



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

GRAND CHAMBER

**CASE OF SITAROPOULOS AND GIAKOUMOPOULOS v. GREECE**

*(Application no. 42202/07)*

JUDGMENT

STRASBOURG

15 March 2012



**In the case of Sitaropoulos and Giakoumopoulos v. Greece,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Nicolas Bratza, *President*,  
Jean-Paul Costa,  
Françoise Tulkens,  
Josep Casadevall,  
Boštjan M. Zupančič,  
Lech Garlicki,  
Egbert Myjer,  
Davíd Thór Björgvinsson,  
Ján Šikuta,  
Ineta Ziemele,  
Luis López Guerra,  
Nona Tsotsoria,  
Ann Power-Forde,  
Zdravka Kalaydjieva,  
Vincent A. De Gaetano,  
Angelika Nußberger, *judges*,  
Spyridon Flogaitis, *ad hoc judge*,

and Johan Callewaert, *Deputy Grand Chamber Registrar*,

Having deliberated in private on 4 May 2011 and 18 January 2012,

Delivers the following judgment, which was adopted on the last-mentioned 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 member of the Athens Bar. The Greek Government (“the Government”) were represented by their Agent’s delegates, Ms K. Paraskevopoulou, Adviser at the State Legal Council, and Ms Z. Hatzipavlou, Legal Assistant at the State Legal Council.

3. The applicants alleged that their inability to vote from their place of residence amounted to disproportionate interference with the exercise of their right to vote in parliamentary elections enshrined in Article 3 of Protocol No. 1.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Christos Rozakis, the judge elected in respect of Greece, withdrew from sitting in the case. The Government accordingly appointed Spyridon Flogaitis to sit as an *ad hoc* judge (former Article 27 § 2 of the Convention, and Rule 29 § 1).

5. On 8 July 2010 a Chamber of that Section, composed of Nina Vajić, President, Anatoly Kovler, Elisabeth Steiner, Khanlar Hajiyev, Dean Spielmann and Sverre Erik Jebens, judges, and Spyridon Flogaitis, *ad hoc* judge, and Søren Nielsen, Section Registrar, delivered a judgment in which it decided to strike the application out of the list of cases in respect of the second applicant. The Chamber held, by five votes to two, that the application was admissible in respect of the first and third applicants and that there had been a violation of Article 3 of Protocol No. 1.

6. On 22 November 2010, following a request from the Government of 7 October 2010, a panel of the Grand Chamber decided to refer the case to the Grand Chamber under Article 43 of the Convention.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicants and the Government each filed observations (Rule 59 § 1), as did the Hellenic League for Human Rights, which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

9. A hearing was held in public in the Human Rights Building, Strasbourg, on 4 May 2011 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Ms K. PARASKEVOPOULOU, Adviser, State Legal Council,

Ms Z. HATZIPAVLOU, Legal Assistant,

State Legal Council,

*Agent's Delegates;*

(b) *for the applicants*

Mr I. KTISTAKIS, lawyer,

Ms A. TERZIS, lawyer,

*Counsel;*

*Adviser.*

The Court heard addresses by Mr Ktistakis and Ms Hatzipavlou.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

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

11. 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.

12. In a faxed letter of 10 September 2007 to the Greek ambassador in France, the applicants, who are permanently resident in France, expressed the wish to exercise their voting rights in France in the elections to be held on 16 September 2007.

13. On 12 September 2007 the ambassador, relying on the instructions and information provided by the Ministry of the Interior, replied as follows.

“[The Greek State] confirms its wish – frequently expressed at the institutional level – to enable Greek citizens resident abroad to vote from their place of residence. However, it is clear that this necessitates statutory rules which do not currently exist. In fact, such rules cannot be introduced by a simple administrative decision, as special measures are 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.”

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

### II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

#### A. Domestic law and practice

##### 1. *The Greek Constitution of 1975*

15. The relevant provisions of the Constitution read as follows.

#### Article 1

“ ...

2. Popular sovereignty shall be the foundation of government.

3. All powers shall derive from the people and exist for the people and the nation; they shall be exercised as specified by the Constitution.”

#### Article 51 (before the 2001 revision of the Constitution)

“1. The number of members of parliament shall be defined by law. It shall not be below two hundred or above three hundred.

2. The members of parliament shall represent the nation.

3. The members of parliament shall be elected through direct universal suffrage and by secret ballot, by those citizens who have the right to vote, as specified by law. The law shall not curtail citizens' right to vote except in cases where the statutory minimum age has not been attained, in cases of legal incapacity or in connection with 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 outside the country may be specified by statute.

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

#### **Article 54**

"1. The electoral system and constituencies shall be specified by a law which will apply to the elections immediately following the forthcoming elections unless an explicit provision, adopted by a majority of two-thirds of the total number of members of parliament, stipulates that it is to apply as of the forthcoming elections.

2. The number of members of parliament elected in each constituency shall be specified by presidential decree on the basis of the population of the constituency for legal purposes, derived, according to the latest census, from the number of persons registered on the relevant municipal rolls, as provided for by law. The results of the census for this purpose shall be those published on the basis of the data held by the relevant department one year after the last day of the census.

3. Part of the Parliament, comprising not more than one-twentieth of the total number of its members, may be elected on a uniform nationwide basis in proportion to the total votes won by each party throughout the country, as specified by law."

