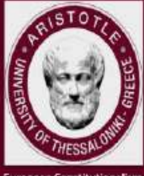

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Prof. Charalambos Papastathis in Memoriam

The Conference is organised by:

European Consortium for Church and State Research

Faculty of Law, AUTh

Jean Monnet Centre of Excellence, "European Constitutionalism and Religion(s)", AUTh

School of Theology, AUTh

Organising Committee

Lina Papadopoulou, *Faculty of Law, AUTh*

Nikos Maghioros, *School of Theology, AUTh*

Angeliki Ziaka, *School of Theology, AUTh*

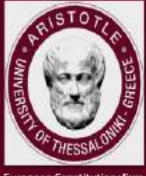
Konstantinos Papastathis, *School of Political Sciences, AUTh*

Ali Rashid Al Nuaimi, Chairman of the World Muslim Communities Council / International Center of Excellence for Countering Violent Extremism

"When History cripples Future"

The starting point of Mr. Nuaimi's presentation is the realization that, although we are living in the 21st century, we are facing numerous challenges because we are trapped in the past. One of the main challenges facing Muslims in Europe concerns their identity and the question arises: are they Muslims or Europeans? A perception has always been adopted, according to which Muslims are separated from Europeans and they are not included in this nation. However, this is a national security issue that needs to be addressed as a matter of priority, because Europe's Muslims are an integral part of Europe and should be treated as European citizens, not as second-class citizens. In addition, it is noteworthy that some Muslims remain attached to the past and to the antiquated notion that places Muslims in a superior position to others because of their religion. This perception is still perpetuated through the education system and religious leaders. So, it is imperative that this problem be resolved and that the foundations of mutual trust and respect be built.

It is crucial that Europe contributes to this effort, sending a strong message that Muslims are European citizens and share the same rights and obligations as others. It is not sufficient simply to issue a decree or a press release. Academic institutions must take a leading role in promoting a new idea that integrates Muslims into society and the nation through initiatives and programs that will foster in Muslims the feeling that they are citizens of Europe, too. Also, the contribution of religious leaders, who should commit themselves to passing on the right values to their supporters and to the religious community, is vital. And at this point, we all ought to overcome the outdated notions of the past and look ahead to the future.



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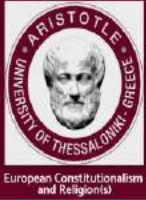
Finally, Mr. Nuaimi concludes his presentation with an exhortation: to engage Muslims in this effort, not as Muslims but as citizens, and not exclusively on issues concerning the Muslim community, but on every issue and challenge that arises within the nation in general. In conclusion, Muslims should live like other citizens, maintain a sense of pride in their nationality and citizenship, but also share with others the responsibility for the development of the nation.

Friday 24 September 2021, AUTh, Faculty of Philosophy, Conference Hall
3rd Session: "Exercise of religious freedom and other cultural rights of Muslims"
Chair: Angeliki Ziaka, University of Thessaloniki
You can watch the third Session here

Agustin Motilla De La Calle, Public University of Madrid
"Muslims in Europe: between religious freedom and securitization"

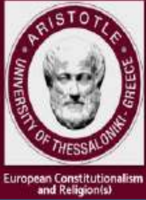
The aim of the presentation is to summarize national reports on religious freedom and cultural rights of Muslims in Europe. There are three dimensions relevant with religious freedom: Difficulties in social integration, a tendency of conservative Islam towards fundamentalism and theocracy, and the desire of certain Islamic states to control their nationals abroad and use them in the foreign policy as a tool to create pressure. Faced with this situation the European states had adopted different types of response depended on the sociological composition of Muslims in each country and can be classified into four different groups: States with very little Islamic immigration, states in which an historical



Islamic minority co-exist with recent well integrated Muslim immigrants, states that without having a significant minority of Muslims throughout their history cope with serious problems of integration in addition to terrorist acts perpetrated by the jihadist groups, and states that held colonial empires and welcomed
immigrants from their colonies as blue-collar workers.

The issue of Muslim integration in Europe depended on the sociological situation of its country varies around three categories that can be graduated from a low level to a higher level of intervention by the state. Those states who do not adopt special measures, those with a large population of Muslims that that guarantees Islamic communities an acceptable status of freedom, while they have also adopted measures for public security, and those that in some way consider Islam incompatible with national principles and values and adopt various policies that discourage their presence in the country. Regarding the issue of public financiering either the mosques or their religious assistance and teaching stuff of Islam in comparison with traditional churches led to more than a few social problems and concerns of security.

Adapting to the present of Islam, considering all its dimensions remains one of the main challenges facing European Society. Broadly speaking European countries regulate the issue by trying to reconcile security and religious freedom. The policies of control and surveillance of Muslims have affected and continue to affect the autonomy of Islamic communities and the statement of their absolute incompatibility with western democratic values is only a partial view that denotes prejudice. Besides, the importance of a religion should be distinguished from the values and principles on which pluralist democracies are based. Among these values is that of religious freedom, which due to its scope extends to the exercise of all religions, also to Islam.



Hamza Osman, Mufti of Didymotiho

"Application of Sharia in Thrace"

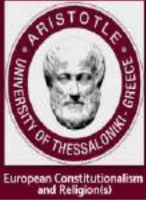
As the Muslim minority in Thrace is the only explicitly recognized religious minority in Greece, the care and effort for the more complete education of Muslim children's remains high in the priorities of the Greek state, which is proved by equalization of the two secular "Ierospoudastiria Madrasi" schools that specialize in religion to the ecclesiastical high schools of six years of study.

In Greece the Mufti is appointed in accordance with the law that defines the qualifications, the process of appointment and termination, his official status, his duties and the rules of operation. The Mufti may be appointed by the state if it does not interfere in their religious customs of Muslims. In Thrace Sharia is applied to Muslims by the Greek state and concerns only the family and hereditary law, but not the criminal law that is valid throughout the Greek territory.

In December of year 2018 was issued the decision of the European Court of human rights on the compulsory application of Sharia. Greece is the only country in Europe to which is applied compulsorily until the recent enactment of law 4511/2018. The law predicts the optional application of Sharia for family matters. In particular, the parties will be brought under the jurisdiction of the Mufti if both parties submit a relevant request for the resolution of a specific dispute. Hereditary relations of Muslims are regulated by the provisions of the civil code unless the holder draws up before a notary a freely revocable declaration of last will in the form of the public will with the exclusively content of his explicit desire for the inheritance to be subject to the Sharia. Simultaneous application of both the civil code and Sharia to the inherited property or to a percentage or to certain elements of it, is prohibited.

Six years ago, the department of introductory direction of Muslim studies was established at the theological school of the Aristotle University of Thessaloniki, which benefits the children of the Muslim minority community, who were forced to immigrate to the abroad to Islamic countries to study Islamic theology. Now thet study Islamic sciences near where they live, and are fully trained in the Islamic religion to fill the positions of religious ministers in the Mosques of Thrace.

It is a huge contribution of the Greek government and state to the scientific training of religious educators. In this way, there will be the appropriate stuffing of the Mosques of Thrace with highly qualified and widely accepted staff of the Muslim community.



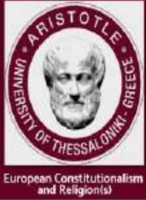
Niels Valdemar Vinding, University of Copenhagen

"Diverse interpretations of the exercise of religious freedom for Muslims in Europe"

In May 2018 a majority in the Danish parliament adopted a ban on face covering, which in effect is and has been discussed as a ban for wearing the niqab or the burkha. The ban which amends the Danish Criminal Code was enacted and took effect on 1st August 2018 and during the first year a total of 23 fines were issued. In the preparatory remarks the Ministry of Justice discussed how freedom of speech and freedom of religion belief came into consideration and should be included in the assessment of whether the cover serves a qualifying purpose. However, it's left up to the individual officer to assess whether this is in fact a criminal matter or whether it's a matter for the social services.

Leading members of parliament have even suggested to reinterpret and tighten the limitation clause which states that nothing at variance with good morals and public order shall be taught or done. In his report doctor Bielefeldt criticized the unqualified understanding that hold all Muslims accountable for the actions of an extreme few and emphasizes that the hardline political legislative responses to religious extremism as the most explicit threat to freedom of religion and belief in Denmark.

Another amendment to the Danish Criminal Code that makes it illegal to expressly approve certain criminal acts as part of religious education. This new Article in the criminal justice in the Criminal Code apply expressly to religious education alone and not to other forms of education or influence. The Ministry of Justice argued in response to criticism that since it must apply for everyone who expressly endorses certain criminal access part of religious education does not raise in the views of ministry questions in relation to Article 70 (freedom from discrimination-European Convention Article 14); and further according to the caseload European Court of human rights the provision that person's incomparable situations as the starting point must not be treated equally and that discrimination is justified only and so it does not discriminate against comparable groups; and here the current argument of the legislature is that the provisions enacted forbids discrimination against an individual on the basis of his individual religion but allows for a general discrimination of religions as all ministers of religion are limited in their exercise of this right. Politicians, media pundits and others with similar extreme points of views and significant influence on weaker members of



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the public are not limited by this. So, it points exactly to the argument that opens for what is considered in Denmark a shift in Danish constitutional theory regarding freedom of religion bringing it in direct conflict with Denmark commitments to international standards; and here's the point and the argument the Danish government in its zeal and moral panic is limiting in the name of freedom expressly in the name of requiring religious groups to work for democracy equality and rights and freedom.

Discussion on the second and the third session

Friday 24 September 2021 AUTh, Faculty of Philosophy, Conference Hall **4th Session: "Religious freedom, Islamophobia and discrimination of Muslims"** Chair: Marco Ventura, University of Siena You can watch the video here

Mauris Berger, University of Leiden

"Two Responses to the Freedom of Religion for Muslims in Europe"

The discussion on Islam in Europe develops in two different ways: the legal and the cultural discussion.

The legal discussion relates to rights, freedoms, the principles of democracy and the rule of

law. These are values that are enshrined in legal texts and are subject to scrutiny by the courts. With regard to the religious freedom of Muslims in Europe, the ongoing legal debate concerns both the safeguarding of one of the most fundamental freedoms, freedom of personal autonomy, and the possibility of restricting it, in order to protect other rights and principles, such as the prohibition of discrimination.

The cultural discussion concerns tradition and culture. In essence, it relates to the way in which society functions. These values do not need to be enshrined in legal texts, but it is self-evident that they exist. They are not brought before the courts, but before society itself. The debate on Islam, and especially Sharia, is conducted in legal terms, but, actually, it is a cultural

discussion, which can take on be stronger than the legal one. Some examples may further clarify the above.

The first example is secularism. The legal part of the discourse on secularism lies in the separation of the state from religion. This aspect is embraced by Muslims because it ensures that the state does not interfere with their religion, and they have the freedom to exercise religious freedom in the way they want. On the other hand, the cultural concept of secularism is the feeling that religion should be removed from the public sphere. It is worth noting that this sentiment is adopted exclusively within the European Union and is found nowhere else.

Another example can be found in the burqa ban in France, the Netherlands and Belgium. During the deliberations on the relevant legislation, it was argued as a ground for this ban that burqa is not permitted in Islam, on the one hand, and that it is considered as a barrier to integration and contrary to Western values, on the other hand. In this way, however, a religious sentiment was turned into law, without much success. When the Council of State was called to give an opinion on the draft law in question in all three countries, it ruled that the latter was unconstitutional, because it violated the fundamental freedom of personal autonomy, without sufficient grounds. In this case, therefore, the cultural aspect took precedence over the legal aspect and the burqa ban was finally imposed by law.

Regarding religious symbols, according to the case law of the European Court of Human Rights, the headscarf is a symbol of indoctrination that undermines gender equality and promotes intolerance. However, the Court issued a different judgment on other religious symbols, such as the cross. In particular, the ECtHR held that the cross does not constitute a form of indoctrination because, although it is a religious symbol, its cultural significance takes precedence.

The ECtHR's ruling that the application of Sharia is contrary to the values of the European Convention on Human Rights (hereinafter: ECHR) is also of particular interest. The Court did not further clarify the concept of Sharia. However, all Islamic laws are considered to be Sharia. Therefore, the Court's reference to the term "Sharia", without any further explanation of it, implies that anything falling within the meaning of Sharia is contrary to the values of the European Convention on Human Rights (hereinafter: ECHR), with the result that all of Islam is prohibited. Howbeit, mr Berger expresses his doubts that this was the actual intention of the Court, and he considers that in this case the Court has made an extremely sloppy judgment.

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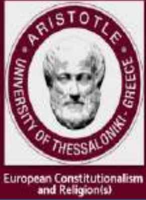
It is common that the discourse on Islam in Europe is placed in a legal context, but in reality, it is a cultural discourse. There is, therefore, a tendency for cultural issues to be increasingly merged into the legal debate and to be regulated by law.

Friday 24 September 2021,
AUTh, Faculty of Philosophy, Conference Hall
5th Session: "Islam before the European supranational courts"
Chair: Merilin Kiviorg, University of Tartu, Estonia

Vincent de Gaetano, Former judge of the ECtHR, Malta
"Veils and other headgear associated with Islam and Islamic sects, the case law of the European Court of Human Rights"

Wolfgang Wieshaider, University of Vienna
"The CJEU case-law"

Enrica Martinelli, Ferrara
"Muslim minors: education and policies for social integration"
Ms Martinelli begins her presentation with a tripartite separation on issues affecting Muslim minors: religious freedom, schooling and social reintegration policy. Their analysis presupposes some preliminary thoughts on the role that religion plays in today's multicultural societies.



