FUNDAMENTAL RIGHTS IN EUROPE AND NORTH AMERICA

Supplement 7

Edited by: Albrecht Weber

Supplement 7 of *Fundamental Rights in Europe and North America* should be filed in the manner indicated below. This instruction sheet is to be filed at the beginning of Part A.

INSTRUCTIONS FOR BINDER GREECE

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Chapter 1

GENERAL PRINCIPLE OF EQUALITY

Lina Papadopoulou

I. Formulation of a Principle of Equality

1. Historical Review\(^1\)

All Greek constitutional texts\(^2\) since the Declaration of Independence in 1822\(^3\) have included equality both as a fundamental right and as a State objective. This


\(^3\) The first revolutionary Constitution of *Epidavros* (1822) declared that ‘all Greeks are the same before the law without any exception or degree or class or office’.
is in tune with the liberal character of both the Greek liberation revolution and the regime established thereafter by the bourgeois class of the late 19th century and by the intellectuals, inspired by the French Revolution and the Enlightenment project.

2. General Principle of Equality and its Special Manifestations

Article 4 (1) of the Constitution of 1975/1986/2001, currently in force, provides that "all Greeks are equal before the law" (isonomy) and thus incorporates the general principle of equality, which has been steadily recognized in the jurisprudence of both the Supreme Civil Court in Greece, (Areios Pagos, Court of Cassation) and the Supreme Administrative Court (Symvoulion tis Epikrateias, Council of State) as a general principle of law. Greek nationality is thus the prerequisite for the enjoyment of equality within Greek territory, irrespective of the time and manner of acquiring that nationality.

Legal provisions requiring a minimum period or a certain modus operandi to acquire Greek nationality are consequently unconstitutional. It is moreover accepted that legal persons of private law are also bearers of the right to

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4 One of the main figures of the Greek Enlightenment, Rigas Feraios, had already declared in 1797 in Art. 2 of his Draft Constitution that 'first among the natural rights is that we are all equals, and not the one inferior to the other'.
6 Equality was the main idea of the French Revolution and the European Enlightenment, as opposed to the American Revolution, where freedom prevailed. This is why European liberalism rarely gains the libertarian nuances that are more often present in American liberal thought.
7 When no legal text is mentioned next to an Article, the latter belongs to the Greek Constitution of 1975/1986/2001, currently in force.
8 This provision is now complemented by Art. 12 of the European Community Treaty (ECT), which prohibits the discrimination of European Community (EC) citizens based on nationality within the European Union (EU) context, and by other non-discrimination provisions of other human rights instruments.
10 With the exception of Art. 31 of the Constitution, which states that ‘Persons who have been Greek citizens for five years and through their father or mother, have attained their fortieth year, and are legally eligible to vote, can be elected to the office of President".
equality.\textsuperscript{11} The Constitution also safeguards the enjoyment of all fundamental rights by all Greek citizens\textsuperscript{17} or, more often, all human beings by using the words ‘everybody’\textsuperscript{13}, ‘all’\textsuperscript{14} and ‘nobody’\textsuperscript{15} or by mentioning, without further qualification, freedom itself\textsuperscript{16}, in this way applying the principle of equality in specific fields.\textsuperscript{17} Other constitutional norms provide for specific dimensions of equality, such as sex equality, equality of access to public services and of taxation, compulsory military service and the abolition of class privileges, which are discussed below.

According to Dagtoglou\textsuperscript{18}, these specific manifestations of the equality principle prevail over and exclude the general equality principle. If a case concerns sex equality, for example, then Articles 4 (2) and 116 (2) apply and not – not even concurrently – Article 4 (1) of the Constitution. Courts, however, often

\begin{itemize}
\item K. Chryssogonos, \textit{Civil and Social Rights} (in Greek), 2\textsuperscript{nd} ed., Athens-Komotini 2002, p. 126. On the contrary, legal persons of public law and the state itself may be subject to favourable provisions in order to realize their aims; see CoS 793/1990 (plenary), NoV 1991, p. 143; CoS 1386/1994 (plenary), ToS 1994, p. 699; AP 1298/1998, ToS 1999, p. 665. This is not valid when the State functions as fiscus, that is as a private legal person.
\item Arts. 5 (4) (right to free movement), 11 (freedom of assembly), 12 (freedom of associations), 16 (4) (right to free education), 21 (3) (health care), 22 (1), 1\textsuperscript{st} period (right to work), 29 (right to found political parties), 31 (right to be elected president of the State) and 51 (3) (voting rights), 55 (1) (right to be elected MP).
\item See Arts. 5 (1) (freedom of development of personality), 5 (5) (protection of genetic identity), 5A (right to information), 9A (personal data protection), 10 (right to petition), 14 (freedom of expression and the press), 20 (recourse to courts) and 24 (1) (protection of the environment).
\item See Art. 5 (2) (right to life, honour and freedom) and 22 (1), 2\textsuperscript{nd} period (right to equal payment for equal work).
\item See Art. 5 (3), 2\textsuperscript{nd} period (personal freedom), 6 (1) (personal liberty and security), 8 (1) (lawful judge) and 17 (2) (deprivation of property).
\item See Art. 5 (3), 1\textsuperscript{st} period (personal freedom), 7 (1) (no punishment without law), 7 (2) (prohibition of torture), 7 (3) (no capital punishment), 9 (respect for private life), 13 (freedom of religion), 16 (1) (freedom of science, research and teaching), 17 (1) (right to property), 19 (secrecy of correspondence), 21 (1) (protection of family, marriage, motherhood and childhood) and 23 (1) (trade union freedom).
\item The constitutional protection of a right for citizens only, may be complemented through international treaties or covenants and through common legislation that introduces equal enjoyment of the right for non-Greeks. Only voting rights may not be attributed to non-Greeks (and nowadays non-EU citizens) without revision of the Constitution.
\end{itemize}
derogate from this principle and cite both the general and the special provisions.\textsuperscript{19} This may lead to confusion, for example in the case of combining the general principle of equality, which is restricted to Greek citizens only, and equality of remuneration for work of equal value, which is awarded to everybody and is furthermore, as opposed to the general principle, applicable horizontally.\textsuperscript{20}

The equality principle is not only enshrined in the Constitution, but also incorporated in numerous international treaties, conventions and covenants, which, under the conditions of Article 28 (1) of the Constitution prevail over any Greek statutory instrument. These instruments extend the obligation of the State to guarantee equal treatment not only to Greek citizens but to everybody covered by them in their respective field of application.

3. Kinds of Equality

3.1. Equality Before and in the Law

The principle of equality contains both objective law and subjective right. Furthermore it is generally accepted that the Greek Constitution safeguards equality not only before the law but also in the law.\textsuperscript{21} This means that equality concerns must be taken into account in both the enactment and the application of the law,\textsuperscript{22} in other words by both the legislature and the administration and by the courts. ‘Law’ here is to be understood in both its formal and its substantive meaning, as both parliamentary legislation and an administrative act of a general and normative nature.

The prominent Greek legal scholar N.N. Saripolos\textsuperscript{23} had already asserted at the turn of the 20\textsuperscript{th} century that the principle of equality contains an objective right and is especially binding on the legislature. This concept of the principle of equality has been adopted by the vast majority of the doctrine\textsuperscript{24} and is nowadays undoubtedly the prevailing one. The Courts used to consider equality a

\textsuperscript{19} See e.g. Athens Court of Appeal 2676/87, ToS 1988, p. 508.
\textsuperscript{20} Dagioglou (n. 18), no. 1340, p. 1032f.
\textsuperscript{22} Dagioglou (n. 18), no. 1346, p. 1038.
\textsuperscript{23} N. N. Saripolos, Das Staatsrecht des Königreicht Griechenland, Tübingen 1909, p. 32.
programmatic norm that bound the administration when applying the law, but not the legislature when formulating it despite the fact that, based on the higher rank of the Constitution as opposed to parliamentary statutes, they already applied (diffuse) judicial control of the legislation as early as the end of the 19th century. The Constitution of 1927 was the first to recognize explicitly the right and obligation of the courts to scrutinize the constitutional conformity of legislative acts and not to apply a provision breaching a constitutional norm. Not surprisingly, it was soon thereafter, in the mid-30s, when the Areios Pagos accepted that the principle of equality had a direct effect and was consequently justiciable. This tradition was established in the jurisprudence of both the Areios Pagos and the Council of State, after the Second World War. Since then, equality has played a very important role in judicial adjudication and the majority of cases of constitutional complaints have been equality cases.

According to an Areios Pagos decision, the equality principle is also breached in the case of a non-constitutional right being violated by a provision concerning a single person or a single legal relationship or imposing obligations on a single person when this discrimination is not based on reasons of general social or public interest, which falls under the control of the courts.

The appeal of general public interest to justify restrictions on the equality principle has, however, been severely criticised. It has been argued that, if situations differ, then differential treatment is allowed. Otherwise, no public or

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26 See AP 261/32 and AP 31/36, Themis 1936, pp. 500 ss., and AP 122/37, Themis 1937, pp. 690 ss.
29 The appeal of general public interest to justify restrictions of the equality principle.
31 Which has even included the fiscal interest of the State, e.g. AP 10/1998 (plenum), EillDni 1998, p. 75, and Thessaloniki Court of Appeal 1380/2000, Arm (journal in Greek) 2000, p. 1240. Critical to these decisions is Chryssogonas (n. 11), p. 122.
social interest can justify any discrimination.\textsuperscript{32} Cases of the unjustifiable retrospective applicability of laws may also be caught by the scrutiny of equality.\textsuperscript{33} Equal treatment is furthermore guaranteed regarding collective agreements on employment issues.\textsuperscript{34}

3.2. FORMAL AND SUBSTANTIVE EQUALITY

Equality as contained in Article 4 (1) of the Constitution is not understood to be arithmetic or formal, in other words it does not oblige the legislature to regulate different situations in the same way. Only political equality is formal in nature, as it is the foundation of the people’s sovereignty as enshrined in Article 1 – not Article 4 (1) – of the Constitution.\textsuperscript{35} In all other cases, equality has a substantive or proportional meaning, imposing similar treatment to similar situations and different treatment to substantially different situations.\textsuperscript{36} This reflects an Aristotelian proportional equality and means that Article 4 does not include an \textit{a priori} prohibition of discrimination.\textsuperscript{37} It also corresponds to the content of the principle in EC law, which prohibits different regulation of similar situations and similar treatment of different situations, unless the opposite is objectively justifiable.\textsuperscript{38} It contains the positive obligation of objective justification and the negative obligation of avoiding arbitrary discrimination. This is any discrimination based on non-existent or irrelevant criteria and ignores substantive similarity between differentiated situations.

Obviously, a decision on whether the situations to be compared are substantially similar or different and to what extent in order for differential treatment to be objectively justifiable involves a logical and evaluative


\textsuperscript{34} Athens Court of Appeal 14210/87, ToS 1988, p. 173.

\textsuperscript{35} Chryssogonas (n. 11), p. 117.


\textsuperscript{38} Compare CoS 5116/1996 (plenenum), ToS 1997, p. 805, which refers to the jurisprudence of the European Court of Justice (ECJ).
General Principle of Equality

appreciation often based on disputable criteria. The decisive element here is the *tertium comparationis* selected, which may not be arbitrary. Differentiation is arbitrary when it contrasts with the general sense of justice of a reasonable, average citizen. This results in a requirement that legislation be ‘just’.

This kind of substantive equality, however, has inherent difficulties that result from the nature of the judgment, which is often either a political and moral evaluation or a technical one and, as such, escapes judicial control. It leads to the replacement of the democratically legitimated will of the legislature by judge-made legislation. In this way, it results in an attempt to rectify legislative injustice judicially. It consequently undermines the people’s sovereignty (Art. 1) and the division-of-powers doctrine (Art. 26).

Based on these considerations, judicial control must be restricted to the outer limits of legal norms and not extend to principal choices and substantive content of such norms. In that sense, the equality principle does not and should not result in the juridification of political life. It has a negative meaning – which excludes arbitrariness – rather than a positive one.

Courts themselves are steadily declaring this assumption. They are relatively cautious about the frequent use of the equality principle by litigants. They explicitly and repeatedly state that they control the limits and not the substantive content of the legal provisions. They recognize that the legislature may differentiate between different factual or personal situations. Yet they emphasize that this differentiation must be within the limits defined by the equality principle and exclude obviously unequal treatment. This is considered to be any privileged treatment or arbitrary assimilation of different situations or people based on formal, incidental or irrelevant criteria.

It is furthermore suggested that the equality principle does not oblige equal illegal treatment, as there is ‘no equality in illegality’. In other words, if a norm is unconstitutional and thus illegal, it must be abolished, not extended to more people.

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39 AP 197/72 and CoS 1852/77.
40 Chryssogonos (n. 11), p. 119.
41 Dagstolou (n. 18), no. 1368, p. 1051.
43 Dagstolou (n. 18), no. 1351, p. 1043.
44 See CoS 3217/77 (3rd Chamber), ToS 1977, p. 459 (460), and CoS 2153/89.
II. Elements of Equality as State Objectives

As implied above, the similar treatment of different situations, more specifically equal treatment of unequal situations, would entail the strengthening of factual social inequality and thus not contribute to substantive equality. The State, in all its manifestations, has thus the right and the obligation\textsuperscript{47} to differentiate in favour of the most disadvantaged in specific cases.

In other words, equality may require positive action from the State, such as free education\textsuperscript{48}, and other ‘social rights’\textsuperscript{49} that constitute the ‘social State’ (\textit{Sozialstaat}). Based on specific criteria, the State is furthermore obliged to take positive measures to protect or support some people or situations that must enjoy enhanced protection.

\textsuperscript{48} Art. 16 (4) of the Constitution.
\textsuperscript{49} See Art. 21 and 22 (4) of the Constitution.
Chapter 2

POLITICAL RIGHTS OF EQUALITY

Lina Papadopoulou

I. General Civil and Political Status

I. Abolition of Class Privileges

Article 4 (7) of the Constitution prescribes that ‘Titles of nobility or distinction shall neither be conferred upon, nor recognized by Greek citizens’. Although, nowadays, this provision may not obviously seem to be fundamental, it has been considered important enough to be included in the non-revisable provisions of Article 110 (1) of the Constitution.¹

Neither academic titles nor titles relating to a profession or occupation, however, fall under the category of titles of distinction as meant in Article 4 (7). The conferment of decorations is also provided for constitutionally, in Article 46 (2). The prohibition in Article 4 (7) furthermore binds both the legislative and

¹ I.J.B., Aristotle University of Thessaloniki, Greece. I.J.M., University of Trier, Dr.jur., University of Hannover, Germany, MSc in Political Theory at the London School of Economics and Political Science, currently Postdoctoral Marie Curie Research Fellow at the Aristotle University of Thessaloniki, Greece.

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¹ See S. Minaidis, The Constitutional Prohibition of Conferment and Recognition of Titles of Nobility or Distinction (in Greek), Athens 1998, passim.
executive Greek authorities but it cannot prevent foreign governments from conferring such titles on Greek citizens.2

2. Equality of Taxation

The obligation to pay taxes fairly was imposed on all the inhabitants of Greece by the first Constitution of 1822. The equality of taxation3 is now enshrined in Article 4 (5)4 of the Constitution, which refers not only to taxes but to all kinds of material contributions5 (services included).6 According to it, tax laws may not arbitrarily discriminate or disproportionately burden some citizens and favour others.