#### **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."

The second paragraph of Article 108 was added during the 2001 revision of the Constitution.

16. In 2001, Article 51 § 4 was amended as follows:

"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 holding elections simultaneously does not rule out the exercise of their right to vote by postal vote or other appropriate means, provided that the counting of votes and the announcement of the results are carried out at the same time as within the country."

2. *The electoral legislation in force at the material time*

17. 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**

“1. Any Greek national aged 18 or over shall be entitled to vote. ...”

**Article 5 – Forfeiture of the right**

“The following persons shall lose the right to vote:

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

(b) persons whose final conviction for one of the offences provided for in the Criminal Code or the Military Criminal Code is accompanied by a measure disqualifying them from voting for the duration of their sentence.”

**Article 6 – Exercise of the right**

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

2. The exercise of the right to vote shall be mandatory.”

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

18. The report on this 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 voting rights for Greek nationals living abroad arose out of both Article 108 and Article 51 § 4 of the Constitution. It pointed out in particular that Article 108 “affords Greek expatriates a ‘social right’. This provision obliges the Greek State to take all necessary measures to maintain Greek expatriates’ ties with Greece, to ensure that 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 characterised the statute to which that Article referred as a law implementing the Constitution. Lastly, the report considered that “in these times of globalisation, it is self-evident that Greek expatriates should have a decisive say in the development of their own country”.

19. The Scientific Council (*Επιστημονικό Συμβούλιο*) of Parliament is a consultative body reporting to the Speaker of Parliament. It comprises ten members, including professors of law, political science, economics, statistics and information technology, and an expert in international relations. It produced a report dated 31 March 2009 on the above-mentioned bill. The report noted that, in the past, some legal authorities had argued that Article 51 § 4 of the Constitution imposed upon the legislature an obligation to permit expatriate Greeks to exercise the right to vote from outside Greece. However, referring to other legal authorities and to the preparatory work for Article 51 § 4 of the Constitution, it asserted that it was an option rather than a duty for the legislature to permit the exercise of voting rights from abroad. It also took the view that the optional nature of the above-mentioned provision of the Constitution had not been affected by the 2001 constitutional revision.

20. On 7 April 2009 the bill was rejected by Parliament since it failed to secure the majority of two-thirds of the total number of members of parliament required under Article 51 § 4 of the Constitution. The members of parliament, especially those on the opposition benches, referred in particular to the number of Greek citizens living abroad compared with the numbers resident in Greece, and to the implications this would have for the composition of the legislature.

## **B. International law and practice**

### *1. Texts adopted by the Parliamentary Assembly of the Council of Europe*

21. The relevant texts adopted by the Parliamentary Assembly of the Council of Europe read as follows.

#### **(a) Resolution 1459 (2005) of the Parliamentary Assembly of the Council of Europe – Abolition of restrictions on the right to vote**

“...

2. In accordance with the opinion of the European Commission for Democracy through Law (Venice Commission) adopted in December 2004, [the Parliamentary Assembly] ... 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 cooperate 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 cooperate with one another to this end;

..."

**(b) 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 cooperation with a view to facilitating the exercise of electoral rights of expatriates."

2. *Texts adopted by the European Commission for Democracy through Law (the Venice Commission)*

(a) **Code of Good Practice in Electoral Matters (Opinion no. 190/2002)**

22. The Code states that “the right to vote and to be elected may be accorded to citizens residing abroad” (point I.1.1.c.v.). The explanatory report makes the following indication in this regard:

“... the right to vote and/or the right to stand for election may be subject to *residence* requirements, residence in this case meaning habitual residence. ... Conversely, quite a few States grant their nationals living abroad the right to vote, and even to be elected. This practice can lead to abuse in some special cases, e.g. where nationality is granted on an ethnic basis.”

23. The other relevant parts of the Code provide:

“ ...

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) **2006 report on electoral law and electoral administration in Europe (Study no. 352/2005)**

24. The report notes, among other things, the following:

*“Voting rights for citizens abroad*

57. 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 (out-of-country voting, overseas 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 ...

...

152. Postal voting is permitted in several established democracies in western Europe, e.g. Germany, Ireland, Spain, Switzerland ... 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) 2011 report on out-of-country voting (Study no. 580/2010)**

25. The conclusions of this report read as follows.

“91. National practices regarding the right to vote of citizens living abroad and its exercise are far from uniform in Europe.

92. However, developments in legislation, such as the judgment delivered recently by the European Court of Human Rights in a case concerning Greece, which is not yet final, point to a favourable trend in out-of-country voting, in national elections at least, as regards citizens who have maintained ties with their country of origin.

93. That is true at least of persons who are temporarily out of the country. But definitions of the temporary nature of a stay abroad vary greatly and if this criterion is adopted, it should be clarified.

94. Distinctions should also be drawn according to the type of elections. National, single-constituency elections are easier to open up to citizens resident abroad, while local elections are generally closed to them, particularly on account of their tenuous link with local politics.

95. The proportions of citizens living out of the country may also vary greatly from one country to another. When there are a large number of them, they may have a decisive impact on the outcome of the election, which may justify the implementation of specific measures.

96. It is perfectly legitimate to require voters living abroad to register to be able to vote, even if registration is automatic for residents.

