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**A COMPARATIVE ANALYSIS OF THE BODIES IN CHARGE OF  
ELECTORAL SUPERVISION, ESPECIALLY THE JUDICIAL ONES -  
THE SITUATION IN GREECE**

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Before the 1911 Constitution, responsibility for scrutinising the lawfulness of electoral operations in Greece lay entirely with Parliament. As was to be expected, Parliament monitored the elections on the basis of political and not legal criteria. On occasion, parliamentary majorities ratified the unlawful election of their own members and invalidated the election of opposition members of parliament, even though they had been lawfully elected. For these reasons, from 1911 onwards the country's Constitutions have assigned responsibility for reviewing the validity of elections to a judicial body, while Parliament is still responsible for monitoring disqualifications and cases where people are not entitled to stand for office.

Article 58 of the Constitution currently in force, which dates from 1975 (and was revised in 1986, 2001 and 2008), assigns responsibility for monitoring parliamentary elections entirely to a court, known as the *Special Supreme Court* and provided for in Article 100 of the Constitution. It should be specified that disputes concerning elections in the municipalities and prefectures (*Nomoi*) may be the subject of administrative-law action and come under the jurisdiction of the higher administrative courts, subject to appeal on points of law to the Supreme Administrative Court. Supervision of the election of the President of the Republic is the responsibility of Parliament, which elects the President, and not of a judicial body.

Before looking at the role of the Court in judging elections (II), it is worth outlining the way in which it is organised generally (I).

## **I. GENERAL DESCRIPTION OF THE SPECIAL SUPREME COURT**

1. The Court is a type of court new to Greek law, set up under the 1975 Constitution. It is a court with special jurisdiction that differs from the existing types of jurisdiction (administrative jurisdiction and ordinary jurisdiction).

2. The Court's jurisdiction is provided for in Article 100 of the Constitution and covers: a) disputes concerning parliamentary and European elections (the latter are not mentioned in the Constitution: jurisdiction was assigned to the Court under Act 1180/1981),<sup>1</sup> and the validity and returns of referenda, b) judgment in cases involving disqualification from or forfeiture of office of a member of parliament c) settlement of disputes concerning jurisdiction, d) "... settlement of controversies on whether the content of a statute enacted by Parliament is contrary to the Constitution, or on the interpretation of provisions of such statute when conflicting judgments have been pronounced by the Supreme Administrative Court, the Supreme Civil and Criminal Court or the Court of Auditors and, lastly, e) settlement of controversies related to the designation of rules of international law as generally acknowledged.

The organisation and working arrangements of the Court are governed by Act 345/1976 and the rules of court. With regard to matters not settled by the above-mentioned Act, the latter refers to the Code of Civil Procedure.

3. In accordance with Article 100 of the Constitution and Act 345/1976, the Special Supreme Court is composed of three ex officio members, namely the three Presidents of the supreme courts (Supreme Administrative Court, Supreme Civil and Criminal Court and Court of Auditors) and eight members with a two-year term of office, namely four members of the Supreme Administrative Court and four members of the Supreme Civil and Criminal Court, all chosen by lot every two years, in December, before a plenary public sitting of the Supreme Administrative Court. In addition to these 11 members of the judiciary, there are two university law professors (also chosen by lot) in cases where the Court is ruling on a dispute concerning jurisdiction or an objection to a law on grounds of unconstitutionality. The Special Supreme Court is presided over either by the President of the Supreme Administrative Court or by the

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<sup>1</sup> The Court held that this Act was not contrary to the Constitution, although the latter listed its areas of jurisdiction exhaustively (judgment 10/1982).

President of the Supreme Civil and Criminal Court, depending on which of them has seniority in the office of President.<sup>2</sup> Act 345/1976 also provides for auxiliary staff composed of members of the legal service and lecturers in law from the Law Faculty of the University of Athens. The members of the Court carry out their main occupation in parallel.

The fact that the composition of the Court is not stable, along with its vast range of responsibilities, has prompted some legal writers to argue that, at the very least, the way in which the composition of the Court is determined should be reviewed.