All natural persons with Greek citizenship who have an economic link with Greece (for example residency, property or income) are obliged to contribute in proportion to their economic power. Legal persons of private law are also covered by Article 4 (5). Legal persons of public law are not taxed, except for public enterprises that function according to the laws of private economy, since their exemption from taxation would mean illegal State aid, which would breach EU competition law principles (Article 87 (1) ECT). Finally, although Article 4 (5) refers to Greek citizens – as opposed to the first Constitutions of 1822, 1823 and 1827, which referred to inhabitants – non-Greek people residing in the territory or having property in or income from it are also obliged to pay taxes.7

Tax equality resembles the general equality principle, in that equal situations may be treated equally and unequal situations unequally. It is obvious that in the case of taxation, the arithmetic equality, that is the imposition of the same amount

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3. According to Art. 78 (1) Constitution: ‘No tax shall be imposed or collected without a law which shall determine the subject of the tax, and the revenue, the kind of property, the expenses and transactions or the categories thereof to which the tax relates’. Thus Art. 4 (5) may not itself initiate any taxation without a formal law permitting it.

4. Art. 4 (5) ‘Greek citizens shall, without discrimination, contribute towards sharing the burden of public expenditure according to their ability’.

5. A specific manifestation of this principle is the obligation to equally contribute for urban planning purposes (CoS 2499/1992, NoV 1994, p. 1255).

6. V. Aravantinos, Equality Principle in Public Expenditure (in Greek), Athens 1993, pp. 81 ss. Contra K. Chryssogonos, Civil and Social Rights (in Greek), 2nd ed., Athens-Komotini 2002, p. 141, according to whom Art. 4 (5) only covers pecuniary burdens towards the State, that is, mainly taxation.

of taxes on everybody regardless of income, would obviously result in inequality due to the different economic power of every individual. Article 4 (5) addresses this concern and determines the relevant criterion to be used by prescribing that all Greek citizens contribute to public expenses with no distinction but in proportion to their (economic) power⁸, that is, fortune, income and/or expenses. The courts however have recognized other criteria, such as the difficult conditions in the exercise of a profession.⁹

From the above mentioned it follows that Article 4 (5) introduces proportional equality, satisfied by progressive taxation¹⁰, aiming at the substantive rather than formal equality and redistribution of wealth. Thus fair taxation does not prohibit every kind of differentiation, but only arbitrary differentiation. Such would be any differentiation based on, for example, sex, ethnicity, language, religion, politics, the negative treatment of categories protected by constitutional provisions (such as families, married couples and mothers) or the unjustifiable positive treatment of specific categories of people. On the contrary, tax relief is constitutional, provided that it is not subject to delegated legislative authority [Article 78 (4)] and is not partial or suppressive but aims at fair taxation or the

⁸ See e.g. CoS 81/2000, ToS 2000, p. 583. This criterion may be complemented by others enshrined in constitutional provisions such as the protection of family, disabled and poor, the acquisition of accommodation (Art. 21) and strengthening the economy of mountainous and frontier areas and the islands (Art. 106 [1]). Chryssogonos (n. 6), p. 143, claims that tax exemption for minimal income may be founded on the obligation of the State to care for the poor.

⁹ CoS 4290/1980, ToS 1981, p. 290 (pirots), CoS 323/1993, DiDik 1994, p. 224 (shipowners); contra Chryssogonos (n. 6), p. 143. This author however accepts the particularity of farmers’ income, which is irregular and dependent on weather conditions, compare CoS 1135/1991, EDD 1992, p. 76. A contract between the State and private agents, ratified by the Parliament, based on reasons of general interest, which provided for tax exemptions, has also been upheld by the CoS (355/1994, NoV 1996, p. 720). Contra Chryssogonos (n. 6), pp. 143-4, who argues that the use of the notion of general interest undermines the normative value of Art. 4 (5) and asserts that such tax exceptions may only be justified based on a relevant constitutional provision and on the condition that they are deemed to be necessary.

¹⁰ And not by the same tax factor for all income groups, since that would be equal treatment of substantively different situations; see K. Finokaliotis, The Principle of Tax Justice and the Constitution (in Greek), Thessaloniki 1985, pp. 131 s. The amount remaining after the taxation of a high income, however, may not be less than the one remaining after the taxation of a lower income, see CoS 436/1995, DiDik 1996, p. 757.
exercise of economic policy.\textsuperscript{11} Objective tax presumptions are constitutional only if they can be overturned.\textsuperscript{12}

Not only is the principle of tax equality an objective legal norm binding the legislature, executive and judiciary but it is also a subjective right of taxpayers. This principle is, however, restricted to Greek citizens only, since tax relief in favour of non-Greeks\textsuperscript{13} is only allowed as part of the economic policy, unless\textsuperscript{14} it constitutes an abuse of the tax authority and is arbitrary.\textsuperscript{15}

3. Equalit\textsuperscript{y} in Compulsory Military Service

Quite surprisingly, the Greek Constitution propounds compulsory military service in the context of the equality principle. According to Article 4 (6), ‘Every Greek able to bear arms shall be obliged to assist in the defence of the nation, as provided for by law’. The obligation refers to both preparations to defend the country and participation in armed conflict involving the risk to life. The Constitution itself does not oblige the legislature to organize preparatory military service, although this was first introduced for all male adults in 1878. Its abolition, however, remains constitutionally possible, as does its formulation (such as length and terms), according to the defence needs of the country.

Where military service is organized, Article 4 (6) imposes the principles of universality and equality, which in this case is of formal – arithmetic nature. This means that exceptions are only possible for significant reasons provided for by the law based on general and objective criteria concerning public interest.\textsuperscript{18}

\textsuperscript{11} Dagtoglou (n. 2), no. 1416, p. 1099.
\textsuperscript{13} By the same token Greek legal persons may be treated differently for their activities abroad, see CoS 2383/1995, DiDik 1997, p. 771.
\textsuperscript{14} And respecting the relevant provisions of the ECT prohibiting discrimination between EU nationals.
\textsuperscript{15} Dagtoglou (n. 2), no. 1418, p. 1100.
\textsuperscript{16} The exemption of religious clergymen or monks of all known religions if the beneficiaries so wish is, however, constitutional.
\textsuperscript{17} See Art. 13 (4): ‘No person shall, by reason of his religious convictions, be exempt from discharging his obligations to the State, or refuse to comply with the laws.’
\textsuperscript{18} CoS 56/1981, ToS 1982, 61 \textit{et al.}
Unjustifiable exemptions are not allowed\textsuperscript{19} and military service is personal and compulsory for all male citizens.\textsuperscript{20} Compulsory military service is, in any case, restricted to those ‘able to bear arms’, which thus includes the criteria of age, health and physical capability. Religious\textsuperscript{21} and political beliefs do not constitute reasons for exemption from this obligation.\textsuperscript{22} This does not, however, exclude the possibility of the special legislative treatment of conscientious objectors.\textsuperscript{23} According to the provisions of law 2510/1997, conscientious objectors may choose between service in the army without arms (prolonged by 12 months) and alternative civil-social service (prolonged by 18 months).

It is accepted\textsuperscript{24} that the enhanced discipline required in the army may legally result in restrictions on the exercise of certain constitutional rights. Also constitutional is the prohibition on travel abroad or on appointment to public service for those not having completed their military service without an objectively justifiable reason. The obligation of military service does not and cannot apply to non-Greek citizens, who are not accepted even on a voluntary basis, unless the law provides otherwise. Concerning the military service of women, it is the law and not the Constitution that exempts\textsuperscript{25} women from

\textsuperscript{19} The following cases have been found to be unconstitutional: limitation of the service to three months of University staff in Greece or abroad (CoS 1616/1977 [plenary], ToS 1977, p. 452), possibility of buying out the service provided for those being permanent residents abroad (CoS 2579/1977 [plenary], ToS 1977, p. 641 and 56/1981, ToS 1982, p. 61). On the contrary, the prolongation of deferment for exceptional scientists living abroad is constitutional CoS 2353/1995, EjjDtn 1996, p. 831.

\textsuperscript{20} That’s why any limitations or exceptions must be interpreted in a strict way (CoS 4474/1995, EjjDtn 1996, 946).

\textsuperscript{21} The exemption of religious clergymen or monks of all known religions, if the men so wish, is, however, constitutional.

\textsuperscript{22} See Art. 13 (4): ‘No person shall, by reason of his religious convictions, be exempt from discharging his obligations to the State, or refuse to comply with the laws.’

\textsuperscript{23} An interpretative comment was added to Art. 4 during the constitutional revision of 2001, according to which “The provision of paragraph 6 does not hinder the law from foreseeing the obligatory offering of other services, within or out of the army forces (alternative service), for those who evidently conscientiously object to the execution of armed or military service in general”. Already prior to the revision, the CoS had adjudicated that alternative service was possible (CoS 526/2001).

\textsuperscript{24} Dagiotoglou (n. 2), no. 1424, pp. 1105–6.

\textsuperscript{25} The Council of State has adjudicated that this exception does not breach the equality principle. In case 2476/86, the court specifically concluded that the presumption of having completed military service to be appointed to a work position applicable only to men is not contrary to the sex equality principle.
compulsory military service, although women can now volunteer. Article 4 (6) refers to all Greeks, including women, and the law obliges women to do compulsory service only in times of war, but exempts mothers.26 In other words, the Constitution itself neither obliges nor prohibits the legislature from introducing compulsory military service for female Greeks.

4. Equality of Access to General Public Services

The universal and equal access of all citizens to general public services was, at least legally, guaranteed, for as long as all public services were provided exclusively by the State, due to the general principle of equality binding all State organs. The application of principles of social justice is recognized as a feature of public services.27 In the course of privatization, that is, the allocation, through either a contract between the State and the undertaking or an administrative act28 of such services to (either private or State) enterprises of private law, the issue arose of the preservation of their character. The services remained ‘public’ in functional terms and thus specific guarantees had to be set. From the body of the ECI jurisprudence29 and EC legislation30 derives a new notion of European ‘public service’31 or ‘service of general economic interest’, which bears the features of continuity, universality and non-discrimination. In accordance with this model, Greek legal acts32 allowing for public services to be allocated to agents of private law set the principles of universality and equality or non-discrimination as a requirement for the operation of the service. The requirements of equal access and use, respect for the principles of equal treatment and non-discrimination of users and the provision of the same services under the same conditions are found in all these acts.

30 See e.g. Directive 98/10 on universal services concerning telecommunications, which has been implemented in Greek law through Presidential Decree 181/99.
32 See e.g. Laws 2246/1994 (telecommunications), 2668/1998 (postal services), 2671/98 (railway), 2773/1999 (energy).
5. **Equality of Access to Public Services and to Political and Public Functions**

According to Article 4 (4), ‘Only Greek citizens shall be eligible for public service save in those cases where exceptions are introduced by specific legislation’. This kind of provision has been included in all Greek constitutions, whereas the possibility of an exception was first introduced in 1911. This means that only Greek citizens have access to public services and that they enjoy equal access to those services. This provision served for the deconstruction of the old regime and the foundation of the nation State. Its importance is reflected in the fact that it is included in the non-revisable provisions defined in Article 110 (1). The Civil Servants Code strengthens this principle by providing that only Greek citizens may be appointed as civil servants.

The meaning of the term ‘public service’ is not clearly defined. Although historically a wide meaning was given to the term, nowadays both international relations and especially the integration of Greece into the EC imposes a narrow interpretation. Such an interpretation accords with and accommodates Article 39 (4) ECT, which applies to EU citizens and introduces an exception to the free movement of people with respect to their occupation in national public administration, a term which is however strictly interpreted by the ECJ. A wider interpretation of Article 4 (4) of Greek Constitution would thus lead to a deadlock given the fact that this article is non-revisable.

According to the definition of Article 4 (4), ‘public service’ does not include every kind of occupation in the public sector or in a public enterprise. As access to public services is traditionally seen as a political right, it presupposes

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34. Dagtoglou (n. 2), no. 1401, p. 1083.
37. Their access to public administration is ruled by Law 2431/1996 and consequent presidential decrees.
38. See 2/74 Reynolds ECI 1974, p. 631. See also ECJ C-290/94, of 2 July 1996 (plenary), *Commission v. Hellenic Republic*, NoV 1996, p. 1058, where Grece’s ban on a non-Greeks’ appointment to different public enterprises was found to breach Art. 48 (now 39) ECT and Art. 1 of Regulation 1612/68.
participation in the exercise of public authority, thus legislative, executive and judicial functions are definitely included in the term. This is reflected in the fact that only Greek citizens may become Members of Parliament and President of the State. It is asserted that the same holds true for both the judiciary and the army. Furthermore it includes traditional functions of the State, such as foreign policy, defence, public order and tax authorities. Other civil servants are not necessarily included in the term 'public service' as meant in Article 4 (4) of the Constitution.

Moreover, 'public service' is not necessarily founded on a contract of public law, as an employee of private law may still provide a 'public service', especially if the employee occupies a high-level position. In other words, 'public service' includes exclusively and every participation in the exercise of public authority. It does not include tasks that may also be entrusted to the private sector. This reinforces the concept that access to public services is a political right attributed to Greek citizens only.

The exceptions provided by Article 4 (4) of the Constitution must be introduced by law, where 'law' includes both legislative acts enacted by Parliament and substantive rules of law contained in administrative decrees and regulations. Such exceptions must furthermore be 'specific', that is they must refer to a specific position or positions.

As mentioned previously, the other aspect of the provision of Article 4 (4) is the equal enjoyment of the political right of access to public services for all Greek citizens without exception. As a manifestation of the equality principle this provision is extended to the public sector lato sensu. Concerning the political right to access political functions, it is specified in Article 55 (1) Constitution. The period and modus operandi required to acquire citizenship are irrelevant to the enjoyment of this right. Other criteria irrelevant to the 'public service'

40 Concerning regional and local administration, an exception has been introduced for EU citizens by Art. 19 (1) FCT. The latter may be deemed to be 'specific legislation' in the meaning of Art. 4 (4) Greek Constitution.
41 Dagtaglou (n. 2), no. 1402, p. 1084.
42 The appointment of non-Greeks as honorary civil servants in the Diplomatic Corps is in accordance with Art. 4 (4); see CoS 4164/1996, EIIIdni 1997, p. 1322.
44 Dagtaglou (n. 2), no. 1402, p. 1084.
45 Dagtaglou (n. 2), no. 1405, p. 1086.
46 The CoS interprets this term rather widely, since it has declared a constitutional provision that allows access of non-Greek citizens of Greek origin coming from South Albania to all positions of public services; see CoS 2210/1992, DiDik 1993, p. 1213.
provided, such as religion or political affiliation\textsuperscript{47}, do not influence the enjoyment of this right. Qualifications relevant to the public service in question must, on the contrary, be taken into consideration (meritocracy), whereas other objective criteria independent of the candidate’s will and effort and irrelevant to the task to be performed are excluded.\textsuperscript{48}


Equality of access to courts is part and parcel of the general principle of equality enshrined in Article 4 (1). Equality before the law means equality before all State authorities, including courts.\textsuperscript{49} Accordingly, Article 110 of the Code of Civil Procedure provides that ‘the litigants have the same rights and the same obligations and are equal before the Court’. In a similar provision, the Code of Tax Procedure ensures that litigants are equal before the court and that they have the right to attend every discussion in open court concerning their case.