97. The obligation to vote in an embassy or consulate may in practice severely restrict the right to vote of citizens living abroad. This restriction may be justified on the grounds that the other means of voting (postal vote, proxy voting, e-voting) are not always reliable.

98. To sum up, while the denial of the right to vote to citizens living abroad or the placing of limits on that right constitutes a restriction of the principle of universal suffrage, the Commission does not consider at this stage that the principles of the European electoral heritage require the introduction of such a right.

99. Although the introduction of the right to vote for citizens who live abroad is not required by the principles of the European electoral heritage, the European Commission for Democracy through Law suggests that States, in view of citizens’ European mobility, and in accordance with the particular situation of certain States, adopt a positive approach to the right to vote of citizens living abroad, since this right fosters the development of national and European citizenship.”

### 3. *International Covenant on Civil and Political Rights*

26. The right to vote is enshrined in Article 25 of the Covenant, the relevant parts of which read as follows:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

...

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

...”

During the drafting of the General Comment on Article 25 of the Covenant, which was published on 12 July 1996 by the Human Rights Committee, a proposal was made calling on States to enable their nationals residing overseas to make use of absentee postal-voting systems where such systems were available. However, as the Human Rights Committee could not agree on the proposal, it was not included in the General Comment.

### 4. *American Convention on Human Rights*

27. Article 23 of the said Convention provides as follows:

“1. Every citizen shall enjoy the following rights and opportunities:

a. to take part in the conduct of public affairs, directly or through freely chosen representatives;

b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

c. to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.”

28. The right to vote under Article 23 is not absolute and may be subject to restrictions on the grounds expressly laid down in the second paragraph, which include “residence”. However, not every restriction of the right to vote based on residence is justified.

29. In the case of *Statehood Solidarity Committee v. United States* (Case 11.204, Report no. 98/03 of 29 December 2003), the Inter-American Commission on Human Rights held that the approach to the interpretation and application of the right guaranteed under Article 23 of the American Convention was consistent with the case-law of the other international systems of human rights protection whose treaties provided similar

guarantees. It referred in that regard to the case-law of the European Court of Human Rights and the United Nations Human Rights Committee:

“93. ... Like the European Court and this Commission, the UN Human Rights Committee has recognized that the rights protected under Article 25 of the ICCPR [International Covenant on Civil and Political Rights] are not absolute, but that any conditions that apply to the right to political participation protected by Article 25 should be based on ‘objective and reasonable criteria’. The Committee has also found that in light of the fundamental principle of proportionality, greater restrictions on political rights require a specific justification.

...”

*5. Human rights protection system based on the African Charter on Human and Peoples’ Rights*

30. Article 13 § 1 of this Charter is worded as follows:

“Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.”

31. Taking the view that this provision was similar in substance to Article 25 of the International Covenant, the African Commission on Human and Peoples’ Rights interpreted Article 13 of the Charter in the light of the Human Rights Committee’s General Comment on Article 25. It therefore held that any conditions applicable to the exercise of Article 25 rights should be based on objective and reasonable criteria established by law (see *Purohit and Moore v. The Gambia*, Communication no. 241/2001, § 76).

### **C. Comparative law**

32. According to the comparative-law materials available to the Court on the legislation of member States of the Council of Europe concerning the right to vote from abroad, the majority of the countries concerned authorise and have implemented procedures to allow their nationals resident abroad to vote in parliamentary elections. However, the situation varies greatly and the different scenarios do not lend themselves to classification into neat categories. A distinction can nevertheless be made between two broad categories: those member States which permit their citizens to vote from abroad, on the basis of a variety of arrangements; and those which, as a general rule, do not. Lastly, most of the member States which allow voting from abroad lay down administrative procedures for the registration of expatriates on the electoral roll.

*1. Arrangements for voting from abroad in the countries which authorise it in principle*

33. Thirty-seven member States fall into this category: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, the Republic of Moldova, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and the United Kingdom.

34. The above-mentioned countries provide either for voting in polling stations abroad or postal voting, or both. The following seventeen countries allow voting in embassies or consulates or in polling stations set up elsewhere: Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Georgia, Hungary, Iceland, the Republic of Moldova, Norway, Poland, Romania, Russia, Serbia, “the former Yugoslav Republic of Macedonia” and Ukraine.

Eight countries (Austria, Germany, Italy, Liechtenstein, Luxembourg, the Netherlands, Portugal and Slovakia) allow their citizens living abroad to vote by post only, either through an embassy or consulate or by writing directly to the competent national authority. The possibility of voting either at an embassy (or consulate) or by post is provided for in Belgium, Bosnia and Herzegovina, Estonia, Latvia, Lithuania, Slovenia, Spain and Sweden. A handful of countries – Belgium, France, the Netherlands, Switzerland and the United Kingdom – also allow voting by proxy. In Monaco, proxy voting is the sole means by which nationals of that country can vote from abroad.

A few States (the Netherlands and Switzerland) allow Internet voting. This type of voting is already enshrined in law and in operation in Estonia, while it is under consideration in Spain.

35. In five member States (Bosnia and Herzegovina, Denmark, Hungary, Liechtenstein and “the former Yugoslav Republic of Macedonia”), only persons temporarily resident outside the country have the right to vote from abroad. In the last-mentioned country, the law refers explicitly to persons living and working abroad temporarily. In some countries, expatriates lose the right to vote after a certain period of time (fifteen years in the United Kingdom and twenty-five years in Germany).

