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

Aristotle University of Thessaloniki
Panepistimioupoli, 54124 Thessaloniki

Newsletter #3
September 2019 – February 2020

News and Activities of AUTH's Jean Monnet Centre of Excellence

1. **Lectures**
   a. Domna-Maria Michailidou, Deputy Minister of Labour and Social Affairs: *Policies for improving the living conditions of unaccompanied minors regardless of ethnic or religious identity,* City Council Conference room, 2.11.2019 (in Greek)
   b. Bernard Hadank: *Freedom of religion in the German constitutional order*, AUTH, Faculty of Law, 7.11.2019
   c. Angioletta Sperti: *Anti-discrimination vs. new claims of conscientious objection and religious freedom*, AUTH, Faculty of Law, 27.11.2019
2. **Scientific Conferences – Workshops**
   a. Conference for young Researchers: *The Church and religion in the context of multilevel European Constitutionalism,* AUTH, Faculty of Law, 19.12.2019 (in Greek)
   b. Conference: *Religion, the church and the Constitution*, Thessaloniki Chamber of Commerce and Industry, 20.12.2019 (in Greek)
3. **Event: 30 years of Jean Monnet actions** (in Greek)
4. **Jurisprudence**
5. **Activities of research group members – Studies**
6. **Summer School of the Centre of Excellence: call for participation and registration form**

With the support of the Erasmus+ Programme of the European Union

Domna-Maria Michailidou, Deputy Minister of Labour and Social Affairs:

Policies for improving the living conditions of unaccompanied minors regardless of ethnic or religious identity

City Council Chamber, Saturday 2 November 2019, 12:00
(as part of the 1st Forum on Fundamental Human Rights with regard to child protection)

Ms Michailidou presented the Greek Governments' efforts to ensure decent living conditions to minors, immigrants and refugees, regardless of their national origin and religious affiliation in accordance with international and national law. These efforts need to be continued and intensified, as at that time the State was unaware of the whereabouts of many unaccompanied minors.

Ms Michailidou acknowledged the fact that according to data from the National Center of Social Solidarity (EKKA), there were approximately 5,000 unaccompanied minors in Greece, with majority being boys over the age of 14, and that Greece has not yet achieved the targeted level of decent housing for these unaccompanied minors. This failure to achieve the target had also been exacerbated by the increase of migratory and refugee flows from the beginning of the summer of 2019, which changed the landscape. In addition, since the beginning of 2019, there has been no significant interest in submitting proposals for the creation of hostels for unaccompanied minors, in the context of a relevant invitation from the Hellenic Management Authority that manages resources from the Asylum and Immigration Fund. Although the use of hotels as shelters may not be the most suitable kind of residence, it constitutes a temporary solution.

Ms Michailidou also announced that in March 2020, EKKA will have a 'pool' of 180 commissioners assembled, essentially social workers, who will help these children in their daily activities and needs. Finally, Deputy Minister Michailidou stressed that in order to provide a decent living for underage immigrants and refugees, the Municipalities should also be mobilized to establish hostels through their development companies. Another favored solution is to establish 500 residencies in semi-autonomous living facilities, via the pilot programme run by IOM (International Organization for Migration), UNICEF and the UNHCR and the re-opening of fourteen hotels for minors managed by IOM.

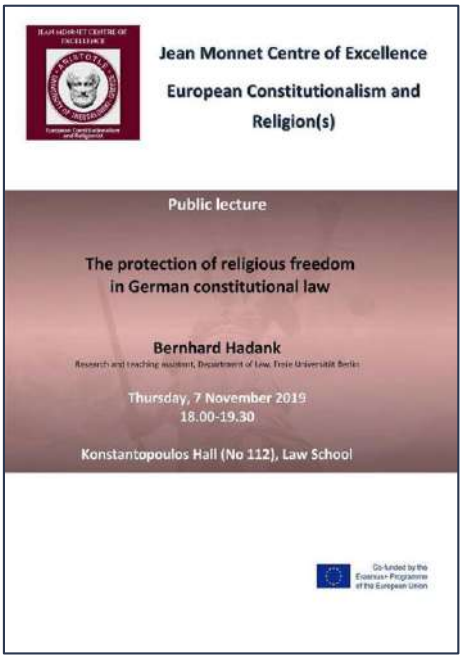
Bernard Hadank
"Freedom of Religion in the German Constitutional order",
07.11.2019, Konstantopoulos Conference room, AUTH, Faculty of Law

On 7th November 2019, Bernard Hadank, Assistant Professor of Research and Teaching at the Freie Universität Berlin) provided a lecture on the protection of religious freedom in the German constitutional order c. The lecture took place at the Faculty of Law of AUTH. The lecture focused on the difficulty of reconciling the religious freedom of civil servants and government officials by imposing the religious neutrality of the State mechanism on a multicultural society like Germany. The challenges faced by German courts in balancing these disputed rights were demonstrated through an assessment of the legitimacy of the non-recruitment of a teacher because of her refusal to remove the Islamic headscarf in the exercise of her duties.

The lecture was followed by a fruitful discussion and a round of questions with the attendees.

In Germany, the protection of freedom of religion poses many challenges both for the administrative courts and the Federal Constitutional Court. As an example, the case in which a Chief Medical Officer was dismissed from the service of the Catholic Church because of his second marriage can be mentioned. In its decision (BVerfG 137, 273, Beschl, dated 22.10.2014 – 2 BvR 661/12) the German Federal Constitutional Court referred the case to the Federal Labor Court (Bundesarbeitsgerichts, BAG), which had declared the dismissal of the Chief Medical Officer contrary to the German law.

The churches and the religious communities in Germany enjoy autonomy as far as job creation is concerned, since they are broad-minded employers. The relevant protection is enshrined in Article 140 of the Basic Law (Grundgesetz), the German Constitution, on the basis of which a number of articles of the Weimar Constitution are still in operation today. It should also be mentioned that the Catholic Church is the second largest employer after the State, while more than 1.3 million people work for the two largest churches.



To the extent that the scope of religious freedom conflicts with the protective provisions of the articles of the Weimar Constitution (WeimererReichsverfassung) embodied in the current Constitution (Grundgesetz, Fundamental Law of Bonn), Article 140 GG, in conjunction with Article 137, prevails, as being more specialized, over paragraph 3V of Article 4(1) (GG) (Freedom of religion, conscience, religion and other beliefs), to the extent that it submits the right of religious communities to self-determination under the generally applicable law (known as the "specialization of restrictions").