In other words, equality of litigants means both equality before the law, that is the same rights and obligations for all, and equality of treatment by the judge. The latter entails primarily the principle of both sides being heard before a decision is made (\textit{audiatur et altera pars}), which is derived from Article 20 (1) of the

\textsuperscript{47} Save in the case of extreme political beliefs, including the overthrow of the constitution and democracy, which may justify the exclusion from public services relevant to State defence and public order. See P.D. Dagtougou, ‘Über den Zugang zum und die Entlassung aus dem öffentlichen Dienst in Griechenland’, in: Böckenförde/Tomuschat/Umback (eds.), \textit{Extremisten und öffentlicher Dienst}, Baden-Baden 1981, pp. 195 ss.

\textsuperscript{48} See CoS (plenary) 2434/52, according to which the advantages enjoyed by the sons and brothers of army officers concerning their appointment to the army was contrary to the general principle of equality and the principle of democracy. Positive discrimination in favour of certain categories is allowed only if specifically resulting from the constitution (for example, Art. 21 [2], which is in favour of families with more than three children or war victims) and not if based on public interest in general. See CoS 2789/81, 2314/68 and 2434/52 (in I. Sarmas, \textit{The Constitutional and Administrative Jurisprudence of the CoS} (in Greek), Athens 1990, pp. 284, 285 and 286 respectively) and CoS 2216/75 (3\textsuperscript{rd} Chamber), ToS 1976, p. 342.

\textsuperscript{49} This specific element is furthermore explicitly guaranteed in Art. 14 of the International Covenant of Civil and Political Rights (ICCPR) of 1966, ratified by Greece with Law 2462/1997.
Constitution.\textsuperscript{50} It is also closely connected with the impartiality of a judge. The same rule binds the administration when it functions quasi-judicially.

The principle is valid even in cases where the State is one of the litigants.\textsuperscript{31} All procedural provisions apply with no differentiation, regardless of whether they refer to the private sector or to the State. Statutory provisions do, however, allow for the privileged procedural treatment of the State or local authorities but they do not extend to the abolition of equality of access to the courts by, for example, allocating a judicial claim only to the State.

Deviation from these rules occurs due to factual reasons and is usually in favour of the defendant, for example the jurisdiction of the court depends on the domicile of the defendant. In order to deal with factual economic inequality, the law guarantees legal aid for those who are impoverished. This cannot, however, really equate to the factual capability of access to the courts.

7. Equality of Minorities

There is no specific provision in the Greek Constitution for the protection of minorities, who are thus covered by the general prohibition of discrimination enshrined in Article 4 (1) of the Constitution.\textsuperscript{52} Greece has however ratified a series of human rights instruments with specific provisions on the equality of minority populations, such as Article 27 of ICCPR\textsuperscript{53} and Article 30 of UNCRC.\textsuperscript{54} The normative content of these articles must be taken into account when judging

\textsuperscript{50} Art. 20 of the Constitution: (1) All citizens are entitled to lawful protection by the courts and may present their views in relation to their rights or interests, as laid down by the law.

(2) The same right of the interested party to a prior hearing is also applicable to any administrative act or measure which is taken against the rights or interests thereof.

\textsuperscript{51} Dagtoglou (n. 2), no. 1443, p. 1128.

\textsuperscript{52} The latter follows the tradition of bills of rights that do not contain a specific norm for minorities, such as the Universal Declaration of Human Rights (Art. 2), the International Covenant on Economic, Social and Cultural Rights (Greek Law 1532/1985), (Art. 2 [2]) and ECHR (Art. 14).

\textsuperscript{53} See S. Spiliopoulos, 'Protection of minorities under Art. 27 of the ICCPR and the Reports of the Human Rights Committee', \textit{Writings in Human Rights}, University of Lapland, Finland 1994, p. 57.

\textsuperscript{54} United Nations Convention on the Rights of the Child, ratified through Greek Law 2101/1992. See also the UN. Declaration on the Rights of Persons belonging to national or ethnic, religious or linguistic minorities of 1993.
Greek legislative and administrative acts concerning minorities. All these legal provisions safeguard the rights of the minorities to freely shape their religious, linguistic, cultural and collective life. International law also provides for the possibility of positive action in favour of minority groups. The protection of the Muslim minorities of Western Thrace derives from the Lausanne Treaty of 1923 (Part E), which includes a non-discrimination clause, right to use a minority language in a private field, worship and an oral hearing before the Courts as well as educational rights. One must remind oneself however, that although the right to recognition of the minority is closely related to its existence and identity, it is not founded in (international or national) positive law.

The above non-discrimination provisions in conjunction with Article 13 (2), 1st and 2nd periods results in the right of religious minorities to found and operate schools without any discrimination, as well as any kind of educational, cultural and religious places, unions or organizations. Minority schools are founded by the State following the application of the parents and operate under the supervision of the Minister of Education. Muslims of Turkish origins are politically represented through the mainstream parties, except for a short period at the end of 80’s to the beginning of 90’s when a radical party appeared.

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55 The Committee of Human Rights, 5th Session (1949), A/2929, Chapter VI, §183, declared for example that ‘...differential treatment might be granted to minorities in order to ensure them real equality of status with the other elements of the population’. Furthermore in UN doc. E/CN.4/Sub.2/384/Add.2, 78, it is being underlined that ‘the implementation of these rights calls for active and sustained intervention by states. A passive attitude on the part of the latter would render such rights inoperative’.

56 For more details see K. Tsitselikis, The international and European status for the protection of the linguistic minority rights and the Greek legal order (in Greek), Athens-Komotini 1996, pp. 339 ss.

57 Tsitselikis (n. 56), p. 334.

58 ‘Every known religion is free and the forms of worship thereof shall be practiced without any hindrance by the State and under the protection of the law. The exercise of worship shall not contravene public order or offend morals.’


60 Such schools exist for the Israeli (Art. 5 of Law 2456/1920), Catholic and the Muslim (Law 694/1977) religious minorities of Greece as well as for national minorities.

61 Whereas orthodox children of Greek nationality are not allowed to visit foreign primary schools, the prohibition is not valid for non-Orthodox ones.

62 For more detailed analysis see K. Kyriazopoulos, Restrictions on the Liberty to Teach Minority Religions (in Greek), Thessaloniki 1999, pp. 343 ss.

II. Equality of Election and Eligibility

1. Universal Suffrage

As an expression of its liberal character, the Greek Constitution of 1864\(^{64}\) guaranteed (in Article 66) equal voting rights for all male citizens over 21 years of age. This was a progressive step, bearing in mind that most of its contemporary constitutions made voting rights dependent on either property or education. Progress was not equal for women, however, since they had to wait until 1952 to be awarded voting rights.

1.1. Minimum Age

Article 51 (3) of the current Constitution provides equal voting rights for all male and female citizens above 18 years of age, which is an expression of political and democratic equality. Eligibility is regulated by Article 55 (1), according to which 'in order to be elected as a deputy one must be a Greek citizen, have the legal right to vote and have attained twenty-five years of age by the day the election is held'.

1.2. (Regional) Suffrage for foreigners

Suffrage in both municipal and European Parliament elections is guaranteed to EU citizens as provided for by Article 19 ECT. Non-EU-citizens do not enjoy any voting rights.

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\(^{64}\) Universal suffrage had already been introduced in 1844 by electoral law. See Y. Drossos, The Legal Status of Political Parties in Greece (in Greek), Athens-Komatini 1982, pp. 64–5.
2. Equal Suffrage

As opposed to other European constitutions, there is no explicit recognition of the equality of suffrage present in the Greek constitutional charter.\textsuperscript{65} Both academia and case law, however, declare that the equality of suffrage is constitutionally enshrined as a special expression of the general equality principle in combination with the universality of suffrage and/or as a foundation of the democratic principle. In this sense, Article 1 (1), which declares democracy, is, at the same time, the institutional guarantee of equal suffrage. This principle contains two elements: it entails both the arithmetic equality (every citizen has only one vote) and the substantive equality (equal worth) of every vote (\textit{Zählwert} and \textit{Erfolgswert} respectively).

The arithmetic nature of equal suffrage means that, in procedures of political will, such as elections, no differentiation is allowed between citizens, for example a multiple vote for well-educated or prosperous citizens.\textsuperscript{66} Apart from the fact that every citizen has one vote, the question arises of how and to what extent the effectiveness of every vote can be safeguarded. Whereas the ‘one citizen, one vote’ principle is beyond dispute, the equal weight of every vote can be contested and in practice depends on the electoral system.

It is in this context that the constitutional foundation of equal suffrage becomes relevant. For the doctrine, the foundation is the democratic principle that results in a formal or arithmetic equality, which refers to both numerical equality and the equal weight of each vote.\textsuperscript{67}

Jurisprudence, however, derives equal suffrage from the general principle of equality [Article 4 (1)] or the universality of suffrage [Article 51 (3)] in combination with the former\textsuperscript{68}, denying any relationship with the democratic principle. According to this reasoning, equal suffrage is identical to universal suffrage, whereas the weighting of votes is simply a manifestation of the general principle of equality, against which it does not gain any kind of autonomy. It is thus conceived as proportional equality, which means that the limits within which the legislature moves are not stricter than in any other case of equality.

\textsuperscript{65} Dagtoglou (n. 2), no. 1431, p. 1114.
Differentiation may thus be justified according to public interest and objective criteria. The need for governmental stability enshrined in Article 41 (1) of the Constitution is such a public interest that allows for derogation from the strict equality of voting effectiveness.

As has been shown in many cases, the Special Supreme Court, which is responsible for the adjudication of cases concerning the legality of elections according to Articles 58 and 100 (1) a of the Constitution, is ready to accept any deviation from the proportional electoral system, since this is deemed necessary for the building of stable governments. The difficulties of preserving the equal weighting of votes and, consequently, the relativity of the principle are reflected in relevant case law. It is indeed almost impossible to find a golden rule to accommodate concerns for the equal weight of every vote and the efficient governance of the country. This problem remains unresolved, since both majoritarian and proportional electoral systems have their disadvantages.

3. Barring Clauses

Article 88 (10) of the electoral law, as codified in presidential decree 92/1994, introduces a barring clause of three per cent (3 %). Parties or candidates who obtained fewer than 3 per cent of votes nationwide are excluded from the distribution of parliamentary seats. It could be inferred that only parties with more than this percentage may be seen as representing 'existing and active

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69 V. Gikas, Chancengleichheit der politischen Parteien in Griechenland, Baden-Baden 1994, p. 68. SSC 36/1990 (n. 68), has declared unconstitutional a provision, under which ballots in constituencies with one seat, although not used in the first round, remained unused in all consequent rounds.


71 The equality of votes may be disputed only by candidates who have not been elected and by individual vote-holders but not by political parties themselves. Critical to this limitation is Gikas (n. 69), p. 76, who cites the institutional role of parties in other cases recognized by the Special Supreme Court. This alienation of political parties is also reflected in the fact that parties are eligible to raise claims in the case of a breach of their right to equal treatment before the CoS but are excluded from disputes concerning an equal vote before the Special Supreme Court.

72 The electoral system is basically proportional, mixed with majoritarian elements, to allow for the formation of government by the first party even if this does not exceed 40 per cent of votes.

73 This provision was declared constitutional by SSC in its decision 12/1991, Arm 1994, p. 862.
political forces’. They then ‘deserve’ parliamentary seats, a share of State financing and the status of a faction for their Members of Parliament. Only after attaining this minimum percentage are political parties therefore eligible to enjoy their right of equal opportunities, in other words to be treated in proportion to their political importance.

As Gikas suggests, political parties may be distinguished between those lato sensu and those stricto sensu. The former include all political groups that have been formally founded as parties after having submitted the statement required by legislative decree 59/1974, according to which their principles oppose any action directed at the violent seizure of power or the overthrow of the democratic form of governance. The latter are politically important, since they contribute to the formation of State will. The distinction between the two categories is not a quantitative differentiation, since the former are excluded from State privileges. One could argue that this exclusion constitutes derogation from the equality principle and therefore requires constitutionally enshrined reasoning to be justified. To this end, one could suggest the principle of the stability of the government, as stated in Article 41 (1) of the Constitution.

III. Principle of Equality and Political Parties

1. Parties as Addressees of the Right to Equal Treatment: Access to Political Parties

1.1. GENERAL RIGHT TO ADMISSION

Only natural persons have the right to found and become members of political parties, since, in accordance with Article 29 of the Constitution, Greek citizens

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74 Gikas (n. 69), p. 51.
75 Supra (n. 69), pp. 52–3.
76 See Y. Papadimitriou, Political Parties Law (in Greek), Athens-Komotini 1994, pp. 32 ss.
77 Compare CoS 4037/1979 (ToS 1979, p. 626), where the court stated that ‘the goal of a party is the realization of its political ideas and programme both in the context of the parliament and through the exercise of the government. The parliamentary control from the one side and governing on the other side result in a contribution to the formation of the State will’.
78 Gikas (n. 69), p. 52.
79 Art. 29 (1): ‘Greek citizens who are eligible to vote can freely establish and participate in political parties, the organization and activities whereof must serve the

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who have the right to vote may found parties. A minimum number of members is not required constitutionally for a party to be founded. The restriction of permitting only Greek citizens to found parties is seen to accord with the sovereignty of the people, since this principle is realized through party action. Further restrictions are contained in Article 51 (3), which provides for the right to vote, which, in accordance with Article 29, is a prerequisite for the right to found and become member of a political party.

Article 29 (3) includes the restriction on the right to found and participate in a political party. This provision excludes specific persons from the enjoyment of the political right in question due to their special relationship to the State. A further restriction is found in Article 51 (3) and refers to age. Only citizens over 18 years of age have the right to vote and they therefore have the right to found a party. This restriction is somewhat relativized through Article 29 (1), 3rd period, which allows citizens under 18 to participate in youth-party organizations. A further restriction covers those convicted of specific criminal offences. This is especially of interest when the conviction has to do with a political function. In this case, the restrictions of election, eligibility and party participation are political disapproval, rather than reduced legal capability, due to moral unworthiness.

Lastly, and less interestingly in practice, those not capable of legal acts do not have the right to found and participate in political parties.

1.2. DISCREITION OF PARTIES IN ADMITTING MEMBERS

Greek political parties accept members on the criterion of political and ideological affiliation, which in this context cannot be regarded as prohibited discrimination based on political opinion. They may however except foreigners, as Article 29 of the Constitution explicitly reserves for Greek citizens the right to found and participate in political parties. This does not mean that political parties

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80 Drossos (n. 64), p. 164, however, remarks that the fusion of political parties is not excluded by Art. 29. In such a case, the citizens found and are members of the party that emerges from the fusion.

81 Drossos (n. 64), p. 168, asserts that the participation of foreigners would counter the principle of the people’s sovereignty, since persons not belonging to ‘people’ would co-influence the exercise of political power.

82 See Art. 29, as revised in 2001, in the following documentation.

83 Drossos (n. 64), p. 173, footnote 25.
are not allowed to accept non-Greeks but simply that they are not obliged to do so. Any other differentiation must be seen as prohibited. Focusing on the four parties currently represented in the Parliament, the following provisions can be extracted from their statutes regarding the admission of members.

Greek parties\textsuperscript{84} accept everybody\textsuperscript{85} who adopts their political and ideological views. In all parliamentary parties entry applications are individual, must be handled personally and in some parties applications must bear the signature of older members.\textsuperscript{86} They are then decided upon by the base organization, which the applicant wants to belong to, in its general assembly.\textsuperscript{87} In the case of a negative\textsuperscript{88} answer applicants have the right to appeal to a higher organ.

