



Religious Freedom under Greek Law

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I hereby declare, that all the data used in this work, have been obtained and processed according to the rules of the academic ethics as well as the laws that govern research and intellectual property. I also declare that, according to the above mentioned rules, I quote and refer to the sources of all the data used and not constituting the product of my own original work.

Vasiliki Strantzali

A handwritten signature in black ink, appearing to be 'V. Strantzali', with a long horizontal flourish extending to the right.

List of Abbreviations

AN: Anagastikos Nomos

C: Constitution

Constitution: the Greek Constitution

CC: Civil Code

CHR: Commission on Human Rights

CoE: Council of Europe

Commission: European Commission of Human Rights

Convention: European Convention for the Protection of Human Rights and Fundamental Freedoms

Council: Council of the European Union

ECHR: European Convention for the Protection of Human Rights and Fundamental Freedoms

ECtHR: European Court of Human Rights

ECJ: European Court of Justice or (Court of Justice of the European Communities)

EU: European Union

FCNM: Framework Convention for the Protection of National Minorities

ICCPR: International Covenant on Civil and Political Rights

SR: Special Rapporteur

UDHR: Universal Declaration of Human Rights

UN: United Nations

Introduction

The right to freedom of religion or belief is a fundamental human right as well as an essential element of a democratic society.

The present paper attempts to examine the issue of religious freedom in Greece. The first chapter provides a conceptual clarification of the terms of religion and religious freedom in general. It describes the importance of the human need to believe and exercise faith as well as the right to be non-religious or atheist. The second chapter includes in a descending scale the International, European and Greek, respectively, legal texts that guarantee the right to religious freedom or belief until nowadays. The third chapter attempts to address a number of special issues that concern Greek society and relate to religious freedom such as cremation, civil marriage, naming and baptism as well as oath. These are issues of the Greek citizens' daily life which due to traditional values, in the vast majority are carried out in a religious way, while there are civil acts that enjoy equal validity regardless of the religious ritual. The fourth chapter summarizes the most important citizens' appeals against the Greek state before the European Court of Human Rights, on the grounds of violating the right to freedom of thought, conscience, and religion.

My ongoing concern as regards the development of human rights safeguards internationally and domestically has been the impetus for my engagement with this topic. In particular, the global refugee crisis affecting Greece and the issue of diversity based on religion, which is one of the most important arguments among Greek public opinion, led me to undertake research on the legal framework concerning religious freedom in our country. Additionally, the issue of cremation. An issue directly related to religious freedom, which was legally enshrined in 2006 but substantially implemented 13 years later.

The Greek society is considered to be a religious one. The Greek constitution itself begins with the invocation "*In the name of the Holy and Consubstantial*

*and Indivisible Trinity*¹. According to the Pew Research Center, Greece is an overwhelmingly Orthodox Christian nation. In surveys conducted during 2015-2017, 90% of the Greek population declared themselves as Orthodox Christians² as well as 76% said that being Christian is very/somewhat important to being truly Greek³. Since public opinion is considered to be strong, this paper will try to explain the legal framework for the protection of religious freedom in Greece as well as examine its effective and substantial application.

This introduction will conclude by quoting John Witte on relation of human rights and religions:

“Human rights norms provide no panacea to the world crisis, but they are a critical part of any solution. Religions are not easy allies to engage, but the struggle for human rights cannot be won without them. For human rights norms are inherently abstract ideals - universal statements of the good life and the good society. They depend upon the visions of human communities and institutions to give them content and coherence, to provide “the scale of values governing their exercise and concrete manifestation”⁴. Religion is an ineradicable condition of human lives and communities. Religions invariably provide universal sources and “scales of values” by which many persons and communities govern themselves. Religions must thus be seen as indispensable allies in the modern struggle for human rights. To exclude them from the struggle is impossible, and indeed catastrophic. To include them to enlist their unique resources and protect their unique rights is vital to enhancing and advancing the regime of human rights⁵.”

¹ Paparrigopoulos, X. and Vasilouni, S., 2008. *The Constitution Of Greece*. [Athens]: Hellenic Parliament.

² Pew Research Center. (2017). *Religious Belief and National Belonging in Central and Eastern Europe*

³ Pew Research Center. (2018). *Greek attitudes toward religion, minorities align more with Central and Eastern Europe than West*

⁴ Jacques Maritain, “Introduction,” in UNESCO, *Human Rights: Comments and Interpretations* (New York, Columbia University Press, 1949)

⁵ Witte, J., & Van der Vyver, J. (1996). *Religious human rights in global perspective*. (p.18-19) The Hague: M. Nijhoff.

A. The concept of religion and religious freedom

1. Definition of religion

Religion is one of the most important chapters in human spiritual and social life. It has been dominant in history and culture of human life since the appearance of man in the world.

The definition of religion is a controversial issue in religious studies. Neither social science nor law has settled upon a clear definition⁶. Scholars have failed to agree on a common accepted definition and there is also no international legal instrument that provides a formal definition of the term religion. Indeed, trying to give a consistent definition is quite a difficult task since there is an important number of religions in the world, each with its own characteristics. However, a number of definitions were given but no one received general recognition.

Many definitions “erect a canopy so large that atheism and most college sororities would qualify as religions” (Grim 2004, 7–8). Asad (1993) contends that there can be no universal definition of religion. Leiter (2010) argues that religion has certain unique characteristics, such as the issuance of categorical (non-consequentialist) demands on action and a reliance on faith, rather than reason or evidence, for beliefs. Feofanov (1994) employs a similar definition, as do many others. The most common definition typically relies upon a belief in the sacred or supernatural as fundamental, though some groups, such as Buddhists, have an ambiguous belief in the supernatural. Koppelman (2010) takes issue with Leiter’s definition but concedes that no definition of religion works very well. Much like pornography, he suggests that the definition of religion is simply that “we know it when we see it” (Koppelman 2010, 976). If religion is to be protected (or limited), though, it must be defined. Some contend that prevailing definitions have produced only a mess or a quagmire (Feofanov 1994). But definition is dangerous. It risks excluding true beliefs as not qualifying as religious. Sullivan (2006, 924) contends that religion cannot

⁶ Cross, F., (2015). *Constitutions And Religious Freedom*. Cambridge University Press, p.2-3.

“be defined in such a way that it can be legally protected and maintained as separate.” Lupu (1996, 358) notes that the “combination of cultural pluralism, pragmatism, and experience” suggests that the definitional problem is not great, as we have “conventional understandings of what constitutes religion.”⁷

Of course, the absence of a definition of a critical term does not differentiate religion from most other rights identified in human rights instruments and constitutions⁸.

The French sociologist Emile Durkheim defined religion as *“a unified system of beliefs and practices relative to sacred things, that is to say things set apart and forbidden - beliefs and practices which unite into one single moral community called a church, all those who adhere to them”*⁹.

The anthropologist Clifford Geertz defined religion as *“a system of symbols which acts to establish powerful, pervasive, and long-lasting moods and motivations in men by formulating conceptions of a general order of existence and clothing these conceptions with such an aura of factuality that the moods and motivations seem uniquely realistic”*¹⁰.

The Human Rights Committee (HRC), in a General Comment on Article 18 of the International Covenant on Civil and Political Rights (ICCPR), has stated that this article protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief; that the terms ‘religion’ and ‘belief’ are to be broadly construed; and, that Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions¹¹.

Religion plays an important role in human life and it is an essential part of human society. Because of the great importance of religion to people, freedom of religion, as discussed below, is equally important.

⁷ Cross, F., (2015). *Constitutions And Religious Freedom*. p. 2-3.

⁸ T. Jeremy Gunn. (2003). *The Complexity of Religion and the Definition of “Religion” in International Law*. Harvard Human Rights Journal / Vol. 16. p. 190

⁹ Durkheim, E. (1915). *The elementary forms of the religious life*. London: Allen & Unwin. (p. 129)

¹⁰ Geertz, C. (1993). *The interpretation of cultures*. London: Fontana.

¹¹ General Comments Under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights: General Comment No. 22(48) (art. 18), U.N. GAOR Hum. Rts. Comm., 48th Sess., Supp. No. 40, at 208, 209, U.N. Doc A/48/40 (1993).

2. The concept of religious freedom or belief

Freedom of religion is a seeming contradiction in terms. Freedom is the absence of constraint; religion is self-imposed constraint on freedom¹². Nevertheless, the right to freedom of religion or belief is a fundamental human right enshrined in all major human rights documents¹³. The term religious freedom indicates the right of every person to believe in the God of his/her own free will as well as the right to express and exercise his/her faith freely.

As enshrined in Article 9 of the European Convention on Human Rights (ECHR), *freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.*¹⁴

Thus, the concept of religious freedom also recognizes the right of a person not to be religious or even the right to change religion. More generally, religious freedom is a broad concept that covers every form of freedom that relates to religion¹⁵. It is a fundamental freedom that includes all religions or beliefs, including those that have not been traditionally practiced in a particular country, the beliefs of persons belonging to religious minorities, as well as non-theistic and atheistic beliefs. The freedom also covers the right to adopt, change or abandon one's religion or belief, of one's own free will¹⁶.

Religious freedom establishes the legal equality of religions in a state. This means that under religious freedom all religions are equal before the law and states. Thus, they claim the respect and recognition of all religions.

¹² Scolnicov, A. (2011). *The right to religious freedom in international law*. London: Routledge.

¹³ The International Covenant on Civil and Political Rights (ICCPR), art. 18; the European Convention on Human Rights (ECHR), art. 9; the American Convention on Human Rights (ACHR), art. 12; and the EU Charter of Fundamental Rights, art. 10.