In case of conflicting interests, emphasis should be placed on the fact that Article 4 (paras. 1 and 2) GG unreservedly guarantees collective religious freedom [BVerfGE 137, 273 (273); BVerfGE 137, 273 (274)]. This guarantee implies also the right of churches to determine their identity and to demand faith in these principles from those who work for them. Nevertheless, their right must be weighed against the fundamental rights of the employees and the protective provisions of labor law applicable to them.

Of particular interest is the issue of posting religious symbols in public administration services and whether civil servants and officials are permitted to wear religious symbols and clothing in their workplace. Freedom of religion and conscience is protected by Article 4 of the Basic Law. This provision, in conjunction with the separation of Church and State and the religious neutrality of the State apparatus, has resulted in the legal prohibition of the hanging of the cross in public schools.

As for the question of the religious attire of civil servants, and especially the Islamic headscarf, the answer is quite complicated. A relevant example that gave rise to a conflict about constitutionally protected goods is a teacher's dismissal from her duties due to her refusal to remove her headscarf while executing her duties. More precisely, the relevant administrative and Federal Constitutional Courts are called upon to reconcile respect for religious freedom with (a) the right of parents to raise their children, (b) the negative religious freedom of mature students (over 14 years old) and (c) the supervision and guarantee of the educational system by the German Federal Government. According to the case-law of the Federal Constitutional Court, the solution lies with the practical harmonization of these claims. On the one hand, the majority in two major related cases considered the total ban to be disproportionate and demanded its establishment on a specific legal basis and the narrow interpretation and application of that ban only if a sufficiently diagnosable risk to the well-being of a school community arises. On the other hand, the minority advocated that the wearing of religious symbols is incompatible with the duty of neutrality of government officials and advocates a ban as far as student-teacher relations concerned, given the compulsory level of education for students and the fact that individuals find it impossible to avoid such a relationship. All in all, even though German case law is not conclusive on this issue, at the current stage the scales are tilting in favor of teachers' religious freedom.

Angioletta Sperti

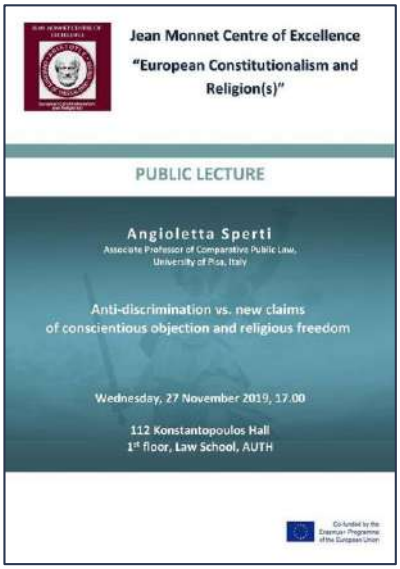
Associate Professor of Comparative Public Law at the University of Pisa

Anti-discrimination vs. new claims of conscientious objection and religious freedom

Wednesday 27/11/2019, Konstantopoulos Conference room, AUTH Faculty of Law

Professor Sperti's presentation addressed the legal treatment of cases of refusal to perform duties for religious or conscientious convictions (which should not be confused with conscientious objection to the military service). These cases give rise to legal issues that are treated differently by various legal orders.

The first category of objections concerns civil servants. For instance, in France, Italy and the United Kingdom, courts have often been called upon to rule on the legitimacy of refusals of public officials to perform the execution of a cohabitation agreement between individuals of the same sex. On the one hand, the Italian Constitutional Court has pointed out that in such cases, there is discrimination not only on the grounds of sexual orientation but also against those who wish to enter into a cohabitation agreement because of their sexual orientation, but also against government officials themselves due to their beliefs. The French Constitutional Court, on the other hand, has emphasized that the performance of this ceremony is of a technical-procedural nature and is therefore an act performed by binding jurisdiction and not by discretionary power. In *Ladele and McFarlane v The United Kingdom*, the ECHR, when called upon to decide whether there was a violation of Articles 9 (freedom of religion and conscience) and 14 ECHR (prohibition of discrimination against the enjoyment of the rights deriving from the ECHR and its additional protocols), rejected the appeal by the two women who had refused to provide services, in the context of their responsibilities, same-sex couples (marriage and marriage counseling respectively). Nonetheless, based on the relevant *obiter dicta*, it seems that the ECHR has allowed Member States to consider such a refusal to be legal under certain conditions.



The second category concerns the refusal to provide services by individuals of different professional categories. A relevant example is the refusal of a pastry chef to prepare the cake for the wedding of a same-sex couple. In such cases, the defendants have argued that their denial is lawful, as (a) forcing them to provide such a service would violate the Bible's teachings on relationships between members of the same sex, and (b) being forced to provide such a service would also violate their freedom of expression. The Supreme Court of the UK cleared the defendant from all charges in a similar case (*Lee v Ashers*), citing, among many other issues, that in that particular case the refusal concerned only the preparation of a cake with the phrase "Support Gay Marriage", which affected the defendant's freedom of expression and not the provision of services in general. The US Supreme Court in a similar case, *Masterpiece Cakeshop v Colorado Civil Rights Commission*, ruled that forcing a confectioner to provide such a service was extremely offensive to his religious beliefs. Therefore, the jurisprudence of these major courts seems to have failed to combat discrimination against the LGBTQI community and the social stigma suffered by its members.

Conference for young researchers

Church and religion in the context of multilevel European constitutionalism

Thursday 19 December 2019, Konstantopoulos» Hall, AUTH Faculty of Law

Coordination: Despina Anagnostopoulou, Assistant Professor, University of Macedonia, Member of the AUTH Jean Monnet Centre of Excellence

Dr. Chara Kafka, Post-doctoral researcher at the AUTH Faculty of Law, Lawyer

Religious symbols in courtrooms and school classrooms in the light of decision no. 71/2019 of the Plenary Session of the Council of State

Courtrooms and school classrooms, although both public spaces, have a significant difference. As a rule, the former are occupied by mature adults with settled religious beliefs, while the latter are occupied by minors whose characters are still being formed. However, the presence of religious symbols gives rise to controversies.

