



Elisabeth-Alexandra Diamantopoulou  
Louis-Léon Christians (eds.)

# Orthodox Christianity and Human Rights in Europe

A Dialogue Between Theological  
Paradigms and Socio-Legal Pragmatics



PETER LANG

This collective book aims at examining in what terms, and to what extent, the "reception" of the Human Rights doctrine takes place in Eastern Orthodox countries, as well as in the Orthodox diaspora. A series of questions are raised regarding the resources and theological structures that are mobilized in the overall Human Rights' debate and controversy, the theological "interpretation" of Human Rights within the Eastern Orthodox spiritual tradition, and the similarities and/or divergences of this "interpretation", compared to the other Christian confessions. Special attention is given to the various Orthodox actors on the international arena, aside the national Orthodox churches, which participate in the Ecumenical dialogue, as well as the dialogue with the European and international institutions.

Religious freedom, as a fundamental Human right, guaranteed by the *European Convention of Human Rights (ECHR)*, constitutes a key-issue that contributes to broadening the reflections on the overall Human Rights-related problematic between East and West, by shading light on the more complex issue pertaining to the conceptualization and implementation of Human Rights in countries belonging to the Eastern Orthodox tradition.

The present volume studies the diversity that characterizes the Orthodox theological traditions and interpretations regarding Human Rights, not only in terms of an "external", or a "strategical" approach of socio-political and ecclesial nature, but also through a reflexive analysis of theological discourses.

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P.I.E. Peter Lang

Bruxelles · Bern · Berlin · New York · Oxford · Wien



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Louis-Léon CHRISTIANS (eds.)

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# Introduction

Elisabeth A. DIAMANTOPOULOU  
and Louis-Léon CHRISTIANS

Since 1989, European studies about religions and democracy have progressively been focused on issues about Islam integration v. Islamic radicalism. It is especially true within the western secularized part of Europe. Such a (legitimate) interest, however, should not obscure other important questions about the relationship between religions, pluralism and Human rights in Europe, and need to be balanced today by new data and influences due to the European enlargement. Orthodox Christianity has become a significant religious actor along with other Christian confessions in Europe. Following the adherence of Greece – the first Eastern Orthodox country that joined the EU in 1981 –, other countries with an Orthodox majority, such as Romania, Bulgaria, and Cyprus, also joined the EU. There is also a significant Orthodox minority in several other EU countries, such as Finland, Poland, Slovakia, Estonia, and Hungary, as well as in the diaspora communities of several Western European countries.

If the process of “Europeanization” does not imply uniformity, in terms of cultural, religious and linguistic traditions, it does, on the contrary, imply common underlying principles and shared norms that are based on the articulation of shared precepts and values of being “European”, among which, in particular, the shared conception of, and adherence to individual Human Rights plays a crucial role.

In fact, the Western secular conception of Human Rights, as embodied in the Universal Declaration of Human Rights (1948) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) – of which not only EU members, but all Council of Europe member states are signatory – constitutes a significant element of

the Western cultural heritage and value system, as well as of the European and/or Western identity.

The issue of Human Rights with regard to Eastern Orthodoxy and the Orthodox Christian Tradition is of utmost importance to understand that European pluralism is not only a question driven by an exogenous Islam, but it is a core question within Christianity itself, between Eastern (Orthodox) and Western (Catholic and Protestant) Christianity and constitutes an endogenous question at the heart of an historical European project.

Thus, the issue of Human Rights is particularly emblematic of the broader problem of a shared value system between Western and Eastern Europe, and raises further a fundamental question: to what extent the religious heritage of Eastern Orthodoxy is compatible with the Western conception of individual Human Rights? The recent adoption (2008) by the Russian Orthodox Church of a key-document on freedom and Human rights, “Basic Principles of the Russian Church Teaching on Human Dignity, Freedom, and Rights”, constitutes a characteristic example of this problematic, and illustrates the significance of the Human Rights issue, within the broader problematic of the dialectic between Eastern Orthodox and Western/secular worldviews and understandings of the human being.

A binary debate often unduly polarises all kind of answers: West against East, individual approach against communitarian approach, relativism against traditionalism, secularity against religion, universalism against nationalism, postmodernity against pre-modernity, plurality against unity, law instead of spirituality, liberty as sin against liberty from sin, human dignity instead of spiritual achievement, one’s neighbour instead of God primacy, and finally Human rights as a “false religion” instead of Orthodoxy as the “true religion”. The question is thus raised, of how to tackle with the insufficiency of various binary oppositions. This is precisely the aim of this book which is itself the result of a two-day international conference held at Louvain-la-Neuve in April 2013.

The authors of this book are convinced that a more reflexive and complex approach is both necessary and feasible. A multi-factorial approach is certainly required: an intertwining of *all* these stereotypical approaches could show the poor performance of each binary opposition taken separately. Diverse attempts of the kind of intertwining process have already been developed in the literature, but they remain attached

to an asymmetrical relation with or from theology. On the one hand, it is frequent to find in line with a post-Marxist paradigm that theology and theological discourses are only superstructures and pretexts. Only geo-political strategies would have some validity and would be able to provide causal explanations. On the other hand, theology may sometimes simply search for an alternative validity for Human Rights through a kind of historical “hermeneutics catalyst”: a rupture from the present time in order to associate a theological approach with the time and narratives of the first primitive Christian communities, the spiritual biographies of early Christianity, the figure of God and the Neighbours, the Holy Trinity etc.

The authors of this book are convinced, on the one hand, that social sciences have to take seriously theological discourses and narratives and, reversely, on the other hand, that theology may not be elaborated only from abstract ideas without taking seriously the concrete “incarnation” of these ideas within pragmatic and present social contexts.

It would be a too limited perspective to debate only among western and eastern theologians, or among western and eastern lawyers or political scientists. Theologians of both sides of Europe need to work not only to discuss or reconcile their theoretical narratives and understanding about human rights, but they also need to be enabled to work on a concrete version of Human rights, i.e. the legal practice of Human rights courts and administrations (e.g. Blasphemy, Polemical Religious Discourses, Churches autonomy, Crucifix, etc.). And reversely, lawyers and political scientists cannot continue to neglect the inner content and history of theological discourses and understandings. The diversity within Christianity is far more complex than a simple opposition between East and West. And it is precisely the reason why a third kind of interdisciplinarity is needed: elaborating this new dialogue between legal practices and theological hermeneutics would still remain a too short methodology, if it does not take into consideration sociological and geopolitical contexts.

This book aims to ensure that a new dialogue between law and theology does not confine itself to their common normativity and formal way of proceeding. Concrete contexts and focuses will be proposed to challenge all too theoretical approaches: Is there a specific “Eastern Orthodox understanding” of Human Rights? To what extent, the key-issue of religious freedom, can inform us in this regard? Or, is it more appropriate to speak in terms of a plurality of diverse Orthodox

conceptions of Human Rights, which are embedded in the specific socio-historical, socio-political, and sociocultural contexts of the various Orthodox countries? Is it possible to speak of a homogeneous “Eastern Orthodoxy”, or is it rather question of multiple “Orthodoxies”?

In what terms are individual Human Rights conceptualized in the European Court of Human Rights’ jurisprudence? And to what extent, the *rationale* of the Court in its condemnatory decisions of Greece, especially with regard to religious freedom, can inform us about a conflicting understanding of Human Rights? Further, the contemporary debate among theologians, religious thinkers and intellectuals in Greece, is expected to shed light in terms of a possible accommodation of the “Orthodox understanding” of Human Rights, to the reality and the challenges raised by the *de facto* European pluralistic society.

The emergence of the new “theology of the 1990s-2000s”, ardently critical of the older “generation of the 1960s” approach towards Human rights, among other, (Kalaitzidis, 2007; Foukas, 2009) is emblematic of the mutations that have been taking place in modern Greece with regard to religion (Fokas and Makrides, 2004; Kalaitzidis, 2007; Roudometof and Makrides, 2010). One new cultural dimension of this de-nationalized version of Greek Orthodoxy is the late modern culture of reflexivity intrinsic to the relativization of identities, especially national identities. The religious thinkers, referred to, insist upon combining an undisputed religious faith with an engagement with modernity, aiming towards renewed relevance of religion in contemporary society (Willert, 2009).

As a background to the debate on Human Rights, this book will examine the discourses, the criticism and the alternatives suggested by this new generation of theologians/scholars with regard to the new role that the Orthodox Church of Greece is called to play within the context of the contemporary Greek multicultural civil society (Kalaitzidis, 2007; Petrou, 2007). Finally, the discourses and the attitude of the Orthodox Church of Greece with regard to Human Rights will be considered, through the study of official documents, and the writings of members of the clergy that specifically address this issue.

The specificity of the Church/State relationships in Greece, as a result of the historical process of nationalization of Orthodoxy, and the transformation of the Greek Orthodox Church into a national Church during the 19<sup>th</sup> century (Makrides, 2005, and 2009; Papatomas, 2006; Kitromilides, 1996) is intertwined with the problem of institutionalization

of democratic structures. This also stands true regarding the other European Eastern Orthodox countries. This factor raises, thus, the issue of the effective implementation and protection of Human rights via the legal and judicial apparatuses.

The chapters in this book are an attempt to expose some of the various issues thus raised, to put the three theological, sociological and legal traditions into some form of dialogue, and to explore how the encounter is working out in practice in the selected case studies of European Orthodox countries.

**A first part is dedicated to an interdenominational and comparative theological debate within Christianity, i.e. between Orthodoxy, Catholicism and Protestantism.**

The first chapter is a comparative theological study of the Orthodox and Protestant traditions regarding the theological foundation and reception of HR. The author examines some key-theological concepts within the two Christian traditions, such as Human Dignity as a foundation of HR, the concepts of freedom, morality, rights and obligations, and the dialectics between HR and salvation (soteriological approach). The author dismisses the assumption of a fundamentally different anthropology between Eastern Orthodox and Western Protestant theology, or of an alleged incompatibility of Orthodoxy with HR understood as rights of the individual. The author claims that the fundamental disparities between the two traditions in the appraisal of HR are not theological, but have predominantly historical, cultural and political roots.

The second chapter deals with the Catholic Church's long and controversial history regarding the Human rights movement in the European context, which is marked by three distinct periods of radical hostility and rejection, of *rapprochement*, and of full recognition and identification. As the author states, Human rights are nowadays an integral part of the Catholic Church's social teaching; Catholic Social Thought is no longer possible without the acceptance of HR, which are fully adopted as humanity's common ground on which theological interpretations – such as Human Dignity – can be presented without being in contradiction with secular reason. The author examines the diverse interpretations of the crucial change that occurred in the Catholic Church's attitude towards HR, according to different big narratives inside and outside of the traditional mainstream. The author demonstrates that despite a new articulation of the relation between religion and modernity,

the Catholic Church has maintained a specific approach of individual rights, marked by certain connotations to HRs' language within a Catholic framework.

**A second part gathers two chapters analysing Orthodoxy from within Human Rights and Comparative European Law in a pragmatical approach.**

The first chapter studies European Court of Human rights case law on violations of religious freedom in cases of countries with an Orthodox tradition, with a particular focus on the Greek case. The author's sociological analysis of "Orthodox litigation" in the ECtHR sheds light on the difficulties encountered by the Strasbourg judges in understanding the status of Orthodoxy and the specificities pertaining to the complex configuration of relations between Orthodox canonical law and civil law. The author demonstrates at the same time the difficulties that Orthodox countries face in the application of the theological Orthodox ideal of "symphony" in the field of Church/State relations, by illustrating the numerous deviations from this ideal on diverse levels, ranging from the structural dysfunctions of State legislation, to problematic interpretations by national State bodies, and/or in administrative practices.

The second chapter, drawing on sociological empirical qualitative research conducted in four majority Orthodox countries (Greece, Romania, Bulgaria and Russia), addresses the problem of restrictions of religious freedom, which appears to be a common pattern in countries where Orthodox Christianity is the majority faith. The author presents a comparative overview of religion/State regimes in the four Orthodox countries context, as well as the results of her fieldwork (in-depth semi-structured interviews) on a variety of religious/State actors. Despite the differentiation of the historical and cultural background (three post-communist cases; centuries of Ottoman domination of Greece), the comparison of the legal framework across the four Orthodox countries contexts reveals significant similarities/convergences in terms of non-implementation of decent legislation on religious freedom and/or of preferential treatment of the Orthodox Churches (*de facto* and *de jure* privileges). The author underscores the resilient, highly exploitable and emotive relationship between religion and national identity, a common denominator in all four cases, which is a decisive factor with regard to violations of religious freedom.

**In a third part, four chapters deal with Orthodoxy and Human rights within local orthodox contexts, in Greece and Russia.**

The first chapter deals with the paradoxical situation in present-day Orthodox majority Greece, as regards the specificities pertaining to the formal recognition of a particular legal status of the so-called Greek Muslim minority (“historical Islam”) in Western Thrace (Northern Greece), for historical reasons dating back to the country’s Ottoman occupation, the exchange of populations in 1923 and the subsequent Treaty of Lausanne. Islam is an integral part of the Greek cultural heritage and, at the same time, is perceived as “local but stranger”. The author reflects on the particular and self-contradicting normative strategies of the Greek State *vis-à-vis* the traditional, historical Islam on one hand, and the contemporary migrant Muslim communities on the other hand, illustrating the discomfort of the liberal legislator and justice, when compelled to deal with the perceived as alien Islam. The author dwells in a critical analysis of the assimilationist model applied to minorities in Greece, in the light of the double-standard State strategies towards the historical and migrant Islam. The author reflects on the possibilities of a transition from essentialist perceptions of belonging – underlying the assumptions of Greekness and Orthodox identity, of nationhood and religious affiliations within the Modern Greek society – to transnational considerations of citizenship.

The second chapter examines a variety of conflicting interpretations concerning the religious-secular boundary in present-day Orthodox Russia, and what the author designates as “post-secular hybrids”, in the light of the famous *Pussy Riot* case. Special attention is given to the hybridization of religion and politics, public order and religious norms, and of secular knowledge and confessional belonging. Uzzlaner shows the de-politicization of the *Pussy Riot* trial in terms of transformation of an essentially political protest into a religious issue. As the author shows, the *Pussy Riot* case highlighted the specific logic of the post-secularism dictated by the Russian “de-secularized regime”, and it became overall an arena for the battle between the proponents of different visions of post-secularism. Uzzlaner underscores that in the conditions of post-secularism, it is question of a choice between different hybrids and, likewise, between different approaches to drawing the constantly contested religious-secular boundary.

The third chapter focuses on the diversity of organisational and jurisdictional patterns of the Greek-speaking component of the Orthodox Church within the Hellenic Republic, and in the context of the Greek diaspora worldwide. The analysis of the various Orthodox discourses on Human rights, as they are deployed within these heterogeneous contexts, shows that there is no uniformity of positions towards HR, but rather a plurality of discourses echoing the very diversity of local traditions, organisational patterns and local jurisdictions, in which the former are embedded.

The fourth chapter deals with the social, theological and canonical approaches towards HR in the Orthodox tradition, and the stance of the Orthodox Churches towards the normative understanding of the provisions generated by the HR treaties and international law within the frame of Late Modernity. The authors show the wide range of theological approaches elaborating the concept of Human Dignity, mainly as an integral part of Christian anthropology, but also as a core concept of HR. Drawing on a rich material of official documents of Orthodox representative bodies, and by highlighting the polymorphy of the Orthodox Church worldwide – diversity of local traditions, specific Church-State relations and perceptions of the Church's role in the public sphere –, the authors demonstrate that there is no unique pattern in the Orthodox views on HR issues. HR are *de facto* acknowledged as a main functional element of the modern world, both at national and international levels. Investigating the theorem of Orthodoxy's incompatibility with HR, in the light of the paradigm of Greek Orthodoxy, the authors underline that the construction of an over-generalized theory on the relation between Orthodoxy and HR is not relevant from an epistemological viewpoint; nor is a one-dimensional approach, deriving from a single conceptual framework indiscriminately including all Orthodox communities.

#### **In a fourth part, five voices try to propose an Orthodox Theological and Ecclesiological Reappraisal on Human Rights.**

In the first chapter, the author addresses from a socio-theological viewpoint the dialectical relationship between Orthodox personalism (personhood) and HR, focusing on a critical analysis of two diametrically opposed evaluations of Orthodox personhood, formulated by two major Orthodox scholars (Yannaras and Papanikolaou), and their consequences in relation to HR. The concept of Orthodox personhood, based on

the Greek Patristic heritage, is considered as the most characteristic aspect of the Orthodox theological tradition, clearly distinguishing the latter from its Latin counterpart. With reference to the key-concept of Orthodox personalism, the author's analysis sheds light on the Orthodox ways of approaching the modern HR issue, by focusing on the diversity of opinions, evaluations and interpretations in this regard, within the broader Orthodox discursive field. In the author's opinion, the necessity of a critical reflection and new orientation for the Orthodox concerning the re-interpretation of their own tradition, is a prerequisite for the achievement of a more constructive and fruitful encounter of Orthodox Christianity with Western Modernity as a whole.

The second chapter addresses the theological foundation of HR from an Eastern Orthodox approach, focusing on the dialectics *individual versus collective* (communal) rights. The adherence to the classic Orthodox communal understanding of the Church, founded in Trinitarian theology, does not necessarily imply an adherence to the stereotypes that are usually attributed to this communal understanding, and which hold as granted the radical opposition and incompatibility between individual and communal. Moreover, as the author shows, elements of subjectivity and individuality are not the exclusive attribute of the Western Christian theological tradition, but are also to be found in the Eastern Greek Orthodox theological tradition (paradigm of the Greek Orthodox author Gregory of Nazianzus). Focusing on the theological interpretation of the Orthodox concept of personhood in the writings of Greek-American Orthodox scholar Aristotle Papanikolaou, the author demonstrates clearly that this core theological concept of the Orthodox tradition is not necessarily incompatible with the Western heritage's notion of individual Human rights.

The third chapter reflects on the dialectical relationship between Ecclesiology and HR from the viewpoint of Orthodox ecclesiology approach, focusing on the concepts of *ontology* and *eschatology*, *multi-ecclesiality* and *ecclesiastical confessionocracy*. The loss of unity that marked the Ecclesiology of the 1st Millennium, gave gradually birth to what the author designates as the "multi-ecclesiality" of the 2nd Millennium, i.e. a *plurality* of Churches based on their confessional differences ("ecclesiastical confessionocracy"). As the author states, ecclesiology aspires to the ontological transcendence of the differences and to the ontological unity, whereas HR, derivatives of the "fallen" world, aspire exclusively to the legal safeguard of individual and collective rights. The

enforcement of HR leads to the relativization of the Churches' character of unity and, as a corollary, to the consolidation and legalization of *plural Churches*, by encouraging, rather than restricting, ecclesial confessionocracy. HR thus constrain the Churches at the *eonie* level ("this century"; "this present world"), depriving the latter from their eschatological orientation. The systematic prioritization of HR by some churches, instead of the ecclesiological vision – paradigm of recourse to the European Court of Human Rights for the resolution of ecclesiastical disputes –, is theologically deeply problematic. However, as the author underlines, from an ecclesiological viewpoint, it is neither question of an absolute rejection of HR, nor a prioritization of the latter.

The fourth chapter deals with a theoretical approach of the dialectics between HR and the theological concept of *Human Dignity* within the Orthodox theological tradition. The author focuses on a critical analysis of the official document of the *Russian Orthodox Church's Basic Teaching on Human Dignity, Freedom and Rights*, and the diverging views of some major Orthodox scholars with regard to HR. This study also sheds light on the specificities of the contemporary Georgian Orthodox case concerning HR. In the light of the Georgian paradigm, an Orthodox majority, post-soviet, emerging democracy undergoing transition and in the quest of self-identity, the author underlines the urgent necessity for the development of a "culture of rights", as a pre-condition for a genuine, effective, formal recognition of HR, within the context of Orthodox majority, newly emerging democracies.

The fifth chapter, within an essentially theoretical reflection, focuses on the moral dimension of HR and of the Orthodox theological key-concept of "theosis" (deification), from the perspective of Russian Orthodox theology. The author shows that any statement on the Human Dignity of the person is necessarily based on moral considerations and, at the same time, on a self-commitment to a political community. Special attention is given to the theological paradigm of the Eastern Christian "apophatic" teaching about God, in order to examine the consequences on inter-human relations and, in extension, on the HR concept.

Finally, in a last part, the author, Jean-Paul Willaime, proposes an analysis in form of provisional conclusions.

## **PART 1**

# **ORTHODOX AND OTHER CHRISTIAN APPROACHES ON HUMAN RIGHTS**



# Theological Foundation of Human Rights

## Incompatibility between Orthodox and Protestant Tradition?

Stefan TOBLER

Since Patriarch Kirill assumed his office, the Russian Orthodox Church finds herself within a process of renewal. She should be able to cope with the requirements of a rapidly changing society and bring in her weight into the political discussion. The Social Doctrine of the Russian Church, published in 2000, already bears the strong seal of Kirill<sup>1</sup>. A collection of lectures of the Patriarch, recently issued in the German translation<sup>2</sup>, is an impressive and instructive testimony of his activity. He is very concerned with maintaining and strengthening the Christian faith in a world under fast transformation. Unfortunately – he says – the prevalent politics in Europe with its secularisation would often be an adversary of faith. His concern is about the universal quarrel between two world perspectives, two systems: the secular-humanist and liberal on one hand, the religious-tradition-bound on the other; it is about a

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<sup>1</sup> For this paper, I used both the edition in German language (J. Thesing, R. Uertz (ed.), *Die Grundlagen der Sozialdoktrin der Russisch-Orthodoxen Kirche. Deutsche Übersetzung mit Einführung und Kommentar*, Sankt Augustin: Konrad Adenauer Stiftung, 2001) and the English translation from the website of the Russian Orthodox Church (<https://mospat.ru/en/documents/social-concepts/>, called on 2015-05-27). Direct quotations have been taken from the latter. The document is quoted hereafter with the abbreviation *ROC-SD* followed by the paragraph number. An extensive analysis of the thought of the Russian Orthodox Church on socio-political matters can be found in: Chr. Schwyter, *Das sozialpolitische Denken der Russischen Orthodoxen Kirche. Eine theologische Grundlegung auf der Basis offizieller Dokumente seit 1988*, Studia oecumenica Friburgensia 56, Basel: Friedrich Reinhardt Verlag, 2013.

<sup>2</sup> Kyrill Patriarch von Moskau und der ganzen Rus', *Freiheit und Verantwortung im Einklang. Zeugnisse für den Aufbruch zu einer neuen Weltgemeinschaft*, edited by Barbara Hallensleben, Guido Vergauwen and Klaus Wyrwoll, Freiburg (Switzerland): Institut für Ökumenische Studien, 2009.

kind of clash of civilizations<sup>3</sup>. This conviction can be found in many lectures and essays of today's Russian patriarch. He advocates the "return to the Christian meaning of the European values"<sup>4</sup> and looks for allies. It is not accidentally that the current representative for external contacts, Metropolitan Hilarion Alfeyev, has been speaking – at least since 2005<sup>5</sup> – of the necessity of a Catholic-Orthodox alliance to protect moral values in Europe and as a fight "against secularism, liberalism and relativism".

"There are now two obvious essentially-differing versions of Christianity – the traditional and the liberal. The abyss that now exists divides not so much the Orthodox and Catholics, or the Catholics and Protestants, as the "traditionalists" and "liberals", he says, but immediately afterward he specifies:

... churches which consider themselves 'Churches of Tradition,' that is, the Orthodox, Catholics and pre-Chalcedonians...<sup>6</sup>

Protestant churches are challenged by this idea. Most of them actively defend human rights<sup>7</sup> – a political instrument rooted in the enlightenment and its conception of a secular society – without reservations, and by doing so, they are often considered to be in opposition to the 'traditional' Orthodox position, because such an attitude is supposed to weaken the influence of the Christian faith in the contemporary society.

<sup>3</sup> One can find this idea in several places, for example in an essay from 2004: Kyrill, "Das liberale Wertesystem als Bedrohung der Freiheit", in Kyrill, *Freiheit und Verantwortung*, 64. It is not between religions, like between Islam and Christianity, that a clash of civilizations is threatening (*ibid.*, 69), but between tradition and liberalism, between religion and secularism. Alfons Brüning adduces more references (A. Brüning, "'Freedom' vs. 'Morality' – on Orthodox Anti-Westernism and Human Rights", in A. Brüning, E. van der Zwerde (ed.), *Orthodox Christianity and human rights. Eastern Christian studies 13*, Leuven: Peeters, 2012, p. 125-152, specially 142).

<sup>4</sup> Kyrill, "Eröffnungsrede zur Konferenz 'Europa' eine Seele geben. Sendung und Verantwortung der Kirche" (in Kyrill, *Freiheit und Verantwortung*, 109-113, quotation p. 112). The occasion of his speech was a conference organized by Pro Oriente in Vienna in 2006. The rights and freedoms of human beings, if secularised, would have "lost their profoundness and could even turn against man and the spiritual bases of the person" (*ibid.*).

<sup>5</sup> In an interview on occasion of the instauration of Pope Benedict the 16th on April 24th 2005, to be found on <http://Orthodoxeurope.org/page/14/65.aspx#3> (called on 2015-05-27).

<sup>6</sup> *Ibid.*

<sup>7</sup> When I use the term "human rights" without any specification, I intend the rights of the first generation, i.e. the civil rights and liberties.

Misunderstandings and suspicion between exponents of these two branches of Christianity seem to be growing.

Therefore, the issue of this essay is an ecumenically important one. I want to touch upon the most important theological topics which play a role in the recent discussion between representatives of the Orthodox and the Protestant Churches, especially after the publication of the Russian document on Human Rights from 2008<sup>8</sup> and the answer given by the Community of Protestant Churches in Europe (CPCE) in 2009<sup>9</sup>. The aim is to give an overview and to draw some consequences; necessarily the discussion of each topic is very short and calls for further deepening.

## 1. The concept of Human Dignity as a foundation of Human Rights

Since this first topic has been discussed in an earlier publication<sup>10</sup>, I will treat it only briefly, even so it is a central point.

A key expression of the Russian document is the following: “According to the Orthodox tradition, a human being preserves his God-given dignity and grows in it only if he lives in accordance with moral norms” (I.5.). That is why human dignity and morality would be inseparable, moreover, “in the Eastern Christian tradition the notion of ‘dignity’ has first of all a moral meaning” (I.2.). As the notion of human dignity is considered to be the foundation of human rights, the latter are then evaluated in the light of this close connection between human dignity and morality.

The problem of this connection is the main point of the answer expressed by the Communion of Protestant Churches in Europe to the Russian document. While the notion of dignity is bound to the moral

<sup>8</sup> *The Russian Orthodox Church's Basic Teaching on Human Dignity, Freedom and Rights*, to be found on <https://mospat.ru/en/documents/dignity-freedom-rights/> (called on 2015-05-27), quoted hereafter *ROC-HR* followed by the paragraph number.

<sup>9</sup> *Human Rights and Morality, A Response of the Community of Protestant Churches in Europe (CPCE) – Leuenberg Church Fellowship* – to the Principles of the Russian Orthodox Church on “Human Dignity, Freedom and Rights”, to be found on [http://www.leuenberg.net/sites/default/files/Human\\_rights\\_and\\_morality%20%28final%29.pdf](http://www.leuenberg.net/sites/default/files/Human_rights_and_morality%20%28final%29.pdf) (called on 2015-05-27), quoted hereafter *CPCE-HR* followed by the paragraph number.

<sup>10</sup> Stefan Tobler, “Menschenrechte als kirchentrennender Faktor? Die Debatte um das russisch-Orthodoxe Positionspapier von 2008”, *Zeitschrift für Theologie und Kirche*, 107 (2010): p. 325-347.

accomplishment of man (in the notion of God's likeness, to be pursued), it is thus "transformed into a moral category" (CPCE-HR 2). Yet, it loses thus its decisive character, namely that of a taboo, which cannot be relativised and scaled gradually. In the notion of human dignity, which lies at the basis of human rights, there is neither a more, nor a less. It is attributed to all humans on no condition, independent of their moral views and behaviour, and independent of their religious belief. It constitutes the unconditional protection from unjustified trespassings, from "reification and instrumentalisation" of men (CPCE-HR 1) by other people and by the state.

Patriarch Kirill is aware of the different approach. In his eyes, there is "a fundamental contradiction between the religious and the secular attitude towards Human Dignity"<sup>11</sup>. But I don't think he is right. The two positions are not in contradiction, but complementary.

The concept of human dignity is not univocal. It can be used as a transcendental or as an empirical notion – both are comprehended even in the basic articles of the European Charter of Human Rights and in the German Constitution<sup>12</sup>. In order not to miss each other's point in the dialogue, the following differentiation has to be made.

1. To speak about human dignity has on one hand a transcendental dimension and designates something that is attributed to all humans, with no exception. As an *innate dignity* (according to the way it was formulated in the General Declaration of Human Rights), it is a fundamental *datum*, a basic attribute of humankind, that precedes law and morals; it calls for universal validity and does not depend on religious argumentation, but has nevertheless a strong ally in religion. Because it simply means humans *as humans*, it is inalienable, unquantifiable and not scaled gradually.

<sup>11</sup> In German: den "fundamentalen Widerspruch zwischen der religiösen und der säkularen Einstellung zur Menschenwürde", Patriarch Kyrill, "Die Russische Kirche und die christliche Dimension der Menschenrechte" [2006], in Kyrill, *Freiheit und Verantwortung*, 106-108, quotation 106. The Russian Orthodox Church – he states – was the first to bring this problem to light on international level.

<sup>12</sup> "Human dignity is inviolable. It must be respected and protected" – these are the words of Art. 1 of the Charter of Fundamental Rights of the European Union, inspired by the German constitution. Yet, how should it be interpreted? Is 'inviolable' a descriptive or a normative statement? Can't dignity be violated, or *must* it not be harmed? The word 'to respect' targets at an inalienable quality of human beings, the word 'to protect' at the possibility that human dignity may be vulnerable and could be in danger.

2. Based on the transcendental dignity given to all humans, we have to consider also an empirical dimension of the concept. In its turn, this empirical dignity has two sides, which must be well distinguished.

2a. One is the ethically relevant fact that human dignity is attributed to *the other* (each other); and this means that there is the possibility to hurt this dignity, and the duty to respect it, respectively. Hereto belong the human rights. In their protective function, human rights are a highly moral category, as they represent fundamental rules, without which no society worthy of humankind can exist.

2b. The other is the ethically relevant fact that human dignity is attributed to *me*. Hereto belongs the freedom of the individual to be conscious of his own dignity and to guide his life according to it – or not; to act with human dignity or not. By all means, this cannot be measured according to compulsory general criteria, as it depends on the scales of values each one connects to this notion. In the plurality of possible concretisations, the fact of my own dignity and its achievement is no object of human rights, but of my world view, of my creed, of my morality<sup>13</sup>.

In theological language, the transcendental Human Dignity is rooted in the *imago dei*, and from it emerge both, the respect of the Dignity of the other (Human Rights) and the respect of one's own Dignity (sanctification, growing in the likeness of God, moral behaviour). There is now reason to differ on this point – we just have to recognize the complementarity of our perspectives.

## 2. Human Rights and eternal salvation

Do Human Rights (and their implications and consequences in society) somehow matter for eternal salvation?

At the very beginning, the Russian document makes a serious statement. The principles of (some) Human Rights force the Christians sometimes “to think and act contrary to God's commandments, thus obstructing their way towards the most important goal in human life, which is deliverance from sin and finding salvation” (ROC-HR Preamble).

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<sup>13</sup> This double differentiation follows my earlier considerations in: Tobler, “Menschenrechte als kirchentrennender Faktor?”, p. 333-334.

If this is the case, if the principles and the practice of Human Rights in modern society concern this key issue of Christian faith, we have to reflect about it seriously and, if necessary, discuss about it passionately. As Protestants, we understand such a passionate struggle for the truth of salvation very well – the Reformation indeed began with the question of justification.

To live following the Christian moral norms matters for eternal salvation – this is part of Orthodox belief. Since the way our society is organised by means of the law has influence on the way of life of those being part of it, and on their patterns of behaviour, it therefore – at least indirectly – also has influence on the process of sanctification required for salvation.

Therefore, it seems to be consistent that the Social Doctrine of the Russian Orthodox Church speaks about a co-operation between State and Church in this regard:

“However, the state is aware as a rule that earthly well-being is unthinkable without respect for certain moral norms – the norms which are also essential for the eternal salvation of man. Therefore, the tasks and work of the Church and the state may coincide not only in seeking purely earthly welfare, but also in the fulfilment of the salvific mission of the Church” (ROC-SD III.3).

If this is the case, civil law must not be an obstacle for Christian faith:

“The human law has never contained the divine law in its fullness, but in order to remain law it is obliged to conform to the God-established principles, rather than to erode them...” (ROC-SD IV.3.).

In this perspective, there exists a (partial) synergy between State and Church with respect to eternal salvation<sup>14</sup>. From a Protestant point of view, we could simply close the discussion here, by referring to our own

<sup>14</sup> This conviction has been confirmed for example by Hegumen Philaret in a paper in which he defends the Russian document on human rights: “Der Standpunkt, von dem das Dokument das moderne weltliche Konzept von ‘Menschenrechten’ behandelt, ist im eigentlichen Sinne noch nicht einmal sittlich, sondern soteriologisch (Hegumen Philaret Bulekov”, *Die ökumenische Diskussion über die Menschenrechte*, § 2,5, published online on <http://www.bogoslov.ru/de/text/480131.html>, called on 2014-06-05). Similar Makrides (Vasilios N. Makrides, “Die Menschenrechte aus Orthodox-christlicher Sicht: Evaluierung, Positionen und Reaktionen”, in M. Delgado *et al.* (ed.), *Schwierige Toleranz. Der Umgang mit Andersdenkenden und Andersgläubigen in der Christentumsgeschichte*, Fribourg: Academic Press, 2012, p. 307). For many Orthodox – he says – human rights should be connected with Orthodox soteriology.

conviction of justification by faith, to the understanding of “good works” as fruits of and not as a condition for salvation. There doesn’t seem to be any direct link between the moral behaviour of men, regulated by civil law, and eternal salvation.

But if we look more closely at both positions, things turn out to be more complex. I begin to question the Protestant viewpoint, going back to a classical discussion in the 17<sup>th</sup> century on the principle of tolerance and the consequences for Christian faith.

From a Christian background, but in the spirit of enlightenment, John Locke argues in his *Letters on tolerance* for the freedom of conscience and brings forward religious arguments for this claim, saying that a true faith cannot come through coercion, but has to grow in freedom; an enforced faith is no faith. In response to this affirmation, an Anglican theologian (Jonas Proast) asks if the freedom Locke speaks about ever exists. He remembers that every person grows up in a certain context and society and with a specific education. If somebody has grown up in error, by the circumstances, we have to change (perhaps even enforce) better circumstances in order to offer the truth<sup>15</sup>.

This old discussion is still relevant. The Protestant churches are aware that the social order, specially the education system, is crucial for the mission of the Church. The principle of religious freedom means the freedom to offer education in religion, not the complete distance of state and school from religion. Religious education helps people to grow into faith – and therefore matters for eternal salvation.

Furthermore, the respect of Human Rights (the classical freedom rights) offers a possibility to act publicly also for organizations which are against the Christian faith, or which promote exclusively materialistic values. This simple fact has influence on people; there has been and there will be persons who lose their affiliation with Christian faith (with the Church) by this reason. In this sense, it can be stated that through the possibilities of freedom of speaking, by means of modern communication tools, through the pluralisation of society and the increasing variety of

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<sup>15</sup> See the extensive analysis of the debate between Locke and Proast made by Rainer Forst (*Toleranz im Konflikt. Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs*, Frankfurt a.M.: Suhrkamp, 2003, 276-312; English translation: *Tolerance in Conflict. Past and Present*, Cambridge: University Press, 2013). Forst comes to the conclusion that there is no convincing intrinsic reason for tolerance in the framework of the Christian faith. Good reasons have rational and political character.

ways of life among which an individual can choose, there are persons who lose eternal salvation.

But can this fact be a reason for churches to prefer a system with restricted freedom? In the perspective of the Protestant experience, the advantages of civil freedom seem to prevail over the dangers. Christian faith has an essentially personal dimension: it means to hear the call of God and to decide to follow Jesus. The first disciples, and most of the Christians in the first centuries, accepted Christian faith against their culture and tradition, in the midst of a pluralistic society and despite the oppression by the State. The reference to the first centuries of Christian history – a time when the Church expanded and flourished – can be one argument on the way to find a common ground for the dialogue with the Orthodox.

But there is also a dogmatical argument. The way Christos Yannaras, a Greek philosopher and influential Eastern Orthodox theologian, describes the path to salvation can be a bridge in ecumenical dialogue. He points out that morality alone (and therefore ‘good works’) are not leading us to eternal salvation, they are “merely natural achievements” which have sense if they prepare us for our “participation in the Eucharistic body of ecclesial communion”<sup>16</sup>. This participation does not depend on the imposition of Christian principles by the civil law; on the contrary, such an imposition could lead to a illusionary image of being “culturally Christian”. This affirmation has to be understood in the light of the distinction, made by Yannaras, between ethos (Christian life on the way towards theosis) and morality (natural, philosophical behaviour)<sup>17</sup>. Therefore, not the external adaptation to some moral or social rules are decisive for salvation, but the inner, personal decision to go our way with God, to participate in the life of the Church and to pursue on the way of sanctification (theosis).

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<sup>16</sup> He writes more extensively: “The same is true of individual virtues, individual moral achievements and ‘good works’. As a training in self-denial and self-offering, they are simply a preparation for the goal or telos of participation in the Eucharistic body of ecclesial communion. Without this telos they are merely natural achievements, feeding illusions of self-sufficiency, that prevent us from renouncing nature and surrendering to grace.” (Chr. Yannaras, *Orthodoxy and the West. Hellenic Self-Identity in the Modern Age*, Brookline, Mass: Holy Cross Orthodox Press, 2006, p. 32).

<sup>17</sup> Kristina Stöckl, “The ‘We’ in Normative Political Philosophical Debates. The Position of Christos Yannaras on Human Rights”, in Brüning, *Orthodox Christianity*, p. 189.

These short considerations lead to the conclusion that, even though the soteriologies of the two traditions are quite different, this fact does not lead necessarily to contradicting positions with regard to the appreciation of Human Rights in Christian perspective.

### 3. The concept of freedom

Within the manifold meanings of “freedom”<sup>18</sup>, on the level of personal existence we can follow the classic distinction between two basic dimensions. Using the terminology of the Russian document on Human Rights, there is – on the one hand – *autexousion* as the capability to take decisions, to make a choice between different possibilities and actions, between good and evil. On the other hand, there is *eleutheria* with the meaning of freedom in Christ, freedom from sin (and from all addictions and evil), and therefore the freedom to serve our neighbour. This distinction is very common in Protestant tradition, too. Martin Luther treats the two meanings of freedom very differently, in *De servo arbitrio* (1525) freedom as self-determination, in *De libertate christiana* (1520) the freedom as a gift from God received by faith and as life in discipleship of Jesus, serving all mankind.

Both dimensions of freedom are part of Christian anthropology. This consensus is expressed explicitly in the final statement of the 24th dialogue meeting 2008 between the Evangelical Church in Germany (EKD) and the Russian Orthodox Church<sup>19</sup>, in which they discussed above all about the human rights in Christian perspective. Freedom understood exclusively as freedom of choice between a number of possibilities, is

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<sup>18</sup> Vasilios Makrides points out that the distinction between two forms of freedom made in the Russian document on Human Rights, has roots in the patristic tradition and lacks in any relation to modern theories of freedom (Makrides, “Die Menschenrechte aus Orthodox-christlicher Sicht”, p. 319).

<sup>19</sup> The final statement of this dialogue meeting says: “Die Freiheit ist das unterscheidende Merkmal, das den Menschen von der übrigen Schöpfung Gottes unterscheidet. [...] Sie ist sowohl die in der menschlichen Natur vorhandene Fähigkeit zur Wahl, einschließlich der Wahl zwischen Gut und Böse, als auch die Nichtdeterminiertheit menschlicher Taten, weiterhin die Freiheit vom Bösen und die Freiheit zur Liebe, sie ist die Nichtgebundenheit durch die Ketten der Sünde und der Leidenschaften, d.h. die Freiheit in Christus, von welcher der Apostel Paulus spricht.” (“Kommuniqué einer Orthodox-lutherischen Konsultation”, in Kyrill, *Freiheit und Verantwortung*, p. 180).

certainly not sufficient from a Christian point of view<sup>20</sup>; but it has to be stated also, that there cannot be a real freedom in Christ without the dimension of personal self-determination which includes the capacity to make choices. The latter is part of the image of God which cannot be erased. “In its freedom of choice, man is image of God”, Stăniloae writes in his *Dogmatics*<sup>21</sup>. This is common Orthodox tradition, rooted in the patristic anthropology, as it can be shown for example in the writings of Gregorius from Nyssa<sup>22</sup>.

Therefore, we can't ignore a contradiction in the Russian document: while it states in the beginning the link between image of God and freedom as *autexousion*, thereafter it assesses that “the abuse of freedom and the choice of a false, immoral way of life will ultimately destroy the very freedom of choice, as it leads the will to slavery by sin. [...] While recognising the value of freedom of choice, the Church affirms that this freedom will inevitably disappear if the choice is made in favour of evil. Evil and freedom are incompatible” (ROC-HR II.2.).

This statement plays an important role in the Russian argumentation because it leads to the claim that the freedom of choice in society has to be limited because otherwise it would disappear together with *eleutheria*. Exaggerating, the line of the argumentation could be characterised as

<sup>20</sup> *Ibid.*, 181. The connection between the freedom given us in Christ and the freedom to act responsibly in society is strengthened by different documents issued by the Evangelical Church in Germany (EKD): *Kirche der Freiheit* (2006), <http://www.ekd.de/download/kirche-der-freiheit.pdf> (called on 2014-05-28), and *Rechtfertigung und Freiheit. 500 Jahre Reformation 2017*, Gütersloher Verlagshaus: Gütersloh, 2014, where it is stated: “Diese christliche Freiheit unterscheidet sich von einem bestimmten modernen Freiheitsverständnis darin, dass sie keine von anderem unbeeinträchtigte Wahlfreiheit für Beliebiges meint, sondern eine Freiheit, die anderen zugutekommt.” (65).

<sup>21</sup> He explains: “So entspricht der passiven Kontingenz der Natur die freie Kontingenz des Menschen. In gewisser Weise verfügt der Mensch selbst in Freiheit über das Wie seines Daseins und über das der Natur. In seiner Wahlfreiheit ist er Ebenbild Gottes; er reicht irgendwie an sein Urbild heran, das je frei war, die Welt zu schaffen oder auch nicht zu schaffen, und er ist dazu befähigt, daraufhin mitzuwirken, dass die eine oder die andere Möglichkeit innerhalb des Schöpfungswerkes verwirklicht werde.” (D. Stăniloae, *Orthodoxe Dogmatik*, Zürich-Einsiedeln-Köln: Benziger/Gütersloher, 1985, p. 327).

<sup>22</sup> See the analysis of Ciprian Mocanu in his doctoral thesis on the concept of human dignity in the writings of Dumitru Stăniloae and Gregory of Nyssa: *Demnitatea omului în contextul ecumenic actual din perspectiva teologiei ortodoxe*: Sf. Grigorie de Nyssa și Pr. Dumitru Stăniloae, Doctoral thesis, University Lucian Blaga Sibiu 2013, p. 76-82.

follows: the freedom of choice must be abolished in order to prevent the abolishment of the freedom of choice through evil...! This is not only a inner contradiction, but it goes also directly against Orthodox anthropology<sup>23</sup>.

But I have to add another reflection which leads to an open question. The Reformers, when they treat the question of self-determination, make a clear difference. There is – on the one hand – the question of freedom with respect to eternal salvation: it is clearly rejected by Luther in his *De servo arbitrio*, as well as by John Calvin in his considerations about predestination of men.

On the other hand, there is the freedom of choice in mundane affairs. *Confessio Augustana* (art. 18) clearly affirms the existence of it: “humana voluntas habeat aliquam libertatem ad efficiendam civilem iustitiam et diligendas res rationi subiectas”<sup>24</sup>. This “freedom to actualize civil justice” has its own dignity, and we must not confound it with the freedom in Christ. Luther even rejects every direct application of the freedom in Christ with social matters, as his opinion of the Peasants’ War shows. As a citizen, you may struggle for social justice and political freedom, but you may not confound it with the freedom given us in faith<sup>25</sup>.

When we take into consideration the appraisal of *autexousion* in both traditions, we find – at least apparently – a kind of paradox. In the line of the Reformation, self-determination with respect to eternal salvation

<sup>23</sup> Christoph Schwyter tries to defend the Russian argumentation, claiming that *autoexousion* and *eleutheria* can’t be separated clearly (Schwyter, *Das sozialpolitische Denken*, p. 216-218). While we acknowledge that there are interconnections and that freedom in the sense of self-determination is limited and threatened in many ways, the difference in the evaluation concerns the legitimacy of imposing the “good” use of *autexousion* by means of the political system.

<sup>24</sup> *Confessio Augustana*, art. XVIII (*Die Bekenntnisschriften der evangelisch-lutherischen Kirche. Herausgegeben im Gedenkjahr der Augsburgischen Konfession 1930*, 12th edition, Göttingen: Vandenhoeck & Ruprecht, 1998, 73), and with the words of Augustinus: “Esse fatemur liberum arbitrium omnibus hominibus, habens quidem iudicium rationis, non per quod sit idoneum in his, quae ad Deum pertinent [...], sed tantum in operibus vitae praesentis tam bonis quam etiam malis” (*ibid.*).

<sup>25</sup> Roger Mehl assesses this lack of a link between the two: “Wie man sieht, hat die Ethik der Reformation keinen Übergang von der christlichen zur politischen Freiheit, von der inneren Freiheit, die dem einzelnen Menschen durch den Glauben gegeben wird, zur politisch-sozialen Befreiung gefunden” (*Theologische Realenzyklopädie*, Vol. 11, Berlin/New York: Walter de Gruyter, 1993, p. 518). This is different in some theologians of the last century, as for example Karl Barth which sees ‘analogies’ between them (*ibid.*, p. 532).

is considered very limited or even completely absent – while the civil freedom in the sense of the autonomy of men in organizing personal and social life, is strengthened and defended. In many Orthodox statements, it seems to be the opposite: a greater personal freedom and responsibility on the way of sanctification, theosis and eternal salvation corresponds to a much more sceptical attitude towards the autonomy of men in society. In both cases we find therefore a negative correspondence: more confidence in freedom in one respect, less confidence in freedom in the other respect. Is there an intrinsic logic, or is it only an incidental parallelism? Furthermore, the question can't be deepened in this essay.

#### **4. Rights and obligations – freedom and responsibility**

The title of Patriarch Kirill's book mentioned above is "Freiheit und Verantwortung im Einklang", Freedom and Responsibility in Harmony. In his lectures he expresses not only the concern that the Western liberal Human Rights discourse strengthens an egoistic and individualistic concept of freedom, but beyond that, he supposes that the Protestant Churches sustain this process, i.e. freedom without responsibility. This opinion can be found in many other Orthodox statements.

In the preceding section about the double concept of freedom, I already pointed out that there is no difference between our traditions in asserting that the freedom in Christ, which means freedom from sin and evil, implies serving our neighbour and taking up responsibility in the society. The Protestant churches and countries have developed a great number of institutions for social work. This fact is rooted in the Christian faith, not *despite of* the importance given to freedom, but *thanks* to it.

We all have duties, not only in the sense of obligations determined through legislation, but also moral duties towards our neighbours which can't be separated from freedom and rights. This is not at stake in the discussion between the two traditions. The difference can be found in the view on the way this duty exercises authority. Does the moral obligation come predominantly from outside, i.e. from the way the community we live in is regulated (with its many written and unwritten rules), or does it come mainly from inside, from the conscience given by God to every human person or from an internal incentive in the sense of the Kantian categorical imperative? What is preferably emphasised, the internal or the external motivation?

With respect to the possibility of internal motivation, the following argument is brought forward quite often in the context of Eastern European countries: modern Protestant theology, strongly influenced by the tradition of humanism and enlightenment, is marked by a too optimistic idea of man<sup>26</sup> and doesn't take seriously enough the reality of sin; or even more, through the Human Rights discourse, it leads to the abolishment of sin<sup>27</sup>. But in the sinner – this argumentation continues – the will to do what is good and to listen to the voice of the conscience is too weak; that's why too much freedom leads to the domination of evil and sin. For this reason, the institutions (State and Church) have to guarantee the respect for human values.

What can be answered from a Protestant point of view? In the theology of the Reformers, sin was a core issue. Both Luther and Calvin strongly rejected the optimistic image of men typical for the philosophy of the *Renaissance*. Man is sinner because he is *homo incurvatus in se ipsum*, defining his existence without or even against God, trying to reach salvation in virtue of ethical perfection and to dominate the earth by means of technical, scientific or economic power. The whole Protestant tradition is marked by this sceptical and realistic image of mankind. It is just for this reason that the churches defend Human Rights, because they limit the possibilities of evil which human persons can do each other, they limit the destructive power of sin.

But it is exactly because of the power of sin that Orthodox dialogue partners often urge the following argument: the human person is not able to carry the whole weight of freedom given to him in the wake of the American and the French revolution and their emphasis on individual (civil and political) rights; taking serious the reality of sin should lead to a certain limitation of individual rights, in favour of reliable common traditions in culture and religion. In a book published in 1977, Wolfgang Huber and Heinz Eduard Tödt have given a convincing answer to this objection. It may be that liberal philosophers have much confidence in the possibilities of the individual, while conservative thinkers rely more on public and communitarian structures. But the social and political

<sup>26</sup> Archbishop Anastasios Yannoulatos from Tirana, for example, opposes this so-called wrong optimism (see Chr. Marsh, D. Payne, "Religiosity, Tolerance and Respect for Human Rights in the Orthodox World", in Brüning, *Orthodox Christianity*, p. 203).

<sup>27</sup> See the examples of Orthodox statements in this sense gathered by Alfons Brüning ("Freedom' vs. 'Morality' – on Orthodox Anti-Westernism and Human Rights", in Brüning, *Orthodox Christianity*, p. 125-152, specially p. 131-132).

structures are made by men, too; at the latest the disasters of the 20<sup>th</sup> century have shown that trust in such structures can prove to be a terrible illusion. Communitarian philosophies are not superior to liberal ones with respect to the question of sin<sup>28</sup>.

## 5. Distinction between the ranges of legality and morality

The reflections of the previous chapter regarding the relationship between rights and obligations are narrowly connected with an issue in which the difference between Orthodox and Protestant experience, sensibility and conviction seems to be even more accentuated: it is about the relationship and the distinction between legality and morality.

In order to illustrate it, I refer to another controversial part of the Russian document from 2008, where it argues that the system of Human Rights “force and often have already forced them [i.e. the Christians, ST] to think and act contrary to God’s commandments” (ROC-HR, preamble). This cannot be accepted by the Russian Church, because “Not a divine institution, human rights should not come into conflict with the Divine Revelation” (ROC-HR III.2.). Therefore, it must be claimed that “The development and implementation of the human rights concept should be harmonised with the norms of morality, with the ethical principle laid down by God in human nature and discernable in the voice of conscience” (ROC-HR III.3.)<sup>29</sup>. The hierarchy of values has to be maintained: “Human rights cannot be superior to the values of the spiritual world. [...] It is inadmissible and dangerous therefore to interpret human rights as the ultimate and universal foundation of societal life to which religious views and practice should be subjected” (ROC-HR III.2.). On the contrary, instead of the secularised norms of Human Rights, faith and tradition should have the highest authority (ROC-HR III.2.).

<sup>28</sup> Wolfgang Huber & Heinz Eduard Tödt, *Menschenrechte. Perspektiven einer menschlichen Welt*, Stuttgart 21978, p. 128-129.

<sup>29</sup> A similar wording can be found already in the Social Doctrine of 2000: “Das menschliche Gesetz kann nie die Fülle des göttlichen Gesetzes enthalten; um jedoch seine Gültigkeit zu bewahren, muß es mit den von Gott aufgestellten Prinzipien übereinstimmen und darf diese nicht übertreten” (ROC-SD IV.3.).

In its response, the statement of the Community of Protestant Churches in Europe rejects the idea of a “confrontational relationship between human rights and Christian morality”, because “the sanctification and morality of human lives are to be distinguished from the definition of the tasks of human rights” (CPCE 2). Legality and morality have manifold interactions, but their range is not coextensive. Therefore, in spite of areas of conflict, which undoubtedly exist, there can be no question of competition in a hierarchical system where only one can occupy the first position. The law reflects the moral convictions of a society with respect to the rules of a peaceful and equitable cohabitation. It would exceed its authority if it asserted a claim to rule personal moral behaviour.

We certainly agree that the spiritual values are the most important ones for a human person, and they have to shape the whole life of a Christian. But this conviction does not impair the relevance of civil law and human rights, because “Human Rights are not the Gospel”: with this short formula, the response of CPCE expresses the distinction which has to be made<sup>30</sup>. This formula contains two important statements. On the one hand: Human Rights do not pretend to be an expression of the Christian message for humankind, even less to substitute for it. We can’t consider them to be coextensive with God’s Revelation and “the law given to us in the Holy Scriptures” (CPCE-HR III.2.), and therefore to help humankind on the path of salvation. Human Rights have a much more restricted function – although very important for the living together of people, expressed and guaranteed by law and constitution. On the other hand, the expression “Human Rights are not the Gospel” means: the Church has her own message, she is called to a mission in which there are common points with the intention of Human Rights, but which goes much beyond them, covering eternal salvation and – in the personal and social life – high moral standards<sup>31</sup>.

<sup>30</sup> The same formulation (“Human Rights are not the Gospel”) can be found for the first time in the final document of a study group on ethics (1989-1994) within the Leuenberg Church Fellowship (W. Hüffmeier (ed.), *The Christian Witness on Freedom. Documents with Guides for Parish Use*, Leuenberg Documents 5, Frankfurt a.M.: Lembeck, 1999, p. 142) and has been taken up again in another text (Michael Bünker & Martin Friedrich (ed.), *Law and Gospel. A study, also with references to decision-making in ethical questions*, Leuenberg Documents 10, Frankfurt a.M.: Lembeck, 2007, p. 280).

<sup>31</sup> The Leuenberg Document 5 quoted above continues: “Human rights are not the gospel. They also had and have their fundamentalists and fanatics; they can serve as an excuse for diversions, thus covering up real exploitations. [...] That is why the

The distinction between the range of law and ethics is narrowly connected with the distinction between Church and State. This leads us to the following point, the appraisal of the secular society.

## **6. The secular society, pluralism and the question of power**

The term “secularization” covers a wide range of meanings, partially controversial within the different Christian traditions. In the context of this paper, I want to highlight and discuss only one specific meaning. With roots in the 17<sup>th</sup> century and connected with the principles of enlightenment, many European countries have passed through a process towards a theory of the state and its political institutions and philosophical foundations which is no longer based on religious faith or linked with a certain Christian tradition. This process was mainly the result of the religious pluralisation in the wake of the Reformation; in order to avoid conflicts, the state began to keep an attitude of neutrality with respect to the different religious groups. The churches as institutions (also the Protestant churches!) were initially in strong opposition to this development, since it entailed a dramatic loss of political power and financial resources.

Must this expression of secularization be considered as negative – or isn't it rather a necessary purification and liberation? There are good reasons to argue that whenever State and Church are narrowly connected, it is predominantly in favor of the State which receives religious legitimation for its power, and to the detriment of, perhaps not the Church as institution, but of the Christian faith which has to make compromises and loses a part of its credibility.

This debate filled innumerable conferences and books and cannot be summarised at this point. I only want to ask the question suggested by the title of my paper: is it here about a fundamental point of Christian faith? The answer is clearly negative: it can't be the case because the Christians of the first three centuries lived without any protection from

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gospel can come to their help, not in a paternalistic manner, but in a true partnership. Each side has to be ready to accept that the other's calling completes their own and that they share a goal: promoting freedom and brotherhood. At the same time, democracy and human rights are nothing unless the values on which they are based are vitally maintained by all” (*The Christian Witness on Freedom*, p. 142).

the state, on the contrary. It is rather a question of historical and cultural circumstances, of social and political institutions, and – unfortunately – of the distribution of power.

The key issue, decisive for the appraisal of a “secular” foundation of the State, is religious freedom. If we look at the situation worldwide, we observe a dramatic lack of religious freedom in many countries. The most persecuted group today are the Christians. If we want to claim religious freedom for Christian minorities, especially in Islamic countries, we can’t claim at the same time that in countries with Christian majorities, the law must reflect and enforce Christian (or, in the case of the Russian document, Orthodox) principles. This is simply not credible. There is no way back to a monolithic Christian state, which – I repeat – is not even beneficial for authentic Christian faith. Churches which defend Human Rights and their neutrality with respect to religion, are not acting against Christian faith, but are in fact defending an appropriate frame for its life and growth.

## 7. Individual and community – the human “Person”

Very often we hear the objection, not only from Orthodox colleagues, but generally in Eastern European countries, that the Western world, including Western churches and especially the Protestant ones, have fallen in the error of an individualistic view of anthropology. It is one of the main points of Christos Yannaras’ criticisms towards the whole Western tradition<sup>32</sup>, and – with his more drastic language – the criticism of the recently canonised Serbian theologian Iustin Popovich<sup>33</sup>. This

<sup>32</sup> He writes: “This is theology in terms of ideology, as in the West. Scripture and Tradition do not define the Church’s historical experience. God’s revelation is not experienced historically; it is a “supernatural” addition of knowledge inaccessible to reason or immediate experience. [...] Faith is no longer trust, hypostasizing hope, but becomes individualistic (i.e., intellectualist) and sentimental abstractions” (Yannaras, *Orthodoxy and the West*, p. 101).

<sup>33</sup> He describes the individual as it is conceived in Western societies as “selfish monad” and condemns this idea as “dogma of the Western civilization” (see the Romanian translation of his book on the Orthodox Church and the Ecumenical Movement: Iustin Popovici, *Biserica Ortodoxă și ecumenismul*, Petru Vodă: Mănăstirea Sfinții Arhangeli, 2002, p. 82.) “Individualism and totalitarism are two sides of the same coin, because they arise from the same source” (*ibid.*, p. 87).

critique seems to be confirmed by the defense of the “individualistic” Human Rights<sup>34</sup>.

I simply don't think Yannaras and others are right in their criticism of the so-called Protestant individualism. Undoubtedly there have been periods and tendencies in the history of Protestant thinking where faith was misunderstood as a merely private, individual matter. But this is not the core of Protestant anthropology. I want to make three remarks.

1. When we look at the Confessio Augustana, the succession of articles 3-7 is significant. After speaking about sin (Art. 3) and justification by grace in Christ through faith (Art. 4), Art. 5 explains that this faith reaches men by means of the ordained ministry through which the Holy Spirit can do his work. In this way, the *congregatio sanctorum* is gathered (Art. 7). There is no question of an individualistic salvation; to be Christian means to have received faith through the Church (with its ministry) and at once to be part of the body of Christ.

2. Pietism is not a movement of individualistic believers (as it is often described in Orthodox literature, erroneously)<sup>35</sup>. In this powerful movement within the Protestant churches, the personal dimension of faith was strengthened, against a purely external, dogmatic, institutional and/or cultural understanding of Christian belief; but this personal dimension led and still leads to a strong commitment in the community of the Church.

3. In the 20<sup>th</sup> century Protestantism, the so-called “personalism” (partially taking up the ideas of Martin Buber) was widespread in Protestant theology, not as something external and new, but as something familiar to our own roots. Human existence is a profoundly communal existence.

Therefore, we cannot oppose Orthodox “personalism” to Protestant “individualism”<sup>36</sup>. This statement can find confirmation in the work of the Romanian theologian Dumitru Stăniloae. In the anthropological chapter of his dogmatics, he underlines that there are some basic capabilities or characteristics of every human person, which are analogically

<sup>34</sup> See Makrides, *Menschenrechte*, p. 304-305, with references to J. Zizioulas and Chr. Yannaras (*ibid.*, p. 312).

<sup>35</sup> As for example Yannaras states (Yannaras, *Orthodoxy and the West*, p. 150).

<sup>36</sup> While Yannaras sets the Orthodox personalism against Western anthropology (Makrides, *Menschenrechte*, p. 312), other Orthodox authors consider it to be a bridge which could lead to the acceptance of the rights of the individual (p. 314).

related to the attributes of God, because they are part of the image of God in humankind. Stăniloae mentions self-consciousness, reason (as capability of knowledge) and freedom. We could say that these are

typically “individual” attributes, but not in contradiction with Orthodox anthropology, rather necessary also within a personalistic view of human existence. We can find similar descriptions already in the anthropology of Gregory of Nyssa<sup>37</sup>.

## Conclusions

a) We can't speak about a fundamentally different anthropology between Eastern-Orthodox and Western-Protestant theology which could be used as an argument for the alleged incompatibility of Orthodoxy with the human rights understood as rights of the individual, or for the necessity – from an Orthodox point of view – to reshape the whole concept of human rights. Beyond that, we have to consider that there is also a plurality of anthropologies within each tradition.

b) The concept of human dignity with its foundation in the idea of man created in the image of God is used in a partially different way in Orthodox and Protestant statements, but the two perspectives don't exclude each other if we carefully distinguish the different dimensions of what is meant with this notion.

c) Undoubtedly, there is a quite fundamental difference in soteriology between the two traditions. But by analyzing the implications of both, we come to the conclusion that this difference is not decisive for the appraisal of human rights.

d) The vision on the various dimensions of freedom are not fundamentally different, nor is this the case with respect to the insight in the narrow link between freedom and responsibility – if we take into consideration the basic sources of the two traditions rather than the polemical statements of the recent discussions.

e) Where our traditions more fundamentally differ from each other, is the vision on the relationship between church and state and on religious pluralism – and this difference has predominantly cultural and political roots. The disparity in the appraisal of human rights doesn't lie

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<sup>37</sup> See Mocanu, *Demnitatea omului*.

in theology, it lies in history, politics and the struggle for power. It is about “an open confrontation of Orthodox theology with the theoretical bases of the political-social project of modernity”<sup>38</sup>, a confrontation for which this theology isn’t *eo ipso* less suitable than the Western one, but which needs time and longstanding serious theological work. This work is ongoing, as many initiatives in this sense are showing<sup>39</sup>.

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<sup>38</sup> R. Preda, “Human Rights and their Reception in Orthodoxy. A Romanian Perspective”, in Brüning, *Orthodox Christianity*, p. 307.

<sup>39</sup> Two examples of recent publications in this sense are: A. E. Kattan (ed.), *Thinking modernity. Towards a reconfiguration of the relationship between Orthodox theology and modern culture*, Balamand theological conferences 1, Balamand 2010; Aristotle Papanikolaou, *The mystical as political. Democracy and non-radical Orthodoxy*, Notre Dame Ind., 2012.

# Human Rights and the Catholic Tradition of Social Ethics

Walter LESCH

It is a challenge to deal with the complicated relationships between human rights and Catholicism within the narrow limits of an article<sup>1</sup>. A lot of international research has been done on this controversial topic so that the following lines can only be a provisional synthesis of some aspects of these well documented scholarly debates<sup>2</sup>. The context of these remarks is the dialogue with other Christian traditions, in particular the Orthodox one which is not widely known in the Western world<sup>3</sup>. Catholics are in a bad position to teach lessons to their fellow Christians as far as human rights are concerned. What seems to show a clear profile nowadays in theology, ethics and at the level of official teaching, is the result of long story of rejection and denial so that it helpful to understand why Roman Catholicism, certainly not always known as the avant-garde of the defence of human rights, sees itself today as one of the most determined advocates of human dignity and personal rights. This intellectual and practical shift from a most negative to a highly positive

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<sup>1</sup> A first version of this text has been presented at the end of the workshop on “Orthodoxy and Human Rights” at the UCL in April 2013 as a series of tentative proposals for further discussion.

<sup>2</sup> One of the leading scholars in this field is the American Jesuit David Hollenbach (Director of the Center for Human Rights and International Justice, Boston College), internationally known for his outstanding research on Christian ethics from a human-rights perspective. See his earlier publications: *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition*, New York: Paulist Press, 1979; *Justice, Peace, and Human Rights: American Catholic Social Ethics in a Pluralistic World*, New York: Crossroad, 1988, second printing 1990. His recent work concentrates on the rights of migrants and refugees. See D. Hollenbach (ed.), *Driven from Home: Protecting the Rights of Forced Migrants*, Washington, DC: Georgetown University Press, 2010.

<sup>3</sup> Truly ecumenical presentations of Christian ethics including the Orthodox perspective are rare. See G. Ingeborg, A. K. Papaderos, U. Körtner, *Perspektiven ökumenischer Sozialethik. Der Auftrag der Kirchen im größeren Europa*, Mainz: Grünewald, 2006, second edition.

stance is in itself a key issue of the historicity of Christian ethics. There is not one single and absolute ethical approach that could never be modified. If the Catholic tradition has been capable of such a radical progress in learning, why should other religious traditions not succeed as well on the path towards a full recognition of an ethics of freedom and rights in a pluralistic world? This rhetoric question reveals of course the open agenda and the commitment of the following argumentation. Religions should be interested in coming to terms with the ethos of human rights as the most elaborate and still unaccomplished project of defining the core values in our globalised world.

The main purpose of this essay is of methodological nature. It tries to reconstruct the arguments which have motivated the theological change within the Catholic view on human rights. I shall first show how human rights can be found today at the very heart of official Catholic documents (1.). A brief look at the history (2.) will prepare the presentation of different ways of interpreting the change according to different big narratives inside and outside of the traditional mainstream (3.). In spite of a new articulation of the relation between religion and modernity, the Catholic Church has maintained a specific regard on individual rights and thus gives certain connotations to human-rights language within a Catholic framework (4.). There will be concluding remarks on the perspectives of the critical and innovative potential of new configurations of religions and human rights (5.).

## **1. Human rights as an integral part of social teaching**

Catholic social thought has an outstanding strategic advantage, which sometimes turns into a serious handicap. It is a tradition that has generated a clearly defined corpus of official texts, which are known as the Catholic Social Doctrine. As the word “doctrine” sounds strange and intimidating in the context of academic teaching and research, theologians specialised in ethics have the tendency to replace it by “social ethics” or “social teaching” in order to avoid the authoritarian touch of the doctrinal reference. The avoidance of the official name is justified as far as Catholic ethics cannot be reduced to magisterial proclamations<sup>4</sup>. On

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<sup>4</sup> It is important to know that the magisterial texts are only the most visible part of a larger corpus of documents including national initiatives (for example the initiatives taken by the Latin American bishops since 1968 in close interaction with

the other hand, the existence of a shared corpus of authorized documents on social issues represents a force of a worldwide community of believers who can organise their specific ethical discourses around a common set of principles and commitments. If this common ground is really convincing, it can encourage a proactive role of Catholics in political institutions and in the civil society. If the message is not understood, the lack of consensus weakens the public voice of the Church. Observers use to say that the social teaching is one of the best kept Catholic secrets. The Church is indeed publicly much more known for its disturbingly spectacular statements on sexuality, for scandals and for the anachronism of its hierarchical structures. Things might positively change with the priorities set by Pope Francis.

In 1891, the encyclical *Rerum novarum* of Pope Leo XIII was the beginning of a series of influential documents, which have shaped the social ethical face of each pontificate until today. In 2005, the Pontifical Council for Justice and Peace published a concise handbook, a compendium, that wants to make the major issues of the Church's social teaching available to all interested readers, especially to politicians and other people in leading positions who are searching for inspiration in the Catholic teaching on matters as justice, solidarity, common good, human dignity and other topics with relevance to politics and economics<sup>5</sup>. It is a kind of overview and systematisation of the encyclicals and other sources covering the period from Leo XIII to John Paul II. Without any surprise, such a compendium cannot be unanimously applauded because it inevitably emphasises some options and neglects others. But it has

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the beginnings of the theology of liberation or the US American bishops' pastoral letter on *Economic Justice for All* from 1986), ecumenical collaboration (for example the common statement in Germany of the Catholic Episcopal Conference and the Federation of Protestant Churches *For a Future founded on Solidarity and Justice* from 1997) and the professional commitment in social work, education, health service and NGOs. The Catholic Social Doctrine is not just an abstract theory; it is a practical reference for people participating in the organisations of the welfare state and in the civil society – at local, regional, national and international levels. All these decentralised dynamics of social teaching should not be forgotten when we focus – also for practical reasons – on the communication centralised in Rome.

<sup>5</sup> Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Washington, DC: USCCB Publishing, 2005. Available in different languages on the website of the Vatican: [http://www.vatican.va/roman\\_curia/pontifical\\_councils/justpeace/documents/rc\\_pc\\_justpeace\\_doc\\_20060526\\_compendio-dott-soc\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html) (04/07/2014). Quotes in this article are taken from the online version with the number of the paragraph.

to be noted that the chapter on human rights even precedes the more traditional presentation of the principles of the doctrine: the common good, subsidiarity, solidarity, participation, charity.

“152. *The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity.* The Church sees in these rights the extraordinary opportunity that our modern times offer, through the affirmation of these rights, for more effectively recognizing human dignity and universally promoting it as a characteristic inscribed by God the Creator in his creature. The Church’s Magisterium has not failed to note the positive value of the *Universal Declaration of Human Rights*, adopted by the United Nations on 10 December 1948, which Pope John Paul II defined as ‘a true milestone on the path of humanity’s moral progress’.”