\textsuperscript{84} Parties represented in the national parliament are only mentioned here, which are 1) the Panhellenic Socialist Party (PASOK, in government since 1993, www.pasok.gr), 2) the ‘New Democracy’ (right-centre wing party, which forms the major opposition, www.nd.gr), 3) the Greek Communist Party (orthodox marxist-leninist party, www.kke.gr/kke_en.html) and 4) The ‘Coalition of Left and Progress’ (Synaspismos, www.syn.gr/index/en/contframe.htm).

\textsuperscript{85} The ‘Coalition of Left and Progress’ explicitly declares in the statutes (Art. IV) that it accepts as members both Greeks and foreigners living and working in Greece.

\textsuperscript{86} New Democracy, Art. 4 (2) of Statutes. In the Greek Communist Party new members are accepted after first becoming candidate members for six months (Art. 2 of the Statutes). They then become full Party members on the recommendation of two regular Party members who must have known them for at least a year.

\textsuperscript{87} Art. 20 of PASOK (Statutes www.pasok.gr/gr/menu/organoi/katastat.html), Art. 4 (3) of the statute of New Democracy, Art. IV of the statutes of the ‘Coalition’. In the Greek Communist Party (GCP) the decision of the base organization needs to be ratified by the immediately higher leading organ within two months. Stricter provisions are reserved for former members of other parties, who may be accepted as candidate members of the Party, after recommendations by two Party members with two years of party life. In such cases, ratification by the City Committee or the Prefectural Committee is required. When leading cadres from another party are involved, a decision is required by the Central Committee. If a group of former members of another political party wish to apply for membership in the GCP, they may be accepted only following approval by the Central Committee. After this approval is obtained, the base organization examines the application of each member of the group separately.

\textsuperscript{88} In PASOK any negative decision must be specifically justified. In ‘New Democracy’ if an answer is not made within 30 days, the application is automatically accepted. In the ‘Coalition of Left and Progress’ any negative decision needs to be specifically reasoned and taken by 50% plus one of the present members of the base organization (‘political movement’), while the latter has a quorum.
1.3. QUOTA ARRANGEMENTS

No Greek party has any admission quotas concerning any group of the population. Some of them do set quotas however regulating the number of women in party organs. These quotas are in accordance with the Constitution, especially after the revision of Article 116 (2). 89

The Panhellenic Socialist Party not only declares that female participation must be promoted at all levels of the party but it also sets a binding quota for their participation in all organs. Women must be represented on every elected party body at least to the same percentage, as they are present in the electing body, and in no case to a percentage of less than 20 % . 90

In the ‘Coalition of Left and Progress’ women are represented in all party organs in proportion to their representation in the party. 91 The election of young people to all organs, especially the central ones, to a satisfactory percentage is also an aim of the party. To facilitate female participation, the party takes measures, such as the provision of kindergarten services, at least in big cities, during evening sittings.

The Communist Party of Greece declares that ‘there must be constant care to elect women to all leading bodies, and to ensure a harmonious blend of older and younger cadres’ 92, without setting any specific quota.

2. Parties as Holders of the Right to Equal Treatment:
Access of Political Parties to Public Services

2.0. SOME PRELIMINARY REMARKS

2.0.1. Construction and Content of the Right

Twentieth-century democracy has — not unjustifiably — been called ‘party democracy’ due to the centrality of the role of political parties, which underlines the importance of equality between political parties as a factor of an effective and just democracy.

Although the Greek Constitution does not expressly make provision for the principle of equal opportunities for political parties, both doctrine and Council of

89 See below Chapter 3, 1, 1.
90 Art. 9 of the Party Statutes.
91 Art. XVI of the Statutes.
92 Art. 27 of the Statutes.
State jurisprudence93 formulated and developed it. The court recognized this principle in a decision94 in 1984 concerning a decision of the Minister of Home Affairs on the allocation of broadcasting time to political parties in view of the European Parliament elections. Examining the constitutionality of the relevant decision, the court stated that Article 4 (1) guarantees the equality principle for both Greek citizens and political parties. It added that the equality of political parties is, at the same time, fundamental to democratic governance and that it results from Article 29 (1) of the Constitution.95

In another decision96, the Council of State confirmed its jurisprudence on the equality of political parties in a case concerning party financing with reasoning similar to that of its earlier decision on broadcasting time. It reiterated that Article 4 (1) is the legal basis of the equality of opportunities for political parties, which is also an element of the democratic principle in Article 1 of the Constitution. The relationship between equal opportunities for political parties and the democratic principle, however, does not differentiate the former from its original source, which is the general principle of equality. Although political equality, being the foundation of democracy, is seen to be formal in nature, the equality of political parties remains, according to the jurisprudence of the Council of State, inherently proportional.

A different opinion is expressed by part of the doctrine97, according to which the right to equal opportunities for political parties is founded exclusively on the democratic principle of Article 1 (1–3) of the Constitution. Freedom and equality are the sine qua non presuppositions of democracy.98 Equality in this context, in other words political equality, is of a formal nature and has an arithmetic character, as the ‘one (wo)man, one vote’ principle reflects. If the equality of

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98 A. Manessis (n.67), pp. 37 ss.
opportunities for political parties is a mere consequence of the democracy principle in its manifestation as the sovereignty of the people, then it is also of a formal and arithmetic character. This assumption sets the starting point for the critique exercised by scholars on the jurisprudence of the Council of State, which, without doubt, accepts the proportional character of the right in question. It is thus argued that no differentiated treatment between political parties is allowed.

2.0.2. Holders of the Right

The question of whether political parties have a subjective right to be treated equally has also been considered by the Council of State. It accepts that equality constitutes a subjective right of the parties themselves as a consequence of the general principle of equality, as contained in Article 4 (1). This acceptance is mirrored by the fact that political parties have a *locus standi* before the Council of State to bring a claim against unequal treatment or against a breach of any of their other constitutional rights despite the fact that they are not legal persons themselves.

Two versions of the nature of the right to equal treatment of political parties have been argued in Greek doctrine. According to the first view, the right, since it is a group right, may not be exercised by an individual member of the group. It is held by the political organization, in other words, by the party itself. This conclusion accords with the special institutional and dynamic role that political parties play in modern democracies. The political will of parties is no longer the accumulation of the will of their members. Parties thus enjoy organizational and political autonomy. According to the second view, it is the individual member who is important. The party will is the consolidation of the legally equal will of each citizen. The right to equal treatment is thus simultaneously the right both of each member and voter of the party and of the party itself. Or, in other words, the right to equal treatment of a party is an extension of the equality of every citizen.

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100 CoS 2423/1984, ToS 1986, pp. 77 ss.
102 Political parties in Greece are not attributed the status of legal persons but of associations of persons. They nevertheless enjoy all the rights and bear the duties necessary to realize their constitutionally assigned goals. They thus have the right to stand before courts.
103 See e.g. Gikas (n. 69), pp. 58–9.
104 Drossos (n. 64), pp. 223 ss.
before the law. Whereas this assertion reflects the jurisprudence of the Council of State, the doubt whether political parties themselves can be holders of the right to be treated equally disregards this.

2.0.3. Addressees of the Right

The addressee of the right of political parties to be treated equally is primarily the State, which either has to provide for equal treatment itself or has to guarantee the respect of this principle by other means. All State functions, in other words the legislature, administration and courts, are bound by this obligation. This also holds for legal persons of public law and for locally and regionally self-administration bodies.

Based on Article 4 (concerning the principle of equality) and Article 29 (concerning political parties), Dagioglou summarizes the principal elements of party equality in the Greek law – and in correspondence with the jurisprudence of the German Federal Constitutional Court – as follows: 105 a) Any differentiation between political parties not objectively justifiable by the equality principle itself is prohibited and b) all parties have a legal claim against the State, that is the legislature, administration and courts, to be treated equally. In doctrine, it is thus accepted that the equality of opportunities for political parties is an institutional guarantee that contributes to the effectiveness and self-regulation of the party system and in the formation of viable governments (Article 37 of the Constitution). 106 At the same time, this constitutes a subjective group right of the political party itself.

2.1. EQUALITY OF ACCESS TO PUBLIC PREMISES

Inspired mainly by German theory, Greek doctrine 107 asserts that the equal treatment principle extends to the use of roads, squares, rooms and other public spaces. It is thus argued that if a public authority permits a political party to make use of such a space, it is then obliged to do the same for any other interested party. The opposite would breach the equality principle for political parties, as enshrined in Articles 4 (1) and 1 (2) in conjunction with Article 29 of the Constitution.

105 Dagioglou (n. 2), no. 1435, pp. 1119 ss.
107 Drossos (n. 64), p. 227.
2.2.EQUALITY OF ACCESS TO STREETS/ROADS FOR ELECTION PROPAGANDA

Equal access to open-air places for (not only electoral) party propaganda and information is safeguarded by Article 9 of Law 3023/2002 on party financing. Bodies of local self-administration are obliged to provide at least 10% of the open-air places provided for advertisement to political parties, workers’, students’ and other civil society organizations. During the period before (parliamentary, European, municipal or regional) elections or a referendum all open-air places normally disposed for advertisement are put at the political parties’ disposal. In both cases the law explicitly rules that the use of the open-air places provided is proportional and on equal terms and is free for all political parties.

2.3. EQUALITY OF ACCESS TO (RADIO) BROADCASTING

Equality in radio and television broadcasting is guaranteed in Article 15 (2) of the Constitution.\textsuperscript{108} It also emanates from the general principle of the equal treatment of political parties as developed above, which is interwoven with the smooth functioning of parliamentary democracy.\textsuperscript{109} Equality in broadcasting is in close accordance with the general principle of equality\textsuperscript{110} contained in Article 4 (1)\textsuperscript{111} and it thus has a proportional character.

As mentioned above, the primary addressee of the right to equal treatment is the State. In order to define ‘State’, the substantive and not the formal criterion

\begin{footnotesize}
\begin{enumerate}
\item[108] Art. 15 (2) states that “[\textit{r}adio and television are placed under the immediate supervision of the State]. This means that the political parties have a claim for objective and (proportionally) equal information and news concerning them; see Drossos (n. 64), p. 235. Through its revision in 2001 a new period was added at the end of the article providing that the “[\textit{l}aw regulates everything concerning the obligatory and free transmission of the sessions of the Parliament and its Committees, as well as the pre-electoral messages of political parties by the media]. However, already under the previous constitutional provision, which did not explicitly oblige the State to allocate broadcasting time to political parties, the same conclusion had been drawn by case law and doctrine, see CoS 1288/1992 (plenary), NoV 1993, p. 158; CoS 4331/1996, Arm 1996, p. 1276, which also underlines the obligation of equal treatment concerning both the time and the content of TV programmes. This was specified in details in Law 2429/1996.
\item[110] Gikas (n. 69), p. 118.
\end{enumerate}
\end{footnotesize}
may be used. However, even private stations are under the immediate control of the State as Article 15 (2) of the Constitution prescribes. State control, exercised by the relevant independent administrative authority, the ‘National Council of Broadcasting’\textsuperscript{112}, guarantees the objectivity, equal treatment and quality of the programmes. This is in line with the admission that broadcasting constitutes the ‘exercise of public power’\textsuperscript{113}. Non-justifiable differential treatment of a party by a radio or television station is thus a breach of this principle.

As implied above, the principle of equal ‘broadcasting’ treatment is not absolute and arithmetic. On the one hand, equal treatment means treatment in proportion to the strength of the parties. It is thus objectively justifiable for more broadcasting time to be allocated to parties that enjoy a wider support as shown in recent elections.\textsuperscript{114} On the other hand, even minority or newly established parties must be given the opportunity of becoming a majority and thus the government.

According to the Supreme Special Court of Greece\textsuperscript{115}, factors such as the duration, continuity, number of members, and width and structure of the organization must be taken into account, although differentiation may not extend to the total exclusion of marginally represented parties. In television discussions, for example, it is constitutionally acceptable for only the strongest parties to be invited. By the same token, the relatively favourable treatment of established parties does not constitute a breach of equal opportunities. From this general concept, the court derived its conclusion that the non-allocation of television time before elections was not unconstitutional to political parties that were neither represented in Parliament nor had candidates in half the electoral regions. The Council of State also concluded that the differential treatment of parliamentary parties does not breach either the constitutional principle of equal treatment or the specific requirement of equal use of broadcasting, if it is based on special and objective circumstances, such as the parliamentary representation of the parties, provided that minimum television time was allocated to all parties.\textsuperscript{116} In another decision\textsuperscript{117}, the Council of State recognized the importance of the specific party as a factor influencing its treatment. The quantity of time thus allocated to each

\textsuperscript{112} Introduced by Law 1866/1989 and, through the recent revision of 2001, enshrined in the Constitution in Art. 15 (2), 2\textsuperscript{nd} period.


\textsuperscript{115} SSC 11/82, ToS 1986, p. 79.


\textsuperscript{117} CoS 930/1990 (plenum), ToS 1990, p. 68, with comments by N. Alivizatos.
party depends on objective factors such as the number of its Members of Parliament, its nationwide structure and its historic role in political life.

As mentioned above, equality for political parties is also a subjective fundamental right of the parties themselves, since it is a manifestation of the general equality principle in the context of party and electoral law. Consequently, in the case of a breach, a party has a legal claim against a station if it is a legal person of public law or against the supervising authority, if it is not, whether it is the Ministry or the independent authority. The claim and application of annulment before the Council of State are exercised against such authority. The fact that the party may have, whether explicitly or implicitly, consented to the breach of its right to equal treatment does not influence the application of the principle.

All the above are reflected in Article 10 of Law 3023/2002, which obliges both public and private radio and TV stations to broadcast party messages for a length of time decided by the Minister of Internal Affairs, and the Minister of Media after seeking the opinion of the National Council of Broadcasting. The time is distributed between the parties and coalitions based on the principle of proportional equality. The same principle applies to the presentation of party activities in TV and radio news broadcasts. Any further broadcasts by political parties is prohibited during the election period under Article 11 (1) b of Law 3023/2002. The same law (Article 12) limits the appearances of candidate MP’s to one in nation-wide and two in regional radio or TV stations.

3. Party Financing

The equality of political parties has always been considered a sine qua non element of democracy. Yet factual effectiveness in political life depends largely on economic power, which means that special arrangements become necessary, such as the funding of political parties and limitations on electoral expenses. The meaning and content of the equality of opportunities is to provide political parties with equal means to help them become the government resulting from democracy and equality principles, as recognized in the jurisprudence of the Council of State concerning party financing.

118 Gikas (n. 69), p. 46.
120 Dagstoglou (n. 2), no. 1436, p. 1121.
121 Such limitation is sine qua non element of party equality, as specified in regard to candidates, see CoS 4332/1996 (n. 109).
According to Article 29 (2) of the Constitution after\textsuperscript{122} its revision in 2001:

'Parties have the right to be subsidized by the State for their expenditure on electoral campaigns and their functional expenses, as provided for by law. The law provides transparency guarantees for electoral expenses and the financial management of parties, generally members of Parliament, and candidates for Parliament and local self-administration bodies.'

This revised provision obliges the legislature to act accordingly. Moreover transparency has been extended to cover not only electoral campaigns\textsuperscript{123} but party finances in general.

