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Prevailing Religion as a Factor in Enhancing the Right to Education: The Example of Educational Policy in Greece

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Abstract: It is clearly stated by the European Court of Human Rights (ECtHR) that provided education should not follow or consist of a means of catechism contrary to the religious or philosophical perceptions of the parents. Consequently, a specific negative claim is established: the state, through its educational policy, must refrain from transmitting information that is contrary to the philosophical and religious beliefs of the parents. In Greece, education policy is not neutral. It has a clear Christian orientation, primarily due to the constitutional establishment of the prevailing religion. It is not a constitutional paradox but a choice of the legislator based on cultural and social characteristics. This article aims to present an analysis of the effect of the constitutional establishment of the Christian faith in the national educational policy, which aims at the development of national and religious consciousness. Given that religious education is more freely formulated, the influence of the prevailing religion proves to be catalytic. In Greece, the catechism is preferred, according to the teachings of the prevailing religion. This choice makes it easier for parents to raise their children based on their beliefs, effectively reinforcing the fundamental right established by Article 2 of the additional protocol of the ECHR.

Keywords: prevailing religion; orthodoxy; right to education; educational policy; catechism; religious consciousness



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1. Introduction

Greece is not a religion-neutral state/*état laïque*, especially as the concept of *laïcité* (i.e., the removal of any form of religious influence over civil society) has been interpreted in the extensive case law of the Conseil d'Etat¹. The secular nature of the French state (where the church and state are almost separate²) has been enshrined in the country's constitution³.

However, within a wider legal framework, the influence of the prevailing religion on state institutions is a common and accepted constitutional phenomenon and is observable in nations with disparate legal tradition (e.g., Egypt, Brazil, the Philippines, etc.). Regardless, in most cases, and in Europe in particular, the norm is institutional separation of the state from the prevailing religion. Indicatively, the Spanish constitution establishes that no religion shall have a state character, while Article 7 of the Italian Constitution states that “*The State and the Catholic Church are, each within its own sphere, independent and sovereign*”; in the latter case, a bipartite agreement was established to regulate the relationships between the two entities⁴. Whether nations retained a religious marker of identity or rejected it depended on whether they had emerged in conflict with religion, as in France, or in alliance with it, as in Poland (Martin 2007, p. 142).

In the wake of the industrial revolution, Christianity has played an ever-diminishing role in the formulation of new rules of law, though its influence did not entirely disappear. Thus, the rationale for certain protective provisions, especially in the field of social rights (education and labor) is drawn from a particular Christian tradition or historical connection.

It is evident that Christianity plays an important role in European societies, providing a framework and direction for models and ways of life for most of their citizens. Considered a cornerstone of these societies, as well as a vital means of transmitting values, Christianity,

embedded in the cultural and ethical foundations of Europe, has been a constituent element in the development of the European states and their national education systems (Bedmar and Delgado-Cobano 2014, p. 55).

The present study investigated the regulatory influence of the Christian tradition on the right to education in Greece. The educational arena constitutes a critical and fraught juncture between religion and law. In other words, the school has become a flashpoint for tensions between states and individual citizens, between secularists and religiousists (Fokas 2019, p. 2). For example, parents of students who are forced to request exemption from religious education for reasons of “religious conscience” respond with lawsuits for damages against the Greek state due to the persistent refusal of the Minister of Education to accept the decisions of the ECoHR (*Papageorgiou and others v. Greece*, 2020) and to also allow Orthodox Christian students to ask for exemption, simply citing “reasons of conscience”. The disputed ministerial decision (no. 106646/ΓΔ4/2.09.2022) is based on four decisions of the Council of State (nos. 559/2014, 660/2018, 1749/2019, and 1750/2019). The former Minister of Education (member of the party of the radical left), Mr. Filis, stated that (Greece) “is being dragged across the European Union, as the last one for which the church’s reason for teaching a lesson is stronger than that of the pedagogues, even of many theologians, of the courts, of the constitutional authorities and in general of modern perceptions, who want the separation of state and church. Starting with education”. Indicative of the opposite trends is that from 2012 until the summer of 2022, 13 court decisions have been issued following appeals regarding the content of the course (confessional or pluralistic), while the Ministry of Education and Religion has changed the content of circulars and ministerial decisions on the reasons for exempting a student from a course six times from 2008 until today ⁵.

Religious education in Greece has formed a wide “cultural (and political) battlefield” (Willert 2014, p. 12) for the recurrent opposition of conflicting views within the Orthodox Church, among theologians, politicians, and the media. It should also be pointed out that in Greece, the predominance of Christian Orthodoxy is not unique to the class on religion: it infiltrates the entire education system, both through references to the historical links between Orthodoxy and national identity spread throughout other subjects, as well as through rituals that symbolize the intense presence of Orthodoxy over the school, namely morning prayer and holy blessing, alongside the presence of orthodox icons in classrooms.

