HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

Neofytou Vamva 6 (3rd floor), GR 106 74 Athens, Greece, Tel: +30 210 7233221-2;
fax: +30 210 7233217; e-mail: info@nchr.gr, website: www.nchr.gr

Recommendations Regarding Freedom of Religion with Special Emphasis on Compliance of Greece with the ECtHR Judgments*

The case law of the European Court of Human Rights concerning Greece since 1985, the year in which the right of individual recourse was recognised, has to do, *inter alia*, with the important issue of the protection of religious alterity, which has preoccupied the Greek courts and Greek legal theory for a particularly long period. It is instructive that up to the present (1 March 2001) a total of 69 judgments have been issued involving Greece, of which 16 concern religious matters.

The present report seeks to present legislative and other proposals for the full harmonisation of the Greek legal order and the practice of the administration with the Strasbourg *acquis*.

I. The question of proselytism

The hearing by the Court of the application of *Minos Kokkinakis*[1] in 1993 (which raised for the first time questions of religious freedom in the case law of this international jurisdictional organ) brought before

* Rapporteurs: Assistant Professor L.-A. Sicilianos, Alternate Chair of Sub-commission A of the NCHR, and G. Ktistakis, Legal Officer of the NCHR. Published in *Syntagma* 3/2001, 649.

[1] EurCHR, *Kokkinakis* judgment, 25.5.1993, série A, No. 260-A.

Strasbourg the issue of proselytism.[2] Subsequently, in the case of *Larisis et al.*,[3] the same issue arose afresh.

In the view of the Court, the Greek courts had contented themselves simply with reproducing the terms of the relevant provision, without determining convincingly in what way the accused had attempted to convert those of another faith by abusive means. Consequently, the convictions of the applicants for their contacts with these citizens were not justified and the invocation of the need to protect the rights and freedoms of the other persons - the 'victims' - was not sufficient. Greece was convicted in both cases.

The Committee of Ministers of the Council of Europe, in examining the execution of the *Kokkinakis* judgment (Résolution DH (97) 576), accepted the assurances of Greece that, on the one hand, public prosecutors and the country's criminal courts had been informed of the content of the Strasbourg judgments and, on the other, had adapted their case law to these judgments, with the result that between 1994 and 1997 there were only two convictions for the proselytism of minors.

The adjustment of the Greek judicial authorities to the judgments of Strasbourg was also confirmed by Bill of *Nolle Prosequi* 183/1994 of the Council of Magistrate's Court Judges (Symvoulio Pliomeliodikon) of Larisa (unpublished), which referred expressly to the *Kokkinakis* judgment.

Nevertheless, the legislative framework concerning proselytism goes back to the period of the Metaxas dictatorship and is seen as a considerable anachronism. As Judge Martens observed in the *Kokkinakis* case, the law's reference to the "simple-mindedness" and the "inexperience" of the 'victims' of proselytism is redolent of conditions in

---

[2] Article 4 of Emergency Law 1363 of 15 August 1938 'concerning the confirmation of provisions of Articles 1 and 2 of the Constitution in force' (*Official Journal of the Hellenic Republic* A 305/3.9.1938). Article 2 of Emergency Law 1672 of 22 March 1939 'concerning the amendment of Emergency Law 1363/1938, etc.' (*OJHR* A 123/29.3.1939).

[3] EurCHR, *Larisis et al.* judgment, 24.2.1998, *Receuil* 1998-I.

another age and underestimates the level of intelligence of the average Greek citizen.[4] A reference to the disturbing side-effects of the law is contained in the report on Greece of Prof. A. Amor, special rapporteur of the Human Rights Committee of the United Nations on the implementation of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* in Greece.

A typical point as to the anachronistic character of the law on proselytism (Article 4 of Emergency Law 1363/1938)[5] is its title: "Concerning confirmation of provisions of Articles 1 and 2 of the Constitution in force", that is, of the Constitution of 1911 which had been brought back into force; this introduced a prohibition of proselytism only at the expense of the prevailing religion and not of other religions or denominations. Thus the penal legislator of 1938 had a purpose other than that which the constitutional legislator of 1975 regarded as tolerable.[6]

It is a well-known fact that by means of the Constitution of 1975 the prohibition of proselytism at the expense of any "known" religion and not only that of the prevailing religion acquired constitutional grounding (Article 13, para. 2).[7] It is also well-known that no other constitutional or

---

[4] The Court of Cassation of Areios Pagos relied in at least three instances on the low level of education of the potential convert in order to conclude that there was inexperience, intellectual weakness and simple-mindedness [AP 997/1975 (*PoinChr* ΚΣΤ, p. 380); AP 1035/1975 (*PoinChr* ΚΣΤ, p. 391); AP 238/1979 (*PoinChr* ΚΘ)]. The same was argued in the *Kokkinakis* case about a potential convert who was the wife of a church cantor.

