Stato, Chiese e pluralismo confessionale

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Article 9 of the E.C.H.R. in light of newer findings of the case law of the E.C.H.R. during the years 2018-2023

L'art. 9 della Convenzione E.D.U. secondo la giurisprudenza recente della Corte E.D.U. (2018-2023)

ABSTRACT: The right to religious freedom is constantly changing, following the contemporary treatment of the religious phenomenon within the public sphere of the states. This finding is also evident in the ECHR's jurisprudence, which since the *Kokkinakis* case seems to have made great progress in the development of the more specific manifestations of religious freedom, such as religious autonomy. In this context, an attempt is made to draw conclusions regarding the right of religious freedom under the related ECHR's case law.

SOMMARIO: 1. Introduction - 2. Freedom of Assembly and Association - 3. Respect for family and private life - 4. Religious freedom in prison - 5. Religious Minorities: the example of Jehovah's Witnesses - 6. The example of Greece - 7. Conclusion.

1 - Introduction

In May 1993, that is thirty years ago, the ECHR issues *Kokkinakis v. Greece*[1], which actually was the first real judgment of the Court on religious freedom. More analytically, by this judgment, the law of 1938 regarding proselytism[2] was not deemed to be incompatible with Article 9 of the Convention, however, a violation of the religious freedom of the applicant, who was Jehovah's Witness, was found, due to the faulty reasoning of the national criminal decision that condemned him[3]. In this

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[1] See ECHR, *Kokkinakis v. Greece*, 25 May 1993, § 31: "As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it".

[2] Regarding the crime of proselytism, see **G. ANDROUTSOPOULOS**, *Religious freedom according to the jurisprudence of the Supreme Court*, in *Ecclesiastical Law Library, Series B': Studies, I*, Sakkoulas publications, Athens-Komotini, 2010, § 19, p. 267 ss.

[3] See **M. EVANS**, *The Freedom of Religion or Belief in the ECHR since Kokkinakis Or 'Quoting Kokkinakis*, in *Religion and Human Rights*, issue XII, 2017, pp. 83-98.

case, the Court examined with "mathematical" precision, a borderline issue by definition, that is the freedom of religion[4], as "the applicants were vindicated and at the same time the legislation was not affected by the appeal"[5].

Since then, the Article 9 ECHR has received many interpretations, including the development of the right to religious autonomy, which is often difficult to distinguish from the right to religious freedom itself. The present article, therefore, is focusing to the last five years, (2018-2023), so that through a case-based orientation, the evolution of the right to religious freedom and in particular to religious autonomy can be identified, through the examination of cases concerning different religious communities. This time – based limitation is related to the development of religious self-organization to a strong degree, but also to the introduction of new regulations, such as the GDPR, which have changed the field of interpretation of religious freedom and continue to change it[6]. Therefore, the scope of this article is to briefly present the case-law of the ECHR that mentioned above and to pose the understanding of religious phenomenon's existence in the public sphere by the Court, since the right to religious freedom and autonomy is connected with this aspect of the "possibility" of religious freedom. In this context, the relevant case law is categorized according to its content, while highlighting separately the case of Jehovah's Witnesses as an example of a religious minority, as well as the example of Greece, since this state constitutes a significant part of the case law under examination. At the same time, Greece is a state with a prevailing religion, which is important to examine if affects the judgment of the Court.

2 - Freedom of Assembly and Association

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[4] See **G. KTISTAKIS** in: **I. SARMAS, X. KONTIADIS, X. ANTHOPOULOS**, *ECHR. According to the interpretation of each article*, Sakkoulas publications, Athens-Thessaloniki, 2021, p. 536, who points out that "the preparatory work for the drafting of the ECHR does not illuminate the content of the concepts 'thought', 'conscience', 'religion' and 'beliefs'. The ECHR itself has not attempted to define them. So, from the few fragments that emerge from the case law, it is clear that "religious beliefs" have the same content as 'religion', meaning that they form a very broad doctrinal and moral whole, which has or can include answers for every philosophical, cosmological or moral question".

[5] See **I. KONIDARIS**, *Debate on "Church and State: The issue of separation"*, in *Synaxis*, vol. CX, 2009, p. 48, **A.-K. DIMOPOULOU**, *Religious freedom in the context of ECHR jurisprudence*, in *Center for International and European Economic Law, Religious Freedom - Current Legal Issues*, Sakkoulas publications, 2019, p. 61, who observes that the initial characterization of the Court as unwilling to delve into issues of Article 9 ECHR no longer appear so precise and, in any case, its attempt to ensure respect for a plurality of religions and beliefs and the disparate practices between states that are either religiously neutral or grant privileges to a dominant religion is notable, attempting to secure, to the extent possible, broad consensus on particularly sensitive issues.