The first sentence is a significant quotation from the Second Vatican Council’s Declaration *Dignitatis humanae*. The last sentence of the paragraph quotes John Paul II in his address to the 34th General Assembly of the United Nations in October 1979. Both elements are highly revealing: the primordial importance of Vatican II as the definite Catholic opening to the constructive dialogue with the modern world and the political responsibility of the Vatican State as a member of the international community and its representation at the level of the United Nations with the *Universal Declaration of Human Rights* as the normative framework. In other words: Catholic Social Thought is no longer possible without the acceptance of human rights which are fully adopted as humanity’s common ground on which theological interpretations – “human dignity (...) inscribed by God the Creator in his creature” – can be presented without being in contradiction with secular reason. This theological argument refers to the Second Vatican Council’s Pastoral Constitution *Gaudium and spes* (No. 41).

The look at just a small passage from the Compendium gives an idea of the complexity of a discourse quoting its own acknowledged authorities in order to find the ultimate legitimation of the positive reading of the tradition of human rights. How should we interpret this new situation? Is it a victory of reason over the obscure forces of anti-democratic thinking? Or is just an expression of opportunism? Can it be seen as a necessary consequence at the end of a longer evolution?

## 2. A long and controversial history

The crucial change in the Catholic Church's look at human rights is closely linked to the numerous innovations during the short but influential pontificate of John XXIII. His encyclical letter *Pacem in terris* (1963) gives the first unambiguously positive reading of the human rights as a condition of justice in well-ordered societies and of peace among the nations. This clear statement in the era of Cold War is a political key to the Second Vatican Council (1963-1965) and its new theological approach to modernity, plurality and the Church's responsibility in a complex world that is no longer perceived as hostile antipode to the religious sphere, but as a partner in dialogue and as the place where the Christian message of salvation becomes real. This attitude of profound humanism and solidarity with the joys and the sorrows of every human being will be the main feature of the most important texts discussed and published by the Council until 1965 under the leadership of Paul VI.

For many Catholics, this renewal of relations between the Church and the World came at the right moment. For others, it came terribly late. And even others, nostalgic traditionalists and fundamentalist reactionaries, regret that it did happen and criticise it as a disloyal break with anti-modern hardcore Catholicism. The different views of human rights remain a dividing line between moderate, progressive and reactionary Catholic tendencies and reveal a lot about the general profile of conflicting groups within a multi-faced World Church<sup>6</sup>. A look at the history of these conflicts can help us to understand the current situation. Historians and theologians use to distinguish three periods of interaction between the Catholic Church and the human-rights movement in the European context: a period of radical hostility and categorical rejection (a.), a period of getting closer (b.) and a period of full recognition and identification (c.)<sup>7</sup>.

<sup>6</sup> For an instructive, sociologically and historically well informed journalistic overview: H. Tincq, *Les catholiques*, Paris: Grasset, 2008.

<sup>7</sup> See K. Hilpert, *Die Menschenrechte. Geschichte – Theologie – Aktualität*, Düsseldorf: Patmos, 1991, 138-148; John Langon, "Human Rights in Roman Catholicism", in C. E. Curran, R. A. McCormick (ed.), *Readings in Moral Theology, No. 5: Official Catholic Social Teaching*, New York/Mahwah: Paulist Press, 1986, p. 110-129; J. Witte, F. S. Alexander (ed.), *Christianity and Human Rights. An Introduction*, Cambridge: Cambridge University Press, 2010.

### **a. A categorical refusal**

The uncomfortable starting point of the story is the French Revolution and its *Declaration of the Rights of Man of an the Citizen*, a document deeply influenced by the spirit of the American Revolution, but still specific to the European context as far as the religious dimension is concerned. The Church in France was considered as a powerful ally of the absolutist regime and thus had to be exposed to the revolutionary logic of defining the future society without the privileges which had characterised the old regime of a sacrosanct monarchy and an authoritarian affirmation of the Catholic hierarchy. Even if the radical split was not yet obvious at the very beginning of the revolution in 1789, the tendency to a strong opposition between conservative Catholic political options and a new ideal of a rational state free from religious influence became the dominating programmatic feature of this stream of European modernity: the lay republic in its French version. In a certain way, the Catholic Church had to pay a high price for its privileged position in the past and used to see these losses during a long time from the point of view of a traumatised victim. Even if there were exceptions from the rule, the French Revolution was the beginning of at least a century of isolation and negative comments on human rights which became in the eyes of many critics the most prominent expression of an anti-religious modern mentality. It still hurts to see the exaggerated rejection of a free press or of the freedom of consciousness by Catholic authors all over the 19<sup>th</sup> century and even later. This combative and negative attitude finds its culmination in the *Syllabus of Errors* issued by Pope Pius IX in 1864 with a long list of modern phenomena that have to be condemned as incompatible with the Catholic doctrine in matters of faith and morals.

It is part of the tragedy of Catholicism that the dialogue with other worldviews was complicated by the very polemical starting positions at the end of the 18<sup>th</sup> century. It took a too long time to see the liberal state as a chance and not as a threat to religion. According to the logic of confrontation, the Catholic tradition became the caricature of an enemy of freedom and democracy and had to get through a long period of learning to find its place in modern societies. The tragedy is also marked by a specifically European construction of Church-State relations which have a different perspective in the North American context where the Revolution established the separation of state and religion in order to protect and encourage religious freedom and a great variety of religious

expressions. According to the Eurocentric manners of the time, it was the aggressive and polemic European version of the story that was the reference of an official and worldwide applicable negative Catholic view on modernity, democracy and secularisation.

### **b. Rapprochement**

The negative statements on human rights continue all over the 20th century with more or less support from the Vatican. But there were signs of change in the direction of an adequate appreciation of the complexities of modernity. Beside the transformation of the political landscape from absolute monarchies to democratic states, the second great challenge was the economical revolution by the means of industrialisation causing wealth and poverty at the same time. The misery of the workers suffering from unacceptable working and housing conditions inevitably led to an ethical and political debate in which Catholics once again arrived late, but not too late. The official social doctrine introduced by Leo XIII and his encyclical *Rerum novarum* in 1891, still kept its distance towards the liberal human-rights discourse. But it was able to find a language for relevant issues that can be read as elements of the category of social and economic rights. The growing consciousness for social justice and injustice will thus be a moving force for the rapprochement between Catholics and others driven by the same sense of the urgent common struggle for a just society.

The fact that a religion cannot define itself in opposition to legitimate rights will be plausible as well in the experience of totalitarian regimes in the 20th century. The most important initiatives in favour of human rights have never been a result of calm reflection in a well protected world of luxury and leisure. They have always been motivated by the scandal of extremely negative experiences of violence, reckless disregard of dignity, poverty, discrimination – humanity showing its most inhumane face. The atrocities of World War II and the uncertainties of the immediate post-war period gave rise to the *Universal Declaration of Human Rights* adopted by the UN in December 1948. Catholic intellectuals, politicians and lawyers actively collaborated in this process<sup>8</sup> and did the same in the negotiations leading to the European project of political integration almost ten years later. One can of course regret the lack of more determination in the

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<sup>8</sup> The French philosopher Jacques Maritain is a famous example of this involvement.

official appreciation of participation and freedom. But things had changed considerably since the period of rejection.

### **c. Identification**

The language still had to be found to articulate the new approach which is not only relevant to social ethics but also to a new understanding of the Church's mission in the world. The great reform Council Vatican II was the event that definitely acknowledged the appropriateness of human-rights discourse in a Christian context. Without being a political power, the Church takes part in the defence of human integrity whenever a person is threatened by state authorities or other structures. There cannot be a just society if the dignity of every human being is not at the centre of political and economical life. Christians can rely upon secular reason when it is working for this same objective at the levels of national and international decision making.

One of the last documents promulgated by Vatican II is the Declaration on Religious Liberty *Dignitatis humanae*. It is less known than the Pastoral Constitution *Gaudium et spes*, but it is of greatest importance for the further development of the discourse on rights and dignity. The preparation of the text was strongly influenced by the US-American experience of religious pluralism and by the theological work of the American Jesuit John Courtney Murray (1904-1967), one of the main authors of the last drafts of the document<sup>9</sup>. This way of bringing together different European and North American experiences with different settings of relations between state and religion underlines the pivotal role of religious freedom in the development of fundamental human rights in general.

The brief look at the historical evolution of Catholic human-rights thinking seems to be a story with a happy end: the final recognition of what should have been taken for granted from the very beginning. It makes no sense to hide the shameful parts of history in the archives. We need to know them if we want to understand where we come from and where we want to go.

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<sup>9</sup> See D. Hollenbach, "Religious Freedom, Morality and Law: John Courtney Murray Today", in *Journal of Moral Theology*, 1 (2012) 1, p. 69-91. See also D. Gonnet, *La liberté religieuse à Vatican II. La contribution de John Courtney Murray*, Paris: Cerf, 1994.

The comparison with other Christian traditions might shed some supplementary light on the particularities of the story. Protestantism has had a far less complicated approach to modernity. With the insistence of subjective conscience and its priority to institutional arrangements it has actively contributed to liberal thinking as one source of modern humanism<sup>10</sup>. On the other hand, Protestantism has not been free from privileged church-state relations and a lack of respect in the coexistence with other religions. Christian Orthodoxy seems to be in other difficulties in so far it has not shared the occidental path of the differentiations leading to the full liberty of conscience that has to be protected against church and state authorities. There is no neutral point of view from which we could objectively judge the strong and weak points of every tradition. But there are common references, most prominently European Law, that push us to move in the direction of comparative studies and context sensitive judgements.

### 3. The big narrative

The reconstruction of different paths of religious traditions towards the coexistence within the framework of modern liberal states is part of a meta-narrative we use to evoke as a plausible interpretation of modernity and secular reason. The radical version of this story presupposes a deep gap between modern culture and modern political institutions on the one side and Catholic Church or other religious organisations on the other side. The only way to close the gap and to build a bridge to the future is a kind of reflexive self-secularisation of traditions which make themselves compatible with secular standards by consenting formally to abandon their claims to shape the rules for all members of the society. Such a narrative cannot escape from the logic of struggle and unilateral surrender. Obscure religions must be defeated and neutralised as potential opponents to the public order and to peaceful coexistence. Such an oversimplified version of the self-interpretation of a proud modernity is still to be found. The story needs of course much more details in order to be adapted to different contexts in which the narrative might use different accents. As far as human rights are concerned, the standard version of secularism<sup>11</sup>

<sup>10</sup> See W. Huber, H. E. Tödt, *Menschenrechte: Perspektiven einer menschlichen Welt*, Stuttgart: Kreuz-Verlag, 1977.

<sup>11</sup> For a critical reconstruction of different versions of modernity and secularism see C. Taylor, *A Secular Age*, Cambridge (Mass.)/London: Belknap Press, 2007.

should better be differentiated because the emergence of fundamental human rights is far from being a linear story leading from obscurity to unlimited progress. The contexts of the discovery of the powerful idea of individual rights depend on a great variety of historical conditions with a trend towards universality – but without being automatically applauded in all cultures. We do not have an objective point of view because we are still within the process of discovering and implementing human rights in international law and at the level of the many differently structured nation states.

The logic of the narrative is easy if we concentrate on the viewpoint of a particular tradition. Let's take the case of Catholicism that does not deserve to be rejected as a monolithic unit. How do Catholics understand the long way of their ambiguous history with human rights? How do they make sense of the undeniable change during the century and even within relatively short periods of time? There is an obvious temptation to replace the anti-religious vision of secular modernity by a counter-narrative.

The most comfortable genealogy of human rights from a Christian point of view is the identification of honourable Christian roots which allow explaining the late but effective reconciliation of only superficially contradictory traditions. According to this interpretation, the dignity of every human creature could not be thought without the biblical background of men and women created as equal according to the image of God and as a part of the huge family of mankind<sup>12</sup>. We can call it a strategy of appropriation that will certainly not please those who do not want to trust the astonishing positive impact of religions. It is historically problematic to say that Christianity has invented the human rights. Had it been like this, we could not explain the embarrassingly long moments of hostility and rejection. Modern human rights had too often to be claimed and enforced against mighty religious institutions. This does of course not mean that religions should be forbidden to reinterpret their own sources and to find a new inspiring configuration of traditional wisdom and modern challenges. If religions serve as an empowerment of human-rights activists, this collaboration can only be welcome. But there are no palliating shortcuts through the centuries where too many people had to

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<sup>12</sup> See T. Stein, *Himmliche Quellen und irdisches Recht. Religiöse Voraussetzungen des freiheitlichen Verfassungsstaates*, Frankfurt: Campus, 2007, especially chapters 7 and 9 (on rights, dignity and the meta-positive).

suffer from the negative and liberticidal impact of religion. The freedom of thought and conscience, the freedom of opinion and expression and the freedom of peaceful assembly and association<sup>13</sup> imply the right to live without any religious attachment and to find other grounds of moral reasoning. Reasonable human beings can disagree on crucial ethical issues without being dangerous fools. This is the very reason for the existence of ethics as a pluralistic philosophical discipline and for the construction of a minimal ethos by the means of human rights.

The Catholic tradition has a second argument in favour of the plausible link between human rights and their possible Christian roots. It is the idea of natural law as a normative orientation working independently from the positive law that can be unjust and oppressive. Natural law is thought to be rational, universally accessible and thus able to give binding rules. The set values and norms called human rights are such a guideline above the level of concrete rules fixed by a legislator. Positive rules are to be judged in the light of higher principles such as human rights. Catholic scholastic tradition and the beginning of the Catholic Social Doctrine are indeed profoundly rooted in the hypothesis of a natural law as an authority beyond particular interests. This intellectual path is highly interesting and can be connected to the practice of nonbelievers who can develop comparable arguments. But they would certainly refuse to be considered as anonymous Christians.

Even if there are connecting lines between contemporary Catholicism and earlier progressive ideas within the same tradition<sup>14</sup>, we should not overemphasise the continuity because there have been radical breaks and disturbing confrontations. Natural law is not the magic formula that established automatically an unlimited community of participants in a free discourse. Would it not be better to read the history of Catholicism and modernity as a story of learning? Religious communities learn when they are seriously challenged by the circumstances and by contradicting projects. Whenever a religion has the humanistic resources to reread its own tradition, it will cope with the challenges in a constructive way and will not see any change as a betrayal of an eternally fixed set of rules. The paradigm of individual and collective learning seems to be the most

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<sup>13</sup> According to the articles 18, 19 and 20 of the Universal Declaration of Human Rights from 1948.

<sup>14</sup> The Spanish Scholasticism of the 16<sup>th</sup> century with personalities like Francisco de Vitoria and Bartolomé de las Casas is often seen as a precursor of what later become known as human rights.

convincing key to the understanding of the gap between the extreme positions we have found in the period from the French Revolution to the Second Vatican Council until the liberating experience of a new interpretation.

Religions can collectively learn and are therefore capable of self-critique and change. They need not combat secular reason and wait for the comeback of religious spheres of influence under post-secular conditions<sup>15</sup>. They can start to learn without fear and to discover the common ground of moral language for which human-rights discourse offers an impressive opportunity as a step into the right direction.

It does not weaken the idea of human rights if we accept the diversity of roots and the mutual influences of these traditions which maintain their differences and nevertheless converge in some normative questions. This situation reminds of the impossibility to define one single source of the European post-war political project. It is a mix of several sources: Greco-roman Antiquity, Judaism and Christianity, the philosophy of Enlightenment, etc. The recognition of one element does not necessarily mean the rejection of the others. Human rights have been invented for a world without monopolies. If they are still considered to be first of all an expression of the occidental path to the political and economical domination of the world, we must admit that there is a long way of learning for a future respecting dignity in diversity. Today we learn that the European integration depends on a better understanding of its Western and Eastern civilisations that have evolved separately for historical reasons.

#### **4. A specific approach**

The openness of the Catholic tradition to human rights does not mean that it can no longer be distinguished from other philosophical theories. Catholic interventions in human-rights debates use to have a clear handwriting that allows making significant differences without making constructive dialogues impossible. The following points do not intend to represent an exhaustive list. They just want to draw the attention to the typical language coming from a specific background and making necessary the cooperative task of mutual translation.

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<sup>15</sup> For a critical survey of clusters of theories of the “post-secular” see J. A. Beckford, “Public Religions and the Postsecular: Critical Reflections”, in *Journal for the Scientific Study of Religion*, 51 (2012) 1, p. 1-19.

### **a. Rights and duties**

The language of rights has its plausible origin in the context of people struggling against political oppression and for the recognition of the citizens' autonomy as masters of their own destiny. Once the democratic procedures are established in the framework of a constitutional state, the focus can shift to a complete description of the moral phenomenon. It can take into account the reciprocity among people sharing the same rights and depending on the mutual respect of their claims and needs. The *Compendium of the Social Doctrine of the Church* puts it this way:

“156. *Inextricably connected to the topic of rights is the issue of the duties falling to men and women*, which is given appropriate emphasis in the interventions of the Magisterium. The mutual complementarities between rights and duties – they are indissolubly linked – are recalled several times, above all in the human person who possesses them.”

The same vocabulary is used in the already mentioned founding documents of 1963 and 1965. No right without duties. No freedom without responsibility. This sounds a bit paternalistic as if the Church would not like to trust the free choice that is almost seen close to egoism and arrogant self-assertion that should somehow be balanced by the dependence on the other, the sense of grace and gift, the ultimate obligation of the creature in front of the creator. But the Catholic viewpoint is not isolated from other political and social theories. It is already relevant at the end of the 19<sup>th</sup> century when the emerging Catholic Social Doctrine searches for an independent approach with equal distance to Marxist collectivism and to Liberal individualism. As a kind of third-way theory surrounded by extremere positions the insistence on the equilibrium of rights and duties proposes a fuller description of the essence of moral obligation. Catholic teaching does not want to insinuate that there is anything wrong with legitimate rights. It just wants to remind us of the interconnectedness of all the elements of ethics. A similar problem has been discussed in the 1980s and 1990s in the debates between liberalism and communitarianism. Catholicism as a religious community has a preference for the communitarian approach as far as it better reveals the embedded character of human existence in social life<sup>16</sup>.

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<sup>16</sup> See D. Hollenbach, “A Communitarian Reconstruction of Human Rights: Contributions from Catholic Tradition”, in R. B. Douglas, D. Hollenbach (ed.),

### **b. Personalism**

Catholic human rights theory tries to avoid the liberal language of subjects and individuals and has more and more developed the theory of personalism as a programmatic anthropological option which is theologically expressed in the close relationship between the human creature and the divine creator. Respecting the unconditional dignity of a human being, independently from physical or intellectual performances, is a way of respecting God. John Paul II has contributed very much to this perspective on the basis of his former work as a social ethicist in Poland and his intense study of personalist thinkers. Modern personalism has different sources. In the French context Emmanuel Mounier, the founder of the monthly journal *Esprit*, has been one of the most influential intellectuals with this orientation. There is no doubt that the centrality of the human person has become one of the most distinctive features of Catholic social teaching since the 20<sup>th</sup> century.

### **c. Preferential options**

The historical and systematic study of human rights can show the emergence of the different categories of rights: starting with the fundamental liberty rights, going to socio-economic claims of welfare rights and defining cultural rights as a new horizon of the diversity within the family of mankind. The existence of a long tradition of social teaching has certainly had an impact on the specific profile of a Catholic way of focussing on the elementary rights of survival. The solidarity with the victims of progress and the preferential option for the poorest are key topics of a social ethical theory with practical relevance. This option can also make a difference in the intercultural dispute on the controversial universality of human rights which are still often seen as instruments of the dominant position of the Western civilisation and its strong economy. Christian ethics should not hesitate to play an active role in the controversies concerning the cultural limits of a universality that is not fully accepted by all participants in intercultural dialogues<sup>17</sup>. The Catholic social thought tries to be attentive to the power dimensions

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*Catholicism and Liberalism. Contribution to American Public Policy*, Cambridge: Cambridge University Press, 1994, p. 127-150.

<sup>17</sup> See S. B. Twiss, "Comparative Ethics and Intercultural Human-Rights Dialogues: A Programmatic Inquiry", in L. Sowle Cahill, J. F. Childress (ed.), *Christian Ethics. Problems and Prospects*, Cleveland (Ohio): The Pilgram Press, 1996, p. 357-378.

of formally equalitarian procedures and has learned to analyse social, political and economic structures from the margins.

Catholic social ethics has neither a privileged approach to human rights nor a categorically negative attitude. It is above all characterised by a specific style when it puts the human person into the centre and when it critically qualifies the dangerous sides of political or economical structures, even the most democratic ones. Human rights are not useful as a strategy of self-salvation. They are not the core of a new religion. But they offer valuable indicators when it comes to testing the quality of a society as a network of rights and obligations of vulnerable persons.

## **5. Perspectives**

If we agree with the hypothesis of a Catholic human-rights tradition as a complex history of learning, we must admit that this history is certainly an unaccomplished project. I simply suggest some points to consider for further discussion and for a self-critical interpretation of the claims for an *aggiornamento*.

### **a. Rights within the church**

No religious community is credible if it is silent when faced with the violation of fundamental human rights. But it is neither credible when it publicly develops a progressive discourse on legitimate rights and denies these same rights within the organisations structures of the community. Human rights are concerned with ethical and legal norms that have a direct impact on the ecclesiological organisation. Human rights also lead necessarily to new church-state relations and to new lines of conflict between the competences of the laws of the Church and the laws of the state. The best way to avoid unnecessary conflicts is to develop a high culture of liberty and respect among the members of the community.

### **b. A common language**

No religion can claim to possess the ultimate key to universal ethics. But all religions can actively collaborate on the basis of a common language that gives a number of normative references which can be adapted to the needs of particular contexts. Without being an ethical Esperanto, the human rights offer such a common framework as a starting point for

deeper debates<sup>18</sup>. They also have the advantage that their language is shared by believers and non-believers in secular societies.

### **c. A new genealogy**

Mankind does not exist to be a slave of religions. Religious traditions have ideally been shaped to serve the human being in the perplexity with finitude and with the difficult decisions on doing the right thing. In the ongoing debate on binding rules and stimulating values the affirmation of the sacred character of every person (Hans Joas)<sup>19</sup> is one of the most convincing genealogies of human rights in articulation with religious and secular dimensions. The formula of the sacredness of the person does not mean that humanism must automatically agree with a religious turn. In the worst case, religion would risk becoming a conversation stopper. On the contrary, the sacred character of the vulnerable person can serve as an opener of more detailed discussions about the conflicting interpretations of what the sacredness concretely means.

### **d. Against the intellectual temptation of “Radical Orthodoxy”**

Religion traditions as learning communities may be proud of cultivating and maintaining a certain number of identity markers. But they should not exaggerate the focus of identity as if the whole truth were captured in the deposits of this tradition. There is no orthodoxy without a dynamic and innovating orthopraxis. Theological movements like “Radical Orthodoxy”<sup>20</sup>, an ecumenical project grown out of Anglican theology since the 1990s, give the false impression of a practice that can be

<sup>18</sup> See H. Bielefeldt, *Philosophie der Menschenrechte. Grundlagen eines weltweiten Freiheitsethos*, Darmstadt: Wissenschaftliche Buchgesellschaft, 1998. For a sophisticated philosophical project of a foundational theory: A. Gewirth, *Human Rights. Essays in Justification and Applications*, Chicago: University of Chicago Press, 1982.

<sup>19</sup> See H. Joas, *The Sacredness of the Person. A New Genealogy of Human Rights* (translated by Alex Skinner), Washington, DC: Georgetown University Press, 2013 (translated from the German: *Die Sakralität der Person. Eine neue Genealogie der Menschenrechte*, Berlin: Suhrkamp, 2011).

<sup>20</sup> See the selection of representative texts in J. Milbank, S. Oliver (ed.), *The Radical Orthodoxy Reader*, London: Routledge, 2009. For the inauguration of a dialogue between the two different types of “orthodoxy”: Adrian Pabst/Christoph Schneider (ed.), *Encounter Between Eastern Orthodoxy and Radical Orthodoxy. Transforming the World Through the Word*, Aldershot: Ashgate, 2009.

deduced from the compelling system of a beautifully structured universe of faith containing all the prescriptions for a good life<sup>21</sup>. The guardians of faith should not forget that religious belonging and religious practice have become optional in modern societies. Something must have gone terribly wrong if it is no longer considered as a rational and respectable option to live one's life without religious beliefs. There should be no constraints in matters of religion because this would pervert the free choice and the responsible appropriation of the religious option. That is exactly what the right to freedom of thought and expression claims to ensure – not more and not less. It includes the right of the British actor and comedian Rowan Atkinson to attack a law at Westminster Parliament that wanted to sanction the critique of extreme religious ideas: “What is wrong with inciting intense dislike of a religion if the activities or teachings of that religion are so outrageous, irrational or abusive of human rights that they deserve to be intensely disliked?”<sup>22</sup>

Far from being an idyllic arrangement with trivial claims with which everybody can easily agree, the discussion about human rights demands the openness to robust and fair controversies. Religions traditions believing in the rationality of their ethical message have no reason to be afraid of cultivating this service to its own members and to society in general.

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<sup>21</sup> See H. Joas, “Social Theory and the Sacred: A Response to John Milbank”, in *Ethical Perspectives*, 7 (2000) 4, p. 233-243.

<sup>22</sup> See the full speech at <http://www.religionnewsblog.com/12529/in-full-rowan-atkinson-speech-on-hate-bill> (04/07/2014).



## **PART 2**

# **ORTHODOXY FROM WITHIN HUMAN RIGHTS AND COMPARATIVE EUROPEAN LAW**



# Orthodox Christianity and Freedom of Religion in European Court of Human Rights Case Law<sup>1</sup>

Elisabeth A. DIAMANTOPOULOU

*Translation from French by Lina Molokotos-Liederman*

## 1. Introduction

The first time when the European Court of Human Rights ECtHR was asked to rule on freedom of religion was for a case involving Greece, a predominantly Orthodox Christian country.<sup>2</sup> Thanks to the well-known judgment of 25 May 1993 on *Kokkinakis* the European Court was able to establish a broad-based case law on the freedom of religion, which is guaranteed by Art. 9 of the Convention:

“This freedom represents one of the foundations of a “democratic society” within the meaning of the Convention; it is, in its religious dimension, one of the most vital elements of believers’ identity and their conception of life, but is also a precious asset for atheists, agnostics, sceptics or the unconcerned.”

Since the *Kokkinakis* decision twenty years ago, ECtHR case law on freedom of religion has grown significantly. Over the past ten years, the multiple aspects of freedom of religion (the freedom to manifest, practice and teach one’s religion, the freedom to change religion and to build and operate places of worship, etc.) concern mainly Islam and Muslim

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<sup>1</sup> First published as “Orthodoxie et Liberté de Religion dans la jurisprudence de la Cour Européenne des Droits de l’Homme”, *Annuaire Droit et Religions*, Vol. 8 – Année 2015-2016, Presses Universitaires d’Aix-Marseille, p. 181-214.

<sup>2</sup> P. Lambert, *La Grèce devant la Cour européenne des droits de l’Homme*, coll. Droit et Justice (51), Nemesis, Bruylant and Sakkoulas, 2003, p. 63.

minorities, as well as sectarian movements, from which most applicants and claims originate. Without denying the difficulty, complexity and importance of these cases, paying attention to other religious areas can introduce a new critical approach to case law. In this article, we will contribute new legal perspectives by focusing on questions regarding the status of Orthodox Christianity. We do not argue that Orthodoxy is a unique religious domain that merits different legal responses; rather, we use this domain as a critical lens revealing the ways in which religion is regulated through European case law and as a methodological test case on the treatment of European diversity.

We should make three preliminary remarks to illustrate why it is worth taking this approach. First, Islam and sectarian movements are viewed and treated as exogenous issues. Orthodoxy seems to introduce a radical diversity at the heart of Christianity, which is perceived as an integral part of Europe. Could this specifically internal diversity prove to be more destabilizing from a legal point of view? Furthermore, though there are few Orthodox applications before the Court, the more Orthodox states seem to represent a higher proportion of states that are condemned by the Court in the area of religion. How can these statistics be interpreted? Finally, from a geopolitical point of view, since EU enlargement in 2005 and the entry of Cyprus and Member-States with Orthodox majorities that were part of the former communist block (Romania and Bulgaria), Orthodox Christianity has become an important factor alongside other Christian denominations in Europe. Several questions emerge on the general role of Orthodoxy in the construction of Europe and, more particularly, on its contribution to the evolution of ECtHR case law.

Following these remarks, in this contribution we will analyze how different cases of religious freedom concerning Orthodox countries (Greece, Russia, Romania, Bulgaria) have changed ECtHR case law. How and to what extent has this case law changed the direction of the Court's reasoning?

How does the Court understand Church-State relations in these countries? How does it perceive the idea of a "dominant religion", a state religion, or even a "national church"? In other words, in cases that involve Orthodox countries, such as Greece, or in cases when Orthodoxy is the "dominant religion", does the Court adopt a different reasoning process, one that is more cautious or more firm, when it has to make a determination on a state's margin of appreciation? How is Orthodoxy understood in ECtHR case law? Does the Court make the effort to

understand the legal and religious configurations that are unique to these countries by exploring the particular social, historical, political and religious context in which they are rooted? Or does it stay close to the law by adopting a strictly legal approach that is limited to the examination of whether restrictions on freedom of religion are “proportionate to the legitimate aims pursued that are necessary in a democratic society”?

We will address the question of Orthodoxy in ECtHR case-law mainly through the case of Greece, which is our area of specialization, but we will also make some initial comparisons with other Orthodox countries (Bulgaria, Romania and Russia).

We will first assess and map the Greek litigation on freedom of religion in ECtHR case law. We will then discuss crosscutting questions concerning the perception of Orthodoxy by the Court in the context of what Peter Danchin described as the “‘secular *nomos*’ of *the European Court of Human Rights*”<sup>3</sup>.

## 2. Mapping of ECtHR case law on religious freedom in Greece (1993-2013)

The well-known *Kokkinakis* case (25 May 1993), which led to the first judgment that the ECtHR was asked to make on the scope of Art. 9 (freedom of religion), concerned the issue of proselytism in Greece. In the years after the case law, several instances concerning violations of freedom of religion in Greece were brought before the Court.

Through the study of these Greek cases, we can make some preliminary remarks that are particularly important, namely that, in most cases, the impugned measures for the cases brought by the applicants to the ECtHR relate to Greek legislation, namely to laws and/or decrees, and even administrative practices, rather than isolated incidents. This can be explained by Greece’s specific social, political and legal history. But we argue more generally that this is because Greece is not a secular state; it is a confessional State. Given its adoption of the doctrine and teachings of the Eastern Orthodox Church, the State is religious<sup>4</sup>. It is generally accepted that the “relations established between the State and a religion

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<sup>3</sup> P. G. Danchin, “Islam in the Secular Nomos of the European Court of Human Rights”, *Michigan Journal of International Law*, 2011 (32), p. 663-747.

<sup>4</sup> Ch. K. Papastathis, “Religious Self-Administration in the Hellenic Republic”, *Church Autonomy: A Comparative Survey*, G. Robbers (ed.), Frankfurt a.M.: Peter Lang, 2001.

that has been determined as traditional are not without an exercise of any influence on the situation of freedom of religious conscience and its manifestation” and that “if these relations are those of a particular protection, it can be said that there is in the country an official Church”<sup>5</sup>. This is the constitutional regime of Church-State relations in Greece, where the Eastern Orthodox Church is a “dominant religion” (Art. 3 of the Greek Constitution of 1975)<sup>6</sup>. Even though there is no consensus among Greek legal scholars on the exact meaning and significance of the constitutional notion of a “dominant religion”<sup>7</sup>, which is in itself problematic, it is the primary source of “religious protectionism”<sup>8</sup> in favour of the dominant religion and the Orthodox Church of Greece. It is a protectionism that has left its mark on most of the Greek legislation, but also on administrative practices and the case law of state tribunals<sup>9</sup>. This situation has been specifically highlighted by ECtHR case law on violations of religious freedom in Greece.

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Article available from <http://www.peterlang.com/Index.cfm?vID=36223&vLang=E> (last accessed on 20 March 2013).

<sup>5</sup> Phédon Vegléris, “Quelques aspects de la liberté de religion en Grèce”, *Revue Trimestrielle des Droits de l'Homme*, 1995, p. 555.

<sup>6</sup> According to the terms of Art. 3, paragraph 1, of the Greek Constitution of 1975 “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.”

<sup>7</sup> See Ch. Papastathis, “La liberté religieuse en Grèce. Entre le passé historique et la réalité internationale actuelle”, *L'Année canonique*, 45, 2003, p. 296-310. The author describes in great detail the legal dispute concerning the notion and significance of the “dominant religion” in contemporary Greece, which remains unresolved.

<sup>8</sup> We borrow here the term used by the Greek legal scholar Ph. Vegleris, since it seems particularly pertinent; see *op. cit.*, p. 562.

<sup>9</sup> See Vegleris who criticized the “undisputed fact that (...) all of our legislation, the case-law of our courts, and our administrative practice, without even mentioning other indicators, are based on the view that there is a strict directive, if not a commandment, to ensure that this dominance is protected, in the very least, up to the last existing believer and first future believer” (translation by the author); (*op. cit.*, p. 560).

## **2.1. Freedom of religion and the Greek State's “religious protectionism” in ECtHR case law**

Confronted with recurring questions on claims brought before the ECtHR by Greek citizens, including issues of proselytism, military insubordination and conscientious objection by members of Jehovah's Witnesses, taking of religious oath and the construction of (non-orthodox) places of worship, the Greek legal system appears as systematically problematic and incompatible with the social context of religious pluralism. On the one hand, the penalization of proselytism, and, on the other hand, the requirement of a special authorization by a competent ecclesiastical authority and the by Ministry for Education and Religious Affairs for the establishment of a temple (mosque, synagogue) or (non-Orthodox) church, are particularly indicative of the State's “religious protectionism”. ECtHR case law seems to clash with the problematic and not so democratic character of the Greek legal system against “laws of religion” that are becoming increasingly plural and influenced by globalization<sup>10</sup>, as part of a “new type of legal management of religion in Europe”<sup>11</sup>.

### *Litigation on proselytism*

Concerning the issue of proselytism, in the decision on *Kokkinakis* (1993)<sup>12</sup>, the Court ruled that there was a breach of Art. 9, since it had not been sufficiently demonstrated that the conviction of the concerned party was justified by a pressing social need. The Court noted that Greek courts settled for reproducing the wording of the law that made proselytism illegal without specifying more specifically how the accused tried to convince his neighbour through excessive means (paragraph 49). The Court reminded in the *Kokkinakis* case that it was during the Metaxas

<sup>10</sup> M. Delmas-Marty, *Trois défis pour un droit mondial*, Paris: Seuil, 1997; cited in A. Garay, “L'Islam et l'ordre public européen vus par la Cour Européenne des Droits de l'Homme”, p. 118.

<sup>11</sup> M. Ventura, *Protectionnisme et libre-échangeisme – La nouvelle gestion juridique de la religion en Europe*, Berne: Conscience et Liberté, No. 64, 2003; also cited in A. Garay, *op. cit.*

<sup>12</sup> The ECtHR ruled in favour of the applicant, a Jehovah's Witness, who complained that his conviction for proselytism by the Greek courts in 1998 for having initiated a discussion on religion with a neighbour, the wife of a cantor of the Church Orthodox in the city.

dictatorship (1936-1940) that laws No. 1363/1938 and No. 1672/1939 were passed, which for the first time made proselytism a criminal offence (paragraph 16). Although the historical and socio-political context at the time was favourable to making “proselytism” a specific offence to the detriment of the dominant religion, this measure seemed rather anachronistic in the current context<sup>13</sup>.

In the judgment on *Kokkinakis*, the Dutch judge Karel Martens considered that Greece, which is the only Member-State that made proselytism a criminal offence, had violated Art. 9 of the Convention<sup>14</sup>. We note that the Court in Strasbourg referred to a definition of proselytism

<sup>13</sup> As the legal scholar Konidaris has aptly noted, “the dictatorial regime of 4 August [1936] attempted a series of legislative reforms in the area of Church-State relations, some of which, despite the changing times, continue to be in force today and to regulate sensitive issues related to religious freedom”. Konidaris also noted that most of these new provisions, which are contained in the two “laws of necessity” No. 1363/1938 and No. 1672/1939 issued during the dictatorship period (1936-1941), concern proselytism and the establishment of non-Orthodox places of worship. The author points out the unconstitutionality of these laws and believes that it is imperative to pass a new law that is in harmony with the contemporary period in terms of religious freedom and in accordance with the requirements of the current Constitution (1975), which are different from those of the Constitution of 1911 that was in force at the time of the dictatorship. See Konidaris, “Residues of the dictatorship of August 4” (*Kataloipa tis tis diktatorias 4is Avgoustou*), 4 August 1996, Vima Online article at: <http://www.tovima.gr/opinions/article/?aid=81392> (accessed 11 May 2014). The criminologist Alice Marangopoulos states that the law on proselytism enacted during the Metaxas dictatorship, which was a sort of mitigated fascism in Greece, aimed at the protection of the Greek Orthodox Church: The Constitution at the time stated that proselytism was punishable only when it was done against the dominant religion. However, the situation changed with the new Constitution of 1975 (following the fall of the second dictatorship of the Colonels), which states that the law will protect all religions in general. However, the criminologist expresses reservations on the effective implementation of these new provisions. See Council of Europe, *Freedom of Conscience*, Proceedings of the seminar organized by le Secretary General of Council de Europe in cooperation with the Center for Human Rights “F.M. van Asbeck” of the University of Leiden, Leiden, Netherlands, 12-14 November 1992, Council of Europe, Strasbourg, 1993, p. 204. See also I. Dépret, “Ioannis Metaxás et le religieux (1936-1941): expérience historique et débats actuels en Grèce”, *Cahiers balkaniques* [on-line], 42, 2014, available on-line on 21 May 2014, last accessed 14 September 2014. URL: <http://ceb.revues.org/5120>; DOI: 10.4000/ceb.5120. See E. Christofilou, *The Constitution and proselytism* [Syntagma kai proshlytismos], [www.greeklaws.com/pubs/uploads/2960.pdf](http://www.greeklaws.com/pubs/uploads/2960.pdf) (last accessed 11 May 2014).

<sup>14</sup> P. Lambert, *op. cit.*, p. 65.

by the World Council of Churches, which was viewed as problematic and was heavily criticized<sup>15</sup>. The ECtHR stated that:

“First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church”. The second is on la corruption or disinformation [...]” (paragraph 48 of the judgement).

Professor Rigaux criticized the religious definition of proselytism used by the ECtHR: “What is this type of language used by the head of a court who should, more than any other, respect the rule of ideological pluralism and equality of any type of belief or disbelief?”<sup>16</sup>

The specific issue of proselytism in the armed forces was the focus of the judgement on *Larissis* (24.02.1998). The Court reiterated the conception developed in *Kokkinakis* concerning the distinction between *respectable proselytism* and *proselytism that is not respectable* (paragraph 58). It also ruled that in this instance “the hierarchical structures which are a feature of life in the armed forces may colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power.” (Paragraphs 45, 50 and 51 of the judgment).

## **Litigation on the operation of (non-orthodox) places of worship**

The anachronistic Greek legislative provisions on freedom of religion are illustrated in the following three cases on the issue of authorizations for establishing places of worship: *Manoussakis* (1996), *Pentidis* (1997)

<sup>15</sup> See P. Lambert, *op. cit.*, p. 63; H. Surrel, “La liberté religieuse devant la Cour Européenne des droits de l’Homme”, *Rev. fr. dr. adm.*, 1995, p. 573.

<sup>16</sup> F. Rigaux, “L’incrimination du prosélytisme face à la liberté d’expression”, *Rev. trim. dr. h.*, 1994, p. 137 (cited in P. Lambert, *op. cit.*).

and *Tsavachidis* (1999). In its judgment on *Manoussakis*<sup>17</sup>, the Court ruled that there was a breach of Art. 9 without any ambiguity on the conformity of the Greek arsenal of legal provisions to the Convention: the judgment states that “Law No. 1363/1938 and the decree of 20 May/2 June 1939 – which concerns churches and places of worship that are not part of the Greek Orthodox Church – *allow far-reaching interference by the political, administrative and ecclesiastical authorities with the exercise of religious freedom*” (paragraph 45)<sup>18</sup>. The importance of this judgment is the affirmation by the Court that “the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate” (paragraph 47). Thus, while the establishment of places of worship is subject to prior administrative authorization, the restrictions enacted by the State “call for very strict scrutiny by the Court”, especially if state authorities have to determine whether there is a “real need” for the religious community making the request (paragraphs 44-45). What was particularly problematic for the Court was the excessive preventive form of control by the administration and even more so the role of the Orthodox ecclesiastical authorities themselves.

The judgment on *Manoussakis* was a historical turning point<sup>19</sup> accusing broadly the Greek special regime governing the issue of administrative permits for the establishment and operation of temples and churches of non-Orthodox religions<sup>20</sup>. The Greek state was finally requested to abolish some of the contentious legal provisions (Art. 1 of Law No. 1363/1938), through a legislative reform and the adoption of a

<sup>17</sup> In this case, it was the legal action brought by a Jehovah’s Witness against a sentence of three months’ imprisonment, in addition to a fine, imposed by the Heraklion Criminal Court (Crete) on appeal, for having turned a hall into a house of prayer without the permission of the official ecclesiastical authority and the Ministry of Education and Religious Affairs.

<sup>18</sup> Emphasis by the author.

<sup>19</sup> See the comments of M. Levinet on *Manoussakis*, particularly in relation to what the author describes as the “the ecclesiastical dimension of the phenomenon of religion”; see “Société démocratique et laïcité dans la jurisprudence de la Cour européenne des droits de l’Homme”, *Laïcité, liberté de religion et Convention européenne des droits de l’Homme*, G. Gonzalez (ed.), coll. Droit et justice, No. 67, Brussels: Bruylant, 2006, p. 102-104.

<sup>20</sup> K. G. Papageorgiou, “The application of the freedom of religion principles of the European Convention on Human Rights in Greece”, *Religious Freedom in the European Union*, Achilles Emilianides (ed.), Leuven: Peeters, 2011, p. 193.

new law (Law No. 3467/2006) whose Art. 27, paragraph 1, abolished the requirement of prior authorization or opinion by the local ecclesiastical authorities of the Orthodox Church of Greece. According to Art. 27, paragraph 2, such applications must be made directly to the Ministry for Education and Religious Affairs.

Lastly, in two other cases, *Pentidis*<sup>21</sup> (1997) and *Tsavachidis*<sup>22</sup> (1999), Greece granted a permit for establishing the contentious places of worship before the hearing of the case (*Pentidis*) and, in the face of risking a new conviction by the ECtHR for violation of Art. 9, an amicable agreement was reached with the applicants (*Tsavachidis*).

However, as noted by Professor Papageorgiou, in his comments on the reform of 2006, the Greek tribunals, following the ECtHR judgments on *Manoussakis*, *Pentidis* and *Tsavachidis*, were rather reticent and not very inclined to accept the unconstitutionality of the contentious laws and the their incompatibility with the European Convention, with the exception of the opinions of the dissenting judges, which was a new development at the time<sup>23</sup>. According to the author, it is also promising that the reticence of the national judges was heavily criticized by many academics in

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<sup>21</sup> In this case, the Court was once again called to rule on the conviction of a Jehovah's Witness, Zissis Pentidis, for establishing a house of prayer without obtaining authorization by the Ministry for National Education and Religious Affairs. The European Commission of Human Rights, in its report of 27.02.1996, found a breach of Art. 9 of the Convention (by 27 votes to 1). Based on the earlier decision, the Ministry granted the required authorization so the applicants asked the Court to strike off the case, which was the subject of the judgment in question, *Pentidis* (9 June 1997); see P. Lambert, *La Grèce devant...*, *op. cit.*, p. 67.

<sup>22</sup> In *Tsavachidis* (21.01.1999), the applicant, a Jehovah's Witness, was also accused of operating a prayer room in the Kilikis region without the required authorization by the local Orthodox ecclesiastical authorities and the Ministry for Education and Religious Affairs. But this case contained an additional and surprising element: the applicant had been placed under surveillance by the National Intelligence Service (NIS) because of his religious affiliation. The daily newspaper *Eleftherotypia* published a confidential report by the NIS, which contained "damaging allegations to Greek citizens who were not members of the Orthodox Church of Greece". The ECtHR found a breach of the right of privacy of Mr Tsavachidis (Art. 8) because of unwarranted surveillance by the State. The government stated that Jehovah's Witnesses were not "subject to monitoring because of their religious beliefs" and assured that they "would never be monitored in the future". After reaching an amicable arrangement, the case was closed; see Elisabeth Diamantopoulou, "Religious Freedom in the light of the Relationship Between the Orthodox Church and the Nation in Contemporary Greece", *IJSCC*, 2012, p. 7.

<sup>23</sup> K. G. Papageorgiou, *op. cit.*, p. 197.

Greece, to whom the repressive measures by some of the administrative authorities were possible only if the establishment of a non-Orthodox place of worship constituted a breach of Greek national legislation.

The anachronistic Greek legislative provisions, which since then have been revoked, are the cause of a certain legal uncertainty since, according to the terms of the Greek Constitution (Art. 3), there is no formal mechanism in Greek law through which a religious group can obtain the legal status of a “known religion”. This recognition is precisely obtained in practice through state authorization for the establishment of a place of worship.

We also note here that despite the positive legislative developments, the Ministry for Education and Religious Affairs still has the discretionary power to grant authorization on the establishment of a non-Orthodox place of worship. In practice, state authorities can continue to reject such demands based on the argument that there is no “real need” for a place of worship for the religious community seeking the authorization.

### **Litigation concerning military insubordination based on religious motives**

In the cases of *Georgiadis* and *Tsirlis and Kouloumpas* (29.05.1997), the Court was asked to rule on the conviction of military insubordination by Jehovah’s Witness ministers. The facts in the two cases are similar: the applicants had asked to be exempted from military service invoking their function as ministers of a known religion, in accordance with Art. 6 of Law No. 1763/1988 that recognizes this right to all ministers of “known religions”. After their request was dismissed by the military recruitment service, based on the claim that they were not ministers of a “known religion”, they were arrested, accused of insubordination and temporarily detained. Similarly to *Georgiadis*, the applicants Mr Tsirlis and Mr Kouloumpas complained that they were detained illegally, subjected to discrimination, based on their religious beliefs, and inhuman and degrading treatment; they were also prevented from a fair trial concerning reparations after having been detained illegally. In the two cases, the Court ruled that the rights of the applicants to a fair trial had been violated (Art. 6 of the Convention). But what is of interest in this discussion is that, the Court, in its examination of Greek Law No. 1763/1988, which exempts all ministers of “known religions” from military service, observed that

“in application of this provision, priests of the Greek Orthodox Church obtain exemption without any difficulty” (paragraph 43). The Court also noted that “the Supreme Administrative Court has repeatedly held that Jehovah’s Witnesses are a “known religion” (judgments Nos. 2105 and 2106/1975, 4635/1977, 2484/1980, 4620/1985 and 790 and 3533/1986) and referred to decision No. 3601/1990, in which the “Supreme Administrative Court expressly upheld the right of Jehovah’s Witnesses ministers of religion to be exempted from military service” (paragraph 44). The Court acknowledged “the relevant authorities’ persistence not to recognise Jehovah’s Witnesses as a ‘known religion’ and deemed that this attitude and the “the disregard of the applicants’ right to liberty that followed, were of a discriminatory nature when contrasted with the way in which ministers of the Greek Orthodox Church obtain exemption” (paragraph 60). It clearly follows that, according to the Court, even though the Greek legislative framework guarantees, in theory, equal treatment of “known religions” in terms of exemption from military service, in practice there is discrimination toward minority religions.

Subsequently, in the well-known judgment on *Thlimmenos* (06.04.2000), the Court confirmed and expanded the case law by giving the case a predominant role in the definition of the discriminations prohibited by the Convention. In this instance, the applicant had been dismissed as a chartered accountant on the grounds of his prior conviction for refusing to wear a uniform during his military service<sup>24</sup>. The Court acknowledged discrimination against the applicant, a Jehovah’s Witness, and ruled that this was a breach of Art. 14 (prohibition of discrimination), combined with Art. 9, according to which the dismissal of Mr Thlimmenos from his profession as a chartered accountant was disproportionate to the aim pursued, since the applicant had already served a prison sentence for the same military offence, which was unrelated to his professional practice: “there existed no objective and reasonable justification for not treating the applicant *differently* from other persons convicted of a serious crime” (paragraph 47). The Court formulated a principle that influenced the rest of its case law:

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<sup>24</sup> Mr Thlimmenos, a Jehovah’s Witness, was convicted criminally for refusing to enlist in the army when Greece at the time did not have any special provisions to conscientious objectors for fulfilling a civilian service instead of a military service. A few years later, the authorities refused to appoint him as a chartered accountant because of his conviction, despite the high ranking he had obtained in the competitive exam for this post.

“The right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different” (paragraph 44).

Beyond this statement of principle, the Court’s argumentation was particularly interesting because it noted that “the applicant is a member of the Jehovah’s Witnesses, a religious group committed to pacifism, and that there is nothing in the file to disprove the applicant’s claim that he refused to wear the military uniform only because he believed that his religion prevented him from doing so” (paragraph 42). It also emphasized that “unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender’s ability to exercise this profession” (paragraph 47). The Greek government’s position of defence clearly revealed the manifestation of a national and patriotic ideal when it affirmed that the “applicant had committed a serious offence by refusing to perform unarmed military service at a time of general mobilisation because he had tried to avoid a very important obligation towards society and the State, linked with the defence, safety and independence of the country (paragraph 35), and more particularly “for having refused to wear the military uniform at a time of general mobilisation (paragraph 7). The government’s position according to which “the applicant’s conviction (...) had nothing to do with his religious beliefs”, and that “the obligation to do military service applied to all Greek males without any exceptions on grounds of religion or conscience” (paragraph 36), was legally contested by the Court. In the ECtHR case-law on *Georgiadis and Tsirlis and Kouloumpas* (29.05.1997), the Court reminded the existence of Greek Law No. 1763/1988, according to which all ministers of “known religions” are exempted from military service. The Court subsequently noted that “in application of this provision, priests of the Greek Orthodox Church obtain exemption without any difficulty” (paragraph 43) added further emphasis on the prejudice and discrimination suffered by religious minority groups in Greece, namely Jehovah’s Witnesses<sup>25</sup>, concerned in the cases brought before the ECtHR.

<sup>25</sup> After the *Kokkinakis* precedents (1993), the Greek government informed the Committee of Ministers that a circular by the Department of Justice had been forwarded to the *Greek judicial and police authorities to put an end to the proceedings that had been previously initiated against those preachers* (emphasis by the author). See

## Disciplinary sanctions in school concerning religious beliefs

In the judgments on *Valsamis* and *Efstratiou* (18.12.1996), the applicants were Jehovah's Witnesses once again. They complained of disciplinary actions (suspension from school) on their children for having refused to participate in a school parade on a national holiday citing their pacifist convictions. The Court this time abstained from convicting Greece. It ruled that the obligation for children to participate in the school parade was not of a nature that interfered with the religious beliefs of the parents, and, furthermore, that the contested measure was not an intrusion on the children's freedom of religion (paragraphs 37 and 38 of the judgments).

The Court evaluated the application of its case law, according to which are protected only convictions and "views that attain a certain level of cogency, seriousness, cohesion and importance" (paragraphs 25 and 26 of the judgments). The rapprochement between "religion" and "conviction"<sup>26</sup> made by the Court seems problematic in many respects, and did not win any unanimous support: the dissenting opinions of the Icelandic and Slovenian judges, Mr Vilhjalmsson and Mr Jambrek, is indicative in this respect. They assessed that the Court should have accepted the declaration of the applicants that the parade was characterized by symbolism that was clearly contrary to their neutralist, pacifist, and thus religious convictions. They stated that they did not see any grounds for judging that the participation in the parade was required in a democratic society, even if this public event was clearly an expression of values and national unity for most people. Therefore, they ruled that there was a breach of Art. 9.

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A. Garay, "L'Islam et l'ordre public européen vus par la Cour Européenne des droits de l'Homme", *Rev. dr. int. et dr. comp.*, Brussels, 2005, p. 150.

<sup>26</sup> "Only holistic conceptions of life, which are somehow able to hold the 'role' of a religious belief 'according to the ordinary meaning', seem protected by the relevant sections of Art. 9 of the Convention"; see L.-L. Christians, "La religion dans la jurisprudence européenne des droits de l'homme", *Revue Théologique de Louvain*, 39, 2008, p. 166-167.

## Litigation on heritage

In the judgments on *Holy Monasteries v. Greece* (09.12.1994) and *Canea Catholic Church* (16.12.1997), freedom of religion was questioned indirectly through the issue of violation of the applicants' right to a fair trial (Art. 6 of the Convention). In the first case, the applicant monasteries complained about the transfer of some of their land property to the Greek state<sup>27</sup>, citing violation of Art. 1, Protocol No. 1 (P1-1)<sup>28</sup>. They also complained that their right of freedom of religion (Art. 9) and freedom of association (Art. 11) had been breached, on the grounds that "the law in question deprived them of the means necessary for pursuing their religious objectives and preserving the treasures of Christendom" (paragraph 86). Under Art. 9, the applicants maintained that "the impugned provisions of the Law would impede the carrying out of their ascetic mission" (paragraph 86). Regarding Art. 11, they emphasized that the contentious law prevented them from increasing the number of monks in the monastery and dissuaded the faithful from making donations. Faced with such argumentation, the Commission held that the "provisions in question refer to the monastic heritage and do not concern the religious practice of asceticism"<sup>29</sup>. It also acknowledged that the applicants "have not demonstrated that other objects or assets that are necessary to

<sup>27</sup> This case concerns eight Greek monasteries (*Ano Xenia, Ossiou Loucas, Aghia Lavra Kalvryton, Metamorphosis Sotiros, Assomaton Petraki, Chrysoleontissa Eginis, Phlamourion Volou, and Mega spileo Kalvryton*) that are ascetic religious institutions whose residents live according to monastic principles, the sacred rules of asceticism and the traditions of the Orthodox Church of Jesus Christ (Art. 39 of Law No. 590/1977 relative to the "Charter of the Greek Church", which sanctifies the interdependence of Church and State and Church). The holy monasteries are public-law entities (Art. 1, paragraph 4). According to the law of 5 May 1987 regulating matters of Church property (Law No. 1700/1987), the Greek state modified the rules for the administration, management and representation of monastery properties to be vested in the ODEP (Office for the Management of Church Property), whose control was transferred from the Holy Synod of the Orthodox Church of Greece to the State. The Law also provided that the State would become the owner of all monastery properties unless the monasteries proved title established either by a duly registered deed or by a statutory provision or by a final court decision against the State.

<sup>28</sup> Art. 1, Protocol No. 1 (P1-1) proclaims that: "every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

<sup>29</sup> Report of the Commission, 14 January 1993, paragraph 93, *Holy Monasteries v. Greece*, application 13092/87 and 13984/88, ECtHR, 9 December 1994, Series A, No. 301-A.

religious practice and religious worship were affected by the impugned provisions”<sup>30</sup>. Adopting the same reasoning, the Court did not subscribe to the applicants’ allegations, evaluating that “the provisions held to be contrary to Art. 1 of Protocol No. 1 (P1-1) in no way concern the objects intended for the celebration of divine worship and consequently do not interfere with the exercise of the right to freedom of religion” (paragraph 87). However, the interest of this judgment lies in that the Court was not insensitive to the fact that some of the properties of the Church or any place of worship can assume considerable importance, to the point that the removal of these properties can have damaging consequences on the manifestation of religion<sup>31</sup>. Consequently, we can assume that if the Church, for example, had proven that certain properties were essential for the manifestation of religion, they would have been able to benefit from the protection that Art. 9 affords<sup>32</sup>.

For the purposes of our discussion, there is one more aspect in this judgment that is of particular interest: it concerns the way in which the Court perceived Church-State relations in Greece, which played a very important role in this case, and the way in which it attempted to address the legal status of the Orthodox Church of Greece and the holy monasteries.

Furthermore, the Court acknowledged that “the ties binding the Hellenic nation – and later the Greek State – to the Orthodox Church” which “go back several centuries”; it also noted that the “the interdependence of State and Church was already apparent in the administrative reorganisation of the Church which followed the restructuring of the Byzantine State” (paragraph 12). The Court acknowledged that “the Church’s historical role grew more important after the collapse of the Byzantine Empire” and made reference to “the spiritual leader, at the same time answerable to the Sublime Porte, of the Orthodox community, which became integrated into the administrative machinery of the Ottoman Empire through the Church” (paragraph 12).

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<sup>30</sup> Report of the Commission, 14 January 1993, par. 94.

<sup>31</sup> See ECtHR, judgment of 8 April 2014 (*Magyar Keresztény Mennonita Egyház and others v. Hungary*); ECtHR, judgment of 6 November 2001 (*Christian Federation of Jehovah’s Witnesses in France v. France*); see *Droit administratif*, June 2002, p. 504.

<sup>32</sup> See Hatem Hsaini, *Le prosélytisme et la liberté religieuse à travers le droit franco-grec et la CEDH*, Masters in Comparative Public Law, 2002, Université Panthéon-Sorbonne (Paris 1); [http://www.memoireonline.com/09/09/2684/m\\_Le-proselytisme-et-la-liberte-religieuse-a-travers-le-droit-franco-grec-et-la-CEDH8.html](http://www.memoireonline.com/09/09/2684/m_Le-proselytisme-et-la-liberte-religieuse-a-travers-le-droit-franco-grec-et-la-CEDH8.html) (last accessed, 22 February 2013).

The Court also took into consideration the general history of Church-State relations since the foundation of the modern Greek state, noting the 1833 proclamation of the autocephaly of the Orthodox Church of Greece, which was “imbued with the spirit of State control (...) and was independent of the State only in matters of doctrine” (paragraph 13), and emphasized the interdependent relations between Church and State (governed by Law 27/31 of May 1977 on the Charter of the Greek Church) (paragraph 14). Lastly, it acknowledged that “the Church’s role in public life is reflected more markedly by the presence of the Minister for Education and Religious Affairs at the sessions held to elect the Archbishop of Athens and by the participation of the Church authorities in all official State events” (paragraph 14).

Therefore, we can see that the Court in Strasbourg did not limit itself to a strictly legal evaluation on *Holy Monasteries*. It plunged into history and really tried to understand the social, historical and political circumstances in Greece, which have led to the legal and religious configuration of Church-State relations. As we will see below, this is not a coincidence in the Court’s general assessment and reasoning, namely in relation to the margin of appreciation that was granted to Orthodox countries by the judge in Strasbourg.

In the judgment on *Canea Catholic Church* (16.12.1997) during a dispute on the destruction of the surrounding wall of the Catholic Church in Canea, the Greek civil courts refused to recognize its legal status, and thus its ability to take legal action to protect the land and the buildings that it owned. The applicant church complained citing Articles 6, 9 and 14 of the Convention. The Court ruled that “it is not for the Court to rule on the question whether personality in public law or personality in private law would be more appropriate for the applicant church or to encourage it or the Greek Government to take steps to have one or the other conferred. The Court does no more than note that the applicant church, which owns its land and buildings, has been prevented from taking legal proceedings to protect them, whereas the Orthodox Church or the Jewish community can do so in order to protect their own property without any formality or required procedure” (paragraph 47). The Court ruled that there was a breach of Art. 14<sup>33</sup> and Art. 6 paragraph 1, “as no

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<sup>33</sup> Concerning the question on the prohibition of discrimination (Art. 14) in these two cases, see also the comments of Pierre Lambert, *La Grèce devant la Cour européenne des droits de l’Homme*, Brussels: Bruylant, coll. Droit et Justice, No. 51, 2003, p. 81.

objective and reasonable justification for such a difference of treatment has been put forward” (paragraph 47). In his comments on this case, the Greek legal scholar Ktistakis, acknowledged that the Court did not concern itself with the allegations of the applicant church in relation to its right of freedom of religion according to the terms of Art. 9 taken alone, nor combined with Art. 14. The Court seemed to follow a reasoning that was similar to the aforementioned judgment on *Holy Monasteries* (1997), where it held that the disputed provisions in no way did they target the properties of the applicants intended for worship; thus, there was no infringement on the exercise of the right of religious freedom (paragraph 87). However, according to Ktistakis, in the case of the *Canea Catholic Church*, the Court should have addressed the contentious issue of the destruction of the wall on the grounds of freedom of religion by examining the “indirect” limitations to the exercise of the religious freedom in question, namely the restrictions in Art. 9, paragraph 2<sup>34</sup>.

## Parenthood and canonical law

In the area of family law, the Court was also able to understand and contest the singularities of Orthodoxy in Greek law. It is worth focusing on a specific judgment. The judgment on *Negrepontis*<sup>35</sup> (03.05.2011) highlights very precisely Church-State relations in Greece and, more particularly, the issue of the civil status of canonical law and, by extension, that of constitutionality in the validity of these holy canons, which is still the subject of unresolved heated debates and divisions within Greek doctrine. In this instance, the case was about the non-recognition in Greece of an adoption made by a Greek Orthodox bishop that took

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<sup>34</sup> G. Ktistakis, “La personnalité juridique de l’Église catholique de la Canée. Commentary de l’arrêt *Église catholique de la Canée* de la CEDH”, *Revue Dini*, 1998 (in Greek); <http://kostasbeys.gr/articles.php?s=5&amid=1479&mnu=3&cid=18840> (last accessed 22 February 2013).

<sup>35</sup> The adoption of the applicant, who was at the time a student in the United States, by his uncle, an Orthodox monk and consecrated bishop with whom he lived, was ordered by an American court in 1984. The applicant went to Greece in 1985 and his adoptive father in 1998. In 1999, the Greek district court, to which the applicant turned, held that the US decision to adopt was not contrary to public order and good moral standards and granted it legal authority with full force and effect in Greece. In 2001, the applicant obtained a decision by the prefect, which allowed him to add the name of his adoptive father to his original name. In 2000 and 2001, the family members of his adoptive father brought legal action to challenge the recognition of the adoption.

place in the United States. In the domestic legal procedure, the Greek district court (2002) found that Greek law did not prohibit an adoption by a monk. However, the Court of Appeal overturned this decision in 2003, considering that a monk was prohibited from carrying out legal acts, which related to secular activities, such as an adoption, as it was incompatible with monastic life and contrary to Greek public law. The case was brought to the Court of Cassation, which, in response to the question of whether adoption by a monk was contrary to public law, answered in the affirmative. This Court had the option, according to the Convention, to restrict family rights by legally citing old religious laws, such as canonical laws from the seventh and ninth centuries. The Court acknowledged that this was an arbitrary and disproportionate interpretation of the notion of public order<sup>36</sup>,

“given the nature of the rules on which the plenary session of the Court of Cassation is based (...): the sixth apostolic canon, the third canon of the Seventh Ecumenical Council, the eleventh canon of the prime-second council, the third fundamental canon of the Fourth Ecumenical Council of Chalcedon, the apostolic canons 6.81 and 83, and the 45<sup>th</sup> canon of the Quinisext Council” (paragraph 71).

The Court in Strasbourg noted that “all these rules are of an ecclesiastical nature and date from the seventh and ninth centuries” and challenged their application by the Greek Court of Cassation, “while Art. 3 of Law 1250 /1982, repealing Art. 1364 of the old Greek Civil Code that prohibited monks to marry, now expressly authorized their right to marry” (paragraph 72). The Court also noted that “in the preparatory works of the law, it was mentioned that certain impediments to marriage, including the prohibition of monks to marry, did not follow any social need and could not be applied to national legislation” (paragraph 72). It is already problematic that the Greek judge of the Court of Cassation made an analogy with the prohibition of marriage for monks and bishops

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<sup>36</sup> The Court in Strasbourg evaluated the texts on which the Court of Cassation based its decision as “ecclesiastical in nature and dating back to the seventh and ninth centuries” and as having been “interpreted by the Court of Cassation in a way that did not correspond to the positive law that was in effect at that time and reflected by Art. 3 of Law 1250/1982”; this provision repealed an article of the Civil Code which prohibited monks from marrying (paragraph 102 of the judgment), thus highlighting the unclear and unpredictable nature of the canons.

in his ruling on the prohibition of adoption<sup>37</sup>. Thus, in this respect, the judges in Strasbourg rightly noted “the opinions of the dissenting judges of the Court of Cassation according to which there was no provision in national legislation prohibiting a monk or a member of clergy, across all grades, including a bishop to proceed with an adoption. The adoption made by a bishop, even if he came from a monastic order, could not be considered contrary to Greek public law, since the view that such an adoption is impossible was not based not on a provision of explicit law” (paragraph 73 of the judgment). The Court in this case put particular importance on the opinions of the dissenting Greek judges<sup>38</sup> and noted that “they had emphasized that the issue had led to strong divisions within the legal community and did not clash with a rule or principle of major or fundamental importance reflecting a firm and social conviction in Greece” (paragraph 73).

*Negrepontis* raised a fundamental question concerning the constitutional regime of holy canons in the Greek legal system, and more particularly, whether these “holy canons” take precedence over the laws of the State; this question is still open today in Greek law<sup>39</sup>.

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<sup>37</sup> According to an excerpt from the judgment of 15 May 2008 (by 16 votes to 8) of the plenary session of the Court of Cassation (as cited by the ECtHR in paragraph 28): “(...) According to these canons, those who have obtained the status of monk, including those who are any type of member of the clergy, are completely excluded from any secular activities, since “the monks have no link on this earth, aspiring to the life of the heavens”, having abandoned “this world and material things” (...) It follows that the prohibition on adoption for a monk, based on the apostolic canons and sacred traditions, also concerns an ordained cleric monk and a consecrated bishop. Given the monastic vows, the apostolic and synodal canons, and the traditions that bar monks and ordained cleric monks from secular activities, constitute, according to the religious and moral conceptions of the religion of the Eastern Orthodox Church of Christ, rules of public order (...)”.

<sup>38</sup> This concerned only half of the plenary session, since the judgment was delivered by 16 votes to 8. This finding is indicative of the disagreements on the issue among the judges.

<sup>39</sup> This is a question on whether and to what extent the canons of the Church and the holy traditions are protected by the Constitution and whether a regulation that contradicts them when is admissible. See Sp. Troianos, “La situation juridique de la ‘religion dominante’ en Grèce”, *L’Année canonique*, 45, 2003, 127-132. According to the author, this problem, created in the early 20<sup>th</sup> century, virtually conceals the Church’s attempt to impose limits on legislative power. Troianos recalls that the violent conflicts did not lead to any solution, and, even under the new Constitution (1975), which did not take a direct position, the question remains theoretically open. The author points out that, in the beginning, the case-law of the supreme administrative court distinguished between dogmatic canons and administrative canons, but the principle of inviolability was reserved only for the former. But, in the past 25 years, there has

The recognition of adoption of a child by a monk raises once again the question whether the usual State legislator can enact laws concerning prescriptions that are contrary to holy canons. In conclusion, can we consider the case-law on *Negrepointis* as particularly revealing of characteristics that are unique to an Orthodox country with a “state religion”, with all the resulting ambiguities, complexities, and structural dysfunctions that are specific to its legal system? Does this judgment also reveal the difficulties faced by the Court in Strasbourg when trying to fully understand these specificities?

## Religious oath and non-obligation to manifest one’s religion and religious beliefs

Two more recent judgments, *Alexandridis* (21.02.2008) and *Dimitras* (03.06.2010; 03.11.2011; chamber judgment 08.01.2013), call into question the “religious protectionism” of the Greek state *vis-à-vis* the “dominant religion” of Orthodoxy. This case involved the obligation to take a religious oath. Contrary to the aforementioned cases, where the

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been a change, which is based on Art. 13 of the Constitution concerning the guarantee of religious freedom. This fundamental right, which concerns not only non-Orthodox Churches and non-Christian communities, but also the “predominant religion” in Greece, includes the right of each Church and religious association to an unrestricted administrative autonomy. According to this (new) conception, the dogmatic canons, but also those that concern fundamental administrative institutions of the Church, are beyond the reach of the legislator. On this complex issue, another Greek legal scholar, Papastathis, argues that there are two opposing philosophies: according to the first, which is supported by the Church, theologians and certain jurists, the provisions of the laws of the Greek State that are contrary to the holy canons (regardless of the subjects they regulate) are unconstitutional. According to the second theory, which is that emerging from the case law and supported by most lawyers and public administration officials, only the holy canons that refer to the dogmas of the Church, and not those that are administrative, are endorsed constitutionally. The legislator may, therefore, freely regulate on all matters that fall within the administration of the Church in general. On this topic see various articles by Ch. K. Papastathis, “The application of religious laws in the Hellenic Republic”, *La religion en Droit comparé à l’aube du 21<sup>e</sup> siècle (Religion in Comparative law at the dawn of the 21<sup>st</sup> century)*, E. Caparos and L-L. Christians (eds.), Brussels: Bruylant, 2000, pp. 307-321; “Religious Self-Administration in the Hellenic Republic”, *Church Autonomy: A Comparative Survey*, G. Robbers (ed.), Frankfurt a.M.: Peter Lang, 2001 (<http://www.peterlang.com/Index.cfm?vlID=36223&vLang=E>); “Etat et Eglises en Grèce”, *Etat et Eglises dans l’Union européenne*, G. Robbers (ed.), Baden-Baden: Nomos Verlagsgesellschaft, 1997, 79-99; “La République Hellénique”, *Les origines historiques du statut des confessions religieuses dans les pays de l’Union européenne*, B. Badevant-Gaudemet and F. Messner (eds.), PUF, 1999, 207-221.

*positive freedom of religion* was called into question, in these instances the issue was the obligation of the State to protect in the same way the *negative freedom of religion*, which “entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion” (paragraph 34). This principle, which was initially affirmed in the judgments on *Kokkinakis v. Greece* (25.05.1993, paragraph 31) and *Buscarini v. Saint-Marin* (18.02.1999, paragraph 34), was noted by the Court in *Alexandridis* (paragraph 31) and *Dimitras* (No. 1, paragraph 77):

“While religious freedom is a predominantly personal matter, it also implies the freedom to manifest one’s religion individually and in private, or in a collective way, in public and among circles which share the same faith. Furthermore, the Court had already the opportunity to sanctify the *negative rights according to Article 9* of the Convention, namely the freedom to not belong to a religion and that of not practicing it” (see also *Kokkinakis v. Greece* and *Buscarini and others v. San Marino*, mentioned above).