[5] As amended by Article 2, para. 2 of Emergency Law 1672/1939, which also relieved the original wording of Article 4 of its "repetitive verbosity", in the words of Prof. P. Vegleris. Article 2, para. 2 of Emergency Law 1672/1939 lays down the following: "*Proselytism is particularly the direct or indirect attempt, by means of benefits of any nature or by the promise of such or of other moral or material inducement, by means of deception, by the abuse of inexperience or trust or by the exploitation of need, weakness of intelligence or simple-mindedness, to infiltrate the religious feelings of those of another belief with a view to altering their content.*"

[6] The criticisms in connection with the Constitution of 1952 expressed as to the Metaxas law on proselytism by A. Svolos - G. Vlachos in their classic work *Το Σύνταγμα της Ελλάδας* [The Constitution of Greece], p. 34, are typical. During the work of the Vth Constutional Revision Parliament, the complete striking out of the provision on proselytism was sought. See Hellenic Parliament, Official Minutes of the Plenum of the 1975 Constitution Committee, Athens 1975, pp. 400, 405 and 408.

[7] According to one view, the constitutional provision prohibiting proselytism should be removed (see M. Stathopoulos, Η συνταγματική κατοχύρωση της θρησκευτικής ελευθερίας

legislative text of a Western European state includes a provision banning proselytism.[8] It is generally accepted that the concept of 'heretic' has no legal significance in human rights law, given the freedom of every individual to profess whatever set of beliefs or religion he/she wishes, and even to be an atheist, as well as the right to alter his/her religious beliefs or to express them as he/she sees fit.

It would therefore be incumbent upon the State to rescind the provisions in force as to proselytism and to create a new framework for the protection of citizens adapted to contemporary circumstances and modern needs.[9]

The good protected today should be the free thought and will of the individual. Certain new religious movements may be dangerous to the extent that they restrict the free thought and will of the individual in general - sometimes to the point of influencing their 'devotees' to commit criminal offences - and not exclusively and only his/her religious feelings. The major value, therefore, of the free thought and will of the individual is what is chiefly threatened today and not simply and only one of its constituents. The constitutional grounding of the new framework for protection should be realised with the right to free development of the personality as a main criterion, without, of course, the more particular aspects of the right in question being overlooked. Nevertheless, in any event, what has priority is the abolition of the anachronistic provisions on proselytism.

και οι σχέσεις κράτους-πολιτείας [The constitutional safeguarding of religious freedom and state-political system relations] in D. Christopoulos (ed.), *Νομικά ζητήματα θρησκευτικής ετερότητας* [Legal issues of religious alterity], Kritiki-KEMO publications, Athens 1999, pp. 199-224, particularly p. 216). However, it is a fact that the specific provision has not been included amongst those to be revised.

[8] See the detailed report by European country of the Law Library of Congress of the USA, updated to 2000; also the article by A. Garay, 'Liberté religieuse et prosélytisme: l' expérience européenne', *RTDH* 1994, pp. 7 - 29.

[9] See, in the same spirit, E. Venizelos, *Οι σχέσεις Κράτους-Εκκλησίας* [State-Church relations], Paratiritis publications, 2000. See also A. Yotopoulos-Marangopoulos, 'La liberté religieuse dans un monde multiculturel', in Marangopoulos Foundation for Human Rights, *Annales*, A.N. Sakkoulas, 1991, particularly pp. 112 - 115.

II. The obstacles to the foundation of churches and houses of prayer

The Metaxas legislation on the founding and operation of churches and houses of prayer[10] is the second important issue which has concerned the Strasbourg Court in three interesting judgments on Jehovah's Witnesses (*Manousakis et al.,*[11] *Pentidis et al.,*[12] *Tsavachidis*[13]).

In the *Manousakis et al.* judgment, the Court did not accept the Greek arguments as to the delay on the part of the administration in examining the application for the operation of a house of prayer within a three-month time-limit, nor did it consider the national legal recourses effective for the remedying of this delay. The conviction of the applicants for the operation of the house of prayer was assessed by the Court to be an unjustified - in the light of the European Human Rights Convention - intervention in the manifestation of their religious feelings. In the other two cases, Greece granted the licence before the case was heard (*Pentidis*) and reached a friendly settlement (*Tsavachidis*).