¹⁴ Kokkinakis v. Greece, app. no. 14307/88 (1993)

¹⁵ P. D. Dagtoglou, (2012), *Constitutional Law: Human Rights*, Ant. N. Sakkoulas Publishers, (4th ed.). (in Greek)

¹⁶ Council Conclusions on Freedom of religion or belief; 16 November 2009.

Religious freedom is an essential element of a democratic society as well as a distinctive feature of civilized states. Thus, in societies where religious freedom is not recognized, there is no real freedom.

B. Rules that regulate religious freedom

This chapter aims to highlight the major instruments concerning freedom of religion and belief under the auspices of the United Nations. It is of great importance because it may shed some light on the understanding of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) since Article 9 of the Convention was drafted upon Article 18 of the Universal Declaration of Human Rights.

1. Charter of the United Nations

The Charter of the United Nations of 1945 is the treaty for the foundation of the intergovernmental organizations of the United Nations. The UN Charter articulated a commitment to uphold the human rights of citizens and outlined a broad set of principles relating to achieving “higher standards of living,” addressing “economic, social, health, and related problems,” and “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion¹⁷. As a treaty, it creates legal obligations for the contracting states. The Charter is ratified by 193 countries in the world¹⁸.

The United Nations Charter, states, among the purposes and principles of the United Nations:

¹⁷Charter of the United Nations. (2020). Retrieved 28 September 2020, from <https://www.un.org/en/charter-united-nations/>

¹⁸ UNTC. (2020). Retrieved 28 September 2020, from https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-1&chapter=1&clang=_en

Article 1

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

Chapter XVI of the United Nations Charter in Article 103, states that the UN Charter is superior to any other treaty. Thus, countries cannot use other treaties to override their UN Charter obligations¹⁹.

2. Religious Freedom and the Universal Declaration of Human Rights

The Universal Declaration of Human Rights²⁰ (UDHR) is a document adopted by the United Nations General Assembly on 10 December 1948, in France. It was drafted between 1947 and 1948 by a committee formed by the United Nations Commission on Human Rights. Although not legally binding as a text, the provisions of the Declaration have been elaborated and included in many legally binding international treaties, human rights instruments as well as in many national constitutions.

With regards to religious freedom, the UDHR provides the following articles:

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a

¹⁹ Un.org. 2020. Retrieved from: <https://www.un.org/en/sections/un-charter/chapter-xvi/index.html>

²⁰ Rocha, R., & Roth, O. (2000). *The Universal Declaration of Human Rights*. United Nations Publications.

person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 26

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

3. The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief

The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981), is clearly the 'most important international instrument regarding religious rights and prohibition of intolerance or discrimination based on religion or belief'²¹. However, it seems that little political will exists to bring this Declaration to fruition as a binding legal instrument²².

²¹ Van der Vyver, J., & Witte, J. (1996). *Religious human rights in global perspective*. The Hague: M. Nijhoff Publishers.

²² Ghanea N. (2004) The 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: Some Observations. In: Ghanea N. (eds)

Article 6 reads as follows:

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion or belief at the national and international levels.

4. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) is a treaty adopted by the United Nations General Assembly on 16 December 1966 and was entered into force from 23 March 1976. It is monitored by the United Nations Human Rights Committee which examines periodic reports submitted

The Challenge of Religious Discrimination at the Dawn of the New Millennium. Springer, Dordrecht. p. 9-31

by the States parties, as regards to their progress in the implementation of their obligations set out in the treaty. As of today, 173 state parties are bound by its articles²³, which among others include the following provisions as regards the right to freedom of religion:

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

²³ - OHCHR Dashboard. (2020). Retrieved 7 March 2020, from <https://indicators.ohchr.org/>

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

5. The European Convention on Human Rights and Fundamental Freedoms

The European Convention on Human Rights and Fundamental Freedoms²⁴ (ECHR) is an international convention which guarantees human rights and political freedoms of the citizens of the countries that belong to the Council of Europe. The ECHR was drafted in 1950 by the Council of Europe and it was entered into force on 3 September 1953. All 47 Council of Europe member states are party to the Convention while new members are expected to ratify the Convention the soonest possible following their entry.

As of the most important legal document of the Council of Europe, the ECHR, refers to as well as ensures the freedom of religion in the following articles:

Article 9, the most important article of the ECHR concerning freedom of religion states that:

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance”.

2. This freedom “shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”.

²⁴ (2020). Retrieved 28 September 2020, from https://www.echr.coe.int/Documents/Convention_ENG.pdf

According to the ECHR the rights arising from the Article 9, can fully enjoy the natural as well as the legal persons. The State authorities can limit the freedom of religion only in accordance to the law when necessary in the democratic society and only on the grounds of exhaustively settled reasons²⁵.

Other referral concerning religious freedom within the ECHR is found in **Article 14** which ensures the general prohibition of discriminations based on "sex, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status".

The right to freedom of religion may be found in other articles included in the ECHR such as **Article 6** which ensures the right to free trial, **Article 13** for the right to an effective remedy, **Article 8** which provides a right to respect for one's private and family life, **Article 10** concerning freedom of expression as well as **Article 11** which protects the right to freedom of assembly and association.

6. Additional Protocol No. 12 to the Convention

Religious discrimination is also prohibited according to the Protocol No.12 to the Convention²⁶ and its core provision, Article 1 which verbatim states that:

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Additional Protocols No. 1 and 2 to the ECHR, also ensure the right to education of children with respect to the religious and philosophical beliefs and convictions of the parents. This right concerns the parent rather than the

²⁵ Evans, C. (2003). *Freedom of religion under the European Convention on human rights*. Oxford: Oxford University Press. p. 139

²⁶ Details of Treaty No.177. (n.d.). Retrieved from <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177>

child but is closely connected to Article 9 of the ECHR regarding freedom of religion.

7. Other instruments within the Council of Europe

The European Convention on Human Rights is the most important legal document ensuring the respect in human rights, within the system of the Council of Europe. However, there are also other legal documents in its framework which concern religious freedom.

The **Framework Convention for the Protection of National Minorities (FCNM)**²⁷ which came into force in 1998 is one of them. **Articles 5, 6, 7, 8 and 17** of the Convention bind states to enable national minorities preserve their religion, to respect it and not to interfere with its practice.

The **European Convention on Extradition** of 1957²⁸ is another legally binding document within the Council of Europe.

Article 3 states that:

1. Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.
2. The same rule shall apply if the requested Party has substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of these reasons.

Therefore, extradition shall not be granted if there are substantial grounds for believing that an individual is being punished or prosecuted on account of his/her religious beliefs.

²⁷The Council of Europe's Framework Convention for the Protection of National Minorities. United Nations Guide for Minorities – Pamphlet No. 8. Office of the High Commissioner for Human Rights.

²⁸ Details of Treaty No.024. (n.d.). Retrieved from <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/024>

The **Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data** of 1981, is another legal document within the context of the Council of Europe. It is **Article 6** of the Convention which states that domestic law must provide the appropriate safeguards in order to avoid reveal of personal data such as religious beliefs as well as other personal information.

8. Charter of Fundamental Rights of the European Union

In Nice, in 2000, the European Council decided to reflect the current situation of the human rights through the Charter of Fundamental Rights. It has been solemnly proclaimed by the European Parliament, the Council and the Commission. The Charter²⁹ is a legally binding document since the entry into force of the Treaty of Lisbon, in December 2009 and concerns all the European member states which must act accordingly to its provisions when they implement EU law. The European Union must also legislate in accordance with the Charter. Since 2010, the European Commission publishes an annual report which monitors the application of the Charter³⁰. The Charter upholds, protects and includes the core European values as well as brings together people's fundamental rights, including freedom of religion or belief into one single document.

In particular, the Charter of Fundamental Rights of the European Union states:

Article 10. Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

²⁹ Office for Official Publications of the European Communities. (2000). Charter of fundamental rights of the European Union. Luxembourg.

³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I33501>

2. The right to conscientious objection is recognized, in accordance with the national laws governing the exercise of this right.

Moreover, the Charter of Fundamental Rights includes some other provisions related to religious freedom.

Article 14. Right to education

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 21. Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Article 22. Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

9. Freedom of religion or belief in the Greek legal framework

Greece gained its independence after a successful Revolution against the Ottoman Empire in 1821. As an independent state it drafted the following constitutions: The Constitution of Epidaurus of 1822 (Syntagma tis Epidavrou), the Constitution of Astros of (Law of Epidaurus) of 1823

(Syntagma tou Astrous) and, most importantly, the “Political Constitution of Greece” 1827, Constitution of Troizina.

The First National Assembly at Epidaurus (1821 - 1822) adopted a number of important documents including the Provisional Regime of Greece which is also known as the Constitution of 1822. In the first paragraph of the Constitution of 1822 it is stated that “The prevailing religion in the Greek territory is the Eastern Orthodox Christian Church. Nevertheless, the Greek Administration is tolerant towards any other religion, and their rites and rituals are performed without interruption”³¹. This provision was used word by word in the next Greek Constitution of 1823³².

The Greek Constitution of 1827 states in article 1 that everyone in Greece performs his/her religion freely and has equal support in the name of its worship³³.

The Royal Constitution of 1832, which incidentally was never enacted, also states that the prevailing religion in the Greek territory is the Eastern Orthodox Christian Church, however everyone can advocate their religion with the greatest freeness as well as every religion whose rites are performed publicly and obviously enjoy equal support before the law³⁴.