36. Certain countries such as Austria, Hungary, Slovenia and Ukraine allow external voting only with the permission of the host country.

37. In four countries – Croatia, France, Italy and Portugal – expatriates may elect their own representatives to the national parliament in constituencies set up outside the country. In Portugal, each of the two constituencies elects a member of parliament. French citizens living abroad participate in the election of twelve members of the Senate via the 150-strong Assembly of French Expatriates. From 2012, they will also be

able to elect eleven members to the National Assembly. In Croatia and Italy, the number of parliamentary seats allocated to expatriate constituencies depends on the number of votes cast.

*2. Countries which do not grant the right to vote from abroad or impose significant restrictions on it*

38. Eight member States – Albania, Andorra, Armenia, Azerbaijan, Cyprus, Malta, Montenegro and San Marino – do not allow voting from abroad in parliamentary elections. In particular, in Albania, the electoral code in force contains no provisions concerning voting from abroad. In Ireland, strict rules are laid down, with postal voting for expatriates being confined to members of the police and armed forces and to Irish diplomats and their spouses. The right is therefore limited to a specific, very small group of individuals. Under the legislation in Montenegro and San Marino, persons resident abroad may vote only in their own country.

*3. Administrative procedures for registration of expatriates on the electoral roll*

39. In at least twenty-two of the member States which allow voting from abroad, persons wishing to avail themselves of this facility must apply by a certain deadline to be registered on the electoral roll, either to the authorities in their country of origin or to the diplomatic or consular mission abroad.

40. In Bosnia and Herzegovina an application for registration must be made before each election to the country's central electoral commission. In Denmark, persons eligible to vote have to submit an application to the last municipality in which they lived. In Hungary, voters may request registration at the diplomatic or consular mission, by filling out an application to the local electoral bureau within the specified time-limit. In Germany and Luxembourg, the request must be made to the local authorities. In Slovakia, voters living abroad must request registration on a special electoral roll held by the municipal authorities of Bratislava-Petržalka. In Slovenia, persons voting abroad must notify the national electoral commission, while in Serbia they must request registration on the electoral roll as foreign residents. Spanish voters must apply to the provincial branch of the electoral bureau for registration on the special list of absentee voters. In the United Kingdom, overseas voters must re-register each year with their local electoral registration office.

41. In some countries, the request must be sent to the diplomatic mission or consulate, which either draws up the list of voters itself or forwards requests to the competent authority in the country of origin. Belgian citizens included on the population register held by the diplomatic mission or consulate must complete a form indicating the municipality in which they wish to be registered and the voting method they will use. The form is then

sent to the municipality concerned and the person's name is added to the list of expatriate voters.

42. In Bulgaria, the Czech Republic, Poland and Russia, the list of expatriate voters is drawn up by the diplomatic or consular mission on the basis of requests from voters. Croatian citizens wishing to vote abroad must register with the Croatian embassy or consulate. Latvian voters who wish to vote by post have to apply to the diplomatic mission or consulate concerned, where they are registered on a special list. In the Netherlands, expatriates eligible and wishing to vote must request registration on the electoral roll of Dutch nationals living abroad by applying to the head of the consular mission, who forwards the request to The Hague. In Portugal, voting abroad entails prior registration on a consular list of voters. Swiss citizens living abroad must apply to the diplomatic or consular mission with which they are registered. The application is forwarded to the municipality in which the person concerned habitually voted, and he or she is registered on the electoral roll there. In "the former Yugoslav Republic of Macedonia", expatriate voters are registered on the country's electoral roll after applying to the diplomatic mission or consulate. In Turkey, expatriate voters must register on a special electoral roll by submitting a declaration of residence to the nearest consulate.

43. In other countries, expatriate voters do not have to complete any formalities in order to register, as the authorities register them automatically on the basis of the existing lists of voters. This is the case in Estonia, Finland, France, Georgia, Iceland, Italy, Lithuania, the Republic of Moldova, Norway, Romania, Sweden and Ukraine. Voters who are not on the electoral roll may register on request (for instance in France, Georgia, Italy and Ukraine).

44. In Iceland, voters must re-register on the national electoral roll after eight years' residence abroad; in Norway and Sweden, the time-limit is ten years.

45. In some countries which have automatic registration, expatriates must complete certain formalities in order to vote in their country of origin. For instance, Italian voters resident abroad who wish to vote in Italy must inform the relevant consular authority in writing. French expatriates must request registration on the electoral roll in France if they wish to vote there.

## THE LAW

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

46. The applicants alleged that their inability to vote from their place of residence amounted to disproportionate interference with the exercise of

their right to vote in the 2007 parliamentary elections, in breach of 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. The Chamber judgment**

47. In its judgment of 8 July 2010, the Chamber held that there had been a violation of Article 3 of Protocol No. 1. It took the view that the present case did not concern the recognition of the applicants’ right to vote as such, which was already recognised under the Greek Constitution, but rather the conditions governing the exercise of that right by Greek nationals living abroad. On this point the Chamber noted that Article 51 § 4 of the Greek Constitution, adopted in 1975 and clarified during the 2001 constitutional revision, empowered the legislature to specify the conditions in question. Although the applicants still had the option of travelling to Greece in order to vote, in practice this complicated significantly the exercise of that right, as it entailed expense and disruption to their professional and family lives.