[6] See **J. CIECHANOWSKA, K. SZWED**, *Protection of Personal Data in the Catholic Church in the Light of the EU Regulation No. 2016/67*, in *Kościół i Prawo*, vol. X, issue XXIII, 2021, pp. 42-43.

Among the manifestations of the freedom of religion is the freedom of religious association[7], in other words the relationship between religion and freedom of association through the implications for the human rights of the members of the community. In this context, the Court, while interpreting articles 9 and 11 of the Convention and starting from the point that the autonomy of religious communities[8] is a necessary condition for ensuring pluralism in a democratic society[9], it significantly limits the possibility of state interventions in their organizational self-regulation, in matters of their internal life[10], as well as in the relationship of the lay people with the priests of the community[11].

The Court dealt with this topic during the mentioned period of examination in its judgment *Ilyin et al. against Ukraine* of 17 November 2022. In that case, the applicants, who were nine Ukrainian nationals and members of the Unification Church, claimed the recognition of their religious community as a legal entity. The state authorities rejected the relevant request, as the suggested name of the entity could be interpreted as a "description of a Christian interfaith entity" and thus mislead believers and the general public about its identity. The Court, although it claimed that the refusal of the national authorities to grant the status of a legal entity to a religious association of believers is equivalent in principle to an interference with the right to religious freedom (§ 58), nevertheless it considered the restriction necessary (justified limitation)

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[7] See **N. LERNER**, *Religion and Freedom of Association*, in **J. WITTE, M. GREEN**, *Religion and Human Rights: An Introduction*, Oxford University Press, 2011, pp. 218-235.

[8] Regarding the nature of the right see G. ROBBERS (ed.), *Church Autonomy. A comparative survey*, Frankfurt am Main, Peterlang, 2001· **E. PALIOURA, M.-O. KOUTSOUPIA**, *The right of religious autonomy: CFR and ECHR*, in V. TZEMOS (ed.), *Dialogues of constitutional, administrative and European law*, electronic edition, Athens, 2018, p. 74 ss. **D. THOMSON, K. TONEY**, *Sacred Spheres: Religious Autonomy as An International Human Right*, in *Catholic University Law Review*, vol. LXXII, issue I, 2023, pp. 151-192. Regarding the earlier case law of ECHR, see *Hassan & Chaush v. Bulgaria.*, 30985 of 1996, 26 October 2000, § 62; *Metropolitan Church of Bessarabia and Others v. Moldova*, 45701 of 1999, 27 March 2001; *Case of Supreme holy council of the Muslim Community v. Bulgaria*, 39023 of 1997, 16 December 2004, § 73, in *Nomokanonika*, issue II, 2006, p. 113 ss.; *Case of Sindicatul Păstorul Cel Bun v. Romania*, 2330 of 2009, 9 July 2013, §§ 136-138.

[9] See ECHR, *Hasan and Chaush v. Bulgaria*, 26 October 2000. According to the Guide on Article 9 ECHR: "Religious communities have traditionally and universally existed in the form of organized structures. In cases concerning the mode of organisation of the religious community in question, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference". See Guide on Article 9 of the ECHR, 31 August 2022, (*https://www.echr.coe.int/ documents/d/echr/guide_art_9_eng*), p. 75.

[10] Associations therefore have the right to make their own rules and manage their own affairs. This does not mean, however, that the Article 11 prevents States from laying down and enforcing rules regarding the role and structure of an association's governing bodies. See **A. POULOS** in: **I. SARMAS, X. KONTIADIS, X. ANTHOPOULOS**, *ECHR. According to the interpretation of each article*, cit., p. 653 ss., here p. 656.

[11] See **EL. KASTANAS**, *Religious freedom in the case law of the European Court of Human Rights - between respect for otherness and preservation of social cohesion*, in *Antipelargisi*, Sakkoulas publications, Athens-Thessaloniki, 2018, p. 205 ss., especially p. 213.

in a democratic society, with the result that there is ultimately no violation of the Article 9 (§§ 77, 82).

Most importantly, the Court stated that under domestic law any contravention of the law in a religious organization's proposed constitution, including its name, could be grounds for refusal of registration. Therefore, the concerns about the community's initial name were apparently sufficient to refuse registration and the authorities were in a position to refuse registration even in the absence of other concerns over the community's practices (§ 79). Therefore, one can conclude that the Court understands the concept of religious self-organization in secular terms, since the name of a religious entity is a strong expression of this self-regulatory possibility.

