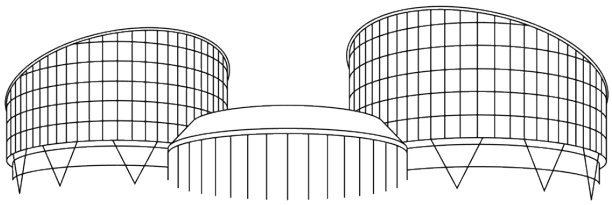

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SITAROPOULOS AND OTHERS v. GREECE

(Application no. 42202/07)

JUDGMENT

STRASBOURG

8 July 2010

THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
15/03/2012

This judgment may be subject to editorial revision.

In the case of Sitaropoulos and Others v. Greece,

The European Court of Human Rights, (First Section), sitting as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*
Spyridon Flogaitis, ad hoc *judge,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 June 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 42202/07) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Greek nationals, Mr Nikolaos Sitaropoulos, Mr Stephanos Stavros and Mr Christos Giakoumopoulos ("the applicants"), on 20 September 2007.

2. The applicants were represented by Mr I. Ktistakis, a lawyer practising in Athens. The Greek Government ("the Government") were represented by their Agent's delegates, Mr Apessos, Adviser at the State Legal Council, Mrs O. Patsopoulou, Adviser at the State Legal Council and Mrs Z. Hatzipavlou, Legal Assistant at the State Legal Council.

3. The applicants alleged a violation of their right under Article 3 of Protocol No. 1 to the Convention.

4. On 12 September 2008 the President of the First Section decided to give notice of the application to the Government. In conformity with Article 29 § 1, it was also decided to examine the merits of the application at the same time as its admissibility.

5. Mr Christos Rozakis, the judge elected in respect of Greece, withdrew from sitting in the case. The Government accordingly appointed Mr Spyridon Flogaitis to sit as an *ad hoc* judge.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1967, 1961 and 1958 respectively and live in Strasbourg. They are officials of the Council of Europe

7. By Presidential Decree no. 154/2007 of 18 August 2007, the Greek Parliament was dissolved and a general election was called for 16 September 2007.

8. In a fax dated 10 September 2007 to the Greek Ambassador in France, the applicants, as permanent residents in France, expressed the wish to exercise their voting rights in France in the elections to be held on 16 September 2007.

9. In his reply of 12 September 2007 the Ambassador, relying on the instructions and information provided by the Ministry of the Interior, stated as follows:

> "[The Greek State] confirms its wish – expressed frequently at the institutional level – to enable Greek citizens resident abroad to vote at their place of residence. However, it is clear that this matter requires regulation by means of legislation which does not currently exist. In fact, such regulation could not be brought about by a simple administrative decision, given that special measures would be required for the setting-up of polling stations in Embassies and Consulates ... In the light of the above and despite the wish expressed by the State, your request concerning the forthcoming elections cannot be granted for objective reasons."

10. The general election took place on 16 September 2007. The applicants, who did not return to Greece, did not exercise their right to vote.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. Domestic law

1. The Greek Constitution of 1975

11. The relevant provisions of the Greek Constitution read as follows:

Article 1

" ...

2. Popular sovereignty is the foundation of government.

3. All powers derive from the People and exist for the People and the Nation; they shall be exercised as specified by the Constitution."

Article 51

" ...

3. The Members of Parliament shall be elected through direct, universal and secret ballot by those citizens who have the right to vote, as specified by law. The law cannot curtail the right to vote except in cases where the statutory minimum age has not been attained or in cases of legal incapacity or as a result of a final criminal conviction for certain offences.

4. Parliamentary elections shall be held simultaneously throughout the country. The conditions governing the exercise of the right to vote by persons living outside the country may be specified by statute.

5. The exercise of the right to vote is compulsory. Exceptions and criminal sanctions shall be specified in each case by law."

12. Following the Constitutional revision of 2001, Article 51 § 4 was amended as follows:

"4. Parliamentary elections shall be held simultaneously throughout the country. The conditions governing the exercise of the right to vote by persons living outside the country may be specified by statute, adopted by a majority of two thirds of the total number of Members of Parliament. Concerning such persons, the principle of simultaneously holding elections does not rule out the exercise of their right to vote by postal vote or by other appropriate means, provided that the counting of votes and the announcement of the results is carried out at the same time as within the country."

Article 108

"1. The State must be attentive to the situation of emigrant Greeks and to the maintenance of their ties with the Homeland. The State shall also attend to the education and the social and professional advancement of Greeks working outside the State.

2. The law shall lay down arrangements relating to the organisation, operation and competences of the World Council of Hellenes Abroad, whose mission is to allow the full expression of Hellenism worldwide."

2. The electoral legislation in force at the material time

13. At the time of the parliamentary elections in issue, Presidential Decree no. 96/2007, which was the electoral legislation then in force, provided as follows:

Article 4 – Right to vote

"Any Greek national aged 18 or over is entitled to vote. ..."

Article 5 – Forfeiture of right

"The following persons are not entitled to vote:

(a) Persons who have been placed under guardianship, in accordance with the provisions of the Civil Code.

(b) Persons finally convicted of one of the offences provided for in the Criminal Code or the Military Criminal Code, for the duration of their sentence. "

Article 6 – Exercise of the right

"1. The right to vote in a constituency is reserved to those persons registered on the electoral roll of a municipality or local authority area within that constituency.

2. Voting is mandatory."

3. Bill entitled "Exercise of the right to vote in parliamentary elections by Greek voters living abroad"

14. The report on that bill placed before Parliament by the Ministers of the Interior, Justice and the Economy on 19 February 2009 indicated that the purpose of the bill was to fulfil "one of the Government's major historical obligations, one which undeniably reinforces Greek expatriates' ties with the homeland". The report stated that the right to vote of Greek nationals living abroad arose out of both Article 108 and Article 51 § 4 of the Constitution. In particular, as regards Article 108, the report pointed out that it "affords Greek expatriates a 'social right'. The provision obliges the Greek State to take all necessary measures to maintain Greek expatriates' ties with Greece, to ensure they have access to Greek education and to make provision, as a matter of State duty, for the social and professional advancement of Greeks working outside Greece. Regulating the conditions for the exercise by Greek expatriates of their right to vote in Greek parliamentary elections will undeniably contribute to real ties being forged between Greek expatriates and their homeland". Moving on to the constitutional provision on this specific subject, namely Article 51 § 4, the report stated that the law to which that Article referred had the status of an implementing law of the Constitution. Finally, the report considered that "in these times of globalisation, Greek expatriates must be able to have a decisive political say in the development of their own country".

