

# Pluralism and Religious Freedom in Majority Orthodox Contexts

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## Summary:

This paper draws on findings of the European Commission / Marie Curie Framework – funded research project entitled 'Pluralism and Religious Freedom in Majority Orthodox Contexts' (PLUREL), based at ELIAMEP and conducted between 2010 and 2013. Here insights arising from the project regarding limitations to religious freedoms in majority Orthodox contexts are injected into broader debates about state neutrality and the extent to which religious freedom is contingent on the latter. The paper also engages with the European Court of Human Rights' handling of the concept of state neutrality.

## Key Words:

Orthodoxy; equality and religious freedom; state neutrality; establishment; European Court of Human Rights; religion and national identity.

# Pluralism and Religious Freedom in Majority Orthodox Contexts

## INTRODUCTION

In a recent article on political liberalism and religion, Cecile Laborde (2013) applies an incisive process of elimination to a list of four ideal-typical models of religion-state regimes, narrowing down to two those possibly compatible with political liberalism. Of these two potentially acceptable religion-state regimes – which she calls ‘modest separation’ and ‘modest establishment’ – Laborde concludes that in fact, only modest separation is truly compatible with political liberalism<sup>1</sup>.

At the heart of the reasoning in this process of elimination is the principle of equality. Regarding moderate establishment Laborde explains that ‘[n]othing in orthodox political liberalism prevents a religious majority from entrenching its symbols within the state, *provided* members of religious minorities are otherwise treated as free and equal citizens ... A political liberal state can give symbolic preference to one religion – as long as the preference is purely *symbolic*’ (2013: 82, *emphasis mine*). Modest establishment is only acceptable, is only ‘modest’ enough, as long as these conditions are met. Strictly speaking, the norm in many if not most European states falls far short of meeting these conditions, thus not qualifying these states as moderate establishment, must less as moderate separation.

It is not only Laborde’s reading of political liberalism which has such a strong emphasis on equality in conceptions of the state’s proper relation to religion. As Heiner Bielefeldt, UN Special Rapporteur on freedom of religion or belief explains, ‘On an abstract level, requirements of equality and non-discrimination receive an almost unanimous approval ... [but] when it comes to drawing the necessary consequences from such general professions, things are often less clear’ (2013: 53). Equality is also built into notions of religious freedom in the European Convention on Human Rights

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<sup>1</sup> The four models are militant separation (‘inadequate protection of religious freedoms; official support and promotion of scepticism or atheism by the state; secularist anti-religious state’); modest separation (‘adequate protection of religious freedoms; no official support of religion(s) by the state; no public funding of religious education and no state aid to religious groups’); modest establishment (‘adequate protection of religious freedoms; official support of religion(s) by the state; public funding of religious education and state aid to religious groups’); and full establishment (‘inadequate protection of religious freedoms; official support and promotion of religious orthodoxy by the state; theocratic anti-secular state’) (Laborde 2013: 68).

(ECHR, or the Convention), albeit in an ambivalent way, as we shall see below. This ambivalence extends also to the European Court of Human Rights (ECtHR, or the Court) jurisprudential engagements with questions of state neutrality and non-discrimination; a brief exploration of the latter is offered in the following pages.

This paper is prompted by the following questions: To what extent does or should religious freedom include an equality dimension and how can such equality translate into practice? Does equality require non-establishment of religion? And what can or should be the role of the Court in the both latter?

The case of religion-state regimes in majority Orthodox country contexts serves as fruitful ground for consideration of these questions. Majority Orthodox countries have a special place in ECtHR religious freedoms jurisprudence. *Kokkinakis v. Greece* (1993) was the watershed case in the Court's case law on religion, as it was the first Article 9 conviction issued by the Court, after the Court's first 34 years of operation<sup>2</sup>. In the 20 years since then, the Court has issued over 50 Art. 9 decisions (and far more on religious freedom but in conjunction with another right – e.g., assembly and association). At last count, majority Orthodox states accounted for 63% of these convictions (32 of 51); Greece alone is responsible for over 20% of all Art. 9 convictions<sup>3</sup>.

Further, although majority Orthodox states exhibit *exceptionally* strong links between religion and state, the principle that underlies these links is deeply historically embedded in Europe, remnants of

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<sup>2</sup> Article 9, on Freedom of thought, conscience and religion, is the main Convention article dealing with religious freedom. It states:

‘1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others’.

Also relevant to religious freedom, besides articles 10 on the Freedom of Expression, 11 on Freedom of Assembly and Association, and 14 on Prohibition of Discrimination, is Article 2 of the 1<sup>st</sup> Protocol, on the Right to Education. It states:

‘No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.’

<sup>3</sup> Numbers in May of 2013 are as follows: Armenia 3; Bulgaria 5, Georgia 1, Greece 11, Moldova 4, Russia 5, Ukraine 3. The remaining 27% of Art. 9 convictions were against Azerbaijan (1), France (4), Latvia (3), Poland (1), San Marino (1), Switzerland (1), Turkey (7), UK (1). These statistics regarding Article 9 convictions alone are of limited explanatory value regarding religious freedoms jurisprudence in general, given that many religious freedoms cases are decided under separate Convention articles or in conjunction with others (e.g., Freedom of Expression, Art.10, Freedom of Assembly and Association, Art.11, and Prohibition of Discrimination, Art.14).

which can be found in abundance in contemporary European states (besides those states which are Orthodox in their majorities) (Martin 1978, Remond 1999). The latter is evinced also in the Court's case law relating to religion-state relations (see below). The more conspicuous nature of certain trends in religion-state relations in majority Orthodox contexts makes these easier to identify and, more importantly, makes the implications for religious freedom and religious pluralism also more conspicuous.

In this paper, I approach the present topic through the results of research conducted in four majority Orthodox countries – Bulgaria, Romania, Greece and Russia – examining limitations to religious freedom across the country cases. In this research, unequal treatment of religious minority groups in relation to the majority Orthodox Church factors prominently in minority groups' conceptions of religious freedom in each country context. In many cases privileges enjoyed by the Orthodox Church do entail direct, and even more so, indirect, limitations on religious freedom for religious minorities. Based on this research project, this paper explores the relationship between religious freedom and equality. In the process of analysing the data arising from the research, it occurred to me that the voices of my interviewees could be usefully injected into current debates on the extent to which regimes with established or significantly privileged religions are compatible with the protection of religious freedom and the promotion of pluralism.