Viewed from this perspective, the fact that the Orthodox faith has been enshrined in Greece’s constitution, far from being a constitutional paradox, is instead a conscious choice that has its origins in the particular national characteristics and traditions of the Greek State.

2. The Constitutional Scope of the Right

Article 3 (1) of the official translation of the Hellenic Constitution states: “The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ”. The term “prevailing religion” accurately conveys the meaning of the original text. It is not taken to signify the religion that prevails over other religions but rather that the religion is espoused by the majority of Greeks. This provision is distinct from the provision that establishes religious freedom and is in a separate section of the constitution titled “*Relations of Church and State*”. The term *prevailing religion* continues to give rise to numerous, often contradictory interpretive approaches with regard both to the need for its enshrinement in the constitution and to its conceptual content. Thus, in some cases, it is understood as the official religion (Papastathis 1988, p. 65), while in others, it is the religion observed by the vast majority of Greeks (Venizelos 2000, p. 146). The latter approach, according to which it is the religion of the majority, is also the prevailing view among both legal theorists (Stathopoulos 2007, p. 321) and in case law (this approach also justifies the invocation of the Holy Trinity at the head of the constitution⁶).

The provision on the prevailing religion has been interpreted as having limited regulatory content⁷. This interpretation is based on the view that the only field over which it has any regulatory scope is the organization and functions of the state, in particular the

organization and practice of the Orthodox Faith (e.g., the legal form of the church, the establishment of state holidays in accordance with the Orthodox calendar, and the overall objectives the state is obliged to pursue as part of its educational policy). The will of the constitutional legislators was for a self-administered church subject to state oversight. In this vein, the court has ruled that a decision by a church authority denying a clergy member permission to travel abroad is an administrative act and not a spiritual matter⁸. In fact, in certain cases, priests are subject to restrictions related to the particular nature of their duties as beacons of love and brotherhood⁹.

It is abundantly clear that the scope of this provision does not extend to issues of individual rights¹⁰. As a result, the enshrinement of the Orthodox faith as the prevailing religion does not provide a legal basis for discrimination against individuals who follow other religions or nonreligious individuals within the context of respect for religious freedom.

Greece is a sovereign nation state where religious education is organized at the national level. The formation of the modern Greek state's education has served as a medium to secure and perpetuate the strong relationship between religion and national identity. Among few other European states, Greece represents an indicative case of a public education system in which the class of religion is both compulsory and denominational (Markoviti 2019, p. 32). Article 16 (2) of the constitution establishes among the objectives of education "*the development of {students} national and religious conscience*". Religious education in Greek schools is compulsory for all Christian Orthodox students in primary and secondary education, and the content of the class is catechetical (emphasis on Christian Orthodoxy).

Greek state schools require two hours of religious education in each of the six years of secondary education, while in the upper primary grades, religious education is provided from the third grade until the sixth. In primary education, those who teach the course are primary school teachers who have not received any special religious education training during their university studies; RE teachers in secondary education are usually graduates of one of the country's two theological schools (Athens and Thessaloniki). The teachers are Greek civil servants and are not controlled or appointed by the Greek Orthodox Church, and the same holds true for university professors of theology.

It was argued that education in Greece falls into the category of national protected spaces, which European norms find hard to permeate (Olsen 2002, p. 934). This approach, however, is not entirely correct because the formulation and content of the educational policy is entirely up to the states, as long as the rights of either the students or their parents are not violated. Moreover, the location of religion in educating national subjects is a function of the location of religion in the imagination of the nation (Van der Veer 2011, p. 236). In any case, the provision of Article 16 (2) regarding the development of Greeks' national and religious consciousness must not be viewed through the lens of the close relationship between the concepts of Hellenism and Orthodoxy (Katras 2019, p. 863), i.e., according to the norms of the previous constitution¹¹. Indeed, this approach is invalidated by the administrative actions in the vital field of education in regions with non-Orthodox¹² or non-Christian populations¹³. The state is required to provide the necessary conditions so that those who participate in the state curricula develop their own religious consciousness, instead of cultivating a particular (i.e., Orthodox) consciousness. State action must not infringe upon the essence of the right to religious freedom, itself defined as the internal belief in a higher power whether positive, in adherence to a certain religious doctrine, or negative. According to this definition, freedom of religious consciousness includes the right to develop one's own internal beliefs free of external influences and the right to change those beliefs at will, as well as the right to express them openly or not.