15. The Scientific Council (*Επιστημονικό Συμβούλιο*) of Parliament, a consultative body reporting to the Speaker of Parliament, produced a report dated 31 March 2009 on the aforementioned bill. That report noted that in the past, some legal authorities had argued that Article 51 § 4 of the Constitution imposed upon Parliament an obligation to grant expatriate Greeks the right to vote from outside Greece. However, referring to other

legal authorities and the preparatory work for Article 51 § 4 of the Constitution, the Scientific Council stated that it was an option rather than a duty of the legislature to grant the right to vote from abroad. It observed, further, that the optional nature of the aforementioned provision of the Constitution had not been affected by the Constitutional revision of 2001.

16. On 7 April 2009 the bill was rejected by Parliament since it failed to gain the majority of two thirds of the total number of Members of Parliament required under Article 51 § 4 of the Constitution.

4. Organisation of elections to the European Parliament

17. According to the information provided on the website of the Greek Ministry of the Interior concerning Greek nationals living abroad, elections to the European Parliament are organised as follows:

> "Greek citizens who have their residence in the other 26 countries of the European Union and Greeks who happen to be in another Member State of the European Union on Election Day are entitled to participate in the election process in Greece in parallel with Greek voters throughout the Greek State. These results will be incorporated into the general voting results achieved in the Greek State overall.
>
> ...
>
> In order to exercise their right to vote at their place of residence Greeks resident abroad should:
>
> a) be registered in an electoral roll of a municipality or community in Greece;
>
> b) be entitled to vote and not have been deprived of that right;
>
> c) submit a statement to the local Embassy or Consulate (in the area where they intend to exercise their voting rights) that they wish to vote at their place of residence. ...;
>
> d) have their residence in a Member State of the European Union on Election Day. Based on this statement they will be entered in special electoral rolls prepared by the Ministry of Interior.
>
> ...
>
> Buildings belonging to Greek Embassies or Consulates, buildings of other Greek authorities or services, independent offices of Greek Christian Orthodox Churches and buildings or other premises belonging to Greek communities, associations or other Greek organizations may be used as polling stations (to be decided on by the Minister of Interior), which will form electoral departments. In case these buildings are inadequate to meet election needs, buildings belonging to the EU Member State may be used.
>
> The number of electoral departments (to be decided on by the Minister of Interior), which will be established for each Embassy or Consulate depends on the number of voters stating their intention to vote in that area

...

Voting at each electoral department will take place under the supervision of a returning board which will consist of ... a Chairman and three voters from those included in the special electoral rolls. The [Chairman] will be appointed by Chamber I of the Hellenic Supreme Court. The other members of the returning board drawn from persons registered in the special electoral rolls will be appointed by the local Ambassador or Consul following a public draw of lots at the Embassy or Consulate. The date and time of such drawing of lots shall be notified by Embassies and Consulates by displaying a notice to this effect at their offices.

Judicial functionaries, court employees and attorneys at law from Greece may be appointed as [Chairmen] of the returning boards. If inadequate numbers of such persons are available to cover the needs of all electoral departments, at exception the Chamber I of the Hellenic Supreme Court may appoint the following persons ...: permanent Embassy and Consul attachés and secretaries ... of higher or tertiary level education employed in the post of Advisor (Grade A or above) serving within the area covered by the Embassy or Consulate."

B. International law

18. The relevant texts adopted by the competent bodies of the Council of Europe provide as follows:

1. Resolution no. 1459 (2005) of the Parliamentary Assembly of the Council of Europe

" ...

2. In accordance with the opinion of the European Commission for Democracy through Law (Venice Commission) adopted in December 2004, it therefore invites the member and observer states of the Organisation to reconsider all existing restrictions to electoral rights and to abolish all those that are no longer necessary and proportionate in pursuit of a legitimate aim.

3. The Assembly considers that, as a rule, priority should be given to granting effective, free and equal electoral rights to the highest possible number of citizens, without regard to their ethnic origin, health, status as members of the military or criminal record. Due regard should be given to the voting rights of citizens living abroad.

...

7. Given the importance of the right to vote in a democratic society, the member countries of the Council of Europe should enable their citizens living abroad to vote during national elections bearing in mind the complexity of different electoral systems. They should take appropriate measures to facilitate the exercise of such voting rights as much as possible, in particular by considering absentee (postal), consular or e-voting, consistent with Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for

e-voting. Member states should co-operate with one another for this purpose and refrain from placing unnecessary obstacles in the path of the effective exercise of the voting rights of foreign nationals residing on their territories.

...

11. The Assembly therefore invites:

i. the Council of Europe member and observer states concerned to:

...

b. grant electoral rights to all their citizens (nationals), without imposing residency requirements;

c. facilitate the exercise of expatriates' electoral rights by providing for absentee voting procedures (postal and/or consular voting) and considering the introduction of e-voting consistent with Recommendation Rec(2004)11 of the Committee of Ministers and to co-operate with one another to this end;

..."

2. Recommendation 1714 (2005) of the Parliamentary Assembly of the Council of Europe – Abolition of restrictions on the right to vote

"1. Referring to its Resolution 1459 (2005) on the abolition of restrictions on the right to vote, the Parliamentary Assembly calls upon the Committee of Ministers to:

i. appeal to member and observer states to:

a. sign and ratify the 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) and to grant active and passive electoral rights in local elections to all legal residents; and

b. reconsider existing restrictions on electoral rights of prisoners and members of the military, with a view to abolishing all those that are no longer necessary and proportionate in pursuit of a legitimate aim;

ii. invite the competent services of the Council of Europe, in particular the European Commission for Democracy through Law (Venice Commission) and its Council for Democratic Elections, to develop their activities aimed at improving the conditions for the effective exercise of election rights by groups facing special difficulties, such as expatriates, prison inmates, persons who have been convicted of a criminal offence, residents of nursing homes, soldiers or nomadic groups;

iii. review existing instruments with a view to assessing the possible need for a Council of Europe convention to improve international co-operation with a view to facilitating the exercise of electoral rights of expatriates."