In a Memorandum in this connection of the Directorate for Human Rights of the Council of Europe to the Greek Government (14-5-1998), the following observations were made on the execution of the judgments:

1. The margin for assessment of the Minister of Education, who is competent in law for the examination of the existence of "substantive reasons" and for approving an application for the founding and operation of a church or house of prayer, is excessively broad.

2. The absence from the law of an express time-limit for the Minister of Education to reply to the application for the foundation and

---

[10] Article 1 of Emergency Law 1363 of 15 August 1938 'concerning the confirmation of provisions of Articles 1 and 2 of the Constitution in force' (*OJHR* A 305/3.9.1938). Article 1 of Emergency Law 1672 of 22 March 1939 'concerning the amendment of Emergency Law 1363/1938, etc.' (*OJHR* A 123/29.3.1939). Article 1, paras 1 and 3 of Royal Decree 20.5/2-6-1939 'concerning the execution of the provisions of Emergency Law 1672/1939'.

[11] EurCHR, *Manousakis* judgment, 26.9.1996, *Receuil* 1996-IV.

[12] EurCHR, *Pentidis et al.* judgment, 19.3.1997, *Receuil* 1997-III.

[13] EurCHR, *Tsavachidis* judgment, 21.1.1999.

operation of a church or house of prayer is of importance. There should be a legislative initiative as to a provision in this connection.

3. The Greek Government is responsible for the briefing of the Greek courts on the content of the *Manousakis* judgment and its implementation by Greek justice.

In reply, the Greek Government (31-7-1998) stressed that, on the one hand, it had informed the competent courts of the case law of Strasbourg and, on the other, that there is no margin for assessment on the part of the Minister of Education if the three prerequisites set by Article 13, para. 2 of the Constitution (known religion, no outrage of good morals, and no practice of proselytism) are fulfilled. It quotes in this connection Judgment 1543/1995 of the Council of State in order to point out that there is no question of a time-limit for the reply of the Minister in the case of an application for a licence because after the elapse of a three-month period without action being taken, the applicant may admissibly have recourse to the Council of State against the tacit refusal of the Minister to grant it.

In a new Memorandum (14-9-2000), the Directorate for Human Rights of the Council of Europe, with reference to the *Manousakis* judgment, argued that even if the applicant is vindicated by the Council of State, practice proves that the relevant judgment is not always executed by the Administration, with the result that the relevant licence for the operation of a house of prayer is not granted, and in the event of the latter coming into operation without the licence required, the case is referred to the criminal courts.

The question of the foundation of a house of prayer has been examined by the Council of State (CS 865/1997, unpublished). The applicant for the setting up of a house of prayer of the Apostolic Church of the Rosicrucian Roman Orthodox had submitted the relevant application to the Ministry of Education in 1988; this had been rejected because a relevant opinion of the Holy Synod of the Church of Greece maintained

that this was not a 'known' religion. The Council of State held the decision of rejection to be "insufficiently reasoned" and quashed it.

Nevertheless, the need for a change in the legislative framework and its harmonisation with the content of the *Manousakis et al.* judgment is judged to be necessary at present for two reasons:

1. The Court has not left much scope for the compatibility of the legislative framework in force with the European Human Rights Convention:

"*Emergency Law No. 1363/1938 and the Royal Decree of 20 May/2 June 1939, which concerns churches and houses of prayer which do not belong to the Orthodox Church of Greece, permit a major intervention of the political, administrative and ecclesiastical authorities in the exercise of religious freedom. Added to the numerous formal prerequisites which are stipulated by Article 1, paragraphs 1 and 3 of the decree, certain of which award to the police authority, the mayor and the president of the commune a very large margin of assessment, is the scope given in practice to the Minister of National Education and Religious Affairs to postpone his reply indefinitely - given that the decree does not provide for any time-limit - or to refuse the licence without lawful justification or reason. In this connection, the Court holds that the decree renders the Minister competent - particularly when he is to establish whether the number of those seeking a licence corresponds to that stated in the decree (Article 1, para. 1 (a)) - with a view to his assessing the existence of an "actual need" on the part of the applicant religious community for the foundation of a church (para. 47).*

The Court notes that the Council of State, in monitoring the legality of refusals of a licence, has elaborated a case law which limits the power of the Minister on this issue and awards to the local ecclesiastical authority a purely advisory competence.