The fact that the Orthodox faith is taught in schools is clearly due to the "*privilege*" Orthodoxy has as the prevailing religion, a privilege explicitly enshrined not only in the constitution but in the wider social situation, given that the vast majority of Greek citizens adhere to Orthodoxy and wish to spread it to the next generation¹⁴. Viewed in this light,

the provision of Article 3 of the constitution does not introduce limits, compared with the distinct fundamental right to religious freedom enshrined at the national level in Article 13 of the constitution and internationally in Article 9 of the ECHR. Any remaining ambiguities could be resolved in a future constitutional revision with the addition of an interpretive declaration to Article 3, which would emphasize the “declarative” nature of the term *prevailing religion*, i.e., as the religious doctrine observed by the majority of Greeks, while clarifying that the reference cannot be used to justify deviations from the right to religious freedom, with special mention for measures that color administrative mechanisms with religious overtones.

The religious neutrality of the state has been well established and convincingly documented in case law¹⁵. The necessity of safeguarding the prevailing religion is directly connected with the motives of the revisionary legislator.

3. The Particularities of Greek Tradition

The reasons for which the Greek revisionary legislators elected to enshrine the Orthodox Faith as the prevailing religion have their origins in the particularities of Greek history and tradition, as these are documented and understood in the modern day. While the explosive outcome of the Greek revolution was obvious, its detonator was less so. Although no single cause could possibly be claimed for the complex series of events between 1821 and 1829, there is an argument to be made that the pre-eminent cause was the spiritual motivation provided by the Orthodox Christian faith (Kepreotes 2021, p. 34). Thus, the Greek identity developed in opposition to the identity of the ‘other’, a reality that has also affected the management of educational policy. The emergence of the new nation-state also relied on collective memories and traditions about lost homelands, resistance against Islamization, and the Orthodox faith’s contribution to the preservation of Greek literature, language, culture, and identity (Molokotos-Liederman 2009, p. 42).

Greece, geographically isolated (at the edge of the EU), is currently not a multicultural society (with the exception of certain neighborhoods of Athens). Although it has been overwhelmed in the last decade by dense immigration flows, these migrants do not prioritize staying in the country. Possibly, then, the “solid ethnicity” of the permanent population may be a crucial factor that reinforces or at least applauds the preservation of traditions of the prevailing religion in the modern secular state.

The Holy Trinity is invoked in the preamble to the constitution primarily for reasons of history but also to honor the vital contribution of Orthodoxy to Hellenic national identity. Consequently, the reference in Article 3 (1) of the constitution to the “*prevailing*” religion of the Eastern Orthodox Church was also included in the preambles to all of Greece’s previous constitutions (1844, 1864, 1911, 1927, and 1952) and continues to be a fundamental part of the country’s constitutional tradition¹⁶, given that even the most recent (2022) revision left it as is¹⁷. It would not be out of place to assert that the rejection of the recent proposed revisions to Article 3 (1) confirms both the intrinsic historical connection between church and state and the continuity of symbolic institutional traditions¹⁸.

This reference, together with the invocation of the “*Holy and Consubstantial and Indivisible Trinity*” in the Preamble to the Constitution, is connected—as pointed out in case law¹⁹—with the leading role the Orthodox Church has played throughout the history of Hellenism, in particular during the lengthy period of Turkish rule. Of course, it is also a reflection of the simple fact that this religion “*is observed by the vast majority of Greeks*”²⁰, undoubtedly a major influence on the decision not to revise Article 3 of the constitution, i.e., not to tamper with an established regulatory framework²¹. Indeed, popular sovereignty and the noted pressure it exerts on government representatives is the catalyst for the coformulation (whether preservation or restructuring) of the rule of law (Habermas 1994, p. 8). It is widely accepted that any constitutional revision of the article which enshrines Orthodoxy as the prevailing religion in a more religiously neutral direction necessitates a broad social and political consensus. Most Greek citizens consider themselves connected to the prevailing religion in an “*identarian*” sense. Indeed, the concept of religion is intrinsically

connected with that of nationhood for Greece, a country that was established in 1830 and obliged to repeatedly defend its independence²².

In any event, the constitutional provision of Article 3 does not impose restrictions on the religious liberty of non-Orthodox citizens. Case law has yet to accept that the term “prevailing religion” must be taken to mean the religion that shall prevail in all cases through the function of the state administrative apparatus. As a former minister of the state put it, “the symbolic article 3 hardly restricts a true religiously neutral State, especially given the fact that all major innovations in the separation of Church and State have been introduced, to an extent, via common legislature”²³. It thus follows that the traditions or liturgies of the known religions, and especially those of the Orthodox Church (with particular emphasis on the baptizing of infants), the various objections regarding their compatibility with the protection of human rights notwithstanding²⁴, should in no way threaten the religious neutrality of the state at the institutional and administrative levels.

The enshrinement of the Orthodox Faith in the constitution as the prevailing religion has as a direct regulatory result: the strengthening or preservation of Orthodoxy through public school education and the establishment of Christian feasts as mandatory national and regional holidays both in the public and in the private sector²⁵.

However, is the preservation of students’ Christian convictions a fundamental right worth protecting?