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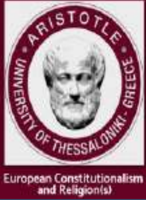
The examination of social policy integration is directly related to issues of religious freedom, cultural and educational choices. In this context, the school plays a key role in educating the adults of the future. It is necessary to build a partnership between schools and families, in order to ensure that children receive an education that respects their religious beliefs and protects religious freedom, to the extent that they are able to make their own choices.

However, there are numerous difficulties in analyzing the religious freedom that is legally recognized in minors, as this stage of their lives is marked by various and significant changes. Nevertheless, in the light of the Convention on the Rights of the Child, minors have an active role to play in shaping their personality. This protection is required to be protected in any legal relationship, and primarily within the family. The balance between parents' discretion in educating their children on the one hand and the child's right to self-determination on the other is found through the best interests of the child. The best interests of the child are enshrined in Article 3 of the Convention on the Rights of the Child and in Article 24 of the Charter of Fundamental Rights. The best interests of the child do not imply absolute autonomy for children which is close to the limits of anarchy. It must always be balanced with the duty of caring for the parents and the principle of family unity.

Today's challenges in the field of education and religious freedom for minors show a greater degree of complexity than in the past, due to the intense multiculturalism and pluralism that societies and families now display. It is customary for children's right to religious freedom to be perceived by religious doctrines as a duty that parents must perform.

Muslim immigrants have multiple social and cultural backgrounds and receive a continuing cultural upbringing from both their country of origin and the host country.

In particular, Muslim minority immigrants face numerous challenges and expectations during their growth. On the one hand, parents have the right to pass on to their children the spiritual education they desire based on their cultural heritage and personal beliefs. On the other hand, the school education provided is required to protect the best interests of the child. Of course, religious education is a value that is certainly protected by the legal system, but it is required to be harmonized with other values, such as respect for the religious freedom of parents. Undoubtedly, the pedagogical system exerts a greater influence in early childhood, where the child has not yet developed the spiritual ability to consciously shape his religious beliefs.



The education system must be adapted to multicultural societies as well as create suitable conditions for underage immigrants, in which the latter will be able to express their personalities and beliefs freely. In this context, it is necessary for the school to contribute to the cultivation and development of students' abilities to recognize stereotypes, to overcome any mutual differences with other people and to share the sense of responsibility for building a common future. The provision of knowledge about the religious traditions, history and culture of each country contributes decisively to this effort.

However, in today's multicultural schools there is a limited freedom of religious expression, with a variety of examples to confirm this. In particular, outdated textbooks are used, which reproduce stereotypes and erroneous knowledge. At the same time, Western schools present distorted analyzes of Islam. According to a study conducted by the German Institute, Islam in many countries appears as an obsolete and sexist religion.
Therefore, there is an urgent need to adopt effective immigration integration policies, investing in resources to develop the services, knowledge and professional skills required to build intercultural schools.

Discussion

You can watch the last sessions here.

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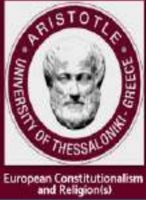
Saturday 25 September 2021,
Alexander the Great VIP Lounge, Capsis Hotel
6th Session: "Securitization of Religion"
Chair: Lars Friedner, Member of the Executive Committee of the Consortium

Merilin Kiviorg, University of Tartu
"Security and liberty in the light of Islam(ophobia)"

Konstantinos Papastathis and Anastasia Litina, University of Thessaloniki
"Islamophobia, anti-immigrant attitudes and religion"

Saturday 25 September 2021,
Alexander the Great VIP Lounge, Capsis Hotel
7th Session: "Challenges posed by Islam in the traditional understanding and application of democracy and rights in Europe" (Closed)
Coordination: Brigitte Basdevant-Gaudemet, Paris

Silvio Ferrari, University of Milan
"Which model of co-existence?"
Discussion
Mark Hill QC, Acting President of the Consortium, London
"Summary and reflections"



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SEMINAR on
Global Challenges on freedom of expression
11 October 2021, Konstantopoulos Hall, Faculty of Law, AUTh

Zoila Combalía Solís, University of Zaragoza

“Freedom of Expression and Religion in the USA and Europe: Two Different Ways of Understanding Democracy”

The difference between the American and the European approach, when they are faced with an expression that incites hatred, is that Americans believe that the greatest danger to democracy is limiting freedom of expression, while Europeans the incitement to hatred. The contrast is proved by their legislation, but also by their jurisprudence.The background of the American concept is a liberal-individualist approach. In particular, their mindset is based on the free trade of ideas, which is for them “the higher good and should be in perpetual vigilance against any attempt to suppress the expression of opinions […] Only an emergency situation[…] justifies making an exception to the general mandate that ‘Congress will not pass any law[…] that restricts freedom of expression” (Judge Holmes). Moreover, the right of people to decide is a keystone for Americans as “There is a significant difference between proscribing racial insults directed toward individuals, for instance in the workplace and proscribing them in a political discussion or debate. The harm to the individual victim may be the same, but for public discourse to enable self-government, racist speech within that discourse must be repudiated on the merits, rather than be silenced by force of law” (R. Post). On the other hand, European Union states via Council Framework Decision 2008/913/JHA of 28 November that “Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable: (a) publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin; (b) the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material” (art. 1, 1,a y b). European Union’s main belief is that recourse to Criminal Law is justified when there is incitement to hatred and so in Venice Commission, Plenary Session, 76th Plenary Session, 17-18 October 2008 (CDL-AD(2008)026)

Seminar “Global challenges on freedom of expression and religion”

SPEAKERS:

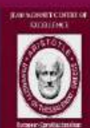
Zoila Combalía Solís, University of Zaragoza, *Freedom of expression and religion in the USA and Europe: two different ways of understanding democracy*

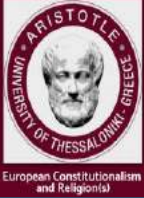
Francisca Pérez Madrid, University of Barcelona *Hate speech in the European Court of Human Rights*

Lina Papadopoulou, Aristotle University of Thessaloniki *(How) Can Advocacy for Allowing Blasphemy be Reconciled with Supporting the Prohibition of Hate Speech?*

Monday 11 October 2021, 5 pm

Konstantopoulos Hall (No 112)
Faculty of Law
Aristotle University of Thessaloniki
Greece





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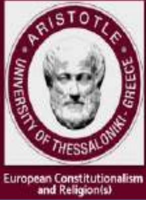
was recommended that the only two Member States that do not provide such sanctions (Andorra and S. Marino) should include them. There is a disparate perception of rights. Americans believe in spheres of individual autonomy, pure freedom as senders, but Europeans believe in autonomy sustained on human dignity as receivers. Therefore, Americans have a different view of neutrality based on the dogma "There is no such a thing as a false idea" (Supreme Court of the US). Both approaches are imperfect, but in a world that has witnessed the Holocaust and various other genocide, the need for regulation abolishing phenomenal neutrality becomes ever more urgent. States must embrace pluralism, guarantee autonomy and dignity, and strive for maintenance of a minimum of mutual respect. Commitment to these values requires states to conduct an active struggle against hate speech.

Francisca Perez, University of Barcelona
"Hate Speech in the European Court of Human Rights"

As a preliminary, freedom of expression, as enshrined in Article 10 of the European Convention on Human Rights, is a fundamental right of great significance in a democratic society. Nevertheless, some people exercise their right to publicly express their own ideas and opinions, intentionally or not, in a manner that is disrespectful for those who hold different views. Many times a public discourse is directly offensive against religion in general or a particular religion or against sacred figures or religious symbols.
The protective framework of Article 10 of the ECHR includes not only the dissemination of ideas which are favourably received, or which are not offensive or which are considered irrelevant, but also those which are offensive, shocking or disturbing.
The scope of protection of Article 10 ECHR includes not only the dissemination of ideas which "are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb". The question that arises is when, and under what conditions, freedom of expression (Article 10 ECHR) can be limited by the exercise of religious freedom (Article 9 ECHR).
The jurisprudential vacillation of the ECtHR on this question is extremely interesting. From its very first judgments (Otto-Preminger-Institut v. Austria, 1994 and Wingrove v. United Kingdom, 1996), the Court affirmed that the protection of the religious freedom constitutes a



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legitimate aim that justifies a restriction of freedom of expression, if the restrictive measure can be considered "necessary in a democratic society". Given the possibility to discern a uniform conception of the importance of religion in Europe, a wide margin of appreciation is recognized to national authorities.

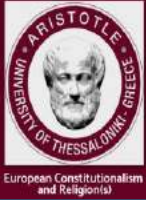
In 2005, in the *Paturel* case, a new element was added to the judicial discourse: the need to distinguish between statements of fact and value judgments. In this context, the impossibility of proving the veracity of value judgments was noted. Such an obligation would constitute a violation of the freedom of opinion enshrined in Article 10 ECHR. In the present case, therefore, the ECtHR held that this was a matter of general interest and the need to protect freedom of expression prevailed

A year later, in the *Giniewski* case, it was highlighted that there is an obligation to avoid "gratuitously offensive" expressions that do not contribute to a public debate that favors the progress of civilization and that may harm the rights of others. In the case in question, the Court concluded that, taking into account that the topic was of extreme importance in the contemporary history of the West, the exercise of freedom of expression did not constitute an gratuitous attack on religious convictions, but a reflection. Comparing the Otto-Preminger-Institut and Wingrove decisions on the one hand and the Giniewski, Paturel decisions on the other hand, the first set of decisions reflects an ultra-protection of religious feelings against some offensive audiovisual expressions, while in the second set of decisions some accusations were considered as part of an ideological debate. There has been a tendency over the last 15 years to prioritize to freedom of expression in this conflict of rights.

Examining hate speech, it is worth noting that no international definition has been established. In the European Council's (1997) guidelines on hate speech, there was an attempt to define this term. Hate speech is now understood as a broader term than 'incitement to hatred'.

UN High Commissioner for Human Rights has recommended that in assessing incitement to hatred, six factors should be tested: a) social or political context; b) the speaker's status and influence; c) the speaker's intent; d) the content, form and style of the discourse; e) the extent of the speech, such as venue and audience; f) the likelihood of inciting direct action against the targets.

The jurisprudential lines drawn by the ECtHR on hate speech and religion are remarkable. In 2003 in *Gündüz v. Turkey*, it was stated that "expressions that seek to spread, incite or justify



hatred based on intolerance, including religious intolerance, do not enjoy the protection granted by Article 10 of the Convention". However, the mere fact of defending sharia, without calling for violence to establish it, cannot be classified as hate speech.

When dealing with incitement to hatred and freedom of expression, the European Court of Human Rights uses two approaches: the broader approach of exclusion from the protection of the Convention provided for by Article 17 (which prohibits the abuse of rights), and the narrower approach of restrictions on protection provided for by Article 10, paragraph 2. Inevitably, the question arises: what is the significance of applying Article 17 instead of Article 10? The answer is an absence of a balancing process. Especially, Article 10 cases take the right to freedom of expression in Article 10 para 1, and weigh this against the interests in Article 10 para 2. There is no such balancing process under Article 17; speech is restricted solely because of its content. In this context, if certain expression is deemed "hate speech", there is no need to assess if the restrictions imposed by the State were legitimate and proportionate and the public authorities are exempted from providing precise justifications for these restrictions.

In *E.S. v. Austria* in 2018, the Court ruled that national authorities were competent to judge whether the "religious peace" of the country could be endangered. Although E.S. was not convicted of incitement, the ECtHR cited an Austrian incitement provision (Article 283 of the Criminal Code) as 'relevant domestic law. The Court claimed that there was "justifiable indignation" among Muslims, even though no Muslims had protested. Nevertheless, the likelihood of indignation can't count as 'a pressing social need' to suppress fundamental freedoms. For the first time, the Court decided to assess the "objectivity", "neutrality" and "rigour" of the statements made by the applicant. In Otto-Preminger-Institut or in Wingrove , favourable to the protection of religious feelings, the Court focused exclusively on the fact that the audio-visual expressions in question were unnecessarily offensive and provocative, without judging their truth or their correctness.

In conclusion, Ms Perez wonders whether we are finally entering a new form of censorship. Many religious doctrines can collide with contemporary values. Topics like child marriages justified by a religion must be addressed in a democratic society. In conclusion, since Article 9

protects not only religion but other life philosophies as well, the right not to be offended may eventually be interpreted as a general right.

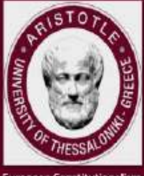
Lina Papadopoulou, Associate Professor of Law, Aristotle University of Thessaloniki, Academic Coordinator of the Centre of Excellence Jean Monnet AUTh,
"(How) can advocacy for allowing blasphemy be reconciled with supporting the prohibition hate speech?"

Prof. Papadopoulou's presentation was based on the study that can be found HERE.