3. The texts adopted by the European Commission for Democracy through Law (Venice Commission)

(a) Code of good practice in electoral matters (Opinion no. 190/2002)

"...

3.2 Freedom of voters to express their wishes and action to combat electoral fraud

i. voting procedures must be simple;

ii. voters should always have the possibility of voting in a polling station. Other means of voting are acceptable under the following conditions:

iii. postal voting should be allowed only where the postal service is safe and reliable; the right to vote using postal votes may be confined to people who are in hospital or imprisoned or to persons with reduced mobility or to electors residing abroad; fraud and intimidation must not be possible;

iv. electronic voting should be used only if it is safe and reliable; in particular, voters should be able to obtain a confirmation of their votes and to correct them, if necessary, respecting secret suffrage; the system must be transparent;

v. very strict rules must apply to voting by proxy; the number of proxies a single voter may hold must be limited;

..."

(b) Report of 18 March 2004 on the compatibility of remote voting and electronic voting with the standards of the Council of Europe (Study no. 260/2003)

"...

52. Although the Code of Good Practice in Electoral Matters is not a binding document, it does nonetheless set out a European standard which could influence the interpretation of treaty-based rules, in particular Article 3 of Protocol 1 (see *infra* 2.).

53. Guideline I.3.2 of the Code states that electronic voting should be accepted only if it is secure and reliable. In particular, electors must be able to obtain confirmation of their vote and correct it if necessary, while respecting secret suffrage. The system's transparency must be guaranteed. Any violation of secret suffrage should be sanctioned (guideline I.4.d).

54. In paragraph 42 onwards of the explanatory report, this guideline is clarified as follows:

Although mechanical and electronic voting methods present clear advantages when several elections are taking place at the same time, certain precautions are needed to minimise the risk of fraud, for example by enabling the voter to check his or her vote immediately after casting it. In order to facilitate verification and a recount of votes in

the event of an appeal, it may also be provided that a machine could print votes onto ballot papers; these would be placed in a sealed container where they cannot be viewed. All the methods used should enable the confidentiality of the ballot to be guaranteed (see explanatory report, § 42). Electronic voting methods are 'secure' if the system can withstand deliberate attack; they are 'reliable' if they can function on their own, irrespective of any shortcomings in the hardware or software (§ 43). The system's transparency must be guaranteed, in the sense that it must be possible to check that it is functioning properly (§ 43).

55. According to guideline I.1.a., democratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties. Restrictions of these freedoms must be in conformity with the ECHR and, more generally, have a basis in law, be in the public interest and comply with the principle of proportionality (cf. § 60 of the explanatory report).

56. It may be concluded that, on the one hand, the institutionalisation of postal voting and e-enabled voting is, in principle, compatible with the Code of Good Practice. On the other hand, their compatibility depends primarily on adequate provision, through national legislation and legal practice, of the prescribed conditions, taking particular account of technical and social conditions."

(c) Draft report of 16 May 2006 (Study no. 352/2005) on electoral law and electoral administration in Europe

"Voting rights for citizens abroad

56. External voting rights, e.g. granting nationals living abroad the right to vote, are a relatively new phenomenon. Even in long-established democracies, citizens living in foreign countries were not given voting rights until the 1980s (e.g. Federal Republic of Germany, United Kingdom) or the 1990s (e.g., Canada, Japan). In the meantime, however, many emerging or new democracies in Europe have introduced legal provisions for external voting .... Although it is yet not common in Europe, the introduction of external voting rights might be considered, if not yet present. However, safeguards must be implemented to ensure the integrity of the vote ...

...

151. Postal voting is permitted in several established democracies in Western Europe, e.g. Germany, Ireland, Spain, Switzerland and, for voters abroad, the Netherlands, Norway, and Sweden ... It was also used, for example, in Bosnia and Herzegovina and the Kosovo in order to ensure maximum inclusiveness of the election process (CG/BUR (11) 74). However, it should be allowed only if the postal service is secure and reliable. Each individual case must be assessed as to whether fraud and manipulation are likely to occur with postal voting.

..."

C. Comparative study

19. Having carried out a comparative study of the domestic law of thirty-three Council of Europe member States based primarily on data gathered by the Venice Commission and by the Organisation for Security and Cooperation in Europe, the Court notes that the great majority of those countries have implemented procedures to allow their nationals living abroad to vote in parliamentary elections. In particular, twenty-six countries make provision, without restriction as to the persons concerned, for the right to vote from abroad (Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Finland, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Moldova, Poland, the Netherlands, Romania, Russia, Serbia, Slovakia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom). Three member States impose certain restrictions on their nationals' right to vote from abroad (Ireland, Denmark and the Czech Republic). Finally, four member States make no provision for their nationals living abroad to vote in parliamentary elections (Albania, Armenia, Azerbaijan and Malta).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1

20. The applicants claimed that as a result of not having been able to vote at their place of residence, they had been disproportionately hindered in the exercise of their right to vote. They relied on Article 3 of Protocol No. 1, which provides:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

1. The second applicant

21. In a letter dated 5 October 2009 the second applicant notified the Court of his intention to withdraw his application. It is clear from this letter that the withdrawal was completely unambiguous. In a letter of 7 October 2009 the Government were informed of the withdrawal and made no objection. The Court notes therefore that the second applicant does not

intend to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. Having ascertained that no particular reason relating to respect for human rights as defined in the Convention requires it to continue its examination of the application in relation to the second applicant under Article 37 § 1 *in fine*, the Court considers that the application should be struck out of the list as far as the second applicant is concerned.

2. The other applicants

22. As regards the other two applicants, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that no other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

23. The Government observed first of all that Greek citizens living abroad, such as the applicants, were still registered on the electoral roll and that they could at any time exercise their electoral rights. Consequently, the Government argued that the applicants had not been deprived of their right to vote in the elections of 16 September 2007. They observed that the applicants had chosen to take up residence in Strasbourg and that, over time, their ties to their home State had weakened. Accordingly, their situation was not identical to that of Greek citizens residing in Greece and the obligation to return to Greece in order to exercise that right did not constitute a disproportionate interference in the exercise of their electoral rights. The Government noted in this regard that regular flights operated between Greece, the applicants' country of origin, and France, their country of residence. Consequently, their journey to Greece to exercise their right to vote would not have been complicated, particularly as they had put forward no particular reasons preventing them from making such a journey.