The first constitution of the Kingdom of Greece, 1844 defines the Eastern Orthodox Christian Church as the prevailing religion. In addition, any other known religion is tolerated and its worship is practiced fully protected by laws, prohibited by proselytism and any other intervention against the prevailing

³¹ Greek Constitution of 1822, scanned original of the 1822 Constitution (in Greek). Retrieved 28 September 2020, from <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/syn06.pdf>

³² Greek Constitution 1823, scanned original from the Library of the Parliament of the Hellenes (Greek Parliament), (in Greek). Retrieved 28 September 2020, from <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/syn07.pdf>

³³ Greek Constitution 1827, scanned original from the Library of the Parliament of the Hellenes (Greek Parliament), (in Greek). Retrieved 28 September 2020, from <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/syn09.pdf>

³⁴The Royal Constitution of 1832, scanned original from the Library of the Parliament of the Hellenes (Greek Parliament), (in Greek). Retrieved 28 September 2020, from <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/syn11.pdf>

religion³⁵. This provision was used verbatim in the next 1864³⁶ and 1911³⁷ Constitutions.

The Constitution of 1925, which was not fully implemented³⁸, led to the Constitution of 1927 which states that religious conscience is inviolable. The rites of all religions are freely protected under the laws, provided that they do not contravene public order and good morals. Proselytism is prohibited³⁹.

During the dictatorship of Ioannis Metaxas (1936-40) proselytism was made a criminal offence for the first time by section 4 of Law 1363/1938 (anagastikos nomos). The following year that section was amended by section 2 of Law no. 1672/1939, in which the meaning of the term "proselytism" was clarified⁴⁰:

1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender. The term of imprisonment may not be commuted to a fine.
2. By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (heterodoxos), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naivety.
3. The commission of such an offence in a school or other educational establishment or a philanthropic institution shall constitute a particularly aggravating circumstance.

³⁵A. Svolos, *The Greek Constitutions of 1822 – 1952, The Constitutional history of Greece* (Athens: Stochastis Press, 1972), 111 (in Greek)

³⁶Svolos, *The Greek Constitutions of 1822 – 1952, The Constitutional history of Greece*, 127

³⁷Svolos, *The Greek Constitutions of 1822 – 1952, The Constitutional history of Greece*, 145

³⁸Constitutional History. (n.d.). Retrieved from <https://www.hellenicparliament.gr/Vouli-ton-Ellinon/To-Politevma/Syntagmatiki-Istoria/>

³⁹ Greek Constitution 1927, scanned original from the Library of the Parliament of the Hellenes (Greek Parliament). Retrieved from <https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/syn15.pdf>

⁴⁰ Mentioned in: *Kokkinakis v. Greece*, app. no. 14307/88 (1993). Retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57827%22%7D>

The Constitution of 1952 adds in Article 2 (5) that no one because of his religious beliefs can exempt from performing his duties or refuse the application of the state law⁴¹.

In the current Greek Constitution 1975/1986/2001 the right to religious freedom or belief is secured within the article 13 which states the following⁴²:

1. Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs.
2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the good usages. Proselytism is prohibited.
3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations towards it as those of the prevailing religion.
4. No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.
5. No oath shall be imposed or administered except as specified by law and in the form determined by law.

It is notable that the Constitution prohibits "proselytizing," defined by law as "any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion with the aim of undermining those beliefs through inducement, fraudulent means, or taking advantage of the other person's inexperience, trust, need, low intellect, or naivete⁴³."

According to the Greek Constitution the enjoyment of civil rights and liberties does not depend on the individual's religious beliefs, and although all known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law, manifestation of these rights is "not

⁴¹ Greek Constitution 1952, scanned original from the Library of the Parliament of the Hellenes (Greek Parliament). Retrieved from shorturl.at/ghsK5

⁴² Pappas, Xenophontos I., & Vasiloune Stauroula. (2008). *The Constitution of Greece: as revised by the parliamentary resolution of May 27th 2008 of the VIIIth Revisionary Parliament*. Athens: Hellenic Parliament.

⁴³ Greece - United States Department of State. (n.d.). Retrieved from <https://www.state.gov/reports/2018-report-on-international-religious-freedom/greece/>

allowed to offend public order or the good usages. Proselytism is prohibited. The Constitution also states that no person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions⁴⁴.

C. Special issues regarding religious freedom or belief

1. Cremation

A very important issue concerning religious freedom, is the right to choose the way that someone's dead body will be finally disposed after they pass away. In Greece until 2006 the only permitted method was the burial of the body, which is entrusted to the exclusive jurisdiction of the Municipalities since the early 19th century.

In 2006, a law was adopted that allows the burning of a dead body in Greece as an alternative way of eliminating the dead human body. The law regulates the issue of the burning, which has long been a demand of a large number of people.

Article 35 of Law 3448/2006⁴⁵ reads as follows:

1. The cremation of the dead, nationals or foreigners, whose religious beliefs allow the post-mortem cremation, is permitted
2. The condition for incineration is the prior, unconditional or conditional, statement of the deceased about his/her wish or the corresponding statement of his/her relatives, by blood or by marriage, up to the fourth degree. In case of disagreement between the relatives of the same degree, the decision is taken by the Prosecutor in whose district the deceased is kept. In the case of minor children, the declaration is made by either the parent or the one who exercises parental responsibility under Article 1510 of the Civil Code.

⁴⁴ Spyropoulos, P. K., & Fortsakis Théodore. (2017). *Constitutional law in Greece*. Alphen aan den Rijn, The Netherlands: Kluwer Law International.

⁴⁵Law 3448/2006 - ΦΕΚΑ 57/15.03.2006. (n.d.). Retrieved from https://www.kodiko.gr/nomologia/document_navigation/157009/nomos-3448-2006.

3. The incineration permit is issued by the municipality or the community where the incineration center operates.

4. A Presidential Decree, issued on a proposal by the Ministry of Internal Affairs, Public Administration and Decentralization, the Environment, Spatial Planning and Public Works and Health and Social Solidarity, defines the locations of cremation centers, their terms and prerequisites as well as more specific incineration conditions. The designation of the burial sites requires the opinion of the relevant municipality or community. By a joint decision of the above Ministers, specific issues as well as matters of a technical or detailed nature shall be regulated.

The issue also arose from the fact that the existing cemeteries in big cities were overfilled. Cemeteries in some Greek cities are so overcrowded that bodies are often only kept in the ground for three years⁴⁶. In addition, the cost of the religious ceremonies, the hygiene problems arising from the burial practice as well as the religious beliefs of people living in Greece, changed the approach towards the issue of cremation⁴⁷.

1.1 Practical Reasons

The lack of space in the modern big cities. A large city disproportionate to the size of the population in combination with the growing number of dead people, is expected to have a limited number of cemeteries⁴⁸.

Secondly, the hygiene reasons. Cemeteries have long been regarded as microbial foci, especially during periods of extreme weather conditions, such as heat. The situation is getting even worse when cemeteries border residential areas. It is notable that the matter of cremation came up in 1987 when the mayor of Athens Miltiadis Evert sent a letter to the Holy Synod of the Church of Greece because the heat wave in Athens had caused an accumulation of dead bodies and their fast decay due to the heat⁴⁹.

⁴⁶ Hadjimatheou, C. (2015, November 26). Why Greeks are exhuming their parents. Retrieved from <https://www.bbc.com/news/magazine-34920068>

⁴⁷Chatzinikolaou F. et al. (2018). Cremation in Greece nowadays. The legal framework. References to the past. *Vol. XXVI*. doi: 10.4323/rjlm.2018.329

⁴⁸ Μαρίνος. Α. Η καύση των νεκρών και το Σύνταγμα. p. 42

⁴⁹ Chatzinikolaou F. et al. (2018). Cremation in Greece nowadays. The legal framework. References to the past.

Economic reasons, since burial expenses are considered to be overwhelming for the families of the deceased, in conjunction with the general feeling of the economic exploitation of the ecclesiastical rite.

Individual rights. The individual right to choose the way that someone's dead body will be finally disposed after they pass away should be inalienable and respected.

Burial is an emotionally difficult image especially for relatives of the deceased. The idea of the decomposition the dead body as well as the procedure of its exhumation makes the pain even greater⁵⁰.

The Orthodox Church has always recognized burial as the only way to eradicate the corpse and has been opposed to the burning of the dead, which it regards as an act of abhorrent violence against the members of the Orthodox Church, because it is contrary to the principles which govern the Orthodox tradition and faith for centuries⁵¹.

Since 2006, when Law 3448/2006 regarding the legalization of cremation practice came into effect, many municipalities have shown interest in building a crematorium. Nevertheless, there is no crematorium in Greece until 30 September 2019. Although the government gave authority to local municipalities, no one has been able to get past opposition from the powerful church for thirteen years⁵².

Greece's first crematorium has recently opened in Ritsona, Viotia. Speaking to the press, President of the Greek Cremation Society, Antonis Alakiotis described the event as a historic one. "Changing funerary customs is one of the hardest and slowest shifts that any society can make," he said, adding, "Our country... is unfortunately the last in the European Union to acquire a crematorium⁵³."

⁵⁰ Μαρίνος Α. Η καύση των νεκρών και το Σύνταγμα. p. 42

⁵¹ Πρακτικά Ημερίδας «Η καύση των νεκρών» της Ι. Συνόδου της Εκκλησίας της Ελλάδος (Αθήνα 3.3.1999).