LECTURE
Francisca Perez, University of Barcelona
"Right to asylum in cases of religious persecution"

Tuesday 12 October 2021
Konstantopoulos Hall, Faculty of Law of the Aristotle University of Thessaloniki

Starting from a brief historical overview, it is observed that numerous cases of intolerance have arisen in the 20th and 21st centuries. In 1951, after the Second World War and the ever-increasing political tensions, the Convention on the Status of Refugees of the United Nations was adopted, which established the conditions for obtaining asylum on the grounds of race, religion, nationality, membership of a particular social group or political opinion. In 2004, UNHCR issued specific guidelines on religion as a ground for fear of persecution and Directive 2011/95/EU of the European Parliament sets out minimum standards for the recognition of refugee status.
Article 1 of the 1951 of the Geneva Convention contains the definition of "refugee". Crystallizing this concept, applicants have to be outside their country of nationality or habitual residence because of a well-founded fear of being persecuted on grounds of race, religion, nationality, membership in a particular social group or political opinion and unable or unwilling to avail himself/herself of the protection of that country. They may be entitled to refugee status as a result of events taking place in their country during their absence (status of refugee sur place). While the challenges of interpreting the definition of refugee are evident, it is even more difficult to establish religious persecution. Despite international legal guarantees, various problems arise in the protection of refugee



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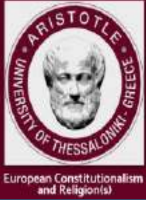
status. In particular, Many of the Convention's member countries have not incorporated its provisions into their national law, while other States apply it, but without consistency or with a restrictive interpretation. Moreover, the refugee protection system is weak and far from universal. At the same time, an international obligation procedure is established to facilitate the recognition of refugees, but not to grant refugee status. Finally, the 1951 Convention lacks an oversight mechanism.

There are numerous examples of religious persecution, such as imposing the performance of given religious acts or punishment for practicing a certain religion. To the long-standing examples, new cases of religious persecution have been added, e.g. parents refusing to send their children to school due to religious reasons, health personnel denying to perform tasks such as abortion, or a death sentence for apostasy for those who change their religious faith. For the recognition of refugee status on grounds of religion, it is necessary to prove a well-founded fear, the particular importance of the religious beliefs to the applicant, that the applicant's activities have led or could have led to his/her persecution, and the existence of a causal link between the religion on the one hand and the acts leading to his/her persecution or the lack of protection against such acts on the other hand. It is worth noting that the mere membership in a religious community is not sufficient for obtaining refugee status. Prosecution on the grounds of religion is characterized as the most complex case to process. The applicant is faced with numerous challenges, and it is common for Western and international courts to be more cautious when recognizing persecution on religious grounds, particularly in relation to the origin or religion of the asylum seeker. Verifying and proving the credibility of a religious conversion is extremely difficult, e.g. because of a low level of knowledge of the religion of the converted applicant or the lack of documentary evidence of the change of faith.

Knowledge of a religion can vary dramatically based on social, economic and educational circumstances, age and gender. It must be born in mind that religion is not just a set of beliefs, but an identity, a way of life. It is not beyond the realm of possibility that an individual is aware of a particular religious doctrine, but that his/her belief is not sincere. In this context, the judgment of the Court of Justice of the European Union (hereinafter: CJEU or Court) in Y and Z v. Germany (2012) is notable. In particular, the Court, underlining the fundamental value of freedom of religion in a democratic society, rejected the distinction between acts that affect a 'essential content' (forum internum) of the fundamental right of religious freedom and acts that do not affect the supposed 'essential content' (forum externum). One of the key points of this decision is that, on the one hand, the external dimension of religion includes the exercise of religious practice that does not constitute a central element for the affected religious community, and on the other hand, a serious breach of religious freedom is established when participation in formal religious worship in public entails a real risk of



persecution or inhuman or degrading treatment.

In conclusion, some governments do not respect the principles of the 1951 Convention. The current passivity of States in the face of the arrival of persons belonging to persecuted religious minorities reflects the realization that the millinery asylum institution presents evident symptoms of crisis and that the Guidelines 2004 need to be revised.

LECTURE
Zoila Combalía Solís, University of Zaragoza
"Religion and politics in the European Union"

Tuesday 12 October 2021
Konstantopoulos Hall, Faculty of Law of the Aristotle University of Thessaloniki

Although the European population is considered to be predominantly Christian, in recent years there has been a rapid spread of secularization and an increase in the number of people belonging to religious minorities, especially Islam. In this context, the public powers are called upon to ensure the peaceful coexistence of a multi-religious society by creating a legislative framework that protects diversity and establishes a common minimum level of respect for human rights and the pillars of democracy. The connecting link between all citizens in the area of religion is not a common belief, but a common belief in religious freedom and equality.

What does "integration" mean? Integration is not standardizing. Uniformity may lead to indirect discrimination, i.e. the adoption of, at a first glance. "neutral" norms that apply equally to everyone but can have disproportionately negative effects on some people. Does integration mean confining religion to the private sphere and making religion "invisible"? For example, in France the burqa ban has been imposed in public spaces.

In the EU legal order, many provisions protect religious freedom (Article 6 Treaty of the European Union, Article 10 Charter of Fundamental Rights of the European Union and Article 17 Treaty on the Functioning of the European Union). In this context, the EU demands from Member States respect for religious freedom and the principle of non-discrimination on grounds of religion, while cooperating with religious communities to guarantee these rights.

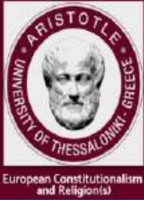
There is no single model of relations between the state and religious confessions in the European Union. However, the different models have to be compatible with human rights. The main models in EU countries regarding state and religion are the confessional (e.g. Denmark, Greece, Malta) and the secular states. In secular states, two models are basically adopted: (a) the model of separation, where religious specificities are not taken into account

and confessions are governed by common law (unilateral) and (b) the model of cooperation, where religious peculiarities are recognized and specific regime for confessions (covenant) is adopted. The ECtHR has detected several problems faced by religious communities in Europe. In this regard, public powers must adopt inclusive measures, removing obstacles to the exercise of religious freedom and promoting the conditions for all citizens to see themselves equally citizens regardless of their beliefs.

Religious freedom needs to be distinguished from freedom of opinion. Beliefs are not just an opinion. Mere opinions do not make up a way of life and do not determine one's own identity. If religious beliefs were to be equated with opinions, religious freedom would become mere individual autonomy and, as such, would have no protection in the public sphere, but only in the private sphere.

Particular attention is required in view of the numerous dangers lurking on the internet and social networks, such as the danger of manipulating religion, aggressive secularism, as well as fanaticism.

To conclude, in a Europe with plurality of beliefs, social cohesion will come from the fact that we are all capable of respecting and considering all people equally as citizens regardless of their faith. Against this background, the mission of the public powers is to guarantee the freedom and equality of all citizens in religious matters within respect for public order as a common minimum of coexistence. The decisive role of religious communities as agents of social cohesion must not be underestimated. Finally, respect for religious diversity is of paramount importance for the protection of European identity.



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Activities of research group members – Working Papers

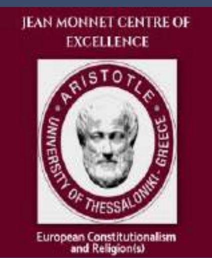
❖ The Associate Professor of the Faculty of Law of the Aristotle University of Thessaloniki, Academic Coordinator of the Jean Monnet Centre of Excellence, AUTh, Mrs. **Lina Papadopoulou**, took part in the **7th Seminar of the National Commission for Human Rights (3rd Cycle)**, which was held on May 10, 21 and had to do with Hate Speech. The main topic of her presentation: "**The legal treatment of hate speech - a constitutional assessment**". You can watch the presentation here.

❖ On 14-15 January 2021, a conference was held on "Migration and Differentiation on EU Law & Governance". The conference was organized online under the auspices of the Brexit Institute of Dublin City University under the Jean Monnet Network BRIDGE program. The Associate Professor of Faculty of Law of the Aristotle University of Thessaloniki and Academic Coordinator of the Centre for Excellence Jean Monnet AUTh, Mrs. **Lina Papadopoulou** participated with a presentation on "Citizenship, Migration and Populism - Nativist populism and religious intolerance".

❖ **Konstantinos Papastathis** (2021), Cultural diplomacy, Church politics, and nationalism in early mandatory Palestine: the case of the Jerusalem Orthodox Church, Contemporary Levant, 6:1, 65-77, DOI: 10.1080/20581831.2021.1881718

❖ **Konstantinos Papastathis** (2021), Introduction of the special issue: Karène Sanchez Summerer / Konstantinos Papastathis (2021), A connected history of eastern Christianity in Syria and Palestine and European cultural diplomacy (1860–1948), Contemporary Levant, 6:1, 1-8, DOI: 10.1080/20581831.2021.1898122

❖ **Working Paper of Ioannis Papadopoulos,** Associate Professor and Director of the Centre for Research on Democracy and Law, Department of International and European Studies, University of Macedonia



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The difficulties of faith in modern times and the implications for democracy

Introduction: The dynamic invasion of Modernity in the West

Modernity is a process that has lasted, and continues to last, centuries. At some point in Western Europe there was a major change of the scientific paradigm, a novelty regarding religion: Faith in God ceased to be self-evident. Since faith in God ceased to regulate social life, we dynamically entered into the field of Modernity. Modernity was marked by a radical desacralization, which today reaches a great – sometimes desperate – need for resacralization. The successor of God in societies was, to a very large extent, secularized ideals. Certainly, this evolution eliminated metaphysics from the horizon of men and left a void in its place. Managing this void brings problems, especially in terms of democracy.

Secularism as liberation and as a fissure

With the advent of Modernity and the major paradigm shift, which was consolidated in the 20thcentury, we have seen that faith in God is no longer self-evident. Especially in the West, it is no longer self-evident to adhere to Christianity, as a dogma and as a belief system. Christianity is known to have marked the life of the West in all its manifestations: political, social, life of ideas, culture, art... Accordingly, the separation of the church from the state and the independence of the latter on the former, which in France was carried out by the famous law of 1905[1], laid the foundations for a secular society that has secularized life as a whole in all its manifestations, just as Christianity had christianized life as a whole before it. Thus, the "Most Christian Kingdom" of France died, and freedom of conscience has come to its place as a new religion; this replacement of the socially imposed religion by freedom of conscience was conquered after many centuries of religious domination in the Catholic West and, of course, it was experienced as a great liberation.

But this freedom that was conquered since the beginning of the 20th century left some kind of nostalgia – a metaphysical 'fissure' – which is produced by the feeling that we have forever left behind the era of innocence, when man spontaneously believed in a higher power and in the traditional faith, and when he referred naturally to God ("natural religion" according to Kant)[2]. This feeling, which can be said to be similar to the feeling of innocence of childhood, left a very large void, just as large as God's place in our lives before the secularization of Modernity ("an omnipresent absence", according to the philosopher Alain)[3].

Two analogies between the Modernity of the 16th and the Postmodernity of the 21st century

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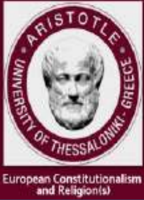
[1] French law on the Separation of the Churches and the State (Loi de séparation des Églises et de l'État) of 1905.

[2] Immanuel Kant, *Religion and Rational Theology*, Allen W. Wood & George di Giovanni eds. & transl., Cambridge, UK: The Cambridge edition of the works of Immanuel Kant, 1996.

[3] Alain, *Propos sur la religion*, Paris: PUF, 1969 (original edition 1938).



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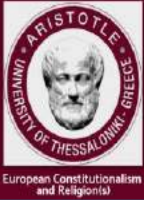
Secularism lasted, as we have seen, for many centuries. Its course began dynamically mainly in the 16th and 17th centuries with the religious wars in Europe and the New Science of Francis Bacon[4] and René Descartes[5]. We can, I think, draw a parallel between this novelty and the condition of Postmodernity that we are living in today, in the 21st century, with the difficulty of faith that characterizes it.

The 16th century, which represents the beginning of the secularization process that resulted in the "omnipresent absence" of God, is marked by Protestantism. *Protestantism*, and the merciless and terribly bloody religious wars that followed, was undoubtedly a turning point for the West, Modernity, and Europe, because it marked the end of the one and only revealed faith. From this, the basic philosophical and experiential attitude of modern man was born, which can be said to be characterized by two basic things: distrust and relativism. Distrust and relativism have their source in the religious rupture that took place in the 16th century in Europe. The modern societies that emerged from old Europe at the cutting point of the 16th century gradually understood themselves as "laïques", i.e., as secular, as not in need of religious references.

But the factor that brought a radical change in the landscape and makes the present era show some analogies with the 16th century is *the establishment of a European Islam*. Islam plays an active, decisive role, because where Europe had come to perceive itself as a fully secularized society, with distrust and moral relativism, comes a very dynamic religion and resurrects the God who had died (according to the famous maxim of Friedrich Nietzsche)[6]. And along with that, it upsets the certainty of the Western man that he was essentially finished with alienating and irrational religious beliefs. Therefore, here we have a certain analogy to the 16th century, with the influx of a new religion, which is upsetting the situation up to that time in the West.

