

Greece: A Faithful Orthodox Christian State THE ORTHODOX CHURCH IN THE HELLENIC REPUBLIC

I. THE SYSTEM OF CHURCH-STATE RELATIONS

The 1821 War of Independence of the Hellenes against the Ottoman Empire ended in 1828 when Greece was organized into a State, with Ioannis Kapodistrias (1828-31) as its president. Greece's independence was recognized internationally by the London Protocol on 28 February 1830, which also established a monarchy. Otto, the second-born son of the King of Bavaria, Ludwig I, was chosen as king and came to Greece in January 1833. However, because he was still a minor, a three-member regency made up of Bavarian officials ruled Greece until 1835. Otto was a paradoxical combination of a Greek nationalist and an authoritarian sovereign. After the revolution of 3 September 1843, the Constitution (henceforth C) of 1844 was promulgated.

The kingdom of Greece extended over Central Greece (Roumeli), the Peloponnese, and the islands of the Cyclades. These provinces, as well as the whole Balkan Peninsula and Asia Minor, were under the religious jurisdiction of the Ecumenical Patriarchate of Constantinople, which is first in preeminence in the Eastern Orthodox Church. The Christian Orthodox religion was espoused by the overwhelming majority of the Greek people and was also the traditional religion. The cultural roots of both Byzantine and modern Greece cannot be separated from Orthodoxy. Therefore, it was natural for the Cs adopted during the War of Independence to make special references in favor of the Orthodox Church.¹

The Cs of the revolutionary period established the Eastern Orthodox Church as the "prevailing" religion or "religion of the State," with a concurrent guarantee of tolerance towards the exercise of their religious duties by the followers of any other cult or religion. The C of the National Conference in Trezene in 1827 also added that "the Clergy according to the Rules of our Holy and Divine Church does not get involved in any public office."²

The revolutionary Cs, however, did not address the State's right to legislate in ecclesiastical matters. The provisions referring to religion were characterized by the drafters' self-restraint in not intervening in matters of the Church. The sole exception was a bestowal of special protection to the prevailing religion, but without a concurrent bestowal of such protection to other cults and denominations. The Cs introduced a system of "coordination" of relations between the State and the Orthodox Church. Each handled its own affairs and cooperated only in matters of common interest. The revolutionaries of 1821 had conceived of "coordination;" this system would be further expanded a few decades later in the West between various States and the Catholic Church by means of concordats.

The system of coordination of the democratic Cs of the period from 1822 to 1827, as well as communal self-administration – directly related to parishes – was set aside by the Bavarian regency. The regency introduced a more specific form of State supremacy into church-state relations: the system of "state-law" rule over the Orthodox Church. This system has been in effect in Greece since publication of a decree of 3 April 1833, which stated that "the establishment of Synodal Authorities, the supervision of their acts and the publication of the decisions issued thereof," and "the royal rights in reference to the appointment to Church offices and to the permission for the ordination of priests and

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¹ For this period, see Ch. A. Frazee, *The Orthodox Church and Independent Greece, 1821-1852*, Cambridge: Cambridge University Press, 1969.

² 1827 Syntagma [SYN] [Constitution] (Greece), art. 24.

deacons” were under the jurisdiction of the “Secretariat [Ministry] of Ecclesiastical Affairs and Public Education.”¹

In a more distinct manner, the same framework of church-state relations was repeated in the regency’s declaration of 23 July/4 August 1833, “[o]n the Independence of the Greek Church,”² which was planned to cause significant damage to Hellenic national interests in the regions of the Balkans and the Near East. The declaration established the state as the exclusive legislative authority of the Church and made the Church a pawn in the hands of the monarch by declaring that the Orthodox Church of Greece did not recognize “in spirit any other head than the founder of the Christian Faith, our Lord and Savior Jesus Christ, while as regards administrative aspects having the King of Greece as its leader.”³ It was also determined that the “supreme Ecclesiastical power lies in the hands of the Synod, under the sovereignty of the King,”⁴ and that the members of the Holy Synod were to be appointed by the government.⁵ The sessions of the Holy Synod were to be held in the presence of a royal trustee⁶ and any decision made in his absence would be void.⁷ Moreover, no synodal decision could be “published or executed” without the government’s approval.⁸ Synod decisions, including those that had been recognized by the declaration as pertaining to the Church’s internal affairs under article 10, could not be executed “unless they were first sanctioned by the government and in compliance with the existing laws.”⁹

The Bavarian regency feared that the place of the Orthodox Church in the national culture and the political clout that it had retained throughout the period of Ottoman rule could prove to be a counteracting force to the foreign dynasty. The regency reacted by downgrading the Church to a maidservant of the monarchy by establishing a system of state-law rule, which, despite differentiations over time, is still in force.

During the discussions accompanying the drafting of the current C¹⁰ established tradition was used as a justification for preserving the state-law system. I am afraid that this view (1) does not afford due weight to the vital needs of the Orthodox Church for substantial self-administration; (2) ignores the unfavorable consequences brought about by the existence of a “prevailing church” doctrine in the field of religious freedom; and (3) overlooks, even though it calls upon tradition, the historical fact that during the 1821 struggle for independence, a different framework of church-state relations had been constitutionally established.

By establishing the state-law system, the Bavarian regency bequeathed the Hellenic State with a kind of caesaropapism, which was constitutionally established for the first time in 1844. Here it should be pointed out that articles 1 and 2 of the 1844 C were, with few changes, repeated in all the consecutive constitutions.¹¹ Neither article, however, refers to state-law rule, but only to the status of the Orthodox Church. From a constitutional point of view, the right of legislators to intervene in Church matters, or state-law rule, was imposed and limited by article 105 of the 1844 C:

by way of special Laws, and as soon as possible, provisions must be made concerning the following issues: a) the number of the Bishops of the State, the provision for all

1. PD 15/1833 (27). This was the Decree of April 3, 1833.

2. Decree of July 23, 1833.

3. Id. art. 1.

4. Id. art. 2.

5. Id. art. 3.

6. Id. art. 6.

7. Id. art. 7.

8. Id. art. 9.

9. Id. art. 17.

10. This is the current constitution. 1975 Syntagma [SYN] [Constitution] (Greece) art. 24. An English translation of the relevant provisions of the 1975 constitution is reproduced in the appendix to this publication.

11. These 1844 provisions are repeated in art. 1 and 2 of the 1864 C; art. 1 and 2 of the 1911 C; article 1 of the 1927 C; articles 1 and 2 of the 1952 C; article 1 of the 1968 constitutional text of the military dictatorship; and art. 3 of the 1975 C; as well as art. 9 of the 1925 and 1926 Cs, which were never enforced

those that are necessary for the maintenance of the clergy, according to the dignity of their character, and the holy offices and those who officiate or lead monastic lives therein; b) Church property.¹²

In subsequent Cs, there has been no stipulation concerning the relevant legislative jurisdiction of the State, with two exceptions: the legislative text of article 1, sections 2 and 5 of the 1968 C¹³ and article 72, section 1 of the current C,¹⁴ which have returned the Hellenic Republic to the monarchic models of 1844.

Throughout the period spanning 1864 to 1968, the State's right to control the administrative affairs of the Orthodox Church was maintained by the various charters of the Orthodox Church of Greece, which were and still are laws of the State, as well as by other laws pertaining to the Church. Thus, the system of state-law rule was not based on constitutional command, but on conventional laws, despite the self-governing regime that had been established by all the Cs for the Church, "administered by the Holy Synod of Bishops,"¹⁵ without including in this provision the phrase "as law stipulates," which had previously been assumed to be necessary in similar cases. Therefore, although the 1864, 1911, 1927, and 1952 Cs established the self-governed status of the Church and the autonomous and independent status of the Church and the State, they made no mention of the legislative power of the State regarding the Orthodox Church.

This lack of constitutional prescription was exactly what those agonizing efforts of theory and judicial precedent trying to cover up with their meteoric caesaropapic fabrications, such as "the King as head of the executive power bears the obligation to protect the prevailing religion of the Hellenes, and this same obligation is born by the administration, which is also headed by the King."¹⁶

These fabrications grounded state-law rule in the constitutional recognition of the Orthodox Church as the prevailing religion, in the King's oath to protect the prevailing religion, or in whatever requirements the principle of the so-called constitutional provision for the holy canons (which, as we will see, is directly aimed at other goals) imposed on legislators. Therefore, from 1864 to 1968, the system of state-law rule was supported by a constitutional fallacy.

The legislation of the dictatorship of 21 April 1967, as well as the C of the Hellenic Republic of 1975, reverted to the monarchic C of 1844. The drafters of the 1975 C, like the drafters of the 1968 constitutional text, omitted those provisions of sections (a) and (b) of article 105 of the 1844 C that restrictively determined on what Church matters Parliament could legislate. They also dropped article 1, section 5 of the legislative text of 1968, which stipulated that without the consultation of the Holy Synod, a draft or a legislative proposal regarding the organization and administration of the Church shall not be discussed in Parliament before the expiration of a twenty-day term.

For these reasons, I cannot subscribe to the prevailing opinion that the 1975 C currently approaches a system of coordination in which church-state relations stand between state-law rule and a regime of inter-mutuality or quasi inter-mutuality.¹⁷ This is because under article 72, section 1 of the C, there is no "tendency for mutual disengagement," but only a unilateral gradual disengagement of the State from the Orthodox Church. From a purely institutional point of view, the present C tries to secularize the State and to politicize the Church.

In summary, according to the 1975 C, the system that regulates relations between the Greek State and the Orthodox Church is State supremacy (*Staatskirche*), or state-law rule.

12. 1844 Syntagma [SYN] [Constitution] (Greece) art. 105.

13. 1968 Syntagma [SYN] [Constitution] (Greece) art. 1, §§ 2, 5.

14. 1975 Syntagma [SYN] [Constitution] (Greece) art. 72, § 1.

15. The relevant constitutional provisions are art. 2 of the 1844, 1864, 1911, 1927, and 1952.

Constitutions, and art. 1 of the 1968 constitutional text.

16. Judgment n° 1661/1947 of the Council of State [CS], 58 in *Themis* 58 (1947), 510-511.

17. See Ar Manassis- C Vavouscos, *Consultatory Report* (Greece), in *Ecclesia* 52 (1975) 304; Ar. Manassis, *Constitutional Rights* (Greece), fasc. 1, Thessaloniki ²1979, 256.

The State legislates on religious matters, as the provisions of article 72, section 1 of the C make clear. The plenary session of Parliament is the competent legislative body for debating and voting on bills and law proposals which refer, *inter alia*, to matters falling under article 3 and article 13 of the C. Article 3 and article 13 cover matters concerning the Orthodox Church¹⁸ and pertaining to freedom of religious conscience and worship of all religions, as well as of atheism and agnosticism in Greece. We can now consider how the aforementioned provisions led to the establishment of the Orthodox Church.

II. THE STATUS OF THE ORTHODOX CHURCH

A. *The Constitutional Provisions*

Article 3, section 1 of the Constitution of 1975 is the primary reference to the status of the Orthodox Church in the Hellenic Republic. Other relevant provisions are included in article 13 (concerning religious freedom), article 18 section 8 (protecting the property of the Patriarchates in Greece), and article 105 (referring to Mount Athos).¹⁹

Article 3, section 1 of the C contains the following fundamental principles, which determine the status of the Church of Greece and of the Orthodox Church in general, in Greece: (1) The Orthodox faith constitutes the prevailing religion; (2) the Church of Greece is inseparably united in spirit with the Ecumenical Patriarchate (which has its see in Istanbul, Turkey) and with all the other Churches of the same denomination; (3) the existing autocephalous regime is maintained; and (4) the Church is self-governed. The provisions of article 3 of the C are not all novel. They are found, with amendments at times, in all Cs which were in force before 1975.

B. *The Prevailing Religion*

The C currently in force differs from the provisions of the 1952 C of the kingdom of Greece concerning some of the specific manifestations of the recognition of the Orthodox religion as prevailing. First, the heir to the throne (and thus indirectly the king as well), the guardian of the minor heir, and the viceroy all had to be Orthodox.²⁰ No similar provision about the president of the Republic is found in the 1975 C. Second, when assuming his duties, the king was required to vow to protect the prevailing religion,²¹ a provision which has been removed from the current C.²² Third, the aforementioned oath was supposed to be taken by the king in the presence of the Holy Synod,²³ a provision which has also been left out of the current C.²⁴ Fourth, proselytism and “any other intervention against the prevailing religion” was prohibited by article 1, section 1 of the 1952 C.²⁵ In the current C, section 2 of this provision has been obliterated; proselytism is now only generally prohibited against any known religion.²⁶ Fifth, the ideological principles of “Graeco-Christian culture,”²⁷ which the interpretation of the C associated directly with the Orthodox Church, were a mandatory basis for public education. This provision has been replaced by one which includes the development of religious

18. L. 590/1977 “On the Statutory Charter of the Church of Greece,” art. 9, § 1(c) (recognizing that the Orthodox Church of Greece reserves the right to give consultative opinions “on any Church law under proposal”; this opinion of the Permanent Holy Synod is not binding on the State).

19. See Ch. Papastathis, *Le régime constitutionnel des cultes en Grèce*, in *The Constitutional Position of Churches in the European Union Countries*, Paris (European Consortium for Church-State Research), 1995, 153. See also, *id.*, “The Hellenic Republic and the Prevailing Religion,” in 1996 *BYU L. Rev.* 821.

20. 1952 Syntagma [SYN] [Constitution] (Greece) arts. 47, 51, 52.

21. *Id.* art. 43, § 2.

22. 1975 Syntagma [SYN] [Constitution] (Greece) art. 33, § 2.

23. 1975 Syntagma [SYN] [Constitution] (Greece) art. 42, § 2.

24. 1975 Syntagma [SYN] [Constitution] (Greece) art. 33, § 2.

25. 1975 Syntagma [SYN] [Constitution] (Greece) art. 1, § 1.

26. 1975 Syntagma [SYN] [Constitution] (Greece) art. 13, § 2.

27. 1952 Syntagma [SYN] [Constitution] (Greece) art. 16, § 2.

conscience among the goals of education.²⁸ Sixth, the confiscation of journals and printed matter was permitted in “an offense against the Christian Faith.”²⁹ The existing C permits confiscation on the grounds of “an offense against the Christian and any other known religion.”³⁰

The invocation to the 1952 C (“In the Name of the Holy and the Consubstantial and Indivisible Trinity”) remains unaltered in the 1975 C³¹ Moreover, in the oath of the president of the Republic³² and of the members of Parliament³³ the invocation of the Holy, Consubstantial, and Indivisible Trinity is maintained. But while this nature of the Holy Trinity is taught by almost all Christian churches,³⁴ the constitution stipulates in article 59, section, 2 that the members of Parliament who are of a different religion or cult are sworn in according to their own religion or cult – a provision which does not appear in the article about the president of the Republic.³⁵ In other words, it seems that the constitutional drafters considered the invocation of the Holy Trinity as fitting only to the teachings of the Orthodox Church. Therefore, from the identical invocation of article 33, section 2 and the concurrent lack of a provision about a non-Orthodox president, one could argue that the C indirectly authorizes the choice of only an Orthodox president of the Republic. But I hesitate to think this is true. We can attribute the wording of article 59, section 2 of the C to the theological ignorance of the drafters of the C. At the same time, the provisions of article 4 (on equality) and article 13, section 1 (on religious freedom) of the C would be grounds for an interpretation that is contrary to the aforementioned hypothesis.