⁵² Webmaster. (2013, May 20). Cremation under debate in Greece. Retrieved from <https://ocf.org/cremation-under-debate-in-greece/>

⁵³ Info@kathimerini.gr. (2019, October 10). Greece's first crematorium opens in Viotia: Kathimerini. Retrieved from

The National Commission for Human Rights had proposed, invoking inter alia, the provisions of Articles 18, 26 and 27 of the ICCPR, the establishment of the cremation of the dead for all those who die in the Greek territory and freely choose to treat their bodies without any discrimination, to regulate the relevant matters relating to the application of the incineration process in practice and recognition of the right of choice for the persons concerned, where the deceased has not expressed any specific choice between incineration and burial⁵⁴.

2. Civil Funeral

The civil funeral is an issue that has begun to concern Greek society in recent years. A civil funeral is the ceremony preceding the burial or cremation and does not include worship by representatives of any religion. There was no legal framework regarding the procedure of the civil funeral until recently.

The way to ensure civil rather than religious funeral is to inform relatives in advance, as well as to draft a notary according to Article 15 of the recent Law 4368/2016 (A '21) amending 344/1976 (A'143) and providing:

Article 35A: Selection of the place of burial⁵⁵

1. Choice of the place of burial shall be the right of the person.
2. Any natural person, if he or she so wishes, may freely, without condition or conditionality, declare before the notary, the type of his funeral and the place of burial. This statement identifies the persons, whether related or not, who will execute his wish, who by their declaration in the same notarial form accept the statement of the person and undertake to execute it.
3. Provided that the formula is followed as described above and the wish of the deceased shall not be contrary to public law, hygiene or morality rules, the

<http://www.ekathimerini.com/245391/article/ekathimerini/news/greeces-first-crematorium-opens-in-voitia>

⁵⁴ <http://www.nchr.gr/index.php/2013-04-03-11-07-36/115-etisies>

⁵⁵ After Article 35 of Law 344/1976 (A'143), Article 35A is added

competent bodies or services responsible for the burial of the deceased shall comply with the deceased's stated wish without any other condition or procedure, even if relatives of any degree have an objection.

Funeral is a special religious ceremony for the Orthodox Church. It is considered very important by the Orthodox Christians since it is believed to give rest to the soul of the deceased as well as it is an act of showing honor and respect to the dead. Nevertheless, it is important for those who do not wish for their funeral to be followed by the ecclesiastical service, to be given such an option.

3. Civil marriage

Until 1982 in Greece, only religious wedding was legal. After the reform of family law civil marriage was introduced by Law 1250/1982⁵⁶. Thus, according to the current law in Greece people can get married either with a religious or a civil wedding, enjoying equal rights under the law.

In existing law, **Article 1367 of the Civil Code**, concerning marriage, provides:

"The marriage is performed either with the contemporaneous statement of the bridegroom that they agree to it (civil marriage) or with a hierology from a priest of the Eastern Orthodox Church or from a practitioner of another religion or religion known in Greece.

The statement is made publicly before two witnesses to mayor or community president of the place where the wedding is taking place or to their legal alternate, who are obliged to draw immediately the relevant act.

The terms of the rite and any matters related thereto are governed by formal and the rules of doctrine or religion according to which rites are performed, as long as they are not contrary to public policy. The religious official is obliged to draw up the relevant act immediately. The performance of a civil marriage

⁵⁶ Law 1250/1982 - ΦΕΚ 46/A/7-4-1982 (n.d.). Retrieved from <https://www.e-nomothesia.gr/oikogeneia/n-1250-1982.html>

does not prevent the hierology of the same marriage according to the religion and the doctrine of the spouses."

The above provision establishes a civil marriage, while at the same time allows Orthodox Christians to perform, instead of a political, a religious marriage. In this way, religious freedom is fully guaranteed, since those who wish it, can perform their marriage according to the principles of their religion, if that is known, but at the same time whoever does not profess any religion or doctrine can choose a civil wedding.

Before 1982, there were provisions that established compulsory hierology, as a constituent type of marriage (1367 Civil Code), obstacles due to religious difference (1353 Civil Code) or baptism (1361 Civil Code). 1367 Civil Code has been replaced by Article 1 of Law 1250/1982, as civil marriage is already in force and Articles 1353 and 1361 Civil Code have been replaced by article 3 of Law 1250/1982.

Regarding marriage between heterodoxy applies Article 1371 Civil Code, which provides: "For marriage between heterodoxy, the ritual is performed as required by their doctrine or religion, if recognized in Greece."

In this point, we should note the following: The notion of marriage has dual importance and is treated differently by the state and differently by religions. For the state, marriage is a formal legal transaction, a peculiar contract between persons that establishes a permanent co-existence between them and creates a marital family. It is regulated by rules of compulsory law and creates rights and obligations. On the other hand, i.e. for the Orthodox Christian Church, the union of man and woman is a mystery, which goes back to the mystery of the union of Christ and Church. With marriage, the love of the spouses is transferred from the psychological and social level, on the spiritual and ontological one.

Civil marriage is a solution for those who wish to marry and are atheists, those whose religion or their doctrine does not foresee marriage hierology as well as the heterodoxy. The option of a couple to have a political marriage instead of

a religious one is a right provided directly by law. Such choice should be fully respected and not be used as a criterion for religiousness or not of the people who choose it.

4. Oath

Oath is the invocation in the name of God or some higher power and is therefore necessarily linked to the religious, non-religious, or atheistic beliefs of each person. Oath is an act by which the affiant is expressing his/her religious conscience and therefore is covered by the individual right to religious freedom⁵⁷.

The oath has a religious basis and presupposes faith in theocracy, that is, that God intervenes in human things to reveal truth or righteousness and to punish falsehood or injustice. The affiant, invoking God's name, essentially surrenders to His judgment and accepts any punishment in the event of his/her being untruthful or dishonest. The oath therefore presupposes religious faith, otherwise it makes no sense. The validity of a religious oath is not affected by whether a religion is a recognized one or not, as long as the affiant believes in it⁵⁸.

The affiant uses the oath to validate the truth of some assurance or the sincerity of a promise. Thus, depending on its content, the oath is characterized either as a vow of truth or a vow of promise. The former relates to the past, and the latter to the future. Breach of the oath of truth is called perjury while breach of the oath of promise is a false swearing⁵⁹.

The constitutional legislator set the oath in Article 13 of the Constitution, apparently because of the connection between oath and religious freedom.

In particular, **Article 13 (5) of the Constitution** states that:

⁵⁷ Μαρίνος Α.Ν., (2004). *Τα βασικά της θρησκευτικής ελευθερίας* π. 70

⁵⁸ Μαντζαρίδης Γ.Ι., (2004) *Χριστιανική ηθική. Άνθρωπος και Θεός: Άνθρωπος και συνάνθρωπος: Υπαρξιακές και βιοηθικές θέσεις και προοπτικές*. π. 409

⁵⁹ Μαντζαρίδης Γ.Ι., (2004) *Χριστιανική ηθική. Άνθρωπος και Θεός: Άνθρωπος και συνάνθρωπος: Υπαρξιακές και βιοηθικές θέσεις και προοπτικές* π. 409

"No oath shall be enforced without a law defining its type".

This provision implies that: a) The type of oath is determined only by formal law (meaning a law passed by Parliament), b) The legislator is free to determine in which cases an oath is required. In practice this means that the drafting legislator does not make the oath obligatory in certain cases, but stipulates that, if the common legislator considers that in one case an oath must be given, then he must also determine the type of oath. c) The type of oath cannot be uniform for all the affiants. Since the oath is directly linked to the religious beliefs of the affiant, he/she must be given the possibility to swear in accordance with his/her religious beliefs. Therefore, a religious person whose religion allows the oath in the name of his/her God, can swear by referring to the name of the God of religion which he/she stands for. On the other hand, one can swear in a non-religious way, whether he/she is atheist or non-religious or if his/her religion does not allow him/her to swear. In this case, the affiant invokes his/her honor and his/her conscience. By the decision of the Council of State No. 2601/1998, all the above were accepted regarding the type of oath⁶⁰.

What is particularly important is the fact that two types of oaths are established, the religious and the non-religious. The religious oath is given in accordance with the religion of the affiant, which seems logical and consistent with religious freedom, although an oath is required, while it is forbidden by religion itself.

If there was a single religious oath for all, then we would have faced a clear violation of religious freedom, since people from different religions would be forced to swear according to the standards of a particular religion. In practice, people would swear in the name of a religion that they didn't follow and therefore could very easily perjure themselves, since they would have no religious, according to their conscience and beliefs, consequence. On the other hand, such practice would not even serve the body to which the oath is intended, as it would not guarantee itself and there would be no reason for the oath as a means of self-restraint and "fear" of the affiant.

⁶⁰Μαρίνος Α.Ν., Τα βασικά της θρησκευτικής ελευθερίας (2004)

The oath is mainly used to prove certain things or as a condition of witness testimony, as is the case with the oath in the courts. For example, the person who is being examined as a witness in a trial, is sworn in in order to prove the truth of his/her testimony and to convince the court by relying on either the God who believes or his/her honor. It is also used for the affiant as an affirmation that he/she will abide by his/her promises in the future. Thus, the oath is used to assert the truth of certain things, when connected to the past or to reinforce a promise when linked to the future.

The ECtHR held that the unjustified requirement to swear by the Gospel is treated as a confession of faith in a particular religion, which violates Article 9 of the ECHR⁶¹.

On the other hand, if there was no alternative vow (the non-religious oath), those who profess no religion or any god would be forced to invoke a God whom they ultimately do not believe. Like those, whose religion does not allow them to swear, they would be forced to break with the principles of their religion and swear, which is a blatant violation of their religious freedom. Especially for the religious oath, A. Manassis describes it as a 'survival of the magical theodicy' and considers that its adoption by common law is not in line with Article 13 (1) of the Constitution, but also with Articles 2 (1) and 7 (2). He therefore considers the religious oath to be contrary to the principles of freedom of religious conscience, respect and protection of human value and human dignity⁶².

