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ABBREVIATIONS

ABl.	: Amtsblatt der EG (EU)
AcP	: Archiv für civilische Praxis
AFDI	: Annuaire Français de Droit International
AJ	: L' actualité Juridique
AJCL	: American Journal of Comparative Law (The)
AJDA	: Actualité Jyridique du Droit Administratif
AJIL	: American Journal of International Law
AöR	: Archiv des öffentlichen Rechts
BB	: Der Betriebs - Berater
CDE	: Cahiers de Droit Européen
CE	: Communautés Européennes
CEDH	: Convention Européennes de Droit de l'Homme
CEEA	: Communautés Européennes de l' Énergie Atomique
CFSP	: Common Foreign and Security Policy
CJCE	: Cour de Justice des Communautés Européennes
CJIT	: Chicago Journal of International Law
Clunet	: Journal du Droit International (J.D.I.)
CLSR	: Computer Law and Security Report
C.M.L.R.	: Common Market Law Reports
CML Rev.	: Common Market Law Review
CONSUM.L.J.	: Consumer Law Journal
Cour eur.dr.h.	: Cour Européennes dew Droits de l'Homme
CTLR	: Computer and Technology Law Review
D.	: Recueil Dalloz
DZWir	: Deutsche Zeitschrift für Wirtschaftsrecht
EA	: Europa Archiv
EAEC	: European Atomique Energy Community
EAG	: Europäische Atomgemeinschaft (EURATOM)
EBRL	: European Business Law Review
EC	: European Communities
ECHR	: European Convention on Human Rights
ECJ	: European Court of Justice

ECLR	: European Competiotion Law Review
ECR	: European Court Reports (Court - Court of First Instance)
ECSC	: European Coal and Steel Community
EELR	: European Envirommental Law Review
EFTA	: European Free Trade Union
EG	: Europäische Gemeinschaft
EGKS	: Europäische Gemeinschaft für Kolhe und Stahl
E.H.R.L.R.	: European Human Rights Law Review
EIPR	: European Intellectual Property Review
EJIL	: European Journal of International Law
EJLT	: European Journal of Law and Technology
ELJ	: European Law Journal
EL.Rev.	: European Law Review
Elrev./HR	: European Law Review/ Human Rights Survey
EMRK	: Europäische Menschenrechtskonvention
EPL	: European Public Law
ERPL	: European Review of Private Law-Revue Européenne de Droit Privé - Europäische Zeitschrift für Privatrecht
EStAL	: European State Aid Law Quarterly
ETL	: European Transport Law - Droit Européen des Transports - Europäisches Transportrecht
EU	: Europäische Union
EU	: European Union
EUG	: Europäischer Gerichtshof
EuGRZ	: Europäische Grundrechte - Zeitschrift
EuR	: Europarecht
EuCHR	: European Court of Human Rights
EuZW	: Europäische Zeitschrift für Wirtschaftsrecht
EWS	: Europäisches Wirtschafts - und Steuerrecht
GASP	: Gemeinsame Aussen - und Sicherheits Politique
GATT	: General Agreement on Tariffs and Trade
GATS	: General Agreement on Trade Services
GRUR Int.	: Gewerblicher Rechtschutz und Urheberrecht - Internationaler Teil
HRLJ	: Human Rights Law Journal
HRSS	: Hamburg Review of Social Sciences
HRQ	: Human Rights Quarterly
ICLQ	: International and Comparative Law Quarterly (The)
IDPL	: International Data Privacy Law
IIC	: International Review of Industrial Property and Copyright Law
IJLIT	: International Journal of Law and International Technology
I.L.M.	: International Legal Materials

IPRax	: Praxis des Internationalen Privat - und Verfahrensrechts
JCMS	: Journal of Common Market Studies
JCP	: Juris-Classeur périodique (La Semaine Juridique)
J.D.I.	: Journal du Droit International (Clunet)
J.O.	: Journal Officiel
JT	: Journal des Tribunaux
JT-DE	: Journal des Tribunaux - Droit Européen
JWT	: Journal of World Trade
JZ	: Juristen Zeitung
JWT	: Journal of World Trade
LIEI	: Legal Issues of European Integration
MJ	: Maastricht Journal of European und Comparative Law
MLR	: Modern Law Review (The)
NJW	: Neue Juristische Wochenschrift
NQHR	: Netherlands Quarterly of Human Rigths
NVWZ	: Neue Zeitschrift für Verwaltungsrecht
NZBau	: Neue Zeitschrift für Baurecht und Vergaberecht
O.J.	: Official Journal
PESC	: Politique Étrangère et de Sécurité Commune
PPLR	: Public Procurement Law Review
RabelsZ	: Rabels Zeitschrift für ausländisches und internationales Privatrecht
R.A.E.	: Revue des Affaires Européennes
RCADI	: Recueil des Cours de l' Académie de Droit International de La Haye
RCC	: Revue de la Concurrence et de la Consommation - Droit et Marchés
R.D.P.	: Revue du Droit Public
RECIEL	: Review of European Community and International Environmental Law - Access to Environmental Information
Recueil	: Recueil de la Jurisprudence (Cour et Tribunal de Premiere Instance CE)
REDC	: Revue Européenne de Droit de la Consommation
Rev.trim.dr.h.	: Revue trimestrielle des droits de l' homme
RFDA	: Revue Française de Droit Administratif
RFDC	: Revue Française de Droit Constitutionnel
RGDIP	: Revue Générale de Droit International Public
RHDH	: Revue Hellénique de Droits de l' Homme (in Greek)
RHDI	: Revue Hellénique de Droit International
RHellDE	: Revue Hellénique de Droit Européen (in Greek)
RIDPC	: Rivista Italiana di Diritto Pubblico Comunitario
Riv.dir.eur.	: Rivista di diritto europeo
RIW	: Recht der Internationalen Wirtschaft