The duties of Secretary General of the Special Supreme Court are performed by the Secretary of the Supreme Court whose President presides over the Court.

4. When cases are referred to the Court, its President sets the date of the hearing and appoints a rapporteur from among its members. The rapporteur, with the help of one of the legal service members or professors who are members of the Court, makes arrangements to obtain any evidence needed to hear the case and drafts a report, which is lodged with the Court registry five days before the hearing and may be examined by the parties. The Court, of its own motion, considers the admissibility of the application and the merits of the submissions, but confines itself to examining the grounds pleaded by the applicants (judgment 16/2008).

5. The Court does not hand down a very large number of judgments: to take recent years as an example, it delivered eight judgments in 2002 and 51 in 2000. As is to be expected, most of the cases concern elections. Apart from those concerning elections, the Court's judgments are published in the Official Gazette.

## **II. THE COURT AS AN ELECTORAL COURT**

Some preliminary remarks

I shall refer not only to the Court's jurisdiction to review the electoral process in the strict sense of the term but also to its jurisdiction to rule on disqualifications from office concerning parliamentarians that emerge after the elections have taken place. It should be pointed out that the Court does not have any case law concerning referenda for the simple reason that none has been announced to date. Moreover, there is no point in making a distinction between national elections and European elections because the principles applied are largely the same.

I shall consider, in this connection, firstly the conditions of the admissibility of applications (A), then the rules governing the Court in the performance of its duties (B) and, lastly, the consequences of its judgments (C).

### **A. Admissibility of applications**

1. Firstly, it should be observed that cases may not under any circumstances be referred to the Court ex officio: a case must be brought by an applicant. The following have the right to take a case to the Court, and hence to challenge the election of a member of parliament:

- a. any voter on the electoral roll of a constituency, for the purpose of challenging the validity of the election results in that constituency. The applicant must prove that he or she is on the electoral roll (judgment 26/2004);
- b. any candidate standing for parliament in a constituency who has not been elected. The applicant (voter or substitute member of parliament) may neither call for the annulment of the elections as a whole (judgment 30/2004), nor contest the election of a member of

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<sup>2</sup> The Court is currently presided over by the President of the Supreme Administrative Court.

parliament in another constituency, unless he or she can argue that a violation of electoral law in another constituency affected the results in his or her own constituency (judgments 8/2008, 12/2005, 26, 30/2004).

The Court has held, on the basis of a strict interpretation of the law and the Constitution, that an application from a political party or legal entity is inadmissible (judgments 26, 30/2004). It merely acknowledged that political parties could intervene in the proceedings.

2. Electoral operations are complex operations, the main stages of which are as follows:
  - a. Dissolution of Parliament and announcement of elections (by decree). The Court is not competent to set aside the decree dissolving Parliament, and therefore rejects any application containing such a request as inadmissible. It may nevertheless, in connection with a specific case, consider whether the decree complies technically with the law; obviously the grounds for dissolving Parliament may not be reviewed (judgments 9/2008, 30/2004, 47/2000). Nor does the Court have jurisdiction to set aside the decree allocating seats to members of parliament, but it may examine its lawfulness in connection with a specific application challenging the election of a member of parliament, in which case its review covers all the aspects of the lawfulness of the decree.
  - b. Submission of candidacies and announcement of the names of the candidates. The latter operation is entrusted to the Regional Court located in the capital of the constituency. On the occasion of the 2007 elections, the problem arose of the scope of the review carried out by the courts in this connection, in other words whether they had jurisdiction to consider, at that stage of the election proceedings, whether a particular candidate was entitled to stand for election or whether they must confine themselves to formal scrutiny of candidacies. Some legal writers considered that only the Special Supreme Court had jurisdiction to carry out such a review. This was not the view taken by the Supreme Civil and Criminal Court, which refused to ratify one candidacy on the grounds that the candidate held a post that disqualified her from standing for election, even though she had resigned beforehand.
  - c. The actual ballot and, lastly (d), the validation of the results by the Regional Court. The 15-day deadline for appealing runs from the date on which the validation decision is published. An application may not be submitted to the Court before the elections take place and the results have been announced. An appeal against forthcoming elections is inadmissible (judgment 9/2007), as is an appeal registered before the official announcement of the results (judgments 22/1985, 5/2005 concerning the European elections) or an appeal registered after the expiry of the deadline.