The first question to be answered is whether religious symbols are purely religious or whether they embody the values of a democratic society. In *Lautsi v Italy*, the Italian government argued before the ECHR that the cross embodies the values of democratic societies. This view was rejected by the Court, which perceived the cross as a purely religious symbol and ruled that its presence in classrooms was contrary to the freedom of religion and conscience (Article 9 of the ECHR) and the right of parents to ensure that their children's education was received according to their religious beliefs. In contrast, when this case was brought before the Grand Chamber, it considered the cross as a passive symbol and that the Member States have a very wide margin of appreciation on the issue, the only restriction being that no active efforts should be made to indoctrinate students in a religious belief contrary to that held by their parents. It is worth stating that a decade earlier, in *Dahlab v Switzerland*, the ECHR ruled that the Islamic headscarf was a symbol with a possible proselytizing influence on students and that the ban on teachers wearing it in the performance of their duties was not contrary to the ECHR.

The different outcomes of judicial reasoning can be traced in the diverse legal traditions of the defending States. This legal tradition was also invoked by the Council of State as a reason for not removing the cross from courtrooms, rejecting the application for annulment by the Union of Atheists regarding the content of religious education lessons and the declaration of a student's religious conviction on school-leaving certificates. More specifically, in decision no. 1749/2019 of the Plenary Assembly of the Council of State, which coincides with decision no. 660/2018, the court rejected this application on the basis of the Orthodox tradition (not in the legal sense of custom) and Articles 3 and 13 of the Constitution.

Dr. Nikolaos Gaitenidis, PHD International and European Studies, University of Macedonia:
Freedom of the arts and respect for religious feelings: When the rights are incompatible

The terrorist attack in January 2015 at the offices of the French satirical magazine "Charlie Hebdo" due to the publication of some controversial sketches of the prophet Mohammed has remained etched on the world's collective memory as a typical example of the conflict between freedom of art and respect for religion.

At the international level, the UN General Assembly has adopted a series of resolutions prohibiting the defamation of religion. Nonetheless, in 2011 the UN Commission on Human Rights, in its General Comment 34 on Article 19 of the ICCPR, argued that prohibitions on blasphemy against a religion and blasphemy laws were incompatible with the freedom of expression and should be applied under significant restrictions. At the European level, the Council of Europe has adopted resolutions on the application of such bans only in cases where there is a serious risk to public order. The case law of the ECHR is quite unclear on the issue. In any case, it considers that Article 10 of the ECHR constitutes the foundation of a democratic and pluralistic society and also protects ideas that disturb or even harm the State authorities or a large part of society as a whole. Nevertheless, artists do not enjoy any particular protection under this article and the exercise of their freedom of expression must be prudent.

Hence, in the case of *Preminger Institut v Austria*, the ECHR held that the seizure and prohibition of the screening of a film containing scenes depicting religious persons in multilateral sexual encounters did not infringe on freedom of expression, since (a) the screening of such a film was an abuse of the spirit of tolerance and offended the religious sentiment of the faithful, protected by Article 9 of the Convention, (b) it did not constitute a disproportionate restriction on freedom of expression, and (c) Member States have a very wide margin of discretion. In later similar cases, such as the case of *I.A. v Turkey*, the court followed a similar reasoning. It is noteworthy, however, that in the most recent case of *Sekmadienis v Lithuania*, it was held that the ban on posting a poster depicting the Virgin Mary and Jesus Christ in modern-day attire was a disproportionate restriction on freedom of expression, not on the basis of the subjective criterion of believers, but on the basis of the most objective criterion that the content of the poster did not incite acts of violence or hatred and did not disturb public order.

Michalis Papageorgiou, Lawyer, PHD candidate in Public Law at the National and Kapodistrian University of Athens, Visiting Research Fellow, Wolfson College, University of Cambridge (Faculty of Law)

The functional delimitation of the religious freedom of the Patriarchal regime in the Greek legal order. From the institutional gaps of the rule of law to the dynamic synergies of unified constitutionalism

Mr Papageorgiou's presentation was based on the emergence of the legal positivim as a harmonized and unified regulatory system that seeks institutional balances but also the rational induction of reality into fundamental legitimacy, within the distinct relationships between the State and the (predominant) Church and between religious freedom and equality – that is, between parameters that fulfill the public interest of social cohesion and national guarantees regarding the sovereign will of the people and the defense of the individual and community rights of an actively liberal democratic government.

In this complex problematic for a modern and at the same time timeless understanding of the basic "reasons" for the synchronized, simultaneous and equivalent presence of the highly analyzed provisions of Articles 3 and 13 of the Greek Constitution, there is no more telling example than the presence and interaction in the legal order of the Ecumenical Patriarchate of Constantinople, mainly in terms of its legal status and personality as well as its jurisdiction. Also, an assessment of its international character reveals characteristics that have a semantic dimension for the Greek State on a global scale, reflecting an additional special basis for the assessment of the constitutional provisions. In addition, the necessary systematic, teleological and hermeneutically reflexive induction into European constitutionalism of the guarantees and assessments of the Constitution itself, as a parameter of the institutional synergies, orientation and causal completeness of the principles of the rule of law, functions and provides an additional substantial and procedural depth of interpretation, which with a dynamic methodology is able to fill institutional gaps in a fair and balanced manner to help rationalize the Constitution's aim to organize the national legal order into its individual legislative initiatives, to drastically reduce the number of dogmatic one-dimensional or even anachronistic provisions, to remove operational deadlocks and practical distortions, to soothe the intended socio-political pressures and minimize the multifaceted power interests. All the above, in the light of a Positive and Cooperative Secularism, which seems to be establishing itself in the public sphere of the progressive European legal order.

Daphne Lima, LLM – University of Cambridge, PHD candidate - AUTH Faculty of Law, Scholar of the Athens Academy, Lawyer

Combating discrimination through criminal law: An overview and critical approach to EU and national hate crime, hate rhetoric, and discrimination based on religion and other characteristics

This presentation aimed at providing a concise and comprehensive overview of EU and Greek criminal law dealing with hate crimes, hate speech, as well as religious and other forms of discrimination.