24. Furthermore, the Government pointed out that the applicants had not informed the Greek Ambassador in France of their wish to exercise their right to vote in France until 10 September 2007, six days before the parliamentary elections were due to take place. As far as the Government were concerned, this amounted to a belated request which made compliance impossible in practice. With regard to elections to the European Parliament, by virtue of Law no. 1427/1984, the deadline for Greek citizens to register on the consular electoral roll was two months before the election date.

In addition, the Government submitted that the delay on the part of the Greek legislature in enacting the law referred to in Article 51 § 4 of the Constitution and thus making provision for Greek citizens to vote from outside Greece in parliamentary elections did not violate Article 3 of Protocol No. 1. It fell within the margin of appreciation granted under the Convention to the national authorities as regards regulation of the conditions for exercising the right enshrined in Article 3 of Protocol No. 1.

25. Whatever the circumstances, the Government noted that wide-ranging political consensus was required before the law referred to in Article 51 § 4 of the Constitution could be enacted, and that the political parties would have to cooperate to that end. They argued that, to date, two proposals for laws governing the right of Greek nationals to vote from outside Greece had been drafted but not as yet adopted by Parliament. Lastly, the participation of expatriate Greeks in parliamentary elections could not be compared to the exercise of the right to vote in European Parliament elections. In the latter case, it was merely a matter of recognising the voting rights of a section of expatriate Greeks, namely those resident in Member States of the European Union, an obligation arising directly out of European Union law and specifically provided for in domestic legislation. The Government argued that in examining the present case, the Court should not disregard the subsidiary role of the Convention mechanism. In matters of general policy, as in the present case, the role of the domestic policy-maker should be given special weight.

(b) The applicants

26. The applicants observed that they were registered on the electoral roll in Greece and that their names had been entered on the special list of Greek expatriates held by the Greek Permanent Representative in Strasbourg, for the purpose of exercising their right to vote in the European Parliament elections. They maintained that being unable to vote in the Greek parliamentary elections in their State of residence constituted interference with their voting rights, in breach of both the Greek Constitution and the Convention. That interference arose out of the fact that they would be required to travel to Greece in order to exercise their right to vote. The applicants acknowledged that they could of course fly to Samos and Thessaloniki, their respective home towns. However, that possibility did not alter the substance of their claim, namely that they would thus incur significant costs and that their professional and family life would be disrupted since they would be obliged to be away from their work and families even if only for a few days.

27. Furthermore, the applicants noted that in 1862, at the time of the elections for the Second National Assembly, Greek citizens living abroad had been able to vote at their place of residence. In addition, they argued that the Greek legislature was under a strict obligation to legislate in

accordance with Articles 108 and 51 § 4 of the Greek Constitution. This was an obligation and not an option, a fact confirmed by the preparatory work for the bill of 11 February 2009 entitled "Exercise of the right to vote in parliamentary elections by Greek voters living abroad". According to the applicants, a State which for thirty-four years had taken no measures to implement the intention clearly set forth in the Constitution to grant expatriate citizens the right to vote from locations abroad could not claim a wide margin of appreciation in applying Article 3 of Protocol No. 1.

28. The applicants referred to the provisions adopted by the bodies of the Council of Europe recommending that Council of Europe member States take measures to remove any obstacles to expatriates of member States exercising their right to vote. They produced a study published in 2007 by the International Institute for Democracy and Electoral Assistance. According to that report, thirty-five member States of the Council of Europe effectively guaranteed expatriates the right to vote in parliamentary elections from locations abroad.

29. Lastly, the applicants submitted that they were officials of the Council of Europe and that their duties therefore related to Council of Europe member States, including Greece. Accordingly, they followed political, economic and social developments in their country very closely. Furthermore, the applicants stated that they were still in possession of passports issued by Greece, that they owned property in Greece and that they were subject to taxation on any assets they might have acquired there. Finally, they pointed out that they were members of Greek bar associations and that their children had, at their request, been entered in the Greek civil registers. To conclude, the applicants argued that they had sufficiently close and continuing ties with Greece. In any event, they did not consider it necessary, in order to establish the existence of these ties with their country of origin, to have to return to Greece to vote in the parliamentary elections.

2. The Court's assessment

(a) General principles

30. The Court points out first of all that Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective political democracy, and is accordingly of prime importance in the Convention system (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 47, Series A no. 113). The Court has often emphasised the role of the State as ultimate guarantor of pluralism and stated that in performing that role the State is under an obligation to adopt positive measures to "organise" democratic elections "under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature" (see *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 106, 8 July 2008).

31. Article 3 of Protocol No. 1 would appear at first to differ from the other provisions of the Convention and its Protocols, as it is phrased in terms of the obligation of the High Contracting Parties to hold elections under conditions which will ensure the free expression of the opinion of the people rather than in terms of a particular right or freedom. However, having regard to the *travaux préparatoires* of Article 3 of the Protocol and the interpretation of the provision in the context of the Convention as a whole, the Court has established that Article 3 of Protocol No. 1 guarantees individual rights, including the right to vote and the right to stand for election (see *Mathieu-Mohin and Clerfayt*, cited above, § 51).

32. The rights enshrined in Article 3 of Protocol No. 1 are not absolute. There is room for "implied limitations", and Contracting States must be given a margin of appreciation in this sphere (see, among other authorities, *Matthews v. the United Kingdom* [GC], no. 24833/94, § 63, ECHR 1999-I, and *Labita v. Italy* [GC], no. 26772/95, § 201, ECHR 2000-IV). There are numerous ways of organising and running electoral systems and a wealth of differences, *inter alia*, in historical development, cultural diversity and political thought within Europe which it is for each Contracting State to mould into their own democratic vision (see *Lykourezos v. Greece*, no. 33554/03, § 51, ECHR 2006-VIII).

33. It is, however, for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions imposed on the right to vote and to stand for election do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Mathieu-Mohin and Clerfayt*, cited above, § 52). 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 the people through universal suffrage (see *Melnychenko v. Ukraine*, no. 17707/02, § 56, ECHR 2004-X).