The distancing of the current constitution from only the secondary provisions of the 1952 C regarding the prevailing religion has led to the view that “prevailing” currently means the religion of the majority of the Hellenic people.³⁶ I cannot embrace this opinion because this whole rationale assumes its conclusion. The prevailing religion is prevalent because it is inextricably connected with the traditions and the majority of Hellenes. The question is discovering the legal content of the provision of the C, not an analysis of statistical data from the population census. At the same time, by not adopting the secondary provisions of the 1952 C, the current constitution demonstrates that the legal weight of the constitutional protection of the prevailing religion is insubstantial in comparison to the 1952 C. This is only in reference to the more secondary consequences of the existence of such a religion, whereas the framework of the more general provision of article 3, section 1 of the C remains intact and identical with that of the preexisting constitutional regime.³⁷

“Prevailing,” therefore, signifies several other things. First, the Orthodox cult constitutes the official religion of Greece. Second, the Church, which expresses this cult, has its own legal existence. It is a legal entity of public law as regards its legal relations, and the same holds for its various organizations.³⁸ Third, the State approaches it with increased interest, and it enjoys preferential (institutional, moral, and financial) treatment, which does not *ipso jure* extend to other cults and faiths. This, however, does not mean that the prevailing religion is dominant; this preferential treatment is not contradictory to constitutional principles of equality, despite the execution of the decisions of the Church

28. 1952 Syntagma [SYN] [Constitution] (Greece) art. 16, § 2.

29. 1952 Syntagma [SYN] [Constitution] (Greece) art. 14, § 2.

30. 1975 Syntagma [SYN] [Constitution] (Greece) art. 14, § 3, a.

31. It was the same invocation in all the Constitutions of Greece.

32. 1975 Syntagma [SYN] [Constitution] (Greece) art. 33, § 2.

33. 1975 Syntagma [SYN] [Constitution] (Greece) art. 59, § 1.

34. The Holy Trinity is first of all holy, consubstantial and indivisible in the doctrine of both the Orthodox and the Catholic Church as well as the Anglican and the various other Protestant denominations, with the sole exception of the so-called antitrinity sects of the first centuries.

35. 1975 Syntagma [SYN] [Constitution] (Greece) art. 33, § 2.

36. According to Sp. Troianos, *Course on Ecclesiastical Law* [in Greek], Athens-Komotini 1984, 94-95, and An. Marinos, *Church-State Relations* [in Greek], Athens 1984, 22.

37. See CH. PAPANATHIS, *Ecclesiastical Law* [in Greek], fasc. 1, Athens-Thessaloniki 2007, 56.

38. L. 590/1977 “On the Statutory Charter of the Church of Greece,” art. 1 § 4.

authorities of the prevailing religion by state officials,³⁹ the pure Orthodox character of the religious service of the armed forces,⁴⁰ and the assumption on the part of the State of the founding and maintenance of Orthodox ecclesiastical schools.⁴¹

This preferential treatment concerns the Church, not its believers as individuals, since that would result in a dissimilar treatment of Orthodox and non-Orthodox citizens by the State, which would entail a violation of the principle of equality.

Preferential treatment concerns primarily the Church of Greece and the other bishoprics of the Ecumenical Patriarchate which have their see in Greece, but preferential treatment is also enjoyed by the Greek Orthodox Churches of the East and the Diaspora. Arguably, that preferential treatment should be of general content and should not turn specifically against a particular religion or cult, or against their worship, and should not conflict with any prohibitive or prescriptive provision of the C⁴². It should be noted that if we leave out the characterization of the Orthodox cult as the official, or state religion, the other two elements of its recognition⁴³ do not correspond exclusively and solely to this particular cult. For example, at least a part of the theory has supported the idea that both the Catholic and the Protestant Churches in Greece are also legal entities of public law. Consequently, the exercise of public administration is not restricted only to the principles of the prevailing religion, but also extends to those of known cults, as was the case before Law 1250/1982 "On the Establishment of the Civil Marriage" came into effect, with the issuance of a marriage license by a non-Orthodox bishop to a member of his congregation.⁴⁴

As to the preferential treatment reserved for the prevailing religion by legislators, there are three things that should be remembered: First, the other known religions and cults are also granted many privileges. For example, L. 1763/1988 article 6, section I(c) exempted from military service all priests, monks, postulants, and seminarists, regardless of their religion;⁴⁵ and the churches, temples, mosques, synagogues, and monasteries of the Orthodox Church and other cults and religions were exempted from paying income tax on legal entities,⁴⁶ as well as property tax.⁴⁷ It became accepted that the text of article 21 of Legislative Decree 22.4/1926, stipulating that the rights of the State, the aircraft defense agency, and the holy monasteries on real estate are not subject to usucaption, is also applicable to Catholic monasteries.⁴⁸

Second, there are "privileges" of the prevailing religion that are contrary to the provisions of the holy canons of the Orthodox Church. An indicative example is that the State pays the wages of the Orthodox Church's metropolitans and parish priests (parsons) but did so with exchanges specifically as to the wages of the latter. These exchanges included the devolvement to the State of a large and most profitable portion of ecclesiastical property, and the imposition on Orthodox parish-churches of a special contribution of thirty-five percent of all their gross earnings.⁴⁹

39. L. 5383/1932 "On Ecclesiastical Courts and the Procedure before them," arts. 53, 54, 62, 107.

40. Legislative Decree 90/1973, art. 2 § 1.

41. See L. 476/1976 "On Ecclesiastical Education."

42. See the pioneering decision 261/1983 of the County Court of Patra which held that such conflict with prohibitive provisions of the C is found in the provision of article 11 of Legislative Decree 3485/1955, which imposed on all consumers of electrical energy in Patra a contribution that was collected with the electrical bills and went towards the erection of the Orthodox Church of Saint Andrew, patron saint of the city. *To Syntagma* 9 (1983), 646.

43. See, supra notes 40-43 and accompanying text.

44. This was according to article 1368 of the Civil Code, which was then in force.

45. L. 1763/1988. "On the Recruitment of the Hellenes."

46. Legal Decree 3843/1958.

47. L. 1249/1982.

48. See Judgment n° 1161/1983, of the Court of Appeal of Thessaloniki, in *Christianos* 23 (1984) 33-35.

49. Compulsory L. 536/1945 art. 2, sect. 2 had set a percentage of 25%, which was increased to 35% by Compulsory L. 469/1968, art. 5. See Ch. Papastathis, *State Financial Support for the Church in Greece*, in *Church and State in Europe: State Financial Support; Religion and the School*, Milano 1992, 9-13. This financial contribution has been abolished by L. 3220/2004, art. 15. See also K. Papageorgiou, *Taxation Status of Religions* [in Greek], Athens-Thessaloniki 2005, 171; Ch. Papastathis, "The Financing of Religions in Greece,"

Third, legislation has established preferential treatment in favor of the adherents of some denominations, even though judicial opinions still debate whether or not they conform to the article 13 concept of “known religion.”⁵⁰ For example, the provisions of L. 2510/1997 regulate the military service of all those who refuse to bear arms on the basis of their religious convictions.⁵¹ The law does not require that conscientious objectors belong to a “known religion.”

C. *The Spiritual Unity of the Orthodox Church*

From an administrative point of view, the Orthodox Church all over the world is distinguished into specific autocephalous and autonomous Churches. The autocephalous Churches are the Ecumenical Patriarchate of Constantinople, the Patriarchates of Alexandria, Antioch, Jerusalem, Russia, Serbia, Romania, Bulgaria, and Georgia, and the Archdioceses of Cyprus, Greece, Poland, Albania, Czech Republic and Slovakia. The Orthodox Churches of Finland and of Estonia are autonomous. The autocephalous Churches are administratively independent from each other. But this independence is circumscribed by a framework of doctrinal and canonical nature, the exit from which leads respectively to heresy and schism. This framework represents the spiritual unity (or simply the unity) of Orthodoxy. The doctrinal unity consists of compliance with the teachings of the Holy Scriptures, of reverence towards sacred traditions, and of the faithful observance of the creeds, as laid down by the ecumenical and local Synods. The canonical unity is expressed by the observance of at least the fundamental institutions of the Church’s administration, which were in turn set forth and recognized by the same Synods, as well as through the relations between the various Orthodox Churches.

By 1844, constitutional drafters had already determined that the Church of Greece exists in inseparable spiritual unity with the Great Church of Constantinople (Ecumenical Patriarchate) and with every other Orthodox Church.⁵² Constitutional drafters have wished the prevailing religion in Greece to be the Orthodox religion. This is why, being led down theological paths, they have imposed the unity of the Church of Greece with the other Orthodox Churches. But how is unity maintained? The C provides that the Church of Greece is “inseparably united in doctrine” with the other Orthodox Churches by “observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions.”⁵³

This last phrase, which has remained unchanged since 1844, is intended to maintain the spiritual unity of the Church of Greece with the other Orthodox Churches. However, under the regime of the state-law rule it led both scholars and the judiciary to the conclusion that here the C introduces a new self-existent statute; the constitutional provision for the holy canons. This view has given rise to diametrically opposite interpretations, controversies regarding the constitutionality of various laws, and endless appeals against acts of the public administration and of the Church to the highest administrative court, the Council of State. The debate on the constitutional power of the holy canons is a recurrent one in Greek constitutional law.

The problem of the constitutional guarantee of the holy canons emerged because of trivial reasons. According to the text of article 114, section 2 of the Law of December 27, 1833, regarding the institution of municipalities, parish councils were constituted for the administration of ecclesiastical establishments, composed of the mayor, the parson and two to four citizens registered in the particular municipality and appointed by the mayor.

in *The Financing of Religious Communities in the European Union*, Leuven-Paris-Dudley, MA (Peeters) 2009, 181.

50. 1975 Syntagma [SYN] [Constitution] (Greece) art. 13.

51. See the relevant judicial decisions in I. Konidaris, *Legal Theory and Practice on Jehovah’s Witnesses* [in Greek], Athens-Komotini 1991.

52. The relevant Constitutional provisions are art. 2 of the 1844, 1864 and 1911 Constitutions; art. 1, section 2 of the 1927 Constitution; art. 2 of the 1952 Constitution; art. 1, section 2 of the 1968 constitutional text; and art. 3, section 1 of the 1975 Constitution.

53. 1975 Syntagma [SYN] [Constitution] (Greece) art. 3, § 1.

On the basis of this statute, many local politicians started to appoint choristers and sacristans to the parishes of their provinces. But the bishops reacted negatively to this, claiming that both from the aspect of holy canons and from that of the laws of the State, the appointment of these positions came under their jurisdiction. The matter of these appointments ended in a compromise: the Church councils recommended and the bishop appointed the choristers and sacristans. But the purely legal issue of whether the holy canons superseded the laws of the state, or vice versa, remained open in theory.

Two basic views have since been put forth. One view suggests that all the holy canons in general, whether they concern the creed and the worship, or the administration of the Church, are safeguarded by the C Hence, the laws that counter their provisions are unconstitutional. According to the other view, only the so-called doctrinal holy canons – those which deal with the creed of the Church and do not merely concern administration – are enveloped by the constitutional guarantee. Consequently, the legislators should be free to regulate all matters pertaining to the administration and the organization of the Church. For many years, this has been the preferred view of the judicial decisions issued by civil and administrative courts alike.⁵⁴

These views require distinction between the phrases “is inseparably united in doctrine” and “observing unwaveringly, as they do, the holy apostolic and synodal canons and the sacred traditions.”⁵⁵ According to the two views, the C introduces two distinct principles: the unity of the creed, and the constitutional guarantee (or non-guarantee) of the holy canons and the sacred traditions. I cannot agree with this conclusion. I believe that in the C there is one, and only one principle: the obligation of the State and the Church in Greece to respect and preserve the unity of the Church. Otherwise, how can one interpret “as they do,” what is interposed in the self-existing statute on the constitutional force of the holy canons? For this reason, and also because the first view leads to hierocracy and the second one to a severe caesaropapism – regimes which are absolutely contradictory with the principles of all the Cs of the Hellenic State – that here the C does not refer directly to the protection of the holy canons, but to the spiritual unity of the Church of Greece with the other Orthodox Churches. Preservation of the spiritual unity of the Church is achieved by ensuring doctrinal unity⁵⁶ and canonical unity.⁵⁷

The letter of the constitutional provision and the historical framework of its first enactment both point towards this conclusion regarding the Church of Greece. When the 1844 C was being drafted, the unity of the Church of Greece with the Ecumenical Patriarchate and with the other Orthodox Churches had already been disrupted because of the declaration (contrary to canonical tradition) of its autocephalous regime in 1833. With the aforementioned constitutional provision, the Third of September National Assembly of Hellenes in Athens aimed at proclaiming the Orthodoxy of the Church of the newly established kingdom. Therefore, that the guideline for legislators interpreting article 72, section 1 of the C in force should be to look into which statutes of the holy canons are differentiated from or are contrary to the law under proposal, and if its provisions can bring about a disruption of the unity of the Church of Greece with other Churches of the same denomination, then the law being proposed is unconstitutional.

In terms of results, the Council of State treated the matter in a somewhat similar fashion in 1967 by abandoning the strict view that the constitution guarantees exclusively the doctrinal holy canons and declaring that “the legislator ... in the spirit of Article 2, § 1 of the Constitution [of 1952] ... cannot by the amendments effected by him bring about fundamental changes to basic administrative institutions, which have been deeply

54. For a detailed legal and historical analysis of the particular views, See P. Poulitsas, *The Relations between State and Church, Especially Regarding the Election of Bishops* [in Greek], Athens 1946 ; Ch. Papastathis, *Relations between church and state according to the Constitution of 1975* [in Greek], in *Dikaion kai Politeia*, fasc. 15, 61–84; Ev. Venizelos, *The Relations between State and Church* [in Greek], Thessaloniki 2000.

55. 1975 Syntagma [SYN] [Constitution] (Greece) art. 3, § 1.

56. Id. (“is inseparably united in doctrine”).

57. Id. (“observing unwaveringly, as they [= all the other Orthodox Churches] do, the holy apostolic and synodal canons and the sacred traditions”).

entrenched and long established within the Orthodox Church.”⁵⁸ The Council of State, with these decisions and in accordance to the “spirit” of the provisions of article 2, section 1 of the 1952 C, which is analogous to that of article 3, section 1 of the current C, then held that the C fully guaranteed the doctrines and all that is pertinent to Orthodox worship and that the C did not fully guarantee the administrative institutions which were contained in the holy canons in general. These administrative institutions (but not administrative holy canons) were to be classified as basic or non-basic. Legislator could proceed as far as a fundamental change of a non-basic institution, and a non fundamental change of a basic institution.

The problem with the rationale of the Council of State’s approach – which no doubt marked a definite progress compared to its prior rigid stance – lies in classifying the administrative institutions of the holy canons as basic or non basic. Making this distinction, although it is “deeply entrenched and long established within the Orthodox Church,” is shaky and calls for an intertemporal approach on the part of the legislator – in other words, something that is not always easy.

Nevertheless, the line of judicial decisions issued by the supreme administrative court also went through a third phase, this time under the regime of the current C. More specifically, without abandoning article 3, section 1 of the C, the Council of State now confers primary status on article 13, sections 1 and 2 of the C, which safeguard the individual right of religious freedom of, among others, the followers of the prevailing religion. Thus, it foils any action on the part of legislators which would infringe upon the freedom of religious conscience and the freedom of worship. But the protection of articles 3, section 1 and *especially* of article 13, sections 1 and 2 of the C, cannot be regarded as extending to those holy canons and sacred traditions which relate to matters of exclusively administrative nature, because these cannot have the internal meaning of the doctrinal canons. Moreover, these same matters are regulated according to the needs of society and under the influence of more contemporary attitudes. Therefore, according to the Council of State, those holy canons and sacred traditions which refer to administrative issues are by necessity variable, in the common interest of both the Church and the state, and are subject to amendment by legislators. However, legislators cannot make fundamental changes in those primal administrative institutions which have been long established in the Orthodox Church. Thus, the more recent decisions of the supreme administrative court, without abandoning the distinction of ecclesiastical administrative institutions into basic and non-basic, adopt *especially* article 13, sections 1 and 2 of the constitution as a constitutional basis for the protection of the holy canons and the sacred traditions and as a standard for its range.