With xenophobic trends on the rise in Europe, the European Union has turned to the penal code to enrichits arsenal, seeking to strike a delicate balance between the different legal traditions of the Member States in the field of criminal law **and to tackle intolerance.** Therefore, EU legislative initiatives on hate crimes, hate speech and religious (and other forms) of discrimination seem primarly to reflect a tug-of-war between security and freedom. The relevant initiatives in the field of criminal law are crucial, both because criminal law is the *ultimum refugium* of State power and because the EU's competence in criminal law remains limited in principle.

The speaker offered a critical approach to the relevant penal provisions of EU and Greek legislation in order to analyze their basic elements, theoretical basis and their practical ramifications. The Framework Decision 2008/913/JHA on combating certain forms and manifestations of racism and xenophobia through criminal law was examined. Additionally, the Greek criminal law provisions on hate crimes, hate speech and discrimination on religious and other grounds were also examined.

Vivi Chadiou, PHD Candidate – AUTH Faculty of Law, Lawyer

The *ECHR case of 31.10.2019, Papageorgiou and others v. Greece. The right to negative freedom of religion*

On 31.10.2019 the ECHR issued its decision on the appeals against Greece under reference numbers 4762/2018 and 6140/2018, when it considered that the declaration of religious faith for the exemption of students from the religious studies course is contrary to the ECHR. Specifically, the applicants (five Greek nationals, parents and children, residents of the islands of Milos and Sifnos), after admitting before the Strasbourg Court that according to the Greek Constitution, as well as other relevant legislative texts and Ministerial decisions, religious education was compulsory for all students in primary and secondary schools, argued that the religious education syllabus for the 2017/18 school year violated the ECHR, to the extent that, according to the established procedure of exemption from religious courses, they were obliged not only to declare that they were not Orthodox, but also to have the veracity of their statements checked by the school principal in a separate document, with both statements being kept in the school records.

The ECHR decided to examine the appeals under Article 2 of the ECHR, which gives parents the right to ask the State to respect their religious and philosophical beliefs in the teaching of religion. It considered this provision in the light of Article 9 of the ECHR, which guarantees students the right to education in a way that respects their right to believe or not to believe (negative religious freedom). Even though a similar exemption mechanism to the Greek one is provided in almost all Council of Europe Member States, the ECHR considered that what matters is the extent to which the requirements for exemption or non-participation are likely to unduly burden parents, e.g. by asking them to reveal their religious or philosophical beliefs.

Hence, the Court ruled – after stressing that State authorities have no right to interfere in the sphere of individual conscience, to ascertain the religious beliefs of citizens or to compel them to disclose their beliefs – that there has been a violation of Article 2 of the ECHR, as interpreted in the light of Article 9 of the ECHR, as the current system in Greece created the risk of exposing sensitive aspects of the applicants' privacy for the exemption of children from religious education courses, while at the same time, the existing system might even prevent them from submitting declarations, given that the school principal may verify the information and notify the prosecutor in cases where the principal notices false information.

RELIGION, CHURCH AND CONSTITUTION

Friday 20 December 2019, Time 11:00 – 20:00

Commercial & Industrial Chamber Thessaloniki

Jean Monnet Centre of Excellence "European Constitutionalism and Religion(s)",
In cooperation with the "Circle of Ideas for National Reconstruction"
and Thessaloniki's Bar Association,
under the auspices of the Department of Political Science and the Aristotle University of Thessaloniki

1st Session: "Religious freedom and multiculturalism"
Coordination: Lina Papadopoulou, Assistant Professor of AUTH Faculty of Law, Academic Coordinator of the AUTH Jean Monnet Centre of Excellence

Nikos Alivizatos, Professor of Constitutional Law, Law School, University of Athens:
The ECHR in the face of Islamic fundamentalism

Konstantinos Papastathis, Assistant Professor, Department of Political Sciences, AUTH &

Anastasia Litina, Lecturer, Department of Economics, University of Ioannina:
Religious Freedom in Modern Greece: An Analysis of Political Discourse and Quantitative Data

Christos Tsironis, AssociateProfessor, AUTH, School of Theology:
Religion in Pluralistic Democracies: Moderation and the Challenges of Cosmopolitan Coexistence

Despina Anagnostopoulou, Assistant Professor, Department of European and International Studies, University of Macedonia:
Article 17 TFEU and the EU's dialogue with churches and religious associations

Click here for the video of the 1st session (in Greek)

2nd Session: "Religion and Education"

Coordination: Christos Rammos, President of the Hellenic Authority for Communication Security and Privacy, Honorary Vice President of the Council of State.


Mr. Christos Rammos

Talks:

Michalis Pikramenos, Assistant Professor, AUTH Law Faculty, Vice President of the Council of State

Religious education courses in a liberal modern democracy

Michalis Pikramenos commented on the following four basic points:

1. Article 16 par. 2 of the Constitution declares education to be a primary responsibility of the State and that its primary purpose is the formation of free and responsible citizens and the development of national and religious consciousness. It is interpreted in combination with: (a) Article 13(1), which establishes the individual right to religious freedom; (b) Article 5(1), which guarantees the free development of the personality; (c) Article 2(1), which defines the respect and protection of the value of the human being as a primary obligation of the State, and (d) Article 1(1) and (2), which establishes the democratic order.

2. The basic element of Article 16(2) is the formation of free and responsible citizens who are not only individuals who exercise their rights in an environment of freedom and equality but also members of an open society.

3. Article 16(2) requires that education should have a religious orientation since religious consciousness is understood as meaning man's inner conviction with respect to his physical or metaphysical view of the world, particularly in terms of the "divine". The content of religious consciousness in relation to the "divine" may be either positive or negative.


From left to right: M. Pikramenos, Chr. Rammos, Ch. Anthopoulos, Kyriaki Topidi

4. Religious education courses, with a general orientation, aim: a) to provide a knowledge of the history and basic principles of the most important religions and atheism; b)to equip students with the necessary knowledge to oppose religious fanaticism and discrimination. Therefore, exempting students from such religious education courses would be against the principles of a liberal and democratic regime. This orientation of religious education does not contradict Article 9(1) of the ECHR, which guarantees the freedom of thought, conscience and religion as one of the foundations of a "democratic society".