34. With particular reference to the cases concerning the right to vote, that is, the so-called "active" aspect of the rights under Article 3 of Protocol No. 1, the Court has considered that exclusion of any groups or categories of the general population must be reconcilable with the underlying purposes of Article 3 of Protocol No. 1 (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 105, ECHR 2006-IV). In particular, the Court has found that domestic legislation imposing a minimum age or residence requirements for the exercise of the right to vote is, in principle, compatible with Article 3 of Protocol No. 1 (see *Hirst v. the United Kingdom* (*no. 2*) [GC], no. 74025/01, § 62, ECHR 2005-IX, and *Hilbe v. Lichtenstein* (dec.), no. 31981/96, ECHR 1999-VI). Likewise, the Court has acknowledged that any general,

automatic and indiscriminate departure from the principle of universal suffrage risks undermining the democratic validity of the legislature thus elected and the laws it promulgates (see *Hirst (no. 2),* loc. cit.).

(b) Application in the present case

35. As a preliminary point, the Court considers it necessary to limit the scope of the case under Article 3 of Protocol No. 1. In fact, the complaint of the first and third applicants relates to the alleged failure by the Greek State to take legislative action to ensure that they were able to vote in parliamentary elections at their place of residence. Accordingly, the complaint does not concern the existence of the right to vote as such, since that right is, in principle, recognised under Article 51 § 3 of the Constitution, together with Article 4 of Presidential Decree no. 96/2007, but rather the conditions for exercising that vote. The present case therefore differs from other cases examined by the Court concerning, for example, measures subjecting the right to vote to a required minimum period of residence (see *Hilbe*, cited above) or forfeiture of the right to vote by virtue of a law prohibiting convicted prisoners from exercising it (see *Hirst* (*no. 2*), cited above). It also differs from *X. and Association Y. v. Italy* (no. 8987/80, Commission decision of 6 May 1981, Decisions and Reports 24, p. 195), where the Commission concluded that the obligation to exercise the right to vote on national territory did not amount to a violation of Article 3 of Protocol No. 1. Unlike in the aforementioned case, the Court notes that in the present case a constitutional provision, namely Article 51 § 4 of the Greek Constitution, exists and authorises the legislature to determine the conditions for exercising the right to vote. Moreover, since the Commission decision in question dates back to 1981, the Court considers it necessary to examine more closely in the context of the present case the evolution of Council of Europe law on the matter at issue.

36. The Court therefore considers that in the present case its task is to examine whether the failure to enact legislation on the conditions for exercising the right to vote, as sought by the applicants, permitted "the free expression of the opinion of the people" in such a way that it did not deny "the very essence of the ... right to vote" (see *Matthews*, cited above, § 65). It must be noted in this regard that, in the context of Article 3 of Protocol No. 1, the primary obligation is not one of abstention or non-interference, as with the majority of civil and political rights, but one of adoption by the State of positive measures to "hold" democratic elections (see *Mathieu-Mohin and Clerfayt*, cited above, § 50).

37. In the present case the Court notes that Article 51 of the Greek Constitution in no way excludes the possibility for voters who are out of the country to exercise their right to vote. On the contrary in fact, the constitutional provision confers on the legislature the task of establishing the conditions for exercising that right. As stated by the Greek Ambassador

to France in his reply to the applicants of 12 September 2007, their request "[could] not be granted for objective reasons" since it "require[d] regulation by means of legislation which [did] not currently exist".

38. Furthermore, the Court notes that it does not appear from the wording of Article 51 § 4 that there is any obligation on the legislature to make provision for voting arrangements for voters who are out of the country. According to that provision, the arrangements "may be specified by statute". Moreover, in its report of 31 March 2009 on the bill entitled "Exercise of the right to vote in parliamentary elections by Greek voters living abroad", the Scientific Council of Parliament stated that legal authorities were not unanimous on whether the constitutional provision imposed an obligation on the legislature, while considering, for its own account, that recognition of the right to vote from abroad was optional. It therefore follows that Greek law makes provision at constitutional level, and at least on an optional basis for the legislature, for the right to vote to be exercised from outside Greece by voters resident abroad.

39. The Court considers that the state of the domestic legislation governing the right to vote is an essential factor in examining issues arising out of Article 3 of Protocol No. 1, given the wide margin of appreciation enjoyed by the Contracting States in this area and the need to assess any electoral legislation in the light of the political evolution of the country concerned (see *Ždanoka*, cited above, § 115). It is true that in the present case neither the wording nor the interpretation of Article 51 § 4 gives rise to a direct obligation for the national authorities to enable expatriate Greeks to vote at their place of residence. The applicants still have the option of returning to Greece to exercise their right to vote and, thus, the situation at issue does not make that right invalid. The fact remains, however, that the impossibility of exercising that right from abroad constitutes a significant practical obstacle in that regard. The case file shows that in order to exercise their right to vote, the applicants would have to incur substantial travelling expenses and that considerable disruption could be caused to their family and professional lives, thus significantly complicating the exercise of that right. The Court will therefore consider the particular circumstances of the case in order to ascertain whether the national authorities took all positive measures necessary to enable the applicants to effectively exercise their right to vote in the national elections.

40. In the present case the Court attaches particular significance to the fact that the Greek Constitution has, since 1975, made express provision for the legislature to establish the conditions for voters outside Greece to exercise their voting rights. Furthermore, when the Constitution was revised in 2001, the content of Article 51 § 4 was actually made more specific; it was specified that the principle of simultaneous voting did not rule out postal voting or voting by any other appropriate method, provided that the

counting of votes and the announcement of the results occurred at the same time as in Greece.

41. The Court does not consider that Article 3 of Protocol No. 1 should be interpreted as generally imposing a positive obligation on national authorities to secure voting rights in parliamentary elections to voters living abroad. This is particularly true in the present case since no direct obligation to that effect is imposed on the legislature under Article 51 § 4. However, such a provision cannot remain inapplicable forever, depriving its content and the intention of its drafters of any normative value. In other words, the role of the Court is not to tell the national authorities when and how they should give effect to the content of the constitutional provision concerned, but merely to ensure that it does not fall into disuse. In the present case the Court notes that approximately thirty-five years, quite a considerable time, have elapsed since Article 51 § 4 of the Constitution was adopted, and that the legislature has still not given effect to the content thereof.