48. The Chamber acknowledged that Article 3 of Protocol No. 1 did not impose any obligation to secure voting rights in parliamentary elections to voters living abroad. However, the constitutional provision in question (Article 51 § 4) could not remain inapplicable indefinitely, depriving its content and the intention of its drafters of any normative value. Thirty-five years (at the time of the judgment) after the enactment of Article 51 § 4, the Greek legislature had still not given effect to its content.

49. The Chamber also held that the failure to enact legislation giving practical effect to voting rights for expatriates was likely to constitute unfair treatment of Greek citizens living abroad – particularly those living at a considerable distance – in comparison with those living in Greece, despite the fact that the Council of Europe had urged member States to enable their citizens living abroad to participate to the fullest extent possible in the electoral process. On the basis of a comparative study of the domestic law in thirty-three member States of the Council of Europe, the Chamber observed that the great majority had implemented procedures towards that end, and concluded that Greece fell short of the common denominator among member States in that regard.

### **B. The parties’ submissions**

#### *1. The applicants*

50. The applicants submitted that the right of Greek citizens to vote from abroad had first been recognised in 1862 in the election of members to the

Second National Assembly, when Greek citizens had been able to vote from their places of residence abroad. A significant section of academic opinion on Greek constitutional law, and also the Greek courts, were of the view that a constitutional provision guaranteeing a right of such importance as the right to vote could not remain inapplicable indefinitely. The applicants pointed out in particular that, when faced with the same issue concerning Article 24 § 6 of the Constitution, which provided for the enactment of a law on measures restricting ownership rights for the purposes of protecting the cultural environment and on the manner in which owners were compensated, the full Supreme Administrative Court had held that, in so far as the legislature had not enacted the implementing law in question, “the authorities were under the obligation, arising directly out of the Constitution, to ensure the continuing protection of the monument and, simultaneously, to compensate the affected owner”. In the applicants’ view, the requirement for the Greek legislature to pass legislation in accordance with Articles 108 and 51 § 4 of the Constitution was binding and not optional. They submitted that the delay of thirty-six years, imputable to the Greek State, in giving effect to a specific provision of the Constitution and making effective the right of expatriates to vote from abroad amounted to a violation of Article 3 of Protocol No. 1.

51. In the applicants’ view, the stance taken by the Court in *Hilbe v. Liechtenstein* ((dec.), no. 31981/96, ECHR 1999-VI) was not relevant in the instant case. Unlike the applicant in that case, they were already registered on the electoral roll and their right to vote was explicitly recognised in domestic law. Hence, they were not complaining about a restriction on their right to vote as such, but about the failure to adopt the arrangements needed to give effect to that right.

52. The applicants stated that they followed political developments in their country of origin with particular interest and wished to maintain close ties with Greece. In particular, they pointed out that they were registered on the electoral roll in Greece, held valid Greek passports, owned immovable property in Greece on which they paid income tax and were still authorised to practise as lawyers in Greece. They maintained that being unable to vote in the Greek parliamentary elections from 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 have to travel to Greece in order to exercise their right to vote. The applicants acknowledged that they could fly to Samos and Thessaloniki, their respective home towns, for parliamentary elections. However, that possibility did not alter the substance of their claim, namely that they would thereby incur significant expense and that their professional and family life would be disrupted since they would be obliged to be away from their work and families for a few days.

53. In the applicants' view, it was clear from the Council of Europe instruments, and in particular Parliamentary Assembly Resolution 1459 (2005), Recommendation 1714 (2005) and the Venice Commission's Code of Good Practice in Electoral Matters, that member States were under an obligation to make the right to vote effective. They noted that, according to the study to which the Chamber referred in its judgment of 8 July 2010, at least twenty-nine Council of Europe member States guaranteed in practice the right of expatriates to vote from abroad in parliamentary elections.

## *2. The Government*

54. The Government argued that the constitutionally recognised possibility of enacting legislation governing the exercise of the right to vote by voters living outside Greece could not be a decisive factor in determining whether there had been a violation of Article 3 of Protocol No. 1 in the present case. In particular, they stressed that Article 51 § 4 of the Constitution, far from imposing any obligation on the legislature, was optional in nature. Moreover, the Court's case-law on Article 3 of Protocol No. 1 recognised that Contracting States had a wide margin of appreciation when it came to organising their electoral systems. The Government added that, in accordance with Article 51 § 4 of the Constitution, voting arrangements for Greek nationals outside Greece had to be adopted by a majority of two-thirds of Parliament; this confirmed the need to secure very broad political consensus on the subject in Greece. Furthermore, it had already attempted to pass a law in 2009 on voting rights for Greek expatriates, a fact which demonstrated the political will to find a solution to the problem. In the Government's view, defining these arrangements was an extremely complex and delicate political issue. Blanket recognition of the right of expatriates to vote in parliamentary elections from their place of residence could give rise to considerable political and economic problems, not just in Greece but also in other member States of the Council of Europe.

55. The Government referred to the case-law of the Court and the former European Commission of Human Rights regarding the compatibility with Article 3 of Protocol No. 1 of measures making the right to vote subject to a residence requirement. They contended that, according to that case-law, imposing such a requirement was justifiable. They referred to the legitimate concern of the legislature to limit the influence of citizens living abroad in parliamentary elections, which focused primarily on issues affecting citizens living in the country. In the Government's view, expatriates could not legitimately argue that they were affected by the decisions of the country's political institutions to a greater extent than Greek citizens living in Greece.