A second point of analogy between the novelty of Modernity of the 16th century and today's era of Postmodernity, which appeared as a consequence of the religious rupture with the emergence of Protestantism, is the *deregulation of knowledge*. Not long before Protestantism, which shook Western Europe from end to end, printing also appeared. The printed book removed from the hands of the Church the monopoly of knowledge. The fact that one could set up a printing press somewhere and print, even illegally, from the simplest pamphlet to a whole treatise, deregulated the control of knowledge. Today, by analogy, we have the Internet, which is a much more advanced development, but in the same vein as the invention of typography, i.e., that of complete deregulation of the scattered sources of knowledge. With the Internet, we are witnessing the propagation –

[4] Francis Bacon, *Novum Organum*, Joseph Devey ed., New York: P.F. Collier, 1902 (original edition 1620).
[5] René Descartes, *Discours de la méthode*, Charles Adam & Paul Tannery eds., Paris: L. Cerf, 1902 (original edition 1637).
[6] Friedrich Nietzsche, *Also sprach Zarathustra*, Ditzingen: Reclam, 1978, p. 5 (original edition 1883-1885).



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in an anarchic or even cacophonous way – of a hotchpotch of knowledge, data, and information, which looks more like a chaotic universe than a well-structured cognitive reserve. But in both cases, i.e., in both the 16th and the 20th century, we have had a deregulation of the control of knowledge.

The search for the possibility of faith in Postmodernity

Today we live in a postmodern era, which seeks – sometimes desperately – the possibility of faith. We are surely now in a different condition from that of Modernity: the condition of the agonizing investigation of the possibility of faith as well as the possibility – at least in part – of a resacralization of social life.

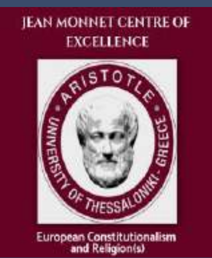
Etymological excursus

Let's take the etymology of two critical terms in Latin. The first term is the infinitive "religare" (a term found at the root of "religion"). In Latin this term means "re-associate", set a new bond. This is the first term, religion as a reconnection. The second term is "credo" ("faith"), which comes from Sanscrit, from the synthesis of a term meaning "vital force" and a term meaning "to pose": therefore etymologically, "credo" means "putting in some vital force". It is an act of recognition that awaits as a return an act of mutual recognition, a gift awaited by a gift in return. It is from the same root that the word "credit" comes from: the financial term "credit" goes back to the term "I believe", i.e., "I trust", i.e., I place someone else in a relationship of a two-way reciprocity, where I believe in the possibility of the other (in his "vital force") and the other in mine. These two words do not just matter for their etymology. They are the foundations of a social contract; we are dealing with a whole contract of mutual trust, which has gradually eroded since the 16th century with the advent of Modernity.

The French Revolution, the point in time when religion's contract of mutual trust was broken

This gradual rupture ends in a real cleft in the 18th century with the dynamic emergence of Enlightenment and the French Revolution, which is the great novelty. The French Revolution set as its primary basic project to end the dominance of religion in public life. This convention of "religion" and "faith" comes to a rupture in the 18th century, after a slow erosion process from the 16th century onwards. It is in the 18th century that the philosophies of disbelief (Marx, Nietzsche, Freud) are born. This trilogy of disbelief is a child of the French Revolution, as it comes from a current of it. Marx, Nietzsche and Freud are radically agnostic; their common project – albeit from a very different point of view – was "to end religion", to turn the page once and for all, to close the chapter called "religion". This goal was largely achieved with Modernity.

But does that mean that we are also done with faith? Probably not. The French revolutionaries themselves did not have the illusion that they could close the chapter called "religion", i.e., that they could abolish religion and impose social atheism. Their



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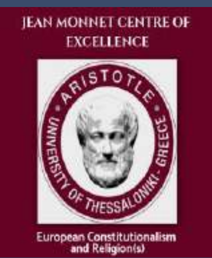
main ambition was to subdue religion, to place it under the sovereignty of the political – as religion had placed under its sovereignty the political for centuries in the Christian West – so that it too would become a tool in the hands of the political. But at the same time, they sought to establish the famous cult of the "Supreme Being" ("Être Suprême"), which takes the form of a triangle with one eye on the forehead of the Declaration of the Rights of Man and Citizen and in many other texts of that time. Because the French revolutionaries were very conscious of the need to unite the people around some kind of metaphysical belief: if not the classical Christian faith, which was in the hands of the Catholic Church, which they should subdue, at least something that would take its place, a fairly undefined and deistic Supreme Being. The French Revolution itself did not have atheism, the abolition of religion, as its pretense; that should be clear, but it is often not.

The incredible need to believe

Modern psychoanalysts, such as Julia Kristeva[7], say that man's need to believe is innate because this way a person can structure his personality and identity. The individual will not acquire mental balance and a self-identity if he does not believe. This is a fundamental stage in our mental and identity construction. And this applies to all ages, since the beginning and forever: from the prehistoric period, where we see that we had religious burial ceremonies, until today. Nothing has changed in this either individually or collectively, in the sense that it is fundamentally impossible to structure a society that believes in nothing. Such a society would have no orientation. The feeling that you are lost begets suffering; you have nowhere to go, you have no compass. Therefore (I refer once again to Kristeva), it is absolutely necessary for a human being and his good mental health to have "illusions" (as Freud said in the *Future of an illusion*, who considered religion to be the greatest illusion)[8]. We thus see the reversal that has taken place today in relation to the frenzy of Modernity, which is the 20th century and the prevalence of the trilogy of disbelief.

However, the term "faith" is now used in a very different way than before Modernity. We are no longer talking about faith in a single religion or in God or even in some gods. Here we are talking about something much broader and very often amorphous, what Spinoza called "conatus" (life impulse of beings)[9] and Freud called the "principle of pleasure" (a principle that brings beings close to one another)[10]. It is the indestructible psychic need

[7] Julia Kristeva, *Cet incroyable besoin de croire*, Paris: Bayard, 2018.
[8] Sigmund Freud, *Die Zukunft einer Illusion*, in *Gesammelte Werke, Bd. 14*. London: Imago, 1948 (original edition 1927).
[9] Benedict de Spinoza, *The Ethics*, transl. R. H. M. Elwes, Project Gutenberg, part 3 (original edition of *Ethica, ordine geometrico demonstrata* 1677).
[10] Sigmund Freud, *Zur Technik der Psychoanalyse und zur Metapsychologie*, Norderstedt: Vero, 2015 (original edition 1911).



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that pushes us not only to associate and love others, but also to build together ideals, a common ideal society.

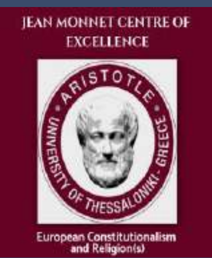
Science and religion

Modernity, especially with Descartes, wanted – and to a large extent imposed – for science to replace religion, i.e., to make science a religion in place of religion. This brings problems today. The project of Modernity was desacralization. For example, Marxism has a messianic dimension; it is a religion of History. Historical materialism, which will end up in communist society, is an eschatology, which is simply secularized. But science and technology themselves, as they were born in the West with the Cartesian revolution from the 17th century onwards, take on the aura of sanctity; they become, as it were, religions of science, replacing pure religion. In reality, however, as Nietzsche himself ironically wrote in *The Gay Science*[11], the previous (i.e., religion) is not very different from the latter (i.e., science). Science perceives itself as all-powerful and as the ruler of everything, as an absolute faith. It is essentially a continuation, with secular elements, of the old Judeo-Christian religion.

But the modern triptych “science – technology – politics” has now entered a deep crisis in the postmodern era. What has become of scientific and technical progress? We certainly have a great deal of scientific and technological progress – and fortunately. This progress – especially technological progress – has produced, however, as a negative aspect, societies which are largely mechanistic, cold, obsessed with the production of material goods and their consumption. But the irony here is that even this condition brought about by science and technology is partly based on foundations, which are as unprovable as those of religious faith. Let us look, for example, at the capitalist belief in the “invisible hand of the market”, namely that the market regulates itself and that it will find by its own a rational point of balance. We are essentially dealing with another form of Divine Providence, namely an invisible force (now called the “free market”), which is supposed to be able to rationally regulate life on its own. In other words, it is also basically, at least in part, a theological thought. Even the (neo)classical economic liberalism, which is very often materialistic, indifferent to the divine, or even openly atheist, is also basically theological. We cannot easily escape from this condition. It is even doubtful whether this is possible at all. However technicalized our lives have become because of science, again this condition remains: science and technique itself have in their foundations some kind of religious faith, which of course is desacralized.

Whatever happened to all these secularized religions, all these promises of earthly happiness, all these political programs, all these mass movements of people who pursued a better society, who had believed in the promise of secularized but theological prosperity

[11] Friedrich Wilhelm Nietzsche, *Die fröhliche Wissenschaft*, Ditzingen: Reclam, 2000 (original edition 1882).



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of a worldly nature? Many of these systems of thought have been discredited; they have lost the “credere” (their credibility, their faith). Science is indeed the last stronghold. But science, too, is no longer all-powerful: it cannot explain everything, nor can it – nor should it – epistemologically invalidate transcendence itself. This cannot happen because science and religion are placed on two different levels of discourse. Science is no longer as we understood it at the apogee of Modernity, i.e., all-powerful; science can be reconciled, certainly at very different levels of discourse, with religious faith.

The necessity and difficulty of faith in Postmodernity

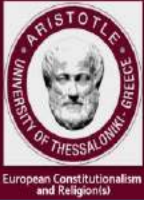
This postmodern condition in which we have entered, with the multiple crises we have seen – a crisis even of science – is characterized by the simultaneous necessity and difficulty of faith. We are at a point where we are thirsty, we have an urge to believe, and at the same time we find it very difficult to believe. This is the great paradox and the difficulty of the postmodern condition: the simultaneous *great need and weakness of faith.* It is a suffocating condition: we are suffocating in the condition of Modernity, where everything is arranged only in its materiality, where the relations between people are no longer, to a large extent, only human, but utilitarian/instrumental, where the great horizons of hope for the end of time are closed or have darkened. This world is unlivable – and paradoxically Islam shows us this by putting the mirror in front of us so that we see it, even if we didn’t want to see it. At the same time, however, it is very difficult for us to believe because Modernity has preceded it with its disenchantment, which has eroded the very foundations of religious faith. We therefore live in societies that are jaded, that are in a crisis of faith, and that at the same time understand how unlivable this lack of ability to believe is, i.e., how much this horizon needs to be reopened.

The moral relativism of Postmodernity and conspiracy theory as dangers to democracy

This condition is also *a danger to democracy*. What is a danger to democracy? Moral relativism, which has now been well established in our postmodern condition. Moral relativism comes from the prevalence of skepticism, i.e., of a radical doubt about everything, and is applied in an anarchic, undifferentiated way in all areas of knowledge and social life. Relativism is a poison, a rust that eats up societies, as Alexis de Tocqueville had first written in the 19th century[12] and was far ahead of his time.

After at least three centuries of scientific rationality, we have come to say that we no longer believe in anything, or that everything is as believable as everything else, that everything has the same moral value as everything else, as there is no longer a system of values or some values that are superior to others. Why? Because we cannot establish any kind of hierarchy anywhere; it would be “authoritarian” or “dominant” or “colonial” to do so, as we often hear today. We have reached this point of established relativism, which

[12] Alexis de Tocqueville, *De la démocratie en Amérique*, tome 2, Paris: Pagnerre, 1848, p. 176.



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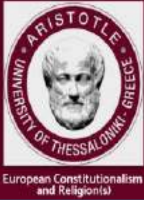
however is unlivable because nature has "horror vacui" (i.e., horror of the void) and in place of the void in the need for faith, left behind by God who died (or in any case we took away from His throne), in place of the older absolute truths, even in place of science (which is no longer what it used to be, since we observe a pervasive opinion about science now that everyone has a "viewpoint" about science in the social media), an anarchic landscape of *conspiracy sects*, a diffusion of conspiracy theories has been established. We have by now entered into the deep waters of cognitive psychology, where this need for faith, precisely because it has collapsed as a whole and relativism has occurred, is replaced, in the worst possible way, by an unregulated, cacophonous, and very dangerous and destabilizing conspiracy theory for our societies. This is very much illustrated by the Covid-19 pandemic, which has become the privileged field of conspiracy theory: everyone now has his own truth and opinion, everyone knows better about vaccines than scientists, who tell us that vaccines are safe and that they have passed all three phases of clinical trials; and everyone writes on these matters in the social media, and is not ashamed of doing so because he knows that others will believe these conspiracy theories as well.

These foci of absolute relativism, i.e., essentially of conspiracy, are pervasive. There is no longer an established right reason that is commonly acceptable. We have a very high hysterical coefficient (if we use a psychoanalytic term), a very high level of doubt and distrust, with a *neurotic approach to reality*, which is not accepted as it is. There is a difficulty in accepting the authorities: the expert who speaks, why is he an "authority"? Why does he know better than I do?

The postmodern man has reached the stage where he is not just the man of Modernity, who believed in nothing, following the project of Modernity to evacuate the religious faith, to get it out of the picture. He is a man who believes whatever – which is worse than the previous condition. We have religious faiths, rather of a sectarian type, which have now been freed from any kind of control. This control of the priesthood that we were fighting against, we are now nostalgic of it to some extent because it could control faith. Now these various sectarian, conspirational, anarchic and obscurantist beliefs have been completely deregulated, resulting thus in modern superstitions. This is because there is no longer a higher authority, to which we naturally refer and which we accept, an authority that we accept that what he is going to say is true. Everyone essentially turns his impulse into knowledge. To put it simply: everyone believes what suits him and is isolated in a place where the rest believe the same, so they provide feedback to one another (the social media play a decisive role in this development).