4. The Preservation of “Established” Religious Convictions as a Fundamental Right

Recent Council of State case law (decision nos. 660 and 926/2018 and nos. 1749-1750/2019) has ruled overwhelmingly in favor of the denominational nature of classes on religion in schools. Despite the fact that certain elements in academia decry the legal findings of these rulings, accusing the judges of “acting as agents of an unsolicited ethno-religious rigidity that bypasses, if not completely demolishes the Greek legal order and the fundamental rules of law which govern it” (Tsitselikis 2019), they nevertheless established a well-documented case-law precedent regarding how classes on religion must be taught.

As has been correctly pointed out, decision 660/2018 clearly expressed the constitutional requirement of the state to develop “Orthodox Christian consciousness” and provided an answer to the following question: what does the constitution mandate, that the class of religion aids students in developing a distinct identity or that it cultivates the preconditions for inter-religious and intercultural dialogue (Papageorgiou 2018, p. 77)? Any answer to this question must clearly define the fundamental concept of distinct religious identity, as that is what delineates this particular fundamental right that parents enjoy vis a vis state educational policy.

The constitution, as interpreted through the ECtHR, permits legislators to establish classes on religion of either a denominational or of a religiously pluralistic nature, albeit with an emphasis on the historical role and principles of the prevailing religion (Papageorgiou 2018, p. 80). In this spirit, with decisions 1749-50/2019, the Plenary Session of the Court ruled first that the class is meant for exclusively Orthodox Christian students and, as such, must be used as a vehicle for the development of an Orthodox Christian consciousness. The class on religion must maintain its denominational content and thus the knowledge transmitted to students must focus, if not exclusively, at least for the most part on the prevailing religion. Of particular interest is the following excerpt: “... religious education for the majority of students cannot be turned into a dogmatic confession of faith, or indeed a catechism, however on the other hand it must maintain as its main focus not the mere transmission and analysis of knowledge or the discussion of historical, religious or sociological issues (which topics are covered in other classes), but rather the strengthening of students’ Orthodox Christian convictions through the teaching of the doctrines, ethical values and traditions championed by the Eastern Orthodox Church”. At this point, a comment is necessary. The boundaries between catechism and the strengthening of religious consciousness are possibly indiscernible. This jurisprudence approach clarifies that the purpose of religious education is not the “sterile” indoctrination of the principles of Orthodoxy but the “stimulation” of Orthodox religious

thought. For that reason, according to the curriculum, religious education in primary and secondary education primarily focuses (and not exclusively) on the Christian faith and Orthodox tradition; however, students are also taught about the other major world religions.

Are these Council of State rulings a step backward? Do they have their roots in antiquated theocratic perceptions, violating the fundamental rights of those who do not espouse the Orthodox faith, or do they instead strengthen the rights of those who adhere to the doctrines of the “prevailing” religion? The European Court of Human rights, the most effective transnational human rights institution on Earth (Durham et al. 2012, p. 2), has provided an answer, viewing the issue through the prism of the right to education (Article 2 of the 1st Additional Protocol to the ECHR²⁶).

This provision establishes the right of all citizens to education, burdening the state with a clear obligation to organize, maintain, and support a structured educational system. However, the provision does not introduce an individual right of citizens to compel States to use their own resources to organize an educational system of any particular form or level²⁷. The provision primarily protects students’ access to meaningful education as well as the elimination of unfair discriminations²⁸ and obstacles to accessing education²⁹.

In contrast with Article 18 (4) of the International Covenant on Civil and Political Rights and Article 12 (4) of the American Convention on Human Rights, both of which connect the state obligation to respect parents’ convictions regarding their children’s education with the rights to freedom of thought, conscience, and religion, the ECHR connects this right with a corresponding obligation of parents to ensure that their children enjoy and are able to exercise their right to education. In particular regarding religious education, the state is obligated to map out educational policy as a whole (organization/layout of schools, curriculum content, and means of providing education) in such a manner as to conform to parents’ religious (and philosophical) convictions. The ECtHR is clearly an active player in the European sphere in the rapidly broadening domain of religion and education (see Hunter-Henin 2012; Leigh 2012; Lozano 2013).

The ECtHR’s case law clearly and categorically establishes the limit that education, whether public or private, must not comprise a means of catechesis contrary to parents’ religious or philosophical convictions³⁰. However, it must be clarified that the court considers that it is not possible to deduce from the convention a right to not be exposed to convictions contrary to one’s own³¹. The convention thus introduces a specific negative claim for parents: that the state refrain from the systematic transmission of knowledge contrary to their philosophical and religious convictions to their children through the educational policy it implements. Parents are recognized as the main bearers of responsibility for developing their children’s consciousness from childhood until adulthood, while the state is called upon to develop more specialized processes with sufficient guarantees of neutrality when presenting opinions/positions/perceptions that are contrary to family traditions. However, this is not always achievable given the nature of the classes included in a curriculum.