D. *The Extent of the Autocephalous Regime*

Article 3, section 1 of the constitution stipulates that ‘the Orthodox Church of Greece ... is autocephalous.’ This mention is not merely an observation, but also a directive that the Church of Greece remains autocephalous. For the autocephalous regime to be lifted, a revision of this statute is necessary. The “Orthodox Church of Greece” of article 3, section 1 of the C does not minister to the Orthodoxy of the Hellenic territory as a whole. The limits of its jurisdiction do not coincide with the borders of the State. The Hellenic territory is divided into five separate ecclesiastical districts, which are subject either to a different Orthodox Church or to the same Church but under a different administrative and spiritual regime. These districts are: (1) the autocephalous Church, (2) the New Lands, (3) Crete, (4) the Dodecanese, and (5) Mount Athos. The autocephalous Church encompasses Central Greece (Roumeli), the Peloponnese, the Cyclades Islands (1833), the Ionian Islands (1866), Thessaly, and the province of Arta in Epirus (1882).

The metropolises that today constitute the autocephalous Church of Greece were for centuries under the jurisdiction of the Ecumenical Patriarchate in Constantinople. During

58. Rulings n^{os} 609/1967, 610/1967.

the War of Independence of 1821, there was no contact with the Patriarchate because of the war. From the first year of the Revolution, Adamantios Koraes, a great intellectual figure of Hellenism, proposed the declaration of an autocephalous ecclesiastical regime in the areas under revolt and the undertaking of the Church's administration by a Synod, whose members would be elected by priests and lay persons.⁵⁹

After the founding of the modern Hellenic State, there were many who favored the autocephalous regime for ecclesiastical and political reasons. The attempts of the Patriarchate to bridge the gap and revert to the prerevolutionary regime met with the opposition of President Kapodistrias, who charged Minister of Justice Genatas with drafting a bill on church-state relations.⁶⁰ Genatas submitted a memorandum in 1830, leaving the draft law for later, when the relevant views of political and ecclesiastical agents would have been expressed. This memorandum, with a detailed account of all that was happening in the Church and a profound knowledge of its needs and of the national interest, concluded as to the matter of the autocephalous regime, that the relations between the Ecumenical Patriarchate and the ecclesiastical provinces of liberated Greece should be regulated by way of a treaty.⁶¹

After the inauguration of Otto, and with the renowned lawyer Georg-Ludwig von Maurer as the coordinator of ecclesiastical affairs, the Bavarian regency was right initially in deciding to proclaim the autocephalous regime, but it did not adhere to the prerequisites and the conditions that were required by the institutions of canon law. Thus, with the 23 July / 4 August 1833 proclamation "On the Independence of the Greek Church," the Hellenic state, in an irregular manner, rendered the bishoprics of its territories as autocephalous Church. This coup caused reactions both inside Greece and in Constantinople and the other Orthodox Churches, a disruption of spiritual unity, as well as significant damage to Hellenic national interests in the East and the Balkan Peninsula, regions which were ministered by the Ecumenical Patriarchate, which was the "nation-leading" Church of all the Orthodox people living there. Finally, on 29 June 1850, the Patriarchate issued a "synodal tome" (official Act), by which the Church of Greece was declared autocephalous *ex nunc*.

After the annexation of the Ionian Islands and, later of Thessaly, the province of Arta, and certain villages of Epirus with Greece, the Ecumenical Patriarchate conceded these regions to the autocephalous Church of Greece with its Acts of 9 July 1866, and of May 1882, respectively. With the Patriarchal and Synodal Act of 1882, the extent of the jurisdiction of the autocephalous Church was finalized. Since that time, any territories that were liberated and came under Hellenic State rule were not subject to the jurisdiction of the autocephalous Church.

With the Balkan Wars (1912–13) and the First World War, regions were liberated and incorporated into Greece, including Epirus, Macedonia, the Aegean Islands, and Western Thrace, whose metropolises and dioceses were subject to the Ecumenical Patriarchate. There were many debates and deliberations regarding the ecclesiastical regime of these new territories, which were called "the New Lands." Their subjection to the full jurisdiction of the Ecumenical Patriarchate gave rise to concerns of a political and ecclesiastical nature because of the wars of the 1912 to 1922 period and strained relations between Greece and Turkey.

The metropolitan of Thessaloniki Gennadios (Alexiades) had suggested in 1925 that the spiritual subordination to the Patriarchate be continued and that an autonomous administrative regime be established, with central organizations having their see in Thessaloniki. This solution was the most suitable one since the Ecumenical Patriarchate, which after the exchange of populations between Greece and Turkey was in a difficult

59. See Ad. Koraes, *Extant Excerpts from the Politics of Aristoteles* [in Greek], Paris 1821, 31.

60. See generally Men. Tourtoglou, *Relations between State and Church: An Attempt for their Regulation during the Time of Kapodistrias* [in Greek] in *Peloponnessiaka* 5 (1985–1986) 15.

61. The memorandum was discovered and analyzed by Men. Tourtoglou (above, n. 62).

state, did not lose the provinces of the New Lands, and there were no dangers from a potential lack of communication between Istanbul and Thessaloniki due to the administratively autonomous regime. But another solution was preferred, paradoxical from the nomo-canonical standpoint. The New Lands continued to be spiritually subject to the Ecumenical Patriarchate, but their administration was heretofore carried out “in trust” by the autocephalous Church of Greece. “In trust” means: (1) at the entreating request of the Ecumenical Patriarchate, the autocephalous Church of Greece took on “the direct governance” of the New Lands by extending thereupon “to all the system of administration and the order of its own Provinces;” (2) that “hence the Holy Synod of the Orthodox Autocephalous Church of Greece in Athens is henceforth recognized as the direct central and superior to these Provinces’ ecclesiastical authority;”⁶² and (3) this regime is temporary.

This solution was reached following deliberations between the Hellenic Republic, the Ecumenical Patriarchate, and the autocephalous Church of Greece. It was enacted in L. 3615 of 10/11 July 1928, and in the Patriarchal and Synodal Act of 4 September 1928, which also determined the general conditions of the operation of this administrative regime. However, the two texts significantly differ regarding the number of these conditions.⁶³

Ever since L. 3615/1928 and the Patriarchal and Synodal Act of 1928 were put into effect, the autocephalous Church of Greece and the patriarchal dioceses of the New Lands have constituted the “Church of Greece.” Hence, the wording of Article 3, Section 1 of the constitution (“The Orthodox Church of Greece ... is autocephalous”), as well as the identical wording of Article 1, Section 2 of the Statutory Charter of the Church of Greece,⁶⁴ are erroneous from a legal technical aspect. The Hellenic Parliament, without due examination, repeated in the current C and in the Statutory Charter the exact same provision of the 1844, 1864, 1911, and 1927 Cs, which contained wording that was correct and congruous with the facts of their time. The 1952 C contains an identical provision as well.

The struggle of the Cretans for independence resulted in the formation of the autonomous Cretan Principality (1898-1912), which signed a treaty with the Ecumenical Patriarchate on 14 October 1900. This treaty regulated the canonical dependence and the organization of the local Church. The local Cretan Church remained under the spiritual jurisdiction of the Patriarchate and administratively came under an autonomous regime. Crete retained this ecclesiastical regime until after its annexation to Greece in 1912. The current Statutory Charter of the Church of Crete is also a law of the Hellenic State.⁶⁵ Under this new Charter the Church of Crete became semi-autonomous towards the Ecumenical Patriarchate.

The Dodecanese was annexed to Greece on 7 March 1947. This political change did not cause changes in the ecclesiastical regime. Thus, the four metropolises and the exarchate of Patmos continue to be subject, spiritually and administratively, to the Ecumenical Patriarchate. Finally, the peninsula of Aghion Oros (Mount Athos), which was united with Greece in 1912, preserves unaltered its ancient privileged self-governing regime and is spiritually under the supervision of the Ecumenical Patriarchate.⁶⁶

E. *The Self-Administration of the Church*

The current C is innovative as to the wording of that provision of article 3, section 1

62. See these L. and Act in French translation by Gr. Papatomas, *L'Église de Grèce dans l'Europe Unie*, Katerini 1998, 724–726 and 557–562 respectively.

63. See Ch. Papastathis, The Incorporation of Macedonia into the Greek State, in *Modern and Contemporary Macedonia*, (ed. I. Koliopoulos), vol. II, Thessaloniki 1993, 33–34.

64. L. 590/1977.

65. L. 4149/1961. See K. Papageorgiou, *The Orthodox Church of Crete* [in Greek], Chania 2001 (vol. IX of the review *Talos*, 543).

66. See An. Vavouscos, *The ecclesiastical Regime of the Dodecanese, (1912-2005)* [in Greek], Athens-Thessaloniki (Sakkoulas) 2005. On Mont Athos see below, Section V.

regarding the self-administration of the Church of Greece. There was technical self-administration under the previous Cs as well, which stipulated that the Church “is administered by a Holy Synod of Bishops”⁶⁷ regardless of the practical extent of this self-administration and of the degree of consideration that the state demonstrated towards it. The 1975 C introduces more explicit provisions, especially as to the central administrative organs, as it stipulates that it “is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church.”⁶⁸ From this provision it follows that the Holy Synod is comprised of those bishops who minister over a province, whereas the preceding Cs referred to a Holy Synod of bishops, a phrase which in practice gave the state the possibility to intervene in Church matters with the appointment of a Synod according to merit.

The provisions of the present C have the following effects: (1) The appointment of a Synod according to merit is thwarted; (2) inactive bishops, associate bishops and assistant bishops are excluded from participating in the Holy Synod, as are representatives of the presbyters, the deacons and lay people; and (3) administration is also exercised by the Permanent Holy Synod, originating from the Holy Synod of the Hierarchy and constituted in a manner determined by the Statutory Charter of the Church⁶⁹ (which is a law of the state according to article 72, section 1 of the C). On this point, the constitution once more introduces a pioneering provision in article 3, section 1: “in compliance with the provisions of the Patriarchal Tome of June 29, 1850, and the Synodal Act of September 4, 1928.”⁷⁰

With the Patriarchal and Synodal Tome of 1850, the Ecumenical Patriarchate endowed the Church in Greece with an autocephalous regime. With the Patriarchal and Synodal Act of September 4, 1928, the patriarchal dioceses of the so-called New Lands (which since then – together with the autocephalous Church – constitute the Church of Greece, but which continue, from a spiritual point of view, to belong to the Ecumenical Throne) came “in trust” under the administration of the autocephalous Church of Greece. The publication of L. 3615/1928 “On the Ecclesiastical Administration of the Metropolises of the Ecumenical Patriarchate in the New Lands” had already taken place. The Patriarchal and Synodal Act contains more general conditions than those of L. 3615/1928, which gave rise to disagreements regarding the force of all of them.

The C of 1975 is the first one to establish the Patriarchal Tome and the Patriarchal Act as sources of law of increased formal authority. One theory has held that the reference of the C to these two texts does not end with the specific matter of the bearer of the administration of the Church, that is, with the composition of the Permanent Holy Synod, but alludes to the administration of the Church in general. Under this view, the Church of Greece should be “basically” administered as the patriarchal texts specify. And, given that the Patriarchal and Synodal Tome of 1850 provides that the Holy Synod administers “Church matters according to the divine and holy canons freely and without impediment from all temporal interventions,” it would follow that the way towards the substantial self-administration of the Church of Greece would be opened. At the same time, the matter of the general conditions of the Patriarchal Act and of L. 3615/1928 would be conclusively resolved in favor of the former.

However, the Council of State ruled that the C imposes the force of the patriarchal texts only as to the composition of the Permanent Holy Synod restrictively, and not in their totality.⁷¹ Using this specific judgment of the Council of State as our standard, we cannot but conclude that the self-administration of the Church is necessarily limited to the regime of the state-law rule or, more emphatically, that “under a regime of State-law rule,

67. The relevant constitutional provisions are art. 2 of the 1844, 1864, and 1911 constitutions; art. 1, section 2 of the 1927 constitution; art. 2 of the 1952 constitution; and art. 1, section 2 of the 1968 constitutional text.

68. 1975 Syntagma [SYN] [Constitution] (Greece) art. 3, § 1.

69. *Id.*

70. *Id.*

71. See Rulings n^{os} 545/1978 ; 546/1978 ; 3178/1976.

the autonomy of the Church has solely theoretical significance.”⁷²

III. STATE SUPERVISION OF RELIGION

A. *The Supervising Agencies*

1. Ministry of National Education and Cults

General state supervision of all the religions in Greece is entrusted to the General Secretariat of Cults of the Ministry of National Education and Cults, which was instituted pursuant to Presidential Decree 417/1987. Its duties include: (1) The supervision of the implementation of government policy in the area of cults, and (2) the duties of the General Directorate of Cults (Pr. D. 339/1990, art. 1A). It includes three departments (a) Ecclesiastical Administration, (b) Ecclesiastical Education and Religious Instruction, and (c) Persons of Different Cult and of Different Religion, which were already provided for in the Ministry of National Education and Cults.⁷³

a. Department of Ecclesiastical Administration

This department is divided into two branches: the Ecclesiastical Administrative Affairs Division; and the Division of Holy Churches (parishes), Holy Monasteries, and Parish Priests. Their duties are limited exclusively to matters of the prevailing religion and only within the Hellenic territory. Thus, the Ecclesiastical Administrative Affairs Division is responsible for recognition of and matters pertaining to the status of the bishops of the Churches of Greece, Crete and the Dodecanese; supervision of the implementation of the C and of the legislation on the organization and the administration of the Churches of Greece and Crete, of the metropolises of the Dodecanese, of the religious associations and foundations, as well as their supervision according to the laws and the sanction of their acts; the founding, the abolishment and the merger of metropolises; the exercise of supervision of the management of the property of the Churches of Greece and Crete, as well as of the ecclesiastical legal entities of public law.⁷⁴ The Division of Holy Churches, Holy Monasteries, and Parish Priests concerns itself with the implementation of legislation on monasteries and hermitages (but not those of the peninsula of Mount Athos), churches, vicarages and their personnel; the expropriation of land for the purposes of erecting or enlarging churches; and the constitution of collection committees for collections in favor of churches when these collections are carried out beyond the boundaries of a single prefecture.

b. Department of Ecclesiastical Education and Religious Instruction

This department is made up of the offices of Personnel and of Administration. The Personnel Office is responsible for the appointment and the official status of the personnel of the schools of ecclesiastical education, of the Apostolic Diaconia of the Church of Greece, and of the preachers. This office also drafts the budget of the General Secretariat of Cults. The Office of Administration is in charge of the foundation and the supervision the schools of ecclesiastical education; the suspension of the operation, the conversion of form, the transfer of seat, the integration and the abolishment of these schools; the programs of their operations; affairs of registration, of transfer and examination of their students; affairs of administration and supervision of the Rizareios Ecclesiastical School (Athens) and the Athonias Ecclesiastical Academy (Karyes in Mount Athos); matters

72. See N. Rotis, Constitutional Order and Holy Canons, Council of State Ruling no. 2336/80 [in Greek], in *“To Syntagma”* 7 (1981) 428-429.

73. PD 147/1976 “Organization of the Central Agency of the Ministry,” arts. 5-7.

74. Exempted from this division is the “Apostoliki Diakonia.” See, *infra* Section IIIA.1.b. The Apostoliki Diakonia is a legal entity which belongs to the Church of Greece and takes care of the programming, the organization, and the realization of its educational and missionary work.

pertaining to the Apostolic Diaconia of the Church of Greece; the equivalence of the schools of ecclesiastical education to those of other public schools and to their diplomas; and affairs of religious instruction and of religious associations and foundations.

c. Department of Persons of a Different Cult and a Different Religion

This department (named in a fashion that is paradoxical for a modern State) is comprised of the Office of Persons of a Different Cult and the Office of Persons of a Different Religion. The tasks of the Office of Persons of a Different Cult include dealing with proselytism, the procedures for entry into the country of foreign heterodox clergy and religious ministers, the procedures for the foundation and the operation of the places of worship of the non-Orthodox Christians, of divinity schools, seminaries, foundations and other legal entities, as well as the supervision of all of the above. The same duties regarding the followers of religions other than the Christian one belong to the Office of Persons of a Different Religion. This office is also in charge of the appointment, the discharge, and matters of official status of the general chief rabbi, the chief rabbis and the Muslim muftis.