Law 3023/2002 defined the amount of regular annual and electoral (at elections to the Hellenic and European Parliament) subsidies at one point zero two (1.02)\% and zero point twenty two (0.22)\% per thousand of the total amount of revenue provides in the yearly budget respectively (Article 1). In order to qualify for these subsidies, parties (or a coalition of parties) must either have representatives at one of the two Parliaments (Hellenic or European) or have presented full candidate lists in at least 70\% of all constituencies and obtained at least 1.5\% of the total votes cast nation-wide during the previous parliamentary elections (Art. 2). The distribution of the regular subsidies occurs as follows: 80\% to the parties represented to the national Parliament, 10\% to those represented in the European Parliament and 10\% to all those having taken part in the elections as specified above. The electoral subsidies are distributed between those parties having MP’s or MEP’s (60\%) and all those that fulfil the requirement of the electoral participation and success mentioned above (40\%). In both cases the amount that each party is awarded is proportional to the number of valid ballots it has received (Art. 3). Parties and coalitions who are subsidized based on the above criteria have moreover the right to receive annual financial support, amounting to 0.1\% of total regular annual revenue, for the founding and operation of research and studies as well as for the education of party cadres (Art. 4). In order to safeguard transparency and avoid violations of the above, and consequently of party equality, publicity obligations are enhanced in Law 3023 (4\textsuperscript{th} Chapter).

\textsuperscript{122} Before its revision the same Article made provision for the possibility but not the obligation of the State to subsidize political parties.

\textsuperscript{123} Under the previous regime the constitutional obligation for transparency covered only electoral expenses, which were incurred after the presidential decree declaring elections and aimed exclusively at electoral campaigning.
3.1. EQUAL OPPORTUNITIES IN ATTAINING DONATIONS

According to Article 7 (1) of Law 3023/2002 on party financing, donations to political parties are prohibited from: a) non-Greek persons, b) legal persons of private or public law, except from those belonging to the party itself, c) local self-administration bodies and d) owners (or publishers) of journals, newspapers, radio and TV stations. This provision obviously aims at combating corruption but at the same time it safeguards equality, since it does not allow government parties to take advantage of their power. Equality is also enhanced through Article 8 of the same law, which limits donations from a single person to no more than € 15,000 per year to a party, and € 3,000 per electoral campaign to a candidate.

3.2. EQUAL OPPORTUNITIES IN REIMBURSEMENT OF CAMPAIGN EXPENSES

Since it is widely accepted, that the equal treatment of political parties does not entail an arithmetic equality but a proportional one, different levels of financing is justifiable when based on objective criteria designed to support existing and active political forces and when in proportion to the desired goal. In this way, arithmetic equality applies to a minimum, guaranteeing opportunities for all parties, whereas the major share is distributed in a proportional way.

The Council of State accordingly dismissed\textsuperscript{124} the claim of a small party (the Christian Democracy) against the (previously valid under Law 1559/1986) 3 % success clause at elections. The court thus accepted that differential State financing could not be excluded, provided that such differentiation is based on objective and reasonable criteria and corresponds to the desired aim. The aim should, in its turn, support political parties that represent existing\textsuperscript{125} and active political forces.\textsuperscript{126} The tertium comparationis, that is the differentiation criterion, must moreover be objective and proportionate, a requirement that underlines the similarity between the principle of equality in general and that between political

\textsuperscript{125} Both the political and organizational existence of the party and its results in the last elections are decisive.
\textsuperscript{126} See e.g. CoS 1862/1985 (n. 96) and 993/1989, Arm 4 (1989), p. 394. As Gikas notes (p. 49), this goal is considered a priori constitutional. This assumption is confirmed by the fact that the Constitution itself seems to choose proportionate treatment in Art. 68 (3), according to which parliamentary committees are constituted in proportion to the size of the parliamentary factions. The principle of government stability enshrined in Art. 41 (1) of the Constitution functions in a similar way.
parties. In this sense, ideology does not constitute an objective criterion, whereas political importance does. In other words, the Council of State scrutinizes the constitutionality of both the criteria and the aim of the differentiated treatment.

In another decision, the Council of State had to decide on the constitutionality of Article 51 of Law 1731/1987 and Article 8 of Law 1775/1988, which provided that only parties that received subsidies the previous year were eligible for financing. In other words, the first year after each election was decisive. The court stated that this criterion was coincidental, since it related to the time of the foundation of a party, and was not suitable for the desired aim, that is supporting existing and active political forces, since it disregarded the political importance of a party and was therefore unconstitutional. Although the provision was omitted from recent law 3023/2002 the effect remains the same, since the criteria for subsidies set by the law are inseparably connected with election results.

127 Gikas (n. 69), p. 104, observes that the total exclusion of a party does not involve proportional treatment of substantially different situations but rather a deviation from the equality principle altogether, based necessarily on public interest. Such interest is the principle of government stability, relevant, as already explained above, in the equal-suffrage issue. This principle allows for small parties that do not represent existing and active political forces, to be disadvantaged since the opposite could lead to the multiple splitting of the party system and endanger the building of stable, although not necessarily one-party, governments.

128 As Gikas (n. 69), p. 47, notes, differentiated treatment may not be used as a mechanism against parties, given the fact that a prohibition of parties is not possible.


131 This provision obviously targeted parties created in the middle of an electoral period after splitting from another party. The case referred to a party (the Hellenic Socialist Movement) founded by a former PASOK Minister that had considerable organizational presence throughout the country.
Chapter 3

SPECIFIC RIGHTS OF EQUALITY

Lina Papadopoulou

I. Prohibition of Discrimination

There is no general provision for non-discrimination in the Greek Constitution.\(^1\) The only aspect explicitly mentioned in this respect is sex. In a more limited meaning, Article 5 (2) of the Constitution does, however, prescribe that ‘All persons within the Greek State enjoy full protection of their life, honour, and

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\(^1\) Greece is of course bound by EC law (see e.g. Art. 21 of the EU Charter of Fundamental Rights) and has moreover ratified most international human rights instruments combating discrimination, which enjoy super-legislative force, according to Art. 28 (1) Constitution. Moreover it is asserted by the doctrine that the constitutional provisions must be interpreted in accordance with international human rights law, or even further, that such law is nowadays constitutional (K. Kyriazopoulos, Restrictions on the Liberty to Teach Minority Religions [in Greek], Thessaloniki 1999, p. 79). So Art. 4 Constitution is complemented by Art. 14 ECHR (legislative decree 53/1974), Art. 2 UNHCR (2102/1992), Arts. 3 and 26 ICCPR (Law 2462/1997), the CEDAW (Law 1342/1983) et al.
freedom, irrespective of nationality, race, language, creed, or political allegiance. Exceptions shall be permitted in such cases as are provided for by international law. Not prohibiting discrimination based on other criteria does not mean that the Greek Constitution necessarily allows them, let alone imposes them. Such discrimination is to be judged against the general equality principle. Based on the above and if one excepts nationality from the criteria listed, the prohibition of discrimination enshrined in Article 5 (2) of the Constitution may be extended and generalized.²

1. Discrimination Due to Sex

Whereas earlier constitutions allowed for differentiated treatment against women in specific fields, the Constitution of 1975/86/01 was the first to recognize explicitly in Article 4 (2) that ‘Greek men and Greek women have equal rights and obligations’.³ Both women and men enjoy the principle of sex equality, which is obviously restricted to natural persons.

The principle is complemented by Article 116 (1) and (2).⁴ Article 116 (2) provided, before its revision in 2001, the possibility of derogation from Article 4 (2) ‘for adequate reasons in the cases specially provided for by the law’. In the beginning courts made use of this provision to justify discrimination against women⁵. They mainly used sex equality to extend to men favourable provisions

³ Although the second paragraph of Art. 4, where sex equality is enshrined, as opposed to the first (the general principle), is not included in the catalogue of non-revisable constitutional provisions [Art. 110 (1)], it is convincingly suggested (P.D. Dagkoglu, Constitutional Law, Fundamental Rights B’ (in Greek), Athens-Komotini 1991, no. 1387, p. 1072) that a revision abolishing sex equality is indeed prohibited due to social development.
⁴ Art. 116: (1) ‘Existing provisions which are contrary to Art. 4 (2) shall remain in force until they be repealed by law not later than 31 December 1982.’ (2) ‘Positive measures that enhance equality between men and women do not constitute discrimination based on sex. The State must care for the abolition of existing inequalities, especially to the disadvantage of women.’
⁵ Voting rights were allocated to women only in 1952.
⁷ See CoS 1917/1998 (plenary), ToS 1998, p. 794. A 10 % maximum quota for women seeking admission to the police academy was declared unconstitutional, as there are no adequate reasons justifying it. Entry into such academies or posts should instead depend merely on examination results independent of the sex of the candidate.
Specific Rights of Equality

designed for women, whereas they never declared unconstitutional provisions inhibiting or limiting women’s access to certain professions.

The change of paradigm happened in 1998 through the Council of State’s decision 1917/1998 that declared that a ceiling quota for women seeking access to police school was unconstitutional. The same court’s decision 1933/1998 also broke new ground, when it declared that positive measures in favour of women were constitutional. In this decision the Court also recognizes that the unwavering application of formal equality results in a mere gloss of equality, whereas it actually consolidates and perpetuates existing inequalities. Positive measures in favour of categories suffering such inequality – and women are such a category – and promoting de facto equality, fully conform with the spirit of the constitutional principle of equality.

However this decision (as well as the similar 1918-1929/1998) accepted that derogation from the principle of equality was possible according to (ex) Art. 116 (2), when necessary due to the specific nature and conditions of the job. A strong dissenting opinion of twelve judges however held that neither the legislator nor the administration may exclude women in general or limit their access in advance in certain public functions or professional academies. All candidates for a position without reference to sex must instead submit to the same examination without further differentiation.

See the right to inherit the spouse’s severance payment (Athens Administrative Court of First Instance 2231/1984, CoS 2978/1997, NoV 1999, p. 133); equalization of the age limit for boys and girls up to which parents are eligible to receive children allowance (AP 564/1992, EED 1993, p. 244); pension rights for widowers in same terms as for widows (CoS 2704/2001).

They sometimes declared quotas against women null and void due to the Minister’s exceeding the outer limits of the power conferred to him by law. See Athens Administrative Court of Appeal 2509/1995 (admission to the police academy); CoS, Elaboration report 243/1996, EDD 1996, p. 400 (admission to the fire brigade academy).

See CoS 1917/1998, supra (n. 7). The Court also declared that legislative derogation from equal treatment between the sexes must be based on adequate criteria that allow both citizens and courts to control whether this derogation is necessary and adequate for the aim pursued and justified due to significant reasons.


This allowed Alice Yotopoulos-Marangopoulou, Affirmative Action, Towards Effective Gender Equality, Athens-Brussels 1998 (in English and French), p. 71, to note that in the tug-of-war that is going on in Greece between progressive forces and conservative ones, effective equality now seems to have the advantage.
Revised  Article 116 (2) gives now the possibility of positive action stating that ‘Positive measures that enhance equality between men and women do not constitute discrimination based on sex. The State must care for the abolition of existing inequalities, especially to the disadvantage of women’. Moreover the abolition of ex-Article 116 (2) means that no derogation from Article 4 (2) is allowed anymore unless it constitutes the positive measures necessary to combat existing factual inequalities. It has been argued that although it cannot found claims against the State for non-action, Article 116 (2) establishes vested rights; this means that the State cannot arbitrarily abolish measures already taken that promote sex equality.

Article 4 (2) is not a mere repetition of the general principle of equality, since it does not only provide for equality before the law but equality of rights and obligations. In other words, sex equality not only involves the prohibition of arbitrariness but it also includes the obligation of the State to take any necessary measures to abolish any legal and factual inequalities between the sexes.

Moreover, whereas the general principle of equality allows for a wide margin of discretion, differential treatment based on sex is constitutional only if it is justifiable on biological grounds that necessitate special measures or in the need for enhanced protection of women and maternity. Negative treatment to the detriment of one sex is consequently prohibited, whereas the positive treatment of one sex must be extended to the other. It has thus both a negative and a positive dimension, obliging the provision of equal opportunities for personal

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13 The revision of this Article was accepted after long lobbying by feminist organizations and some legal scholars. See especially the writings of the prominent scholar and activist, A. Yotopoulos-Marangopoulos, ‘The Evolution of the Notion of Equality in Modern Democracy’, Maragopoulos Foundation for Human Rights (ed.), Equality and Development, Fifty years of UN contribution to their evolution, Athens-Komotini 1998, p. 57 (pp. 98 ss.) (in Greek); the same, Affirmative Action (n. 12), esp. pp. 79 ss.

14 It read as follows: ‘Any deviation from the provisions of Art. 4 (2) shall be permitted only for adequate reasons, in the cases specifically prescribed by law.’ ‘Adequate reasons’ were considered those based on the biological or psychological particularity of a woman or man.


16 Dagtoglou (n. 3), no. 1387, p. 1072.

development. Last but not least, sex equality has a horizontal effect; that is, it may be invoked towards not only the State but also private agents. This is due to the fact that Article 4 (2) aims to guarantee equality of all rights, both of a public and private nature.

In cases where the legislature fails to uphold this, the judge has traditionally declared the provision inserting positive differentiating treatment unconstitutional and not extended such provision to the discriminated sex in order not to intervene in the legislative task and thus breach the principle of the division of powers. Lately however it has been recognized that sex equality may be creative, meaning that it creates the right for both Greek men and women to claim the extension of favourable provisions provided for one sex only.

1.1. POLITICAL OR CIVIL RIGHTS

In 1953 Greece ratified the International Convention on the Political Rights of Women. A number of professions opened then to women, who had also acquired voting rights the previous year. Nowadays women enjoy exactly the same political and civil rights as men and no discrimination is allowed. The under-representation of women in political bodies (e.g. Parliament, government) is however still a problem undermining Greek democracy.

A limitation on the free movement of Greeks within the territory of the Republic and to the detriment of women is the special regime of Mount Athos, where women are not allowed to enter. This ‘inaccessibility’ (avaton) is

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18 CoS 2096/2000, supra (n. 17), pp. 1288 ss.
21 Legislative decree 2620/1953.
23 Art. 105, 1st paragraph, 1st period: ‘The Athos Peninsula extending beyond Megali Vigla and constituting the district of Mount Athos shall, in accordance with its ancient privileged status, be a self-governing part of the Greek State whose sovereignty thereon shall remain unaffected.’ The special legal status of Athos was preserved by the Joint Declaration on Mount Athos annexed to the Final Act of the Treaty of Accession of The Hellenic Republic to the European Communities and recalled and renewed by Declaration no. 8 by Greece concerning the Declaration on the Status of Churches and non-confessional Organizations, annexed to the Amsterdam Treaty.
constitutionally tolerable\textsuperscript{25} and the law\textsuperscript{26} considers the opposite a criminal offence.\textsuperscript{27}

1.2. PENSIONS / LABOUR LAW

In labour law the general principle of equal treatment of workers by the employer covers every kind of feature, including sex and gender, provided that they are not immediately linked to the specific type of work. This principle is founded on Article 288 of Civil Code, Article 4 (1) and (2) as well as Article 22 (1) of the Constitution.\textsuperscript{28} No differential treatment of workers in the same employment, with the same qualifications, providing the same services under the same conditions is allowed, unless there is an adequate objective reason for it.\textsuperscript{29}

Article 4 (2) in conjunction with International Labour Convention no. 100\textsuperscript{30} and Law 1414/1984 guarantee the general principle of prohibition of

\textsuperscript{25} I. Konidaris, 'The Mount Athos “Avaton”', RHDI 2000, p. 215 (221) claims that the constitutionally protected right of free movement is not violated when there are ‘sufficient reasons serving the general public or social interest’, which is, he seems to think, the case here. ‘Avaton’ is also tolerable by the EU; see for example parliamentary written question E-1055/01 by G. Ford and the answer given by Commissioner Vitorino (OJ/C C 318I/194 of 13 Nov. 2001). See however the European Parliament Report on women and fundamentalism, A5-0365/2001 (Committee on Women Rights and Equal Opportunities), based on Opinion of the Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs (draftswoman: A. Karamanou), which underlines that prohibition of movement for women in certain areas of the planet is not accepted (point 13).

