Gender Constitutional Reform and Feminist Mobilization in Greece and the EU: From Formal to Substantive Equality?

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Abstract

Over the past fifteen years, substantive equality and the idea of positive measures to tackle the structural roots of gender inequality have increasingly gained currency in Europe. Focusing on the case of Greece, this article explores the factors that promote constitutional and statutory reforms to promote substantive equality, and examines the effect of such reforms on gender equality rights and policy. It argues that domestic legal and social mobilization by feminists, who participated in transnational networks, were instrumental in the diffusion of the relevant EU and international norms, leading to a shift in the courts' jurisprudence and to a constitutional amendment recognizing substantive equality. At the same time, the paper also underscores the ambivalent and limited effects of constitutionalizing substantive equality and positive measures in the absence of ongoing actions aimed at raising awareness and pushing for effective implementation.

Keywords: gender equality, constitutionalism, legal mobilization, positive measures, courts, feminist politics

Résumé

Depuis les quinze dernières années, l'égalité réelle et l'idée de mesures positives pour stopper les racines structurelles de l'inégalité entre les sexes se sont fait de plus en plus sentir en Europe. Le présent article, qui se concentre sur le cas de la Grèce, explore les facteurs qui mettent en avant les réformes constitutionnelles et statutaires afin de promouvoir l'égalité réelle, et examine les effets de telles réformes sur les droits et les politiques en matière d'égalité entre les sexes. Il fait valoir que la mobilisation nationale juridique et sociale des féministes, qui ont participé à des réseaux transnationaux, est essentielle à la diffusion de normes pertinentes européennes et internationales, ce qui conduira à un changement dans la jurisprudence des tribunaux et à une modification constitutionnelle reconnaissant l'égalité réelle. Dans un même temps, cet article souligne aussi les effets ambivalents et limités d'une constitutionnalisation de l'égalité réelle et de mesures positives en l'absence d'actions continues destinées à accroître la sensibilisation et à promouvoir une mise en place efficace.

Mots clés : égalité entre les sexes, constitutionnalisme, mobilisation juridique, mesures positives, tribunaux, politiques féministes

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1. Introduction[1]

The importation of gender into constitutionalism has been the focus of a growing number of studies over the past couple of years.[2] From the discipline of law, a feminist perspective has been deployed to rethink and critically appraise normative tenets of constitutional law that are variably underpinned by fundamental gender imbalances, and even to challenge and redefine the very idea of constitutionalism.[3] From a political perspective, constitutions form structures of opportunity that define the normative parameters and influence the organizational strategies for pursuing gender equality reform and social change.[4] Scholars have explored the spread of women mobilizing through lobbying, litigation, or other forms of action to influence the drafting or reform of constitutions, and to change the scope and meaning of sex equality norms.[5] They have pursued constitutional reforms and raised related claims to fight against employment discrimination, political underrepresentation, military service discrimination, and pregnancy, among others. Even though feminists have pointed out the limitations of constitutional reform and a rights approach, they have recognized it as an indispensable component of a multipronged strategy to promote more equitable gender relations.[6] Constitutions are the foundations of legal systems around the world, they shape fundamental assumptions about rights and citizenship, and they form the parameters for the judicial interpretation and protection of rights.[7]

Most constitutions around the world, especially if they have been recently drafted, include provisions that guarantee equality between men and women and explicitly prohibit discrimination.[8] Even where they do not explicitly do so (e.g., the United States or Australia), the constitutional right to gender equality is entrenched in the courts' jurisprudence.[9] A crucial element that distinguishes constitutions is the extent to which they endorse a substantive conception of equality as opposed to a strictly formal view of it.[10] Substantive equality is premised on the need for law to redress the underlying sources of discrimination and hierarchy in order to promote greater equality of results, rather than to merely insure equal opportunities as starting conditions. It requires delving into and uncovering the

[1] I would like to gratefully acknowledge the contribution of Alexandros-Ioannis Kargopoulos to the case law research, from which this paper draws.

[2] See Beverly Baines and Ruth Rubio-Marin, eds., *The Gender of Constitutional Jurisprudence* (Cambridge: Cambridge University Press, 2005).

[3] Beverly Baines, Daphne Barak-Erez, and Tsvi Kahana, eds., *Feminist Constitutionalism: Global Perspectives* (Cambridge: Cambridge University Press, 2012).

[4] Helen Irving, *Gender and the Constitution—Equity and Agency in Comparative Constitutional Design* (Cambridge: Cambridge University Press, 2008), 32.

[5] Susan H. Williams, "Introduction: Comparative Constitutional Law, Gender Equality, and Constitutional Design," in *Constituting Equality—Gender Equality and Comparative Constitutional Law*, ed. Susan H. Williams (Cambridge: Cambridge University Press, 2009), 1–25 at 20.

[6] Helen Irving, "More than Rights," in *Constituting Equality—Gender Equality and Comparative Constitutional Law*, 75–92.

[7] Beverly Baines, Daphne Barak-Erez and Tsvi Kahana, "The Idea and Practice of Feminist Constitutionalism," in *Feminist Constitutionalism: Global Perspectives,* 1.

[8] Helen Irving, *Gender and the Constitution*, 166.

[9] Beverly Baines and Ruth Rubio-Marin, "Introduction—Towards a Feminist Constitutional Agenda," in *The Gender of Constitutional Jurisprudence*, 13.

[10] Susan H. Williams, "Introduction: Comparative Constitutional Law, Gender Equality, and Constitutional Design," in *Constituting Equality—Gender Equality and Comparative Constitutional Law*, 1–25 at 8–9.

entrenched social and cultural assumptions about distinct and/or unequal gender roles that are often embedded in seemingly neutral laws and institutions. Treating women and men the same, as required by formal equality, overlooks the underlying structures that differentiate and disadvantage women, and it may actually exacerbate, instead of alleviating, social disparities. Therefore, a substantive equality approach variably prescribes schemes of differential treatment and/or positive action aimed at creating the underlying conditions that in practice make equal opportunities available and accessible to men and women alike. Such schemes, however, reveal the limits of, and come into conflict with, a formal conception of equality that is entrenched in many constitutions.