In the well-known ruling *Kjeldsen, Busk Madsen and Petersen v. Denmark* (1976), the court established that the issue of teaching religion touches upon the wider issue of educational pluralism, defined as the conveyance of knowledge in an objective and critical manner. At this point, a fundamental distinction must be made between classes with humanistic content and their counterparts in the field of the natural sciences. The educational system is only pluralistic with regard to humanistic issues (religious and philosophical convictions) and not in fields connected to the natural sciences, where the knowledge students acquire is based on widely accepted scientific findings (physics, chemistry, mathematics, geometry, geography, anatomy, engineering, etc.). The natural sciences have no room for ideological approaches or scientific theories that have been rejected over the course of the development of knowledge³². However, this is not the case for religious and philosophical convictions, which are not subject to the rigid laws of nature and do not develop according to the advancement of knowledge and science. This makes them open to pluralistic presentations. At the systematic level, religious convictions do not fall within the regulatory

scope of the right to freedom of expression, with case law³³ instead having placed them squarely within the scope of the right to freedom of thought, conscience, and religion (ECHR, Article 9), provided that these convictions are serious, cohesive, and significant.

The content and scope of the (religious) education the educational system, namely provides the teaching of a particular doctrine not with the goal of examining it critically but of instilling its tenets as truths in students, are not in keeping with the principle of academic freedom. This is because the fundamental requirement of scientific research and teaching is the possibility to challenge and even overturn established knowledge and theories to further science. However, this is not applicable to doctrinal truths by revelation, which are, by definition, not subject to challenges and critical assessment (Alivizatos 2007, p. 275). Consequently, classes on religion are, at least in principle, presented in a pluralistic manner or, more precisely, open to a more pluralistic teaching approach. Pluralism in this field may be seen as the result of the responsibility of the state for the effectuation of the right to education as recognized in Article 2 First Protocol of the Convention and parents' right to respect for their religion or philosophy of life (Nieuwenhuis 2007, p. 372). According to the ECHR, there is a direct connection with democracy³⁴.

Pluralism strengthens the function and quality of democracy; however, the state is solely responsible for organizing school educational programs. That is because governments recognize that their legitimacy depends on meeting a normative expectation of the community (Franck 1992, p. 49).

On the matter of the formulation of educational policy, based on the permanent jurisprudence of the ECtHR, the states have a fairly wide margin of appreciation. This doctrine³⁵ is a substantial tool through which the court allows states a certain, variable leeway to interpret religious rights and freedoms within the broader context of their national cultures and traditions (Fokas 2015, p. 58).

Consequently, states are responsible for the regulation of their respective educational systems and their curricular contents, which may implicitly involve transmitting knowledge of a moral, philosophical, or religious nature, all this while respecting the right to freedom of thought, conscience, and religion, a state of affairs THAT may turn out to be difficult to achieve. Given the intrinsic connection Greek society has with its prevailing religion, the incorporation of classes on religion in compulsory school curricula, and of a denominational nature no less, is a clear majority mandate. According to *Lautsi and others v. Italy* (2011), states themselves have been granted a "right to manifest {their} religious beliefs" (Liu 2011, p. 254). Therefore, the denominational nature of the class in accordance with the teachings of the prevailing religion is in keeping with Article 2 of the First Additional Protocol to the ECtHR, as long as children whose parents do not espouse said religion have the option to be exempted.

The ECtHR has delineated the limits according to the particular religious and philosophical convictions of parents, to which the state must show the appropriate respect when organizing curricula, as aptly pointed out in the seminal *Kjeldsen, Busk Madsen and Petersen v. Denmark* (2011, par. 53): "*The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded*".

It thus logically follows that parents' negative claim that state educational policy respect or at the very least not contradict their religious or philosophical convictions is a clearly defined regulatory directive. In contrast, no positive right is established. In other words, the state is under no obligation to promote parents' religious convictions through the educational system. However, the right to education is strengthened to the extent that these convictions are indeed promoted and/or enriched meaningfully through student participation in classes on religion.

As such, in Greece and in correspondence with the case law of the ECtHR, the Greek Orthodox majority reserves the right to demand that the state preserve and strengthen their religious convictions, with special focus on the younger generations. Thus, the explicit enshrinement of the prevailing religion in the Constitution, taking into account the fact that

the majority of the population espouses Orthodox Christianity, together with the directive of Article 16 (2) of the Constitution regarding the development of students' national and religious consciousness, demonstrate the teleological validity of Greece's case law. Greek judges do not view the Orthodox faith as an exclusively internal phenomenon. Indeed, in an almost transcendent manner, they attempt to identify its particular nature, always in relation to Greece's particularities, which mandate the maintenance and imparting of the faith to the younger generations as a particular aspect of the "connection" between citizens and the homeland. This connection between Hellenism and Orthodoxy must not be viewed as an inherent (*sine qua non*) element of Greek identity but instead as a *supplementary* aspect of the national tradition. Ergo, for reasons of history and tradition, the Orthodox faith is a fundamental, albeit nonintegral, element in the development of national consciousness. This is due to its link to historical tradition (throwing off the Turkish yoke) and to national symbols (the cross on the flag). However, it is not an intrinsic element of the national identity because the modern Greek state has the ability to assimilate, ethnically, socially, and culturally, all those who are not Christian Orthodox (Muslim minority in Thrace, economic immigrants, refugees, spouses of Greeks, etc.), and make them feel that this piece of land is their own homeland.