In addition, it must be noted that the above judgment of the Court includes the concept of religious autonomy, without using its terminology, however, by referring to its general structure (article 9 read in the light of Article 11 of the Convention). More specifically, it judges an issue of great importance for a Church, referring to the previous case law (for example *İzzettin Doğan and Others v. Turkey* of 26 April 2016, which is a key – case for religious autonomy), and at the same using the domestic law as the limit of self-determination.

3 - Respect for family and private life

It is a frequent practice in the case law of the Court, that the violation of Article 9 is not always examined independently, but also in combination with other provisions of the Convention. In this context, an indicative example that should be mentioned is the decision which was already referred above (freedom of religion and the right of association) as well as the one that will be discussed in the current paragraph. More specifically, in the *Aygün v. Belgium* of 8 November 2022, the ECHR held that the refusal of the authorities to release the bodies of the victims, for a period of 2.5 years during a criminal investigation, in order to be buried in Turkey in accordance with the internal regulations of the Islam, constituted a violation of religious freedom in combination with the applicants' right to respect of private life (Article 8)[12].

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[12] The applicants were Belgian nationals and their two sons succumbed to multiple gunshot wounds. In February 2014, following the conclusion of the criminal proceedings, a neighbor was sentenced to 29 years' imprisonment for the murder, while another neighbor was acquitted. During the investigation, the applicants faced a prohibition from transferring their sons' bodies to Türkiye, their country of origin, where they wished to bury them in the family grave according to their rites, beliefs, and traditions. The investigating judge cited a lack of legal basis for such a transfer and emphasized the investigative needs as reasons for denying the request. The judge suggested that the applicants could bury their sons in accordance with their religious beliefs in a Muslim cemetery in Belgium. The applicants contested this decision through various legal avenues in Belgium, invoking Article 9 of the Convention. Despite these efforts, the applicants' requests to lift the prohibition on transferring their sons' bodies

Therefore, the Court ruled that the coroner's decision not to hand over the victims' bodies to their parents for a particularly long period of time, in order to bury them according to their burial customs and regulations of their religion[13], combined with the absence of a legal framework for questioning the decision of the judicial officer, exceeded the limits of proportionality[14]. Thus, the violation of articles 8 and 9 of the Convention, consists in the inability of the applicants, parents of the victims, to achieve a review at regular intervals of the necessity and appropriateness of the restrictive measure in question, as imposed by the principle of proportionality in the measure and the extent that it has been conceptualized by the Court. Therefore, this decision is an example of the concept of personal autonomy, as it has developed in the case law regarding the article 8 of the Convention in the light of the article 9.

4 - Religious freedom in prison

Moreover, an arena in which the freedom of religion is "tested" in terms of its boundaries and resilience is its presence within the prison system and among prisoners.

1. *The first* case that should be taken into consideration in this context is *Constantin-Lucian Spînu v. Romania* of 11 October 2022.

The applicant, who was a prisoner in Romanian prisons, was a member of the Seventh-day Adventist religious community. Prison authorities refused to grant him permission to leave prison in order to attend regular religious rituals outside Jilava prisons. This refusal was based on the emergency measures which were put in place during the COVID-19 pandemic to prevent the spread of the coronavirus. The Court, after pointing out that the protection of public health justifies any restrictions on the freedom of expression of religion, considers that the latter was not violated in this case, since the authorities had - based on their wide margin of appreciation - adopt alternative forms of participation in religious worship, such as e.g. teleconferencing, even if such measures could not fully replace unmediated participation in religious rituals. Also, it mentioned that religious rituals were not prohibited inside the prison.

The judgment of the Court in examining the temporary suspension of the operation of Orthodox places of worship, due to the pandemic, would be of interest here, given that for the Orthodox Church the collective expression of religious freedom, which is mainly formalized by participation in the sacrament of the Eucharist, it is a

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were declared inadmissible or dismissed by the Belgian courts (§ 4-29).

[13] In Greece, the state has regulated this specific tradition by the article 58 of the law no. 4807 of 2021.

[14] Regarding the principle, see **G. ANDROUTSOPOULOS**, *Public health and religious worship in the age of Covid -19*, in *Public Law*, issues I-II, 2020, p. 22 ss., here at pp. 27-28, where refers also to further bibliography.

constituent element of its identity[15]. For example, the Suspensions Committee of the Greek Council of State has decided (decision no. 60 of 2020) that the temporary prohibition of the operation of places of worship was a proportional one, due to reasons of substantial public interest, without mentioning why this is a proportional limitation to religious autonomy itself.

2. *Second* case to be examined: *Abdullah Yalçın v. Turkey* of 14 June 2022.

