



GREECE

Preliminary Report on the Legal Status of Religious Minorities in the Shadow of the European Court of Human Rights

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v. 3 May 2016



Funded by European Research Council
7th Framework Programme

1. The legal status issues investigated for this aspect of our research

My research has been focusing on a key issue of the legal standing of religious minority groups in Greece, namely the question of the legal personality of religious communities, which also touches upon the right to the establishment of places of worship.

Background: Legal Status of Religions in Greece

The legal and political frame in Greece, as dictated primarily by the Constitution of 1975, has confirmed and has helped maintain the historically established position of dominance held by the Christian Orthodox Church. Article 3 of the Constitution asserts the “prevailing position” of the Orthodox Church in the country, while Article 13 states that freedom of religious conscience is inviolable and that all “known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law”. The interconnection between religious and national identity in Greece is translated into laws and practices that lead to a series of restrictions and discriminations on non-Orthodox communities present in the country. Both the question of legal status/personality and the establishment of places of worship are of concern to religious minority groups. The nature of their involvement however, including the claims that religious minorities make, seem to differ considerably. I have thus far studied the claims of the following groups around these two topics: Jehovah’s Witnesses, Old Calendarists, Bahai, Evangelicals, Polytheists, Scientology, Protestants, Buddhists, Roman Catholic Church, including parts of the Muslim community of Athens.

Only three religious groups have been formally recognized as legal personalities as a *faith community*. The Greek Orthodox Church is a legal entity of public law¹ by virtue of Article 1(4) of Law No. 590/1977 on the Statutory Charter of the Church of Greece. The Jewish community is also recognized as a legal entity of public law. The Greek state officially recognizes only one minority present in the country – the Muslim minority of Western Thrace, whose legal status is governed by the Convention on the Compulsory Exchange of Population and the Treaty of Lausanne of 1923². Other religious groups have had the right to be established as legal entities pursuant to the pertinent provision of the Greek Civil Code, either as associations, as foundations that are approved by a decree or as charitable fund-raising committees.

¹ Under Greek law, a legal entity can be either of a public or private nature or of a mixed character. A legal entity of public law is established by the state for a public, governmental or quasi-governmental purpose and is governed by public law, whereas a legal entity of private law is one whose purpose is private, for profit or non-profit, and is governed by private law Symeon Symeonidis, *The General Principles of Civil Law*, in INTRODUCTION TO GREEK LAW 84 (Konstantinos D. Kerameus & Phaedon J. Kozyris eds., 2008).

² In spite of their legal recognition – or perhaps because of the restrictions imposed by the Treaty of Lausanne – members of the Muslim minority of Thrace have also litigated in the Strasbourg Court for different reasons, also related to freedoms of religion and Article 9 of the Convention.

Recent developments: the bill on “religious legal person”

An important recent development needs to be taken into consideration. Following the Strasbourg case on *Chania Catholic Church* (see below), the Greek parliament passed a law in October 2014 on the organization of the legal form of religious communities and their unions. This law introduces for the first time the concept of religious legal person - a new form of legal personality. According to the explanatory report on the bill by the General Secretariat of Religions (at the Ministry of Education and Religions), this law “settles a number of issues, which the Greek state had left unresolved, demonstrating lack of determination in addressing them (i.e. the lack of legal personality of historic churches or of large communities with a significant number of believers), forcing those concerned to use [...] other forms of private law (nonprofit organizations, associations, etc.)”. At the same time, the bill seeks to also guarantee the right of association and assembly, emphasizing that the European Court of Human Rights often rules on Article 9 in conjunction with Article 11 of the Convention.

The beginning of my research coincided with the introduction of this law. It is thus primarily on the different aspects – the opportunities, the limits and implications – of this recent law that my interviews with religious communities and their legal counselors focused. Religious communities have received the bill with mixed feelings. The general impression is that the bill benefits the historical and larger Christian communities present in the country, such as the Roman Catholic Church (whose mobilization at the ECtHR provided the basis for the drafting of the bill in the first place), the Armenian Orthodox communities, the Coptic Orthodox and Ethiopian Orthodox Churches, the Anglican and Evangelical Church. For “historical reasons” these communities enjoy special treatment under the new law and their “religious legal person” status is recognized automatically, without them having to meet the criteria set out by the law. According to the General Secretary of Religions, the Pentecostal Church and two churches of the Old-Calendarist community have already profited from the law. The Polytheists were also considering the inclusion of their community in the new law, but the title that they wished to use for their community – “National Hellenic Religion” – was not accepted. Other smaller, non-Christian or “non-historical” religious groups are much more skeptical towards the bill and towards their rights-claiming, for a number of reasons.