There is no deadline for appeals to have a member of parliament removed from office on the grounds that he or she is disqualified from office (judgments 1/2007, 5/2006).

As for the registration of voters on the electoral roll, which is an administrative decision (and therefore subject to appeal to the administrative court), the Court reviews the lawfulness of registration in connection with specific cases (16/2005).

3. Applications must be submitted in writing and contain the surname, first name and status of the applicant and the (elected) persons against whom they are addressed, and set out the facts and the grounds for annulment. They must also indicate the constituency concerned by the prospective annulment of the election. They do not have a suspensive effect. Once an application has been submitted to the Court, the hearing takes place before the Court even if the applicant withdraws the appeal (judgment 7/2005, which held that the fact that it was impossible for the applicant to withdraw the appeal was not contrary to Article 20 of the

Constitution, which guarantees the right to legal protection from a court). A friendly settlement is not possible. Lastly, the Court holds that there is no need to rule on cases that are pending if the parliamentary session ends before the hearing (31/1997).

**B. The rules governing the Court in the performance of its duties**

**1. Review of compliance with the constitutional principles governing elections**

a. Article 51 of the Constitution provides that elections shall take place by direct, universal suffrage and secret ballot and that parliamentary elections shall be held simultaneously throughout the country. The Court reviews compliance with these principles by considering whether legislation governing elections is in keeping with the Constitution. It should be noted that Greece has a system of widespread review of the constitutionality of the law, in that every court has the duty to review the constitutionality of the law applicable.<sup>3</sup> It can therefore happen that the Court reviews the electoral laws it has occasion to apply in the light of constitutional principles.

b. In its judgment 34/1985 it had occasion to review the law in the light of the constitutional principle of direct suffrage. The case concerned the abolition, by the law existing at the time, of the system whereby a voter could choose which of the candidates on the list submitted by a party he or she wanted to see elected. This system was replaced by a fixed-party-list ballot. The Court held that the law was not contrary to the above-mentioned principle (or indeed to any other constitutional principle) because, even in this circumstance, the will of another party (an electoral college) did not intervene between the expression of the will of the voter and the election. Suffrage therefore continued to be direct.<sup>4</sup>

According to the Court's case law, Parliament is free to choose the electoral system it wishes, provided it complies with constitutional principles. The Court held that the Constitution provided for equal suffrage, which meant that a voter could not vote in more than one constituency and that each vote had the same value, in that it must have the same influence on the election results of a constituency. It considered that the electoral law provision whereby no member of parliament could be elected if his or her party had not obtained at least 3% of the total number of votes cast in the country was constitutional. According to the Court, this was an objective, impersonal percentage that made it more likely that stable, viable governments would be formed (judgments 26/2001, 74/1997). On the same grounds, the Court considered that the provision whereby seats not filled after the initial allocation were assigned to the party that obtained the largest number of votes was constitutional (judgment 47/1978).

In a recent judgment (4/2008), the Court had the opportunity to assess the constitutionality of a statutory provision whereby former prime ministers standing for election were considered to have obtained all the votes cast for their party in the constituency in which they were standing without the need for voters to express a preference for them. According to the Court, this provision did not violate any constitutional principle, in particular the principle of equality of candidates, which required that the law treat candidates in the same way, without discrimination, for in the current system the Prime Minister played a preponderant and dominant role, as was borne out by a series of constitutional provisions. The challenged provision merely acknowledged that role, admittedly introducing an exception to the equality rule (in the case of other candidates, voters had to express a choice in their favour for them to be elected), but it was constitutionally tolerable because it was based on objective criteria related to the political life of the country.