The applicant, who was a prisoner for being a member of an illegal organization (Hezbullah), requested from the administration of the maximum-security prison (Diyarbakır high-security prison), where he was serving a sentence, to be allowed to participate in the Muslim Friday prayer. His request was declined for security reasons. Accordingly, the ECHR found a violation of the Article 9, on the grounds that the authorities had not succeed a "fair balance" between the countervailing interests of security and order in the prison and the applicant's right to freedom of collective worship. In more detail, the Court held that the prison authorities could have allocated a room for Friday congregational prayers, as well as that they had not carried out an individualized assessment of the case, as they could have considered whether the applicant was a high-risk prisoner or whether gatherings for Friday prayer would be more of a security risk than gathering it for other activities[16].

This judgment is important for the collective exercise of religious freedom, in the sense that such exercise must be in a fair balance with the interests that must be protected each time. However, individual religious autonomy is also important, in the sense that a member of the religious community who wants to exercise his religious duties within the context of his religious community, must be treated by the authorities ad hoc, as an individualized case. Therefore, this judgment could be characterized as one of the few cases of the ECHR that provide some perspectives on

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[15] See, **G. ANDROUTSOPOULOS**, *The Right of Religious Freedom in Light of the Coronavirus Pandemic: The Greek Case*, in *Laws*, vol. X, issue I, 2021; A. MADERA (ed.), *The Crisis of Religious Freedom in the Age of COVID-19 Pandemic*, MDPI, electronic edition, 2021, p. 97 ss., here p. 99.

[16] §33-34 are very important. More analytically, in paragraph 34 it is mentioned that ''as regards the domestic authorities' reliance on the absence of appropriate premises for Friday prayers at the Diyarbakır D-type High-Security Prison, the Court attaches decisive weight to the fact that the domestic authorities did not seem to explore any other modalities, including those which were less restrictive of the applicant's rights under Article 9 of the Convention, (see, for example, *Janusz Wojciechowski v. Poland*, § 69, of 28 June 2016, for an assessment of the steps taken by prison authorities to accommodate inmates' wishes to attend Masses on Sundays or religious holidays where it was not possible to allow all the prisoners to do so at the same time). Accordingly, the Court is not convinced by the Government's argument that realising the applicant's request could only have been possible by opening the doors of all the cells. In any event, the applicant's argument for "forty to fifty people" could gather for Friday prayers was only raised before the Court, and it did not form part of his request to the domestic authorities''.

the content of the individual religious autonomy. This aspect of autonomy has of course been inspected by the Court in sense that is the right of the member either to be or not a part of a religious community[17]. However, this is not enough as a definition of the individual religious autonomy, since a member of a religious community is at the same time a citizen of a state with both rights and obligations. Thus, it is very important to deepen the concept of religious autonomy of the community member so that it is clear to the courts how to regulate it whenever it conflicts with other human rights.

3. *Third* case to be examined: *Saran v. Romania* of 10 November 2020[18].

The applicant, who was a Moldovan citizen, was serving his sentence in a Romanian prison. Being a Muslim by religion, he asked from the administration to provide him with meals compatible with his religion. His request was rejected, as he did not provide a written proof of his change of religion. The Court notes that certain diet imposed by a religion is protected under the Article 9 of the Convention as a direct expression of the right to manifest one's religious beliefs. The state is obliged to provide prisoners with meals according to their religion[19]. It is obvious that in this particular case, the authorities did not respect the expression of freedom of religion, in which both the coercion to an action that is not allowed and the hindrance of behavior imposed by a specific religion were prohibited[20].

The above judgment has also a great importance in terms of individual religious autonomy, since it involves a practical issue: the proof of membership in a particular religious group in order to exercise a right. In this case it is observed that of course one is free to belong or not to belong to a religious group, as well as that religious conversion is absolutely without restrictions by the state. However, there should be certain guarantees to the state, when this religious choice is linked to the certain rights (for example alternative military service, certain meals in prison, asylum claim). These guarantees protect against the abusive exercise of the right to religious freedom, but of course, they should not strictly formalize the concept of being or not a member of a religious community, as in this case it would be easy to unfairly limit the right to religious freedom[21].

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[17] See, ECHR *Fernández Martínez v. Spain* of 12 June 2014, §128. Also, in paragraph 131, the Court notes that a community may demand from its member a particular duty of loyalty when this member works on its behalf or represents it.

[18] See also in comparison *Neagu v. Romania* of 10 November 2020 (no. 21969/15), *Erlich and Kastro v. Romania* of 9 June 2020 (no. 23735 of 2016 and 23740 of 2016), concerning Jewish prisoners.

[19] See already ECHR *Jak ó bski v. Poland* of 7 December 2010, in *Nomokanonika*, issue I, 2011, p. 131 ss.