Paradoxically, conspiracy theory is an inverted fear: conspiracy theorists mainly believe what scares them. Am I afraid of vaccines for some irrational reason? I believe that vaccines are fake, the product of a conspiracy to control us, and so on. That is, we now have a "democracy of the naive", of those who naively believe whatever. We might even



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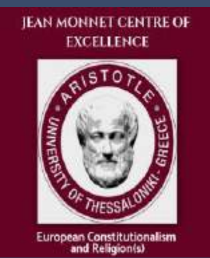
say that we have a "democracy of the foolish", if I may say so, where anyone can believe whatever he wants. In this universe of deregulation, which is exacerbated by the downpour of information, and especially of images that flood our screens, an idolatry of the image prevails: it is difficult for us to find an edge of all these images and to understand which image is of greater value and which one has no value at all.

Religious fanaticism and radicalization as results of relativism

This total deregulation, exacerbated by the supremacy of images and combined with the need for faith that, as we saw with Kristeva, remains active, ends up on *the dark side of faith: religious fanaticism* (fundamentalism) and *religious radicalization*. This development has been brought to the West mainly by Islamic jihad. What is jihad, with this reading framework that I have adopted? Jihad is a crude expression of the need for all of us to believe. It is a perverse, ghastly recovery of the experience of faith, which is fundamental to human existence. It is a radical reversal of this experience in a universe where ideals have collapsed and relativism has prevailed, where conspiracy theory triumphs, and where small, local sects do not communicate with each other and are in a constant state of war with all the others. In such a Hobbesian [s.s. by the philosopher Thomas Hobbes] universe, where everyone fights everyone, jihadism comes to establish a unity, especially in thousands of young Europeans, who were born and raised in Europe and have no orientation or frames of reference in their lives, as there is no longer either the classic imam, nor the political party, nor the trade union, nor any of that. Jihadism gives them a reason to unite into a community and, if you like, gives them a reason to die for. In this way the sacred is reintroduced; we had pulled the sacred out of the door, but now it is entering through the window. Unfortunately, religious radicalization is the reversed aspect of this orphan need to believe in Postmodernity.

Hence the famous "return of the religious". Yet we are not dealing literally with the return of the religious. We are not talking here about a return of religious faith and classical religious belief as we knew them. Here we are talking about a cry of despair, which is also taking on a collective form. In other words, it is the desperate search for a certainty where certainties have collapsed. And what greater certainty than paying with your own blood for your own ideas – whatever they may be? In jihadism, ideas do not matter much; what is important is the idea of testimony, i.e., that one chooses to be a martyr ("to testify"), to die for what he believes, to prove to everyone, by his martyrdom, that they live in a lack of faith. By killing and cancelling the opponent, he makes a *complete reversal of eschatological hope*. Jihadism is based on the hope that the act of wiping out the "infidels" from the surface of the Earth can alleviate a little the despair that many have within them and give them a certainty.



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This is a very different faith, a "complete inversion of all values" (Nietzsche)[13]. Before, either religious or secular ideals had as their mission to unite us (*religare*), i.e., to unite the individual with society and to form a community. Today all this no longer exists. *Religion* has been individualized in this extreme, radical way *as an absolute expression of our individuality*: I will show everyone who I am and what I am worth, even through a terrorist act of death. In other words, we have a break in the chain of transmission of knowledge and values. Everyone, in his own corner, can make his own, personalized tools of "faith" using the Internet. It is a *purely identitarian, enclosed faith* that closes you to yourself; you claim a religious identity that cuts you off from others – and you even see others as enemies that you must neutralize.

Some concluding thoughts

So what can be done here? Are things so bad?

Let us take a distance and revisit this unquenchable thirst, this great need for faith, which is deeply nested in the human being. Let us revisit the meaning of faith, the sense of the sacred — and let this feeling not necessarily be expressed in a religious doctrine — to give a new freshness to this need for faith. What do we keep and what do we leave in this condition that we are in? We keep the good things and leave the bad ones. First, we can and must keep the very etymological source of religion, the *religare*: the *connection*, which is the opposite of division. If this need to believe today, in this relativistic and radicalized Postmodernity, is not a need for reconnection, then what is it?

The second thing we keep is a need *for a renewed morality*. As Jürgen Habermas (one of the greatest philosophers of the 20th century, secularized – not religious – and clearly a thinker of the Enlightenment), says it himself openly: We must rediscover the sources of our civilization, which are religious, to give a new impetus to a renewed morality[14].

Connection and morality, then. A moral attitude of *connection with the rest*: that is the modern meaning of the sacred. And we see this in the current pandemic, where my own body is a bearer of responsibility and if I get vaccinated, I will do so out of faith in the community with which I am connected and because I have to protect others – and of course myself – from being part of the viruses' transmission chain.

Therefore, in the contemporaneous condition, one can very well be *both agnostic and faithful*, provided of course that we take these good elements and leave everything else, which caused, and unfortunately still causes, the rivers of blood of religious (Islamist in this case) terrorism. Are we exiting religion? Possibly. Modernity has indeed taken us out of religion; we have indeed dethroned God and His throne has been left empty. But it has not taken us out of the need for social connection and morality. It has not taken us out of

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[13] Friedrich Wilhelm Nietzsche, *Der Antichrist: Versuch einer Kritik des Christentums*, Hamburg: Nikol Verlag, 2008 (original edition 1895).

[14] Jürgen Habermas, "Religion in the Public Sphere", *European Journal of Philosophy* 14(1), 1-25 (2006).

the need for faith, for transcendence – regardless of whether it has a religious reference or not.

In summary: *An exit from religion for a re-entry, essentially, into religion*. Because the right reason – as already understood by Blaise Pascal, who was a brilliant scientist himself, when he developed his polemics against Descartes in the 17th century[15] – is not enough for a full life. One cannot have a human life, community, and ethics only with the radical Cartesian doubt and the religion of science, the religion of right reason. We have seen that this cannot stand: it has brought as many problems and dangers as those of the previously imposed religion from above. There are two extremes, as Pascal said: one extreme is to exclude right reason and the other extreme is to accept only right reason[16]. Essentially, that is, we are talking about an exit from classical religion and a re-entry into a universe where this *bipolar contrast between rationality and faith no longer has a reason to exist*. In other words, we can have a fuller understanding of humans as whole persons, in need of both right reason and faith, regardless of whether this faith is religious or secular, because otherwise one will not be a full person.

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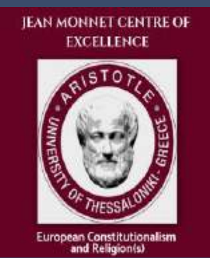
[15] Blaise Pascal, *Pensées*, Léon Brunschvicg éd., Paris: Hachette, 1904, tome 1, p. 98, pensée n° 78: "Descartes inutile et incertain" ("Descartes is useless and uncertain") (original edition 1670).

[16] Blaise Pascal, *Fragment "Soumission et usage de la raison"* n° 4/23, Paris: Éditions de Port-Royal, 1669, chapitre V: "Il faut savoir douter où il faut, assurer où il faut, se soumettre où il faut. Qui ne fait ainsi n'entend pas la force de la raison. Il y en a qui pèchent contre ces trois principes, ou en assurant tout comme démonstratif, manque de se connaître en démonstrations ; ou en doutant de tout, manque de savoir où il faut se soumettre ; ou en se soumettant en tout, manque de savoir où il faut juger" ("We have to know how to doubt when we must, assure when we must, obey when we must. Those who do not proceed in this manner do not understand the force of reason. There are people who disobey these three principles, either by assuring everything as demonstrative, thus lacking knowledge as to demonstration; either by doubting everything, thus lacking knowledge as to when one must obey; or by obeying everything, thus lacking knowledge as to when one must exercise judgment").



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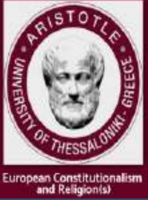
Case Law

- **Council of State [Greece] 1751/2021**
  Comment: Dimitris Tsantaris, Lawyer
  Translation: Loukia Tremma

"…….11. Because the contested act, as is apparent from its wording set out in paragraph 8, allows Article 2 to slaughter animals in the form of cults without prior anesthesia. Furthermore, Article 3 of this act, as this Article is in force after its amendment by the joint ministerial decision 292/46122 / 26.3.2018, does not provide in essence stricter national rules for slaughter in the form of cults, if already with the said decision 292/46122 / 26.3.2018 the minimum additional measures provided by the Regulation were abolished in order to avoid further suffering of the animals provided by the original wording of the Article, such as the prohibition of immobilization of ruminants by reversal or any other abnormal position. In addition, the provisions of the other articles of the contested act govern regulate, in particular, technical issues concerning the carrying out of the slaughtered animals. However, the Greek legislature with the adoption of the contested act omitted to balance the obligation to protect animals under Article 13 TFEU and its obligation to comply with Article 13 of the Constitution and Article 10 of the Charter of Fundamental Rights of the European Union to respect the religious freedom of religious Muslims and Jews living in Greece. He erroneously considered that he was bound by Article 4 para 4 of the said Regulation to allow the religious or according to cultic types slaughter without prior stunning of the animals, despite the fact that the above provision of para 2 of Article 2 of law 1197 / 1981, which reflects the current and in accordance with the law of the European Union conceptions of the treatment of animals during their slaughter, already prohibits the killing of mammals in slaughterhouses without prior stunning. This provision can not be considered that it has been tacitly abolished due to p.d. 327/1996 because Articles 2 lit. 8 and 5 para 2 of this decree suffice to repeat the respective provisions of Directive 93/119 / EC and do not constitute an autonomous regulation of the issue of massacres carried out according to religious norms in Greece. This Article is not regulated by Articles 13 para 1 and 23 para 2 of Law 4235/2014, which merely mention religious massacres in the context of administrative measures and sanctions that generally provide for non-compliance with the applicable rules for the protection of animals during slaughter or killing, while the authorization of para 2 of Article 62 of law 4235/2014 has a general wording. Moreover, the fact of non-notification of the provision of para 2 of Article 2 of law 1197/1981 to the Commission, according to the definitions of Article 26 of the Regulation, does not imply its abolition. With these data, the Greek legislator should, balancing on the one hand and mainly the EU value of protecting animals from any suffering during their slaughter and on the other hand the right of religious freedom, to regulate



religious slaughter in a way that ensures and the decent killing of animals, making use of the possibilities of Article 26 of Regulation 1099/2009. Consequently, the contested act has been declared in violation of Article 2 para 2 of law 1197/1981 interpreted in accordance with the spirit of Regulation 1099/2009 and the principles of animal welfare, as they are based on Article 13 of the TFEU and the protocol no. 33. For this reason, which is well founded, the present application must be upheld and the contested joint ministerial decision annulled, so that the Administration can regulate the issue of slaughtering animals in the form of cults in such a way as to ensure the protection of animals from any suffering during their slaughter as well as the religious freedom of the religious Muslims and Jews living in Greece, utilizing the possibilities provided by the above provisions of Article 26 of Regulation 1099/2009."

Comment: *Dimitris Tsantaris*, Lawyer

As for meat, kosher and halal are its products derived from animals slaughtered with a special ritual reduced to the religious teachings of the Jewish and Muslim religions correspondingly. In short, these teachings require the animal to be slaughtered with its senses, with an incision in the neck so that it gradually loses all its blood. A more moderate variant of halal is anesthetized in cases where it is practically necessary (eg an aggressive animal) as long as it does not kill it (it must be slaughtered alive).

In the EU the law requires stunning the animal before slaughter, so that it does not experience pain from it. The real conditions in the slaughterhouses and whether they meet the respective standards is a totally different story, which permeates every culture, a story not flattering for our species and culture, a story to strict control and correction, but the institutional provision in Europe is this, accompanied by sanctions.

The relevant Regulation (1099/2009) included an exception to this rule dictated by religious reasons (allowing in principle the halal and kosher practices).

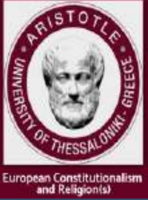
In the course, in 2020, the Court of Justice of the European Union (Case C-336/19) ruled that Member States could take back exemption at national level by prohibiting such practices and by requiring general anesthesia, for reasons relating to the protection of animals from unjustified abuse.

Indeed, gradually various countries introduced such bans.

In essence, animal rights organizations have criticized halal and kosher practices as barbaric, causing unnecessary torture to the slaughtered to be animal, which until it dies from bleeding, suffers for a few minutes with full awareness.

