

European Master's Degree in Human Rights and Democratization

Freedom of Religion and the Identity Card Reform in Greece

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Preface

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Encouraging me in whatever I was hoping to achieve, my family believed in my strengths when I did not. Without the true kindness of Dimitris and Georgia, I would not have survived Athens. Finally, I thank Iason who has, for more than two years, endured my moods with patience and enriched my day with humour. He has also acted as my private translator for this thesis. The imperfections of the text are, of course, solely of my doing.

Annex

Freedom of religion has for many centuries been a concern for the Hellenic Republic. Before her independence, centuries of Ottoman occupation have helped to establish the Orthodox Church as a protector of Greek identity. The idea that “being Greek is being Orthodox” has been understood to be widely accepted by the population. However, the country’s religious traditions are diversified by citizens who followed other faiths. This thesis examines how the right to freedom of religion of both the Orthodox and non-Orthodox groups is protected.

It highlights grievances relating to constitutional provisions and administrative practices, such as proselytism and conscientious objection. Its focus then narrows upon a particular controversy. Removing the category of religion from the national identity card was a measure to secure processing of personal data, but it triggered a two-year-long public debate on both the role of the Orthodox Church and the substance of the right to religious freedom. This recent incident serves as an example that reconciling an improved protection of this right with the entrenched values of a peaceful and democratic, yet religiously homogeneous country, is neither a straightforward nor a painless task.

Declaration against Plagiarism

I certify that the attached is all my own work. I understand that I may be penalised if I use the words of others without acknowledgement.

Tanya Moeller

Abbreviations

International and European abbreviations

CRC	The Convention on the Rights of the Child
COECHR	The Council of Europe Commissioner for Human Rights
ECRI	The European Commission against Racism and Intolerance
ECommHR	The European Commission of Human Rights
ECHR	The European Convention on Human Rights and Fundamental Freedoms
ECtHR	The European Court of Human Rights
EEC	The European Economic Community
EU	The European Union
FCNM	The Framework Convention for the Protection of National Minorities
CERD	The International Convention on the Elimination of All Forms of Racial Discrimination
ICCPR	The International Covenant on Civil and Political Rights
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
OECD	The Organisation for Economic Cooperation and Development
OSCE	The Organisation for Security and Cooperation in Europe
GA	The United Nations General Assembly
UN	The United Nations Organisation
UDHR	The Universal Declaration of Human Rights

Greek abbreviations

ND	New Democracy
CEDIME-SE	The Centre for Documentation and Information on Minorities in Europe – Southeast Europe
GHM-MRGG	The Greek Helsinki Monitor and Minority Rights Group Greece
DPA	The Hellenic Republic Authority for the Protection of Personal Data
NCHR	The Hellenic Republic National Commission for Human Rights
ODEP	The Office for Management of Church Property
PASOK	The Panhellenic Socialist Movement
LAOS	The Popular Orthodox Rally

Introduction

Guaranteeing the freedom of religion has been defined as one of the oldest concerns of mankind and became one of the first ambitions of the modern human rights regime.¹ Defying its old age, this right continues to demand the attention of contemporary international and national protection systems. As its substance is a commonly metaphysical world-view that applies to the totality of all things, it may conflict normatively with the social order encompassed by the human rights canon, especially so when it functions as an instrument of fundamentalism, which has destabilised international and domestic politics for centuries.

The right to religious freedom is safeguarded by a number of international instruments, such as the *International Covenant on Civil and Political Rights* (ICCPR) or the *Universal Declaration of Human Rights* (UDHR).² Article 18§1 of the former echoes the shorter Article 18 of the latter by providing that

“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 or teaching”.

Religious freedom consists of the internal freedom to hold a faith and the external freedom to manifest it. Both freedoms are violated on a daily basis. The external freedom is frequently restricted by discriminatory practises by the State administration or other public sectors. The internal freedom is threatened by public emergencies and coercive governmental efforts at changing religious beliefs, but also State failures to provide adequate protection from unofficial perpetrators which often target specifically women.³ Fundamentalist demands for an enforced religious conformity are especially damaging, as they lack tolerance towards different faiths and oppose the liberal understanding of man as an autonomous human being,

¹ M.D. Evans, “The Evolution of Religious Freedom in International Law: Present State Perspectives” in J-F. Flauss (ed.), *International Protection of Religious Freedom*, Bruylant, Brussels, 2002, pp. 15-56.

² UDHR, GA resolution 217 A (III), 10 December 1948 and ICCPR, GA resolution 2200 A (XXI) of 16 December 1966.

³ B. Tahzib-Lie, “Interdiction of Religious Discrimination, Problems that Members of Minority Religions and Belief Communities Experience in the Exercise of their Freedom of Religion or Belief” in J-F. Flauss (ed.), *International Protection of Religious Freedom*, Bruylant, Brussels, 2002, pp. 57-91.

endowed with innate dignity and free will.⁴ Violations of religious freedom may not only jeopardise related human rights, but also a peaceful social order. The preamble to the 1981 *UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* states that

“the disregard and infringement of human rights...in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations”.⁵

Protecting the right to religious freedom, to the contrary, can ensure that each individual may live according to his religious conviction in the context of a pluralistic society. The European Court of Human Rights (ECtHR) ruled that “freedom of thought, conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the [European] Convention [of Human Rights].”⁶

Bearing these arguments in mind, it would be to the interest of world peace and to the welfare of national societies if the international community protected this freedom fully. This thesis maintains that two preconditions must be fulfilled before the ideal situation, in which various religious beliefs may coexist without suffering from any kind of discrimination, can come into existence. Firstly, freedom of religion will have to be legitimised as regards to its content on the national level of the country concerned. Legitimation here would mean that the legal provisions, which go to make up the concept of this freedom, will have to be accepted by domestic law and policy makers as well as other affected elements of the public sphere. In essence, all levels of society will have to tolerate the new legal order brought about by the prescription of religious freedom.

Secondly, following a normative acceptance of the laws in question, a satisfactory implementation is required to prevent them from being empty textual standards. The administration of justice is now burdened with the responsibility to establish new guidelines in its case-laws on this matter, but also non-judicial institutions of the public sector, such as the police, the media and all governmental authorities, will have to readjust. It goes without saying that both preconditions

⁴ C. Evans, *Freedom of Religion under the European Convention of Human Rights*, Oxford University Press, Oxford, 2001, pp. 18-33.

⁵ *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA resolution 36/55 of 25 November 1981.

⁶ ECtHR, *Case of Kokkinakis v. Greece*, Judgement of 25 May 1993, Series A no. 260-A, §31.

demand an immeasurable amount of transformations of the social, legal and political order in the country, which is likely to trigger popular opposition.

Despite such problematic obstacles, a number of States have a comparatively good record of protecting the freedom of religion, especially those on the European continent. As has been argued, this region has unusually sophisticated human rights protection mechanisms, which in turn set good examples for regional developments elsewhere in the world, not least because of the ECtHR.⁷ According to this Court, the *European Convention on Human Rights and Fundamental Freedoms* (ECHR) has been “a constitutional instrument of a public European order”. Together with other structural elements such as the European Union (EU), the *ECHR* has helped to create a situation in which domestic laws were voluntarily subjected to a process of permanent judicial harmonisation in the sector of human rights, whose basic tenets are maintained by supranational organisations.⁸

The Hellenic Republic is a beneficiary of such European human rights mechanisms. She will serve this thesis as a case-study for analysing how freedom of religion may be legitimised and implemented in a country that is both fully democratic and benefits from a unique heritage. Centuries of following the Orthodox faith have allowed Greece to follow a path of social and cultural development different to other European countries. She was the first Orthodox member of the European Community.⁹ In addition to this religious difference, she is placed at an interesting geographical cross-roads, which raised questions whether she would be “a part of Europe, the Balkans, the Mediterranean, or perhaps a synthesis of these political and cultural units”.¹⁰ Such factors are likely to influence popular reactions to the protection of religious freedom especially remembering that, according to the figures of the Council of Europe Commissioner for Human Rights (COECHR), Mr

⁷ M.D. Evans, *Religious Liberty and International Law in Europe*, Cambridge University Press, Cambridge, 1997, p. 3.

⁸ S. Perrakis, “La Déclaration Universelle des Droits de l’Homme et l’Instauration d’un Ordre Public Européen dans le Domaine des Droits de l’Homme” in *Tous Concernés, L’Effectivité des la Protection des Droits de l’Homme 50 ans après la Déclaration Universelle, Colloque Régional Européen, organisé par le Conseil de l’Europe en tant que Contribution à la Déclaration Universelle des Droits de l’Homme et à l’évaluation en 1998 de l’Application de la Déclaration et du Programme d’action de Vienne*, Editions du Conseil d’Europe, Strasbourg, 1998, pp. 53-63 and P. Rolland, “Ordre Public et Pratiques Religieuses” in J-F. Flauss (ed.), *International Protection of Religious Freedom*, Bruylant, Brussels, 2002, pp. 231-271.

⁹ R. Clogg, *A Concise History of Greece*, Cambridge University Press, Cambridge, 1992, pp.1-6.

¹⁰ D. Conostas, T.G. Stavrou, *Greece Prepares for the Twenty-First Century*, The Woodrow Wilson Centre Press, The John Hopkins University Press, Washington D.C., Baltimore and London, 1995, p. 4.

Alvaro Gil-Robles, about 900,000 people are immigrants, or about 10% of a population which is approximately 95-97% Orthodox.¹¹ Greece therefore presents an excellent opportunity to study how the provisions guaranteeing freedom of religion could be effectively reconciled with the traditions and values of a peaceful and developed democracy, which has a distinct national identity and has been called “the most religiously homogeneous society of Europe”.¹²

At the outset, this thesis will consider the legal framework to freedom of religion in Greece by looking at which international obligations she is subjected to. This factual summary will be followed by a short historical analysis why the regulations on religious freedom are divided between those for the Orthodox Church on the one hand, and minority religions on the other. An explanation may be found by looking at centuries of Ottoman occupation and the role of the Orthodox Church for the survival of the Greek nation and in efforts of nation-building.

Secondly, this thesis will turn towards the status of other religions in Greece. The government recognises only one religious minority, the Muslim minority in the province of Thrace.¹³ Nevertheless, this thesis will employ in a non-official meaning the term “religious minorities” to describe the non-Orthodox communities, who have been a vital contribution to her cultural diversity, because they only number to almost 5% of Greece’s population. For example, Christian, Muslim and Jewish traditions have flourished in Greece for centuries, and also religions such as Jehovah’s Witnesses and even the controversial Scientologists are present in Greece today. Legal provisions regulating the rights and freedoms of these denominations will be examined before this thesis will outline what allegations of discrimination the State and other actors have been the target of.

Against this background, this thesis will analyse a more specific issue of religious freedom in Greece, namely the recent controversy surrounding the government’s decision to remove, upon being so advised by an independent public

¹¹ Idem, p. 5 and Council of Europe, Office of the Commissioner for Human Rights, *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the Hellenic Republic, 2-5 June 2002*, CommDH(2002)5, Strasbourg, 17 July 2002, p. 4 and p. 10.

¹² N.C. Alivizatos, “A New Role for the Greek Church?” in *Journal of Modern Greek Studies*, vol. 17, 1999, p. 24.

¹³ S. Stathopoulos, A. Catranis, E. Lambrou, *A Global View of Foreign and Security Policy*, The Hellenic Republic, Ministry of Press and Mass Media, Secretariat General of Information, Oertel Druck, Andernach, 1999, p. 80.

authority, the category of religion from the national identity card. This step meant to streamline current Greek provisions with European Union legislation to protect individuals with regard to the processing of personal data. With the help of empirical information taken from interviews, statements and reports, this thesis hopes to render a balanced account of the conflicting opinions on the new identity card. Welcomed by a number of organisations as helping to prevent discrimination on the basis of religion, it will be shown that the majority of the Greek population opposed the reform not least because it was transformed by public debate into a matter that affected the very essence of Greece's national identity. Moreover, the opposition of the Orthodox Church defined the issue as a moment of showdown with the government. By analysing these events, this recent controversy will illustrate what kind of obstacles and opportunities present themselves to Greece, in wishing to legitimate and implement freedom of religion effectively.

Part One

Freedom of Religion in Greece: A General Approach

Chapter 1: The Legal Framework of Freedom of Religion in Greece

1.1 International and Regional Instruments

Greece has signed and ratified a number of important legal instruments both on the international and regional political level, which help to regulate the protection of freedom of religion. However, the relevance of these provisions for domestic law-making was only officially recognised with the 1975 Constitution, since its 1952 equivalent did not allow international treaties to supersede domestic legislation. Article 2§2 of the 1975 constitution, as revised in 1986 and 2001, stipulates that Greece adheres to the “generally recognised rules of international law” and Article 5§2 singles out international law as the only authority allowed to make exceptions to the absolute protection of life, honour and liberty for all persons.¹⁴ Most important is Article 28, whose first paragraph states that

“the generally recognised rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law. The rules of international law and of international conventions shall be applicable to aliens only under the conditions of reciprocity.”¹⁵

It has been argued that according to this provision, the supremacy of the treaty is conditional upon it being in force, being approved by law, and being subject to an assessment of conflict with domestic legislation. If this conflict is established, the courts will only retain the rule of supremacy after the fulfilment of certain conditions. It is fortunate that the principle of reciprocity does not apply to multilateral treaties guaranteeing human rights.¹⁶

More than twenty-five instruments ensure the protection of religious freedom, to which Greece is a State party, both international ones such as the *UN Convention for the Abolition of any Racial Discrimination*, and regional ones such as the *Final Act of*

¹⁴ K. Ioannou, "Greece" in R. Blackburn, J. Polakiewicz (eds.), *Fundamental Rights in Europe, The European Convention of Human Rights and Its Member States, 1950-2000*, Oxford University Press, Oxford, 2001, pp. 355-359.

¹⁵ D.T. Tsatsos, X.I. Contiades, *The Constitution of Greece 1975/86/2001, Comparative Approach of the Constitutional Revision*, Ant. Sakkoulas Publishers, Athens, Komotini, 2001.

¹⁶ K. Ioannou, "Greece", op.cit., pp. 355-359.

Helsinki of the Organisation for Security and Cooperation in Europe (OSCE).¹⁷ This thesis can only examine a select few, observing at the outset that religion is cited repeatedly as one ground on which discrimination and denial of the enjoyment of rights and freedoms may not occur. One example is the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), which was ratified by Greece in 1985 and which demands in Article 2§2 that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kinds, such as...religion”.¹⁸ The same principle applies “to each child within their jurisdiction”, according to Article 2§2 of the *Convention on the Rights of the Child* (CRC), “irrespective of the child’s or his or her parent’s or legal guardian’s...religion”.¹⁹ Even more weight has been attached to this notion by Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD), which was ratified by Greece as early as 1970.²⁰

With a delay of almost twenty years after coming into force, Greece finally ratified the *ICCPR* in 1997.²¹ Apart from a provision that echoes Article 2§2 of its sister covenant, this instrument has a number of provisions beneficial for the protection of religious freedom. Article 8§3 outlines that “forced or compulsory labour” may not include military service or national service in countries where conscientious objection is recognised, and Article 18 states that “everyone shall have the right to freedom of thought, conscience and religion”, as mentioned above.

An essential European instrument is of course the *ECHR*. It contains a non-discrimination principle in Article 14, which prescribes that “the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as...religion”. The limitation of this clause to the rights and freedoms of the *ECHR* resulted in the opening for signature of Protocol 12 in November 2000. Advocated by various bodies of the Council of Europe since the 1960s, this additional instrument broadens the jurisdiction of the ECtHR by securing “any right set forth by

¹⁷ GHM-MRGG, *Religious Freedom in Greece, September 2002*, <http://www.greekhelsinki.gr>, pp. 3-4.

¹⁸ P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, Ant. N. Sakkoulas Publishers, Athens and Komotini, 2000, p. 41 and ICESCR, GA resolution 2200 A (XXI) of 16 December 1966.

¹⁹ CRC, GA resolution 44/25 of 20 November 1989.

²⁰ P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, op.cit., p. 41 and CERD, GA resolution 2106 A (XX) of 21 December 1965.

²¹ P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, op.cit., pp. 40-43 and ICCPR, GA resolution 2200 A (XXI) of 16 December 1966.

law” from discrimination on a number of grounds including religion, as expressed in its first article.²²

Similar to the *ICCPR*, the *ECHR* also focuses on religious freedom specifically, as the first paragraph of Article 9 states that

“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, practise and observance.”

The second paragraph spells out which limitations to this right are allowed:

“Freedom to manifest one’s religion or beliefs 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.”

Finally, Article 2 of Additional Protocol 1 prescribes that the State must “respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”. Greece added a reservation to this provision when it ratified the *ECHR* in 1974 but lifted this restriction in 1985, with a retrospective application since January 1984.²³

Repeatedly, Greece was called to defend herself before the ECtHR against allegations of having violated provisions relating to religious freedom. The court’s judgements had a significant influence on shaping her domestic judicial traditions, not least due to their binding character. It is therefore relevant that this thesis will examine at a later stage the case-laws that have developed since Greece recognised the right of individual petition in 1985.²⁴

Concerning other instruments of the Council of Europe, Greece has signed but not ratified the *Framework Convention for the Protection of National Minorities* (FCNM), adopted in 1995. Article 6 prohibits discrimination “as a result of...religious identity” and obliges the State to “encourage a spirit of tolerance...amongst all persons living on their territory, irrespective of...religious identity, in particular in the

²² N. Frangakis, “The Prohibition of Discrimination in the Case-Law of the European Court of Human Rights and Protocol 12 to the European Convention on Human Rights” in M. Gavouneli, V. Kyriakopoulos (eds.), *Olympia II: Human Rights in the Twenty-First Century, Proceedings of the Second Annual Human Rights Education Programme for Southeastern Europe*, Ant.N. Sakkoulas Publishers, Athens, Komotini, 2002, pp. 153-177.

²³ *Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention*, 1952.

²⁴ I. Kraterou, “Greece“, op.cit, p. 357.

field of education, culture and the media”. Article 8 provides that “every person belonging to a national minority has the right to manifest his or her religion or belief” and to establish institutions or associations of this nature.²⁵ The delay at ratifying the *FCNM* could be explained with the fact that Greece recognises only one minority, the Muslim community in Thrace.²⁶ Its rights and freedoms are legally secured by the 1923 *Treaty of Lausanne*, which will be given greater attention below.²⁷

Greece undoubtedly established herself throughout the last fifty years as firmly committed to the protection of human rights. Her efforts of adhering to international human rights treaties would have been more successful, however, if the process of democratic consolidation had not been interrupted by seven years of military dictatorship, which attempted to defend the “Hellenic-Christian civilisation” against secular influences from the West.²⁸ In these efforts, the military junta violated human rights protection mechanisms with the help of a “brutal and efficient security apparatus”.²⁹ Despite proclaiming a “public emergency threatening the life of the nation” to save face, the junta was soon compelled to denounce the Council of Europe Statute to avoid a humiliating expulsion, following the ECtHR finding grave violations of several *ECHR* articles.³⁰ However, many international instruments were re-enacted when a democratic civilian government returned in 1974 and the mastermind of the 1967 coup d’état spent his remaining life in prison.³¹ Even though Greece had never denounced the *ECHR* domestically, she – as the only member of the Council of Europe to do so – approved it for a second time but without another ratification, but this irregularity was not regarded as a problem.³² Her entry into the European Community in 1981 removed any doubts that could have remained regarding her credibility.³³ The era of dictatorship was overcome by a political tradition of democracy, human rights and international cooperation.

²⁵ *FCNM*, Strasbourg, 1 February 1995.

²⁶ S. Stathopoulos, A. Catranis, E. Lambrou, *A Global View of Foreign and Security Policy*, p. 80.

²⁷ P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, op.cit, p. 45.

²⁸ R. Clogg, *A Concise History of Greece*, op.cit, p. 160.

²⁹ Idem, pp. 161-163.

³⁰ K. Ioannou, “Greece”, op.cit, p. 356.

³¹ Idem, p. 357 and R. Clogg, *A Concise History of Greece*, op.cit, p. 235.

³² K. Ioannou, “Greece”, op.cit, p. 357.

³³ P.C. Ioakimidis, “Greece in the European Union: The ‘Maverick’ Becomes an ‘Orthodox’ Member State” in *Hellenic Studies*, no. 2, vol. 5, 1997, pp. 121-134.