\textsuperscript{26} Legislative Decree 2623/1953.

\textsuperscript{27} Another exception to the equality of political and civil rights was, until recently, enshrined in Art. 31, which only provision set the formal qualifications for a candidate to the presidency of the Republic as having to be Greek through such a candidate’s father. In the constitutional revision of 2001, this provision was changed, allowing for a candidate for the presidency to be Greek through such a candidate’s mother as well.

\textsuperscript{28} Art. 141 HCT and the EC Social Charter are also applicable. Greece has also ratified (Law 2595/1998) the First Protocol to the ICESCR providing for equal opportunities and treatment in labour law.

\textsuperscript{29} AP 7/1996 (plenary), EllDni 1996, p. 1050.

\textsuperscript{30} Ratified in Greece through Law 46/1975. For the application and influence of this Convention to Greek jurisprudence see S. Koukouli-Spiriotopoulou, “Protection in Employment and Gender Equality. International Norms and their Function in the Greek law”, Equality and Development (n. 13), p. 171 (214 ss.).
discrimination due to sex in labour law.\textsuperscript{31} As mentioned above, Greek Courts usually use this principle to equalize requirements, which were disadvantageous for men.

In this way, the Council of State has considered law provisions declaring a different pension age for men and women unconstitutional. Moreover the same Court in recent decisions\textsuperscript{32} recognized the creative nature of sex equality in the social security field, and considering that, under the modern socio-economic conditions, there are no objective reasons justifying any differentiation, extended the norm providing widowed women with a pension to widowed men.\textsuperscript{33} By the same token, a divorced father with minor children has a claim to a pension under the same conditions as a mother in the same situation.\textsuperscript{34}

More recently and in the course of the change of the Council of State’s jurisprudence indicated above, the Court overturned quotas setting a limit on women’s access to specific professions and professional schools.\textsuperscript{35} Courts also declared a prohibition on announcing posts separately for the two sexes. In such a case the announcement and the list of successful candidates are still valid but the latter are listed according to their results, independently of their sex.\textsuperscript{36}

1.3. PRINCIPLE OF EQUALITY OF WAGES

A more specific provision of the Constitution provides that ‘All workers, independent of sex or any other criteria, have the right to equal payment\textsuperscript{37} for

\begin{footnotes}
\item[34] CoS 1379/1998, ToS 1999, p. 329. This is in accordance with European jurisprudence, e.g. in its decision \textit{Commission v. Hellenic Republic} of 28 Oct. 1999, the ECJ ruled that a Greek provision setting different requirements for women and men, in order for the former to receive family allowance, breached Art. 141 ECT.
\item[37] According to Art. 4 (2) of Law 1414/1984, which provides for, \textit{inter alia}, sex equality in the work environment, payment of the salary and any other additional allowance that is paid by the employer to the employee, whether immediately or not and
\end{footnotes}
work of equal value' (Art. 22 (1), 2nd period). This provision is inspired by International Labour Convention No. 100 of 1951, ratified by Greece in 1975 when the latest Constitution came into force; it extends protection to criteria other than sex, which is not usually found in other Constitutions, and bears a justiciable claim by the employee.\(^{38}\)

The Council of State has, however, adjudicated\(^{39}\) that it does not cover employees on a contract of public law. Both Areios Pagos and Eletiko Sunedrio (Court of Auditors, CoA)\(^{40}\) opposed this view but it was confirmed by the Special Supreme Court (Anotato Eidiko Dikastirio).\(^{41}\) Employees of public law are still covered however by Article 4 (1) and EC law. Moreover, the term 'work' does not apply to self-employment.

It is more difficult to determine the meaning of the term 'of equal value' in the economic sense. It is suggested that a comparison may be drawn only when employees work for the same employer at the same time and under the same conditions. Differentiated productivity, experience and special qualifications can still justifiably alter the level of payment.\(^{42}\) The term 'independent of sex' means that, when work performed is of equal value, sex cannot differentiate remuneration and that sex is not enough to alter the value of work. The term 'other criteria' means those irrelevant to the work performed, in other words qualifications or capabilities reasonably linked to the work may justify different payment.

According to Areios Pagos' jurisprudence, no law or collective agreement may provide for unequal remuneration based on sex, where remuneration\(^{44}\) includes all possible allowances.\(^{45}\) Any discriminatory provision is considered non-existent

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\(^{38}\) Dagtagloou (n. 3), no. 1388, p. 1075.

\(^{39}\) Special Supreme Court 16/83, ToS 1985, p. 343.

\(^{40}\) CoS 763/1982; differentiated CoS 4022/86.

\(^{41}\) AP 810/80 and CoA 276/80.

\(^{42}\) Special Supreme Court 16/83, ToS 1985, p. 343 (no. 124, p. 369).


\(^{45}\) AP (plenary) 3/1995, ruling that women have equal right to family benefits and that equal work merits equal payment. In judicial practice, the provision is usually invoked concerning non-obligatory provisions of the employer in order to prevent arbitrary differentiated treatment, see AP 211/1992, EllDni 1995, p. 57. On the
and the favourable provision provided for the other sex is applicable. Differentiation is judicially accepted when it is just and reasonable, justified by a special and significant reason or, when introduced by law, when it is founded on reasons of general social or public interest.

Non-Greeks equally enjoy the protection of Article 22 (1) Constitution. Following the ECJ’s jurisprudence based on Article 141 (ex 119) ECT and respecting the relevant EC directives, both the national legislature and the judge extend the right of equal payment to the right of equal treatment in general. Greek case law moreover recognizes the horizontal effect to Article 22 (1), 2nd period, which allows it to be applicable to private employers as well.

1.4. QUOTA ARRANGEMENTS FOR WOMEN

Article 29 of Law 2085/1992 introduced a quota of at least one woman to serve on councils that are provided by law. Since under-representation of women in those councils was a factual situation, this provision aimed at securing a minimum of participation. The provision was abolished with posterior Article 38 of Law 2190/1994 and the Council of State overthrew it as breaching the equality principle. Nevertheless, based on both EC Directive 76/207 and the CEDAW, it changed its jurisprudence in its decision 1933/1998 mentioned above and affirmed the constitutionality of positive measures in favour of women. It declared that they may, when adequate and necessary, be taken for a certain period of time in order to combat factual inequalities and for as long as factual equality is achieved.

contrary, when based on a collective agreement, payment does not need to be extended to workers not covered by that agreement, see AP 108/1990, NoV 1992, p. 53.

51 CoS 6275/1995, with the reasoning that the travaux préparatoires of the law did not prove that there was discrimination against women in this field!
52 1933/1998 (plenary), supra (n. 11), p. 792.
Based on this change of attitude by the Court, Article 6 of Law 2839/2000 introduced a new quota, concerning members of service councils of the State, legal persons of public law and local self-administration, as well as members of Board of legal persons, when these members are nominated by the State, legal persons of public law and local self-administration. One-third of the members of these bodies must belong to each sex.

Law 2910/2001 added a third paragraph to Article 54 of the ‘Municipal Code’ (presidential decree 410/1995) and to Article 23 of the ‘Code on Prefectural Self-administration’, (presidential decree 30/1996) introducing a quota in the number of candidates in the municipal and prefectural elections. At least one third of the total number of candidates must belong to each sex. \(^53\) If this is not the case the list of candidates is invalid.

1.5. USE OF THE FAMILY NAME

Law 1329/1983 contributed dramatically to the implementation of the sex equality principle as it radically changed family law. \(^54\) Article 1388 Civil Code, as revised by Article 15 Law 1329/1983\(^55\), prescribes that ‘the surname of the spouses does not alter after marriage, in regard to legal relations. In regard to social relations, each spouse may use their partner’s name, provided that the latter consents.’

1.6. RIGHT TO BEAR A NAME FOR CHILDREN

According to Article 1505 Greek Civil Code\(^56\) parents are obliged to choose the surname of the prospective children before marriage. This surname may be either

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\(^53\) A dogmatic question arising is whether the revised Art. 116 (2) allows only positive measures in favour of women or tolerates neutrally formulated provisions as well. In the former case, the above provisions are unconstitutional and the women-specific formulation must instead be chosen. See Y. Katrougalos, ‘Revision of Classical Rights and Guarantees’, in: Tsatsos/Venizelos/Contiades (eds.), \textit{The New Constitution}, Athens-Komotini 2001, p. 55 (72) (in Greek).


\(^55\) Previous Art. 1388 Civil Code ruled that the woman takes her husband’s name after marriage.

\(^56\) As revised by Art. 17 of Law 1329/1983.
the one parent's surname or a combination of both parents' surnames (not more than two). Should parents omit to declare the name of their children, those will then bear the father's name.\textsuperscript{57}

2. *Discrimination Due to Descent*

There are no cases of discrimination, either positive or negative, due to descent in the Greek law. Such discrimination would also be covered by Article 4 (1) of the Constitution.

3. *Discrimination Due to Race*

As mentioned above, prohibition of discrimination due to race is covered by Article 4 (1), as well as Article 5 (2) of the Constitution. Although the latter explicitly refers only to rights of life, honour and freedom, it may be extended to all other rights. Greece has moreover ratified the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (Legislative Decree 494/70). A special Law (927/1979) provides penal sanctions for activities or acts that discriminate due to race and ethnicity.

4. *Discrimination Due to Language*

There is no discrimination due to language in the Greek law, as well as no relevant specific provision. Articles 27 ICCPR\textsuperscript{58} and 30 UNCRC\textsuperscript{59} are applicable here. The Muslim minority of Turkish origin living in West Thrace (north-east Greece) have their language rights safeguarded, since minority schools of all levels operate in the area.\textsuperscript{60} This is facilitated by the fact that the Muslim minority is concentrated there. On the contrary, there are no specific schools for children

\textsuperscript{57} This provision, introducing an arbitrary and unjustifiable discrimination in favour of men, has been criticized as reflecting the past, male-dominated ideology. See A. Manesis, "The Constitutional Establishment of Equality between Men and Women", DkP 4 (1983), p. 9 (27–28).

\textsuperscript{58} Law 2462/1997.


belonging to the minority of Pomaks, who also live in West Thrace, and the Roma minority, which is dispersed in the whole country. The use of their languages, is free in the private field but it is not supported by the schooling system, mainly due to the fact that they are both solely oral languages. The Greek State, however, has subsidized projects aimed at writing down these languages.

5. Discrimination Due to Social Background

Although factual discrimination due to social background cannot be prevented in a capitalist society, neither the Constitution nor any other legal text applicable in Greece tolerates such negative discrimination. On the contrary, positive discrimination is enshrined in the constitutionally guaranteed social rights, since the latter acquire their significant value for persons of a disadvantaged social background.

6. Discrimination Due to Religion

The prohibition of discrimination based on religious beliefs results from Article 5 (2) and Article 13 (1) 2nd period of the Constitution, according to which '[t]he enjoyment of civil and political rights does not depend on the religious conviction of each individual. This prohibition is not compromised by Article 3 of the Constitution that declares the Eastern Orthodox Church of Christ the

61 See supra, Chapter 3, 1. Although the latter only mentions civil and political rights and Art. 5 (2) specific rights, the prohibition on discrimination due to religion covers every single right provided for by the Constitution and law. CoS194/1987, NoV 1987, p. 607. See also I. Kriaris-Catranis, ‘Freedom of Religion under the Greek Constitution’, RHD 1994, pp. 400–1.

62 See however also Art. 13 (4) of the Constitution: ‘No person shall, by reason of his religious convictions, be exempt from discharging his obligations to the State, or refuse to comply with the laws.’

63 The constitutional provisions are complemented, as noted above, by EU law, especially Art. 21 (1) and 10 of the EU Charter of Fundamental Rights, as well as, by provisions of international human rights instruments, such as Art. 9 and 14 ECHR, 2 (1), 18, 26 and 27 ICCPR, 2 (2), 13 (2) ICESCR and 18, 29 (2), 26 (3) and 2 UDHR. Furthermore, Greek Law 927/1979 ‘on penal sanctions for activities or acts aiming at racial discrimination’ was complemented by Art. 24 of Law 1419/1984 to cover religion as well.
prevailing religion\textsuperscript{64}, a provision that belongs to the organizational part of the Constitution and does not interfere with the enjoyment of fundamental rights.\textsuperscript{65}

Compared to the general principle, religious equality is of a more formal-arithmetic nature, since different religious beliefs may not normally justify differential treatment.\textsuperscript{66} Belonging to any recognized doctrine may be neither a requirement nor impediment for appointment as a civil servant.\textsuperscript{67} Exceptions are justified only when the religious beliefs of the applicant are decisive for or incompatible with the task performed. Such a case is deemed to be the post of a professor of religion at secondary school, where she is expected to share the religion of her students.\textsuperscript{68} No exception can however be justified for non-religious


\textsuperscript{65} D. Tsatsos, ‘Two advisory notes on the relation between Church – State and the Religious Freedom’, DkP 15 (1988), p. 195 (198). However, as Ch. Papastathis, ‘Tolerance and Law in Countries with an Established Church’ \textit{Ratio Juris} 10 (1997), p. 108 (112) notes, ‘irrespective of the level of religious tolerance … there are inequalities among various religions’ and ‘[t]he cohabitation of an established church and non-established churches and religions is bound to generate unfair discrimination and abridge religious tolerance’ (p. 113). He therefore suggests that ‘the institution of the established church should wither away’. See also P. Foundathakis, ‘Religion and Constitutional Culture in Europe’, RHDI 2000, p. 227 (238), who rightly points out the fact that the representatives of the [Orthodox] Church always attend political, cultural and social events and every kind of inaugurations, which is inherently discriminatory for non-Orthodox citizens.

\textsuperscript{66} Chryssogonos (n. 2), p. 251. For example, the Administrative Court of first instance in Thessaloniki accepted (1064/1998, DkA 2000, p. 705), that religious equality covers equal tax treatment of all recognized religions, which consequently must enjoy any tax relief available to the prevailing Greek Orthodox Christian Church. In custody cases after divorce the religious faith of each parent must not be taken into consideration (Court of First Instance of Thessaloniki 1080/1995, Arm 1995, p. 1160, as opposed to older case-law).


\textsuperscript{68} This is due to the fact that the religion course at both primary and secondary school is confessional, as it promotes the Orthodox Christian doctrine. This privilege of the prevailing religion however is rightly seen by part of the theory as discriminatory and breaching the freedom of religion (G. Sotirelis, \textit{Religion and Education. The Constitution and the European Convention: From Catechism to Pluralism}, Athina-Komotini 1998, especially pp. 247 ss. (in Greek); Kyriazopoulos (n. 1), p. 357). Nevertheless, non-Orthodox, even irreligious, students must be accepted to the
courses at secondary school\textsuperscript{69} or for teachers at primary school\textsuperscript{70}, where the non-Orthodox teacher can be substituted in the religion course, which nowadays is mainly on orthodox Christianity.\textsuperscript{71} Religious equality covers both Greeks and non-Greeks.\textsuperscript{72}

Despite this constitutional equipment, religious minorities in Greece still face a series of impediments in the enjoyment of their religious freedom, which results in religious discrimination.\textsuperscript{73} In judicial practice,\textsuperscript{74} discrimination is sometimes founded on Article 13 (2), 3\textsuperscript{rd} period in conjunction with Article 4 (1) of Law 1363/1938 (as revised by Article 2 of Law 1672/1939) prohibiting proselytism.\textsuperscript{75} The prohibition concerns the use of illegal or immoral means, or undue inducements, or abuse of a relationship of dependence, and covers all religions – the Orthodox Christian doctrine included. Courts, however, especially in the past, based on the vagueness of the above-mentioned laws, used to overreact and unjustifiably extend the legal sanctions to acts not actually covered by them when rightly interpreted, mainly against non-Orthodox believers, especially Jehovah's

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Theology Departments of the Universities, as the latter are not confessional (CoS 194/87, NoV 1987, p. 608).