In the pages that follow, I will offer a brief introduction to this research project on pluralism and religious freedom in majority Orthodox contexts, followed by a focus on equality and establishment-related limitations experienced by religious minority groups. I shall then assess these limitations in terms of the mechanisms establishing and/or keeping them in place.

I will then turn to a discussion of relevant ECtHR jurisprudence to consider what the role of the European Court of Human Rights can be in influencing state neutrality in matters of religion. And I will close with an exploration of what I see as a key factor in the problematic relationship between religious freedom and equality, both at the national and supranational level.

## **1. Pluralism and Religious Freedom in Majority Orthodox Contexts (PLUREL)**

PLUREL is a 2-year research project carried out through a Marie Curie Fellowship, based at ELIAMEP, between 2010-13. The research consists mainly of qualitative fieldwork conducted in the capital cities of the four aforementioned majority Orthodox countries: Bulgaria, Romania, Greece and Russia. The broad aim was to identify similarities and differences in the experience of religious minorities in each case, and to assess the factors and mechanisms influencing protection or violation of religious freedom in each case.

The country selection includes old, new and non-members of the EU (Greece 1981; Bulgaria and Romania 2007) and countries with and without an experience of communist regimes. And together the countries cover a range of levels of religiosity vs. secularity (from highly secular in the Bulgarian case and highly religious in the Romanian case).

The fieldwork consists of approximately 25 interviews in each country, conducted in November of 2010 in Romania; December 2010 in Bulgaria; November 2012 in Russia; and January-February of 2013 in Greece<sup>4</sup>. The pool of interviewees is comprised mainly of representatives of: religious minority groups; the Orthodox Church; state organs dealing with 'religious affairs'; NGOs dealing with religious freedom issues; and lawyers handling religious freedom cases.

Most interviewees were approached through two or three initial key contacts, and the snowball method took effect. The selection aim was to cover as many religious groups as possible and a breadth of opinions, ranging from 'conservative' to 'liberal' on matters of religious pluralism.

Besides offering a vibrant picture of current grassroots developments in the domain of religious pluralism, interviews made the researcher privy to the deeper mentalities, perceptions and perspectives of people in positions of power (in each of the four categories), and to their broader objectives – what do they hope to achieve? These perspectives, mentalities etc. have value, arguably, independent of the actual facts and realities on the ground; together they offer a picture of pluralism, or lack thereof, internalised by the representatives of various stakeholder groups.

Broadly speaking, **religious minority representatives** were asked about their experiences as religious minorities in relation to the state, to the Orthodox Church, and to society in general, and their assessment of motivations for attitudes and policies against them, where applicable. **Orthodox Church representatives** were asked about their relationship with religious minorities, and with the state, as well as their assessment of reasons behind the nature of those relationships. And **state officials, NGO representatives and lawyers** were asked about the legal framework governing religious freedoms (including their assessments of the evolution of the legislative framework; their opinion of the laws currently in place; and their perspective on the state of religious freedom in the country). All interviews touched on interviewees' conceptual understanding of the terms 'pluralism' and 'religious freedom', but in the Russian and Greek cases interviewees were also explicitly asked to offer their own definitions of the terms.

### Religion-State regimes in the four cases<sup>5</sup>

**Bulgaria**<sup>6</sup> The Bulgarian Constitution (1991, amended in 2003, 2005, 2006 and 2007) sets out and defines freedom of religion in Art. 13 (1). Para. 2 of Art.13 indicates that religious institutions are separate from the state. Art. 37 proclaims freedom of conscience, thought and religion, and

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<sup>4</sup> The research was divided into two periods by a break for maternity leave.

<sup>5</sup> Note: in each case religion-state relations are deeply historically embedded, and just how so is an important part of each national story; space and time limitations do now allow me thorough historical analysis. Further, the information offered here is not standardised for each country-case, but the material offered for each case serves as a helpful background for understanding the religious freedoms limitations addressed later in the paper.

<sup>6</sup> Most of the information on the Bulgarian constitutional and legislative framework draws on Petkoff (2010) and (2005).



freedom of religious and atheistic beliefs. It obliges the state to maintain tolerance and respect among all religious communities, as well as among all believers and atheists. According to Art. 57 (3) this freedom is non-derogable during war or states of emergency.

Art. 13 (3) defines the Christian Orthodox Religion as 'the traditional religion of the Republic of Bulgaria'<sup>7</sup>; 'Initially, this provision was interpreted to not provide any legal preference for the Orthodox Church in contrast to other religious denominations [though] there were several draft laws in the 36<sup>th</sup> National Assembly which attempted to provide such privileged status for the Orthodox Church' (Bulgarian Helsinki Committee 1994: 5). Art. 37 (5) introduces restrictions to the freedom of conscience on ground of national security, public order, public health, good morals, and the rights and freedoms of others.

It is worth noting also that Art. 73 of the 1996 Law on Radio and Television was struck down by the Bulgarian Constitutional Court, but other articles of the Act remain to restrict religious groups from access to radio and TV broadcasting, whilst Art. 67(6) of the statute gives the right to the Bulgarian Orthodox Church to statements on great religious feasts (a right also conferred on other groups by the Council of Ministers) but also gives the BOC the right to demand direct media broadcasting of its religious services (Petkoff 2010: 150).

The post-communist law on religion, replacing the Denominations Act of 1949, was introduced in December 2002. In the 1990s continued application of the 1949 Act undergirded to a large extent the rivalry and eventual split between two Synods of the Bulgarian Orthodox Church and two Supreme Muslim councils (Petkoff : 148). The wording of the 2002 Law gives the impression that 'a primary purpose of the present legislation was to end the organizational crisis within the ranks of the BOC' (Petkoff 153), as suggested in Para.3 of the concluding chapters, which provides that persons who have split from a registered religious institution in violations of its Constitution may not use its name or its property.

In the preamble of the 2002 Law, the 'special and traditional role' of the BOC in Bulgarian history and the formation and development of its spiritual and intellectual history is acknowledged. The preamble then declares respect for the three Abrahamic monotheistic religions in particular and also for 'any other form of religion'. The statute devotes an entire Article (10) to the status of the BOC, defined here as 'a traditional denomination'.