RMCUE	: Revue du Marché Commun et de l' Union Européenne from 1991 (since 1990 Revue du Marché Commun - RMC)
RMUE	: Revue du Droit de l' Union Européenne from 2000 (since 1999 Revue du Marché Unique Européen)
RTDeur.	: Revue Trimestrielle de Droit Européen
RUDH	: Revue Universelle des Droits de l' Homme
Sammlung	: Sammlung der Rechtssprechung (Gerichtshof und Gericht erster Instanz EG)
TRIPs	: Trade Related Intellectual Property Rigths
UE	: Union Européenne
WuW	: Wirtschaft und Wettbewerb
YBEL	: Yearbook of European Law
ZEuP	: Zeitschrift für Europäisches Privatrecht
ZfBR	: Zeitschrift für deutsches und internationales Bau- und Vergaberecht
ZFIR	: Zeitschrift Für Immobilienrecht
ZfRV	: Zeitschrift für Rechtsvergleichung - Internationales Privatrecht und Europarecht
ZHR	: Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht
ZVglRWiss	: Zeitschrift für Vergleichende Rechtswissenschaft

GREECE'S PARTICIPATION IN THE EUROPEAN INTEGRATION AS A NATIONAL CONSTITUTIONAL DECISION VALIDATED IN THE CRISIS'S CAULDRON

Evangelos Venizelos*

I. ACCESSION TO THE THEN EUROPEAN COMMUNITIES AS A GENETIC ELEMENT OF THE 1975 GREEK CONSTITUTION

Greece's accession to the then European Communities is interwoven with the collapse of the 1967-1974 dictatorship and the restoration of democracy, with «metapolitefsi», the change of regime[1]. That the European choice was linked from the beginning to critical internal, political and institutional developments, qualified the relevant decision as a manifestation of political voluntarism, as a statement of choice of values. The Hellenic Republic viewed its participation in the European integration primarily as a medium for its institutional shielding and as a consequence of its western orientation. The Greece-European Economic Community Association Agreement was the first of its kind to be concluded as early as 1961, but its core mechanisms ceased to operate during the dictatorship[2]. Moreover, at the time, the dictatorial regime was forced to leave the Council of Europe under the pressure of the inter-state application filed by the Nordic countries[3]. It was reasonable for

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1. Ex multis, see, D.A. SOTIROPOULOS, Democracy in Greece, Forty Years On, Heinrich Boll Stiftung, 12 April 2014, https://eu.boell.org/en/2014/04/12/democracy-greece-forty-years.
2. C. SALM, The European Parliament and Greece's accession to the European Community, European Parliament Research Service, 29 January 2021, https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI (2021) 679064.
3. COUNCIL OF EUROPE, European Commission of Human Rights, The Greek Case, Report of The Sub-Commission, 1 April 1999, vol I, p. 1; D.C. CONSTAS, The "Greek

the Democratic restoration to be accompanied by a restoration of the country's relations, on one hand, with the then European Communities, and, on the other hand, with the Council of Europe. In the first case, taking the Association Agreement as starting point, the objective was that of an as speedy an accession as possible. In the second case, the country had to return to the Council of Europe and once again become a high contracting party to the European Convention on Human Rights[4].

Furthermore, acceding to then European Communities came to balance the fierce anti-Americanism then prevalent in the Greek society, which held the US primarily liable for the dictatorship's rise and stay in power, as well as for the then raw Turkish military invasion of Cyprus and occupation of the northern part of the territory of the Republic of Cyprus[5]. Said accession meant to countervail, to some extent, the crisis in Greece's relations with NATO in the wake of the dramatic developments in Cyprus; a crisis that led to Greece withdrawing from NATO's military wing between 1974 and 1980[6].

Greece's decision to seek and pursue its accession to the then European Communities as soon as possible on account of political primarily reasons (more specifically, reasons related to democratic normalcy and national security), acquired constitutional features right from the beginning. To be exacting, it was solemnly linked to the entry into force of the country's new democratic and liberal Constitution, since the application for membership in the then European Communities was submitted on the same day on which the Constitution entered into force (11.06.1975)[7].

Case" before the Council of Europe: The Exercise of "Political Pressure" by International Organizations: Theory and Practice, Papazissis Publishing House, 1976 (in Greek); J. BECKETT, The Greek Case Before the European Human Rights Commission, Human Rights, 1970-71, pp. 91-117; A. KISS / PH. VÉGLÉRIS, L'affaire grecque devant le Conseil de l'Europe et la Commission européenne des Droits de l' homme, Annuaire Français de Droit International, 1971, pp. 889-931. More generally on the junta's relationship with international organizations, see E. PEDALIU, A clash of cultures? The UN, the Council of Europe and the Greek dictators, in A. Klapsis … [et al.] (eds), The Greek Junta and the International System: A Case Study of Southern European Dictatorships, 1967-74, Routledge, 2020

4. The ECHR was ratified by Greece initially by virtue of L. 2329/1953 and, after the dictatorship and Greece's reinstatement in the Council of Europe, once again by virtue of L. 53/1974.
5. S.V. ROBERTS, A New Anti-Americanism in Greece, The New York Times, Aug. 20, 1974, https://www.nytimes.com/1974/08/20/archives/a-new-antiamericanism-in-greece.html.
6. On the sentiment of the period, V. COUFOUDAKIS, Greek-Turkish Relations, 1973-1983: The View from Athens, International Security, 1985, pp. 185-217.
7. The 1975 Constitution was voted on 7 June, promulgated on 9 June and entered into force on 11 June 1975, in accordance with the 12th Resolution of the Revisionary Parliament (Government Gazette of the Hellenic Republic, First issue, issue number 110/9 June

Through the provisions of Article 28, the new (at that time) 1975 Constitution, formulated the necessary constitutional receptor for the country's accession to the then European Communities without contestations of a constitutional nature[8].