The Qur'an proclaims respect for animals. The practice of halal (with all its ritual details, care of the animal before, slaughter in isolation from other animals, thanksgiving / purifying prayer at slaughter, etc.), in relation to the alternative of slaughter without any care for the living,

natural and as it happened, was civilized, sensitive, humanitarian.
As for kosher, finding logic behind it proves to be more difficult, as the texts that support it are more archaic, with more ritual than some perceptible worldview.
I estimate that both practices, in addition to the religious foundation, were based on hygiene with the data of the time.
All of this may have made sense, humanitarian motives, and even practical value, then. In ancient and medieval societies.
Now, animal rights awareness has brought better methods, which further reduce the animal's suffering.
Now, therefore, these practices seem anachronistic and indeed barbaric. And Western societies are called upon to strike a balance between respect for religious diversity and animal rights. The direction seems to favor - correctly - the latter.
In this context, in the Greek legal order the change came judicially, not legislatively. With its recent decision (StE 1751/2021) the Council of State annulled the ministerial decision (CMD 951/44337 / 21.4.2017) that regulates the massacres without anesthesia for religious reasons, accepting an application for annulment by animal welfare organizations.
As with the burqa, as with other issues, the European Union, or what we call the West, is called upon to answer the question of whether progress on human and animal rights has an objective or subjective effect. Whether it describes new red lines that apply to everyone in its territory or whether it is open to cultural relativism.
My position is that while in other matters coexistence and respect for the different can and should welcome alternative beliefs and attitudes, in matters of rights no concessions or different speeds are forgiven. The EU must create a space for the enjoyment of more and more individual or animal rights for all without exception, a space with the promise of progress, security and respect for life, freedom, self-determination, and the rights of others - including animals. This as a progressive and irrevocable recognition of a physical and ecumenical condition around coexistence, not as a construction capable of multiple considerations and exceptions.
And because both religious conscience and its practice, worship, are an individual right, weighting is required. But a pondering that should lead to the predisposition of the least harm to others / other, to the predominance of values that promote respect for life in general, even in the very partial and indirect version of the aftereffect of its less painful end, which promote coexistence with as much more humanitarian terms. Between beliefs (i.e. mental attitudes and evaluations) and tangible fundamental interests we are called, in case of conflict, to protect the latter.
We are not done with the subject - by far. It no longer has only religious dimensions; it is a fortification point for Muslims with an identity character and political implications.



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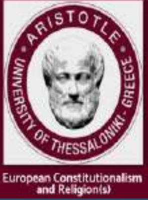
- **Council of State [Greece] 491/2021**
  Presentation: Loukia Tremma
  Translation: Loukia Tremma

This application requests the annulment of a decision of the Board of Directors (BoD) of the Athens Bar Association (ABA), which rejected a request for a monk to register in the special register of the Association, as a lawyer who acquired the law capacity in another Member State of the European Union and in particular in the Republic of Cyprus. Following the answer of a major panel of the Court of Justice of the European Union, after a preliminary question from the Council of State, the following were judged:

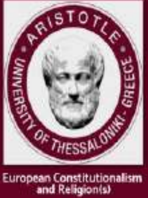
Directive 98/5/EC is intended to facilitate the practice of the profession of lawyer on a permanent basis as a self-employed person or a salaried person in a Member State of the European Community (EC - now European Union) other than that in which the professional rights were acquired, securing on the one hand the right to practice law permanently in the professional title of origin under the restrictions of Article 5 of the Directive and on the other hand the equalization with a lawyer of the host Member State under the conditions of Article 10 . A lawyer wishing to practice in a different Member State of the one who obtained his professional qualification is required to register with the competent authority of the host Member State and the competent authority of the host Member State shall register the lawyer upon presentation of the certificate. entry in the registers of the competent authority of the home Member State.

According to the relevant national provisions "The lawyer must not have the status of a clergyman or a monk" , "Automatically eliminates the status of a lawyer and is deleted from the register of the association of which he is a member: […]One who is appointed or holds any salaried position by employment contract or employment in any natural or legal person or public service (political or military), judicial, municipal or legal entity of public or private law or to local authorities, subject to the provision of Article 31 of the Code " . It was also argued that monks should be barred from practicing law in the absence of guarantors, whose existence is, in the judgment of the national legislature, independent of the finding of a specific breach of professional obligations, simply because as a monk one is in a state of special dependence resulting in the derogation of the prestige of the legal function.

The present application argues that the above provisions are contrary to Directive 98/5 / EC, because they establish a condition not provided for therein, which requires full harmonization of the conditions for the registration of Union lawyers in the registers of another Member State of the European Union. It is also alleged that the provision of article 6 para 6 of the Bar Code violates professional freedom in conjunction with the principle of proportionality and other rules of law of superior formal force.



The Court of Justice of the European Union has ruled that the national legislature has the power to provide guarantees of independence from the ecclesiastical authorities, full employment, ability to handle disputes, actual establishment in the district court where they are appointed, and compliance with the prohibition unpaid services in the light of the principle of proportionality. In particular, the absence of a conflict of interest is essential for the practice of the legal profession and presupposes, inter alia, the independence of lawyers from the principles from which they should in no way be influenced. Nevertheless, the CEE ruled that the relevant bar association could not fail to register a lawyer registered with the competent authority of a Member State of the European Union in order to practice his profession in Greece under his professional title of origin, due to his status as a monk, because it is not stipulated that for this registration is required the provisions of the Bar Code not to be incompatible. This is provided in Article 8 para 1 of p.d. 152/2000, which regulates the issue of professional and ethical rules to be observed by that lawyer. The issue of the requirements for the registration in the Greek Bar Association of the above lawyer is distinct because it concerns the later stage of the practice of the legal profession and in particular that of the professional and ethical rules that govern it. Hence the accordance of national to EU law rule prohibiting the practice of the monastic profession to monks, will be judged, if it arises, at this stage and not at the stage of registration of this lawyer in the registers of the bar association. The contested measure therefore has no legal reasoning, and, for that reason, which is well founded, should, in the majority view, to accept the adjudicated application.
According to the minority does not simply introduce a negative condition (non-existence of monastic status), the control of which (within the meaning of impediment) can be omitted at the stage of registration by the competent bodies and carried out only at the stage after registration exercise of the legal function (in the sense of incompatibility), but an obstacle and incompatibility is established at the same time for the monk to acquire the legal capacity and for the practice of law, respectively, because, in the discretion of the legislator, the status of monk comes with obligations that are incompatible with the capacity of lawyer. In this case, the A.B.A. in the contested act rejected the monk's request to register him, not merely because he lacked in his person the formal condition required for his registration - the non-existence of monk status - but because that according to the above, this capacity is a barrier to registration for him, as well as for all monks who have a law degree and wish to practice law.
The object of the present dispute is therefore the legality of this impediment and incompatibility, which excludes the possibility of access to the profession of lawyer. In that regard, the Court of Justice of the European Union has not ruled, restricted in its interpretation of Article 3 (2) of the Directive, that 'the rejection of the application [...] would be tantamount to adding another registration condition Article 3 (2) of Directive 98/5 / EC, and this provision shall not permit such addition «. As for the rest, as regards the legality of



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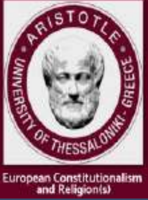
the incompatibility arising from the impediment, the Court of the European Union, knowing that, as explicitly referred to in item 7 of its preamble, Directive 98/5 / EC "does not prejudice the national rules governing access to the profession of lawyer", refers to the crucial issue of barrier-incompatibility in this Court, stating that "It is for the referring court to make the necessary inquiries concerning the rule of incompatibility at issue in the main proceeding". It is therefore necessary to judge the legality of the establishment of the incompatibility arising from the obstacle to the acquisition of legal status by the holder of the status of monk, according to Article 6 para 6 of the Bar Code. Moreover, since national law does not allow the qualities of a monk and a lawyer to coincide in the same person, annulment of the contested act, without resolving the question of the legality of that incompatibility, would be irrelevant in this case for the applicant monk, since after any, with cancellation, registration in the special register of the A.B.A., the latter will be obliged immediately after to delete him from the said register, pursuant to the above Articles 6 para 6 of the Bar Code and 8 para 1 of p.d. 152/2000.

- **Administrative Court of Thessaloniki {Greece] 49/2020**

The Administrative Court of Thessaloniki published the irrevocable decision 49/2020, which recognized atheism as a reason for vulnerability that imposes the provision of asylum to refugee, due to the extremely dangerous situation in his country for atheist citizens.
In the Islamic Republic of Pakistan, atheism is punishable (as a blasphemy) by the death penalty. The few citizens who dare to publicly declare that they do not belong to the official state religion are persecuted by the local authorities, imprisoned, or even killed. The applicant had been examined by the Greek asylum committees and his request had been declared groundless. In particular, both the primary and the secondary committee had deemed his testimony unreliable, considering that his atheism was not an integral feature of his personality. Due to these two rejections, the refugee was in danger of being deported and facing a charge punishable by death for his conscientious choices and beliefs.
The Court applied the 1951 Geneva Convention, as amended by the 1968 New York Protocol, which defines the meaning of refugee and concluded that "a foreigner who wishes to be subject to the special protection regime of this Convention must to report to the Administration, with elementary clarity, the specific facts that cause him, in an objectively justified way, fear of persecution due to race, religion, nationality, social class or political beliefs ", without, however, the written proof being necessary , as long as he has made a real effort to substantiate his application, since his general credibility is well-founded, while in any case the benefit of the doubt applies. Of course, the person concerned must rely on a number of specific facts which would enable him to prove that the conditions for his inclusion in the



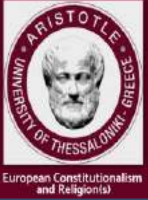
abovementioned protection regime were met. While in case of a decision to reject the application, a special and complete reasoning is required.

The refugee in this case had proved his atheism, citing a certificate of participation in the Association of Atheists and Agnostics of Pakistan, reports about the blocking of his FACEBOOK accounts due to "blasphemous content" and a Pakistan court ordering his arrest, but also the intervention of the Pakistan authorities in the homes of his atheists friends, who conspired to warn him to escape, while an operation had already been launched to arrest him.

With the initial decision of the Regional Asylum Office of Thessaloniki, the request was rejected as baseless, on the grounds that on the one hand atheists sentenced to death are not executed by the authorities and on the other hand that the atheism of this refugee "is not essential and is not an integral part of personality" and "his profile as an amateur internet user does not place him in a high-risk profile to attract the interest of the Pakistani authorities, and that his claim of persecution by the authorities of his country, because of his apostasy from Islam and his beliefs about atheism, relied solely on his own assumptions and, therefore, that the applicant did not have a well-founded and justified fear of persecution because of his religious beliefs and could not be subjected to a refugee status".

The applicant appealed against the initial rejection to the Board of Appeal of the Ministry of Civil Protection, which considered his allegations unreliable, while his answers regarding his FACEBOOK account were considered contradictory and his answer to the question how they located him was considered unsatisfactory and his testimony about how he was notified and escaped from persecution of the local authorities not reasonable.

The Administrative Court of Thessaloniki annulled the above decision, accepting the request for annulment of the applicant refugee, mainly because his atheism was challenged without a legal reason by the Greek authorities. The Court held that "The above allegation of unlawful reasoning of the contested decision, in so far as the applicant's allegations of his atheistic beliefs were not upheld, is well founded, as the contested decision rejected these allegations on the ground of unlawful reasoning as general reasons, indefinite and not based on personal experiences.", during his personal interview, he mentioned on the one hand specific situations and specific experiences that led him to the relevant choice, on the other hand specific personal conditions of his daily life, related to his atheistic beliefs. The reasoning of the contested decision that the applicant claimed to have become an atheist without explaining the reason for his rejection of all religions is not lawful because the Commission did not take into account that the applicant, in his personal interview, stated that in his view, all religions are human creations, and the mere fact that he did not mention any religion other than Islam, which he studied and rejected, is not sufficient to justify the Commission's judgment on the vagueness of the claim; given the fact that he had not been asked any clarifying question in this regard. Furthermore, the sole critique of Islam in the applicant's posts cannot legitimately justify the judgment on the vagueness of his claim to atheistic



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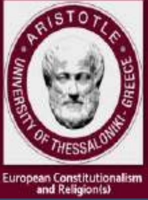
beliefs, given that it is the predominant religion in his country. Finally, the applicant's fear of persecution is not justified if it is in fact or is characterized by a certain degree of intensity by the religious element which causes or is likely to cause persecution (in this case by atheism), under the condition that this characteristic is attributed to him by the body of the prosecution, according to the explicitly defined in Article 10 para2 of p.d.141 / 2013.
Furthermore, the Court annulled the allegations of the Greek authorities that his allegations were allegedly not plausible and clear, with a complete re-examination of the information provided by the applicant. Earlier, the same court had given an interim injunction and suspended the execution of the contested decision, so that the refugee would not be deported until the final court decision was issued.