The 2002 law, significantly, moved the registration process from the executive branch of government to the legislative branch and, specifically, to Sofia City Court. The registration regime is now fairly liberal and over 100 groups are registered. However, the BOC (and only the BOC) is fully exempted from the registration requirement and is, rather, recognised *ex lege*. Also, though registration has been moved to the legislative branch, a role has been maintained in the 2002 law for the executive branch in that the Directorate of Religious Affairs issues an 'opinion' on each registration application. (The directorate was established under communist times and then it had the right to grant and withdraw registration). Local branches of religious groups must be registered

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<sup>7</sup> As Petkoff (2010) notes, the earlier *Turnovo Constitution* of 1879 recognised Orthodoxy as the 'prevailing religion'.



also at the local level, though if registered successfully in Sofia City Court theoretically local level registration cannot be denied. In practice though this requirement is a breeding ground for conflict for religious minorities at the local level.

## ROMANIA<sup>8</sup>

The Romanian Constitution (1991, revised 2003) makes no mention of either the secular or religious nature of the state. Article 29 sets out the parameters of religious freedom protection as follows:

- (1) Freedom of thought, opinion, and religious beliefs shall not be restricted in any form whatsoever. No one shall be compelled to embrace an opinion or religion contrary to his own convictions.
- (2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
- (3) All religions shall be free and organized in accordance with their own statutes, under the terms laid down by law.
- (4) Any forms, means, acts or actions of religious enmity shall be prohibited in the relationships among the cults.
- (5) Religious cults shall be autonomous from the State and shall enjoy support from it, including the facilitation of religious assistance in the army, in hospitals, prisons, homes and orphanages.
- (6) Parents or legal tutors have the right to ensure, in accordance with their own convictions, the education of minor children whose responsibility devolves on them.

Though some analysts refer to Art. 29 as confirmation of the secular spirit of the Romanian constitution, 'religious remnants' are to be found in Art.82(2), on the presidential oath (which entails a promise to dedicate all strength to the spiritual and material welfare of the Romanian people, 'So help me God!'), and in Art. 104(1) setting out that the prime minister, ministers and other members of government take the same oath before the president (Iordache 2008).

The new law regulating religion which was adopted after the fall of communism was late in coming, 2006, after a long and arduous process of debate and negotiation between the Romanian Orthodox Church, other religious groups represented in Romania, and the Romanian government. However, one of the first revolutionary decrees following the fall of the Communist regime in 1989 was an act of *restitutio* repealing the 1948 Decree whereby the Greek Catholic Church had been outlawed and stripped of its properties. Otherwise the legislative framework in effect governing religious affairs was the Decree 177/1948 which provided for a strict recognition process (Iordache 2013: 78).

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<sup>8</sup> Most of the information on the Romanian constitutional and legislative framework draws on Iordache (2008) and (2013).

Law 489/2006 (henceforth, 'the law') introduces a 3-tier system for registration of religious entities which is amongst the most restrictive among OSCE countries: there are two categories of state recognised entities – 'state recognised religious denominations' (*culțe*, in Romanian), and religious associations – and a third category called 'religious groups' (defined in the law as 'a form of association without a distinct legal entity status, of individuals who, without a preliminary procedure, freely adopt, share and practice the same religion') (Iordache 2013: 80). The 18 religious denominations recognised by the state before the introduction of the new law in 2006 are included in the Annex of the Law; they passed a simplified recognition process which required submission of their bylaws and canonical codes to the Ministry of Culture and Religious Denominations and publication of Governmental Decisions recognising their statutes.

The Romanian Orthodox Church (ROC) has a special mention in the law, according to Art.7(2): 'The Romanian State recognises the important role of the Romanian Orthodox church and that of other churches and denominations as recognised by the national history of Romania and in the life of the Romanian society.'

According to the law, for religious groups beyond those 18 to achieve 'recognised denomination' status, the members must make up 0.1 percent of the population (i.e., 22,000 membership requirement, the year the law was introduced), and must have operated in the country for 12 years [check details]. If the already recognised religious denominations were put to the same membership threshold test, at least 3 would not pass and their membership levels are far lower.

Recognised religious denominations receive financial support from the state proportionately to their membership levels and based on 'the religion's actual needs', 'though in reality the majority of public funds both from central and local budgets go to the Romanian Orthodox Church' (Iordache 2013: 81). They enjoy unrestricted access in their pastoral work to detention facilities, hospitals and army services, and the right to teach their religion in the primary, secondary and vocational education system.

Religious associations, the second-tier status for religious groups, also have a relatively high membership threshold for establishment – 300 members required (when compared to the 3 required to establish a non-religious association). Achieving religious association status also requires submission of full lists with the identification data of all members of the group (in contradiction, that is, of data protection laws applicable in Romania). Though Article 44 allows for tax breaks related to religious activities of religious associations, because there is no mention of such right in the Fiscal Code, it remains arbitrary. The law allows religious associations to establish graveyards, and religious association status is a necessary prerequisite to reaching denomination (first tier) status.

Finally, religious groups have no legal status as religious groups and thus are privy neither to state support nor to tax exemptions. They operate formally as secular associations in spite of their religious mission, goals or objectives.

## RUSSIA

The Russian Constitution (1993) stipulates that 'religious associations ... shall be equal before law'. Article 14 of the Constitution of the Russian Federation states that in a secular society 'No religion can be set as an official or an obligatory one'.

The first law on religions introduced in the post-communist period to replace Stalin's 1929 decree On Religious Associations was the Law on Freedom of Conscience and Religious Organisations in October of 1990<sup>9</sup>. The law was a fairly liberal one, stating the following objectives in its preamble: to guarantee citizens' right to express their attitude towards religion to guarantee the right to exercise religious rites; to guarantee equality regardless of religious conviction; and to regulate the activity of religious organisations. The law was made defunct by the dissolution of the USSR, but in the case of the Russian Federation a replacement Law on Freedom of Belief was already prepared and adopted (25 October 1990). The law was widely considered even more liberal than its predecessor: several provisions barred any form of discrimination based on religious belief or practice (Articles 1-7, 17, 22, 25, 29); it emphasised that state and religious institutions were separate and should not interfere with or finance state elections, secular public education, or other political affairs (Art.8); and guaranteed freedom of worship for both indigenous religious associations and foreign religious associations (Art.4), with 'worship' defined broadly to include performance of rites, dissemination of one's beliefs directly or via mass media; missionary work, acts of charity, religious instruction and education, ascetic establishments, pilgrimage, 'and other activities as defined by the appropriate system of beliefs and provided for by the statutes (regulations) of the given association' (Art.17) (Knox 2005: 77).