The teaching of the Orthodox faith through the class on religion thus becomes an alternative means of instilling national consciousness, which is, at least at the European level, wholly unique. Given that, according to ECtHR, each contracting state is free to include in its curricula the teaching of religious lessons according to doctrines espoused by religious minorities, there are no grounds for unfair discrimination against non-Orthodox populations in Greece.

One more point must be made at this juncture: the constitution does not mandate compulsory classes on religion. This means that there are two widely accepted possibilities: both the inclusion of classes on religion of a denominational nature and the removal of said classes from the curriculum are completely in keeping with Greece's constitution³⁶. The incorporation in the curriculum of classes on religion is the primary administrative act that "implements" the corresponding provision of Article 16 (2) regarding the development of Orthodox religious consciousness, i.e., with classes of a denominational nature. This interpretation is in keeping with the Council of State case law according to which the inclusion in the regular school curriculum of classes on religion is at the substantive discretion of the administration and is not subject to judicial assessment within the context of the separation of powers³⁷.

5. Conclusions

In Greece, the development of religious consciousness in the younger generations through corresponding changes to school curricula is a substantive assessment of the legislature and the regulatory administration that is not subject to judicial review. This aspect had been relatively neglected (especially by those who have criticized the relevant rulings). Indeed, recent legislative practice³⁸ has demonstrated that religious consciousness may also be developed through implementation of celebratory events of a religious nature, given that the class on religion is merely a means and not a prerequisite for the development of a particular religious consciousness.

While abolishing the class is legally possible, such an act will cause significant political fallout given that a majority of the population has been brought up on Christian values and traditions and thus expresses conservative or, more correctly, Christian-centric beliefs. As Carolyn Evans argued, "*to exclude religion from the curriculum is as offensive to one set of parents as including it is to another set*" (Evans 2008, p. 458). However, as long as classes on religion are included in school curricula, their content must be of a denominational nature, according to the correct interpretation of the constitution. Indeed, this singular focus is a hallmark of teaching of both the Catholic and the Muslim faiths. As such, does it not constitute a violation of the principle of equality in the provision of state education for classes on Orthodoxy to be taught in a pluralistic manner, when students of other doctrines

maintain the “*privilege*” of being taught doctrines that are in keeping with their parents’ religious convictions in their corresponding classes?

The preservation of the provision of Article 3 (1) of the constitution regarding the prevailing religion “*safeguards*” the denominational nature of the class, to the extent that the state wishes to maintain it as an intrinsic part of school curricula. This denominational nature is, by definition, consistent with the religious convictions of (the majority of) parents, a fact that guarantees the perpetuation of these convictions to the extent that they wish them to be perpetuated. In summary, the enshrinement in the constitution of the Orthodox faith as the prevailing religion means that the state must take specific actions to support this religious doctrine. This means that, to the extent that including classes on religion in school curricula achieves this objective, the rights of the Orthodox Christian majority³⁹, particularly their dependent (minor) family members⁴⁰, as enshrined in article 2 (2) of the First Additional Protocol to the ECHR, are protected.