In the first case, the applicant, a lawyer at the Athens district court, took on November 2005 the oath of office, which was a precondition to practising as a lawyer. Mr Alexandridis made the allegation that when taking the oath of office he had been obliged to reveal that he was not an Orthodox Christian in order to make a solemn declaration as an alternative since there was no standard text for taking an oath<sup>40</sup>. The Court ruled that there was a breach of Art. 9, considering that the “obligation imposed on the applicant to reveal before the court that he was not an Orthodox Christian and that he wished to make a solemn declaration rather than a religious oath violated his right not to be obliged to manifest his religious beliefs” (paragraph 41).

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<sup>40</sup> In Greece, a lawyer is a civil servant whose status is governed by the Civil Service Code. Art. 19 paragraph 1-c for the Code provides that: “Persons declaring that they have no religion or that their religion does not allow oath taking, are required to offer the following assurance instead of an oath: “I declare, on my honour and consciousness, that I will be loyal to Greece, obey her Constitution and laws and perform my duties honestly and conscientiously”. According to government allegations, “the applicant did not comply with standard practice (...); he had the choice of two different forms, one for the religious oath and the other for a solemn declaration” (paragraph 28 of the judgment). The applicant, fighting against the government’s position, claimed that, as any lawyer appearing before a court to take the oath, he was considered an Orthodox Christian and should have stated his religious beliefs before being allowed to take a different type of oath (...). Moreover, the majority of the forms used in the justice system, including the minutes of the hearings of witnesses, made reference to Orthodox worship” (paragraph 29).

Initially, the Court “observed that this procedure reflected the existence of a presumption that lawyers going before the court were Orthodox Christians and would take a religious oath” (paragraph 36). It then raised the issue of incompatibility of Art. 9 of the Convention with the disputed provision (Art. 9, paragraph 18 of the Civil Service Code) stipulating that the oath that civil servants were invited to take was in principle a religious oath. Yet, it was precisely this presumption that was problematic for the Court since “in order to be allowed to make a solemn declaration, they [lawyers] were obliged to state that they were atheist or that their religion did not allow them to take the oath” (paragraph 37).

Furthermore, the Court strongly reaffirmed the principle that “the freedom to manifest one’s beliefs also contained a negative aspect, namely, the individual’s right not to be obliged to manifest his or her religion or religious beliefs, and not to be obliged to act in such a way as to enable conclusions to be drawn regarding whether he or she held – or did not hold – such beliefs”. The Court also expressed its criticism of the Greek state and acknowledged that “it is not permissible for state authorities to interfere in the freedom of conscience by asking individuals about their religious beliefs or by forcing them to manifest them, especially doing so while taking an oath, to be able to practice their profession” (paragraph 38).

In *Dimitras*<sup>41</sup> (03.06.2010; 03.11.2011; Chamber judgment 08.01.2013), the facts are similar since the case was about the obligation of applicants to reveal their “non-Orthodox” religious beliefs while taking an oath in court. The ECtHR reaffirmed the principle of *negative rights* under Art. 9 of the Convention, noting its prior decisions (*Kokkinakis v. Greece*, *Buscarini and others v. San Marino*, and *Alexandridis*) (No. 1, paragraphs 77 and 78). The Court’s decision was similar to *Alexandridis*, since it ruled once again that “state authorities do not have the right to intervene in the area of freedom of conscience and to search an individual’s religious beliefs, nor to oblige them to manifest their religious beliefs” (paragraph 78)<sup>42</sup>.

<sup>41</sup> On the question of the presence of religion in Greek public space, see the comments by the Hellenic League for Human Rights concerning on the *Dimitras* and *Lausi v. Italy* case-law: “The display of religious symbols in places where justice is carried out interferes with the freedom of religious conscience” (in Greek), Hellenic League for Human Rights, May 2012, article available at [www.hlhr.gr](http://www.hlhr.gr).

<sup>42</sup> In its Chamber judgment (08.01.2013), the Court confirmed its conclusions in the judgements on *Dimitras and others*, and *Dimitras and others* (No. 2) (aforementioned, paragraphs 88 and 35 respectively) considering that the disputed laws “required the applicants to reveal their religious convictions in order to be allowed to make a solemn

## Defence rights of Orthodox priests

*Seremetis*<sup>43</sup> (27.03.2008) concerns the defence rights of a priest of the Orthodox Church of Greece, a legal person of public law, based on Art. 6 of the Convention. The interest of the ECtHR's judgment in this discussion lies in the special status of priests in the Orthodox Church of Greece, which is the same as that of civil servants, a specificity that was taken into account by the Court in the following terms:

“(...) The dismissal of the applicant must be treated as a redundancy with consequences on his salary and pension rights. In the view of the Court, the case brought before the Council of State was definitely about a civil right, in relation to a dispute on the dismissal of the applicant from being a priest” (paragraph 21).

The specific status of priests in the Orthodox Church of Greece, who are civil servants (whose salary is paid by the State), has to be emphasized, given that in ECtHR case-law on another Orthodox country, Romania, *Sindicatul Pastoral Cel Bun v. Romania* (Chamber judgment 31.01.2012; Grand Chamber, 09.07.2013), the status of Orthodox priests was also questioned, but in a very different context, in relation to the autonomy of churches<sup>44</sup>.

The diversity of Greek cases in relation to violations of religious freedom in ECtHR case-law reveals a set of very important questions: whether the existence of a “dominant religion” and an established Church, in this case that of the Eastern Orthodox Church, with its legal privileges and specific administrative practices, is hardly compatible with the real protection of freedom of religion, as it is regulated by Art. 9 of

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declaration, which had interfered with their freedom of religion”. It concluded that the interference was neither justified nor proportionate to the aim pursued. There had, therefore, been a breach of Art. 9 (paragraph 22).

<sup>43</sup> The applicant, Mr Seremetis, was dismissed from his post following an ecclesiastical disciplinary procedure (ecclesiastical district court and ecclesiastical court of appeal) accused for several mistakes according to the Orthodox canonical law. He filed an application with the Council of State for the annulment of the decision of the Ecclesiastical Court of Appeal, but his request was dismissed. The applicant complained about the fairness and length of the proceedings under Art. 6, paragraph 1, of the Convention (right to a fair trial and right to prepare a defence). The ECtHR ruled in his favour based on a violation of this article in light of the length of the procedure.

<sup>44</sup> This question is discussed in greater detail in Part III.

the Convention<sup>45</sup>. It is indicative that, concerning the rights of religious minorities in Greece, for example, real discrimination by the Greek state towards Jehovah's Witnesses still persists despite their recognition as a "known religion" (Art. 13, paragraph 2). This type of discrimination has been systematically penalized by the Court in Strasbourg, which has repeatedly noted the recognized status of Jehovah's Witnesses and acknowledged that "some first-instance courts, however, continue to rule to the contrary" (*Kokkinakis* 1993, paragraph 23). The Court has also emphasized the need for stronger motivation and better balancing of all the fundamental rights at stake, at the level of domestic courts. For example, the Court held that the Greek judge should have better developed the reasoning behind his decision and explained how fundamental rights weighed in *Negrepontis* 2008 (paragraphs 71-73).

An overview of the Greek litigation that has been brought before the ECtHR<sup>46</sup>, sheds light on some of the difficulties that Greece has faced in the application of the scope of Art. 9 of the Convention. These challenges relate to the specific characteristics of Church-State relations in the country. More particularly, the "religious protectionism" of the Greek State, as reflected in structural dysfunctions at the legal and constitutional level, in certain administrative practices of discrimination, and in the case-law of state courts, is often questioned directly in ECtHR case-law.

Even if Orthodox Greece has been subject to several disputes that have been brought before the ECtHR, the same is true for other Orthodox countries, including Russia, Romania, and Bulgaria. This raises several questions: what are the *Greek* or *Orthodox* specificities in the area of freedom of religion? How did the Court reason with regard to

<sup>45</sup> On this subject, see the very interesting comments by Temperman J., "Are State Churches Contrary to International Law?", *Oxford Journal of Law and Religion*, 2012, 1-31. The author concludes that the existence of an "official religion", a State Church, is incompatible with the effective protection of the right of religious freedom in the context of defending human rights through international law.

<sup>46</sup> For a comprehensive legal view of Greek litigation on religious freedom in the ECtHR case-law, see Tsagari A., "Issues of Religious Freedom in the Greek Cases of the ECtHR" [Zitimata thriskeftikis eleftherias stis ellinikes ypothesesis toy Eyrwpaikoy dikasthrioy], *Revue juridique Armenopoulos*, published by the Bar of Thessaloniki, Thessaloniki, No. 26, 2005, p. 295-318; P. Naskou-Perraki, "ECtHR Case-Law on the Protection of Religious Freedom in Greece" [I nomologia tou Eyrwpaikou Dikasthriou Dikaiwmatwn tou Anthrwpou sxetika me tin prostasia tis thriskeftikis eleftherias stin Ellada], *Revue Hellénique de Droit Européen*, published by the Centre for International and European Economic Law and the Bar of Thessaloniki, No. 4, 1999, p. 785-814.

the Orthodox tradition? How are the issues raised by the scope of Art. 9 similar and/or different in the specific context of the various Orthodox countries?

### **3. The Strasbourg judge and Orthodoxy in freedom of religion case law: crosscutting issues**

The first fundamental question that emerges is whether the different issues relating to the scope of Art. 9 of the Convention, raise difficulties that are specific to Orthodoxy. Or, are we dealing with more general questions that are not related to issues closely associated with an “Orthodox specificity”? Thus, for example, we note that recurring questions of discrimination concerning worship by religious minorities in cases involving countries with an Orthodox tradition, also come up in ECtHR case-law on non-Orthodox countries. The case of France, a secular state, and the problems of discrimination toward the Muslim communities, is a representative example. However, the question remains open: does Orthodoxy have particular difficulties in relation to minority religions?

Before attempting to outline some answers, it is useful to place these questions in the broader context of Church-State relations, and the interactions between law (the Constitution) and religion in the various Orthodox countries, where the specific links between religion, history and national identity are very strong.

The constitutions in the majority of countries with an Orthodox tradition affirm the separation between Church and State by excluding the existence of an established Church (Russia: Art. 14, Bulgaria: Art. 13, Ukraine: Art. 35 paragraph 3, Serbia: Art. 11, and Belorussia: Art. 16). After the fall of communist regimes in 1989, no country with an Orthodox tradition followed the example of Greece at the constitutional level. The only exception was the Bulgarian Constitution which, despite the principle of separation affirmed in Art. 13, paragraph 2: “Religious institutions shall be separate from the State”, contains an explicit reference to Orthodoxy as a traditional religion: “Eastern Orthodox Christianity is a traditional religion in the Republic of Bulgaria” (Art. 13, paragraph 3)<sup>47</sup>. The Romanian case is also a particular case in terms of Church-State

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<sup>47</sup> See R. Potz “State and Church in the European countries with an Orthodox tradition”, *Derecho y Religión*, No. 3, 2008, p. 52; article available from: <http://>

relations to the extent that the Romanian Constitution does not include an explicit reference to a secular state, nor to the separation between Church and State; there is also no reference to a religious organization as an official or privileged Church<sup>48</sup>.

Nevertheless, the affirmation of a total separation between Church and State is also not possible according to the Romanian constitution to the extent that the legislator has combined the principle of autonomy and the principle of freedom of religious groups with the affirmation that “religious cults shall be autonomous from the State and shall enjoy support from it” and that the latter shall recognize the religious leaders of religious denominations<sup>49</sup>.

However, despite the affirmation of the principle of separation between Church and State, “in most of the countries, the Orthodox Church is explicitly mentioned in the special laws regulating the status of churches and religious communities (Belarus, Bulgaria, Macedonia, Moldavia, Romania, Russia, Serbia)”<sup>50</sup>. Thus, for example, under the Bulgarian Religious Denominations Act (2002), the Orthodox Church “has a historical role in the Bulgarian state” (Art. 10); in Romania, the Law on Religious Freedom and Religious Denominations, “the Romanian State recognizes the important role of the Romanian Orthodox Church and that of other churches and denominations as recognized by the national history of Romania and in the life of the Romanian society” (Section I, Art. 7, paragraph 2). Similarly, in Russia, the Preamble of the Law of Freedom of Conscience et Religious Associations (2002), “recognizes a special role of the Orthodox Church in the history of Russia, the formation and development of its spirituality and culture; having respect for Christianity, Islam, Buddhism, Judaism and other religions constituting an integral part of the historical heritage of the peoples of Russia.”<sup>51</sup>

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[www.deltapublicaciones.com/derechoyreligion/gestor/archivos/07\\_10\\_831pdf](http://www.deltapublicaciones.com/derechoyreligion/gestor/archivos/07_10_831pdf) (last accessed 3 December 2012).

<sup>48</sup> In the Romanian Constitution, we can see the traits of a secular state: paragraphs 1 and 2 of Art. 29 (freedom of conscience) guarantee the freedom of conscience and the freedom of religious beliefs; paragraph 3 guarantees the freedom of religious groups; and paragraph 5 guarantees the autonomy of these groups from the State. See V. Dima, “Freedom of Religion in the Romanian Legislation”, *Libertatea Religioasa în Context Românesc și European*, Bucuresti: Simpozion international, 12-13 September 2005, Acta, Bucuresti: Editura Bizantina, 2005, p. 268-269.

<sup>49</sup> *Ibid.*, p. 269.

<sup>50</sup> See R. Potz, *op. cit.*, p. 52.

<sup>51</sup> See R. Potz, *op. cit.*, p. 53.

A series of questions emerge on the attitude of the judges in Strasbourg toward Orthodoxy: does the Court understand the principle of “symphony” in Church-State relations in Orthodox countries? How does it reason in terms of the “margin of appreciation” concerning these countries? How does the Court perceive the status of the Orthodox Church? Does it make a distinction between religious and national identity? Does the Court have to engage in theological or biblical interpretations? Does it refer to the Holy Synod of the Orthodox Church?<sup>52</sup> Does it engage in a doctrinal interpretation of the holy canons of the Orthodox tradition? Through these questions, does the reasoning of the Court’s case law reveal a special treatment of Orthodoxy?

In several judgments, it seems that the Court recognized the dimension of national identity that is so important in Orthodoxy. Furthermore, it acknowledged that:

“the Christian Eastern Orthodox Church, which during nearly four centuries of foreign occupation symbolised the maintenance of Greek culture and the Greek language, took an active part in the Greek people’s struggle for emancipation, to such an extent that Hellenism is to some extent identified with the Orthodox faith” (*Kokkinakis*, paragraph 14);

in a similar way, the Court referred to the “ties binding the Hellenic nation – and later the Greek State – to the Orthodox Church [that] go back several centuries” and noted that “the interdependence of State and Church was already apparent in the administrative reorganisation of the Church which followed the restructuring of the Byzantine State” (*Holy Monasteries v. Greece*, paragraph 12). The Court also referred to the general history of Church-State relations since the foundation of the modern Greek state, recalling the 1833 proclamation of autocephaly of the Orthodox Church of Greece, which “was very noticeably imbued with the spirit of State control; the Church was independent of the State only in matters of doctrine” (paragraph 13); it also emphasized the interdependence between Church and State (governed by Law 27/32 of May 1997 relative to the Church’s Charter or other statutory provisions) (paragraph 14). The Court also considered that “the Church’s role in public life is reflected more markedly by the presence of the Minister for Education and Religious Affairs at the sessions held to elect the

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<sup>52</sup> See ECtHR, *Skugar v. Russia* (3 December 2009).

Archbishop of Athens and by the participation of the Church authorities in all official State events” (paragraph 14).

However, in its case law on *Sindicatul Pastorul Cel Bun v. Romania* (Chamber judgment, 31 January 2012; Grand Chamber, 9 July 2013), the Court seemed to have some difficulties understanding the status of the Orthodox Church of Romania. The different assessments between the Chamber and the Grand Chamber judgments are indicative in this respect:

“considering that members of the clergy should not be excluded from the protection which Art. 11 affords, the Grand Chamber did not invoke public law (which was done by the Chamber), which seemed to establish the Orthodox Church as a State Church, or at least as some kind of Orthodox religious *establishment* in force in Romania. The Grand Chamber controlled the legitimacy of the Romanian refusal under the ‘protection of the rights of third parties’, in this case those of the Orthodox Church”<sup>53</sup>.

Another important aspect in this judgment is the Court’s approach with regard to canonical law, namely the criticism that: “the Grand Chamber departed from canonical law and Romanian law by imposing its own classification of the relations between priests and the Church: an *employment relationship* with its own characteristic features” (paragraph 143) that fell within the scope of Art. 11 (paragraph 148). Yet, according to the Orthodox Church and Romanian law, the religious specificity of pastoral care prevents the making of such a conclusion, because it is a relationship that is different from a regular employment relationship that is governed by state legislation”<sup>54</sup>. This is also problematic in as much as “even assuming that members of the Romanian Orthodox clergy may waive their rights under Art. 11 of the Convention, the Court observes that there is no indication in the present case that the members of the applicant union agreed to do so on taking up their duties” (paragraph 146)<sup>55</sup>. The importance of canons in states from an Orthodox tradition is at the very least a complex issue for the Court. In the case of *Sindicatul*, Chamber made reference to the judgment on *Negrepontis*, which was

<sup>53</sup> J.-P. Schouppe, “L’identité et l’autonomie des groupements religieux ne sont pas des notions indéfiniment flexibles: *Sindicatul Pastorul Cel Bun c. Roumanie*”, *Annuaire Droit et Religions*, Presses Universitaires d’Aix-Marseille, Vol. 7, No. 2, 2013-2014, p. 748 (translation by the author).

<sup>54</sup> However, we note that certain local bishops had unwisely accepted employment contracts with members of the clergy.

<sup>55</sup> J.-P. Schouppe, *op. cit.*, p. 747.

omitted by the Grand Chamber, thus reinforcing the sense of complexity and uncertainty<sup>56</sup>. In *Negrepointis* (2011), where what was in question was the civil status of Orthodox canonical rules, the Court emphasized the “ecclesiastical nature” and the old age of the canonical rules that “dated from the seventh and ninth centuries”. The Court had contested their application by the Greek Court of Cassation by also invoking the opinions of the Greek dissenting judges and it had used subsequent Greek legislation on the matter, which was contrary to the canonical rules (paragraph 72). This doctrinal interpretation of Orthodox canons by the judges in Strasbourg was problematic in the least: connections between canonical rules and civil laws<sup>57</sup> that are apparently contradictory have failed to win unanimous support and have divided Greek doctrine to this day<sup>58</sup>. This issue has also revealed the difficulties of evaluation by the Court, which are specific to the heritage and context of the Orthodox tradition.

The judgment on *The Holy Synod of the Bulgarian Orthodox* (22 January 2009) is particularly indicative of the difficulties of the ECtHR in dealing with cases concerning the status of the established Orthodox Church in countries that are predominantly Orthodox. In this instance, the case was about an internal ecclesiastical conflict that divided the Bulgarian Orthodox Church. The ECtHR ruled that by pressuring a divided Orthodox religious community to become united under the authority of one of its rival factions, the Bulgarian authorities were in breach of Art. 9 of the Convention.

The foundation of the Holy Synod of the Bulgarian Orthodox Church, under the authority of Metropolitan Inokentiy (alternative Synod), was the result of a schism within the Church in 1992. Since then, there has

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<sup>56</sup> We note the “ambiguous scope of reference [by the ECtHR in *Sindicatul*] in the case-law on *Negrepointis*: first, “*Negrepointis* concerned a customary and uncertain reference to a religious norm, while *Sindicatul* concerned a reference validated by an law expressly”. Also, *Negrepointis* concerned the status of common family law and not an internal matter that related to the organization of a Church”; see L.-L. Christians, “Autonomie des cultes et bras séculier des normes religieuses à propos de CEDH 31 January 2012, *Sindicatul Pastoral Cel Bun c. Roumanie*”, available at [www.uclouvain.be/chaire-droit-religions](http://www.uclouvain.be/chaire-droit-religions) (last accessed 14 April 2013).

<sup>57</sup> On this question in Romania, see I. Marga, “The Relationship Between the Religious Civil Law and the Orthodox Canonical Law in Romania”, *Libertatea Religioasa în Context Românesc și European*, Bucuresti: Simpozion international, 12-13 September 2005, Acta, Bucuresti: Editura Bizantina, 2005, p. 213-221.

<sup>58</sup> See the bibliography by Papastathis and other Greek authors; see note No. 38.

been a conflict between the alternative Synod (Metropolitan Inokentiy) and the established Synod under the authority of Patriarch Maxim, over the direction of the Bulgarian Orthodox Church. The Bulgarian state intervened in favour of the latter, which succeeded in giving legitimacy to his authority as the only power in the Bulgarian Orthodox Church. In this instance, the Bulgarian state authorities, in order to give legitimacy to the authority of Patriarch Maxim, used the 20 December 2002 Religious Denominations Act, which affirmed the recognition by the Bulgarian Orthodox Church as a matter of law, whose Art. 10 paragraph 1, stipulates that the “Church is represented by the Bulgarian Patriarch who is also the Metropolitan of Sofia”. Although this article does not explicitly recognize the Synod of Patriarch Maxim as the only legitimate authority of the Bulgarian Orthodox Church, it was interpreted in this way by the Bulgarian authorities<sup>59</sup>.

The Court considered that the disputed provisions of the 2002 Religious Denominations Act “were formulated with a false appearance of neutrality and that the courts and prosecuting authorities did not have clear basis to identify the ‘valid’ leadership of the Church” (paragraph 157). The Court specified that the dispute in question “was not about a refusal to register a new religious group bearing a name identical to an existing one but about State action to ‘resolve’ a leadership dispute in a divided religious community by assisting one of the opposing groups to gain full control, to the exclusion of the rival group” (paragraphs 112-113). It insisted on this point by specifying that the issue in question was “about the fact that the authorities decided to impose a solution through legislative intervention and wide ranging actions eliminating the existence of one of the two opposing leaderships and forcing the believers under the leadership of Patriarch Maxim” (paragraph 147).

*The Holy Synod of Bulgarian Orthodox Church* (2009) is one of three judgments where the ECtHR had to question the established leadership of the majority Church in a state from the Orthodox tradition<sup>60</sup>. Even if the judgment in question was not directly aimed at the Synod of Patriarch Maxim, he perceived it as an attack against the Bulgarian Orthodox Church

<sup>59</sup> D. Kalkandjieva, “Bulgarian Orthodoxy and the European Court of Human Rights: The case of the Holy Synod of the Bulgarian Orthodox Church”, *Orthodox Christianity and Human Rights*, Alfons Bruening and Evert van der Zweerde (eds.), Eastern Christian Studies, Leuven: Peeters, 2012, p. 317.

<sup>60</sup> See also: *Metropolitan Church of Bessarabia v. Moldova* (13 December 2001), and *Biserica Adevarat Orthodoxa din Moldova and others v. Moldavia*.

and Orthodoxy as a whole. The same was true concerning the reactions of the Bulgarian state authorities, the Primer Minister, the President and several members of parliament. The judgment was criticized virulently by the Bulgarian national press and media<sup>61</sup>. Kalkandjieva observed in this respect that “the media discourse shifted the attention from the essence of the ECtHR judgement, stressing the infringed freedom of religion and pluralism by the state authorities, to the thesis that this act constitutes an intervention in the canonical life of the traditional Orthodox Church and endangers the national and religious identity of the Bulgarians”<sup>62</sup>. According to Kalkandjieva, the media debate is particularly indicative of the difficulties of the Bulgarian state regarding the implementation of the principles of freedom of religion and pluralism, when it comes to the traditional Bulgarian Orthodox Church<sup>63</sup>. But we note that these reactions are more particularly revealing of the “Orthodox sensitivities” of countries with a predominantly Orthodox majority where there is a strong identification between religious identity and national identity<sup>64</sup> that is deeply rooted in the collective conscience of the people.

Lastly, in this instance, the main preoccupation of the Court consisted of reiterating the need to respect the principle of neutrality by the State, in the context of the separation between Church and State. The Court emphasized that the “the role of the authorities in a situation of conflict between or within religious groups is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other” (paragraph 120). Furthermore, the Court did not fail to note the principle of Church autonomy by affirming that in this instance “it was not the Court’s role to decide who the legitimate leader of the Bulgarian Orthodox Church was” (paragraph 100).

At the same time (seeing here another important feature of this judgment) the Court distanced itself from matters concerning the canonical aspects of the internal schism within the Bulgarian Orthodox

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<sup>61</sup> D. Kalkandjieva, *op. cit.*, p. 332-333.

<sup>62</sup> *Ibid.*, p. 333.

<sup>63</sup> *Ibid.*

<sup>64</sup> See C. Schifirnet, “Orthodoxy, Church, State, and National Identity in the Context of Tendentia Modernity”, *Journal for the Study of Religions and Ideologies*, Vol. 12, issue 34 (Spring 2013), p. 173-208; V. Karpov, E. Lisovskaya, D. Barry, “Ethnodoxy: How Popular Ideologies Fuse Religious and Ethnic Identities”, *Journal for the Scientific Study of Religion*, 51 (4), 2012, p. 638-655; D. Kalkandjieva, “A Comparative Analysis on Church-State Relations in Eastern Orthodoxy: Concepts, Models, and Principles”, *Journal of Church and State*, Vol. 53, No. 4, 2011, p. 587-614.

Church<sup>65</sup>. It explicitly abstained from making a decision, estimating that “it is not the Court’s task, and indeed it is not the task of any authority outside the Bulgarian Christian Orthodox community and its institutions, to assess the validity under canon law of the opposing claims to legitimacy made by the rival leadership” (paragraph 137). However, despite the prudent attitude of the Court, its judgment, as we have seen, was certainly perceived as an *attack*<sup>66</sup> against Orthodoxy and an interference by the judges in Strasbourg to the canonical life of the established Bulgarian Orthodox Church.

Another recurring problematic aspect that the judges in Strasbourg have faced in cases involving Orthodox countries had to do with the structural problems of state legislation pertaining to freedom of religion, in terms of the content of the law, its interpretation by domestic state authorities or administrative practices. In the case-law on *Manoussakis* (1996) and *Pentidis* (1997), *Holy Synod of the Bulgarian Orthodox Church* (2009), and *Metropolitan Church of Bessarabia v. Moldova* (2001), the Court highlighted the legal anomalies, but also the anomalies of administrative practices, by ruling that the legal provisions in question were incompatible with Art. 9 of the Convention. Thus, concerning the authorization of establishing places of worship in Greece, the Court ruled in *Manoussakis* that “Law No. 1363/1938 and the decree of 20 May/2 June 1939 – which concerns churches and places of worship that are not part of the Greek Orthodox Church allow far-reaching interference by the political, administrative and ecclesiastical authorities with the exercise of religious freedom” (paragraph 45).

In the *Holy Synod of the Bulgarian Orthodox Church*, the Court ruled that the provisions of the 2002 Religious Denominations Act “were formulated with a false appearance of neutrality and that the courts and prosecuting authorities did not have clear basis to identify the “valid” leadership of the Church” (paragraph 157). In the *Metropolitan Church of Bessarabia v. Moldova*, the Court reminded *mutatis mutandis* its case-law on *Pentidis* (1997) and *Manoussakis* (1996), and reaffirmed the principle

<sup>65</sup> D. Kalkandjieva, *op. cit.*, p. 321.

<sup>66</sup> *Id.*, *op. cit.*, p. 332-333; “Minister Tacheva has informed Patriarch Maksim about the decision of the Court in Strasbourg”, *Bulgarian News Agency*, 23.01.2009; “Legal consultations are complicated, yet necessary for the people”, *Trud*, 24.01.2009, p. 4; “Maksim asks Moscow for help”, *Telegraf*, 24.01.2009, p. 5; T. Krasteva, “Patriarch Kirill to condemn Bulgarian schismatics on Parvanov’s request”, *24 Hours*, 01.02.2009, p. 40 (press articles, as cited by D. Kalkandjieva, *op. cit.*, p. 325).

according to which “the right to freedom of religion for the purposes of the Convention excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed”, ruling once again that “where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorization of a recognized ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Art. 9 of the Convention” (paragraph 117). In this instance, it was based on the Moldavian Law of 24 March on Religious Denominations, that the Court noted that “although the Religious Denominations Act makes the activity of a religious denomination conditional upon government recognition and the obligation to comply with the laws of the Republic, it does not contain any specific provision governing the recognition procedure and making remedies available in the event of a dispute” (paragraph 140). In this case, there are striking similarities and analogies between this issue and the case law on *Manoussakis*.

In the judgment on *Metropolitan Church of Bessarabia v. Moldova*, it was clear that any attempt by the government to create a hierarchy of religious groups was in direct breach of fundamental principles, such as the neutrality of the state and the equality of religious groups. In a similar way, the issue of a hierarchy of religions was raised in the 1997 Russian Law on Freedom of Conscience and Religious Associations, whose Preamble, “recognizes the ‘special contribution’ of Russian Orthodox Christianity to the country’s history and to the establishment and development of its spirituality and culture” and “acknowledges Christianity, Islam, Judaism, Buddhism, and other religions as constituting an inseparable part of the country’s historical heritage”. The Law establishes a hierarchy<sup>67</sup> of religions: the traditional religions mentioned in the Preamble with Orthodoxy at the top, other traditional religions, established religions for the past fifteen years, and, finally, new religions. We note the heavy criticism triggered by this law, which was of great concern to the Council

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<sup>67</sup> See the guidelines of the Council of Europe, working group “Human Rights and Religions”, *Provisional report of the Working Group established within the Human Rights Committee of the INGO Conference of the Council of Europe*, NV6b. February 2013 (141 p.); see the *Guidelines for review of legislation pertaining to religion or belief*, OSCE, Advisory Panel of Experts on Freedom of Religion or Belief, Warsaw: ODIHR, 28 September 2004. Article available at: <http://www.osce.org/odihr/44459> (English).

of Europe in regards to its compatibility with the European Human Rights Convention<sup>68</sup>. In this respect, it is particularly important the ECtHR, in its judgement on the *Moscow Branch of the Salvation Army v. Russia* (24 June 2004), explicitly referred to the concerns of the Council of Europe by mentioning Resolution 1278 adopted on 23 April 2002 by the Parliamentary Assembly of the Council of Europe, which noted, among others, that “the new Russian Law on religion entered into force on 1 October 1997, abrogating and replacing a 1990 Russian law – generally considered very liberal – on the same subject. The new law caused some concern, both as regards its content and its implementation” (paragraph 104, No. 3). The Court also mentioned the recommendation made by the Assembly to the Russian authorities that “the Law on religion be more uniformly applied throughout the Russian Federation, ending unjustified regional and local discrimination against certain religious communities and local officials’ preferential treatment of the Russian Orthodox Church, and in particular their insisting in certain districts that religious organisations obtain prior agreement for their activities from the Russian Orthodox Church” (paragraph 104, No. 6).

In *Moscow Branch of the Salvation Army v. Russia*, as well as in another judgment concerning Russia, the *Church of Scientology of Moscow v. Russia* (5 April 2007), the ECtHR considered the specific legal issues in question, including certain parts of the Law of 1997, which required an amendment, in connection with arbitrary intervention by state authorities, and the way that their interpretation of this law was incompatible with the protective system of Strasbourg<sup>69</sup>.

In studying the diversity of ECtHR case law, we have seen that the Court was sometimes confronted with the challenges of making an assessment on the canons of the Orthodox tradition. In this respect, the Court was not always able to maintain a consistent stance. Although it was able to make a doctrinal interpretation of the holy canons of the Orthodox tradition (*Negrepontis*), in other cases it distanced itself explicitly from the canonical aspects of a purely internal matter within the Orthodox Church (*Holy Synod of the Bulgarian Orthodox Church*), or depart from the canonical law and state (Romanian) law by making its own classification of the relations between priests and the Church

<sup>68</sup> D. Hallinan, “Orthodox Pluralism: Contours of Freedom of Religion in the Russian Federation and Strasbourg Jurisprudence”, *Review of Central and East European Law*, 37 (2012), p. 310.

<sup>69</sup> *Ibid.*, p. 332.

(*Sindicatul*). The case law on *Sindicatul*, including the respective decisions by the Chamber and the Grand Chamber, were particularly revealing of the Court's confusion over the status of the Orthodox Church of Romania.

In the case law on *Skugar v. Russia* (3 December 2009), the ECtHR was faced with an issue raising the problem of theological interpretation and the interpretation of the Bible. In this instance, the applicants complained that a taxpayer's number had been "imposed on them contrary to their religious convictions". In this judgement, the Court initially cited the declaration adopted by the Holy Synod of the Russian Orthodox Church (7 March 2000) concerning taxpayer's identification numbers:

"Fear not the external symbols and signs, for no delusion created by the enemy to human souls may prevail the God's grace that abounds in the Holy Church (...) To those who attempt to link the identification numbers with the 'antichrist's mark' we remind that the tradition of the holy fathers understood the marks as a sign certifying deliberate repudiation of Christ... In spite of that tradition it is occasionally claimed that a technological act allegedly may, by itself, create turmoil in the innermost depths of the human soul leading to Christ's oblivion. Such a superstition is at variance with the Orthodox interpretation of the Revelation of St John the Divine, according to which those who deliberately put faith in him will receive the 'mark of the Beast' 'solely for the sake of his false miracles' (St John Chrysostom). No external mark may harm the spiritual health of the person unless it is a consequence of deliberate treason of Christ and profanation of faith..."

Although the ECtHR cited the Holy Synod, it abstained from making any comment on this issue and simply affirmed that "in the instant case, the interpretation of the Bible to which the applicants adhere appears to be at variance with the position expressed by the Holy Synod of the Russian Orthodox Church in its statement of 7 March 2000." The Court considered that:

"The applicants objected to the use of taxpayers' identification numbers, not because the numbers placed any restriction on the way they acted or wished to act, but solely because they believed that the mere existence of the numbers harmed their spiritual well-being".

Lastly, the Court declared the claim inadmissible, ruling more specifically that "the State, in designing and implementing its internal procedures, cannot be required to take into account the way in which

individual citizens could interpret them on the basis of their religious beliefs.”

#### 4. Conclusions

The study of ECtHR case law on religious freedom in cases of countries with an Orthodox tradition leads to two sets of remarks relating to the role and the attitude of the European human rights judges toward Orthodox countries and the attitude of the Orthodox countries themselves with respect to the right of religious freedom, which is a function of the specific social, historical, political and religious context.

1. The first set of remarks relates to the difficulties of the Strasbourg judges in cases brought by the Orthodox applicants in understanding the status of Orthodoxy, including the status and specificities of the internal administrative structure of the Churches, the status of Orthodox priests, and the complex configuration of relations between Orthodox canonical law and civil law. In terms of European “Orthodox litigation”, we have seen that the Court seems to be more comfortable when the cases it receives concern *institutional* aspects of the right to religious freedom. In such instances, the Court has to apply the simple and straightforward principle in virtue of the fact that before the state all religions are equal before the law. But the issue becomes more complicated when it comes to *individual* religious freedom since the European judges must find a balance between religious freedom and the interests of the state and/or the rights of third parties, which are different from case to case<sup>70</sup>. In the latter case, it is interesting to see the means used by the ECtHR, namely, on the one hand, resorting to the conceptual categories of a “margin of appreciation” and “public law”, and, on the other had, “the rights and/or freedoms of third parties”, so as to prioritize the values of the predominant religious culture<sup>71</sup>. The Court’s attitude is even more common in “Orthodox cases”,

<sup>70</sup> See P. Voyatzis, “Pluralismo e Libertà di Religione nella Giurisprudenza della Corte Europea Dei Diritti Dell’Uomo”, *Diritto e Religione in Europa. Rapporto sulla giurisprudenza della Corte Europea Dei Diritti Dell’Uomo in materia di libertà religiosa*, R. Mazzola (ed.), Società Editrice Il Mulino, 2012, p. 113-114.

<sup>71</sup> See G. P. Danchin, “Islam in the Secular Nomos of the European Court of Human Rights”, *Michigan Journal of International Law*, 2011 (32), p. 695 (emphasis by the author).

where countries with a predominantly Orthodox tradition and culture are marked by particularly strong links between national and religious (Orthodox) identity. Some have observed that the judges in Strasbourg seem to give a large margin of appreciation to Christian states where there is a State Church or a National Church<sup>72</sup> (see *Kokkinakis*, 1993; *Otto-Preminger*, 1994; *Wingrove*, 1996). They have even said that “the fact that many European states, including Greece and the United Kingdom, the respondent states in *Kokkinakis* and *Wingrove*, have official or established churches has not apparently been seen to raise existential dangers to secularism, democracy, or the rule of law”<sup>73</sup>. Even though this statement may seem exaggerated, it is clear that the Court has shown itself to be extremely vigilant, when it comes to established privileges and prerogatives related to Christianity, and it gives states the right to decide and choose how to respect the terms of an established religion and the means to be used for this purpose<sup>74</sup>.

Concerning the dimension of national identity in Orthodoxy, we must note that the Court does not fail to refer to the specificities of the historical, political, historical and religious context of Orthodox countries, thus showing a real effort to try to take into consideration such specificities in its argumentation. In this respect, “Greek litigation” is a clear and representative indicator of the Court’s attitude.

2. The second set of remarks relates to the difficulties that Orthodox countries face in the application of the theological Orthodox ideal of “symphony” (συμφωνία), or, in other words, the “system of co-reciprocity” or “synallelia”<sup>75</sup>, that was developed in Byzantium, and which continues to this day to govern – at least in theory – Church-State relations in various orthodox countries. The great Orthodox theologian John Meyendorff summarized the quintessential *ideal of a symphony* when he wrote that “the great dream of Byzantine civilization was a universal Christian society administered by the emperor and spiritually guided by

<sup>72</sup> *Ibid.*, p. 695-6; see also J. Temperman, “Are State Churches Contrary to International Law?”, *Oxford Journal of Law and Religion*, 2012, p. 9-14 et p. 30.

<sup>73</sup> See Danchin, *op. cit.*, p. 706.

<sup>74</sup> See Temperman J., *op. cit.*, p. 30.

<sup>75</sup> For more details, see the article by D. Kitsikis, “La structure politico-religieuse de la synallélie, en tant qu’antithèse du système occidental”, *Constructions identitaires et pratiques sociales*, J.-P. Wallot, P. Lanthier and H. Watelet (eds.), Les Presses de l’Université d’Ottawa, 2002, 303-313.

the Church”<sup>76</sup>. This Orthodox ideal of “symphony” encourages equality and a close relationship between the two institutions, the State and the Church, each one maintaining its own priorities and ways of operating. Church and State each have their own rules in view of promoting their respective goals without any intermingling between the two. The State does not legislate using the law of the Church and vice versa. There is no complete interdependence or total separation between the two entities. Yet, in reality, the main problem of the “symphony” is that the line separating Church and State remains hazy<sup>77</sup>, which leads to deviations from this ideal in the contemporary practices in Orthodox states. “Orthodox litigation” in the ECtHR in Strasbourg is particularly revealing in this respect, precisely because it illustrates these deviations on several levels: the structural dysfunctions of state legislation, either in its interpretation by national state bodies, or in administrative practices. It remains to be seen if such an idyllic and fragile “symphony”, will be successful in finding its own place in the future in a post-modern, post-secular and multicultural world during a turbulent period.

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<sup>76</sup> See J. Meyendorff, *Byzantine Theology. Historical Trends and Doctrinal Themes*, New York: Fordham University Press, 1974, p. 213.

<sup>77</sup> See N. L. Leustean, “The concept of *symphonia* in contemporary European Orthodoxy”, *International Journal for the Study of the Christian Church*, Vol. 11, No. 2-3, May-August 2011, p. 189.

# Pluralism and Religious Freedom

## Insights from Orthodox Europe

Effie FOKAS

### 1. Introduction

A snapshot of European societies today reveals the importance of religious minority treatment and the grave potential that the latter can carry for instability and even social unrest in a situation of rapidly increasing religious diversity. The Pew Forum's influential study on the 'Rising tide of restrictions on religion' highlighted the problem on a global scale. Most conspicuous are the reactions of Muslim groups against what they perceive to be intolerant majorities, but other (less attended by the mass media) religious minority experiences are no less compelling evidence of tensions around religious pluralism in localities across Europe. Registration restrictions, curtailed rights to expressions of faith, and exclusion from mass media are amongst several limitations on religious freedom experienced by religious minorities in Europe.

Such limitations of religious freedoms are particularly prominent in countries where Orthodox Christianity is the majority faith. Indicatively, majority Orthodox states are accountable for 63% of all European Court of Human Rights convictions for religious freedoms violations<sup>1</sup>. What is the reason behind this state of affairs? Is there something intrinsic to

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<sup>1</sup> Majority Orthodox state religious freedom (Art. 9) convictions at the time of writing: Armenia 3; Bulgaria 5, Georgia 1, Greece 11, Moldova 4, Russia 5, Ukraine 3. The remaining 27% are against Azerbaijan (1), France (4), Latvia (3), Poland (1), S. Marino (1), Switz. (1), Turkey (7), UK (1). Note: these statistics alone are of limited explanatory value regarding religious freedoms jurisprudence *in general*, given that many relevant cases are decided under separate, or in conjunction with, other European Convention on Human Rights articles (e.g., Freedom of Expression, Art. 10, Freedom of Assembly/ Association, Art. 11, and Prohib. of Discrimination, Art. 14).

Orthodoxy as a religious and social institution that makes it intolerant towards minorities? Or are there historical and political particularities in individual Orthodox majority countries that underlie the barriers to religious freedoms in each case?

This chapter draws on empirical research conducted in four majority Orthodox countries with the explicit aim of addressing such questions<sup>2</sup>. Specifically, the text reflects research conducted by the author in Bulgaria, Romania, Russia and Greece, in response to two particular realities: first, the aforementioned prominence of limitations to religious freedoms in majority Orthodox contexts, and second, a body of social science literature questioning the relationship between Orthodoxy and pluralism.

Currently one finds analyses of the problem embedded in a diverse body of literature based in different disciplines and invoking different types of explanation. For some scholars, Orthodox theology is the root of the problem and, specifically, the Orthodox understanding of the human person as foremost a member of the collective, rather than as an autonomous individual. This emphasis on the collective is thought to underlie Orthodox Church preoccupation with national unity, even when at the expense of individual human rights<sup>3</sup>. At the same time, the strong, historically developed links between religion and national identity in Orthodox contexts, leaving no room for religious ‘others’, are indicated as the basis of strong links between church and state whereby the state privileges the majority church and bends under pressure to maintain those privileges over and above other faith groups<sup>4</sup>. From

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<sup>2</sup> This chapter represents a first effort to present in written form the results of the FP7 Marie Curie – funded project on ‘Pluralism and Religious Freedom in Majority Orthodox Contexts’ (PLUREL) conducted by the author between 2010 and 2013. As such it should be read very much as a ‘work in progress’ presentation of the research data.

<sup>3</sup> See D. Payne (2003), “The Clash of Civilisations: The Church of Greece, the European Union and the Question of Human Rights”, *Religion, State & Society*, 31, p. 261-271; see also A. Pollis (1993), “Eastern Orthodoxy and Human Rights”, *Human Rights Quarterly*, 15(2), p. 339-352.

<sup>4</sup> See Halman, Loek and Veerle Draulans (2005), “How secular is Europe?” *British Journal of Sociology*, Vol. 57, Issue 2, p. 263-288; exclusively on the Greek case Fokas (2008), “A new role for the church? Reassessing the place of religion in the Greek public sphere”, *Hellenic Observatory Papers on Greece and Southern Europe (GreeSE)*, No. 17. Published in-house and online, London School of Economics, August 2008, available at <http://www.lse.ac.uk/collections/hellenicObservatory/pdf/GreeSE/GreeSE17.pdf>; and “Religion: towards a post-secular Europe?”, in ed. Ch. Rumford, *Sage Handbook of European Studies*, Sage, 2009, p. 401-419.

historio-sociological perspectives, other scholars point to the relative susceptibility of Orthodoxy to communist thinking which, in turn, leads to insufficient respect for religion and for religious freedoms<sup>5</sup>.

Such perspectives often include reference to the fact that the Orthodox world did not experience the Renaissance or the Enlightenment but, rather, centuries of Ottoman rule, and the fact of communist rule for generations of Orthodox peoples, which led to underdevelopment (especially in terms of democratic mindset) in many European Orthodox contexts. Still others focus instead on the aftermath of the communist experience in most Orthodox majority countries with the sudden influx of missionary groups and the rise of new religious movements that accompanied this new diversity of religious expression. The negative reactions of Orthodox churches in these regions to religious pluralism is described as largely a defensive reaction against what is perceived as a cultural imperialism<sup>6</sup>. This is especially the case with regards to proselytism by minority religious groups towards majority Orthodox individuals, itself perceived as a violation of the latter group's religious freedom<sup>7</sup>.

The existing literature as a whole represents a mixture of ideas and perspectives uneven in its approach and thus unsuitable for comparison, but useful in revealing certain common threads – including a fundamental questioning of the relationship of Orthodoxy to democracy, and a concurrence that the Orthodox world has, at best, an ambivalent relationship to pluralism<sup>8</sup>. The present chapter is based on systematic, comparative, and empirical research on the instances and nature of religious rights violations in Orthodox contexts, and analysis of the factors

<sup>5</sup> See M. Radu (1998), "The Burden of Eastern Orthodoxy", *Orbis*, Spring, p. 283-300, and A. Papanikolaou (2003), "Byzantium, Orthodoxy and Democracy", *Journal of the American Academy of Religion*, Vol. 71, No. 1, p. 75-98.

<sup>6</sup> E. Prodromou (2008), "International religious freedom and the challenge of proselytism", in eds. A. Papanikolaou and E. Prodromou, *Thinking Through Faith: New Perspectives from Orthodox Christian Scholars*, Crestwood, NY: St. Vladimir's Seminary Press; see also D. Martin (2006), "Integration and fragmentation: patterns of religion in Europe", in K. Michalski (ed.), *Religion in the New Europe*, Budapest: Central European University, pp. 64-84.

<sup>7</sup> See E. Prodromou, "International religious freedom and the challenge of proselytism".

<sup>8</sup> See E. Prodromou, "The Ambivalent Orthodox", in *Journal of Democracy*, Vol. 15, No. 2, p. 62-75, and "Orthodox Christianity and Pluralism: Moving beyond Ambivalence?" in ed. E. Classis, *The Orthodox Churches in a Pluralistic World: an Ecumenical Conversation*, Geneva: WCC Publications, p. 22-46.

and mechanisms influencing the latter. The previous chapter (3) serves as a helpful backdrop against which to consider the material presented here.

## **2. A Research Agenda – methods and definitions**

The country case study selection of Bulgaria, Greece, Romania and Russia 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. 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 research presented herein is qualitative in nature, aimed at understanding the attitudes and practices of the majority vis-a-vis religious minorities and the experiences of religious minority groups within this context – a research aim best served by qualitative research methods. The fieldwork referenced in the text consists of in-depth semi-structured interviews with representatives of religious minority groups; representatives of the Orthodox Church; representatives of state organs dealing with ‘religious affairs’; and representatives of NGOs dealing with religious freedom issues (often representing secular and secularist organisations) and lawyers handling religious freedom cases. Between 25-30 interviews were conducted in each country case, in November of 2010 in Romania, in December of 2010 in Bulgaria, in November of 2012 in Russia and in January-February 2013 in Greece.

Besides offering a vibrant picture of current grassroots developments in the domain of religious pluralism, in-depth interviews offered insight into the deeper mentalities, perceptions and perspectives of people in positions of power (in each of the four aforementioned categories), and to their broader objectives – what do they hope to achieve? These perspectives, mentalities etc. have value 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 of the above discussions required common definitions of such terms as 'pluralism' and 'religious freedom'. In the context of this research pluralism is distinct from plurality – which is a *descriptive* term, simply describing situation of diversity. Rather, pluralism is used herein as a *prescriptive* and a normative term – it entails an aim to promote and preserve religious plurality, an aim which is, or should be, enacted through relevant policies. Religious freedom is a far more tricky a notion, a point which is critical to arguments emanating from this paper: specifically, the research suggests a significant mismatch between legal studies literature, political philosophy texts, European and international treaties on human rights and religious freedoms, and sociological studies, on the one hand, and the realities we find on the ground, on the other. Namely, there is a conspicuous disconnect between definitions and practices which include an *equality* dimension to notions of religious freedom, and those that do not.

Most definition offered by interviews include the basic assertions of religious freedom pertaining to the Forum internum of a person's (and sometimes, group's) beliefs and Forum externum, of a person (or group's) manifestation of those beliefs. But definitions of religious freedom found often in legal studies literature and found almost always in treaties and conventions on religious freedom, also include reference to equality before the law of individuals (and, sometimes, of groups) of all religions.

These latter conceptions of religious freedom which give emphasis to the equality dimension are contradicted in very fundamental ways in *many* if not most liberal democratic states.

Thus, for the purposes of this research, the definition of religious freedom was kept open, to include the basic rights related to conscience and belief, practice and manifestation, and to engage in a critical way debates around the problem of equality in relation to religious identities.

### 3. Religion-State regimes in the four country contexts<sup>9</sup> Bulgaria

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 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>10</sup>. According to the Bulgarian Helsinki Committee (1993: 7), although this clause was initially meant to be nothing more than a mere declaration, ‘there have been repeated subsequent attempts to make this provision a ground for legislative privileges of the Orthodox Church’. 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<sup>11</sup>.

<sup>9</sup> 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 this chapter. This section of the chapter is reflected in Effie Fokas (2014), (2014), “Pluralism and religious freedom in majority Orthodox contexts”, *ELLAMEP* Working Paper No. 49, available at [http://www.eliamep.gr/wp-content/uploads/2014/06/49\\_2014\\_-WORKING-PAPER\\_-Effie-Fokasfinal.pdf](http://www.eliamep.gr/wp-content/uploads/2014/06/49_2014_-WORKING-PAPER_-Effie-Fokasfinal.pdf).

<sup>10</sup> As P. Petkoff (2010) notes, the earlier *Turnovo Constitution* of 1879 recognised Orthodoxy as the ‘prevailing religion’.

<sup>11</sup> See P. Petkoff (2010), “Religion and the Secular State in Bulgaria”, in *Religion and the Secular State: National Reports*, a compilation of reports prepared for and issued

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<sup>12</sup>. 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’<sup>13</sup>, as suggested in Para. 3 of the concluding chapters, which provides that persons who have split from a registered religious institution in violation 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 Art. (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 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.

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upon the occasion of The XVIII<sup>th</sup> International Congress of Comparative Law, 25-31 July 2010 in Washington, DC, p. 145-182. Available online at <http://www.iclrs.org/content/blurb/files/Bulgaria.pdf>.

<sup>12</sup> P. Petkoff, “Religion and the Secular State in Bulgaria”, p. 148.

<sup>13</sup> P. Petkoff, “Religion and the Secular State in Bulgaria”, p. 153.

## Romania<sup>14</sup>

The Romanian Constitution (1991, revised 2003) makes no mention of either the secular or religious nature of the state. Art. 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<sup>15</sup>.

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

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<sup>14</sup> Most of the information on the Romanian constitutional and legislative framework draws on R. Iordache (2008), “The 2006 R. Law on Religious Denominations and Religious Freedom: High Expectations, Sober Returns”, paper delivered to INFORM/CESNUR Conference at London School of Economics, 16-20 April, and (2013) “Registration of religious entities and religious autonomy in Romania – Old Limitations and New Challenges”, *Religion and Human Rights*, Vol. 8, p. 77-91.

<sup>15</sup> R. Iordache, “The 2006 Romanian Law on Religious Denominations and Religious Freedom”.

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<sup>16</sup>.

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 recognized entities – 'state recognized religious denominations' (*culte*, 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')<sup>17</sup>. The 18 religious denominations recognized 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 recognizing their statutes.

The Romanian Orthodox Church (ROC) has a special mention in the law, according to Art. 7(2): 'The Romanian State recognizes the important role of the Romanian Orthodox church and that of other churches and denominations as recognized 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 'recognized 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. If the already recognized religious denominations were put to the same membership threshold test, at least 3 would not pass and their membership levels are far lower.

Recognized religious denominations receive financial support from the state proportionately to their membership levels and based on 'the

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<sup>16</sup> R. Iordache, "Registration of religious entities and religious autonomy in Romania – Old Limitations and New Challenges", p. 78.

<sup>17</sup> R. Iordache, "Registration of religious", p. 80.

religion's actual needs', 'though in reality the majority of public funds both from central and local budgets go to the Romanian Orthodox Church'<sup>18</sup>. 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 Art. 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'. Art. 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>19</sup>. The law was a fairly liberal one, stating the following objectives in its preamble: to guarantee citizens' right to express their attitude towards

<sup>18</sup> R. Iordache, "Registration of religious entities", p. 81.

<sup>19</sup> Most information on the 1990 laws is taken from Z. Knox (2005), *Russian Society and the Orthodox Church. Religion in Russia after Communism*, Abingdon: Routledge, and G. Fagan (2012), *Believing in Russia – Religious Policy after Communism*, Abingdon: Routledge, p. 66-68.

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 emphasized 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)<sup>20</sup>.

These extensive freedoms were endorsed in the 1993 Russian Constitution, but calls for revision to the law soon materialized, 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<sup>21</sup>.

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

<sup>20</sup> Z. Knox, *Russian Society and the Orthodox Church*, p. 77.

<sup>21</sup> Z. Knox, *Russian Society and the Orthodox Church*, p. 78.

probationary period and 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'<sup>22</sup>. 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 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<sup>23</sup>.

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'<sup>24</sup>.

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'.

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<sup>22</sup> G. Fagan, *Believing in Russia*, p. 68.

<sup>23</sup> G. Fagan, *Believing in Russia*, p. 67.

<sup>24</sup> G. Fagan, *Believing in Russia*, p. 67.

## Greece<sup>25</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>26</sup>. Furthermore, with the new constitution the clause forbidding proselytism was moved from Art. 3 (where the subject of proselytism was treated as a matter of protecting solely the Orthodox Church) to Art. 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<sup>27</sup>. 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>28</sup>; and the third sets

<sup>25</sup> Most of the information of the Greek legal and constitutional framework on religion is drawn from E. Fokas (2004), “The role of religion in national-EU relations: the cases of Greece and Turkey”, Unpublished PhD thesis, London School of Economics. Available at <http://etheses.lse.ac.uk/904/>. Original sources are cited here also.

<sup>26</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 Art. 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 Art. 4 of the Greek Constitution)’.

<sup>27</sup> P. Dimitropoulos (2001), *State and Church: a Difficult Relationship*, Athens: Kritiki [in Greek], p. 133-135.

<sup>28</sup> Paragraphs 1 and 2, respectively, of Art. 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 C. Papastathis (1996), “State and

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 Art. 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)<sup>29</sup>. The former is the predominant view amongst constitutional specialists and within Greek courts<sup>30</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)<sup>31</sup>. Furthermore, until fairly recently metropolitan bishops were given a role in the issuance of licenses for the building of places of worship for minority faiths (their ‘opinion’ on the application request

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church in Greece”, in ed. G. Robbers, *State and Church in the European Union*, Baden-Baden: Nomos Verlagsgesellschaft, p. 75-92, at 84.

<sup>29</sup> N. Alivizatos, “A new role for the Greek Church?”, *Journal of Modern Greek Studies*, Vol. 17, No. 1, 1999, p. 23-40, at 25.

<sup>30</sup> According to specialist in Ecclesiastical Law, I. 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 I. Konidaris (2003), “The legal parameters of Church and State relations in Greece”, in eds. T. Couloumbis, T. Kariotis, and F. Bellou, *Greece in the Twentieth Century*, London: Frank Cass, p. 223-235, at 226.

<sup>31</sup> I. Konidaris, “The legal parameters of Church and State relations in Greece”, p. 227-228. 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.

was sought by the Ministry of Education and Religious Affairs). 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, 25th 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>32</sup>. Each of these facts, in varying degrees, entails an especially close relationship between church and state in Greece.

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<sup>32</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 N. Kokosalakis (1997), "Orthodoxy and social change in modern Greek society", in *Synaksi*, Issue 62, p. 101-108 [in Greek] (especially the sections on "The functions of religion in Greek society", and "Religion and recent socio-economic change", p. 257-265); (1996) "Orthodoxie grecque, modernité et politique", in eds. G. Davie and D. Hervieu-Léger, *Identités religieuses en Europe*, Paris: La Découverte, p. 131-151; and (1997) "Orthodoxy and social change in modern Greek society", in *Synaksi*, Issue 62, p. 101-108 [in Greek]. See also T. Stavrou (1995), "The Orthodox Church and political culture in Greece", in eds. D. Conostas and T. Stavrou, *Greece Prepares for the Twenty-first Century*, Washington, DC: Woodrow Wilson Center Press, p. 35-54; Nikos Demertzis (1996), "La place de la religion dans la culture politique grecque", in ed. S. Mappa, *Puissance et Impuissance de l'État: les Pouvoirs en Question en Nord et au Sud*, Paris: Karthala, p. 233-244; V. Georgiadou (1995), "Greek Orthodoxy and the politics of nationalism", *International Journal of Politics, Culture and Society*, Vol. 9, No. 2, p. 295-315; and A. Paparizos (1998), "Du caractère religieux de l'État grec moderne", *Ilu revista de ciencias de las religiones*, No. 3, p. 183-207.

#### 4. Religious freedom as experienced and described at the grassroots level

As suggested above, the perspectives, especially of religious minorities and religious majorities, form an important part of the narrative of pluralism and religious freedom in each case, quite apart from the hard-core realities on the ground. The following lists reflect mainly (but not exclusively) the voices of religious minority representatives consulted for this study. Specifically, the lists below reflect the assessments of my interlocutors regarding the main limitations they face to their religious freedoms. These lists are crude in that they can give no sense of the nuance behind each problem in each country. Also, lists in general can give a sense of hierarchy which does not apply here: not all groups experience all problems equally, and some of the most conspicuous religious freedoms limitations which influence large populations may be limited only to one or two religious groups. Thus, the following lists should not be read as a measure of the 'size' of particular problems related to religious freedom. Likewise of course, the number of limitations listed in each case says nothing of the weight of the given problems as experienced by one or more religious minority group, nor is it suggestive of a 'general degree' of limitation on religious freedoms.

### Bulgaria

*a. Legal framework on religion* (including preferential treatment for the Bulgarian Orthodox Church, maintained role for executive branch in this legal framework; and the requirement of a local level registration, because of the heightened problems experienced by religious minorities at the local level; see below).

Registration limitation formed the greatest challenge to religious freedom experienced by most groups, during communism of course but also until a new religion law was introduced, finally in 2002, to replace the repressive regulatory regime enacted by the communist party. 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. Still, religious minorities have qualms with the law. First, they find problematic the *preferential treatment* for the BOC (the

Orthodox faith is indicated as the traditional religion of the Republic of Bulgaria and the BOC is recognized *ex lege* and thus exempted from the registration process). Second, respondents complained of the *maintained role 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). The complaint is that this role allows for political interference in religious groups. And third, respondents find problematic that local branches of religious groups *must be registered 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.

*b. Government interference in internal affairs*

The main problems cited by respondents here are the schisms in the Bulgarian Orthodox Church and in the Muslim Community, caused in large measure by state actions. In a grossly oversimplified version of the account: in 1991, soon after the collapse of communism, and in a supposed process of democratization, a newly-elected democratic government removed from office the Patriarch of the BOC, and the Chief Mufti of the Muslim community, both of whom had collaborated extensively with the communist regime; the government declared their elections invalid and appointed new interim leaderships. In both cases subsequent governments reinstated the leaders who had been deposed, but by then the ‘new’ leaders had already gained followings. In both cases, major financial and estate claims have been fought out in legal battles that have reached the ECtHR. The account suggests that the hiring, firing and re-hiring of religious leaders by political leaders embedded these two groups into a mess from which they, as well as the successive governments, have found it extremely difficult to escape.

*c. Societal hostility*

In 1993, a mass media campaign was launched against minority religions and, specifically, against newer and smaller religious minority groups, the effects of which continue to be felt today.

*d. Local level limitations*

Societal (and Orthodox church) hostility is cited as a problem *especially* at the local level: for most minority religious groups, it is at

the local level in particular where they experience limitations to their freedoms of worship, assembly, and speech.

*e. Media hostility and limited to access to mass media*

According to some of my interviewees, religious minorities have limited rights to operate their own channels and stations of mass media. (This is a complaint echoed in all cases: somehow in practice, free radio frequencies, for example, seem never to become available for religious minority groups).

## **Romania**

*a. Legal framework on religion*

Several religious freedoms-related complaints of Romanian respondents are related to the 2006 law on religious denominations. A most prominent claimed problem relates to the *strict registration requirements* embedded in the law, including an extremely high membership threshold (0.1 per cent of the population, approx. 22,000 people – notably, versus *three* for a non-religious association); some recognised religions have far fewer members), and a long waiting period (12 years). There are only 18 recognised denominations; in the Romanian two-tiered recognition system, other religious groups are registered as religious associations. A second problem emphasised by interviewees is the *role of Secretariat of State for Religious Affairs* within this legal framework: the Secretariat issues an opinion on each registration application, as well as on withdrawal of recognition status. The State Secretary's role is cited as particularly problematic because, in practice, he (thus far always male) is (thus far always) an Orthodox theologian and, in the case of the Secretary in place at the time of the research, also an ordained Orthodox priest. In the opinion of one interviewee, 'you can't be a player and referee as well'.

*b. De jure and de facto Romanian Orthodox Church privileges*

The privileged status of the Orthodox Church, both *de jure* and *de facto*, stands apart as a major theme in religious minority complaints related to their rights and freedoms. One primary issue has to do with tremendous financial benefits enjoyed by the Romanian Orthodox Church. The 2006 law entails fairly extensive *financial support* to religious groups, on a proportional basis to their number of members (i.e., by default a huge percentage goes to the Orthodox church). But also, the Romanian

Orthodox Church receives many other one-off grants and awards from the state (this point is confirmed by all groups of interviewees). A second related complaint is the *privileged access to cemeteries*. In most towns, the cemeteries are dominated by the Orthodox Church; many were donated by the government to the Romanian Orthodox Church, and often there is only one cemetery per town. Religious minority groups are regularly denied the right to hold a ceremony in their own religious tradition within the cemetery. Third, respondents indicate that *media access* is heavily biased towards the Orthodox Church's favour and the Church may influence religious minority access.

*c. Romanian Orthodox Church actions and attitudes*

A third group of complaints is waged at the Orthodox Church itself, regarding influence that it exerts over politics; anti-ecumenicity in its approach; and expressions of hostility towards religious minorities.

*d. Land retribution to Greek Catholics*

Greek Catholics in particular but many respondents in general note the very limited land retribution to the Greek Catholic Church, linking the latter to the Orthodox Church's resistance. The struggle over these churches and other properties has degenerated in some cases into intense and sometimes violent conflict.

*e. Religious Education*

Fifth, there is a series of complaints related to religious education in the public school system, including about the content of the religious education course (Orthodox and catechetical in nature, and blatantly anti-minorities); the notion that the course is mandatory *by default* (one research showed the most parents were not aware the class is optional, meanwhile there is no alternative ethics class for children to choose and the course is usually slotted in the middle of the day so children cannot simply go home early or arrive late); and the fact that there is a 10-child threshold of students required for other-faith classes to be taught in the schools, and it is difficult to reach that number in small towns.

*f. Local level problems*

Finally and as a recurring theme in other cases also, special attention is given by respondents to problems faced by religious minorities specifically at the local level. As one interviewee puts it, 'the law does not provide protection against abuse from the local level'.

## Russia

### *a. Legal framework on religion*

More specifically, respondents in the Russian case tended to focus on the *arbitrariness* of the laws more than on the letter of the law. Notions such as implemented versus unwritten laws implemented were repeated during interviews: it is not the legislative framework itself which is perceived by many as a remnant of a communist mentality of control, but rather the practices which run in parallel with the law, rendering the latter arbitrary. As one interviewee expresses this notion: ‘the problem is not that the written laws are bad, but that they are not followed. Because there are un-written laws. And life in Russia is going according to those unwritten laws...when we see arrests of people, we understand that they have violated unwritten laws’. Related complaints are launched about the inequality in the preamble to the law on religion (i.e., the setting apart of the Russian Orthodox Church and other ‘traditional’ religions from other religious groupings) and the lawlessness specifically in the ‘periphery’ (what respondents in other contexts call ‘the local level’ but in the Russian context is described more as the periphery).

### *b. Law on extremism*

Much emphasis was given by respondents about the Federal Law on Combating Extremist Activity, adopted in 2002 and which provides specific guidelines for prosecution of non-governmental groups and organizations and media outlets found guilty of extremism. Specifically, the liberal use of the law against religious minority groups is criticized, as well as the vague conceptions of the term ‘extremism’ allowing for the latter.

### *c. Barriers to building places of worship*

Related to point 1 above, several minority religious groups complain about de facto limitations on their freedom to build places of worship in spite of the protection of this right in the Russian legislative framework.

### *d. Hostility of and limited access to mass media*

Finally, many respondents claim there is a perennial mass media misrepresentation of and attack against religious minority groups, coupled with barriers these groups face to express their own voices through mass media outlets.

## Greece

### *a. Legal framework on religion*

The legal framework about which religious minorities complain in the Greek case dates back to 1938, to laws introduced during the Metaxas dictatorship at that time and, specifically, two laws to do with proselytism (forbidden in the Constitution but defined, rather loosely, in the 1938 law), and the process for attaining permits for the building of places of worship (the attainment of which entails also formal government acknowledgement of the group as a 'known' religion). Both these laws have been rendered ineffective through a series of ECtHR and Greek Constitutional Court cases, but they have not been repealed or replaced with new legislation.

### *b. Unequal status of religious groups*

The privileging of the Greek Orthodox Church by the state over and in some ways against religious minority groups is a commonly cited complaint of religious minority representatives in the Greek context. This grievance encompasses a number of subthemes, such as financial privileges, which render 'competition in the religious market' of religious minority groups impossible; unequal access of religious minority individuals to cemeteries and of religious minority ministers to conduct funerals in the Orthodox chapels at those cemeteries; and unequal access to mass media outlets.

### *c. Religious education*

As in the Romanian case, the Orthodox catechetical content of the mandatory (de jure, in the Greek case) religious education course in public schools is a frequent complaint of religious minority groups in Greece. But what is considered far more problematic is the conceptions for exemption from the course (requiring a formal statement of the student's non-Orthodox religious affiliation, a statement which is then reflected on the student's 'leaving certificate'). The latter raises a related grievance about the public registration of private data.

### *d. Greek Orthodox Church influence on politicians*

In the Greek context, the status of (Greek Orthodox) church-state relations is raised as a problem specifically with reference to the capacity the church has to influence Greek politicians, and the susceptibility of the latter to this influence.

## 5. Preliminary assessments

If we consider the Bulgarian and Romanian lists comparatively, conspicuous is the absence of reference to the Bulgarian Orthodox Church. Here agency is an important factor (at that time the Bulgarian Orthodox Church was led by the very elderly, frail, and communist-regime appointed Patriarch Maxim; Maxim was notably inactive compared to the young and highly engaged Romanian Patriarch Daniel). A second and stronger factor, one could argue, is the relative secularity of Bulgaria as a society, as evinced, for example, in the fact that the Bulgarian Orthodox Church aim to introduce mandatory religious education in public schools struggled to achieve political support. The Romanian Orthodox Church has been much more effective pursuing its aims *vis-à-vis* the state, and thus religious minorities have more grievances specifically against it.

Also notable is the fact that in the three post-communist cases very obvious is what many interviewees call ‘remnants of a communist mentality’ of control. The legal frameworks on religion for both the Bulgarian and Romanian cases are interpreted mostly through this prism.

Certainly the schism within the Bulgarian Orthodox Church, as well as the division over the contested leadership of the Muslim population, have been long-drawn out problems which originated in government interference (the second point on the Bulgarian list) in internal affairs of religious groups during communist times, but problems which have continued into the near present because of political manipulation of these issues immediately after the end of communism and at various stages since then. As Cole Durham (a religious freedoms scholar), observes, it is difficult to overestimate the grave challenges to religious freedom entailed by 50 or 70 years of communism followed by bumpy transition periods. But this begs the question of why in the Greek case too, without the ‘excuse’ of a communist experience, the legislative framework on religion is also amongst the most cited religious freedoms complaints of religious minority groups.

As mentioned before, the 1938 Metaxas laws on religion are currently 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 sentences are almost never served (because, as

one interviewee put it, ‘the police have Kokkinakis in their drawer’<sup>33</sup>, but such cases are still obstructions to individual religious freedom.

In much social science literature, the centuries of Ottoman domination instead of the experiences of the Renaissance and Enlightenment 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 the research presented here 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 this particular research project one could 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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<sup>33</sup> ‘Kokkinakis’ here refers to *Kokkinakis v. Greece* (1993), the watershed case in the European Court of Human Rights’ case law on religion, as it was the first Art. 9 (religious freedom) conviction issued by the Court, after the Court’s first 34 years of operation. For more on the *Kokkinakis* case see Diamantopoulou, Chapter 3 in this volume.

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 European Court of Human Rights case of *Church of Bessarabia v. Moldova* (2001) is worth citing here in full because it echoes the above notion 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>34</sup>.

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<sup>34</sup> In the Russian case Dmitry Uzlaner (2013) speaks of 'securitization of religion' re use of public security concerns as a pretext to limit religious (and other) freedoms of 'dissident' groups.

There are of course several potential ways of analysing the similarities to be found in similarities in limitations to religious freedom across different majority Orthodox cases. One approach could focus on the legislative aspects in order to glean insights into the key turning points in the development of poor legislation and in the non-implementation of decent legislation. Further inquiry into the nature of unspoken and yet known norms, which exist in parallel to the unimplemented decent laws, would yield useful results in terms of a broader understanding of Christian Orthodoxy in relation to religious freedom.