These extensive freedoms were endorsed in the 1993 Russian Constitution, but calls for revision to the law soon materialised, particularly in response to the influx of foreign missionaries and the rise of new religious movements, native and foreign, and particularly vocally by the Moscow Patriarchate. Besides this top-down campaign against the 1990 Law, however, local laws restricting foreign religious activity developed in many Russian regions between 1994 and 1996 (Knox 2005: 78).

The 1997 Law on Freedom of Conscience and Religious Associations, contrary to the constitutional provision on equality of religious associations and to the aforementioned 1990 Laws, introduced discrimination between associations according to their degree of establishment within Russia.

Specifically, the new 1997 law introduced two new categories: 'religious organisations' and 'religious groups'. Religious organisations register with the state and enjoy full rights of a legal personality whilst religious groups, unregistered, do not. For state registration, a religious group must provide proof from a local state authority that it has existed in the vicinity for at least 15 years, or confirmation from a centralised religious organisation of the same creed that it formed part of its structure. If unable to obtain either, it would have to wait out a 15-year probationary period and

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<sup>9</sup> Most information on the 1990 laws is taken from Knox (2005) and on the 1997 law from Fagan (2012: 66-68).

re-register with the state annually. Further, state registration requires provision of extensive information about a religious organisation's history, beliefs and activities, as well as the particulars of at least ten founders. As Fagan notes, these are intimidating demands for a populace 'still traumatized by an all-pervasive state intrusion' (Fagan 2012: 68). Once registered, the Law states that the ministry will monitor a religious organisations' compliance with its own statutes.

The 1997 stipulates that umbrella or centralized organisations must consist of at least 3 local religious organisations of the same creed. As Fagan (2012: 67) points out, if a religious organization has been active on Russian territory for at least 50 years, it may use the terms 'Russia' or 'Russian' in its title.

Rights enjoyed by registered organizations and denied unregistered religious groups include: to produce, obtain, import, export or distribute religious literature, audio and video material; to produce liturgical literature and other religious items;' to found mass media; to conduct religious rites in institutions such as hospitals, orphanages and prisons at the request of residents or inmates; to found educational institutions and seminars and to give non-curricular religion lessons in state schools with parental and educational authority consent; to request military deferment for clerics and seminarians; to host representative bodies of foreign religious organizations; and to invite foreign citizens for professional purposes. 'In fact', Fagan explains, 'the only rights which the 1997 law explicitly granted religious groups were to conduct religious rites and to teach religion to existing followers using premises and property provided by the group' (2012: 67).

Further, the 1997 Law outlaws independent religious activity by foreign citizens (while the 1990 law had explicitly granted foreign citizens and persons without citizenship the right to found religious associations).

Finally, the preamble, though without legal force, sets the tone by recognizing Orthodox Christianity's 'special role' in Russia's history, spirituality and culture, and proclaiming respect for Christianity, Islam, Buddhism, Judaism, 'and other religions, constitution an integral part of the historical heritage of Russia's peoples'.

### GREECE<sup>10</sup>

Prior to the 1975 Constitution (which is in force today), the President of the Republic was required to be Orthodox and to take an oath before Parliament promising to 'protect' the Greek Orthodox faith, and proselytism perpetrated against Orthodoxy (only) was prohibited. According to the 1975 Constitution, the president is no longer required to be Orthodox nor to take such an oath<sup>11</sup>.

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10 Most of the information of the Greek legal and constitutional framework on religion is drawn from Fokas (2004). Original sources are cited here also.

<sup>11</sup> The president's oath no longer pledges protection of the Orthodox faith, but it does make reference to the deity. There is no alternative oath, as is provided for members of Parliament in Article 59 of the 1975 Constitution (See Dimitropoulos 2001: 67). According to Papastathis (1996: 84), 'this is an indirect way of promoting the election of a Christian president only and does not conform to the principle of equality (as set out in Article 4 of the Greek Constitution)'.

Furthermore, with the new constitution the clause forbidding proselytism was moved from Article 3 (where the subject of proselytism was treated as a matter of protecting solely the Orthodox Church) to Article 13 on human rights (thus prohibiting proselytism perpetrated against any faith). There was also, in previous constitutions, a provision prohibiting any activity aimed against the Greek Orthodox faith (this clause was aimed to limit conversions from Orthodoxy to other faiths). This too was omitted from the 1975 Constitution. Likewise, according to the 1975 Constitution, confiscation of newspapers and other publications upon their distribution is allowed in cases where any 'known' religion (not only Christianity) is offended (Dimitropoulos 2001: 133-5). The articles of the 1975 Constitution in force today which determine Church-state relations are mainly Articles 3, 13 and 16. The first affirms recognition of Orthodoxy as the 'prevailing' faith; the second guarantees religious freedoms of conscience and of worship<sup>12</sup>; and the third sets out 'development of religious conscience of youth' as one of the aims of national education.

Many of the changes in the 1975 Constitution were designed to extend religious freedoms to other faiths as well, and to limit the extent to which the Orthodox Church has a privileged and protected status. However, these aims have not been fully met. This is due, in part, to the wording of Article 3 of the Constitution, which indicates that Greek Orthodoxy is the 'prevailing' faith: it is unclear whether the term 'prevailing' indicates a statement of fact (i.e., reflecting the predominance of the faith, representing approximately 97% of the population in Greece), or whether the term entails a normative statement (i.e., that Orthodoxy *ought to be* the prevailing religion, and is thus deserving of protective privileges) (Alivizatos 1999: 25). The former is the predominant view amongst constitutional specialists and within Greek courts<sup>13</sup>. However, there is a great deal of debate over whether, regardless of constitutional terminology and predominant interpretations, in practice the faith is treated as if it ought to prevail in Greece, thus granting the Orthodox Church of Greece privileges vis-à-vis the state and over other faiths represented in the country.

In terms of privileges vis-à-vis the state, the clergy of the Orthodox Church of Greece are remunerated and pensioned by the state: the state pays the salaries and pensions of the clergy, preachers and lay employees of the Orthodox Church, and the Church is exempted from taxation Konidaris (2003: 227-8)<sup>14</sup>. Furthermore, Metropolitans are given a role in the issuance of licenses for

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<sup>12</sup> Paragraphs 1 and 2, respectively, of Article 13. According to Paragraph 2, 'known' religions are protected by this provision. To be 'known' the religion must not have a secret dogma or a hidden cult; it must apply to the Greek state for recognition; and the cult should not offend public order and moral principles. The latter includes the whole set of civil, moral, social and economic principles and beliefs prevailing in Greek society at a given period. The above conditions are enforced by the public administration and, ultimately, by the courts. See Papastathis (1996: 84).

