave of constitutionalism is created on the level of the Nation State.[6] The national Constitution seems to be undergoing a golden period, even though the concept of the sovereignty of the national State is going through a manifest crisis: for example, we are seeing the revival of the phenomenon of the protectorate, in a blatant manner that has not been seen in many decades.[7]

Summing up this argument, there are three basic reasons causing a revival of interest in the concept of the Constitution. The first being an intense internationalization of the constitutional phenomenon. From the 1950's onward, that is, since the founding of the U.N. and throughout the entire second half of the 20th century, the path followed by international law has been marked by constitution-building. International law has been approaching the issues that are traditionally dealt with by national Constitutions. There has been a continuous formulation and institution of international texts that are constitutional in form. Interest has been manifest on the part of international organizations and especially regional bodies (such as the Council of Europe, and the European Union itself)

regarding issues that constitute characteristic subjects of a primary or secondary constitutional legislator.[8]

The second reason is that the Constitution as a form (the form "Constitution") seems capable of surviving even without sovereignty. There might be political or State developments that are expressed in texts of a constitutional form without assuring the substance of sovereignty, which expresses itself in the form of primary or secondary constitutional sovereignty and as external sovereignty related again to the Constitution, which is the symbol of the existence of an independent and sovereign State.[9]

The third reason is that, at the dawn of the 21st century, the importance of the Constitution is preserved for one because the phenomenon of the Nation State has been preserved and is spreading as a result of new Nation States (e.g. the dissolution of the Soviet Republic or of the former Yugoslavia) and secondly because from what is apparent, a "Constitution" can exist without a Nation State, disassociated from the concept of the nation State,[10] as is shown by the path towards a European Constitution.

II. The European Constitutional Space: from a "fragmented" Constitution to a single European Constitution?

The debate on the gradual "constitutionalism" of the primary law of the European Union has long since shaped its first *acquis*, which is the formation of a European constitutional space.[11] This space that has been shaped through the gradual, reciprocal concessions between the founding Treaties of the Union and the national Constitutions of Member States, or the mutual influence of the national Constitution and of the primary law of the European Union.[12] This means that (after the long debates and negotiation on the important steps of European integration in the past 20 years, from the Single European Act to the present) an area of agreement and consent around all important issues has been worked out.

To express the same idea more concisely, I believe that the debate on the European Constitution is essentially a debate on the transition from an unwritten or rather "fragmented" European Constitution to a written- or to be more precise- a single European Constitution.[13]

The European constitutional space, created through the common constitutional traditions of the Union Member States, the primary law of the European Union, and its acceptance by the Constitutions of the Member States, already suggests a "fragmented" European Constitution. A European Constitution which of course is not codified, does not contain the aspects of solemnity and succinctness, and the systematic order that one would expect from either a traditional or modern constitutional text, but it exists nonetheless. And so the problems confronting us are far less crucial and not as monumental as they might appear to the naked eye. However, the issues that do remain are extremely important.

This "fragmentary" and in part unwritten European Constitution is formed –as mentioned- from the rules of the primary law of the European Union (that regulate the formation and functioning of the Union's Institutions), from the procedure for the production of the secondary EU law, from the method for the revision of the founding Treaties, from the issues relating to European citizenship and the fundamental rights of European citizens, in conjunction with the aims and policies of the Union and in direct reference to the common constitutional traditions of the Member States and to the European Convention on Human Rights. This chapter on the fundamental rights, as codified in the European Charter of Fundamental Human Rights (regardless of its legal force and validity) was -both in procedural method and in content- the most advanced step in the path towards a European Constitution before the calling of the European Convention and the beginning of the procedure that lead to the 2003 Inter-Governmental Conference.[14]

When using the term "Constitution" today, one refers to something very specific: a written, strict and preferably unified Constitution that implies a set of fundamental elements and contradistinctions.[15] Firstly, the term "Constitution" refers to the shaping and exercise initially of a primary constituent power, and subsequently of a revisory power, separate from that of the prevailing, common legislative power. Secondly, the term "Constitution" refers to the contradistinction between its own self and common legislation. Thirdly, the term "Constitution" refers to a complete system of the protection of fundamental rights. Fourthly, "Constitution" means a set of systematic and simple rules for the composition and oper-

ation of the direct bodies of a coordinated system of political power. And fifthly, "Constitution" means the provision of mechanisms of judicial review regarding constitutionality (without conflicting with the constitutionality of all other laws).