One other possibility which arises somehow organically from the material entails placing it all within the context of historical and contemporary developments and debates on established religion and whether there is any room for it in liberal democracies in the present period, where religious plurality is a given in increasingly more country contexts. 'Organically' because in the definitions of religious freedom provided by the interviewees consulted through the present research, noteworthy was the large extent to which the notion entailed also *equality* amongst religious groups.

The voices of the interviewees consulted for this research can 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. More specifically, these voices offer nuanced perspectives on how many of the limitations faced by religious minority groups are linked to symbolic, in theory, but influential, in practice, 'special' relationships of majority Orthodox churches to states. All of the above relates directly to the question of the extent to which pluralism, in the normative sense of the term, requires even-handedness of the state towards all religious groups.

This large and unresolved question is central to truly radical discussions and developments in relation to the proper place of religion in the public space. One conspicuous example is the European Court of Human Rights' handling of the 2009 *Lautsi* case on the crucifix in Italian schools, wherein the Court's original judgement that the presence of the crucifix violates parents' freedom to raise their children in accordance with their own religious or philosophical beliefs, as well as violating the freedom of thought, conscience and beliefs, was radically reversed in the Grand Chamber judgement of 2011, following the intense outcry, and interventions in the case, of vested interests across Europe (including, notably, the interventions by the Greek and Russian governments).

This example, together with countless others showcasing European versus national level debates over religious freedoms issues, attests to the extent to which religious freedom is, at its core, intimately intertwined with national identity concerns. The ‘margin of appreciation’, which is now (through the adoption of Protocol 15) embedded in the European Convention on Human Rights specifically in order to allow states a margin – sometimes wide, sometimes narrow – for implementation of its statutes in accordance with their own national identity concerns, is very much at the heart of contemporary debates about *whether* and *where* there is a line to be drawn between religious freedoms guarantees and respect of individual national cultures and histories.

## **PART 3**

### **ORTHODOXY AND HUMAN RIGHTS WITHIN PRAGMATICAL ORTHODOX CONTEXTS**



# How Can One Both Apply Sharia Law in Greece and Deny Building a Mosque in Athens?<sup>1</sup>

Dimitris CHRISTOPOULOS

Why does building a mosque in Athens appear like a “mission impossible”? What makes the Greek State so rigid in this regard, whereas the former seems rather tolerant *vis-à-vis* the application of the Sharia by its Muslim-Turkish minority? Why is it that, in Greece’s Western Thrace, the region inhabited by this minority, ever since the former has been annexed to Greece, function approximately 300 mosques and mescits<sup>2</sup> for a number of one hundred thousand Greek citizens of Muslim faith, whereas there is no mosque functioning in any other part of the country? What might explain this *prima facie* paradoxical situation at the second decade of the 21<sup>th</sup> century? The present chapter attempts to bring an answer to all the above mentioned questions.

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<sup>1</sup> Since the first draft of this chapter, some important developments occurred in Greece regarding the issue of building a Mosque in the Greek capital. More specifically, the adoption of the Law 3512/2006 regarding the building of a Mosque in the area of Votanikos in Athens. According to the provisions of the law, the realization of this project would be subject exclusively to national funds, and the Mosque would be under the direct supervision of the Greek state (designation of Imam by the Greek state, the latter holding the majority at the Administrative Board of the Mosque). The adoption of a second law followed, dealing with the more technical aspects of this issue (law 4014/2011), and in 2013 the Mosque project was finally included in the national investments programme. However, there was no development since the adoption of these laws, mainly due to the vivid reactions of the Greek Orthodox Church, as well as of some far-right political elements, which, as a result, dissuaded companies from investing and moving forward with this building project. Following the adoption of two additional laws (Law 4327/2015 and 4414/2016), finally the way was paved for the signature of the contract between the Greek state and four private companies for the building of the Mosque in Athens.

<sup>2</sup> Mescit is the muslim prayer house.

## 1. Introduction: Islam as a local alien

Despite essentialist judgments and easy stereotyping, Islam is not alien to Greece, or, at least, it should not be regarded as such. Islam and Orthodoxy share centuries of cohabitation on Greek soil, either in terms of peaceful coexistence, or in terms of revival and violent antagonism. Still, it is only over the last years that the Greek legal Academia has delivered significant work on the position of Islam into the Greek legal order. Of paramount importance in this production comes the work of K. Tsitselikis<sup>3</sup>, which traces the origins and trajectory of historical Islam in Greece, articulating it with the current migration flows from Muslim countries, which have resulted in the creation of a new Islamic community.

If one wants to explore the weight of history on shaping and understanding legal regulations regarding the position of Islam in the Greek public order, the narration would obviously start with the so-called “Revolutionary Constitutions” of 1822/23/27, awarding Greek nationality on the basis of Christian religious affiliation and residence. Then, came the international conventions following the territorial expansion of the Greek State, at the expense of the Ottoman Empire, the short lasting experience of the Autonomous Cretan State and, *last but not least*, the populations’ exchange of 1923. During that period, history witnesses the transformation of a Muslim religious affiliation to national identity:

the shift from *millet* to nation. Special attention here should be devoted to the Treaty of Lausanne, the cornerstone of minority protection in Greece and to the structure of Muslim minorities as legal entities ever since. This Treaty shapes the historical legacy of the millet as an ethnic engineering originating both from Greece and the minority’s kin state, Turkey, and forms a complex political and legal reality, a *sui generis Greek Muslim citizenship* based on ethnic denial, religious freedom on the basis of reciprocity, legal discrimination and socio-political isolation.

From this historical trajectory, it derives that the normative framework of this *sui generis* “Greek-Muslim citizenship”, is based on a combination of pre-modern communitarianism and imperfect liberal normative assumptions, unmasking a parallel legal system within the

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<sup>3</sup> K. Tsitselikis (2012), *Old and New Islam in Greece – From Historical Minorities to Immigrant Newcomers*, Studies in International Minority and Group Rights, Leiden/Boston: Martinus Nijhoff Pub.

Greek legal order; a particular legal pluralism, as inertia *vis-à-vis* national Greek modernity: a particular legal status of Islam in Greece, which can be summarized in what Tsitselikis qualifies as “local but stranger”. The exercise of traditional individual rights, such as freedom of expression, information and property rights, the right of association, etc., by individuals who belong to the Muslim community, pass through this particular religious belonging. With this framework as a legacy, Muslim migrants, newcomers of the 21<sup>st</sup> century, could then be regarded as “aliens but – after all – locals”.

Islam is an integral part of the Greek cultural heritage and, obviously, a part of Greece’s current point in time and future, due to the Muslim migrants arriving after the 1980s. This chapter proposes a reflection on the particular and self-contradicting normative strategies of the Greek State *vis-à-vis* the traditional and migrant Islamic presence in the country, illustrating the discomfort of the liberal legislator and justice when compelled to deal with the – perceived as alien – Islam.

Our expectation is that this reflection will not only inform us about Islam in Greece, but will bring us closer to the fundamental interrogations, underlying assumptions of Greekness and Orthodoxy, of nationhood and religious affiliation within the modern Greek society. The main question raised here, is what lies behind the incredible *prima facie* paradox of a country that accepts the application of the Sharia Law to its historical Muslim minority, while, at the same time, denies obstinately building a mosque for a much bigger number of Muslim newcomers in its capital. A possible explanation of this persisting paradoxical situation, could help us understand why a “suffering” (more than ever today) state budget has been funding the operation of a considerable number of mosques in Western Thrace for less than a hundred thousand Greeks, whereas, until recently, the Greek state has been negotiating with Saudi Arabia to finance a place of Muslim worship in Athens.

## 2. From codifying the Sharia law...

It is only recently that the application of the Holy Islamic Law started to become of interest to Greek jurists through a critical narrative<sup>4</sup>. Traditionally, the application of the Sharia law has been regarded in a

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<sup>4</sup> Y. Ktistakis (2006), *The Holy Law and the Muslim Greek Citizens: Between Communitarianism and Liberalism* (Ιερός νόμος του Ισλαμ και Μουσουλμάνοι

rather neutral way, considered as the only law that could actually be applied to Greek Muslims because of their religion. Very few Greeks actually know that the Holy Islamic Law is even applied in Greece and ever fewer would care about it.

The most important role of the Muslim's minority religious leader, the Mufti, consists in safeguarding the legality of marriage and the main issues of divergence between the Greek law and the Moufti rules on marriage concern the age of spouses, marriage through authorization and bigamy<sup>5</sup>.

Until today, Islamic law is not standardized. The Mufti, himself, has a great margin of appreciation, a broad interpretation as to the applicable norms, to adjudicate family law, pensions, divorce and children's custody. On December 11, 2013, the Mufti of Komotini addressed the following letter to the Secretary General of the Ministry of National Education and Religious Cults:

“We consider of imperative importance for the Ministry, and particularly Your Secretariat, to advance the drafting, the publication and free disposal of a book on Sharia. (...) This book must be as short and comprehensive so that it could help the Greek citizens of all cults to understand that the assignment of this privilege from the Greek State for the recognition of Sharia as law applicable for civil issues for the Greek citizens, members of the Muslim minority in Thrace, is linked to their religious identity, tradition and culture, without being a threat to human rights and the Greek legal order, in general.”

On February 10, 2014, the Minister issued a decision in virtue of which he established a *Special Commission for drafting the codification of the Holy Islamic Law*. In the first place, according to the Decision, the codification will concern exclusively the Muslim minority of Western Thrace. It will be drafted both in Greek and the “language of Koran”. It will regulate every aspect of inter-individual relations of persons belonging to the Muslim minority. In a few words, the Muftis of Western Thrace, will have, for the first time in the history of the Modern Greek State, a codification to work upon, instead of improvising and applying Sharia on their own will. It is though problematic that the languages chosen for

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Ἑλληνες πολίτες: μεταξύ κοινοτισμού και φιλελευθερισμού) Athens/Salonika: Sakoulas Pub.

<sup>5</sup> L. Papadopoulou (2010), “Trapped in History: Greek Muslim Women under the Sacred Islamic Law”, *Annuaire International des Droits de l'Homme*, Vol. V, Athens: Sakkoulas/Bruylant, p. 397-418.

the codification are Greek and Arabic, the Turkish being excluded, even though it is, the main language of the religious group.

The Ministerial Decision reads as following:

“We create a pro bono commission with the exclusive task to draft a guide entitled “Manual of Interpersonal Relations according to the Holy-legal System Hanafi”. According to the common proposal of the savant Muftis, this manual will be based upon the authentic sources of Hanafi School for family and patrimonial law. (...) The Commission for drafting the manual will be composed by the three Muftis, and the copyright of the manual will exclusively belong to the Ministry.”

The codification of the Islamic law by the Greek State in the two languages, Greek and Arabic, is a development that seems more advanced, compared to what the Archbishop of Canterbury stated, back in February 2008, regarding the application of Sharia in the UK. Let us remember the words that provoked rather strong reactions, not only within the country, but also in the rest of Europe. Dr Rowan Williams said:

“It seems unavoidable and indeed, as a matter of fact, certain provisions of Sharia are already recognized in our society and under our law. So it’s not as if we’re bringing in an alien and rival system. We already have in this country a number of situations in which the law – the internal law of religious communities – is recognised by the law of the land as justifying conscientious objections in certain circumstances.”

It appears here, that the Greek Minister went further than the Canterbury Archbishop...<sup>6</sup>

Not only the Greek authorities accept that Islamic law is officially recognized as the applicable law in family law issues, as Greek legislation envisages an Islamic personal law system to be applied to a specific category of Greek citizens, but they equally assume the task of its codification. Still, unlike the vivid reactions caused by the Archbishop statements in the UK a few years ago, in Greece no remarkable reaction was caused by the state undertaking the codification of Islamic law, either from the legal world, the minority itself, or the Greek public opinion. Very few Greeks seem to know about the Sharia’s application in Greece, even fewer seem to care about it, be it positively or negatively.

<sup>6</sup> E. Velivasaki (2013), *Operating Religious Minority Legal Orders in Greece in the UK: A comparison of the Mufti, Office in Komotini and the Islamic Shari’a Council in London*, UNILU Center for Comparative Constitutional Law and Religion Working Paper Series.

### ... to applying it

Meanwhile, during the same period, a decision of the Supreme Court<sup>7</sup> (Areios Pagos) brought up again the thorny issue of the application of Islamic Sharia. The members of the minority of Thrace are exempted – should it be on an optional or compulsory basis (positions vary in Greek legal theory and jurisprudence) – from the jurisdiction of Greek courts with regard to their inheritance and family law matters, and instead, they are subjected to the jurisdiction of the Mufti. The Mufti's initial role as divine interpreter of Islamic law, a Greek state's legacy from the Ottoman Empire, has been fused with the function of the ottoman *kadi* that is that of a judge. The Mufti, along with his religious and social tasks, has judicial competence to adjudicate in private disputes of inheritance and family matters that is: marriages, divorces, personal relations of the spouses, family ties of Muslim citizens, mainly the Muslims belonging to the minority of Western Thrace, applying Islamic law. This creates a sui generis judicial system stemming mainly from the minority protection status of a particular religious community dating back to the establishment of the Greek state. Islamic law is thus officially accommodated as a separate normative order.

A Greek citizen, member of the Muslim minority of Thrace, married with a Muslim woman, died. The man, before demise, drafted his public will within which he determined that the whole of his immobile property would be inherited by his spouse. His sister, though, took legal action before the first Instance Court of Rhodope requiring the nullification of the will. The reasoning had been that the deceased had no legal ground of drafting a will, since this practice is unknown to Sharia law. His sister claimed a part of his immobile property, according to the Islamic inheritance law, as if her late husband had not drafter the will. The First Instant Court ruling rejected the spouse's claim on the grounds that

“the judicial competences of the Mufti (...) would never be applicable in a detrimental way for the free exercise of human rights and freedoms of the Muslims, explicitly protected both by the Greek Constitution, as well as the European Convention for Human Rights”<sup>8</sup>.

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<sup>7</sup> 1862/2013.

<sup>8</sup> [http://www.areiospagos.gr/nomologia/apofaseis\\_DISPLAY.asp?cd=N175H12AC1HW9AVJ5GBRXZFM1UDD6D&apof=1862\\_2013](http://www.areiospagos.gr/nomologia/apofaseis_DISPLAY.asp?cd=N175H12AC1HW9AVJ5GBRXZFM1UDD6D&apof=1862_2013).

The reasoning and the ruling of the Appeal Court had been identical. Nevertheless, the Supreme Court had a different view and referred back the case to the first Appeal Court. For the Cassation Court, the Appeal Court's ruling violated the Greek Law, "since the applicable law for the regulation of inheritance (...) are the provisions of the Holy Muslim law which constitutes internal law and applies specifically to Greek citizens, of Muslim faith" (*ibid.*).

In practice, the Supreme Court ruled that the Islamic legal system, while functioning in parallel to the Greek Civil Court, is compulsory rather than voluntary for Greek Muslims. As a consequence, on the grounds of this disputable decision creating a strong legal precedent, Greek Muslims do not even possess the right to select which provisions they would prefer to apply. As expected, the case is brought before the European Court for Human Rights and we are waiting for the Court's ruling, assuming that it is very improbable to tolerate the Greek Supreme Court's inclination to a rather segregationist perception of legal pluralism.

The Greek legal order follows par excellence the main patterns of legal modernity in Europe. This means that it reflects an internally coherent system, in terms of values and provisions, according to the prescriptions of legal monism. Hence, although, in general, the Greek state law claims universal application over individuals under its jurisdiction there is an exception of introducing a phenomenon of legal pluralism on the basis of religious belonging. This legal pluralism goes even further as it implies a certain level of segregation based on the assumed normative expectations of the Muslim Greeks. They, on the grounds of their religion, cannot even see themselves under the jurisdiction of a color-blind authority even if they require so. As we've seen until today, most of the Greek Courts have been denying the rights of Muslims to bring their cases before the civil courts as they did not want to be regarded as infringing on the minority's rights and autonomy...

### **3. The Mosque's construction: A Sisyphean task for Athens**

The other side of this segregationist perception of normative essentialism is pure unbending legal uniformity, as evidenced by the ongoing discussions on the construction of a Mosque in Athens.

Right after the Lausanne Treaty, in 1929 already, some 300 mosques (including the mescits) were operating in Western Thrace. The number remains the same today (including the two islands of the Dodecanese, Kos and Rodos habituated also by Muslims and annexed to Greece in 1947) and next to it, we should add approximately the same number of Muslim cemeteries. Muslims outside the traditional settlements of the minority have no opportunities to comply properly with their worship requirements. This deficit affects particularly the Muslim population of Athens, i.e. around 200,000, approximately 10% of which are Greek citizens, internal migrants from Thrace. Today in Greece we encounter the following paradox: 300 mosques and mescits for 100,000 Muslims in Western Thrace, no mosque for 200,000 Muslims in Athens. It is the very nature of the segregationist “paradox” we’ve faced before with the codification and compulsory application of the Islamic Holy Law by the Greek judicial authorities.

This is exactly what is proven by the case of the Mosque. In our days, many would go as far as blaming the rise of the far right in Greece for the inertia and extreme delays regarding the Mosque’s construction in Athens. It is true that supporters and members of the Greek Neo-Nazi party, Golden Dawn, organize quite regularly marching protests against the construction of a Mosque in central Athens<sup>9</sup>. Still, this should not be regarded as the reason of this animosity regarding the construction of the Mosque. The Odyssey of the Athenian mosque has started long before.

The story goes back to the end of 19<sup>th</sup> century, when, with the law 1851/1890, the Greek State offered a piece of land in Piraeus to the Ottoman Government for the construction of a “Turkish place of warship”. Then, quite a few years after, in 1934, another piece of land was assigned to the Egyptian Government for the same purpose. To no avail. The discussion was warmed up again in the early 1970s when the first Muslim migrants – mainly Arabs according to bilateral treaties of Greece with Egypt and Lebanon – arrived to Athens and tourism started to develop within the years of the Greek junta. After the change-over to democracy, the King of Saudi Arabia proposed to finance the construction of the Mosque. That was not any more in the city center. The discussion went on. Nobody denied the need of the mosque, but nobody really wanted it. As elsewhere in Europe, a particular “Not in my

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<sup>9</sup> See more at: <http://greece.greekreporter.com/2013/12/14/golden-dawn-protests-against-mosque-in-athens->

Back Yard symptom” has been developed with the Mosque in Athens. At the beginning, the Mosque should not be located down town because it would be very close to places of touristic importance or symbols of the city...

Then came the organization of the Olympics Games. This time, it well appeared that the Muslims who would visit Athens for the Games needed a place of worship. A law passed in 2000 (L.2833) for its construction along with an Islamic Cultural Centre financed by Saudi Arabia again. Hence, this time the mosque with its minaret, would be too close to the Athens airport and would raise “false impressions” about the country’s identity to the visitors, as the Archbishop of Mesogeia said, back then. The same Archibichop ten years after welcomed the new pupils at the primary and secondary schools of his area saying that “it is not civilization to have a mosque in the center of Greece” (<http://aktines.blogspot.gr/2016/09/2016-2017.html>).

The discussion went further on, attracting great interest from the Greek media. In 2006, an “administrative committee for an Islamic temple of Athens” (3512/2006) was established after vivid discussions within the Parliament. This resulted to a new legislative Act in 2011 (4014). According to the law of 2006, the Mosque would be constructed at the expenses of the Greek State and not after donation of any foreign government. This decision echoed the reactions against the financing of the Mosque by the Saudi Arabian regime.

But now, critics of the mosque had a target different from the dangerous Salafit intervention of the Saudi Arabians in Greek politics... They claimed that no Greektaxpayer should have to pay for a mosque when Greece is bearing a huge foreign debt, is relying on foreign aid to stay afloat and the country is sinking in the vicious circle of austerity and recession... This time, it has been the financial crisis that would prevent the construction of the Mosque.

Still, a new area, in Votanikos, a downgraded part of Athens Municipality had been selected for its construction. Due to budgetary restraints, the Mosque would be much smaller and without minarets. The work was put up to auction in the summer of 2013. During the electoral campaign for the recent municipal elections in Athens (May 2014), the conservative candidate for the municipality of Athens Aris Spiliotopoulos repeated his objection to the construction of a mosque in Athens. He claimed that the mosque would attract illegal immigration

and argued that it would result in “third world tents popping up beneath the holy rock of the Acropolis”. The candidate claimed that his objection has nothing to do with religious rights, but the urban and spatial planning of the building itself. He stated that he would be in favor of letting the people of Athens decide via a referendum.

Spiliotopoulos then came up with an idea of a referendum... The organization of a referendum where the Greek citizens – or should it be the Athenians? – would democratically decide whether the Muslims in Athens deserve a dissent place<sup>10</sup> for their worship is the last snapshot of the Sisyphean task of construction a mosque in the capital of Greece. The candidate in question has not been elected. It remains to be seen though, when or whether the Mosque will after all be constructed after 134 years of “efforts”.

#### **4. Between uniformity and segregation: “Greek and Muslim” versus “Greek or Muslim”?**

For reasons related to the position of Greece as the first Post-Ottoman country which joined the “West” – with all possible connotations this “West” might carry – traditional Greek perception of the Turk as the par excellence *other*, in the Schmittian terms of the enemy, *meets* the widespread European Islamophobia due to migration from countries where Islam is the dominant religion. Present-day representations of Islam and Turkey thus carry with them in Greece, more than any other European country, the memory of earlier representations. Such memories are among the operative factors in today’s Turkish-European discourse,

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<sup>10</sup> During the long years of state’s absence, the Muslim communities in Athens organized themselves and established temporary informal places of worship. Today, more than 70 informal mosques and mescits function in Athens, situated in the premises of houses and private shops. Last but not least in this Odyssey, comes the luck of cemetery for the Muslims in Athens. The only Muslim cemetery in Greece is situated in Western Thrace for the local minority. It has been only under strong political pressure and demands emanating not only from Muslim associations but by international authorities, such as the Commissioner for Human Rights of the Council of Europe, that the Orthodox Church announced the decision to provide the use of a piece of land next to the port of Piraeus for the establishment of a Muslim cemetery. Given the circumstances, this should be regarded as progress. As it has been noted, for four years alone, (from 1997 to 2001) 30 Muslim migrants were interred in Komotini of Western Thrace, some 800 km north-east of Athens.

and this discourse remains part of the discourse on Greek identity, as on European identities as well<sup>11</sup>.

For most Greeks, and for sure, for what is regarded as a mainstream perception of nationhood in the country, Orthodoxy forged a direct link to belonging to the political community. The result is univocal: this perception of nationhood in practice renders difficult the possibility to be a Greek and not a Christian. Particularly more difficult – somewhat perplex – to be a Greek and Muslim together. This “packet” is historically quasi-unthinkable. As it has been already pointed out, “[d]uring the War of Independence itself, religion was the only fixed line of demarcation between the warring sides, in full conformity with the pre-existing Ottoman system of religiously defined millets”<sup>12</sup>.

Islam, therefore, should be historically regarded as the *par excellence* pillar of hetero-determination for Greekness. When the first Greek revolutionaries were solemnly declaring at the beginning of the so-called Revolutionary Constitutions of the second decade of the 19<sup>th</sup> century that “Greeks are the Christian habitants” of the new-born State, they were actually claiming to every direction “we are not Muslims, *that is that why we are Greeks*”. Not being a Muslim has been the *a priori* necessary condition – not sufficient per se though – to obtain the Greek citizenship<sup>13</sup>.

Still, history did not favor this holistic and unconditional submission of religion to citizenry. History knows of “accidents”. One such “accident” had been the exception from the compulsory Population Exchange between Greece and Turkey. The term “accident” is used for the exception from the exchange and not that much for the exchange itself. As Schmitt

<sup>11</sup> I. B. Neumann (1999), *Uses of the Other: The East in European Identity Formation*, Minneapolis: University of Minnesota Press, particularly p. 39-64.

<sup>12</sup> Mavrogordatos, G. (2003), “Orthodoxy and nationalism in the Greek Case”, *26/1 West European Politics*, p. 117-136.

<sup>13</sup> Despite a commonly asserted view by the Greek public opinion, Rigas Feraios, founder of the Greek Enlightenment, did not make it: he remained rather isolated claiming in his draft Constitution of 1787 the absolute equality of “Christians and Turks” under a common all Greek citizenship: “Sovereign people are all the inhabitants of the kingdom with no exception: Greeks, Albanians, Vlachs, Armenians, Turks and any other race”. Still, only the fact the even Rigas distinguishes between “Christians” and “Turks” shows the innate contradiction between being “Greek” and “Muslim”. Ρίγας Βελεστινλής. Ο οραματιστής της “Ελληνικής Δημοκρατίας” [Rigas Velestinlis. The visionary of the “Hellenic Republic”], Historical Library: The Founders of Modern Greece, No. 1, Athens: *TA NEA*, 2009.

put it back then in his 1923 work, the population exchange had been the most illustrative example of the authentic intention of the lawmaker back then:

“Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally. Democracy requires, therefore, first homogeneity and second – if the need arises elimination or eradication of heterogeneity. (...) Equality is only interesting and valuable politically so long as it has substance and for that reason the possibility and the risk of inequality.”<sup>14</sup>

Since the establishment of the Greek State, an entirely assimilationist model has been applied to minorities. According to this prevailing perception, the state cannot be stable and consistent unless all its members share a common culture and national consciousness, shared values and ideals, morals, social and cultural practices. By sharing common references, members of society develop bonds of solidarity and a shared sense of belonging. In this sense, the choice for minorities is simple. If assimilated, then the State is welcoming and treating them like all other citizens without discrimination against them. If minorities choose another path, that of maintaining their diverse identity, then the state will discriminate since the preservation of minority identity is considered as jeopardizing the unity of the political community.

The assimilationist model has been employed in Greece against all minorities and especially against the Slav Macedonians. An exception was made for the Muslims of Thrace and Jews. And this is exactly because the Thrace Muslim minority was not considered to be able to meet the fundamental requirement for the application of the assimilationist model: they were not considered as being able to be assimilated due to their religion. Efforts of “deturkisation” (apotourkopiisis) of the minority through education since the early 1960s seemed more like a nasty political farce inspired by the Greek nationalist grotesque visions rather than as a serious strategic orientation. Essentially, these efforts have been the springboard for the final attachment of the minority of Western Thrace to Turkish nationalism<sup>15</sup>.

<sup>14</sup> *The Crisis of Parliamentary Democracy [1923]*, The MIT Press, 1988, p. 9-10.

<sup>15</sup> On that matter the revealing paper of Iliadis C. (2013), “The Emergence of Administrative Harrassment Regarding Greece’s Muslim Minority in a New Light: Confidential Discourses and Politics of Inclusion and Exclusion”, *Nationalism and Ethnic Politics*, 19, p. 403-423.

In the troubled years to come for the Greek-Turkish relations, the minority of Thrace suffered heavy discrimination although not forced to assimilate. The group was never officially conceived to be acculturated to Greek nationhood. It had been always regarded as essentially alien. While all minority languages in Greece were under persecution or under censorship, the use of Turkish language or the worship of Islam had never been targeted. It has been regarded as “normal” in the Thracian folklore. The legal system of minority protection of the Treaty of Lausanne had been used in order to achieve the target of sealing and isolating of the group. Thus, while assimilation applied against all other minorities, the protection of minority in Thrace since 1923 has been inspired primarily by the tradition of self-governing religious community of the Ottoman Empire, the millet.

According to this communitarianist view, people are, above all, cultural entities by definition embedded in specific communities. Only belonging to this collectivity gives any meaning in their lives and content to their well-being. The state was not only asked to refrain from interfering in the internal minority affairs, but additionally had to institutionalize this autonomy: not in the name of equality and communication but in the name of segregation, as seen above.

The example of Millet strongly resists time: neither the minority nor the Greek government or the Turkish foreign policy operate effectively even in the early 21<sup>st</sup> century to modernize the structures and institutions dating from 1881, in a memorable among their ideological engagement. Even today, the parties are hostages of the impasse, anachronistic and inappropriate rhetoric of reciprocity<sup>16</sup>.

Throughout its history, the easiest and fastest way for the integration of any minority within the Greek political community has been cultural assimilation. That was the path for the virtue of a good citizen. Putting aside values and references that are considered as a challenge or even threat for the cultural unity within the Greek polity is by far the safest way that any migrant/minority community disposes in order to become an integral part of the Greek political community. If the classic French heritage of this ideology wants the nation to form the exclusive mediatory body between state and individual, its Greek version introduces an additional

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<sup>16</sup> K. Tsitselikis (2007), “Reciprocity as a regulatory pattern for the treatment of the Turkish/Muslim minority of Greece”, S. Akgönül (ed.), *Reciprocity. Greek and Turkish Minorities: Law, Religion and Politics*, Istanbul: Bilgi University Press, p. 163-189.

demand: the mediation of the *orthodox genos*. According to this scheme, the Greek political community appeals to assimilation strategies, because it cannot even conceive non-assimilated citizens. But, on the other hand, it cannot equally conceive that some citizens can be assimilated.

This is *par excellence* the very nature of the paradox of a country which seems at ease with the normative perspective of compulsory application of Sharia law to its native Muslims, whereas can hardly live with the fears and insecurities that the possibility of building a single mosque for a bigger number of Muslim newcomers in its capital.

## 5. From essentialist perceptions of belonging to transnational considerations of citizenship

Given the aforementioned, in Greece, should the relation between minorities and majorities, be immigrants and natives or historical minorities *vis-à-vis* the dominant nation, has been traditionally conceptualized as mainly a matter of cultural assimilation or adaptation. For reasons that we have attempted to explain, a particular model of selective or imperfect acculturation has traditionally been put in force towards minorities. This conceptualization has been commonly formed by normative ideas about whether traditional or new minorities, described as conglomerates of ethnic groups, should retain or give up their supposed cultural distinctiveness. Therefore, the prevailing assimilation practice and theory has been favoring and predicting the ceasing of 'difference'.

'Difference' here, is mainly perceived as an attribute rather than a relational phenomenon.

In literature though, cultural pluralism assumptions have seriously challenged assimilationist expectations for the dissolution of 'difference', be it perceived in terms of ethnicity, or culture. Pluralist narratives on integration became even a mainstream in Greek literature, but still marginal in state policies. Both assimilation and recognition practices, perceived as such, have been rightfully criticized for essentializing culture as an immobile property of groups<sup>17</sup>. Here comes the paradigm of transnationalism, as the agenda grown out of the heightened interconnectivity between people and the receding economic and social

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<sup>17</sup> Among others: T. Faist (2000), *The volume and dynamics of international migration and transnational social spaces*, Oxford: Clarendon Press.

significance of boundaries among nation states. Scholars working on this issue, have partially succeeded in transcending the problem by emphasizing the hybridist character of minority cultures, the durable ties of migrants across countries, and have particularly highlighted the fact that minorities mostly develop their sense of identity and community through a syncretism of cultural premises of both the receiving nation and the home land or kin state. In doing so, these analyses have argued for the need to go beyond nation-state as a the exclusive unit of understanding complex social relations, and have shifted attention away from the sharp dilemma that we have witnessed in the Greek case, between assimilation and recognition of sharply differentiated ethnic groups in the national mainstream. Transnationalism, therefore, goes in hand with constructionism, in the sense that it highlights the individual choice (of being or not being) with the group<sup>18</sup>.

Nonetheless, the transnational perspective, in its attempt to go beyond nation-centered thinking, forgets the heavy impact of ideology. It downgrades the impact of nationalism in the construction of citizenry identities and perceptions of belonging<sup>19</sup>. Overcoming the “fallacy of groupism”<sup>20</sup>, and conceiving culture in relational and processual terms, becomes then necessary, though not sufficient, in order to fully conceptualize and grasp the strong dynamics characterizing minority-majority relations. And that is simply because these relations are not only or mainly cultural relations, but, to a large extent, power and class configurations.

While the importance of ideologies of national belonging in structuring minority-majority relations is generally acknowledged, still, limited research has been conducted in Greece on how these perceptions of belonging are practically experienced and negotiated in daily life. Given the above, in Greece, we tend to forget that “minority-majority” relations are not only, or even mainly, mediated by ethnicity, religion or culture, but by class as well. And this perspective should always be taken into account when analyzing such complex situations of co-existence

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<sup>18</sup> This is the case with our previous work (2000), *Droit, Europe et minorités – Critique de la connaissance juridique*, Ed. Sakkoulas, Athens from a constructionist perspective.

<sup>19</sup> A. Wimmer, N. Glick Schiller, (2002), “Methodological nationalism and beyond: nation-state building, migration and the social science”, *Global Networks*, 2 (4), p. 301-334.

<sup>20</sup> R. Brubaker (2002), “Ethnicity without groups”, *European Journal of Sociology*, 43 (2), p. 163-189.

with an “unbearable” historical legacy to compete and to live with, such as the one described in the chapter about the Greek case.

The structural contradiction of the Greek model towards its minorities (new or historical ones) is that, on the one hand, assimilation is regarded as a one-way path for integration and, on the other hand, assimilation and integration are denied to individuals in the name of religion. The deadlock has been fatal; neither can they remain strangers – by preserving what differentiates them from Greeks –, nor can they become Greeks, or be regarded as equal citizens, as it is the case with the Muslims in Thrace. Rather than assuming the dominant standpoint of essentializing difference in the perspective of erasing it or stigmatizing it, we should be called upon to reflect on its hegemonic power in our national narratives and analyses; not undermining nationalism and history but, equally, not letting the future be univocally guided by historical legacies. In this way, we might be able to understand what makes it possible for a country (not only to tolerate but in practice) to promote Sharia for its native Muslims, while denying constructing a mosque in its capital city for both its native and migrant Muslims. This is the only way actually that might allow us to politically transcend this wired dichotomy in the power dynamics that are structured along citizenship and religious freedom in contemporary Greece. Resolving this contradiction, is the major challenge for the Greek state at the second half of the 21<sup>st</sup> century.

# The Pussy Riot Case and the Peculiarities of Russian Post-Secularism<sup>1</sup>

Dmitry UZLANER

*Translation from Russian by April French*

Many authors, including several from Russia, have studied the problem of post-secularism sufficiently well from a theoretical standpoint<sup>2</sup>. There is, however, a clear lack of empirical research that could operationalize the current theory as it applies to Russian realities. In this article, based on material surrounding the Pussy Riot case, I intend at least partially to fill this lacuna.

Judging from its resonance in the mass media, the Pussy Riot case became the main event of 2012, if not in the social and political spheres, then at least in the area of religion. The essence of the case and the sequence of events can be briefly summarized as follows: on February 21, 2012, at the very height of the presidential election campaign, the musical group Pussy Riot, already well-known for its scandalous artistic-political protests, organized a performance in Moscow's Cathedral of Christ the Savior. The group entered the church in the guise of regular visitors;

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<sup>2</sup> Among Russian publications see A. Kyrlezhev, "Postsekuliarnaia epokha" [The Post-Secular Era], *Kontinent* 120 (2004): p. 252-264; A. Morozov, "Nastupila li postsekuliarnaia epokha?" [Has the Post-Secular Era Arrived?], *Kontinent*, 131 (2007): p. 314-320; D. Uzlaner, "V kakom smysle sovremennyi mir mozhet byt' nazvan postsekuliarnym" [In What Sense Can the Modern World be Called Post-Secular?], *Kontinent*, 136 (2008): p. 339-355; "Postsekuliarnaia filosofii" [Post-Secular Philosophy], Special edition of *Logos*, 3 (2011): p. 1-275; "Religiia v postsekuliarnom kontekste" [Religion in the Post-secular Context], Special edition of *Gosudarstvo, religiia, tserkov' v Rossii i za rubezhom*, 2 (2012): 1-344 [<http://religion.rane.ru/?q=en/node/138>, accessed March 22, 2014].

then the participants removed their outer clothing (under which multi-colored dresses were hidden), put on balaclavas, and began to perform a so-called “Punk Prayer”<sup>3</sup> called “Mother of God, Banish Putin!” on the soleas<sup>4</sup> of the church, directly in front of the Royal Doors of the iconostasis. Security guards and chance witnesses escorted the women out of the building. No one detained them, so they easily dispersed into the crown outside. While at the church, the women did not have time to sing the entire song, but later that day a video based on the performance appeared online, with the full text of the “Punk Prayer” and photos from the Cathedral of Christ the Savior<sup>5</sup>. By the next day, the Orthodox movement known as the World Russian People’s Council had already filed a lawsuit with demands to bring criminal prosecution against the participants in the performance.

The Tagansky District Court of the City of Moscow subsequently sanctioned the detention of Nadezhda Tolokonnikova and Maria Alyokhina, members of the punk group, on March 5. On March 16, a third member of the group, Ekaterina Samutsevich, was arrested. On July 30, Moscow’s Khamovniki District Court started to review the essentials of the case. On August 17, Judge Marina Syrova sentenced the three members of Pussy Riot to two years at a minimum-security penal colony for hooliganism (Art. 213, Clause 2 of the Criminal Code of the Russian Federation)<sup>6</sup>. This sentence was appealed to the Moscow City Appellate Court. On October 10, 2012, the City Court upheld the sentence of the Khamovniki District Court with no changes for Tolokonnikova

<sup>3</sup> The song title “Punk Prayer” (the most widespread English rendering) is “*Pank-moleben*” in the original Russian. In order to grasp the extent of the radicalism entailed in Pussy Riot’s invocation of this term, is essential to understand that the word *moleben* refers to a special service of prayer that can be conducted either by a priest or a layperson. In Russian history, the *moleben* has been used in times of national crisis to beseech Christ or the Virgin Mary for protection. Neither “prayer” nor “prayer service” fully captures the essence of this term. When not using the term “Punk Prayer” specifically, we have varied between “prayer” and “prayer service” as contextually approximate English renderings on a case by case basis. – Translator.

<sup>4</sup> The technical term for the portion of the raised floor that extends beyond the iconostasis in an Orthodox church. – Translator.

<sup>5</sup> “Pank-moleben ‘Bogoroditsa, Putina progoni’ Pussy Riot v Khrame [Khristos Spasitelia]” [The Punk Prayer ‘Mother of God, Banish Putin’: Pussy Riot in the Cathedral (of Christ the Savior)], *YouTube*, February 21 (2012) [<http://www.youtube.com/watch?v=GCasuaAczKY>, accessed February 5, 2013].

<sup>6</sup> Art. 213 is located in Part II, Section IX, Chapter 24 of the Criminal Code.

and Alyokhina<sup>7</sup>. It did, however, commute Samutsevich's sentence to probation; she was freed at court.

The records of this case constitute a very interesting source for the sociological, anthropological, and psychological analysis of contemporary Russian society. This article will limit itself to the consideration of two themes that shed light on the specific nature of Russia's particular post-secular situation: (1) the "Punk Prayer" and the religious-secular boundary; and (2) the "Punk Prayer" and post-secular hybrids (to be defined below).

One of the key intuitions that guided me as I wrote this text was the notion that the post-secular situation is one of profound ambiguity, confusion, and fluctuation. Deeply rooted boundaries, constants, and definitions concerning the religious and the secular are now actually opened and have been called into question<sup>8</sup>. The standard secular vision of a socially differentiated society, in which the religious and the secular are separated into distinct corners, is beginning to break down. This creates the impression that religion is encroaching upon those spaces that are supposed to be alien to it (whether politics, law, culture, economics, etc.). In contrast to the prevailing opinion, however, the blurred boundaries characteristic of post-secularism and the incursion of religion into secular space (and of the secular into religious space) are not subject to a unified logic, nor do they fall in line with a supposed monolithic form of post-secularism. On the contrary, as will be shown based upon the materials of the Pussy Riot case, the issue at hand involves the collision of various competing normative models of post-secularism, each supported by its own activists and interest groups. In the course of our examination, we will delineate at least two such models, the "pro-authority" and the "oppositional." It is most interesting to observe how the secular state has been pulled into this conflict through the law enforcement and court systems. At times, this conflict has taken on the character of a (quasi-)theological dispute, and the state has begun to concern itself with problems for which it does not have the corresponding expertise, language, or properly trained personnel to solve<sup>9</sup>.

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<sup>7</sup> On December 23, 2013 Tolokonnikova and Alyokhina were released due to amnesty.

<sup>8</sup> D. Uzlaner, "Raskoldovyvanie diskursa: 'religioznoe' i 'svetskoe' v iazyke Novogo vremeni" [The Disenchantment of a Discourse: The 'Religious' and the 'Secular' in the Language of the Modern Age], *Logos*, 4 (2008): p. 140-59.

<sup>9</sup> Traditionally, the Church has dealt with such issues, because it formulated what could properly be considered "religion" by sanctioning or anathematizing new forms of piety,

Since this case has achieved such a high profile, I consider it necessary to clarify my position as a scholar. In this article, I do not aim to prove the correctness of one of the sides or one of the possible visions of post-secularism. Instead, using the materials of the Pussy Riot case, this article will lay out what constitutes Russian post-secularism, along with its associated conflicts.

## 1. The “Punk Prayer” and the Religious-Secular Boundary<sup>10</sup>

As mentioned above, in the post-secular context, the boundary that separates the religious and sacred from the secular and profane is now in flux. Constant battles are taking place in order to determine exactly which way this boundary should run<sup>11</sup>. The once well-defined boundary is now becoming “a frontier” in which various “activists and actors of desecularization” are staging front-line battles<sup>12</sup>. Indeed, the very status – religious or secular – of one or another phenomenon is now disputed, as is the issue of who exactly has been vested with the authority to certify such a status. In this conflict, the final word of interpretation remains with the state, which must constantly resolve any conflicts that arise through its law enforcement agencies and court system, with the participation of specialist experts who are part of the state’s “ideological apparatus” (see below). After all, the unregulated dislodging of previous footholds is a constant and obvious threat to the state. In the new post-secular situation, the secular state thus finds itself pulled into (quasi-)theological disputes.

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authenticating miracles and relics, regulating new folk movements, etc. Yet, with the rise of the modern sovereign state, which asserts the full powers of its authority in a controlled territory, these functions have gradually been transferred to the jurisdiction of secular authorities (T. Asad, *Formations of the Secular: Christianity, Islam, Modernity*, Stanford: Stanford University Press, 2003, p. 36-39).

<sup>10</sup> This section is based on an earlier publication (D. Uzlaner, “‘Pank-moleben’ i granitsa religioznoe/svetskoe” [(Pussy Riot’s) ‘Punk Prayer’ and the Religious-Secular Boundary], *Russkii zhurnal*, March 11 (2012) [<http://www.russ.ru/pole/Pank-moleben-i-granica-religioznoe-svetskoe>, accessed May 22, 2013]).

<sup>11</sup> R. K. Fenn, *Toward a Theory of Secularization*, Storrs, CT: Society for the Scientific Study of Religion, 1978.

<sup>12</sup> V. Karpov, “Kontseptual’nye osnovy teorii desekuliarizatsii” [The Conceptual Foundations of the Theory of Desecularization], *Gosudarstvo, religiia, tserkov’ v Rossii i za rubezhom* 2 (2012): p. 114-164.

Pussy Riot's "Punk Prayer" and the ensuing debate graphically illustrate these processes. The Russian court was pulled in *volens volens* to decide fairly specific theological questions in order to restore the blurry religious-secular boundary and to assert once again the balance destroyed by the "Punk Prayer."

### **a) The "Punk Prayer": A Religious or Secular Activity?**

The first conflict of interpretation that arose in connection with the "Punk Prayer" had to do with how to characterize Pussy Riot's performance appropriately. Was the action religious (a prayer service, holy foolishness or Maslenitsa (Carnival) foolishness), or was it secular (sacrilege<sup>13</sup>, hooliganism, an artistic performance, or a political and civil protest)? People hold disparate positions as to whether it was a genuine (though radical and untraditional) prayer service, an intentional form of blasphemy and hooliganism, an inappropriate artistic performance, or a civil and political protest. Thus, it is not surprising that the specific classification of the "Punk Prayer" is being determined by the interests of warring sides, each of which is intent upon its own version of drawing the boundary between the religious and the secular.

Let us begin with the members of Pussy Riot. By all appearances, the group's participants themselves did not fully understand how to describe what they had done accurately. Thus, in their idiosyncratic press release<sup>14</sup>, there are signs indicating that it was a specifically religious act:

"'Because peaceful demonstrations with hundreds of thousands of people are not producing immediate results, before Easter we will ask the Mother of God to banish Putin more quickly,' announced Serafima, the most pious punk feminist, to the rest of the team as they set out for the Cathedral [of Christ the Savior] in the February morning frost."

<sup>13</sup> While "sacrilege" or "blasphemy" might generally seem to fall into the religious category, inasmuch as they are inconceivable apart from a religious context, the interpretation consistently implied in this article suggests that in the Russian context they are frequently regarded as an expression of secular ideology embodied in the deliberate entrance into the religious sphere with the intent to disrupt and/or disrespect. – Translator.

<sup>14</sup> Pussy Riot, "Segodnia v polden' aktivistki Pussy Riot otsluzhili v Khrame Khrista Spasitelia pank-moleben 'Bogoroditsa, Putina progoni'" [Today at Noon, Pussy Riot Activists Conducted a 'Punk Prayer' Service, 'Mother of God, Banish Putin.'], *Live Journal of Pussy Riot*, February 21 (2012) [<http://pussy-riot.livejournal.com/12442.html>, accessed March 30, 2013].

Yet, in one of their first interviews after their act<sup>15</sup>, there are signs that Pussy Riot took the act to be more like an artistic performance (i.e., something secular) masked by external Orthodox attributes:

“Correspondent: So if you are turning to the Mother of God, does it mean that you are positioning yourselves as believers?

Kot [Cat]: Well, some of us are believers, but I certainly wouldn’t say we were ‘Orthodox.’ This appeal was more like a game, an artistic move.

Schumacher: Yes, it was a unique subversion”.

Here, of course, with the words “more like,” the fundamental and emphatic ambiguity of the action becomes apparent. The ill-defined position of those who sang the “Punk Prayer” hindered its final classification as a religious or secular act.

Yet, in the end, the position that insisted upon the religious character of the “Punk Prayer” reigned until the beginning of active investigative proceedings, as demonstrated by this excerpt from a statement published on Pussy Riot’s blog<sup>16</sup> on March 4, 2012 (i.e., practically at the moment of their arrest):

“In all of our public statements, we constantly emphasize that the punk prayer “Mother of God, Banish Putin” was truly a prayer – a radical prayer directed to the Mother of God with a request to prevail upon the earthly authorities and the ecclesiastical authorities who take their cue from them. Among the two-dozen Pussy Riot members, many are Orthodox believers for whom a church is a place of deep prayer. Yes, our prayer overstepped the bounds of what is acceptable for many in a church. But we did not desecrate the church, nor did we blaspheme. We prayed, and many priests do not doubt that “Mother of God, Banish Putin” was a true prayer. We passionately prayed to the Mother of God, asking her to give us all the strength to fight against our incredibly merciless and wicked overlords. And we will continue to sing songs and will pray for those who want us killed and thrown in prison, because Christ teaches us not to wish death or prison on those whom we do not understand”.

<sup>15</sup> R. Dobrokhotov, “Bunt pipisek VS RPTs” [The Revolt of the Pussies [Pussy Riot] vs. the Russian Orthodox Church], *Live Journal of Roman Dobrokhotov*, February 22 (2012) [<http://dobrokhotov.livejournal.com/568315.html>, accessed March 30, 2013].

<sup>16</sup> Pussy Riot, “Krik Pussy Riot o spasenii plenennykh zhenshchin” [Pussy Riot’s Cry to Save the Jailed Women], *Live Journal of Pussy Riot*, March 4 (2012) [<http://pussy-riot.livejournal.com/15189.html>, accessed March 11, 2012].

To what can such a clear emphasis on the specifically religious aspect of the “Punk Prayer” be attributed, as distinct from the earlier more ambivalent position that emphasized an artistic, subversive composition? Perhaps the defense attorneys encouraged this interpretation, since it allowed them to count on the most minimal punishment or even on complete immunity from legal prosecution on the basis of the constitutional right to freedom of religion (Art. 28 of the Constitution of the Russian Federation). However, another interpretation is also possible: the “Punk Prayer” attains maximum radicalism when it is recognized as a prayer and not as an political performance art (a flashy but fleeting performance in the context of global artistic events). When “Mother of God, Banish Putin” is understood precisely as a prayer, it turns out to be a courageous claim to Christian content and values, their reorientation into a different course from the one set by those who speak officially on behalf of the Russian Orthodox Church.

For the purposes of this article, the crux of the matter is that the “Punk Prayer” sheds light on the “pro-authority” model of post-secularism, implicating it in the close interaction of ecclesiastical and secular authorities, complete with an unusual “exchange of gifts” (i.e., political protection in exchange for moral support in the context of a growing protest movement)<sup>17</sup>. The “oppositional” model stands against this “pro-authority” model, with the “Most Holy Mother of God and Ever-Virgin Mary” at the head of a protest march and civil opposition. As a prayer, Pussy Riot’s performance is a challenge to the authority of the Patriarchate, a contestation of its monopolistic claims on both the Russian Orthodox legacy and the stipulation of the terms of this legacy’s interaction with the secular reality of Russia’s sociopolitical life. The members of the punk group exhibited an awareness of this point throughout the entire affair. Yet over time in their rhetoric, this awareness yielded more and more to an alternative interpretation of the “Punk Prayer” as political performance art, apparently as a consequence of the international campaign in support of the punk activists<sup>18</sup>.

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<sup>17</sup> Pussy Riot’s performance took place just as civil protest was on the rise. If we take the position of the group’s participants at face value, their act was incited by the support that the Patriarch showed for Vladimir Putin in early February 2012, at the time of Putin’s election to a third term.

<sup>18</sup> Curiously, any record indicating that Pussy Riot once considered the “Punk Prayer” a religious activity has disappeared from the group’s official blog and is no longer accessible.

Let us turn now to the perspective of the ecclesiastical authorities. By all accounts, the official representatives of the Church sharply judged the radical challenge of the “Punk Prayer.” From the very beginning, they fundamentally refused to see in it any kind of connection to a meaningful religious activity. Immediately following the initial news of Pussy Riot’s performance, Fr. Vsevolod Chaplin<sup>19</sup>, chair of the Moscow Patriarchate’s Synodal Department for the Cooperation of Church and Society, posted a piece called “Blasphemy at the Royal Doors” on his blog, *Orthodox Policy*. Vladimir Legoida<sup>20</sup>, chair of the Synodal Information Department, repeats Chaplin, writing that the performance was “a blasphemous and loathsome act.” In this interpretation, Pussy Riot’s “Punk Prayer” was an unmistakably secular action; the unsanctioned invasion of the profane – art, politics, and ideology – into a sacred space that is alien to it; and the perpetration of blasphemous and disorderly acts in that space.

Insisting upon the secular character of the “Punk Prayer,” official representatives of the Church demanded that secular authorities alone should handle the case. In the words of Chaplin<sup>21</sup>, “the crime committed (and I am convinced that it was definitely a crime) should be exposed and judged in the courts.” Here, one sees the Church’s desire to distance itself fundamentally from the legal process. As Legoida<sup>22</sup> writes, “The Church does not have the right to directly interfere with the operations of the law enforcement agencies, which are working on this case seriously and conscientiously.” In this instance, we observe a categorical refusal to analyze the situation in theological language, to translate it to the level of religious significance, or to see in it echoes of any problems that might exist in modern Orthodoxy. Perhaps the harsh reactions of many

<sup>19</sup> V. Chaplin, “Koshchunstvo u Tsarskikh vrat.” [Blasphemy at the Royal Gates], *Live Journal of Vsevolod Chaplin*, February 22 (2012) [<http://www.pravoslav-pol.livejournal.com/8714.html>, accessed March 30, 2013].

<sup>20</sup> V. Legoida, “Reaktsiia na vykhodku ‘Pussy Riot’ – eto test na zrelost’ grazhdanskogo obshchestva” [The Reaction to Pussy Riot’s Prank Is a Test of the Maturity of Civil Society], *Pravoslavie i mir*, March 7 (2012) [<http://www.pravmir.ru/vladimir-legojda-reakciya-na-vykhodku-pussy-riot-eto-test-na-zrelost-grazhdanskogo-obshchestva/>, accessed March 30, 2013].

<sup>21</sup> “Pank-feministki: kaznit’ nel’zia pomilovat’? (MNENIE)” [The Punk Feminists: Execute Them We Should Not Pardon Them? (OPINION)], *Pravoslavie i mir*, March 5 (2012) [<http://www.pravmir.ru/pank-feministki-kaznit-nelzya-pomilovat-mneniya/>, accessed March 30, 2013].

<sup>22</sup> Legoida, “Reaktsiia na vykhodku ‘Pussy Riot’ – eto test na zrelost’ grazhdanskogo obshchestva” [The Reaction to Pussy Riot’s Prank is a Test of the Maturity of Civil Society].

Orthodox spokesmen against Archdeacon Andrei Kuraev's position stemmed from such categorical refusals<sup>23</sup>. Kuraev<sup>24</sup> attempted to place the "Punk Prayer" in a specifically religious context and to see in it a religious act that does not contradict Orthodox traditions (carnavalesque form of transgression during *maslenitsa*, a week of carnival before Lent), although he believed the women who participated in the "Punk Prayer" were not fully cognizant of this.

In their interpretations of the "Punk Prayer" as a secular act, Church authorities have sought to maintain for themselves the monopolistic right to delimit the religious and the secular and to sanction or forbid any non-traditional religious forms that arise inside the controlled space of Russian Orthodoxy. If the "Punk Prayer" were actually a prayer, it would be an unsanctioned attempt to redraw the boundaries that separate the religious and the secular. For this reason, under no circumstances can the Church grant it the status of a prayer. To them, it is nothing but blasphemy and hooliganism, and they believe that the particular form of post-secularism posed by the "Punk Prayer" should, therefore, be summarily rejected.

Let us now examine the views of the so-called "schismatics" (i.e., those Christians in opposition not only to the Russian Orthodox Church, but also to the existing political regime). Considering the above, it is unsurprising that "schismatics" have been inclined to place decisive emphasis upon the religious character of the "Punk Prayer." Thus, according to Yakov Krotov, a priest from the Kharkov-Poltava Diocese of the Ukrainian Autocephalous Orthodox Church, which does not recognize the authority of the Russian Orthodox Church:

"Based on the canons of the Byzantine Church, this particular act was not *sviatotatstvo* (sacrilege). The main root of *sviatotatstvo* is the verb *tat'*, the stealing of church valuables. In this case, there was no robbery at all. What is more, strictly from a formal standpoint, there was not even blasphemy. Thus, it was technically a prayer within a church. The methods and forms of this prayer are untraditional for central Russia, but it was technically a prayer"<sup>25</sup>.

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<sup>23</sup> A. Kuraev, "Beznadyoga.ru" [Desperation.ru], *Live Journal of Andrei Kuraev*, February 2 (2012) [<http://diak-kuraev.livejournal.com/286877.html>, accessed March 30, 2013].

<sup>24</sup> A. Kuraev, "Maslenitsa v Khrame Khrista Spasitelia" [Carnival Week at the Cathedral of Christ the Savior], *Live Journal of Andrei Kuraev*, February 21 (2012) [<http://diak-kuraev.livejournal.com/285875.html>, accessed March 30, 2013].

<sup>25</sup> A. Sharyi, "Sviashchennik Iakov Krotov – o pank-gruppe Pussy Riot" [The Priest Yakov Krotov on the Punk Group Pussy Riot], *Radio Svoboda*, March 7 (2012) [<http://www.svoboda.org/content/article/24508098.html>, accessed March 30, 2013].

Vladimir Golyshev<sup>26</sup>, the author of the satirical play *Lyzhneg* about the current Patriarch<sup>27</sup>, repeats Krotov's sentiments:

- “1. The girls came to a house of prayer in order to pray.
2. They prayed in the way they considered most fitting for our time and for the given location.
3. Today, in the liturgical practice of Russian Orthodox parishes, there are so many wild, unauthorized ad-libs – all of them vulgar, tasteless, and often openly blasphemous – that to speak of the violation of any kind of ‘rule’ by the Pussy Riot girls is simply laughable”.

Such an interpretation makes a claim to a redefinition of the boundaries of the religious and the secular, asserting boundaries that differ from those defined by the ecclesiastical authorities. The “Punk Prayer” is a religious protest not only against Putin, but also against the Church itself. According to these newly drawn boundaries, many of the Church's practices turn out to be outside the bounds of the sacred, unlike the scandalous “Punk Prayer.” Put another way, Pussy Riot's performance, in this interpretation, becomes a symbol of another, “oppositional” version of post-secularism, in contradistinction to the “pro-authority” version.

Let us turn at last to the wider Russian public sphere. In Russian society, the “Punk Prayer” evoked widely varying approaches to its proper classification. For example, Yuri Samodurov<sup>28</sup>, a human rights activist and the former director of the Andrei Sakharov Museum and Public Center, underscored the particularly secular, political performance art character of the “Punk Prayer”:

“[...] for a moral, political, and legal evaluation of this religious blasphemy, society (including citizens who are believers), the leadership of the Russian Orthodox Church, and law enforcement agencies must consider that the meaning and purpose of [Pussy Riot's] performance was absolutely *not* to be a *militantly atheistic or anti-religious act*; it was a purely secular and unquestioningly *political* act. For how else is it

<sup>26</sup> V. Golyshev, “Liniia zashchity dlia Pussy Riot” [A Line of Defense for Pussy Riot], *Live Journal of Vladimir Golyshev*, March 4 (2012) [<http://golyshev.livejournal.com/1918458.html>, accessed March 30, 2013].

<sup>27</sup> The title of this play, *Lyzhneg* (lit: lover of alpine skiing), refers to the rumors that Patriarch Kirill is addicted to alpine skiing. This implies that the Russian Patriarch is fond of worldly pleasures.

<sup>28</sup> Yuriy Samodurov, “Otkrytoe pis'mo v zashchitu devushek iz gruppy Pussy Riot” [An Open Letter in Defense of the Girls from Pussy Riot], *Grani.ru*, February 29 (2012) [<http://grani.ru/blogs/free/entries/196019.html>, accessed March 30, 2013].

possible to conscientiously and appropriately interpret the oft-repeated lyrics sung by the girls in a beautiful chant much like a genuine prayer – ‘Mother of God, rescue us from Putin!’”

The opposition politician Alexei Navalny<sup>29</sup> showed solidarity with those supporting this interpretation of the “Punk Prayer” as a secular action when he described Pussy Riot as “silly girls who committed minor hooliganism for the sake of publicity.”

For the opposition, such an interpretation of the “Punk Prayer” makes complete sense. On the one hand, the opposition does not wish to argue with Orthodox believers, who constitute a significant portion of the electorate, so it does not look for a religious meaning in the act. On the other hand, it seeks to see in everything a political subtext and a civil protest that must take on more and more exalted forms.

Yet by no means did all of Russian society sympathize with this secular interpretation. For example, the curator and art critic Andrei Yerofeyev, who together with Samodurov was a defendant in a criminal case against the exhibit “Forbidden Art,” does not agree with Samodurov’s treatment:

“It seems to me that in this instance, the question is not about a performance (*aktsiia*) of contemporary art, but about an act (*aktsiia*) of young believers,’ he said, adding that the act became an expression of protest against the way the head of the Church, without consulting his flock, is supporting one of the candidates in the presidential election. ‘These young believers came to the Cathedral of Christ the Savior, to the home of the Patriarch, and conducted a prayer service – that is what Pussy Riot called their musical appeal to the Mother of God. This uncanonical form of prayer is a prayer service in a punk style’<sup>30</sup>.

Thus, the “Punk Prayer” found itself at the intersection of various interpretations. And behind each one stood a preferred version of the correct position of the religious-secular boundary and a particular normative vision of post-secular Russia.

<sup>29</sup> Alexey Naval’nyi, “Pro pussi riatoi” [About Pussy Riots], *Live Journal of Aleksei Navalny*, March 7 (2012) [<http://navalny.livejournal.com/690551.html>, accessed March 30, 2013].

<sup>30</sup> I. Karev and A. Krizhevskii, “Pank po predvaritel’nomu sgovoru” [A Punk Performance by Premeditated Conspiracy], *Gazeta.ru*, March 6 (2012) [[http://www.gazeta.ru/culture/2012/03/06/a\\_4029145.shtml](http://www.gazeta.ru/culture/2012/03/06/a_4029145.shtml), accessed March 30, 2012].

## **b) The Cathedral of Christ the Savior: Religious or Secular Space?**

A second conflict of interpretation was associated with the location of the “Punk Prayer,” the Cathedral of Christ the Savior. Is this church a secular/profane or a religious/sacred space? Again, one or the other answer to this question emanates from the different normative visions of post-secularism defended by various sides.

Official representatives of the Church saw the “Punk Prayer” as a secular/profane behavior, hooliganism, and blasphemy conducted in a religious/sacred space. The participants in this performance, however, took the directly opposite position, saying that they conducted a religious act – a prayer service – in a place that is actually profane. An official statement by Pussy Riot<sup>31</sup> declared:

“We believe that it [the Cathedral of Christ the Savior] is not a church, but a shame (*ne khram, a sram*). The Shame of Christ the Savior. And it is not a house of the Lord, but an office of the Russian Orthodox Church. We came formally to the office of the Russian Orthodox Church to speak out. Rather than a place of spiritual life, the Cathedral of Christ the Savior looks more like a business center – banquet halls rented out for exorbitant prices, a dry cleaner and laundry service, and a parking lot protected by security guards.

The website of the Cathedral of Christ the Savior shows that ‘The Hall of Church Councils is a multi-purpose hall [...] Various events take place in the Hall of Church Councils, including concerts of church choirs, folklore ensembles, and symphony music, solemn ceremonies and other events.’ The hall is equipped with two snow makers, two smoke machines, and a bubble maker. As you see, everything was prepared for our “Punk Prayer.” We presented our church choir and our solemn punk-act prayer service using the 64-channel Midas Heritage 2000 sound board owned by Russian Orthodox Church, Inc. and included in the list of ecclesiastical equipment on the church’s website”.

Krotov agrees with the view that the Cathedral of Christ the Savior is a secular space:

“[Pussy Riot] chose a church that does not belong to the Russian Orthodox Church but is the property of the Moscow Mayor’s Office. It has often been said that topless runway modeling takes place there and that women display

<sup>31</sup> Pussy Riot, “Vyn’ prezhde brevno iz tvoego glaza i togda uvidish” [First, Take the Plank out of Your Eye, and Then You Will See], *Live Journal of Pussy Riot*, February 23 (2012) [<http://pussy-riot.livejournal.com/12658.html>, accessed March 30, 2013].

diamonds. And the response has been: “This is not [a part of] the Patriarchate, but the property of the Moscow Mayor’s Office”<sup>32</sup>.

The logic of these people’s rhetoric, which excludes the Cathedral of Christ the Savior from religious space, is perfectly clear. They are criticizing the Church’s current policies and the version of post-secularism on which the Church insists. They have chosen to target the Cathedral of Christ the Savior as the chief symbol of these policies. As in the case of the status of the “Punk Prayer,” we again find ourselves in the very epicenter of a multi-faceted conflict of interpretation, as various sides attempt to draw the religious-secular boundary in their own way.

### **c) Just Who Are “Believers”?**

The third and final interpretive conflict touches on the fundamental question of who exactly count as “believers,” since it was “believers” whose feelings turned out to be injured by the “Punk Prayer.” It was in the name of “believers” that the entire judicial process took place, and members of Pussy Riot went to prison specifically for hatred toward “believers.” Yet who can be called a believer? Who can be recognized as a rightful representative of the social group “Orthodox believers”; whose religious feelings were or were not insulted and against whom did Pussy Riot (or did they not) direct intentional hatred?

With respect to this question, we once again encounter serious disagreement. For example, the journalist Maxim Shevchenko, who identifies himself as an Orthodox believer, justifies his indignation toward Pussy Riot by rehashing the absolutely secular idea of Samuel Huntington concerning the “clash of civilizations.” Shevchenko<sup>33</sup> sees the “Punk Prayer” as “an invasion of the front-line squadrons of liberal Western civilization into the personal life of millions of Russians, Ukrainians, Belorussians, Georgians and Armenians.”

Yet some people who identified themselves with Orthodoxy voiced even more radical judgments:

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<sup>32</sup> Sharyi, “Sviashchennik Iakov Krotov – o pank-gruppe Pussy Riot” [The Priest Yakov Krotov on the Punk Group Pussy Riot].

<sup>33</sup> M. Shevchenko, “Voina bliadei” [The War of the Whores], *Live Journal of Maxim Shevchenko*, February 21 (2012) [<http://shevchenko-ml.livejournal.com/5544.html>, accessed March 30, 2013].

“They should have dragged the whores out of the church by their hair and impaled all that filth on a stake, so no one would dare to mock the Russian Orthodox faith again.”

“[...] do not be offended if they break your legs next time. Christians are sick and tired of being weak.”

“If I had been one of the church clergy, I would have stripped them to their underwear, rolled them in honey and *pukh* [poplar down], shaved them bald and thrown them out in the freezing cold in front of the gathered television cameras.”

“For the desecration of the church, they must be burned ... PUBLICLY! ... They are beasts.”

“Hanging should be the punishment for things like this. I wonder, will they die tomorrow or will they first be tortured?”<sup>34</sup>

To what extent is such a reaction characteristic of a believing Christian? How can the court certify that the lawsuit was truly submitted by believers and not by an ideologue in the highest degree, a person directed by fits of passion and thoughts in keeping with Huntington’s ideas?

Fr. Igor Gagarin, a believer of a rather different sort, offers another reaction:

“The Christian has something that no one else in the world has. There are words that are not comprehensible to many, yet to us, they are not simply comprehensible but also, I believe, extraordinarily precious. ‘But I say to you, love your enemies, bless those who curse you, do good to those who hate you, and pray for those who spitefully use you and persecute you [...]’ (Matt. 5:40)<sup>35</sup>. It seems to me that the very essence of the difference between us Christians and all other people is encapsulated in these words. Many people say that we should not take revenge. As far as I know, even Islam says that to avenge is good, but to forgive is better. To forgive? Yes! Not to take revenge? Yes! But to LOVE?! Humanity has never heard such a thing except from Jesus Christ. And so the proposals to punish these lost sheep sound unchristian.

In many blogs, I have read things like, ‘What would they have done to those hooligans if they’d gone into a mosque?!’ We don’t need things

<sup>34</sup> For a collection of such pronouncements, see Marsh Nesoglasnykh, “Koshchunnitsy, khulivshie Putina i Gundiaeva, poimany” [The Blasphemous Women Who Disparaged Putin and Gundyayev (Patriarch Kirill) Have Been Caught], *Live*, Journal of the Association “March of the Dissidents”, March 3 (2012) [<http://namarsh-ru.livejournal.com/6606803.html>, accessed April 10, 2013].

<sup>35</sup> The correct reference is Matthew 5:44.

in our churches to be like a mosque! Let the Muslims deal with those who defile their mosques in a Muslim way, but we will handle things in a Christian way. And how exactly? ‘If your enemy is hungry, feed him; if he is thirsty, give him a drink [...]’ (Rom. 12:20). And right there we also read, “Do not be overcome by evil, but overcome evil with good” (Rom. 12:20)<sup>36</sup>. What could be more wonderful and exalted? And how bitter will it be if we refuse to do so in practice? By responding to evil with good, we do not give ourselves over to evil, but we conquer it with the only true victory. If we respond to evil with evil, then who is the victor but the one who pushed these foolish girls into their act [i.e., Satan]? Are we really going to be his puppets?!

Human justice requires that evil be punished. But we want something else, something more. We want evil to turn to good. The latter is so much higher than the former! Perhaps this seems utopian and completely impossible. But, praise God, every once in a while, such things do occur, and not all that rarely. Are there really so few examples?<sup>37</sup>

The members of Pussy Riot, along with their defense attorneys, followed the same logic. They did not want to recognize the parties injured by the “Punk Prayer” as believers who have the right to complain about their insulted religious feelings<sup>38</sup>.

Krotov unambiguously draws attention to the impossibility of considering the injured parties to be believers:

“Correspondent: Can they [those who feel insulted] publicly demand punishment?

Krotov: No! If they believe that the Lord Jesus Christ is the Savior, they cannot do it even in their hearts. If they do not believe this, then, of course, their reaction can be exceptionally cannibalistic, or they can hanker to throw punches and knock out a few teeth. But if a person has had even the slightest experience of an authentic encounter with Christ, with the Kingdom of God in this world, he understands that a desire to avenge and punish is satanic<sup>39</sup>.

<sup>36</sup> The correct reference is Romans 12:21.

<sup>37</sup> “Pank-feministki: kaznit’ nel’zia pomilovat’? (MNENIE)” [The Punk Feminists: Execute Them We Should Not Pardon Them? (OPINION)], *Pravoslavie i mir*, March 5 (2012) [<http://www.pravmir.ru/pank-feministki-kaznit-nelzya-pomilovat-mneniya/>, accessed March 30, 2013].

<sup>38</sup> See examples of this in the later part of the “Investigators and Judges as Theologians” section below.

<sup>39</sup> Sharyi, “Sviashchennik Iakov Krotov – o pank-gruppe Pussy Riot” [The Priest Yakov Krotov on the Punk Group Pussy Riot].

As we see, the religious-secular boundary is disputed even on the level of the injured parties. Are the persecutors of Pussy Riot really genuine believers or just pseudo-believers? And is it really true that genuine Orthodox Christians cannot allow themselves to demand punishment, even in their hearts? Here, we again step into a (semi-)theological issue that had to be decided by a secular court.

Thus the “Punk Prayer” caused the boundary between the religious/sacred and the secular/profane to hang in midair. In the subsequent public reaction, the “Punk Prayer” rendered things that had previously seemed fully defined and immovable – prayer, church, and believers – ambiguous and flexible.

#### **d) Investigators and Judges as Theologians**

The paradoxical nature of the situation is that in the Pussy Riot case, we do not simply encounter eternal disputes about eternal issues (e.g., Who are Christians? What is a church? What can legitimately be called genuine prayer?), but we encounter an *eternal dispute* that must receive a *concrete, instant resolution*. Otherwise, public peace will not be restored. The state must definitively decide this dispute as the sovereign arbitrator, putting the contested religious-secular boundary into place and separating the opposing sides into distinct corners. In order for this to take place, both the court and the investigators must have solidarity with one of the possible interpretations, effectively recognizing its truth in a given concrete historical situation.