<sup>13</sup> According to specialist in Ecclesiastical Law, Ioannis Konidaris, the concept of 'prevailing religion' is not to be construed as the right to dominate other religious communities; it now has no normative content. Instead, it has a mainly declaratory sense: namely, it denotes that the overwhelming majority of Greeks belong to this Church and that state occasions are only celebrated according to the rites of this Church. See Konidaris (2003: 226).

<sup>14</sup> As Papastathis notes, the state also receives 35% of all parish revenues. Furthermore, certain tax exemptions apply to other faiths as well. C.Papastathis, 'State and church in Greece', p.86.

the building of places of worship for minority faiths. The lessons of religion in public schools reflect official Orthodox positions. State holidays are based on the religious calendar, so that the holidays of the Greek Orthodox Church are acknowledged as official national holidays. This is the case significantly beyond the celebration, in other European states, of Christmas and Easter as public holidays. Also significant is the fact that the Statutory Charter of the Church must be passed by the Plenary Session of Parliament (Konidaris 2003: 227-8). Meanwhile, the Archbishop presides over each opening session of Parliament and blesses with Holy Water each of the Parliamentarians. Of especially symbolic impact is the fact that Church and state leaders often jointly preside over state functions and national holiday celebrations. A small but telling example is that National Independence Day, 25<sup>th</sup> of March, is also a major religious holiday (the annunciation of Mary), and the celebrations across the country are jointly presided over by Church and state leaders. It is interesting to note that, during one of the most intense church-state conflicts in history (over ecclesiastical property), one of the Church's most severe reprisals was refusal to be present at the 25 March celebrations. Finally, one cannot underestimate the role of politicians themselves in entrenching such church-state links through their own presence and contributions to religious functions<sup>15</sup>. Each of these facts, in varying degrees, entails an especially close relationship between church and state in Greece.

### **Overview of equality and establishment-related limitations experienced by minority groups**

The research in these four country cases indicates that many limitations to religious freedoms experienced by religious minority groups derive from aspects of inequality between the majority faith group (in these cases, the majority Orthodox Church<sup>16</sup>) and minority groups.

The following list is by no means exhaustive (nor tailored), and it focuses **specifically** on equality and establishment-related limitations, as communicated by the interviewees in the research project.

Broadly speaking, some of the limitations listed below are somehow embedded in the constitutional and/or legal framework regulating religion in the given country context (a); others arise purely in practice and without legal or constitutional underpinnings (b); and still others are *ambiguous* in their relation to the constitutional and legal framework regulating religion in each case (c). The following list is arranged accordingly.

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<sup>15</sup> This is a tremendous topic for which space does not allow full attention. For further information about politicians' emphasis on church-state links with regard to other matters, see Kokosalakis (1995)(especially the sections on 'The functions of religion in Greek society', and 'Religion and recent socio-economic change', pp.257-265); (1996); and (1997). See also Stavrou (1995: 35-54); Demertzis (1996); Georgiadou (1995: 307-310); and Paparizos (1998).

<sup>16</sup> And in the 'majority' majority Orthodox Church, at the time of the research, in the case of the divided Bulgarian Orthodox Church.



(a)

- Inequalities in the registration regime between the Bulgarian Orthodox Church and other religious groups: the fact that the BOC is registered *ex lege* whilst minority groups have to register also at the local level. Though the latter is in theory simply a formality, in practice it entails disproportionately more barriers for a religious minority group to function at the local level.
- The 3-tiered system of recognition of religious groups in Romania and the limitations on the ability of many groups to function as a religion. [The point applies also to the Russian and Greek cases]. Of all such 'lists' of religious groups with different degrees of recognition, Bielefeldt writes:

*The various lists of recognized religions may be short or long. In any case, the problem remains that, based on such an understanding, religious or belief pluralism can only unfold within a predefined set of permissible options. This is unacceptable from a human rights perspective as such a limitation runs counter to the foundational concept of normative universalism (2013: 37).*

- Religious education in the public school system in Romania and Greece – Orthodox, catechetical in character, anti-minority to some degree or another, and mandatory (only by default in Romanian case)

(b)

- Limited access to mass media and media attacks
- Privileged access to cemeteries

(c)

- Financial benefits to the majority Orthodox churches in all cases
- Limited land retributions to the Greek Catholic Church in the Romanian case<sup>17</sup>
- Barriers to building places of worship and to registration in the Russian case (role of advisory group led by 'anti-cult' Orthodox theologian)
- Barriers to building places of worship and ban on proselytism in Greek case (the 1938 Metaxas laws and the arbitrariness of their application)<sup>18</sup>

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<sup>17</sup> The Greek Catholic Church was constituted in 1700 in Transylvania under the Hapsburg regime and uses the Orthodox liturgy but also accepts Roman Catholic dogma and the supremacy of the Pope. It was disbanned by the communist regime and forcefully merged with the ROC and all its properties and churches were transferred to the ROC. But the Greek Catholic Church remained operative underground until the fall of the communist regime, after which it was reinstated to its previous status. Since the ROC used the churches for so many years, though, and the population of Greek Catholics shrunk in the meantime, it has resisted giving back the churches and properties to the Greek Catholic Church. The struggle over these churches and other properties has degenerated in some cases into intense and sometimes violent conflict.

<sup>18</sup> As mentioned before, the 1938 Metaxas laws on religion are ineffective, but not obsolete, and their existence on the books is seen by many interviewees as a reason police still take religious minorities to the police station for handing out pamphlets, for example: convictions are no longer made and jail



### Assessments: religion-national identity link as a common denominator

Clearly, laws, constitutional provisions and, in short, 'establishment' or not, only tell us *part* of the story in each case. From this perspective establishment or non appears to be not primarily a constitutional or legal matter, but rather a practical matter linked to specific practices. The research points to a large grey area between religion and law in terms of interpretation of the precepts and the extent to which supposedly 'symbolic' references in legal and constitutional texts influence these readings.

Let me focus on the Greek case to elaborate: The 1938 Metaxas laws on religion are ineffective, but not obsolete, and their existence on the books is seen by many interviewees as a reason police still take religious minorities to the police station for handing out pamphlets, for example: convictions are no longer made (though arrests, yes) and jail sentences are almost never served (because, as one interviewee put it, 'the police have Kokkinakis in their drawer' (see below re Kokkinakis), but such cases are still obstructions to individual religious freedom.