Said set of moves represented not only a national strategic choice, but also a national constitutional decision, incorporated in the new democratic regime's historical and institutional foundations. At that time, the Member States' "*national identity inherent in their fundamental structures, political and constitutional*"[9] was not so intensely discussed as it is now, but with a legitimate hindsight, one can say that membership in the European Communities, participation in the European phenomenon and the dynamics of European integration constituted an integral part of the Greek national (constitutional) identity, which, from the outset, was shaped in view of the accession. We can say that this is a reversal of the concept of national (constitutional) identity: not as a limit, but as a mandate to the Member State to participate in the European integration.

In the first phase of the post-dictatorship period (1974-1977), the political system included a pro-European ruling party (New Democracy, led by Konstantinos Karamanlis) and a pro-European opposition party (Enossi Kentrou - Nees Dinamis), that would be quickly overtaken by the emerging PASOK, led by Andreas Papandreou. At the time, the latter was delivering a strongly anti - American, anti-Western and anti-European rhetoric. In the second phase (1977-1981), the New Democracy party still had parliamentary majority, but PASOK had now taken the position of major opposition. At any rate, the Treaty of Greece's Accession to the then European Communities was ratified in 1979 (Law 945/1979) by an overwhelming majority of 191/300 MPs, i.e. a majority that well exceeded the supermajority of 3/5 of the total number of MPs (180/300) provided for in paragraph 2 of Article 28 of the Constitution (should the strictest interpretation of the procedural conditions for ratifying a treaty of such nature be adopted).

PASOK's promotion into a parliamentary majority and the formation of the first

1975). The country's application for accession to the then European Communities was submitted on the same day.

8. Out of recent bibliography, see X. CONTIADES / CH. PAPACHARALAMBOUS / CHR. PAPASTYLIANOS, The Constitution of Greece: EU Membership Perspectives, in A. Albi / S. Bardutzky (eds) National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law, T.M.C. Asser Press, The Hague, 2019, https://doi.org/10.1007/978-94-6265-273-6.
9. Pro multis, see V. SKOURIS, L'identité nationale: qui détermine son contenu et selon quels critères?, in liber Amicorum in onore di Antonio Tizzano, Giappicheli, 2018), p. 912; S. MARTIN, L' identité de l' État dans l' Union européenne: entre 'identité nationale' et 'identité constitutionnelle', Revue française de droit Constitutionnel, 2012, p. 13; E. CLOOTS, National Identity, Constitutional Identity, and Sovereignty in the EU, National Netherlands Journal of Legal Philosophy, 2016, pp. 82-98

Andreas Papandreou government in 1981 coincided with the activation of the 1979 Accession Treaty[10]. Thus begins the third phase of the post-dictatorship period (1981-2009), which, I believe, ends with the outbreak of the economic crisis in 2009. This long phase can be characterized as a phase of broad pro-European consensus, as both ruling parties (PASOK and New Democracy) that alternate in power appear equally pro-European and vote in favor of all amendments to the founding treaties of the EU and of the treaties for the accession of new member states. In fact, at some point in this long journey, smaller pro-European parties, including the pro-European communist left at the time, took a stand in favor of ratifying the main treaties (as it happened with the Treaty of Maastricht in 1992).

The broad political consensus on the country's European orientation and its participation in the course of European integration is largely due to the fact that throughout this period no issue related to the Greek membership and, especially, no issue related to the ratification of a founding treaty, was put to a referendum. All relevant issues were decided within the politically secure shell of the Parliament, i.e. within the institutional framework of representative democracy. Proposals for holding a referendum were formulated, but they were rejected by the successive parliamentary majorities, without the rejection provoking a political, or even more, an institutional crisis[11].

The great steps made towards European integration after Greece's accession in 1981 were never the subject of a major and heated internal political conflict; unlike what happened in other Member States. Neither the Maastricht, Amsterdam and Nice Treaties, nor the Treaty establishing a Constitution for Europe or the Treaty of Lisbon provoked reactions similar to those recorded in France, the Netherlands, Ireland or the Czech Republic.

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10. A. NAFPLIOTIS, From radicalism to pragmatism via Europe: PASOK's stance vis-à-vis the EEC, 1977-1981, Journal of Southeast European and Black Sea Studies, 2018, pp. 509-528

11. A proposal for holding a referendum regarding the ratification of the Treaty of Lisbon had been put forward in 2007 by PASOK, in its capacity as major opposition party, however, the relevant proposal was not upheld by the New Democracy party parliamentary majority. The announcement made on 31st October 2011 by the then Prime Minister, George Papandreou, about holding a referendum for the approval of the second program in support of the Greek economy, did not materialize. On the conduct of the referendum of 5th July 2015 that was proclaimed by the SYRIZA – ANEL government, with "No" prevailing by an overwhelming majority of 62% of the valid votes, whereas the agreement for the third program in support of the Greek economy (memorandum), lasting from 2015 until the end of 2018, was concluded immediately thereafter see E. VENIZELOS, State transformation and the European integration project: Lessons from the financial crisis and the Greek paradigm, CEPS, Special Report No 130, 2016, https://www.ceps.eu/ceps-publications/state-transformation-and-european-integration-project-lessons-financial-crisis-and/.

II. FROM THE CREATIVE AMBIGUITY OF THE REFERENCE IN ARTICLE 28 OF THE CONSTITUTION TO THE INTRODUCTION OF EXPLICIT PROVISIONS ON THE COUNTRY'S PARTICIPATION IN THE EUROPEAN INTEGRATION BY THE 2001 CONSTITUTIONAL REVISION

The European consensus was therefore, already since 1975, a key element of the country's political, as well as constitutional acquis, with Article 28 operating as an explicit, yet interpretatively ambiguous constitutional basis. From the start (i.e. soon as the Accession Treaty was ratified by Law 945/1979), two were the interpretatively ambiguous points: the first concerned the majority that was necessary for ratifying the relevant treaties and the second the Constitution's and its interpreters' (especially the judiciary's) understanding as to the relationship of the national Constitution with primary, as well as derivative EU law.