B. *Ministry of Foreign Affairs*

The Ministry of Foreign Affairs is also charged with responsibilities concerning the various cults. To my knowledge, it is internationally the only Ministry of Foreign Affairs to be institutionally assigned to religious affairs. More specifically, its E2 Department of Religious and Ecclesiastical Affairs⁷⁵ has jurisdiction over the supervision of the communal educational and ecclesiastical affairs of Hellenes living abroad; the relation of the Greek State with the Ecumenical Patriarchate of Constantinople, the other Patriarchates the Autocephalous Orthodox Churches, as well as affairs that concern the other Christian creeds, cults and international ecclesiastical organizations abroad, and the civil administration of Mount Athos.⁷⁶

The Department of Ecclesiastical Affairs includes three offices. The first is the Office of Patriarchates-Autocephalous Churches. This Office is responsible for: (1) overseeing relations of Greece with the Patriarchates and the other autocephalous Churches, the World Council of Churches (“WCC”), the various cults and non-Orthodox Churches, as well as the resolution of any relevant matter that arises; (2) supervising the relations among the Orthodox Churches; (3) supervising the relations of the Orthodox Churches with the other Churches, the WCC and religious organizations; (4) providing every possible assistance to the senior Patriarchates and the Monastery of Mount Sinai; and (5) supervising the relations of the Ecumenical Patriarchate with the metropolises of the Dodecanese, the semi-autonomous Church of Crete, and the patriarchal monasteries and foundations in Greece.

The second office deals with Mount Athos and with the “Foreign Cults and Religions in Greece.” This office’s duties include the regulation of any matter that refers to the exercise of state supervision on Mount Athos, and the supervision of cases that regard matters “of heterodox Churches, foreign Religions and foreign Ecclesiastical Educational Establishments, Foundations and Associations in Greece.”⁷⁷ The third office of the department is the Office of Ecclesiastical Affairs of Greeks Living Abroad, Orthodox Divinity Schools and Ecclesiastical Centers. This Office is responsible for: (a) protecting all ecclesiastical matters of Hellenes living abroad; (b) providing assistance to Hellenic clergy and lay persons for the study of Orthodox theology; (c) developing the activities of clergy, schools, foundations, and associations situated abroad; and (d) promoting cooperation between the Church of Greece and the Hellenic divinity schools with the Greek Orthodox Churches abroad.

75. P. D. 230/1948, art. 38, §§ 1–3.

76. For the civil administration of Mount Athos. See *infra*, Section V.

77. *Id.*

C. State Supervision of the Self-Administration of the Prevailing Religion

The acts of self-administration of the Orthodox Church are subject to State control. Under the regime of article 26, section 1 of L. 590/1977, this is a review of legitimacy and is exercised in three situations. The first situation is when for the completion of an act of the ecclesiastical authority, the law demands the cooperation of the state either: (1) with the participation of state agencies in the final form of the act and within the boundaries of the joint administrative action (for example, in the election of a bishop as archbishop or metropolite, which is completed only with the issuance of a presidential decree);⁷⁸ or (2) in the form of the provision of sanction, so that the act of an ecclesiastical administrative organ is rendered executable. For example, for the erection of a place of worship of any religion, Mandatory Law 1369/1938 “On Holy Churches and Vicarages,” article 41, section 1 demanded a license issued by the local Orthodox metropolite and final sanction by the Ministry of Education and Cults.⁷⁹

Second, the review of legitimacy can be exercised with the participation of State officials in Church collective administrative organs. Two examples of this would be the participation of a judge and a tax official (an employee of the Public Revenue Services) in the metropolitan councils, and the presence of a government delegate, appointed by a State presidential decree⁸⁰ in the Holy Synod of the Church of Crete.

The third situation of State control occurs with the appellate procedures of the administrative courts (the Council of State and the administrative Courts of Appeal) on executory administrative acts of Church agencies, which have been issued in compliance with established legislation and pertain to administrative matters.

2. Appellate Review of the Council of State

The Orthodox Church in Greece is a spiritual and religious foundation, but, at the same time, it exercises a granted administrative power, implementing, as a public legal entity, the provisions of state legislation. Since the first years following its institution, the Council of State has subjected to its review all acts that pertain to administrative matters of agencies to which the State grants the administration of the Orthodox Church, to the extent these agencies are called upon to implement provisions of legislation. The Council of State uses three relevant criteria: First, the act should originate from those agencies to which the State has entrusted the administration of the Church (for example, the Holy Synod, the metropolises, the parish councils). Second, the contested act should be issued in compliance with State legislation. Third, the contested act should be both an exercise of administration – that is, it should regulate an administrative matter, not doctrines, worship, or general matters of a spiritual nature – and be executory. These acts may pertain to either the internal or the external affairs of the Church. Reviewable acts relating to the internal affairs of the Church consist of two types.

One type includes those acts that refer to the general position, formation, operation, exercise of administration, etc., of the central and peripheral organs charged with Church administration, as well as the official status of its employees. This is so because all these are subject to a legislative regime which is established by the state.

Examples of acts which have been reviewed include:

(1) A decision of the Holy Synod concerning the appointment of members of the Permanent Holy Synod and the synodal committees.⁸¹

(2) Acts by a metropolitan concerning the transfer,⁸² discharge,⁸³ and dismissal of a

78. L. 590/1977, art. 15 § 6 ; *Ib.*, art. 26 § 1.

79. Council of State, Ruling n° 721/1969.

80. L. 4149/1961, “The Statutory Charter of the Church of Crete,” art. 8.

81. Ruling n° 1175/1975.

82. Ruling n° 5761/1974; Ruling n° 628/1951.

83. Ruling n° 824/1949, Ruling n° 1930/1946.

parish priest for relinquishing his duties,⁸⁴ and dismissal of a temporary parish priest from his position.⁸⁵

(3) An act of a metropolitan council refusing to grant credit for the payment of wages to a parish priest.⁸⁶

(4) A decision of the Permanent Holy Synod to file a document issued by the Ecumenical Patriarchate that constituted a retrial of the judicial case of a metropolitan – who had already been sentenced by an ecclesiastical court – and had been issued by the Patriarchate after the exercise of appeal, according to the old privileges of the Ecumenical Throne.⁸⁷

(5) A metropolitan's decision concerning an objection, submitted against the validity of the election of members of a superior parish delegacy⁸⁸ or concerning the appointment of an abbot and the regulation of the administration of a monastery.⁸⁹

(6) A decision of the Permanent Holy Synod rejecting an appeal against the election of an abbot.⁹⁰

(7) Acts surrounding the election of a metropolitan.⁹¹

(8) The decision of a metropolitan concerning an appointment of a member of a monastery board.⁹²

(9) Decisions of a monastic brotherhood on the election of an abbot.⁹³

(10) An act of the Organization for the Administration of Ecclesiastical Property which granted a license for the construction of a temporary building made of aluminum and meant to be used as a church.⁹⁴

(11) A decision of the Permanent Holy Synod, transferring a parish priest.⁹⁵

The second type of internal affairs acts subject to review include those dealing with the administrative division of the Church, by which the local jurisdiction of ecclesiastical authorities is influenced. Examples of these acts include decisions of the Holy Synod subjecting a church to the jurisdiction of a specific metropolis⁹⁶ or setting of boundaries of metropolises,⁹⁷ and acts of a metropolitan council concerning the detachment of the territory of a parish and its subjection to another⁹⁸ or concerning the setting of boundaries of a parish.⁹⁹

The reviewable acts of the external affairs of ecclesiastical authorities include those enforceable acts of an administrative nature which are issued in compliance with existing legislation and influence the constitutionally established rights of citizens. Examples of acts which were admissibly contested before the Council of State include the following:

(1) The orders of a metropolitan to a police authority to seal a private church, because the church had been unlawfully offered for public worship¹⁰⁰ or had been put into operation without legal license.¹⁰¹

(2) The orders of a metropolitan to a police authority to demolish a private church because the church had been erected without observing the legal formalities.¹⁰²

84. Ruling n° 507/1983; Ruling n° 1665/1949.

85. Ruling n° 4625/1985.

86. Ruling n° 669/1942.

87. Ruling n° 1983/1979.

88. Ruling n° 250/1954.

89. Ruling n° 2403/1965.

90. Ruling n° 688/1967.

91. Ruling n° 3856/1980; Ruling n° 545/1978.

92. Ruling n° 511/1983.

93. Ruling n° 2714/1984.

94. Ruling n° 1382/1984.

95. Ruling n° 1416/1989; Ruling n° 708/1983.

96. Ruling n° 2063/1947.

97. Ruling n° 1588/1959.

98. Ruling n° 1162/1967, Ruling n° 1/1945.

99. Ruling n° 981/1959.

100. Ruling n° 2915/1983; Ruling n°. 1626/1972; Ruling n° 2688/1970; Ruling n° 219/1944.

101. Ruling n° 1731/1971.

102. Ruling n° 1414/1963.

(3) An omission on the part of the metropolitan to issue an order to seal a private church which had been unlawfully offered for public worship.¹⁰³

(4) The refusal of a metropolitan to grant a marriage license¹⁰⁴ or to spiritually dissolve a marriage pursuant to a judicial decision of divorce.¹⁰⁵

These categories of acts are subject to the review of the Council of State whether they are of an individual or of normative nature. Especially for the latter, it has become accepted that a regulation of the Church of Greece is admissibly contested by a plea in abatement.¹⁰⁶ Therefore, if the time period set to contest it expires, its legitimacy is admissibly reviewed secondarily by contesting an act issued pursuant to this regulation of the ecclesiastical authority.¹⁰⁷

Those acts of ecclesiastical authorities which have “spiritual and purely religious content”¹⁰⁸ are not subject to the review of the Council of State. In this broad category one finds those acts which, based on the statutes of the holy canons, regulate matter relating to the creeds, worship, and teachings of the Church. Therefore, the Council of State has excluded from its jurisdiction acts such as a refusal of a metropolitan to ordain one elected to the position of parish priest because of spiritual faults¹⁰⁹ and the election of a bishop as a merely religious minister, which took place with the exclusive invocation of the holy canons and without assigning administrative duties.¹¹⁰ However, if an act is of double-natured content – both spiritual and administrative in nature – then it may be contested, but only as to its administrative elements.¹¹¹

The Council of State had for decades excluded from its review the decisions of ecclesiastical courts under the exception of acts with solely spiritual content. In this field, the decisions of the Council of State shifted in focus at different times. It had initially ruled that the decisions of the ecclesiastical courts were not acts of administrative agencies; therefore, they were not subject to review by a plea in abatement.¹¹² Consequently, the Council of State called upon the very nature of the decisions of ecclesiastical courts,¹¹³ but excluded them from appeal, because the review is permissible only from the decisions of the administrative courts; ecclesiastical courts are courts of a special penal nature and impose special penalties.¹¹⁴

More shifts in position in the Council of State’s line of decisions followed.¹¹⁵ The Council of State finally concluded¹¹⁶ that the ecclesiastical courts have the character of disciplinary councils, which, in order to safeguard the principles of the welfare state and just administration, should follow, at least as to their composition and the disciplinary procedure, the basic principles of disciplinary law.

Moreover, the decisions issued by them are contested by plea in abatement before the Council of State as enforceable acts of administrative authorities.¹¹⁷ Recently, decision 1534/1992 of the Council of State has come full circle and annulled the decision of a metropolitan issued pursuant to the statutes of article 11 of Law 5383/1932, that is, as a bishop’s court.

103. Ruling n° 219/1944.

104. Ruling n° 390/1971.

105. Ruling n° 2635/1980.

106. Ruling n° 960/1978; Ruling n° 866/1974.

107. Ruling n° 3234/1971.

108. Ruling n° 583/1940; Ruling n° 491/1940.

109. Ruling n° 583/1940; Ruling n° 491/1940.

110. Ruling n° 5856/1980.

111. Ruling n° 545/1978; Ruling n° 546/1978.

112. Ruling n° 830/1940.

113. Ruling n° 2279/1953.

114. Ruling n° 2265/1969, Ruling n° 2298/1965, Ruling n° 2024/1965.

115. Ruling n° 368/1977; Ruling n° 36/1975; Ruling n° 2548/1973, Ruling n° 2800/1972.

116. Ruling n° 825/1988; Ruling n° 195/1987.

117. Ruling n° 825/1988.

IV. THE ADMINISTRATIVE STRUCTURE OF THE CHURCH

D. *Organization of the Church*

The Church of Greece is organized according to the synodical system; this is a fundamental administrative institution for every Orthodox Church, and it is found at central and local levels. The supreme authority is the Holy Synod of Hierarchy with the Archbishop of Athens as its President, and all the serving bishops (Metropolitans) are its members. Currently, there are eighty metropolitan sees in the entire Archbishopric: 43 in the autocephalous Church and 36 in the New Lands. The Church of Crete has an archbishopric and eight metropolitan sees, the Dodecanese Islands have six, and the Holy Mountain is under the Episcopal jurisdiction of the Ecumenical Patriarch himself.

The Holy Synod has administrative, legislative and juridical competence. In its legislative competence, it may publish regulations and canonical orders according to authority given in several areas by the Charter of the Church (L. 590/1977). The Synod is summoned *ipso jure* annually on 1 October, and at other times exceptionally according to need. A permanent administrative service is assured by the Permanent Holy Synod; this is formed by twelve metropolitans (six from the autocephalous Church and six from the Churches of the New Lands), with the Archbishop of Athens as President. It has a yearly tenure and prescribed powers. At the same time, there exist several synodical committees, which also assist the Synod. It also has attached to it certain organizations as legal persons: the Apostoliki Diakonia and the Inter-Orthodox Centre.

The Church of Greece is organized locally as follows:

(1) The Archbishopric of Athens and the metropolitan sees, whose boundaries, name and see are defined according to resolutions of the Holy Synod of the Hierarchy. The metropolitan sees are legal persons of public law. The bishop is the principal administrator in every province, and his title is that of metropolitan; questions concerning churches and parishes are in general decided by the metropolitan council consisting of a judge, an official from the Ministry of Finance, two priests, and a parish councilor. The election of the Archbishop of Athens and of the metropolitans is carried out by the Holy Synod of the Hierarchy. All active metropolitans are eligible for the archbishopric, together with those priests who are included in the list of candidates. Priests who are candidates for election as metropolitan must be included in the list of those eligible as archbishops. This list is established by the Holy Synod. New names are added every year, according to criteria stated in the Charter of the Church. The Ecumenical Patriarchate of Constantinople also has the right to add new names to the list, but only for the sees of the New Lands. Also eligible are prelates who are not active metropolitans. Official records on the election of archbishops and metropolitans are submitted to the Minister of Education and Cults, and he orders the publication of a presidential decree; following that, the elected prelate submits his confirmation to the President of the Republic and assumes his duties.

(2) A parish is a legal person of public law. It is founded by a presidential decree and administered by the parish priest and a five-member council of lay persons. The parish priest must be married; non-married priests may be ordained temporarily. Vacancies are filled by decree.

(3) Monasteries are also legal persons of public law, and also founded by presidential decree. Monasteries in the Church of Greece are divided into those which are under the spiritual supervision of the local metropolitan and those which are supervised spiritually by the Holy Synod. There are also monasteries in Greece which are supervised spiritually by the Ecumenical Patriarchate or are dependent (“metochia”) upon the Monasteries of Mount Athos, the Holy Sepulcher, or the Mount Sinai Monastery.

E. *Church and Education*

In primary and secondary schools, courses in religious education are taught according to the doctrine and the tradition of the Eastern Orthodox Church. Teaching is carried out

by teachers in primary schools, and graduates of a Theology Faculty in secondary schools. Both are considered as civil servants and receive a salary from the State, while their appointment and syllabus are not controlled by the Church. According to the principle of religious freedom, non-Orthodox pupils are not obliged to follow the courses. Parents raise their children according to their own religious beliefs.

Each religious denomination may have its own schools in Greece. The State is also in charge of schools for the Muslim minority in Western Thrace as well as a training college for future teachers in these schools.

Training for Orthodox ordinands is given in twenty-one schools (secondary schools, higher schools and schools for accelerated training). These establishments also provide board and lodging for the students. All expenses are met by the State, and the teachers are considered civil servants. Both the Universities of Athens and Thessaloniki have Theological Faculties, which non-Orthodox students may also attend.