Charalampos Anthopoulos, Professor, Hellenic Open University
Constitution, Religion and Education

Prof. Anthopoulos elaborated his views, based on his publication in the "Proto Thema" newspaper: he emphasized that the regulation of the issue of religious studies in schools presupposes the synthesis, that is, the mutual relativization, between conflicting constitutional principles. On the one hand, there is article 3(1)of the Greek Constitution, which declares the Orthodox Christian religion to be the "dominant religion" and article 16(2),which defines, the purpose of education amongst other, the "development of the religious consciousness" of students. On the other hand, there is article 13(1) of the Constitution which secures the inviolability of the freedom of religious conscience, and also article 16(2), which defines the ultimate goal of education as being the formation of students as "free and responsible citizens". Article 2 of the First Protocol to the European Convention on Human Rights also guarantees the right of parents to choose the religious education of their children according to their own religious or philosophical beliefs. The conflict of these principles creates a need to find a "mutually accepted solution" in the Aristotelian sense, which in the language of modern constitutional law is called "practical harmony". According to Prof. Anthopoulos, the recent Council of State decision no. 660/2018 on the teaching of religious studies in schools did not achieve this "practical harmony". And this applies to both the majority opinion and the minority opinion.

According to the majority, the religious studies course should aim exclusively to develop the Orthodox-Christian consciousness in a purely confessional-catechistic way, that is, through the teaching of the doctrines, values and traditions of the Eastern Orthodox Church. Heterodox, non-religious or atheist parents are entitled to the the right to have their children exempted, providing, however, that their relevant declaration is credible, which in effect calls upon them to reveal their religious beliefs. On the other hand, the minority considers that the legislator has a very wide margin of appreciation in formulating the material of the religious studies course in a pluralistic and value-neutral way, even as a purely religious course.

The theological-evaluative dimension should not be absent from the subject of religious studies in Greek schools, which should definitely be connected with Orthodoxy and Christianity, although at the sametime there shuold be a complementary and non-evaluative dimension, i.e. a historical, comparative and phenomenological approach to the religious phenomenon. The emphasis placed on the Orthodox Christian religion is justified by the fact that it consitutes a significant part of the cultural heritage of the Greek people and is the dominant religion in Greek society. This is accepted in principle by the current education legislation and also by the minority in Council of State decision no.660/2018.

In this respect, the problem is not the new syllabi of the religious studies course in elementary, middle and high schools but the contents of the textbooks that lean more in the second direction, often creating a religious confusion in students".

From left to right: Mr. M. Pikramenos, Vice-President of the Council of State; Mr. P. Kosionis, Attorney at Law; Her Excellency Katerina Sakellaropoulou, President of the Hellenic Republic, Mr. I. Sarmas, President of the Court of Audit

Kiriaki Topidi, Lead Researcher and Team Leader on Culture and Diversity, European Center for Minority Issues, Flensburg, Germany:

Public Education and Religion: The role of the State and the new Challenges

According to Dr. Topidi, the analysis of the context in which the State regulates the presence of religion in the public sphere, raises a series of questions emerging from the correlation of public education with religious education at the human rights level. How, for example, according to ECHR case law, is the right to education linked to the exercise of religious freedoms? What conditions must be met in accordance with the current Strasbourg case law in order for a fair balance to be achieved between the two key rights in education and religious freedom? On a secondary level, a thorough analysis of the issue introduces a pluralistic and interdisciplinary array of arguments to substantiate the position that religious education in the 21st century is a public good based on concepts such as legal emancipation and good governance for educating future citizens. Taking into consideration the current form of religious education, as expressed in sociology, anthropology and pedagogical science, the analysis should focus on the importance of religious literacy for students in terms of harmonious coexistence and acceptance of diversity as prerequisites for the future multicultural societies.

Discussion

Click here for excerpts from the 2nd Session (in Greek)

3rd Session: 18.00 – 20.00
Round Table: ***The past, the present and the future of Church-State relations and the opportunity for constitutional review.***
Coordination: **Aik. Sakellaropoulou, President of the Council of State**

Participants:

Evangelos Venizelos, Professor, Faculty of Law, AUTH, former Vice-President of the Government

Ioannis Sarmas, President of the Court of Auditors

Ioannis Konidaris, Emeritus Professor, Law School, National and Kapodistrian University of Athens

Ifigeneia Kamtsidou, Assistant Professor, Faculty of Law, AUTH

Discussion

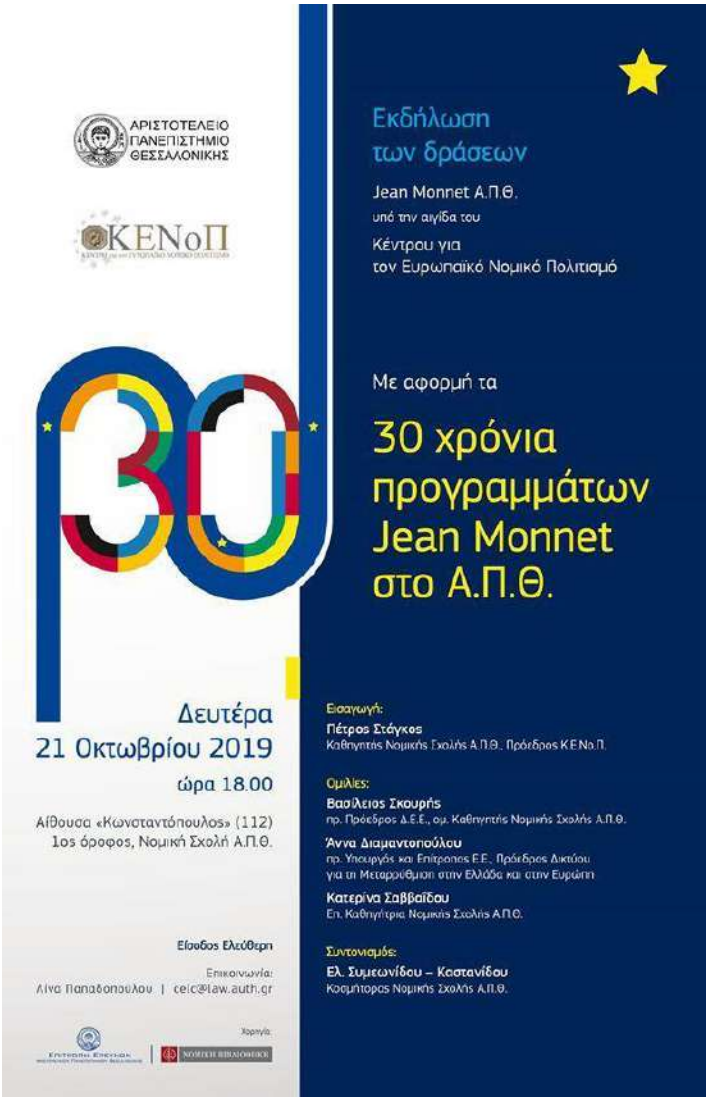
Click here for excerpts from the 3rd Session (in Greek)