[20] See **I. KONIDARIS**, *Ecclesiastical Law Courses (*with the collaboration of G. ANDROUTSOPOULOS*)*, Sakoulas Publications, Athens-Thessaloniki, 2020, § 5, p. 75.

[21] It is also important to note that the judgment, in paragraph 34, determines that national authorities enjoy direct democratic legitimacy and are, in principle, better

4. *Fourth* case to be examined: in the case *Korostelev v. Russia* of 12 May 2020 the Court decided in the same context as above.

More specifically, the Court examined the compatibility with the ECHR of reprimanding a Muslim prisoner for performing acts of worship during the night, in violation of the prison schedule. According to the Court, despite recognizing the importance of discipline in prisons, adherence to the letter of the regulation constitutes a "formalistic approach" (§ 59), resulting in the proportionality of this sanction -which was not necessary in a democratic society- has not been evaluated by the national courts in a substantial way and thus the prisoner's right to religious freedom was violated. In addition, paragraph 65 states that the Court concludes that the interference with the applicant's freedom of religion resulting from his disciplinary punishment did not strike a fair balance between the competing interests and was disproportionate to the aims referred to by the Government. "It cannot therefore be regarded as having been necessary in a democratic society within the meaning of the second paragraph of Article 9 in the particular circumstances of the case".

This judgment is also important for the individual religious autonomy of a citizen, which is being examined ad hoc in the case law. According to the paragraph 57 the Court reiterates that, prisoners, during their imprisonment, continue to enjoy all fundamental rights and freedoms, save for the right to liberty. For this point, the Court mentions its previous judgment *Khoroshenko v. Russia* of 30 June 2015 (§ 116). Moreover, it states that on imprisonment one "does not forfeit his or her Convention rights, including the right to freedom of religion, so that any restriction on that right must be justified in each individual case".

Both this judgment and the above ones show that the ECHR is developing over the years an argument that puts religious freedom on a more realistic basis. The jurisprudence of the Court, therefore, based on the general principles of religious autonomy, as they have been analyzed in *Fernández Martinez v. Spain*[22], begins to understand that religious freedom is a "living right" that should not be formalized, but judged ad hoc based on the principle of proportionality, as it is developed in the field of law and religion. Characteristically, in *Fernández Martinez,* the Court developed that it was necessary to strike a balance between the right to privacy and the right to religious autonomy, so that the regarding the internal autonomy of religious groups, Article 9 of the Convention does not guarantee the right of the member to disagree with the religious

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positioned than international judges to decide on local needs and contexts. Therefore, when issues of general policy are at stake, the role of the national decision-maker should be accorded special significance, according to the Court. In addition, concerning Article 9 of the Convention, the state must be granted a wide margin of appreciation to decide whether and to what extent a restriction on the right to manifest religion or beliefs is "necessary" (see *SAS v. France* of 1 July 2014, § 129). Moreover, in determining the extent of the margin of appreciation in a given case, the Court must also take into account the specific issues at stake in the case (see *Manoussakis and Others v. Greece* of 26 September 1996, § 44).

[22] ECHR, *Fernandez Martinez v. Spain*, 12 June 2014.

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community. Therefore, in the event of a doctrinal or organizational difference between the community and the member, the religious freedom of the member is exercised with his right to leave the community[23].

5 – Religious Minorities: the example of Jehovah's Witnesses

However, religious freedom is not only "tested" in the prisons, but also in many cases of Jehovah's Witnesses.

In this context, the *Teliatnikov v. Lithuania decision* of 6 July 2022 should be examined. More analytically, the applicant, who was a Lithuanian national and a religious minister of the community of Jehovah's Witnesses - which, it should be noted, is not one of the nine traditional religions recognized by the State of Lithuania - refused to serve in the army, so he requested to be placed under the status of alternative tenure, as he presented a documented conscientious objection[24] due to his religious beliefs. His request, however, was declined. The Court, after pointing out that states must create alternatives outside military command structures, ruled that the state's failure to respect the applicant's conscientious objection "was not necessary in a democratic society" (§ 110) and therefore, led to a violation of his right to religious freedom[25].

In addition, the illegal obstruction of the construction of a place of worship also constitutes such a violation. The ECHR dealt with this issue in the case *Religious Doctrine of Jehovah's Witnesses of Bulgaria against Bulgaria* of 10 November 2020, which is among others an important case for the collective aspect of the right to religious autonomy. Referring, among other things, to the emblematic judgment of Greek interest, *Manoussakis and Others v. Greece* of 26 September 1996, the Court notes that the possibility of using buildings as places of worship is important both for participation in the life of the religious community and for the right to manifest religion. Furthermore, it considers that the refusal of the local mayor to permit the construction of the building intended for religious use violated the Article 9 of the Convention (§ 115), as it was based on the mayor's conviction of opposition to the doctrine of the Jehovah's Witnesses[26].