III. The new phenomenon of the "intergovernmental" Constitution

Given these assumptions, there necessarily arise a whole series of crucial legal and political questions:

The first question, as already stated, is whether this "fragmentary" European Constitution, having taken shape as a unified, written Constitution, classic in form, can really exist without corresponding "sovereignty." That is, whether it can exist without an alteration in the nature of the European Union and of its relations with its Member States, that is without a change in the nature of the latter as sovereign nations.

The second important question is whether constitutional typology can admit a new type of constitution: the term "intergovernmental constitution"should be used even though this term might seem provocative, and refer to a Constitution that is different from the federal Constitution we have known up to now, and different from the Constitution of a single State, as well as different from the Constitution of a federal state that belongs to a federal union[16]. The difference is not merely semantic and therefore symbolic. It is also a difference of a deeper, civic and political substance. Could the European Constitution, as it is being shaped, be anything but an "intergovernmental Constitution," that is a text of Constitutional form produced through the procedures of an intergovernmental conference for the subsequent approval and ratification of all the Member States, in accordance with the procedures provided in their individual Constitutions for the approval and ratification of international treaties, or specifically for the amendment of the European Union's founding treaties (that is of primary law)? Could the European Constitution be anything else?

This question coincides with the third important question which is the potential for setting up a European "Constitutional assembly," as an agency of primary constitutional authority.[17]

Politically, only a referendum on the European Union level could offer this framework. Something like this, in turn, would either have to be provided for in the Constitutions of all Member States- which is not the case of course- or else would have to lead to an over-stepping of the constitutional orders of at least some Member States.[18]

The prospect of an over-stepping of national constitutional orders cannot be politically envisaged in any of the European Union's Member States. The entire debate on European integration and all the related political and procedural initiatives are under the absolute control of the European Council, or rather of the Heads of State or Heads of governments of Member States, whether they are acting in a European or intergovernmental framework. Thoughts and proposals which over-step the bounds of this framework either do not take into account the real correlation of political forces on the European level, nor do they account for the institutional framework within which the European Union as such and its individual Member States operate, and so are merely theoretical exercises, lacking political and therefore practical significance. Worst of all, however, is that any attempt-even theoretical- to hasten developments, which would transgress the tolerance of European social and political systems, and overstep the bounds of the constitutional orders of the Member States, in the end undermines the smooth progress of European integration. These attempts do not assist or speed up the process. Every such attempt can, in other words, provoke useless but intense reactions which will only slow or complicate the process of integration.

The question therefore, practically speaking and keeping in mind the real political probabilities, is whether an intergovernmental method with parliamentary pretense or even a more powerful and substantial participation of the national parliament representing every State (because this is how the functioning of the European Convention was described in the draft of the European Constitution at the European Council of Thessaloniki) is indeed enough in order to have a new legal quality and a new legal phenomenon, and enough to have an alteration in the actual correlation of powers on a European level. Whether, in other words, such a method is sufficient to convert the instrument that will tackle the drafting of the

European Constitution into a body of primary constitutional authority and the whole process into a primary process.

My answer is that no, it is not enough, given that the final word lies within the constitutional procedures of the Member States. It is obvious that the procedure that is leading to the production of a European Constitution is organized in three major stages, neither of which independently nor taken together have the classic characteristics of a primary constitutional process.

The first phase, the preparatory phase, was that of the European Convention which drafted a European Constitution and which functioned as a composite body: with the representation of the governments of Member States, of national parliaments, and of the European Parliament.

The second stage brought back the whole issue of the classic intergovernmental framework. It is the Heads of State and government that will handle the issue in the framework of the Inter-Governmental Conference 2003/4. The conclusion of this process, regardless of the titles and symbols used, can only be the signing of a multilateral, international Treaty which will replace, amend, and finally integrate the founding Treaties of the European Union.

The third and final stage is expected to be the return to the level of the Member States, that is, to the level of national constitutional processes, according to which the result of the Inter-Governmental Conference must be approved and ratified, even if this is called constitutional and not conventional.