F. *Criminal Law*

3. Ecclesiastical Courts

The penal jurisdiction of the Church, its offences, sentences, and procedures are governed by State L. 5383/1932. Under the regime of “state-law rule,” the jurisdiction of the ecclesiastical courts has been limited to clergy and monks. These courts do not judge lay people. If a lay person has committed a serious violation of faith or ecclesiastical order - such as heresy or schism - the Holy Synod of Hierarchy can impose anathema (anathema) or excommunication. The ecclesiastical courts are for priests, deacons and monks the Episcopal court; the first instance synodal court and the second instance synodal court; bishops the first and second instance courts; and, solely for the members of the Permanent Holy Synod, a special court. All bishops found guilty by the second instance court have the right of appeal to the Ecumenical Patriarchate. The penalties of the ecclesiastical courts are demotion, suspension, dethronement (only for bishops), fine, internment, and unfrocking.¹¹⁸

4. State Penal Code

A number of articles of the Penal Code deal with religion:¹¹⁹

(1) Article 175, paragraph 1, stipulates that everyone who intentionally assumes, without justification, the exercise of any public, municipal or community authority shall be punished by imprisonment for not more than one year or by pecuniary penalty. Paragraph 2 of the same article adds that the above provision also applies to the cases of assuming, without justification, the exercise of the functions of the service of a clergyman of the Eastern Orthodox Church or any other religion “known” in Greece.

(2) According to article 176, everyone who publicly and without right wears a decoration or title or a uniform or other distinctive indication of a public, municipal, community or religious official, included under paragraph 2 of article 175 (the paragraph dealing with known religions), shall be punished by imprisonment or by pecuniary penalty. At the same time article 54, paragraph 2–3, of the Charter of the Church of Greece (L. 590/1977) imported the disposition according to which those who are not Orthodox monks [or nuns] do not have the right to wear the frock of the monks, who belong to the Eastern Orthodox Church. Otherwise they can be punished according to article 176 of the Penal Code.

(3) Article 196 on abuse of religious office explains that a religious minister who, in the exercise of his office or publicly and because of his office, causes or incites the citizens to bear animosity against the power of the State or against other citizens, shall be punished by imprisonment for not more than three years.

118. See also Section IV E, below

119. See An. Christophilopoulos, *The new Penal Code and Ecclesiastical Law* [in Greek], in *Themis* 63 (1952) 305 ff.

(4) Article 198 refers to malicious blasphemy. It stipulates in paragraph 1 that everyone who publicly and maliciously and by any means blasphemes God shall be punished by imprisonment for not more than two year. According to the disposition of paragraph 2, except for cases under paragraph 1, one who by blasphemy publicly manifests a lack of respect for the divinity shall be punished by imprisonment for not more than three months.

(5) There is one more article of the Penal Code about blasphemy: n^o 199 on blasphemy concerning religions. According to this article, one who publicly and maliciously and by any means blasphemes the Eastern Orthodox Church or any other religion tolerable [not only known in the constitutional sense of the term] in Greece, shall be punished by imprisonment for not more than two years.

(6) Article 200 stipulates in paragraph 1 that one who maliciously attempts to obstruct or intentionally disrupts a religious assembly for service or ceremony permitted under the C shall be punished by imprisonment for not more than two years. Paragraph 2: One who commits blasphemous, improper acts in a church building or in a place devoted to a religious assembly - not only for worship - permitted under the C shall be subject to the same punishment of two years in prison.

(7) Article 201 on the desecration of corpses says that one who willfully removes a corpse, parts of a corpse or the ashes of the dead from those who have lawful custody thereof or one who commits an offence against a corpse or acts blasphemously and improperly towards a grave shall be punished by imprisonment of not more than two years.

(8) Article 342 refers to the abuse of minors, punishing abuse by imprisonment for not more than ten years. According to paragraph 2, there is incriminating evidence if the perpetrator of this crime is a clergyman with whom the minor has a spiritual relationship.

(9) Article 371 on the breach of professional confidence, stipulates in paragraph 1 that clergymen . . . because of their profession or capacity, are entrusted with personal matters of a confidential nature shall be punished by pecuniary penalty or imprisonment for not more than one year if they disclose such matters entrusted to them. According to the explanation of paragraph 4, such an act shall be justified and shall not be punished if the perpetrator acted in accordance with a duty or in the interest of the custody of a lawful or otherwise justifiable legal interests, public or private, whether his own or an other's, which could in no other manner be protected or performed.

(10) Article 374 on special cases of theft, stipulates that theft shall be punished by confinement in a penitentiary for not more than ten years "if property used for religious worship has been taken from a place of such worship."

5. Religious Symbols

Article 198 of the Penal Code on malicious blasphemy punishes, as we have seen already, everyone who by blasphemy publicly manifests a lack of respect for the Divinity by imprisonment for not more than three mouths. This disposition includes also offenses against the symbols of any religion and cult. Religious symbols, mainly icons of Jesus Christ, are used in the court halls and behind the judges' chair at all jurisdictions, as well as in the classrooms of elementary and secondary schools, hanging on the wall behind the teacher's desk. Schools that belong to various religious and denominations can use their own symbols. No law deals with the use of religious symbols; it is customary. Also, every person is free to use and wear his or her symbols, such as the Muslim foulard, crosses, and the David star.

G. Financing of Churches

In Greece there is no Church tax. Every religion has its own revenues from movable and immovable property and offerings of members. The State has, however, almost entirely assumed the financing of the prevailing religion; this is done under a variety of forms: direct or indirect subventions, such as the yearly subvention to the "Apostoliki

Diakonia” (L. 976/1946, art. 24(1)(8)) and another granted to the Cathedral of Athens (L. 2844/1954), together with various grants to churches and monasteries for different reasons. At the same time, the State is charged with all the expenses of Orthodox clerical education.

The State pays the salaries of prelates, priests who serve a parish, deacons (priests and deacons number up to 10,000), preachers, and also laity employed by the Orthodox Church. The same persons also receive pensions from the State when retired. The law which imposed a State levy of 35 % of all parish revenues was abolished in 2004. The monks are also insured (for health and pension) by the “Farmers’ Security Organization.” Priests serving in cemeteries and hospitals receive their salary from the local municipality or hospital administration. Priests serving in the Army and the Police Force are raised to the rank of officers and receive the salary or pension of their rank. They may also hold posts in the public or private sector - usually as teachers - with the appropriate income.

The Orthodox Church enjoys various tax-exemptions such as those from real-estate tax, real-estate income tax, tax from real-estate transfers, donations, and inheritance tax. More favorable tax-exemptions apply to Mount Athos. According to the jurisprudence, all tax exemptions in favor of the prevailing religion are also in force for all the know religions and Christian denomination in Greece, according to the constitutional principle of equality.¹²⁰

Other financial privileges comprise the inalienability of real property belonging to the Orthodox Patriarchates of the Middle East as well as to the monasteries of the Ecumenical Patriarchate, and the fact that real property belonging to monasteries cannot be taken over by third parties by usucapion. The Court of Appeal in Thessaloniki has accepted that this also holds for Roman-Catholic monasteries.¹²¹ The State does not pay the salaries of preceptors and sacristans; these persons, however, are not employees according to general labor laws because, according to the Holy Canons, they are considered as inferior clergy.

Although only a few of these persons have this status, the old financial regime still holds in their case—that is, when they are appointed by the metropolitan, they receive from the church a salary which has been agreed by the parties. Other Church employees are remunerated as civil servants of similar categories.¹²²

H. Ordination and Legal Position of Priests and Monks

The qualifications required of candidates for ordination are the following:

(1) He must be a member of the Orthodox Church, (2) with a correct and sound faith; (3) he must be a male, (4) of the right age (minimum age 25 years for a deacon, 30 for a priest, 34 for a bishop), (5) have the necessary education, (6) be physically and spiritually healthy; (7) if he is married, his marriage must conform to the Holy Canons; ; (8) he should not have extramarital relations, and (9) he must be of irreproachable conduct.

If he is found guilty by an ecclesiastical court, a priest may lose his attributes and may be defrocked. A defrocked priest resumes the status he held before ordination, as a lay person or monk. The Eastern Church accepts that the conferring of orders is reversible: the acts of the defrocked priest are invalid.

Priests must accept the following restrictions: they cannot be appointed guardians of

120. Article 4 § 1.

121. 1161/1983.

122. On ecclesiastical financial matters See I. Koukiadis-Ch. Papastathis, *Droit du travail et religion en Grèce*, in *Les Églises et le droit du travail dans les pays de la Communauté Européenne*, Milano-Madrid (Consortium Européen) 1993, 115 ff.; Ch. Papastathis, *The Financing*, supra n. 49 at 180–184; K. PAPAGEORGIOU, *Tax Status of Religions* [in Greek], Athens-Thessaloniki (Sakkoulas) 2005; IDEM, *Taxation of Religions* [in Greek], Trikala-Athens 2005; IDEM, *Usucapion and ecclesiastical Real Estate* [in Greek], Trikala-Athens 2008; G. APOSTOLAKIS, *On the Real Estate of the Orthodox Churches in Greece* [in Greek], Trikala-Athens 2007.

minors or of legally condemned persons. The holy canons prohibit trading by priests; if a priest is found to be practicing trade systematically, he is considered a trader and accordingly punished. There exist in the Penal Code certain offences, which can be perpetrated only by a priest. These include the abuse of clerical rank,¹²³ the abuse of a spiritual child with indecent assault,¹²⁴ violation of confidentiality.¹²⁵ Another offence is the celebration of betrothal before a marriage or marriage without the bishop's permission, according to the constitutional Charter of the Church.¹²⁶ This offence may be punishable by up to a year's imprisonment by a State court and is also punishable by the ecclesiastical courts.¹²⁷

According to penal and civil jurisprudence, when an oath is necessary, priests must only give an affirmation; they are not asked to divulge any information gained through confession. A prelate's testimony is taken at his residence and then read out in court. Bishops enjoy a special penal jurisdiction according to the Code of Criminal Procedure. Petty offences committed by a prelate are judged at the "crown court," not at the police court; while an offence is judged at the court of appeal, not at the "crown court." Although this was standard practice in the past, lay people do not now take part in the administration of ecclesiastical establishments and the election of prelates and parish priests.

Monastic status is acquired by tonsure, which is a ceremony and not a mystery. Tonsure takes place at the monastery where the new monk will live. During the ceremony the monk takes vows of obedience, poverty and chastity. Before tonsure, a future monk has to remain a novice, usually for a period of three years. A novice cannot be less than 16 years old.

As with priesthood, tonsure is an obstacle to marriage; tonsure will not automatically annul a former marriage. It constitutes, however, a reason for a demand of divorce by the other partner. Succession to the property of a monk is subject to particularly complicated legal arrangements in Greece. It will suffice to mention here that a monk's estate is inherited twice: after tonsure and after his death. After tonsure, his estate goes to the monastery and to his wife and children if he was married. After death, his estate is equally divided between the monastery and the Church.

I. *Matrimonial and Family Law*

Marriage is not considered incompatible with priesthood in the Eastern Church. It must have taken place, though, before ordination. Bishops are elected only from among non-married or widowed priests.

Civil marriage was introduced in Greece in 1982. Until that year, religious marriage was the only valid form; a civil marriage could only take place abroad, but it was not recognized in Greece. L. 1250/1982 introduced the equal validity of religious and civil marriage, and at the same time abolished many marriage-impediments in the Civil Code. However, the Church of Greece decided to keep many of these impediments for the religious marriage.

Thus, an Orthodox may not be married to a person of a different religion (not of a Christian denomination); nor when a third marriage has already taken place; nor when there is a close blood-relationship or spiritual affinity after baptism; nor when both parties have been convicted by a criminal court of adultery between them (although adultery is no longer considered a criminal offence). Marriage is not permitted to priests and monks (after their ordination or tonsure respectively) and to a woman before ten months have elapsed after the dissolution of a previous marriage. Marriage in Church requires a license

123. 1975 Syntagma [SYN] [Constitution] (Greece) art. 196.

124. 1975 Syntagma [SYN] [Constitution] (Greece) art. 342(1).

125. 1975 Syntagma [SYN] [Constitution] (Greece) art. 371(1).

126. 1975 Syntagma [SYN] [Constitution] (Greece) art. 49(2) & (3).

127. See, *supra*, IV, C

from the metropolitan. In practice, this amounts to the same license required by municipalities or communities for a civil marriage. The officiating Orthodox priest should be “in a regular position,” that is entrusted with performing the sacraments of the Church. Otherwise, the marriage is not valid. Mixed marriages are celebrated according to both doctrines.¹²⁸

Divorce is granted only by a civil court. The Church may intervene in the proceedings twice: before a divorce suit in an attempt at reconciliation,¹²⁹ (; and after the court’s decision the Church dissolves the marriage spiritually. This is still in force today for persons who after a first religious marriage wish to proceed to another religious marriage.¹³⁰

V. MOUNT ATHOS

Organized coenobitic monastic life on the Athos Peninsula is considered to date from the year 963, when the Monastery of Great Lavra was built. The Byzantine Emperors were in the habit of granting to Mount Athos privileges of self-administration (relating to the exercise of legislative, judicial, and administrative power), as well as privileges of a religious, personal, and financial nature. Mount Athos became the pan-Orthodox monastic centre, with monks from all the Orthodox nations. Currently, almost 2,800 lead the monastic life there.¹³¹

According to the C, the Athos Peninsula is a self-governing part of the Greek State, whose sovereignty remains intact.¹³² Spiritually, Mount Athos is under the direct jurisdiction of the Ecumenical Patriarchate of Constantinople. All persons leading a monastic life there acquire Greek citizenship *ipso jure* upon admission to a monastery as monks or novices. Mount Athos is governed, according to its privileged regime, by its twenty monasteries, and the entire peninsula is divided among them. The whole territory of the peninsula is exempted from expropriation.

The administration is exercised by representatives of the twenty monasteries constituting the Holy Community, and its executive body the *Holy Epistassia* (Superintendence), which comprises four monks drawn annually from four different monasteries in rotation. The C does not permit any change in the administrative system or in the number of the monasteries or in their hierarchical order or in their relationship to their subordinate dependencies (scetes, cells, hermitages). Non-Orthodox Christian persons or Orthodox schismatic are prohibited from dwelling there. The determination in detail of the regimes of Mount Athos entities and their manner of operation is regulated by the Charter of Mount Athos. This Charter was drawn up regulated by the Charter of Mount Athos. This Charter was drawn up and voted for by the twenty monasteries, and ratified by the Ecumenical Patriarchate and the Hellenic Parliament. The Charter in force came into operation in 1927.

In the spiritual field, proper observance of the Athonic regimes by its entities is under the supreme supervision of the Ecumenical Patriarchate, and in the administrative field under the supervision of the Hellenic Republic, which is also exclusively responsible for safeguarding public order and security. These powers of the State are exercised through a civil governor, whose rights and duties are determined by law, and who is appointed by the Ministry of Foreign Affairs. The law determines also the judicial power exercised by the monastic authorities and the Holy Community as well as customs and taxation

128. Civil Code 1371.

129. Code of Civil Procedure, art. 593 & f (this was abolished after the introduction of civil marriage).

130. See J. Deliyannis, *Le mariage religieux et son efficacité civile en droit hellénique*, in «Les effets civils du mariage religieux en Europe», Milano (Consortium Européen Giuffrè) 1993, 121 ff.

131. See Ir. Doens-CH. Papastathis-K. Papageorgiou-D. Nikolakakis, *Nomo-canonical bibliography on Mount Athos; 1912-2000* [in Greek], Mount Athos 2003; CH. PAPANATHIS, The Status of Mount Athos in Hellenic Public Law, in “*Mount Athos and the European Community*,” Thessaloniki (Institute for Balkan Studies) 1993, 55–57 ff.

132. 1975 Syntagma [SYN] [Constitution] (Greece) art. 105.

privileges.¹³³

In addition to the C, the Charter, and the L.D., two other basic legal sources are in force: article 13 of the 16th protocol of the 1923 Treaty of Lausanne, which safeguards the rights and liberties of the monastic communities that are non-Greek in origin; and the Joint Declaration no. 4 of the Final Act of 1979 of the Agreement concerning the accession of Greece to the European Community, which states that the Community must preserve the status of Mount Athos, in particular in relation to customs franchise privileges, tax exemptions, and the right of establishment.