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[23] § 128 as mentioned above.

[24] Regarding the content of the right, see **G. ANDROUTSOPOULOS**, *Religious freedom*, cit., § 18, p. 256 ss.

[25] Compare in the same context *Avanesyan v. Armenia* of 20 July 2021 (no. 12999 of 2015).

[26] See also *Nasirov et al. against Azerbaijan* of 20 February 2020 (case no. 58717 of 2010), in which it was decided that the confiscation of books of the religious community of "Jehovah's Witnesses" was not legal within the content of the Article 9 § 2 ECHR, as long as inappropriate proselytizing methods were not proven to be performed by this community members.

More analytically, the Court ruled that while the Convention doesn't explicitly ensure the right to be provided with a place of worship by authorities, restrictions on establishing such places may constitute interference with the right protected by Article 9. Therefore, the use of buildings as places of worship is essential for religious community participation and the exercise of the right to manifest religion, so it is a matter of religious autonomy and self-regulation of a religious community or a faith group. As a result, even the enforcement of neutral provisions, like urban planning regulations, can, in certain cases, interfere with religious freedom[27].

6 – The example of Greece

From this long list of the judgments of the ECHR, specific case law of Greek interest is certainly not absent[28].

More specifically:

1. In the *Pantelidou v. Greece* judgment of 10 October 2019[29], it was decided that the ban on converting, in violation of the urban planning legislation, a public building - a green space that belonged to the Greek navy - into a place of worship for "Old Calendarists" does not contradict the ECHR (Article 9). To be precise, the ECHR accepted that the public interest of urban development cannot be superseded by the needs of a religious community that had arbitrarily usurped public property to establish and operate a place of worship[30]. Thus, the relevant appeal was dismissed as manifestly unfounded and this case is a typical example of balancing religious freedom and autonomy on the one hand and public interest on the other one.

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[27] The Court mentions also other impornat judgments for the same minority group, such as *Jehovah's Witnesses of Moscow v. Russia* of 10 June 2010 and *Association for Solidarity with Jehovah's Witnesses and Others v. Turkey* of 24 May 2016.

[28] See **S. GALATOULA**, *Religious freedom in Greece according to the case law of the European Court of Human Rights*, in *ΔτΑ*, vol. LXXXVI, 2020, pp. 990-991, who notes that "according to the official statistics of the Council of Europe for the period 1959-2018, Greece is the country that has been convicted more times than any other for violating its citizens' right to religious freedom. Specifically, our country counts 13 convictions under the corresponding article (article 9), while Turkey and Russia follow, with 12 and 10 convictions respectively".

[29] See in comparison *Vergos v. Greece* of 24 June 2004, which was about a municipal measure which refused to modify the urban plan for the construction of a worship facility. The Court found non violation of the Article 9 (however a violation of the Article 6 of the Convention).

[30] It must be noted that in Greece the Old Calendarists, in order to establish and operate their places of worship, are not required to obtain a relevant licence from the General Secretariat for Religious Affairs, as is the case for other religious communities regulated under the private law. Characteristically, the Greek Council of State developed in its reasoning that the Old Calendarists, as a special religious community, does not need such license (Decision no 821/2022). Of course, it must be clarified that the legislation does not prevent the Old Calendarists from applying for and receiving a license from the General Secretariat for Religious Affairs.

Therefore, the above is obviously a case of an abusive exercise of the right to religious freedom. As, in fact, it has been stated that comparing the religious case law of Strasbourg over time, one could find, as an indication of the maturity of the Greek administration, that the fewer the cases of genuine manifestations of religious freedom which the state violates or suppresses, the more they increase the cases of abusive invocations of the same freedom which the state reasonably rejects[31].

2. Moreover, with the judgment *Stavropoulos v. Greece* of 25 June 2020, it was accepted that the recording, in a birth certificate, of indications about the way of acquiring a name from which the religious beliefs of the child or its parents can be deduced, is not in compliance with Article 9 of the Convention. Such indication is, for example, the note that a registration of the name took place, so the child was not baptized. In the same context, the registration of baptism as naming is illegal (articles 25-26 of the Law no. 344/76)[32].

This judgment occupies a special place in the list of condemning cases for Greece in the field of religious freedom[33]. It thus brings to light the "misunderstood" relationship between the religious sacrament of baptism and the administrative act of naming. The first entails only the inscription of the religion, while the second constitutes the exclusive procedure for the acquisition of a name[34]. This confusion of baptism with naming is critically highlighted by the Strasbourg judgment[35].