This article explores the factors and processes that have contributed to the wave of constitutional and statutory reforms towards substantive equality in several EU countries. The appeal of a substantive equality approach to redress social disadvantages is reflected in the spread and growing legitimacy of positive measures. Over the past fifteen years, the idea of positive measures to tackle the structural roots of gender inequality (but also of discrimination on other grounds such as race, ethnicity, and disability, among others) has increasingly gained currency in Europe. Constitutional and statutory reforms in a number of countries have allowed for the adoption of positive measures, or for recognizing their legitimacy and necessity as a means to achieve equality in practice for members of groups that are socially, economically, or politically disadvantaged.[11] The wave of such reforms in EU states since the 1990s arguably reflects a deepening in the understanding of gender equality in Europe, in contrast with the rejection of affirmative action in the United States.[12]

In regard to gender, constitutional and statutory reforms espousing substantive equality have often taken place at least in part in connection with the goal of introducing some form of quotas. For example, in France (where a 1999 constitutional reform paved the way for the introduction of parity law) and Italy, the road to positive measures as the crux of a substantive conception of equality has had to pass through constitutional reform.[13] Quotas are a particular, if not exemplary, instance of positive action aimed to promote women's participation and representation in various employment sectors, in political decision-making structures, and in corporate management structures of public companies. In countries such as France, Belgium, Slovenia, and Spain, but also the United Kingdom and Poland among others, laws to this end have provided for some form of legislated quotas or voluntary candidate quotas in political parties, a minimum number of seats or candidate posts that must be filled by women.[14]

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[11] For this definition of positive action, see *International perspectives on positive action measures—A comparative analysis in the EU, Canada, the United States and South Africa* (Brussels: European Commission, 2009), 6.

[12] For a cogent elaboration of this argument, see Ruth Rubio-Marin, "A New European Parity-Democracy Sex Equality Model and Why It Won't Fly in the U.S.," *American Journal of Comparative Law* 60/1 (Winter 2012): 99–126.

[13] Mercedes Mateo Diaz and Susan Millns, "Parity, Power and Representative Politics: The Elusive Pursuit of Gender Equality in Europe," *Feminist Legal Studies* 12 (2004): 279–302 at 291.

[14] Legislated and voluntary quotas vary by the extent to which they are either legally/constitutionally mandated, or optional. See Drude Dahlerup and Lenita Freidenvall, "Gender Quotas in Politics—A Constitutional Challenge," in *Constituting Equality,* 29–52 at p. 33.

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The appeal of a substantive equality approach along with that of positive action at the national level has gone hand in hand with its endorsement at the EU level. Notwithstanding a contradictory and for the most part restrictive approach of the European Court of Justice (ECJ) on quotas and positive measures,[15] the Amsterdam Treaty for the first time allowed member states to adopt positive discrimination measures (Art. 114(4)). While it presented a potentially more expansive and positive formulation than the one contained in the original Equal Treatment Directive (ETD) from the 1970s, the scope for gender-related positive action as interpreted by the ECJ did not significantly increase. At the same time, the Treaty of Amsterdam (Art. 114(4)) extended positive action to grounds such as race and ethnicity.[16] In light of the fact that EU law does not oblige member states to adopt positive measures, their scope and nature greatly varies across states, along with the extent to which national legislation imposes duties on organizations to adopt such measures.

Considering their incompatibility with entrenched conceptions of formal equality contained in most constitutions, the growing acceptance of positive measures in Europe is a notable development. What factors have led to constitutional and statutory reforms towards a substantive equality approach and positive action measures as the most promising means to realizing it? What is the influence of the EU here? And what are the effects of gender constitutional reform for legal, social, and policy change regarding equality between men and women? This article explores these questions by specifically focusing on the case of Greece. The country's democratic constitution included for the first time in 1974 a sex equality provision alongside the general equality clause that was carried on from the 1952 post-war constitution. The gender-specific provision stated that "Greek men and women have equal rights and equal obligations" (Art. 4, parag. 2).[17] Since then, Greek courts have interpreted the constitutional norm of gender equality in a large body of case law, often in conjunction with the EC Equal Pay and Equal Treatment Directives. They espoused a formal conception of equality that ruled out any kind of preferential measures.

By the end of the 1990s, however, and in the frame of the constitutional revision process that was under way in the late 1990s, the Greek government agreed to an amendment that expressly stipulated that positive measures do not constitute gender discrimination but may be necessary in order to achieve substantive equality (Art. 116, parag. 2). The way for this amendment had already been paved by a shift in the constitutional jurisprudence of the Council of the State (CoS) in the second half of the 1990s that departed from its earlier approach to preferential treatment as a violation of gender equality. In a country traditionally characterized by strong judicial reluctance to embrace fundamental rights issues, and by the promptness

[15] See, for instance, the highly controversial decision of *Eckhard Kalanke v. Freie Hansestadt-Bremen* Case C-450/93; and *Marschall v. Land Nordrhein-Westfalen*, Case C-409/95.

[16] *International perspectives on positive action measures*, 22–25.

[17] The 1975 constitution also stipulated that "all workers, irrespective of sex or other distinctions shall be entitled to equal pay for work of equal value" (Article 22, parag. 1). *The Constitution of Greece, as revised by the parliamentary resolution of April 6th 2001 of the VIIth Revisionary Parliament*.

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of judges, including those of higher courts, to defend even vague notions of public interest, such a shift in the CoS jurisprudence was not what would normally be anticipated. Indeed, it was an exceptional instance of rights-expansive interpretation through judicial assertion in the review of existing legislation.[18] The 2001 constitutional amendment was greeted as a major turning point. It paved the way for the introduction of positive measures to redress inequalities by "elevating substantive [and not only legal and nominal] equality into a constitutional principle."[19] Considering the fact that the 1974 constitution had ruled out positive measures as contrary to equality and that courts had opposed these until the 1990s, what led to the 2001 constitutional amendment allowing the government to introduce such measures?

To be sure, significant legal and constitutional reforms to advance gender equality were undertaken already from the mid-1970s onwards, and particularly in the 1980s, which were decisively influenced by accession to the EC in 1981. The first part of this article depicts the legal-constitutional reforms with regard to gender equality after 1975, and the evolution of the respective norms in the case law of higher courts that marked a turning point in the second half of the 1990s. The second section of the article depicts and analyzes the processes of feminist mobilization that unfolded in the second half of the 1990s. These combined litigation, advocacy, and lobbying, and were specifically influenced and shaped by the multilevel system of EU law and governance. This study is based on examination of the relevant case law of Greece's higher courts, legal and policy documents, as well as on material obtained through interviews and from the memoirs of women who were involved in the campaign. It argues that legal mobilization processes were crucial in "importing" and diffusing at the national level the growing appeal of positive measures evidenced in the EU and international equality norms. Combined with the social activism of individual lawyers and women's organizations, they decisively contributed to the relevant shifts in judicial interpretation, and eventually to the 2001 constitutional reform that recognized positive measures as legitimate.