There is nothing ordinary about this whole process, nor is it either inconsequential or uninteresting. It is rather a substantive development in the progress towards European integration, and one that is capable of producing new and highly crucial practical results. The legal product of this process is almost certainly to be called "European Constitution" and will- partially for this reason- have great political and symbolic authority. By its very nature it will be equipped with a series of textual and methodological advantages, as mentioned previously. This European Constitution will not, of course, be the product of a primary constitutional authority, as the way the latter is defined by constitutional theory, and hence it will

not in this sense constitute an exercise of internal sovereignty on the European level. It will, however, change a whole series of institutional and political givens and will constitute one further, major, step towards European integration.

IV. Can the political deficits of the European Union be made up for?

The political question is whether such a debate as well as the prospect of the concept, operation and form of the European Union, substantially formulate a new stage in the process towards European integration. How, in other words, does all this relate to the debate on the budget of the European Union, on the amount and distribution of the EU's own resources, on the role of Structural policies and Funds? How is all this connected with the prospect of the enlargement of the European Union? How does the thinking about government form and the Constitution relate to the thinking about economic, social and developmental prospects of the European Union? And how does it relate to the Union's position within the global economy and within the post-industrial model of development, as well as with its geopolitical mark and its international role?

In other words, is the debate on the European Constitution, regardless of its extent and nuances, a debate referring to a different political, economic, developmental and social substance, or is it a debate that seeks to institutionally conceal the great European deficits instead of covering them politically?

This question can only be answered from a historical distance. What is certain is that the changes in the institutional form and structure of the European Union brought about by the European Constitution will not conceal its geopolitical, political, developmental and other deficits but will indeed shape the conditions for a greater understanding of these deficits.

V. The impact of the introduction of the form "constitution" in the European Union

The legal and political effects resulting from the adoption of a European

Constitution -even if referring to the constitutional form and even if the change is only systematic and symbolic- could be enormous.

This is true with regard to the very distinction of the law of the European Union as primary or secondary. This distinction will yield its place to the classic distinction between the Constitution on the one hand and ordinary legislation on the other. The content of the European Constitution will consequently be subject to interpretative methods and will therefore be included in the historical, theoretical, ideological and legal contexts that generally apply to constitutional texts. This applies to the entire set of concepts and technical legal and systematic choices of a European constitutional text. Everything that is intended for inclusion in such a text acquires, for that reason alone, preponderant legal and political weight, as it will comply with the economy of constitutional texts.

Also, the question of the many and varied law-making procedures that exist within the European Union will be put on the table.[19] Therefore, the distinction between the Intergovernmental and the Community methods[20] will necessarily take on new dimensions. This because, if the intergovernmental method will essentially be a method of exercising constitutional power only, while the ordinary legislative procedure and the normative competence will be exercised in accordance with the Community method, then we will have a significant shift, or rather a clearer delimitation of the subject matter that each method will deal with. If the scope of the primary constitutional authority within the Union comprises only of matters of constitutional interest (as they are listed in protocol 23 of the Treaty of Nice)[21] then this distinction between matters of constitutional interest and other matters bears no relation to the existing distinction between the primary and secondary law of the Union. Only a very small fraction of the content of the Union's primary law is concerned with issues of constitutional interest. The transference, however, of many matters from the level of primary law to the level of secondary Community law itself suggests an overwhelming shift. This would create a set of chain reactions which cannot, or at least should not be ignored by anyone who is politically involved in the debate on the adoption of the form "Constitution." And of course all this is directly related to matters that are of far more immediate concern to the European citizen, such as the level and

manner of the protection of his/her fundamental rights, even if we accept that there is a single level of protection and therefore it is of no practical significance whether the reference rule is a rule belonging to International law, to European Community law or to a national Constitutional law.

This brings me to the extremely important matter that regards the work of the European Court of Justice and the review of constitutionality. The level of self-restraint of the European Court of Justice is gar greater than that displayed by the constitutional and higher courts of the EU Member States.[22] The probability, therefore, of a change in the role of the courts, and I would say in the role of the EU judicial system as a whole, is very great: Consequently, a debate on the European Constitution is in essence also a debate on the role of justice and on the relationship between judicial and political institutions on the European Union level. The classic but always crucial concern on the relationship of justice and politics, about the judicial review of political decisions and the increasingly political role of the judge, emerging in all Member States of the European Union is a debate that will acquire crucial as well as practical interest for the European Union itself.