The activities of the Jean Monnet Centre of Excellence were presented during an event celebrating the 30 years of implementation of the Jean Monnet Programs at AUTH. The event took place on October 21st 2019 at the Faculty of Law and was organized under the auspices of the Centre for European Legal Culture (KENOP) of AUTH and with the participation of all those responsible for the coordination of Jean Monnet actions at the AUTH.

Prof. Vassilios Skouris, former President of the ECJ and Professor at the Law Faculty of AUTH, gave a speech on "Democracy and the Rule of Law as fundamental values of the European Union".

Mrs Anna Diamantopoulou, former EU Minister and Commissioner and President of the ReformNetwork in Greece and Europe spoke about the "4th Industrial Revolution and Educational System".

Last but not least, Mrs Katerina Savvaidou, Assistant Professor of Law at the AUTH, gave a presentation on "The harmonization of the tax systems of the EU Member States: obstacles and challenges".



Lina Papadopoulou, State and Church in Greece, in: G. Robbers (ed.), *State and Church in the European Union*, Baden-Baden: Nomos, 3rd edition, 2019, 171-194 [text]

Lina Papadopoulou, Religion and the Constitution in today's Greece and Europe: ten short comments on up-to-date issues, in: A-K. Dimopoulou (ed.), *Religious freedom – Current Legal Issues*, Minutes of the KDEOD Conference 25/02/2019, Athens-Thessaloniki: Sakkoulas 2019, 63-87 (in Greek) [text]

Lena Zervogianni, Overcoming parental disagreements about religion, food choices and health care, presentation at the 7th Conference of the Family Law Association, Katerini 15-16 November 2019 (in Greek)

Lina Papadopoulou, Church-State relations 200 years after the Revolution of 1821, in: *The Constitution in Progress, Volume in honour of Professor Antonis Manitakis*, Athens – Thessaloniki: Sakkoulas 2019, 617-666 (in Greek) [text]

The Academic Coordinator of the Jean Monnet Centre of Excellence, Assistant Professor Lina Papadopoulou and Konstantinos Papastathis, Assistant Professor and member of the Centre, took part in the annual scientific meeting of the European Consortium for Church and State Research which took place in Luxembourg on 14-16/11/2019 on the issue of "Taxation, Religions & Philosophical and Non-Confessional Organizations in Europe". During the meeting issues relating to the taxation of churches and monasteries in Europe were discussed, as well as the different types of taxation of church members that aim to provide financial support for their churches. The national report for Greece was compiled by Katerina Savvaidou, Assistant Professor of Tax and Fiscal Law at the AUTH Faculty of Law.

Plenary Decision 1749/2019 of the Council of State (similar Plenary CoS Decision 1750/2019)
[new religious studies course in Greek schools]
President: Athanasios Rantos
Lecturer: Paraskevi Braimi, Consultant

Council of State decision no. 1749/2019 (published on 20 September 2019) concerns the annulment of Ministerial decision no. 101470/D2/16.6.2017 of the Minister of Education, Research and Religious Affairs, which defines the syllabi of the religious studies course in Greek primary and secondary schools.

The Plenary Session was held on 21/9/2018 to rule on the application for annulment made in 2017 by1) D. TH and 2) E. D., as spouses and joint parents of minor children; 3) X.P., as the person exercising parental responsibility for his minor child; 4) the Holy Metropolis of Piraeus; 5)the Metropolitan of Piraeus Seraphim, and 6)the "Panhellenic Union of Theologians" against1) the Minister of Education, Research and Religious Affairs and 2) the "Panhellenic Theological Association 'Kairos' for the Improvement of Religious Education".

The first three applicants claimed that, as Orthodox Christians with a direct, present and legitimate interest, they and their children were affected by the contested decision because they were not taught the principles of the Orthodox faith in the religious studies course at their school. Furthermore, the Metropolis of Piraeus and the Metropolitan claimed that according to Law 590/1977 (Statutory Charter of the Church of Greece) they had the obligation to cooperate with the State on issues relating to the religious education of young people. In addition to the aforementioned claims, the Metropolis claimed that it had a direct, present and legitimate interest because it managed and supervised three school-units (a kindergarten, an elementary, and a middle+high school) where it was obliged to implement the relevant religious education syllabi, while the Metropolitan argued that his Orthodox followers had been morally affected by the changes that had been made to the religious education course by the contested ministerial decision.

The Court accepted the aforementioned legal interests, while a minority decision was formed by a Councilor, according to which the Metropolis of Piraeus and its metropolitan had no legal interest in submitting the contested application because, according to art. 9 of Law 590/77, the supervision of the doctrinal content of religious education textbooks is an exclusive responsibility of the Permanent Holy Synod. Moreover, operating schools did not imply the possession of a legal interest because it was not presumed that the above-mentioned parties represented the school units in question but it is their administrative bodies who should represent them. In addition, the Court accepted the legal interest of the Panhellenic Union of Theologians and accepted their joint action.

According to the Court's minority decision, however, it was not possible for the Court to accept an application for annulment by parties that did not have the status of parents of students. Additionally, the Court accepted the legal interest of the intervening association 'Kairos' on the basis both of its statutory aims and the participation of its members in formulating the syllabi of the religious education course.

On the substantive issues, the Court accepted (paragraph 16) that the Eastern Orthodox Church of Christ is the religion embraced by the majority of the Greek people, and described the content of the terms "national" and "religious" in article 16 par. 2 of the Constitution.