1.2.The domestic legal order

Before a descriptive analysis of the domestic legal order relating to the freedom of religion in Greece can be undertaken in greater detail, it is useful to provide an appropriate context by presenting some historical and cultural observations. As already stated, more than ninety percent of Greek citizens declare themselves, at least nominally, as followers of the Orthodox faith.³⁴ This figure illustrates a unique religious but also social and cultural feature of private and public Greek life.

Greece has for many centuries followed a path different from the mainstream history of her European neighbours. A decisive cause of this historical originality resides in the fall of Constantinople in 1453 and the consolidation of the Ottoman empire on Greek lands. Useful for the survival of the Orthodox and other faiths was the establishment of a ruling system which categorised popular groups according to their religious confessions. Besides the Muslim *millet*, the Orthodox equivalent was not only the second largest of these groups but also identified by the Ottoman Turks as being Greek, also because the ecumenical patriarch of Constantinople was so.³⁵

Arguably, the Orthodox Church contributed to Greece bypassing the far-reaching developments caused by Western European Enlightenment. Not only was Greece politically absorbed by her subjugation to the Ottoman empire, but also the unique Orthodox conceptions of man were wholly contrary to a process of rationalisation of the world. According to Adamantia Pollis, “there is no recognition of individual personality” in Eastern Orthodoxy, because human beings are “interchangeable parts of the mystical unity of the religious community, the *Ekklesia*”. Already centuries before the Enlightenment occurred, Latin Christian philosophers like Thomas Aquinas would search for God’s laws of nature with the help of reason but Eastern Orthodoxy would reinforce spirituality.³⁶ While “Western theology understood dogma mainly through logic and reasoned thought”, Anthony-Emil Tachiaos explains, “the Orthodox Fathers understood it through personal mystical experience”.³⁷

³⁴ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the Hellenic Republic, 2002, p. 4.

³⁵ R. Clogg, *A Concise History of Greece*, op.cit, pp. 7-9.

³⁶ A. Pollis, “Eastern Orthodoxy and Human Rights” in *Human Rights Quarterly*, vol. 15, 1993, pp. 340-345.

³⁷ A-E. N. Tachiaos, “Europe’s Encounter with the Athonite Tradition” in A-E.N. Tachiaos (ed.), *Mount Athos in Hellenic Public Law*, Institute for Balkan Studies, Thessaloniki, 1993, p. 102.

Both *millet* system and Eastern Orthodox mysticism helped to avert the influences of Enlightenment and consequent political upheavals. Of course, many Western-educated Greek elites, such as those who participated in the revolution against the Ottoman Turks from 1821 onwards, sought to establish Western-type institutions.³⁸ However, these ambitions were exceptional in the overall historical development. A popular revolution against religious faith or religious institutions has never occurred, whereas pious views of the Orthodox Church as the saviour of the Greek nations during centuries of Latin and Ottoman Muslim rule have prevailed as it embodied and protected Greek identity at a time when foreigners could have enforced political and cultural assimilation. Concerning the 1821 Revolution, the church is regarded as having welcomed the struggle for freedom and independence for the benefit of the nation.³⁹ Some historians claim controversially that popular sovereignty and the temporal nation-State were anathema to the Orthodox Church at the time, but the conception that the church actively fought for Greek independence since 1453 has prevailed until today.⁴⁰ Either way, in facts or in collective memory, “the Orthodox Church has always played a key role in preserving the country’s Hellenic and Christian heritage.”⁴¹

The notion of an Orthodox national history, together with the unusually high percentage of citizens who declare themselves to belong to this faith, no doubted causes wide-spread sentiments that “being Greek is being Orthodox”. As the European Commission against Racism and Intolerance (ECRI) noted, “Greece is a fairly homogeneous country in which a very high proportion of the population are of Greek ethnic descent and practise the Greek Orthodox religion. The notion of ‘hellenism’, or a strong Greek national identity, has historically been emphasised and continues to influence modern Greek society”.⁴² It is therefore not surprising that

³⁸ R. Clogg, *A Concise History of Greece*, op.cit, p. 37.

³⁹ J.S. Koliopoulos and T. M. Veremis, *Greece: The Modern Sequel, From 1831 to the Present*, Hurst and Company, London, 2002, pp. 141-145, P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, p. 16 and A. de Raulin, “Le Mont Athos et La Liberté Religieuse en Grèce” in *Mélanges Raymond Goy, Du Droit Interne au Droit International, Le Facteur Religieux et l’Exigence de Droits de l’Homme*, University of Rouen, Rouen, 1998, pp. 237-238.

⁴⁰ J.S. Koliopoulos and T. M. Veremis, *Greece: The Modern Sequel*, op.cit, pp. 141-145.

⁴¹ *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000, A Report Prepared by the Law Library, Library of Congress, at the Request of the Commission of Security and Cooperation in Europe*, 106th Congress, 2nd Session, Washington, 2000, p. 5.

⁴² ECRI, *ECRI’s Country-by-Country-Approach: Greece*, Strasbourg, 1997, CRI (97)52, p. 5.

Greece is “the only Orthodox country in which official State recognition of the church continued uninterrupted throughout the twentieth century”.⁴³

Following the line of reasoning that “the cultural roots of both Byzantine and modern Hellenism cannot be separated from Orthodoxy”, the constitutions of the mid-19th century revolutionary period established the Eastern Orthodox Church as the “prevailing” religion.⁴⁴ Article 3§1 of the 1975/1986/2001 Constitution repeats this provision. Questions arise whether an obstinate insistence on the universal validity of human rights, especially the right to freedom of religion, would not do injustice to the religious and cultural quality of modern Greek society.

However, these questions can be silenced by the observation that the Hellenic Republic is signatory and staunch supporter of the human rights regime, as spelled out by international agreements listed above. She is therefore obliged to fulfil her self-imposed responsibilities. She is also bound to Article 13 of Constitution 75/86/01, which guarantees religious freedom by stating that “freedom of religious conscience is inviolable” and that “the enjoyment of civil rights and liberties does not depend on the individual’s religious beliefs”.

Moreover, these questions can be confronted with the empirical recognition that Greece currently experiences profound changes in her social architecture. Firstly, the notion that “being Greek is being Orthodox” is not wholly factually correct because a small percentage of Greek citizens belong, and have belonged in cases for centuries, to non-Orthodox denominations such as Old Calendarists, Catholics, Muslims, Jews, evangelicals and Jehovah’s Witnesses.⁴⁵

Secondly, Greece has politically and socially undergone a process of greater foreign involvement, caused by, for example, more than twenty years of belonging to the European Community and the European Union, the jurisdiction of the ECtHR, the rapprochement with Turkey, the greater role in the Balkans after the fall of Yugoslavia, the preparation for the upcoming Olympic Games and the steady stream of both legal and illegal immigration unusual for a country traditionally associated with emigration.⁴⁶ Non-European nationals make up around 8% of the population and

⁴³ D. Conostas, T.G. Stavrou, *Greece Prepares for the Twenty-First Century*, op.cit, pp. 35-36.

⁴⁴ Ch. K. Papastathis, “The Hellenic Republic and the Prevailing Religion” in *Brigham Young University Law Review*, no. 4, vol. 1996, 1996, pp. 815-853.

⁴⁵ The United States of America, Bureau of Democracy, Human Rights and Labour, *Greece, International Religious Freedom Report*, 2002, Section 1.

⁴⁶ P.C. Ioakimidis, “Greece in the European Union: The ‘Maverick’ Becomes an ‘Orthodox’ Member State”, op.cit, pp. 121-134 and R. Clogg, *A Concise History of Greece*, op.cit, p. 204 and pp. 232-238.

15% of the workforce. Both this influx and the association of Greekness with Orthodoxy can easily “engender a sense of insecurity which may, if not checked, lead to excessive ethnocentrism and a climate of mistrust of ‘otherness’”.⁴⁷

A country that is seen abroad as a guardian of Orthodoxy and at the same time undergoing many social and cultural transformations, the Hellenic Republic is for all these reasons a relevant and interesting case for examining how freedom of religion is protected.

Chapter 2: The Position of the Orthodox Church in Greece

The previous sections outlined the international and regional obligations of the Hellenic Republic to the protection of religious freedom and illustrated the popular conception of the Orthodox Church having a historical mission for the Greek nation. In this context, this thesis will examine the laws on freedom of religion in detail. Like its predecessors, the Constitution 75/86/01 has divided the provisions to the Orthodox Church and those pertaining to other religions. Similarly, this analysis will first focus on the regulations pertaining to the church before turning to the laws for other denominations.⁴⁸

2.1. Article 3§1 of Constitution 75/86/01

This paragraph describes that the Orthodox Church is united with all other Orthodox Churches, administers its own affairs and is autocephalous. In this regard, the Constitution 75/86/01 echoes all its predecessors since 1844.⁴⁹ Article 3§1 reads in full:

“The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in

⁴⁷ ECRI's *Country-by-Country Approach: Greece*, op.cit, p. 5 and *Athens News*, 07 March 2003.

⁴⁸ Ch.K. Papastathis, “The Application of Religious Laws in the Hellenic Republic” in *Revue Hellénique de Droit International*, vol. 1, 1998, p. 37.

⁴⁹ Idem, p. 37.

compliance with the provisions of the Patriarchal Tome of June 29, 1850 and the Synodal Act of September 4, 1928.”

The 1850 *Tome* refers to a settlement allowing the church to ordain new metropolitans, which was made possible by an official recognition of her “canonical union” with the “Mother church” in Constantinople, as the Ecumenical Patriarch’s spiritual domain had been significantly limited during the revolutionary period by the Greek church.⁵⁰ For this reason, the Patriarch endowed the church with an autocephalous, or independent status. Her administration covers a number of districts, such as Crete, the Dodecanese and Mount Athos. In addition, the New Lands were incorporated as a district during the 1912-1913 Balkan Wars, having formerly belonged to the Patriarch. Consequently, the 1928 *Synodal Act* entrusted these territories officially to the Greek church.⁵¹

The 1850 *Tome* was a result of difficult negotiations. It recognised the 1833 settlement between the new Greek political and ecclesiastical bodies, which followed the creation of the Greek State in 1830 by the *London Protocol*. The establishment of an autocephalous church by Bavarian representatives of the new Greek king, the under-aged Otto of Wittelsbach, was harmonised with the provisions of Orthodox canon law by the 1850 *Tome*.⁵² Part of the autocephalous status was the institution of the Orthodox Holy Synod and the ecclesiastical acceptance of a considerable degree of government control by recognising King Otto.⁵³ The Constitution 75/86/01 is the first of all to establish both *Tome* and *Act* in its provisions, but the rulings of the Council of State restricted the authority of these agreements as sources of law, with the result that the autocephalous freedom of the church remains limited.⁵⁴

An important supervising agency of the State over the church is the Ministry of Education and Religious Affairs, which was established in 1833, but its most recent authority derives from a presidential decree of 1987. Both the Department of Ecclesiastical Administration and the Department of Ecclesiastical Education and Religious Instruction are relevant to the daily affairs of the Orthodox Church.

⁵⁰ J.S. Koliopoulos, T.M. Veremis, *Greece: The Modern Sequel*, op.cit, pp. 145-147.

⁵¹ Ch.K. Papastathis, “The Hellenic Republic and the Prevailing Religion”, op.cit, pp. 815-853 and P. Foundethakis, “Religion and Constitutional Culture in Europe” in *Revue Hellénique du Droit International*, 2000, p. 239.

⁵² Ch.K. Papastathis, “The Hellenic Republic and the Prevailing Religion”, op.cit, pp. 815-853.

⁵³ J.S. Koliopoulos, T.M. Veremis, *Greece: The Modern Sequel*, op.cit, p. 141, R. Clogg, *A Concise History of Greece*, op.cit, pp. 43-49 and P. Foundethakis, “Religion and Constitutional Culture in Europe”, op.cit, p. 239.

⁵⁴ Ch.K. Papastathis, “The Hellenic Republic and the Prevailing Religion”, op.cit, pp. 815-853.

Together, they oversee the lawful implementation of constitutional and other legal provisions, supervise the administration of the church, the expropriation of land to build or renew ecclesiastical buildings, appoint and finance staff of Orthodox education and preachers, and in addition, they organise large-scale financial collections.⁵⁵

According to Law 590/1977 or the *Statutory Charter of the Church of Greece*, both State and church are interdependent. Article 2 prescribes that they must cooperate on a number of common interest issues, such as raising the younger generation to Christian values, providing religious services in the armed forces, promoting marriage and family, and establishing new religious holidays.⁵⁶ As the church enjoys the status of being a legal entity of public law, its self-governance is limited but it benefits from direct financial government subventions and privileges, such as tax exemptions. Orthodox clergy are public employees, therefore the State offers employment, health and pension benefits and other services as outlined above.⁵⁷

A second important governmental department relevant to matters pertaining the Orthodox Church is the Ministry of Foreign affairs, whose Directorate of Ecclesiastical Affairs carries the task of “supervision, study and recommendation” of issues of Orthodox but also other Christian churches outside Greece. It also oversees Orthodox Divinity Schools, Ecclesiastical Centres and clergy who are located abroad. In addition, Law 2594/1998 provides that it would attend to the relations of the State with the Ecumenical Patriarchate, other patriarchates and other autocephalous churches.⁵⁸

According to the first sentence of Article 3§1, the Orthodox Church enjoys a prevailing (επικρατούσα) status. A literal reading may understand this as a prescription that the church ought to be the prevailing religion in Greece, implicating

⁵⁵ J.S. Koliopoulos, T.M. Veremis, *Greece: The Modern Sequel*, op.cit, p. 141, P. Veglérís, "Quelques Aspects de la Liberté de Religion en Grèce" in *Revue Trimestrielle des Droits de l'Homme*, vol. 24, 1995, p. 558, Ch.K. Papastathis, "The Hellenic Republic and the Prevailing Religion", op.cit, pp. 815-853 and *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, op.cit, p. 66.

⁵⁶ *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, p. 56.

⁵⁷ Idem, p. 56 and P. Foundethakis, "Religion and Constitutional Culture in Europe", op.cit, p. 240 and N.C. Alivizatos, "Issues of Religious Freedom in Greece", in M. Vassiliou, H.J. Psomiades (eds.), *Human Rights in the Twentieth Century, Proceedings of the First Annual Human Rights Education Programme in South-Eastern Europe*, Ant. N. Sakkoulas Publishers, Athens, Komotini, 2001, p. 228.

⁵⁸ *Religious Liberty in Selected OSCE Countries, May 2000*, op.cit, p. 66.

that all her citizens should homogenously belong to this institution. However, the current interpretation finds “prevailing religion” to indicate a mere recognition that almost all Greeks adhere to the church, without wanting to make a specific religious prescription.⁵⁹

Recognising the prevailing status of the church is reflected in a number of other provisions of the Constitution 75/86/01. The preamble expresses that it was resolved by the Fifth Revisionary Parliament of the Hellenes “in the name of the Holy and Consubstantial and Indivisible Trinity”. In line with the same sentiment, Article 59 requires that parliamentary deputies take an oath “in the name of the Holy Consubstantial and Indivisible Trinity” but individuals of “a different religion or creed” are allowed to alter this provision accordingly.

However, Article 33 does not offer the possibility of replacing the identical oath for the President of the Republic. Criticism has been mounted against what is perceived as a restriction of the president to an Orthodox individual.⁶⁰ However, a number of arguments explained this difference with the “theological ignorance of the drafters of the constitution” and argued that the oath “does not exclude the possibility of an exception” as this would entail violations of other constitutional provisions, such as Articles 4 and 13 dealing with equality before the law and freedom of religion.⁶¹ A member of the Council of State, Greece’s highest administrative supreme court, argued in 1975 that this only applied to the incumbent president but could be changed if a non-Orthodox president appeared.⁶² Unfortunately for the sake of his argument, Greece has not yet enjoyed the occasion of proving him correct, as all presidents since were Orthodox.

As a prevailing religion, the Orthodox Church is in legal terms recognised as the official religion in Greece.⁶³ The current system pertaining to the arrangements between the Greek State and the Greek Orthodox Church applies the “state-law rule” system or the institution of a *Staatskirche*.⁶⁴ This is not unusual in comparison with

⁵⁹ N.C. Alivizatos, “A New Role for the Greek Church?”, op.cit, pp. 25-26 and A.N. Marinos, “Greece’s New Constitution” in *Liberty, A Magazine of Religious Freedom*, no. 6, vol. 71, 1976, p. 17.

⁶⁰ GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p.11 and P. Vegléris, “Quelques Aspects de la Liberté de Religion en Grèce”, op.cit, p. 557.

⁶¹ Ch.K. Papastathis, “The Hellenic Republic and the Prevailing Religion”, op.cit, pp. 815-853 and P. Naskou-Perraki, *The Legal Framework for Religious Freedom in Greece*, op.cit, pp. 26-27.

⁶² A.N. Marinos, “Greece’s New Constitution”, op.cit, p. 17.

⁶³ GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p.11.

⁶⁴ P. Foundethakis, “Religion and Constitutional Culture in Europe”, op.cit, p. 239.

other European provisions.⁶⁵ Indeed, Penelope Foundethakis draws useful categories, according to which European States have accommodated churches: firstly, States with an established church such as the United Kingdom and Greece, secondly, States supporting a specific church such as Ireland and Poland, thirdly, States with quasi-separation such as Germany, Spain and Italy, and finally, States with full separation like France and Switzerland. Even though these classifications reveal that European countries have weakened or disestablished dominant churches, it is clear that the constitution of Greece by no means makes her an outsider.⁶⁶

In conclusion, the Orthodox Church enjoys a clearly defined legal position, both through constitutional and other public authoritative provisions which tie the church closely to the Greek State. One distinguished academic recognises a “structure of a state agency” for the church, which suffers from a “number of handicaps...to the fulfilment of its mission”. However, the “many and various forms of interdependence” also created unpleasant consequences for the State because “the system of relations that was instituted in 1833 cannot function smoothly”.⁶⁷ State intervention has not only beneficial consequences, as the following section will demonstrate.

2.2. Problems of State intervention and the Complaint of the Orthodox Church

Two cases have been lodged against Greece before the ECtHR by legal Orthodox entities, claiming violations of religious freedom: the first one concerned a number of monasteries whose property ownership came into question, the second one involved a group of individuals who protested against the new identity card, which will be dealt with at a later stage in this thesis.

The case of the *Holy Monasteries v. Greece* can be interpreted as an occasion of conflict where the State interfered with the Orthodox Church, specifically with property. It is the latest of governmental attempts at expropriating real estate, as already after the 1833 arrangement, the enough lands were confiscated to reduce 412

⁶⁵ N.C. Alivizatos, "A New Role for the Greek Church?", op.cit, p. 26.

⁶⁶ P. Foundethakis, "Religion and Constitutional Culture in Europe", op.cit, pp. 227-275.

⁶⁷ Ch.K. Papastathis, "The Hellenic Republic and the Prevailing Religion", op.cit, p. 815-853.

monasteries to 148 one year later.⁶⁸ Law 1700/1987 changed a 1930 arrangement, by which the Office for Management of Church Property (ODEP) administered church property and related matters.⁶⁹ The majority of board members would now be appointed by the government rather than by the Holy Synod, and all property would taken from the monasteries unless they could produce a register of ownership or a court decision in their favour within six months.⁷⁰

On the latter issue, Law 1811/1988 ratified an agreement in which most monasteries agreed to make parts of their lands available in return for direct financial contributions: one percent of the total appropriation revenue would thence be allocated to the Ministry of National Education and Religious Affairs, spent on ecclesiastical matters such as the salaries of priests.⁷¹ It is one explanation of the large amount of financial aid that flows from the Ministry to the Orthodox Church.

A minority of monasteries rejected the constitutionality of Law 1700/1987, claiming that it violated Article 17 of Constitution 75/86/01, which regulates property. The supreme administrative court affirmed the constitutionality of this law but revised the first governmental appointment of ODEP board members. Left dissatisfied, the monasteries applied to the European Commission of Human Rights (ECommHR) to evoke Articles 6,9,11,13 and 14 of the *ECHR* in addition to Article 1 of Protocol 1, but the Commission did not recognise any alleged violation.⁷²

However, the ECtHR found a violation of Article 6§1 because those monasteries not party to the 1811/1988 agreement were denied access to an appropriate domestic court in matters concerning the management of their property. It also found that here, the State interference in the peaceful enjoyment of the monasteries' property was a "deprivation" of property within the meaning of the second sentence of Article 1§1 of Protocol 1. Even though the interference was for the public interest, it was unanimously regarded as disproportionate on grounds of lacking appropriate compensation. The ECtHR did not find an interference with the right to freedom of religion as guaranteed by Article 9 because "monastery property intended

⁶⁸ D. Conostas, T.G. Stavrou, *Greece Prepares for the Twenty-First Century*, op.cit, p. 42-22.