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<sup>3</sup> Under Article 93, paragraph 3, of the Constitution, "The courts shall be bound not to apply a statute whose content is contrary to the Constitution."

<sup>4</sup> In the meantime, the law that gave rise to this judgment has been repealed. Under the legislation in force, fixed-party-list ballots apply where parliamentary elections take place less than 18 months after the previous elections.

While in most cases the Court recognises the constitutionality of electoral provisions, thereby acknowledging that Parliament has a wide measure of discretion when legislating on the subject, there are two cases in which it did not hesitate to reject its choices.

Blank ballot papers raise tricky constitutional issues. Electoral law provides that the electoral quotient is calculated on the basis of valid ballot papers, with no account being taken of spoilt and blank ballot papers. In its judgment 12/2005, the Court, in a reversal of precedent, held that the provision in question was contrary to the principles of the sovereignty of the people and the equality of votes and hence at variance with the Constitution and inapplicable. Blank ballot papers should therefore be taken into account in calculating the electoral quotient and allocating seats. The Court, in accordance with its case law, was therefore to reallocate the seats in the main constituency of Central Macedonia. This judgment, which was moreover taken by a narrow majority of six votes to five, was severely criticised. Parliament, for its part, did not, in the Electoral Act that followed, amend the provision in question concerning blank ballot papers (Act 3434/2006 and decree 96/2007 codifying the electoral legislation). Given that Parliament has retained the provision, it will be interesting to see whether in future, in the context of "dialogue" between Parliament and the Court and on the occasion of a forthcoming election, the Court will stand by its new case law.

In another judgment (judgment 36/1990), the Court held that the Electoral Act in force at the time infringed the principle of equality and Article 52 of the Constitution, which reads "The free and unfalsified expression of the popular will, as an expression of popular sovereignty, shall be guaranteed by all State officers ...". More specifically, under the electoral system in question, constituencies in which only one member of parliament could be elected were dealt with differently from the others: once it had been established who had been elected, the votes cast in that constituency in favour of the candidate who had not obtained a majority no longer counted when votes were added up to obtain the total number of votes that the party to which that candidate belonged was deemed to have obtained at national level (this figure is designed to serve as a basis for determining the number of seats to be allocated during the second round of apportionment and allocation of seats). By contrast, unused votes in favour of candidates from the same party in constituencies where several members of parliament were elected were added up. The Court ordered a new census, in keeping with constitutional principles, to establish the total number of voters at national level that was to serve as a basis for recalculating the allocation of seats.

## **2. Review of violations of electoral law**

The Court ensures that the provisions of the Electoral Act and any other rules concerning the election have been complied with. Any application alleging failure to comply with the provisions in question may be submitted to the Court.

Here are a few examples. The Court frequently has occasion to rule on the validity of ballot papers. It considers as invalid those ballot papers that bear distinctive marks that could violate the secrecy of the ballot (which is a constitutional principle) by making it possible directly or indirectly to identify the voter. The Court seeks to ascertain whether the mark was made intentionally for the purpose of revealing the voter's identity. Any mark made by chance, because of the voter's advanced age, haste, state of emotion, etc does not cause the ballot paper to be invalidated (judgments 9/2005, 25/1999). In case of doubt, the Court considers the ballot paper to be valid (judgment 12/2005).

The Court has held that failure by the presiding officer of the polling station to initial ballot papers taken out of the ballot box, serious shortcomings in the drafting of election reports, a lack of election material in a polling station making it impossible for a number of voters to express their preference for a candidate or party and the use of non-regulation ballot papers

constitute infringements of the electoral rules. With regard more specifically to failure to initial the ballot papers, this may invalidate the ballot papers only if their validity is contested (judgments 12/2005, 26/2001).

In a recent judgment, the Court had to interpret a provision of the Electoral Act whereby it is forbidden to engage in election campaigning or issue election messages on the eve or day of the election. The Court held that the messages prohibited are those issued publicly to a broad public and an indeterminate number of people. Text messages sent by mobile phone are therefore not prohibited messages: they are private messages addressed to a finite, albeit possibly large, number of people and therefore constitute a means of personalised communication (judgment 23/2008).