Interpreting the term "religious conscience" in conjunction with art. 13 paras. 1 and 2, as well as art. 2 of the ECHR, the Court concluded that the Orthodox Christian consciousness is the type of religious consciousness that should be developed according to the will of the constitutional legislator. The Court concluded that the syllabi were contrary to the Constitutional aim of developing the Orthodox Christian consciousness.

However, the Supreme Court stressed that the religious studies course, as a constitutional requirement, without due cause, and on the condition of respecting the fundamental freedom of conscience in article 13 of the Constitution, does not amount to the imposition of a religious doctrine in favor of the dominant religion since it exclusively addresses students that share Orthodox Christian values.

With regard to citizens of other religions, the Court ruled that there would be a violation of the principle of equality if there were unequal treatment of Orthodox and non Orthodox students.

According to the expert opinion of two Councilors, the basic mission of the State is the formation of free and responsible citizens, where the element of the divine is a condition for the shaping of human life. The religious education course in schools should not be of a doctrinal nature, although it should, on the other hand, strengthen the teaching of the Eastern Orthodox Church.

In another opinion of one Councilor, the freedom to shape education lies in the competences of the common legislator, under the Constitution, which include the aim of the development of religious consciousness. Consequently, the syllabus of the religious studies course must include the teaching of the Orthodox Christian doctrine, under the condition arising from article 13 par.1 of the Constitution that students who do not adhere to the Orthodox Christian religion are not obliged to attend religious education lessons. The existence of a general religious knowledge course is considered useful for the general spiritual education of students, although it does not lead to the development of the type of religious consciousness required by the Constitution.

As claimed by the Court, the transmission of knowledge must be objective and pluralistic, without compromising the ability of the State to shape its educational programme, and should not pursue indoctrination aims. Nonetheless, there is a need to lay emphasis on the teachings of the Orthodox Church in religious education, as well as a need to create a system of exemption from the religious education course without violating the religious freedom of students or parents. The judicial review of the syllabi of religious education courses was marginal because the essential pedagogical choices of administrative bodies cannot be subject to the cassational review of the Council of State.

According to the minority opinion of a Councilor, the provision of article 3of the Constitution does not restrict the exercise of the fundamental right to religious freedom, nor does it include a biased treatment in favor of the Orthodox. More specifically, the term "religious conscience" in article 16 par. 2 of the Constitution is equated with the corresponding term in article 13 par. 1 of the Constitution and concerns students' attitudes towards the divine element. An element derived from this is the student's ability, depending on his/her age, to embrace a religion or not.

As Councilor Aravanis noted, the abandonment of the ideological model of "Greek Christian culture" by the current Constitution, in conjunction with Article 9 of the ECHR and Article 2 of the First Additional Protocol of the ECHR, and in the light of additional articles in International Conventions, and the freedom of conscience in an individual's religious affairs, require the observance of the principle of religious neutrality, giving the legislator exclusive competences and the wide margin of discretion in formulating the religious education syllabus. In accordance with the requirements of the Constitution and international conventions, the legislator is not obliged to give the subject of religion a confessional and indoctrination character, partly because it would impose a specific religious doctrine, violating the principles of religious neutrality and pluralism which govern the provision of education by the State, and because it would deprive students of the right to shape their personality and life. Regarding the issue of exemption from the religious education course, the Councilor argued that this possibility should only be a last resort not only because there is no alternative course, a fact that hinders the religious education of students, in violation of article 16 par. 2 of the Constitution, but also due to distortions and deviations are created within the school environment. Based on the Constitution, the legislator can give a religious content to the subject of religious studies, which will thus more fully meet the requirements of the Constitution and international institutional framework.

According to the opinion of Councilor Mich. Pikramenos, the main orientation of article 16 par. 2 is the formation of free and conscious citizens who function both as persons exercising their rights and freedoms within a democratic State and as members of pluralistic societies, in which mutual respect is an inalienable element.

Therefore, the constitutional provisions of article 16 par. 2 require that religious education should have a religious studies orientation which is not contrary to article 3 par. 1. When the religious education course takes the form of religious studies, as is implied in art. 16 par. 2 of the Constitution, it serves the purpose of 'education' by forming responsible, conscious and free citizens. Hence, as the Court argues, there can be no exemption of students from the existing pluralistic religious education course as it would contravene the fundamental principles of democracy, while also breaching the principle of state neutrality.

The Court ruled that: a) the teaching of the religious education course concerns only students of the Orthodox Christian faith, and b) the syllabus of the course does not aim to develop the Orthodox Christian consciousness of the students because it does not contain distinctly Orthodox teaching, as is required by the Constitution and, thus, the contested decision by the Minister of Education is contrary to articles 16 par. 2 and 13 par. 1 of the Constitution, as well as the Second Protocol of the ECHR.

Likewise, the contested decision is contrary to the constitutional principle of equality, as well as articles 9 and 14 of the ECHR. This contradiction lies in the fact that it deprives students of the Orthodox faith of the right to be taught exclusively about the traditions, teachings and values of the Eastern Orthodox Church of Christ, which is disproportionate to the corresponding right of non Orthodox students.

According to the convergent opinion expressed by the Court, the invalidity of the provisions of the contested decision is due to the violation of the constitutional obligation to develop a Christian Orthodox consciousness.

According to the opposing minority opinion expressed by the Court, the ministerial decision under scrutiny is not contrary to the provisions of the Constitution and the ECHR as it retains the teachings of the prevailing religion and has permissibly introduced elements of religious studies into the course. The formulation and design of the syllabi falls under the discretion of the legislator, and this is why his judgment is not, in effect, subject to any controls.

Finally, according to another opinion – that of Councilor Pikramenos – the content of the religious education syllabus and of each of its thematic units, as well as the course's objectives, are within the constitutionally defined framework and are addressed to all students in primary and secondary schools. In particular, the content of the course overcomes distortions and dogmatic approaches, and succeeds in forming, in the long term, free and conscious citizens. The contested ministerial decision defining the syllabi of the religious education course does not contradict the provisions of the Constitution, nor the provisions of art. 9 and 14 of the ECHR, or art. 2 of the First Additional Protocol of the ECHR, while the opposing arguments are considered to be inadmissible.

For the aforementioned reasons, the Court annulled the contested decision.