2. Gender equality from democratization to the 2001 constitutional reform

A process of slowly abolishing some of the most glaring inequalities against women in Greece had already begun in the early 1950s following their participation in the resistance and the civil war in the previous decade that had enhanced women's position.[20] Yet it was not until 1974 that the first Greek constitution

[18] The pronouncement of a law or executive act as unconstitutional by Greek courts does not automatically lead to its abolishment, but it is expected that the government will proceed with its cancellation and/or replacement. See Julia Iliopoulos-Strangas and Stylianos-Ioannis Koutnatzis, "Greece," in *Constitutional Courts as Positive Legislators*, ed. Allan R. Brewer-Carias (Cambridge: Cambridge University Press, 2011), 539–573 at 563–4.

[19] Chrysa Chatzi, "Diakriseis logo Fylou" [Gender Discrimination], in *Ta Dikaiomata stin Ellada 1953–2003* [Rights in Greece 1953–2003], eds. Michalis Tsapogas and Dimitris Christopoulos (Athens: Kastanioti, 2004), 158–169. See also Stamatina Yiannakourou, *H Isi Metaxeirisi Andron kai Gynaikon kata to Koinotiko kai to Elliniko Ergatiko Dikaio* [Equal treatment of men and women according to Community and Greek Labor Law] (Athens: Sakkoulas, 2008), 148.

[20] In 1952, women got the right to vote, and in 1953, the first female Member of Parliament was elected. See Chatzi, "Diakriseis logo Fylou," 159.

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following the end of the seven-year dictatorship made a substantial leap forward and expressly recognized equality between the two sexes. Its constitutional recognition meant that all laws that did not comply with the principle of equality would have to be abolished during the following transitional seven-year period (that is, by the end of 1982; Art. 116 (1) of the constitution). While it was a response to the democratic—including feminist—demands that suffused the political landscape after the fall of the junta, it was also influenced by the country's European aspirations. Coming out of a period of international isolation due to the colonels' regime, Prime Minister Kostas Karamanlis and the new center-right government of New Democracy (ND) at the time were eager to pursue membership in the EEC and restore Greece's place among the Western democratic nations. To this end, the government ratified in 1975 the International Labour Convention, which recognizes equal pay for work of equal value (Art. 2, parag. 1).[21] In the early 1980s, the center-left government of the Panhellenic Socialist Movement (PASOK) also signed and ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[22]

Under the influence of a vibrant women's movement that had emerged after 1975, the Socialist government of PASOK that came to power in 1981 incorporated gender equality among its goals and introduced major reforms towards it. Of major importance was the reform of the Family Code (*oikogeneiakos kodikas*).[23] The old Family Code contained antiquated provisions that placed women in a subordinate position to that of men, to a degree that was already out of touch with actual social conditions.[24] The reformed Code replaced the patriarchal family dominated by the father with a family model based on the principle of equality, in which both husband and wife share parental authority. Furthermore, new statutes abolished all prohibitions and discriminatory treatment against women's employment in the public sector, among others, and transposed the EEC Equal Pay and Equal Treatment Directives of the 1970s.[25] Together with reformed abortion laws, they formed an impressive array of measures that challenged the legal frame sanctioning inequality.

From the 1990s onwards, gender equality case law developed by the country's two higher courts, *Areios Paghos* (on civil and criminal matters, hereafter AP) and especially by the Council of the State (*Symvoulio Epikrateias*, in administrative matters, hereafter CoS). A diffused system of judicial review enables all Greek courts to engage in constitutional review of fundamental rights. However, the practice of lower courts in following the pronouncements of the high courts, and the fact that individual challenges to executive acts are directly made before the CoS, have resulted in the concentration of judicial review in higher courts,

[21] The Convention was ratified with Law 46/1975 and entered into force in July 1976.

[22] The Convention on the Elimination of All Forms of Discrimination against Women entered into force on 3 September 1981, and it was ratified in Greece by Law N.1342/1983.

[23] Law 1329 of 1983.

[24] For instance, the old family law (Art. 1387) required women to obtain the consensus of their husband in order to be able to work. See Yiota Papageorgiou, *Eghemonia kai Feminismos* [Hegemony and Feminism] (Athens: Typothito, 2004), 324, 329.

[25] For instance, Law 1414/84 provided for the abolition of all forms of discrimination against women in labor relations, including in training, employment, pay, and promotion.

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especially in the CoS.[26] In general, Greek courts after 1974 have taken a deferential approach towards the executive. It has been characterized by strong judicial restraint in reviewing the constitutionality of legislative acts and the tendency to "insulate several areas of State activity from judicial scrutiny and to limit their judgments' adverse effects on the State."[27] In spite of this, the 1974 constitutional provision on sex equality, interpreted in conjunction with EC equality law, formed the basis for slowly advancing gender equality rights through the courts' jurisprudence.

A central impediment in the judicial advancement of sex equality rights was the constitutional provision that allowed for derogations from the equality principle for justified reasons and as provided for by statute (incorporated as Art. 116, parag. 2). Its interpretation by courts allowed for the perpetuation of old inequalities and the appearance of new ones. In a growing body of case law from the 1980s onwards, Greek higher courts often interpreted the sex equality clause of the constitution (Art. 4 (2)) in the light of permissible derogations from the equality principle (Art. 116 (2)). For instance, the latter was invoked to justify differential (and favorable) treatment for women in the sphere of social policy, such as lower age of retirement and pension. Such derogations became acceptable to courts on grounds of increased protection of women in relation to maternity, marriage, and the family (as if men's role in relation to these did not need to be similarly protected), as well as on the basis of the biological differences that presumably required differential treatment of men and women.[28] The same constitutional provision (Art. 116(2)) had also been invoked to legitimate exceptions that circumscribed women's participation in particular male-dominated sectors of employment. For instance, such exceptions persisted in the form of restrictive quotas limiting the number of women who could be recruited into various military or police corps and academies. Within the broad scope of permissible divergences from equality under the 1974 constitution (Art. 116, para. 2), judges accepted such restrictive measures disadvantaging women.

While the CoS occasionally struck down restrictive quotas for lack of any justification in the relevant statutory provisions (as required by old Art. 116 (2)), it never questioned their legitimacy and constitutionality. In an early set of five similar cases, the CoS deemed unconstitutional (contrary to Art. 4, parag. 2, and Art. 116, parag. 2 of the Greek constitution) a legislative provision[29] that gave to the Minister of Defence the discretion and power to decide about the number of women who can annually enroll into military schools.[30] It did so because the

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[26] Iliopoulos-Strangas and Koutnatzis, "Greece," 546.