The European Union will not become something distinguishable from its founding Treaties, but rather it is these Treaties (including the general principles and rules and more generally the components of a European legal system to which these will refer: such as the common constitutional traditions of the Member States and the substantive provisions of the European Convention on Human Rights) will be expressed in a more systematic, succinct and solemn form.[23]

Therefore, there will be no real reason for which the European Constitution will provoke a wave of contestation in regard to its relationship with the Constitutions of the Member States, since these matters have already been clarified through gradual processes of mutual respect between the Union's primary law on the one hand, and the national Constitutions of the Member States, on the other hand. The "European Constitution" as a form will supplement and confirm the scheme of things, rather than overturn a pattern that has been laboriously worked out and is a product of political balances and institutional maturity.

In a European constitutional text that must be functional, sufficient, cohe-

sive and symbolic, proclamations of goals, political priorities, organizational choices, vague concepts and technical details, self-understood rules and institutional novelties will coexist, as is the case with every corresponding legal text. To some extent, this was covered by the draft Constitution that resulted from the European Convention. We must, however, admit before anything else, that a draft European Constitution must be a text that can be adopted by the Member States.

It will therefore be a text of compromise and synthesis, as every constitutional text that respects history and wants to be valid. Otherwise, it will remain one of many theoretical projects that come to public attention from time to time.

VI. The importance of legitimizing the debate on the "European Constitution"

What is certain is that the debate on the European Constitution is particularly important, any way one looks at it, even if it only brings us face to face with all the above problems and it forces us to confront our doubts. In other words, this debate turns the spotlight on the great deficits of the European Union and once one has observed and become conscious of its great deficits, one is forced to think of how to overcome them.

In this sense, the European Constitution will be a legitimate Constitution (albeit without all the classic characteristics of the concept "Constitution") only if it can answer these questions in the context of post-modern society and the globalized economy and in the context of a society of fear and insecurity that seeks guarantees of a constitutional caliber accompanied by high efficiency. The European Union is forced to supply these answers if it wants to have a future.

From this point of view, I believe that the debate surrounding the constitutional future of Europe is both crucial from a practical point of view and pre-eminently political. Consequently, it is a matter that ought to be of interest to all European citizens and therefore to all European politicians, who in turn must always bear in mind when approaching these matters, that the answers they give must be both legally grounded and be able to stand theoretical examination.

[1] See E. Venizelos, Lectures in Constitutional Law, Vol. I, Thessaloniki, 1991, (in Greek), Id, The new Youth of the Constitution, in G. Amato - G. Braibant – E. Venizelos (eds.), in The Constitutional Revision in Today's Europe, London, 2002, pp. 25 et seq., Ar. Manesis, The Constitution on the threshold of the 21st century. Reprint from the Acts of the Academy of Athens, vol. 68, Athens, 1993, (in Greek), D. Tsatsos, Constitutional Law, Athens - Komotini, pp. 178 et seq., (in Greek.) Also see U. Preuss (ed.), Zum Begriff der Verfassung. Die Ordnung des Politischen, Frankfurt am Main, Fischer, 1994, D. Grimm, Die Zukunft der Verfassung, Frankfurt am Main, Suhrkamp, 1991, M. Fioravanti, Costituzione, Bologna, 1999. The prospect of a "European constitution" has given new dimensions to the debate on the constitution as form. See E. Venizelos, The Challenge of the European Constitution, Athens - Thessaloniki, 2003, (in Greek), X. Yataganas, The long path towards the constitutionalism of the European Union, Athens - Thessaloniki, 2003, (in Greek), P. Magnette (ed.), La constitution de l'Europe, Bruxelles, 2002, Ad. Anzon, La costituzione europea come problema, Riv. Ital. Dir. Pubbl. Comunitario 2000, pp. 629 et seq., J - C. Piris, L'Union Européenne a-t-elle une constitution? Lui en faut-il une?, RTD eur. 1999, pp. 600 et seq., G. Frankenberg, The return of the contract: problems and pitfalls of European Constitutionalism, ELJ 2000, pp. 257 et seq., I. Pernice - F.C. Mayer, De la constitution composée de l'Europe, RTD eur. 2000, pp. 623 et seq., P. Allott, The Crisis of European Constitutionalism: Reflections on the Revolution in Europe, CML Rev. 1997, pp. 439 et seq., D. Grimm, Does Europe need a Constitution?, ELJ 1995, pp. 282 et seq.,J. Habermas, Remarks on Dieter Grimm's "Does Europe need a Constitution"?, ELJ 1995, pp. 303 et seq.