42. The Court is not unaware that the national authorities did in fact take the initiative of drafting a bill entitled "Exercise of the right to vote in parliamentary elections by Greek voters living abroad". That bill was tabled in Parliament on 19 February 2009 by the Ministers of the Interior, Justice and the Economy, and stressed that legislation was required to give practical effect to the constitutional provision in question. The report accompanying the bill indicated that the law to which Article 51 § 4 of the Constitution referred had the status of an implementing law of the Constitution. Moreover, it pointed out that "in these times of globalisation, Greek expatriates must be able to have a decisive political say in the development of their own country". In the view of the Court, that bill is evidence of the intention of the political authorities to enact legislation in the area covered by Article 51 § 4 of the Constitution. Nevertheless, it must be noted that the bill was only put before Parliament approximately eight years after the last revision of the Constitution which had also amended Article 51 § 4 of the Constitution. In addition, since that bill was rejected by Parliament on 7 April 2009, no law has to date given effect to the content of the constitutional provision in issue. The Court notes in this regard that, as shown by the case file, no initiative has since been taken with a view to enacting the law referred to in Article 51 § 4 of the Constitution.

43. In short, and having regard to the foregoing considerations, the Court finds that the failure to enact legislation giving practical effect to the content of Article 51 § 4 of the Constitution is evidence of an unwillingness on the part of the national authorities to grant expatriate Greeks the opportunity to exercise their voting rights at their place of residence. As a result, and as argued by the applicants, economic, professional and family considerations may by force of circumstances make it impossible in practice for them to travel to Greece at the time of national elections. This applies with even greater force to other expatriates who, due to their financial circumstances

or the fact that their place of residence is even further away, are *de facto* deprived of the opportunity to exercise their right to vote. Consequently, the absence of any regulation over such a long period in relation to the right of expatriates to vote at their place of residence, despite the provisions of Article 51 § 4 of the Constitution, is likely to constitute unfair treatment of Greek citizens living abroad in comparison to those living in Greece.

44. Since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions in the respondent State and in the Contracting States in general and respond, for example, to any emerging consensus as to the aims to be achieved. One of the relevant factors in determining the scope of the authorities' margin of appreciation may be the existence or non-existence of common ground between the laws of the Contracting States (see *Glor v. Switzerland*, no. 13444/04, § 75, ECHR 2009-...). Viewed from this angle, the failure by Parliament to implement regulations on the right to vote of expatriates becomes more striking, having regard to the changes in Council of Europe law on the subject at issue. In fact, the bodies of the Council of Europe have demonstrated their will to render more effective the right to vote in national elections by urging member States to enable their citizens living abroad to participate to the fullest extent possible in the electoral process. Thus, Resolution no. 1459 (2005) of the Parliamentary Assembly of the Council of Europe considers that member States should take the appropriate measures to facilitate such voting rights as much as possible, in particular by means of postal voting. Moreover, in Recommendation 1714 (2005), the Parliamentary Assembly of the Council of Europe invited the competent services of the Council of Europe to develop their activities aimed at improving the conditions for the effective exercise of election rights by groups facing special difficulties, such as expatriates (see paragraph 18 above).

45. Lastly, the European Commission for Democracy through Law (the Venice Commission) has already noted the growing recognition, since the 1980s, of external voting rights throughout the world and in particular in numerous new or emerging democracies in Europe. On this point, after having carried out a comparative study of the domestic law of thirty-three member States of the Council of Europe, the Court observes that the great majority, that is to say, twenty-nine of them, have implemented procedures to enable their nationals living abroad to vote in parliamentary elections (see paragraph 19 above).

46. The Court finds therefore that, despite the constitutional provision dating back to 1975, Greece clearly falls short of the common denominator among Contracting States as regards the effective exercise of voting rights by expatriates. The Convention and the Protocols thereto must be interpreted in the light of present-day conditions (see *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A no. 26) and the

Convention is designed to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see *Micallef v. Malta* [GC], no. 17056/06, § 81, ECHR 2009-...). Furthermore, an additional factor must be taken into account in the present case as regards the margin of appreciation to be afforded to the respondent State: the fact that the Court is more demanding when assessing restrictions on voting rights, that is to say, the "active" aspect of the rights secured by Article 3 of Protocol No. 1 than when dealing with the right to stand for election, that is to say, the "passive" aspect of the rights secured by Article 3 of Protocol No. 1 (see, to that effect, *Ždanoka*, cited above, § 115).

47. In the light of the foregoing, the Court considers that in the present case the respondent State cannot rely on the wide margin of appreciation normally afforded to Contracting States in the area of Article 3 of Protocol No. 1. Whilst taking into account national autonomy as regards the conditions of exercise of voting rights, the Court considers that the failure to give legislative effect to the provisions of Article 51 § 4 of the Constitution for over three decades, combined with the evolution of the law of the Contracting States in such matters, is sufficient to engage the responsibility of the respondent State under Article 3 of Protocol No. 1. On the basis of this finding the Court concludes that the failure by the Greek State to take effective measures to ensure that the first and third applicants were able to exercise their right to vote in national elections at their place of residence breached the right to free elections.

Accordingly, there has been a breach of Article 3 of Protocol No. 1 in relation to the first and third applicants.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

49. The applicants each claimed 10,000 euros (EUR) for the non-pecuniary damage they had allegedly sustained.

50. The Government submitted that the finding of a violation of Article 3 of Protocol No. 1 would in itself constitute sufficient just satisfaction for non-pecuniary damage.

51. The Court considers that the finding of a violation of Article 3 of Protocol No. 1 constitutes in itself sufficient just satisfaction for any

non-pecuniary damage sustained by the first and third applicants (see *Lionarakis v. Greece*, no. 1131/05, § 60, 5 July 2007).

B. Costs and expenses

52. The applicants also claimed EUR 2,000 for the costs and expenses incurred before the Court, in respect of which they provided supporting invoices.

53. The Government stated that any sum awarded under this head should not exceed the amounts customarily awarded by the Court in similar cases.