The right to religious freedom, as that is enshrined in the European Human Rights Convention, precludes any assessment on the part of the state as to the legality of religious convictions or as to the ways in which these are expressed. Consequently, the Court holds that the licence system

which was introduced by Emergency Law No. 1363/1938 and the Royal Decree of 20 May/2 June 1939 is not compatible with Article 9 of the European Human Rights Convention except to the extent that it aims at ensuring a check by the Minister on the fulfilment of the formal prerequisites which are required by the above legislative regulations. It emerges from the file, and from the numerous cases which have been reported by the applicants, and which have not been disputed by the Government, that the Greek state uses the scope of the above provisions in such a way as to impose strict or even prohibitive conditions on the worship of certain non-Orthodox religions, particularly Jehovah's Witnesses. Certainly the Council of State quashes, by reason of a lack of justification, any unjustified refusal of a licence, but the abundant case law on this issue seems to show a distinct tendency on the part of the administrative and ecclesiastical authorities to use the possibilities afforded by these provisions in order to restrict the activities of non-Orthodox religions." (paras 48 - 49)

2. The practice of the Greek administration, as that can also be seen from the recent attempt to obstruct the operation of the house of prayer of the Jehovah's Witnesses in the region of Kassandreia, Chalcidice, and the relevant intervention of the Ombudsman (3-8-00), is not in harmony with the case law of Strasbourg.

Finally, it is instructive that four years after the issuing of the *Manousakis et al.* judgment, no resolution of the Committee of Ministers of the Council of Europe to confirm the execution of the judgment by Greece has been issued. In other words, the matter remains pending before the Council of Ministers, awaiting an overall legislative regulation of the issue.

As has been concluded, the European Human Rights Court has not left much scope for the compatibility of the Metaxas legislation on the founding and operation of churches and houses of prayer with the European Human Rights Convention.

The abolition of the criminalisation of the building or bringing into operation of a church or house of prayer of a non-Orthodox denomination

or religion is proposed. At the same time, it is proposed that Article 1, paras 1 and 3 of the Royal Decree of 20.5/2.6.1939, which lays down the prerequisites for the issuing by the Minister of Education and Religious Affairs of the licence stipulated for the building or operation of churches be rescinded.[14] As a sole prerequisite, the planning licence should be retained, on condition of respect for the principle of equality in the exercise of religious freedom.

III. The treatment of the Muslim minority of Western Thrace

Thorny issues concerning the political representation of the Muslim minority of Western Thrace have reached Strasbourg, without, however, there being a final judgment of the Court as to the substance. The matter concerns four applications centring chiefly on the activities of Ahmet Sadik and his fellow-candidates.[15]

However, in late 1999, the *Sadik* judgment was issued; this convicted Greece of a violation of religious freedom. The applicant had sought as of 1990 the position of Mufti of Rodopi. In 1990, the manner of appointment of the Mufti changed: he was now appointed by the Minister of Education and Religious Affairs on the proposal of a committee consisting of the Prefect and a number of representatives of the minority selected by the state.[16] The new regulations and the person who was finally appointed as Mufti of Rodopi did not satisfy a dynamic section of the minority, who wanted, and finally organised, elections for the same position as Mufti, which were won by the appellant. Because of this election, the latter found himself accused of usurpation of the exercise of

[14] In the same direction: M. Stathopoulos, Η συνταγματική κατοχύρωση της θρησκευτικής ελευθερίας και οι σχέσεις κράτους-πολιτείας, *op. cit.*, p. 218.

[15] The first had to do with pre-election material and the use of the term 'Turk' and 'Turkish minority' in the case of Western Thrace. The second concerned denunciations of neglect of the minority by the central administration, while the third recourse had as its subject the minimum limit (3%) for admission of political parties to the Greek Parliament. The fourth recourse was lodged by a joint candidate with Sadik who was charged with attempted buying of votes in the elections of 1989 in Xanthi.

[16] Act of Legislative Content of 24 December 1990 and Law 1920/1991.

the duties of a minister of the Muslim religion, and, after many judicial vicissitudes, was sentenced to six months' imprisonment - a sentence which could be commuted to a fine.

There are two points in the Strasbourg judgment which give rise to serious reflection.