With regard to the first issue, the escalation of the majorities required by the three paragraphs of Article 28 was a challenge for jurisprudence, the legislature and, ultimately, case law. According to paragraph 1 on the ratification of international conventions by statute, where this is required by Article 36 and, in any case, in order for the international convention ratified by statute to prevail over national law (i.e. over ordinary acts of Parliament, not over the Constitution), the ordinary majority for passing laws suffices. Such majority is the absolute majority of the MPs present, which in case of votes by roll-call cannot be less than a quarter of the total number of MPs (75/300), per Article 67 of the Constitution. According to paragraph 3, "*Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament* [151/300] *to limit the exercise of its national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity*". According to paragraph 2, "*Authorities provided by the Constitution may, by treaty or agreement, be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament [189/300] shall be necessary to vote the law ratifying the treaty or agreement*".

In this majorities' challenge, the answer that prevailed in the academic debate[12] (with weighty different opinions having been set forth) was that the founding treaties and amendments to the primary law of the Union, in general, should be regarded

12. The relevant debate is set out in recent bibliography by D. AKOUMIANAKI, Les rapports entre l'ordre juridique constitutionnel et les ordres juridiques européens: analyse à partir du droit constitutionnel grec, Thèse pour l' obtention du Doctorat en Droit, Universite Paris I Pantheon- Sorbonne, 2014, pp. 55 et seq., mainly p. 91 et seq., https://mail.google.com/mail/u/0/#inbox/FMfcgzGllCnlZnwxfhrFlSlznvRRVNvd?projector=1&messagePartId=0.1.

as falling within the common scope of paragraphs 2 and 3 of Article 28; therefore, the strictest substantive requirements of paragraph 3 and the strictest procedural requirements of paragraph 2 should be met, and the enactment of ratification laws requires a supermajority of three-fifths of the total number of MPs (180/300).

Many years later, on the occasion of reviewing the constitutionality of the first support and adjustment program (memorandum) for the Greek economy, case law ruled that fulfillment of the conditions of paragraphs 2 and 3 of Article 28 is judicially reviewable[13]. In that specific case, though, the so-called first memorandum was not an international convention, but a set of provisions included in ordinary national laws further to political commitments undertaken by the Hellenic Republic and aiming at fiscal adjustment and at enhancing competitiveness through structural changes[14].

Parliamentary and legislative practice made it easier for the judge to take this stance, as all key laws ratifying the amendments to the founding treaties have been passed by a supermajority of more than three-fifths of the total number of MPs. However, said laws sometimes refer to Article 28 without specifying the critical paragraph, and at others, they make express reference to paragraph 1 thereof as regards the legal force acquired by a convention that is ratified according to the national legal order (and not self-referentially, per the logic of the EU legal order). More specifically, general reference to Article 28, without further specific reference to a paragraph, is made mainly in Law 945/1979, ratifying Greece's Accession Treaty to the then European Communities, in Law 2077/1992, ratifying the Treaty of Maastricht, and in Law 3671/2008, ratifying the Treaty of Lisbon. On the contrary, explicit reference to the force provided in paragraph 1 of Article 28 (superior to ordinary legislative provisions and, by contrast, inferior to the Constitution) is made in Law 2691/1999, ratifying the Treaty of Amsterdam, in Law 3001/2002, ratifying the Treaty of Nice, and in Law 3341/2005, ratifying the Treaty establishing a Constitution for Europe. A similar reference to the force provided in paragraph 1 of Article 28 is contained in articles one, two and three of Law 4063/2012, which ratify, respectively, the Decision of the European Council amending Article 136 TFEU, the Treaty on the establishment of the European Stability Mechanism and the Treaty on Stability, Coordination and Governance in Economic and Monetary Union[15].

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13. Judgment no. 668/2012 of the Plenary Session of the Council of State, particularly recitals 27-29 and 32. A succinct yet comprehensive presentation is made by A. BANOS / X. YATAGANAS, La Constitutionnalité du Programme de Consolidation Financière pour la Grèce, European Politeia, 2015, p. 77.
14. This was the position which prevailed in judgment no. 668/2012 of the Plenary Session of the Council of State.
15. In the context of the latest revision of its Constitution in 2019, Greece did not include a provision regarding the deficit and debt limit, in accordance with the provisions of the Treaty on Stability, Coordination and Governance in Economic and Monetary Union;

The first option of a general reference to Article 28 leaves the requisite majority question pending and does not take an explicit position as to the legal force of a Treaty ratified by law, per the national constitutional perception on the hierarchy of legal rules (which, of course, begins with the Constitution's self-referential supremacy). The second option of an express reference to the force set out in paragraph 1 of Article 28 seems to answer the question of a ratified Treaty's legal force in the hierarchy of legal rules, according to the national constitutional perception; however, it, too, leaves pending the question of the majority required for this category of treaties, as the reference to paragraph 1 is about the legal force set out expressly thereat – not about the necessary majority for enacting the ratification law. In other words, paragraphs 2 and 3 of Article 28 that provide for supermajorities, are an exception to the general rule which requires an ordinary majority for enacting ratification laws and which is not contained in paragraph 1 of Article 28, but in the aforementioned Article 67[16].

Therefore, in my opinion, neither one nor the other way of drafting the ratification law provides a clear legislative answer to the necessary majority question. The legislative answer as to the legal force of Treaties ratified is, under both options, an answer given in the context of the self-referential supremacy of the national Constitution within the framework of the national legal order and does not resolve the conflict around the subject of primacy which EU law claims to have over the national constitutions of the Member States in the field of the EU legal order.

By the 2001 revision and by an overwhelming majority that exceeded the supermajority provided for in Article 110 as required for revising the Constitution, the following plain, though evidently forceful, interpretative clause was added to Article 28: "*Article 28 constitutes the foundation for the participation of the Country in the European integration process*". A respective, interpretative clause was added to Article 80, paragraph 2 of which provides: "*The minting or issuing of currency shall*

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nonetheless, as already noted, the Treaty has been already ratified by Law 4063/2012 and, as such, its relevant provisions anyway carry the (higher) legal force of Article 28 par. 1 of the Constitution. As for the national Constitution, according to the interpretative clause of Article 28 that was added in by the 2001 revision, has to operate as foundation for Greece's participation in the European integration and, therefore, to be interpreted accordingly, i.e. in line with EU Law and ancillary rules of International Law, such as the Treaty on Stability etc., that are not part of the domain of the Union's legal order, but which co-formulate it, regulating by means of International Law rules the conduct of member states in the EU and the Eurozone that are high contracting parties to the Treaty and have therefore undertaken relevant international legal obligations, on top of their obligations deriving from EU Law.