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Notes

- ¹ See, CE, judgement du 28 janvier 1955, Sieurs Aubrun et Villechenoux, CE, judgement of 28 janvier 1955, Association professionnelle des aumôniers de l’enseignement public. CE, judgement du 04 novembre 1994, Abbé Chalumey. CE, judgement du 16 mars 2005, Ministre de l’Outre-mer c/Gouvernement de Polynésie française. CE, Sect., 9 octobre 1992, Commune de Saint-Louis c/Association Siva Soupramanien de Saint-Louis, available on Lebon database.
- ² Despite its undeniable secular character, France has a sizeable state-funded Catholic school sector and state-maintained church buildings.
- ³ Article 1 of the Constitution of the 5th French Republic: “*France shall be an indivisible, secular, democratic and social Republic*”. In fact, in 2004, the Conseil Constitutionnel clarified that these provisions “*forbid any individual to use their religious beliefs to supersede the common rules which govern the relations between public authorities and individuals*”. CC judgement no. 2004-505 DC du 19 novembre 2004, *Traité établissant une Constitution pour l’Europe*. CC décision no. 2010-613 DC du 07 octobre 2010, Loi interdisant la dissimulation du visage dans l’espace public, both available on: <https://www.conseil-constitutionnel.fr/decisions> (accessed on 26 May 2023).
- ⁴ Namely, the Lateran Pact (Patti Lateranensi), signed in 1929 by the (then-fascist) Italian Government and the Vatican State. This treaty also contained provisions for compensation of the Vatican for the loss of the papal states (Stato Pontificio), and was enshrined in the Constitution (article 7) in 1947.
- ⁵ Article in the newspaper “*Kathimerini*”, *The political “verses” in the Religious*, 5.09.2022
- ⁶ See the Council of State judgement no. 2176/1998, Nomos Database.
- ⁷ Proceedings of the Fifth Revisionary Parliament, Proposal of Minister of Education Zeppos, p. 173 ff.
- ⁸ Council of the State, judgement no 2336/1980, Nomos database. Cf. Legal Council of the State, opinion no 390/2003, Nomos database: *No permission is required from the Chief of the Hellenic Police for the ordainment of an officer as a priest and his execution of duties related to religious services, as such permissions are given only for “paid” work. According to the Holy Canons, there is an incompatibility between an individual’s status as a member of the police force and their status as a cleric, which is addressed by the competent Metropolitan before ordainment. If a member of the police force is ordained by the competent Metropolitan despite the existence of said incompatibility, they must wear the appropriate uniform as specified by the Law when executing their duties as a member of the police force*, Nomos database.
- ⁹ Council of the State, judgement no 2569/1991, Nomos database, which ruled that clerics and monks may not be issued a license to carry a firearm, given that this contravenes the process of love that is fundamental to the Orthodox Church (with a minority dissenting opinion), Nomos database.
- ¹⁰ Council of the State, judgement no 3356/1995, Nomos database. Protection of religious freedom and education according to the Constitution. A student’s refusal to say the morning prayer in public is justified, Nomos database.
- ¹¹ Article 16 § 2 of the 1952 Constitution stated that: “*Education in all secondary and primary education institutes must aim at ethical and spiritual development as well as the development of national consciousness in the youth in accordance with the ideology of Hellenic and Christian civilisation*”.

- Due to the coexistence of populations that observe different religious doctrines on the islands of Tinos and Syros, Catholic theologians are employed in the islands' public schools, who teach religion to Catholic children.
- Ministerial Decision no. 182721/A3/29.11.2013 established voluntary participation in Quran classes for Muslim students enrolled in public schools in Thrace as well as the right of parents or guardians to freely allow their children to participate in these classes.
- The most recent census, carried out in 2021, does not provide official statistics regarding the exact number of Orthodox Christians. However, according to a report dated 5.01.2010 of the European Education and Culture Executive Agency: "... the great majority of Greeks are affiliated with the Orthodox Church and is therefore not a "state religion" or "official religion". Available online: <https://eurydice.eacea.ec.europa.eu/national-education-systems/greece/population-demographic-situation-languages-and-religions> (accessed on 26 May 2023).
- Council of the State, judgement nos. 2279-2285/2001, Nomos database.
- Council of the State, judgement no. 2176/1998, Nomos database.
- The revision to Article 3 proposed by the opposition was as follows: 1. *The Hellenic Republic is religiously neutral. The prevailing religion in Greece is the Orthodox Church, which is an integral part of the Ecumenical Patriarchate of Constantinople and every other Orthodox Church and maintains the Laws of the Apostles and the Ecumenical Councils and the ecclesiastic traditions. The Hellenic Orthodox Church is autocephalous and is governed in accordance with its Constitution, the Patriarchal Tomos of 1850 and the Synodal Act of 1928. The ecclesiastical status of Crete and of the Dodecanese are not contrary to the above provisions.* However, this proposal was not adopted by the revisionary Parliament, with the relevant vote on 25 November 2019 producing the following results: in favour of: 83, against: 190, present: 24
- MPs swearing their oaths before the archbishop, the National holiday of 25 March coinciding with the feast day of the Annunciation, the presence of the President of the Republic at the Easter Resurrection Service, the celebrations for the birth of the Theotokos, etc.
- Council of the State, judgement nos. 1750/2019, 3533/1986, 3356/1995, Nomos database.
- Council of the State, judgement no. 660/2018, par. 14. Contra, G. Stavropoulos, "*The decision ... erroneously interprets article 3 of the Constitution, which itself merely serves as a recognition of the fact that the majority of Greeks adhere to said religion, while the purpose of the article is to regulate the relations between the Church of Greece with the Ecumenical Patriarchate*" (Stavropoulos 2018).
- Also proposed but not voted for were revisions to Articles 13, 33, and 59 to include the choice for individuals appointed or elected to public offices to swear civil oaths and delineate the relations between church and state.
- General Makriyannis, a hero of the Greek War of Independence, wrote the following in his memoirs: "*The sweetest thing of all is the fatherland and religion*".
- G. Gerapetritis, Minister of State, Parliament Minutes, 18 November 2019.
- Baptism of infants is a violation of the right to religious liberty, to the extent that the baptised is inducted into an organised church without having decided, wanted and consented to such an act. Indeed, at such young ages consent is objectively impossible* (see Papadopoulou 2019, p. 74).
- Council of the State, judgement no. 100/2017.
- Right to education: "*No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions*".
- Preparatory work on Article 2 of the Protocol to the Convention. Information document prepared by the registry of the Court. Document available online: [https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-P1-2-CDH\(67\)2-BIL2292567.pdf](https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-P1-2-CDH(67)2-BIL2292567.pdf) (accessed on 26 May 2023). See also 40 *Mothers v. Sweden*, no. 6853/74 (admissibility decision), 9 March 1977.
- See *D.H. v. Czech Republic*, no 57325/00, 13 November 2007, § 183. *Sampanis and Others v. Greece*, no. 32526/05, 5 September 2008, § 85.
- Cyprus v. Turkey*, no. 25781/94, 10 May 2001, § 277–280, which ruled that Greek Cypriot students who complete their primary education in Greek must have access to a Greek secondary education study program. The abolition of such programs essentially amounted to a denial of the right to education.
- See *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, no. 5095/71; 5920/72; 5926/72, 7 December 1976, § 53: "*It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education program...The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded*". *Valsamis v. Greece*, no. 21787/93, 18 December 1996, § 27. *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, 9 October 2017, § 51.
- See *Appel-Irrgang and Others v. Germany*, no. 45216, 6 October 2009.
- For example, the *Flat Earth Society*, which has thousands of members across the globe, espouses the theory that the earth is flat, a conviction directly contradicted by fundamental principles of mathematics and physics. As such, educational systems are under no obligation to present and analyze the theory to their students. An exceptionally topical ruling on this issue is *Vérités Santé Pratique Sarl v. France*, no. 74766/01, 1 December 2005, which, among other findings, established that certain experimental therapeutic approaches not based on scientific/laboratory findings were dangerous for patients' health and rehabilitation.