VI. RELIGIOUS FREEDOM IN GREECE

There were references to religious freedom in Modern Greece already before the establishment of the Greek State. In 1768, a renowned prelate and scholar, Evghenios Voulgaris, published in Greek a work entitled “Draft on Religious Tolerance, That Is, on the Tolerance of the Heterodox.”¹³⁴ In his work, he renders the word “Tolerance” with the coined term *anexithreskeia* (tolerance for other religions), which restricts the former only to religious matters. Almost at the same time, another scholar, Righas Veletinlis, who envisioned the cooperation among the Balkan peoples, asserted in the Declaration, which he issued regarding the basic principles of the regime of the future state in South-Eastern Europe, that “the freedom of religions of any kind, Christianity, Turkism, Judaism and so on is not impeded . . . ,” as well as that the state shall be inhabited “with no exceptions on grounds of religion and language”¹³⁵

The Cs, which were enacted during the War of Independence (1821-1828), established the Christian Orthodox cult as the state religion, - a provision which is contained in the current C (1975), as discussed above. At the same time, they instituted tolerance towards any other religion, as well as the unrestrained rite of its worship. In the monarchic C (1844), as well as in those of 1864 and 1911, the relevant statutes became more rigid. The various cults were treated with tolerance, and their rites of worship uninhibited, as long as they were “known.” This is a term that, both by precedent and in theory, was used to determine a religion that has no secret beliefs and clandestine worship. Furthermore, these constitutions prohibited proselytism and all kinds of intervention against the prevailing religion. In the C of the Republic (1927), there was no longer plain tolerance of the various religions, but provisions on religious freedom. Religious conscience was inviolable. The rite of worship of every known religion was also unhindered, as long as its celebration was not counter to the public order and public morals. Moreover, proselytism was prohibited.

In the current C of 1975, article 13 contains the following fundamental provisions on religious freedom: the freedom of religious conscience is inviolable. All known religions are free and their rite of worship is performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the moral standards. Proselytism is prohibited, and no person is exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.

The C, which guaranteed merely the tolerance towards various religions, empowered the State to grant the right of worship to the followers of religions other than the prevailing one. By contrast, since 1927, under the regime religious freedom, the State is required to guarantee the free formation and worshipping manifestation of religious convictions. Religious freedom is also interrelated with other provisions of the C, besides those of art. 13. Article 2, paragraph 1, on the value and dignity of a person, is also

133. Legislative Decree of 10/16-9-1926.

134. Evghenios Voulgaris published in 1768, a Greek translation of Voltaire’s *Essai historique et critique sur les dissensions des Églises de Pologne*. Voulgaris added (pp. 217-284) an appendix under the title *An Outline on Toleration, that is Tolerance towards the Heterodox* [in Greek].

135. 1975 Syntagma [SYN] [Constitution] (Greece) art. 7. See Righas Veletinlis, *All his Extant Works* [in Greek], vol. V, Athens (Parliament of the Hellenes) 2000, p. 37.

relevant, and so is art. 5, paragraph 1, on the unhindered development of one's personality. Also, in cases of events that pose threats to the State (in a state of emergency), during which art. 48 provides for the suspension of force of certain articles, though the implementation of article 13 is not suspended. Also, article 13 protects all those inhabiting the Greek territory, regardless of their nationality, while other articles concerning individual rights protect only Greek citizens (art. 4 on equality; art. 2 on the right to assemble; art. 12 on the right of association).

The C differentiates religious freedom into first, freedom of religious conscience; and second, freedom of worship.¹³⁶

J. Freedom of Religious Conscience

The freedom of religious conscience is absolute. The C sets no limitations. Not even common legislation imposes restrictive provisions. However, a problem that often arises is how public administration and the courts are to implement the C and the laws. In this field, there were past decisions, which were not always congruous to these provisions.

Let us take a closer look at certain characteristic acts. One of the consequences of freedom of religious conscience is religious equality. This right has primary significance when getting hired for employment in the public sector. A grave problem came up concerning the occupancy of a teacher's post, although the relevant laws did not stipulate anything to the contrary.¹³⁷

In all the schools of general education in Greece, the course of religion is taught – always in accordance with the creed of the Eastern Orthodox Church – as compulsory for all grade-schoolers who have declared to be Orthodox. In junior high schools and high schools, this course is taught by graduates of a university Faculty of Theology; in elementary schools, by the teacher of each class. In 1949, the Ministry of National Education and Cults fired a teacher because he had joined the religion of Jehovah's Witnesses. He appealed to the Council of State (the highest administrative court), which rejected his appeal on grounds that the qualification of Christian Orthodox constitutes a necessary element for the fulfillment of a teacher's duties, which include, e.g. the teaching of religion, the students' churchgoing, etc. Following this decision, the administration no longer appointed teachers in primary education if they were not Orthodox. In fact, the impediment was extended to include kindergarten teachers, although the latter do not teach courses. This system, with an exception in the case of schools of religious minorities, was in force up to 1988, when it was abolished.¹³⁸ Accordingly, the non-Orthodox may now be appointed as teacher (in a school with at least two posts) and

136. On the religious freedom in Greece, See An. Marinos, *Religious Freedom* [in Greek], Athens 1972; IDEM, "La liberté religieuse dans la nouvelle Constitution grecque," *Conscience et Liberté* 11/1976, 17-20; K. Kyriazopoulos, *Protection of Cultural Property and Religious Freedom* [in Greek], Thessaloniki 1993; G. Sotiirelis, *Religion and Education according to the Constitution and the European Convention* [in Greek], Athens-Komotini 1993; I. Konidaris, "Legal Status of Minority Churches and religious Communities in Greece," in *The Legal Status of religious Minorities in the Countries of the European Union*, Thessaloniki-Milano (European Consortium) 1994, 171-181; Ismini Kriari-Katrani, "Freedom of Religion under the Greek Constitution," *Revue Hellénique de Droit International* 47 (1994) 397-415; C Bees (ed.), *Religious Freedom* [in Greek], Athens (Eunomia) 1995; Emm. Roukounas, *International Protection of Human Rights* [in Greek], Athens 1995; Ch. Papastathis, Le régime constitutionnel des cultes en Grèce, in *Le statut constitutionnel des cultes dans les Pays de l'Union Européenne*, Paris-Milano (Consortium Européen) 1995, 153-169; K. Kyriazopoulos, *Limitations in the Freedom of Religious Minorities' Instruction* [in Greek], Thessaloniki 1999; Paroula Naskou-Peraki, *The legal Framework of Religious Freedom in Greece*, Athens-Komotini 2000; Ch. Papastathis, (ed.), *Religious Freedom and Prevailing Religion* [in Greek], Athens-Thessaloniki 2000; Ch. Papastathis, The Applications of Religious Laws in the Hellenic Republic, in *La religion en droit comparé à l'aube du XXI^e siècle*, Bruxelles (Académie Intern. Droit Comparé-Bruylant) 2000, 307-321; R. CLOGG (ed.), *Minorities in Greece. Aspects of a plural Society*, London (Hurst & Company) 2002; Ch. Papastathis, La liberté religieuse en Grèce, in *L'Année Canonique* 45 (2003) 295 ff; G. Ktistatkis, *Religious Freedom and the European Convention of Human Rights* [in Greek], Athens-Komotini 2004; K. , *Taxation Status of Religions* [in Greek], supra n. 51.; I. Petrou, *Religious Freedom and Democracy* [in Greek], Thessaloniki 2005.

137. See I. Koukiadis-Ch. Papastathis, *Droit du travail*, supra n. 124 at 115ff.

138. L. 1771/1988.

religion is taught by the Orthodox colleague. Moreover, today there are state-appointed Catholic theologians who teach the course of religion in the junior high schools and high schools of certain islands in the Cyclades, where Catholics represent a high percentage of the local population.

The President of the Hellenic Republic, before assuming the exercise of his duties, can take only a Christian oath. C 33 does not contain a stipulation similar to that of C 59, concerning the oath of non-Christian members of Parliament. This is an indirect way of promoting the election of a Christian as President only, although this provision does not conform to the principle of equality.

A Jehovah's Witness has been convicted to imprisonment by court-martial, because he refused to serve in the military. After his release from prison, he attempted to be appointed as chartered accountant. The administration refused to grant him the relevant license because of his previous conviction. The Council of State (3339/1991) nullified the disapproving act. Also, the Municipality of Peristeri in Attica had refused to provide one of its employees, who was a Jehovah's Witness, with the family allowances provided by law, because he had solemnized his wedding in the ceremony of the Jehovah's Witnesses, a religion which the Municipality of Peristeri did not consider "known" under the constitutional mandate.¹³⁹ Therefore, the said marriage was non-existent for the municipality. The Council of State nullified this act (2105, 2106/1975). Lastly, the Faculty of Theology of the University of Athens decided on the expulsion of one of its students, because he had asserted to be an atheist. The Council of State voided this act, on grounds that the Faculty of Theology is not confessional; thus, it is also open to non-followers of the prevailing religion.¹⁴⁰

As concerns the military service of those who refuse to serve on the basis of their beliefs, L. 731/1977 initially had provided for the objectors of exclusively religious conscience. This was the first law of its kind in Greece. Its statutes allowed for the unarmed military service for a time period that was double the regular term of service. The refusal to serve this type of military duty constituted a criminal offence. It was punishable by an imprisonment term of equal duration to that of the unarmed service. After serving the sentence, the duty for military service was terminated.

In the year 1997, the Parliament enacted a new law, 2510/24-27.6.1997, which was a "regulation of military duties . . ." This law introduced new and modernized statutes concerning conscientious objectors. In the preamble to the bill, it is mentioned that "the treatment of the relevant issue, always with regard to the compulsory and universal character of military service, is required also by the compliance of the Country to obligations it has undertaken by way of international treaties." Apart from that, it is well-known that both the prevailing Orthodox Church and several other nationalistic agents are opposed to the provision of military facilitations to conscientious objectors. They allege that Greece faces security risks. The third chapter of this law (articles 18-24) refers to conscientious objectors. The relevant statutes provide that the reasons of conscience are considered to refer to a general outlook on life based on conscious religious, philosophical or moral convictions, which are applied by the individual unwaveringly and manifest themselves with the observance of an analogous behavior. The conscientious objectors are called upon to render either unarmed military service, or alternative civil social service, equal to that which they would have done if they had served in arms, increased by twelve (12) months for those obliged to serve without arms, and eighteen (18) months for those obliged to render civil service.¹⁴¹ The current L. 3421/2005, art. 59-65, has decreased the duration of the above services.

139. See section VI, below.

140. 194/1987.

141. See Ch. Papastathis, in *European Journal for Church and State Research* 5 (1998) 40-46, where the text of L. 2510/1997 on conscientious objectors in English translation.

K. *Freedom of Worship*

While in the realm of freedom of religious conscience, the problems which came up in the past concerned, as a rule, Jehovah's Witnesses. These problems today seem to have been substantially resolved. However, where freedom of worship is concerned, the relevant legislation has not improved. The unhindered practice of worship (C 13, paragr. 2) occurs under certain conditions, determined by the C itself. What is more, the Council of State (866/1974) has ruled that the common legislator cannot add other to the existing ones. In reality, the relevant laws and, consequently, the administrative and the judicial decisions operate regardless of the constitutional prerequisites.

As we already saw, the first condition for the freedom of worship on the part of the followers of a religion is that the religion happens to be "known." A "known" religion does not signify recognized religion. Besides, there is no administrative agency charged with the acknowledgment of religions. In practice, the characterization of a religion as known is usually accomplished with the approval of its petition for the establishment of a church or a house of prayer. Under this procedure, in each particular case the Administration conducts an *ex officio* inquiry to determine whether or not the conditions of known religion are met. The same procedure is followed by the courts, when the adherents of a religion appeal to it, requesting the nullification of an unfavorable act of the State administration.

Furthermore, the practice of worship of the known religion should not offend public order and public morals (C 13, paragraph 2). The former includes, in its general scope, the latter. Basically, it is the full spectrum of the fundamental civil, moral, social and economic principles and attitudes that prevail in Greece during a particular period. This constitutional framework of safeguarding worship is in practice conveyed by provisions in laws that were very often in stark contradiction to it particularly during periods of political unrest.

It is well known that during Metaxas' dictatorship (1936–1941) the Greece government issued laws which gave the Orthodox Church a predominant position over the other religions and Christian confessions.

One of these laws, L. 1369/1938, stipulated (art. 41) that for the erection of a place of worship of any religion or confession the interested parties had to submit a petition to the local Orthodox bishop. Only after the latter's approval could the Ministry of National Education and Cults authorize it. According to the same law, for houses of prayer there was no need of such permission from the local Orthodox bishop.

In spite of the fact that this provision was obviously anti-constitutional, as the freedom of worship of any religion and confession of worship of any religion and confession was left within the discretionary power of the Orthodox Church, the Council of State had accepted, in a series of rulings, that this law was congruous both with the former C (1952) and with the current Constitution in force (1975).

The Council of State had moreover extended the prerequisite of the bishop's authorization to the establishment of houses of prayer. On the other hand, the Council of State characterized the permission given by the bishop as a mere consultatory opinion, which is not binding for the Ministry's final decision. At the same time, the Council of State had ruled (721/1969) that if the Ministry happened to approve the establishment of a place of worship in spite of the local bishop's contrary opinion, it should make special justification for such a decision.

In practice, most of the time Orthodox prelates did not grant the required permission, particularly to Christian confessions; consequently, the Ministry was hesitant to approve the establishment. The interested parties had no other means to implement their constitutional rights than petitioning the Council of State and then the European Court of Human Rights.

This frustrating situation came to an end through L. 3467/21.6.2006 on "Matters concerning educational staff." Article 27 enacts that the permission (or opinion) of the local Orthodox authority is not required for the foundation, erection or functioning of a place of worship of any confession or religion; It also establishes that all different or

contrary provisions on the same matter are abrogated henceforth. The relevant application should be submitted directly to the Ministry of National Education and Cults, which is the only competent authority.

Furthermore, the Council of State added to the constitutional requisites for the operation of a church or house of prayer the non-performance of proselytism on the part of the petitioners (995/1970 and thereafter). But what is proselytism?

L. *Proselytism*

Proselytism as a legal term means any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of material assistance, or by fraudulent means or by taking advantage of his or her inexperience, trust, need, low intellect, or naiveté.

Proselytism was a criminal offense under article 198 of the old Criminal Law (1833). The relevant statute was deemed inadequate. It was replaced by that of article 4 of Compulsory Law 1363/1938 (cf. CL. 1672/1939), where the aforementioned definition is cited.¹⁴²

Under the precedent of the Areios Pagos (the highest civil and criminal court), this statute has maintained its force even after the introduction of the new Criminal Code (1.1.1951). It is immaterial if the used means are expedient or if the person to whom the attempt is responsive of proselytism or if the desired result is ultimately achieved. It is likewise immaterial if the persons who are involved with the offense are related (e.g. parents-children, spouses).

Proselytism is punished with a cumulative sentence of incarceration (one month to five years) and imposition of a fine. If the perpetrator is a Greek citizen, police surveillance may also be imposed; if he is a foreigner, he may be punished with deportation.

The same law, when referring to the means for the practice of proselytism, uses the term “in particular.” This allowed for judicial precedent finding that the enumeration of the manners and means of proselytism is indicative and alternative. Only one of them suffices or the use of other means, not mentioned explicitly in the law, suffices for the offense to take place. It is characteristic that both theory and precedent dealt with the issue of whether or not the distribution or the mailing of printed matter constitutes the offense. Their opinion is that in every single case this depends on the particular circumstances under which the act was committed.