Jehovah's Witnesses have lodged a number of applications in the ECtHR against Greece, opening up the way to Article 9 jurisprudence and exposing a number of religious freedoms issues in the country. They appear to thus be playing a hegemonic role both in terms of the “trouble” they have created to the Greek state (and the Orthodox Church) but moreover because they act as a source of inspiration and advise to other religious minority groups, which largely acknowledge the contribution of Jehovah's witnesses to the promotion of religious freedoms in the country. Though they do consider that it may indeed constitute a step ahead, Jehovah's Witnesses are overall suspicious of the 2014 law. Their reasoning is the following: considering that they have suffered much discrimination and persecution in the past, they remain suspicious each time the Greek state, and in particular the Ministry of Education and Religions which has been hostile towards them, seeks to set things under its

control in such a way. They do not oppose the law. Rather, their main criticism is based on the special treatment of certain (Christian) communities by this law. Moreover, while the explanatory report states that inclusion in the new law is not compulsory for a community, it does not explain what the consequences of non-inclusion would be (i.e. over the question of exemption from taxation).

After facing a series of prosecutions in the 1990s, the Church of Scientology in Greece has been recognized as a nonprofit organization under civil law (the Church is often described as a “sect”, as was the case in the school textbooks for the class or religion in Greek schools). They wait to see whether the Church in Greece can benefit from the 2014 law, considering especially the recent decision by a court in Belgium, which acquitted the Church of Scientology of charges of forming a criminal organization and dismissed demands that it should close its Belgian branch and European headquarters. According to the lawyer of the Church of Scientology, though the 2014 law resolves the issues primarily for Christian religions, it is nonetheless an important step ahead as it places central responsibility to judges (and not to the Ministry of Education and Religions).

The Bahai community demonstrates interest in the 2014 law and makes its claims in terms of the significance in acquiring such a legal entity. It is perhaps no coincidence that their main concern was whether Jehovah's Witnesses have already benefited from it. They are however also suspicious of the implications of the law and they emphasize how the preconditions set out by the law of presenting a “leader” or pastor of the religious group in question violates the very principles of the Bahai faith. The same applies to the claims of a Buddhist group, Soka Gakkai international (SGI), which was similarly eager to find out what Jehovah's Witnesses think about the 2014 law. Their main concern has to do with the condition to draw a list with the names and signatures of 300 members. A presbyter of an Evangelical Church, called “New Life”, also brought up the impediment posed by the “300 signatures”. He claimed that it would be impossible for his Church to acquire the status “religious legal person”, given the small number of its members in a given region.

Places of Worship

In my discussions thus far, some religious minority communities in Greece are also concerned by the question of their right to establish houses of prayer. An important distinction should be made between the newcomers on the one hand and the settled religious communities on the other. While the latter, who have settled in the country for quite some time, seek to claim their rights also in relation to official places of worship, the large number of immigrants and refugees who have arrived much more recently in the country and who also belong to religious minority groups with established, yet unofficial worship spots (mainly of African and Asian origins) do not express such claims and are concerned rather by issues of their permit and stay in the country and everyday struggles.

The “mosque debate” largely prevails in discussions over places of worship. Law No. 3512/2006 on a Mosque in Athens authorizes the construction of a mosque on public land that will be provided by the Greek State. Yet, no official mosque has been provided to the large and heterogeneous Muslim community in the capital. The 2014 law on the organization of the legal status of religious minorities also has an article which links the concept of “known religion” (as stated in the Constitution) to a religion or denomination which, in order to practice its rites of public worship, has acquired a valid permit enabling it to establish and operate its church building or house of prayer. This provision raises crucial questions about the legal entity of the Muslim population of the country, which – unlike the recognized Muslim minority of Western Thrace – does not enjoy either of these rights. For quite some time, the main dispute over the mosque had to do with the choice of location. Though the specific issue has now been resolved – as the spot has been established – new problems seem to emerge, this time concerning urban laws and planning permissions. This is an obstacle that has also come up for other minority groups, including the Polytheists and Buddhists. Another specific case of place of worship concerns a Buddhist group in Northern Greece, which was forced to shut down the house of prayer that it had established following complaints by the local Orthodox priest.

While both national and international developments, as well as political opportunity structures, influence discussions in Greece on the “mosque debate”, in my interviews thus far there has been no link between the “mosque debate” and the ECtHR.