The Court has ruled that illicit promises and gifts to voters at election time constitute violations of the law and may lead to the election being declared invalid in a particular constituency (judgments 25/2001, 2/2000, 26/1994). It has also held that exit polls are not, in principle, illegal. According to the case law, reference to exit polls on certain television channels before the end of the ballot, although reprehensible and subject to criminal and administrative penalties, cannot influence the expression of the will of the voters sufficiently to warrant annulment of the elections (judgment 66/1997).

According to the Constitution (Article 29, paragraph 2) and Act 3023/2002, a member of parliament who exceeds the authorised expenditure ceiling during the election campaign may be removed from office by decision of the Court.

### **3. Review of situations where people are not entitled to stand for election or are disqualified from office**

Articles 56<sup>5</sup> and 57<sup>6</sup> of the Constitution, which are fairly detailed, set out the situations in which

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<sup>5</sup> "1. Salaried civil functionaries and servants, other employees of the Public Sector, persons serving in the armed forces and the security corps, employees of local government agencies or of other legal entities of public law, elected single-member organs of local government agencies, governors, deputy governors or chairmen of the boards of directors or managing or executive directors of legal entities of public law or of state legal entities of private law or of public enterprises or of enterprises whose management the State appoints directly or indirectly by administrative act or as shareholder, or of local government enterprises, may neither stand for election nor be elected to Parliament if they have not resigned prior to their nomination. Such resignations shall be valid upon written submission thereof only. Military officers who have resigned may under no circumstances return to active service. Senior elected single-person organs of local government agencies of the second degree may not stand for election nor be elected to Parliament during the tenure for which they have been elected, even if they resign. 2. Professors of institutions of university level are exempt from the restrictions of the preceding paragraph. The exercise of the duties of professor shall be suspended for the duration of the parliamentary term and the manner of replacement of professors elected to Parliament shall be specified by law. 3. The following persons may not stand for election nor be elected to Parliament in the electoral district where they served or in any electoral district to which their local authority was extending during the last eighteen months of the four-year parliamentary term: a) Governors, deputy governors, chairmen of the boards of directors, managing and executive directors of legal entities of public law, with the exception of associations, of state legal entities of private law and of public enterprises or of enterprises whose management the State appoints directly or indirectly by administrative act or as shareholder. b) Members of independent authorities which are established and operate pursuant to article 101A, as well as of the authorities designated by law as independent or regulatory. c) Senior and top-ranking officers of the armed forces and the security corps. d) Salaried employees of the Public Sector, of local government agencies or of enterprises thereof, as well as of the legal entities and enterprises under case (a) who were holding a position of head of unit at the level of department or another corresponding position, as specifically provided by law. Employees mentioned in the preceding section and having wider local authority are subject to the restrictions of this paragraph concerning electoral districts other than those of their seat, only in case they were holding a position of head of unit at the level of general directorate or other corresponding position, as specifically provided by law. e) Secretaries general or special of ministries or of autonomous secretariats general or regional administrations and all persons that the law puts in the same category as these. Persons nominated as State Deputies shall not be subject to the restrictions of this paragraph. 4. Civil servants and the military in general, having undertaken the obligation by law to remain in service for a certain period of time, may not stand for election nor be elected to Parliament during the period of such obligation."

parliamentary candidates are not entitled to stand for election and members of parliament are disqualified from office.

**a. Prohibition from standing for election**

It is generally accepted that provision should be made for situations where people are not entitled to stand for election, in order to prevent the election of persons who may influence the electorate by virtue of the posts they occupied before standing for election. This rule, which limits the freedom of citizens to stand for election and be elected, is designed to enhance the neutrality and impartiality of persons in public office. It is not appropriate here to go into the details of situations where people are not entitled to stand for election or make constitutional distinctions (absolute and relative prohibition).