\textsuperscript{70} Only in 1988 (Law 771/98) however did the Ministry of Education and Cults pass a law which explicitly permitted the appointment of non-Orthodox teachers.

\textsuperscript{71} Chryssogonos (n. 2); p. 252. Decisions of Administrative Appeal Court of Athens 2704/1987, NoV 1988; p. 1509 and 299/1988, DiDik 1989, p. 83., unjustifiably discriminated against non-Orthodox Christians in this context. Art. 16 of Law 1771/1988 in accordance with Art. 13 (1) and 4 (4) of the Constitution provided however, that non-Orthodox teachers must be placed in schools with more than one teacher, so as to be substituted for the religion course and they may only teach students of the same doctrine as themselves.

\textsuperscript{72} See CoS 160/1990, NoV 1991, p. 142 (the part of the reasoning of a negative decision concerning naturalization referring to the applicant's religious beliefs is null and void).

\textsuperscript{73} Some cases of administrative discrimination may be found in decisions of the Greek Ombudsman, see Y. Kamilis 'Ombudsman and Religious Freedom', ToS 2000, p. 597 (e.g. higher cost for burial of Jehovah's Witnesses than for Christians in the same cemetery, p. 607).


\textsuperscript{75} For a general introduction to the problem from a conservative point of view see A. Marinos, 'La notion du prosélytisme religieux selon la Constitution', RHDI 47 (1994), p. 377. See also Papastathi, 'Tolerance and Law...' (n. 65), pp. 111-2.
Witnesses. Recent cases before the European Court of Human Rights, where Greece was found to violate Article 9 of the Convention, lead the Courts to a stricter interpretation of the relevant laws in accordance with the right of religious freedom.

Discrimination against non-Orthodox-Christian denominations is the requirement to get the permission of both the Minister of Education and Religions and the Orthodox bishop to build and operate places of worship! Although this holds for all religions, it obviously favours the prevailing one. A further requirement of at least 50 signatures of 'heads of families' accompanying the application to build a place of worship applies only to non-Orthodox denominations. Although all three provisions are obviously unconstitutional, breaching both religious freedom and equality, the Courts have not yet declared them as such. What they did was to consider the 'permission' of the bishop as a preparatory - ascertaining act, not binding the Minister and the latter's permission as only ascertaining that the religion is known and does not violate public order or virtuous morals. A further impediment in their operation is the

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80 That is, it does not have secret doctrines and worship ceremonies.

81 AP 421/1991, ElIDDi, p. 1548. This practice has however led to the conviction of Greece by the ECHR, see Manoussakis v. Greece, Judgment of 26 Sep. 1996, Reports No. 17, 1996 (4) and also Case Pentidis et al, judgment of 9 June 1997, Reports no. 39, 1997 (3). It falls however outside the scope of EU law and thus no EC action is possible, see parliamentary written question E-2200/00 by M. Cappato and Prodi’s relevant answer in OJEC C151E/2 of 22 May 2001.
lack of legal personality for all religious Communities, except for the Orthodox Christian, the Muslim and the Jewish ones.\textsuperscript{82}

7. Discrimination Due to Political View

For a long time in modern Greece political views had been a criterion especially concerning appointment to public services. However after the collapse of the dictatorship (1967–1974) and the establishment of democracy, political conditions changed to allow for the respect of political and social pluralism. Under the Constitution of 1975/86/01 any discrimination due to political views, although not specifically guaranteed, is totally prohibited. So is any attempt to know or make known somebody’s political views.\textsuperscript{83} Given that the concept of ‘streibare’ democracy does not prevail in Greece, as it is reflected in the fact that there is no provision for banning a party, the prohibition of discrimination covers even extreme political views.

8. Discrimination Due to Other Reasons

8.1. AGE

Differential treatment due to age is permitted. Both active\textsuperscript{84} and passive\textsuperscript{85} voting rights depend on it. Moreover, an age limit is constitutionally set for the exercise of certain professions.\textsuperscript{86} Every differential treatment based on age, however, must be objectively justifiable and based on substantially different situations, as required by the general principle of equality.


\textsuperscript{84} Art. 51 (3), 2\textsuperscript{nd} period of the Constitution.

\textsuperscript{85} Art. 55 (1) (Members of Parliament) and 31 (President of the Republic).

\textsuperscript{86} Art. 16 (6c) (professors in higher education), 88 (5) (judicial functionaries) and 92 (5) (notaries, and public and non-salaried registrars of mortgages and transfers).
8.2. MARITAL STATUS

Positive discrimination based on marital status is constitutional, in accordance with Article 21 (1).\textsuperscript{87} It cannot, however, be interpreted as prohibiting the legislature from recognising equivalent benefits to non-married couples but only from discriminating\textsuperscript{88} against the categories explicitly mentioned in Article 21 (1).

8.3. MERIT

As stated above, equal treatment of substantially different situations breaches the principle of equality. It is argued that this is the conceptual basis of a meritocracy as a manifestation of equality.\textsuperscript{89} Nowadays meritocracy is also enshrined in Article 103 (7), following the recent revision of 2001, which rules that civil servants are appointed after competition or selection based on prearranged and objective criteria. Generally, setting subjective qualifications that anyone can acquire as requirements for employment is in accordance with equality, whereas setting objective qualifications independent of any effort by the applicant may result in a breach of equality. The latter is constitutional only when and to the extent that it serves constitutionally protected goods.\textsuperscript{90}

Based on the same rationale, acquired qualifications may justify differential treatment. In that sense it has been decided that neither differentiation concerning salaries and pension in favour of holders of university degrees\textsuperscript{91} nor longer army deferment for exceptional scientists living abroad breach the equality principle.

\textsuperscript{87} Thus, according to CoS 2214/86 (3\textsuperscript{rd} Chamber), ToS 1987, p. 271, the marriage allowance is constitutional.

\textsuperscript{88} Thus heavier taxation of the immovable property of married people has been considered unconstitutional by the Council of State (CoS 1773/85).


\textsuperscript{90} Dagtooglou (n. 3), no. 1370, p. 1052. For example, bodies of local self-administration may favour, when hiring, their own citizens, to a limited extent, in order to enhance decentralization and self-governance, see CoS 477/1989 (plenary), EllDni 1991, p. 398.

8.4. SEXUAL ORIENTATION

There is no special provision covering discrimination based on sexual orientation, and since literature denies\(^\text{92}\) that such discrimination may be covered by the sex equality principle, it is the general provisions of Articles 4 (1) and 5 (1) that prohibit it. Family law discriminates against same sex couples, as they do not enjoy any legal recognition. A further discriminatory provision is included in the Penal Code (Article 347 (1) b), which extends the age limit for seduction of minors by adults from 15 to 17 years in case of ‘unnatural lechery’ (sic!).

II. Specific Obligations of Non-discrimination of the Legislative and Executive Branch

1. Discrimination by the Legislature

1.1. CONSTITUTIONAL TASKS OF THE LEGISLATURE

Since equality as a constitutional principle has a proportional dimension that imposes the different treatment of substantially different situations, it is not surprising that constitutional provisions exist that oblige the legislature to treat certain categories of people favourably.

More specifically, the Greek Constitution acknowledges the importance of family\(^\text{93}\) and marriage and offers special status to mothers, although the combination of these criteria is not a presupposition for special treatment.\(^\text{94}\) Childhood, youth and senility also enjoy special protection. The Constitution itself furthermore obliges the State to take health-care measures especially in favour of persons with special needs\(^\text{95}\) and the incurable. It also recognizes that poor people are worth protecting and obliges positive and proactive action such as special State care for the homeless.

Not only do positive measures in favour of the above-mentioned categories not contradict the equality principle\(^\text{96}\) but they are also imposed by Article 21 of the

\(^{92}\) Chryssogonos (n. 2), p. 139.

\(^{93}\) See Art. 21 of the Constitution in the following documentation.

\(^{94}\) Dagistoglou (n. 3), no. 1363, p. 1049.

\(^{95}\) CoS 4979/1996, EllDni 1999, p. 958

\(^{96}\) CoS 251/79, ToS 1979, p. 182, and the Administrative Appeal Court of Athens 2476/91, DiDik 1992, p. 74 that the supernumerary introduction of students who are children of handicapped people or war victims is not breaching equality.
Specific Rights of Equality

Constitution. This article, which contains a social right, allows the legislature to define the extent of the protection and is not justiciable regardless of legislative intervention. There is, however, a claim against a legislative or administrative act that discriminates against the categories in Article 21 of the Constitution.

1.2. STATUS OF ILLEGITIMATE CHILDREN IN FAMILY LAW AND THE LAW OF SUCCESSIONS

From Article 2 (1) in conjunction with 4 (1) and 21 (1) of the Constitution it results that no discrimination is allowed against children born out of wedlock. Article 1484 of the Greek Civil Code provides that ‘in case of recognition, voluntary or judicial, if not otherwise prescribed by the law, the child has in every aspect towards her parents and relatives the status of a child born in wedlock’. Greece has moreover ratified the European Convention on the legal status of children born out of wedlock of 1975.

1.3. CONSIDERATION OF THE PRINCIPLE OF EQUALITY IN THE LEGISLATION PROCESS

The legislature is not allowed to differentiate between persons or situations based on haphazard or accidental criteria but it is obliged to found its decisions on objective reasoning. Moreover, the adoption of criteria that are irrelevant with the situation concerned also breaches the equality principle. On the contrary, not only do reasons of force majeur justify, but indeed, based on Article 4 (1), compel the differentiated treatment of the relevant situations.

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97 See Art. 21 in the following documentation.
99 CoS 3348/83 (3 Chamber), ToS 1984, p. 393.
103 Chryssogonos (n. 2), p. 132.
1.4. INSTRUMENTS OF ABROGATION OF DISCRIMINATORY LAWS

In cases of judicial control based on equality concerns, the judge is often called to compare the treatment of the plaintiff with differential treatment allocated to, according to the plaintiff, subjects that are similarly situated. The legislature may, in fact, breach equality by enacting a law, not only by omitting to do so. In cases where a law omits awarding privileges to categories similar to those included in the law, however, the decision of the legislature may be revised on constitutional grounds for this substantive choice, in other words for what was – not for what was not – omitted.\textsuperscript{104} Courts often legitimize differentiation by the legislature of certain categories by taking recourse to a vaguely defined ‘general interest’, which has become a stereotype in Greek jurisprudence. They usually do this without specifically scrutinising its manifestation and, in this way, free themselves of the obligation to find out the substantive difference that justifies the discrimination.\textsuperscript{105}

If the court however accepts that the provision in question discriminates unjustifiably against the plaintiff, it may proceed as follows: It may, firstly, extend the more favourable norm to the plaintiff (it would, in such a case, create a provision that legislature failed to create). It may, secondly, annul the discriminatory norm applicable to the litigant by inserting an exception to allow the more general and favourable norm to apply (it would not, in such a case, create a new norm). Third, it may refuse to interfere with the decision of the legislature as being beyond its competence.

In following the third course of action, however, the court actually refuses judicial protection in a case of unjustifiable discrimination.\textsuperscript{106} This course of action is based on the assumption that constitutional adjudication, which consists of the decision of the judge on whether or not to apply the law, depending on its constitutional conformity, should not, based on grounds of equality, result in an extension of the field of application of the law regardless of, or even opposing to the will of the legislature.\textsuperscript{107} This has traditionally been the way followed by the

\textsuperscript{104} Dagtolou (n. 3), no. 1348, p. 1040.
\textsuperscript{105} Compare E. Venisclos, \textit{The General Interest and the Limitations of Constitutional Rights} (in Greek), Thessaloniki 1990, pp. 203 ss.
\textsuperscript{106} S. K. Manolikidhs, \textit{Granting Benefits through Constitutional Adjudication: The Extension of the Most Favourable Norm in Greece and Italy} (in Greek), Thessaloniki 1999, p. 126.
\textsuperscript{107} Dagtolou (n. 3), no. 1349, p. 1040.
Council of State. This Court may alternatively follow the second of the above mentioned courses of action, when the advantage has been allocated as a general norm to all, except from the litigant's category.

Some decisions of the Council of State, however, which have lately become more frequent, derogate from this practice and follow the first path, which is the usual course of action of Areios Pagos, Elektiko Sunedrio (State Audit Council) and the regular administrative courts. These courts extend an advantageous provision to all similarly situated persons, even if the provision in question refers to a specific and narrowly specified category. More specifically Areios Pagos has stated that: 'If a law contains a justifiable special provision applying to a certain category of persons and it unjustifiably excludes from that special provision a similarly situated category of persons, the provision that introduces that negative discrimination is unconstitutional.' For the principle of equality to be reinforced, the court must apply the favourable special provision to those unjustifiably excluded from it.

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109 See CoS 1016/1963, where the court extended a provision freeing Orthodox Christian monks from military service to monks of other religious doctrines.


112 CoA 887/92 (plenary), Sarmas (n. 110), p. 289


114 There is a gap in the logic of the argument: Since there is a special, more favourable provision for a category of people, those excluded from it fall under the general provision. In other words, there is no 'provision that introduces the negative unjustifiable discrimination', as the court presupposes.

115 A vast number of such cases concerns the judges themselves, e.g. AP 567/86 (plenary), ToS 1987, p. 512, on the unconstitutionality of the maximum pensions for judges; AP 1441/84 (plenary), ToS 1985, p. 54, on the extension of the study allowances of teaching staff to the vice-presidents of AP; and AP 1751/84 (plenary), in ToS 1985, p. 517, on the extension of the car allowances of higher civil servants to high-court judges.
This case law, which is based on the obligation of the courts to extend favourable provisions which break the equality principle, when applying to monetary benefits\textsuperscript{117}, contradicts Article 80 (1) of the Constitution.\textsuperscript{118} Areios Pagos has, however, asserted that this is the only way to combat inequality, since the mere declaration of the unconstitutionality of a discriminatory norm renders judicial protection ineffective.

Scholars have criticized the practice of the courts of revising even the omissions of the legislature based on the principle of equality. They argue\textsuperscript{119} that courts, although they can control the application of the principle of equality by the legislature, cannot amend legislative acts and thus legislate themselves. Neither can they\textsuperscript{120} impose or provide an exemption from taxes, nor impose a burden on the national budget. The proposal however to revise Article 80 (1) so as to prohibit any provision or extension of salary, pension or other remuneration to persons or categories not included in the law was turned down by the majority of Parliament during the recent revision of the Constitution (completed in 2001). As Chryssogonos\textsuperscript{121} notes, the voting down of this proposal reflects the acceptance of the courts’ extensive application of the equality principle. As the same author\textsuperscript{122} rightly points out decisive in such an application is the formulation and the context of the provision in question. When there is a generally favourable provision, any disadvantageous exception of similarly situated categories should

\textsuperscript{116} See CoS 2080/1950 (plenary), in: Sarmas (n. 110), p. 306, concerning the income of judges, and CoS 9/1988 (plenary), in: Sarmas (n. 110), p. 312, concerning shareholders. In both cases, the court extended the field of application of the norm to cover the excluded categories of people and situations. Adversely, it may extend the exception to cover categories similar to those that are covered, CoS 1016/63, where the court extended a provision freeing Orthodox Christian monks from military service to monks of other religious doctrines.