Another issue is whether the state has the right to impose an oath on its citizens. It is left to the drafting legislator to determine the cases in which the oath is compulsory and to determine the type of oath, according to Article 13 (5) of the Constitution. Therefore, although compulsory oaths are compulsory in practice, which may be contrary to the freedom of religious conscience, the Constitution still empowers the common legislature to decide in which cases the oath is needed and with what type it should be given.

⁶¹ *Buscarini and Others v. San Marino* (application No. 24645/94)

⁶² Μάνεσης Α.Ι., *Συνταγματικά δικαιώματα Α'* - 4η έκδοση (2013) p. 258

5. Naming and baptism

In the past years, naming and the mystery of baptism were identified and considered one and the same. It is typical that to this day, a minor child who has not yet been named is described as "unbaptized", which indicates that in Greek society the baptism of children is considered a given.

But since the early 1980s the procedure of the naming means the registered declaration of the parents' will regarding the name of their child, which is independent of the celebration of baptism⁶³. In short, with the naming the child acquires a legally recognized name, while baptism is the process by which the child embraces religion. For the state, the main name is obtained through the procedure of the naming, which is a unilateral legal action drawn up in partnership with the public authority in the registry office, according to Article 22 of Law 344/1976. The choice of the name is free but it should not offend moral, religious or national sentiment, human dignity or good morals. The right to naming has the one who has custody of the child. Usually the beneficiaries of this are the parents entitled to joint parental responsibility (1510 CC) or one of the two parents, who is practicing it alone, under certain conditions⁶⁴.

The right to naming is exercised by unilateral formal legal action, addressed to the contracting authority either when baptized with a statement to a religious official or a direct statement to the registrar. The naming procedure is independent and does not constitute an element of the mystery of baptism.

For the Orthodox Christian religion, baptism is a great mystery. It symbolizes the entry and integration of a new member into the body of the Church. Baptism is not so much about naming, but about integrating the baptized into the body of Christ. Important in baptism is the role of the godfather, who is responsible for the Christian education of the child.

Under the current legal status, the name of the child is given by the parents either through the baptism with a statement to the religious official or through a direct statement to the registrar, independently of the baptism. Therefore, in

⁶³ Βενιζέλος Ε., Οι σχέσεις κράτους και εκκλησίας (2000). Εκδόσεις Παρατηρητής. p.113

⁶⁴ Γεωργιάδης Α.Σ., Γενικές αρχές αστικού δικαίου (2012) p. 124-125

terms of naming, religious freedom of heterodoxy is not affected as they are not obliged to baptize their children with the process followed by the Orthodox church, but they have the option to state the name that wish to give to their child, directly to the relevant authority. On the other hand, it is the right of the parents who belong to a religion to baptize their child. The opposite would undermine their religious freedom.

D. Legal cases before the European Court of Human Rights

The European Court of Human Rights was set up to deal with human rights complaints against Member States under the European Convention on Human Rights. Its purpose is to monitor the implementation of the Convention, adjudicating citizens' appeals against human rights violations committed by Member States. Only citizens as well as non-governmental organizations have the opportunity to appeal to the ECtHR against a state, provided that a Member State of the ECHR has violated any of its provisions and the citizen has exhausted all the domestic remedies against this infringement⁶⁵.

In total, the cases that have been filed against the Greek state before the ECtHR alleging violation Article 9 (freedom of religion) are 23⁶⁶. The cases are related to proselytism, establishment of places of worship, education, oath, conscientious objectors, as well as cases related to the Muslim minority.

1. Kokkinakis v. Greece⁶⁷

On March 2 1986, Mr and Mrs Kokkinakis, two Jehovah's witnesses visited the home of Mrs Kyriakaki, an Orthodox Christian. According to facts subsequently made by national courts, Mrs Kyriakaki was pressed to let them

⁶⁵Echr.coe.int. 2020. European Court Of Human Rights - ECHR, CEDH, News, Information, Press Releases. Retrieved from: <https://www.echr.coe.int/Pages/home.aspx?p=home&c=>

⁶⁶ Hudoc.echr.coe.int. 2020. HUDOC - European Court Of Human Rights. [online] Available at: shorturl.at/InHP2

⁶⁷ European Court of Human Rights. (1993). Case of Kokkinakis v. Greece (3/1992/348/421) judgment. Strasbourg: European Court of Human Rights

in and then they entered into a discussion during which Mr Kokkinakis elaborated on his views regarding a number of issues, read some books and gave her others trying to convince her and make her change her religious belief.

Mr and Mrs Kokkinakis were arrested, after the incident was reported to the police by Mr Kyriakakis, with the charge of proselytism, an offence punishable under Section 4 of Law no. 1363/1938. They were sentenced to imprisonment and a fine, on the grounds that the Kokkinaki couple attempted to proselytize and, directly or indirectly, to intrude on the religious beliefs of Orthodox Christians, with the intention of undermining those beliefs, by taking advantage of their inexperience, their low intellect and their naivety.

Mr and Mrs Kokkinakis appealed against this judgment to the Crete Court of Appeal (Efetio). The Court of Appeal quashed Mrs Kokkinakis's conviction and upheld her husband's but reduced his prison sentence to three months. Finally, Kokkinakis appealed to the Court of Cassation (Arios Pagos) arguing, inter alia, that the provisions of Law no. 1363/1938 contravened Article 13 of the Greek Constitution. His appeal was dismissed by the Court of Cassation since it was considered that such legislation "does not contravene Article 13 of the 1975 Constitution but is fully compatible with the Constitution, which recognizes the inviolability of freedom of conscience in religious matters and provides for freedom to practice any known religion, subject to a formal provision in the same Constitution prohibiting proselytism, in that proselytism is forbidden in general whatever the religion against which it is directed, including therefore the dominant religion in Greece, in accordance with Article 3 of the 1975 Constitution, namely the Christian Eastern Orthodox Church.

Mr Kokkinakis applied to the European Commission on Human Rights on 22 August 1988. The applicant's complaints mainly concerned a restriction on the exercise of his freedom of religion. He claimed that his conviction for proselytism was in breach of the rights secured in Articles 7, 9 and 10 of the ECHR. He stressed that Article 4 of Law 1363/1938 is incompatible with the right that Article 9 of the ECHR secures and which has increased formal power over the contrary law. As to Article 9 of the ECHR, he argued before

the European Court of Human Rights, where the case concluded, that there was restriction on the right to freedom of religion, as it involves freedom of change of religion or beliefs and the freedom to express those beliefs publicly or privately, through religious practices. He also pointed out that the prohibition of proselytism was not only unconstitutional, but it also formed, together with the other provisions of Law no. 1363/1938, "an arsenal of prohibitions and threats of punishment" hanging over the adherents of all beliefs and all creeds. Kokkinakis finally complained of the selective application of this Law by the administrative and judicial authorities arguing that it would be even less likely that an Orthodox Christian would be prosecuted for proselytizing on behalf of the "dominant religion".

On the other hand, the Greek Government maintained that there was freedom to practise all religions in Greece. What is forbidden, is "proselytism that is not respectable", the kind that consists in using deceitful, unworthy and immoral means, such as exploiting the destitution, low intellect and inexperience of one's fellow beings. The Greek Government has argued in its defense that the criminal prohibition of proselytism is a restriction on the expression of religious beliefs, which is legitimate under Article 9 (2) of the ECHR and is based on Article 13 of the Greek Constitution. which prohibits proselytism with all religions.

The ECtHR initially acknowledged that freedom of thought, belief and religion are fundamental values of a democratic society. Freedom of religion is not just about the interior beliefs but it also includes the ability to express it in words or actions, public or private. It therefore includes the ability to convince your neighbor of the correctness of your beliefs.

The ECtHR also accepted that Article 9 of the ECHR is reflected in Article 13 of the Greek constitution, which recognizes the freedom of religious conscience and the freedom of any recognized religion. The religion of Jehovah's Witnesses is considered a "well-known religion" and as such enjoys all the benefits which derive from this characterization. Furthermore, the ECtHR recognizes that in a pluralistic society, where many religions coexist, it is necessary to impose restrictions on the exercise of this freedom,

in order to reconcile the interests of the various religious groups as well as to ensure the mutual respect of everyone's beliefs. Such restrictions were to be found in the Greek legal system through Article 13 of the 1975 Constitution which refers to the prohibition of proselytism and which aims to protect the individual from activities that violate human dignity and personality.

The ECtHR finally accepted the claim that the criminal repression of proselytism violated freedom of expression of religion, but not the right to religious freedom. After considering whether the restriction was lawful under Article 9 (2) of the ECHR, the court ended that it was based on an express legislative provision (Article 4, no. 1363/1938). However, the court held that the provision was not clear.

On the basis of the above, the court concluded that the restriction complained of by the applicant was imposed by law, under Article 9 (2) of the ECHR and it served the protection of the rights and freedoms of others, a purpose which was fully legitimate.

Finally, the court held that the provision of Article 4 no 1363/1938, in so far as it seeks to suppress illicit conversion, is not in breach of the provisions of the ECHR. Therefore, due to the fact that the court did not identify the use of unfair means by Mr Kokkinakis, his conviction was unjustified and there was a breach of Article 9 of the ECHR.