3. It should also be noted a pending appeal, which is a remnant of the pandemic[36].

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[31] See **M. TSAPOGAS**, *Remarks on "Pantelidou v. Greece"*, in *Nomokanonika*, issue I, 2020, p. 119 ss., here p. 120, where the context of the case.

[32] The applicants, Nikolaos Stavropoulos, Ioanna Kravari, and their daughter, Stavroula-Dorothea Stavropoulou, were Greek nationals residing in Oxford, United Kingdom. Their daughter, born in 2007, had her birth registered in the Amarousio registry office. On her birth certificate, her first name was accompanied by the handwritten note "naming" in brackets. In October 2007, the applicants sought the annulment of the registration concerning the note "naming" by applying to the Supreme Administrative Court. They contended that this note implied that their child had not been christened, thus revealing their religious beliefs. However, their application was dismissed as inadmissible. The rejection was based on the argument that the note next to the third applicant's name merely reiterated the title of the relevant domestic law, specifically Article 25 of Law no. 344/1976. This law stipulated that the civil act of "naming" was the sole legal method of acquiring a name (§ 2-7).

[33] See **T. ILIOPOULOU-STRAGA**, *General theory of fundamental rights*, Sakkoulas Publications, Athens-Thessaloniki, 2018, p. 617, who points out that "The multiple convictions of Greece by the ECHR for violations of Article 9 of the ECHR show [...] that from the point of view of the ECHR it is not the enshrining of religious freedom in the article 13 of the Greek Constitution that is problematical itself, but its concretization by the legislator, as well as its implementation by the Administration".

[34] See **G. ANDROUTSOPOULOS**, *The Independent Authorities for matters of religion*, in *Nomokanonika Parafulla, I*, Sakkoulas publications, Athens-Thessaloniki 2018 (in Greek), § 14, p. 121 ss.

[35] Council of State 1670 of 2021, in *Nomokanonika*, issue I, 2023, p. 77 ss., with *remarks* by **G. IATROU**.

[36] See **G. KTISTAKIS, M. TSIRLI**, *Pandemic and the Strasbourg Court*, in: *Hellenic Society of Environmental Law, The Sustainable State*, Sakkoulas publications, Athens-

More analytically, in May 2020, the Greek Council of State was asked to decide on the requests to cancel Ministerial decisions, that temporarily prohibited all kinds of acts of worship and services in all places of religious worship, without exception. However, since, at the time of the discussion of the cases, the validity of the contested Joint Ministerial Decisions had already expired, the Council of State decided[37], following a rather formal approach[38], to abolish the trial, due to the absence of a legitimate interest.

A few months later, in November 2020, the *Association of Orthodox Ecclesiastical Obedience* appealed to the ECHR. The appeal was based on two claims: a) the claim that the two-month suspension of the right to worship (16 March - 16 May 2020), to the extent that was also included the Easter celebrations, amounted to an excessive, unnecessary restriction of the right and b) the violation of article 6 of the ECHR, which enshrines the right to a fair trial. And this, because the Council of State refused to judge the case and rejected it as inadmissible.

In this context, the Court decided to ask the following two questions to the parties: First, whether there was a violation of Article 6 of the Convention and whether the measures limiting the collective exercise of worship were necessary in order to serve an important national interest. We could not, of course, prejudge the decision of the Court. One could, however, hazard an assessment: this formalistic approach of the Court may lead to the acceptance of the appeal even for a violation of Article 6 of the Convention[39].

7 – Conclusions

There is no doubt that "in the light of the ECHR, the well-known institutional primacy of the Court in the field of the defense of religious freedom"[40], starting, as mentioned in the introduction, from the

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Thessaloniki, 2022, p. 785 ss., especially pp. 790-791, who notes that many appeals concerning issues of public health and arose during the pandemic, or issues related to travel restrictions and other measures taken by states to prevent the spread of the virus, such as the inability to practice religious worship during the period when churches were closed and restrictions on the exercise of the religious freedoms of prisoners, are pending. See also **S. VLACHOPOULOS**, *Constitutional Mithridatism: Fundamental Rights in Times of a Pandemic*, in *The Visio Journal*, vol. VI, 2021, pp. 10-20.

[37] Council of State 1294-6 of 2020.

[38] See also, **G. ANDROUTSOPOULOS**, *Religious freedom in the time of the pandemic*, in *Nomokanonika*, issue II, 2020, p. 45 ss, here pp. 52-53.

[39] See in comparison, *Magdić v. Croatia* of 1 September 2022. The Court did not rule on the legality of the restrictions on the exercise of the right to freedom of worship, as it dismissed the appeal on the grounds that the applicant had failed to prove a victim status. On the contrary, his appeal constituted as an actio popularis.