⁶⁹ GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p. 31 and K. Ioannou, "Greece", op.cit, p. 377.

⁷⁰ Idem, p. 377.

⁷¹ *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, op.cit, p. 67.

⁷² Idem, p. 68, K. Ioannou, "Greece", op.cit, p. 377 and ECtHR, *Case of the Holy Monasteries v. Greece, Judgement of 9 December 1994*, Series A no. 301-A.

for the celebration of divine worship” had not been affected by expropriation.⁷³ Law 2413/1996 concluded a settlement between the two parties, which delegated the ownership of the property in question to the monasteries.⁷⁴

This confrontation between the Orthodox Church and the Greek State was not the last, as the controversy over the reform of the identity card half a decade later gave rise to a new large-scale conflict. Given the overlap of their respective spheres of power in administrative, ecclesiastical and other affairs, both authorities do not hesitate to test each other’s will-power and strength in an uneasy yet nevertheless intimate relationship.

2.3. Mount Athos

The Holy Mountain, a very special feature of Orthodox worship, constitutes the peninsular Aghion Oros region and houses twenty Holy Monasteries, which have been organised as a Holy Community for centuries. From the year 963 when monk Athanasios first instituted organised monasticism, Mount Athos has preserved the three types of Orthodox monastic life until today: the coenobium, the skete and the eremitic life, which were preserved down to the present century.⁷⁵ Aghion Oros enjoys many freedoms of self-administration. Byzantine emperors granted this special community a number of administrative, judicial and financial privileges. Obedience to the Patriarch of Constantinople was secured even after the Ottomans conquered the peninsula in 1430.⁷⁶ With a delay of more than one century, the Muslim rulers formally instituted the current administrative system.⁷⁷

Greece acquired sovereignty over the holy peninsula in the 1920s by the Treaties of *Sèvres* and *Lausanne* respectively. Emerging from the competition for secular control with the Russians since the First Balkan War in 1912, Greece enshrined the century-old traditional privileges of Mount Athos into her Constitution of 1927, which have not been changed thereafter.⁷⁸ Chapter III of the 1975/86/2001 equivalent is not different: Article 105 repeats the tradition of self-administration

⁷³ Idem, pp. 5-6 and K. Ioannou, “Greece”, op.cit, p. 378.

⁷⁴ *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, op.cit, p. 68.

⁷⁵ A-E.N. Tachiaos, “Europe’s Encounter with the Athonite Tradition”, op.cit, pp. 94-100 and P. Naskou-Perraki, *The Legal Framework to Religious Freedom in Greece*, op.cit, p. 59

⁷⁶ Idem, p. 59 and Ch.K. Papastathis, “The Status of Mount Athos in Hellenic Public Law” in A-E.N. Tachiaos (ed.), *Mount Athos and the European Community*, Institute for Balkan Studies, Thessaloniki, 1993, pp. 55-56.

⁷⁷ A. de Raulin, “Le Mont Athos et la Liberté Religieuse en Grèce”, op.cit, p. 246.

⁷⁸ Ch.K. Papastathis, “The Status of Mount Athos in Hellenic Public Law”, op.cit, pp. 57-59.

because “in accordance with its ancient privileged status”, Aghion Oros will be “a self-governed part of the Greek State”. Explicitly, Athos territory “shall be exempt from expropriation”, which in light of *The Holy Monasteries* case is a significant guarantee. As regards to self-governance, “the administration... shall be exercised by representatives of the Holy Monasteries” and “no change whatsoever shall be permitted in the administrative system”. Implemented in 1927, the *Mount Athens Charter*, a new regulation for the Holy Community, is here regarded as a law of superior force.⁷⁹

Indeed, Article 105§3 rules that “the determination in detail of the Mount Athos regimes...is effected by the Charter of Aghion Oros which... shall be drawn up and voted by the twenty Holy Monasteries and ratified by the Ecumenical Patriarchate and the Parliament of the Hellenes”. State interference is limited to a governor, “exclusively responsible for safeguarding public order and security”. Civil, penal and ecclesiastical jurisdiction is exercised by the Athonite authorities and “in the spiritual field... under the supreme supervision of the Ecumenical Patriarche”.⁸⁰

Aghion Oros also occupies a special position in European Community law. Attached to the *Treaty of Accession* of Greece of 1979, the fourth *Joint Declaration* recognised “the special status of Mount Athos, as spelled out by Article 105 of the Hellenic Constitution” and guaranteed that “this status is taken into account [relating to] provisions of Community law”. A similar declaration was attached to the *Schengen Agreement* of 1985 and to the *Amsterdam Treaty* of 1999.⁸¹

Accusations on the level of the EU, that the Mount Athos regime violates the non-discrimination principle enshrined by the *ECHR* because the avaton principle prohibits the entry of women, can be convincingly rejected. Firstly, the avaton constitutes a practice of Orthodox monasticism and is protected by Article 9 of the *ECHR*. Secondly, the Charter of Mount Athos protects the avaton principle, in turn safeguarded by the Greek Constitution and enacted by the Hellenic Parliament. Thirdly, State expropriation is prohibited and the monasteries can, as private owners, lawfully prevent women to enter.⁸² Fourthly, no objection has yet been launched against the similar prohibition of “heterodox or schismatic persons” from entering.

⁷⁹ Idem, pp 57-59 and p. 61.

⁸⁰ Idem, pp. 67-68.

⁸¹ Ch.K. Papastathis, “The Status of Mount Athos in Hellenic Public Law”, op.cit, pp. 69-71 and P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, op.cit, p. 93 and pp. 96-97.

⁸² I.K. Konidaris, “The Mount Athos Avaton” in *Revue Hellénique de Droit International*, 2000, pp. 215-226.

The avaton principle is both a manifestation of religious freedom and a result of clear Greek legal provisions.

No doubt, the Hellenic Republic has made considerable efforts to preserve the unique heritage of Mount Athos, a living centre of monastic life for more than one millennium. She has thereby enthusiastically fulfilled the right to freedom of thought, conscience and religion.

Chapter 3: Implementing Religious Freedom and Issues of Non-Orthodox Religions

The previous section has revealed that despite a number of problems such as those of the *Holy Monasteries* case, the Orthodox Church and the modern Greek State work closely together, with some of their respective spheres of administration overlapping. Mount Athos serves as an example that Greece has made many successful efforts to protect the freedom of religion of the Orthodox Church and its institutions. Both protection and intimate cooperation correspond to the common image of the church as the protector of national identity throughout history.

However, a prevalence of the Orthodox Church in the public and private spheres of Greek life may not become a disturbance to the enjoyment of religious freedom by other ecclesiastical or spiritual organisations. It is for this reason that the legal status of non-Orthodox religions require due attention and a number of concerns will be highlighted. Without intending to sympathise with any actor involved in given controversies, this thesis hopes that an analytical approach will provide a fair description of the current legitimisation and implementation of freedom of religion in Greece.

3.1. Guaranteeing the Right to Freedom of Religion

Even though the protection of religious freedom is a well-established tradition in Greece, Article 13 of Constitution 75/86/01 has been called a “novelty” as for the first time in very “explicit” terms, the freedom of religious conscience and the free exercise of religious beliefs are safeguarded. Its unanimous adoption was a condemnation of the military junta’s violations of religious liberties.⁸³ Article 13

⁸³ I. Kiriari-Catranis, “Freedom of Religion under the Greek Constitution” in *Revue Hellénique de Droit International*, 1994, pp.397-398 and N.C. Alivizatos, “Issues of Religious Freedom in Greece”, op.cit, p. 230.

contains a number of limitations to the exercise of religious freedoms, which are outlined in the second sentence of paragraph two and paragraphs three to five, but these will be analysed in greater detail below. At this point, those provisions of Article 13 which guarantee the right to religious freedoms will be analysed. They read as follows:

- “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 rights of worship shall be performed unhindered and under the protection of the law”.

Article 13 has been described to prohibit discrimination on religious grounds.⁸⁴ Of course, it is not as explicit the provisions by the *ECHR*, but apart from the general freedoms listed in the first sentence of paragraphs one and two, the second sentence of paragraph one covers the ground. Certainly, it prohibits that civil rights and liberties may not be granted or withdrawn on the basis of religious beliefs.

The first sentence of paragraph two contains the term “known” (γνωστές) religions, which indirectly excludes those deemed not to be so. According to Council of State, this curious element has been borrowed by the drafters of the Constitution from older legislative texts and includes all religions accessible to anybody, as opposed to sects with secret initiations.⁸⁵ Their doctrines and rites are open to the public and taught publicly.⁸⁶

It will be remembered that both the ECommHR and the ECrtHR have hardly delineated the nature and scope of religion, conscience and belief, but they nevertheless established if a world-view falls under these categories and may be protected by Article 9 of the *ECHR*.⁸⁷ It is therefore not unusual if Greek judicial authorities work with a definition of a “known” religion. However, this definition is nevertheless said to have “created more problems than it has resolved”.⁸⁸ Attempts to clarify its meaning did not prevent the UN Special Rapporteur on Religious

⁸⁴ Idem, p. 230.

⁸⁵ N.C. Alivizatos, "A New Role for the Greek Church?", op.cit, p. 28.

⁸⁶ I. Kiriari-Catranis, "Freedom of Religion under the Greek Constitution", op.cit, p. 406 and *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, op.cit, p. 54.

⁸⁷ P. Van Dijk, G.J.H. Van Hoof, *Theory and Practice of the European Convention on Human Rights*, Kluwer Law International, The Hague, London, Boston, 1998, p. 548, F.G. Jacobs, R.C.A. White, *The European Convention on Human Rights*, Clarendon Press, Oxford, 1996, pp. 211-212 and D. Gomien, D. Harris, L. Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, Council of Europe Publishing, Strasbourg, 1996, pp. 263-269.

⁸⁸ N.C. Alivizatos, "A New Role for the Greek Church?", op.cit, p. 28.

Intolerance from criticising it as a limitation to religious freedom. Not only is “the absence of any constitutional, legislative or other definition of the concept” inconsistent with the 1981 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, but “the legal limitations envisaged” in this term pose “serious practical problems for religious minorities”. For these reasons, the Rapporteur recommended that either a “known” religion should be defined in consistency with the 1981 Declaration, or be “eliminated altogether”.⁸⁹

As the concept differentiates between “known” and other religions, some groups who claim to have a spiritual nature will be excluded nevertheless. For example, the Church of Scientology in Greece has not been recognised as such, which drew criticism from legal experts.⁹⁰ More explicitly have the dangers inherent in using such a category been recognised in the case of *Tsirlis and Kouloumpas v. Greece* before the ECtHR. Law 1763/1988 prescribes that ministers of “known” religions are exempted from compulsory military service. The applicants were ministers of the Jehovah’s Witnesses, which has been recognised as “known” from as early as the mid-1920s. The Council of State stated that their dogma “fulfils the prerequisites set out by the Constitution for a ‘known’ religion” and validated with judgement 3601/1990 the right of their religious ministers to be exempted. However, the military courts denied the above applicants such recognition and imprisoned them for unlawfully refusing military service. The ECtHR condemned the military courts for a treatment “discriminatory when compared to ministers of the Greek Orthodox Church”.⁹¹ The *Tsirlis and Kouloumpas* case proves that discrimination on the basis of the concept of “known” religions may occur and hopefully, the condemnation of the ECtHR will prevent similar incidents in the future.

⁸⁹ UN Commission for Human Rights, *Human Rights Questions: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Note by the Secretary-General, 7 November 1996, UN doc. A/51/542/Add.1, p. 4 and p. 132.

⁹⁰ *Religious Liberty: The Legal Framework in Selected OSCE Countries*, May 2000, op.cit, p. 58, A. Diamantara, President of the Board of the Greek Church of Scientology, *Letter to the National Committee for Human Rights*, 07 October 2002 and M. Stathopoulos, D. Tsatsos, D. Melissas, *Gnomodotisi gia tin Elliniki Ekklesia tis Saientologias*, 2003.

⁹¹ ECtHR, *Tsirlis and Kouloumpas v. Greece*, *Judgement of 29 May 1997*, Reports of Judgement and Decisions 1997-III, CEDIME-SE, *Christian Jehova’s Witnesses of Greece*, September 2002, <http://www.greekhelsinki.gr/cedime-se-greece-jehova.doc>, p. 7, Thanassis Reppas and Associates Law Offices, *The Legal Status of Jehova’s Witnesses in Greece*, 31 May 1999, Athens, pp. 1-2 and S. Stavros, “Human Rights in Greece: Twelve Years of Supervision from Strasbourg” in *Journal of Modern Greek Studies*, vol. 17, 1999, p. 9.

Apart from being “known”, religions must judicially establish themselves as a person of law. This thesis has mentioned previously that since 1977, the Orthodox Church is a legal entity of public law, but the only religious minorities who enjoy the same status are the Muslim and Jewish communities. All other religious organisations may become legal entities of civil law according to the Greek Civil Code, either as associations, foundations or charitable fund-raising committees. In order to gain recognition as an association, the applicant entity must be a non-profit organisation, not offend public order or morality, be supported by at least twenty individuals, and most importantly in this context, be recognised as a “known” religion.⁹²

Attaining the legal status of civil law has not always occurred without problems. The example of the Roman Catholic church may demonstrate what complications can surround this procedure. Recognised as a “known” religion, its bishoprics and foundations are legal entities, but their status is left unclear, and neither the church as a whole nor the Archbishopric of Athens enjoy a legal personality.⁹³ The 1830 *Third London Protocol* supplied the Catholic institutions of the time with legal personality and with the rights of free and public worship, property-rights and certain other privileges but the *Treaty of Sèvres* arguably discontinued the authority of the former agreement. Despite the *Sèvres* treaty, however, the *Third London Protocol* is still mentioned today as guaranteeing religious freedom to Catholic institutions. This confusing situation is not clarified, and further complicated by the fact that all Catholic bodies erected after 1830 are not legally recognised by the Greek State at all, amongst which is the Archbishopric of Athens.⁹⁴

Despite such legal uncertainties, the ECtHR has maintained in the case of the *Canea Catholic Church v. Greece* that “settled case-law and administrative practice” never shed any doubts on the legal status of the church, which has existed in Greece for centuries. The Court found that an acquisition of such a status under current regulations would not automatically solve its legal difficulties, such as undertaking legal proceedings to safeguard property ownership. However, the Orthodox Church and the Jewish community, cited as legal entities of public law, can undertake legal

⁹² *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, op.cit, p. 58.

⁹³ CEDIME-SE, *Minorities in Southeast Europe, Catholics of Greece, September 2002*, <http://www.greekhelsinki.gr/pdf/cedime-se-greece-catholics.doc/>, p. 2.

⁹⁴ Idem, p. 19, N.C. Alivizatos, “A New Role for the Greek Church?”, op.cit, p. 29 and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p. 20.

proceedings “to protect their own property without any formality or required procedure”, which amounted to discrimination violating Article 14 of the *ECHR*.⁹⁵

The ECtHR noted that “it is not for the Court to rule on the question whether personality in public law or personality in private law would be more appropriate” and refused “to encourage it or the Greek government to take steps to have one or the other conferred”.⁹⁶ It remains unclear until today which status the Roman Catholic church will obtain. Neither the Catholic canon law nor the Archbishop of Athens are officially recognised, but they communicate unofficially with the government on a daily basis.⁹⁷ The categorisation of religious organisations according to entities of public or civil law may give rise to a number of problems, which have here been found to have a discriminatory nature. They may impede the enjoyment of religious rights and freedoms even of those bodies that are lawfully recognised as “known” religions.

3.2. Limitations to the Right to Religious Freedom

Following the provisions expressing the right to freedom of religion, a number of limitations are listed by Article 13 of Constitution 75/86/01 in the second and third sentences of the second paragraph and in paragraphs three to five:

- “2. 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 toward 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 not unusual that limitations are placed upon religious freedom: the provisions in Article 9 of the *ECHR* have been distinguished between the inner world or *forum internum* of a belief and its external manifestation, which may be

⁹⁵ ECtHR, *Case of Canea Catholic Church v. Greece*, *Judgement of 16 December 1997*, Reports of Judgements and Decisions 1997-VIII, §§39-47 and S. Stavros, “Human Rights in Greece: Twelve Years of Supervision from Strasbourg”, op.cit, pp. 9-10.

⁹⁶ *Canea Catholic Church v. Greece*, op.cit, §47.

⁹⁷ CEDIME-SE, *Catholics of Greece, September 2002*, op.cit, pp. 33-34, Press Office of the Catholic Bishops Conference of Hellas, *The Catholic Church of Greece*, Athens, 2003, p. 2 and *Interview with Nicolas Foscolos, Catholic Archbishop of Athens, The Roman Catholic Church of Greece*, 6 June 2003.

restricted.⁹⁸ Paragraph two reads that the “freedom to manifest one’s religion or beliefs 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”.

Here, the ECtHR has applied the well-known concept of a State margin of appreciation “in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law”. The ECtHR scrutinises the legitimacy of State interference with the manifestation of a belief comparatively strictly, given the importance of the right to religious freedom for the “constitutional paradigm” of the *ECHR*. In this examination, the Court has granted the State this margin especially to whether or not the interference is “necessary in a democratic society”. However, the margin does not apply to the *forum internum* of the individual.⁹⁹

The example of the *ECHR* demonstrates that the limitations of Greece’s Constitution to the right to religious freedoms are common. The condition that “the practice of rites of worship is not allowed to offend public order or the good usages” of Article 13§2 even resembles the *ECHR* limitation that “freedom to manifest one’s religion or beliefs” may be restricted for “the protection of public order...or morals”. Furthermore, the requirement that the “ministers of all known religions” are subjected to the same State treatment and legal obligations as the Orthodox ones is a guarantee of equal treatment. Finally, the demand that oaths may not be administered without lawful administration thereof is not unreasonable because oaths need to be regulated if they are to be recognised officially.

The observation of similarities between Article 13 of the Greek Constitution and Article 9 of the *ECHR* can not, however, silence the criticism voiced on the limitations of the former. Problematic areas of concern are the administrative practices relating to places of worship, the prohibition of proselytism and the issues relating to conscientious objection.

⁹⁸ P. Van Dijk, G.J.H. Van Hoof, *Theory and Practice of the European Convention on Human Rights*, op.cit, pp. 542-544 and pp. 554-557, D. Gomien, D. Harris, L. Zwaak, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, op.cit, pp. 263-271, F.G. Jacobs, R.C.A. White, *The European Convention on Human Rights*, op.cit, pp. 211-215 and Y. Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Intersentia, Antwerp, Oxford, New York, 2002, p. 93.

⁹⁹ Idem, pp. 1-18, p. 168 and pp. 93-100 and S.C. Prebensen, “The Margin of Appreciation and Articles 9, 10 and 11 of the Convention” in *Human Rights Law Journal*, no. 1, vol. 19, 1998, pp. 13-14.

A. PLACES OF WORSHIP

It has been argued that everyone enjoys “the right to manifest their religion alone or with others, in public or in private, without being subjected to any discrimination on the grounds of religion”.¹⁰⁰ However, allegations persist that religious communities encounter obstacles to establishing places of worship, which is one aspect of religious freedom.

Greek regulations demand a permit for constructing or opening places of worship according to law 1363/1938 as amended by law 1672/1939, adopted during the military dictatorship under General Metaxas.¹⁰¹ These laws provide that “the construction and operation of temples of any denomination whatsoever shall be subject to authorisation by the recognised ecclesiastical authority”, which is usually the local Orthodox Metropolitan, “and the Ministry of Education and Religious Affairs”. Places of worship without a permit “shall be closed and placed under seal by the police”, and a fine will be imposed on the operators of these places, who may additionally be “sentenced to a non-convertible term of between two and six months imprisonment”.¹⁰²

The Royal Decree of 20 May/2 June 1939 gave the Minister of Education and Religious Affairs the authority to assess whether “essential reasons” for a non-Orthodox religious group to open a new place of worship exist. Required is an application by at least fifty families, whose residential location necessitate the new place, and supported by their signatures, submitted to the local Orthodox authority and verified by the police. The latter will send a “reasoned opinion” to the Ministry, which may “accept or reject the application according to whether it considers that the construction or use of a new temple is justified or whether the provisions of the present decree have been complied with”. Similarly, the construction of an Orthodox place of worship also needs an authorisation, but this permit is granted by the Office for Management of Church Property, whose members are both from the Ministry and from the church.¹⁰³ This administrative differentiation is not normatively problematic when considering that the Orthodox Church is the prevailing religion and may be

¹⁰⁰ P. Naskou-Perraki, *The Legal Framework to Religious Freedom in Greece*, op.cit, p. 32.