Loukia Tremma, based on: E-Lawyer: *Atheism as a ground for granting asylum to a refugee from Pakistan* (elawyer.blogspot.com) -in Greek

- **CJEU, *IX v. WABE eV and MH Müller Handels GmbH v. MJ,* C-804/18 and C-341/19, 15.07.2021**
  Presentation: Lydia Papagiannopoulou
  Translation: Loukia Tremma

WABE manages a large number of child care centers in Germany and it is non-partisan and non-denominational. In this context, it adopted the 'Instructions on observing the requirement of neutrality', according to which employees are required to observe strictly the requirement of neutrality that applies in respect of parents, children and third parties, in order to ensure children's individual and free development with regard to religion, belief and politics. This means that in the workplace, employees should not wear obvious symbols of their political, philosophical or religious beliefs.
IX, a special needs carer of WABE, came to the workplace on June 1, 2018, wearing a Muslim headscarf, which she refused to remove when asked by the head of the child day care centre. For this reason, the latter temporarily relieved her of her duties. A few days later, came to work again wearing a headscarf headscarf and refused to remove it, resulting in the temporary suspension. Accordingly, WABE asked another employee to remove the cross she was wearing. IX brought an action before the referring court, arguing that the prohibition of wearing visible political, religious or philosophical symbols constitutes direct discrimination as a direct concerned the use of the Muslim headscarf and violates the prohibition of discrimination on grounds of gender and ethnic origin, given that the prohibition mainly concerns women with migration backgrounds.
MJ works as a sales assistant and cashier in a store operated by MH. When she started wearing a Muslim headscarf in the workplace, she was asked to remove it. Following her non-compliance, she was transferred to another post allowing her to wear the headscarf. In June



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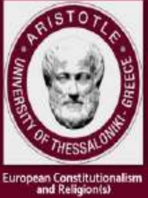
2016, MH asked her to remove the Muslim headscarf and due to her refusal, she was sent home. In July 2016, MH instructed her to attend her workplace without conspicuous, large-sized signs of any political, philosophical or religious beliefs. MJ's response was to bring an action before the national courts, seeking a declaration of the invalidity of that instruction and compensation of the damage suffered. In particular, invoking her religious freedom, she stressed that the policy of neutrality does not enjoy unconditional priority over the freedom of religion and must be subject to a proportionality test. MH argued that the purpose of the internal directive was to preserve the neutrality of the company, in order to avoid, inter alia, the risk of conflicts between employees, as had occurred several times in the past.
In this context, the domestic courts seized of the aforementioned cases have referred questions before the CJEU on whether an internal company rule prohibiting employees from wearing to work any visible symbol of political, philosophical or religious beliefs forms a direct or indirect discrimination and under what conditions it could possibly be justified.
First, the Court examines in Case C-804/18 whether an internal company rule prohibiting employees at work from wearing any symbol with a religious, political or philosophical mark on visible parts of the body constitutes direct discrimination on grounds of religion or in breach of Directive 2000/78 to the detriment of employees who have to comply with certain dress codes in accordance with their religious beliefs.
The Court recalls that the purpose of Directive 2000/78 is to combat discrimination in order to implement the principle of equal treatment in the Member States. At the same time, it emphasizes that the manifestation of religion or belief with symbols or clothing falls within the protective field of freedom of thought, conscience and religion, which is protected in Article 10 of the Charter. In fact, religion and belief claim equal protection and constitute the two sides of the same ground of discrimination.
In addition, the Court gives a literal and teleological interpretation of the Directive and clarifies that the prohibition of discrimination provided for in this Directive is not limited to conflicts in treatment between, on the one hand, persons of a particular religion or belief and persons who do not represent a certain religion or do not have specific beliefs on the other hand. On the contrary, comparisons with people who do not represent a particular religion or belief are not required, as discrimination based on religion or belief is justified when the individual is less favorable or disadvantaged precisely because of his religion or beliefs. In particular, reaffirming its case law, the judiciary recalls that the imposition of a neutral dress code, excluding the use of symbols in general and indiscriminately on all workers in the workplace, does not introduce different treatment based on a criterion which is inextricably linked to beliefs. This finding cannot be refuted, because religious rules require a specific dress. In the present case, it is established that the employer applied the policy of neutrality indiscriminately to each WABE employee. Therefore, in these circumstances, there is no direct discrimination on the grounds of religion.



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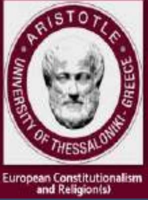
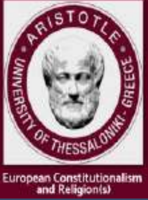
The second question referred in the light of Case C-804/18 concerns whether an indirect discrimination on the grounds of religion or belief under the internal rules of business in question is justified by the employer's willingness to adopt a political, philosophical and religious neutrality towards its customers or recipients of its services.
In principle, such indirect discrimination is prohibited by the Directive, unless it is objectively justified by a legitimate aim and the means to that aim are appropriate and necessary. The concepts of legitimate purpose and the appropriate and necessary nature of the means to achieve it need a narrow interpretation. In this context, the desire of an employer to project an image of neutrality towards his clients is linked to business freedom and is therefore a legitimate aim, especially when the employer restricts discrimination only to employees who come into contact with people. However, the will of the employer alone is not enough in order to justify such an internal rule. Instead, it is required to be combined by a real need of the employer, who also bears the relative burden of proof. This proof takes into account the rights and legitimate expectations of the clients or recipients of its services - (eg the desire of the parents to surround their children with persons who do not express their religion or beliefs when they come to contact with them to ensure the individual and free development of their personality). An important role in the judgment on the objective justification of discrimination also plays the evidence that the employer would suffer adverse consequences and his business freedom would be affected if he did not adopt such an internal rule. In addition, the latter is required on the one hand to be suitable for the proper implementation of the employer's policy of neutrality, ie this policy must be adopted in a consistent and systematic manner, on the other hand to be limited to the absolutely necessary measure to achieve the intended purpose and in the light of adverse consequences which the employer seeks to avoid through this prohibition.
The next question before the Court, this time in Case C-341/19, concerns whether an internal regulation prohibiting the use of visible symbols in the workplace for the purpose of maintaining political neutrality, is justified only if this prohibition covers any manifest form of manifestation of political, philosophical or religious beliefs or if it is sufficient to limit itself to the systematic application of the rule only in respect of the ostentatious and large symbols. Although the question referred refers to indirect discrimination, the Court finds that an internal rule, such as that at issue, which prohibits the use of only ostentatious and large symbols, constitutes direct discrimination, as it is inextricably linked to religion and may affect more Religious, philosophical and non-confessional groups that request the use of a particular attire or oversized symbol and inevitably, some workers will be treated less favorably than others.
In case that the impugned prohibition is not considered to be direct, but indirect discrimination, it can be justified if a legitimate aim is pursued and the principle of proportionality is observed. In the present case, this measure is intended to prevent social



conflicts within the company. In this regard, it is pointed out that both the prevention of social controversy and the neutrality of the image presented by the employer towards the clients fall within the concept of the real need of the employer, if he proves it. In any case, a policy of neutrality applies only when no apparent manifestation of political, philosophical or religious beliefs is allowed in employees' contacts with customers or with their employees. such employees. Otherwise, the use of even small and discreet symbols calls into question the effectiveness of the policy and is not applied consistently. The Court then examines in Case C-341/19 whether, in order to assess the appropriateness of an internal business rule aimed at ensuring the application of political, philosophical and religious neutrality in accordance with Directive 2000/78, a balance must be struck between of conflicting rights and freedoms, or this balancing should take place only when the internal rule is applied in a specific case. The answer to this question is that the various conflicting rights and freedoms must be taken into account.

Of course, it is for the national courts to carry out this check, which must assess all the elements of the case, the interests in question, and restrict the freedoms in question exclusively to the extent absolutely necessary. In case that several rights and principles are in conflict, as in the present case (namely, the principle of non-discrimination, freedom of thought, conscience and religion, the right of parents to ensure the education and education of their children in accordance with religion, philosophical and pedagogical beliefs and business freedom), the control of the principle of proportionality is carried out in the light of the compromise of the protection of the various rights and principles in question, in order to achieve a fair balance between them. After all, the EU legislature has limited itself to establishing a general framework for advocating for equal treatment in employment and occupation, leaving a wide margin of appreciation in the Member States. Of course, this margin of appreciation, in the absence of consensus in the EU, is subject to judicial review by the CEU. However, the legislature instructed the Member States to reach the necessary compromise between freedom of thought, conscience and religion on the one hand and the legitimate aims which may be invoked to justify unequal treatment on the other, taking into account the specific context of each member.



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- **ECtHR, *Avanesyan v. Armenia*, No. 12999/15, 20.07.2021**
  Presentation: Lydia Papagiannopoulou
  Translation: Lydia Papagiannopoulou

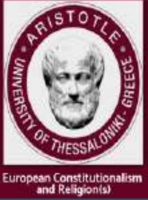
The applicant, an Armenian national and holder of an Armenian passport, lived in the town of Askeran, situated in the unrecognised "Nagorno Karabakh Republic" and is a Jehovah's Witness.

In response to a summons to report to the Askeran military commissatiat with a view to performing his military service, the applicant addressed a letter explaining that, because of his religious beliefs, his conscience did not allow him to perform his military duties, while expressing his willingness to serve in the Armenian alternative civilian service. Convinced that his application would be rejected and fearing criminal prosecution, the applicant moved to the town of Masis in Armenia, and he registered with the Masis military commissariat, asking the Askeran military commissariat to transfer his personal file and requesting alternative civilian service instead of military service.

Afterwards, criminal proceedings were initiated against him for evading regular conscription of military service. The applicant alleged that his prosecution violated his rights guaranteed by Article 9 of the Convention and as an Armenian national, he was entitled to perform alternative civilian service under the Alternative Service Act. He was eventually convicted by the national courts of the unrecognized “Nagorno Karabakh Republic” without a final conviction.

Considering the admissibility of the application, the ECtHR started from the ratione loci objection raised by the Armenian government, finding that Armenia exercised effective control over the “Nagorno Karabakh Republic” and the surrounding territories and that, by doing so, Armenia was under an obligation to secure in that area the rights and freedoms set out in the Convention. Hence, at that time, Armenia had jurisdiction over the applicant’s prosecution and conviction in the “Nagorno Karabakh Republic”. Thus, the Court adhered to its precedent case-law, particularly in view of the fact that there are no special circumstances here to reverse it.

Furthermore, the ECtHR rejected the plea as regards compliance with the six-month time-limit, since Armenia's responsibility is not limited solely to the acts of the Armenian police, namely the arrest of the applicant in Armenia and his transfer to the police of the “Nagorno Karabakh Republic”, but it also extends to the entire criminal proceedings against the applicant, starting with his arrest in Armenia and ending with his conviction by the courts of the “Nagorno Karabakh Republic”. Therefore, since the applicant brought an action within the six-month time-limit following the decision of the Supreme Court, Armenia's claim to the contrary must be rejected.



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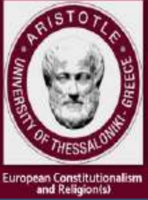
Turning to the merits of the application, it is accepted that the applicant's refusal to perform his military duties had been a manifestation of his religious beliefs. In this context, his conviction for draft evasion constituted an interference with the right to exercise his religious freedom, as laid down in Article 9(1)(b) of the Constitution. 1 of the ECHR.

Subsequently, the ECtHR confirmed its settled case-law according to which a certain margin of appreciation is granted to States regarding the decision on whether and to what extent an interference is necessary. This margin of appreciation is subject to the Court's scrutiny. However, this margin of appreciation is limited in the case where no alternatives to compulsory military service are introduced to reconcile a possible conflict between individual conscience and military obligations and the State must prove that such an intervention corresponds to a "pressing social need". A system of compulsory conscription, which imposes potentially serious implications on conscientious objectors without taking into account the exigencies of an individual's conscience and beliefs, fails to strike a fair balance between the interests of society as a whole on the one hand and those of the individual on the other.

In the present case, the applicant applied for exemption from military service, not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions. Although alternative civilian service was available to conscientious objectors in Armenia at the material time, he did not take advantage of this option because it was considered that, as a citizen of the "Nagorno Karabakh Republic", he was obliged to perform his military service in the "Nagorno Karabakh Republic", which did not recognize the right to conscientious objection. However, it had not been established that the applicant was not an Armenian national and the Government failed to explain why the applicant, an Armenian national, had been prevented from exercising the right to conscientious objection.

In any event, even assuming that the applicant was a "citizen" of the "Nagorno Karabakh Republic", Armenia was responsible for the acts and omissions of the authorities of the "Nagorno Karabakh Republic" and was under an obligation to act as the guardian of the rights and freedoms provided for in the Convention in that region. In this context, by depriving the applicant of the opportunity to perform alternative civilian service instead of military service and the subsequent conviction of the applicant for refusing to do so, the authorities failed to make appropriate allowances for the exigencies of the applicant's conscience and beliefs and to secure to him a system of alternative service that struck a fair balance between the interests of society as a whole and those of the applicant, as required by Article 9 of the Convention. The interference under question therefore violates Article 9 of the ECHR.



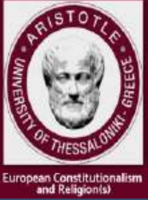
- **ECtHR, *Ancient Baltic religious association "Romuva" v. Lithuania*, No. 48329/19, 08.06.2021**
  Presentation: Lydia Papagiannopoulou
  Translation: Lydia Papagiannopoulou

The applicant is a non-traditional religious association, established under Lithuanian law and comprising several religious communities following the old Baltic pagan faith. applied to be granted the status of a State-recognized religious association. It is worth noting that non-traditional religious associations may ask to be recognized by the State, on condition that they fulfil the requirements laid down by law. The Ministry of Justice examines whether an association complies with these conditions and delivers its conclusion to the Seimas, which then takes the decision by adopting a resolution. State-recognized religious associations are granted certain additional privileges, namely, the right for their ministers to perform religious marriages that would have had the effect of civil marriages, the right to provide religious education in schools, the right to be given airtime for the purpose of broadcasting their religious services, an exemption from the payment of land tax, and the right for their ministers to receive social insurance benefits at the expense of the State.