[2] See I. Pernice - F.C. Mayer, De la constitution, *op. cit.*, pp. 626-627, W. van Gerven, Toward a coherent constitutional system within the European Union, EPL 1996 pp. 82 et seq. See also J. Isensee, Staat und Verfassung, in: J. Isensee – P. Kirchhof (eds.), Handbuch des Staatsrechts der Bundesrepublik Deutschland, Heidelberg, Müller, 1995, I, pp. 592 et seq., according to whom the State is the necessary object of the constitution and the essential means for making it effective. The idea of a constitution without a state also appears in the works of those who argue for a "global constitutionalism" based on a people constituted of all mankind. See L. Ferrajoli, La sovranità nel mondo moderno, Milano, Anabasi, 1997, pp. 50 et seq. This, however, is a rather "supra-historical" and utopian conception of the constitution, which cannot serve as the basis for dealing with the problem of the "European Constitution".

[3] See E. Venizelos, Lectures, *op. cit.*, pp. 27-28.

[4] See E Venizelos, Lectures, *op. cit.*, p. 28, Á. Manitakis, Constitutional Law, I, Thessaloniki, Sakkoulas, 1987, pp. 51 et seq., (in Greek.)

[5] See E. Venizelos, The durability of the constitutional phenomenon in the postmodern age, in P. Häberle – M. Morlok – V. Skouris (eds.), Festschrift für Dimitris Th. Tsatsos, Baden – Baden, 2003, pp. 690 et seq.

[6] See T. Tzonos, The constitutions of Central and South Eastern Europe, Athens – Komotini, 2000, (in Greek.)

[7] The situation of Kosovo following the installation of the UN Administration in 1999 is a characteristic example.

[8] See A. Manesis, The constitution on the threshold of the 21st century, op. cit., D. Tsatsos, European Confederacy. For a union of peoples with powerful fatherlands, Athens, 2001, p. 156, (in Greek.)

[9] For the concept of sovereignty, see P. Dagtoglou, On sovereignty, Athens – Komotini, 1986, (in Greek), D. Tsatsos, Controversial concepts of the European unionist order. Methodological contribution to the interpretation of European unionist institutions, Athens – Komotini, 1997, pp. 31 et seq., (in Greek.)

[10] See E. Venizelos, The durability of the constitutional phenomenon, op. cit., pp. 696 et seq.

[11] See E. Venizelos, The Maastricht Treaty, and the constitutional European space, Athens – Komotini, 1994, pp. 18 et seq., (in Greek), Cf. L. Fernandez Esteban, Constitutional values and principles in the Community Legal Order, Maastricht J. Eur. Compar. L. 1995, pp. 129 et seq.

[12] A characteristic example of the reciprocal tolerance between national constitution and Community legal order is found in paragraph 2 of article VI of the Maastricht Treaty. See E. Venizelos, The Maastricht Treaty, *op.cit.*, pp. 16 et seq.

[13] See E. Venizelos, Greece and the perspective of European integration – Ten proposals for the Intergovernmental Conference and the following steps, in: S. Dalis (ed.), From Amsterdam to Nice. Europe and Greece in the new era, Athens, 2001, pp. 67 et seq., (in Greek), D. Tsatsos, European Confederacy, *op. cit.*, pp. 145 et seq., I. Pernice – F. C. Mayer, De la Constitution, *op. cit.*, pp. 623 et seq., P. Craig, Constitutions, Constitutionalism and the European Union, ELJ 2001, pp. 125 et seq., L. Fernandez Esteban, Constitutional values, *op. cit.*, pp. 129 et seq., T. Schilling, Treaty and Constitution. A comparative analysis of an uneasy relationship, Maastricht J. Eur. Compar. L. 1996, pp. 47 et seq.

[14] See D. Tsatsos, European Confederacy, *op. cit.*, pp. 81 et seq., P. Lemmens, The relation between the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights – Substantive Aspects, Maastricht J. Eur. Compar. L. 2001, pp. 49 et seq., M. Gijzen, The Charter: A milestone for social protection in Europe?, Maastricht J. Eur. Compar. L. 2001, pp. 33 et seq., B. de Witte, The legal status of the Charter: Vital question or non – issue, Maastricht J. Eur. Compar. L. 2001, pp. 81 et seq., L.F.M. Besselnik, The member states, the national constitutions and the score of the Charter, Maastricht J. Eur. Compar. L. 2001, pp. 68 et seq., A. Vilhelm Heringa – L. Vehley, The EU Charter: Text and structure, Maastricht J. Eur. Compar. L. 2001, pp. 11 et seq, Revue européenne de droit public, No 1, 2002, La Charte des droits fondamentaux de l'Union européenne.