To begin with, the Court was critical of the competences of the religious organs functioning in Greece: "*The Court notes that although Article 9 of the Convention does not require States to lend consequences in law to religious marriages and to the decisions of religious courts, according to Greek law, marriages which are solemnised by ministers of 'known religions' are made equivalent to civil marriages, and the Muftis have competence to pronounce on specific family and inheritance disputes between Muslims. In some cases, it may be accepted that it is to the public benefit for the State to take special measures with a view to protecting those citizens whose relations in law may be affected by acts of fraud on the part of religious functionaries. Nevertheless, the Court does not regard it as necessary to decide on this question, which, in any event, does not concern the case of the appellant.*"

At another point, the Court touched on the issue of the intervention of the State in matters of the break-up of religious communities: "*Although the Court recognises that it is probable that tension will arise in instances where a religious or other community breaks up, it believes that this break-up is one of the inevitable consequences of pluralism. The role of the authorities in such cases is not to eliminate the cause of the tension by eliminating pluralism, but to ensure toleration between the competing groups. In relation to this, the Court notes that, over and above a general reference to the creation of tension, the Greek Government has made no suggestion of disturbances among the Muslims in Rodopi which have already or could be caused by reason of the co-existence of two religious leaders.*"

In other words, the decision of the Court in the *Serif* case raises directly, on the one hand, the issue of the appointment of the Mufti - in

conjunction with the country's treaty obligations - and, on the other, the problem of the competences of the Mufti in relation to the right to a fair trial. It is indeed curious, to say the least, that in Greece in the twenty-first century, Islamic law should continue to be applied, by way of deviation from the provisions of the Civil Code at a time, moreover, when this is not the case even in Turkey or in certain other Muslim countries. The abolition of the jurisdictional and administrative competences of the Mufti and a restriction of his religious duties is, in our opinion, a measure to modernise the institution which is called for in view of the commitments of Article 20 of the Greek Constitution (right to provision of protection in law) and of Article 6 of the European Human Rights Convention (right to a fair trial).

It is in precisely this direction that the very recent Judgment 405/2000 of the Single-Member Court of First Instance of Thiva (2-11-2000) is moving;[17] this renders an issue of family law of a Muslim, a permanent resident of Viotia, subject to the regular civil courts, invoking precisely the Constitution and the European Human Rights Convention.
What is proposed is the briefing of the civil judges as to the specific judgment and more broadly as to the conflict between the exercise of jurisdictional competences by the Mufti with the Constitution and the European Human Rights Convention in whatever way the leadership of the Court of Cassation of Areios Pagos thinks suitable.

On the issues of the appointment of the Mufti, it is proposed that he be chosen by a decision of the Minister of Education from a list of three candidates proposed by the Muslim community.

---

[17] See K. Tsitselikis, Ο Μουφτής ως Ιεροδίκης. Με αφορμή την απόφαση 305/2000 του Μον. Πρωτ. Θήβας [The Mufti as a religious judge. On the occasion of Judgment 305/2000 of the Single-Member Court of First Instance of Thiva], *NoB* (2001), pp. 583 *et seq.*

IV. Prohibition of discrimination against religious communities

The *Thlimmenos* judgment (6-4-00) highlights an important dimension of the issue of conscientious objectors. The appellant had been convicted by the courts martial for refusing enlistment in the army for reasons of religious conscience (Jehovah's Witness). Some years afterwards, he was faced with the refusal of the Institute of Certified Accountants to enter him on their register in spite of the fact that he had been successful in the relevant examinations, because his criminal record bore this conviction.

The Court concluded unanimously that there was a violation of the right of religious freedom in conjunction with a violation of the prohibition of discrimination on grounds of religion. It interpreted, that is to say, the prohibition of discrimination of grounds of religion in such a way that an obligation on the State to take special measures for the benefit of religious communities in order to be in harmony with the content of the provision of the European Human Rights Convention resulted: "*The right not to suffer discrimination in the enjoyment of the rights which stem from the European Human Rights Convention is also violated when States without objective or reasonable justification fail to treat differently individuals which situation is obviously different.*" (para. 44)

What directly emerges from the *Thlimmenos* judgment is the need for the supplementation of the already existing legislative framework on conscientious objectors so that those who have been convicted by the courts martial because of their religious beliefs before the coming into force of the law on conscientious objectors should not have the relevant note in their criminal record, as this is a permanent obstacle in their everyday, and particularly in their professional, life.

The following wording is proposed:

"1. Penalties which have been imposed for the military offence of disobedience and refusal to enlist up to the coming into force of Law 2510/97 on these eligible for call-up who refused miltary service, invoking

their religious or philosophical convictions, shall put struck off the criminal record provided that they have in any way served the sentence imposed upon them. For the purposes of this article, the sentence shall be deemed to have been served in full at the time when the convicted person was conditionally discharged from prison.

2. Consequences of any kind of the convictions imposed for the above reasons on the persons and on the conditions determined in the preceding paragraph shall be cancelled. The cancellation of the consequences of the above convictions shall include particularly the possibility of these persons being appointed to the public sector on the same conditions which have force for every citizen who has discharged his military obligations."

1 March 2001