[27] Ibrahim Ozden Kaboglu and Stylianos-Ioannis G. Kounatzis, "The Reception Process in Greece and Turkey," in *A Europe of Rights: The Impact of the ECHR on National Legal Systems*, eds. Helen Keller and Alec Stone Sweet (Oxford: Oxford University Press, 2009), 451–529 at 464.

[28] Aliki Yiotopoulou-Maragopoulou, "H istoriki strofi tou Symvouliou tis Epikrateias pros pragmatiki isotita" [The historic shift of the CoS towards substantive equality], *To Syntagma* 4 (1998): 785. See also Charalambos Tsiliotis, "H syntagmatiki provlimatiki tis lipsis thetikon metron gia tin apokatastasi tis isotitas metaksi andron kai gynaikon" [The constitutional issue of adoption of positive measures for the restitution of equality between men and women], *To Syntagma* 25/2 (1999): 264–95 at 268.

[29] Law 1911/1990 (Art. 1, parag. 3).

[30] *Council of State*, case no. 2857-2861/1993.

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statutory provision under dispute did not spell out objective criteria that would justify the differential treatment of women.[31] Two years later, in reference to this case, the CoS similarly condemned a ministerial order, this time because it restricted the number of men entering the Officer's Academy for Nurse Training (*Scholi Aksiomatikon Nosileftikis*, SAN).[32] The ministerial order had limited to 10 percent the number of men who would be accepted into the Academy, most likely on the assumption that the profession of a nurse requires "intrinsically female" traits, such as that of caring for others. On the whole, though, the CoS accepted restrictive quotas as permissible divergences from gender equality, using gender as a proxy for physical abilities, or for various psychological/moral qualities, and largely without justification in reference to actual circumstances. Greek government policy unconcernedly continued to resort to restrictive quotas overwhelmingly to the disadvantage of women.[33]

At the same time that the CoS accepted differential treatment of women due to their distinct biological, physical, and presumably psychological traits, it rejected such a treatment when it amounted to preferential measures targeting women. It did so by invoking a formal conception of equality premised on the absence of direct discrimination. In the early 1990s, a statute for the first time instituted a form of affirmative action, requiring that at least one fully qualified woman be present in service councils (*dioikitika symvoulia*).[34] The CoS found it to be incompatible with the principle of gender equality (Art. 4, para. 2 of the Greek constitution),[35] using the lame and unfounded justification that there was no evidence to suggest that the glaring underrepresentation of women in service councils was due to discrimination.[36]

In 1998, however, the CoS case law took a notable turn in its jurisprudential approach on restrictive quotas, which drew from developments in international and EU law. In an important decision, the Full Chamber of the CoS in reference to the constitutional principle of sex equality (Art. 4 para. 2) and the EC Directive 76/207, for the first time deemed as prima facie unconstitutional the adoption of quotas that limited the number of women (to a maximum of 10 percent) accepted in police academies.[37] It argued that divergences from sex equality are permissible as long as they are determined on the basis of criteria that allow individuals and courts to review whether they are justified. In this decision, a strong concurring

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31 For a discussion see Panos Kapotas, "Gender Equality and Positive Measures for Women in Greece," 17. Paper presented at the 2nd LSE PhD Symposium on Modern Greece: Current Social Science in Greece, Hellenic Observatory, European Institute, LSE, 10 June 2005.

32 *Council of State*, Section C, case no. 870/1995.

33 A 1997 Ministerial Order introduced anew restrictive quotas for entry in the various military academies, mainly targeting women and only in one case targeting men (in SAN). *Efimeris tis Kyverniseos tis Ellinikis Dimokratias* 2, no. 292 (10 April 1997).

34 Service Councils (or departmental boards) are decision-making bodies made up of employees in the public sector and in other legal entities governed by public law.

35 The CoS decision no. 6275/1995 deemed unconstitutional Art. 29 of Law 2085/1992 that required at least one qualified woman to be present in service councils. See Aliki Yiotopoulou-Maragopoulou, "H istoriki strofi tou Symvouliou tis Epikrateias," 786–87.

36 P. Kapotas, "Gender Equality and Positive Measures for Women in Greece," 18.

37 *CoS*, Full Court, case no. 1917/1998. This case was referred to the Plenary Session of the CoS, following the CoS section judgment 5646/1996.

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opinion by twelve members of the CoS Plenum underlined that the a priori view that particular physical, psychological, or intellectual capabilities are not shared by women (who must therefore be excluded from or restricted in certain kinds of professions) was against constitutional equality guarantees.[38] Invoking the principle of proportionality, the court also argued that the differential treatment of women must be both necessary and appropriate to achieve the stated purpose.[39] It was no longer enough to generally refer to the mission and nature of activities in which corps like the police engage in order to restrict the number of women who are recruited to them. Equally importantly, this CoS decision went a step further to argue that positive measures in favor of one of the sexes may be necessary as a temporary means to correct long-term and persistent discrimination.

At the same time, the constitutionality of positive measures was reviewed for the first time by the CoS in another landmark decision that was issued the same day in 1998 as the above-mentioned decision on restrictive quotas (1917/1998).[40] It concerned the requirement of including at least one qualified woman in the service councils (the same dispute involved in the case discussed above, see CoS Section judgment 6275/1995), and it was subsequently referred to the CoS Plenary Session because of the importance of the issue. This time, the CoS Plenum departed from the Section judgment to pronounce the constitutionality of such a requirement.[41] The Court advanced its interpretation in reference to the constitution's gender equality principle (Art. 4 (1) and (2)) rather than in reference to the permissible divergences from it (Art. 116 (2)). Additionally, invoking the EC directive 76/207, and the UN CEDAW Convention, the CoS reiterated its view that positive measures (in favor of women) may be appropriate and necessary in order to reduce existing disparities (the underrepresentation of women in the higher levels of public administration) until real equality is achieved.[42] In a phrase that hinted at the ECJ's decision in *Kalanke*, the CoS stated that "in practice, discrimination against a category of persons is so intense that the strict application of the equality principle amounts to equality in appearance, while in reality it entrenches and reproduces an existing situation of inequality."[43]

The 1998 shift in the CoS jurisprudence that condemned restrictive quotas against women and simultaneously accepted the constitutionality of positive measures was both informed by and in turn advanced a substantive understanding of

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38 Yiotopoulou-Marangopoulou, "H istoriki strofi tou Symvouliou tis Epikrateias," 789–90.