56. Referring in particular to the parliamentary input into the 2001 revision of the Constitution, the Government observed that the legislation referred to in Article 51 § 4 of the Constitution continued to be optional. Although Article 51 § 4 made reference for the first time to postal voting,

the latter was purely optional. Furthermore, the exercise of postal voting had to comply with the constitutional principle of simultaneous conduct of parliamentary elections. The Government also reiterated the reasons for requiring an enhanced two-thirds majority for enactment of the implementing legislation referred to in Article 51 § 4 of the Constitution, namely the need for political consensus in view of the considerable numbers of Greek citizens living abroad (some 3,700,000 persons compared with a population of 11,000,000 living in Greece). For instance, there were around 1,850,000 Greek citizens living in the United States and some 558,000 in Australia. Hence, according to the Government, the broadest possible consensus among the political parties was needed in order to prevent political tensions arising out of the *de facto* increase in the electorate.

57. The Government argued that Greek citizens who had their permanent residence abroad developed social, economic, political and cultural ties in their host country and that the main centre of their interests lay there. In addition, any comparison between Greece and other countries which had granted expatriates the right to vote from their place of residence had to take into account the specific features of each case, in particular the number of citizens living outside their country of origin, the socio-political context in each country and the electoral system in place.

58. The Government further submitted that the participation of expatriate Greeks in parliamentary elections could not be compared to the exercise of the right to vote in elections to the European Parliament. In the latter case, it was merely a matter of granting voting rights to 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.

59. To sum up, the Government pointed out that the applicants satisfied the requirements laid down by the electoral legislation for the purposes of exercising their right to vote in Greece. The issue of granting expatriates the right to vote from their place of residence fell within the margin of appreciation of the domestic authorities, who could decide how and when to grant that right.

### 3. *The third-party intervener*

60. The Hellenic League for Human Rights, established in 1953, is the oldest non-governmental organisation in Greece and a member of the International Federation for Human Rights. It noted the paradoxical situation with regard to voting rights for expatriates from their place of residence. While the right of expatriates to participate in the political decisions of the “motherland” was not disputed, the principle in question, which had acquired constitutional value, appeared to be ineffective: although ten years had elapsed since the constitutional revision of 2001, the

constitutional requirement to adopt “postal voting” for Greeks resident abroad had not yet been enforced.

61. The debate on expatriates’ political rights hinged on two opposing ideas and the majority of positions and practices of States, with different variants and nuances, fell within the two extremes. The first was the idea of a political community based entirely on territory while the second was that of a community beyond territory, formed by links of solidarity which united the nation. The third-party intervener cited J. Habermas, according to whom the notion of the democratic self-determination of a community “require[d] that those who [were] subject to the law and those to whom the law [made] reference should consider themselves to be the creators of the law”. This quotation reflected a notion of the status of citizen that primarily viewed residence on a territory as the decisive criterion but took objective account of the fact that it was not absolutely necessary for individuals to reside on the territory of a State in order for them to feel that they had vital links with that State. There was an increasing realisation that “it [was] possible to live at home and far from home”. This transnational approach to citizenship rendered obsolete a debate on voting rights for expatriates based solely on a territorial understanding of citizenship. The fact that electoral campaigns were now conducted principally via computer-based social networks (such as Facebook and Twitter) proved that the argument of “distance” between the expatriate and his or her country of origin was no longer as relevant as it had been a few years previously.

62. In the view of the third-party intervener, the response to the dilemma of whether to grant political rights to expatriates could not be an “all or nothing” one. There was a need to define an objective criterion by which to assess whether or not expatriates had meaningful links with the Greek State and thus decide whether they should be included in the electorate. The League observed that in most member States of the European Union which provided for electoral rights for expatriates, the usual precondition was registration on the electoral roll of the State concerned at the embassy or consulate located in the region in question. Accordingly, the only objectively reliable criterion for the granting or otherwise of “a postal vote or other appropriate means” would appear to be whether or not electoral rolls existed at the overseas consulate. The response to the demands of the Greek diaspora to participate in Greek elections should be graduated in order to take account, in a proportionate and balanced manner, of the way in which the democratic process in the country of origin influenced the lives of expatriates.

### C. The Court's assessment

#### 1. General principles

63. The Court reiterates 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). This Article 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 Protocol No. 1 and the interpretation of the provision in the context of the Convention as a whole, the Court has held that it also implies individual rights, including the right to vote and the right to stand for election (*ibid.*, § 51). It has also held that the standards to be applied for establishing compliance with Article 3 of Protocol No. 1 must be considered to be less stringent than those applied under Articles 8 to 11 of the Convention (see *Ždanoka v. Latvia* [GC], no. 58278/00, § 115, ECHR 2006-IV).