2. Strategies pursued by the groups involved in these issues

Religious minority groups and actors use different strategies to claim their rights concerning their legal status and places of worship. Certain groups use legal mobilization in Strasbourg to pursue their rights, as was the case with Jehovah's Witnesses or the Catholic Church of Chania. Having secured the support of a legal activist, the Buddhist group in Northern Greece mentioned above has also chosen legal action and has taken their case to national courts. The smaller religious groups I have met with usually seek to avoid legal forms of mobilization and they choose to socially approach either potential allies or experts who can advise them on the specific topics (very often, these experts are Jehovah's Witnesses). The Muslim Association of Greece, which represents a certain number of - mainly Egyptian – Muslims in Athens, is very active in its claims for the establishment of the mosque. The president of the Association stressed the significance of taking advantage of the political opportunity structures offered to them, as is the case with the current government in Greece, which he sees as more willing to support them in their claims.

3. Reference points of these issues in ECtHR case law

Two ECtHR cases against Greece on the legal status of religious minorities form the main reference point in discussions around these topics: In *Chania Catholic Church v. Greece*, a decision of the domestic courts in Greece to refuse to recognize the applicant church (the Roman Catholic Church) as having the necessary legal personality was successfully challenged. The Strasbourg Court considered that the effect of such a decision was to prevent the Church now and in the future from having any dispute relating to property determined by domestic courts. In 2001, the ECtHR also dealt with the issue of access to fair judicial proceedings and of state recognition of a Church in *Metropolitan Church of Bessarabia and Others v. Moldova*.

In *Manoussakis and Others v. Greece* the applicants are Jehovah's Witnesses. In 1990, The Court of Cassation dismissed their appeal after the Heraklion Criminal Court had found them guilty of having converted the room that they had rented into a place of worship without the authorisation of the recognized ecclesiastical authority and of the Ministry of Education and Religious Affairs. The applicants complain that their conviction was a violation of Articles 3, 5, art. 14+6, and Articles 8, 9, 10 and 11 of the Convention and of Article 1 of Protocol No. 1. On 10 October 1994 the Commission declared their application admissible as regards the complaint based on Article 9, but inadmissible for the rest. In its report of 25 May 1995 (Article 31) (art. 31), it expressed the unanimous opinion that there had been a breach of that Article (art. 9).³

4. Extent to which the actors involved in these legal status issues engage with the ECtHR in their claims-making; preliminary assessments

The degree and type of knowledge of the ECtHR and its case law depend primarily on the position and background of the respective actor each time. For instance, the lawyers and legal advisors I have spoken to all integrate the Court in their claims-making, showing an important degree of awareness of the relevant (and not only) case law. Almost all references have to do with petitions against Greece, such as the *Catholic Church of Chania* or *Manoussakis and Others*. The non-legal experts have a much narrower understanding of the Court and its case law (and have often used our meetings as an opportunity to expand their knowledge on it). They exhibit knowledge of the mobilization of Jehovah's Witnesses by the Court (particularly *Kokkinakis*) and some other cases, which are not directly related to the question of legal status, such as *Lautsi v. Italy*.

³ Similarly, the case *Pentidis and Others v. Greece* also involved Jehovah's Witnesses and the right to places of worship, while in *Vergos v. Greece* the applicant, a member of the Genuine Greek Orthodox Church, alleged that the refusal of the national administration to grant a building permit for a house of prayer constitutes an interference with his freedom of religion.

Only one legal activist I have spoken to – who represented the Buddhist group in Chalkidiki, Northern Greece – told me that they were considering reaching the Court in Strasbourg over the issue of a house of worship for the community. The issue was, eventually, resolved in national courts and no further litigation was necessary. Smaller religious groups tend to often emphasize their willingness to “avoid any kind of confrontation”, which a litigation may entail. They wish to keep things as peaceful and calm as possible and not to create any tensions with the Greek state. Financial resources entail a further constraint that small religious communities (such as Buddhists, Polytheists and Bahai⁴) consider about Strasbourg, including the precondition of exhausting all national remedies (and the delay and bureaucratic challenges that this entails). Though some religious groups and legal activists distrust national courts (emphasizing that the case depends on the respective judge and on his/her disposition towards their claims and towards religious minority groups in general), the very idea that they have to go through this process within the country to then reach Strasbourg considerably discourages them. The general view of the Court is that it constitutes a neutral and much-needed institution⁵, which has helped change the state of religious freedoms in Greece (both the legal aspects and the general mentality in society). A significant finding in this research thus far has to do with the ways in which religious minority groups in Greece seem to appreciate the impact of the Court primarily through the successful mobilization of Jehovah's Witnesses.

⁴ The members of the Bahai community informed me that in the late 1980s they were seriously considering appealing to Strasbourg, but on a different issue that concerned the rights of non-Orthodox teachers to be appointed in public schools.

⁵ Note that the legal advisor to the Church of Scientology raised the question of whether or not the Court in Strasbourg does indeed serve the principles of secularism and neutrality.