16. Article 67 of the Greek Constitution provides the following: "*Parliament cannot resolve without an absolute majority of the members present, which in no case may be less than one-fourth of the total number of the Members of Parliament. In the case of a tie vote, the vote shall be repeated; in the case of a second tie the proposal shall be rejected*".

be regulated by law". Following the country's participation in the Eurozone and the assignment of monetary policy to the EU (in fact, to the ECB) – namely, following the dramatic limitation of monetary sovereignty –, the amending legislator found necessary to clarify, by an interpretative clause under Article 80, that "*Paragraph 2 does not impede Greece's participation in the process of the Economic and Monetary Union, in the wider framework of European integration, according to the provisions of article 28*".

By these two interpretative clauses[17] two interesting novelties are introduced in the Greek Constitution:

Firstly, an explicit foundation for the country's participation in the European integration process, and therefore in the dynamics of integration - whatever this may entail each time. Article 28 must therefore be interpreted and applied in the light of the constitutional purpose (teleology) and the constitutional decision set out in the interpretative clause. The fact that, from a legislative drafting point of view, this constitutional rule is rendered as an interpretative clause does not change its nature or reduce its legal force; it is a complete constitutional rule of equal force that, in legislative drafting, could have taken the form of a separate article or of a new paragraph of Article 28.

Secondly, the explicit constitutional acceptance of the country's participation not only in the EU, but also in the monetary and economic union, in the Eurozone. The statements made directly above regarding the legal nature and force of interpretative clauses likewise apply to this more specific interpretative clause, which refers to Article 28 and to the interpretative clause contained therein.

The most important function of the Article 28 interpretative clause lies in the obligation deriving therefrom, as an explicit interpretative rule, to interpret the Constitution, on the whole, in accordance with the purpose of European integration. Such an interpretation seeks to reduce as much as possible the frictions between a national Constitution and EU law, both primary and derivative. It has been already adopted in the key judgment no. 3470/2011 of the Plenary Session of the Greek Council of State (CoS - Greece's Supreme Administrative Court), which concluded the dialogue between the CoS and the CJEU regarding article 14 par. 9 of the Greek Constitution and the incompatibility presumption of a media company's "principal shareholder" to conclude a public contract by sustaining the CJEU position that, under EU law, such presumption cannot be irrefutable. Said judgment explicitly renders the interpretative clause of Article 28 of the Constitution, a component of

17. For a more detailed exposition of my views, as well as references to the travaux préparatoires and to the positions I had developed as general Rapporteur of the 2001 revision see E. VENIZELOS, The revisionary acquis (Το αναθεωρητικό κεκτημένο, in Greek), Sakkoulas, 2002, p. 234. Also see CONTIADES / PAPACHARALAMBOUS / PAPASTYLIANOS, supra note 8.

the major premise (recital 8) of its judicial reasoning; in other words, it renders the interpretative clause of Article 28, a rule of reference. Based on this rule as well, Article 14 par. 9 is, in the end, interpreted by the Plenary Session of the Supreme Administrative Court in a way that does not contradict EU law, as interpreted by the CJEU[18].

The same interpretative scheme was followed by the Greek Council of State on the issue of professional rights of those who hold degrees from universities of other Member States but have completed part of their studies not at the campus of these foreign universities, but in Greece, in colleges associated with franchise agreements with said universities. The original position of the case law insisted on the explicit constitutional prohibition (article 16 par. 5 and 8) of the establishment and operation of institutions of higher education by private entities. Subsequently, however, the CoS case law was aligned to the case law of the CJEU on the professional rights of graduates and respect for fundamental Union freedoms[19].

In 2001, through adding the interpretative clauses to Articles 28 and 80, the constitutional decision for the country's participation in the European integration, which could be inferred from the travaux préparatoires and the context of the 1975 Constitution, is turned into an explicit constitutional provision and a rule for interpreting the Constitution. Evidently, a similar constitutional rule of interpretation also covers Article 44(2) regarding the conditions for proclaiming a referendum and the questions thereof, especially after the 2015 experience which led to the degradation of the regulatory content of Article 44(2) and the legal consequences of a referendum that was held without subsequently being taken into account by the government which took the initiative to proclaim it[20]. Therefore, the 2001 constitutional revision can be seen as the culmination of a constitutional and political consensus on the country's irrevocable decision to participate in European integration.

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18. In greater detail, see E. VENIZELOS, Constitutional Law Lessons (Μαθήματα Συνταγματικού Δικαίου), Sakkoulas, 2021, p. 190 et seq. (in Greek). It is also worth noting judgment no. 1386/2021 of the Plenary Session of the Court of Auditors, which in recital 21 makes reference to the interpretative clause of Article 28 of the Constitution, as added in the 2001 revision. This is a judgment of broader interest regarding the relationship between the National Constitution and EU law.
19. The Council of State Plenary Session case law shifted from a restrictive interpretation of article 16 par. 5 of the Constitution regarding the exclusively public nature of Higher Education Institutions and the impact this has on the recognition of degrees awarded by foreign universities offering educational services in Greece (judgments no. 3457/1998 and 2070/1999 are telling) on to a broad and effectively compatible with EU law interpretation, which is also in line with the relevant CJEU case law (judgments no. 2770-2771/2011, 691-692/2013 are characteristic).
20. See supra note 11.