64. The concept of “implied limitations” under Article 3 of Protocol No. 1 is of major importance for the determination of the relevance of the aims pursued by the restrictions on the rights guaranteed by this provision (see *Mathieu-Mohin and Clerfayt*, cited above, § 52). Given that Article 3 of Protocol No. 1 is not limited by a specific list of “legitimate aims” such as those enumerated in Articles 8 to 11 of the Convention, the Contracting States are free to rely on an aim not contained in such a list to justify a restriction, provided that the compatibility of that aim with the principle of the rule of law and the general objectives of the Convention is proved in the particular circumstances of a case (see *Ždanoka*, cited above). Nevertheless, it is 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 to which the right to vote and the right to stand for election are made subject 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 meet the requirements of lawfulness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Tănase v. Moldova* [GC], no. 7/08, § 162, ECHR 2010, and *Mathieu-Mohin and Clerfayt*, cited above, § 52).

65. As regards, in particular, the choice of electoral system, the Court reiterates that the Contracting States enjoy a wide margin of appreciation in this sphere. In that regard, Article 3 of Protocol No. 1 goes no further than prescribing “free” elections held at “reasonable intervals”, “by secret ballot” and “under conditions which will ensure the free expression of the opinion

of the people”. Subject to that reservation, it does not create any “obligation to introduce a specific system” such as proportional representation or majority voting with one or two ballots (see *Mathieu-Mohin and Clerfayt*, cited above, § 54).

66. 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 its own democratic vision (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 61, ECHR 2005-IX). For the purposes of applying Article 3 of Protocol No. 1, 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, 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” (see *Yumak and Sadak v. Turkey* [GC], no. 10226/03, § 111, ECHR 2008). Furthermore, since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any emerging consensus as to the standards to be achieved. In this regard, 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).

67. It should also be noted 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). In this regard the Court also takes into consideration the fact that the right to vote, the “active” element of the rights under Article 3 of Protocol No. 1, is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion (see *Hirst*, cited above, § 59).

68. Accordingly, the exclusion from the right to vote 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*, cited above, § 105). The Court has held, *inter alia*, that domestic legislation making the right to vote subject to a minimum age or to residence conditions is, in principle, compatible with Article 3 of Protocol No. 1 (see *Hirst*, § 62, and *Hilbe*, both cited above). It 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*, cited above).

69. As regards restrictions on expatriate voting rights based on the criterion of residence, the Convention institutions have accepted in the past that these might be justified by several factors: firstly, the presumption that non-resident citizens are less directly or less continually concerned with their country's day-to-day problems and have less knowledge of them; secondly, the fact that non-resident citizens have less influence on the selection of candidates or on the formulation of their electoral programmes; thirdly, 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; and, fourthly, 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*, cited above; see also *X and Association Y v. Italy*, no. 8987/80, Commission decision of 6 May 1981, Decisions and Reports (DR) 24, p. 192, and *Polacco and Garofalo v. Italy*, no. 23450/94, Commission decision of 15 September 1997, DR 90-A, p. 5). More recently, the Court has taken the view that having to satisfy a residence or length-of-residence requirement in order to have or exercise the right to vote in elections is not, in principle, an arbitrary restriction of the right to vote and is therefore not incompatible with Article 3 of Protocol No. 1 (see *Doyle v. the United Kingdom* (dec.), no. 30158/06, 6 February 2007).

## 2. Application of these principles to the present case

70. The Court observes at the outset that the applicants complained that the Greek legislature had not to date made the necessary arrangements enabling Greek expatriates to vote in parliamentary elections from their current place of residence. Accordingly, the complaint does not concern the recognition of expatriates' right to vote as such, the principle of which is already recognised by Article 51 § 4 of the Greek Constitution in conjunction with Article 4 of Presidential Decree no. 96/2007, but rather the conditions governing the exercise of that right. Like the Chamber, the Grand Chamber is therefore of the view that its task consists in examining whether, despite the failure to enact legislation on the conditions for exercising the right to vote, the Greek electoral system, in the instant case, nevertheless permitted "the free expression of the opinion of the people" and preserved "the very essence of the ... right to vote", as required by Article 3 of Protocol No. 1 (see *Matthews v. the United Kingdom* [GC], no. 24833/94, § 65, ECHR 1999-I). It will conduct its examination in the light of the broader question as to whether Article 3 of Protocol No. 1 places States under an obligation to introduce a system enabling expatriate citizens to exercise their voting rights from abroad.

71. In general terms, Article 3 of Protocol No. 1 does not provide for the implementation by Contracting States of measures to allow expatriates to exercise their right to vote from their place of residence. Nevertheless, since

the presumption in a democratic State must be in favour of inclusion (see *Hirst*, cited above, § 59), such measures are consonant with that provision. The question is, however, whether Article 3 of Protocol No. 1 goes so far as to require them to be taken. In answering that question, Article 3 should be interpreted with reference to the relevant international and comparative law (see *Yumak and Sadak*, cited above, § 127, and *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 76 and 85, ECHR 2008) and to the domestic law of the country concerned.

72. Firstly, with regard to international law, the Court notes that neither the relevant international and regional treaties – such as the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights – nor their interpretation by the competent international bodies provide a basis for concluding that voting rights for persons temporarily or permanently absent from the State of which they are nationals extend so far as to require the State concerned to make arrangements for their exercise abroad (see paragraphs 26-31 above).