2. Larissis and others v. Greece⁶⁸

This case concerns three Greek air force officers, Mr Dimitrios Larissis, Mr Savvas Mandalarides and Mr Ioannis Sarandis, who were followers of the Pentecostal Church, a Protestant Christian denomination which adheres to the principle that it is the duty of all believers to engage in evangelism. The three officers repeatedly approached various Christian Orthodox air men and they were talking about the doctrines of the Pentecostal Church, read aloud extracts from the Bible and encouraging them to accept the beliefs of the

⁶⁸ Larissis et al v. Greece, Applications nos. 140/1996/759/958-960, Council of Europe: European Court of Human Rights, 1998 Available at: shorturl.at/dkmBH

Pentecostal Church. In the meantime, two of the above officers tried to convert several citizens as well.

The applicants appeared before the Permanent Air Force Court (Diarkes Stratodikio Aeroporias) in Athens, on 18 May 1992, composed of an officer with legal coaching and four other officers. They were tried for numerous offences of proselytism, under section 4 of Law no. 1363/1938. It found all three applicants guilty of proselytism. After the conviction of the Permanent Air Force Court they filed an appeal against the Courts-Martial Appeal Court (Anatheoritiko Dikastirio). The Appeal Court rejected the defence's argument to the effect that the accused had simply exercised a constitutional right and upheld most of their convictions, using the same reasoning as the first-instance court. It did however reduce the sentences by two months. They then appealed before the Court of Cassation (Arios Pagos), claiming that the decision of Law 1363/38 violated the constitutionally guaranteed rights of *nullum crimen, nulla poena sine lege certa* and the right to religious freedom as well as Article 9 of the ECHR. The Court dismissed the applicants' appeal.

Having exhausted all remedies before the Greek courts, the officers convicted of proselytism appealed to the Commission on 28 January 1994, alleging a breach of Articles 7, 9, 10 and 14 of the ECHR. The Commission declared their application admissible on 27 November 1995 and referred it to the ECtHR on 28 September 1996. The ECtHR in its decision of 24 February 1998 reiterated its position in the Kokkinakis case regarding the distinction between proselytism and abusive behavior. It also singled out the cases of attempted conversion of the smiths towards the citizens. As to the former, they considered that because of their military hierarchy and their position as subordinates over the applicants, it was difficult for them to refuse or avoid the discussion. Consequently, the behavior of the officers did indeed have the element of abusive proselytism. On the contrary, as regards citizens, the ECtHR found that the measures taken against two of the three applicants were unjustifiably harsh, since the right to freedom of religion also included the right to try to persuade others of the correctness of their views as long as they are using legitimate means; and the means that were used towards the citizens were legitimate.

3. Manoussakis and Others v. Greece⁶⁹

The first of the applicants, Mr Manoussakis, rented under a private agreement a place in a building located in Heraklion, on 30 March 1983. The agreement specified that the room would be used "for all kinds of meetings, weddings, etc. of Jehovah's Witnesses". Two months later, Mr Manoussakis reported to the local police station that the windows of the room were broken by unknown persons. On September of the same year, he laid a further complaint concerning a similar incident. On 28 June 1983 the applicants applied to the Education and Religious Affairs for permission to use the room as a place of worship. The Ministry replied that their request was being reviewed and it was never authorized until their appeal was heard in 1996. On 30 July 1984 the Orthodox Church in the area, notified the Heraklion police, that a place was being used as an unauthorized place of worship for Jehovah's Witnesses adding that they had applied to the Minister for permission. At the same time, the Church asked the police authorities to carry out an inspection of the premises, to punish the responsible and to prohibit any further activity until the Minister had granted the permission. On March 3 1986, the public prosecutor of Heraklion prosecuted a violation of Article 1 of Law no. 1363/38 as amended by Law no. 1672/39 on the ground that the applicants had set up a site of worship for the religious meetings of members of the doctrine of Jehovah's Witnesses without the prior permission of the competent ecclesiastical authorities and the Minister Education and Religious Affairs.

In the first instance hearing on 6 October 1987, the Criminal Court of Heraklion composed of a single judge (Monomeles Plimmelioidikeio) acquitted the defendants on the ground that "*in the absence of any acts of proselytism, followers of any faith are free to meet even if they do not have the requisite authorization*".

⁶⁹ Manoussakis and Others v. Greece, Application No.18748/91, Available at: <https://hudoc.echr.coe.int/eng?i=001-58071>

The Heraklion Public Prosecutor, however, viewed that the Criminal Court had incorrectly assessed the facts and lodged an appeal. On 15 February 1990, the Heraklion Criminal Court convicted the initially acquitted applicants.

The convicts then appealed to the Court of Cassation, which dismissed their appeal on the ground that “*for the right to freedom of worship is not unlimited and may be subject to control*”. In particular, according to Article 13 of the Constitution: must be a known religion, not a secret religion; there must be no prejudice to public order or morals; neither must there be any acts of proselytism. Also, according to Article 9 (2) of the ECHR the manifestation of religious worship is subject to restrictions in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

In view of the above, the Court of Cassation held that the provisions, providing for the above conditions to be verified by the competent Minister for National Education and Religious Affairs, are in accordance with Articles 13 of the Greek Constitution and Article 9 of the ECHR, as the investigation is of a purely factual nature. On 20 September 1993, the Heraklion police placed seals on the front door of the room rented by the applicants.

Manoussakis and others applied to the Commission on 7 August 1991. The Commission expressed the unanimitous view that there had been a breach of Article 9.

The European Court of Justice, held that the conviction of the Heraklion Criminal Court constitutes interference with the exercise of the right to freedom of expression of religious beliefs. The intervention must be provided by law in order not to infringe Article 9 of the Convention.

The applicants argued that the law of 1938 essentially prohibited constantly and generally the establishment of a church or a place of worship in any religion or doctrine other than the Orthodox Church. They did not complain as much about the treatment they suffered as they complained about the obstacles they faced when it came to establish a church or a place of worship. They further submitted that such limitations result in the denial of their right to

religious freedom and stressed that their conviction was unjustified and unnecessary to a democratic society.

On the other hand, the Greek Government argued before the ECtHR a preliminary objection that the applicants failed to exhaust all domestic remedies. Greece based this objection on the fact that the applicants did not consider it appropriate to initially apply to the Supreme Administrative Court against the Minister's tacit refusal to grant them the required authorization. However, the ECtHR did not take this claim into account.

Finally, the ECtHR found that the provisions of the Law 1363/38 on the establishment of guest houses constitute a clear interference with the right to religious freedom.

The legality of this restriction under Article 9 (2) ECHR came to the following conclusions:

- 1) Jehovah's Witnesses are a "known religion."
- 2) The purpose pursued by the relevant provisions is, in principle, legitimate, in the sense that it is intended to protect public order.
- 3) Article 9 of the ECHR does not give to the States the power to make assessments of the legality or illegality of the various religious denominations as well as the manner in which their respective religious beliefs are expressed.
- 4) From the applicants' evidence and references to other cases, the competent Greek authorities tend to take full advantage of the margins allowed by the current legislation to impose strictly restrictive conditions on the religious worship of certain non-Orthodox doctrines and religions, especially Jehovah's Witnesses.
- 5) The Criminal Court of Appeal and the prosecutor of Heraklion, were based on the applicants' failure to obtain the approval of the Minister and the Metropolitan.

In the light of the foregoing, the ECtHR held that the applicants' criminal conviction was due to their failure to comply with a formal requirement to carry out their religious duties.

It was therefore considered that this restriction on religious freedom, was too harsh and therefore violated the principle of proportionality with regard to the objective of protecting the social community, which is necessary in a democratic society.

There has therefore been a violation of Article 9 of the Convention.

4. Valsamis v. Greece⁷⁰ & Efstratiou v. Greece⁷¹

According to the history of the two cases, eventually joined on account of their connection, at the beginning of the academic year 1992-1993 & 1993-1994, the parents of Victoria Valsami and Sophia Efstratiou, respectively, who were Jehovah's Witnesses, submitted a written declaration in order that their daughters should not attend school religious-education lessons, Orthodox Mass, as well as not to be engaged in any other event contrary to their religious beliefs, such as the celebration of national anniversaries or school parades. The administration of the schools that both students were attending agreed on their request and exempted them from attending religious-education lessons and Orthodox Mass. In October 1992, 1993 and 1994 the students were invited to participate in the school parades for the commemoration of the national anniversary of October 28. The students refused to participate in such activity on account of their religious beliefs. In accordance with Circular no. C1/1/1 of 2 January 1990 issued by the Ministry of Education and Religious Affairs, the headmasters of the schools punished the two students. Victoria Valsami was punished with one day's suspension from school for not attending 28.10.1992 parade and Sophia Efstratiou with

⁷⁰ Valsamis v. Greece, 74/1995/580/666, Council of Europe: European Court of Human Rights 1996, Available at: [https://hudoc.echr.coe.int/fre#{\"itemid\":\[\"001-58011\"\]}](https://hudoc.echr.coe.int/fre#{\)

⁷¹ Efstratiou v. Greece, 77/1996/696/888, Council of Europe: European Court of Human Rights 1996, Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58006%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58006%22]})

two days of suspension for not participating in the parade on 28.10.1993 and one day of suspension for not participating in the parade on 28.10.1994.

Valsamis and Efstratiou families appealed in April 1993 and in April 1994, respectively, to the ECtHR, alleging a violation of a) Article 2 of Protocol No.1 which refers to “the right of parents to ensure education and teaching in conformity with their own religious and philosophical convictions”, b) the right to religious freedom (Article 9 ECHR), c) the prohibition of subjecting a person to inhumane and degrading treatment (Article 3 ECHR) and, finally, d) the right to an effective remedy (Article 13 ECHR). The two cases, as mentioned above, were joined because of the great relevance of their background and were found admissible.