In much social science literature the centuries of Ottoman domination, in the place of the experiences of the Renaissance and Enlightenment as in Western Europe, are often cited as explanations for this and other ills of the modern Greek state. Certainly these facts together form an important background to the story, but my research points much more explicitly to the great lengths politicians go to impress upon civil servants to *not* implement those 1938 Metaxas laws, thus avoiding further chastisement from the European Court of Human Rights, and thus avoiding the anticipated backlash from a particularly vocal and anti-pluralist part of the Church of Greece hierarchy and from an increasingly menacing far right in Greece.

This dynamic cannot accurately be generalised as simply an issue of church-state relations. European pressure, religious and political agency, *and* church-state relations are all relevant factors here, but there is a missing link which generates with these factors a mechanism of repression of religious freedoms, and this is the relationship between religion and national identity.

In the case of the Metaxas laws, for example, reference to the irrevocable ties between Orthodoxy and Greek national identity underpin the pressures placed on Greek politicians to maintain the laws in place (even if not substantially in force). Specifically, the pressure works because of the *expectation* that a large proportion of the Greek population can be mobilised – especially around election times - on the basis of exactly that Orthodoxy-Greek national identity link.

In fact, based on my research I would venture to say that one, and *the only*, common denominator in all four cases is the resilient, highly exploitable and emotive relationship between religion and national identity. This is one element we find at some level behind most, if not all, violations of religious freedom in each case, and always mediated in some way.

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sentences I think never or almost never assigned (because, as one interviewee put it, 'the police have Kokkinakis in their drawer'), but such cases are still obstructions to individual religious freedom.

This raises the question of how it is mediated and whether there are significant differences in this across the cases. Certainly we cannot assume a somehow linear relationship between religion and national identity, influencing close church-state relations, and then in turn resulting in anti-pluralist policies. In the Bulgarian case, for example, the church-state link is *often* 'skipped' in the process of developing barriers to religious freedom. (This has to do both with the relatively weak church and the secularity of the country, so here religion-national identity links are often directly embedded into policies and practices, unmediated by the Bulgarian Orthodox Church but often still motivated by potential electoral gains.)

In both Bulgaria and Russia, the Orthodox Church is perceived by many Orthodox Church and government officials as the *only* possible unifying factor for the nation, following the collapse of communism. The wording of the Moldovan state in its defence in the ECtHR case of *Church of Bessarabia v. Moldova* (2001) is worth citing here in full because the notion is echoed by many of my interviewees and because it illustrates well both a perspective which is fairly 'persistent' in Orthodox cases and a striking degree of nonchalance about it:

*the refusal to allow the application for recognition lodged by the applicants was intended to protect public order and public safety. The Moldovan State, whose territory had repeatedly passed in earlier times from Romanian to Russian control and vice versa, had an ethnically and linguistically varied population. That being so, the young Republic of Moldova, which had been independent since 1991, had few strengths it could depend on to ensure its continued existence, but one factor conducive to stability was religion, the majority of the population being Orthodox Christians. Consequently, recognition of the Moldovan Orthodox Church, which was subordinate to the patriarchate of Moscow, had enabled the entire population to come together within that Church. If the applicant Church were to be recognised, that tie was likely to be lost and the Orthodox Christian population dispersed among a number of Churches. Moreover, under cover of the applicant Church, which was subordinate to the patriarchate of Bucharest, political forces were at work, acting hand-in-glove with Romanian interests favourable to reunification between Bessarabia and Romania. Recognition of the applicant Church would therefore revive old Russo-Romanian rivalries within the population, thus endangering social stability and even Moldova's territorial integrity<sup>19</sup> [emphasis mine].*

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<sup>19</sup> In the Russian case Dmitry Uzlander (2013) speaks of 'securitization of religion' re use of public security concerns as a pretext to limit religious (and other) freedoms of 'dissident' groups.

## 2. State Neutrality in the European Court of Human Rights Context

The ECtHR opinions on religion-state relations have evolved over several years of engagement with less intense but still clearly challenging struggles over the state's proper relation to religion, often stemming from a protection of a majority faith, a tendency, *in turn*, (whether conspicuously or not) often related to a religion-national identity link (whether now a benign aspect of national identity and/or embedded in nationalistic expressions, or more powerful). This evolution has been masterfully examined and critiqued by a number of scholars (including Koenig 2012; Ventura 2011; Ringelheim 2012) whose assessments have significantly influenced my thinking<sup>20</sup>.

As Evans and Thomas (2006: 706) note, the ECtHR has held that establishment is not in itself a breach of the Convention but is only prohibited to the extent that it implicates one of the other Convention rights, for at least three reasons. First, the text does not mention establishment and takes no explicit position on whether or should be permitted. Second, at the time the ECHR was drafted, a number of member states had established churches, including the UK, Sweden, and Norway; prohibition of establishment could have threatened the Convention's ratification. Third, the Court 'is not convinced that all forms of establishment are necessarily incompatible with the right set out in the ECHR'.

Still, establishment or significant privileging of a majority faith have many times been on trial in the Court. Throughout the Court's religious freedoms case law, the Court has increasingly dealt with issues going to heart of religion-state relations and of the place of religion in the public sphere. The evolution is by no means linear, but certain trends can be detected. For example, Matthias Koenig (2012) observes a trend of the Court towards more narrow margins of appreciation and, effectively, towards more secularist approaches (see also Langlaude 2006). Koenig sees a three-step evolution of the Court's jurisprudence on matters of religion, leading increasingly to assertive secularist stances. The first step consists of a broad definition of religious freedom which tends to work in favour of majority religion over negative religious freedom claims – for example, the maintenance of asymmetric blasphemy laws as in the case of *Otto-Preminger-Institut v. Austria* (1993), where the Court defended the state's right to seize and forfeit a film considered offensive to Christians.

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<sup>20</sup> A study of the evolution in case law not intended to supplement or echo existing studies but to tailor the approach to lessons that can be drawn from the majority Orthodox cases would include reference to the following cases: overview below is *Grandrath v. Germany* (1966), *Kjeldsen v. Denmark* (1976), *Young v. UK* (1981), *Kokkinakis v. Greece* (1993), *Darby v. Sweden* (1989), *Wingrove v. UK* (1996), *Dahlab v. Switzerland* (2001), *Refah v. Turkey* (2003), *Folgero v. Norway* (2007), *Lautsi v. Italy* (2009), (2011).