¹⁰¹ GHM-MRGG, *Religious Freedom in Greece*, September 2002, p. 28 and R. Clogg, *A Concise History of Greece*, op.cit, p. 113-119.

¹⁰² ECtHR, *Case of Manoussakis and Others v. Greece*, *Judgement of 26 September 1996*, Reports of Judgements and Decisions 1996-IV, §21.

¹⁰³ Idem, §23, *Religious Liberty in Selected OSCE Countries, May 2000*, op.cit, p. 60 and pp. 67-68, and GHM-MRGG, *Religious Freedom in Greece*, September 2002, op.cit, pp. 28-29 and p. 31.

regulated by administrative channels unlike those for other religions. However, allegations of religious discrimination have been raised.

Apart from the argument that “adherents to ‘small’ religions have resorted to other ways of operating places of worship, usually under the cover of secular civil law associations (σωματεία) that they themselves establish for this purpose” because “not a single license has ever been issued through this procedure” with ease, the main cause for criticism is the report drawn up by the Orthodox bishop to the Ministry on whether other religious denominations need a place of worship.¹⁰⁴ The judgements of the Council of State on cases where the Ministry refused permits had the result that firstly, the discretion of this Ministry has been reduced to a minimum and secondly, the interference of the Orthodox bishop has been given a consultative nature only.¹⁰⁵ However, even this non-binding opinion dissatisfied the COECHR on his visit to Greece in 2002, because “the foundations for this consultative procedure, in a sphere that is strictly the responsibility of the State authorities, is not clearly discernible”. According to Mr Alvaro Gil-Robles, the granting of permits is an administrative affair of the State and it would be “desirable to amend the relevant legislation” by introducing a “hearing...within a specified time to all interested parties”, amongst which could be included the Orthodox bishop, but on equal status “as part of a prior public enquiry” only.¹⁰⁶

The ECtHR was confronted with such a controversy in the case of *Manoussakis and Others v. Greece* in 1996. Jehovah’s Witnesses in Crete were fined and imprisoned for establishing an unauthorised place of worship and the domestic courts had rejected the argument that the procedures for a permit were unconstitutional and violated Article 9 of the *ECHR*. The ECtHR refrained from repealing the laws as such because it granted Greece a wide margin of appreciation but it applied a strict standard of proportionality.¹⁰⁷ On behalf of this standard, Article 9 was violated.

The Court further noted that the procedures in question “allow far-reaching interference by the political, administrative and ecclesiastical authorities with the

¹⁰⁴ N.C. Alivizatos, “A New Role for the Greek Church?”, *op.cit.*, pp. 31-32 and I. Kriari-Catranis, “Freedom of Religion under the Greek Constitution”, *op.cit.*, p. 409.

¹⁰⁵ S. Stavros, “The Legal Status of Minorities in Greece Today: The Adequacy of their Protection in the Light of Current Human Rights Perceptions” in *Journal of Modern Greek Studies*, no. 1, vol. 13, 1995, p. 11.

¹⁰⁶ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his Visit to the Hellenic Republic, June 2002*, *op.cit.*, p. 6.

¹⁰⁷ Y. Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, *op.cit.*, p. 99.

exercise of religious freedom”. Consequently, they are only consistent with Article 9 “in so far as [they are] intended to allow the Minister to verify whether the formal conditions laid down in those enactments are satisfied”, which means that “the power of the Minister... [is] not discretionary”. The Court regretted that “the extensive case-law in this field seems to show a clear tendency on the part of the administrative and ecclesiastical authorities to use these provisions to restrict the activities of faiths outside the Orthodox Church”.¹⁰⁸ Similar events were repeated in the case of *Pentidis and Others v. Greece*, which was subsequently struck out of the list following a friendly settlement between both parties.¹⁰⁹

The ECommHR took a more critical stance than the Court by noting in both cases that “the involvement of the Greek Orthodox Church [as such] in determining whether the members of another religion fulfil the conditions necessary to receive the authorisation in question appears difficult to reconcile with paragraph 2 of Article 9 of the Convention”.¹¹⁰

Three years after the *Manoussakis* case was established as “the only case leading to unreserved condemnation of Greece by the Court of Strasbourg for practices against religious minorities”, the first ECRI report noted that “recent discussions with the Greek government as regards the possibility of removing the obligation to submit applications to the Orthodox Church before opening places of worship for other religions are welcomed as a positive step”.¹¹¹ ECRI’s second report stated, however, that religious minorities still encounter difficulties in obtaining permits, which was rejected by the government as “totally unfounded”.¹¹² Indeed, positive developments seem to have occurred because authorities no longer delay or obstruct the issuing of permits but issue them on a regular basis, even against the approval of the Orthodox bishop and protests against a place of worship only occur sporadically.¹¹³ The most recent controversy over places of worship was the lack of an official mosque in Athens, which had been objected to by the Orthodox Church

¹⁰⁸ *Manoussakis and Others v. Greece*, op.cit, §§45-48.

¹⁰⁹ ECtHR, *Case of Pentidis and Others v. Greece*, Judgement of 9 June 1997, Reports of Judgements and Decisions 1997-III.

¹¹⁰ *Manoussakis v. Greece*, op.cit, §43 and *Pentidis v. Greece*, op.cit, §§43-48.

¹¹¹ N.C. Alivizatos, “A New Role for the Greek Church?”, op.cit, p. 32 and *ECRI’s country-by-country approach: Report on Greece*, op.cit, p.10.

¹¹² ECRI, *Second Report on Greece adopted on 10 December 1999*, Strasbourg, 2000, CRI (2000)32, p. 11 and p. 27.

¹¹³ CEDIME-SE, *Christian Jehova’s Witnesses of Greece, September 2002*, op.cit, p. 13 and pp. 15-16 and *Interview with Babis Andreopoulos, Legal Representative for the Christian Jehova’s Witnesses of Greece*, 27 May 2003.

because the “average Greek cannot yet accept the idea of a minaret in the city centre”. The government, with the funds of King Fahd of Saudi Arabia, plans to open a mosque by the 2004 Olympic games, which to the regret of local worshippers will be situated outside the capital.¹¹⁴

Despite such developments, the debate on the regulations pertaining to places of worship is not silenced, as the Hellenic Republic National Commission for Human Rights (NCHR) “urged the Greek authorities to abrogate the relevant antiquated legislation and comply with the judgements” of the ECtHR.¹¹⁵ The Greek Ombudsman noted that “the provisions [of the legislation] treat the matter of the operating licence...with such obvious suspicion against all religions apart from the dominant one, that public administration has been led to believe that religious worship must be subjected to increased, stricter controls in comparison to other areas of human activity”. It suggests that the Royal Decree should be altered so that only a permit from the urban planning authorities will be required.¹¹⁶

Bearing positive comments in mind, it is not possible to negate that controversies regarding the construction of places of worship for non-Orthodox religious groups remain. No doubt, the authorities have made significant efforts to comply with the *Manoussakis* judgement and grant permits without unreasonable delay or discrimination. However, the regulations for places of worship continue to provoke criticisms, especially regarding the advisory opinion of the Orthodox bishop. It would be desirable if these were silenced, not only by revising the legal provisions and implementing them carefully on all levels of State administration, but also by warranting them in the public sphere. This would make them acceptable to opposition groups within the Greek population and enhance current popular levels of religious tolerance even further.

¹¹⁴ Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the Hellenic Republic, June 2002, op.cit, p. 6, *The New York Times*, 22 April 2003, *BBC News*, 29 October 2002, *The Independent*, 1 November 2002, and *Athens News*, 11 October 2002 and *Interview with Dr. Olga Tsakirides, Lecturer at Panteion University and Researcher in the Panhellenic Foundation for Supporting Muslims in Greece*, 2 June 2003.

¹¹⁵ Hellenic Republic, NCHR, *Report 2002, Summary in English*, National Printing Office, Athens, January 2003, p. 7 and p. 13, and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p. 49.

¹¹⁶ Office of the Greek Ombudsman, *Draft Annual Report, English Version, 2001*, section 3.1.

B. PROSELYTISM

The last sentence of paragraph 2 of Article 13 of Constitution 75/86/01 specifies that “proselytism is prohibited”. An estimated 4400 Jehovah’s Witnesses were arrested for this reason between 1975 and 1992, of which 1233 were tried.¹¹⁷ In fact, the first case before the ECtHR found to have violated Article 9 of the *ECHR* was the 1993 *Kokkinakis v. Greece case*, which concerned a Jehovah’s Witness convicted for this offence.¹¹⁸ In the past, the 1844 Constitution had first banned “proselytism and any other action against the dominant religion” because the Orthodox Church had complained about an Evangelical Bible society addressing Orthodox schoolchildren. Constitution 75/86/01 then extended the scope of prohibition to apply to all “known” religions.¹¹⁹

Proselytism became a criminal offence with the institution of Law 1363/1938 as amended of 1672/1939, originating like the laws pertaining to places of worship in the Metaxas dictatorship. Until the current Constitution, these regulations were allegedly used “as an instrument of suppression” of every form of non-Orthodox religious expression.¹²⁰ Specifying that proselytism would result in imprisonment up to five years, fines, police surveillance and expulsions of foreigners, these laws defined this crime as,

“in particular [or: among other actions], 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, 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”.¹²¹

This definition has been accused of lacking precision. “Among other actions” leaves open a wide variety of means by which the crime of proselytism could be committed, and terms like “naivety” are vague enough to “leave courts, prosecutors and most importantly police authorities a wide margin of discretion”. In addition,

¹¹⁷ *Kokkinakis v. Greece*, §24 and *Religious Liberty: The Legal Framework in Selected OSCE Countries*, May 2000, op.cit, p. 69.

¹¹⁸ C. Evans, *Freedom of Religion under the European Convention on Human Rights*, op.cit, p. 99 and S. Stavros, “Human Rights in Greece: Twelve Years of Supervision From Strasbourg”, op.cit, p. 7.

¹¹⁹ *Idem*, p. 12.

¹²⁰ S. Stavros, “The Legal Status of Minorities in Greece Today”, op.cit, p. 15.

¹²¹ *Idem*, p. 12 and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p. 32 and N.C. Alivizatos, “A New Role of the Greek Church?”, op.cit, p. 30.

“intrusion” could be misunderstood as “including any attempt to talk in good faith with someone on religious matters”.¹²²

Resembling the allegation that proselytism is too vaguely defined, the argument of Mr Kokkinakis stipulated that his conviction was not prescribed by law. By saying that the “absence of any description of the ‘objective substance’ of the offence” resulted in a “‘risk of extendibility’ by the police and often by the courts too”, the laws in question were “designed to ensure that non-Orthodox Christians were permanently gagged”.¹²³

The ECtHR granted the State a margin of appreciation which made its interference prescribed by law as well as necessary in a democratic society, but they were disproportionate to the aim ensued because the domestic courts had failed to show in detail that the conviction of the applicant was “justified in the circumstances of the case by a pressing social need”. In finding a violation of Article 9, the Court differentiated between “bearing Christian witness and improper proselytism”. The Greek laws are found to comply with Article 9 “in so far as they are designed only to punish improper proselytism”. Unfortunately, the Court did not define this term clearly, to the regret of partly concurring Judge Pettiti.¹²⁴

It has also been criticised that the Court “sidestepped the issue of whether the legislation as such” violated the article in question.¹²⁵ In fact, Judge Pettiti doubted “whether the very principle of applying a criminal statute to proselytism is compatible with Article 9 of the constitution” because coercive proselytism could be covered by ordinary civil and criminal law. Moreover, “the wording adopted by the majority of the Court in finding a breach, namely that the applicant’s conviction was not justified in the circumstances of the case, leaves too much room for a repressive interpretation by the Greek courts in the future”.¹²⁶ Judge Martens also warned that Law 1363/1938 could, “in an atmosphere of religious intolerance”, provide a “perfect and dangerous instrument for repressing religious minorities”, as it has “indeed been used for such purpose”. According to him, this law is “*per se* incompatible with Article 7§1 of the

¹²² Idem, p. 30.

¹²³ *Kokkinakis v. Greece*, op.cit, §38 and C. Evans, *Freedom of Religion under the European Convention of Human Rights*, op.cit, p. 139.

¹²⁴ *Kokkinakis v. Greece*, op.cit, §§47-50.

¹²⁵ P. Van Dijk, G.J.H. Van Hoof, *Theory and Practice of the European Convention of Human Rights*, op.cit, p. 555.

¹²⁶ Idem, pp. 25-28.

Convention”, which provides the principle of restrictive interpretation of criminal legislation, and violated Article 9 by making proselytism a criminal offence.¹²⁷

The ECtHR stated in the *Kokkinakis* case that religious pluralism is an inherent feature of the a democratic society, and in the *Manoussakis* case, it noted that the regulations concerning places of worship allowed “far-reaching interference...with the exercise of religious freedom”.¹²⁸ Considering the arguments of the dissenting judges and the fact that Law 1363/1938, which criminalised proselytism also regulates places of worship, it may not be far-fetched to question whether the Court in the *Kokkinakis* case allowed the State a dangerously wide margin of interfering with freedom of religion, which was reduced slightly in the *Manoussakis* case. It distinguished “proper” and “improper” proselytism, which could create the “danger of discrimination when there is one dominant religion”.¹²⁹

Judge Valticos argued that “the Greek law does not in any way restrict the concept of proselytism to attempts at the intellectual corruption of Orthodox Christians but applies irrespective of the religion concerned”. Although “the Government’s representative was not able to give concrete examples concerning other religions...this is not surprising since the Orthodox religion is the religion of nearly the whole populations and sects are going to fish for followers in the best-stocked waters”.¹³⁰

Nevertheless, the UN Special Rapporteur on Religious Intolerance noted that “proselytism is itself inherent in religion” and concluded that the criminalisation of proselytism is “inconsistent with the 1981 Declaration [on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief]”, which makes the “removal of the legal prohibition against proselytism...very strongly recommended”.¹³¹ Similarly, the COECHR stated that the practise of proselytism “revealed some disproportion in prosecutions and convictions for proselytism to the disadvantage of minority groups”. Accordingly, the laws regulating this offence put “needless pressure on religious or spiritual groups” and Mr Alvaro Gil-Robles declared himself supporting “the proposal by the NCHR to have these provisions

¹²⁷ *Idem*, pp. 34-39.

¹²⁸ *Kokkinakis v. Greece*, op.cit, §31 and *Manoussakis v. Greece*, op.cit, §45.

¹²⁹ *Kokkinakis v. Greece*, op.cit, §§16-17 and C. Evans, *Freedom of Religion under the European Convention on Human Rights*, op.cit, pp. 140-141.

¹³⁰ *Idem*, pp. 31-32.

¹³¹ UN Commission for Human Rights, *Human Rights Questions*, op.cit, p. 5 and pp. 27-28.

repealed”.¹³² This proposal urged Greece “to proceed to abrogating the relevant legislation in force and create a new relevant legal framework grounded in the right to freedom of thought, conscience and religion”.¹³³ Finally, the former Minister of Justice, Michalis Stathopoulos recommended the sentence “proselytism is prohibited” to be removed from Article 13§2 of the Constitution.¹³⁴

In line with the *Kokkinakis* case, the ECtHR convicted the Greek government in the 1998 *Larissis and Others* case of having violated Article 9 because the condemnations of the applicants on grounds of “improper proselytism” towards civilian individuals were not justified by the circumstances and therefore disproportionate to the legitimate aim pursued.¹³⁵ Even if the scathing criticism of proselytism laws persist, it may be concluded in line with the findings of Mr Alvaro Gil-Robles that, “since [these European] Court judgements were delivered...prosecutions for proselytism have decreased markedly or even disappeared from the Greek judicial scene”.¹³⁶ Such observations were shared by a spokesman of the Jehovah’s Witnesses who stated that after the *Kokkinakis* judgement, imprisonment has no longer occurred.¹³⁷ The Greek Ombudsman office adds that “every conversation about religious matters used to be a criminal offence but nowadays, the laws pertaining to proselytism are being treated differently by our courts: either they hardly use them at all or they interpret them in ways which no longer pose a danger to freedom of religion”.¹³⁸

It cannot be disputed that the judgements of the ECtHR have markedly improved the administration of the laws regulating to proselytism in Greece, even though the argument has been raised that “the general perception of Greek judges of their role in protecting civil liberties has changed little”.¹³⁹ Despite continuing controversies about whether the Metaxas regulations are normatively damaging to the protection of freedom of religion, and proposals of abolishing them altogether, it is

¹³² Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his Visit to the Hellenic Republic, June 2002, op.cit, p. 5.

¹³³ Hellenic Republic, NCHR, Report 2002, op.cit, p. 13.

¹³⁴ GHM-MRGG, Religious Freedom in Greece, September 2002, p. 71.

¹³⁵ ECtHR, Case of *Larissis and Others v. Greece*, Judgement of 24 February 1998, Reports of Judgements and Decisions 1998-I.

¹³⁶ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his Visit to the Hellenic Republic, June 2002, op.cit, p. 5.

¹³⁷ Interview with Babis Andreopoulos, Legal Representative for the Christian Jehova’s Witnesses of Greece, 27 May 2003.

¹³⁸ Interview with Dr. Michael Tsapogas, Senior Investigator, Office of the Greek Ombudsman, 16 May 2003.

¹³⁹ S. Stavros, “Human Rights in Greece: Twelve Years of Supervision from Strasbourg“, op.cit, p. 16.

fortunate that at least judicial practice has seen a major reform. An optimistic point of view would therefore hope that such positive developments will firmly entrench themselves on all levels of State administration and become widely accepted in popular and in ecclesiastical circles.

C. CONSCIENTIOUS OBJECTION

Next to the regulations pertaining to places of worship and the constitutional prohibition of proselytism, another area of concern is conscientious objection as regulated by paragraph 4 of Article 13 of current Constitution. This paragraph 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 convictions”, added during the 1946-1949 Greek Civil War.¹⁴⁰ In addition, the Constitution provides in Article 25§4 that “the State has the right to claim of all citizens to fulfil the duty of social and national solidarity” and in Article 4§6 that “every Greek capable of bearing arms is obliged to contribute to the defence of the Fatherland as provided by law”.

Greece introduced by Law 731/1977 that people who refuse to bear arms for military beliefs will serve in the military twice the period of regular duty. Adopted in 1988, Law 1763/1988 obliged every citizen between 20 to 50 years of age to perform military duties in the armed forces. Conscientious objectors are recognised, but instead of civilian service, they either served a full or a reduced unarmed service in the military for a period twice the time of normal conscripts. People who objected to unarmed military service would, according to this law, be imprisoned by military courts for a period equal to regular conscription for disobedience, and then be released from such duties to the State.¹⁴¹

Such domestic regulations may be compared with the provisions of the *ECHR*. Article 4§3b provides that “for the purpose of this Article, the term ‘forced or compulsory labour’ shall not include any service of a military character or...service exacted instead of compulsory military character”, but the latter applies only “in case of conscientious objectors in countries where they are recognised”. This does not

¹⁴⁰ N.C. Alivizatos, “A New Role for the Greek Church?”, op.cit, p. 30.