As we have seen, entitlement to stand for election may also be reviewed at the stage when candidacies are announced. It is worth pointing out that, according to a long line of Court decisions, given that cases where people are not entitled to stand for election are exceptions that undermine electoral freedom, the relevant constitutional provisions must be strictly interpreted (judgments 20/2008, 12/2004, 7/2002, 51, 18/2000). Accordingly, recent case law (that dating from after the 2001 revision, which largely reformed Article 56) has specified, pursuant to Article 56, that the following are entitled to stand for election: a) a deputy prefect who was not elected to the post but appointed by order of the prefect (who was elected to that post) and who is consequently not an elected official (judgment 5/2008); b) the deputy chair of the board of a public-law legal entity, who may not be considered as chair simply because he stands in for the chair when the latter is absent or otherwise engaged (judgment 7/2008); c) civil servants and public-law legal entities bound by a private-law contract, since they do not come under the scope of Article 56, paragraph 1, of the Constitution, which refers to "civil functionaries" (judgment 13/2004); d) the chair of the board of a private-law municipal undertaking, who is not covered by Article 56, paragraph 3.a (judgment 10/2004) and e) an official of the European Communities, who does not, ipso facto, have national civil servant status (judgment 20/2008). Furthermore, the Court held that that the public limited companies

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<sup>6</sup> "1. The duties of Member of Parliament shall be incompatible with the duties or the capacity of owner or partner or shareholder or governor or administrator or member of the board of directors or general manager or of their deputies, of an enterprise that: a) Undertakes Public works or studies or supplies or the provision of services to the Public Sector or concludes with the Public Sector similar contracts of a development or investment nature. b) Enjoys special privileges. c) Owns or manages a radio or television station or publishes a newspaper of country-wide circulation in Greece. d) Exercises through concession public service or public enterprise or public utility enterprise. e) Rents for commercial purposes real estate owned by the State. For the purposes of applying this paragraph, local government agencies, other legal entities of public law, state legal entities of private law, public enterprises, enterprises of local government agencies and other enterprises whose management the State appoints directly or indirectly by administrative act or as shareholder, are put in the same category as the Public Sector. Shareholders of an enterprise falling within the restrictions of this paragraph are all persons possessing a percentage of more than one percent of the share capital. *The duties of Member of Parliament are also incompatible with the exercise of any profession. Activities compatible with parliamentary office, as well as matters relating to insurance and pension issues and to the manner in which Members of Parliament return to their profession after loss of the capacity of Member of Parliament, shall be specified by law. Under no circumstances may the activities of the previous section include the capacity of employee or legal or other advisor of enterprises under cases (a) to (d) of this paragraph.* Violation of the provisions of the present paragraph shall result in forfeiture from parliamentary office and shall render the related acts null and void, as specified by law. 2. Members of Parliament falling within the provisions of the first section of the preceding paragraph must, within eight days of the day on which their election becomes final, state their choice between their parliamentary office and the above stated duties or capacities. Failing to make the said statement within the set limit, they shall forfeit their parliamentary office ipso jure. 3. Members of Parliament who accept any of the capacities or duties mentioned in this or in the preceding article and designated as impediments for parliamentary candidature or as incompatible with parliamentary office, shall forfeit that office ipso jure. 4. The manner of continuation or transfer or dissolution of contracts mentioned in paragraph 1 and undertaken by a Member of Parliament or by an enterprise to which he participated before his election, or undertaken in a capacity incompatible with his office, shall be specified by law."

The sentence in italics was deleted when the Constitution was revised in 2008 and replaced by the following provision: "Professional activities other than those mentioned in the preceding paragraphs which members of parliament are prohibited from carrying out may be specified in a special law."



"Greek Electricity" and "Hellenic Radio and Television" were public enterprises within the meaning of Article 56, with all the consequences that this status entailed for their directors (judgments 91/1997, 21/2000), and that a dentist employed by Social Security under a private-law contract fell into the category of "other employees" of the public sector and "employees" of other legal entities of public law and was therefore not entitled to stand for election if the conditions laid down in Article 56, paragraph 1, were not fulfilled (i.e. if the dentist did not resign before his candidacy was announced; judgment 26/2008).