The second stage reflects a tendency of the Court to uphold secularism, mostly through cases to do with Islam. Characteristic here is the case of *Leyla Sahin v. Turkey* (2005), in which it upheld a ban on wearing the Islamic headscarf at Turkish universities.

Finally, the third phase in ECtHR jurisprudence transposes the secularist line of argument in cases related to Islam, onto cases involving Christian majorities. In other words, in this latter stage, the Court may be seen not only as ceasing to protect majority religious rights but also actively influencing the status quo of church-state relations in signatory nations (Koenig 2012).

The *Lautsi vs. Italy* (2009) decision is a case in point, where the Court ruled unanimously that the display of the crucifix in Italian classrooms is in violation of the European Convention on Human Rights. Here through its reasoning the Court described the crucifix as a symbol which could 'easily be interpreted by pupils of all ages as a religious sign', which would result in them feeling 'that they have been brought up in a school environment marked by a particular religion'. The latter, the Court argues, is problematic because 'What may be encouraging for some religious pupils may be emotionally disturbing for pupils of other religions or those who profess no religion' (*Lautsi v. Italy*, 2009, para 55).

The fact that Italy historically, culturally and institutionally is an 'environment marked by a particular religion' is a factor which prevailed in the Grand Chamber's 2011 reversal of that earlier Chamber decision. For Julie Ringelheim (forthcoming), this dramatic, 15-2, reversal represents yet another stage in the evolution of the Court's religion case law, one backtracking to the Court's earlier stance of 'non-coercive neutrality'<sup>21</sup>.

It should be noted that the main body of the ECHR lacks a general provision requiring the equality of all people before the law, and instead only prohibits discrimination in regards to rights set out explicitly in the Convention (Evans and Thomas 2006: 703). However, the 12th Protocol to the Convention entails a broadening of the scope of the anti-discrimination requirement by stating that the enjoyment of legal rights must be 'secured without discrimination' on a number of grounds, including religion<sup>22</sup>. There are 37 signatories of the 47 Council of Europe member states, but only 18

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<sup>21</sup> Ringelheim (2014) also describes a 3-stage evolution in the Court's case law, when examined from the perspective of state neutrality: stage one is a period of 'neutrality with non-coercion' (e.g., *Darby v. Sweden*, 1989), stage two (in the 2000s, e.g., *Folgero v. Norway*, 2007), 'neutrality without preference', and stage three, beginning with the Grand Chamber decision in *Lautsi v. Italy* 2011, entails a return to the first stage of 'neutrality with non-coercion'.

<sup>22</sup> The 12<sup>th</sup> Protocol was introduced in 2000. The full title and text of Article 1, Protocol 12 are as follows: Article 1 – General prohibition of discrimination.

'1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.'

of these have ratified<sup>23</sup>. According to Evans and Thomas 'the absence of a general non-discrimination provision in the main body of the ECHR has a significant legal effect in church-state cases' (2006: 4), and ratification of the 12<sup>th</sup> Protocol is unlikely to make a great difference in this regard 'because of the generous approach the Court has taken to state claims of an objective and reasonable basis for making a distinction between religions' (2006: 717)<sup>24</sup>.

### 3. Religious Freedom v. National Identity?

As suggested above, there's a great gap between theory and practice where the relationship between religious freedom and equality is concerned and, specifically, regarding whether religious freedom *requires* equality amongst all individuals of different religious beliefs, or non-belief.

Martha Nussbaum is a prominent voice in the discussion as far as theory is concerned. According to Nussbaum (2008: 2)

*liberty of conscience is not equal, however, if government announces a religious orthodoxy, saying that this, and not that, is the religious view that defines us as a nation. Even if such orthodoxy is not coercively imposed, it is a statement that creates an in-group and an out-group. It says that we do not all enter the public square on the same basis: one religion is the [national] religion and others are not. It means, in effect, that minorities have religious liberty at the sufferance of the majority and must acknowledge that their views are subordinate, in the public sphere, to majority views<sup>25</sup>.*

Heiner Bielefeldt also cites Nussbaum in his discussion of the importance of striving for equality in religious freedom by accommodating minority religious needs, with Nussbaum's argument that 'the denial of an accommodation for the free exercise of one's own religion is a type of de facto establishment. It means that the majority's religion has been written into law and minorities have been denied the same opportunity to legalise their own practices' (Bielefeldt 2013: 59; Nussbaum 2012: 93). But, perhaps inevitably, Bielefeldt is also acutely aware of the practical difficulties in the ground...and of the conceptual challenges.

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<sup>23</sup> As of October 2013, Greece s/nr (= signed, not ratified); Bulgaria ns/nr; Romania s/r; Russia s/nr. Other ns/nr: Denmark, France, Norway, Sweden, Switzerland, UK.

<sup>24</sup> For example, in *Iglesia Bautista v. Spain* (1992), the Court ruled that because of the Spanish Concordat with the Catholic Church, awarding privileges for the Church in exchange for obligations placed on the Church, e.g., maintenance of certain historical places and objects, is an objective and reasonable basis for distinctions between treatment of the Catholic Church and other religious institutions. This case bears strong relevance to several Orthodox cases, where agreements and 'exchanges' on similar historically embedded grounds underlie certain privileges enjoyed by the Orthodox Church.

<sup>25</sup> The question of the place of and conditions for religion in the public sphere is the subject of a well-developed discussion and exchange amongst a broad range of scholars. For a brief summary, see Fokas (2009).

In terms of the latter, Bielefeldt emphasises that equality and freedom inextricably belong together, as part of the 'architectural principles' of human rights (2013: 50-1): 'Without equality, rights of freedom would amount to mere privileges of the happy few. Vice versa, without due account of the spirit of freedom underlying human rights in general, equality could easily be mistaken for uniformity of sameness, a misunderstanding that has often appeared in the writings of conservative critics of human rights'.

Bielefeldt is referring here and elsewhere in the text to misunderstandings and *misgivings* around the terms secularism and neutrality and how they are embedded into international human rights texts. Indeed there is a great deal of resistance to the egalitarian dimension of religious freedom: equal treatment of all faith groups before the law is actually rare, and efforts to establish it get clouded by controversy over the term 'secularism', and whether it is inherently anti-religious. In much discourse, 'neutrality' replaced the term 'secularism' as a more '*neutral*' term, but it too has been tainted. Lately, we see 'evenhandedness' increasingly in the literature.