Let us consider how the court decided all three questions discussed above (i.e., how to classify Pussy Riot’s performance, the church’s space, and real believers). The indictment explicitly interpreted the “Punk Prayer” as a secular action, the essence of which was common hooliganism carried out under the inspiration of religious hatred toward the social group “Orthodox Christians” (Art. 213, Clause 2 of the Criminal Code). In the interpretation of the official indictment<sup>40</sup>, what the Pussy Riot members called “a radical prayer addressed to the Mother of God” became “the commission of a rude violation of public order, expressing clear disrespect for society motivated by religious hatred and hostility and motivated by hatred with reference to any social group, by way of performing provocative

<sup>40</sup> Obvinitel’noe zakliuchenie po delu ‘Pussi Raiot’ [The Indictment in the Case of Pussy Riot], *Novaya Gazeta*, July 11 (2012) [<http://www.novayagazeta.ru/society/53602.html>, made public July 19, 2012; accessed November 19, 2013].

and insulting actions in a religious building while attracting the attention of a wide circle of believing citizens.”

In the indictment’s interpretation, the “Punk Prayer” was reduced to “provocative and insulting actions.” It denied any intentionality of the acts committed, recognizing only the motive of “religious hatred and hostility.” According to the indictment, the girls:

“vulgarly, provocatively and shamelessly moved around the soleas and ambon [a projection of the soleas], access to which is strictly forbidden to visitors. Over the course of approximately one minute, motivated by religious hatred and hostility, they shrieked and yelled out expletive phrases and words that were insulting to believers. They also jumped around and lifted their legs, imitating dances and the striking of blows against imaginary opponents with their fists”<sup>41</sup>.

The indictment’s position depended upon the third evaluation prepared by a team of expert witnesses, after the first two had not found anything objectionable in the “Punk Prayer.” The defense accused the third team of expert witnesses, who prepared this evaluation, of clear bias (see below). The text of this expert evaluation is especially interesting in that it explicitly classifies the “Punk Prayer” in sacred-profane terms. The expert witnesses reduce the purpose of the performance to “a ploy to intermingle the sacred with the profane and foul”<sup>42</sup>. They interpret the “Punk Prayer” as a profane phenomenon rudely invading sacred space:

“The sacred space here was a place of worship [an Orthodox Church], its interior with the corresponding religious paraphernalia, containing objects venerated by Orthodox believers. These include a portion of the Lord’s Robe, one of the religious relics venerated by all Christians.

The profane and foul here includes the entire performance itself, as well as its separate elements – the song’s deceptive invectives against Orthodox clergy and values, the use of obscene and expletive language, shrieks, and the bodily movements of the women who took part in the performance, etc.”<sup>43</sup>

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<sup>41</sup> Obvinitel’noe zakliuchenie po delu ‘Pussy Riot’ [The Indictment in the Case of Pussy Riot].

<sup>42</sup> *Zakliuchenie komissii ekspertov (po ugovnomu delu No. 177070)* [The Opinion of the Commission of Expert Witnesses (Criminal Case No. 177070)], *Live Journal of Mark Feygin*, May 23 (2012) [<http://mark-feygin.livejournal.com/89127.html>, accessed February 16, 2013].

<sup>43</sup> *Ibid.*

As the investigation progressed, any interpretation of the “Punk Prayer” as an unconventional but still religious activity—complete with prostrations, signs of the cross, and the singing of psalms—was fundamentally rejected. At best, the witnesses allowed into the trial interpreted the act as an intentional mockery and a parody of religious behavioral patterns. In particular, according to the interpretation of Mikhail Riazantsev, sacristan at the Cathedral of Christ the Savior, the actions committed by the girls are reminiscent of “the activity of the League of the Militant Godless from the 1920s and 1930s, an organization that jokingly parodied sacred rites conducted by the Russian Orthodox Church, such as processions of the cross, public prayer services, etc.”<sup>44</sup> Other witnesses upheld Riazantsev’s position, classifying the “Punk Prayer” either as an intentional mockery of Orthodoxy or as a type of “demonic activity.”<sup>45</sup>

In its sentence<sup>46</sup>, the court was in full solidarity with the position of the prosecution, classifying the “Punk Prayer” as hooliganism, that is, a secular action wholly devoid of any substantive aspects. The “Punk Prayer,” according to the logic of the court, entailed nothing but hatred toward the social group “Orthodox Christians.”

Of course, it is worth recalling that the position of the members of Pussy Riot themselves did change slightly. At court, they were already inclined to interpret the “Punk Prayer” as a secular phenomenon. They emphasized that it was political performance art directed against the fusion of political and ecclesiastical power at the highest level<sup>47</sup>.

Echoes of their previous position (that the “Punk Prayer” was a prayer service) only occasionally crept into the statements of both the accused and the defense. In particular, defense attorney Violetta Volkova noted during a court session, “The court is attempting to retreat from politics into the criminal sphere. Yet the girls are being tried not for brightly colored dresses and an incorrect sign of the cross; they are being tried for a prayer, and

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<sup>44</sup> Obvinitel’noe zakliuchenie po delu ‘Pussi Raiot’ [The Indictment in the Case of Pussy Riot].

<sup>45</sup> See, for example, the testimony of the witness L.A. Sokologorskaia.

<sup>46</sup> Prigovor po delu ‘Pussi Raiot’ [The Sentence in the Case of Pussy Riot], *Gazeta.ru*, August 17 (2012) [[http://www.gazeta.ru/social/photo/pussy\\_riot.shtml?photo=4733497](http://www.gazeta.ru/social/photo/pussy_riot.shtml?photo=4733497), made public August 22, 2012; accessed November 19, 2013].

<sup>47</sup> See below for more on the intersection of the religious and political spheres as a “post-secular hybrid” that was problematized over the course of the proceedings.

this prayer was political”<sup>48</sup>. During her questioning at trial, Tolokonnikova referred to the words of Krotov: “It was not blasphemy. This is clear if you simply read the text carefully. The priest Yakov Krotov spoke out about our prayer. He said that the form of the prayer was untraditional for central Russia, but that it was technically a prayer”<sup>49</sup>.

During the trial, the defense attempted to write the “Punk Prayer” into a religious context with the goal of proving that Pussy Riot did not violate any Orthodox canons with their actions. Volkova said, “The expert witnesses claim that the girls parodied Orthodox rites through ‘excess movements.’ They do not specify which ‘excess movements.’ The girls blessed themselves with the traditional three-fingered sign of the cross and performed full prostrations. And in not one of the eight church councils, which by now I know practically by heart, is it forbidden to cross oneself with one’s back to the altar. One can pray with one’s back to the altar; one can pray!”<sup>50</sup>. Thus, Volkova attempted to prove that on formal grounds the “Punk Prayer” could be considered a prayer service and not the violation of a church’s unwritten rules of behavior. Furthermore, Samutsevich gave a revealing response to a question by the prosecutor:

“Prosecutor: Is it permissible in a church to dance and sing, while yelling out battle cries like ‘Holy shit!’?”

Samutsevich: Do you want me to read you a lecture on the traditions of travelling minstrelsy [*skomoroshestvo*]? Minstrelsy has been in the Church, and it exists to this day<sup>51</sup>. It is permissible”<sup>52</sup>.

<sup>48</sup> E. Kostiuchenko, “Sed’moi den’ slushanii po delu Pussy Riot” [The Seventh Day of the Hearing in the Pussy Riot Case], *Novaia Gazeta*, August 7 (2012). [<http://www.novayagazeta.ru/news/58806.html>, accessed February 16, 2013].

<sup>49</sup> E. Kostiuchenko, “Delo Pussy Riot: zavershen shestoi den’, storony gotoviatsia k preniiam” [The Pussy Riot Case: The Sixth Day Has Concluded; the Sides Prepare for Oral Arguments], *Novaia Gazeta*, August 6 (2012) [<http://www.novayagazeta.ru/news/58788.html>, accessed February 16, 2013].

<sup>50</sup> E. Kostiuchenko, “Delo Pussy Riot: zavershen shestoi den’, storony gotoviatsia k preniiam” [The Pussy Riot Case: The Sixth Day Has Concluded; the Sides Prepare for Oral Arguments].

<sup>51</sup> In this statement, Samutsevich seems to be following a recent tendency in Russian popular culture to equate the term *skomoroshestvo* (medieval East Slavic traveling minstrelsy) with holy foolishness (*iurodstvo* in Russian, a term with a long history in Eastern Christianity, prominently in the Byzantine Empire and medieval Russia). We should stress that these are in fact two different, although somewhat related, historical phenomena. – Translator.

<sup>52</sup> E. Kostiuchenko, “Chetvertyi den’ slushaniia dela Pussy Riot v Khamovnicheskom Sude stolitsy. Naval’nogo i Ulitskuiu doprashivat’ ne stanut” [The Fourth Day of the

For what reason did the punk group members reconsider their position? Why did they reject the religious conceptualization of their own action for a more comprehensible interpretation of the “Punk Prayer” as political performance art? Although one can probably not answer this question definitively, perhaps this transformation was connected to the reaction of the worldwide public sphere concerning the Pussy Riot case. The West interpreted Pussy Riot’s case primarily as a limitation of the group members’ political freedoms and a denial of the artist’s right to self-expression (e.g., Human Rights Watch 2013). It is entirely possible that this reaction predetermined Pussy Riot’s final position.

In the conflict concerning the location of the performance of the “Punk Prayer,” the defense continued to insist that, from a legal standpoint, the Cathedral of Christ the Savior is a profane space. Volkova directed attention to the fact that “the church building belongs to the Foundation of the Cathedral of Christ the Savior. According to its bylaws, the foundation does not have a religious function. In other words, illegal religious rites take place at the Cathedral of Christ the Savior. The upper sanctuary is a replica of a religious structure, much like a representation of a person. It has hands and feet, but no soul”<sup>53</sup>. The court, however, rejected the defense’s interpretation and favored solidarity with a more conventional reading:

“The defense argues that the actions of the accused cannot be viewed as having taken place in a church, since the Cathedral of Christ the Savior is not actually a church, nor has it ever been transferred to the Russian Orthodox Church, but it has only been granted for use by the Foundation of the Cathedral of Christ the Savior. According to these arguments, the conduct of ecclesiastical rites is not part of the statutory activity of the Foundation, so the Cathedral of Christ the Savior is [merely] a replica of a religious structure. The court finds these arguments untenable.

In its outer appearance, the building of the Cathedral of Christ the Savior corresponds fully with an Orthodox church, having cupolas crowned with crosses. The interior space of the Cathedral of Christ the Savior also corresponds with Orthodox canons. It has annexes, an altar, an iconostasis, a soleas, an ambon, and other such facilities. The church’s walls have been painted in conformity with Orthodox tradition. The Orthodox Church recognizes these premises as a church and conducts religious events (rites)

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Hearing of the Pussy Riot Case at the Khamovnicheskii Court in Moscow; Naval’nyi and Ulitskaia Will Not Be Questioned], *Novaia Gazeta*, August 2 (2012) [http://www.novayagazeta.ru/news/58736.html, accessed February 16, 2013].

<sup>53</sup> E. Kostiuhenko, “Sed’moi den’ slushanii po delu Pussy Riot” [The Seventh Day of the Hearing in the Pussy Riot Case].

there in accordance with its statutory purposes.

The building complex of the Cathedral of Christ the Savior belongs to the city of Moscow. The church's foundation runs the operational administration of the complex. The Cathedral of Christ the Savior has been transferred without charge to the Russian Orthodox Church for permanent use.

As for ecclesiastical administration, this church has the status of a metochion [parish dependency] of the Patriarchate of Moscow and all Rus', an organ of the Russian Orthodox Church. The Bishops' Council conducted a religious ceremony called the Great Sanctification, which conferred on the Cathedral of Christ the Savior the status of a church, according to Church canons.

The presence of this building (address: 15 Volkhonka Street, Moscow) – along with the facilities used for the performance of ecclesiastical rites and other spaces such as a hall for Holy Synod meetings, a refectory, and even a parking lot – does not, in the eyes of believers, diminish the designation of this structure as a church.

In order to evaluate the status of the given building in connection with this criminal case, it is also material that the accused entered into the building as into a church, desiring to perform the aforementioned actions there, as in a cathedral of the Russian Orthodox Church. They did not hide this fact"<sup>54</sup>.

In this way, yet another (semi-)theological dispute – specifically the dispute over whether this building could be considered a church – was decided in the courts.

Finally, in a somewhat curious way, the court also ruled on the question of who can be recognized as a believer and how to define the social group "Orthodox Christians." How did the court (and before that, the criminal investigation) delineate the social group "Orthodox Christians," toward which hatred was shown in the performance of the "Punk Prayer"? And how did the criminal investigation, and subsequently the court, select the people who would be recognized as legitimate spokespersons for the entire insulted "social group?" The simplest means of doing this would be to use obvious formal criteria: self-identification, proof of baptism, knowledge of the Creed, prayer and church attendance. If viewed from the surface, the investigation did work along these lines; at least the testimony of nearly every witness was prefaced with a similar story: "He is an Orthodox Christian who was baptized as a child and affiliates himself with believers."<sup>55</sup>

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<sup>54</sup> *Prigovor po delu 'Pussi Raiot'* [The Sentence in the Case of Pussy Riot].

<sup>55</sup> This particular example comes from the testimony of the plaintiff S. V. Vinogradov, assistant to the chief power engineer of the Cathedral of Christ the Savior.

Yet, if one were to dig slightly deeper, it would become clear that these criteria played only a secondary role. The truth is that many defense witnesses who matched these criteria were not recognized as representatives of the requisite social group and were correspondingly deprived of the possibility to testify at court<sup>56</sup>.

If one relies on court records, one finds that the social group “Orthodox Christians” was formulated as the trial unfolded based upon a person’s attitude toward the “Punk Prayer.” This was the decisive criterion for a person to fall into this group. As a result, the social group “Orthodox Christians” did not logically precede the “Punk Prayer” and become insulted by it. On the contrary, this group came into being in the process of the investigation and court trial precisely *through* a negative view of the “Punk Prayer.” The court constructed this social group on the basis of feelings of humiliation and insult brought on by the “Punk Prayer,” and on the basis of a desire to punish the offenders. Only those who conformed to these criteria – those who were ready to admit that they were insulted, to consider themselves the object of hatred, and to demand punishment – were admitted as witnesses.

Such social construction could not satisfy the side of the defense. Defense attorney Volkova brought up the point that the group “Orthodox Christians” was far from unified: “It is unclear why Orthodox believers are separated out into a single group! Among the Orthodox, there are many groups, and they are far from friendly to one another”<sup>57</sup>. In her final statement to the court, Tolokonnikova attempted to give an alternative interpretation of the category “believer,” highlighting the importance of compassion and mercy for any Christian:

[...] I know that right now a huge number of Orthodox people are advocating for us. In particular, they are praying for us at the court, praying for the Pussy Riot members who are held in confinement. We have seen the small booklets that these Orthodox believers are handing out. The booklets include a prayer for those held in confinement. This alone is a demonstration

<sup>56</sup> For example, Aleksei Navalny, a politician and Orthodox Christian, was not accepted as a witness for the defense. See “Sud nad Pussy Riot: Svidetelei zashchity ne puskaiut v zdanie, u politseiskogo epilepticheskii pripadok” (The Pussy Riot Trial: Witnesses for the Defense Not Allowed into the Building; Epileptic Seizure at the Police Station), *Gazeta.ru*, August 3 (2012) [[http://www.gazeta.ru/social/news/2012/08/03/n\\_2467017.shtml](http://www.gazeta.ru/social/news/2012/08/03/n_2467017.shtml), accessed April 10, 2013].

<sup>57</sup> E. Kostiuchenko, “Delo Pussy Riot: zavershen shestoi den’, storony gotoviatsia k preniiam” [The Pussy Riot Case: The Sixth Day Has Concluded; the Sides Prepare for Oral Arguments].

that there is no such thing as a unified social group of Orthodox believers, as the prosecution is trying to present. It does not exist. And now, more and more believers are coming to the defense of Pussy Riot. They are of the opinion that what we did is not worth five months in a pre-trial detention center, nor is it worth three years of incarceration, as the esteemed prosecutor wants”<sup>58</sup>.

According to Tolokonnikova, the category of “Orthodox believers” constructed by the court should hardly be recognized as such: “It was not in vain that Christ spent time with prostitutes. He said, ‘It is necessary to help those who are stumbling’ and ‘I forgive them.’ But for some reason, I do not see this in our trial, which is taking place under the banner of Christianity. It seems to me that the prosecution is trampling Christianity underfoot!”<sup>59</sup>. In other words, Tolokonnikova tried to oppose the court’s interpretation with her own vision of who is a genuine Christian. In the interpretation of the defense and the accused, a much larger stress in the construction of the group “Orthodox Christians” is placed on mercy, forgiveness for all, and compassion.

From this brief overview, it is evident how initially the investigation, and then the court, resolved the ambiguous (semi-)theological problems that arose in connection with the Pussy Riot case. In fact, they did not so much solve the problems as they restored the boundaries that had been blurred by the “Punk Prayer,” thereby confirming the course of the particular model of post-secularism that the state has attempted to establish in recent years. Yet the questions brought forth by the “Punk Prayer” – concerning what constitutes a genuine prayer, a genuine church, or a genuine Christian – have hardly disappeared after the rendering of the verdict. With a sufficient measure of certainty, one can, therefore, predict that the temporarily reigning calm on the religious-secular boundary will soon explode again at the hands of proponents of other answers and of another normative vision of post-secularism. And the state, for its part, will again have to involve itself in “theological matters” to which it is unaccustomed.

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<sup>58</sup> E. Kostiuchenko, “Tak nazyvaemyi protsess: poslednee slovo Nadezhdy Tolokonnikovoi, Marii Alekhinoi i Ekateriny Samutsevich” [The So-Called Trial: Final Statements to the Court by Nadezhda Tolokonnikova, Mariia Alekhina, and Ekaterina Samutsevich], *Novaya Gazeta*, August 10 (2012) [<http://www.novayagazeta.ru/society/53903.html>, accessed February 16, 2013].

<sup>59</sup> *Ibid.*

## 2. The “Punk Prayer” and Post-Secular Hybrids

The court and the investigation played a key role in unfolding of what I call “post-secular hybrids,” a second interesting development pertaining to the Pussy Riot case. These “post-secular hybrids,” which are characteristic of the post-secular situation, stand out in the records of the case.

Let us begin with a theoretical digression. What do we mean by the concept of “post-secular hybrids”? As is well known, one of the most noticeable manifestations of secularization was the process of the so-called “institutional segregation of religion,” which, in its turn, was incited by the more general process of social differentiation. In the most general sense of the word, social differentiation is the process of the complication of society through its specialization. Every function of a society has its corresponding institution<sup>60</sup>. Karel Dobbelaere<sup>61</sup> explains that, as a result of modernization, a society differentiates itself along functional lines that develop corresponding functional subsystems (economics, politics, science, family, etc.). Every subsystem acts on the basis of its own mediating element (money, power, truth, love) and also on the basis of its own values and norms (success, the separation of powers, reliability and trustworthiness, the primary significance of love, etc.). Such a modern, socially differentiated society stands against the traditional as against “a social order regulated by religious requirements”<sup>62</sup>.

Correspondingly, in the process of secularization, the social order frees itself from religious requirements, and each of its subsystems (including religion itself) achieves autonomy.

The transition to post-secularism is leading to a further transformation of this social differentiation of society. This transformation, however, is not going in the direction of a return to the pre-modern situation “of a social order regulated by religious requirements,” but rather to a situation of the emergence of post-secular hybrids marked by the interpenetration

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<sup>60</sup> B. Wilson, *Religion in Secular Society: A Sociological Comment*, London: Watts, 1966, p. 56; Peter Berger, *The Social Reality of Religion*, London: Faber & Faber, 1969, p. 113.

<sup>61</sup> K. Dobbelaere, “Toward an Integrated Perspective of the Processes Related to the Descriptive Concept of Secularization,” in W. H. Swatos and D. Olson (eds.), *The Secularization Debate*, Lanham: Rowman & Littlefield, 2000, p. 22-23.

<sup>62</sup> B. Wilson, *Contemporary Transformations of Religion*, London: Oxford University Press, 1976, p. 10.

of religion and societal subsystems from which it had once been isolated. Talal Asad was one of the first to direct attention to this phenomenon. With reference to “the revival of religion” (a fact long acknowledged in scholarly literature) and its conversion into one of the key factors in both domestic and foreign policy, Asad<sup>63</sup> asserts:

“When religion becomes an integral part of modern politics, it is not indifferent to debates about how the economy should be run, or which scientific projects should be publicly funded, or what the broader aims of a national education system should be. The legitimate entry of religion into these debates results in the creation of modern ‘hybrids’: the principle of structural differentiation – according to which religion, economy, education, and science are located in autonomous social spaces – no longer holds”.

This process has also had an impact on Russia. The Pussy Riot case shed light on several very striking Russian “post-secular hybrids.” I intend to examine three of them: the intersection of the religious and political spheres; religion as part of the public order; and confessional experts on religion.

### **a) The Intersection of the Religious and Political Spheres**

The most obvious post-secular hybrid of post-Soviet Russia is the formation of an elaborate apparatus for the intersection of the political and religious spheres. Some call this “the clericalization of the Russian state,” while others call it “fruitful collaboration between state institutions and the representatives of Russia’s traditional confessions and their corresponding institutions.” From the standpoint of the theory of desecularization, it is fully possible to consider the Russian political regime an example of “a desecularized regime.” Vyacheslav Karpov<sup>64</sup> offers a definition of this term as “a specific normative and politico-ideological course of action, whereby desecularization manifests itself, expands and is supported”.

According to the conception of the Pussy Riot members, their “Punk Prayer” was directed against the particular post-secular hybrid that developed as a result of the actions of the “desecularized regime.” The

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<sup>63</sup> T. Asad, *Formations of the Secular: Christianity, Islam, Modernity*, p. 182.

<sup>64</sup> V. Karpov, “Kontseptual’nye osnovy teorii desekularizatsii” [The Conceptual Foundations of the Theory of Desecularization], *Gosudarstvo, religiia, tserkov’ v Rossii i za rubezhom*, 2 (2012): p. 142.

essence of this hybrid, in Pussy Riot's interpretation, is summed up as follows: a rapprochement between the presidential administration and the Moscow Patriarchate, in which the former receives moral and spiritual support in its struggle against the opposition, and the latter receives political influence and economic benefits. "Indignation" motivated the actions of the punk group members in the church. Tolokonnikova in particular directed indignant words at the Patriarch in her final statement to the court: "See what Patriarch Kirill says! 'The Orthodox do not go to protests'"<sup>65</sup>. During her questioning, she clearly explained the motives of her behavior at the Cathedral of Christ the Savior: "We sang part of the chorus and '*Sran Gospodnia*' [Holy Shit]. I have apologized and will continue to apologize if that offended anyone, but that was not my intention. This idiomatic expression referred to the previous verse about the fusion [*srashchivanie*] of the Moscow Patriarchate and the state, Putin and Kirill.

'*Sran Gospodnia*' is our evaluation of the situation in the [Russian] state"<sup>66</sup>. Samutsevich, in her final statement to the court, more explicitly described her view of this post-secular hybrid and subjected it to criticism when she spoke word-for-word about "the intersection of the religious and political spheres"<sup>67</sup>.

According to the logic of the Pussy Riot members, their "Punk Prayer" struck a blow against the particular intersection of the religious and political spheres offered to Russia by its "desecularized regime." If we return once again to Karpov's article<sup>68</sup>, then in this context it is fully possible to examine Pussy Riot's performance through the logic of the typology of a "grassroots" reaction to the establishment of desecularized

<sup>65</sup> E. Kostiuchenko, "Tak nazyvaemyi protsess: poslednee slovo Nadezhdy Tolokonnikovoi, Marii Alekhinoi i Ekateriny Samutsevich" [The So-Called Trial: Final Statements to the Court by Nadezhda Tolokonnikova, Mariia Alekhina, and Ekaterina Samutsevich]; cf. "Patriarkh Kirill: Pravoslavnye ne khodiat na demonstratsii" [Patriarch Kirill: Orthodox Christians Do Not Go to Demonstrations], *Rbk.ru*, February 2 (2012) [<http://top.rbc.ru/society/02/02/2012/635891.shtml>], accessed February 16, 2013].

<sup>66</sup> E. Kostiuchenko, "Sed'moi den' slushanii po delu Pussy Riot" [The Seventh Day of the Hearing in the Pussy Riot Case].

<sup>67</sup> E. Kostiuchenko, "Tak nazyvaemyi protsess: poslednee slovo Nadezhdy Tolokonnikovoi, Marii Alekhinoi i Ekateriny Samutsevich" [The So-Called Trial: Final Statements to the Court by Nadezhda Tolokonnikova, Mariia Alekhina, and Ekaterina Samutsevich].

<sup>68</sup> V. Karpov, "Kontseptual'nye osnovy teorii desekuliarizatsii" [The Conceptual Foundations of the Theory of Desecularization].

regimes “from above.”<sup>69</sup> From all appearances, such extensive public uproar and such an angry reaction to the “Punk Prayer” were due to the song’s interference with a process of the directed hybridization of politics and religion *controlled from above*. This implies that controlled hybridization can take place only in specific ways and through specific channels that have been officially or unofficially sanctioned. Orthodoxy and Christianity in general can increase their influence on society, but only in ways that are sanctioned, protected and *politically safe*. Any other hybridization is outlawed and subject to prosecution.

In her final statement to the court, Samutsevich turned her attention to this state of affairs:

“In our presentation, without a patriarchal blessing, we dared to combine the visual image of Orthodox culture with the culture of protest, leading intelligent people to the thought that Orthodox culture belongs not only to the Russian Orthodox Church, the Patriarch, and Putin, but it can also be on the side of civil insurrection and the oppositional mood within Russia”<sup>70</sup>.

Through its performance, Pussy Riot placed the credibility of both Church and state authorities under question. The group did so by declaring that Christianity and Orthodoxy belong not only to those authorities, that Christianity is multifaceted, and that it is not compelled to fall in line with the “pro-authority” model of post-secularism.

Key to understanding the “Punk Prayer” is that it was not directed against the very possibility of the intersection of the religious and political spheres or against the very possibility of post-secular hybrids as such. It was directed against a concrete manifestation of the post-secular hybrid – the *symphonia* of state and Church. The “Punk Prayer” instead advanced another kind of hybrid as an alternative, one in which Orthodox culture turns out to be on the side of civil protest (i.e., the “Punk Prayer” set the “oppositional” model of post-secularism against the “pro-authority” model). In this context, Pussy Riot proposed a radically different, innovative reaction to the post-secular situation: instead of a classical,

<sup>69</sup> If we employ Karpov’s classification, the “Punk Prayer” is a reaction that combines elements of an “innovative” strategy with a strategy of “rebellion” (V. Karpov, “Kontseptual’nye osnovy teorii desekuliarizatsii”, p. 146).

<sup>70</sup> E. Kostiuhenko, “Tak nazyvaemyi protsess: poslednee slovo Nadezhdy Tolokonnikovoi, Marii Alekhinnoi i Ekateriny Samutsevich” [The So-Called Trial: Final Statements to the Court by Nadezhda Tolokonnikova, Mariia Alekhina, and Ekaterina Samutsevich].

secular reaction that implies the intention to terminate the developing post-secular hybrids and to separate religion again from that with which it had become intertwined, the punk group, acting in the logic of new post-secular realities, attempted to set one hybrid against another.

Apparently, in the conditions of post-secularism, the question is not about the restoration of the old stubborn boundaries and the overcoming of hybridity as such. It is a question of the choice between *different* hybrids. In place of the hybrid that Pussy Riot rejected, it proposed its own. The “Punk Prayer” was an act of the appropriation of religious content and the use of religious space with the goal of redirecting them to another course not sanctioned by the authorities. The fundamental radicalism of Pussy Riot’s “Punk Prayer” consisted in the way it directed Christian content against the prevailing policy of the country.

There is every indication that the expert witnesses, the prosecution, and the court were all disinclined to see the obvious political component of the “Punk Prayer” due to this radical course toward the construction of alternative modes of intersection between the religious and political spheres. The depoliticization of Pussy Riot’s performance was one of the internal conceptual threads lending coherence to the entire legal process, from the pre-trial investigation to the reading of the sentence. For example, the expert witnesses<sup>71</sup> depoliticized the performance as follows:

Taken as a whole and judging from the song’s general conceptual composition, an analysis of the lyrics of the Pussy Riot song under investigation exposes the clear artificiality and logical groundlessness of the inclusion of the following textual fragment, which was placed at both the beginning of the song and repeated at the end: ‘Mother of God, Virgin, Banish Putin / Banish Putin. Banish Putin.’

This textual fragment appears to be completely disconnected from and out of context in the song, which was fully devoted to the insult and mockery of the social group of Orthodox believers, not of Putin. The aforementioned fragment, considering that insulting words and expressions were not used in relation to this person [i.e., Putin] within the song itself (as opposed to other figures who were mentioned therein), can thus testify only to the ancillary and secondary nature of the song being performed for any motive of political hatred or hostility.

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<sup>71</sup> *Zakliuchenie komissii ekspertov (po ugovnomu delu No. 177070)* [The Opinion of the Commission of Expert Witnesses (Criminal Case No. 177070)].

It is highly likely that the participants, fully cognizant of the possibility of incurring liability for performing this act and foreseeing the incurrence of such liability, employed the surname 'Putin' in their song in order to create a basis for the subsequent artificial positioning of this performance as an expression of political protest against authorities and high officials, etc., and in order to make themselves out to be 'prisoners of conscience who were persecuted by the authorities for their criticism' and so on. In actuality, it was a familiar technique of 'the removal of responsibility,' a common ruse<sup>72</sup>.

The Prosecutor employed this same strategy of depoliticization, virtually repeating the logic of the expert witnesses:

"The defendants' statements about the performance's political motive are unfounded. Not one surname of any politician was pronounced within the church. An analysis of the song exposed the clear artificiality of the inclusion in the text, of 'Mother of God, Virgin, Banish Putin!' The text was actually devoted to insulting the feelings of Orthodox believers. Putin's surname was mentioned only in order to create a pretext for the subsequent attempt to position the performance as a protest against the highest authorities"<sup>73</sup>.

The attorneys for the plaintiffs used the same logic. In the words of attorney Lev Lialin, "When I entered this case, a civil crisis took place in my consciousness. I finally knew what a civil war was. The mass media was packed with outcries about politics and political prisoners. They were saying, 'The girls are innocent...'. But it was not politics; it was filth!"<sup>74</sup>. In the sentence<sup>75</sup>, the judge showed unambiguous solidarity with the depoliticized interpretation: "There was no music or singing; there was chanting. There were no political motives or slogans; there were actions that insulted believers. It is improper to conduct oneself this way in a church."

The court more or less unequivocally rejected the arguments of the defendants and their attorneys that it was impossible to ignore the political subtext of the "Punk Prayer." As a result, Pussy Riot's defense attorney Volkova felt compelled to state:

"The court is attempting to retreat from politics into the criminal sphere. Yet the girls are being tried not for brightly colored dresses and an incorrect sign of the cross; they are being tried for a prayer, and this prayer was political.

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<sup>72</sup> *Ibid.*, p. 18-19.

<sup>73</sup> E. Kostiuchenko, "Sed'moi den' slushanii po delu Pussy Riot" [The Seventh Day of the Hearing in the Pussy Riot Case].

<sup>74</sup> *Ibid.*

<sup>75</sup> Prigovor po delu 'Pussi Raiot' [The Sentence in the Case of Pussy Riot].

It would be a sin to turn our backs on this nail being driven now into the Constitution, from which blood is flowing. The Church has been turned into a memorial at the grave of justice, law, and human rights, all of which have been mockingly infringed<sup>76</sup>.

Tolokonnikova summed up the trial with the words, “This really hurts. They will not hear us”<sup>77</sup>.

Both the court and the investigators sought to deprive the “Punk Prayer” of its most radical dimensions. According to these authorities, the particular post-secular hybrid associated with the intersection of the religious and political spheres, the contours of which are discernible in Pussy Riot’s performance, had to be destroyed. It was necessary to disentangle the unsanctioned interlacing of religion and politics by showing that there was nothing in the “Punk Prayer” but hatred to Orthodoxy, for which certain insignificant political subtexts served as formal cover. Just as Pussy Riot undermined the post-secular hybrid created by the “desecularized regime,” so also the court had to destroy the hybrid that threatened to become its alternative.

In the context of post-secularism, religion and politics have become entangled. They are already inseparable. Yet a series of problems emerges. Who controls the conditions of this entanglement? Who determines the legal channels by which it takes place? Finally, who should be declared the legitimate actors in this new post-secular space?

### ***b) Religion as Part of the Public Order***

A second post-secular hybrid that became apparent during the Pussy Riot trial was the intersection of the internal norms of religious associations and the universal norms of state order. During the court proceedings, one issue came to a head: in a secular state, can the internal norms of religious associations be considered part of the public order and public principles to the extent that one could be sent to prison for

<sup>76</sup> E. Kostiuchenko, “Sed’moi den’ slushanii po delu Pussy Riot” [The Seventh Day of the Hearing in the Pussy Riot Case].

<sup>77</sup> E. Kostiuchenko, “Delo Pussy Riot: zavershen shestoi den’, storony gotoviatsia k preniyam” [The Pussy Riot Case: The Sixth Day Has Concluded; the Sides Prepare for Oral Arguments].

violating them? In short, can someone be put in prison for violating the canons of the Council of Trullo?<sup>78</sup>

An open letter from various Russian attorneys<sup>79</sup>, written immediately following the disclosure of the indictment, clearly specified this issue. In particular, the attorneys wrote:

“Nadezhda Tolokonnikova, Maria Alyokhina, and Ekaterina Samutsevich are accused of violating the rules of conduct in an Orthodox church. [According to the indictment,] they thereby demonstrated ‘blatant disrespect for the believers who were visiting and serving at the church’; ‘deeply insulted and denigrated the feelings and religious compass of believing Orthodox citizens’; ‘set themselves up against the Orthodox world’; and ‘demonstrably and pointedly attempted to dismiss centuries of preserved and hallowed ecclesiastical traditions and dogmas.’ In the published indictment of these Pussy Riot members, there is not one word about activities that disturbed the public order or infringed on public safety.

The investigators accuse these women not of infringing on public order and safety, but of violating the canons and traditions of the Orthodox Church. Their behavior neither contradicted general state order nor undermined public safety. The operation of those prescriptions and proscriptions that they violated extend only to the territory of an Orthodox church. If they had done the very same thing outside of a church, it would not have been possible to accuse them of anything. The investigation does not demonstrate their violation of anything other than ecclesiastical rules.

The declaration of their activities as ‘hooliganism’ equates the canons of the Orthodox Church with the norms of state order and signifies that the Orthodox Church is an inalienable part of the state. The filing of the indictment of ‘hooliganism’ against Nadezhda Tolokonnikova, Maria Alyokhina, and Ekaterina Samutsevich is not merely a misuse of the Criminal Code, but also contradicts the secular character of our state, guaranteed by Art. 14 of Russia’s Constitution”.

The expert testimony, written by representatives of the specific post-secular hybrid associated with “the equation of Orthodox Church canons

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<sup>78</sup> The third expert evaluation enumerated the guidelines of the Council of Trullo (692 CE) as evidence of Pussy Riot’s violation of the rules of conduct within a church. This expert testimony laid the groundwork for the official indictment.

<sup>79</sup> “Otkrytoe pis'mo: Advokatskoe soobshchestvo publichno vystupilo v podderzhku Pussy Riot” [An Open Letter: Attorneys’ Association Publicly Speaks out in Support of Pussy Riot], *Novaia Gazeta*, August 2 (2012) [<http://www.novayagazeta.ru/news/58750.html>, accessed February 16, 2013].

with the norms of state order” and the declaration that “the Orthodox Church is an inalienable part of the state,” argues:

“It is important to note that the state confirmed the validity [...] of the internal constitutions of religious organizations through the legal norm of Clause 2 of Art. 15 of the Federal Law ‘On Freedom of Conscience and Religious Associations’ (No. 125-F3 from September 26, 1997, including subsequent amendments). This law has enacted that the state respects the internal constitutions of religious organizations if said constitutions do not contradict the law of the Russian Federation”<sup>80</sup>.

In its decision, the court virtually sanctioned this post-secular hybrid, ruling that “the citation of ecclesiastical nomenclature and ecclesiastical norms, particularly the canons on conduct in a church, is employed solely for the purpose of defining whether or not there is a violation of the public order and a motivation of religious hatred and hostility in the actions of the accused”<sup>81</sup>. The effect of this argumentation is that from now on the canons of the Council of Trullo (as well as the canons of all other church councils) may very well be considered prescriptive with respect to the norms of public order.

In the same way that the court earlier sought to obliterate the specific post-secular hybrid discernible in the “Punk Prayer” – a hybrid that concerned the intersection of the religious and political spheres – Pussy Riot’s defense attorneys attempted in every way possible to demolish the specific post-secular hybrid sanctioned by the court. In particular, one of the defense attorneys noted, “[O]nly publicly disclosed rules apply. Where is the Council of Trullo published [in our nation’s laws]? Why are we citing ancient legal norms? We cannot live by the standards of Hammurabi, because that society used to cut off a person’s hand for theft, and this does not accord with our understanding of humanism”<sup>82</sup>.

The Pussy Riot case has determined the course for the integration of the norms of religious associations into the body of ideas concerning the public order. This applies not only to Orthodoxy, but also to all of Russia’s traditional confessions. In particular, the court gave such serious consideration to the position of the Council of Muftis in Russia that, in

<sup>80</sup> *Zakliuchenie komissii ekspertov (po ugovnomu delu No. 177070)* [The Opinion of the Commission of Expert Witnesses (Criminal Case No. 177070)].

<sup>81</sup> *Prigovor po delu ‘Pussi Raiot’* [The Sentence in the Case of Pussy Riot].

<sup>82</sup> E. Kostiuhenko, “Sed’moi den’ slushanii po delu Pussy Riot” [The Seventh Day of the Hearing in the Pussy Riot Case].

Pussy Riot's sentence, it quoted a letter written on April 3, 2012, by one of the organization's representatives:

“From the standpoint of the canons of Islam, the unapproved public performance that occurred on February 21, 2012, in the Cathedral of Christ the Savior is conduct that must be condemned and that demands public apology for offense to the feelings of believers. Without question, any sanctuary (*kbram*) contains holiness and is pervaded by a correspondingly exalted atmosphere, which those who are present should support, preserve and solemnly protect. Such a bacchanalia [i.e., Pussy Riot's act] discredits the status of the sanctuary and challenges the traditional way of life and the centuries-old traditions of the peoples of this country. It is clear from the perspective of Muslim culture that such behavior, not only within the walls of a religious sanctuary, but also outside of its confines, is sinful and damnable”<sup>83</sup>.

The expression “the spiritual foundations of the state” figures in the records of this case – particularly in the indictment, according to which Pussy Riot impinged upon said foundations. The use of this expression in court records represents the direct recognition of Orthodoxy as an inalienable part of the state. Although this expression had disappeared from the court's sentence, the pathos of the entire trial testifies to its being directed primarily against the denigration of these “spiritual foundations” by the “Punk Prayer.”

### **c) Confessional Expert Witnesses**

A third post-secular hybrid that manifested itself over the course of the Pussy Riot case was the figure of the “confessional expert witness” (i.e., an expert witness who has certain confessional sympathies). Vsevolod Yurevich Troitskii, Vera Vasilevna Abramenkova, and Igor Vladislavovich Ponkin, who made up the third team of expert witnesses, served in this capacity. In the final analysis, it was they who played the key role in forming the definitive logic of the indictment. It was they who gave the investigation the formulation with which the punk group was convicted after a rather expeditious trial (in particular, the statements suggesting a violation of the Apostolic Canons and the canons of the church councils). And it was they who came to the assistance of the prosecution when the two previous expert evaluations, conducted by the State Unitary Enterprise known as the Center for the Technology of Information

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<sup>83</sup> See Prigovor po delu ‘Pussi Raiot’ [The Sentence in the Case of Pussy Riot].

Analytics<sup>84</sup>, found no basis for charging the members of Pussy Riot with the commission of any crime.

Timothy Fitzgerald<sup>85</sup> has already clearly described the figure of the expert on religious matters as part of “the ideological state apparatus.”<sup>86</sup> The task of this ideological apparatus is to trace a line in the interests of the state that separates religion from that to which it does not belong, thereby implementing a semblance of police control over the latter. Yet, in the example of the Pussy Riot case, we see how the figure of the expert witness has been transformed. Secular expert witnesses were needed in the age of the ascendancy of secular ideology, but in the current situation of a transition to post-secularism, the state needs a somewhat different “ideological apparatus.” This apparatus must reposition itself under the policies and strategic tasks of a “desecularized regime.” The “confessional expert witness” nicely embodies this new characteristic of the “ideological apparatus.” Indeed, it is now no longer necessary to separate religion from social subsystems that have been fundamentally isolated from it. On the contrary, the state now deems it necessary to promote the formation of acceptable post-secular hybrids.

The Pussy Riot case legitimized the presence of clear confessional bias within expert testimony. Defense attorneys spent several hours trying to prove the invalidity of the expert testimony and the dubiousness of

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<sup>84</sup> The Center for the Technology of Information Analytics is an organization created by the Moscow City Government and the Administration of Moscow Province. It functions in part as a legal examining body. For the Pussy Riot case, center staff prepared two expert evaluations (Pervaia ekspertiza GUP “TsIAT” po delu PUSSY RIOT [The First Expert Evaluation by the Center for the Technology of Information Analytics for the Pussy Riot Case]; Vtoraiia ekspertiza GUP “TsIAT” po delu PUSSY RIOT [The Second Expert Evaluation by the Center for the Technology of Information Analytics for the Pussy Riot Case]) concluding that there was no basis for a criminal investigation of the women who took part in the “Punk Prayer.”

<sup>85</sup> T. Fitzgerald, “Playing Language Games and Performing Rituals: Religious Studies as Ideological State Apparatus,” *Method and Theory in the Study of Religion*, 15(3) (2004): 209-54.

<sup>86</sup> Louis Althusser introduced the concept of “ideological state apparatuses” in order to provide a more precise understanding of the operational nature of systems of government coercion, which act not only through violence, but also through ideology: “the Repressive State Apparatus functions ‘by violence,’ whereas the Ideological State Apparatuses function ‘by ideology’” (Louis Althusser, “Ideology and Ideological State Apparatuses: Notes towards an Investigation,” in Louis Althusser, *Lenin and Philosophy and Other Essays*, trans. Ben Brewster, New York: Monthly Review Press, 2001, p. 85-126.

the handpicked expert witnesses. For example, Mark Feygin ascertained that “the expert witness Ponkin had a connection to a certain M. N. Kuznetsov, who is representing the interests of Potankin, a plaintiff against the punk group’s actions in this trial.” Feygin provided evidence for this: “Kuznetsov was one of Ponkin’s advisors when he defended his dissertation for his Juris Doctor degree. The dissertation was entitled ‘The Contemporary Secular State: A Constitutional and Legal Examination.’ Moreover, [Ponkin and Kuznetsov] have co-authored books entitled *The Disgraceful Discussion about Religious Education in the Secular School: Lies, Substitutions and Aggressive Xenophobia* and *On the Right to Critically Evaluate Homosexuality*”<sup>87</sup>. Judge Marina Syrova, however, did not allow herself either to doubt the expert testimony or to summon the expert witness Ponkin for clarification. Similarly, she defended the post-secular hybrid that had crystallized during the trial, not allowing the defense to sever the coupling of secular science and confessional bias – a fusion inadmissible under secularism.

## Conclusions

This article has examined a variety of conflicting interpretations concerning the religious-secular boundary and what we have called “post-secular hybrids.” These conflicting renditions advance alternative normative images of post-secularism, and various groups are waging a battle for the fulfillment of their particular vision. We emphasized two such normative images: the “pro-authority” and the “oppositional.” I would like to underscore once more that the issue here is not about a choice between a dangerous post-secularism and a salvific return to the previous situation of a socially differentiated society. Rather, the main choice in the current situation is between various models of post-secularism and between different forms that can and should be assumed in particular by the hybridization of religion and politics, of public order and religious norms, and of secular knowledge and confessional belonging. It is likewise a choice between different approaches to drawing the constantly contested religious-secular boundary. The logic of the post-secularism dictated by the “desecularized regime” is not the only

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<sup>87</sup> E. Kostiuchenko, “Delo Pussy Riot: zavershen shestoi den’, storony gotoviatsia k preniiam” [The Pussy Riot Case: The Sixth Day Has Concluded; the Sides Prepare for Oral Arguments].

possible logic, as is evident from the Pussy Riot case files. The trial of the women who took part in the “Punk Prayer” became an arena for the battle between the proponents of different visions of post-secularism. The conclusion of this battle is not yet predetermined. The state, the Church and society will have to continue searching for solutions to the issues raised by the “Punk Prayer.”

# Diversity of Greek Orthodox Discourses on Human Rights

Theodoros KOUTROUBAS

## 1. The organization of the Greek-speaking component of the Orthodox Church

The very nature of the organization of the Greek-speaking component of the Orthodox Church<sup>1</sup>, both within the borders of the Hellenic Republic and with regard to the Greek diaspora around the world – the Greeks living outside these borders long before the establishment of the Hellenic State, makes it impossible to speak of “a” Greek-Orthodox Discourse on Human Rights.

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<sup>1</sup> The Orthodox Church worldwide is composed of:

A) 9 Autocephalous Churches headed by a Patriarch: these are the Patriarchates of Constantinople (also known as Ecumenical from the Greek word “οικουμένη” – the world), Alexandria, Antioch (Damascus – Beirut), Jerusalem, Moscow, Serbia, Romania, Bulgaria and Georgia. Some of the Patriarchates mentioned above have a number of “Autonomous Churches” within their jurisdiction, such as, for example the Ukrainian Orthodox Church within the Moscow Patriarchate or the Finnish Orthodox Church within the Patriarchate of Constantinople.

B) 5 Autocephalous Churches headed by a Metropolitan Bishop who often has the title of Archbishop of the whole country or countries: these are the Churches of Cyprus, Greece, Poland, Albania and the Czech and Slovak Republics. The majority of the faithful of the Patriarchate of Constantinople and of the Autocephalous Churches of Cyprus and Greece are Greek-speaking. The Patriarchates of Alexandria and Jerusalem have many Arabic and African language-speakers among their faithful but the majority of their hierarchy (Bishops and unmarried clergy) is composed of ethnic Greeks or Cypriots. In the case of the Patriarchate of Jerusalem in particular, the overwhelming predominance of Greeks/Cypriots amongst the high clergy, which is in reality inversely proportional to the percentage of Greek-speaking faithful, is often the cause of protests from the Arabic-speaking component of that Church. The Autocephalous Church of Albania counts among its members a sizeable Greek-speaking community. Its Head, the Archbishop of Tirana is also a Greek-born Greek-speaker.

Within the borders of the Hellenic Republic there are in fact five ecclesiastical jurisdictions<sup>2</sup>:

a) The Autocephalous Church of Greece, which includes all the Metropolises up to the river Pineios, those of the Peloponnese, the Ionian islands and the islands of the Aegean sea that were included in the first borders of the Hellenic State of 1832;

b) The Semi-autonomous Church of Crete, depending from the Ecumenical Patriarchate of Constantinople;

c) The five Metropolises of the Dodecanese and the Patriarchal Exarchy of Patmos, belonging directly to the jurisdiction of the Ecumenical Patriarchate of Constantinople;

d) the thirty-six Metropolises of the so called “New Lands”, i.e. the lands that were added to the Hellenic State after the Balkan Wars, whose bishops are, since 1928, “temporarily” elected by and actively participating in the Holy Synod of the Autocephalous Church of Greece but continue to belong in the jurisdiction of the Ecumenical Patriarchate of Constantinople. The latter must approve the list of the candidates to these episcopal thrones. Amongst the obligations of the Metropolitan Bishops of the provinces in question is to mention the Ecumenical Patriarch’s name in every liturgy or other ecclesiastical office they perform. It is interesting to note that amongst the Metropolises of the “New Lands” are some of the most important cities – regions of the Hellenic Republic, including Thessaloniki, the second after Athens in number of inhabitants.

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<sup>2</sup> It is interesting to note that not all Greeks who consider themselves Orthodox within the borders of the Hellenic Republic and in the diaspora belong to a component of the Orthodox Church. Following the adoption of the Gregorian calendar by the Autocephalous Church of Greece, the Patriarchate of Constantinople and many other Autocephalous Churches in 1924, a considerable number of faithful and three Bishops (1935) walked out of the Church of Greece to establish an “old-calendar” Orthodox Church. Divided in several fractions and not canonically recognised by the Orthodox Churches worldwide, this Church counts today tens of thousands of members in Greece, in Australia, in Canada and in other countries where Greeks immigrated in the second half of the 20<sup>th</sup> century. The non-negligible number of “old-calendarists” in Greece attracts the attention of local politicians to the needs of their communities. The latter, especially their monasteries and shrines, enjoy a certain respect from the “new-calendarist” Orthodox population. See for example: <http://churchgoc.blogspot.gr> (last accessed on 14/01/2017); <http://www.ecclesiagoc.gr/index.php/ierasunod>, [http://www.dogma.gr/default.php?pname=Article&art\\_id=5650&catid=3](http://www.dogma.gr/default.php?pname=Article&art_id=5650&catid=3) (last accessed on 14/01/2015).

e) The Auto-governed Peninsula of Mount Athos (known as “Holy Mountain”), administered by an Assembly of representatives of the monks of its 20 monasteries and belonging “spiritually” to the jurisdiction of the Ecumenical Patriarchate.

Most of the Greek-Orthodox Metropolises with a majority of Greek-speaking faithful out of the borders of the Hellenic Republic belong directly to the jurisdiction of the Ecumenical Patriarchate of Constantinople. Their Bishops are elected by and participating in the Holy Synod of the Patriarchate, along with those of the Dodecanese, of Crete and of the (very) few missionary Metropolises of the Ecumenical throne in South Asia.

The majority of the hierarchy of the Patriarchates of Alexandria and Jerusalem are Greek-speaking. Even though the number of the Greek-speaking faithful under their jurisdiction has drastically diminished since the 1950s and most of their folk is today constituted by Arab-speaking and African Orthodox, the two Patriarchs and their Bishops frequently visit and officiate in religious ceremonies in Greece and their sermons and opinions do enjoy a certain prestige among the population of the Republic

One of course should not forget the Greek-speaking Autocephalous Church of Cyprus, whose jurisdiction coincides with the borders of the Republic of Cyprus. Most of the faithful of this Church define themselves as Greek and the presence of Cypriot Greek-speaking Bishops is not negligible among the hierarchy of the three Greek-speaking Patriarchates. The close cultural and political bonds between the two Republics and the current political situation in the island, considered by most of Greeks as a “major national issue” explain why the opinions of the Bishops of the Church of Cyprus, have a special weight among Greek-Orthodox Greek-speakers.

Finally, it is important to note that the Head of the Autocephalous Church of Albania, the Archbishop of Tirana, Anastasios Giannoulatos, a native Greek, former Professor of the Faculty of Theology of the University of Athens and former assistant-bishop of the Archdiocese of Athens, is also a personality to count with, in the context of the Greek-Orthodox discourse and notably on that regarding Human Rights. Known for his missionary work in Africa, his erudition, his rich academic work and his “monastic” lifestyle, Giannoulatos has a special weight amongst

Greek-Orthodox prelates and this is clearly reflected in the coverage his opinions and sermons enjoy from the Greek media.

## **2. The inexistence of an institutional position of Primate vested with general and concrete authority over all or at least most Greek-Orthodox, Greek-speaking Metropolitan Bishops and faithful**

### ***a) The moral authority of the Primus of the Autocephalous Church of Greece over the faithful of this Church's jurisdiction and his effective power over the Synod are rather weak.***

Despite of being the Head of the Church in which belong the biggest number of the Greek-Orthodox, Greek-speaking faithful, the Primus of the Autocephalous Church of Greece is not in fact vested with an authority comparable to that exercised by Patriarchs or other Autocephalous Orthodox Archbishops over the Metropolitan Bishops that compose their respective Synods.

Unlike the practice followed in the case of the Heads of the neighbor Orthodox Churches, the name of the Archbishop of Athens and All Greece is not mentioned during divine liturgies and ceremonies performed by other Bishops of his Church's jurisdiction<sup>3</sup>.

Within the Synod, the Archbishop has the role of a Chair, of a "*primus inter pares*", rather than that of an all-powerful President. As a consequence, his proposals are not always accepted and the candidates he (always unofficially) supports at the elections held amongst the Synod's members in order to fill the vacant episcopal sees are not always chosen by the majority of the Metropolitan Bishops.

In the protocol of the Ecumenical Orthodox Church, known as "diptychs", the primate of Greece humbly occupies the 11th place out of fourteen<sup>4</sup>, his name figuring after that of the Archbishop of Nova

<sup>3</sup> [http://xristodoulos.antibaro.gr/koinonia/mega\\_19-2-2001.html](http://xristodoulos.antibaro.gr/koinonia/mega_19-2-2001.html) (last accessed on 13/08/2012).

<sup>4</sup> Or fifteen if one counts the Orthodox Church in America, granted the status of Autocephaly by the Patriarchate of Moscow and All Russia but not recognized as an Autocephalous Church by the Oecumenical Patriarchate of Constantinople, who claims for itself the exclusive right to grant this status to other Churches.

Justiniana and All Cyprus and just before that of the Metropolitan of Warsaw and All Poland.

The moral authority the Head of the Greek Church enjoys amongst both the clergy and the faithful of the different Metropolises, depends much more on his personal charisma, his relations with the national media and those he entertains with the local Metropolitans, rather than on the prestige of his throne.

At the same time, it is important to underline that the Metropolitan Bishops of the Autocephalous Church of Greece are vested with an almost absolute authority over the priests and the faithful of their eparchies.

The importance of the dimensions this power entails at the level of the public life of every Greek province can be best understood in the light of the specific prerogatives the Church enjoys in the context of a non-secular, religiously quasi-homogenous country, in which public education still puts emphasis on the links between nationhood and Orthodoxy. The Hellenic State in fact officially recognises Orthodoxy as the “*prevailing*” religion of the Republic<sup>5</sup>; requests the synergy and/or the presence of the Church in all official ceremonies, from the launching of the new school year to the celebration of national holidays and the taking of the oath of office of elected authorities; presents military honours to public processions and other ecclesiastical events and accords to Metropolitan Bishops a protocol rank equal to that of acting Government Ministers. Not surprisingly, a very considerable number of politicians are more

<sup>5</sup> Art. 3 of the Hellenic Constitution: “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 in Constantinople, is prohibited*”. It is interesting to note that the Constitution begins by invoking the “Holy and Consubstantial and Indivisible Trinity”! <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf> (last accessed on 20/05/2013).

than eager to maintain the best possible relations with their local Bishop because of the latter's visibility and influence over a part of their electorate.

Conscious of the genuine popularity they enjoy amongst the general population of their diocese, due to their personal charisma or good charity work, some of these Bishops do not hesitate to publicly voice any disagreement they might have with the positions officially taken by their Primate or even with some of the decisions of the Holy Synod. The systematic absence of any kind of disciplinary action against the Metropolitans who act as "opposition" to the Archbishop of All Greece or who use the media to contest guidelines and strategies adopted by the majority of their pairs in Synod, highlights even more the lack of uniformity that characterizes the discourse of the Autocephalous Church of Greece.

***b) The moral authority of the Ecumenical Patriarch of Constantinople over the faithful and the Churches who are not under his direct jurisdiction is rather weak***

Despite of being often considered as the Head of the Ecumenical Orthodox Church, the Archbishop of Constantinople – New Rome and Ecumenical Patriarch is vested with an almost minimal effective authority over the different Autocephalous Churches and in practice his position of Primate of Orthodoxy is limited to strictly protocol-related prerogatives.

Bishop of the First City of the Christian Roman Empire till 1453 and Head of the Christian subjects of the Ottoman Sultan – Caliph of Islam till the 1910s, the Patriarch of the city now called Istanbul has seen both his jurisdiction and the number of faithful living in the Metropolises of his throne being drastically limited during the last century. The movements of national independence that led to the dismantlement of the Ottoman Empire have in fact forced the Church of Constantinople to grant the status of Autocephaly to the Churches of Romania, Serbia, Bulgaria and Greece<sup>6</sup>. In the middle of the 1920s, the exchange of populations between Turkey and Greece that followed the defeat of the latter in the Greco-Turkish War of 1922, has stripped the Patriarchate from all its faithful on Turkish soil,

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<sup>6</sup> The Church of Russia had already declared itself Autocephalous in the year 1448, following the refusal of the Union of the Eastern with the Western Church accepted by the Emperor and the Patriarch of Constantinople after the Synod of Ferrara – Florence. The Moscow see was elevated to the rank of Patriarchate by Constantinople in the year 1589.

with the exception of those living in Istanbul and the two Turkish islands of the Aegean Sea. Further tensions between Ankara and Athens forced the great majority of the remaining Greek-Orthodox population in Turkey to immigrate with no real perspective of return.

Today the faithful of the Patriarchate in Turkey are generally estimated as being less than five thousand, whilst the largest part of its flock resides in North America and Australia. As previously mentioned, the See of Constantinople continues to administer the Metropolises of the Greek Dodecanese islands and to exercise a certain degree of authority over the Semi-autonomous Church of Crete, the Peninsula of Athos and the Metropolises of the Greek “New Lands”.

The inevitable consequence of this decline was a *de facto* contestation of the very few non-protocol-related elements of Constantinople’s position of *primus inter pares* amongst the Orthodox Heads of Churches<sup>7</sup>. Today, the Oecumenical Patriarchate’s right to administer all faithful living out of the borders of the established Autocephalous Orthodox Churches is limited almost exclusively to the Greek-speaking diaspora; its privilege to be the only Church able to grant the status of Autocephaly and autonomy is actively challenged, notably by the See of Moscow who has proceeded to grant this status to its American Metropolises (Orthodox Church of America); the role of the Constantinopolitan throne as the ultimate judge of appeal on differences amongst bishops is very rarely invoked by non-Greek-speaking prelates and the recent meeting of all Orthodox Primates in order to prepare a pan-orthodox Synod has confirmed the rules of one vote per Autocephalous Church and of unanimity for the adoption of decisions.

Undoubtedly, the Patriarchate of Constantinople still commands, as an institution, a considerable respect and prestige amongst the Greek-speaking Orthodox living out of its immediate jurisdiction. The principle reason of the Oecumenical throne’s importance amongst ethnic Greeks is not so much its canonical position within the universal Orthodox Church though, but rather the exceptional place the Byzantine era continues to occupy even today in the Greek psyche. Generations of Greeks were in fact brought up with the nostalgia of the lost Empire and of the splendour of its capital, once the most brilliant of the cities of the known world. Last of the guardians of this bygone glory, living link with a past very

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<sup>7</sup> See, for example, the position of the Patriarchate of Moscow “On the problem of Primacy in the Universal Church” <https://mospat.ru/en/2013/12/26/news96344/>.

often sublimated and symbol of the continuation of Hellenic presence in what is today almost exclusively Turkish-speaking Muslim lands, the Patriarch is still viewed as Head of the “nation” (Ἔθνος) by many in the Republic of Greece, in Cyprus and among the diaspora overseas.

The very nature of the system of Autocephaly however, makes the real influence of the throne of Constantinople on the other Greek Speaking Churches highly dependable from the charisma of the Patriarch’s personality and from his relations with the local media and the local Primates or Metropolitan Bishops.

During the last fifteen years, the Patriarchate’s ties with the Autocephalous Church of Greece have frequently experienced very serious tensions that led Constantinople to officially sever spiritual communion and administrative contacts with the Archbishop of Athens and All Greece Christodoulos Paraskevaïdis in April 2004. This unprecedented decision was taken by an extraordinary Synod of Greek-speaking Bishops, convened by the Patriarch Bartholomew Archontonis over Paraskevaïdis’ efforts to completely integrate the Metropolises of the “New Lands” in the jurisdiction of the Church of Greece<sup>8</sup>. The communion between the two Churches was restored by a decision of a new major Patriarchal Synod after some months (June 2004), following concessions from both sides<sup>9</sup>, but the tensions between the two Churches did continue, albeit somehow less visible, almost till 2007. Extensively covered by the Greek media, the perceived “rivalry” between the two Church Primates<sup>10</sup> has divided many among the Greek-Orthodox faithful and has clearly highlighted the impossibility of an (even unofficial) single leadership of the Greek-speaking part of the Orthodox Church.

The election of Ieronimos Liapis as Head of the Church of Greece after Christodoulos’ death in January 2008 inaugurated a period of better relations between Constantinople and Athens, that endures more or less to the day these lines are written. However, despite of the numerous declarations of goodwill and brotherly love and the official support of Athens to the patriarchal line in matters of interreligious – inter-Christian dialogue, several Metropolitan Bishops of the Autocephalous Church of

<sup>8</sup> <http://www.ec-patr.org/docdisplay.php?lang=gr&id=23&tla=gr>.

<sup>9</sup> <http://www.ec-patr.org/docdisplay.php?lang=gr&id=32&tla=gr> (last accessed on 17/01/2015).

<sup>10</sup> See for example the Patriarch’s interview to a well-known journalist of a very popular channel of the Greek television in October 2003: [http://www.theodromion.com/arthra/O\\_PATRIARXHS\\_SE\\_SYNENTHEYXH\\_STO\\_MEGA\\_CHANNEL/index.htm](http://www.theodromion.com/arthra/O_PATRIARXHS_SE_SYNENTHEYXH_STO_MEGA_CHANNEL/index.htm).

Greece are publicly and very severely criticising Bartholomew's positions on religious freedom and condemn his efforts of rapprochement with the Roman-Catholic and Protestant worlds<sup>11</sup>. Constantinople's call upon Archbishop Ieronimos to demand from these Bishops to adjust their discourse to the official position of the Greek Autocephalous Church<sup>12</sup> remain fruitless up today and constitutes another eloquent illustration of the absence of a single discourse in the context of the system of Autocephaly prevailing in the Orthodox Church.

Much less turbulent than those with the Church of Greece, the Oecumenical Patriarchate's ties with the Autocephalous Church of Cyprus are marked by the continuing occupation of the North part of the Island by Turkish troops and the recognition by Ankara of the self-proclaimed Turkish State in the occupied territories. Cautious of the high price it has paid in the past for its sympathy towards Greek nationalism, the See of Constantinople is very prudent the very rare times it has to mention the Cypriot problem, whilst no Patriarch of Constantinople has visited the island in the last fifty years despite the geographical proximity. The first visit of a Head of the Orthodox Church of Cyprus to the See of Constantinople took place only in 2010 (April)<sup>13</sup>.

The leadership of the Church of Cyprus seems to understand the delicate position of the Patriarchate when it comes to publicly denounce the Turkish occupation of a big part of the island<sup>14</sup>. Most Cypriot Metropolitan Bishops express frequently their respect for the person of Patriarch Bartholomew and publicly acknowledge the importance of the Oecumenical throne as first amongst equals in Orthodoxy, albeit putting more emphasis on its "national" significance for ethnic Greeks. In practice, the effective influence of the Patriarchate in the discourse and the internal affairs of this Autocephalous Church is today even less important than the one it has on the Church of Greece.

If none of the two most important leaders of the Orthodox Church's Greek-speaking component, i.e. the Archbishop of Athens and All Greece and the Oecumenical Patriarch, is vested with an effective authority to

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<sup>11</sup> See for example the opinions of the Metropolitan Bishop of Kalavryta and Aigialeia Amvrosios Lenis on Patriarch Vartholomew's positions in: <http://www.amen.gr/article10139> (last accessed on 20/11/2014).

<sup>12</sup> See for example <http://www.tovima.gr/society/article/?aid=450832> (last accessed on 18/04/2015) and <http://www.amen.gr/article8883> (last accessed on 29/04/2015).

<sup>13</sup> <http://www.churchofcyprus.org.cy/article.php?articleID=1170>.

<sup>14</sup> <http://www.churchofcyprus.org.cy/article.php?articleID=1182>.

define the Greek-Orthodox official discourse, the same can be said ever more for their pairs, the Primates of Alexandria, Jerusalem and Cyprus.

The prestige and respect the Patriarchs of Alexandria and Jerusalem enjoy in the Greek-speaking Orthodox world is mostly due to the memory of the long and prosperous Hellenic presence in Egypt in the case of the first one, and to the strong feelings of piety and devotion that the sites related to the Ancient and New Testament never fail to ignite among the faithful in the case of the second. Both institutions are also considered by a lot of Greeks as advanced outposts of Hellenism in the Middle-East, an idea often put forward by the Patriarchs and their clergy themselves, as well as by the successive governments of the Hellenic Republic<sup>15</sup>.

As already mentioned, the “Cyprus issue” is a very sensitive one for the majority of Greeks. The leading role the Church of Cyprus has played during the fight against British rule, under the charismatic leadership of Archbishop Makarios III (Mouskos), who also served as elected President of the Republic of Cyprus till his death in 1977 and the latter’s clash with the nationalistic military junta that tyrannically governed Greece from 1967 to 1974, are not yet forgotten in the Greek-speaking world. The Primate of the Church of Cyprus still enjoys a part of this capital of sympathy, especially when he denounces the islands division following the Turkish invasion of 1974. As in the case of the Patriarchs of Alexandria and Jerusalem of course, the influence his discourse has on the general Greek Orthodox population depends also from his personality and relations with the press and is not accompanied by any effective authority over Bishops or faithful out of his jurisdiction.

### **3. The conditions under which the components of the Greek-speaking part of the Orthodox Church live and develop their activities differ considerably from each other**

These conditions considerably influence the discourse of each component on Human Rights:

In the case of the Autocephalous Church of Greece:

Living in a non-secular or a non-completely-secular State and enjoying the multiple privileges of the status of “established” Church,

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<sup>15</sup> See for example: <http://www.jp-newsgate.net/gr/2013/03/25/8153/>.

has led several, if not the majority, among the Bishops of the Church of Greece to consider any evolution that could weaken the official links between Church and State as a threat for Orthodoxy and for the unity and identity of the Hellenic nation itself<sup>16</sup>. To quote Archbishop Christodoulos Paraskevaïdis, who was Primate of the Orthodox Church of Greece between April 1998 and January 2008,

*“Any attempt to break the ties between Orthodoxy and Hellenism constitutes a threat for the unity of the nation. We must stop, as long as there is still time, the undermining of our historical self-conscience, defending in the spirit of the truth not only the ecclesiastical Orthodoxy but also the cultural foundation of our national unity and solidarity”*<sup>17</sup>.

This conception of the Greeks and their church as “Siamese brothers”<sup>18</sup>, to quote again the same late Archbishop, is very well described by François Thuat (1994), who notes that:

*“The fundamental of Orthodoxy aims not at expanding but rather at defending the sacred patrimony. Its references are the national Churches and not some ideal or theoretical community of the faithful: there is no Orthodox “umma”. The particular characteristic of the countries in which Orthodoxy prevails is that the religion sacralises the nation and at the same time the nation ethnicises the religion. Orthodoxy favours, stimulates an ambient nationalist ideology, which galvanises and cements ever more the identification (of the nation) with*

<sup>16</sup> 272 See for example a recent (2014) declaration of the Metropolitan Bishop of Phthiotis, Nikolaos Protopapas, against separation between Church and State in Greece: <http://www.romfea.gr/teres-mitropoleis/24443-2014-05-20-20-03-37>.

<sup>17</sup> Solemn sermon given by newly elected Archbishop of Athens and All Greece Christodoulos Paraskevaïdis, the day of his enthronement (our translation): <https://www.youtube.com/watch?v=2KE2mPbl6N8> (last accessed on 13/06/2013). It is interesting to note that the late Archbishop condemned racism and xenophobia in the same sermon the above quotation was taken from, insisting on the fact that *“they give Greeks a bad reputation abroad”*. Both the Archbishop and those who have commented his sermon at the time, have failed to see the paradox between the two ideas: by linking so closely the Orthodox faith with the *“unity of the nation”* and its *“historical self-conscience”*, the Primate of the Church of Greece was *de facto* excluding from the core of this nation all non-Orthodox citizens, such as for example the members of the small Greek Roman-Catholic community, the Greek Muslims, the Greek Jews, the Jehova’s Witnesses, those who are atheists or agnostics, etc. Despite of their citizenship, the latter were in practice considered, under the logic of that sermon, as being somehow “foreigners”, not really Greeks. Such a view is obviously hardly compatible with a firm condemnation of xenophobia.

<sup>18</sup> <http://news.in.gr/greece/article/?aid=666885> (last accessed on 25/11/2013).

*Orthodoxy. In Romania, Serbia, Greece or Russia, Orthodoxy is the nuclear heart of nationalism and at the same time the nation is the unsurpassable horizon of Orthodoxy.*<sup>19</sup>

In a country where an approximate 97% are registered as baptised Orthodox, the temptation of the episcopate to assume the role of legitimate representative of the vast majority of the people is big. With it, comes inevitably a certain arrogance and a lack of tolerance that may often lead to excess.<sup>20</sup>

In such a context, the official positions of the Church against racism and xenophobia<sup>21</sup> and the respect it claims it has for Human Rights<sup>22</sup>, are quite often contradicted by very numerous declarations of members of its Hierarchy (and sometimes of the Primate himself).

Viewing themselves as the ultimate defenders of the Hellenic nation's uniqueness, in fact, many senior Bishops of the Church of Greece do not refrain from declarations that may incite to hatred and do not hesitate to vehiculate conspiracy theories and vehement insults against individuals or communities who do not share their view-point or who just not happen to be ethnic Greeks and of Orthodox faith.