54. The Court reiterates that costs and expenses will not be awarded under Article 41 unless it is established that they were actually incurred, were necessarily incurred and were also reasonable as to quantum (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI).

55. In the present case, having regard to the supporting documentation and the criteria referred to above, the Court deems it reasonable to award to the first and third applicants, jointly, the full amount requested, namely EUR 2,000 for costs and expenses, plus any tax that may be chargeable to them.

C. Default interest

56. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Decides* unanimously to strike the case out of the list as regards the second applicant;

2. *Declares* unanimously the application admissible as regards the first and third applicants;

3. *Holds* by five votes to two that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

4. *Holds* by four votes to three that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the first and third applicants;

5. *Holds* unanimously
(a) that the respondent State is to pay the first and third applicants jointly, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to them;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in French, and delivered in writing on 8 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:
Joint partly dissenting opinion of Judges Spielmann and Jebens;
Dissenting opinion of Judge Vajić;
Dissenting opinion of Judge Flogaitis.

N.A.V.
S.N.

JOINT PARTLY DISSENTING OPINION OF JUDGES SPIELMANN AND JEBENS

(Translation)

1. We voted against point 4 of the operative provisions, according to which "the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the first and third applicants".

2. Such non-redress is inadequate. In our view, the applicants can undoubtedly claim to have sustained non-pecuniary damage on account of the frustration of not being able to exercise their right to vote, a right afforded to them by the Greek Constitution combined with Presidential Decree no. 96/2007. The absence of legislation as regards the conditions of exercise of voting rights and the ensuing violation of Article 3 of Protocol No. 1 constitute non-pecuniary damage that should give rise to an award of just satisfaction.

3. We would like to repeat here the partly dissenting opinion of Judges Spielmann and Malinverni (paragraphs 7-9) annexed to the judgment in *Prežec v. Croatia* (no. 48185/07, 15 October 2009) and reiterated in the partly dissenting opinion of the same judges (paragraph 4) annexed to the judgment in *Alfantakis v. Greece* (no. 49330/07, 11 February 2010), which refer to the partly dissenting opinion of Judge Bonello annexed to the Grand Chamber judgment in *Aquilina v. Malta* ([GC], no. 25642/94, ECHR 1999-III).

4. "Generally speaking and independently of the above considerations, one wonders whether the mere finding of a violation of a right – no matter which – protected by the Convention is capable of repairing the harm done to the victim.

5. It is true that Article 41 of the Convention stipulates that the Court shall afford just satisfaction only if necessary. The case-law reveals that the Court has adopted this solution mainly when the victim had the possibility of obtaining satisfaction at the domestic level, when the violation found was of little significance, when the national authorities clearly expressed the will to reform the legislation or practice at the origin of the violation or when, as in this case, the victim had the possibility of requesting the reopening of the domestic proceedings or obtaining satisfaction at the domestic level.

6. But can one really consider that the mere finding of a violation of a fundamental right can possibly afford redress (see *Aquilina v. Malta* [GC], no. 25642/94, ECHR1999-III, dissenting opinion of Judge Bonello)?"

7. It is difficult to see why, where a violation of Article 3 of Protocol No. 1 has been found, "there is no need" to award just satisfaction for the non-pecuniary damage sustained. The judgment is silent in this

respect and in the absence of any reasons having been given,[1] we can but note our disagreement with this point of the operative provisions.

[1] Concerning the lack of reasoning, we cannot resist the temptation of quoting a particularly eloquent passage from the partly dissenting opinion of Judge Bonello annexed to the judgment in *Aquilina v. Malta*: "The first time the Court appears to have resorted to this hapless formula was in the Golder case of 1975 (*Golder v. United Kingdom* judgment of 21 February 1975, Series A no. 18). Disregarding its own practice that full reasoning should be given for all decisions, the Court failed to suggest one single reason why the finding should also double up as the remedy. Since then, propelled by the irresistible force of inertia, that formula has resurfaced regularly. In few of the many judgments which relied on it did the Court seem eager to upset the rule that it has to give neither reasons nor explanations." According to Judge Bonello, this was the case in *Nikolova v. Bulgaria* ([GC)], no. 31195/96, ECHR 1999-II).

DISSENTING OPINION OF JUDGE VAJIĆ

1. I do not agree with the majority's conclusion that there has been a violation of Article 3 of Protocol No. 1 to the Convention because the "failure by the Greek State to take effective measures to ensure that the first and third applicants were able to exercise their right to vote in national elections at their place of residence breached the right to free elections" (see paragraph 47 of the judgment).

2. As the Court has often reiterated in relation to parliamentary elections, the rights safeguarded by Article 3 of Protocol No. 1 are not absolute but subject to restrictions. The Contracting States have a wide margin of appreciation in this sphere to make the right to vote subject to conditions. Moreover, as repeated by the Court on several occasions, having to satisfy a residence requirement in order to have or exercise the right to vote in parliamentary elections is not an unreasonable or arbitrary restriction of the right to vote and is therefore not incompatible with Article 3 of Protocol No. 1. (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 62, ECHR 2005-IX; *Melnychenko v. Ukraine,* no. 17707/02, § 56, ECHR 2004-X; *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI; *Polacco and Garofalo v. Italy,* no. 23450/94, Commission decision of 15 September 1997, Decisions and Reports (DR) 90-A; *Luksch v. Germany*, application no. 35385/97, Commission decision of 21 May 1997, DR 89-B, p. 175; *X and Association Y v. Italy*, application no. 8987/80, Commission decision of 6 May 1981, DR 24, p. 192; and *X* v. the United Kingdom, application no. 7730/76, Commission decision of 28 February 1979, DR 15, p. 137).

Thus the Court considered that a residence requirement for voting may be justified on the following grounds: (1) the assumption that a non-resident citizen is less directly or less continually concerned with his country's day-to-day problems and has less knowledge of them; (2) the fact that it is impracticable for the parliamentary candidates to present the different electoral issues to citizens abroad and that non-resident citizens have no influence on the selection of candidates or on the formulation of their electoral programmes; (3) the close connection between the right to vote in parliamentary elections and the fact of being directly affected by the acts of the political bodies so elected; (4) the legitimate concern the legislature may have to limit the influence of citizens living abroad in elections on issues which, while admittedly fundamental, primarily affect persons living in the country (see *Hilbe*, op. cit.).