The generality of the wording of the C, as well as the methods and means of proselytism which are indicatively described in the law, have led to the formulation of the opinion that proselytism is distinguished into fair and unfair. The former constitutes the mere exercise of the right of the free declaration of religious convictions. I believe that this distinction is not grounded on legislative reality. However, the limits between the two are extremely elusive. Undoubtedly, the provision of the current C, which prohibits the practice of proselytism for or against a given religion, constitutes progress when compared to the past, provided that the Greek legal order persists in preserving it as an offense. Precisely for this reason some writers do not include proselytism in the domain of religious freedom, but in that of the protection of religions on the part of the State.¹⁴³

M. *Religious Freedom Cases v. Greece before the European Court of Human Rights*

During the period of 1993–2002, sixteen cases on religious freedom versus Greece

142. A. Loverdos, *Proselytism* [in Greek], Athens-Komotini 1986; K. Kyriazopoulos, Proselytization in “Greece: Criminal Offence vs. Religious Persuasion and Equality,” *Journal of Law and Religion* 20 (2004–2005) 149ff.

143. As Sp. Troianos-G. Poulis, *Ecclesiastical law* [in Greek], Athens-Komotini 2003, 119–127.

have been tried by the European Court of Human Rights (the Court).¹⁴⁴ The first one is the well known as *Kokkinakis v. Greece*.¹⁴⁵ Discussed below are some of the most characteristic of these cases:

1. **Kokkinakis v. Greece.** Minos Kokkinakis, a Greek citizen, became a Jehovah's Witness in 1936. From that time, Kokkinakis was arrested more than sixty times for proselytism. Between 1936 and 1962 he was sentenced to imprisonment for 33 1/2 months and convicted to exile for 31 months in total. On 2 March 2 1986, M. Kokkinakis and his wife visited the home of Mrs. Kyriakaki, in Setia/Crete, and engaged in a discussion with her, also attempting to sell some booklets of their cult. Mrs. Kyriakaki's husband, who was the cantor at the local Orthodox parish, accused the Kokkinakis couple of proselytism to the police, who arrested them. They were convicted by the magistrates' court. The Court of Appeals of Crete acquitted Mrs. Kokkinakis, but upheld the conviction of Mr. Kokkinakis. His further appeal to Areios Pagos (the Supreme Court) in Athens was dismissed. M. Kokkinakis applied to the Commission, claiming that his conviction for proselytism was in breach of the rights secured in articles 7, 9 and 10 of the European Convention on Human Rights.

The Commission adopted Mr. Kokkinakis' account and expressed unanimously the opinion that there had been a violation of article 9. The Court in its judgment, held by six votes to three, ruled that there had been a violation of article 9 (right to freedom of religion). The court reasoned that the Greek courts established the applicant's liability by merely reproducing the wording of article 4 of the CL. 1363/1938 and did not sufficiently specify the way in which the accused had attempted to convince his neighbor by improper means. None of the facts they set out warranted such finding. Thus, it had not been shown that the applicant's conviction was justified under the circumstances of this case by a pressing social need. The contested measure (Mr. Kokkinakis' conviction) therefore did not appear to have been pursued or, consequently, necessary in a democratic society for the protection of the rights and freedom of others.

The court acknowledged a violation of article 9 of the Convention, because the inadequately substantiated decisions of the Greek courts infringed on the liberty of manifestation of religious convictions. Further, the Court held that there had been no violation of article 7 of the Convention, since the applicant was in a position to know the actions for which he may incur criminal liability, pursuant to the wording of the Greek law and the relevant legislation. The Court also deemed unnecessary to inquire into the allegations for violation of articles 10 and 14 of the Convention, since all relevant matters had already been analyzed in the context of article 9.

2. **Holy Monasteries of Ano Xenia and Others v. Greece.** The second complaint against Greece before the European Court, which invoked, among other things, a violation of religious freedom (article 9), was made by certain monasteries of the Church of Greece.

Law 1811/1988 ratified the agreement of the assignment to the State of the forest and agricultural property of 149 monasteries of the Church of Greece which entered into this agreement. Forty-seven monasteries informed the Holy Synod that they were not entering into the agreement because, according to their own statement, they did not possess significant forest and farming property. The administration and the management of the overall civil property of the monasteries that did not enter into the agreement came to the Holy Synod of the Church of Greece. It was provided for that around each monastery there was to be a retention of a specific area from the assigned property for the purposes of environmental protection and self-cultivation. The monastery lands for which the monasteries could prove ownership through title-deeds properly registered or by legal statute or by irreversible decision against the State remained in their ownership.

The reasons that compelled the State to initiate a new regulation of the issues regarding ecclesiastical property through Law 1700/1987 and Law 1811/1988, which ratified the agreement of the assignment of monastery property to the State, are the prevention of illegal and disadvantageous transactions or trespasses on the part of shrewd exploiters and the deterrence of frictions not only between the Church and the State but also between the Church and civilians. Similar compulsory concessions of monastery property to the state have been made right after the liberation from the

144. E. Kastanas, *The Jurisprudence of the European Court of Human Rights on Religious Freedom* [in Greek], *Nomocanonica* 1/2 (Oct. 2002) 17–44.

145. *Kokkinakis v. Greece*, 17 EHRR 397 (1994) (ECtHR 260–A, 23 June 1993).

Ottoman yoke, as well as pursuant to the directive of the Constitution of 1952 (Decree 2185/1952) regarding the restitution of sharecroppers (landless peasants).

The State, in exchange for the concession of the ownership of monastery property of those monasteries which became parties to the agreement took on the payment of the salaries of the preachers who were hitherto paid by the Organization for the Administration of Ecclesiastical Property and also the financial support of the monasteries with an amount equal to 1% of the annual budget allotted by the Ministry of Education towards the reimbursement of the expenses of the Church (payment of salaries to bishops, priests, preachers, employees of metropolises, ecclesiastical education, etc.).

It was noted that the agreed price for the Church lands that were surrendered to the State towards the restitution of landless peasants on the basis of the agreement ratified by the Decree of 8/10/1952 was equal to 1/3 of their value.

The holy monasteries (Ano Xenia of Thessaly, Aghia Lavra of Kalavryta, Metamorphoses tou Soterou of Meteora, Chrysoleontissa of Aegina, Megalon Spelaion of Kalavryta, Flamourion of Volos, Asomata of Petrake, Osios Loukas of Boeotia) appealed to the European Commission of Human Rights and argued that Law 1700/1987 and Law 1811/1988 violated their rights which stem from articles 6, 9, 11, 13 and 14 of the Treaty of Rome and from article 1 of the First Additional Protocol.

The Commission expressed the unanimous opinion that there had been no violation of the Convention and the Additional Protocol by the Greek State. The European Court did not follow the Commission. It held unanimously that Law 1700/1987 constituted a deprivation of the peaceful enjoyment of the property of some of the applicants. The Court found a violation of article 1 of Protocol n° 1 and rejected all other claims, including violation of article 9.

3. **Manoussakis v. Greece.** The third case is that of T. Manoussakis et al. (1996). In the year 1983, T. Manoussakis rented an 88 m² room in a building of the village of Ghazi in Herakleio/Crete so that it could be used by Jehovah's Witnesses for their gatherings of any kind. In compliance with the provisions of the law concerning the operation of houses of prayer, T. Manoussakis addressed himself to the Ministry of National Education and Cults five times, requesting license of operation. The Ministry responded that it was not ready to grant the license because it had not yet received the required information from other services. In 1986, Manoussakis and the others were indicted of violation of art. 1 of Law 1363/1938, as this was amended by CL. 1672/1939. They were accused of using a site as a house of prayer, without having prior received the required license by the competent ecclesiastical authority and by the Ministry. The Magistrates⁷ Court acquitted the accused. It held that "the gathering of followers of any faith, as long as there is no proselytism conducted, is unhindered, even when it is carried out in a place without a license." In 1987, the accused were tried by a higher court, and convicted to three-month imprisonment, which could be commuted to a fine of four hundred drachmas per day.

The accused appealed to the Commission and subsequently to the European Court. They pleaded that article 1 of CL. 1363/1938 is contrary to articles 11 (right of assembly) and 13 of the C of Greece, as well as to article 9 of the European Convention.

The Court issued its judgment on 26 September 1996. It held that in Greece Jehovah's Witnesses do not enjoy the guarantees which are in effect in other member-states of the Council of Europe. As a result, pluralism, tolerance, even the spirit of open-mindedness, without which there is no democratic society, were in grave danger in Greece. The whole procedure for the granting of a license of operation of a place of worship has been turned into a weapon against the right of religious freedom. Furthermore, the Court noted that the Greek State tended to utilize the potential of legislative provisions in such a way as to impose rigid – even prohibitive – conditions on the practice of worship of certain non-Orthodox religions, specifically of the Jehovah's Witnesses. Besides, the voluminous precedent of the Greek Council of State illustrates the tendency of administrative and ecclesiastical authorities to use legislation towards restricting the activities of non-Orthodox religions.

4. On the same issue was another case, that of **Pentidis, Kahtarios and Stagopoulos v. Greece.** The European Court of Human Rights resolved the dispute (9 June 1997) by giving a similar ruling.

5. **Larissis and Others v. Greece.** Dim. Larissis, S. Mandalaridis and I. Sarandis were

officers of the Greek Air Force and followers of the Pentecostal Church. Between 1986 and 1989 they allegedly approached various airmen serving under them, all of whom were Orthodox Christians, and spoke to them about the teachings of the Pentecostal Church. In addition, two of the above officers attempted to convert a number of civilians. They were charged with offences of proselytism under article 4 of Law 1363/1938, which provides that it is a criminal offence to engage in proselytism, by which is meant “in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion, with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of the other person’s inexperience, trust, need, low intellect or naivety.”

In 1992, the three officers stood trial before the Permanent Air Force Court of Athens, which dismissed their objection that article 4 was unconstitutional. The court convicted them of various offences of proselytism against airmen and civilians. They were sentenced to 12, 13 and 14 months’ imprisonment respectively, convertible into pecuniary penalties; but these penalties were not to be enforced, provided that they did not commit new offences within the next three years.

The officers appealed and the Court-Martial Appeal Court upheld the above judgment and reduced the prison sentences by 2 months. Then they lodged an appeal on points of law with the Court of Cassation. This court held that article 4 did not contravene either the provisions of the Hellenic Constitution, which enshrined the principle of *nullum crimen sine lege certa* and the right to religious freedom, or article 9 of the European Convention of Human Rights.

In their complaint before the European Court of Human Rights, the three convicted men complained principally that the Greek law against proselytism was not sufficiently well defined and that its application to them constituted an unjustified interference with their right to exercise their religious freedom.

The European Court found no violation of articles 7, 10, and 14 of the European Convention of Human Rights, though they did find violation of article 9.

6. Tsavachidis v. Greece. Gabriel Tsavachidis was a lay Jehovah’s Witness in Kilkis. In 1981, in order to conduct meetings of the Jehovah’s Witnesses circle, he rented premises in Kilkis. In 1993, the public prosecutor of this town ordered a preliminary enquiry into complaints that a Jehovah’s Witnesses church had been established without the necessary permission from the local bishop and the Ministry of National Education and Cults, as specified in article 1 of the Royal Decree of 20 May/2 June 1939. The public prosecutor pressed charges against G. Tsavachidis and another person for illegally operating a church and summoned them to appear before the first instance single-member criminal court on 9 December 1994. One week before the trial, the defense became aware that a “top secret” information report had been included in the case-file. This report contained detailed information about the activities carried out at the church and identified G. Tsavachidis as one of the leaders. G. Tsavachidis wrote to the Prosecutor’s Office and requested to be informed of the following: who delivered the “information report”; who wrote it and in what capacity. Also, he announced that he intended to use this information to bring proceedings in the domestic courts and to appeal to the European Court of Human Rights.

When the hearing began, the applicant objected to the validity of the indictment claiming that the “information report” could not be used as a part of the indictment as it was not signed. The court dismissed his objection because they concluded that he had had ample opportunity to prepare his defense. However, the court decided not to take into account the report as evidence because it was anonymous. On 7 April 1995 the criminal court acquitted G. Tsavachidis of the charges. The assistant prosecutor of Kilkis stated *inter alia* that the “information report” had been sent anonymously to the Prosecutor’s Office and that the document had not been drawn up by the Secret Service. In his application to the Commission G. Tsavachidis complained that he had been subjected to surveillance by the National Intelligence Service because of his religious beliefs. He invoked articles 8, 9 and 11 of the European Convention taken alone or in conjunction with article 14. In its report of 28 October 1997, the Commission expressed the opinion that: (1) there had been a violation of article 8 (right to respect for private life); (2) there had been no violation of article 9 (religious freedom); (3) no separate issues arose under article 11 (freedom of assembly and association); (4) it was not necessary to examine whether there had been a violation of article 14 (prohibition of discrimination) taken in conjunction with articles 8, 9 and 11. The spokesperson for the Greek

government sent a letter to the European Court whereby a positive assurance was given that Jehovah's Witnesses will not in the future be subjected to surveillance because of their religious beliefs, and the applicant would be awarded a sum of money for the expenses he had incurred. The case was ultimately stricken from the record.

7. **Thlimmenos v. Greece.** On 9 December 1983, the Athens Permanent Army Tribunal convicted Iakovos Thlimmenos, a Jehovah's Witness, of insubordination for having refused to wear the military uniform at a time of general mobilization. The tribunal sentenced I. Thlimmenos to four years' imprisonment. In 1988, I. Thlimmenos sat a public examination for the appointment of twelve chartered accountants. He came second among sixty candidates. However, the Executive Board of the Greek Institute of Chartered Accountants refused to appoint him on the ground that he had been convicted of a felony. I. Thlimmenos exhausted all the legal remedies against this decision before domestic courts, with an unfavorable outcome. Thus, he appealed to the European Court of Human Rights (appl. n° 34369/1997). He argued that the decision of the Executive Board constituted a violation of articles 9 and 14 of the European Convention, and further that the manner and the time at which the subsequent judicial actions transpired constituted a violation of article 6, § 1. Both the Committee and the European Court granted the appeal of I. Thlimmenos for violation of article 14 in conjunction with article 9, as well as of article 6, § 1. Also, Greece had to pay the applicant 6,000,000 drachmas (drs.) for non-pecuniary damages and 3,000,000 drs. for non-pecuniary damages and 3,000,000 drs. for costs and expenses.¹⁴⁶

8. **Serif v. Greece.** Under L. 2345/1920, the religious leaders of the Muslims of particular regions, the *muftis*, were elected by them. After the integration of Western Thrace into Greece (1920), the exchange of populations between Greece and Turkey and the Treaty of Lausanne (1923), Muslims, as a recognized minority, inhabited only Western Thrace, where there are three *muftis*, in Xanthi, Komotini and Didymoteicho respectively. The Treaty of Lausanne does not provide for the election of a *mufti*. Moreover, *muftis* in Greece are not simply religious leaders. They are judges in the disputes of family and inheritance law, adjudicating on the basis of the *sharia*. What is more, they are civil servants. Their status is similar to that of the general director of a ministry, and they receive respective salaries from the Greek state. In other words, they hold a status and have competencies that are not afforded them today in Muslim countries. Because of these special judicial competencies, the Greek state has since the beginning designated the *muftis* in Western Thrace by appointment, and not by election on the part of the faithful.

In December of 1990 a new mufti was appointed in Komotini. The two Muslim Members of the Greek Parliament from Western Thrace requested that the government organize elections for the position of *mufti*. After it turned down their request, they organized their own elections and named Ibrahim Sherif as their own *mufti* of Komotini. The public prosecutor indicted them for usurpation involving the exercise of religious service (article 175 of Penal Code) and usurpation of office and vestments (article 176). I. Sherif was convicted by both the trial court and the appellate court, whereas the highest court rejected his appeal. After exhausting the domestic legal remedies, he appealed to the European Court invoking a violation of article 9 (concerning religious freedom) of the European Convention.

In its decision, the European Court held that the right of worship includes the right of the faithful to elect their religious leader. But in what concerns the judicial and administrative competencies, the Muslim interested parties will turn only to the *mufti* that is recognised by the State, regardless of which person they consider as their natural religious leader.