During the last three years for example, the Metropolitan Bishop of Piraeus, the third biggest city of the Hellenic Republic, has solemnly anathematised Pope Benedict XVI and "all those in communion with

<sup>19</sup> F. Thual (1994), *Géopolitique de l'Orthodoxie*, Paris: Dunod, p. 17-18, our translation.

<sup>20</sup> Addressing left-wing politicians that did not share the Church's views on a number of issues, the late Archbishop Christodoulos Parakevaidis declared: "*You are a very small minority of a mere 2 or 3%. You cannot with your 2 or 3% impose yourselves upon the 97 or the 98%*" (our translation): <http://www.tovima.gr/politics/article/?aid=181376> (last accessed on 01/12/2013). Along the very same line, his successor, Archbishop Ieronimos Liapis, noted in the case of an MP who had a different opinion with the Church about prayer in public schools: "*We want people who have graduated from Harvard or from MIT. But the fact that he/she learned to speak languages, he/she learned a lot of things, does not mean that we are going to give him/her the right to sign and publish decisions against prayer in schools. We have a motherland, we have a tradition, we have a religion and those who wish to make such decisions should go wherever they want elsewhere. They are free. We don't hate them, we don't chase them away, but a few people cannot destroy everything*": [www.romfea.gr/epikairota/13296-arxiepiskopos-poia-eisai-esi-kyra-mou](http://www.romfea.gr/epikairota/13296-arxiepiskopos-poia-eisai-esi-kyra-mou) (our translation).

<sup>21</sup> [http://www.ecclesia.gr/english/archbishop/christodoulos\\_messages.asp?cat\\_id=8&id=519&what\\_main=3&what\\_sub=13&lang=en&archbishop\\_heading=Messages](http://www.ecclesia.gr/english/archbishop/christodoulos_messages.asp?cat_id=8&id=519&what_main=3&what_sub=13&lang=en&archbishop_heading=Messages) (last accessed on 01/06/2013).

<sup>22</sup> <http://www.archxristodoulos.gr/index.php/2012-12-07-11-01-14/318-2012-12-07-10-40-59> (last accessed on 03/06/2013).

him”<sup>23</sup>, has blamed the Jewish lobby for the government’s plans to allow shops to open during Sundays, accusing at the same time a Greek Jew Rabbi to be “the successor of the killers of the Great Saint and Godly Man” Kosmas Aitolos (the death of whom he also blamed on the Jews)<sup>24</sup> and has declared that Islam is “a political-military-economic system, totally incompatible with Democracy and the European acquis”<sup>25</sup>.

The absolute impunity this Metropolitan Bishop, Seraphim Mentzelopoulos, enjoys from both the civil and the ecclesiastical authorities, despite of the fact that all the above statements were made in the most official possible way and went literally viral because of their extreme content, had as a consequence the multiplication of similar hateful discourse. Thus, Bishop Mentzelopoulos went on to describe the Germans as “miserable, ridiculous and silly” because their Parliament was allegedly discussing a law tolerant of zoophilia<sup>26</sup>, and has threatened to excommunicate any MP elected in the region of his jurisdiction who would dare to vote in favour of extending the Greek equivalent of civil partnerships to same sex couples, stating that homosexuality leads to paedophilia and is the “most vile and dirty sin”<sup>27</sup>.

Thinking along the same line, the Bishop of Konitsa, Metropolitan of a region very close to the Greek-Albanian border, did not hesitate to call “traitors” and “Ephialtes” of the nation all those who do not share the Church’s opinion on homosexuality, the opening of the shops on Sundays etc.<sup>28</sup> The same Bishop, Andreas Trembelas, used his 2013 Christmas message to the faithful of his Eparchy in order to point out

<sup>23</sup> See: <https://www.youtube.com/watch?v=DpGvSS9-kNQ>. It is interesting to note that both the late Archbishop Christodoulos and the Oecumenical Patriarch Bartholomew have made a point of building a good relationship with pope Benedict the XVI. Christodoulos was in fact the first Archbishop of Athens to officially visit the Vatican (December 2006) despite the negative opinion of both the Holy Synod and the representative body of the parish clergy. Bartholomew received an official visit of Benedict XVI in his premises in Istanbul on November 2006.

<sup>24</sup> See <http://www.imp.gr/2012-03-27-20-22-23/811-δῆλωση-κ-κ-σεραφειμ-περι-της-αργίας-της-κυριακής.html> and <http://www.imp.gr/home/epikaira-arxeio/12-daynews/580-κατάργηση-της-αργίας-της-κυριακής-από-το-εβραϊκό-λόμπι.html> (last accessed on 14/12/2014).

<sup>25</sup> See: <http://www.inewsgr.com/268/mitropolitits-peiraios-ekporthisi-tis-elladas-apo-to-islam.htm> (last accessed on 27/04/2014).

<sup>26</sup> See: <http://romfea.gr/epikairota/17140-mitropolitits-peiraios-kata-germanias>.

<sup>27</sup> See: <http://www.tanea.gr/news/greece/article/5058198/o-mhtropolitits-peiraiws-aforizei-thn-epektash-toy-symfwnoy-symbiwshs/> (last accessed on 29/11/2013).

<sup>28</sup> See: <http://www.romfea.gr/ieres-mitropoleis/21696-2014-01-13-21-23-30>.

that “the Jews, with very few exceptions, not only they have not accepted Christ but they still fight against him with undiminished passion” and that “the Muslims also fight with mania against Christ (...) and offend the country that offers them hospitality with their multiple crimes”<sup>29</sup>.

The public positions many other Metropolitan Bishops have taken during the last three years on these or other similar issues were more or less marked by the same spirit. Among their number one may find Bishops of rather small dioceses of the Greek countryside, like for example Kosmas Papahristos of Aitolia and Akarnania<sup>30</sup>, Ieremias Phountas of Gortynia<sup>31</sup> or Amvrosios Lenis of Kalavryta and Aigialia<sup>32</sup>, as well as Bishops responsible for very big cities, like Chrysostomos Sklifas of Patras<sup>33</sup>, or Anthimos Roussas of Thessalonica<sup>34</sup>, the country’s co-capital.

As a rule, the majority of the 81 Metropolitan Bishops of the Church of Greece abstain from commenting this kind of declarations of their pairs, with some notable exceptions, like for example Metropolitan Chrysostomos Savvatos of Messinia<sup>35</sup>, and there has never been a tendency to isolate “extremists” within the Hellenic Orthodox Hierarchy.

It is also interesting to note here that two of the above-mentioned Metropolitan Bishops, Athimos Roussas of Thessalonica and Andreas Trembelas of Konitsa, are administering Metropolises of the “New Lands” and are thus under the jurisdiction of the Patriarch of Constantinople. The comparison of their discourse, strongly tainted by nationalism and the phobia of difference to that of Patriarch Bartholomew, particularly respectful of Islam and Judaism<sup>36</sup>, speaks a lot about the level of

<sup>29</sup> See: <http://www.romfea.gr/ieres-mitropoleis/21236-2013-12-24-13-41-08>.

<sup>30</sup> See for example: <http://www.romfea.gr/ieres-mitropoleis/20999-2013-12-13-22-31-43>.

<sup>31</sup> See for example: <http://romfea.gr/diafora-ekklisiastika/18442-ieremia-gyfto-xristiano-bouleuti>.

<sup>32</sup> See for example: <http://romfea.gr/epikairota/17103-2013-05-20-10-14-46>.

<sup>33</sup> See for example: [http://www.dogma.gr/default.php?pname=Article&art\\_id=6342&catid=6](http://www.dogma.gr/default.php?pname=Article&art_id=6342&catid=6) (last accessed on 28/06/2016).

<sup>34</sup> See for example: <http://news.in.gr/greece/article/?aid=886478> (Last accessed on 27/03/2011) or <http://www.imth.gr/inst/imth/gallery/epistoles%20arthra/2013.04.03-dimosievma-tzami-sti-Thessaloniki.pdf> (last accessed on 18/04/2013).

<sup>35</sup> See for example: <http://www.iefimerida.gr/news/58520/μεσηνία-χρυσόστομος-κατά-σεραφείμ-για-το-μποζόνιο-“δε-ζούμε-στο-μεσαίωνα”>.

<sup>36</sup> See for example <http://www.apostolicpilgrimage.org/-/statement-by-his-all-holiness-ecumenical-patriarch-bartholomew-at-yad-vashem-holocaust-memorial-jerusalem-27-may-2014> and <http://www.patriarchate.org/documents/christianity-and-islam>.

independence of Bishops in the Greek-speaking component of the Orthodox Church.

Some of the prelates who often take the floor to discuss issues linked to Greek politics and everyday life barely hide their sympathy for extreme right-wing nationalistic parties, like the “People’s Orthodox Alarm”<sup>37</sup> or even, albeit thankfully to a lesser extent, for the infamous neo-nazi party “Golden Dawn”. Before the incarceration of the latter’s leadership for illegal activities, the Metropolitan Bishop of Kalavryta and Aigialia, Amvrosios Lenis, had in fact not hesitated to write that the party in question could become a potential “sweet hope” for the nation, provided it slightly changes some of its most extreme shenanigans and rhetoric<sup>38</sup>.

It is interesting to note that, despite of the fact this opinion of the Metropolitan Bishop of Kalavryta and Aigialia on the “Golden Dawn” party has caused a public controversy and was condemned by several other Metropolitan Bishops, like for example Pavlos Ioannou of Siatista<sup>39</sup>, the Holy Synod of the Church of Greece has chosen not to make any comment about it at all. The Church’s highest authority has in fact the practise to abstain from condemning declarations of its members when the latter contradict its own – and the Hellenic Republic’s – official positions on issues related to the Human Rights or even to the essence of the Christian religion itself<sup>40</sup>. The Synod’s reaction was however much more severe the rare times a few Metropolitan Bishops had dared to give a less conservative opinion on issues such as, for example, pre-marital sex<sup>41</sup>.

Of course, a theological discourse on Human Rights does exist within the Church of Greece, who counts two Faculties of theology, in Athens

<sup>37</sup> See for example <http://www.tovima.gr/politics/article/?aid=181376> (last accessed on 18/03/2013) on the late Archbishop Christodoulos’ sympathy for the People’s Orthodox Alarm and its leader Georgios Karatzaferis.

<sup>38</sup> See: <http://www.ethnos.gr/article.asp?catid=22768&subid=2&pubid=63730220> (last accessed on 30/10/2012).

<sup>39</sup> See: <http://www.romfea.gr/epikairota/19293-2013-09-24-19-47-48>.

<sup>40</sup> The Synod has abstained, for example, to condemn Metropolitan Bishop of Kalavryta and Aigialia, Amvrosios Lenis, when the latter prayed, in writing, to God “*to make rot the mouth*” of a journalist who dared, without using any insulting expression, to contest the allegedly miraculous apparition of the “Holy Light” during a ceremony of the Orthodox Patriarchate of Jerusalem on Good Saturday: <http://www.imerisia.gr/article.asp?catid=26510&subid=2&pubid=113258366> (last accessed on 21/04/2014).

<sup>41</sup> See for example <http://www.tovima.gr/relatedarticles/article/?aid=179385> (last accessed on 22/09/2013).

and Thessalonica respectively. This discourse however hardly penetrates the public sphere in the country. The vast majority of the faithful are in fact very little acquainted, if at all, with the opinions of academic theologians, including those who enjoy the biggest visibility amongst them, and this speaks a lot about the extend of this visibility. Thus, for the average Greek-Orthodox faithful the position of the Church is first of all that of his/her Metropolitan Bishop and the priests of his/her province and then the one of those prelates who enjoy a broader coverage of their activities and views by the media.

In the case of the Autocephalous Church of Cyprus:

Seriously invested in the defence of the rights of the Greek-Cypriots who lost their families and lands because of the Turkish invasion of 1974 and the unilateral proclamation of a Turkish “State” in the North part of the Republic, the Holy Synod of the Church of Cyprus seems to not have among its members many who share the extreme opinions of their Greek counterparts.

Having assumed, in a not that distant past, the leadership of the Orthodox Greek-Cypriots living under Ottoman and then under British rule, its Bishops and even more their Primate, Archbishop Chrysostomos II (Chrysostomos Dimitriou), do continue to publicly express positions on all issues political and especially on that of the future relationship between the Greek and the Turkish community of the island<sup>42</sup>. Morally conservative and politically openly in favour of right-wing candidates, Chrysostomos II is probably too conscious of the consequences that a discourse similar to that of the Metropolitans of Piraeus or Thessalonica would have for his fight for the Human Rights of his refugee flock. His positions – and those of the Holy Synod as a whole – on questions such as for example the adoption of a law on allowing same-sex couples to enter in civil partnerships, are thus expressed in a language that does not incite to hatred even if it is not always very respectful of difference<sup>43</sup>.

In the case of the Ecumenical Patriarchate, the Patriarchates of Alexandria and Jerusalem:

Living in countries with Muslim (and in the case of Israel, Jewish) majority, where another religion enjoys the status of being the “prevailing”

<sup>42</sup> See for example <http://www.churchofcyprus.org.cy/article.php?articleID=4533>.

<sup>43</sup> See for example: [http://www.newsit.com.cy/default.php?pname=Article&art\\_id=108729&catid=6](http://www.newsit.com.cy/default.php?pname=Article&art_id=108729&catid=6) or [http://www.newsit.com.cy/default.php?pname=Article&art\\_id=109631&catid=31](http://www.newsit.com.cy/default.php?pname=Article&art_id=109631&catid=31) (last accessed on 29/11/2012).

one, it would have been obviously impossible for these Churches not to embrace a concept of Human Rights focused on religious freedom and liberty of cultural expression. Adopting a discourse similar to the one that seems to currently prevail in the Autocephalous Church of Greece would in fact condemn them to public hostility and very probable persecution. The rise of radical Islam almost everywhere in the Middle East and the militant discourse of extreme right-wing Jewish movements in Israel, are often putting the Orthodox Hierarchy of these lands in the same unfortunate position the Muslim and Jewish communities are experiencing in Greece, because of the hateful rhetoric of several local Orthodox Bishops.

The Metropolises of the Ecumenical Patriarchate in the diaspora on the other hand are almost all evolving within modern secular multicultural environments and thus need to develop a discourse on Human Rights that would address modern concerns and would not estrange them from the other communities they live with.

These Metropolises and the Hierarchy of the Greek-speaking components of the Orthodox Church out of the borders of the Hellenic and Cypriot Republics are often quite embarrassed by the public positions of some of their brethren of the Church of Greece. Thus, for example, Ecumenical Patriarch Bartholomew Archontonis did not hesitate to openly express his disapproval for several of the late Archbishop Christodoulos' policies with regard to the relations between Church and State or the Human Rights and notably on the issue of the inclusion of religion among the information appearing on Hellenic citizens' identity cards<sup>44</sup>.

In another, more recent example, the Archbishop of America of the Ecumenical Patriarchate, Demetrios Trakatellis, responsible for the Greek-Orthodox diaspora in the USA, had to solemnly condemn one of the anti-Semitic declarations of the Metropolitan of Piraeus in which the latter claimed that "Hitler was an organ of the international Zionism who received money from the Rothschild family in order to persuade the Jews to abandon the sores of Europe and to go to Israel to build the new

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<sup>44</sup> See for example: [http://archive.in.gr/news/2000/greece/g\\_jun02.htm](http://archive.in.gr/news/2000/greece/g_jun02.htm) (last accessed on 03/11/2012) and Christodoulos' speech to the Holy Synod of the Church of Greece the 11/10/2000 in which the Archbishop acknowledges and disagrees with the Ecumenical Patriarch's public disapproval of his efforts to maintain the inscription of the citizens' religious beliefs on the identity cards: [http://xristodoulos.antibaro.gr/koinonia/id\\_isi11-10-2000.html](http://xristodoulos.antibaro.gr/koinonia/id_isi11-10-2000.html) (last accessed on 11/10/2012).

empire”<sup>45</sup>. The international outcry the position in question has raised, led to condemnations of Seraphim Mentzelopoulos from all parts of the political and religious sphere in Greece and abroad, with the notable – and usual – exception of the Holy Synod of the Greek Autocephalous Church.

## Conclusions

The absence of a single authority, the millennial tradition of autonomy of local Bishops and the radical difference of the conditions each one of the various components of the Greek-speaking part of the Orthodox Church lives and works in, makes it impossible to speak of a Greek-Orthodox discourse on Human Rights. Even within each one of these components, the difference between official positions and praxis at the level of every Eparchy is noticeable and often overwhelming. In the recent years, the Greek-speaking Primate who enjoyed the biggest visibility and dedicated a considerable amount of thought on the issue was probably the late Christodoulos Paraskevaïdis, Archbishop of Athens and All Greece. His position, that echoes, loudly or in silence, in our opinion, that of the majority of the current Greek-speaking Orthodox hierarchy, can best be resumed in a speech given the fifth of July 2006:

“The Church, is not against Human Rights, it transcends them, because in the place of *Human Rights*, i.e. a legalistic concept, the Church proposes the concept of service “*diakonia*”. What they want to present as being Human Rights is not the respect for the *Human person* but rather its profound change, the prohibition to Men to realise their weakness in front of God, their state of sin. They plot to abolish moral conscience and replace it with legal rules. In the world, they are preparing for us there won't be sins anymore but just infringements of the law. To this transformation of the Human being into the devil's slave the Church is certainly going to be opposed without retreating.”<sup>46</sup>

<sup>45</sup> See for example: <http://gr.voanews.com/content/serafim-ahepa-112408504/231185.html> (last accessed on 22/05/2012).

<sup>46</sup> [http://www.ecclesia.gr/greek/archbishop/christodoulos.asp?id=454&what\\_main=1&what\\_sub=7&lang=gr&archbish\\_op\\_heading=Μηρνύματα](http://www.ecclesia.gr/greek/archbishop/christodoulos.asp?id=454&what_main=1&what_sub=7&lang=gr&archbish_op_heading=Μηρνύματα) (our translation) (last accessed on 19/04/2013).

# **Human Rights and Orthodoxy**

## **An Inquiry into the Canonical and Social perspectives<sup>1</sup>**

Nikos Ch. MAGHIOROS  
and Christos N. TSIRONIS

### **1. The rights of the faithful and citizens' rights: Legal and moral accounts**

The modern concept of human rights (HR) appeared after the Second World War in an attempt to prevent states from committing crimes against humanity. An institutional framework was established in order to cover a broader field of rights. The Universal Declaration of Human Rights in 1948 (UDHR), which is based both on ethical and political notions, manifests a basically secular understanding of human beings. According to the preamble to the UDHR, ‘... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.’ In addition, Art. 1 clearly affirms that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Therefore, all nations subscribing to the UDHR are committed to promoting a number of human, civil, economic and social rights. HR have a political aspect as they regulate the interaction of groups and individuals with the State and other political and social authorities. The struggle for the protection and

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<sup>1</sup> This paper should be considered as an interdisciplinary, cooperative work-in-progress presenting the preliminary results of a long-term research.

promotion of human rights is therefore political and presupposes not only social sensibility but also a dynamic collective action.<sup>2</sup>

HR are “the rights one has because one is a human”<sup>3</sup> and all individuals are entitled to them as they belong to the “human family”. Their presuppositions and aims “are closely, if not inextricably, related and consist of their necessity for being human in the first place.”<sup>4</sup> Although natural law was initially linked with the early stages of the formulation of the concept of HR, it does not currently figure among the distinctive or restrictive elements of HR.<sup>5</sup> The guarantee of equal rights to individuals is not based on moral obligations. It is the legal and political institutions that make them safe, concrete and transparent. In this respect, issues such as race, gender, ethnicity, sexual orientation, physical capabilities, religious beliefs, and political ideas are protected by the State and they should not result in any kind of discrimination.<sup>6</sup> The exercise of HR is not unlimited. The appeal to HR should not overcome legal provisions. The relevant limitations “are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.<sup>7</sup>

Despite the fact that the UDHR and other international conventions, constitutions and national legislation have created a solid ground for the protection of HR, the reality is disappointing, to say the least. Their violation is an increasing global phenomenon. However, a detailed account of HR abuses does not provide evidence that HR have failed. Rather, it shows that the struggle for HR is a continuous process that should also be supported by independent judicial systems and by the commitment of the local and international communities.

The individual rights to freedom of thought, conscience and religion belong to the first generation of HR. The initial concept has contributed

<sup>2</sup> A. Clapham, *Human Rights. A Very Short Introduction*, Oxford – New York: Oxford University Press, 2007, p. 161-162.

<sup>3</sup> J. Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca, NY and London: Cornell University Press, 2003, p. 7.

<sup>4</sup> A. Fagan, *Human Rights, Confronting Myths and Misunderstandings*, Cheltenham, Northampton, MA: Edward Elgar Pub, 2009, p. 8.

<sup>5</sup> J. Porter, “From Natural Law to Human Rights: Or, Why Rights Talk Matters”, *Journal of Law and Religion*, 1 (1999-2000): p. 77-96.

<sup>6</sup> A. Clapham, *Human Rights*, p. 159 et seq.

<sup>7</sup> UDHR, Art. 29. A. Clapham, *Human Rights*, p. 43.

to the formulation of the broader idea of individuals' freedom. Although the polemical attitude of the French Revolution to ecclesiastical institutions led the Churches to adopt a sceptical stance towards the political ideas on secular rights, in the 20<sup>th</sup> century there was a shift of attitude due to changing international conditions. The two world wars prompted intensive ecumenical commitment to peace and justice.<sup>8</sup>

The paradigm of the Roman Catholic Church exemplifies the new attitudes that have emerged in almost all Christian Churches. The Catholics' sceptical approach, which lasted almost a century, changed radically in the 1960s under Pope John XXII.<sup>9</sup> From the Encyclical *Rerum Novarum* (1891, Leo XIII), through *Pacem in Terris* (John XXII 1963) to the Declaration on Religious Freedom *Dignitatis Humanae* (Paul VI, 1965),<sup>10</sup> the doctrine of the Roman Catholic Church on HR was organized in a systematic way and has since been an essential and recurrent part of its social teaching. The main principles were included in the Code of Canon Law of 1983 (CIC). Additionally, the contemporary HR debate has spurred the Catholic Church to discuss analytically the rights of the "people of God". The traditional model of supporting the generally inherent rights of the human person created in the Image of God was developed in order to identify, enumerate and protect the rights of Church members in the canonical framework. Canons 208 to 223 of the *CIC* and 10-26 of the *Codex Canonum Ecclesiarum Orientalium* include a list of the obligations and rights of the faithful. According to Lorusso, there are some major differences between the rights of the faithful in the ecclesiastical community and the associated rights of the citizens of modern states because their nature is different. The rights of the faithful arise from the relations between the individual – person and the community. The private good and the public good cannot be distinguished in the ecclesiastical field, as the spiritual struggle for the salvation of the faithful is realized within the communion.<sup>11</sup>

<sup>8</sup> (Bishop) M. Schindehütte, "Facing God's Image-Christian Churches and the Idea of Human Rights," *European Churches Engaging in Human Rights*, Church and Society Commission of CEC, Mag. Elizabeta Kitanović (ed.), 2012, p. 18-21.

<sup>9</sup> D. Menozzi, *Chiesa e diritti umani Legge naturale e modernità politica dalla rivoluzione francese ai nostri giorni*, Bologna: Il Mulino, 2012.

<sup>10</sup> L. Orsy, "The Divine Dignity of Human Persons in *Dignitatis humanae*", *Theological Studies*, 75 (2014): p. 8-22.

<sup>11</sup> L. Lorusso, "I diritti e i doveri dei fedeli cristiani nel Codex Canonum Ecclesiarum Orientalium e nel Codex Iuris Canonici", *Iura Orientalia*, 5 (2009): p. 166-184.

In 2004 the Pontifical Council for Justice and Peace published the *Compendium of the Social Doctrine of the Church*, a systematic presentation of the foundations of Catholic social doctrine.<sup>12</sup> Chapter 3, under the general title “The Human Person and Human Rights”, includes the Catholic doctrine on HR (IV 152-159). The document acknowledges the “positive value” of the UDHR and, among other things, states that the movement towards the identification and proclamation of HR is one of the most significant attempts to respond effectively to the inescapable demands of human dignity. “The roots of human rights are to be found in the dignity that belongs to each human being, although the ultimate source of human rights is not found in the mere will of human beings, in the reality of the State, in public powers, but in man himself and in God his Creator. Human rights are to be defended not only individually but also as a whole as partially would imply a kind of failure to recognize them (par. 153).”

As far as the Orthodox Church is concerned, the relation between the concept of HR and Orthodox theology has been a subject of research and controversy in the academic field. In the debate that has emerged, such questions as the compatibility of HR with Orthodox anthropology,<sup>13</sup>

<sup>12</sup> As the President of the Pontifical Council for Justice and Peace Card. R. R. Martino affirms in the preface of the *Compendium*: “In the present text we can see the importance of moral values, founded on the natural law written on every human conscience; every human conscience is hence obliged to recognize and respect this law. Humanity today seeks greater justice in dealing with the vast phenomenon of globalization; it has a keen concern for ecology and a correct management of public affairs; it senses the need to safeguard national consciences, without losing sight however of the path of law and the awareness of the unity of the human family. The world of work, profoundly changed by the advances of modern technology, reveals extraordinary levels of quality, but unfortunately it must also acknowledge new forms of instability, exploitation and even slavery within the very societies that are considered affluent. In different areas of the planet the level of well-being continues to grow, but there is also a dangerous increase in the numbers of those who are becoming poor, and, for various reasons, the gap between less developed and rich countries is widening. The free market, an economic process with positive aspects, is nonetheless showing its limitations. On the other hand, the preferential love for the poor represents a fundamental choice for the Church, and she proposes it to all people of good will.”

[http://www.vatican.va/roman\\_curia/pontifical\\_councils/justpeace/documents/rc\\_pc\\_justpeace\\_doc\\_20060526\\_compendio-dott-soc\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html).

<sup>13</sup> C. Marsh – D. Payne, “Religiosity, Tolerance, and Respect for Human Rights in the Orthodox World”, in A. Brüning and E. van der Zweerde (ed.), A. Brüning – E. van der Zweerde (eds.), *Orthodox Christianity and Human Rights*, Leuven: Peeters, 2012, 202; G. Tsetsis, “Human Rights – Why do they matter for Churches?”, European

and arguments on the biblical and patristic roots of HR, the theology of the creation, personhood, ontological equality, free will, and freedom are discussed.<sup>14</sup> In parallel, issues such as ethnofyletism, national identity, church and state relations, the role of the Orthodox Church in the public sphere, and moral and traditional values have come to the fore.

## 2. The emergence of a social discourse: preliminary remarks on the Social and Theological approaches to HR

Over the past few decades there has been an increased interest in issues relating to the Orthodox tradition and the configurations of contemporary democracies, particularly the stance of the Orthodox Churches towards the normative understanding of the provisions generated by the human rights treaties and international law within the frame of Late Modernity. In this sense, issues such as the existence of a national-established Church, the relation between Orthodox Churches and the State(s), the banning of proselytism and restrictions in the area of religious freedom, the traditional ideas about the communities of faith as carriers of collective identity, the regulation of the newly emerged “multicultural conditions” and the neutrality of the law in democracy – particularly in secularized societies – have gained considerable importance in current academic dialogue.<sup>15</sup>

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Churches Engaging in Human Rights, Church and Society Commission of CEC, p. 17-18.

<sup>14</sup> *Ibid.*, A. Peck, “The Bible and Human Rights”, 22-25; *Ibid.*, V. Perišić, “Interpretation of Human Rights in the Light of the Church Fathers”, p. 33-37.

<sup>15</sup> See, among many others: A. Brüning – E. van der Zweerde (ed.), *Orthodox Christianity and Human Rights*, Leuven: Peeters, 2012; K. Stoeck, *The Russian Orthodox Church and Human Rights*, Oxon: Routledge, 2014; Rev. Em. Clapsis (ed.), *The Orthodox Churches in a Pluralistic World*, Brookline: Holy Cross Orthodox Press, 2004; Ef. Fokas, “Greece: Religion, Nation, and Membership in the European Union”, H. Güllalp (ed.), *Citizenship and Ethnic Conflict: Challenging the Nation-State*, Oxon: Routledge, 2006, p. 39-60; A. Pollis, “Eastern Orthodoxy and Human Rights”, *Human Rights Quarterly*, 15 (1993): p. 339-356; A. Pollis, “The State, the Law, and Human Rights in Modern Greece”, *Human Rights Quarterly*, 9 (1987): p. 587-614; V. Roudometof, *Globalization and Orthodox Christianity: The Transformations of a Religious Tradition*, New York: Routledge, 2014; V. Roudometof – V. Makrides (eds.), *Orthodox Christianity in 21<sup>st</sup> Century Greece: The Role of Religion in Culture, Ethnicity and Politics*, Farnham: Ashgate, 2010; V. Makrides, “Die Menschenrechte aus orthodox-christlicher Sicht. Evaluierung, Positionen und

It is clear in several analytical studies that religious communities and political bodies are presented as carriers of competing visions for the future of society. A wide spectrum of conceptualizations and interpretative attempts have come to the fore in the frame of the ongoing debates on the religious understandings of civil society, civil law and civic values in modern liberal democracies. In this particular topic of religious interest, the exchange of ideas, theoretical skirmishes, even disputes and conflicts based mainly on historical references, has emerged through this challenging and sometimes polarizing examination of the current trends in the “Orthodoxy – HR relation” issue.

The wider discourse on the essence of HR and its related issues (universality, applicability, etc.) is no less complex<sup>16</sup>. The dissemination of HR norms and particular issues – such as the option of humanitarian intervention in cases of HR violations – are under dispute<sup>17</sup>. Even the concept of HR itself is not viewed similarly by all theoretical streams.

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Reaktionen”, M. Delgado – V. Leppin – D. Neuhold (eds.), *Schwierige Toleranz. Der Umgang mit Andersdenkenden und Andersgläubigen in der Christentumsgeschichte*, Fribourg/Stuttgart: Academic Press/Kohlhammer Verlag, 2012, p. 293-320; L. Molokotos-Liederman – T. Stauning Willert (ed.), *Innovation in the Orthodox Christian Tradition? The Question of Change in Greek Orthodox Thought and Practice*, Farnham: Ashgate, 2012; El. H. Prodromou, “Orthodox Christianity and Pluralism. Moving beyond Ambivalence?”, Rev. Em. Clapsis (ed.), *The Orthodox Churches in a Pluralistic World – An Ecumenical Conversation*, WCC Publications; Holy Cross Orthodox Press, 2004, p. 22-46; D. Payne, “The Clash of Civilisations: The Church of Greece, the European Union and the Question of Human Rights”, *Religion, State & Society*, 31 (2003): p. 261-271; D. Payne, “Nationalism and the Local Church: The Source of Ecclesiastical Conflict in the Orthodox Commonwealth”, *Nationalities Papers*, 35 (2007): p. 831-851; Io. Petrou, *Cultural Pluralism and Religious Freedom*, Thessaloniki: Vantias, 2005 [in Greek]. Io. Petrou, *Religion and Society. A Sociological Analysis of the Relations between Religion and Society in Modern Reality*, Thessaloniki: Barbounakis, 2012 [in Greek]; K. Delikonstandis, *The Rights of Man. Western Ideology or Ecumenical Ethos?* Thessaloniki: Kyriakidis, 1995 [in Greek]; P. Kalaitzidis, *Orthodoxy and Modernity. Prolegomena*, H.M. Dimitriadis, Indiktos: Athens, 2007 [in Greek].

<sup>16</sup> See: J. Donnelly, “The Relative Universality of Human Rights”, *Human Rights Quarterly*, 29 (2007): p. 281-306; *Id.*, “Human Rights: Both Universal and Relative. A Reply to Michael Goodhart”, *Human Rights Quarterly*, 30 (2008): p. 194-204.

<sup>17</sup> J. Harriss, (ed.), *The Politics of Humanitarian Intervention*, London-New York: Pinter, 1995; An. Cl. Arend – R. J. Beck, *International Law and the Use of Force*, Routledge: London, 1993; S. Asfaw – G. Kerber – P. Weiderud (eds.), *The Responsibility to Protect: Ethical and Theological Reflections*, WCC: Geneva, 2005; See also the statement by the WCC 9<sup>th</sup> Assembly on this issue: “Vulnerable Populations at Risk – the Responsibility to Protect”. 23 February 2006. Statement of the WCC 9<sup>th</sup> Assembly, Porto Alegre, Brazil, 14-23 February, 2006.

Different schools of thought perceive the relevant discursive elements in different ways<sup>18</sup>. Questions such as “what are human rights?” or “what is human dignity?” are open and still generate varying approaches across the societal, academic and religious spectrum. In sum, it is a matter of (sometimes oversimplifying) decision to speak vaguely on the “Orthodoxy” – “human rights” issue, which is in any case polysemic by nature.

There is a long line connecting HR with moral theories and even religious teachings on the nature of the human biosphere. Some of the most prominent social theorists of our time have cultivated ideas in this field. The theory of J. Habermas stresses the Janus face (legal-moral) of HR<sup>19</sup>, Am. Sen focuses on the ethical basis of HR<sup>20</sup> while Ch. Taylor examines the different rationales behind the secular and the religious moral basis of HR<sup>21</sup>. Currently, there are various scholars who, while cautious to avoid the use of religious language, indicate that HR as entitlements are based on some notion of human nature and carry a moral account of human beings. As Donnelly suggests: “Human Rights theories... point beyond actual conditions of existence – beyond the ‘real’ in the sense of what has already been realized – to the possible, which is viewed as a deeper human moral reality”<sup>22</sup>. On this basis, the teaching of religious communities on morals and ethics acquires significant interest in relation to the overarching HR discourse.

<sup>18</sup> M.-B. Dembour, “What Are Human Rights? Four Schools of Thought”, *Human Rights Quarterly*, Vol. 32, No. 1, 2010: p. 1-20.

<sup>19</sup> “Because the moral promise of equal respect for everybody is supposed to be cashed out in legal currency, human rights exhibit a Janus face turned simultaneously to morality and to law. Notwithstanding their exclusively moral content, they have the form of enforceable subjective rights that grant specific liberties and claims...” J. Habermas, “The concept of human dignity and the realistic utopia of human rights”, *Metaphilosophy*, 41 (2010): p. 464-480 [here 470].

<sup>20</sup> “Human rights can be seen as primarily ethical demands. They are not principally “legal,” “proto-legal” or “ideal-legal” commands. Even though human rights can, and often do, inspire legislation, this is a further fact, rather than a constitutive characteristic of human rights”. A. Sen, “Elements of a Theory of Human Rights”, *Philosophy and Public Affairs*; 32 (2004): p. 315-356 [here 319].

<sup>21</sup> Ch. Taylor, “Why We Need a Radical Redefinition of Secularism”, Ed. Mendieta – J. VanAntwerpen (eds.), *The Power of Religion in the Public Sphere*, New York: Columbia University Press, 2011, p. 34-59 [esp. 54].

<sup>22</sup> J. Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca, NY and London: Cornell University Press, 2003, p. 15.

Although there is no unique pattern in the Orthodox views on HR issues, it is fair to say that in official declarations, Orthodox representative bodies stress the support of the Orthodox communities for ideals such as the respect of human dignity and HR; as the Third Pre-Conciliar Pan-Orthodox Conference stated: “...we also defend human rights for every human being and every people”. However, it should be added that the moderate acceptance of HR is frequently qualified by an interpretative Christian meaning.

There is a wide range of theological approaches elaborating the idea of human dignity, mainly as a part of Christian anthropology and not only as a core concept of HR. Although a systematic presentation of these approaches is beyond the scope of this paper, it is worth mentioning that the term “human being” in Orthodox theology denotes the human being as *Imago Dei*, *a being in relationship with God and with others*<sup>23</sup>. Hence, the way in which the “Human Person” is perceived in Orthodox theology is not necessarily identical with the political idea of an individual belonging to a community as an agent of political attitudes. This observation should enforce vigilance in clarifying the concepts in hand when dealing with political or/and theological terms. Believing in God and belonging to a faith community is what characterizes a person as a faithful member of the Church. For the Orthodox Church this means to understand, to live, and finally to witness the mystery of God’s Economy in Church life as well as in the “world”, the faithful’s social environment<sup>24</sup>.

Over the last few decades a question has emerged that poses a theoretical and political challenge: namely, whether HR are incompatible with Orthodox tradition. Although the investigation of the relevant philosophical foundations normally consumes the most dynamic parts of the above-mentioned discussion<sup>25</sup>, the following analysis proposes an

<sup>23</sup> “From the fact that a human being is a member of the Church, he becomes an ‘image of God’, he exists as God Himself exists, he takes on God’s ‘way of being’. This way of being is not a moral attainment, something that man accomplishes. It is a way of relationship with the world, with other people and with God, an event of communion, and that is why it cannot be realized as the achievement of an individual, but only as an ecclesial fact”. J. Zizioulas, *Metr. of Pergamos, Being as Communion. Studies in Personhood and the Church*, Crestwood NY: St Vladimir’s Seminary Press, 1997, p. 15.

<sup>24</sup> See also: P. Vasiliadis, *Eucharist and Witness. Orthodox Perspectives on Unity and Mission of the Church*, Geneva-Boston: WCC-HC Press, 1998.

<sup>25</sup> The Marsh-Payne analysis is a notable use of social data “in an attempt to shed some empirical light on the controversial question of Orthodox values and the embrace of

epistemological shift. In this perspective, the analytical interest is focused on the question of whether there are theological reasons for Orthodoxy to devalue HR and the co-evolved legal norms relating to religious freedom, democratic citizenship and the primacy of the Rule of Law. Another important research topic is the way in which the Orthodox Churches have cultivated and manifested their teaching on these issues. As is self-evident when examining how church leaders, institutional bodies and the average Orthodox Christian express particular attitudes towards HR, the analysis should be highly contextual.

### **3. On the Theorem of Orthodoxy's incompatibility with Human Rights: The paradigm of Greek Orthodoxy**

Is the Orthodox tradition incompatible with HR? As a preliminary note, one should bear in mind that in the argumentation about the incompatibility of "Orthodoxy" with Human Rights and even with modern State regulations the use of terms might be blurred. Very often "Orthodoxy" is not likely to mean the body of believers, the members of the Orthodox community (either in a theological or a sociological perspective), while the term "Human Rights" rarely refers to a coherent concept. Most of the time the tension is concentrated around the issues of State-Church relations, the legal regulations concerning the functions of traditional institutions – in short, the contested hegemonies<sup>26</sup> in the social and political reality of Late Modernity.

The problems in implementing HR in countries with an Orthodox majority are many and deep-rooted, as is the case almost always and anywhere in the world for a variety of reasons. The issue of Orthodoxy's compatibility with HR is of interest to a certain group of scholars and forms part of an academic dialogue linked with the wider discussion on the changes and challenges of modernity encountered by the Christian

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Human Rights." See: C. Marsh – D. Payne, "Religiosity, Tolerance, and Respect for Human Rights in the Orthodox World", in A. Brüning – E. van der Zweerde (ed.), *Orthodox Christianity and Human Rights*, Leuven – Paris: Walpole, Ma, 2012, p. 201-214 [here 207].

<sup>26</sup> This term has also been used recently in an international studies edition of collected essays concerning discourses of order and techniques of power in the public sphere of Muslim majority countries. See: Ar. Salvatore – M. LeVine (eds.), *Religion, Social Practice, and Contested Hegemonies*, Palgrave, 2005. Retrieved:  
<http://www.palgraveconnect.com/pc/doi/10.1057/9781403979247>.

Churches and particularly the Orthodox Church. Questions such as whether Orthodoxy “accepts” or not the existence of the legal power that HR have in modern democracies, whether the Church should propose an alternative paradigm in the political era or the possibility that the Ecclesia might have to be outside the jurisdiction of international treaties do not belong to the heart of ecclesiastical or political life, neither are they a vital part of the Church-State (not to mention interfaith) dialogue. However, contrary to these facets of political reality, the dialogue on this topic – whenever it comes to the fore – is almost always heated and troublesome.

The examination of the Greek Orthodoxy paradigm provides us with analytical elements that lead to diverse conclusions. Greece is quite often taken as an exceptional case in Europe due to the fact that the Greek Orthodox Church has a “predominant status” in society, a situation that signals certain privileges in comparison with other religious communities<sup>27</sup>. At the same time, Greece as a member-state of the European Union has followed the path of European integration in a variety of social, political, economic and legal perspectives. This process, which has been unfolding for more than three decades, has influenced the sociopolitical configurations, the law provisions, the institutional and the overall contexture of society. Although several tensions have emerged, mainly with regard to the role of the Church in the new political milieu, along with “cultural” and religious issues such as the identity cards conflict<sup>28</sup>, the question that still remains open is whether Orthodoxy has ever been a radical anti-European voice and an obstacle to Greece’s European course.

It is true that there are clergymen and theologians who, as “concerned” Christians, express ideas that can hardly be reconciled with a HR frame of action. On the other hand, most official statements have emphatically supported the idea that Greece and Greek culture is a vital component of the European Project – especially at times when this project has been understood as an alliance of nations “united in diversity”. In the

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<sup>27</sup> On this topic see: E. Fokas, “Religion in the Greek Public Sphere: Nuancing the Account”, *Journal of Modern Greek Studies*, 27 (2009): p. 349-374.

<sup>28</sup> As a result of the Schengen Agreement, since 2000 it has been forbidden for religious affiliation to be recorded on ID cards issued by the Greek State. At that time a petition was organized by Archbishop Christodoulos aiming at a national referendum and asking to keep this issue as a matter of personal discretion. See: L. Molokotos-Liederman, “The Greek ID Card Controversy: A Case Study of Religion and National Identity in a Changing European Union”, *Journal of Contemporary Religion*, 22 (2007): p. 187-203.

meantime, the Greek Orthodox people, carrying a religious tradition of moderation and having being “naturally”<sup>29</sup> integrated into European political and social history, have moved forward in the new reality sometimes with enthusiasm and sometimes with scepticism, especially in the perspective of changes at pan-European level and the possible loss of the old, particular, national socio-political culture.

The interrelation between religious faith and the political sphere, as well as the role of religion in the construction of the overall Weltanschauung of society is an old and contested issue in the social sciences<sup>30</sup>. Although the interweaving of all social agents has been already well examined at global and local levels, no one could argue that a religious tradition entirely forms the political ideology of a society, nor that theological discourse can turn the course of political events either in favour or against HR ideas, at least in the case of Greece. Thus, the debate on “Orthodoxy’s compatibility” is mainly theoretical, constructed primarily with philosophical raw material and concentrated on the history of ideas.

Indeed, the research interest is mainly focused on the question of whether Orthodoxy is *in principio* incompatible with the modern

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<sup>29</sup> On the political rationale behind the idea of Greece as a modern State belonging to the “European family” see the Greek Prime Minister’s speech on Greece’s accession to the European Community: “Although it is an important historical event, Greece’s membership of the European Community will not involve any change of climate for my country. Europe, which bears a Greek name, is an area with which Greece is familiar, since its civilisation is a synthesis to which, as I have had occasion to say elsewhere, the Greek mind has contributed the concepts of liberty, truth and beauty; the Roman mind, the concept of the State and of justice; and Christianity, faith and love. This is the common civilisation upon which we are called to build the new Europe... As of today, Greece irrevocably accepts this historical challenge and its European destiny while preserving her national identity...” Constantine Karamanlis, Speech on Greece’s accession to the European Community, January 1, 1981. In the official presentation of EU countries, Greece is referred to as “one of the cradles of European civilisation”, whatever this might mean for the present situation. (Retrieved from: [http://europa.eu/about-eu/countries/member-countries/greece/index\\_en.htm](http://europa.eu/about-eu/countries/member-countries/greece/index_en.htm)).

<sup>30</sup> B. C. Labuschagne, R. W. Sonnenschmidt (eds.), *Religion, Politics and Law. Philosophical Reflections on the Sources of Normative Order in Society*, Leiden: Brill, 2009; J. Casanova, *Public Religions in the Modern World*, Chicago, IL: University of Chicago Press, 1994; J. Haynes, *Religion in Global Politics*, Harlow: Longman, 1998; Cl. Geertz, *The Interpretation of Cultures*, New York: Basic Books, 1973; P. Berger (ed.), *The Desecularization of the World: The Resurgence of Religion in World Politics*, Washington, DC: Ethics and Public Policy Center, 1999.

socio-political paradigm and more specifically with the HR regulations. This contested topic deserves to be examined under the light of an analysis of the overall social paradigm in modern democracies and its possible interrelation with Orthodoxy, not so much as it is mirrored in the variety of theoretical approaches but merely as it is recorded in official texts and expressions of the Orthodox Churches. If nothing else, the complexity of current geopolitics and the emergence of multiple modes of modernity<sup>31</sup> is a call to vigorous analysis away from oversimplistic generalizations.

As I have stated elsewhere, the analysis of religious phenomena often tends to reflect conceptualizations of specific Christian traditions and lifestyles or even particular theoretical premises<sup>32</sup>. This is a fact that epistemologically challenges the validity of the cross-cultural predications on ethical or social issues applied in diverse religious traditions. Misconceptions, along with a blurry use of language, are not rare in this area. Speaking of “Orthodox countries” when having in mind modern nation-states with a majority Orthodox Church and mentioning “Orthodox populations” in the assumption that all the citizens of the abovementioned countries organize their civic life in absolute accord with the Holy Canons and the ethical teaching of Orthodoxy has not proved to be the most accurate epistemic option. Furthermore, when taking “Orthodoxy” out of its theological context one can easily assume a unique, invariable, massive paradigm. Once again some of the hermeneutical attempts on this topic suffer from a lack of epistemic criteria and are rather characterized by a more or less doxastic certainty. Furthermore, the use of polarized terms such as West-East, liberal democracies, Communist regimes etc. as a leitmotif tends to produce more polarized explanations. A reflexive epistemology allows us to better understand that beyond these categories – taken as coherent preconceptions – the social reality is far more complex. In the cases of issues that are political by nature the social context must be carefully defined before any in-depth analysis can start over. Rightfully, in analysing a society-religion topic, the theological rationale should be included in an inclusive and multifaceted approach to the social world. In this sense,

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<sup>31</sup> N. S. Eisenstadt, *Multiple Modernities*, New Brunswick, NJ: Transaction Publishers, 2002; N. S. Eisenstadt, “Multiple modernities”, *Daedalus*, 129 (2000): p. 1-29.

<sup>32</sup> C. N. Tsironis, “Concept-centric or method-centric research? On paradigm war in the interdisciplinary study/research of religion”, L. Berzano – Ol. Riis (eds.), *Annual Review of the Sociology of Religion*, 3 Leiden-Boston: Brill, 2012, p. 57-80.

a double methodological approach is needed: While examining reality as a wide and unified matrix of interrelated webs of meaning and actions, one must be able to define with clarity the particular agents and factors.

By applying the aforementioned epistemic criteria to the case of Greek Orthodoxy we may find some evident facts that cannot really be a part of over-generalized approaches: Greece, as a country with an established Orthodox Church, has never been under Communist rule nor truly opposed to HR norms. The Greeks, and particularly people familiar with Orthodoxy, cannot reasonably be described as being opposed to “western values”, if by that is meant a trust in democratic institutions, political participation in international assemblies and respect for Human Rights treaties and conventions. The ratification of international agreements has never been seriously questioned, while the implementation of all consequent commitments is a sociopolitical challenge, just as it is for any other country in the world. What rather can easily be observed is a distinctive suspicion – inside and outside Church circles – of transformative political projects. The distrust has arisen due to the fact that the development of civil society has been frail in terms of peoples’ engagement in Greece<sup>33</sup>, sometimes leading to an understanding of terms such as “modernization”, “Europeanization” etc. as models coming from “outside” and propelling a transition to a new era through the deconstruction of all that was traditionally familiar and fundamental in everyday experience. Moreover, the sociopolitical turbulence that has accompanied the current debt crisis, along with the loss of the EU’s legitimacy, have intensified defensive stances, immoderate reactions and even conspiracy theories referring to the demolition of every national structure, starting with traditional religious faith. This crisis of trust caused by historical and other factors in the past and by the disputes and conflicts in the Balkans, Eastern Europe, the Near East and other corners of the globe where ancient enclaves of Orthodox believers have suffered as a result of the current geopolitical antagonisms, has strengthened a desire to retreat to the safe haven of Tradition and, to a certain extent, has stimulated rhetoric and practices of defensive communitarianism.

Of course, it should be noted that critics of HR do not exclusively appear in Orthodox theological debates<sup>34</sup>. In one way or another, the

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<sup>33</sup> See: N. Mouzelis, G. Pagoulatos, “Civil Society and Citizenship in Postwar Greece”, *Greek Review of Political Science*, 22 (2003): p. 5-29.

<sup>34</sup> See for example: “From the perspective of the victors of the Cold War, all critique is dismissed as irrational and unreal. ... From the perspective of the prophets of

re-appearance of phenomena of xenophobia, hate speech, intolerance and racism paints a bigger picture of the current situation. The liberal democracies all over Europe are facing their own challenges *vis-à-vis* the respect for HR issues, especially those linked with religious freedom. The results of the 2014 European Parliamentary elections should alert us to the fact that the blind spots in the legal framework, and furthermore in the implementation of HR norms as “common principles” (Treaty of Amsterdam, amended Art. F., par. 1)<sup>35</sup> are certainly not only a Greek or an “Orthodox” problem as European politics has obviously been shaken and disoriented by the rise of extremism.

In the light of the foregoing considerations, this analysis draws the following significant conclusions: a) it is clear that Orthodoxy has not developed an overall normative teaching on HR, and b) the effects of controversial theological approaches towards HR have to be further examined. A first attempt to define the diverse theological accounts on these issues has led to the identification of at least four streams of theological and social reasoning:

a) The first theoretical stream is characterized by a mainly pragmatic assessment of the role of HR as a part of the modern condition, of which Christian and other religious communities form an integral part. HR are considered to be norms that regulate social, political and economic interaction. In this respect, no opposition between Orthodoxy as a faith community and HR as a form of political/ legal regulation may be observed. There are actually scholars who indicate the interweaving of the moral and political background of HR with the religious events in premodern and modern Europe and elsewhere, in respect of the development of a (pro-human rights) historical-theological approach<sup>36</sup>, while there are others who call upon Christians to have an open and creative democratic presence in modern democratic societies<sup>37</sup>, and yet others who encourage

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the end, free markets and human rights are the non-ideological ideologies left, final proofs of the pragmatic benevolence of the American way”. C. Douzinas, *The End of Human Rights*, Hart: Oxford, 2000, p. 378.

<sup>35</sup> “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”/See also: Consolidated Version of the Treaty on European Union 2010, Art. 2.

<sup>36</sup> S. Agouridis, *The Human Rights in the Western World*, Athens: Filistor, 1998 [in Greek].

<sup>37</sup> Io. Petrou, *Social Theory and Contemporary Culture*, Thessaloniki: Vantias, 2013 [in Greek]/ *Id.*, *Cultural Pluralism and Religious Freedom*, Thessaloniki: Vantias, 2005 [in Greek].

*“The conversation of Orthodoxy with other Christian traditions, as well as religious and secular ideologies, on the notion of human dignity” since “The task of defining the appropriate ambition of human dignity and human rights today must be a multidisciplinary, multireligious and multicultural exercise”<sup>38</sup>.*

b) Precisely the opposite view has been voiced by a group of heterogeneous thinkers with an absolutely negative appraisal of the HR-Orthodoxy relation. These thinkers are members of zealotic groups who tend to emphasize that the HR norms should be considered as being opposed to God’s law if they are not identical with Church Canons or if they limit the normative rule of ecclesiastical teaching. In one way or another, within these circles Orthodoxy has to stay “pure” from modern ideas. This kind of argumentation is very often expressed anonymously in the digital highways of the Internet or between rigorist groups. The tone of aggressive absolutism is sometimes surprisingly similar to the public utterances of American ultra-conservative groups.

c) Another theoretical stream consists of scholars and theologians who underline what are in their view the essential and bridgeless differences between HR and the Orthodox tradition. The view expressed by this group is in any case distinct from the unproductive denial of the zealotic groups since it creates platforms for delicate theological dialogue. The existence of the critical notes of this group played a crucial role in the construction of the current debate – at least at the theological level – by setting off pro and contra remarks and the respective theoretical views and dimensions on this topic. The most prominent representative of this third stream is Prof. Yannaras, whose consistent theory on “ecclesiastical realization of the image of the Trinitarian Communion” stands in contrast to modern institutions based on the “egocentrism of human rights”<sup>39</sup>. In this sense, Prof. Yannaras makes a clear distinction in his theory between what he describes as the anthropological basis of individualistic HR and the existential experience of the “prosopon”, a person living in a true community with other persons<sup>40</sup>. As his views are greatly respected in the wider circle of scholars working on issues relating to the Orthodox Church, they have had a significant impact on the overall discussions not

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<sup>38</sup> Rev. Em. Clapsis “Human Dignity in a Global World”, *Theologia*, 81 (2010): p. 233-247.

<sup>39</sup> Ch. Yannaras, “Human Rights and the Orthodox Church”, *Theologia*, 73 (2002): p. 381-387 (in Greek).

<sup>40</sup> Ch. Yannaras, *The Inhumanity of the Right*, Athens: Domos, 2000, p. 202-205, p. 213-215, p. 217 (in Greek).

only on HR but also on the Mission of the Church and the meaning-bestowal of Church Institutions in modernity.

d) The fourth theoretical stream has been documented in a highly eloquent way in the writings of Anastasios, Archbishop of Tirana. Archbishop Anastasios actually offers a theological argumentation on HR that is at the same time a pragmatic call for participation in the public debates. He proposes that Orthodox theologians and Church members should get involved in the HR discourse and at the same time maintain the (Orthodox) theological conceptual framework. He makes a series of critical observations concerning all possible limits of a normative understanding of HR and he paves the way for a reflexive and moderate Orthodox argumentation towards “a valuable contribution” to the debated issues. As he states:

*“In the Eastern Orthodox understanding, the contents of the existing human rights documents are just beginnings; they do nothing to safeguard the dignity of persons against domination by their egos... the Eastern Orthodox Tradition... offers a possibility for gaining a deeper insight into the matter of human rights.”*<sup>41</sup>

In his later attempt to revise this text in the “Facing the World” edition, while depicting the failure of simplistic over-optimism, he consistently adheres to the observation that any approach to HR in the frame of Orthodoxy has to be elaborated with the appropriate theological instruments (p. 60)<sup>42</sup>.

In this discursive frame, conflicting and overlapping theological views, socio-political visions, domestic quarrels, and diverse perspectives are to be observed. Ad. Pollis can hardly see any actual bridging between the “horizon of meaning” in Orthodoxy and HR<sup>43</sup>. The same is true for Orthodox scholars such as Chr. Yannaras<sup>44</sup>. For both of these – essentially diverse – approaches HR are a vital part of “modernity” while Orthodoxy has a totally different character.

<sup>41</sup> A. A. Yannoulatos, “Eastern Orthodoxy and Human Rights”, *International Review of Missions*, 73 (1984): p. 454-466 [here 454].

<sup>42</sup> A. A. Yannoulatos, *Facing the World: Orthodox Christian Essays on Global Concerns*, Crestwood, NY: St. Vladimir’s Seminary Press, 2003, p. 49-77.

<sup>43</sup> “As transmitted through the centuries, Eastern Orthodoxy speaks to the rights of persons only in mystical and spiritual terms”: A. Pollis, *Eastern Orthodoxy and Human Rights*, p. 356.

<sup>44</sup> Ch. Yannaras, *The Inhumanity of the Right*, p. 17-19, p. 165 [in Greek].

Other Orthodox scholars concentrate on conceptual approaches that could potentially lead to a more consensual approach. In this respect, Papanikolaou approaches liberal democracies in a way that allows the development of a theological argumentation capable of pursuing a dialogue between Orthodox spirituality and modern democratic ideas<sup>45</sup>. As Rev. Em. Clapsis confidently notes: “However, it is wrong to assume that the ethos of Orthodoxy does not permit the development of a sensitivity to human right and its advocacy. Quite to the contrary, the Orthodox view of human dignity supports the idea of human rights.”<sup>46</sup>

Here we are right back where we started from. Is Orthodoxy incompatible with HR? Some theologians and other theorists would say yes. The ultra-zealots argue that Orthodoxy *should be* incompatible, while some scholars suggest that the question should be elaborated and others affirm a dialogical approach. The statement by the Ecumenical Patriarch of Constantinople, Bartholomew, that “Orthodox spirituality assures us that Orthodox Christians will always respect the human rights of others”<sup>47</sup> makes it clear that the challenge to understand the theological frame in which such recognitions of human rights and polarized arguments coexist is becoming more complex.

What a first approach might reveal is that, although there are Orthodox people who are reluctant, or simply fail, to maintain their commitments to HR provisions, the Orthodox tradition is primarily bestowed by the Orthodox themselves as a tradition of moderation and meekness in its biblical and patristic roots. Even when there are heated speeches in the public sphere, a possibly immoderate denial of the HR of every person in the world would most probably fail to be placed at the heart of Orthodox Ecclesiology<sup>48</sup>. While there are undoubtedly immoderate voices trying

<sup>45</sup> Ar. Papanikolaou, *The Mystical as Political: Democracy and Non-Radical Orthodoxy*, Indiana: University of Notre Dame Press, 2012.

<sup>46</sup> Rev. Em. Clapsis “Human Dignity in a Global World”, *Theologia*, 81 (2010): p. 233-247 [here 242].

<sup>47</sup> Ecumenical Patriarch Bartholomew, *In the World, Yet Not of the World. Social and Global Initiatives of Ecumenical Patriarch Bartholomew*, USA: Fordham University Press, 2010, p. 64.

<sup>48</sup> See: H. H. Ecumenical Patriarch Bartholomew, “Opening Address” to the: Interparliamentary Assembly on Orthodoxy, *The Social Dimension of Monotheistic Religions*, IAO: 2013, p. 13-18 [here 18]. “An Orthodox Approach to Diaconia. Report from the Work Groups of an Inter-Orthodox Consultation”, Metr. Gennadios Limouris (compiled), *Orthodox Visions of Ecumenism*, Geneva: WCC Pub., 1994, p. 70-73; P. Vasiliadis (ed.), *Orthodox Perspectives on Mission*, Oxford: Regnum Books

to produce alternative theological narratives, the Orthodox tradition in its theological perspective of meaning has for centuries remained a soteriological proposition, a compassionate call for a community life centred on worship, participation in the sacramental life, and personal devotion to pro-social values. Further ontological examination and development of a relevant theological discourse, bringing affirmative or dissentient voices into the light, is a never-ending challenge.

Currently, an examination of relevant messages and statements in the Orthodox milieu would shed more light on the discourse.

#### **4. Orthodoxy and Human Rights: Notes from a canonical point of view**

The Orthodox Churches do not share the same ideas regarding HR. Similarly, their conception of other important affairs relevant to social and canonical issues may vary. There are a number of reasons for this diversity, such as local traditions, specific Church and State relations, perceptions on the role of the Church in the public sphere and in politics, as well as the personalities and ideas of the ecclesiastical leaders. This polymorphy might be explained by the polycentric jurisdictional structure of the Orthodox Church worldwide, and by the minority or majority status the Church might have in society. The multiform organization of the Orthodox Churches has its origin in the ideas that have dominated political and ecclesiastical affairs in the Balkan region and in the formation of the nation-states that have emerged during the last two centuries. Local Orthodox Churches have supported the national ideology in each country concerned, while national identities have strengthened the demand for independent, national, autocephalous and autonomous Churches. Gradually, the Churches belonging to the new nation-states acquired self-governing independence (full or relative) from the Ecumenical Patriarchate of Constantinople.<sup>49</sup> On

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Inter., 2013; C.N. Tsironis, "Peace-War-Ecclesia in Modern Greece: Fragments and Continuities", S. Asfaw – Al. Chehadeh, M. Simion (eds.), *Just Peace. Orthodox Perspectives*, Geneva: WCC Pub., 2012, p. 128-151.

<sup>49</sup> "... The Orthodox Church comprises a number of autocephalous regional Churches, which move within certain boundaries defined by the Sacred Canons and the *Tomes* conferring their autocephaly while at the same time being entitled to full self-administration without any external interference whatsoever. This system, which was bequeathed to us by our Fathers, constitutes a blessing that we must preserve

the other hand, the Orthodox Church's embrace of the nation-state in these countries resulted in the Church's autonomy being restricted by the intervention of the political power in ecclesiastical affairs. It is not rare for ecclesiastical institutions to be regulated by laws, decrees or ministerial decisions.<sup>50</sup>

Moreover, the abovementioned formation of Church-State relations, combined with the strengthening of local nationalisms and long debates on rediscovering the genuine ecclesiastical tradition, is one of the reasons why tensions have emerged with regard to Orthodoxy's attitude towards modern social and political concepts assumed to be generated by western interpretations.<sup>51</sup>

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like the apple of our eyes. For it is by means of this system that we may avoid any deviation toward conceptions foreign to Orthodox ecclesiology concerning the exercise of universal authority by any local Church or its Primate. The Orthodox Church comprises a communion of autocephalous and self-administered Orthodox Churches." Address by His All-Holiness Ecumenical Patriarch Bartholomew at the Synaxis of the Primates of the Orthodox Churches (Phanar, March 6, 2014) <http://www.patriarchate.org/documents/synaxis-2014-patriarchal-address>. See also K. Papageorgiou, *An Introduction to Hellenic Ecclesiastical Law*, Trikala-Thessaloniki, 2012: p. 22-26 and p. 103 et seq.

<sup>50</sup> This model of heteroregulation characterizes Church-State relations in Greece. The Autocephalous Church of Greece is defined as a *sui generis* public entity, quasi-self-governing. This model is reflected in the Greek Constitution and in different parts of the national legislation. N. Maghioros, "State and Church in Greece: "to reform or not to reform?", *Droit et Religions*, 2 (2006-2007): p. 497-534; CH. Papastathis, "The Hellenic Republic and the Prevailing Religion", *Brigham Young University Law Review*, 4 (1996): p. 815 et seq., *Id.*, "Church and State in Greece", in *Church and State in the European Union* (ed. G. Robbers), Baden-Baden, 2005, p. 115-138; K. Papageorgiou, *An Introduction*, p. 69-76.

<sup>51</sup> As E. Fokas affirms, "In the Greek context, to assume that Orthodox Christianity is a barrier to the implementation of Western norms of human rights, on the basis of the church-state conflicts over implementations of such norms in Greece, is to overlook the specificities of the Greek case, the divisions within the Greek Orthodox Church on such matters, and the support of such norms by Orthodox believers, leaders, and communities in contexts beyond the Greek case (but also within Greece). Even if in Greece there is difficulty in implementing human rights norms, particularly as regards religious freedoms for the non-Orthodox, this does not mean that the blame lies with the Orthodox faith" and "Thus, rather than speaking in terms of European and Greek exceptionalism, it is suggested that significant effort be made to strike a delicate balance between recognizing and respecting the complexities characterizing each case and working creatively and productively with the many points of similarity and inter-influence. The place of religion in Europe in general is in a state of flux, and there is a reflexive element in this affecting both the European and the Greek contexts" in *Religion in the Greek Public Sphere*, p. 365, p. 369.

This ecclesiastical “regionalism” often provokes tensions in questions relating to canonical issues. The Canon Law of the Eastern Orthodox Church differs significantly from other canonical Christian traditions. The lack of a systematic structure limits the common Orthodox canonical tradition to the *corpus of the Holy Canons* while the rest of the canonical, administrative and also Church-State issues are regulated at national level. The Orthodox Church does not have a Code of Canon Law like the *Codex Iuris Canonici* of the Roman Catholic Church. The *corpus* of the Canons still takes the form of a collection of legal texts of different historical and chronological origins. It is the synodal system of administration that guarantees (or should guarantee) the smooth operation of the whole ecclesiastical organization at both a universal and regional level. It should prevent authoritarian or arbitrary behaviour in the ecclesiastical body, ensuring the stability of the organization, administration and operation of the Church.<sup>52</sup>

In this frame, a fundamental document relevant to HR issues was introduced in a synodal way by the Orthodox Church delegates at the 3<sup>rd</sup> Pan-Orthodox Pre-Conciliar Conference in Chambésy in 1986. This thoughtful document entitled *The Orthodox Church contribution to the achievement of peace, justice, freedom, brotherhood and love between nations and the elimination of racial and other discrimination* expresses a common view of the Orthodox Churches and, after further elaboration, will be a working text for discussion in the Holy and Great Council to be held in 2016. Hence, issues relating in one way or another to HR will be part of the agenda of the forthcoming Council of the Orthodox Church. The abovementioned document deals with the value of the human person conceived as the foundation of peace, human freedom, justice over racial and other forms of discrimination and the prevalence of fraternity and

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<sup>52</sup> “Thus we can clearly see the paramount importance of synodality in the Church. The synodal system has from the outset constituted a foundational aspect of Church life. Every difference or disagreement in matters of either faith or canonical order was set before the judgment of the Synod. ... This synodal system was and is upheld more or less faithfully, within the autocephalous Orthodox Churches, but it is entirely absent in relations among them. This accounts for a source of major problems. It creates an image of Orthodoxy as being many Churches but not one Church, which by no means concur with Orthodox ecclesiology; instead it comprises an aberration from this ecclesiology and becomes the root of trouble. We are obligated to support the synodal system even beyond the boundaries of our individual Churches. We are required to develop a conscience of one Orthodox Church, and the concept of synodality alone can achieve this goal.” Address by His All-Holiness Ecumenical Patriarch Bartholomew at the Synaxis of First-Hierarchs of the Orthodox Churches (*Phanar*, March 6, 2014).

solidarity among people. One of the conclusive statements of this text is that

“Since we (Orthodox Christians) continuously declare the incarnation of God and the deification of humanity, we defend human rights for every human being and every people. Since we live with the divine gift of freedom through Christ’s work of redemption, we are able to reveal to the fullest the universal value that freedom has for every human being and every people.”<sup>53</sup>

Despite the unanimous character of the above message, there are still different perspectives on HR documented in texts published at various events organized by the Russian Orthodox Church (ROC) and the Ecumenical Patriarchate of Constantinople. Different historical, social and political circumstances affect the approaches of the two Churches. The ROC is numerically the largest Orthodox Church and the majority religious community in a state with a fairly long Christian tradition. On the other hand, the Ecumenical Patriarchate Bartholomew, recognized as *primus inter pares* among Orthodox Churches, is not a national Church. Having been based in Constantinople for 17 centuries, it is currently recognized by the Turkish state as a small religious minority in a society with a prevailing Islamic tradition.

The ROC was, and still is, the first and only Orthodox Church to take the initiative to systematize and present its social doctrine in parallel with the abovementioned Pan-Orthodox Conciliar framework. In 2000 the Sacred Bishops’ Council of the Russian Orthodox Church approved *The Bases of the Social Concept of the Russian Orthodox Church*. According to the preface of this text, its provisions reflect “the official position of the Moscow Patriarchate on relations with the state and secular society. .... The nature of the document is determined by the needs experienced by the whole of the ROC during a long historical period both within and beyond the canonical territory of the Patriarchate of Moscow.”<sup>54</sup> Later the document,

<sup>53</sup> The Greek text in *Episkepsis*, No. 17 (1986), issue 369, December 15, 1986. Also in P. Vassiliadis, *Unity and Testimony*, Thessaloniki, 2007, 267-289 (in Greek) and [http://www.apostoliki-diakonia.gr/gr\\_main/dialogos/dialogos.asp?content=content&main=C\\_pros\\_4.1.htm](http://www.apostoliki-diakonia.gr/gr_main/dialogos/dialogos.asp?content=content&main=C_pros_4.1.htm).

<sup>54</sup> *The Bases of the Social Concept of the Russian Orthodox Church*, <https://mospat.ru/en/documents/social-concepts/>. A. Agadjanian, “Russian Orthodox vision of human rights”, in V. Makrides (ed.), *Erfurter Vorträge zur Kulturgeschichte des Orthodoxen Christentums 7*, (Universität Erfurt Religionswissenschaft Orthodoxes Christentum), Erfurt, 2008; K. Stoekl, “The Human Rights Debate in the External Relations of the Russian Orthodox Church”, *Religion, State and Society*, 40 (2012): p. 212-

in referring to human rights, states that “The idea of these rights is based on the biblical teaching on man as the image and likeness of God, as an ontologically free creature” (IV. 6). With regard to secularism, it states that “As secularism developed, the lofty principles of inalienable human rights turned into a notion of the rights of the individual outside his relations with God. In this process, the freedom of the personality transformed into the protection of self-will (as long as it is not detrimental to individuals) and into the demand that the state should guarantee a certain material living standard for the individual and family” (IV. 7).

The publication of the *Bases of the Social Concept of the Russian Orthodox Church* was the first official step in a course of events that paved the way for a more dynamic intervention in the internal and external relations of the Moscow Patriarchate. In 2008, *The Russian Orthodox Church’s Basic Teaching on Human Dignity, Freedom and Rights* was published.<sup>55</sup> K. Stoeckl analysed the key terms used in various documents and pointed out that the rhetoric on human rights has changed over time and the teaching has become “an instrument of the external relations and foreign policies of the ROC”<sup>56</sup>. During this process, the question on “traditional values” was raised. In 2011 the United Nations Human Rights Council adopted a resolution *Promoting human rights and fundamental freedoms through a better understating of traditional values of humankind* (A/HRC/RES16/3). This document describes the terms “dignity”, “freedom” and “responsibility” as traditional values. According to Stoeckl, the UNHRC resolution used key terms from the Russian Orthodox HR debate.<sup>57</sup> The related resolution of adopting the concept of “traditional values” provoked a storm of protest from HR supporters as it failed to provide a clear definition of the concept “traditional values of mankind” within a multi-religious global framework.<sup>58</sup>

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232; A. Brüning, “Freedom” vs. “Morality” – On Orthodox Anti-Westernism and Human Rights”, in A. Brüning and E. van der Zweerde (eds.), *Orthodox Christianity and Human Rights* 13, Leuven – Paris: Walpole, Ma, 2012: p. 124-152; D. Payne, “Spiritual Security, the Russian Orthodox Church, and the Russian Foreign Ministry: Collaboration or Cooptation?”, *Journal of Church and State*, 52 (2010): p. 712-727.