The Greek Government argued the following: 1) that the parade of October 28 is not of a military nature but maintains an idealistic and peaceful spirit underlined by the presence of students; 2) that the subjective perceptions of the parents cannot constitute a violation of Article 2 of Protocol No.1 to the ECHR, because education is a task of the State, which organizes the functioning of the former; 3) that a student's few-days expulsion has a negligible impact on his/her annual program and cannot be regarded as a deprivation of the right to education.

The ECtHR accepted the submissions of the Greek Government and held that there had been no violation of Articles 3 and 9 of the ECHR and Article 2 of Protocol No.1 to the ECHR. The mandatory participation in the October 28 parade does not violate the right of parents to educate their children according to their own perceptions, neither the right of the child to freedom of religious conscience. However, the Court found that “the applicants did not have an effective remedy before a national authority”, meaning that the Greek State failed to provide both families with a legal channel to protect their rights, which included the parents' right to “ensure education and teaching in conformity with their own religious and philosophical convictions” and the child's right to freedom of religion. There had therefore been a violation Article 13 of the Convention in both cases.

5. Thlimmenos v. Greece⁷²

According to the facts of the case, on December 9 1983, Mr Thlimmenos, a follower of the Jehovah's Witnesses doctrine, was convicted by Athens Permanent Army Tribunal (Diarkes Stratodikio) for refusing to be classified in a general mobilization. He later sat a public examination, in June 1988, for the appointment of twelve chartered accountants. Although he came second among sixty candidates, his appointment was refused by the Chartered Accountants Association on the grounds that he had been convicted of a serious crime.

Mr Thlimmenos, appealed to the Supreme Administrative Court (Simvulio Epikratias) on May 8 1989, relying mainly on the right to freedom of religion and equality before the law, as enshrined in the Constitution and the ECHR. He further claimed that he was not accused of a serious crime but of a less serious offence. The Third Chamber of the Supreme Administrative Court, owned the view that Article 10 of Legislative Decree No. 3329/1955 did not provide for the appointment of a chartered accountant to a person who would not qualify for appointment to civil service. In addition, Article 22 (1) of the Code of Civil Servants specifies that no person convicted of a serious crime could be appointed to the civil service. However, it considered that the legislative provision concerned convictions by courts established pursuant to Article 87 (1) of the Constitution. This was not the case with the permanent military courts, because the majority of the members were not professional judges and did not provide the necessary guarantees of independence for the ordinary courts. Consequently, the conviction of the Permanent Army Tribunal should not have been taken into account and the refusal to appoint him a chartered accountant had to be quashed. Finally, the Third Chamber of the Supreme Administrative Court decided to refer the case to the plenary. On the contrary, the plenary of the Supreme Administrative Court ruled that the Association of Chartered Accountants had applied the law on account of the

⁷² Thlimmenos v. Greece, App no 34369/97, Council of Europe: European Court of Human Rights 2000, Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58561%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58561%22]})

applicant's prior conviction. During the plenary session of the Supreme Administrative Court, the Greek Constitution provided that military courts would continue to operate until the enactment of a new law would change their composition. Nevertheless, this law had not been adopted yet.

The plenary then referred the case back to the Third Chamber of the Supreme Administrative Court, which, while initially dissenting, rejected the applicant's position on the ground that the refusal to appoint was not related to his religious beliefs but to the fact that he had committed a criminal offence. Therefore, Mr Thlimmenos faced a problem with his appointment, since his past conviction was a future obstacle to his professional career. Since the Association of Chartered Accountants refused to register him, he could not pursue the profession, since until 1993 only members of the Association could practice that profession.

Mr Thlimmenos appealed to the ECtHR claiming that there had been a violation of Articles 9 (freedom of religion) and 14 (non-discrimination) of the Convention. The Greek Government submitted that the applicant could have avoided the consequences of his conviction by making use of the beneficial arrangements provided for by Article 23 (1) and (4) of Law no. 2510/1997⁷³ for conscientious objectors. However, the applicant claimed that he, as well as many other conscientious objectors, was not informed of the existence of the above legislation.

The Greek Government also argued that the applicant had committed a very serious offence, refusing to be listed as a general conscript. The obligation to serve in the army applies to all male Greek nationals and no exceptions can be made due to religious beliefs or conscientious reasons. The ECtHR considered that the law prohibiting the appointment of a person convicted of a serious crime does not distinguish between those convicted on the grounds of their religious beliefs and those convicted for another reason. The Court also

⁷³ Law no. 2510/1997, which entered into force on 27 June 1997, gives conscientious objectors the right to perform civilian, instead of military, service. Under section 23(1) and (4) of this law, persons who had been convicted of insubordination in the past were given the possibility of applying for recognition as conscientious objectors. One of the effects of such recognition was having the conviction expunged from one's criminal record.

accepted that the applicant's refusal to be appointed a chartered accountant was directly linked to his religious beliefs as one of Jehovah's Witnesses and not to the fact that he did not serve in the army. It also considered that a person's exclusion from the profession of a chartered accountant because of his refusal to serve in the army on religious grounds, serves no purpose. The law should discriminate accordingly the type of crime, the time it was committed and the behavior of the individual per se. The ECtHR stated that the applicant, as one of Jehovah's Witnesses, belonged to a pacifist organization and the reason he did not serve in army, was solely because he believed that his religion prohibited it. He was therefore discriminated in exercising the freedom of his religious beliefs because he was treated in the same manner as any other person convicted of crime, while his own conviction stemmed from the exercise of the right to freedom of religion.

The ECtHR concluded that the Greek Government's refusal to take these parameters into consideration constituted a violation of Article 14 (non-discrimination) in conjunction with Article 9 (freedom of religion) of the ECHR.

6. Serif v. Greece⁷⁴

In 1985 one of the two Muslim religious leaders of Thrace, the Mufti of Rodopi, died. The Greek state then appointed an interim religious leader. When he resigned, Mr M.T, another mufti was appointed. On April 6 1990, President of the Hellenic Republic confirmed the appointment of the new interim mufti. In December 1990, the two independent Muslim Members of Parliament for Xanthi and Rodopi called on the Greek state to carry elections, for the post of Mufti of Rodopi, as the law provided at that time. However, the Greek state did not respond to their request, so they decided to organize the elections themselves, at the mosques on Friday 28 December 1990, after prayers. On 24 December 1990, after a recommendation from the Council of Ministers and pursuant to Article 44 (1) of the Constitution, President of the

⁷⁴ Serif v. Greece, Application no. 38178/97, Council of Europe: European Court of Human Rights 1999, Available at: <https://hudoc.echr.coe.int/eng?i=001-58518>

Hellenic Republic adopted a legislative decree amending the way muftis were appointed. Four days later, Serif was elected mufti of Rodopi by the worshippers. Then, along with other Muslims, he appealed to the Supreme Administrative Court challenging the legality of the appointment of the temporary mufti, which had previously been made by the Greek state.

At the same time, the Rodopi public prosecutor, prosecuted Serif for having usurped the functions of a minister of a "known religion" (Article 175 CC) and for having publicly worn the dress of such a minister without having the right to do so (Article 176 CC). The Court of Cassation, fearing any incidents in Rodopi, ordered the case to be heard in Thessaloniki. Finally, the court found Serif guilty of the offences provided under Articles 175 and 176 of the Criminal Code. Serif appealed, but the Court of Appeal upheld the first-instance verdict by simply reducing the original sentence. He then appealed to the Court of Cassation on the grounds that there was wrong law interpretation by the Court of Appeal. On 2 April 1997 the Court of Cassation dismissed the applicant's appeal.

Having exhausted all remedies before the Greek courts, Serif appealed to the European Court of Human Rights alleging a violation of Articles 6, 9 and 10 of the ECHR. The court also found his appeal admissible and found that Greece had indeed violated Article 9 of the ECHR. The infringement of that article resulted in the applicant being sentenced by the Greek court on the basis of Articles 175 and 176 CC. This conviction amounted to a restriction on his religious freedom (Article 9 (1) ECHR). Further, the ECtHR considered that Serif's conviction by the Greek courts amounted to a restriction on his religious freedom, which was still "prescribed by law" and it pursued a "legitimate purpose", that is, the protection of public order, but the ECtHR considered that his conviction for having usurped the functions of a minister of a "known religion" did not constitute a restriction of religious freedom "necessary in a democratic society". The restriction imposed by the Greek court was deemed not to correspond to an "pressing social need" nor was it "proportionate to the legitimate aim pursued". Although the ECtHR recognized the right of the Greek State to take measures for the general public interest necessary to protect the dignity of religious officials from imminent fraud,

however, in the court's view "punishing a person for merely acting as the religious leader of a group that willingly followed him can hardly be considered compatible with the requirements of religious pluralism in a democratic society".

In the light of the foregoing, the ECtHR held that the intervention of the Greek State in condemning Serif was not justified under the circumstances by an urgent need. Consequently, this intervention was not necessary in a democratic society for the protection of public order and thus Greece was convicted for violation of Article 9 of the ECHR.

7. Canea Catholic Church v. Greece⁷⁵

The case concerns the Roman Catholic Church of the Virgin Mary (Tis Panagias) in Canea, which is the cathedral of the Roman Catholic diocese of Crete. The church was built in the 13th century and has been used as a place of worship since 1879. The building belonged to the Canea Catholic Church by adverse possession (ektakti khrissiktissia).