[15] See E. Venizelos, Lectures, *op. cit.*, pp. 25 et seq.

[16] Cf. H. P. Schneider, Alternativen der Verfassungsfinalität: Föderation, Konföderation – oder was sonst?, Integration 2000, pp. 171 et seq., D. Thürer, Föderalistische Verfassungsstrukturen für Europa, Integration 2000, pp. 89 et seq., I. Pernice – F.C. Mayer, De la constitution, *op. cit.*, pp. 641 et seq., A. Anzon, La costituzione europea, *op. cit.*, pp. 642 et seq.

[17] See A. Anzon, La costituzione, *op. cit.*, pp. 654 et seq.

[18] For the problems and difficulties of this venture, that presupposes a clear separation of powers between the European Union and the member states, the organisation of a Government of the European Union that will determine and direct its general policy, and the sovereignty of the European Union in matters of foreign policy, see J.-C. Piris, L'Union Européenne, *op. cit.*, pp. 621 et seq., P.Craig, Constitutions, *op. cit.*, pp. 135 et seq., E. Venizelos, Greece and the perspective of European integration, *op. cit.*, p. 69.

[19] See E. Venizelos, Greece and the perspective of European integration, *op. cit.*, pp. 68-69, A. Dashwood, The Constitution of the European Union after Nice: Law – making procedures, ELRev. 2001, pp. 215 et seq.

[20] For this institutional dichotomy on the level of the law-making processes of the European Union, see E. Venizelos, The Maastricht Treaty, *op. cit.*, p. 32, and more extensively Id., Lectures, *op. cit.*, pp. 154 et seq. For the most recent developments of this institutional form, see P. Kousis, The institutional reforms of the Treaty of Amsterdam, Greek Review of European Law, 1998, pp. 219 et seq., (in Greek), P. Ioakeimidis, The Treaty of Nice and the future of Europe, Athens, 2001, pp. 31 et seq., pp. 83 et seq. (in Greek.)

[21] See P. Ioakeimidis, The Treaty of Nice, *op. cit.*, pp. 12 et seq., A. Hatje, Die Institutionelle Reform der Europäischen Union – der Vertrag von Nizza auf dem Prüfstand, EurR 2001, pp. 143 et seq., T. Wiedmann, Der Vertrag von Nizza; Genesis einer Reform, EurR 2001; pp. 185 et seq.

[22] Cf. A. Baldassarre, La tutela comunitaria dei diritti dell' uomo e la corte costituzionale italiana, in: A. Romano (ed.), Enunciazione e giustiziabilità dei diritti fondamentali nelle carte costituzionali europee, Acts of a Congress in honour of Professor Francisco Tomás y Valiente, Honorary President of the Spanish Constitutional Court, Milano, Giuffré, 1994, pp. 80 et seq. Baldassarre – at that time a judge on the Italian Constitutional Court – observes that European Court of Justice lacks "the language of constitutional law, the language of a law that is turned towards values and that considers the entire body of law to be organised around the fundamental values, which are the values of human dignity, the values of freedom, universal values (*op. cit.*, p. 84). In the more recent jurisprudence of the European Court of Justice, however, there is a clear trend towards a broadening of the list of protected rights. See P. Stangos, Towards a European Constitution: Rule of Law, Fundamental rights, capacity of "citizen of the Union", in: K.

Stefanou – A. Fatouros – T. Christodoulidis, Introduction to European studies, Athens, 2001, pp. 414 et seq., (in Greek.)

[23] Cf. D. Tsatsos, European Confederacy, *op. cit.*, p. 62, pp. 146 et seq., who uses the term "European constitutional treaty". This term is obviously more precise, but it emphasises the old and – in the context of the European Union – classic element of the treaty rather than constituting a more profound institutional reformation in the framework of the European Union, which permits the use of the term "Constitution", albeit in the sense of "intergovernmental Constitution".