<sup>55</sup> <https://mospat.ru/en/documents/dignity-freedom-rights>.

<sup>56</sup> K. Stoeckl, “The Human Rights Debate in the External Relations of the Russian Orthodox Church”, p. 212.

<sup>57</sup> *Ibid.*, p. 226.

<sup>58</sup> See M. Blake, “Traditional values and Human Rights: Whose Traditions? Which Rights?”, *Cicero Foundation Great Debate Paper*, 13/06 (2013), p. 1-12. [http://www.cicerofoundation.org/lectures/Michael\\_Blake\\_Traditional\\_Valuexx.pdf](http://www.cicerofoundation.org/lectures/Michael_Blake_Traditional_Valuexx.pdf).

On the other hand, the Ecumenical Patriarchate has a long history of inter-religious dialogue with Islam and Judaism, theological dialogues with Christian denominations and also dialogues with political institutions. In 1994, it participated in the Conference on Peace and Tolerance held in Istanbul. In the Joint Declaration (known as “The Bosphorus Declaration”) Christian, Jewish and Muslim<sup>59</sup> participants denounced “any attempt to corrupt the basic tenets of our faith by means of false interpretation and unchecked nationalism”, as well as “the concept that it is possible to justify one’s actions in any armed conflict in the name of God.” They affirmed their opposition to “those who violate the sanctity of human life and pursue policies in defiance of moral values” and they emphasized “the imperative of freedom of conscience and freedom of religion for every minority” and “the right to practice one’s religion in freedom and with dignity”.<sup>60</sup>

Some years later, at the annual meeting of the World Economic Forum in Davos, the Ecumenical Patriarch affirmed that in a ranking of values the human person is above any economic activity and introduced the idea of *spiritual ecumenicity*. This idea emerges from the life of the Orthodox Church and “is a form of globalisation that proclaims that bonds of love, brotherhood and cooperation should unite all human beings of every race and language and of all cultures”. He expressed his determination

“to safeguard the possibility for the members of every religious or cultural minority to maintain their distinctiveness and the particularity of their culture” and rejected the idea that considers globalisation “as a means of making humanity homogeneous, of influencing the masses and causing a single, unified and unique mode of thought to prevail.”<sup>61</sup>

The Ecumenical Patriarch continued in this vein at the 4<sup>th</sup> meeting between the Orthodox Church, the European People’s Party and the European Democrats Group in Istanbul (June 2000). He affirmed that the integrity of the human person is the cornerstone of Orthodox anthropology and the bedrock of all human, social and political relationships. Therefore, “the cultivation of a culture that strengthens

<sup>59</sup> G. Papademetriou, “Recent patriarchal encyclicals on religious tolerance and peaceful coexistence”, *Journal of Ecumenical Studies*, 40 (2003): p. 320-324.

<sup>60</sup> The Bosphorus Declaration: Joint declaration of the Conference on Peace and Tolerance. <http://www.patriarchate.org/documents/joint-declaration>.

<sup>61</sup> Address given at the 1999 Annual Davos meeting of the World Economic Forum, [http://www.orthodoxresearchinstitute.org/articles/ethics/bartholomew\\_globalization.htm](http://www.orthodoxresearchinstitute.org/articles/ethics/bartholomew_globalization.htm).

civil society, protects human rights, and fosters a high quality of life, in truth reflects the praxis that should characterize our faith, and thus our regard for one another.”<sup>62</sup> In the final Joint Declaration the Ecumenical Patriarchate, the participating Autocephalous Orthodox Churches and the Presidency of the Group confirmed “their attachment to principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law, principles inspired by Judaeo-Christian teaching.”

In respect of HR, it was affirmed that “every Christian had to be a guarantor of the sanctity and dignity of each man and woman, believer or unbeliever, and that this sanctity and dignity were best protected by a rational definition of human rights, the Natural Law being the lodestar for such definitions; it was the continuing vocation of everyone to work peacefully and constructively to safeguard the value of each human person.” With regard to civil society, it was stressed “that the churches are an integral and essential part of European society and that they play a most important role in the common effort for a European civil society based on pluralism, tolerance, respect of human and minority rights and democracy”.

One year later, in his message to the participants of the 5<sup>th</sup> dialogue between the Orthodox Church and the Christian Democrats on the island of Crete (June 2001), the Ecumenical Patriarch made a reference to the way in which the Orthodox Church perceives her role in the public sphere. “The Orthodox Church does not seek to promote its own position in society, for it does not see itself as a part of the community of man that is opposed to any other part of that same community. By its nature it is universal and ecumenical because of its fundamental sense of sharing a common future with the world to come. Consequently, it does not believe there is any reason why it could or should oppose anyone else, and it certainly does not see itself as constituting just one sector or part of mankind.”<sup>63</sup> At the same meeting the participants welcomed and fully accepted the Charter of Fundamental Rights of the European Union as a very important document, and observed that it “must reflect more the spiritual and moral bases of all the peoples of Europe”. The lack of reference in the Charter to the role of the Churches was an issue of deep

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<sup>62</sup> <http://arc.eppgroup.eu/Activities/pcurrentissues/politics-religion/docs/orthodox4-conclusions-speeches-en.pdf>.

<sup>63</sup> Message of His All-Holiness Bartholomew. Proceedings of the Fifth Dialogue (draft text in Google).

concern. Moreover, the participants welcomed the *Charta Oecumenica*<sup>64</sup> as a document that could “contribute to the debate on integrating the Charter into the constitution of the European Union.”<sup>65</sup>

The respect for minorities was the main issue of the Ecumenical Patriarch’s speech at the OSCE Symposium in Brussels in 2004.<sup>66</sup> In this speech, he observed that

“the situation becomes unbearable for indigenous minorities, for those who exist within intolerant societal majorities, for they are deemed alien whilst being equally indigenous as the majority. On many occasions, the majorities merely indulge in intense attempts to assimilate the minorities culturally, religiously, nationally and linguistically. ... This is lack of maturity in receiving the other. ... The clause of the European Treaty in respect of freedom of residence constitutes a courageous impetus towards the right direction, but certain reasonable reservations are bound to curtail its breadth of application. ... Overstressing racial origins for one, and racism even more so, as well as unfavourable discrimination perpetrated by any powerful majority against powerless minorities for racial, religious, linguistic or any other reasons, together with xenophobia are ideologies and mental attitudes that are entirely opposed.”

The need to respect minorities was reaffirmed at the Plenary Assembly of the European Parliament in 2008.<sup>67</sup> Here the Ecumenical Patriarch affirmed that

“... there must be respect for the rights of the minority within every majority. When and where the rights of the minority are observed, the society will for the most part be just and tolerant. In any culture, one segment will always be dominant – whether that dominance is based on race, religion or any other category. Segmentation is inevitable in our diverse world. What we seek to end is fragmentation!”

<sup>64</sup> “Charta Oecumenica, Guidelines for the Growing Cooperation among the Churches in Europe”, <http://www.ceceurope.org/introduction/charta-oecumenica/>.

<sup>65</sup> Dialogues between the Orthodox Church and the EPP-ED Group in the European Parliament, p. 50-51, <http://stream.eppgroup.eu/Activities/docs/year2008/dialogues-en.pdf>.

<sup>66</sup> Speech by the Ecumenical Patriarch Bartholomew at the OSCE Symposium in Brussels on the topic “Religious Tolerance: Combating Racism and Xenophobia. An Unfavorable Discrimination”, Belgium Sept. 13, 2004, *Greek Orthodox Theological Review*, 49 (2004): p. 409-416.

<sup>67</sup> Address of His All-Holiness Ecumenical Patriarch Bartholomew to the Plenary Assembly of the European Parliament, Brussels, September 24, 2008, *Greek Orthodox Theological Review*, 53 (2008): p. 281.

The notions of personal freedom, dignity and integrity for every single human being were placed among the main issues in the Ecumenical Patriarch's speech at the London School of Economics in 2005<sup>68</sup>. The concept of personal freedom, he maintained,

“lies at the heart of what we mean by the European idea, and it is the primary guiding principle of the EU. It is precisely in this perspective that we can begin to appreciate the role of religion in Europe; for personal freedom is fundamental likewise to the Christian doctrine of human personhood. For the Christian tradition, freedom – the ability to make decisions consciously and with a full sense of responsibility – is the most tremendous thing granted by God to human persons. Without liberty of choice, there is no authentic personhood. Hitherto, we have spoken of ‘personal freedom’, but it needs also to be said, that our freedom is not only personal but interpersonal. As human beings, we cannot be genuinely free in isolation, repudiating our relationship with our fellow humans. We can only be genuinely free if we form part of a community of other free persons. Freedom is not solitary, but social. ... Freedom, respect or the dignity and integrity of each human person, is fundamental to our vision of a united Europe.”

In his speech to the Plenary of the Parliamentary Assembly of the Council of Europe in Strasbourg in 2007<sup>69</sup>, the Ecumenical Patriarch called for HR to be respected on a universal level, especially where tensions between religions occur. As he observed: “We, the people of the so-called Western Civilization, have been convinced that pure religious faith in itself does not find any pleasure in engaging its followers in warfare and conflicts with the faithful of other religions, for the truth does not walk along either with militant power, or with numerical, or any other superiority for that matter. The conviction that the divine Truth and gratification is witnessed by the event of victory in war has been abandoned today as inaccurate. The truth is known through the word and the personal experience of it in a pure and selfless heart.” He continued by saying that

“western civilization, under the influence of the evangelical principles of

<sup>68</sup> Speech by the Ecumenical Patriarch Bartholomew at the London School of Economics (LSE) for the London Hellenic Society: “The Role of Religion in a Changing Europe”, *Greek Orthodox Theological Review*, 50 (2005): p. 432-445.

<sup>69</sup> “The Necessity and Goals of Interreligious Dialogue: A Speech Given by His All Holiness Ecumenical Patriarch Bartholomew to the Plenary of the Parliamentary Assembly of the Council of Europe”, *Greek Orthodox Theological Review*, 52 (2007): p. 233.

the equality of human beings, of freedom of consciousness and existence, of the protection of the weak, of justice and of love, and of many more, but also under the influence of the ideas of humanism, has, especially since the Enlightenment on, raised gradually the institution of human rights to a high level. ... Religious freedom and human rights in general are of the accomplishments of the civilization which constitute the very identity of Europe. Each and every confinement of religious freedom and human rights mutilates human civilization. It is a sign of regression and interception of human hope”.

Recently, at the Synaxis of the Primates of the Orthodox Churches in the Phanar,<sup>70</sup> while stressing the dangers arising from the rapid secularization of society, the Ecumenical Patriarch made some valuable remarks on the moral principles of Orthodoxy concerning human freedom:

“Of course, the Orthodox Church has never favoured the forceful imposition of evangelical principles on people, placing freedom of the human person above objective rules and values. Coercion of any kind does not belong to the nature and ethos of Orthodoxy. Matters pertaining to people’s moral life are treated by the Orthodox Church as being personal, managed by each individual in his or her personal relationship in freedom with their spiritual father and not by the sword of the law. However, this in no way frees the Church of its obligation to promote the Gospel principles in the contemporary world, even if these sometimes come into conflict with prevailing ideas. A traditional Church does not mean a fossilized Church, one that is indifferent to the ongoing challenges of history. Such challenges are particularly acute in our times, and we are compelled to heed them.”

## Conclusions

A perusal of the recent bibliography on the Orthodoxy and HR topic reveals that the debate is ambivalent, highly theoretical and unfinished. The construction of an overall theory on the relation between “Orthodoxy” and “Human Rights” (in the vague senses of the terms) is vulnerable to epistemological faults as it deals with both concepts in a supra-contextual manner. Thus, it is at least an oversimplification for someone to speak of a unique and solid “Orthodox” stance towards Human Rights, assuming that there is only a one-dimensional approach deriving from a single conceptual framework and indiscriminately including all Orthodox

<sup>70</sup> Address by His All-Holiness Ecumenical Patriarch Bartholomew at the Synaxis of the Primates of the Orthodox Church (*Phanar*, March 6, 2014) <http://www.patriarchate.org/documents/synaxis-2014-patriarchal-address/>.

communities, no matter whether they are a majority or a minority Church, a Church strongly bound up with a national history, a Church in diaspora or a newly established Church, or a community with experience of Communist rule or European integration etc. In this respect, by placing within a singular frame the theological and political challenges facing the Orthodox Churches in Greece, the Balkans, Central Europe, Asia, Africa, Russia and the United States, one will overlook not only the contextual differences but also the ecclesiological character of Orthodox tradition<sup>71</sup>.

It seems that the Orthodox Churches have an inconvenient relation with various liberal democratic configurations, at least when the latter are understood as projects to be implemented at any cost. However, no matter how stressful the tension is, there is no official voice possibly disputing the Rule of Law and the recognition of Human Rights. All official statements in international fora typically express the concern the Orthodox Churches feel for the violations of Human Rights worldwide. Surprisingly enough, although it is the Russian Orthodox Church that often raises questions on the essence of Human Rights, the final message of the ECRL Moscow Declaration includes the statement that: “The Universal Declaration of Human Rights (1948) is an expression of shared values which are recognised across religions and cultures, and which we as leaders of diverse religious traditions emphatically support” (par. 5).<sup>72</sup> In this frame, this statement stands in accordance with other Orthodox statements, as presented above. If any of the local Orthodox Churches support in principle a different approach or promote different practices, they should take it upon themselves to clarify whether there are theological or other reasons for adopting an anti-human rights stance. Of course, something that should not be left unsaid is the fact that particular issues such as non-traditional family forms, regulations on Bioethics, and sexual orientation etc., conceived within the European frame of secular political understanding<sup>73</sup>, still cause highly emotional reactions, tumultuous protests and scepticism.

<sup>71</sup> As Ef. Fokas stresses: “*This diversity of environments in which Orthodoxy operates leads to vastly different constellations of the relationship between religion and nation, between church and state, and between majority and minority populations*”, in Ef. Fokas, *Religion in the Greek Public Sphere: Nuancing the Account*, p. 355.

<sup>72</sup> European Council of Religious Leaders, *Moscow Declaration on Advancing Human Dignity Through Human Rights and Traditional Values*, <http://www.rfp-europe.eu/Moscow%20Declaration>.

<sup>73</sup> See: “Nor may states allow the dissemination of religious principles which, if put into practice, would violate human rights. If doubts exist in this respect, states must

Respect for freedom and diversity should not only be shown to “others”. It is demonstrated primarily within one’s own ecclesiastical community. The faithful members of the religious communities have rights and obligations. Currently, research into these topics in Orthodox theology is underdeveloped and characterized by the lack of a coherent approach. It seems that as the discussions on HR applicability in modern societies are further developed, new issues concerning rights within ecclesiastical communities will emerge. HR are not only static norms but also a dynamic situation that tends to be integrated into everyday life.

This presentation of a series of documents, messages and texts of different character that have been made public by the Ecumenical Patriarch and other Orthodox representatives demonstrates that HR are *de facto* acknowledged as a main functional element of the modern world at national and international level. Especially the speeches given by the Ecumenical Patriarch have a particular significance in the Orthodox world as there is an emphasis on the desire of the Orthodox communities to contribute in a spirit of reconciliation to peaceful coexistence, religious tolerance and the overcoming of extremism in the world. Religious freedom, the dignity of the human person and the ideals of Peace, Tolerance and Fraternity are repeatedly affirmed. However, this fact has not discouraged the development of discussions on the nature, origin and role of HR in comparison with the theological understanding of the person and his/her social world.

Beyond all theoretical inquiries on HR issues, it remains a fact that the violations of HR around the globe are traumatizing human dignity. This situation does not fall only within the sphere of interest of legal structures and HR international instruments. The Orthodox Church is expected to bridge the gap between the theological “logos” and the challenges of our times. In this sense, the greatest challenge for the Orthodox Church concerning HR is to diaconate the suffering of human beings by dealing with modern problems in their tangible and exigent circumstances. The integrity of human life should be protected from any misuse of power, either *sacra* or *profana*.

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require religious leaders to take an unambiguous stand in favour of the precedence of human rights, as set forth in the European Convention on Human Rights, over any religious principle”, in Council of Europe, Recommendation 1804 (2007) State, religion, secularity and human rights (par. 17).



## **PART 4**

# **ORTHODOX THEOLOGICAL AND ECCLESIOLOGICAL REAPPRAISAL OF HUMAN RIGHTS**



# Orthodox Personalism

## In Favor of or Against Human Rights?

Vasilios N. MAKRIDES

### 1. Introduction

Even a casual look at the contemporary Orthodox theological scene can easily reveal one of its dominant orientations, namely one that revolves around the central notion of the person. One may thus rightly speak of an Orthodox personalism or personhood as a widespread and more or less established discourse today, generated in diverse contexts, sustained through various arguments and formulated by different theologians and thinkers. In most cases, this discourse is informed by the Greek Patristic thought and by the Orthodox tradition in general. Historically, the concept of the person has a great deal to do with the Trinitarian and Christological debates of the fourth and fifth centuries – a period when this concept stood in contrast to the concepts of essence/substance and nature. Another source of related impulses comes from the Hesychast controversies in fourteenth-century Byzantium, and from the relationship between the divine essence/energy distinction of Gregory Palamas on the one hand, and the doctrine of persons of the Trinity on the other hand. In some cases, though, this discourse is also informed by developments in contemporary philosophy and human sciences. One may thus speak of an “Orthodox philosophy of the person”<sup>1</sup>, and perhaps even more so of an “Orthodox theology of the person” – all without drawing

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<sup>1</sup> See I. Papagiannopoulos, “Re-Appraising the Subject and the Social in Western Philosophy and in Contemporary Orthodox Thought”, *Studies in East European Thought*, 58 (2006): p. 299-330.

a strict demarcation line between the concepts.<sup>2</sup> Yet, despite eventual differences in such approaches, there exist some common points in the attempts to formulate an Orthodox understanding of the person. One of them usually relates to a dominant Trinitarian background, namely to the particular emphasis put on an analogous understanding of the one God as consisting of three persons and on their assumed communion and mutual relationship of love. The personalist understanding of God is further contrasted with an essentialist one, because the person is conceived as being more dynamic, free and unrestricted than an opaque, firm and inflexible essence. The above presuppositions not only serve as a point of departure for formulating analogous ideas and suggestions about the human person, action and society at large. They are also used to basically demarcate the theological development of the Orthodox East from the Latin West with regard to various Trinitarian models, which are believed to have wider implications beyond the strict theological realm. Such an agenda stems from the broader phenomenon of Orthodox anti-Westernism and from the need for some sort of East-West demarcation – be it a strict or a mild one.<sup>3</sup>

It is thus claimed that the East has historically put more emphasis on a person-centered discourse, whereas the West has strongly flirted with the notion of the essence. Such a divergence is believed to have had radical consequences, such as in the context of church organization and structure, as well as in the respective societal developments of the East

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<sup>2</sup> From the rich literature on this topic, see K. Ware, “The Unity of the Human Person According to the Greek Fathers”, in Arthur Peacocke / Grant Gillett (eds.), *Persons and Personality: A Contemporary Enquiry* (Oxford: Basil Blackwell, 1987) p. 197-206; Archbishop Stylianos (Harkianakis), “The Mystery of Person and Human Adventure”, *Phronema*, 11 (1996): p. 6-20; S. Yangazoglou, “The Person in the Trinitarian Theology of Gregory Palamas”, *Philotheos. International Journal for Philosophy and Theology*, 1 (2001): p. 137-143; Nonna Verna Harrison, “The Human Person as Image and Likeness of God”, in M. B. Cunningham, E. Theokritoff (eds.), *The Cambridge Companion to Orthodox Christian Theology* (Cambridge: Cambridge University Press, 2008), p. 78-92; J.-C. Larchet, *Personne et nature. La Trinité – Le Christ – L’homme. Contributions aux dialogues interorthodoxes et interchrétiens contemporains* (Paris: Cerf, 2011); A. Louth, *Introducing Eastern Orthodox Theology* (Downers Grove, IL: InterVarsity Press, 2013) p. 89-91.

<sup>3</sup> See G. Demacopoulos, A. Papanikolaou (eds.), *Orthodox Constructions of the West* (New York: Fordham University Press, 2013). See also various articles in A. Krawchuk, Th. Bremer (eds.), *Eastern Orthodox Encounters of Identity and Otherness: Values, Self-Reflection, Dialogue* (New York: Palgrave Macmillan, 2014).

and West.<sup>4</sup> It is thus not accidental that the Orthodox East has shown a more liberal face and spirit in numerous domains than the more rigid and legalistic Latin West.<sup>5</sup>

Furthermore, the entire discussion is closely connected to the issue of individuality and its evaluation from an Orthodox point of view, which is mostly negative. After all, the concepts of the individual and of individuality have been the cardinal features of the Western theological and intellectual development, especially after the Reformation and the dawn of the modern age. It is argued that the idea of the person points to the importance of community and an analogous way of life, which reflect the particular Orthodox communitarian ethos and its Trinitarian background. As such, the person constitutes the opposite of the individual, and communion the contrary of individuality. Ideas of community and the person also became quite prominent among Orthodox thinkers after the fall of the communist Eastern Bloc, while, interestingly enough, they were also brought into relation with the rise of the communitarian discourse within the Western world.<sup>6</sup> We can thus rightly talk of an Orthodox emphasis on anti-individuality, which occupies a key place in the personalist discourse. The response of Patriarch of Constantinople Jeremias II Tranos to the Protestant theologians in late sixteenth century marks the first traces of a negative evaluation of the rise of individuality within Western Christianity. However, a more systematic reflection on this topic as culturally distinguishing the Orthodox East from the Latin West took place among the Slavophile thinkers in Russia in the second half of the nineteenth century. Since then, the anti-individualist strand, formulated in various yet interrelated ways, has become a cardinal characteristic of the Orthodox discourse as a whole. This remains the case up to the present day.<sup>7</sup>

<sup>4</sup> See Chr. Yannaras, "Consequences of an Erroneous Trinitology in the Modern World", in Centre Orthodoxe du Patriarcat Œcuménique (ed.), *La signification et l'actualité du II<sup>e</sup> Concile Œcuménique pour le monde chrétien d'aujourd'hui* (Chambésy-Genève: Éditions du Centre Orthodoxe du Patriarcat Œcuménique, 1982), p. 497-502.

<sup>5</sup> Cf. F. von Halem, "Eine Skizze über Gesetz und Weltordnung in Ost und West: Von der Antike bis zur Moderne", *Forum für osteuropäische Ideen- und Zeitgeschichte*, 7 (2003): p. 15-51.

<sup>6</sup> For details, see K. Stoeckl, *Community after Totalitarianism: The Russian Orthodox Intellectual Tradition and the Philosophical Discourse of Political Modernity* (Frankfurt am Main: Peter Lang, 2004).

<sup>7</sup> Cf. V. N. Makrides, "Orthodoxes Christentum und Individuum – verhängnisvolle Affäre oder productive Interaktion?", in B. Kracke, R. Roux / Jörg Rüpke (eds.), *Die*

Before launching into the main subject, we should briefly mention here that personalism is hardly the exclusive area of creative reflection, either theological or philosophical, in modern Orthodox thought. On the contrary, personalism has been already acknowledged as a specific strand of thought in Western philosophy and enjoys a long historical background.<sup>8</sup> It focuses on the uniqueness, the dignity and the distinctive value of the human person and uses the latter as the starting point for philosophical inquiry and analysis. Yet, this took place in various forms and following different presuppositions and agendas. Consequently, the specific notions associated with the person vary significantly and may be incompatible, if not outright contradictory.<sup>9</sup>

The entire topic thus exhibits a great historical and cultural variability, for the term person can be applied equally to human or non-human agents. Further, the whole topic also concerns modern law, as the concept of the person is linked here to specific legal and political notions (e.g., citizenship, equality, liberty). The roots of personalism are believed to go back to Greek antiquity and its philosophical tradition. That being said, personalism's flourishing development is located mostly within the context of the twentieth-century Western world and is associated with the so-called "dark" history of this century.<sup>10</sup> Personalism was conceived as a third way between liberalism and communism/Marxism and was seen as placing emphasis on human rights and the inalienable worth of the human person. Nevertheless, it also acquired several critics, who associated personalism with collectivism and fascism. Needless to say, there were also currents of religious/theological personalism (such as the so-called Boston Personalism of the early twentieth century), which focused on the absolute value of personhood and in which the personalist understanding of God and the Trinity also played an important role.<sup>11</sup>

There are two aspects of Western personalist philosophy and theology which must be underlined in the present context and which

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*Religion des Individuums* (Münster: Aschendorff, 2013), p. 63-81, here p. 72-73.

<sup>8</sup> See J. O. Bengtsson, *The Worldview of Personalism: Origins and Early Development* (Oxford: Oxford University Press, 2006).

<sup>9</sup> See P. van Inwagen, D. Zimmerman (eds.), *Persons: Human and Divine* (Oxford: Clarendon Press, 2007).

<sup>10</sup> Cf. M. Mazower, *Dark Continent: Europe's Twentieth Century* (London: Allen Lane, 1998).

<sup>11</sup> See P. Deats, C. Robb (eds.), *The Boston Personalist Tradition in Philosophy, Social Ethics, and Theology* (Macon, GA: Mercer University Press, 1986).

are very relevant for the analogous Orthodox personalist discourse. First, personalism is here generally associated – though not necessarily explicitly – with human individuality. In other words, person and individual are not regarded as constituting two opposite and mutually exclusive categories<sup>12</sup> (particularly when referencing the situation in non-Western cultures)<sup>13</sup>. This relates to the enormous issue of the rise of Western individuality, which has, among other things, a long historical Christian background and which had a catalytic impact on the Western world as a whole. The Roman consul and philosopher Boethius created a characteristic definition of the person as “the individual substance of a rational nature” (*naturae rationabilis individua substantia*). Such a definition is indicative of a particular correlation between person and individual in Late Antique thought.<sup>14</sup> Needless to say, one can find significant differences (for several reasons) between the Orthodox East and the Latin West as far as the degree and the intensity of individualization are concerned. The significance and repercussions of such differences are still visible today.<sup>15</sup>

The second point refers to the connection between personalism and communitarianism in Western thought. This feature has a prominent place in Orthodox personalism as well, yet the presuppositions and the coordinates of the Western counterpart are in many respects different.<sup>16</sup> This is because they are informed by the advances (especially in modern times) made in the long Western intellectual tradition, including the rise of individuality. As a result, many attempts have been made to find a viable balance between the individual and the community and to incorporate both into the conceptualization of human beings and society. This is evident, for example, in the various twentieth-century manifestations of Roman Catholic personalism.<sup>17</sup>

<sup>12</sup> See B. Morris, *Western Conceptions of the Individual* (Oxford: Berg, 1991).

<sup>13</sup> Cf. B. Morris, *Anthropology of the Self: The Individual in Cultural Perspective* (London: Pluto, 1994).

<sup>14</sup> See K.-H. Ohlig, *One or Three? From the Father of Jesus to the Trinity* (Frankfurt am Main: Peter Lang, 2002), 99-101.

<sup>15</sup> Cf. V. N. Makrides, “Orthodoxes Christentum und Individuum”, p. 66-71.

<sup>16</sup> Cf. V. N. Makrides, “Gemeinschaftlichkeitsvorstellungen in Ost- und Südosteuropa und die Rolle der orthodox-christlichen Tradition”, in J. von Puttkamer / Gabriella Schubert (eds.), *Kulturelle Orientierungen und gesellschaftliche Ordnungsstrukturen in Südosteuropa* (Berlin: Harrassowitz, 2010), p. 111-136.

<sup>17</sup> See K. Wojtyła (Pope John Paul II), *Person and Community: Selected Essays*, trans. Theresa Sandok (New York: Peter Lang, 1993). See also K. P. Doran, *Solidarity: A*

In relation to our main topic, it should be mentioned that Western personalism, including the type formulated by Roman Catholic thinkers (e.g., Jacques Maritain, John Courtney Murray), was also closely related to the emergence of the human rights concept, as this came to be articulated within the overall frame of the Western world during the interwar period.<sup>18</sup> Interestingly enough, this era was marked by the formation of a personalist frame for individual human rights and their protection – a combination that was not regarded as contradictory. The notion of the individual person bestowed with human dignity became a key notion in Roman Catholic theology after the Second Vatican Council. Thus, we should keep in mind that, historically speaking, Western personalism did contribute to and accept individual human rights in the twentieth century. Of course, the same cannot be claimed for the Orthodox side, although some few isolated parallels between East and West may be located.<sup>19</sup>

We are talking of course about developments within the Western world, which were, however, universalized after World War II, especially after the United Nations' well known "Universal Declaration of Human Rights" in 1948. The idea of an "individual person", characterized by his/her individual personal characteristics, weighted much in the respective argumentation. Various rights and duties were thus ascribed to the individual person, who became a legal subject and enjoyed legal protection for his/her basic rights. Legal, political and practical interests (and their concomitant ramifications) thus occupied a prominent place in the foundation of human rights. Still, the philosophical, moral and religious aspects of human rights did also play a role in this context. The whole issue is hardly considered a marginal one. On the contrary,

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*Synthesis of Personalism and Communalism in the Thought* of Karol Wojtyła, John Paul II (New York: Peter Lang, 1996); Chr. Böhr, "Phänomenologie als Anthropologie. Zu Karol Wojtylas Konzeption der Person", in Ralf Becker / Ernst Wolfgang Orth (eds.), *Religion und Metaphysik als Dimensionen der Kultur* (Würzburg: Königshausen & Neumann, 2011), p. 228-244.

<sup>18</sup> See S. Moyn, "Personalismus, Gemeinschaft und die Ursprünge der Menschenrechte", in Stefan-Ludwig Hoffmann (ed.), *Moralpolitik. Geschichte der Menschenrechte im 20. Jahrhundert* (Göttingen: Wallstein, 2010), 63-91. See also J. de Tavernier, "The Historical Roots of Personalism: From Renouvier's *Le Personnalisme*, Mounier's *Manifeste au service du personnalisme* and Maritain's *Humanisme intégral* to Janssen's *Personne et société*", *Ethical Perspectives*, 16 (2009): p. 361-392.

<sup>19</sup> See E. Pribytkova, "Natural Law and Natural Rights according to Vladimir Solovoyov and Jacques Maritain", in A. Brüning, E. van der Zweerde (eds.), *Orthodox Christianity and Human Rights* (Leuven: Peeters, 2012), p. 69-82.

it still generates many discussions and debates. Hence, it is not unusual to find today various approaches to and evaluations of human rights. Among them, there exist contemporary personalist perspectives on human rights as moral entitlements grounded in the dignity of the human person. For instance, Thomas D. Williams has attempted to set forth the anthropological, philosophical, and theological bases of human rights by drawing on the personalism of Thomas Aquinas and by showing that these rights fit well with the historical formulations of justice and natural law. Consequently, the human person was placed at the center of the individual rights discourse.<sup>20</sup> These and similar ideas should not cause any surprise, given that they are part of broader discussions and debates – on human rights, on their multi-faceted foundation, and on their potential universal applicability. Further, one should note the existence of purely secular attempts to found human rights, which have long enjoyed a wide range of influence. With regard to the Eastern Orthodox world, the question is how the specific Orthodox personalism may fit into this overarching frame of discussion, and whether it can contribute in a fresh way to the already established (and in many ways globally dominant) West-derived human rights discourse.

## **2. Orthodox Personalism and Human Rights: Is there a Viable Connection?**

Before dealing more systematically with this topic, we should mention that the issue of human rights has increasingly interested the Orthodox world in recent decades. This is most evident from the official document that the Orthodox Church of Russia issued on human rights in 2008, which has generated quite some debates on an international level.<sup>21</sup> Without going into too many details, it should be acknowledged that this document articulated the Orthodox understanding of human rights as in many respects different not only from the established notion of human rights in international usage, but also from its reception by Western Christianity, namely by Roman Catholicism and the main Protestant Churches. In fact, there are many Orthodox positions with regard to

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<sup>20</sup> See Th. D. Williams, *Who is My Neighbor? Personalism and the Foundations of Human Rights* (Washington, DC: The Catholic University of America Press, 2005).

<sup>21</sup> See K. Stoeckl, *The Russian Orthodox Church and Human Rights* (London/New York: Routledge, 2014).

human rights, including some quite positive ones. Yet by looking at the whole range of these positions, it is easy to observe that in their majority they deviate from the internationally established norm of human rights, and even criticize it on many points from a moral standpoint, arguing that it opposes fundamental tenets of the Christian doctrine.<sup>22</sup>

This particular situation should be explained through referencing the origin of the modern human rights concept, which mainly lies within the Western world. Simply by considering the long historical tensions and conflicts between the Orthodox East and the Latin West, one can realize the gap that separates them, both historically and at present. A crucial difference is that Western Christianity had a painful yet productive interaction with modernity, of which the modern human rights concept is an integral part. By contrast, for historical reasons the Orthodox East was not able to have such a fruitful encounter with Western modernity, which was always seen as an external threat. This explains also why the Orthodox world has still not accepted the legitimacy of modernity and its numerous implications (secularity, individuality, etc.) and has not managed to enter into a more productive interaction with it.<sup>23</sup> This concerns the issue of individual human rights, as well, with which many Orthodox have serious problems. This is because these rights are regarded as undermining the foundations of Christian truth and as relativizing the claims for Christian absoluteness. On the other hand, the Orthodox are keen on supporting other kinds of rights, which are basically harmless to their claims for truth. For instance, this holds true for the rights of many specific minorities (though generally speaking not of sexual ones). In short, there is obviously an Orthodox selectivity in favoring only certain rights, and refusing some other. This explains why many Western observers have criticized the Orthodox position for introducing strict moral criteria in the human rights discourse. In addition, the rights that are supported by the Orthodox are usually not individually based, but

<sup>22</sup> For an overview, see V. N. Makrides, “Die Menschenrechte aus orthodox-christlicher Sicht: Evaluierung, Positionen und Reaktionen”, in M. Delgado, V. Leppin, D. Neuhold (eds.), *Schwierige Toleranz. Der Umgang mit Andersdenkenden und Andersgläubigen in der Christentumsgeschichte* (Fribourg / Stuttgart: Academic Press / W. Kohlhammer Verlag GmbH, 2012), p. 293-320. See also various articles in Brüning, Zweerde (eds.), *Orthodox Christianity and Human Rights*.

<sup>23</sup> For details, see V. N. Makrides, “Orthodoxes Christentum und Moderne – Inkompatibilität oder langfristige Anpassung?”, *Una Sancta*, 66 (2011): 15-30; *id.*, “Orthodox Christianity, Modernity and Postmodernity: Overview, Analysis and Assessment”, *Religion, State & Society*, 40 (2012): p. 248-285.

concern broader communities of people and have an analogous character. The tension between individuality and communality in the Orthodox thought again becomes obvious here.

Given this initial overview regarding the current relations between Orthodox Christianity and human rights, the question is whether one might expect any contributions from the Orthodox side to the related debates on an international level. In fact, this is what several Orthodox actors nowadays intend to do in a consistent and systematic way. A characteristic example is the present Orthodox Church of Russia, whose Moscow Patriarchate has emerged in the post-Soviet period as an important player on an international scale.<sup>24</sup> Interestingly enough, the Orthodox are well aware of the existing gap between their positions and the logic of the modern human rights discourse, yet they do not intend to retreat or to stay isolated within their traditional faith enclaves. On the contrary, they want to enter into a dialogue with other institutions and actors so as to make their voice heard and taken into consideration worldwide. Kristina Stoeckl has termed this particular moderate policy “religious traditionalism” and has described it as lying between liberalism and fundamentalism.<sup>25</sup> This policy does not fully endorse a liberal adaptation to the modern secular environment, yet it also does not resort to a staunch reaction and polemic against it in a radicalized form. It is difficult to speculate about the outcome of these attempts and initiatives, given that the debated issue does not solely concern human rights, but rather deals with the question of modernity as a whole. After all, similar movements can be seen today among various non-Western communities and actors across the globe, many of whom are calling into question the universal taken-for-grantedness of Western modernity. Not infrequently, this process results in cultural and other conflicts.

It is within this frame of reference that the issue of Orthodox personalism has been brought into discussions related to the human rights issue. Bearing in mind what has already been mentioned about Western personalism, individual human rights and the persisting Orthodox uneasiness with individuality, one would hardly expect any promising and fruitful ideas from Orthodox personalism on the present

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<sup>24</sup> From the extensive literature on this topic, see A. Agadjanian, *Turns of Faith, Search for Meaning: Orthodox Christianity and Post-Soviet Experience* (Frankfurt am Main: Peter Lang, 2014).

<sup>25</sup> See K. Stoeckl, “Religious Traditionalism and Politics”, *IWM Post*, 112 (Winter 2013/14): p. 12.

issue. This assumption is basically corroborated when looking at the work of the very prolific Greek theologian and philosopher, Christos Yannaras. He has been one of the most known critics of Western modernity from an Orthodox point of view<sup>26</sup> and has formulated a serious critique of the West-derived individual human rights concept, even going so far as to talk about the “inhumanity” of human rights<sup>27</sup> – a poignant play on words. In addition, he is well known for his preference for the ideal of community, for his critique of the rise of individuality, and for his articulation of an Orthodox theology/philosophy of the person.<sup>28</sup> In recent years, Yannaras’ works have been increasingly translated into various foreign languages, including Western ones – a phenomenon that has rendered his ideas known to a wide international public.

With regard to individual human rights, his critique<sup>29</sup> is focused on their resulting emphasis on unconditional human individuality and existence as the bearer of such rights. These individual claims and demands are believed to have a mandatory character, because they are legally founded, can be applied to society, and refer to all human beings without exceptions. This breakthrough is chiefly connected with the rise of Western modernity and with the intellectual legacy of the Enlightenment, which rendered the protection of such rights one of

<sup>26</sup> See Chr. Yannaras, “Orthodoxy and the West”, *Philotheos. International Journal for Philosophy and Theology*, 2 (2002): p. 72-87. See also P. Kalaitzidis, “The Image of the West in Contemporary Greek Theology”, in Demacopoulos, Papanikolaou (eds.), *Orthodox Constructions of the West*, p. 142-160; Basilio Petrà, “Christos Yannaras and the Idea of ‘Dysis’”, *ibid.*, p. 161-180.

<sup>27</sup> See Chr. Yannaras, Ἡ ἀπανθρωπία τοῦ δικαιώματος (Athens: Domos, 1998). For a critique, see Angelos Giannakopoulos, “Δικαιώματα καὶ δικαίωμα”, *Σύναξη* 83 (2002): p. 105-107; *id.*, “Νεοορθοδοξία, Κομμουνитарισμός καὶ Μοντερνικότητα”, *Θρησκευολογία* 5 (2004): p. 265-284. For another, more positive evaluation of Yannaras’ views, see Kristina Stoeckl, “The ‘We’ in Normative Political Philosophical Debates: The Position of Christos Yannaras on Human Rights”, in Brüning, Zweerde (eds.), *Orthodox Christianity and Human Rights*, 187-198.

<sup>28</sup> See Chr. Yannaras, *Person and Eros*, trans. Norman Russell (Brookline, MA: Holy Cross Orthodox Press, 2007). See also N. Tănase, “Otherness and Apophaticism: Yannaras’ Discourse of ‘Personhood’ and the Divine Energy in the Apophatic Theognosia”, *Philotheos. International Journal for Philosophy and Theology*, 14 (2014): p. 254-267.

<sup>29</sup> For a good summary of his views, see Chr. Yannaras, “Human Rights and the Orthodox Church”, *Θεολογία* 73 (2003): p. 381-387; *id.*, “Human Rights and the Orthodox Church”, in Emmanuel Clapsis (ed.), *The Orthodox Churches in a Pluralistic World: An Ecumenical Conversation* (Geneva / Brookline, MA: WCC Publications / Holy Cross Orthodox Press, 2004), p. 83-89.

the highest priorities, and which codified them in related documents and treaties claiming universal validity and applicability as proofs of a civilized development. Nevertheless, this is hardly the case in real life, since violations of such rights due to various interests and objectives are still very common. This situation brings the potential moral dimension of human rights to the fore. Granted, this dimension has been hotly debated in the history of Western Europe. Its peoples have had a quite negative experience with the church and its alleged divinely grounded moral code in the Middle Ages. For this reason, they revolted against such codes, against any metaphysical order supporting morality and rights, and against the arbitrary use of excessive power and authority from religious and other institutions. In turn, they emphasized natural reality, which appeared to be more subject to objective examination, explanation and control, and attempted to understand its logic and laws including the normative moral principles of common good and interest, which every individual would be obliged to responsibly accept. It is out of this context that the idea of the “natural right” of every individual emerged. This idea was protected through a “social contract” and became the cornerstone of modern individualism. All this was initially hailed optimistically as signaling a new era for humankind. Unfortunately, it was a far cry from solving all related problems, as is demonstrated by how history subsequently showed its most inhuman face, especially during the twentieth century.

Yannaras sees thus the entire process of Western modernity and its consequences as very problematic. He contrasts them with the earlier Helleno-Christian paradigm, which had flourished in the Greek Orthodox East, and which he regards as far superior. He points to the crucial fact that in Ancient Greece with its great achievements (e.g., in politics and democracy), the very idea of human rights was absent. The same holds true, he claims, for Roman Law as well. He proceeds then by delineating the ancient Greek understanding of the city (πόλις), the first one in human history, as an “exercise of truth” and not as a collective structure serving the individual utilitarian needs of its citizens. The city was supposed to reflect the harmony and the order of the universe and was based on a community of relations aimed at realizing “what truly exists”. The transformation of bare collective life into a city was not an individual effort or aim, but a social event and a common exercise rendering the cohabitating people into citizens. In such a context, power and judgment belonged to all citizens, a situation which made individual

human rights completely superfluous. To be a citizen had a sacred aura and protected people from any harmful deeds against them – even more than the modern human rights idea, which is thus incompatible with the ancient Greek version of politics.

This ancient Greek paradigm was later transferred, according to Yannaras, to the early Christian Church, which by being an *ecclesia* differed from any other “religion”. The ancient Greek “assembly of the people” as a political event and a way of life “according to the truth” was transformed into the Eucharistic assembly of Christians, who lived according to their own understanding of truth. This assembly no longer focused on imitating the logic of the cosmos, but rather on the Trinitarian communion of persons, which was seen as constituting the true existence and life. In such a communion, there was again no need for protection from the abuse of power, since a true and ideal community renders individual human rights needless. This signified that the Christian Church as such a community is fundamentally different from religion, which is an *individual* phenomenon based on instinctive natural needs; an “individual effort towards individual faith, individual virtues, individual justification, individual salvation”. By contrast, within the church, human identity is personal, namely it is realized and revealed through unconditional love, self-transcendence and self-offering. To be a person signifies “an existence with an active creative otherness, which is the fruit of relations of communion, love and freedom from the ego”. Yannaras sees this as completely different from “natural religion” and the religionized versions of Christianity in the West, where every individual seeks his/her own individual justification and salvation and the safeguarding of an egocentric metaphysical protection through virtues and good deeds. It is this particular religionized and individualized culture of Latin Christianity that gave birth (much later) to the concept of individual human rights in Western modernity, yet this time within a secular frame of reference due to the negation of metaphysics. For Yannaras, the gap between East and West is in fact unbridgeable, although the religionized form of Latin Christianity exerted a strong influence in the Orthodox East from the late Middle Ages onwards, resulting in numerous fundamental deviations from early Christian authenticity.<sup>30</sup>

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<sup>30</sup> Yannaras distinguishes clearly between the notion of the church and religion and thinks that Christianity in its authentic form is not a religion, but a church. For a critical discussion of this view, see V. N. Makrides, “Religion, Kirche und Orthodoxie.

Another vital consequence of the connection between the ancient Greek political event and the Eucharistic community of the Christian Church relates, for Yannaras, to their crucial difference from any metaphysics and its transformation into a secular ideology. Theocracy and other metaphysical authorities have nothing in common either with the ancient Greek political “exercise of truth”, or with the ecclesiastical realization of the image of the Trinitarian communion within the community of believers. They offer a solely psychological satisfaction to instinctive human religious needs and do not provide the realization of what is perceived to be true. To Yannaras, it was this metaphysically-based, authoritarian theocratic tradition in Western Europe – political and religious alike (e.g., the “kingship by the grace of God” and Papocaesarism) – which was devoid of any ontological content and which collapsed in the modern age, giving birth to secularism and the individual human rights, among other things.

The above summary of Yannaras’ views on human rights makes clear that his version of Orthodox personalism is diametrically opposed to the notion of the individuality underlining the modern human rights concept. Yannaras has also written on the idea of personhood in the Greek Patristic thought and its numerous implications (e.g., its ecstatic and erotic potential) and has repeatedly made clear his negative view on the individualization process characterizing Western modernity, which in his prediction is not only in decline, but is in fact fast approaching its end. It goes without saying that from Yannaras’ personalist point of view there is not much that the Orthodox can do with Western human rights. It is a matter of two different worlds being unable to share common presuppositions, ideals and orientations, such that a real communication between them seems extremely difficult, if not utterly impossible.

However, the discussion now turns to another, more recent formulation of Orthodox personalism, which is not portrayed as opposing the modern human rights concept. It stems from a Greek-American theologian Aristotle Papanikolaou, who is also particularly interested in Orthodox personhood,<sup>31</sup> and who in various publications has attempted to consider the Orthodox tradition and its potential contributions in a new light

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Aspekte orthodox-christlicher Religionskritik”, *Zeitschrift für Religionswissenschaft*, 15 (2007): p. 53-82.

<sup>31</sup> See A. Papanikolaou, “Personhood and its Exponents in Twentieth-Century Orthodox Theology”, in Cunningham, Theokritoff (eds.), *The Cambridge Companion to Orthodox Christian Theology*, p. 232-245.

while upgrading the importance of the Orthodox voice in the American public sphere. Such an objective entailed a revisionist policy, calling into question some of the basic and long-established Orthodox assumptions and standards in related discourses. For example, he considered the traditionally widespread and dominant Orthodox anti-Westernism as an unproductive means to enter into a dialogue with the Western world.<sup>32</sup> In this and in other respects, he distanced himself from the views of Yannaras, although he acknowledged his major contributions to the modern Orthodox theological thought. More specifically, Papanikolaou has attempted to formulate a fresh Orthodox political theology, and to discuss the key issues of today (e.g., liberal democracy) from an Orthodox perspective. Previously, it was generally assumed among Western observers that Orthodox Christianity is incompatible with such notions, while Orthodox thinkers expressed critical views towards them. Papanikolaou's aim was thus to reassess this long tradition and look for a more fruitful interaction between the Orthodox tradition and the Western intellectual heritage. This brought him to consider also the central issue of human rights in connection with Orthodox personalism and in the light of a theological anthropology based on the principle of divine-human communion (θέωσις).<sup>33</sup>

Papanikolaou is well aware of the difficulties inherent in discussing this topic, namely because a considerable part of Orthodox thought has already painted the human rights issue in quite negative colors (e.g., because of their individualistic and a-relational character). He thus reviews various critical Orthodox voices on human rights, including the aforementioned ones of Yannaras and those of the Orthodox Church of Russia in the related document of 2008, while also taking into consideration several more positive Orthodox views on human rights.<sup>34</sup> Generally, he seems to think that there is still enough ground to bring recent Orthodox theological views of personhood, developed in relation to Trinitarian theology and Eucharistic ecclesiology, together

<sup>32</sup> See the aforementioned volume by Demacopoulos, Papanikolaou (eds.), *Orthodox Constructions of the West*. See also G. Demacopoulos / A. Papanikolaou (eds.), *Orthodox Readings of Augustine* (Crestwood, NY: St Vladimir's Seminary Press, 2008).

<sup>33</sup> On this principle, see also A. Papanikolaou, *Being with God: Trinity, Apophaticism, and Divine-Human Communion* (Notre Dame, IN: University of Notre Dame Press, 2006).

<sup>34</sup> A. Papanikolaou, *The Mystical as Political: Democracy and Non-Radical Orthodoxy* (Notre Dame, IN: University of Notre Dame Press, 2012), p. 88-98.

with the notion of human rights. He is convinced that the only way the Orthodox can make sense of the language of human rights is through the prism of the divine-human communion, namely that the human was created for communion with God, a point of departure that has been underestimated so far. Yannaras is seen as the only Orthodox thinker who bases his rejection of the human rights language on the Orthodox understanding of personhood. Yet Papanikolaou tries to present his own reading of the contemporary Orthodox theology of personhood, which disagrees fundamentally with that of Yannaras (and also with the Russian Orthodox document on human rights).

More specifically, to Papanikolaou, it is about the personalist understanding of the doctrine of the Trinity, namely of persons in perichoretic communion, which as a model for imitation has many implications for human anthropology in terms of inter-human relationality, freedom, communion and love. In turn, this Orthodox theology can be traced to nineteenth- and early twentieth-century Russian religious philosophers. Apart from some changes and adaptations, this understanding of personhood was further developed during the twentieth century by various Orthodox theologians – first by Vladimir Lossky, and later by Christos Yannaras and John Zizioulas. According to Papanikolaou, despite eventual differences in the form and in the arguments adduced, all three share a consensus on two accounts: first, on an understanding of human personhood on the basis of the Trinity in terms of ἔκστασις (*ecstasis*, freedom) and ὑπόστασις (*hypostasis*, uniqueness) in the context of a loving communion; and second, on the affirmation of the divine-human communion, the perennial core of the Orthodox tradition, which is expressed through the concept of personhood. For Papanikolaou, these fundamental presuppositions cannot be inimical to the notion of natural human rights. This is what he tries to prove by looking in more detail at the personalist views of these three theologians, all of whom draw on the heritage of the Greek Patristic tradition. The investigation especially relates to the Cappadocian “ontological revolution” concerning the crucial distinction between *ousia* (οὐσία) and *hypostasis* (that is, between nature and person). The Capadocians identified the person and the *hypostasis*, while the category of person (πρόσωπον, *prosopon*) was supposed to have stronger relational implications than *hypostasis*. All this signified a move away from the ancient Greek philosophical ontology of substance. Personhood as a mode of being therefore constitutes an event of relationality, freedom, otherness, uniqueness and communion,

all realized both in the divine and in the created being. In addition, personhood as the realization of the love of God and the love of neighbor can well resonate with the modern human rights discourse on the equal worth and dignity of every human being and the uniqueness of the relationship of each human being to all others.<sup>35</sup>

Papanikolaou further tries to correlate the Orthodox relational notion of personhood with the theistic, dignity-based approach to human rights found in the works of the philosopher Nicholas Wolterstorff and of the legal scholar Michael J. Perry. In Papanikolaou's view, the affinities between them are more than clear. He claims that recent research has shown that human rights language existed prior to the Enlightenment and that it should not be considered exclusively within a secular or atheistic frame. It is also historically inaccurate to consider human rights language as unable to be integrated into theological anthropology. This refutes the arguments of Yannaras, of the Russian Orthodox Church, and of others who connect human rights exclusively with a hyper-individualistic and atheistic anthropology. On the contrary, the Orthodox notion of the divine-human communion and all implications about relational notions of personhood are not exclusive of the language of human rights. In the end, the Orthodox endorsement of human rights language is not only effected at the level of theory and rhetoric, but also emerges as a practice within the Christian ascetic struggle to love. Papanikolaou's conclusion is that the Orthodox should unequivocally support the language of human rights in such a way that humans are treated as unique and irreplaceable. Human rights can be seen as a practice that realizes uniqueness and irreducibility, and this fits in well with the Orthodox notion of personhood.<sup>36</sup> One should mention here in passing that a positive connection between Orthodox personhood and human rights has been supported by others as well.<sup>37</sup>

Having presented two completely different evaluations of Orthodox personhood in relation to human rights, one cannot help but be left with a big question mark as to which one of the two positions does more justice to the topic as a whole. Is Orthodox personalism in favor of or against human rights, at least as they are conceived of and formulated by the

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<sup>35</sup> See *ibid.*, p. 98-114.

<sup>36</sup> See *ibid.*, p. 114-130.

<sup>37</sup> See Chr. J. Helali, "The Pluralistic Horizon: Orthodox Theology in the Age of Human Rights", *International Journal of Orthodox Theology*, 4/3 (2013): p. 128-167.

Western tradition? What makes the current Orthodox evaluations of this topic so divergent and different? Before examining the above positions critically, one should mention that there are other Orthodox personalist theologians who have also dealt with this issue, albeit not systematically. For example, consider the aforementioned Zizioulas,<sup>38</sup> whose overall contribution to the articulation of the current Orthodox understanding of personhood has been seminal<sup>39</sup> and has been recognized as such by various researchers of his thought.<sup>40</sup> Zizioulas does not share the anti-Western attitude of other Orthodox personalists, yet he shares some of the cardinal characteristics of this current, such as the anti-individualist stance. Even so, his thought has also occasioned various debates,<sup>41</sup> a fact that makes it clear how far from being homogeneous and unified the broad Orthodox personalist domain truly is.

### 3. Critical Remarks and Suggestions

The existing diversity of opinions and evaluations within the broader Orthodox discursive field is evident from the preceding presentation and analysis of two Orthodox scholars and of their positions on the consequences of Orthodox personalism in relation to human rights. Such diversity often seems contradictory. No doubt, each of the above Orthodox thinkers has a different intellectual and cultural background and motivation in expounding his views on the topic. On the one hand, Yannaras comes from a Greek Orthodox milieu and is well known for his negative view and wholesale critique of the West – an attitude which of course could not leave the related human rights concept outside his

<sup>38</sup> See A. L. Heil, *Divine Personhood, Human Rights: The Image of God in the Theology of John Zizioulas* (Master of Divinity Thesis, School of Divinity, Wake Forest University, 2010).

<sup>39</sup> See J. D. Zizioulas, *Being as Communion: Studies in Personhood and the Church* (Crestwood, NY: St Vladimir's Seminary Press, 1985); *id.*, *Communion and Otherness: Further Studies in Personhood and the Church* (London: T & T Clark, 2006).

<sup>40</sup> From the rich secondary bibliography on Zizioulas, see D. Knight (ed.), *The Theology of John Zizioulas: Personhood and Church* (Aldershot: Ashgate, 2007); Sergii Bortnyk, *Kommunion und Person. Die Theologie von John Zizioulas in systematischer Betrachtung* (Berlin: LIT, 2014).

<sup>41</sup> See, for example, E. Russell, "Reconsidering Relational Anthropology: A Critical Assessment of John Zizioulas' Theological Anthropology", *International Journal of Systematic Theology*, 5 (2003): 168-186; N. Loudovikos, "Person instead of Grace and Dictated Otherness: John Zizioulas' Final Theological Position", *The Heythrop Journal*, 52 (2011): p. 683-699.

critical scope. In fact, Western Latin civilization represents for him an erroneous development for humankind in comparison to the qualitative superiority of the Greek Orthodox East, and this critique necessarily implicates modern human rights as a product of such a flawed civilization.

On the other hand, Papanikolaou comes from a Greek-American Orthodox milieu and addresses a different public. His main interest is to provide a fresh account of the Orthodox Christian tradition and to move beyond the traditional Orthodox reflexive opposition to the West and a nostalgic return to idealized pre-modern Orthodox conditions. In doing so, he strives to reconsider the proclaimed mutual incompatibility between Orthodox Christianity and liberal democracy, maintaining that the latter should not be understood exclusively within the secular Enlightenment heritage. As already mentioned, he is also interested in reevaluating the position of Orthodox Christianity within the American public scene,<sup>42</sup> an environment that seems to be particularly allergic to anything that may threaten liberal ideals and standards – of course, always depending on how these liberal traditions are understood and defined. For Papanikolaou, the traditional anti-liberal Orthodox discourse is based on some serious misunderstandings that were perpetuated in the Orthodox world for a long time, and that need to be substantially reassessed today in the light of recent developments.

In this regard, we observe here not only a huge gap in the ideas and evaluations of the above Orthodox thinkers, but also in their backgrounds and their objectives. Both of them have reiterated their opinions and positions, at times in an attempt to refute their critics.<sup>43</sup> All this should not occasion any surprise, even at first sight, for such divergent views are not unusual, either in scholarly debates or elsewhere. Further, the intention here is not to justify one or the other of the two sides, but rather to try to consider the opposing views by contextualizing them within the broader frame of the current Orthodox discursive field. By looking namely at the many facets of this discursive field, one cannot escape from observing a recurrent problem, namely the imminent danger of *ideologization*. Such a danger often involves diametrically opposed suggestions and evaluations

<sup>42</sup> See Papanikolaou, *The Mystical as Political*, passim. See also Aristotle Papanikolaou / E. H. Prodromou (eds.), *Thinking through Faith: New Perspectives from Orthodox Christian Scholars* (Crestwood, NY: St Vladimir's Seminary Press, 2008).

<sup>43</sup> See Chr. Yannaras, "Ἐξ ἰ φιλosophικῆς ζωγραφιῆς "ἐκόμισα εἰς τὴν Τέχνην" (Athens: Ikaros, 2011), p. 113-151; A. Papanikolaou, "Is John Zizioulas an Existentialist in Disguise? Response to Lucian Turcescu", *Modern Theology*, 20 (2004): p. 601-607.

concerning the alleged core Orthodox view on various issues, although in the end one may be left wondering about who and what exactly might represent the Orthodox view in a more normative form.

Take, for example, the above-mentioned issue of Orthodox personalism. Using various arguments, the thinkers in question (and many other thinkers) claim that personhood, based on the Greek Patristic heritage, constitutes the most characteristic aspect of the Orthodox tradition. They also claim that the idea of personhood clearly distinguishes Orthodox theology from its Latin counterpart. Yet it is also worth mentioning that this position does not seem to have entered into the official church discourse, at least in the form previously discussed, and appears to belong more to the theological extrapolations and individual inquiries of certain Orthodox theologians. We should also mention here that there have been some interesting inter-Orthodox and other debates regarding the various aspects of Orthodox personalism, the analogous Trinitarian theology and the relevant features of the Greek Patristic background. Among other things, it was argued that modern Orthodox personalists often project their own subjective views onto the Christian past, distort the intention of the Church Fathers and often create a “philosophy” instead of a more traditionally-oriented “theology of the person”.<sup>44</sup> It is not possible here to go into more detail regarding these debates, yet it is again clear that we are dealing with a huge variety of divergent opinions, evaluations and suggestions, which in the end may obscure rather than clarify the whole issue, as they cannot lead to any safer conclusions. This is already evident in the present paper if one takes into consideration all the suggested positive and negative aspects of the relationship between Orthodox personalism and human rights. Personalism, as many other issues, can be thus interpreted *ad libitum*, or even according to the principle of

<sup>44</sup> See D. Wendebourg, “Person und Hypostase. Zur Trinitätslehre in der neueren Orthodoxen Theologie”, in Jan Rohls / Gunther Wenz (eds.), *Vernunft des Glaubens. Wissenschaftliche Theologie und kirchliche Lehre. Festschrift zum 60. Geburtstag von W. Pannenberg* (Göttingen: Vandenhoeck & Ruprecht, 1988), p. 502-524; S. Agouridis, “Μποροῦν τὰ πρόσωπα τῆς Τριάδας νὰ δώσουν τὴ βάση γιὰ Περσωναλιστικὲς ἀπόψεις περὶ τοῦ Ἀνθρώπου; Σχόλια σὲ κάποιες σύγχρονες Ὀρθόδοξες θεολογικὲς προσπάθειες”, *Σύναξη* 33 (1990): p. 67-78; J. Panagopoulos, “Ontologie oder Theologie der Person? Die Relevanz der patristischen Trinitätslehre für das Verständnis der menschlichen Person”, *Kerygma und Dogma*, 39 (1993): 2-30; L. Turcescu, “‘Person’ versus ‘Individual’, and Other Modern Misreadings of Gregory of Nyssa”, *Modern Theology*, 18 (2002): p. 527-539; *id.*, *Gregory of Nyssa and the Concept of Divine Persons* (Oxford: Oxford University Press, 2005).

“anything goes”. Such an approach would not be very helpful in the attempt to find a more clear and binding Orthodox position on the issue.

For the purpose of this paper, it is more pertinent not to deal with all the various facets of Orthodox personalism and its accompanying debates. Instead, it is more reasonable to focus on personalism’s potential relation with the modern human rights concept, regardless of whether such a relationship is positive or negative. One should also mention from the outset that this human rights concept, despite its “official backing” and “codification” (e.g., through the well known “Declaration” in the context of the UN), is far from attaining the status of being unequivocal, indisputable and unarguable in the contemporary world. Aside from the unclear issues of the universal applicability of (Western) human rights, even scholars and actors from the Western world, which historically gave shape to this concept, make divergent arguments about the concept nowadays, and understand it in quite different ways.<sup>45</sup> The same holds true for the theoretical foundation of the human rights concept, which has been attempted in numerous and diverse ways: secular, religious and otherwise. The whole issue is therefore far from closed. Consequently, contemporary Orthodox Christians have every right to engage themselves in related discussions today and to offer their own views – as many other actors, religious and otherwise, worldwide do. Yet, it is important to reflect more on the Orthodox way of approaching the modern human rights issue, and to do so specifically with reference to Orthodox personalism. It is not only about formulating a viable Orthodox position on this matter. It is equally vital to examine whether Western and other actors will take this Orthodox position into account, and to ask whether the position will have a lasting impact on ongoing relevant discussions, reflections and exchange of ideas. We should not forget that the contemporary human rights discourse, despite other voices and influences, is still heavily permeated by Western premises and ideas, and is molded by Western institutions (e.g., The European Court of Human Rights in Strasbourg) and actors (e.g., various political philosophers and thinkers such as J. Rawls, J. Habermas, R. Dworkin, M. Sandel and many others). Within the discursive parameters outlined above, which exhibit a dominant secular (albeit not anti-religious) character and orientation, it is questionable whether the Orthodox opinions will be seriously taken

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<sup>45</sup> See E. van der Zweerde, “Uneasy Alliances. Liberal, Religious and Philosophical Human Rights Discourse”, in Brüning, Zweerde (eds.), *Orthodox Christianity and Human Rights*, p. 35-67.

into account. In my view, this is because the above Orthodox positions present various weaknesses and deficits.

First of all, in Yannaras' case, the negativity towards all Western "products", including human rights, undermines the credibility of his arguments from the very beginning. Even if he acknowledges various Western achievements, this is usually followed by a critique and a belief in the religious and cultural superiority of the Greek Orthodox East. Yet this is hardly a dispassionate attitude that tries to evaluate an entire civilization like the Western one from a more neutral perspective. What is particularly missing here is a constructive dialogue with the West, which should not be collectively regarded as a deviation from the authentic tradition of the East. It is not about negating the numerous flaws and negative sides of Western civilization, which even Western thinkers and observers admit. It should simply be recognized that it was precisely this civilization that gave rise to modernity including the modern human rights concept.

One has thus to take into consideration the long intellectual evolution of the Western world, regardless of whether such a development was right or wrong, and discuss it critically and constructively with good intentions. After all, one can hardly understand the modern human rights concept without considering various historical developments within the Western world itself. To be more specific, the idea of "natural law" (widely developed and discussed within Western Christianity since medieval times, and even more so in modern times) is closely related to the experiences that the Western world underwent during this long period; for example, following the negative treatment of indigenous peoples in the context of Western colonialism and overseas expansion. The same holds true for the notion of secularity, which, despite postmodern reevaluations and postsecular reconfigurations, still remains a cornerstone of the Western modern establishment and is intrinsically related to the modern human rights concept. Now, if some secular intellectuals think positively and more neutrally about religion today (e.g., J. Habermas)<sup>46</sup>, this is another issue and does not necessarily call into question the secular legitimacy of modernity.

<sup>46</sup> See J. Habermas, *Nachmetaphysisches Denken. Philosophische Aufsätze* (Frankfurt am Main: Suhrkamp, 1988); *id.*, *Zwischen Naturalismus und Religion. Philosophische Aufsätze* (Frankfurt am Main: Suhrkamp, 2005); *id.*, *Nachmetaphysisches Denken. Teil 2: Aufsätze und Repliken* (Berlin: Suhrkamp, 2012). See also J. Habermas, J. Ratzinger, *Dialektik der Säkularisierung. Über Vernunft und Religion*, ed. by F. Schuler (Freiburg im Breisgau: Herder, 2005).

These and similar developments remained essentially unknown to the Orthodox world, which lacked the proper intellectual background to proceed to the formulation of related concepts, including that of human rights. This is not meant as a critique of the Orthodox side, but simply as a realistic evaluation of its specific historical contours in modern times. Seen in this light, it is more advisable for the Orthodox to show a real “extroversion” and confront the Western heritage not polemically, but constructively, even if they might disagree with it. They should not castigate Western developments (e.g., secularity, individuality) as deviations from authentic Christianity, but rather reflect more systematically upon them and draw useful conclusions for their own future developmental course. Whether one likes it or not, and regardless of postcolonial perspectives, the overall discursive field of the contemporary world still remains heavily based on or profoundly influenced by Western historical developments and intellectual premises. This also concerns the modern human rights concept, despite the ongoing debates about its universal relevance and validity. No doubt, the globalization process has rendered the world less “Western”, yet the implicit or explicit impact and significance of the West are still present and should not be underestimated. It is hence pertinent for the Orthodox to accept this situation neutrally and impartially, to come to terms with it and to pragmatically assess their role within the contemporary and rapidly changing global environment.

Another problematic attitude of the Orthodox side in this context is the perpetual search for ideal situations, models and solutions for contemporary problems and dilemmas – a search that typically reaches as far back as the pre-modern period, the early church, the Patristic period, the Byzantine era, or (in the case of Yannaras) even Greek antiquity. Interestingly enough, one can observe many attempts to locate a particular non-secular human rights language in the texts of the Church Fathers or in the Eastern Orthodox world in general.<sup>47</sup> This is something that Papanikolaou finds very promising for Orthodoxy today, whereas Yannaras altogether denies the existence of such “rights” in the

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<sup>47</sup> See S. R. Holman, “The Entitled Poor: Human Rights Language in the Cappadocians”, *Pro Ecclesia* 9 (2000): p. 476-489; V. Perisic, “Interpretation of Human Rights in the Light of the Church Fathers”, in E. Kitanović (ed.), *European Churches Engaging in Human Rights* (Bruxelles: Church and Society Commission of the Conference of European Churches, 2012), p. 33-37; J. A. McGuckin, “The Issue of Human Rights in Byzantium and the Orthodox Christian Tradition”, in J. Witte Jr., F. S. Alexander (eds.), *Christianity and Human Rights: An Introduction* (Cambridge: Cambridge University Press, 2010), p. 173-190.

Orthodox context. Be that as it may, the question remains: Can a return to the Church Fathers or to other pre-modern situations really help the Orthodox to articulate an up-to-date position on human rights suitable to the contemporary world? It is again very questionable whether this is a persuasive strategy, or even a possible one. This is because the Church Fathers of the fourth century, even if they had some “rights” in mind, had basic concerns that fundamentally differ from those of the contemporary world, which was formed in the wake of Western modernity. For example, questions of democracy, liberalism and secularity were basically non-existent in the fourth century and could not even bother the Church Fathers. In addition, this phenomenon of turning to the past and its authorities, Patristic and otherwise (especially in a normative and binding way), has been a constant policy of the Orthodox discourse for many centuries now, a fact that has elicited criticism in recent years.<sup>48</sup> It is again about an Orthodox introversion, which does not take the developments of the outer world seriously into account, which is fully convinced of its own superiority, and which expects to solve all related problems by its own means.

To be more specific, the Orthodox put much emphasis on the potential of their personalist tradition, stemming from the analogous Trinitarian understanding of God and the Patristic heritage. It is again a contemporary attempt based on the Orthodox intellectual and cultural tradition, regardless of the significant differences in the interpretation of such tradition. Yet, this effort again exhibits the signs of traditional Orthodox introversion. First, there are some earlier ideas on Orthodox or philosophical personalism (e.g., in Greece), which the leading contemporary Orthodox personalists pass over more or less in silence.<sup>49</sup> Further, it remains to be seen whether the Orthodox are willing to take into consideration the rich non-Orthodox body of literature on the person, which has also been brought into relation with the human rights issue. Although there have been some attempts to bring Orthodox personalism into interaction with various liberal arts disciplines,<sup>50</sup> the

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<sup>48</sup> See P. Kalaitzidis, “From the ‘Return to the Fathers’ to the Need for a Modern Orthodox Theology”, *St Vladimir’s Theological Quarterly*, 54 (2010): p. 5-36.

<sup>49</sup> See the useful survey by B. Petrà, “Personalist Thought in Greece in the Twentieth Century: A First Tentative Synthesis”, *The Greek Orthodox Theological Review*, 50 (2005): p. 1-48, esp. p. 3-13.

<sup>50</sup> See J. T. Chirban (ed.), *Personhood: Orthodox Christianity and the Connection Between Body, Mind, and Soul* (Westport, CT/London: Bergin & Garvey, 1996).

results are rather isolated and meager, and we cannot really talk of a very fruitful encounter so far.

But we should not lose sight of the fact that personalism, as already mentioned, existed and still exists in various facets amply beyond the strict Orthodox domain. For example, there is a long tradition of philosophical personalism,<sup>51</sup> as well as of socio-anthropological, sociological and historical perspectives on the person.<sup>52</sup> The essay of Marcel Mauss on the person as a category of the human mind in various manifestations (including the individualized self) is well known.<sup>53</sup> Even Émile Durkheim, who put so much emphasis on the importance of the individualization process,<sup>54</sup> made a distinction between the individual and the person (as a social individual).<sup>55</sup> More recent social theory, characteristically, has also tried to move away from Western Christian biases and to take more seriously into account the Orthodox tradition of personhood.<sup>56</sup> In another recent attempt at generating a new genealogy of human rights, Hans Joas talked explicitly of the “sacralization of the person” as the basis of human rights. This is related to Durkheim’s ideas,<sup>57</sup> especially as regards the perception of the human person as “sacred” and inviolable – a perception that was subsequently institutionalized in the course of modernity. Joas does not understand the “sacred” here in a conventional sense, and tries with his theory to overcome the traditional

<sup>51</sup> See C. Taylor, “The Concept of a Person”, in *id.*, *Human Agency and Language: Philosophical Papers*, Vol. 1 (Cambridge: Cambridge University Press, 1985), p. 97-114.