39 Yiotopoulou-Maragopoulou, "H istoriki strofi tou Symvouliou tis Epikrateias," 788.

40 There were a total of fourteen decisions that the CoS issued on 8 May 1998 (case no. 1933 and case numbers 1917–1929). See Aliki Yiotopoulou-Marangopoulou, "Pros statheropioisi mias sovaris kataktisis—h ousiastiki isotita sto neo syntagma" [Towards ensuring a major achievement—substantive equality in the new constitution], in *Agonas tis Gynaikas* (2000).

41 Law 2085/1992 (Art. 29) had already been abolished by the time the CoS reviewed this case (it had been replaced by Law 2190/1994, Art. 38, para. 10). However, the CoS went ahead and reviewed the constitutionality of Law 2085/1992.

42 CoS decision 1933/1998 (and 1917/1998) has been subject to numerous analyses and legal commentaries. Indicatively, see Yorgos Gerapetritis, "Ta thetika metra sto syntagma: to taksidi pros tin ousiastiki isotita" [Positive measures in the constitution: the journey towards substantive equality], in *Pente Chronia meta ti Syntagmatiki Anatheorisi*, vol.1, ed. Ksenophon Kontiadis (Athens: Sakkoulas, 2006), 541–71.

43 *CoS*, Grand Chamber, case no. 1933/1998.

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sex equality, moving away from its earlier attachment to a formal conception of it. According to the law professor and activist Aliki Yiotopoulou-Marangopoulou, the articulation of such a substantive notion rendered extremely problematic derogations from gender equality other than those aimed at redressing existing inequalities, namely positive measures, and deprived restrictive quotas of any kind of justification.[44] Others, however, argued that the court's interpretation did not amount to such a substantive reconceptualization. Greek judges and the 2001 constitutional legislators did not intend to abandon a formal conception of equality or to eliminate derogations from sex equality that resonated with gendered social roles and stereotypes.[45]

Nonetheless, the 1998 shift in the CoS jurisprudence provided the ground for advancing an important amendment of the equality provisions in the frame of a constitutional reform process that was already under way in Greece. The amended constitution of 2001 abolished the embattled Article 116 (2), which had allowed for derogations from the principle of sex equality, and replaced it with another provision stating that "positive measures for promoting equality between men and women do not constitute discrimination on grounds of sex." It added that "the state shall take measures to eliminate inequalities to the detriment of women that exist in practice" (Art. 116(2)). To be sure, the amended Article 116 (2) did not create a justiciable right; individuals cannot appeal to it in front of courts to demand that state authorities undertake positive measures as a form of remedial action for past or ongoing injustices.[46] Besides, the CoS jurisprudence remained contradictory and at times regressive, as it is subsequently discussed.[47]

Still, the shift in the higher courts' approach and the 2001 constitutional reform of gender equality provisions had important legal and policy consequences. In the first place, they strengthened the legal basis for challenging restrictive quotas against women's employment and training in certain professions. Secondly, they allowed for the adoption of positive measures legislation to promote women's participation in service councils and to redress their underrepresentation in politics. In a number of cases,[48] the CoS confirmed the constitutionality of provisions requiring that at least one third of candidates in local government elections must belong to one sex.[49] Thirdly, the amended Article 116 of the 2001 constitution also appears to have emboldened Greece's higher courts to be more proactive for gender equality. They began to scrutinize restrictive quotas in order to identify whether they were based on objective and appropriate criteria that could be reviewed and verified.[50] The CoS has maintained that by amending Article 116 (2) of the constitution, the Greek lawmaker renounced the discretion that the Equal Treatment Directive (76/207 EC, Art. 2, para. 2) grants to national authorities to

44 Al. Yiotopoulou-Maragopoulou, "H istoriki strofi tou Symvouliou tis Epikrateias pros pragmatiki isotita," 789–90.
45 Yorgos Gerapetritis, "Ta thetika metra sto syntagma," 547.
46 Yorgos Gerapetritis, "Ta thetika metra sto syntagma," 550.
47 Ibid., 547, 558–59.
48 *CoS*, case numbers 2831, 2832, 2833/2003; also *CoS* case no. 3185/2003.
49 Law 2910/2001, Article 75.
50 See the text of the important judgment of the CoS Full Court, case no. 365/2006. See also CoS, Full Chamber case no. 1986/2005.

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make exceptions from the equality principle.[51] A few years later, the CoS Full Chamber reiterated this opinion ruling out any divergence from the equality principle, except in the form of positive measures that aim to restore a "real equality" between men and women.[52]

The 1998 shift in the CoS jurisprudence and the 2001 constitutional amendment described above cannot be understood outside of the existing EC/EU legal norms of sex equality, as well as the international and human rights law developments in this area. The general nature of the equality principle in the 1974 constitution was not in and of itself a sufficient basis to ground the gender claims and rights. It was in the light of the EC directives and ECJ case law from the 1970s onwards that national courts were able to render the general principle of sex equality contained in the Greek constitution concrete and directly applicable in contexts such as employment. The influence of the EC/EU law in Greek equality jurisprudence has become much more clearly evidenced and substantial since the 1990s, in part due to increasing awareness of EC/EU law among Greek judges.[53] The landmark 1998 CoS decisions described above were arguably the "culmination of Greek jurisprudence, by which the gender equality constitutional norms have been interpreted and applied in the light of and in conjunction with Community law and international human rights treaties."[54] It is unlikely, however, that the 1998 shift in the CoS jurisprudence and the 2001 constitutional reform would have taken place in the absence of legal and social mobilization, to which we now turn.

3. Greek feminist mobilization and the pursuit of substantive equality

Already in the immediate aftermath of the transition to democracy in 1974, Greek feminists sought to influence the equality-related provisions that were proposed for the new constitution. Accounts of the constitution-drafting process at the time show that the permission for derogations from equality (ex-Art. 116 (2)) was a last-minute insertion. It was a compromise reached in the conflict between feminists who had advocated the inclusion of a sex-specific equality clause, and the members of the constitutional assembly who opposed this.[55] Legal mobilization, though, whether in the form of litigation or collective attempts aimed at changing the law, did not emerge as significant among Greek feminist strategies, possibly due to restrictive rules of standing for collective actors, and a prevailing culture of judicial conservatism and restraint, among other reasons. Despite accession to the EC in 1981, Greek courts throughout the decade continued to be unfamiliar with EC equality law and unwilling to apply it.

For most part, feminists from the left saw law and equality as compromising the goal of radically transforming traditional relations between men and women

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51 *CoS*, Section C, case no. 2906/2003.