9. **Canea Catholic Church v. Greece.** On 16 December 1997, the European Court of Human Rights held unanimously that the Greek courts had violated article 6 of the European Convention on Human Rights by refusing to acknowledge that the Canea Catholic Church in Crete had legal personality and, therefore, the standing to act in legal proceedings. The Court awarded the Church \$40,000 in court costs and damages. The Greek Government complied with decision No. 146/1996/762/963 of 16-12-1997 of the European Court of Human Rights about the legal entity of the Catholic establishments in Greece. Law 2731/5.7.1999 was amended with the addition of an article no. 33, which stipulates: "the legal entities that have been maintained in effect by virtue of article 13 of the Introductory Law of the Civil Code shall include those establishments of the

146. 340,75 drs. is equivalent to 1 Euro.

Catholic Church of Greece that were created or have been in operation prior to 23/2/1946.” February 23, 1946, was the date when the Greek Civil Code came into effect. With this new provision, cases like the one that was brought before the European Court (that of the Catholic Church in Canea/Crete) are henceforth regulated. But there is no doubt that the whole matter has been treated half-heartedly. The Hellenic Republic could very well proceed to a legislative solution that would once and for all ensure the establishments of the Catholic Church, as well as those of other religions that were founded even after the coming into effect of the Civil Code.

N. *The Special Legal Status of Various Religions and Cults*

1. **Orthodox Church.** According to the C art. 3, para. 1: (1) the doctrine of the Orthodox Church is the prevailing religion; (2) the Orthodox Church in Greece is inseparably united spiritually with the Ecumenical Patriarchate of Constantinople in Istanbul/Turkey and with all other Orthodox Churches; (3) the Church is self-ruled; and (4) it is autocephalous.

The legal significance of the term prevailing is that (1) the Orthodox faith is the official religion of the Greek State; (2) the Church, which embodies this faith, has its own legal status as a moral person under public law in its juridical relations, as well as its various services; and (3) it is treated by the State with special interest and in a favorable manner, which is not extended to other cults. According to jurisprudence and legal theory, this is not inconsistent with the constitutional principle of equality.

The relations between the State and the Orthodox Church are under the principles of the “State-law rule.” According to the C 72, para. 1, bills concerning article 3 (position of the Orthodox religion) and 13 (religious freedom) are discussed by the Parliament; in particular in plenary session only, not in the summer session. The legal sources for the Orthodox Church in Greece are mainly laws of the State.

2. **Christian Cults.** Non-Orthodox Christians, as well as the Orthodox who follow the Julian calendar,¹⁴⁷ are almost always assembled into associations of the type provided for in the Civil Code, since there are no special laws that would recognize the moral personality of public law.

The 3rd London Protocol (1830), dealt in the first place with the position of the Roman Catholic Church in Greece. Under this Protocol, France, which had assumed the protection of the Catholics during the period of the Ottoman rule, abandoned this role in the liberated Greek territories, entrusting this task to the future sovereign of the newly-formed state. In addition, under this protocol it was determined that the Roman Catholic religion would enjoy the free and public exercise of its cult; that its property would be guaranteed; that its bishops would be maintained in the integrity of functions, rights and privileges which they enjoyed under the patronage of the kings of France; that the property which had belonged to the old French missions, or French settlements, would be recognized and respected.

Protocol n° 33 (1830) which followed, stipulated that the privileges which the Catholics had benefited from could not impose, on the Greek government, obligations which would eventually entail prejudice towards the dominant religion. When the Ionian Islands were annexed again to Greece (1864), the 3rd Protocol was also put in effect. After the ratification (1923) of the Treaty of Sèvres dealing with the protection of the minorities in Greece, the prevalent opinion in Greek theory and jurisprudence maintained that the London Protocol ceased to be in effect. This interpretation created various problems within the Catholic Church concerning the creation of new dioceses, the official recognition of prelates, the nature and function of its administrative organs, or even the very application of its Canon Law.¹⁴⁸

147. Christodoulos Paraskevaïdis, *Historical and Canonical Study of the Old Calendarist Question* [in Greek], Athens 1982; K. Papageorgiou, Statut constitutionnel des communautés religieuses des Anciens Calendaristes à l'ordre juridique de Grèce, in “*L'Année Canonique*” 45 (2003) 171 ff.

148. S. Laskaris, The Catholic Church in Greece [in Greek], *Ephimeris tis Hellenikis kai Gallikis Nomologias*

There is no legislative text regarding Protestant cults. Several years ago, the question of the legal personality of the Evangelist Church was raised. The justice of the peace of Katerini (1961) had accepted that this Church constituted a moral person of private law. The tribunal of the first instance of the same city and the Appellate Court of Thessaloniki had ruled, to the contrary, that the Evangelist Church is deprived of any legal personality. The Areios Pagos has however attributed this Church with the moral personality of private law.¹⁴⁹ The same was maintained for the Armenian parishes in Greece.¹⁵⁰ As concerns Jehovah's Witnesses, the Council of State has decreed that it is a "known" religion according to art. 13 of the C, whereas the Areios Pagos and the other civil tribunals always maintain their negative position on this subject.¹⁵¹

3. **Muslims.** The Muslim minority installed in Western Thrace is governed by the provisions of the Treaty of Lausanne (1923) and by various more recent laws. At the head of the minority, divided into three districts (Xanthi, Komotini, Didymoteicho), there are three *muftis*, appointed by the Minister of National Education and Cults. The jurisdiction of the *mufti* is exercised over all the ministers of the Muslim religion of his district and he judges suits relevant with family law and inheritance law of his fellow Muslims. Next to each *mufti* there sits a committee which manages the property (*evkaf*) which belongs to the religious collectivities and to the pious establishments of its district. The Greek State looks after the maintenance of schools for the Muslim minority, as well as after the *mendresses* (seminaries) and the School of Muslim school teachers in Thessaloniki.¹⁵²

4. **Israelites.** In Greece, the legal status of the Israelite religion is secured by several laws.¹⁵³ In cities where more than five Israelite families reside, an Israelite Community may be founded by Presidential Decree. These communities are moral persons of public law, administrated by the Assembly and the Council of the Community, with organs elected by their members. All the Israelite Communities of Greece are represented by the "Central Israelite Council of Coordination and Consultation," elected for three years by a general assembly, comprised of their special representatives.

Each Israelite Community is headed by a rabbi, appointed by Presidential Decree on the proposal of the respective community. There is likewise a council of rabbis, which also acts as religious tribunal (*Beth-Din*). The Civil Code (1946) has however abrogated its civil jurisdiction. The *Beth-Din* continues, nevertheless, to exercise its competence over the Israelites that don't have Greek citizenship, as well as for pronouncing the spiritual dissolution of marriages for which the civil court granted the divorce.¹⁵⁴

VII. CONCLUSIONS

In conclusion, it could be said that the constitutional and common legislative provisions are constructed so as to give to the Orthodox Church in Greece the structure of

43 (Sept. 1923–Aug. 1924) 145–160, 209–232; D. Salachas, *The legal Status of the Catholic Church in the Greek State* [in Greek], Athens 1978; N. Maghioros, L'Église Catholique Romaine et l'État en Grèce: Une approche juridico-canonique, in *L'Année Canonique* 45 (2003) 177 ff.

149. K. Vavouskos, On the legal personality of the Protestant Church in Greece [in Greek], *Annuary of the Faculty of Law of the University of Thessaloniki* vol. 13/1 (1966), 421-499; An. Vavouskos, Le statut juridique des Églises Protestantes en Grèce, in *L'Année Canonique* 45 (2003) 191 ff.

150. See Maria Tatagia, Le statut juridique de l'Église Arménienne en Grèce, in *L'Année Canonique* 45 (2003) 207 ff.

151. I. Konidaris, Legal Theory . . . [in Greek], supra n. 51. K. Kyriazopoulos, Les nouveaux mouvements religieux en Grèce: La reconnaissance des organisations religieuses en Grèce, in *L'Année Canonique* 45 (2003) 249 ff.

152. S. Minaidis, "The Religious Freedom of the Muslims in the Greek Law and Order" [in Greek], Athens-Komotini 1990; K. Tsitselikis, Muslims in Greece, in *Islam and the European Union*, Leuven (European Consortium) 2004, 79–107; Id., Le statut juridique de l'Islam en Grèce, in *L'Année Canonique* 45 (2003) 219 ff.

153. L. 2456/1920, CL. 367/1945, L. 1657/1951, R.D. of 25.6.1951, D.L. 01/1969.

154. See V. Papagrigoriou, Religious Freedom as Experienced by the Jewish Community in Greece [in Greek], in C. Bees (ed.), supra n. 136 at 255–289; Ch. Papastathis, Le statut légal de la religion juive en Grèce contemporaine, in *L'Année Canonique* 45 (2003) 243 ff.

a State agency. This situation causes a number of handicaps to the Church in the fulfillment of its mission. At the same time, however, State-law rule over the prevailing Church has also turned against the State itself, due to the many and various forms of interdependence that it has created in their relations. The consequences of a state-established church became unpleasant for the social and political institutions in Greece. The system of relations that was instituted in 1833 by the State cannot function smoothly. Instead, whether caesaro-papal or hierocratic views prevail depends on the personalities of State leaders.

In very general lines the above framework constitutes an outline on religious freedom in Greece. Until now laws that echo dictatorial conceptions on the subject, such as those enacted during the Metaxas regime, are in force and are considered in conformity with the Constitution. Especially, the provisions of the laws and jurisprudence on proselytism constitute the Achilles heel of the common legislation on the subject. Since the famous Kokkinakis affair in 1993, the European Court of Human Rights has dealt several times with Greece in matters on religious conscience and worship. In fact the Byzantine and Post-Byzantine tradition and the political factor keep religious freedom and the relations between the prevailing religion and the State in Greece in a framework that has long been overcome by the member-states of the European Union. It is not possible to keep the medieval historical past and the present democratic international reality at the same time.

Since the Hellenic Republic hesitates to proceed in the direction of a contemporary constitutional and legislative framework for the safeguarding and enjoyment of religious freedom, as well as for the relations between the Republic and the prevailing religion, the decisions of the Commission and the European Court of Human Rights will continue to provide an immeasurably positive contribution in this field.

APPENDIX

CONSTITUTIONAL PROVISIONS CONCERNING RELIGIONS

CONSTITUTION OF GREECE (1975)

In the Name of the Holy and Consubstantial
And Indivisible Trinity

THE FIRST REVISIONARY PARLIAMENT OF THE HELLENES RESOLVES

RELATIONS OF CHURCH AND STATE

Article 3

1. The prevailing religion in Greece is that of the Eastern Orthodox Church of Christ. The Orthodox Church of Greece, acknowledging our Lord Jesus Christ as its head, is inseparably united in doctrine with the Great Church of Christ in Constantinople and with every other Church of Christ of the same doctrine, observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions. It is autocephalous and is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church in compliance with the provisions of the Patriarchal Tome of June 29, 1850, and the Synodal Act of September 4, 1928.

2. The ecclesiastical regime existing in certain districts of the State shall not be deemed contrary to the provisions of the preceding paragraph.

3. The text of the Holy Scripture shall be maintained unaltered. Official translation of the text into any other form of language, without prior sanction by the Autocephalous Church of Greece and the Great Church of Christ of Christ in Constantinople, is prohibited.

Article 5

2. All persons living within the Greek territory shall enjoy full protection of their life, honor and freedom, irrespective of nationality, race or language and of religious or political beliefs. Exceptions

shall be permitted only in cases provided by international law.

The extradition of aliens prosecuted for their action as freedom fighters shall be prohibited.

Article 13

1. Freedom of religious conscience is inviolable. Enjoyment of individual and civil rights does not depend on the individual's religious beliefs.
2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of law. The practice of rites of worship is not allowed to offend public order or moral principles. Proselytism is prohibited.
3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations toward it as those of the prevailing religion.
4. No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.
5. No oath shall be administered except by law determining the form thereof.

Article 14

3. Seizure of newspapers and other publications before or after circulation is prohibited. Seizure by order of the public prosecutor shall be allowed exceptionally after circulation and in case of: a) an offence against the Christian or any other known religion.

Article 16

3. Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional, and physical training of Greeks, the development of national and religious conscience and at their formation as free and responsible citizens.

Article 18

3. Farmlands belonging to the Patriarchal Monasteries of Aghia Anastassia Pharmacolytria in Chalkidiki, of Vlatadhes in Thessaloniki and St. John the Evangelist –Theologos– in Patmos, but not the dependencies thereof, cannot be subject to expropriation. Likewise the property in Greece of the Patriarchates of Alexandria, Antioch and Jerusalem and that of the Holy Monastery of Mount Sinai cannot be subject to expropriation.

Article 24

6. Monuments and historic areas and elements shall be under the protection of the State. A law shall provide for measures restrictive of private ownership deemed necessary for protection thereof, as well as for the manner and the kind of compensation payable to owners.

Article 33

2. Before entering office, the President of the Republic shall take the following oath before Parliament. "I do swear in the name of the Holy and Consubstantial and Indivisible Trinity to guard the Constitution and the laws, to provide for faithful observance thereof, to defend the national independence and territorial integrity of the Country, to protect the rights and freedoms of the Greeks and to serve the general interests and progress of the Greek People."

Article 59

1. Before undertaking the discharge of their duties, members of Parliament shall take the following oath in the Chamber and in public setting. "I swear in the name of the Holy and Consubstantial and Indivisible Trinity to guard faith in my Country and in the democratic form of government, obedience to the Constitution and the laws and to discharge conscientiously my duties."

2. Members of Parliament who are of a different religion or creed shall take the same oath modified to the form of their own religion or creed.

3. Members of Parliament declared elected in the absence of Parliament shall take the oath in the Section, in session.

Article 72

1. Parliament in full session debates and votes on its Standing Orders, on bills and law proposals pertaining ... to the subjects of articles 3, 13...

Article 95

1. The jurisdiction of the Council of State pertains mainly to:
 - a) The annulment upon petition of executive acts of administrative authorities for abuse of power or violation of the law.
 - b) The reversal upon petition of final rulings of administrative courts, for abuse of power

or violation of the law.

- c) The trial of substantive administrative disputes submitted thereto as provided by the Constitution and the laws.
- d) The elaboration of all decrees of a regulative nature.

.....

5. The administration shall be bound to comply with the annulling judgments of the Council of State. A breach of this obligation shall render liable any responsible agent as specified by law.

Article 105

1. The Athos peninsula extending beyond Megali Vigla and constituting the region of Aghion Oros shall, in accordance with its ancient privileged status, be a self-governed part of the Greek State, whose sovereignty thereon shall remain intact. Spiritually Aghion Oros shall come under the jurisdiction of the Ecumenical Patriarchate. All persons leading a monastic life thereon acquire Greek citizenship without further formalities, upon admission as novices or monks.

2. Aghion Oros shall be governed in accordance with its regime by its twenty Holy Monasteries among which the entire Athos peninsula is divided; the territory of the peninsula shall be exempt from expropriation.

Administration of the Aghion Oros region shall be exercised by representatives of the Holy Monasteries constituting the Holy Community. No change whatsoever shall be permitted in the administrative system or in the number of Monasteries of Aghion Oros, or their hierarchical order or in their position to their subordinate dependencies. Heterodox or schismatic persons shall be prohibited from dwelling thereon.

2. The determination in detail of the regimes of Aghion Oros and the manner of operation thereof is effected by the Charter of Aghion Oros which, with the cooperation of the State representative, shall be drawn up and voted by the twenty Holy Monasteries and ratified by the Ecumenical Patriarchate and the Parliament of the Hellenes.

4. Faithful observance of the regimes of Aghion Oros shall in the spiritual field be under the supreme supervision of the Ecumenical Patriarchate, and, in the administrative, under the supervision of the State, which shall also be exclusively responsible for safeguarding public order and security.

5. The aforementioned powers of the State shall be exercised through a governor whose rights and duties shall be determined by law.

The law shall likewise determine the judicial power exercised by the monastic authorities and the Holy Community, as well as the customs and taxation privileges of Aghion Oros.

Article 110

1. The provisions of the Constitution shall be subject to revision with the exception of those which determine the form of government as a Parliamentary Republic and those of article [...13, paragraph 1...