In the present case, the Ministry of Justice, after examining its application, concluded that the applicant association met all the legal requirements for being granted State recognition, since it had been functioning in Lithuania for more than twenty-five years, its teachings did not violate the law or public morals, and it had sufficient public support. Subsequently, a group of members of the Seimas (Lithuanian Parliament) presented a draft resolution proposing that the applicant association be granted the status of a State-recognized religious association. This draft was examined be the Seimas and supported by other State authorities as well as the Government. During the first debate of the Lithuanian Parliament on the draft resolution, a preliminary vote on whether to approve the text of the draft resolution was held and the majority approved it.

Afterwards, the president of the Lithuanian Bishops' Conference sent a letter by email to a certain member of the Seimas, questioning the scientific basis of the ancient Baltic union and arguing that there had never been a universal and unified "old Baltic faith". In fact, he claimed that this faith was essentially superstition and peasant customs, with a shade of magic. In support of this, it was pointed out that the only source of its teachings was a book - clearly insufficient - written by one of its founders, while doubts were raised about the public support the association allegedly enjoyed.

Then, the second debate of the Seimas was held regarding the adoption or not the draft resolution, which resulted in the rejection of the draft resolution. The applicant association complained to the Seimas Commission on Ethics and Procedures and to the domestic judicial instruments. The appeal is still pending.



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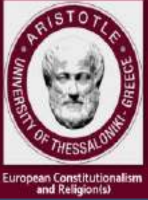
The applicant's complaint is examined in the light of Article 14 of the Convention in conjunction with Article 9.

Starting from the examination of admissibility, in particular the government's claim of non-exhaustion of domestic remedies, it was found that lodging a claim for damages could not be considered to constitute an effective remedy within the meaning of Article 35 para 1 of the Convention, because a remedy of a purely compensatory nature could not have provided adequate redress in respect of the applicant's complaint, in the absence of a possibility to have the impugned decision annulled or declared unlawful in a ruling which would be binding on the Seimas. Furthermore, concerning the proceedings before the administrative courts, the ECtHR reiterated that it had not been established with a sufficient degree of certainty that the impugned decision of the Seimas fell within the category of acts of public administration and that it could therefore have been examined by the administrative courts. Last, an individual constitutional complaint could not be considered to constitute an effective remedy in respect of the present case, since the Law on the Constitutional Court does not provide for any possibility to lodge an individual complaint in cases that do not fall within the remit of other courts and for which no other legal remedies are available, as in the present case. In the light of the foregoing, the Court rejected the Government's objection of non-exhaustion of domestic remedies.

Assessing the merits of the application, the application of Article 14 in conjunction with Article 9 of the Convention is examined. Firstly, the Court recognized the religious nature of the organization. Its judgment was based on the fact that multiple communities claimed to profess the Old Baltic faith. In fact, some of those communities were officially registered in 1992. Also, that faith was included in national censuses as one of the available options for individuals to describe their religious beliefs. In addition, in 2002 the applicant association was registered as a religious association after examination of its statute and its basic tenets. Besides, a debate among religious scholars about the lack of the historical foundations of the applicant association is not sufficient to deny the religious character of those beliefs.

Secondly, it is examined whether the additional privileges granted to State-recognized religious associations fall within the protective scope of Article 9 ECHR. In this regard, it is found that the refusal to grant State recognition to the applicant association did not affect its legal personality or its ability to operate and exercise its religion. In essence, that refusal entailed the denial of certain additional privileges. In any event, the Court has already held that the protection of religious freedom does not go so far as to oblige States to equate the results of religious marriages with those of civil marriages or to allow religious education in public schools. However, it has been recognized that the celebration of a religious marriage and the teaching of either religion are both manifestations of religion within the meaning of Article 9 and therefore fall within the scope of that provision. The ambit of this Article also covers the granting of various privileges to religious associations to ensure their proper



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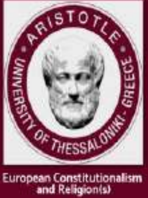
functioning. Accordingly, the Court accepted that the facts of the present case fall within the scope of Article 9 and that Article 14 in conjunction with Article 9 is applicable.

In order to answer the question whether the contested refusal of the Lithuanian Parliament is compatible with the requirements of Article 14 in conjunction with Article 9 of the Convention, the ECtHR first examines whether there is a difference in treatment between persons in analogous or relevantly similar situations. In this context, it is noted that since the Ministry of Justice is the domestic body charged with carrying out that assessment, the Court is not competent to rule on the correct application and interpretation of domestic law by the Minister of Justice in the present case, nor is there any ground for it to question the conclusion reached by the Ministry of Justice to the effect that the applicant association met the requirements laid down by law for being granted State recognition. Given that national law does not provide for any other conditions for granting State recognition to a religious association, the applicant association was in an analogous or relevantly similar situation to that of other non-traditional religious associations that sought State recognition and in respect of which the Ministry of Justice adopted a positive conclusion. Since a number of religious associations had been granted State recognition by the Seimas, it can be concluded that the applicant association was treated differently from other religious associations in an analogous or relevantly similar situation. Moreover, the statements made by various members of the Seimas during the debates, as well as the Government's submissions before the Court, indicate that he decision not to grant State recognition to the applicant association was based essentially on arguments relating to the substance of its religious beliefs. Therefore, it is concluded that the applicant's different treatment is based on her religion, which is one of the grounds explicitly enumerated in Article 14 of the Convention.

Next, it is examined whether the difference in treatment in question constitutes discrimination within the meaning of Article 14 ECHR.

First, the Court observes that there is no reference to the grounds on which the Seimas may refuse state recognition to a religious association for which the Ministry of Justice has issued a favorable conclusion, nor to the possibility for Seimas to question the positive finding of the Minister of Justice as to whether or not the conditions are fulfilled. There is thus a risk of arbitrary decision-making on the part of the Seimas, while at the same time limiting the possibility for religious associations to be fully informed and to prove the criteria actually taken into account for the granting of that status. Additionally, the decision-making to grant status by a political body, such as the Seimas in this case, may not meet the requirements of objectivity and may be related to political events and circumstances. Indeed, in the present case both the applicant association and the Government suggested that the impugned decision may have constituted a "personal revenge" on the part of some members of the Seimas against a specific politician.



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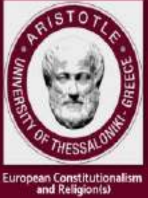
In any event, the Court states that it does not intend to review domestic law in abstracto, but whether Seimas' refusal to grant the applicant State recognition was based on a reasonable and objective justification. That review lies in whether the applicant was given a fair opportunity to apply for that status and whether the criteria laid down by law were applied without discrimination. Given that the Seimas decision in question did not include any reasons, the Court will assess the arguments presented by the members of the Seimas during the parliamentary debates.

The alleged existence of links between the applicant association's activities and the policies of the KGB or the Kremlin was not supported by any relevant domestic authority. These allegations were held to be unfounded by both the Seimas Ethics and Procedures Committee and the first-instance administrative court. Furthermore, the Government had not alleged that the applicant association could pose any risk to national security, nor was the Court aware of any domestic proceedings from which such a risk might arise. In these circumstances, it is accepted that the refusal to grant State recognition to the applicant was not based on grounds of national security.

Moreover, doubts had been expressed about the religious character of the applicant association and the very existence of the Baltic faith during the debates. However, it is noted that neither Seimas nor the Government argued that the applicant association's beliefs did not meet the required level of cogency, seriousness, cohesion and importance. Besides, the applicant association had been registered as a religious association and its religious nature had not been challenged by any competent authority until the debates in question. It follows from the foregoing that the Seimas, in its assessment, questioned the legitimacy of the applicant association's beliefs and the ways in which those beliefs were expressed, in breach of its duty of neutrality and impartiality.

In parallel, the relationship of the applicant association with Christianity was examined. Particularly, taking into account the majority of Lithuanians being Catholic, the historical importance of Christianity in Lithuania as well as the impact which the granting of State recognition to a pagan religious association could have on Lithuania's relations with "the Christian world" (see paragraphs 23 and 30 above). The Court also notes that on several occasions when granting State recognition to other non-traditional religious associations, there were concerns expressed regarding the impact of the recognition of a pagan association on Lithuania's relations with the Christian world. Indeed, members of the Seimas found that other non-traditional religious associations which were granted the status, they maintained good relations with the Catholic Church. The Court, while refraining from speculating on the effect of the letter from the Lithuanian Bishops' Conference, does not overlook the fact that it is a document that was circulated to most of the members of the Seimas and its context was discussed during the second debate. It is worth noting that in a similar case of granting status to a non-traditional religion, the favourable position of the Catholic Church, again



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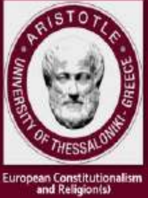
expressed in a letter, had been positively taken into account. Nonetheless, the Court of Justice recalls that maintaining religious pluralism is the cornerstone of any democratic society. In the event of a conflict of religious interests, the role of the authorities is not to remove the cause of the tension by eliminating pluralism itself, but to ensure that the competing religious groups respect and tolerate each other. Therefore, the value of a faith or a church with which the population of a particular country has historically and culturally connected cannot be diminished.

On the basis of the aforementioned, the Court concludes that it cannot accept that the existence of a religion to which the majority of the population adheres or any alleged tension between the applicant association and the majority religion or the opposition of an authority to that religion could constitute an objective and reasonable justification for refusing State recognition of the applicant association. The ECtHR also reiterates that the margin of appreciation of States does not depend on the nature of religious beliefs, contrary to the Government's claims that no pagan association in most Catholic countries of the EU enjoys any sort of privileged status.

In the light of the above, the Court concludes that the refusal to grant State recognition to the applicant association is not based on a reasonable and objective justification for the different treatment of the applicant association in relation to other religious associations in a relevantly similar situation, and that the members of the Seimas who voted against granting State recognition did not remain neutral and impartial in the exercise of their duties.

In the light of the foregoing, the Court considers that it is unnecessary to examine the compatibility with the ECHR of allowing the possibility of reapplying for State recognition in ten years' time.

There is therefore a violation of Article 14 in conjunction with Article 9 of the ECHR, as well as of Article 13 on account of the lack of an effective remedy against the impugned decision of the Seimas.

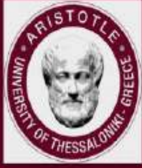


Co-funded by the Erasmus+ Programme of the European Union

A summary pre-publication of the presentation entitled:
“religious freedom in the age of pandemic: a comparative study of the case law of the Supreme Courts”

The Center for Research on Democracy and Law the Hellenic Foundation for European and Foreign Policy (ELIAMEP), and the 4-year, EU funded COST Action “Constitution-making and deliberative democracy” (CA17135), will co-organize the international conference “Constitution-making and Democracy in Troubled Times”, in cooperation with the Jean Monnet Chair “European Constitutional Law and Culture” on 16 and 17 December 2021.
Lydia Papagiannopoulou will present a contribution on: “Religious freedom in the pandemic era: comparative study of the case-law of supreme courts”.
Summary pre-publication:

The outbreak of the pandemic has posed an unprecedented threat to public health worldwide. To stem the pandemic’s tide, States took emergency measures that dramatically curtailed fundamental rights such as religious worship. Religious worship concerns the manifestation of religious beliefs and the exercise of religious duties, individually or collectively, in private or in public. It requires the State to refrain from any unjustified interference in the sphere of religious conscience and to take appropriate and adequate measures to ensure the peaceful coexistence of a multi-religious society. However, it is not an absolute right, and it is therefore subject to restrictions under certain conditions.
This presentation will provide a comparative overview of the lines drawn by the Supreme Courts of Greece, France and the United States regarding the burning issue of balancing the protection of religious freedom and public health. Subsequently, a comparison will be conducted between the attitude of the executive on the one hand and the judiciary on the other hand on the above issue. Finally, observations will be made on the meaning and the significance that religious freedom acquires in the context of an unprecedented health crisis.



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LE LABORATOIRE DE LA RÉPUBLIQUE

The challenges posed by the 21st century led to the creation of “LE LABORATOIRE DE LA RÉPUBLIQUE”, which states that must bring the Republican promise to every citizen and give it its full meaning. Denying the temptation of withdrawal that goes against the philosophy of emancipation carried by the Enlightenment and Republic they seek to carry and promote the meaning of the Republic. They aim to show, especially to the youngest, how the Republican project is the only one capable of responding to the challenges of our time, such as ecological, technological, geopolitical, using freedom and human dignity as a compass. Since the Republican project is based on respect for others, dialogue and openness, it is up to it to have constant concern for the firmness of democratic principles. The "Laboratory of the Republic" intends to reaffirm the Republic as the basis of Democracy and to restore to everyone the sense of the ideal that it carries within it. Beyond political divisions, the Republic places the emancipation of everyone at its heart, by refusing the temptation of individualism and withdrawal into oneself, with the constant concern for solidarity and fraternity. Through the debate of ideas, action and public commitment, the “Laboratory of the Republic” purposes to bring together all the women and men who, without defining themselves in relation to a party or a clan, want to consolidate the Republic and the Republican Pact around the values on which they are based. Concluding, it provides concrete responses to current challenges in order to chart a path for new generations by linking thought and action.