[40] See for the right A. EMILIANIDES, (ed.), *Religious Freedom in the European Union: The application of the European Convention on Human Rights in the European Union*, Proceedings of the 19th Meeting of the European Consortium for Church and State Research, Nicosia (Cyprus), 15-18 November 2007, Peeters, Leuven-Paris, 2011; **S. FERRARI, M. HILL, A.**

emblematic judgment *Kokkinakis v. Greece*, as well as the diffusion of the relevant jurisprudence of the Strasbourg Court within the European area, constitutes an indisputable acquis with a variety of legal policies demonstrations.

The overview of the religious jurisprudence of the ECHR presented above confirms the following estimates:

a. The Court examines the conformity of restrictions on religious freedom with the Convention, which means that it examines whether the conditions of proportionality in their imposition are met and therefore, whether they become necessary - and not merely useful or desirable - in a democratic society. This is considered correct in a society that is religiously neutral, according to its own cultural orientation[41], but at the same time perceives the religious phenomenon as an essential part of its public sphere.

b. Strasbourg, with already accumulated experience of thirty years in matters of religious freedom, is now able to distinguish which cases really constitute a legitimate exercise of a right and which are merely expressions of an unnecessary rightism. It has also developed the concept of the autonomy of religious communities. This autonomy does not always have to be referred to as a technical term. Its meaning, i.e. the possibility of self-organization of a religious community, but also the weighing of legitimate interests in favor of the existence of a religious community in the state in accordance with its internal law, is evident in the development of the case law of the ECHR.

c. An additional observation that can be made is the following one: the ECHR in each case has to judge same issues of religious freedom but regarding different religious communities each time, with a different structure, rules and administration and different models of church and state relations in each country[42]. Thus, religious autonomy, as perceived by the religious community itself, should be considered. The right to

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JAMAL, R. BOTTONI, *The Routledge Handbook on Freedom of Religion of Belief*, Routledge, London, 2020.

[41] See also, **S. FERRARI**, *Who needs freedom of religion*, in *The confluence of law and religion: Interdisciplinary reflections on the work of Norman Doe*, Cambridge University Press, Cambridge, 2016, p. 187.

[42] For the different systems of Church and State relations in Europe, see **N. DOE**, *Law and Religion in Europe: A Comparative Introduction*, Oxford University Press, Oxford, 2011· Atti del II Forum Europeo Cattolico-Ortodosso, Rodi, Grecia, 18-22 ottobre 2010; *Rapporti Chiesa-Stato: prospettive storiche e teologiche [= Church and State relations: from Historical and Theological Perspectives]*, Edizioni Dehoniane, Bologna, 2011· **C. PAPAGEORGIOU**, *An Introduction to Hellenic Ecclesiastical Law: Religious Freedom, State and Church Relations· Administration of the Church*, Grigoris publications, Trikala-Thessaloniki, 2012, in particular pp. 77-101; S. BALAZS (ed.), *The Mutual Rules of Religion and State in Europe*, European Consortium for Church and State Research, Trier, 2014. Especially for Greece, see, *inter alia*, **I. KONIDARIS**, *The legal Parameters of Church and State Relations in Greece*, in *Greece in the twentieth century* (ed. T. COULOUMBIS, T. KARIOTIS, F. BELLOU), Hellenic Foundation for European and Foreign Policy (ELIAMEP), London-Rortland, 2003, pp. 223-235; **L. PAPADOPOULOU**, *State and Church in Greece*, in: *State and Church in the European Union* (ed. G. ROBBERS), Baden-Baden, Nomos, 2019, 3rd ed., pp. 171-194.

religious autonomy itself means that a religious community claims to be treated by the state as an organization with members who are at the same time citizens and have rights and obligations that derive from both from the state as well as from the internal law and regulations of the religious organization. The interpretation of Article 9 of the Convention in the light of the Article 11, as it mentioned above in the relevant case, is characteristic, and shows that the right to religious autonomy initially refers to the community, whether it is considered under its collective approach or not.

Therefore, the ECHR's wide jurisprudence on religious freedom reminds of the need for a full and clear guarantee of religious freedom. This can only be achieved by a conscious treatment of the parameters that give rise to religious freedom as a recognized right and a legal claim. These parameters are both the different aspects of religious autonomy, but also the ad hoc treatment of cases related to the religious phenomenon in general. This ad hoc treatment is imposed by the different character of each religious community. Autonomy, therefore, is possible to have common general principles, but it cannot be regulated in the same way for example in the Catholic Church and in a small Christian church that does not have canon law, or in the Muslim minority of Thrace. This is an element that seems to have not yet been developed by the ECHR.