73. It is true that, in order to give greater effect to the right to vote in parliamentary elections, the institutions of the Council of Europe have, *inter alia*, invited member States to enable their citizens living abroad to participate to the fullest extent possible in the electoral process. Hence, Resolution 1459 (2005) of the Parliamentary Assembly of the Council of Europe (see paragraph 21 above) states that member States should take appropriate measures to facilitate the exercise of voting rights to the fullest extent possible, in particular by means of postal voting. Furthermore, in Recommendation 1714 (2005), the Parliamentary Assembly invited the Council of Europe to develop its activities aimed at improving the conditions for the effective exercise of election rights by groups facing special difficulties, including expatriates. The Venice Commission, for its part, observed that since the 1980s the recognition of external voting rights had gained ground in Europe. While it also recommended that member States facilitate the exercise of expatriates' voting rights, it did not consider that they were obliged to do so. Rather, it viewed such a move as a possibility to be considered by the legislature in each country, which had to balance the principle of universal suffrage on the one hand against the need for security of the ballot and considerations of a practical nature on the other (see, in particular, paragraph 25 above).

74. Furthermore, a comparative survey of the legislation of Council of Europe member States in this sphere shows that, while the great majority of them allow their nationals to vote from abroad, some do not (see paragraph 38 above). However, as regards those States which do allow voting from abroad, closer examination reveals that the arrangements for the exercise of expatriates' voting rights are not uniform, but take a variety of forms. By way of example, some countries allow voting in polling stations

set up abroad, and/or postal voting, proxy voting and e-voting (see paragraph 34 above). The length of residence abroad is another factor taken into consideration by member States. Some grant voting rights only to nationals temporarily resident outside the country, while in others expatriates lose the right to vote after a certain period of time (see paragraph 35 above). Furthermore, some Contracting States make provision for expatriates to elect their own representatives to the national parliament, in electoral constituencies set up outside the country (see paragraph 37 above). Lastly, in the majority of member States which allow voting from abroad, persons wishing to avail themselves of this facility must register by a certain deadline on the electoral roll with the authorities in their country of origin or the diplomatic or consular authorities abroad (see paragraphs 39-45 above).

75. In short, none of the legal instruments examined above forms a basis for concluding that, as the law currently stands, States are under an obligation to enable citizens living abroad to exercise the right to vote. As to the arrangements for exercising that right put in place by those Council of Europe member States that allow voting from abroad, there is currently a wide variety of approaches.

76. Secondly, with regard to the domestic legislation in issue in the present case, the Court observes that Article 51 § 4 of the Constitution provides that “[t]he conditions governing the exercise of the right to vote by persons outside the country may be specified by statute ...”. The Scientific Council of Parliament, for its part, stated, in its report of 31 March 2009 on the bill concerning the exercise of the right to vote in parliamentary elections by Greek voters living abroad, that permitting the exercise of the right to vote from abroad was an option rather than a duty for the legislature, while stressing that legal opinion was not unanimous on the subject (see paragraph 19 above). In conclusion, it would appear that while Article 51 § 4 of the Constitution allows the legislature to give effect to the exercise of voting rights for expatriate Greeks from their place of residence, it does not oblige it to do so. Accordingly, and having regard to the considerations outlined above (see paragraph 75), the Court is of the view that it is not its task to indicate to the national authorities at what time and in what manner they should give effect to Article 51 § 4 of the Constitution.

77. Furthermore, since 2000, the Greek authorities have made several attempts to give effect to the provisions of Article 51 § 4. During the 2001 constitutional revision, for instance, the content of these provisions was clarified and it was stated that the principle of simultaneous voting did not rule out the exercise of voting rights by postal vote or other appropriate means, provided that the counting of votes and the announcement of the results were carried out at the same time as within the country (see paragraph 16 above).

78. Mention should also be made of the initiative taken in 2009 aimed at enacting the legislation provided for by Article 51 § 4 of the Constitution, in the form of a bill placed before Parliament on 19 February 2009 by the Interior, Justice and Economics Ministers laying down the arrangements for the exercise of voting rights in parliamentary elections by expatriate Greek voters. The bill was not passed as it failed to secure the two-thirds majority of the total number of members of parliament required by Article 51 § 4 of the Constitution as amended following the 2001 constitutional revision.

79. Lastly, as regards the specific situation of the applicants, the Court has no reason to doubt their assertion that they maintain close and continuing links with Greece and follow political, economic and social developments in the country closely, with the aim of playing an active part in the country's affairs. The presumption that non-resident citizens are less directly or less continually concerned with the country's day-to-day problems and have less knowledge of them (see paragraph 69 above) does not therefore apply in the instant case. Nevertheless, in the Court's view, this is not sufficient to call into question the legal situation in Greece. In any event, the competent authorities cannot take account of every individual case in regulating the exercise of voting rights, but must lay down a general rule (see *Hilbe*, cited above).

80. As to the disruption to the applicants' financial, family and professional lives that would have been caused had they had to travel to Greece in order to exercise their right to vote in the 2007 parliamentary elections, the Court is not convinced that this would have been disproportionate to the point of impairing the very essence of the voting rights in question.

### 3. Conclusion

81. Having regard to the foregoing considerations, it cannot be said that the very essence of the applicants' voting rights guaranteed by Article 3 of Protocol No. 1 was impaired in the instant case. Accordingly, there has been no breach of that provision.

**FOR THESE REASONS, THE COURT UNANIMOUSLY**

*Holds* that there has been no violation of Article 3 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 15 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Johan Callewaert  
Deputy to the Registrar

Nicolas Bratza  
President