¹⁴¹ UN Commission for Human Rights, *Human Rights Questions*, op.cit, p. 9, *Religious Liberty: The Legal Framework in Selected OSCE Countries*, May 2000, op.cit, p. 71 and GHM-MRGG, *Religious Freedom in Greece*, September 2002, op.cit, p. 63.

confer upon States the obligation to recognise conscientious objectors in the first place: such a right is not automatically granted.¹⁴²

Greece debated about the constitutionality of conscientious objection for a number of years after the 1988 law was enacted but the Central Law Preparatory Committee of the Parliament concluded that a draft for unarmed or civilian service violated Article 13§4 and Article 4§6 of the constitution. In 1991, the Ministry of Defence requested the Council of State to judge on the same issue, which in opinion 669/1990 argued that indeed unarmed duty was against the Constitution because Article 13§4 prohibits religious objection and Article 4§6 prohibits ideological or moral objections. Such statements supported the argument that Jehovah's Witnesses were not imprisoned for their religious beliefs but for violating the law.¹⁴³

However, such conclusions were rejected by a number of jurists and non-governmental organisations who believe that conscientious objection is constitutional according to Article 13§1, which states that "freedom of religious conscience is inviolable". Moreover, Article 2§1 provides that "respect and protection of the value of the human being constitute the primary obligations of the State". They further raise the argument that the Greek nation could indeed be defended by unarmed service. For this reasons, such lobbyists urge the State to assure the religious freedom of conscientious objectors, especially Jehovah's Witnesses, by implementing adequate legal clauses for them.¹⁴⁴

Greece also came under pressure from abroad. A parliamentary resolution of the Council of Europe declared already in 1967 that conscientious objectors "shall enjoy a personal right to be released from the obligation" of military service, which is a "right...deriving logically from the fundamental rights...guaranteed in Article 9" of the *ECHR*.¹⁴⁵ It was followed by a recommendation in 1967 and in 1977 on the same matter.¹⁴⁶ The Committee of Ministers published a recommendation one year before the Greek 1988 law was implemented, which calls for Member States to include in

¹⁴² F.G. Jacobs, R.C.A. White, *The European Convention on Human Rights*, op.cit, p. 217, Y. Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, op.cit, p. 98 and P. Van Dijk, G.J.H. Van Hoof, *Theory and Practice of the European Convention on Human Rights*, op.cit, p. 545.

¹⁴³ UN Commission for Human Rights, *Human Rights Questions*, op.cit, pp. 10-11 and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, pp. 65-66.

¹⁴⁴ UN Commission for Human Rights, *Human Rights Questions*, op.cit, p. 10 and p. 12.

¹⁴⁵ Parliamentary Assembly, *Resolution 227/1967 on the Right of Conscientious Objection*, 1967.

¹⁴⁶ Parliamentary Assembly, *Recommendation 478/1967 on the Right to Conscientious Objection*, 1967 and *Recommendation 816/1977 on the Right of Conscientious Objection to Military Service*, 1977.

their legislation a non-punitive civilian service.¹⁴⁷ When as Greece failed to do so, the European Parliament condemned her in 1993 for punishing conscientious objectors with internment in military prisons.¹⁴⁸

The UN Special Rapporteur on Religious Intolerance drew attention to the Commission for Human Rights Resolution 1989/59, which was published in 1989 and reaffirmed in 1991 and 1993. It recognises “the right of everyone to have conscientious objections to military service...as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in Article 18 of the *UDHR* as well as Article 18 of the *ICCPR*”. The Special Rapporteur reminded Greece that the Commission for Human Rights urged States to “introduce for conscientious objectors various forms of alternative service...of a non-combatant or civilian character, in the public interest and not of a punitive nature”. He proposed a revision of the 75/86/01 Constitution, if such a service was found to violate the same.¹⁴⁹

Law 2510/1997 finally enabled persons to choose between unarmed military service or civil community service as they were exempted on the basis of religious or ideological convictions from conscription like religious ministers and monks of a “known” religion. The law further provides that if someone wishes to “serve either without carrying a weapon of any kind or by offering social service...the time of service shall be prolonged from 12 to 18 months”.¹⁵⁰ In addition, Greece has undertaken some steps to recognise conscientious objectors constitutionally with the *Interpretative Resolution* of 6 April 2001 on Article 4§6.¹⁵¹

Such developments were highly welcome as “more than 100 persons per year were being sentenced by courts-martial” with the result that “over the past twenty years, the average number of those permanently held in jail for this reason was approximately 300”, and more than 95% of the interned belonged to Jehovah’s Witnesses.¹⁵² However, observations have been made that Orthodox priests have been exempted from military service without difficulties, whilst religious ministers of other

¹⁴⁷ Committee of Ministers, *Recommendation Regarding Conscientious Objection to Compulsory Military Service*, No. R(87)8, 1987.

¹⁴⁸ *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, op.cit, p. 71 and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p. 14.

¹⁴⁹ UN Commission of Human Rights, *Human Rights Questions*, op.cit, pp. 12-13 and p. 28, and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, p. 14 and p. 65.

¹⁵⁰ *Religious Liberty: The Legal Framework in Selected OSCE Countries, May 2000*, op.cit, p. 71 and P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, op.cit, p. 22.

¹⁵¹ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the Hellenic Republic, June 2003*, op.cit, p. 7.

¹⁵² N.C. Alivizatos, “A New Role for the Greek Church?”, op.cit, p. 31.

religions have been harassed and illegally detained for this matter.¹⁵³ Furthermore, the law prevents individuals from becoming conscientious objectors during military service because “those who have carried arms for whatever length of time” cannot be considered.¹⁵⁴ It has also been remarked that “the almost double duration of the service can be considered as a sort of punishment for those refusing military service”.¹⁵⁵ The Commissioner for Human Rights noted that “an extra term of 18 months as currently prescribed in Greece constitutes a disproportionate measure in practice”.¹⁵⁶ Sharing the opinion of the Greek Ombudsman, the NCHR proposed that “alternative service should be of a reasonable duration and never have the character of punishment, while the relevant authority should be independent from the military and provide adequate procedural safeguards”. The administration of conscientious objectors has been criticised as falling below international standards.¹⁵⁷

Two cases came before the ECtHR on these issues. The first was the *Tsirlis and Kouloumpas* case of 1997, where Law 2510/1997 had not yet been enforced. As noted earlier in this thesis, this case involved two applicants who had been detained for refusing military service even though, as religious ministers of the Jehovah’s Witnesses, they were exempted by Law 1763/1988. Section 6 of this law exempts ministers of all “known” religions, which is a category under which the Jehovah’s Witnesses in Greece may certainly be classified. The Court noted that their detention was “discriminatory when compared to ministers of the Orthodox Church” and convicted Greece of violating Article 5 of the Convention, which prohibits arbitrary detention, but surprisingly enough did not find a violation of Article 14 in conjunction with Article 9 as the ECommHR had done.¹⁵⁸

The ECtHR in the second, more recent case of *Thlimmenos v. Greece* that lifelong penalties from a felony conviction for conscientious objection may give rise to discrimination. Interned by a military tribunal in 1983 for not wearing a uniform, a

¹⁵³ *Religious Liberty: The Legal Framework in Selected OSCE Countries*, May 2000, op.cit, p. 71

¹⁵⁴ GHM-MRGG, *Religious Freedom in Greece*, September 2002, op.cit, p. 66.

¹⁵⁵ P. Naskou-Perraki, *The Legal Framework of Religious Freedom in Greece*, op.cit, p. 23 and Amnesty International, *Annual Report, Greece*, 2000, 2001, 2002.

¹⁵⁶ *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights on his Visit to the Hellenic Republic*, June 2003, op.cit, p. 7.

¹⁵⁷ NCHR, *Report 2002*, op.cit, p. 15, Amnesty International, “Report on Conscientious Objectors in Greece” in GHM-MRGG, *Religious Freedom in Greece*, September 2002, op.cit, pp. 68-71 and the Office of the Ombudsman, *Draft Annual Report*, 1999, pp. 9-10.

¹⁵⁸ *Tsirlis and Kouloumpas v. Greece*, op.cit, and D. Shelton, “Conscientious Objection and Religious Groups” in J-F. Flauss (ed.), *International Protection of Religious Freedom*, Bruylant, Brussels, 2002, p. 186.

Jehovah's Witness had been refused five years later from becoming a chartered accountant on the grounds of his criminal offence. Law 2510/1997 grants individuals like this applicant the possibility of having their past convictions expunged from their criminal records if they are being recognised a conscientious objector *a posteriori*, but this procedure is by no means a guaranteed success. The ECtHR concluded that it had been disproportionate to deny the applicant the desired employment solely on failing to make a distinction if a person was convicted of a criminal offence, or convicted of a criminal offence on grounds of religious beliefs, as the latter does not "imply any dishonesty or moral turpitude". Greece was found guilty of breaching Article 14 in conjunction with Article 9.¹⁵⁹ She has since introduced Law 2915/2001 which provided clear regulations how convictions that occurred before 1997 relating to civil service may be struck out of from the criminal register.¹⁶⁰

It is possible to conclude this examination with the positive observation that since 1998, "all members of Jehovah's Witnesses who wished to submit applications for alternative non-military service have been permitted to do so", with a small number of exceptions, of which the ECtHR has seen a case.¹⁶¹ It may be suggested that there still exist a number of problems because not only do the laws in question leave room for criticism but their implementation on administrative levels could be improved. However, it is beneficial to the religious freedom that arguments against conscientious objection, based on constitutional provisions, have been overcome not least with the help of international pressure. Moreover, the judgements of the ECtHR have been decisive in matters such as prohibiting discrimination against conscientiously objecting ministers of the non-prevailing religion. It may be expected that this area of concern will further improve in coming years, during which the work of international and national organisations will be essential to aid the State in making this concept become a widely accepted tradition in Greece.

¹⁵⁹ ECtHR, *Case of Thlimmenos v. Greece*, Judgement of 6 April 2000, Application no. 34369/97.

¹⁶⁰ GHM-MRGG, *Religious Freedom in Greece*, September 2002, op.cit, pp. 67-68.

¹⁶¹ Greece, *International Religious Freedom Report*, 2002, op.cit, section II.

3.3. Allegations of Religious Discrimination

In order to complete the brief description of the right to freedom of religion in Greece, a little attention will have to be devoted on issues that have been identified as grievances for non-Orthodox communities. This thesis will argue that it would be detrimental to the implementation of religious freedom if allegations of discrimination were not mentioned at all, even if they are highly controversial. They may be at least considered by the reader and rejected if proven incorrect, but they will prove helpful to establish a clear picture of Greece's current protection framework in any case.

A field of major importance to the protection of religious freedom is equality of different beliefs in the section of school education. The Greek Constitution states in Article 16§2 that "education constitutes a basic mission for the State and shall aim at...the development of national and religious consciousness". This mission was interpreted by the Supreme Administrative Court in 1998 as meaning to "develop religious conscience of the students in accordance with the principles of the Orthodox Christian religion" which is compulsory for students of this faith, but exemptions are made following a statement declaring an adherence to atheism or to another denomination.¹⁶² In 1995, the Council of State ruled that not attending the course of religion may not incur any penalties. It will also be remembered that Greece lifted her reservation to Article 2 of Protocol 1 to the *ECHR*, which gives parents the right to ensure education in conformity to their own beliefs.¹⁶³ The necessity of declaring that one does not belong to the Orthodox faith in order to be exempted from religious classes was recently declared illegal by the Authority on the Protection of Personal Data (DPA), which is by Article 15 of Law 2472/1997 an independent public authority. In decision 77A/2002, the DPA judged such a declaration as violating the 2472/1997 law, because it forces the individual student to publicly announce a religious conviction.¹⁶⁴

Attention has been called to the question whether pupils of non-Orthodox religions experience problems at school on behalf of their beliefs. Requested to interfere in a matter pertaining to religious teaching material allegedly defaming Jehovah's Witnesses, the Office of the Greek Ombudsman stated in the year 2000 that

¹⁶² *Religious Liberty: The Legal Framework in Selected OSCE Countries*, May 2000, op.cit, pp. 72-73.

¹⁶³ P. Naskou-Perraki, *The Legal Framework to Religious Freedom in Greece*, op.cit, pp. 28-29.

¹⁶⁴ GHM-MRGG, *Religious Freedom in Greece*, September 2002, op.cit, p. 54.

not only must all material must be authorised by the appropriate ministry first but that religious teaching at public schools for Orthodox students must comply to principle of respect of other religions. The Office further noted that it had received a complaint against religious schoolbooks, and the government has made efforts to include chapters on non-Orthodox religions and their histories in Greece. ECRI welcomed these steps, reminding Greece that “children who are not of the Greek Orthodox religion should be treated on an equal footing with other pupils, even if they do not participate in Orthodox religious worship”.¹⁶⁵ Two years later, it was compelled to warn the State that “there is a serious need to educate the Greek public to the benefits of a multicultural society”, which, “in order to have a lasting effect...should begin in schools”. ECRI called upon the government to provide that “school curricula, for example in the field of history teaching, are set up in such a way to enhance the appreciation of cultural diversity”.¹⁶⁶

Another issue to which attention has been drawn is that of cremation and burials according to non-Orthodox traditions. Greece is one of the few countries lacking a crematorium with the result that the deceased must be shipped to neighbouring countries where their wishes can be fulfilled, and Muslims will have to travel to the Northern region of Thrace to bury their dead according to their belief. The Orthodox Church objects to this possibility because in the words of Bishop Vasilios of Trimithoundos, “cremation is a violation of the natural order” and a “new ethos...completely foreign to our culture and our Christian belief” with the result that the church must “protect the Greek way of life from the encroachments of Western secularism”.¹⁶⁷

The Office of the Greek Ombudsman has noted that the freedom to choose how to dispose one’s own body after death constitutes a right under Article 4§1 of the Constitution 75/86/01, which provides that “all Greeks are equal before the law” and Article 5§1, which provides that “all persons shall have the right to develop freely

¹⁶⁵ *ECRI’s Country-by-Country Approach: Greece*, op.cit, p. 8.

¹⁶⁶ Idem, pp. 55-56, ECRI, *Second Report on Greece*, op.cit, p. 9, *Letter of the Central Congregation of Christian Jehova’s Witnesses of Greece to the Ministry of Eudcation and Religious Affairs and the Office of the Greek Ombudsman*, 25 September 2001, http://www.greekhelsinki.gr/bhr/english/countries/greece/index_10-11-12_01.html. and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, pp. 54-55.

¹⁶⁷ *Interview with Dr. Olga Tsakirides, Lecturer at Panteion University and Researcher in the Panhellenic Foundation for Supporting Muslims in Greece*, 2 June 2003 and *BBC News*, 11 April 2002.

their personality”. However, Greece currently allows only the burial of a body according to Orthodox traditions which “clearly violates the principle of freedom of belief”. For this reason, the Ombudsman proposes legislative amendments to make alternative options, such as cremation, possible because “it is not permissible for the legislature to take for granted the opposition of Christian Orthodox dogma to cremation or to accept this opposition as the basis for its regulatory intervention, allowing only the followers of other religions to cremate their dead”.¹⁶⁸ Similarly, the NCHR provided on 7 December 2000 that Greek laws should be changed as to give each individual the right, “without discrimination whatsoever, to choose between cremation and burial when deceased”.¹⁶⁹

The government prepared a law allowing cremation last year.¹⁷⁰ At the time of writing, this law has not yet been enacted and further developments will have to be awaited.

Allegations of anti-Semitism in Greece are possibly the most controversial of all problems pertaining religious freedom. On the one hand, there is the Greek Helsinki Monitor (GHM) which has compiled a report on the issue, arguing that “a fundamental obstacle to counteracting anti-Semitism in Greece is that its existence is systematically denied or ignored” because “efforts to expose it are met with resistance, sometimes even from the Jewish community itself”. It regrets that “the Greek government has yet to take a strong and consistent stand against anti-Semitism” and that “even extreme anti-Semitic views openly expressed by Orthodox clergy members, politicians, factions, cultural icons, and journalists pass without comment.”¹⁷¹ The GHM collected a number of Greek and foreign newspaper articles that prove these issues further.¹⁷² Moreover, ECRI admitted that “recent changes to schoolbooks in order to eliminate passages with anti-Semitic undertones are to be commended”.¹⁷³

¹⁶⁸ Office of the Greek Ombudsman, Draft Annual Report, English version, 2000, pp. 13-14.

¹⁶⁹ NCHR, *Report 2002*, op.cit, p. 12.

¹⁷⁰ *BBC News*, 11 April 2002.

¹⁷¹ GHM-MRGG, *Anti-Semitism in Greece, A Current Picture: 2001-2002, November 2002*, http://www.greekhelsinki.gr/bhr/english/organizations/ghm_mrgg_antisemitism_2002.rtf, pp. 1-2.

¹⁷² AIM, 7 December 2000 and 17 March 2001, *Forward*, 28 March 2003, *Eleftherotypia*, 29 September 2001, *The Independent*, 15 October 2002.

¹⁷³ ECRI's *Country-by-Country Approach: Greece*, op.cit, p. 8.

On the other hand, a representative of the Central Board of Jewish Communities in Greece stated that there only exist “sporadic” instances of anti-Semitism, which are “certain cases of extreme fanatics”, with the consequence that “there exists no real anti-Semitism”.¹⁷⁴ While the UN Special Rapporteur on Religious Intolerance also noted “sporadic cases of intolerance by teachers and occasional anti-Semitic content of schoolbooks” he admitted that political leaders had promised to rectify these grievances, allowing him to conclude that apart from “some minor problems which...are linked to the intolerance of certain poorly educated Orthodox priests...the situation of the Jewish community seems to be eminently satisfactory”.¹⁷⁵

It is therefore not possible to call anti-Semitism an emergency issue of religious freedom in Greece, but controversial voices that claim otherwise must be met with firm action: even in the fortunate case that they prove wrong, it would not do any harm if religious tolerance was promoted even further.

Finally, this thesis will turn to the special status of the Muslims of Thrace, which do not have a recent history in Greece. The *Peace Treaty of Athens*, which included Greece and the Ottoman Empire as the main signatories, was concluded in 1913 and provided a number of important rights and freedoms for the Muslim communities on Greek territory. Seven years later, treaties at *Sèvres* regulated Greek possession of the province of Thrace and gave Muslims further protection. The most important agreement today is the 1923 *Treaty of Lausanne*, which provides religious rights for Muslims similar to the *Treaty of Sèvres* and targets specifically the Northern province of Thrace.¹⁷⁶ Amongst other provisions, Article 39 of this treaty promised that “all the inhabitants of Turkey, without distinction of religion, shall be equal before the law”, which would also include Greek Orthodox residents. In exchange, Article 45 applied these guarantees vice versa by stating that “the rights conferred...on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minority in her territory”.

¹⁷⁴ Interview with Leon D. Gabrielidis, Director of the Central Board of Jewish Communities in Greece, 13 May 2003.

¹⁷⁵ UN High Commission for Human Rights, *Human Rights Questions*, op.cit, pp. 30-32.

¹⁷⁶ ECtHR, *Case of Serif v. Greece, Judgement of 14 December 1999*, Reports of Judgements and Decisions 1999-IX, R. Clogg, *A Concise History of Greece*, op.cit, pp. 95-99, GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, pp. 15-18 and P. Naskou-Perraki, *The Legal Framework to Religious Freedom in Greece*, op.cit, p. 45.

In line with these special traditional arrangements, the Muslim minority is today the only officially recognised minority in Greece and numbers approximately 120,000 members. The *Lausanne* treaty gave the members of this group the right to administer charitable, religious and social institutions, schools and other protections for their religious establishment. As the *Treaty* is considered as a fundamental law, it is not possible for either signatory State to enact contradictory legislation, which may be a safeguard but could also function as an impediment to reform. It is the explanation for why Greece defines the Muslims in Thrace as a religious minority only, and not divides this religious group into national minorities such as Turkish, Pomaks and Roma people.¹⁷⁷

According to governmental figures, there existed in the year 2000 more than 260 mosques and more than 440 imams, and it may be speculated that this figure has increased by the time of writing. The election of the Muslim religious leaders, the muftis, has created controversies for two reasons. Firstly, they enjoy judicial competence in matters such as family and inheritance laws according Islamic law, as by Law 1920/1991, they are “recognised and tolerated by Greek authorities as authentic interpreters of the Koran and the holy traditions of Islam”. As a safeguard, this law enforced that the judgements of the Muftis may not violate the Greek Constitution, to ensure clarities in matters such as polygamy and full gender equality, but a reconciliation between the two sets of different laws is not an easy task in the context of both judicial fairness and of a modern minority policy.¹⁷⁸

Secondly, the above-named law implemented a selection procedure in the form that a committee, of which some members are State-appointed, proposes to the Ministry of Education and Religious Affairs a number of candidates who are recommended on a select list of conditions. The Ministry has the final choice, which will then be confirmed by a presidential decree. The affected population in Thrace seems to be divided on whether this is an acceptable procedure or not, but the government insists that, because of the judicial powers of the muftis, they are appointed by the State just as all other judges in Greece not unlike in Muslim countries. Nevertheless, there has been a case where a man charged with unlawfully

¹⁷⁷ Idem, p. 24 and S. Stathopoulos, A. Catranis, E. Lambrou, *A Global View of Foreign and Security Policy*, op.cit, p. 80, *Statement by the Greek Delegation on National Minorities, The Muslim Minority in Thrace*, Warsaw, 24 October 2000, <http://www.greekhelsinki.gr/english/pressrelease/GD-24-10-2000-osce2000.html>.