III. THE DECADE OF THE GREEK ECONOMIC CRISIS (2009-2019) AS A TEST, BUT ALSO AS VALIDATION OF THE RELATIONSHIP BETWEEN THE NATIONAL AND EU LEGAL ORDER

Seven years after the 2001 revision of the Greek Constitution, which offered the solution of inserting an explicit provision as to the country's participation in the processes of European integration (especially in the monetary and economic union and thus in the Euro area), the 2008 international economic crisis erupted, which in 2009 escalated into a fiscal crisis of the most vulnerable Member States of the Eurozone, beginning with Greece. From 2010 to 2019 the country was subjected to three support and adjustment programs which included loans from European partners under various legal schemes, supplementary loans from the IMF, debt reduction and restructuring and a monitoring mechanism of a large list of reforms and fiscal adjustment measures (conditionality) that had been provided for, in summary, in successive EU Council (ECOFIN) decisions, in the context of the excessive deficit control procedure[21].

Those three programs' dual objective was, on the one hand, a structural adjustment, i.e. reinforcing the Greek economy's competitiveness, and, on the other hand, a rapid fiscal adjustment by way of a dramatic reduction of the primary and budget deficit and the achievement of primary surpluses; at the same time (basically, by the second program), a rigorous intervention in the public debt was organized and financed. Fiscal adjustment went through major cuts in public spending, mainly via cuts in salaries and pensions, and through pursuing significant increases in public revenues, mainly via increased tax charges. The macroeconomic effect of this targeting was a several years cumulative recession and a substantial increase in unemployment. If measured as the size of loans granted on relatively favorable terms, European solidarity is impressive; however, the public opinion perceived the programs primarily as a set of austerity measures imposed by the European partners. This mix of solidarity, structural change and strict fiscal discipline, resulting in severe recession and unemployment for a number of years, engendered an obvious crisis of EU popularity and legitimacy in the eyes of a large portion of the Greek public opinion. It further stirred a political earthquake with structural changes in the Greek political system. It tested the resilience of constitutional institutions and maximized the impulse towards populism that is inherent in democracy, including in the European liberal democracy version.

Throughout this period, Greece operated as a laboratory whereby the EU's ability to manage crises was tested. The necessary institutional mechanism did not exist; it was gradually formed and was, to a large extent, ready when the pandemic crisis (especially the economic aspect of this crisis) broke out. Up until the pandemic's outbreak, the political, democratic and institutional implications were not taken

21. See, in greater detail, VENIZELOS, supra note 11.

into account as a critical factor in elaborating and taking key economic decisions. Thus, the contribution of the difficult Greek experience to the maturing of the institutional edifice of the EU economic governance and to its readiness to face the economic dimensions of the pandemic crisis is great[22].

This test did not affect the way in which Greece perceives the constitutional foundations of its membership in the EU, its institutional behavior in ratifying international treaties that are critical to the functioning and development of the EU, or the question of the relationship between the national Constitution and EU law, primary and derivative. This period's governments and parliamentary majorities, in respect of the legislature, and the supreme courts' case law on matters of substantive importance, ultimately moved within the framework of the national constitutional decision originally taken in 1975 and explicitly confirmed in 2001 about the country's irrevocable participation in the EU, even in the most advanced level of integration each time, such as that of the Euro area.

In this light, it is easier to understand why the referendum that the then Prime Minister announced in November 2011 was not held, but also why the July 2015 referendum, that registered an overwhelming majority against accepting the proposals of the European partners on the content of the third support program (which, a few days later, was accepted on stricter terms by the then government that had proposed the referendum without significant changes, on key, in fact, issues, and was then approved by a law passed by a broad parliamentary majority), did not produce substantial legal and political results[23].

During the period of the economic crisis and the so-called memoranda, despite the raised tones of the political debate and the hard social conditions, the stance of the Greek supreme courts' case law on the issue of primacy and priority of application between the national Constitution and EU law, did not change[24]. Out of the forty, in

22. E. VENIZELOS, The Impact of the Financial Crisis on the Constitutions of Eurozone Member States Under Rescue Programs – Greece as a Laboratory of Constitutional Theory, ERPL, 2020, pp. 295-342

23. See, in greater detail, VENIZELOS, supra note 11.

24. The "pro-Union" judgments of the Council of State's Plenary Session quoted in footnotes 18 and 19, were issued either during or immediately after the economic crisis. However, the most important judgments in Greek case law in terms of securing the country's European course are judgments no. 668/2012 and 1116/2014 of the Plenary Session of the Council of State. The first one concerns the first program in support of the Greek Economy and second one the second program, including the rigorous intervention on the debt. For a more detailed exposition of my views, see E. VENIZELOS, The economic crisis as judicial challenge: The curve of judicial review of the constitutionality of the "memoranda" measures (Η οικονομική κρίση ως δικανική πρόκληση. Η καμπύλη του δικαστικού ελέγχου της συνταγματικότητας των «μνημονιακών» μέτρων), Sakkoulas, 2020, (in Greek).

total, years of Greek membership in the EU and the twenty years of Greek participation in the Euro area, ten, i.e. one quarter and one second thereof respectively, are the years of the economic crisis, which, after all, steeled the Greek membership and validated, at a high political cost, the national constitutional decision to participate in the European integration.

IV. THE FINAL POLITICAL CHOICES' REALISM EVOLVING ALONGSIDE THE REALISM OF GREEK CASE LAW WITH RESPECT TO THE MAJOR ISSUES OF THE CONFLICT REGARDING PRIMACY BETWEEN THE NATIONAL CONSTITUTION AND EU LAW

The curve of the period between the country's application for membership in the then European Communities (1975) until today (2021) may include individual phases of questioning or endangering its European orientation; considered overall, however, it shows the stability of the national strategic choice in favor of participating in every step of the European integration that has been taken in the last almost half a century.