52 See the important judgment of the *CoS* Full Court, case no. 365/2006.

53 Iliopoulos-Strangas and Koutnatzis, "Greece," 561.

54 Sophia Koukoulis-Spiliotopoulos, "Greece: From Formal to Substantive Gender Equality—The leading role of the jurisprudence and the contribution of women's NGOs," in *Essays in Honour of Alice Yiotopoulos-Marangopoulos,* ed. A. Manganas (Athens: Nomiki Vivliothiki/Bruylant, 2006), 659–700 at 659.

55 Yiotopoulou-Marangopoulou, "H istoriki strofi tou StE pros pragmatiki isotita," 774.

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and refrained from pursuing legal reforms and claims through courts. Those among them who resolved to give up their ideological and organizational autonomy chose to associate with, and incorporate, their goals within broader party platforms. Political parties, rather than courts, became the main organizational and institutional structures that channeled women's demands and participation and shaped their strategies throughout the 1980s. By the 1990s, though, the women's movement as it had developed after 1974 had dissipated and largely drifted away from political parties due to a generalized disappointment with the way in which these had handled women's issues in the 1980s. An increasing number of activists and women's organizations began to (re)consider their dismissive attitude towards legal strategies and to pay attention to and seek to leverage the EU legal and policy tools regarding sex equality.

In the 1990s, less than a handful of lawyers who were also feminists and who had been active in various international and European fora began to use the courts strategically to advance equality-related case law. Aliki Yiotopoulou-Marangopoulou and Sophia Koukouli-Spiliotopoulou were the leading figures here. They acted under the aegis of the Hellenic League of Women's Rights (hereafter HLWR or the League), the oldest feminist association in Greece. Since its creation in the 1920s, the HLWR had an international orientation, being a member of the International Alliance of Women since the early part of the twentieth century and later gaining United Nations consultative status. Yiotopoulou-Marangopoulou, a law professor and the longest-serving (over twenty-five years) HLWR president, has a lifelong record of activism and involvement in gender equality issues, particularly in relation to the UN system. Koukouli-Spiliotopoulou, a professional lawyer, was well-versed and highly active in developments in EC/EU law throughout the 1980s and the 1990s, as an expert of the European Commission, a member of European networks of collaboration coordinated by the European Women's Lobby (EWL), as well as vice president of the European Women's Lawyers Association (Stratighaki 2006: 283).[56]

In the mid-1990s, the promotion of positive measures and substantive equality, both through courts and through lobbying, and systematic contacts with parliamentarians assumed priority. Around that time, the HLWR launched a well-coordinated campaign combining test case litigation with various informational and political activities in seeking support for positive measures. Together with collaborators, Yiotopoulou-Marangopoulou and Koukouli-Spiliotopoulou brought or supported cases before Greek courts, including those that led to the landmark decisions of the CoS in 1998 on restrictive quotas, and followed them through with legal commentary. The initial CoS section judgment in 1998 that pronounced unconstitutional the first positive action law requiring the presence of at least one woman in the service councils prompted strong criticism by Yiotopoulou-Marangopoulou (it was subsequently reversed by the Plenary Court).[57]

[56] Maria Stratighaki, "Politikes gia tin isotita ton fylon stin Ellada" [Policies for gender equality in Greece], in *Evropaiki Oloklirosi kai Ellada*, eds. Napoleon Maravegias and Theodoros Sakellaropoulos (Athens: Dionikos, 2006), 279–300 at 280.

[57] See Aliki Yiotopoulou-Marangopoulou, *Affirmative Action: Towards Effective Gender Equality* (Athens: Sakkoulas/Bruylant, 1998), 92.

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The constitutional reform process that was under way in the second half of the 1990s presented a unique opportunity for the HLWR feminists. In December 1997, the HLWR-led coalition organized a panel where it launched its proposal for a constitutional amendment, along with other activities seeking to raise awareness about positive measures among lawmakers, judges, and the society at large. Yiotopoulou-Marangopoulou invoked Greece's obligation to comply with the CEDAW provisions (Art. 4(1)) and EC/EU law (Art. 141(4) and Art. 2 and 3(2) of the EC Treaty). Inspired by similar developments in Austria, Portugal, Germany, and elsewhere, the HLWR amassed the support of twenty-two women's organizations to push for a constitutional amendment that would make positive measures acceptable.[58] The ability of the HLWR to build this coalition was instrumental in convincing a sufficiently large number of members (fifty-eight MPs across political parties led by Anna Benaki-Psarouda) of the constitutional assembly to endorse its proposal.[59] Subsequently, the League's proposed amendment was adopted nearly verbatim by the Parliament's constitutional reform committee, which explicitly referred to the shift in the CoS case law in 1998. The proposal was voted by an overwhelming parliamentary majority (275 out of 280 votes) to be incorporated in the reformed constitution.[60]

While the women's litigation and mobilization campaigns were entirely domestic, the strategic decision to place constitutional and legal reform towards positive measures and substantive equality on the top of the Greek feminist agenda cannot be understood outside of the EU context. As its advocacy and awareness-raising activities peaked in 2000, the HLWR stressed among judges, parliamentarians, and legal practitioners that a "constitutional tradition common to the EU member states had formed" and that a growing number of national constitutions were guaranteeing substantive equality and incorporating positive action provisions.[61] The feminist campaign towards the 2001 constitutional amendment in Greece unfolded contemporaneously with initiatives and reforms towards substantive equality across different member states in the 1990s and early 2000s,[62] along with more or less coordinated action targeting EU institutions. Even though positive measures are not required by EU law, they had been incorporated into a Council recommendation[63] and were high on the national feminist agenda in countries such as Germany and in Scandinavia. The acceptance of positive measures as

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58 For an account of the activities and initiatives that the campaign involved, see Aliki Yiotopoulou-Marangopoulou, "Pros statheropioisi mis sovaris kataktisis—h ousiastiki isotita sto neo syntagma" [Towards ensuring a major achievement—substantive equality in the new constitution], *Agonas tis Gynaikas* 69 (2000). See also Yiotopoulou-Marangopoulou, "Dipli Niki—Vouli kai Symvoulio tis Epikrateias apodechontai ousiastiki isotita kai thetika metra yper ton gynaikon" [Double victory—Parliament and CoS accept substantive equality and positive measures in favor of women], *Agonas tis Gynaikas* 65 (1998): 1–3.

59 Interview, Sofia Koukouli-Spiliotopoulou, Athens, 16 November 2010.

60 Koukouli-Spiliotopoulou, "Greece: From Formal to Substantive Gender Equality," 664.

61 For an account of all the actions taken, see Koukouli-Spiliotopoulou, "Greece: From Formal to Substantive Gender Equality," 662–66.