¹⁷⁸ Idem, and GHM-MRGG, *Religious Freedom in Greece, September 2002*, op.cit, pp. 26-27 and pp. 39-40.

assuming the title of “Mufti of Xanthi” in 1991 was detained on a number of occasions for the same offence.¹⁷⁹

A case before the ECtHR dealt with a similar problem. Upon the death of a mufti in the area of Rodopi in Thrace in 1985, the government made a number of interim and a final appointment of a mufti. Even though Mr Serif had been elected, Law 1920/1991 was retroactively validated and his office became void. He was subsequently charged for having usurped the functions of a minister of a “known” religion. The ECtHR responded by noting that “punishing a person for merely acting as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society”. Even though there existed a government-appointed mufti in Rodopi, the Court recalled that “there is no indication that the applicant attempted at any time to exercise the judicial and administrative functions, for which the legislation of muftis and other ministers of ‘known religions’ makes provision”. It was not the State’s obligation to ensure in a democratic society that “religious communities remain or are brought under a unified leadership”. As a result, the sentencing of the applicant was therefore not necessary in a democratic society for the protection of public order, and Article 9§2 of the Convention was violated.¹⁸⁰

In conclusion, controversies regarding the legal provisions and their implementation concerning the right to religious freedom for the Muslim community in Thrace exist. Of course, the protection of its religious freedoms may not cause the State to neglect the rights and freedoms of Muslim communities elsewhere in the country, but Greece may be praised for paying considerable amounts of attention to the needs of the Muslim minority in Thrace.

Chapter 4: Conclusion

It has been observed that the Orthodox Church is widely perceived as the saviour of Greek identity, and thereby the Greek nation, during centuries of foreign occupation which threatened to dissolve the Greek heritage with different cultural and religious traditions. Even though this idea is challenged by a number of historians today, this thesis has established that, whether or not factually correct, it has far-

¹⁷⁹ Idem, pp. 42-45, *Statement by the Greek Delegation on National Minorities*, op.cit, and Amnesty International, *Annual Report, Greece*, 2000, 2001 and 2002.

¹⁸⁰ *Serif v. Greece*, op.cit, §§7-19 and §§33-54.

reaching implications for the status of the Orthodox Church. Not only is Orthodoxy the “prevailing” religion amongst a number of other “known” religions, but the institutions of this faith also have special administrative links to the government, such as in matters of erecting new places of worship.

After establishing that the Orthodox Church has a special role and a special position in Greece, this thesis continued to examine whether minority religions share common grievances and what these are. Concerning the Constitution, the notion of a “known” religion remains contested. Other provisions relating to proselytism, conscientious objectors and the administration of places of worship have particularly affected the Jehovah’s Witnesses, but not exclusively so. Even more controversial are allegations that non-Orthodox religions experience discrimination in matters such as religious education at school and regulations concerning places of burial and cremation. Affirmations of Greek anti-Semitism are particularly delicate if not questionable. Positive observations can be made on the administration of the Muslim minority in Thrace, but even this issue has not been left untouched by criticism.

However, both criticisms and comments pertaining to the protection of religious freedom, and the elimination of discrimination on the basis of belief, can provide useful and productive contributions to the debate how the welfare of religious communities may be improved. For no reason may problems be presented as either constructing a pessimistic future outlook, or as a ‘Orthodox religion v. Non-Orthodox religion’ case. The latter would indeed exclude that State agents such as courts and national commissions, but also civil society authorities such as human rights groups and the media, have contributed considerably to the debate. In addition, both international judicial and non-judicial bodies such as the ECrtHR and ECRI influenced the way that Greece protects the right to freedom of religion today. Facing this wealth of criticism and comments, the Greek State has made many efforts in all cases cited, not least by attempting to eradicate underlying causes for conflict.

Part Two

The Reform of the Identity Card in Greece

The previous part has closed with the observation that the State has undertaken considerable efforts to protect the right to freedom of religion, despite many controversies and conflicts concerning this issue. Serving both as a specific problem of religious freedom and as an example of exactly such an effort, the reform of the Greek identity card was successfully implemented despite encountering considerable unrest and opposition launched against it.

When employing the term “reform”, this thesis refers to the incident in the year 2000 when contemporary Greek laws were changed to prohibit the hitherto obligatory or even voluntary inscription of the category of religion on this document. This was a legal innovation because it broke with a nearly fifty-year-old tradition of naming the religious faith of the identity card holder. It occurred in Greece in response to developments on the European level, where Member States to the EU were requested to regulate automatic processing of personal data within their field of jurisdiction. As a result, the Greek government removed certain data, to which was classified religion, from the identity card and sparked a nation-wide debate on this issue.

This thesis will demonstrate that the discourse on whether or not religion should be mentioned on the identity card involved considerable use of human rights language, which means that especially the right to freedom of religion was repeatedly referred to in the debate. The identity card has been changed primarily to protect the subject whose personal data was being processed, but also to protect those individuals who may experience discrimination on the basis of their religion. In other words, by referring to the law that regulates the administration of data in Greece, the identity card reform affected the sphere of religious freedom. This thesis will therefore analyse the nation-wide debate not only to evaluate how the new identity card was received by the general public but also to demonstrate that the reform was immediately perceived as a controversial issue of the right to freedom of religion.

Chapter 1: The Legal Framework to the Reform

In order to place the public discourse about the reform into an appropriate framework, it is relevant to examine the legal history of the category of religion on the identity card. Greece was arguably the only country in the European Union to oblige

its citizens of stating this information on this document.¹⁸¹ Law 127/1969 cancelled in Article 14 the 87/1945 law concerning the identity card but reiterated in Article 2 that the identity card would include, amongst other facts, the religion of the bearer. Article 4 endowed the Minister of Public Order with the authority to determine which public bodies may issue identity cards, the size and type of cards, the procedure for renewing them and any other detail.

An innovation was introduced by the first two paragraphs of Article 3 of a new regulation pertaining to identity cards, Law 1599/1986. Now, religion would be the only category of information that was not mandatory, indicated only when requested to by the applicant. However, this thesis will illustrate below how the application of this law was impeded by the continuous extension of the 1969 law. In any case, the innovative feature of the 1986 regulation was overruled four years later with Article 2 of Law 1988/1991, which modified the 1986 equivalent to the extent that religion was made a mandatory category again.

In response to such a requirement, the European Parliament produced *Resolution on Religious Freedom in Greece and the Compulsory Declaration on the Greek identity card*. In this document, it “disapproves of the Greek Government’s decision to make the declaration of religion compulsory in that this is a constraint on individual freedom” and therefore “calls on the Greek Government to revoke this decision”. Such an appeal was supported by the argument that the declaration of religion should be made optional but that Greece, “under pressure from the Orthodox clergy in particular...has made the declaration of religion compulsory”. The Parliament further considered “the concern which this decision has aroused among the Catholic and Jewish religious minorities”.¹⁸² Following this resolution, the *Annual Report on Respect for Human Rights in the European Union* by the Committee on Civil Liberties and Internal Affairs recalled that the “obligatory stating of a person’s religion on an identity card in Greece is a serious violation of privacy and could lead to discrimination”.¹⁸³

¹⁸¹ P. Naskou-Perraki, *The Legal Framework to Religious Freedom in Greece*, op.cit, p. 31.

¹⁸² European Parliament, *Resolution on Religious Freedom in Greece and the Compulsory Declaration on the Greek Identity Card*, 20 January 1993, B3-0061/93.

¹⁸³ European Parliament, *Annual Report on Respect for Human Rights in the European Union (1993)*, 21 December 1994, A4-0124/94.

However, the identity card was stripped off the category of religion not to silence these appeals but as a response to a certain sector of Community rules, namely data protection law. The Council of Europe, the Organisation for Economic Cooperation and Development (OECD) and the European Economic Community (EEC) have considered since the late 1960s which legal instruments could be useful in regulating automatic data processing.¹⁸⁴ They supported regulation firstly, to protect the privacy of the individual and secondly, to harmonise national data protection laws which allows an open flow of information necessary for the benefit of transborder economics.¹⁸⁵ As a result of these efforts, the OECD published in 1980 *Guidelines* which introduced minimum standards, recommended how the privacy relating to personal data may be protected in public and private sectors, and outlined how national laws may be brought into line with international data flows.¹⁸⁶

This context explains why the Council of Europe adopted the 1981 *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*. Unlike the *Guidelines*, this instrument is legally binding. It came into effect four years after publication, establishing basic rules for national data protection laws, regulating transborder data flows and providing mechanisms for consultation on a Council level. In order to benefit transborder data flows, States not members to the Council could also become Parties to the *Convention*.¹⁸⁷

Almost parallel to committing herself to the *Guidelines* and ratifying the *Convention* in 1992, Greece adopted national provisions concerning the protection of the individual in regards to data processing. She had already drafted her first law regarding this issue in 1983, which was submitted to the parliament a number of times in an ongoing debate, and was more than ten years later strongly influenced by the EU adopting the *Directive On the protection of individuals with regard to the processing of personal data and on the free movement of such data*. This directive had been instituted, amongst other reasons, because “data-processing systems are designed to serve man [but] must, whatever the nationality or residence of natural persons, respect

¹⁸⁴ J. Michael, *Privacy and Human Rights*, UNESCO Publishing, Dartmouth, 1994, p. 32.

¹⁸⁵ Idem, p. 34.

¹⁸⁶ Idem, pp. 40-42 and J. Holvast, W. Madsen, P. Roth, “Introduction to International Regulations” in J. Holvast, W. Madsen, P. Roth, *The Global Encyclopedia of Data Protection Regulation*, Kluwer Law International, The Hague, London, Boston, 1999, p. 3.

¹⁸⁷ J. Michael, *Privacy and Human Rights*, op.cit, pp. 35-40 and Council of Europe, *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, Strasbourg, 28 January 1981.

their fundamental rights...notably the right to privacy, and contribute to economic and social progress”.¹⁸⁸ According to the statements made in the unusually long preamble, the directive relates to the 1981 *Convention* of the Council of Europe, but only covers data processing if it is automated or contained in a filing system organised according to specific criteria of persons. An implementation of the directive would prevent Member States from individually regulating personal data flows between each other, but they would benefit from a “margin of manoeuvre” created by specifying, “in their national law the general conditions governing the lawfulness of data processing”.

Under pressure by the Directive 95/45/EC, the Greek government adopted Law 2472/1997 in 1997, whose provisions resemble those of the directive rather truthfully. It establishes a comprehensive protection framework for automated and non-automated personal data processing in a file. Unlike the directive, however, it also regulates manual non-filed data processing. Apart from determining which factors render data processing unlawful, Law 2472/1997 also introduced a principle of transparency, according to which the subject must be notified and his rights must be respected.¹⁸⁹

Following the instructions of Articles 28 to 30 by the Directive 95/45/EC, which state that “each Member State shall provide that one or more public authorities are responsible” for how this directive is adopted at home, Law 2472/1997 creates the Authority for the Protection of Personal Data (DPA). Article 15 provides it with the task to “supervise the implementation of this law and all other regulations pertaining to the protection of individuals from the processing of personal data” through being constituted as an “independent public authority...not subject to any administrative control” whilst attached to the Ministry of Justice. Article 18 confers precise duties to the DPA: Not only should it “issue instructions for the purpose of a uniform application of the rules pertaining to the protection of individuals against the processing of personal data”, but it will also “denounce any breach of the provisions of this law to the competent administrative and judicial authorities”. Apart from supervising and assisting, the DPA has the power to deliver opinions and complaints,

¹⁸⁸ European Parliament and Council, *Directive, On the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data*, 24 October 1995, 94/45/EC, Preamble and E. Mitrou, “Greece” in J. Holvast, W. Madsen, P. Roth, *The Global Encyclopedia of Data Protection Regulation*, Kluwer Law International, The Hague, London, Boston, 1999, p. 2.

¹⁸⁹ E. Mitrou, “Greece”, op.cit, pp. 2-3.

and by Articles 21 to 23 it enjoys the power to impose administrative and penal sanctions on the controllers of data processing if so required.

Especially relevant for the identity card is the fact that both the Directive 95/45/EC and Law 2472/1992 create special categories of information processed. Article 8 of the Directive prohibits “the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life”. Article 2 of Law 2472/1997 repeats these categories almost word-by-word, adding only criminal charges or convictions to the list, and declares all these as “sensitive data”. Article 7 then proceeds to prohibit the processing of such data but allows the DPA to issue a permit for processing if certain conditions are fulfilled: the data subject must have given his written consent and processing must be to his vital interests, to a defence in court, to health matters, for reasons of national security, or for scientific or journalistic purposes.

Scrutinizing the application of Law 2472/1997, the DPA issued Decision 510/17 on the 15 of May 2000 relating to the identity card. It notes how Law 1988/1991 made religion an obligatory information by revising Law 1599/1986 and that both laws have been “in abeyance until today” because “local police authorities still issue old type identity cards by virtue of successive renewals” of Law 127/1969.

Despite this irregularity, however, all regulations have in common that they regulate the issue of “public documents containing personal data...registered in relevant public authorities’ filing systems and are subject to processing, the aim of the said processing being the verification of the subject’s identity”. By handling personal data registered in a filing system, these laws are subjected to Law 2472/1997 whose Article 4§1b requires personal data to be processed lawfully by being “relevant, appropriate and [by] not exceeding what may be required”. Considering this provision, the DPA established that the category of religion and a number of other categories “exceed the purpose of processing”, namely the “verification of the identity of the data subject”. As religion allegedly refers to the “inner world of the individual”, it is therefore “neither appropriate nor necessary in order to prove one’s identity”. Consequently, the DPA calls upon the Ministry of Public Order and other agencies to “comply with the content of this decision in due time” until a new type of identity

card is created. If not doing so, it threatens with referring to sanctions as prescribed by Law 2472/1997.¹⁹⁰

Referring to its authority to regulate identity cards given by Article 2 of Law 127/1969, the Minister of Public Order together with the Minister of Finance published Decision 8200/0-441210 relating to identity cards on the 17 July 2000. Article 4 provided for a new design of the card and presented a reformulated list of criteria for identifying the card-bearer, which excludes religion even on a mandatory basis.

In this way, Greece not only responded to the 1993 Resolution of the European Parliament and its recommendations, but also complied with the 1995 Directive concerning the processing of personal data. She accepted the consequences to her national Law 2472/1997 and agreed to the decision of the DPA by issuing new identity cards, which do not state the bearer's faith. However, this so-called reform would not be implemented without meeting challenges on the domestic level, where it had a noteworthy political and social impact.

Chapter 2: The Consequences to the Reform

The controversy, which erupted over the announcement that the category of religion on the identity card conflicted with Law 2472/1997, may be described as a conflict between the Orthodox Church, who opposed this measure, and the Greek government, who did not want to contravene the DPA's decision. A "two-year-old feud" ensued between both parties from the moment that the DPA had considered the case.¹⁹¹

However, this thesis will attempt to demonstrate that the identity card had larger implications which went beyond a mere standoff between the prevailing religion and the ruling political party. The conflict was not just about the inclusion of the category of religion on this document but also a conflict on greater issues concerning the future of Greece both in regard to the identity of Greek citizens and the nature of the Greek State. Here, the thesis will show in what ways the identity card issue was instantly transformed into a problem of profound nation-wide importance. It will present the argument that the identity card became an instrument by the church to accuse the

¹⁹⁰ Hellenic Republic Authority for the Protection of Personal Data, *Decision*, 15 May 2000, 510/17/15-05-2000.

¹⁹¹ *Kathimerini, English Edition*, 22 April 2002.

government of not considering the will of the Greek people, because the identity card was not just an administrative document but an essential symbol of Greek Orthodox identity. Church rhetoric may be understood as delegitimising the democratic basis of the ruling party and thereby interfering in secular state politics. At a later stage, this thesis will connect such matters with the right to freedom of religion by considering what civil society organisations and non-Orthodox religions had to say.

The DPA convened to scrutinize the legality of the current identity card a few days after the Minister of Justice at the time, Michalis Stathopoulos, launched a “direct challenge to the [Orthodox] Church” on 8 May 2000 by claiming that it enjoyed “more than its fair share of State protection”.¹⁹² Despite governmental claims that the Minister was expressing a personal opinion, the State could not avert the anger from the Orthodox Church especially when he called for “a clear delineation of the ecclesiastical and political spheres of authority” and concluded that “the law is the law, and its implementation will mean that identity cards are not required to state their holders’ religion”.¹⁹³ He was consequently called by Bishop Anthimos of Alexandroupoli an “enemy of the church”.¹⁹⁴

The damage was done. Minister Stathopoulos had not only preceded the decision of the DPA concerning identity cards by a number of days, which convened on the 15 May 2000. He had also indicated that the identity card reform had implications for church-state affairs at large because he wished for a clearer delineation, stopping short of calling for a separation of both authorities. Commenting on the DPA’s decision, he stated that it was “final, and not subject to the approval or ratification of any other legal authority”.¹⁹⁵ Only nine days after it was adopted, Prime Minister Costas Simitis announced in Parliament to the satisfaction of the Justice Minister that the decision would be implemented and the new identity cards would not state religious affiliation.¹⁹⁶ The modification of the laws concerning these cards was presented as an entirely secular issue throughout, which was justified by Greek law and not worth greater debate.

¹⁹² *Athens News*, 24 May 2000.

¹⁹³ *Athens News*, 11 May 2000.

¹⁹⁴ *Athens News*, 24 and 26 May 2000.

¹⁹⁵ *Athens News*, 18 May 2000.

¹⁹⁶ *Athens News*, 24 May 2000.

However, the Orthodox Church was not ready to comply to the argument that identity cards were an administrative matter. While government spokesman Dimitris Reppas maintained that “the government is responsible for implementing laws and that includes the 1997 law regarding the registration of personal data on the ID card”, the spokesman for Archbishop Christodoulos called it a “deliberate, premeditated attempt to strip the nation of its religious identity”. Bishop Theoklitos of Florina stated that “if the political leadership is afraid of the verdict of the people” by rejecting the archbishop’s proposal for a nation-wide referendum on the issue, “then I am afraid we are living in a shameless dictatorship”.¹⁹⁷

The Orthodox Church was not unanimous in the rejection of the identity card reform. Bishop Chrysostomos of Zakynthos, for example, believed that “one does not need to have one’s faith certified by a police identity card”. Also the Ecumenical Patriarch Vartholomeos of Constantinople has been interpreted of indirectly supporting the Greek government when exclaiming that “the Orthodox Church is obedient to the law of the land, wherever its faithful reside”.¹⁹⁸

The Patriarch was later denying an implicit reference to Greece but this was only symbolically important because the majority and especially Archbishop Christodoulos had already declared open opposition to the identity card and drawn political and social consequences. Of course, at the beginning both the Orthodox Church and the government attempted to prevent the disagreement from escalating. When the newspaper *I Hora* called the “head-on collusion between church and government” over identity cards a “Holy war”, both the archbishop and the Minister of Education and Religious Affairs claimed that “there is neither a holy nor an unholy war”.¹⁹⁹

By the end of May 2000 however, Archbishop Christodoulos delegitimised the ruling government when he branded the identity card reform a “coup d’état”, referring to the argument that it would have prevented the government from winning the recent general elections if implemented beforehand.²⁰⁰ The previous month had seen Prime Minister Simitis and his Panhellenic Socialist Movement (PASOK) winning over their competitor, the New Democracy Party with only one percent majority. *Time Europe* called it “the toughest election contest in Greece since democracy was restored in

¹⁹⁷ *Athens News*, 26 May 2000.

¹⁹⁸ *Athens News*, 26 and 30 May 2000.

¹⁹⁹ *Athens News*, 24 May and 25 May 2000.

²⁰⁰ *Athens News*, 30 May 2000.