This can be said to be the curve of final key decisions made by the state's political organs, respective governments and parliamentary majorities, usually qualified and under conditions of pro-European consensus. In the end, this curve was also confirmed during the extremely difficult decade of the economic crisis (2009-2019). Mistakes, outbursts of demagogy and populist rhetoric are also included in this broad framework. *A fortiori*, there are included many problems related to the legislator's and the administration's compliance with EU law rules; in particular, problems related to the transfer of Directives in the national legal order or the recognition of their direct effect by the administration. But the main thing is the stable and final participation of the country in the European acquis, which has also become a national acquis.

This curve of political choices is similar to the curve drawn by the national supreme courts' case law on the question of the relationship between the national and the EU legal order and, more specifically, on the conflict over primacy between the national Constitution and EU law. The object of this analysis is not to assess the way in which the Greek courts' case law has received and applied EU law, or the way in which the dialogue between the Greek courts and the CJEU has been conducted, mainly through preliminary ruling references. Nonetheless, the stance taken by the Greek supreme courts on the issues of primacy and priority of application between the national and the EU legal order, especially whenever there is a question of conflict or even of deviation between the national Constitution and a rule of primary or derivative EU law, is effectively a political issue. When an application filed before the CJEU, in the context of an infringement procedure against a Member State, considers that an infringement has been committed by the judgment of national court (indeed, of a supreme or constitutional court, although the latter does not ap-

ply to the Greek legal order), the state's political organs which represent it to the EU institutions, including the CJEU, are called upon to defend or not to defend the national case law position by which they may be obliged to comply, according to the national Constitution. Herewith I do not refer to a procedural defense in the context of a trial before the CJEU, but to the political decision whether a dispute between the national supreme (or constitutional) court and the CJEU, which enunciates the EU point of view, will turn into a point of friction, or not; whether a front of a political or values' conflict will be opened, or settlement will be sought through co-inherence, demonstrated by the legal orders and courts operating within either or both legal orders, as is the case with national courts that also act as Union courts[25].

Greek case law did not place the political organs of the Hellenic Republic in a position similar to that which Poland's political organs chose to adopt (at the level of their Prime Minister, in fact, who defends with political arguments and as a political choice his country's Constitutional Court case law which advocates the national Constitution's solid supremacy over EU law)[26].

Greek case law did not even put the political organs of the Hellenic Republic in a position similar to that in which the political organs of the Federal Republic of Germany were put, following the ruling of the German Federal Constitutional Court in the well-known Weiss case, which found that the Union's bodies had acted in an *ultra vires* manner and wherewith the issue of respect for the limits imposed by the national constitutional identity was raised[27]. This ruling of the German Federal Constitutional Court has given rise to an infringement procedure by the Commission against Germany. On 2 December 2021 the European Commission announced that it was closing the relevant procedure for three reasons: "First, in its reply to

25. T. NOWAKA / M. GLAVINAB, National courts as regulatory agencies and the application of EU law, Journal of European Integration, 2021, pp. 739-753. For approaching the subject's various aspects, see. M. BOTMAN / J. LANGER (eds), National Courts and the enforcement of EU law: The pivotal role of national courts in the EU legal order, Eleven International Publishing, 2020.
26. Pro multis, see M. LASEK-MARKEY, Poland's Constitutional Tribunal on the status of EU law: The Polish government got all the answers it needed from a court it controls, European Law Blog, 21 October 2021, https://europeanlawblog.eu/2021/10/21/polands-constitutional-tribunal-on-the-status-of-eu-law-the-polish-government-got-all-the-answers-it-needed-from-a-court-it-controls/; E. ŁĘTOWSKA, The Honest (though Embarrassing) Coming-out of the Polish Constitutional Tribunal, VerfBlog, 29 November 2021, https://verfassungsblog.de/the-honest-though-embarrassing-coming-out-of-the-polish-constitutional-tribunal/; O. GARNER / R. LAWSON, On a Road to Nowhere. The Polish Constitutional Tribunal assesses the European Convention on Human Rights, VerfBlog, 23 November 2021, https://verfassungsblog.de/on-a-road-to-nowhere/.
27. See in further detail, with regard to my approach, E. VENIZELOS, Passive and Unequal: The Karlsruhe Vision for the Eurozone, VerfBlog, 27 May 2020), https://verfassungsblog.de/passive-and-unequal-the-karlsruhe-vision-for-the-eurozone/.

the letter of formal notice, Germany has provided very strong commitments. In particular, Germany has formally declared that it affirms and recognises the principles of autonomy, primacy, effectiveness and uniform application of Union law as well as the values laid down in Article 2 TEU, including in particular the rule of law. Second, Germany explicitly recognises the authority of the Court of Justice of the European Union, whose decisions are final and binding. It also considers that the legality of acts of Union institutions cannot be made subject to the examination of constitutional complaints before German courts but can only be reviewed by the Court of Justice. Third, the German government, explicitly referring to its duty of loyal cooperation enshrined in the Treaties, commits to use all the means at its disposal to avoid, in the future, a repetition of an 'ultra vires' finding, and take an active role in that regard". This development is of great institutional interest because the Commission accepts that each Member State is represented internationally and within the European Union by its government and not by its supreme or constitutional court. These are particularly important when the question arises as to the limits of the Union's competences (Ultra Vires control) as they are determined by the multilateral international treaties which constitute the primary law of the EU but do not cease to belong themselves to the field of International Law[28].

A similar thing could have happened in Greece during the economic crisis decade when the Council (ECOFIN) decisions in the context of the excessive deficit procedure and the conditionality of the loans granted to Greece under various legal schemes by the European partners (as well as by the IMF), in the context of the three adjustment programs, raised questions with regard to important aspects of the Union's primary law (whenever there was literally no need for raising an issue of potential conflict with the national Constitution). As we have seen, the key legislative choices, such as the programs themselves and the intervention in the public debt, were not considered contrary either to the Constitution, the ECHR, or EU law. Judging from its effect, the relevant case law of the Greek Supreme Courts, the ECtHR, the CJEU, the Supreme Courts of other Member States and international arbitral tribunals appears aligned[29].