62 Lina Papadopoulou, "Gynaikeia simmetochi kai dimokrateia: oi posostoseis ypo to phos tis syntagmatikis kai politikis theorias" [Women's participation and democracy: quotas in the light of constitutional and political theory], *Dikaiomata tou Anthropou* 32 (2006): 219–74 at 254.

63 Council of the EU recommendation of 13 December 1984 concerning the promotion of positive measures on behalf of women (84/635/EEC, EU L 331, 19 December 1984).

legitimate by the Amsterdam Treaty (modified Art. 119, now Art. 141) further boosted their appeal and most likely galvanized the domestic HLWR campaign in Greece, too.[64]

The controversy and struggle for positive measures at the EU level also saw a peak in the period between 1995 and 1998, and Greek feminists were cognizant of and informed by the relevant judicial developments and policy debates in the EU during that period. These saw a spurt around the mid-1990s, when the ECJ provided different interpretations of positive measures in its decisions in *Kalanke* (1996) and *Marschall* (1997). *Kalanke* triggered an outcry from the European Commission, while women's organizations and representatives from member states took action to challenge the view that it conveyed an absolute rejection of positive measures.[65] They appealed to international instruments such as the ILO Discrimination Convention (Art. 5) and the CEDAW (Art. 4) that accepted special measures as necessary to promote de facto equality.[66] In contrast to *Kalanke*, the *Marschall* decision accepted that the preferential measures instituted by German legislation to redress the underrepresentation of women were in conformity with the ETD (Art. 2(4)). The response of the Commission and women's organizations to *Marschall* was overwhelmingly positive.

The 2001 constitutional reform has had mixed and ambiguous effects on the case law of Greek higher courts. On the one hand, it rendered it more difficult to justify restrictive quotas against women in training for and employment in traditionally male-dominated corps such as the Border Guard against Illegal Immigration[67] (*Synoriofylakes*) or the Marine Border Guard.[68] It also compelled decision makers to provide concrete and explicit justification when adopting provisions for restrictive quotas. While the CoS was still deliberating on a number of related cases, Law 3181/2003 was passed, abolishing the restrictive entrance quota for women in the Border Guard.[69] Nonetheless, a few years later, a highly divided CoS in plenary session accepted anew the constitutionality of restrictive quotas regarding women's employment as border guards.[70] Throughout the post-2001 period, the CoS continued to affirm the legality and constitutionality of quotas restricting women's

64 Maria Stratigaki, "Politikes gia tin isotita ton fylon stin Ellada," 285.

65 Katherine Cox, "Positive Action in the EU: From *Kalanke* to *Marschall*," *Columbia Journal of Gender and Law* 8/1 (1998–1999): 101–142 at 127–29.

66 Ibid., 133–34.

67 *CoS*, Section C, case no. 2906/2003. Law 2622/1998 (Art. 3, parag. 1) as amended by Law 2838/2000, Art. 1, parag. 2) had reasoned that because the nature of the work and activities involved required special physical and bodily advantages, 90 percent of those recruited would be Greek males and only 10 percent would be women.

68 *CoS*, Section C, case no. 3121/2002. The CoS argued that the nature and mission of the Marine Border Guard activities are not sufficient to justify the quota disadvantaging women and that the respective executive decision did not clearly specify for which kind of activities gender is presumed to play a decisive role. See also CoS, Section C, case no. 365/2006.

69 Kalliope Lykovardi, "H simvoli tou Synigorou tou Politi stin katapolemisi ton diakriseon logo fylou" [The contribution of the Greek Ombudsman in the fight against gender discrimination]. Paper presented at the conference on Gender Equality Policy at the National, European and International Plane, Athens, 31 March 2006.

70 See CoS Full Court case no. 1986-90/2005. Thirteen judges, though, expressed a dissenting opinion, claiming that the amended constitutional provision Art. 116(2) abolished any possibility for the legislator to derogate from gender equality, except for positive measures. See Gerapetritis,"Ta thetika metra sto syntagma," 558–59.

employment in the police, confirming the respective statutory provision,[71] as well as provisions restricting the number of women being hired as prison guards.[72] The court accepted that it is at the discretion of national authorities to treat women and men unequally if "due to the nature of the activities or the condition under which they are exercised, gender is of decisive importance."[73]

The new line that the CoS seemed to draw in its jurisprudence was between restrictive quotas that are justified objectively by the legislator and are proportionate to the aim pursued, and those that are not well-founded.[74] In some cases, the CoS appears to easily accept justifications that reproduce inequalities by taking gender as a proxy for physical strength and agility. For example, the CoS conceded that apart from the administrative tasks, the remaining activities in which the police engage (e.g., confronting violent acts, restoring order in mass events, guarding and transferring inmates, expelling illegal immigrants) require increased physical strength and speed, which "common sense and experience [tell us] that men possess due to biological differences."[75] Additional barriers were erected in 2009 when candidates for entry in military academies were required to pass athletic tests, in which performance targets and height requirements often surpassed the average height and physical aptitudes of women, thereby strongly disadvantaging them.[76]

The legislative and policy effects of the 2001 constitutional reform have been limited, too. Besides a new statute to ensure women's participation in service councils,[77] the government in 2001 adopted a law requiring at least one third of candidates from each sex in the party ballots for local and regional elections.[78] It did so in reference to Community "soft" law on the balanced participation of men and women in decision making[79] and the EU's Framework Strategy on Gender Equality (2001–2005). While lower courts have considered this unconstitutional and a restriction on the right to be elected and on equal citizen participation in political life (Art. 5(1) of the constitution),[80] the CoS has affirmed its constitutionality.[81] In a new campaign coordinated by the HLWR, women's organizations have sought to extend this provision to national elections. While their proposal was for at least one third of candidates of each sex in each ballot, the law that was finally adopted in 2008 provides for at least one third of each party's candidates across

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71 Law 2713/1999, Article 12(2).
72 *CoS*, Section C, case no. 622/2004.
73 *CoS*, Section C, case no. 261/2006.
74 See the important judgment of the *CoS* Grand Chamber, case no. 365/2006.
75 *CoS*, Section C, case no. 261/2006. See also *CoS*, Section C, case no. 1850/2002. See also *CoS*, Section C, case no. 414/2006; *CoS*, Section C, case no. 1137/2005.
76 See the detailed report of the Greek Ombudsman (Department of Equality) on "Proypothesis eisagogis ypopsifion stis Stratiotikes Scholes" [Requirements for entry in military academies], 10 April 2009.
77 This is Law 2839/2000 (Art. 6). It stipulated that a minimum of one third of departmental board members in the public sector should belong to each sex.
78 Law 2910/2001, Art. 75, para. 2.
79 Recommendation 96/694/EC. See Koukouli-Spiliotopoulou, "Greece: From Formal to Substantive Gender Equality," 698.
80 See Lina Papadopoulou, "Gynaikeia simmetochi kai dimokrateia," 254–55.
81 CoS, case no. 3185/2003. See Panos Kapotas, "Gender Quotas in Politics: The Greek System in the Light of EU Law," *European Law Journal* 16/1 (January 2010): 29–46 at 32–33.