1974". Allegedly, the Orthodox Church "contends that its support was critical" to this success and was now let down.²⁰¹

In less than a month, the identity card became an instrument for the Orthodox Church to challenge the legitimacy of the new PASOK government. It was transformed by church rhetoric into an object essential for the nation's "religious identity" while the government, by refusing to compromise, was portrayed as unreceptive to the sentiments of the people. Such a reference to the nation standing behind the church was justified to the extent that considerable sections of the population were organised into large demonstrations. These occurred in Athens and Thessaloniki already in June 2000, where Archbishop Christodoulos rallied the "tens of thousands of people" on the streets "to defend their faith like lions" because the reform would be "bleaching religion from Greek history".²⁰² At the demonstration in Athens on 21 June, participants carried Greek flags and crucifixes and chanted "Greece is Orthodoxy", listening to the warnings of the archbishop that "the forces of globalisation and religious marginalisation are out to get us".²⁰³

According to statements by newspapers such *Vradyni* and *I Hora*, the identity card was recognised by Archbishop Christodoulos as what may be called the tip of an anti-Orthodox iceberg, which was part of a process of Europeanisation that threatened the national Orthodox identity of Greece.²⁰⁴ Quoting the daily *Eleftherotypia*, *Athens News* reported that Archbishop Christodoulos pinpointed at "forces of evil" which followed the goal of "de-Christianising and de-Orthodoxising our country".²⁰⁵ Indeed, he argued that "our faith is the foundation of our identity" and that the changes made to the identity card were "being put forward by neo-intellectuals who want to attack us like rabid dogs and tear at our flesh".²⁰⁶ Indeed, the fight was for the survival of the national status quo: "Our country should remain as it is and not accept the religious fading which is being pursued by dark forces that are determined to erode and

²⁰¹ *Time Europe*, 26 June 2000.

²⁰² *Athens News*, 4 June 2000 and 25 June 2000, *Time Europe*, 25 June 2000 and *BBC News*, 14 June 2000.

²⁰³ *The New York Times*, 22 June 2000.

²⁰⁴ *Athens News*, 17 June 2000.

²⁰⁵ *Athens News*, 27 June 2000.

²⁰⁶ *The Guardian*, 22 May 2000.

undermine this land and country”, for which reason “we have proceeded as the Holy Apostles would have, undertaking a struggle in the name of and with the people”.²⁰⁷

In other words, the opposition of the church was for the benefit of the Orthodox identity of Greek citizens, which were rallied to sign a petition for a nation-wide referendum starting from September 2000 on whether or not religious affiliation should be an optional category on the identity card.²⁰⁸ Already in 1993 the European Parliament received Greek petitions which “claim the right for religious faith to be entered on these documents” because “religion is a part of their identity” and “the Greek nation and Orthodoxy are historically almost identical concepts”.²⁰⁹ However, they were by no means as extensive as the equivalent organised seven years later. Having extended the deadline to the referendum scheduled on the 25 March 2001, Archbishop Christodoulos declared on 28 August 2001 that 3,008,901 people had given their signature.²¹⁰ Commenting on this massive turnout, he claimed that the church is “the permanent and everlasting cohesive factor of this nation”, which fights for “preservation of our paternal heritage” and “individuality, choice and tolerance”.²¹¹

Despite these efforts of the archbishop and other church leaders to portray the Orthodox faith as a force of national cohesion and the essence of Greek identity, the symbol for this argument – the identity card – was left as decided the year before. Constantine Dafermos, the President of the DPA, argued that “religious beliefs and professions can change at any time and cannot be regarded as proof of identity”, which should be the reason why “the government has pledged to uphold our decision”.²¹² Such a promise has been kept on numerous occasions. At the meeting between Archbishop and the President of the Hellenic Republic after the publication of the church’s petition, the former urged the latter, as the head of State, to exert pressure on the PASOK government for a referendum on the identity card. The president refused, explaining that referenda, plebiscites and other expressions of

²⁰⁷ *Athens News*, 01 July 2000.

²⁰⁸ *Athens News*, 2 September 2000 and 11 November 2000.

²⁰⁹ E.M. Ziazopoulos, *Petition on Behalf of the ‘Christian Union of Education Officials’ on the Inclusion of the Holder’s Religious Faith on new Greek Identity Cards*, No. 600/93, 1993 and the Young Mothers Union – the Apostle Paul, *Petition on the Inclusion of the Holder’s Religious Faith on New Greek Identity Cards*, No. 601/93, 1993.

²¹⁰ *Athens News*, 14 March 2001 and *Kathimerini, English Edition*, 1 September 2001.

²¹¹ *Athens News*, 31 August 2001.

²¹² *The Guardian*, 22 May 2000.

popular sovereignty are regulated by the Constitution, according to which there is no reason why a referendum on the identity card should be held. He furthermore reminded the archbishop to comply with current legislation, that the signatures to the petition were not collected according to legal procedures and that they could not overrule the Constitution.²¹³

Such arguments may be considered in the context of the government and other State authorities repeatedly emphasising that the identity card was subject to Greek laws. In the words of spokesman Dimitris Reppas, the changes were not intended to clash with the church.²¹⁴ Premier Simitis considered the issue closed long before the petition was signed because it was solely a matter of State responsibility, echoing the President's position.²¹⁵ Inviting the Orthodox leadership to any dialogue requested, it was maintained that the identity card "is under the exclusive jurisdiction of the government and the State", removed from ecclesiastical spheres of influence and "had been handled definitely and finally".²¹⁶ Foreign Minister George Papandreou even expressed what could be read as incredulity at the church's vociferous opposition because "the Greeks have survived for millennia without the plastic card".²¹⁷

Despite these reassurances that the identity card issue was solely a matter of secular administration, the Justice Minister was quoted as not hiding his opinion that it was just the beginning of a separation from the church. Stating that "those who do not like these measures can go before the Council of State", he said that "we are going to move forward" because "Greece is a European country".²¹⁸ As the thesis will demonstrate below, the opponents to the new identity card did go to the Council of State and applied to the ECtHR, when the former upheld the DPA's decision in March 2001.²¹⁹

An interim conclusion at this point cannot fail to express astonishment at the extent to which the conflict over the identity card influenced public debate in Greece for more than a year after the first decisions on the matter were made. As soon as the current Justice Minister and the DPA declared that the category of religion was an

²¹³ *Kathimerini, English Edition*, 1 September 2001 and *Athens News*, 31 August 2001.

²¹⁴ *Athens News*, 30 May 2000.

²¹⁵ *Athens News*, 17 June 2000.

²¹⁶ *Athens News*, 27 June 2000.

²¹⁷ *Athens News*, 17 June 2000.

²¹⁸ *The Guardian*, 22 May 2000.

²¹⁹ *Athens News*, 31 August 2001.

unlawful element of the identity card, the Orthodox Church voiced its opposition to the allegation that the Greek Orthodox identity was threatened from Western influences and internal enemies. According to the statements of Archbishop Christodoulos, the people of Greece were called to save their Orthodox heritage, starting with the identity card a symbol for the Orthodox mission. This may explain the vociferation of most other church leaders on a matter that was seen by the government as a mere administrative procedure.

Massive demonstrations in the summer 2000 have shown that a large section of the Greek population supported the church in what the archbishop had called a “crusade”.²²⁰ Even one year later, a poll by Flash Radio found that 50.1% of Greek citizens wanted religion to be stated on the identity card, while 23.4% believe that this information should be optional: in other words, 73.4% of those individuals polled opposed the reform.²²¹ It is therefore not a surprise that local and municipal elections in the autumn 2001 were influenced by whether or not certain candidates had supported the government or the church, as illustrated below.

However, the wide-spread opposition by the people to the new card may not necessarily imply a destabilisation to the legal and public order of the country. Even though more than 3million people had signed the petition, including the leader of the New Democracy Party, 52.1% of the participants of the Flash radio poll supported President Stephanopoulos in rejecting the request by Archbishop Christodoulos for a referendum.²²² One possible explanation for this curious contradiction may be the judgements of both the Council of State and the ECtHR, which upheld the legality of the government’s decision on the identity card. These influential decisions will be examined in detail in the following section, which reveals that the right to freedom of religion was an essential element in the cases concerned.

²²⁰ *BBC News*, 7 January 2002.

²²¹ *Kathimerini, English Edition*, 8 September 2001.

²²² *Idem*.

Chapter 3: The Judicial Approach to the Reform

After a meeting of the Holy Synod, Bishop Ignatios announced in May 2000 that “the Eastern Orthodox Church of Christ will have recourse to the Council of State to decide the issue before the law”.²²³ However, it was a number of individuals rather than the church as an institution who brought the case against the identity card before the Council of State, and consequently before the ECrtHR.²²⁴

A prominent member of the Council had published an article on the new identity card in *To Vima* as early as two days after the publication of the DPA’s decision in May 2000. He noted that revealing religious affiliations is necessary on certain public occasions such as weddings, and argued that voluntary inscription of religion on the identity card cannot be a violation of religious freedom. He further proposed that the prohibition of processing sensitive data could be overcome firstly, by recording religious affiliation on the identity card but not in the filing system of the police and secondly, by applying the provision of Law 2472/1997 that with the consent of the subject, sensitive data may be filed. Finally, he claimed that since the category of religion does not amount to a filing system being created, the law 1988/1991 still applies and is not overruled by its 1997 equivalent.²²⁵

However, such arguments were rejected by the Council of State judges who considered the court cases relating to the identity card reform in 2001.²²⁶ These cases may be understood as bringing forward two basic arguments. Firstly, the legality of the decision-making process for the removal of religion from the identity card was challenged with the result of a demand for the cancellation of Decision 510/17/15-05-2000 of the DPA as well as Decision 8200/0-441210 by the Ministry of Public Order and the Ministry of Finance relating to the identity card. Secondly, the applicants considered these decisions in question to have caused significant damage by offending the “patriotic and religious feelings of Greeks and Orthodox Christians”, which accordingly justified their abolishment and which allowed for a reintroduction of religion as a category of data.²²⁷

²²³ *Athens News*, 26 May 2000.

²²⁴ ECrtHR, *Sofianopoulos, Spaidiotis, Metallinos and Kontogiannis v. Greece*, Application Nos. 1988/02, 1997/02 and 1977/02, Decisions and Reports, 12 December 2002, and *Interview with George J. Mavros, Attorney at Law*, 18 June 2003.

²²⁵ *To Vima*, 17 May 2000.

²²⁶ “Nomologia” in *To Syntagma*, vol. 5, 2000, pp. 1025-1094.

²²⁷ D. Petroulia, “Eisigisi tou Symvoulou Epikrateias” in *To Syntagma*, vol. 5, 2000, pp. 1113-1117.

The claim that the identity card reform had been brought about by unfounded means necessitated the Council of State to establish at the outset whether or not the legality of the processing of data in regards to the identity card had been evaluated correctly by both the DPA and the two Ministries in question. On Law 2472/1997, the Council stated that firstly, the category of religion on the identity card was indeed sensitive personal data. Secondly, it repeated that this law required personal data to be related, necessary and useful to the purpose of processing in order to be lawfully handled. Thirdly, the Council validated that the processing of religious beliefs is not justified as it is non-object related, not useful and not necessary for identifying an individual, as the identity card describes a person's physical rather than mental capacities.²²⁸ The Council of State therefore shared the DPA's opinion that processing of religion as a category on the identity card is illegal according to Law 2472/1997. In this way, it overruled the argument that the consent of the subject would allow sensitive data to be processed. It also clarified that Law 1988/1991 does not apply to the identity card anymore, because the category of religion belongs to a system of data processing as covered by Law 2472/1997.

The Council of State then examined the claim that the decision of both Ministries should be cancelled. The applicants argued that they violated Article 2 of Law 127/1969, which provides that religion should be mandatory to the card, and Article 3 of Law 1599/1986, which allows religion to be inscribed when requested by the card-bearer.²²⁹ Questions have also been raised whether the Ministry of Public Order, by virtue of Article 4 of 127/1969, has the authority to remove categories from the identity card in the first place. By virtue of this article, he is given the authority to administer the issuing and renewing of identity cards and "in which order" the categories are listed, but this may not necessarily imply that he may erase categories, even if the law mentions his authority over "any other detail" on this matter.²³⁰

Such controversies were brushed aside when the Council of State argued that Law 2472/1997 set new standards. As mentioned already, the mandatory inscription of religion on the identity cards as demanded by Article 2 of 127/1969 was abolished by the 1997 provision. It also replaced Article 3 of Law 1599/1986 even if that law was never applied because the validity of the 1969 law was extended continuously by

²²⁸ Idem, pp. 1130-1137.

²²⁹ Idem, p. 1137.

²³⁰ P.D. Nikopoulos, "Paratiriseis Nomologias" in *To Syntagma*, pp. 1015-1018.

the Ministry of the Interior.²³¹ The applicants had further claimed that the legal authority of the ministries must be questioned as the inscription of the regulation should be provided for by law, enacted in parliament, and not by a common decision.²³² The Council of State rejected this argument because the removal of religion from the identity card is based as well on Law 2472/1997 as well as Article 4 of 127/1969, the latter being revised by the former: it is therefore the law which justifies the identity card reform, not solely the decision by the DPA or the ministerial decree.²³³

In other words, the Council of State ruled in favour of the government by ruling that firstly, the removal of religion from the identity card was in accordance with Law 2472/1997 which regulates the processing of personal data, and secondly, that the enactment of the DPA by the common Ministerial Decision 8200/0-441210 of July 2000 may not be subjected to doubts regarding its legality.

As already mentioned, the applicants also argued before the Council of State that their “patriotic and religious feelings” of Orthodox Greeks had been offended.²³⁴ Not recognising this injury, the Council refused the reinstatement of the mandatory or even voluntary inscription of religion on the identity card. It repeated that this document had the purpose of identifying a Greek citizen: it neither had any cultural relevance nor did it apply to Greek Orthodox persons resident outside State borders.²³⁵

In the context of “religious feelings”, the argument was raised that the prohibition of religion on the identity card violated the right to religious freedom as guaranteed by Article 13 of the Greek Constitution. According to the Council of State, however, this article does not provide the right to writing one’s religious affiliation on a State document.²³⁶ In case 2285/2001, it noted that “la mention obligatoire de la religion sur les cartes d’identité... emporterait violation de l’article 13 de la constitution”. Indeed, the positive aspect of freedom of religion “ne comprend pas le

²³¹ D. Petroulia, “Eisigisi tou Symvoulou Epikrateias”, op.cit, pp. 1137-1141 and *Sofianopoulos, Spaidiotis, Metallinos and Kontogiannis v. Greece*, op.cit.

²³² D. Petroulia, “Eisigisi tou Symvoulou Epikrateias”, op.cit, pp. 1137-1141 and *Interview with George J. Mavros, Attorney at Law*, 18 June 2003.

²³³ D. Petroulia, “Eisigisi tou Symvoulou Epikrateias”, op.cit, pp. 1137-1141.

²³⁴ “Apophaseis” in *To Syntagma*, pp. 1032.

²³⁵ D. Petroulia, “Eisigisi tou Symvoulou Epikrateias”, op.cit, pp. 1137-1141.

²³⁶ Idem, pp. 1141-1148 and “Apophaseis”, op.cit, pp. 1040-1041.

droit pour les individus de manifester leur religion...sur des documents publics, comme les cartes d'identité".²³⁷

The argument produced in *To Vima* that a voluntary inscription of religion would not violate religious freedom was similarly rejected. Article 13 of the Constitution had the protective function of securing a person against the interference by public authorities in the sense that it even prohibits a voluntary inscription of religion on the identity card: people who would chose not to reveal their religion may be indirectly or negatively discriminated against in comparison with those who do reveal their belief. The Council of State warned that an optional writing of religious affiliation would pave the way for discrimination.²³⁸ It noted that "en effet, les Grecs qui refusent de mentionner leur religion ou leurs convictions religieuses sur leur carte... sont obligés de divulger, indirectement et presque publiquement, un aspect de leur attitude envers le divin. En même temps, ils se distinguent...de ceux des Grecs qui révèlent leurs convictions religieuses en les mentionnant sur leur carte d'identité. En outre, la mention de la religion sur la carte d'identité ouvre la voie à la discrimination, positive ou négative".²³⁹ Underlying this argument is said to rest the principle of "reversed publicity" regarding the creation of discrimination by not revealing religious belief.²⁴⁰

The decisions of the Council of State did not satisfy a select few of the applicants, who proceeded before the ECtHR and alleged Greece to have violated Article 6§1 and Article 9 of the *ECHR*. Article 6§1 was referred to because of an alleged miscarriage of justice on behalf of the Council of State. Some of its members belonged to the Hellenic Society of Judges for Democracy and Freedom, which had prior to the consideration of the applicants' cases publicly acclaimed the removal of religion from the identity card. A demand to remove members of this association from the panel of judges was arguably not fulfilled adequately. By decisions 152/2000 and 151/2000 of the Council, all member judges to the Society were left seated on the jury

²³⁷ *Sofianopoulos, Spaidiotis, Metallinos and Kontogiannis v. Greece*, op.cit.

²³⁸ D. Petroulia, "Eisigisi tou Symvoulou Epikrateias", op.cit, pp. 1141-1148 and "Apophaseis", op.cit, pp. 1040-1041.

²³⁹ *Sofianopoulos, Spaidiotis, Metallinos and Kontogiannis v. Greece*, op.cit.

²⁴⁰ P.D. Nikopoulos, "Paratiriseis Nomologias", op.cit, pp. 1021.

because they had not participated directly in the publication of the aforesaid statement, while only the president of the Society was removed.²⁴¹

The ECtHR considered the allegation that the Council of State had violated the principle of an impartial tribunal, as enshrined in Article 6§1, as manifestly ill-founded and therefore rejected its admissibility. It argued that “la déclaration parue dans la presse émanait d’une association regroupant un grand nombre de magistrats” and that the judges of the jury in question had not individually taken a position on the identity card. It emphasised that a change to the jury panel would have been an excessive formality that would have paralysed the system and reminded the applicants that the president of the society concerned had already been removed in response to their request.²⁴²

The ECtHR also refused the admissibility of the alleged violation of Article 9 on the ground of being manifestly ill-founded. The applicants had considered the inscription of religion on the identity card important for “les sensibilités religieuses de la majorité des Grecs, qui est orthodoxe” with the result that it was not just a matter “déclaratoire mais aussi honorifique”, citing the 3 million signatories to the referendum by the Orthodox Church on the matter. Commenting on the case in retrospective, their defendant lawyer did not deny that “the identity card may create some problems in the field of labour” but maintained that “the identity card has a very symbolic value” not least because “being Greek Orthodox is part of the national identity of Greece, whether or not it is partly myth or partly reality”. However, the ECtHR clarified that “le fait que la religion orthodoxe est la religion dominante en Grèce et que les manifestations officielles comportent une part de cérémonies religieuses...ne saurait justifier la mention de la religion sur les cartes d’identité”. It reminded the applicants that “le but d’une carte d’identité ne consiste ni à conforter le sentiment religieux de son porteur ni à refléter la religion d’une société donnée à un moment donné”.²⁴³

Secondly, the applicants claimed that the prohibition of inscribing religion on the identity card was not a justified interference by the State according to Article 9§2 of the *ECHR*: it was neither necessary for public order, for public health or public morals, nor was it necessary for protecting the rights and freedoms of others. The

²⁴¹ *Sofianopoulos, Spaidiotis, Metallinos and Kontogiannis v. Greece*, op.cit, and *Interview with George J. Mavros, Attorney at Law*, 18 June 2003.

²⁴² *Sofianopoulos, Spaidiotis, Metallinos and Kontogiannis v. Greece*, op.cit.

²⁴³ *Idem and Interview with George J. Mavros, Attorney at Law*, 18 June 2003.

prohibition was not necessary in a democratic society and violated the principle of proportionality. The ECtHR noted that the identity card could not be considered as being “indispensable pour la vie des citoyens ni pour le fonctionnement de l’Etat” because many States did not have this document. If it is an element of the administration of a country, it is one of many official documents who identify and individualise citizens. Accordingly, “les convictions religieuses...ne constituent pas une donnée servant à individualiser un citoyen dans ses rapports avec l’Etat” because they refer to the internal life of each person and could therefore change in the course of a lifetime, unlike most physical features. A voluntary inscription of religion would also violate the uniformity of identity cards. Moreover, the ECtHR supported the warning of the Council of State that mentioning religious convictions “dans un document risque aussi d’ouvrir la porte à des situations discriminatoires dans les relations avec l’administration ou même dans les rapports professionnels”.²⁴⁴ In this way, the ECtHR assembled a number of arguments against the alleged violation of Article 9 and thereby indirectly endorsed the opinion of the DPA. Greece was spared another court-case as the application was declared manifestly ill-founded.

Chapter 4: The Response to the Judicial Approach

Before the ECtHR rejected the application concerning the identity card in the stage of admissions, the Orthodox Church defied the lack of success of individual applicants before the Council of State, and the failure to call for a referendum on the optional inclusion of religion.