Malcolm Evans voices some of the resistances to human rights approaches to religion, particularly as expressed through the ECtHR religious freedoms jurisprudence:

*The need to restrict the manifestation of religion by believers in order to secure pluralism and tolerance between religions is becoming something of a counter-intuitive mantra in human rights circles. Indeed, in adopting such a stance, the European Court is not itself acting in an even-handed fashion since it appears to be embracing a form of 'secular fundamentalism' which is incompatible with its self-professed role as the overseer of the state as the 'neutral and impartial organiser' of the system of beliefs within the state. This is deeply problematic for all religious believers since it is tantamount to elevating secularism in the name of pluralism, and achieving this by 'sanitising' public life of traces of the religious (2008: 312).*

Here Evans is focusing on rights at the individual level. But he also expresses concern regarding religious rights at the national level, seeing in the Court's engagement with the question of religious neutrality 'an attempt to brush aside the reality of church-state relations and with it a foundational element of national identity in many member states of the Council of Europe' (2008: 303)<sup>26</sup>.

Strict egalitarian approaches to religious freedom – and, specifically, Nussbaum's views – have drawn sharp criticism at the purely conceptual level too. In *The Tragedy of Religious Freedom*, Marc DeGirolami (2013) describes how difficult it is to navigate between religious liberty, equality and non-disparagement. He argues that any legal theories which reduce religious liberty to a set of supreme principles or a 'single all-powerful imperative' (e.g., equality) 'are poorly equipped to

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<sup>26</sup> Indeed, it is helpful to examine the relationship between religious freedom, equality and national identity as a 3-tiered phenomenon in the European setting – individual level, national level, and supranational/European level.



understand and manage the untidy welter of values that are encompassed in the social and legal practice of religious liberty' (2013: 2)<sup>27</sup>.

Beyond these conceptual problems, which provoke debate and reactions at the individual, national and supranational levels, we also have significant practical problems in the implementation of equality in the domain of religious freedom or, as Bielefeldt (2013: 56) puts it, 'the practical problem of whether and how freedom of religion or belief can actually be implemented in a strictly non-discriminatory manner'. Equality in celebration of public holidays is an obvious example of a problem area.

Here the terms 'reasonable accommodation' and 'evenhandedness' come in. According to Bielefeldt, 'What [reasonable accommodation] means in practice cannot be defined abstractly, but must be worked out in a case by case manner... [but] when there is goodwill on all sides, practical solutions can usually be found' (2013: 57-58).

Key here of course is the fact that there is not always, and in some contexts not *often*, goodwill on all sides. And bearing in mind the particularly ubiquitous and ambiguous influences of the religion-national identity link in problems around religious freedoms in majority Orthodox contexts, relevant here is Evans and Thomas' critique of the ECtHR's 'fragmented' approach to religious freedom, focused as the latter is on individual cases and the implications of state actions for specific applicants involved (2006). Such an approach, they argue, fails to take sufficient account of certain structural issues, issues which can be better identified when examining in a more general way establishment or non of a particular religion or religions in a given context and the implications of the latter in terms of religious freedoms.

The way the relationship between religion and national identity underlies so many limitations to religious freedom in majority Orthodox cases points to one such structural issue – and one which could perhaps be counted amongst the 'untidy welter of values' DeGirolami references. This relationship and its potential influence on politics and policies is often the root of effectively systemic problems in the area of religious freedom. These problems cannot be adequately detected or addressed through a strictly 'establishment' approach either, as discussed by Evans and Thomas: as we have seen, *de facto* establishment is supported through a range of practices which may or may not have a base in legal or constitutional texts. Cecile Laborde (2013: 82) approves of state preference of one religion as long as it is 'purely symbolic', but my research suggests that there may be no such thing as 'purely symbolic': regardless of legal weight, preambles and other texts singling out certain faiths often carry practical implications. The way such references are read, and whether symbolism will take on a different form, is difficult to control. The relationship between religion and national identity may form a broader context and environment in which such 'symbolic' references have a life of their own.

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<sup>27</sup> DeGirolami fleshes this point out later: 'For each conflict in this area, there is a multiplicity of real microconflicts of values that are flattened out, if not misunderstood and mischaracterized, by the insistence that the only proper way to understand them is as manifestations of discrimination or disparagement' (2013: 25).



Evans and Thomas argue that 'a greater preparedness to invalidate laws that are discriminatory or are routinely used in a discriminatory manner – rather than a condemnation of the particular application of the law—would be a good step in the right direction' (2006: 724) and they cite as an example of such an approach Judge Martens' concurring opinion in *Manoussakis v. Greece*. Here Judge Martens explicitly referred to the context of the close relationship between the Orthodox Church and the Greek state and considered this a relevant issue to the determination of whether the law in question was permissible under the Convention. Evans and Thomas praise this 'more robust approach', and many champions of religious freedoms regret the fact that such a robust approach has not prevailed, from *Kokkinakis* and beyond, in the Court's religious freedoms jurisprudence.

By way of conclusion: the relationship between religion and national identity should be brought more firmly into the discussion of the relationship between religious freedom, equality and establishment. It is a glaring factor in majority Orthodox cases, but it also underlies many of the problems addressed through the ECtHR's jurisprudence related to state neutrality. The 2009 *Lautsi v. Italy* decision and its radical reversal in 2011 (including the unprecedented and fervent third party interventions which influenced the latter) illustrate well the challenges faced by the Court in undertaking questions that (also) touch on the relationship between religion and national identity. But efforts to arrive at 'reasonable accommodation' and 'evenhandedness' will also be significantly challenged if sufficient account is not taken of this particular factor which often carries with it very particular conceptions of what is 'reasonable' and 'even' in each given national historical context.

The adoption of Protocol 15 into the European Convention on Human Rights, which embeds reference to the principle of subsidiarity and to the doctrine of the margin of appreciation into the Convention's preamble, signals a new (or renewed) emphasis on national level courts and potentially greater space for national identity concerns to play a role in the ECtHR's jurisprudence. Thus closer attention to relationships between religion and national identity, and to their impact on religious freedom and on equality in a variety of national and cultural contexts, will be helpful in both theoretical and practical approaches to the relationship between freedom and equality in religion-related cases. The latter will, in turn, form a firmer basis upon which to consider contrasting conceptions of state neutrality and the proper role of the Court in relation to these.

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