In June 1987, two neighbors demolished one of its walls and built in their own houses a window facing the church. On 2 February 1988, the church, represented by the abbot, as its legal representative, applied to the Canea District Court, seeking the abolition of her right to own property, the restoration of her former status, on the threat of financial penalty or personal detention in the event of failure to comply with a court order. The two defendants argued that the Catholic Church had no legal personality and was therefore not entitled to legal action. The Catholic Church argued that it had legal personality and was recognized under the Protocol of London of 3 February 1830. The court upheld this claim. However, the defendants appealed against the judgment to the Canea Court of First Instance which quashed the judgment on the ground that, under the above Protocol, was

⁷⁵ Canea Catholic Church v. Greece, Application no. 143/1996/762/963, Council of Europe: European Court of Human Rights 1997, Available at: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-58124"\]}](https://hudoc.echr.coe.int/eng#{)

granted to the bishops of the Roman Catholic Church only spiritual and administrative jurisdiction. Consequently, the acquisition of legal personality was not to be judged on the basis of the above Protocol but on the basis of Greek public law. The Catholic Church then appealed to the Court of Cassation on 14 December 14 1990, which was dismissed on 2 March 1994 on the same grounds.

Having exhausted all legal remedies provided by law, the Catholic Church appealed to Commission, alleging that there had been a violation of Articles 6, 9 and 14 of the ECHR and of Article 1 (1) of the First Protocol. The basis of the appeal concerned the fact that the decision of the Court of Cassation constituted an unfavorable and unjustified change in the established jurisprudence that had prevailed for more than a century and which had not raised the question of the legal personality of the Roman Catholic Church until then. This challenge was alleged by the Roman Catholic Church to be evidence of selective and partial administration of justice, which deprived itself of the right to seek justice in defense of its rights on the sole ground that it served universal faith. On the other hand, the Greek Government argued that the Roman Catholic Church reopened after 1879 while Crete was still under Ottoman rule. For this reason, it could not be considered to have acquired legal personality. The Government also argued that Greek law provided a complete system giving the opportunity to form non-profit associations, associations of persons or companies, so the Roman Catholic Church could have better organized its activities, manage and protect its property, and defend its financial interests more effectively. Consequently, the wrong procedural course followed by the Catholic Church was its own responsibility and could not be attributed to the Greek state. Finally, the Greek Government argued that even the Greek Orthodox Church, which has had a continuous and uninterrupted presence in Greece since the 1st century, was not recognized as an ipso facto legal entity. As to the legal personality of the Israeli community, it was justified by the fact that it is not only a religious organization but also a union people who manage their own affairs and share common thoughts, one of which is religion.

The ECtHR after considering both sides came to the following conclusions: a) That the legal personality of the Roman Catholic Church of the Virgin Mary and its various parish churches have never been challenged by the judicial or administrative authorities. b) That the Church has had been granted exemptions under Greek fiscal law for non-profit institutions and associations. c) The position of the Greek Government which stated that the Catholic Church of Greece had to follow one of the prescribed procedures in order to obtain legal personality, was untenable, since in view of its administrative and judicial practice it was not obliged to know that it might be denied court access in defense of its civil rights in the future. d) That the retroactive movement of the Catholic Church to obtain legal personality under the provisions of the Civil Code, may have caused her serious problems in the various assets she had previously entered into, as well as in the various pending lawsuits. e) That it would be extremely difficult for the applicant to adapt to the structures provided for by the Civil Code. f) That the transfer of the applicant's assets to the new entity would be costly and problematic. g) That the court was not competent to decide on which is the most appropriate form of legal personality (private or public) so as the applicant to be organized accordingly. However, it was competent to decide that there was no objective and reasonable justification for the maltreatment of the Church.

On the basis of the above, the ECtHR held that the Court of Cassation had not merely imposed a sanction for lack of a formal term, as argued by the Greek Government, but had in fact imposed a severe restriction, which obstructed the applicant in the present case and would prevent it from bringing any disputes concerning its property in the future.

As regards to the infringement of Article 9 of the ECHR, the applicant argued that the refusal to recognize the legal personality so that the Church could appeal justice for the protection of its property, even if the present case was not directly linked to the religious activity, jeopardizes the essence of the right to religious freedom and deprives it of any opportunity to appeal to the courts in the event of arbitrary deprivation of property or expropriation. Furthermore, in relation to Article 14 of the ECHR, the applicant had alleged that it was a victim of discrimination based on religion. The Commission accepted this

allegation, finding that a breach of Article 9 of the ECHR had indeed occurred combined with Article 14 of the ECHR, but not Article 9 of the ECHR individually. The ECtHR disagreed with this position and held that there was infringement of the right of access to a judicial body under Article 6 (1) ECHR, as well as Article 6 (1) in conjunction with Article 14 ECHR, but there has been no violation of Article 9 or Articles 9 and 14 of the ECHR or of the First Protocol in conjunction with Article 14 of the ECHR or Article 1 of the First Protocol individually.

8. Stavropoulos and Others v. Greece⁷⁶

The European Court of Human Rights has recently condemned Greece for violating Article 9 of the ECHR, with the judgement of 25 June 2020.

The applicants Nikolaos Stavropoulos, Ioanna Kravari and their daughter Stavroula-Dorothea Stavropoulou are Greek nationals. They live in Oxford.

The couple's daughter was born in 2007 and her birth was registered at the Maroussi registry office. Her name was recorded in her birth certificate and the word "naming" was handwritten next to it in parentheses.

In October 2007, the applicants applied to the Supreme Administrative Court for the annulment of the "naming" note. They argued that it was a reference to the fact that their child had not been baptized and thus revealed their religious beliefs.

Their application was rejected as inadmissible because the disputed handwritten note next to the name of the third applicant merely repeated the wording of the domestic law (Article 25 of Law no. 344/1976), which provided that the civil act of "naming" was the only legal way to obtain a name.

Based on Article 9 (freedom of religion) and Article 8 (right to respect for private and family life), the applicants argued that the notation "naming" in their daughter's birth record implied that she had not been baptized, and that

⁷⁶STAVROPOULOS AND OTHERS v. GREECE - 52484/18 (Judgment : Freedom of thought, conscience and religion : First Section) [2020] ECHR 493 (25 June 2020). (2020). from <https://www.bailii.org/eu/cases/ECHR/2020/493.html>

it was tantamount to interfering with their right not to express their religious beliefs. On the other hand, the Greek Government claimed it was added unintentionally.

The ECtHR found that, although the note could not in itself be regarded as evidence of religious belief or an indication of the absence of a particular religious belief, thus, the addition of the note to the birth certificate, implied that the third applicant was not baptized.

In the observations submitted by the Ombudsman in the context of the use of the word “naming” in birth certificates, it is mentioned a widespread belief by some Greek registry offices, that there were two alternative procedures for obtaining a name, baptism and naming, and that only those who have not been baptized should initiate the naming process.

Indeed, the Court could not understand why it was necessary to mention the word “naming” next to the name of the third applicant, if it were not to distinguish it from something else. This conclusion was further reinforced by the fact that there was a section on the right side of the third applicant's birth record relating to baptism, which in her case had been left blank. Therefore, the relevant Registry office had not mistakenly written the footnote, as claimed by the Government, but instead wanted to point out the way in which the name of the third applicant had been given.

The Court shared the applicants' view that the note “naming” next to the third applicant's name had a special connotation, namely that she had not been baptized and that she had received her name by a civil act.

The Court also considered that the inclusion of this information in such an important and necessary document, i.e for enrollment in the school, had been an interference with the applicants' right not to be obliged to disclose their beliefs, as protected by Article 9 of the ECHR. It could even put them at risk of discrimination in their dealings with the administrative authorities.

For the above reasons the Court unanimously held that there has been a violation of Article 9 of the Convention, as well as held that there was no need

to examine separately the applicants' complaint of breach of their privacy under Article 8.

Conclusion

Freedom of religion or belief is a major conquest for human rights progress and constitutes a fundamental element for a democratic society. In Greece, it is enshrined in the Constitution but also in a series of international and European legal documents that provide wider protection. There is therefore, no question for its legal consolidation. Since the creation of the first independent Greek state, religious freedom was guaranteed by the constitutions and gradually the freedoms provided were expanded. As mentioned in this paper, for certain issues of the daily life of the Greek society which are traditionally performed in the religious way, such as the wedding, the naming, the burial and the oath, the state has long ago provided, civil practices which concern heterodoxy as well as atheists or non-religious people. However, while religious freedom is theoretically protected as well as legally guaranteed, in practice there are many difficulties, due to the poor wording of laws, the preservation of the anachronistic legislation and its incorrect application by the authorities.

This is also evident from the large number of appeals and the numerous convictions of Greece for religious freedom issues by the European Court of Human Rights in Strasbourg, which internationally expose Greece and cause some to argue that religious freedom is violated in Greece.

The Greek state should encourage religious diversity and the freedom of expression of religious beliefs by taking every positive measure for its protection because it has undertaken relevant international legal commitments.

However, it is also a personal responsibility for every individual, state organ or not, regardless of his/her religious or non-religious convictions, to be tolerant and show respect towards diversity.

Finally, it should be noted that Greece has not been convicted of violating the individual right to religious freedom in all of the above cases before the ECtHR. Nevertheless, these cases, made the existing legislation as well as the administrative practice, which promote a distinct favorable treatment of the prevailing religion, go public at a European level. It is true that the Greek state is in general tolerant towards religious freedom. But it is also a fact that it needs to improve its legislation and bring it into line with the ECHR's requirements as well as with the jurisprudence of its institutions.

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