At first, Archbishop Christodoulos seemed to resigned on the matter when he reassured a congregation one day after President Stephanopoulos rejected the petition that “the more they hit the church, the greater it becomes”.²⁴⁵ However, the identity card was not laid to rest as it played a role in the autumn local and municipal elections. Yiannis Tzannetakos was nominated by New Democracy for the Athens-Piraeus district, even though he had previously supported the PASOK government’s stance towards the identity card issue. Archbishop Christodoulos himself was said to have indirectly rebuffed Tzannetakos’ nomination and criticised New Democracy for the choice.²⁴⁶ When Tzannetakos fared badly in the elections, it was alleged that he

²⁴⁴ Idem, pp. 7-9.

²⁴⁵ *Kathimerini, English Edition*, 1 September 2001.

²⁴⁶ *Kathimerini, English Edition*, 23 September 2001.

was “severely hampered by the fact that he was a standard-bearer for the [PASOK] government in its war against the church”, especially considering that he insulted the archbishop by calling him by his surname, Mr Paraskevaïdis. Despite a mildly forgiving statement, the archbishop denied a meeting between himself and Mr Tzannetakis, which would have won the candidate many votes as his own party had stood behind the church throughout the conflict.²⁴⁷

Disillusioned New Democracy supporters were therefore said to have cast a protest vote for the “powerful extreme right voice” in the local and municipal elections, Giorgios Karadzaferis. This former New Democracy member was running independently for the election of Athens-Piraeus and was suggested to have received as much as 24% from those people who had elected New Democracy in 1998.²⁴⁸ Called an “extreme right-wing populist”, Karadzaferis had continually supported the Orthodox Church. His young party was called the Popular Orthodox Rally, or LAOS, the “people”, in Greek. An illegal television channel owned by the candidate advertised his book on Orthodox saints and the notorious Protocols of the Elders of Zion.²⁴⁹

Bearing the competition with Karadzaferis for Athens-Piraeus in mind, two members of the New Democracy party visited Archbishop Christodoulos without their leader Tzannetakis to regain public esteem. However, this visit was preceded by the archbishop remarking that “the people who voted for Giorgios Karadzaferis are not extreme right-wingers, they are good Christians” even though the candidate had four members of a neo-Nazi group on his ticket.²⁵⁰ On a tape played by Flash Radio on 24 October, the archbishop maintained that “a temporary majority of people [were] dissatisfied” with Tzannetakis and “Karadzaferis would not even have got one percent had [New Democracy] chosen another nominee”.²⁵¹

In short, it may be observed that the Orthodox Church and particularly Archbishop Christodoulos played a considerable role in the local and municipal elections of 2001. The competition between New Democracy’s candidate Tzannetakis and the LAOS candidate Karadzaferis demonstrated that the archbishop may, intentionally or unintentionally, be a powerful non-political element in electoral

²⁴⁷ *Kathimerini, English Edition*, 28 September 2001.

²⁴⁸ *Kathimerini, English Edition*, 14 October 2001.

²⁴⁹ *Kathimerini, English Edition*, 28 September 2001.

²⁵⁰ *Kathimerini, English Edition*, 16 October 2001.

²⁵¹ *Kathimerini, English Edition*, 25 October 2001.

battles. Similarly influential was the identity card controversy. The support by Tzannetakis to the PASOK government on this issue conflicted directly with the opposition of his own party, New Democracy, which weakened his popularity and credibility. Karadzaferis with his nationalistic and pro-Orthodoxy agenda was therefore said to have reaped the fruits of Tzannetakis' failure.

Apart from drawing attention to itself in Greek political affairs, the identity card also provided ample material for a lively debate on religious freedom, even if the reform was carried out in response to laws processing personal data. The Council of State ruled that the right to freedom of religion does not entail the manifestation of one's religious beliefs on public state documents and that, if such an inscription would occur, it may pave way for direct or indirect discrimination. The ECtHR indirectly endorsed these arguments when it rejected the case on this matter in the stage of admissions.

This was welcome news for international organisations, who had been lobbying the Greek government on the identity card matter for years. ECRI repeated in both its first and second reports that "any reference to religion [should] be removed from identity cards" to limit "overt or covert discrimination against members of non-Orthodox religions, who may in some cases be considered as less 'Greek' as Orthodox ethnic Greeks".²⁵² The UN Special Rapporteur on Religious Intolerance "fully supports" the resolution of the European Parliament, "which considered this provision firstly, as a violation of the fundamental freedoms of the individual... and secondly as a provision that should be abolished".²⁵³ In 2000, the government was praised by the Commissioner for Human Rights for "the way in which the delicate question of mentioning the religion on the identity cards was handled", which "bears witness" to an improvement of freedom of religion in Greece.²⁵⁴ Even the Congress of the United States of America considered the issue when a member to this body called the removal of religious affiliation from the Greek identity card a "positive development...[which] has long been a pending human rights concern".²⁵⁵

²⁵² ECRI's country-by-country approach: Greece, op.cit, p. 9 and ECRI, *Second Report on Greece*, op.cit, p. 12.

²⁵³ UN High Commission for Human Rights, *Human Rights Questions*, op.cit, p. 8 and p. 28.

²⁵⁴ Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his Visit to the Hellenic Republic, June 2002, op.cit, p. 4.

²⁵⁵ The United States of America, *Congressional Record, Proceedings and Debates of the 107th Congress, First Session*, no. 38, vol. 147, 21 March 2001.

In the same year, the NCHR had endorsed the government's reform because even a voluntary inscription of religious affiliation on the identity card would not only give rise to potential discrimination, but would also be "unconstitutional and opposed to Greek law and international obligations".²⁵⁶ Praise was therefore heaped on the government by "NGOs and all observers of the human rights scene in Greece" who were described at the OSCE Implementation meeting in the year 2000 to have "welcomed Minister of Justice Michalis Stathopoulos' initiative to remove the entry on religion from Greek identity cards".²⁵⁷

Some non-Orthodox groups proclaimed themselves to be in favour of the change. Already in 1993, the European Parliament had noted "the concern which [the inscription of religion on the identity card] has aroused among Catholic and Jewish minorities".²⁵⁸ A few years later, the UN Special Rapporteur remarked that "the main problem facing the Jewish community is the fact that religion must be mentioned on identity cards, which is perceived as a potential source of discrimination".²⁵⁹ *To Vima* reported Archbishop Christodoulos observing that "the Jews" had allegedly persuaded the Greek Prime Minister in 1996 at a meeting in the United States on the matter. The Central Board of Jewish Communities admitted that it had communicated with the government on this but criticised such comments for fostering "an indiscriminate climate of anti-Semitism, the results [of which] is the eventual vandalism of Jewish cemeteries and institutions, which [the archbishop has been] obliged to condemn".²⁶⁰ As the European Parliament also cited the Greek Catholics, it is not surprising that the Catholic Archbishop of Athens praised the reform because the identity card "est un document civil et la religion est privée".²⁶¹ Of course, some religious groups believe that "hiding what you are is not a solution", but it cannot be denied that the identity

²⁵⁶ Hellenic Republic, NCHR, *Ekthesi*, 2000, pp. 83-84.

²⁵⁷ *Statement on Greece at the 2000 OSCE Implementation Meeting, Freedom of Greece: Persistent Intolerance*, 23 October 2000, <http://www.greekhelsinki.gr/english/pressrelease/MRG-G-23-10-2000b-osce2000.html>.

²⁵⁸ European Parliament, *Resolution on Religious Freedom in Greece*, B3-0061/93, op.cit.

²⁵⁹ UN High Commission for Human Rights, *Human Rights Questions*, op.cit, p. 31.

²⁶⁰ *Interview with Leon D. Gabrielides, Director of the Central Board of Jewish Communities in Greece*, 13 May 2003, GHM-MRGG, *Anti-Semitism in Greece, November 2002*, op.cit, p. 6, p. 37 and p. 53, *BBC News*, 15 March 2001, *Athens News*, 16 March 2001 and *Associated Press*. DATE

²⁶¹ *Interview with Nicolas Foscolos, Catholic Archbishop of Athens from the Roman Catholic Church of Greece*, 6 June 2003.

card reform in the current situation means “less pressure and fairer chances in employment”.²⁶²

On the one hand, the elimination of religion from the identity card has been condemned for offending the patriotic and religious feelings of Orthodox Greeks. On the other hand, it was praised as an improvement for preventing discrimination on the grounds of not being Orthodox. Why it could succeed despite the opposition of the prevailing religion gave rise to suggestions only. The Office of the Ombudsman believes it was due to “globalisation and internationalisation, especially the jurisdiction from Strasbourg”.²⁶³ A legal advisor to the NCHR agrees that the ECtHR caused a new approach towards religious freedom during the last ten years.²⁶⁴ He and members of non-Orthodox communities identified an international and European environment as releasing Greece from the notion that “being Greek is being Orthodox” and helping protect religious freedom.²⁶⁵

It would be preposterous to demand that a revolution the Greek *status quo* must occur in the name of freedom of religion, even if the European Community was called “the wagon on which countries like Greece will hitch their destiny”.²⁶⁶ It is of course possible to protect this human right within the current framework of public order and values. A senior investigator of the Office of the Ombudsman believes that “even under this system you can have a good protection of religious freedom as also the United Kingdom has an official State church” but adds that this would demand a transformation of the “mentality of Greek society”.²⁶⁷ Such a transformation is likely to occur the longer Greece enjoys her membership to the EU and elaborates her role in international politics. A greater secularisation of the State and an increased

²⁶² Interview with Babis Andreopoulos, Legal Representative of the Christian Jehova's Witnesses of Greece, 27 May 2003 and Interview with Aikaterini Diamantara, President of the Church of Scientology in Greece, 21 May 2003.

²⁶³ Interview with Dr Michael Tsapogas, Senior Investigator at the Office of the Greek Ombudsman, 16 May 2003.

²⁶⁴ Interview with Ioannis Ktistakis, Legal Advisor to the NCHR, 7 May 2003.

²⁶⁵ Interview with Nicolas Foscolos, Catholic Archbishop of Athens from the Roman Catholic Church of Greece, 6 June 2003, Interview with Babis Andreopoulos, Legal Representative of the Christian Jehova's Witnesses of Greece, 27 May 2003 and Interview with Aikaterini Diamantara, President of the Church of Scientology in Greece, 21 May 2003.

²⁶⁶ D. Conostas, T. Stavrou, *Greece Prepares for the Twenty-First Century*, op.cit, p. 11.

²⁶⁷ Interview with Dr Michael Tsapogas, Senior Investigator at the Office of the Greek Ombudsman, 16 May 2003.

separation with the prevailing religion appears to be desirable also for non-Orthodox religions.²⁶⁸

It is to be expected that a “comprehensive reform of the State-church relations does not seem likely in the immediate future”.²⁶⁹ Reforming the identity card may be seen as a “progressive” step, but the Orthodox Church emerged from the conflict with the government “politically stronger than before”, with the result that “the battle is over but the war not yet won”. It has been suggested therefore that “it will probably be another ten years before another major conflict occurs” between these two authorities: the “agenda [on issues of religious freedom] will not be touched in the near future for fear of another confrontation”.²⁷⁰ Similarly, the lawyer who defended the applicants before the ECtHR argued that because the sensitive issue of identity cards was attacked by the government, it will not dare now to abolish other laws relating to religious freedom.²⁷¹

This does not silence harsh criticism. Panayiotis Dimitras of the GHM argued that the former Justice Minister, who implemented the identity card reform, “was swiftly removed one year later and is now issuing strong legal opinions against the present situation while his successor is on excellent terms with the church”.²⁷² An academic expert warned that “the church’s relations to the State in conjunction with the centrality of Orthodoxy to nationality can authenticate authoritarian regimes”, with the result that “for Greece to psychologically and culturally accept a European identity necessitates a massive transformation of its world view”, where “Greekness can no longer be understood as integral whole”. Membership to the EU must mean “acceptance of human rights as inhering in individuals, establishment of a secular State, separation of church and State, privatisation of the church and a recasting of Greek identity”.²⁷³

²⁶⁸ Interview with Konstantinos Kadam Kapetanopoulos, Teacher of the New Kadampa Tradition, Buddhaland Buddhist Centre, 22 May 2003, Interview with Dr. Olga Tsakirides, Lecturer at Panteion University and Researcher in the Panhellenic Foundation for Supporting Muslims in Greece, 2 June 2003, Interview with Babis Andreopoulos, Legal Representative of the Christian Jehova’s Witnesses of Greece, 27 May 2003 and Interview with Aikaterini Diamantara, President of the Church of Scientology in Greece, 21 May 2003.

²⁶⁹ P. Foundethakis, “Religion and Constitutional Culture in Europe”, op.cit, p. 241.

²⁷⁰ Interview with Ioannis Ktistakis, Representative of the National Commission for Human Rights, 7 May 2003.

²⁷¹ Interview with George J. Mavros, Attorney at Law, 18 June 2003.

²⁷² Interview with Panayiotis Dimitras, Representative of the Greek Helsinki Monitor, Electronic Mail, 16 June 2003.

²⁷³ A. Pollis, “Eastern Orthodoxy and Human Rights”, op.cit, pp. 17-19.

Arguing about whether the State, the Orthodox Church or other factors are the scapegoats who obstruct the effective implementation of religious freedom, however, is not a productive exercise. More useful would be to focus on enhancing the atmosphere of tolerance in Greek society, as in the words of ECRI, “Greek public opinion as a whole...still tends to see recognition of multiculturalism as a threat to national identity”.²⁷⁴ The rhetoric of Archbishop Christodoulos that “forces of globalisation and religious marginalisation” are a threat to the Greek nation, and the emphasis of the Orthodox Church as uniting Greek citizens, could present an obstacle to the process of making the country more receptive to European and international influences. However, such rhetoric is not necessarily damaging if combined with good relations to other religious groups. Indeed, many minority religions have stated to communicate with representatives of the prevailing religion, even if not always on an official basis.²⁷⁵ An enhanced visibility and regular ecumenical or at least official meetings between the prevailing religion and non-Orthodox worshippers would not threaten but strengthen the Greek Orthodox heritage: damaging divisions within the religious community of the country would be given a chance to be overcome.

Concluding on the controversy over the identity card, Archbishop Christodoulos reminded the public in early 2002 that the Orthodox Church “has no four-year limit, nor does it fear elections” and warned how “the identity card issue arises of its own volition ahead of the next parliamentary elections” for which polls are not due until spring 2004.²⁷⁶ A representative of the DPA, however, observed that “after two years, nobody talks about this issue anymore”.²⁷⁷ Time will tell which of the two viewpoints proves to be correct.

²⁷⁴ ECRI, *Second Report on Greece*, op.cit, p. 14.

²⁷⁵ *Interview with Nicolas Foscolos, Catholic Archbishop of Athens, Roman Catholic Church of Greece*, 6 June 2003, *Interview with Leon D. Gabrielides, Director of the Central Board of Jewish Communities in Greece*, 13 May 2003 and *Interview with Dr Olga Tsakirides, Lecturer at Panteion University and Researcher in the Panhellenic Foundation for Supporting Muslims in Greece*, 2 June 2003, *Interview with Babis Andreopoulos, Legal Representative of the Christian Jehova's Witnesses of Greece*, 27 May 2003.

²⁷⁶ *Kathimerini, English Edition*, 26 March 2002.

²⁷⁷ *Interview with Philippos Mitleton, Attorney at Law in the Auditors Department at the Data Protection Authority*, 21 May 2003.

Conclusion

At the outset of this thesis, it has been demonstrated that Greece has ratified a number of international treaties and developed herself as an eager player on the level of international politics. Certainly after 1981, the Hellenic Republic was firmly entrenched as a proponent of democracy and human rights, which were values that had been neglected in the troublesome years of military dictatorship. She enjoys a unique history in the EU which not only saw centuries of Turkish Ottoman occupation but also the emergence of the sentiment that the Orthodox Church has been the protector of the Greek people, indeed also of their values and traditions. Almost homogeneously Greek Orthodox, the country treasures a national heritage strongly influenced by this particular religious faith.

A number of factors modified the homogeneity of Greek society. Firstly, a select few religious groups, such as the Muslim, the Catholic and the Jewish, have a flourishing past in Greece. Secondly, it has been established by ECRI that Greece experienced a transformation of her society due to a recent influx of immigrants, who may frequently be non-Orthodox. In addition, it is evident that not just her developed tourist industry but also membership of the EU and the globalisation process of strengthening international politics and economics makes Greece increasingly susceptible to foreign influences. It is therefore not possible to argue that she may rest politically or even economically isolated, despite being located on an interesting part of the Union's periphery, at an axis of South-Eastern Europe, the Mediterranean and the Middle East. Both the former presidency of the Union and the upcoming Olympics are useful examples to portray Greece as a key player in international matters, and has been for decades.

The right to freedom of religion is one of the areas where this interesting and ongoing process of Greece's rich heritage meeting the forces of internationalisation is manifesting itself. This was illustrated very recently when Archbishop Christodoulos expressed his interest in inserting a reference to a Christian heritage into the preamble of the EU Constitution.²⁷⁸ Especially the ECtHR is understood to have altered the common belief that "being Greek is being Orthodox". With a number of cases concerning Article 9 of the *ECHR*, Greece is challenged to confront her legal system

²⁷⁸ Athens News, 20 June 2003.

concerning religious freedom and the last ten years or so have seen a considerable improvement. Regarding the regulations of proselytism, the right to conscientious objection and the issuing of permits for the construction of places of worship, the domestic legal practice was strongly affected by the judgements of the ECtHR. However, there still exist areas that are sensitive to discrimination on the basis of religious difference. Not only does the definition of a “known” religion leave open insecurities about the fairness of its administrative application but also other matters, such as pertaining to the Muslim minority of Thrace, or even to non-Orthodox burial rites, may require further attention.

The Hellenic Constitution establishes the Orthodox Church as the prevailing religion and includes certain other clauses, such as the presidential oath and the preamble, which have met with criticism for lacking a secular nature. However, the current system of the close affiliation between the Orthodox Church and the Greek State must not be an impediment to a fair system of protecting religious freedom. The UK and other countries also have official churches and nevertheless make considerable efforts to respect and protect social and spiritual differences. The opinion that a greater secularisation of the State would be beneficial at least in administrative practice, will nevertheless have to be taken into account.

In this controversial context, the identity card was transformed into a symbolic item. People who promoted a greater separation between the spheres of influence of the Orthodox Church and of the State were blamed for either wanting to undermine the prevailing religion or erase Greek national Orthodox identity. The card itself, used to physically identify each citizen and stripped of personal data for reasons of law pertaining to data processing, was now regarded as a very sensitive issue for Greek society. Indeed, it was argued in both the cases before the Council of State and the ECtHR that the identity card reform not only offended the Greek Orthodox patriotic spirit but also the right to manifest one’s religious affiliation in public. However, the administrative nature of the card was maintained, denying the applicants the possibility of expressing their religious beliefs on a State-owned official document.

This did not prevent large sections of Greek society to demonstrate against the new identity card. While some believe that the matter will surface again in the upcoming parliamentary elections, others deny that it has any more influence today, but it cannot be denied that due to the public attention given to this reform, the identity card and the Orthodox Church played a major role in the municipal and local

elections of 2001. When the fight for the reversal of the decisions pertaining to the new card seemed lost, it was celebrated by its advocates that Greece was one step closer to implementing religious freedom fully. Accordingly, the controversy around the identity card was seen as a showdown between the government and the Orthodox Church but questions remain whether it will mean victory for an increasingly secularised Greek State, or a triumph for an allegedly politicised prevailing religion. Only the future may harbour satisfying answers.

In the meantime, this thesis will conclude that recent years have witnessed an enormous commotion in the legal and administrative framework for the protection of religious freedom. Not least are they due to considerable political will. It cannot be doubted that Greece will see further transformations in this sector, as the forces that brought about reforms pertaining to the right to freedom of religion remain active and influential. She will therefore be required to be further subjected to a all-encompassing process of national adaptation to far-reaching changes. The two-year-long public controversy over the identity card shows, however, that reforms to improve the protection of religious freedom in a country with an incredibly rich and religiously homogeneous past may be very painful. It remains therefore the responsibility of international organisations, domestic political actors and civil society to justify these reforms by employing human rights language sensibly, which defends new measures but nevertheless respects the cultural and indeed Orthodox sensibilities of large sectors of Greek society.

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