3. According to Article 4 of the Greek Constitution all Greek citizens over 18 years of age have the right to vote (see paragraph 13 of the judgment). According to Article 51 § 4, the conditions for the exercise of the right to vote by persons living outside the country may be specified by

statute, adopted by a majority of two thirds of the total number of Members of Parliament (see paragraph 12 of the judgment).

The proposal of a draft law on that question prepared by the Government was rejected in Parliament a year ago, on 7 April 2009, as it failed to achieve the required majority.

4. I do agree that Greece should try to find arrangements for the exercise of the right to vote of its citizens permanently or temporarily living abroad. In my opinion, however, this is a rather difficult question and a matter of delicate political balance to be found by the Greek Parliament.

States Parties enjoy a wide margin of appreciation in the choice and organisation of their respective electoral systems as Article 3 of Protocol No. 1 does not create any "obligation to introduce a specific system" (see *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 54, Series A no. 113). In this respect the Court has reiterated that the rules in this area vary in accordance with the historical and political factors specific to each State; the large variety of situations provided for in the electoral legislation of numerous member States of the Council of Europe shows the diversity of the possible options. For the purposes of applying Article 3 of the Protocol, any electoral legislation must be assessed in the light of the political evolution of the country concerned, so that features that would be unacceptable in the context of one system may be justified in the context of another (see *Py v. France*, no. 66289/01, § 46, ECHR 2005-I (extracts)), at least so long as the chosen system provides for conditions which will ensure the "free expression of the opinion of the people in the choice of the legislature". In countries with a large *diaspora*, such as Greece, the question of whether, to what extent and under which conditions citizens living abroad should participate in parliamentary elections on issues which primarily affect persons living in the country, should even more so be decided within the country and not in Strasbourg. This process seems to be under way in Greece and it would be in its best interest to resolve it in due time.

5. I am unable to agree with the majority that the present situation is to be distinguished from the existing case-law as it merely concerns the conditions of exercise of the right to vote because "the Greek Constitution ... authorises the legislature to determine the conditions for exercising the right to vote". Even more so, I do not agree that one of the elements to overrule the decision in *X. and Association Y.* (cited above) should be the fact that that decision dates back to 1981: "Moreover, since that Commission decision dates back to 1981, the Court considers it necessary to examine more closely in the context of the present case the evolution of Council of Europe law on the matter at issue" (see paragraphs 35 and 44 of the judgment). In my opinion, it would be for the Grand Chamber to deal with this specific issue of the right to vote and, if it decided so, to change the approach to Article 3 of Protocol No. 1 to the Convention. The "Council of Europe law" which is put forward, consisting in a recommendation and a

resolution by the Parliamentary Assembly, as well as texts adopted by the Venice Commission, can be seen as an interesting indication of the aims to be pursued in the field. However, they do not as such create any legal obligations for States. As to the comparative law research (see paragraph 19 of the judgment), it obviously indicates a trend summarising recent developments in the laws of the States parties in this sphere. This state of affairs does not create an obligation for Greece to introduce a right to vote for citizens living abroad and certainly not one allowing all of them to vote in their actual place of residence (see paragraphs 43 and 47 of the judgment). The Court's view has been that where States parties have adopted a number of different ways of addressing the question of the right to vote of certain groups/categories of citizens, the Court must confine itself to determining whether the restriction in issue exceeds any acceptable margin of appreciation, leaving it to the legislature to decide on the choice of means for securing the rights guaranteed by Article 3 of Protocol No. 1 (see, *mutatis mutandis*, *Hirst,* op. cit.).

6. As to the present case, even if the applicants may well still have close links with Greece (see paragraph 29 of the judgment) and are owners of property that is taxed in the country, the fact remains that since the applicants chose to reside abroad, their situation is significantly different to that of citizens permanently resident in Greece. In a similar situation the Commission was satisfied that the restriction on the applicant's right to vote was not arbitrary, noting that "as to the correlation between one's right to vote in Parliamentary elections and being directly affected by acts of political bodies so elected, the applicant cannot claim to be affected by the acts of these political bodies to a similar extent as resident citizens" (see *X v. the United Kingdom*, cited above).

7. In view of all the above it is my opinion that the majority's opinion departs from the established jurisprudence allowing for a large margin of appreciation in the area of Article 3 of Protocol No. 1. Moreover, it can be understood as introducing a very broad positive obligation, i.e., a general recognition of the right of citizens living abroad to vote in their place of residence (see paragraphs 43 and 47 of the judgment), which I am unable to accept. If confirmed, such a solution might affect not only large numbers of European citizens but create considerable political, organisational and/or economic problems for many member States of the Council of Europe.

DISSENTING OPINION OF JUDGE FLOGAITIS

I believe that under the legal and factual circumstances of the present case, Greece should not be condemned. There are in this issue many and very difficult aspects, which need in-depth evaluation and careful answers.

Greece is a unique country in Europe in terms of its diaspora around the world. Millions of Greeks migrated especially during the 20th century to all continents. All of them but also their descendants may declare themselves as Greek nationals, given the fact that Greece practises *jus sanguinis*. Greeks have the right to have as many nationalities as they want, but for Greece they will always be Greek. It seems that Melbourne alone has more Australian citizens declaring themselves as Greeks than any Greek city other than Athens.

Organising the electoral vote around the globe for a number of potential voters not lower than the number of voters in the country is not a simple task – in practical but also in political terms – especially in a country where the normal electoral process does not date back more than 35 years. International voting must guarantee the equality of vote and at the same time exclude fraud of any sort.

Greece introduced into the Constitution the possibility for Greeks in the diaspora to vote; an Act of Parliament, to be voted by a majority of two thirds, is to lay down the conditions. The two-thirds condition is due to the high importance of the vote of the diaspora in national politics, because only an Act of Parliament with a wider support by Greek political forces could be the basis for a reform which will in practice give Greeks who left the country for ever, or even those who never visited the country, a determining role in future as regards decisions taken in Greece.

Greece has already made a first attempt to pass that Act of Parliament. Although the attempt failed, the political parties in Parliament demonstrated the wish to find a solution to the problem. Therefore, I will dissent from the majority opinion.