the country, thereby diluting further the possibility for female candidates to be elected.[82]

4. Concluding discussion

The EU multilevel system of law and governance has enhanced opportunities and resources for lawyers and activists seeking to advance gender equality, a potential already identified by scholars studying the effects of federal structures on feminism.[83] The proliferation of a community body of equality and anti-discrimination law with gender at its origins and core has provided an overarching and dynamic frame that significantly influences and shapes national feminist struggles. In these struggles, the endorsement of positive measures with the Amsterdam Treaty most likely acted as a catalyst in elevating the legitimacy and appeal of substantive equality. Contrary to what is commonly assumed, the interaction of EU law with the diversity of legal cultures and norms across states has most likely had leveling-up effects, with the more advanced national equality norms creating pressures for reforms in those legal-constitutional orders with the less developed norms. The greater popularity and appeal of substantive equality and positive measures in Europe in comparison with the United States must also be understood in reference to the European tradition of social protectionism. The entrenched idea that the state can take action to favor and support particular segments of the population was far from novel, including in the case of Greece.

The preceding analysis shows that the constitutional reform towards substantive equality in 2001 in Greece, and the 1998 jurisprudential shift that paved the way for it, were a direct consequence of the legal and social mobilization campaign by domestic women's organizations. It involved higher levels of litigation by individuals, and it was supported by a few lawyers committed to women's rights. International and EU normative developments in gender equality inspired feminist leaders to launch this campaign. The leading figures among Greek feminists systematically invoked EU and international law in sex equality in front of courts and developed their argumentation on this basis. The decisive role of legal and social mobilization, demonstrated in the Greek case study here, is, however, no big news; it mainly confirms and reinforces a substantial body of scholarship that has already highlighted how civil society alliances are at the forefront of campaigns to adopt quotas for women in politics and to pursue constitutional reforms more broadly.[84] The activism of feminists and women's organizations at the EU level has also been sufficiently documented and depicted.[85] Yet, we still lack

[82] Law 3636/29008, Art. 3. See Sophia Koukouli-Spiliotopoulou, "Greece," *European Gender Equality Law Review* 2 (2008): 57–59.

[83] Louise Chappell, "Interacting with the State—Feminist Structures and Political Opportunities," *International Feminist Journal of Politics* 2/2 (2000): 244–75.

[84] Yvonne Galligan, "Bringing Women In: Global Strategies for Gender Parity in Political Representation," *University of Maryland Law Journal on Race, Religion, Gender and Class* 6 (2006): 319–36; Mona Lena Krook, "Quota Laws for Women in Politics: Implications for Feminist Practice," *Social Politics* 15/3 (2008): 345–68.

[85] Catherine Hoskyns, *Integrating Gender—Women, Law and Politics in the EU* (London: Verso, 1996); Rachel A. Cichowski, *The European Court and Civil Society* (Cambridge: Cambridge University Press, 2007).

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sufficient knowledge and understanding of the national dynamics, as well as the bottom up processes of mobilization that provide the groundwork for European developments.

Gender equality legal advancements in the EU member states cannot be understood without attending to and tracing the parallel and largely coordinated feminist actions and initiatives, and the complex flow of interactions and influences both horizontally across countries and vertically between national and EU levels. Transnationally coordinated mobilization of women's organizations advocating positive measures and targeting EU institutions have had a direct and powerful effect on national feminist demands and strategies. In Greece, the national delegation that was formed in the frame of the European Women's Lobby (EWL), and which included many of those feminists at the forefront of the HLWR positive measures campaign, actively participated in its decision-making and agenda-setting processes in Brussels. At the same time, the European Commission also provided financial, organizational, and political support to activities launched by various women's organizations in Greece, such as those within the frame of its European programs for equal opportunities between men and women.[86]

The transnational and multilevel dynamics of mobilization in the frame of EU governance are a source of "soft" pressure to national courts and governments. The feminist mobilization of the 1990s in Greece, which intensified in the second half of the decade, was decisive in bringing the influence and pressure from EU and international norms to bear upon the national judiciary, constitutional legislators, and decision makers. It is highly unlikely that the 1998 jurisprudential shift and the 2001 constitutional amendment recognizing substantive equality and positive measures would have occurred in the absence of such mobilization. To be sure, even a strong women's movement does not necessarily become the fountain for diffuse mobilization, let alone bring about successful legal and policy outcomes.[87] At least two characteristics rendered such mobilization in Greece possible and successful. First, the campaign pursued and coordinated by the HLWR was highly effective because it was well-focused, it strategically combined legal with political action, and it skillfully exploited the opening up of the constitutional reform process to pressure for an amendment. Secondly, the issue of positive measures, but also of electoral quotas, was not controversial among women's organizations like other issues such as social policy, over which feminists are sharply divided. Therefore, the campaign was able to acquire a broad basis of support among feminists, which was also enhanced by its cross-party character.

On the other hand, though, the Greek case study here demonstrates the limits of legal and constitutional reform for feminism in the absence of ongoing and systematic commitment to transform legal advancements to practical measures and to shifts in the actual gender distribution of power. It shows that such reform is not necessarily a precursor to policy and social change; indeed, it can have meager effects on the latter. In Greece, despite the constitutional change, courts have

[86] M. Stratigaki, "Politikes gia tin isotita ton fylon stin Ellada," 283.

[87] Amy G. Mazur and Mark A. Pollack, "Gender and public policy in Europe: An introduction," *Comparative European Politics* 7/1 (2009): 1–11.

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continued to display a wavering attitude towards persisting gender inequalities and positive measures. Furthermore, in Greece, as elsewhere,[88] the limited enactment, implementation, and effectiveness of positive measures such as quotas have stemmed from the unwilling or lukewarm approach of policy makers. The lack of clarity and understanding that prevail in regard to positive action, both the concrete measures to pursue it, and also their nature and scope, does not help, either. Formal notions of equality remain strongly entrenched and continue to give rise to challenges to electoral quotas, which are seen as a limitation to the right to be elected and to equal participation in politics because they favor women.

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[88] Mercedes M. Diaz and S. Millns, "Parity, Power and Representative Politics," 300.

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