**b. Disqualification from office (incompatibilities)**

People may be disqualified from office because they are engaged in occupations or activities that are not compatible with parliamentary office. Disqualification is designed to guarantee the independence of parliamentarians, the impartial performance of their duties and the transparency of politics. Disqualification is an issue that emerges only after the election, and the elected candidate must choose within the constitutional time-limit between parliamentary office and his or her occupation. Cases in which persons are disqualified from office are exhaustively listed in the Constitution (judgment 2/1992) and, as in cases where persons are not entitled to stand for election, the relevant constitutional provision must be strictly interpreted (judgments 7/2002, 22/2001).

Under Article 57, paragraph 1, as it stood before the 2008 revision, the Court annulled the election of a member of parliament who was a practising barrister, on the grounds that he had not chosen between parliamentary office and his profession. The problem was that this provision was the result of the 2001 revision and had a retrospective effect, in that it concerned members of parliament elected in the elections that took place in 2000. The member of parliament against whom the appeal was directed argued that the retrospective effect violated the principle of legitimate expectations, which was a constitutional principle. The Court rejected the argument on the grounds that constitutional provisions all had the same value and that the provision preventing certain persons from standing for election was applicable as a special law (judgment 11/2003). The member of parliament then took his case to the European Court of Human Rights, which, in the case of *Lykourazos v. Greece* (15.6.2006), sentenced Greece under Article 3 of the First Protocol (Right to free elections). According to the Strasbourg Court, the Court had "to satisfy itself that the conditions imposed in the right to vote and to stand for election [did] not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they [were] imposed in pursuit of a legitimate aim; and that the means employed [were] not disproportionate ... In particular, any conditions imposed must not thwart the free expression of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of people through universal suffrage ... Equally, once the wishes of the people [had] been freely and democratically expressed, no subsequent amendment to the organisation of the electoral system [could] call that choice into question, except in the presence of compelling grounds for the democratic order." The European Court of Human Rights went on to observe that "the applicant [had been] elected in conditions which were not open to criticism, namely in accordance with the electoral system and Constitution as in force at the material time. Neither the applicant, as candidate, nor his electors could imagine that the former's election could be called into question and held to be flawed while his term of office was still in progress on account of a disqualification arising from the parallel exercise of a professional activity". In the circumstances, the Court concluded that the Special Supreme Court had caused the applicant to forfeit his seat and had deprived his constituents of the candidate whom they had chosen, in breach of the principle of legitimate expectation, and that this situation was in breach of the very substance of the rights guaranteed by Article 3 of Protocol No. 1. The Court therefore found that there had been a violation of this provision.

This judgment is important, particularly because it raises the question of the relationship

between the Constitution and the European Convention on Human Rights and seems to accept that the latter takes precedence.

### **C. The consequences of the Court's judgments**

It should first be observed that judgments of the Court annulling the election of a member of parliament are valid erga omnes (judgment 8/2000). Such judgments are final and not subject to appeal: any appeal would therefore be inadmissible (48/1982).

If the Court finds that a member of parliament was not entitled to stand for election or is disqualified from office, it merely declares the member's election invalid or rules that the member must be removed from office. It is not competent to declare another candidate elected (judgment 48/2000).

Since the 2001 revision of the Constitution, removal of a member of parliament from office on grounds of disqualification has no retrospective effect and applies only as from publication of the Court's judgment (judgment 11/2003).

If the Court finds an error in the counting of the votes obtained by a candidate, it recounts them itself, in which case it may declare another candidate elected (judgment 36/1990). In that case, the candidate declared elected by the Court is considered to have been elected from the start of his or her term of office.

A judgment acknowledging that a member of parliament was not entitled to stand for election has a retrospective effect. Decisions by the Chamber to which the member of parliament who has been removed from office belonged are considered valid even after his or her removal from office.

Lastly, if the Court finds a serious irregularity in the election procedure, it may annul the election in question, in which case a new ballot is held. The Court has, however, made use of this power only once since 1975.