\textsuperscript{117} See Manolikidis (n. 106), pp. 129 ss.

\textsuperscript{118} Art. 80 (1) ‘No salary, pension, grant, or remuneration shall either be recorded in the budget of the State or granted unless provided for by an organizational or other special law’.

\textsuperscript{119} Dagioglou (n. 3), no. 1351, p. 1042.

\textsuperscript{120} Due to above-mentioned Art. 80 (1) and to Art. 78 (1) and (4) of the Constitution (‘No tax shall be imposed or collected without a law which shall determine the subject of the tax, and the revenue, the kind of property, the expenses and transactions or the categories thereof to which the tax relates’ and ‘The object of taxation, the rate of the tax, the exemptions from taxation and other concessions and the awarding of pensions cannot be made subject to delegated legislative authority’ respectively).

\textsuperscript{121} Chryssogonos (n. 2), p. 125.

\textsuperscript{122} Chryssogonos (n. 2), p. 124.
remain inapplicable, as it breaches equality. On the contrary, when the favourable provision is special and exceptional, but not justified, equality should have a levelling out effect. This however cannot happen due to the fact that the litigants are usually categories who want to be awarded the same benefit. Thus by turning their claim down, the courts refuse judicial protection, whereas by awarding them the benefit, they necessarily legislate.

1.5. SPECIFIC LAWS OF NON-DISCRIMINATION

No specific laws of non-discrimination exist in the Greek law. Some laws however include penal sanctions for crimes based on or causing discrimination. For example law 2207/1994 provides penal sanctions for those, who publicly, orally or in the press or in written texts or illustrations instigate actions that may cause discrimination, hate or violence against persons or categories of persons due to the latter's racial or ethnic background. The same sanctions are also provided for those founding or participating in unions targeting discriminatory propaganda or activities.

A more specific prohibition is included in the ‘Regulation on Mineral and Quarry Works’ (1984), where penal sanctions are provided for those denying the provision of goods or services to people due to their racial or ethnic origin or make such a provision dependant on people’s race or ethnicity.

1.6. SANCTIONS IN CASE OF VIOLATION

No sanctions are provided against the legislature where the courts declare a specific provision of a law unconstitutional as breaching the obligation of non-discrimination by the legislative. One could only think of political sanctions or moral disapproval being applied.

2. Discrimination by the Executive Branch

The principle of equality binds not only the legislature, as described above, but also the executive branch in cases where the latter has a margin of discretion and appreciation. The force of the principle is then even greater for the administration than for the legislature. Administrative acts, both normative (or general) and

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123 Dagstoglou (n. 3), no. 1370, p. 1052.
industrial, as well as mere facts and administrative behaviour must comply with
the principle.\textsuperscript{124}

More specifically the equality principle sets a limit on the exercise of
administrative discretion, that is the prohibition of differential treatment of
similar situations.\textsuperscript{125} When having a margin of appreciation, administrative organs
must come to a conclusion based on objective criteria.\textsuperscript{126} Furthermore, the
administration is obliged to compare and justify the disciplinary sanctions it
imposes on the parties of the same action.\textsuperscript{127} It must provide everybody interested
with the same possibilities to make use of public facilities (e.g. athletic ones)\textsuperscript{128}
and make known its actions that may produce rights for any interested citizens
(e.g. hiring of personnel)\textsuperscript{129}, in order to ensure equal opportunities.

On the contrary, the administration is under no obligation to respect the
principle of equality when an administrative act is illegal. In other words, the fact
that an administrative organ breached or did not apply the law in one case does
not oblige the administration to follow suit in any other case.\textsuperscript{130}

3. Specific Problems of Reverse Discrimination

3.1. 'AFFIRMATIVE ACTION IN FAVOUR OF WOMEN,
THE HANDICAPPED AND OTHER MINORITIES

The theory and praxis of affirmative action or reverse discrimination in favour of
historically, socially or factually disadvantaged categories of people has only
recently started to appear in Greek law. It usually takes the form of the
reservation of a number or percentage of work or study placements in favour of
minorities or underrepresented groups. Article 2 (1) of Law 2341/1995 reserves a
specific percentage of university placements for school graduates of the Muslim
minority from Thrace. The constitutionality of this provision has been disputed
before the Council of State\textsuperscript{131}, which rejected the claim, stating that the extension
of the provision in question to all Greek citizens through judicial decision was not
conceivable.

\textsuperscript{124} Dagtoğlou (n. 3), no. 1354, p. 1044.
\textsuperscript{126} Dagtoğlou (n. 3), no. 1354, p. 1044.
\textsuperscript{127} Administrative Court of Appeal of Athens 946/1992, EDD 1992, p. 468.
\textsuperscript{130} CoS 1776/53, 745/54 and 2262/84.
Greece has also ratified the International Convention for the Elimination of Discrimination against Women (CEDAW) of 1979 (Greek Law 1342/1983), Article 4 of which allows for temporary special measures aiming at the realization of *de facto* equality. Measures of affirmative action are also the quotas based on sex, which have been discussed above (Chapter 3, I.1.4).

3.2. OTHER FORMS OF REVERSE DISCRIMINATION

Other than quotas, social rights and provisions may also be deemed to be a kind of reverse discrimination. No other forms are known in the Greek law.
Documentation

Abbreviations

AP – Areios Pagos
Arm – Armenopoulos (journal in Greek)
CoS – Council of State
DiDik – Dioikitiki Diki (journal in Greek)
DkP – Dikaioi kai Politiki (journal in Greek)
DiA – Dikaiomata tou Anthropou (journal in Greek)
EDD – Epitheorisis Dimosiou Dikaiou kai Dioikitikou Dikaiou (journal in Greek)
EEEurD – Elliniki Epitheorisi Evropaikou Dikaiou (journal in Greek)
EEN – Efimeris Ellinon Nomikon (journal in Greek)
EllDni – Elliniki Dikaiosuni (journal in Greek)
NoV – Nomiko Vima (journal in Greek)
RHDI – Revue Hellenic de Droit International
ToS – To Syntagma (journal in Greek)

1. Essential Constitutional Norms

CONSTITUTION OF THE HELLENIC REPUBLIC 1975/86/2001

Article 1 [Parliamentary Democracy]

(1) Greece is a Parliamentary Democracy with a President as Head of State.
(2) Popular sovereignty is the foundation on which the form of government rests.
(3) All powers are derived from the People, exist for the benefit of the People and the Nation, and are exercised in the manner determined by the Constitution.

Article 4 [Citizenship and Equality]

(1) All Greeks are equal before the law.
(2) Greek men and Greek women have equal rights and obligations.
(3) Greek citizens are those who possess the qualifications specified by the law. No one shall be deprived of his citizenship save in the case of persons assuming on their own free will another citizenship or joining a service in another country which is contrary to the national interests, in accordance with the conditions and procedure laid down in detail by the law.

(4) Only Greek citizens shall be eligible for public service save in those cases where exceptions are introduced by specific legislation.

(5) Greek citizens shall, without discrimination, contribute towards sharing the burden of public expenditure according to their ability to pay.

(6) Every Greek able to bear arms shall be obliged to assist in the defence of the nation, as provided by law.

(7) Titles of nobility or distinction shall neither be conferred upon, nor recognized by Greek citizens.

Article 5 [Freedom]

(2) All persons within the Greek State enjoy full protection of their life, honour, and freedom, irrespective of nationality, race, language, creed, or political allegiance. Exceptions shall be permitted in such cases as are provided for by international law.

Article 13 [Freedom of religion]

(1) … 2nd period: The enjoyment of civil and political rights does not depend on the religious conviction of each individual.

(4) No person shall, by reason of his religious convictions, be exempt from discharging his obligations to the State, or refuse to comply with the laws.

Article 15 [Supervised Media]

(2) Radio and television are placed under the immediate supervision of the State. The National Council of Broadcasting, which is an independent authority, has exclusive responsibility to control and impose administrative sanctions, as the law prescribes. The immediate State control, which includes the requirement of a licence, aims at the transmission of objective information and news under conditions of equality, as well as of products of art and culture...

The law regulates everything concerning the obligatory and free transmission of sessions of the Parliament and its Committees, as well as the pre-electoral messages of political parties by the media.
Article 21 [Family]

(1) The institution of the family, being the foundation of the preservation and improvement of the nation, as well as marriage, motherhood, and childhood, shall be protected by the State.
(2) Families with a large number of children, war and peace invalids, war victims, widows, and orphans of persons killed in the war, and those suffering from mental or physical illness are entitled to the special care of the State.
(3) The State shall be concerned with the health of citizens and shall take special measures for the protection of youth, old age, cripples, and those who are destitute.
(4) The provision of homes to those who are homeless or live in inadequate housing conditions shall be the subject of special care by the State.
(5) Planning and the application of demographic policy, as well as the taking of all necessary measures is a State obligation.
(6) Persons with disabilities have the right to enjoy measures that ensure their autonomy, professional advancement and participation to social, economic and political life of the country.

Article 22 (1), 2nd period

All workers, independent of sex or any other criteria, have the right to equal payment for work of equal value.

Article 29 [Political Parties]

(1) Greek citizens who are eligible to vote can freely establish and participate in political parties, the organization and activities whereof must serve the free functioning of the democratic political system. Citizens who have not yet acquired the right to vote can participate in the youth organizations of political parties.
(2) Parties have the right to be subsidized by the State for their electoral campaign and functional expenses, as provided for by law. The law provides transparency guarantees for electoral expenses and the financial management of parties generally, members of Parliament, and candidates for Parliament and local self-administration bodies.

The law defines the upper limit of electoral expenses, it may prohibit certain kinds of electoral promotion and sets the conditions under which a violation of the relevant provisions leads to loss of a parliamentary seat on the initiative of the organ foreseen in the following period. Special organ consisting of judges among
others, as the law provides, exercises control on the electoral expenses of parties and candidate MP’s. The law may extend this provision to the candidates for other bodies.

(3) Activities of any kind whatsoever in favour or against political parties by judicial functionaries, military personnel and personnel of the security forces shall be absolutely prohibited. Also absolutely prohibited are any kind of activities in favour or against political parties in the exercise of their duties by employees of the State, local self-administration bodies, other corporate bodies of public law or public enterprises or undertakings of local self-administration authorities, or undertakings, to which the State appoints the management, either immediately or not, through an administrative act or as a share-holder.

_Article 51 [Deputies, Right to Vote]_

... (3) The deputies shall be elected by direct, universal, and secret ballot and by citizens having the right to vote as the law provides. The law cannot restrict the right to vote, save in cases of persons who have not attained the required age or on grounds of contractual incapacity or as a result of an irrevocable penal sentence for certain crimes.

...

_Article 110 [Limits and Proceedings]_

(1) The provisions of the Constitution, save those which determine the basis and the form of government as a Parliamentary Republic with a President as Head of State and those of Articles 2 (1), 4 (1), (4) and (7), 5 (1) and (3), 13 (1) and 26 shall be subject to revision.

_Article 116_

(1) Existing provisions which are contrary to Article 4 (2) shall remain in force until they be repealed by law not later than 31 December 1982.

(2) Positive measures that enhance equality between men and women do not constitute discrimination based on sex. The State shall attend to the elimination of existing inequalities, especially to the disadvantage of women.

2. _Essential Judgments_

- Council of State 4037/1979, ToS 1979, p. 626 (political parties)
- SSC 11/1982, ToS 1986, p. 79 (equality of political parties is proportional, dependent on their political importance)
- Council of State 2423/1984, ToS 1986, p. 77 (equality for political parties in allocation of broadcasting time before elections)
- Council of State 2423/84, ToS 1986, p. 77 and Council of State 4333/1996, Arm 1996, p. 1281 (differential treatment of parliamentary parties is constitutional, if it is based on special and objective circumstances, such as the parliamentary representation of the parties, provided that minimum television time was allocated to all parties)
- Athens Court of Appeal 14210/87, ToS 1988, p. 173 (equal treatment in collective agreements on employment issues)
- Council of State 993/1989, Arm 1989, p. 394 (party financing aims at supporting political parties that represent existing and active political forces)
- Council of State 930/1990, ToS 1990, p. 68 (the importance of the specific party is a factor influencing its treatment)
- Special Supreme Court 36/1990, EllDni 1993, p. 552 (not using of ballots in constituencies with one seat, in any round is unconstitutional)
- Special Supreme Court 12/1991, Arm 1994, p. 862 (three per cent clause for parties to be represented in the parliament is constitutional)
- Council of State, Elaboration Report 494/1993, ToS 1993, p. 633 (alphabetical order as a criterion to choose between candidates of equal qualification breaches equality)
- Areios Pagos 3/1995, NoV 1995, p. 463 (women have the equal right to family benefits and that equal work merits equal payment)
- Council of State 2353/1995, EllDni 1996, p. 831 (the prolongation of deferment to the army for exceptional scientists living abroad is constitutional)
- Council of State 436/1995, DiDik 1996, p. 757 (the net sum remaining after the taxation of a high income may not be less than the one remaining after the taxation of a lower income)
- Areios Pagos 7/1996, EllDni 1996, p. 1050 (no differential treatment of workers unless there is an adequate objective reason)
- Council of State 4331/1996, Arm 1996, p. 1276 (equal treatment of political parties concerning both time and content of TV programs)
- Council of State 4979/1996, EllDni 1999, p. 958 (obligation of the State to take health-care measures especially in favour of persons with special needs)
Documentation

- Council of State 5116/1996, ToS 1997, p. 805 (prohibition of different treatment of similar situations and similar treatment of different situations, unless the opposite is objectively justifiable)
- Council of State 2435/1997, ToS 1998, p. 569 (extension to widowers of pension reserved by the legislature only to widows)
- Council of State 2978/1997, NoV 1999, p. 133 (favourable provision for the one sex may be judicially extended to the other)
- Thessaloniki Administrative Court of first instance 1064/1998, Dikaioimata tou Anthropou 2000, p. 705 (religious equality covers equal tax treatment of all recognized religions)
- Council of State 1917/1998, ToS 1998, p. 794 (a 10 % maximum quota for women concerning admission to the police academy was declared unconstitutional)
- Council of State 939/1999, EDD 1999, p. 833; Appeal Court of Athens 1320/1999 and 256/1999, EDD 2000, p. 661 and EDD 2000, p. 442 respectively (prohibition to announce posts separately for the two sexes) (prohibition to announce posts separately for the two sexes; in such a case the announcement and the list of successful candidates are still valid but the latter are listed according to their results, independently of their sex)
- Council of State 1933/1998, ToS 1998, p. 792 (positive measures in favour of women are constitutional)
- Council of State 2096/2000, ToS 2000, p. 1288 (different minimum height for female and male candidates for the Fire Brigade is justified based on biological difference)
- Council of State 656/2000, Arm 2000, p. 558 (party equality)
- Council of State 2056/2000, DiDiK 2001, p. 87 (the legislature is not allowed to differentiate based on haphazard or accidental criteria)

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4. Table of Internet Addresses

www dsanet gr (Athens Bar)
www parliament gr (Hellenic Parliament)
www kethi gr (centre for equality issues)
www synigoros gr (ombudsman)