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28. For the Commission's initial decision see T. NGUYEN, A Matter of Principle. The Commission's Decision to Bring an Infringement Procedure against Germany, VerfBlog, 11 June 2021, https://verfassungsblog.de/a-matter-of-principle/. For the final decision of the Commission and the statement made in 2 December 2021 see, EU Commission closes infringement procedure against Germany on primacy of EU law and authority of the EU Court of Justice, INSIGHT EU MONITORING – EU and global regulatory monitoring, 02.12.2021, https://portal.ieu-monitoring.com/editorial/eu-commission-closes-infringement-procedure-after-germany-recognising-the-primacy-of-eu-law-and-authority-of-the-eu-court-of-justice?utm_source=ieu&utm_medium=web&utm_campaign=portal. For a theoretical approach see E. VENIZELOS, *Ultra Vires* Review and the Shift of Legal Orders, in Mélanges V. Skouris, Université de Toulouse, (forthcoming).
29. For greater detail, see E. VENIZELOS, The influence of the 2012 restructuring of the

As we have seen, the areas where the Greek Constitution was opening fronts of opposition to EU law (derivative EU law, in fact), i.e. the additional national conditions of constitutional restraint from concluding public contracts (article 14 par. 9) and the constitutional provisions that could act as obstacles to recognizing the professional rights of graduates of higher education provided by private or foreign entities (Article 16 par. 5 and 8), were in the end dealt by the case law of the Council of State (Supreme Administrative Court) in a flexible manner and by adopting an interpretative approach that eliminated the hotbeds of a possible crisis in its relations with the CJEU and the latter's case law. As already noted, the interpretative clause of Article 28, exerted its influence. Within a short period of time, the Supreme Administrative Court's case law effected those turnings and adjustments that prevented conflict from arising. Of course, there are still signs of possible future friction. For instance, the Greek constitutional treatment of the statute of limitations on criminal law matters is similar to the Italian one, which triggered the sequence of rulings known as *Taricco*[30]. Same applies to the Greek constitutional guarantees governing the arrest warrant and personal safety. In other Member States, similar national constitutional guarantees were a source of major friction with the CJEU over the European arrest warrant[31]. In both said examples, though, the national constitutional guarantees protect, instead of undermining, the rule of law as a fundamental European value.

The big picture, however, shows that, despite the extreme test of the economic crisis, Greece, as a Member State, remains politically firmly oriented towards the European integration, and at judicial level, so far at least, does not pose major problems, such as questioning the self-referential superiority of EU law, invoking the

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Greek public debt on the economic governance of the Eurozone and on public debt law, EL.Rev., 2020, pp. 267-277.

30. M. BONELLI, The Taricco Saga and the consolidation of judicial dialogue in the European Union: CJEU C-105/14, *Ivo Taricco and others*, 08.09.2015, ECLI:EU:C:2015:555; and CJEU C-42/17, *M.A.S. and M.B.*, 05.12.2017, ECLI:EU: C:2017:936, Italian Constitutional Court, Order no. 24/2017, Maastricht Journal of European and Comparative Law, 2018, p. 357; G. RUGGE, The Italian Constitutional Court on Taricco: Unleashing the normative potential of 'national identity'?, Question of International Law, 31 Mar 2017, http://www.qil-qdi.org/italian-constitutional-court-taricco-unleashing-normative-potential-national-identity/; F. FABBRINI / O. POLLICINO, Constitutional identity in Italy: European integration as the fulfilment of the Constitution, Working Paper, EUI Law, 2017; C. AMALFITANO / O. POLLICINO, Two Courts, two Languages? The Taricco Saga Ends on a Worrying Note, VerfBlog, 05 June 2018, https://verfassungsblog.de/two-courts-two-languages-the-taricco-saga-ends-on-a-worrying-note/.

31. S. RÖß, The Conflict between European Law and National Constitutional Law using the example of the European Arrest Warrant, EPL, 2019, pp. 25-42; F.-X. MILLET, Successfully Articulating National Constitutional Identity Claims: Strait Is the Gate and Narrow Is the Way, EPL, 2021, pp. 571-596.

national constitutional identity, or exercising *ultra vires* control. By the same token, it does not pose major problems for the rule of law. The national constitutional decision on the country's participation in the EU and the prospect of European integration is ultimately served, both politically and judicially.

After forty years (1981-2021) of EU membership, of which twenty (2001-2021) cover its participation also in the Euro area, while ten (2009-2019) were spent in dealing with the economic crisis, Greece is well aware that the EU is an open field for ongoing negotiation, and, in fact, for negotiation that is primarily intergovernmental, as well as between the EU institutions and European political parties. Greece is also well aware that the multiple inequalities between Member States are not legally eliminated by invoking the Member States' institutional parity. It is also aware that European solidarity works, though not without difficulties due to the inequalities just mentioned, the stereotypes that make profound mutual understanding harder and, of course, the strong part that each Member State's national interest always plays - economic interest, especially, but also interest linked to perceptions of national identity and national security.

The overall balance of Greek membership in the EU is not only financial and fiscal[32], it is developmental and structural, institutional and political, one of values and culture. It concerns Greece's integration in the EU acquis and the assimilation of the EU acquis by Greece. It is therefore a multi-positive balance for Greece.

Greece's participation in the European integration as a national constitutional decision, after forty years heavy with developments, is not at all unsuspecting of the magnitude of problems, or of the universal changes that the EU is obliged to live with and confront, while correctly calculating its figures in a world that does not have Europe at its epicenter. I wish, however, to believe that it is a constitutional decision irrevocable. In the light of this constitutional decision, Greece is now called upon to meet the challenges of the pandemic, climate change, artificial intelligence, new migration and refugee flows, European security, common defense policy and common defense and all points of the debate regarding the future of Europe that has been already opened in the context of the namesake Conference.

32. On the Union's point of view see, EUROPEAN COMMISSION, Enhanced Surveillance Report-Greece, September 2021, Institutional Paper 159, 22 September 2021, https://ec.europa.eu/info/publications/enhanced-surveillance-report-greece-september-2021-0_en.