Critique (Web link):

For the relevant Court decision listen to this recording of an interview with Angeliki Ziaka, Ass. Professor in the Department of Theology and member of the AUTH Jean Monnet Centre of Excellence

Decision1759/2019 of the Plenary Session of the Council of State

[display of a student's religious convictions on the high school diploma, proof of grades and certificates of study]

President: Aikaterini Sakellaropoulou

Rapporteur: Marlena Tripolitsioti, Councilor

In the decision no. 1759/2019, published on September 20, 2019, the Plenary Session of the Council of State ruled on the application for the annulment of decision no. 92091 / Δ2 / 5.6.2018 of the Minister of Education, Research and Religious Affairs entitled "Determination of types of lower high school certificate" (B'2087 / 7.6.2018), with respect to the part of the decision providing for the display of students' religious affiliations on lower high school diplomas, proofs of grades and certificates of study, as amended by decision no. 43479 / Δ2 / 20.3.2019 of the Minister of Education, Research and Religious Affairs (B'1120 / 4.4.2019) entitled "Determination of types of lower high school certificate", according to which provision continues to be made for the display of a student's religious affiliation on the lower high school diploma, proofs of grades and certificates of study.

The contested decision determines the type of certificates that should be used in both public and private high schools, which form an integral part of the decision. Specifically, for each type of high school a model for each type of certificate is included: the lower high school diploma, proof of completion of studies in the 1st, 2nd and 3rd grades, and certificates of study.

In the decision of the Plenary Session of the Council of State, it was held that the contested decision, which provided for uniform types of lower high school diplomas and certificates, with the identical representation of all fields in the models attached to the decision, it did not appear that the completion of the 'religious affiliation' field was optional, but that the display of the student's religious affiliation in the above documents was in principle mandatory. This was found to constitute a violation of article 13 of the Constitution, in the sense that on the one hand, the freedom of religious conscience, which primarily protects the individual's inner convictions regarding the divine from any State intervention, includes, inter alia, that individual's right not to disclose their religion or their religious beliefs in general. No one may be compelled, in any way, to disclose, either directly or indirectly, their religion or religious beliefs in general, subject to acts or omissions from which their existence or non-existence may be presumed. Additionally, no State authority or State body is allowed to intervene in what is, according to the Constitution, the inviolable sphere of the individual's conscience or to attempt to as certain their religious convictions, much less to impose the externalization of any of the individual's beliefs regarding the divine. On the other hand, pursuant to Article 13 of the Constitution, it is also forbidden to list religion or religious beliefs in general on diplomas and certificates of study, which are documents proving the attendance, performance and completion of a stage in a student's education and not documents providing information that is irrelevant to these facts, such as religious beliefs.

Therefore, the indication of a student's religious affiliation on the aforementioned high school diplomas and certificates of study that is provided for by the contested decision, as amended, even if it is optional, that is, if it is done with the consent or initiative of the student or their parents, constitutes a violation of Article 13 of the Constitution.

Last but not least, the aforementioned decision ruled that the contested decision, in addition to Article 13 of the Constitution, violates also the provisions of articles 9 and 14 of the ECHR, in view of the fact that religious beliefs have a given personal and sensitive character. Hence, the display of a student's religion on high school diplomas and certificates, regardless of whether it is compulsory or optional, constitutes a form of processing personal data without any legal purpose, contrary to article 2 (b) and article 4 par. 1 (a) and (b) of law 2472/1997 and article 5 par. 1(a) and (b) and article 9 par. 1 of General Regulation (EU) 2016/679.

Decision 2101/2019 of the Plenary Session of the Council of State
[the automatic termination of a Mufti's employment due to the expiration of an age limit]
President: Aikaterini Sakellaropoulou
Rapporteur: Dimitrios Makris, Councilor

With the decision no. 2101/2019 of the Plenary Session of the Council of State, published on November 1st 2019, the Council ruled on the application for the annulment of decision no. 133948/Θ1/8.8.2018 of the Minister of Education, Research and Religious Affairs ruling the automatic termination of the employment relationship of the applicant, as Mufti of Komotini (PE class, grade A, salary scale 19), due to the expiration of the age limit, in accordance with the provision of par. 3 of article 48 of law 4559/2018 (A'142/3.9.2018).

According to the above decision, the Muftis are civil servants and exercise, in addition to religious duties, the judicial competences assigned to them by law. Taking into account the composite role of the Muftis, the age limit for their service established by article 48 of law 4559/2018, which serves the aforementioned purposes of public interest and which is in line with the generally valid regulations concerning the termination of employment of civil servants or officials due to expiration of the age limit, is a legitimate restriction on the retention of this position, which is provided for by an Act of Legislative Content ratified on 24/12/1990, and does not constitute an infringement of religious freedom, as safeguarded by the Constitution. Moreover, those who automatically leave their position as Mufti due to reaching the set age limit can exercise the work of a religious minister, since they may in practice be appointed by the new Mufti or Deputy Mufti as an Imam and thereafter exercise purely religious duties, provided that the Deputy Mufti considers them capable of performing these duties.

It was also ruled that the established age restriction for the service of Muftis is appropriate and necessary to achieve the intended purpose because the age of the Mufti is crucial for the effective exercise of his duties and, indeed, of his judicial duties, which are governed by the aforementioned legal regime. With the Mufti's automatic departure from service due to expiration of the age limit, the smooth succession in the service is ensured by the competent State bodies. Also, the aforementioned age limit for the automatic termination of service of Muftis that are appointed for a ten-year (renewable) term, taking into consideration their service status, is not disproportionate to the intended purpose, because their service until the age of 67 ensures (based on the learning experience acquired) the existence of the physical and mental endurance and abilities necessary for the proper and effective performance of their duties, including the administration of justice.

The given age limit for the departure from service of Muftis, as provided for in article 48 of law 4559/2018, was ruled that it does not to violate the provisions of article 13 d the Constitution on religious freedom, nor those of article 4 par. 1 on equality, article 5 par. 1 and articles 8 and 20 par. 1, nor the provisions of article 6 paras. 1, 9 and 14 of the ECHR.

Consequently, through the above decision the Plenary Session ruled that the automatic termination of the employment relationship of the applicant, as Mufti of Komotini, was legal on the basis of the contested decision, pursuant to the provisions of par. 3 of article 48 of law 4559/2018, due to the fact that he was over the age of 67.

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