Therefore, by analogous application, it would be safe to assume that if certain convictions espoused by parents contradict common logic or objective scientific facts, State educational policy is under no obligation to present these convictions as part of a pluralistic system of knowledge/information transmission.

See, *Campbell and Cosans v. United Kingdom*, no. 7743/76, 25 February 1982, § 36.

Konrad and Others v. Germany (admissibility decision), referring to Kjeldsen, Busk, Madsen & Pedersen, § 50.

The doctrine, closely linked in practice to the principle of subsidiarity, is based on the Court's assumption that "By reason of their direct and continuous contact with the vital forces of their countries, state authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the 'necessity' of a 'restriction' or 'penalty' intended to meet them". *Handyside v. United Kingdom*, no. 5493/72, 7 December 1976, § 48.

See Council of the State, judgement no. 614/2004.

Council of the State, judgement no. 2176/1998: Whereas also according to the above provisions, in order for the provision of article 16 par. 2 of the Constitution to be applicable and for the "development", at least to an adequate extent, of students' religious convictions in accordance with the principles of the Orthodox Christian faith to be made possible, the State must, by implementing the appropriate legislative and regulatory measures, ensure that students are taught the above described class on Religion, for a duration in hours per week which has already been established [CoS 3356/95]. And it is a fact that the Administration is substantively responsible for establishing the hours per week for teaching classes on religion.

Greek Ministry of Education and Religious Affairs circular under protocol number Φ1/3495/ΓΔ4/10-1-2020: "Please be informed that on 30 January, the feast day of the Three Hierarchs, celebratory events are to be held at (public and private) schools of Primary and Secondary Education in honor of the Three Hierarchs' contributions to Learning, together with visits to church at the discretion of the Teachers' Association and if conditions are favorable. The school curriculum will remain otherwise unchanged".

This is true for those who espouse a different faith (primarily Catholics and Muslims), whose children are taught the relevant doctrines in classes of a denominational nature.

However, these actions must not burden parents with obligations that violate the negative aspect of the right to freedom of expression. See *Papageorgiou and Others v. Greece*, nos. 4762/18 and 6140/18, 31 October 2019, § 89–90: "In the above-mentioned cases the Court stated that the freedom to manifest one's beliefs also contained a negative aspect, namely the individual's right not to manifest his or her religion or religious beliefs and not to be obliged to act in such a way as to enable conclusions to be drawn as to whether he or she held—or did not hold—such beliefs. The State authorities did not have the right to intervene in the sphere of individual conscience and to ascertain individuals' religious beliefs or oblige them to reveal their beliefs concerning spiritual matters. Having regard to the foregoing, the Court dismisses the Government's objection of non-exhaustion as regards the applicants' omission to use the exemption procedure and concludes that there has been a breach of their rights under the second sentence of Article 2 of Protocol No. 1, as interpreted in the light of Article 9 of the Convention".

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