<sup>52</sup> See M. Carrithers, S. Collins / Steven Lukes (eds.), *The Category of the Person: Anthropology, Philosophy, History* (Cambridge: Cambridge University Press, 1985).

<sup>53</sup> See M. Mauss, “A Category of the Human Mind: The Notion of Person; The Notion of Self”, in Carrithers / Collins / Lukes (eds.), *The Category of the Person*, p. 1-25.

<sup>54</sup> See É. Durkheim, “Individualism and the Intellectuals”, in W. S. F. Pickering (ed.), *Durkheim on Religion: A Selection of Readings with Bibliographies and Introductory Remarks* (London / Boston: Routledge & Kegan Paul, 1975), p. 59-73.

<sup>55</sup> See F. Callegaro, “The Idea of the Person: Recovering the Novelty of Durkheim’s Sociology. Part I. The Idea of Society and its Relation to the Individual”, *Journal of Classical Sociology*, 12 (2012): p. 449-478.

<sup>56</sup> Ch. Hann, “Personhood, Christianity, Modernity”, *Anthropology of this Century*, 3 (January 2012), URL: <http://aotcpress.com/articles/personhood-christianity-modernity/> See also Ch. Hann, H. Goltz (eds.), *Eastern Christians in Anthropological Perspective* (Berkeley: University of California Press, 2010).

<sup>57</sup> See M. Koenig, “Ambivalenzen der Säkularisierung: Zur Durkheim-Rezeption in Hans Joas’ affirmativer Genealogie der Menschenrechte”, in H.-J. Große-Kracht (ed.), *Der moderne Glaube an die Menschenwürde* (Bielefeld: Transcript, 2014), p. 113-128.

divide between secular and religious views on the origins and the legitimation of human rights.<sup>58</sup> Again, though, all this does not entail any strong opposition between the individual and the person, as in the Orthodox case. There is also constant reference to the ancient Greek tradition and its concept of the person,<sup>59</sup> which differs once more from Yannaras' above-mentioned interpretation. These few examples attempt to show what is going on outside the Orthodox world in relation to personalism and in relation to the human rights issue. Such outside activity is something that Orthodox personalists should not neglect or ignore, unless they want to stay insulated within their own intellectual enclaves and much-cherished ivory towers.

Moving to another issue, the Orthodox personalist Trinitarian models have also been criticized in Western theology on various fronts (including misreading of the sources, ideologization, inconsistency, opaqueness).<sup>60</sup> In other words, many fundamental Orthodox personalist premises (e.g., the particular interpretation of the difference between essence and persons/hypostases in the Trinity as strongly anti-individualist) should not be taken for granted. Characteristically enough, many Western scholars speak of the "individual persons/personality" of the Trinity<sup>61</sup> or of the concept of

<sup>58</sup> See H. Joas, *Die Sakralität der Person. Eine neue Genealogie der Menschenrechte* (Berlin: Suhrkamp, 2011).

<sup>59</sup> See C. J. de Vogel, "The Concept of Personality in Greek and Christian Thought", in J. K. Ryan (ed.), *Studies in Philosophy and the History of Philosophy*. Vol. 2 (Washington DC: The Catholic University of America Press, 1963), p. 20-60; J. Rüpke (ed.), *The Individual in the Religions of the Ancient Mediterranean* (Oxford: Oxford University Press, 2013).

<sup>60</sup> See D. Wendebourg, *Geist oder Energie. Zur Frage der innergöttlichen Verankerung des christlichen Lebens in der byzantinischen Theologie* (München: Kaiser, 1980); A. de Halleux, "Personnalisme ou essentialisme trinitaire chez les Pères cappadociens? Une mauvaise controverse", *Revue théologique de Louvain*, 17 (1986): p. 129-155 and p. 265-292; *id.*, "'Hypostase' et 'personne' dans la formation du dogme trinitaire (375-381)", *Revue d'histoire ecclésiastique*, 79 (1984): p. 313-369 and 625-670; D. Reid, *Energies of the Spirit: Trinitarian Models in Eastern Orthodox and Western Theology* (Atlanta, GA: Scholars Press, 1997); P. M. Collins, *Trinitarian Theology, West and East: Karl Barth, the Cappadocian Fathers, and John Zizioulas* (Oxford: Oxford University Press, 2001); N. Bamford, "Gregory Palamas' Energetic Approach to Person: Existential and Ontological Implications", *Studia Patristica*, 48 (2010): p. 241-246.

<sup>61</sup> See Chr. G. Stead, "Individual Personality in Origen and the Cappadocian Fathers", in *id.*, *Substance and Illusion in the Christian Fathers* (London: Variorum, 1985), Chapter 13.

the “individual” in the Greek Church Fathers<sup>62</sup>, as they read the sources from a different angle, not bearing in mind a contemporary Orthodox personalist perspective and agenda.<sup>63</sup> In addition, they consider the entire issue of Christian Trinitarian terminology and its development within the contours of their historical epoch and immediate background,<sup>64</sup> without making extrapolations for the present age or constructing various ideologies out of history. Once more, my intention here is not to find the right interpretation of the idea of the person in the Greek Patristic thought, but to point to the existence of a sheer diversity of related positions and interpretations. In so doing, the goal is to underscore not only the concomitant relativity of purely subjective readings of the sources, but also their individual intellectual trajectories and preferences. Thus, given that the whole area is far from clear and unambiguous, it becomes far more hazardous to view such extremely fuzzy human rights concepts from past centuries as related to modern human rights. The inherent danger is the development of an even broader Orthodox anti-individualist front, with far-reaching repercussions. As there has always been a counter-reaction and critique to the Orthodox suggestions, it would be a little more helpful to try to find a common denominator or a common basis between Orthodox and other positions, and to explore the possibility of a more productive synthesis.

Another shortcoming of the above-mentioned Orthodox positions is the lack of historicity and of contextualization in their presentation and founding. For example, if someone wants to know more about the Orthodox position on liberalism, one will not look solely at the ideas in Papanikolaou’s work, which stems from and reflects the comparatively liberal American milieu. No matter how interesting his positions and suggestions are, at base they reflect his own subjective interpretation of Orthodoxy, which is not substantiated by overall Orthodox history and context. By looking, for example, at the Russian Orthodox discourse in post-Soviet times, one realizes that the term “liberal” and its derivatives are overwhelmingly used in a negative sense – especially with reference

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<sup>62</sup> See M. Frede, “Der Begriff des Individuums bei den Kirchenvätern”, *Jahrbuch für Antike und Christentum*, 40 (1997): p. 38-54.

<sup>63</sup> Cf. G. G. Stroumsa, “*Caro salutis cardo*: Shaping the Person in Early Christian Thought”, *History of Religions*, 30 (1990): p. 25-50.

<sup>64</sup> Cf., for example, I. L. E. Ramelli, “Origen, Greek Philosophy, and the Birth of the Trinitarian Meaning of *Hypostasis*”, *The Harvard Theological Review*, 105 (2012): p. 302-350.

to the Western liberal traditions.<sup>65</sup> This official Orthodox position carries much more weight than the various subjective interpretations of individual Orthodox theologians. In addition, one should not forget that Yannaras and many other Orthodox thinkers are critical of Western liberal democracy for various reasons – for one, because of their different conceptualization of the notion of freedom.<sup>66</sup> Therefore, if we historicize and contextualize the whole issue, we see the existence of a majoritarian Orthodox tradition that stands in opposition to Western liberalism. However, all this takes place on the level of theory and principles and does not render the Orthodox Churches incompatible with liberal democracy on a real and formal level.

Bearing this in mind, how, then, one can postulate that Orthodoxy and liberal democracy can be exactly compatible at the level of both theory and principles without considering this long and negative Orthodox anti-liberal heritage? To be sure, Papanikolaou is aware of the difficulties of his project and the hindrances he has to overcome, yet he is more carried away by his objective of reevaluating Orthodox Christianity, especially in a post-Cold-War period, when numerous negative comments and stereotypes about this religion proliferated in Western media. Yet it is vital to put one's own subjective opinion about the alleged Orthodox position on a broader historical context and to test it against differing views. The same concerns the issue of human rights in the Western sense, which has elicited various negative critiques on the Orthodox side. Even the Russian Orthodox document of 2008 was interpreted as representing a negative critique of the Western human rights, despite its attempt to enter into a dialogue with it. In this respect, it is hardly persuasive, if not altogether pointless, to try to found a human rights concept based on Orthodox principles, which on many other occasions would appear to call into question the very basic tenets of modernity. Such a basis concept has also been attempted by using Orthodox personalism, although the results, as we have already seen, do not seem particularly convincing.

The same, however, does not hold true for Western Christianity. By historicizing and contextualizing the Western human rights concept, we

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<sup>65</sup> See J. Willems, "Wie liberal ist die Russische Orthodoxe Kirche?", *Glaube in der 2. Welt*, 38/1 (2010): p. 15-19; R. Elsner, "The Russian Orthodox Church on the Values of Modern Society", in Krawchuk, Bremer (eds.), *Eastern Orthodox Encounters of Identity and Otherness*, p. 169-175.

<sup>66</sup> See Chr. Yannaras, *The Freedom of Morality* (Crestwood, NY: St Vladimir's Seminary Press, 1984).

can discover a link to the rise of the Protestant Reformation and the concomitant postulates for freedom of religion and conscience. The jurist Georg Jellinek explicitly suggested this link in 1895, a theory that also impressed Max Weber, who in his seminal studies later developed the dialogue on the cultural significance of Protestantism even further.<sup>67</sup> No doubt, there was a dominant “meta-narrative” in Germany at that time about the inherent compatibility between Protestantism and modernity, and this attitude has often received criticism in the present day.<sup>68</sup> However, the suggested connection can be historically corroborated, and it thus appears plausible that the Reformation provided one important source for the future genesis of the modern human rights concept. By contrast, the respective Orthodox suggestions mostly lack this historical and empirical backing and seem to belong in many cases to the category of “wishful thinking”, a fact that renders them purely speculative, weak and unpersuasive.

One should also take special note of a related point: the Orthodox evaluation of individuality (or selfhood). As already mentioned, the evaluation is a deeply negative one. Yet, talking about human rights and heavily criticizing individuality is a contradiction in terms. This may not matter much for Yannaras, who in fact tries to overcome the very human rights concept within a community-oriented social formation, and who finds individuality in almost all its manifestations most repulsive. His understanding of personhood is thus highly anti-individualistic. Papanikolaou, on the other hand, cannot avoid dealing with this issue in his discussion of Orthodoxy and liberal democracy, of which individuality is, after all, an integral part. Yet, he does not proceed to ask for a more radical reevaluation of the Orthodox anti-individualist stance. The clear reason for this is that the personalist thinkers he has in mind (especially Zizioulas) mainly follow an anti-individualist line. As a result, we end up again with the traditional opposition between the person and the individual, which characterizes the largest part of the related Orthodox discourse. Following the analogous interpretation of the Trinity, it is

<sup>67</sup> See Fr. W. Graf, “Puritanische Sektenfreiheit versus lutherische Volkskirche. Zum Einfluß Georg Jellineks auf religionsdiagnostische Deutungsmuster Max Webers und Ernst Troeltschs”, *Zeitschrift für neuere Theologiegeschichte*, 9 (2002): p. 42-69; H. Joas, “Max Weber und die Entstehung der Menschenrechte. Eine Studie über kulturelle Innovation”, in G. Albert *et al.* (eds.), *Das Weber-Paradigma* (Tübingen: Mohr Siebeck, 2003), p. 252-270.

<sup>68</sup> H. Joas, *Glaube als Option. Zukunftsmöglichkeiten des Christentums* (Freiburg im Breisgau: Herder, 2012), p. 86-105.

claimed that individuality leads to the separation of the three Divine hypostases, and that it destroys the very thing towards which the human hypostasis is reaching: namely the person. Overall, the Orthodox aim is thus the transcendence of individuality.

Nevertheless, it is hard to imagine a human rights concept in the modern world without a strong individual character, despite how recent decades have seen a rise of the communitarian discourse in the West. Many Orthodox try to counterbalance the “individual” human rights with the “collective” rights that are in line with their own communitarian tradition. Yet, from a modern human rights perspective, to talk of collective rights might be considered a contradiction in terms, given that any collectivity consists in turn of the individuals that comprise it. Furthermore, in the context of modern human rights, not the overarching entities, but the rights of the minorities are of primary importance, which are assumed to be most endangered. In myriad of forms and domains, the element of individuality is hence inextricably connected with the genesis and the evolution of the Western world as a whole, and it seems difficult to try to erase or replace it through another, possibly more communitarian ideal. It would be much preferable, in my view, if the Orthodox were to start reassessing the strong anti-individualistic character of their discourse, and if they were to try and find a balance between the person and the individual. After all, several elements postulated within the frame of Orthodox personalism – including otherness, freedom from essentialism’s sameness, and irreducible uniqueness – could be considered as entailing features of individuality, albeit to varying degrees. Such elements are generally found in all religions and cultures historically and should not be considered solely from a modern perspective. Deviations from accepted rules and established patterns were mostly condemned or suppressed by the dominant groups, yet these deviations were the very phenomena that revealed the individual trajectories of their promoters.<sup>69</sup> The difference is simply that in modern times there was a speeding up of the individualization process, which was not unrelated to the advent of the Reformation and the internal pluralization of Christianity. In addition, from the seventeenth century onwards the autonomous individual and

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<sup>69</sup> Cf. J. Rüpke, *Aberglauben oder Individualität? Religiöse Abweichung im römischen Reich* (Tübingen: Mohr Siebeck, 2011).

his/her fulfilment came to be regarded as an ideal and as the measure of all things, which in turn gave rise to modern forms of individualism.<sup>70</sup>

Looking at the Orthodox past and present, one can thus find quite many manifestations of an Orthodox individuality on many levels (intellectual, practical, moral, cultural).<sup>71</sup> Hence it is more pertinent to evaluate these phenomena in a more dispassionate way. A growing individualization process can be observed in many respects even in traditionally communitarian Orthodox cultures, as Renée Hirschon has shown in the case of Greece (basing such an argument on the gradual move toward celebrating each person's individualized birthday, and the move away from celebrating the more communitarian name days according to the Orthodox feast calendar).<sup>72</sup> After all, Christianity in general is closely associated with the rise of individuality in various ways. For example, consider the transformation from an inner-worldly to an outer-worldly orientation,<sup>73</sup> as well as the discovery of and emphasis on the "inner self".<sup>74</sup> Among other things, this was observed in early Christian monasticism with the eremites as "religious individualists", even after the appearance of the communities of coenobitic monasticism.<sup>75</sup> The phenomenon of the "fools for Christ", which still survives in the Eastern Orthodox world up to the present day, reflects these individual paths and trajectories quite vividly. Interestingly enough, Orthodox monasticism exhibits both communal and individual aspects in its structure, as the monks and the nuns engage themselves in the deconstruction and reconstruction of their monastic self.<sup>76</sup>

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<sup>70</sup> See H. Joas, K. Wiegandt (eds.), *Die kulturellen Werte Europas* (Frankfurt am Main: Fischer, 2005).

<sup>71</sup> Cf. Makrides, "Orthodoxes Christentum und Individuum", p. 76-79.

<sup>72</sup> See R. Hirschon, "Indigenous Persons and Imported Individuals. Changing Paradigms of Personal Identity in Contemporary Greece", in Hann / Goltz (eds.), *Eastern Christians in Anthropological Perspective*, p. 289-310.

<sup>73</sup> See L. Dumont, "A Modified View of Our Origins: The Christian Beginnings of Modern Individualism", *Religion*, 12 (1982): p. 1-27. See also A. Buss, "The Evolution of Western Individualism", *Religion*, 30 (2000): p. 1-25.

<sup>74</sup> See G. G. Stroumsa, *La fin du sacrifice. Les mutations religieuses de l'Antiquité tardive* (Paris: Jacob, 2005), p. 21-60; Chr. Marksches, "Innerer Mensch", *Reallexikon für Antike und Christentum*, 18 (1998): p. 266-312.

<sup>75</sup> See A. Buss, *The Russian-Orthodox Tradition and Modernity* (Leiden / Boston: Brill, 2003), p. 129-163.

<sup>76</sup> See K. A. Bruder, "Monastic Blessings: Deconstructing and Reconstructing the Self", *Symbolic Interaction*, 21 (1998): p. 87-116.

Further, there have been also some Orthodox thinkers in the past who evaluated individuality differently and connected it with communitarian aspects. Consider, for example, Sergii Bulgakov, who in his doctrine of Sophiology asserted the potential of Christianity to free the individual person, to transcend material nature, and to bring it back into communion with God.<sup>77</sup> His concept of personal dignity (autonomy, liberty, uniqueness, equality and human commonality) is considered to be fully compatible with the modern human rights concept.<sup>78</sup> Another thinker of a similar bent is Nikolai A. Berdiaev, who was familiar with Western personalism (of J. Maritain and E. Mounier) and emphasized human freedom, subjectivity and creativity regarding one's own values – without the need to rely on external codes of morality, and while putting the individual person above any collectivity.<sup>79</sup> In both these cases, there was a particular tendency to bridge personalism and individuality,<sup>80</sup> which might also be of use to contemporary Orthodox personalists. Aside from this, the Russian tradition in general, both theological and intellectual, possesses an abundance of concepts about the person, which could also be brought into fruitful interaction and correlation with Western thought.<sup>81</sup>

In addition, there is a contemporary Greek philosopher, Stelios Ramfos,<sup>82</sup> who has dealt systematically with all these issues, including with the Orthodox Trinitarian theology, personalism, and their consequences, as well as with the incomplete individualization process in the Orthodox

<sup>77</sup> See D. P. Payne, Christopher Marsh, "Sergei Bulgakov's 'Sophic' Economy: An Eastern Orthodox Perspective on Christian Economics", *Faith & Economics*, 53 (2009): p. 35-51.

<sup>78</sup> See R. Zwahlen, "Sergey N. Bulgakov's Concept of Human Dignity", in Brüning / Zweerde (eds.), *Orthodox Christianity and Human Rights*, p. 169-186.

<sup>79</sup> See N. Berdjajew, *Das Ich und die Welt der Objekte. Versuch einer Philosophie der Einsamkeit und Gemeinschaft* (Darmstadt: Holle Verlag, 1958). See also B. Dadić, *Metafisica della libertà nella filosofia di Nikolaj Berdjajev* (Frankfurt am Main: Peter Lang, 2002).

<sup>80</sup> See also R. M. Zwahlen, *Das revolutionäre Ebenbild Gottes. Anthropologien der Menschenwürde bei Nikolaj A. Berdjajev und Sergej N. Bulgakov* (Münster: LIT, 2010).

<sup>81</sup> For more details, see A. Haardt, Nikolaj Plotnikov (eds.), *Diskurse der Personalität. Die Begriffsgeschichte der >Person< aus deutscher und russischer Perspektive* (Munich: Wilhelm Fink, 2008). See also the Special Issue on "The Discourse of Personality in the Russian Intellectual Tradition" of the journal *Studies in East European Thought*, 61/ 2-3 (August 2009), edited by N. Plotnikov.

<sup>82</sup> See the dissertation of I. Schwaderer, Πτῆσις πνευματική – *Geistiger Höhenflug. Antike Philosophie und Orthodoxie im kulturphilosophischen Werk von Stelios Ramfos* (Universität Erfurt 2014).

East, which in his opinion already stopped in late Byzantium and never developed further. He locates this drawback in the specific Eastern Trinitarian theology with its “exteriority of relations” between the three persons of the Trinity, with their hypostatic properties, and with a lack of inwardness. In his view, this created an analogous human relations system lacking inwardness and interiorization and by consequence individualization and historicity – contrary to what has happened in the West with its Trinitarian theology.<sup>83</sup> Ramfos even thinks that many social drawbacks in modern Greece – including the deep financial crisis after 2009 – can be explained and better understood through reference to these long-term problems, including the lack of individuality and historicity.<sup>84</sup> As a result, Ramfos is critical of the community-oriented tradition of the Orthodox East, which in his view has in fact acted as a hindrance towards the emergence of self-responsible and autonomous individuals as citizens. The lack of this balance between community and individuality led in the long run to extreme situations, such as the eruption of an egotistic individualism in modern Greece, lacking a sense of temperate individuality. Even if one does not agree with the overall philosophical system of Ramfos, one cannot but agree that in the Greek Orthodox case several shortcomings concerning individualization can be observed.<sup>85</sup> Whether this has to do with the Orthodox Trinitarian theology (which is supposed to explain many particularities of modern Greece) is a difficult issue to prove, at least from a social-scientific and cultural-historical perspective. The point is always to find plausible and persuasive connections between postulated theories on the one hand, and historical evidence and empirical reality on the other hand. As already mentioned, it seems to be true then that Western Christian personalism did contribute to the emergence of the modern human

<sup>83</sup> See S. Ramfos, *Ὁ καινός τοῦ ἐνός. Κεφάλαια τῆς ψυχικῆς ἱστορίας τῶν Ἑλλήνων* (Athens: Armos, 2000); *id.*, *Τὸ ἀδιανόητο τίποτα. Φιλοκαλικά ριζώματα τοῦ νεοελληνικοῦ μηδενισμοῦ. Δοκίμιο φιλοσοφικῆς ἀνθρωπολογίας* (Athens: Armos, 2010).

<sup>84</sup> See S. Ramfos, *Ἡ λογικὴ τῆς παράνοιας* (Athens: Armos, 2011); *id.*, *Time out. Ἡ ἐλληνικὴ αἴσθησι τοῦ χρόνου* (Athens: Armos, 2012); *id.*, *Ὁ “ἄλλος” τοῦ καθρέφτη. Ψυχογραφία τῆς ἀγωνίας μας* (Athens: Armos, 2012).

<sup>85</sup> See P. Kalaitzidis, “De la création théologique à la création artistique. Prolégomènes au dialogue entre théologie et littérature moderne”, in A. E. Kattan, F. A. Georgi (eds.), *Thinking Modernity: Towards a Reconfiguration of the Relationship between Orthodox Theology and Modern Culture* (Tripoli, Lebanon / Münster: St John of Damascus Institute of Theology, Balamand / Center for Religious Studies, 2010), p. 37-77.

rights concept in the twentieth century. In contrast, this is something that Orthodox personalism has never done. Whether or not the latter doctrine ever contributes to the entire discussion in one way or another is still a matter of speculation and heightened uncertainty.

As already indicated in several of my own previous studies, this is basically because such a contribution presupposes certain things that the Orthodox side should fulfill, and not just through a simple development of another view on the “liberal individual”.<sup>86</sup> The differences between the Orthodox East and the Latin West in terms of the individualization process are more than conspicuous, yet this is not enough. It is about a much broader issue, of which the modern human rights concept is an integral part and on which the Orthodox should show signs of a critical reflection and new orientation, especially as regards the reinterpreting of their own tradition. More specifically, it is about the need for a more productive and constructive encounter of Orthodox Christianity with Western modernity as a whole. This does not amount to a glorification of Western modernity, nor does it necessitate the copying of Western models and the responses of the Western Churches to such models. Rather, the need is for an increasingly positive yet critical confrontation with this decisive turn in modern history, which had catalytic effects worldwide. The Orthodox should ask themselves the question of whether they ever can profit and learn from Western modernity in one way or another, and of whether they can be challenged productively by it. The aim would not be to deny modernity or to approach it selectively while rejecting some cardinal parts of it (e.g., secularity). Modernity was a serious challenge, though in the long run a useful one. After initial severe problems and conflicts (especially concerning the Roman Catholic world and establishment), Western Churches managed to beneficially interact with this challenge, which was not seen as a threat any more.

This is something that the Orthodox have to do, sooner or later, but they must do so according to their own rules and preferences. The whole issue of human rights thus constitutes only a part of a much more complex issue, and cannot be adequately addressed by the Orthodox, especially considering that certain premises have yet to be fulfilled. For example, the Orthodox cannot still preserve an overwhelmingly negative

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<sup>86</sup> Cf. Agadjanian, *Turns of Faith, Search for Meaning*, p. 157-174.

image and evaluation of the Enlightenment,<sup>87</sup> yet try at the same time to articulate their position on modern human rights (which owed a great deal to the legacy of Enlightenment). One cannot try to enter into a constructive dialogue with the modern world and at the same time call into question various fundamental stages of Western modernity, namely the ones that gave rise to that same Western modernity. This observation is not aimed at belittling the Orthodox side. For various reasons, historical and otherwise, Orthodox Christianity has never entered into a more fruitful interaction with modernity, at least in the way Western Christianity (both Protestantism and Catholicism) did, and it cannot be blamed for this. This is why it criticizes (often sharply) the cultural and humanist heritage of modernity. In retrospect, all this is perfectly understandable, yet the time is now ripe for Orthodox Christianity to make a new step, as many signs already show.<sup>88</sup> The above-suggested extroversion (in a positive sense of the word) will hopefully render Orthodoxy more attuned to the spirit of the modern world and will enable a more fruitful synthesis of indigenous and exogenous elements – for example, elements of Orthodox personalism on the one hand, and of Western individuality on the other hand. A unilateral, one-sided and introversive focus on Orthodox personalism would not suffice for such a transition, not only in the human rights issue, but also generally.

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<sup>87</sup> Cf. V. N. Makrides, “Orthodoxes Christentum und westeuropäische Aufklärung: Ein unvollendetes Projekt?“, *Ökumenische Rundschau*, 57 (2008): p. 303-318.

<sup>88</sup> See, for example, P. Kalaitzidis, “Ist das orthodoxe Christentum vor der Moderne stehengeblieben? Die Notwendigkeit einer neuen Inkarnation des Wortes und das eschatologische Verständnis von Tradition und der Beziehung Kirche-Welt”, in Florian Uhl *et al.* (eds.), *Die Tradition einer Zukunft. Perspektiven der Religionsphilosophie* (Gaal-Müritz: Parerga, 2011), p. 141-176.

# Individual versus Collective Rights: the Theological Foundation of Human Rights

## An Eastern Orthodox View<sup>1</sup>

Pantelis KALAITZIDIS

Human rights marked a very significant political and broader cultural step toward a more human and fairer world. Well over half a century after the Universal Declaration, which “unites people and humanity around certain principles of universal recognition,” human rights are still at the center of the political discussion and the debate of ideas. Despite widespread disagreement over their content and universality, mainly by non-Western cultures and traditions, human rights can serve as a humanitarian core for our globalized culture. In his China lectures, Jürgen Habermas stated some years ago, that, “human rights are a creative response to the problems facing China, as had been the case with Europe.” Now that the global market brings us so close, “we need common rules,” and that is how “human rights [...] are offered,” Habermas concluded.<sup>2</sup>

Nevertheless, as is well known, human rights are inextricably bound with modernity and the Enlightenment, that is, with a movement that

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<sup>1</sup> Paper presented at the International Conference “Orthodoxy and Human Rights,” organized by the Chaire de droit des religions de l’Université catholique de Louvain, Louvain-la-Neuve, April 26-27, 2013. The same paper was presented in a shorter version at the International Consultation: “Churches Together for Human Rights,” organized by the “Church and Society Commission” of the Council of European Churches (CEC/CSC), in cooperation with the Finnish Ecumenical Council, the Evangelical-Lutheran Church in Finland, and the Finnish Orthodox Church, Sofia Orthodox Cultural Center, Helsinki, March 7-8, 2013.

<sup>2</sup> J. Habermas, “Das geht ans Eingemachte,” *Der Spiegel*, 30-4-2001, p. 148-149, p. 149. Quoted in Konstantinos Delikostantis, “Orthodoxy and Human Rights,” in P. Kalaitzidis and Nikos Ntontos (eds.), *Orthodoxy and Modernity*, Volos Academy for Theological Studies (Athens: Indiktos, 2007), p. 181-182 [in Greek].

sets the process of emancipation from religious rules and ecclesiastical authorities. Now, if Protestantism and Roman Catholicism, after centuries of struggles and hesitations, have finally come to terms with this new reality, and have decided to deal with modernity in a dialogical and dialectical way, Eastern Orthodoxy, for what are chiefly historical reasons, is still on the way there. In fact, the Orthodox world did not organically participate in the phenomenon of modernity. It did not experience the Renaissance, the Reformation or the Counter-Reformation, religious wars or the Enlightenment, the French or the industrial revolution, the emergence of the subject, of human rights or the religiously neutral national state. What has been recognized as a central interest of modernity seems to have remained alien to Orthodoxy, which still functions innocently of modernity, a tendency that many believe accounts for its difficulty in communicating with the contemporary (post-)modern world.<sup>3</sup> I consider the question – or, to be more precise, the problem – of Orthodoxy and human rights as a part of the broader historical abeyance between Orthodoxy and Modernity, Orthodoxy and the Enlightenment, and consequently I will herein formulate my ideas and thesis in light of this statement.

There is no doubt that, following a forceful impetus from the spirit of the Enlightenment, the demand for respect for human rights (which forms the core of the modern paradigm) was clearly formulated in modernity; significant milestones in its progress were the American Bill of Rights (1776) and the French Declaration of the Rights of the Individual and the Citizen (1789); this progress has continued to be consolidated and broadened ever since, reaching an apex in the Universal Declaration of Human Rights of the United Nations General Assembly (1948).<sup>4</sup>

<sup>3</sup> P. Kalaitzidis, *Orthodoxy and Modernity: An Introduction*, Volos Academy for Theological Studies (Athens: Indiktos, 2007) [in Greek; English translation (by Elizabeth Theokritoff) forthcoming by St Vladimir's Seminary Press].

<sup>4</sup> As it is reported (J. S. Nurser, *For All People and All Nations: The Ecumenical Church and Human Rights* (Washington, DC: Georgetown University Press, 2005), 43f., 159, No. 58; cf. M. A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001)), one of the members of the drafting committee which prepared the Universal Declaration of Human Rights of the United Nations General Assembly (1948), was an Orthodox academic and statesman from Lebanon, a “theologically informed” philosophy professor, named Charles Malik. Cf. A. Kireopoulos, “Seeking Justice and Promoting Human Rights: Orthodox Theological Imperatives or Afterthoughts?”, in M. J. Pereira (ed.), *Philanthropy and Social Compassion in Eastern Orthodox Tradition*:

## 1. Are Human Rights Incompatible with Orthodoxy?

A pervasive reserve, not to say rejection, seems to characterize the attitude of many Orthodox hierarchs, thinkers and theologians towards human rights, indeed to such a degree that there is now a firm conviction in Western circles that Orthodoxy is incompatible with the modern world and the achievements of modernity, with democracy, human rights and political liberalism. The culture of human rights does indeed seem to form a challenge to which historical and contemporary Orthodoxy, and indeed Orthodox theology itself, have not always been able to respond positively. It must be confessed that (principally in the case of the so-called “Orthodox countries” and local Orthodox Churches) such a culture tends to be absent both on the level of theory and also, principally, that of historical praxis; at the same time, Orthodox theology has frequently sought to defend this deficiency or to invest it with theological and philosophical meaning. At the basis of the philosophy of rights, a sizeable trend in Orthodox theology perceives nothing more than the idolization of individualism/subjectivism and a glorification of the individual, which it contrasts with the supposedly communitarian culture of Orthodoxy. This kind of theology sees nothing more than a rebellion against the divine order and its substitution by a purely humanist order on earth, in all resulting in the fragmentation of communitarian life.

Indeed, prominent Orthodox theologians with significant influence in Greece and the wider Orthodox world, such as the Greek theologian and philosopher Christos Yannaras, go so far as to talk about the “inhumanity of rights,”<sup>5</sup> about a logic of “rights” according to which the claims of the individual become so central and there is the threat of altering our anthropology and lapsing into a form of human psychology that is deficient in relationality and communication. The Orthodox detractors of the rights language argue, following Yannaras’ lead which “is in some ways paradigmatic for the Orthodox criticism of Human Rights,”<sup>6</sup> that the whole “paradigm” of modernity was grounded on an egocentric

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*Papers of the Sophia Institute Academic Conference, New York, Dec. 2009* (New York: Theotokos Press, 2010), p. 229-230.

<sup>5</sup> See his book of the same title in Greek language, *The Inhumanity of Rights* (Athens: Domos, 1998). This radical rejection of human rights has to be encapsulated to Yannaras’ overall refusal of modernity.

<sup>6</sup> K. Stoeckl, “The ‘We’ in Normative Political Philosophical Debates: The Position of Christos Yannaras on Human Rights,” in Alfons Brüning and Evert van der Zweerde (eds.), *Orthodox Christianity and Human Rights* (Leuven: Peeters, 2012): p. 187.

perspective, inherently linked with a non-relational, autonomous, individualistic understanding of the human person.<sup>7</sup>

These and other similar Orthodox arguments forthrightly denouncing human rights, appear to do justice to the critical voices formulated of those Western intellectuals or scholars, such as political scientist Samuel Huntington<sup>8</sup> or psychoanalyst Julia Kristeva,<sup>9</sup> who maintain that in the Orthodox tradition the individual is doomed to remain underdeveloped; this, because the very structure of Eastern Christianity is hopelessly collectivist and subordinates the individual to collectivities such as the nation or the community, while Orthodox societies as a whole are incompatible with pluralism, democracy, and human rights.<sup>10</sup> As the Greek American political scientist Adamantia Pollis unequivocally states,

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<sup>7</sup> Besides Yannaras' critic and rejection of human rights cf. also, V. Guroian, "Human Rights and Modern Western Faith: An Orthodox Christian Assessment," *Journal of Religious Ethics*, 26 (1998): p. 241-247; Métropolite Cyrille de Smolensk et de Kalliningrad (sc. actual Patriarch Cyril), *L'Évangile et la liberté. Les valeurs de la Tradition dans la société laïque*, Précédé d'un entretien avec le Frère Hyacinthe Destivelle et le Hiéromoine Alexandre (Siniakov), traduction du russe et notes Hyacinthe Destivelle et Alexandre Siniakov (Paris: Cerf, 2006), esp. p. 177-200; B. H. Alfeyev, *Orthodox Witness Today* (Geneva: WCC Publications, 2006): p. 216-251. See also the official document of the Russian Orthodox Church dealing with these issues: "The Russian Orthodox Church's Basic Teaching on Human Dignity, Freedom and Rights," accessible through <http://mospat.ru/en/documents/dignity-freedom-rights/> For an analysis, interpretation and critic of this document, see K. Stoeckl, *The Russian Orthodox Church and Human Rights* (London and New York: Routledge, 2014), esp. p. 69-90. See also, A. Agadjanian, "Liberal Individual and Christian Culture: Russian Orthodox Teaching on Human Rights in Social Theory Perspective," *Religion, State, and Society*, 38 (2010): 97-113; A. Papanikolaou, *The Mystical as Political: Democracy and Non-Radical Orthodoxy* (Notre Dame, IN: University of Notre Dame Press, 2012), p. 93-94, p. 127-129.

<sup>8</sup> Cf. S. Huntington, "The Clash of Civilizations," *Foreign Affairs*, Vol. 72, No. 3 (Summer 1993): 22-49; *id.*, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1996).

<sup>9</sup> See for example her article, "Le poids mystérieux de l'orthodoxie," *Le Monde*, 18/19 avril 1999.

<sup>10</sup> Cf. the critical remarks by A. N. Papathanasiou, "An Orphan or a Bride? The Human Self, Collective Identities and Conversion: An Orthodox Approach," in A. E. Kattan, F. Georgi (eds.), *Thinking Modernity: Towards a Reconfiguration of the Relationship Between Orthodox Theology and Modern Culture* (St John of Damascus Institute of Theology, University of Balamand-Center for Religious Studies, University of Münster, Tripoli, Lebanon-Münster, 2010), 133ff.

“individual human rights cannot be derived from Orthodox theology. The entire complex of civil and political rights – freedom of religion, freedom of speech and press, freedom of association, and due process of law, among others – cannot be grounded in Orthodoxy, they stem from a radically different worldview.”<sup>11</sup>

The same type of Orthodox negativism toward human rights gives often the impression of a philosophical and cultural affinity between Orthodoxy and Islam,<sup>12</sup> contributing to an image of an anti-Western Orthodoxy, far from the European standards.

For example, in the “Russian Orthodox Church’s Basic Teaching on Human Dignity, Freedom and Rights” (which is in fact a document focusing on human dignity and dominated by the concepts of sin and evil), we can read that:

“At the same time, human rights protection is often used as a plea to realize ideas which in essence radically disagree with Christian teaching. Christians have found themselves in a situation where public and social structures can force and often have already forced them to think and act contrary to God’s commandments, thus obstructing their way towards the most important goal in human life, which is deliverance from sin and finding salvation.” (Introduction)

“The weakness of the human rights institution lies in the fact that (?) while defending the freedom (αὐτεξούσιον) of choice, it tends to increasingly ignore the moral dimension of life and the freedom from sin (ἐλευθερία). The social system should be guided by both freedoms, harmonizing their exercise in the public sphere. One of these freedoms cannot be defended while the other is neglected. Free adherence to goodness and the truth is impossible without the freedom of choice, just as a free choice loses its value and meaning if it is made in favour of evil.” (II.2)

“A society should establish mechanisms restoring harmony between human dignity and freedom. In social life, the concept of human rights and morality can and must serve this purpose. At the same time these

<sup>11</sup> A. Pollis, “Eastern Orthodoxy and Human Rights,” *Human Rights Quarterly*, 15 (1993): p. 353.

<sup>12</sup> For a more detailed analysis on this see P. Kalaitzidis, “Orthodox Christianity and Islam: From Modernity to Globalization, From Fundamentalism to Multiculturalism and to the Ethics of Peace,” in S. Asfaw-Alexios, C.-M. Gh. Simion (eds.), *Just Peace: Orthodox Perspectives* (Geneva: WCC Publications, 2012), p. 201-221.

two notions are bound up at least by the fact that morality, that is, the ideas of sin and virtue, always precede law, which has actually arisen from these ideas. That is why any erosion of morality will ultimately lead to the erosion of legality.

“It is necessary to give a clear definition to Christian values with which human rights should be harmonized.” (III.1)

“Not a divine institution, human rights should not come into conflict with the Divine Revelation. For most of Christendom the category of doctrinal and moral tradition is no less important than the idea of individual freedom and the individual should reconcile his freedom with it. For many people in various parts of the world it is not so much secularized standards of human rights as the creed and traditions that have the ultimate authority in their social life and inter-personal relations.” (III.2)

“It is inadmissible to introduce in the area of human rights the norms that obliterate or altogether cancel both the Gospel and natural morality. The Church sees a great danger in the legislative and public support given to various vices, such as sexual lechery and perversions, the worship of profit and violence. It is equally inadmissible to elevate to a norm such immoral and inhumane actions towards the human being as abortion, euthanasia, use of human embryos in medicine, experiments changing a person’s nature and the like.

“Unfortunately, society has seen the emergence of legislative norms and political practices which not only allow of such actions but also create preconditions for them by imposing them through the mass media, education and healthcare systems, advertising, commerce and services. Moreover, believers, who consider such things to be sinful, are forced to accept sin as admissible or are subjected to discrimination and persecution.” (III.3)

“The acknowledgment of individual rights should be balanced with the assertion of people’s responsibility before one another. The extremes of individualism and collectivism cannot promote a harmonious order in a society’s life. They lead to degradation of the personality, moral and legal nihilism, growing crime, civil inaction and people’s mutual alienation.

“The spiritual experience of the Church however has shown that the tension between private and public interests can be overcome only if human rights and freedoms are harmonized with moral values and, most

importantly, only if the life of the individual and society is invigorated by love. It is love that removes all the contradictions between the individual and those around him, making him capable of enjoying his freedom fully while taking care of his neighbors and homeland.

“Some civilizations ought not to impose their own way of life on other civilizations under the pretext of human rights protection. The human rights activity should not be put at the service of interests of particular countries. The struggle for human rights becomes fruitful only if it contributes to the spiritual and material welfare of both the individual and society.” (III.4)

“From the point of view of the Orthodox Church the political and legal institution of human rights can promote the good goals of protecting human dignity and contribute to the spiritual and ethical development of the personality. To make it possible the implementation of human rights should not come into conflict with God-established moral norms and traditional morality based on them. One’s human rights cannot be set against the values and interests of one’s homeland, community and family. The exercise of human rights should not be used to justify any encroachment on religious holy symbols things, cultural values and the identity of a nation. Human rights cannot be used as a pretext for inflicting irretrievable damage on nature.” (III.5)

## 2. The positive sense and the possible limits of Human Rights

In recent years, however, there has also been an upsurge of positive approaches to the issue of rights from an Orthodox viewpoint, expressed chiefly in the writings of Frathers Stanley Harakas,<sup>13</sup> and John A. McGuckin,<sup>14</sup> Professors Konstantinos Delikostantis,<sup>15</sup> Marios

<sup>13</sup> S. Harakas, “Human Rights: An Eastern Orthodox Perspective,” *Journal of Ecumenical Studies*, 19 (1982): p. 13-24.

<sup>14</sup> J. A. McGuckin, “The Issue of Human Rights in Byzantium and the Orthodox Christian Tradition,” in J. Witte Jr., Frank S. Alexander (eds.), *Christianity and Human Rights: An Introduction* (Cambridge: Cambridge University Press, 2010), p. 173-189.

<sup>15</sup> K. Delikostantis, *Human Rights: Western Ideology or Ecumenical Ethos?* (Kyriakidis: Thessaloniki, 1995) [in Greek].

Begzos,<sup>16</sup> Savvas Agourides,<sup>17</sup> Antonios Kireopoulos,<sup>18</sup> and Aristotle Papanikolaou,<sup>19</sup> as well as Archbishop Anastasios (Yannoulatos) of Tirana and All Albania.<sup>20</sup> In addition, the only official Orthodox document we have up to day relating to our discussion, the 1986 declaration on justice and human rights by the Third Pre-Conciliar Pan-Orthodox Conference, does refer to human rights in a positive way, stating among other things that

“Orthodox Christians experience divine condescension every day and fight against every form of fanaticism and bigotry that divides human beings and peoples. Since we continuously declare the incarnation of God and the deification of humanity, we defend human rights for every human being and every people. Since we live with the divine gift of freedom through Christ’s work of redemption, we are able to reveal to the fullest the universal value that freedom has for every human being and every people.”<sup>21</sup>

Professor Konstantinos Delikostantis, from his side, does indeed accept, to some extent, the legitimacy of the reservations shared by non-Westerners, versus human rights, as expressing Western individualism. But he does not neglect to critique the shallow and misguided “anti-individualistic” position of a certain “Orthodoxism.” In concluding, he adds the following corrective point:

<sup>16</sup> M. Begzos, “Human Rights and Interreligious Dialogue,” *Third International Symposium on Orthodoxy and Islam. Tehran, 17<sup>th</sup>-19<sup>th</sup> September 1994* (Tehran, 1995), p. 7-11.

<sup>17</sup> S. Agourides, *Human rights in the Western world: A historical and social quest. Theology-Philosophy*, [in Greek] (Athens: Philistor, 1998).

<sup>18</sup> A. Kireopoulos, “Seeking Justice and Promoting Human Rights: Orthodox Theological Imperatives or Afterthoughts?,” in M. J. Pereira (ed.), *Philanthropy and Social Compassion in Eastern Orthodox Tradition: Papers of the Sophia Institute Academic Conference, New York, Dec. 2009* (New York: Theotokos Press, 2010), p. 224-247.

<sup>19</sup> Papanikolaou, *The Mystical as Political*, esp. p. 87-130.

<sup>20</sup> A. Anastasios (Yannoulatos), *Facing the World: Orthodox Christian Essays on Global Concerns*, transl. by Pavlos Gottfried (Crestwood: St Vladimir’s Seminary Press, 2003), esp. chap. 2, p. 49-78: Orthodoxy and Human Rights: On the universal declaration of human rights and the Greek Orthodox tradition.

<sup>21</sup> See *Episkepsis*, No. 17 (1986), issue 369, December 15, 1986. Ecumenical Patriarch Bartholomew from his side, in his book entitled *Encountering the Mystery: Understanding Orthodox Christianity Today* (New York: Doubleday, 2008), 126, maintains that, “human rights, then, must be understood in a way that conforms to the right-eousness of God; in Greek, both ‘humans rights’ and ‘divine commandments’ are implied in the same word, namely *dikaionomata*. Human freedom and rights are ultimately informed by divine justice, truth, and love.”

“With every attempt at an Orthodox view of human rights, it is always the case that an exclusively negative assessment reveals unseen prejudices and an inability to understand the real ethos and the deeper meaning of human rights. Because the freedom that they promise, despite its innate focus on the individual and the subjectivist tendencies that go with it, is not individual arbitrariness and obsession with individual rights, but above all responsibility and commitment to shared freedom and peace. Furthermore, human rights presuppose the communal dimension of human existence, our relationship with and obligations towards others, the recognition that my rights are limited by the rights of others. In consequence, the answer to the Western notion of freedom, which should not of course be identified with its negative manifestations, cannot be anti-modernism or anti-Westernism. The answer is critical dialogue, which means openness and at the same time faithfulness to the core of our traditions. [...] The Orthodox intervention may prove to be a catalyst in the progress of human rights, because human rights are something open and constantly evolving. The Orthodox theological grounding and interpretation of human rights opens up the horizon of a social dimension to human freedom. [...] In this way, one-sided individualistic or communal interpretations of rights are averted, a new dynamic is developed for understanding, respecting and promoting rights, and new possibilities are revealed somewhere between ‘individual’ rights and an anti-Western rejection of human rights in the name of an extreme “communitarianism.” Human rights are given their place in a supremely philanthropic and ecumenical tradition which has reconciled freedom and love, individual and society, which has united peoples and cultures and honored the human person.”<sup>22</sup>

Metropolitan John D. Zizioulas of Pergamon on his side, while he criticized the individualistic understanding and practice of human life, initiated by Western Christianity and Western Philosophy, and highlighted the main axes of the theology of personhood as a proper response to the dead ends of individualism, he did not ultimately reject human rights, but gave a positive sign, and value to the person-centered perspective of rights versus the individual-centered one, i.e., the perspective in which the right is practiced in accordance or in relation to other persons, and not *in absentia* or against other persons.<sup>23</sup>

We should note here that even Yannaras’ writings, there include more careful and measured statements concerning human rights, such

<sup>22</sup> K. Delikostantis, *Human Rights*, p. 75-76, p. 80-82.

<sup>23</sup> Metropolitan of Pergamon J. D. Zizioulas, “Law and Personhood in Orthodox Theology,” in *id.*, *The One and the Many: Studies on God, Man, the Church, and the World Today*, edited by Fr. G. Edwards (Alhambra, CA: Sebastian Press, 2010), p. 402-413.

as when he notes that “the priority of communion of relationships – a socially-centered anthropology as the basis for the meaning of politics – is not in theory antithetical to the principle of defending individual rights.”<sup>24</sup> Still more clearly, in a more recent expression of his views, Christos Yannaras<sup>25</sup> distinguishes, along with many negative elements, some positive features of human rights, although still without repudiating the anti-modern and anti-Western core of his thought or the fundamental characteristics of his approach to human rights. As in his book *The Inhumanity of Rights*,<sup>26</sup> he continues to regard rights as a pre-political achievement, since according to him the liberal discourse affirming individual rights does not chiefly aim at the attainment of the *polis*, the formation of vital social relationships, concerned as it is rather, with the individual and an iron-clad protection of individual independence:

“the greater (a society of persons, the revealing of personal uniqueness, otherness and freedom through social relationships) does not invalidate or destroy the lesser (the legal, institutional and uniform protection of every individual from the arbitrariness of power). The Orthodox acknowledge that the historical existence of such experiences as the Western Middle Ages makes the protection of individual rights a major success and a precious achievement.

“Nevertheless, it would be doing violence to historical memory and critical thought if, simultaneously, we did not recognize that, compared to the ancient Greek *city* [*polis*] and the Byzantine (and post-Byzantine) *community*, the protection of individual rights is a *pre-political* achievement. It is an indisputable achievement, but an achievement of societies that have not yet attained (perhaps not even understood) the primordial and fundamental meaning of politics: politics as a common struggle for life “in truth,” a politics constituted around the axis of ontology (and not self-interested objectives).”<sup>27</sup>

<sup>24</sup> Yannaras, *The inhumanity of rights*, p. 188.

<sup>25</sup> Yannaras, “Human Rights and the Orthodox Church,” in Emmanuel Clapsis (ed.), *The Orthodox Churches in a Pluralistic World: An Ecumenical Conversation* (Geneva Brookline, MA: WCC Publications/Holy Cross Orthodox Press, 2004), p. 83-89.

<sup>26</sup> Yannaras, *The Inhumanity of Rights*, 45ff.

<sup>27</sup> Chr. Yannaras Yannaras, “Human rights and the Orthodox Church,” 88 (translation adapted). As Kristina Stoeckl (“The ‘We’ in Normative Political Philosophical Debates: The Position of Christos Yannaras on Human Rights,” 191, No. 12) comments on this crucial position of Yannaras: “What Yannaras completely leaves out of the picture is that children, women, foreigners, and slaves were excluded from the ancient Greek rights-space. They were not bearers of any rights at all. This is an important point of criticism and discussion that cannot be followed up here but should be considered.”

Despite this quite more positive understanding of human rights, Yannaras does not abandon his usual way of approaching history, which is integral part of his anti-Westernism. For him, what justifies the institutional and uniform protection (provided by human rights) of every individual from the arbitrariness of power, is not traumatic historical experiences of the pre-modern, pre-Enlightenment societies in East and West alike, but only “the historical existence of such experiences as the Western Middle Ages.”<sup>28</sup>

What ultimately seems therefore problematic for, but also for numerous Orthodox hierarchs and church intellectuals, is the pre-eminence of individuality and subjectivity implied in human rights, which contradict the communal or even communitarian character of Orthodox Church and tradition. These scholars would have not a problem with what we would call “communal rights,” or even “cultural rights,” but still remain very reluctant to accept and to integrate in their thought human rights because the latter are connected to and defined by individualism. Against the “individual rights” of the individualistic, secularized West, they oppose the “communal rights” of the Orthodox communitarian East. In this perspective, subjectivity and individualism represent the most serious obstacles not only for an Orthodox reception of human rights, but also for the encounter between Orthodoxy and modernity, Orthodoxy and the tradition of the Enlightenment. End of the day, however, how incompatible is Orthodoxy and its ecclesial vision with the rise of the subject and even with individuality? And how communitarian is the ecclesial ethos and theological self-understanding of Eastern Orthodoxy? And why should we be forced to consider as self-evident the identification between “communal” and “communitarian”? In the remaining part of my presentation, I will attempt to offer some initial answers and evidences to these crucial questions.

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<sup>28</sup> According to the remark by Alfons Brüning (“‘Freedom’ vs. ‘Morality’ – On Orthodox Anti-Westernism and Human Rights,” in A. Brüning, E. van der Zweerde (eds.), *Orthodox Christianity and Human Rights* (Leuven: Peeters, 2012), p. 8-9), the frequent anti-Western reasoning of Greek and Russian theologians usually operates with long established stereotypes, which in nowadays prefers to hold a discourse on essentially different “civilizations” or even on rival “civilizations.”

### 3. The individual subject and the social dimension of Christianity

As is well known, religion in traditional societies has always been a supra-individual, inter-personal, communal, collective, and social phenomenon. Orthodoxy, in particular, entails a profoundly social dimension, since its identity, its very being, is identified with the notions of “body” and “communion,” with the eschatological and Eucharistic community of the faithful. As the great twentieth-century Orthodox theologian, Fr. Georges Florovsky characteristically remarks, following on this point the ancient patristic tradition, Eastern and Western alike, in its entirety,

“Christianity from the beginning existed as a corporate reality, as a community. To be Christian meant just to belong to the community. Nobody could be Christian by himself, as an isolated individual, but only together with ‘the brethren,’ in a ‘togetherness’ with them. *Unus Christianus nullus Christianus* [one Christian – no Christian]. Personal conviction or even a rule of life still do not make one a Christian. Christian existence presumes and implies an incorporation, a membership in the community. This must be qualified at once: in the *Apostolic* community.”<sup>29</sup>

It was precisely this consciousness of charismatic co-belonging, this social, communal and “corporate” character of Christian existence, which was indicated by the choice of the Greek political term *ecclesia* (a term already used in the Septuagint Old Testament text to translate the Hebrew *qahal*) as the word by which the first Christians defined their own identity. This is why Christianity, according again to Florovsky, “is fundamentally a social religion [...] Christianity is not primarily a doctrine or a discipline that individuals might adopt for their personal use and guidance. Christianity is exactly a community, i.e., the Church. [...] The whole fabric of Christian existence is social and corporate. All Christian sacraments are intrinsically ‘social sacraments,’ i.e., sacraments of incorporation. Christian worship is also a corporate worship, ‘*publica et communis oratio*’ in the phrase of St Cyprian. To build up the Church of Christ means, therefore, to build up a new society and, by implication, to rebuild human society on a new basis. [...] The early Church was not

<sup>29</sup> Florovsky, “The Church: Her Nature and Task,” Georges Florovsky, *Bible, Church, Tradition: An Eastern Orthodox View*, Collected Works Vol. I (Belmont, MA: Nordland, 1972), p. 59.

just a voluntary association for 'religious' purposes. It was rather the New Society, even the New Humanity, a *polis* or *politeuma*, the true City of God, in the process of construction.<sup>30</sup>

This insistence on the communal structure and social nature of the church, however, is not characteristic exclusively of Orthodox or traditional theologians. Even Western and indeed Protestant theologians, such as the German Lutheran pastor and martyr of the struggle against Nazism Dietrich Bonhoeffer (1906-1945), who in his time was the theologian perhaps most orientated towards modernity, are distinguished by the same sensitivity. In his doctoral thesis *Sanctorum Communio*, completed in 1927 but published three years later, Bonhoeffer attempts precisely to prove in the context of a doctrinal study, with the aid of the social sciences, the empirical structure and the particular social nature of the church.<sup>31</sup>

It is obvious from the forgoing that in this perspective, the church is not a private but rather a social or public matter, and upon first reading, this seems incompatible with the fundamental agenda and priorities of modernity. This alleged incompatibility is the cornerstone shaping the stereotypically negative view toward religion by those intellectuals who declare themselves faithful to the principles of modernity. That, in turn, provokes the defensive reflexes of Orthodox theologians and intellectuals; for, such an individualistic and private version of faith and religion as enshrined by modernity, is not only a challenge to the social character of the church, but also runs directly counter to the priorities and presuppositions of the theology of the person, of the relational ontology of personhood. The latter, which makes no sense apart from the questions raised by modernity, represents perhaps the most original and bold synthesis of modern Orthodox theology: originating in Russian religious philosophy and émigré theology, especially as represented by Berdyaev, Bulgakov, and Lossky, the theology of personhood culminates in the thought of the contemporary Greek theologians Christos Yannaras and Metropolitan of Pergamon John D. Zizoulas, placing the answers

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<sup>30</sup> Florovsky, "The social problem in the Eastern Orthodox Church," Georges Florovsky, *Christianity and Culture*, Collected Works Vol. II (Belmont MA: Nordland, 1974), p. 131-132. For a more detailed analysis of this argument, and its consequences in the political domain, cf. P. Kalaitzidis, *Orthodoxy and Political Theology*, "Doxa & Praxis: Exploring Orthodox Theology" series (Geneva: WCC Publications), 2012, p. 116-119.

<sup>31</sup> D. Bonhoeffer, *Sanctorum Communio: A Theological Study of the Sociology of the Church*, translated by R. Krauss and N. Lukens (Minneapolis: Fortress Press, 1998).

given by Greek patristic theology into a fruitful dialogue focusing on the ontological question with the exploits of contemporary Western European philosophy (particularly phenomenology and existentialism). Concurrently, it makes the notion of the person (in which individuality is joined with sociality) into a basic ontological and theological category.<sup>32</sup>

In this context, we may make the following brief observations in relation to our topic:

a) It is commonly accepted by all Orthodox theologians, of all trends and schools, of all sensitivities and tendencies, that “the Orthodox Church is preeminently communal: grounded in a Trinitarian conception of God, whose perichoretic relationship definitively characterizes its oneness of being; composed of countless members who together make up the one body of Christ; gathered in Eucharistic fellowship to partake of divine life as only, holy catholic and apostolic community.”<sup>33</sup> But does subscribing to this classic Orthodox communal understanding of the church founded in Trinitarian theology also, or necessary, means to subscribe to the many stereotypes that are usually attributed to this communal understanding and which are holding as granted the radical opposition and incompatibility between individual and communal? “Does such an emphasis on community preclude any consideration of individuals – *as* individuals – who compose the Church and society? Does the Orthodox theology of personhood, rooted in the creation of human beings in the image and the likeness of God and transformed by the experience of the divine-human person of Jesus Christ, say something to this situation?”, as Antonios Kireopoulos, the Associate General Secretary of the Faith and Order and Interfaith Relations Commission of the National Council of Churches in the USA, fairly asks<sup>34</sup> challenging thus a whole set of Orthodox or Western established ideas?

<sup>32</sup> For an initial introduction to the extensive and important question of the theology of the personhood, we would direct the non-specialist reader to the following classic studies: J. D. Zizioulas, *Being as Communion. Studies in Personhood and the Church* (Crestwood, NY: St Vladimir’s Seminary Press, 1985); *id.*, *Communion and Otherness: Further Studies in Personhood and the Church* (London: T & T Clark, 2006); Chr. Yannaras, *Person and Eros*, transl. by N. Russell (Brookline, MA: Holy Cross Orthodox Press, 2007).

<sup>33</sup> A. Kireopoulos, “Seeking Justice and Promoting Human Rights: Orthodox Theological Imperatives or Afterthoughts?”, in M. J. Pereira (ed.), *Philanthropy and Social Compassion in Eastern Orthodox Tradition: Papers of the Sophia Institute Academic Conference, New York, Dec. 2009* (New York: Theotokos Press, 2010), 235.

<sup>34</sup> A. Kireopoulos, “Seeking Justice and Promoting Human Rights,” p. 235.

b) This connection and positive consideration between communal and individual, Orthodoxy/Byzantium and Enlightenment, and therefore between the Orthodox tradition, and the theology of personhood and human rights, is clearly supported by Fr. John A. McGuckin, a distinguished patristic and byzantinist scholar, and a priest of the Romanian Orthodox Church in the U.S. Unlike Yannaras and other Orthodox intellectuals who introduced and implemented a radical distinction and dichotomy between the above mentioned elements, McGuckin considers that there is a close link between theological principles articulated by the theologians of the early church and the Enlightenment theories that succeeded them.<sup>35</sup> As McGuckin himself maintains, “After the Christological councils, Orthodoxy brought to the European mind the understanding that personhood was vested with divine potency. This applied directly in the case of the divine personhood of Christ (now incarnate among humanity). But it also referred to the human person, as a potentiality of grace (what the Orthodox tradition described as deification by grace). It was, therefore, Orthodox philosophical theology that historically brought the very terms of “person” and “individual” from the margins of irrelevance to the central stage of anthropological philosophy. [...] It is this theological stance underpinning all Orthodox theology, the deification of the human race by the grace of divine incarnation within it, which is the root of how Christian-inspired philosophers of a later age could declare: ‘We hold these truths to be self-evident,’ and go on to the cite the inalienable dignity of human person as one of the ‘self-evident’ things they took as axiomatic.”<sup>36</sup>

This “pro-European” understanding of the spiritual and cultural heritage of Byzantium, far from any defensive and identity-based consideration, allows him even to see the connection rather than the disconnection between Byzantium and the West, as well as the emergence in the Eastern Christian civilization – especially in the Canon law – of the idea of the individual and of the subject, and the warning signs of human rights. In the words of Fr. McGuckin himself,

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<sup>35</sup> See McGuckin, “The Issue of Human Rights in Byzantium and the Orthodox Christian Tradition,” *op. cit.*; Cf. Kireopoulos, “Seeking Justice and Promoting Human Rights,” p. 237.

<sup>36</sup> McGuckin, “The Issue of Human Rights in Byzantium and the Orthodox Christian Tradition,” p. 179. Cf. Kireopoulos, “Seeking Justice and Promoting Human Rights,” p. 237.

“They manifest [sc. the canons of the Orthodox Church] on every page a code of governance that protects, defends, and orders the Orthodox Christian community. [...] These canons are [...] regarded by all the Orthodox as a fundamental part of what is called the ‘Holy Tradition’ of the Church. [...] This development and flourishing of Canon Law in the East [...] is a major rebuttal of the idea that Orthodoxy is not concerned with the rights of the individual, or that Orthodoxy can hardly conceive of the concept of the individual as such, only the collective. It is equally a defense of the fundamental Orthodox understanding that rights of persons cannot be separated from duties and responsibilities.”<sup>37</sup>

c) Furthermore, the characteristic of defining oneself in individual rather than communal terms is usually connected with the rise of the subject and of individuality, which has taken place *par excellence* during modern times and is hence regarded as an integral part of modernity. Indeed, one of the most significant upheavals – if not *the* most significant – that came with modernity was the emergence of the subject and the individual. For perhaps the first time in history, the individual acquires value and existence in his or her own right and his/her own autonomy. For the first time, the individual acquires such significance and importance that he is placed above the community and the organized group, above the ties and institutions of his/her culture or heritage. How alien are the above characteristics to the appearance and structure of primitive Christianity, no less than to the radical innovations it promised and to a degree effected in the framework of ecclesial communities: i.e., to the de-sacralization of Caesar and civil authority; the release of the human being from religious subordination and submission to the city, the state or the sacralized civil authority and biological subordination to the tribe, the patriarchal family, the clan and the family group; to the new emphasis given by the Gospel on the unrepeatable uniqueness and value of the human person, etc.? What else was ultimately the early Christian struggle for the “right” to conversion, if not the “right” of individuals to free themselves from their ancestors’ religious beliefs, or from their community tradition, as prerequisites for adopting Christian faith?<sup>38</sup> And what else is nowadays the struggle of many Christians living in Muslim

<sup>37</sup> McGuckin, “The Issue of Human Rights in Byzantium and the Orthodox Christian Tradition,” p. 178-179. Cf. *id.*, *The Ascent of Christian Law: Patristic and Byzantine Formulations of a New Civilization* (New York: St. Vladimir’s Seminary Press, 2012).

<sup>38</sup> See on the relationship of self to conversion the interesting analysis by A. N. Papathanasiou, “An Orphan or a Bride? The Human Self, Collective Identities and Conversion: An Orthodox Approach,” *op. cit.*

countries (who in a large majority are supporting human rights and the secular character of the state) that seek to abolish the laws on blasphemy (laws imposing the death penalty for every Muslim who would convert to another religion, including Christianity), if not the “right” of autonomous selves seeking to be free to decide their individual trajectory, which is different or even contrary to their tradition or community?

d) Much support to my argument could be provided from the analysis of the phenomenon of spiritual autobiography, as it is exemplified by Augustine in the Latin West, but especially by Gregory of Nazianzus in the Greek East.<sup>39</sup> In fact, the *Confessions* of St Augustine (Books X and XI), depict their author’s turbulent life and his anguished search for the truth which will lead to his religious conversion. The *Confessions* are regarded as essentially the first text in the history of Western thought to highlight and enshrine individual subjective speech; they lay the foundation for the narrative ‘I’, and have had a profound influence on the spiritual and cultural history of the West. The *Confessions* effect a shift of interest from the field of history to the realm of the inner human being, to the searching that takes place within the individual’s own psychology and consciousness. This shift is helped enormously by the workings of the narrative which presupposes inner wanderings in the deepest recesses of the self, as well as by the internalized-psychological understanding of time and memory that Augustine develops in Books X and XI of the *Confessions*, giving us the measure of his contribution not only to the appearance of modern literature but also to the formation of the culture of modernity.<sup>40</sup>

<sup>39</sup> In this part of my paper (III, d, e, f), I lean on the analyses I offered in P. Kalaitzidis, *Orthodoxy and Modernity: An Introduction*, Volos Academy for Theological Studies (Athens: Indiktos, 2007) [in Greek; English translation (by Elizabeth Theokritoff) forthcoming by St. Vladimir’s Seminary Press]. I thank St. Vladimir’s Seminary Press for the permission to use here material from the English version of that book.

<sup>40</sup> Out of an extensive bibliography on the subject, see for example: J.-Cl. Fredouille, “Les Confessions d’Augustin. Autobiographie au présent,” in Marie-Françoise Baslez, Philippe Hoffmann et Laurent Pernot (ed.), *L’invention de l’autobiographie d’Hésiode à Saint Augustin* (Paris: Presses de l’Ecole normale supérieure, 1993), 167-178; Br. L. Horne, “Person as Confession: Augustine of Hippo,” in Chr. Schwöbel and C. E. Gunton (eds.), *Persons, Divine and Human* (Edinburgh: T & T Clark, 1991), 66-67, 69-73; C. Taylor, *Sources of the Self. The Making of the Modern Identity* (Cambridge MA: Harvard University Press, 1989), 127-142. Objections to the autobiographical interpretation of Augustine’s *Confessions* have been voiced by P. Courcelle, *Les Confessions de S. Augustin dans la tradition littéraire. Antécédents et postérité* (Paris, 1963); *id.*, *Recherches sur les Confessions de S. Augustin* (Paris, 1968);

It is less well known, however, that elements of the question of subjectivity and individuality are to be found also in the autobiographical poems of Gregory of Nazianzus (who was earlier than Augustine), principally in his long autobiographical poem *On his own life* (Historical Poems, XI). This Cappadocian hierarch and saint is one of the very few Fathers to have been dignified with the title of “theologian” in the tradition of the Eastern Church; and in this work, as in other, shorter autobiographical poems or epigrams, after and perhaps because of his resignation from the throne of Constantinople (in 381 AD), he converses with himself and addresses himself to God seeking consolation and peace. But he also dares to speak in the first person about his life and recount his life story in strict chronological order, from his childhood and his studies to his service as bishop and archbishop, not omitting even the most inward and personal feelings connected with the inner conflicts and contradictions that he experienced, his sorrows and disappointments, his mental pain and his complaints about friends and colleagues. In addition, he does not hesitate to castigate the attitude of the clergy of his day in terms that today would probably be described as anti-clerical. Gregory’s autobiographical writing may not possess to the full the characteristics that would make him a precursor of modern literary writing or of self-aware modern man; and although the tradition of autobiography to which Gregory contributed continued in the Byzantine East, it does not seem ever again to have attained or surpassed the important milestone represented by his work, particularly his autobiographical poems.<sup>41</sup> Yet the case of Gregory cannot easily be ignored; nor is it without importance for the questions discussed in this paper, particularly as regards the way in which questions of subjectivity and individuality fit into Orthodox theology.<sup>42</sup> So while in Orthodox theological circles there is usually an

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and, following Courcelle’s line, P. Hadot, *Exercices spirituels et philosophie antique*, nouvelle édition revue et augmentée (Paris: Albin Michel, 2002), p. 258-259.

<sup>41</sup> For an overview of autobiography in Byzantium, see the study by M. Hinterberger, *Autobiographische Traditionen in Byzanz* (Wien: Verlag der Österreichischen Akademie der Wissenschaften, 1999).

<sup>42</sup> On autobiography in Gregory of Nazianzus see G. Misch, *A History of Autobiography in Antiquity*, v. II (Westport, CT: Greenwood Press Publishers, 1973), p. 600-624; C. Jungck, *Gregor von Nazianz. De vita sua* (Heidelberg, 1974); R. Benin, *Une autobiographie romantique au IV<sup>e</sup> s.: le poème II, I, 1, de Grégoire de Nazianze*, unpublished PhD thesis (Montpelier, 1988); J. Bernardi, “Trois autobiographies de S. Grégoire de Nazianze,” in M.-F. Baslez, Ph. Hoffmann, L. Pernot (ed.), *L’invention de l’autobiographie d’Hésiode à Saint Augustin* (Paris: Presses de l’Ecole normale supérieure, 1993), 155-165; P. L. Gilbert, *Person and Nature in the Theological Poems*

emphasis on the decisive contribution of Greek patristic thought to the theology and ontology of the personhood, it is often forgotten or overlooked how much Christianity, Western and Eastern, has contributed to the emergence of the subject and its emancipation (in an eschatological and theological perspective) from the bonds of the city or state, the group, tribe, family etc., as evidenced *inter alia* in the phenomenon of spiritual autobiography. This spiritual autobiography, as we have said, was formed through writing in the first person and exploration of the psychological self; and it is no accident that it appears chiefly in the early Christian centuries, and indeed, among others, in the persons of two distinguished theologians, Gregory of Nazianzus in the East and Augustine in the West.

e) It is ensued from the above that the concept of subject and its emergence are instrumental both for human rights and the dilemma individual *versus* communal. Although the emergence of the subject gives rise to the emergence of the individual (which is contained within it), the subject, as a broader notion and reality, cannot be identified with the individual; the emergence of the subject could perfectly well give rise also to a heightened emphasis on the person (which is also contained within it) since it is a precondition and a *sine qua non* for that emphasis. For without the subject, neither individual nor indeed person can exist. And much more to the point, without the subject there can be no relationship with God or our fellow humans. According to St. Basil and St. Gregory of Nyssa, indeed, the human being must first be formed into a rational being by overcoming the passions, and then relationship with God and one's fellow man follows. In this perspective, we might consider the ancient injunction "Know thyself" and the broader practice of "attention to oneself," which originate from classical, Hellenistic and Roman philosophy and were incorporated into Christian spirituality and tradition and later crystallized in that context, through the movement of radical self-transformation and self-transcendence that is called *eros*, and the arduous and persistent spiritual work that is called *ascesis*. In the

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of S. Gregory of Nazianzus, PhD thesis (Washington, DC: The Catholic University of America, 1994), p. 1-16; Grégoire de Nazianze, *Le dit de sa vie*, traduit, présenté et annoté par Al. Lukinovich, mis en vers libres par Cl. Martignay, introduction de Th. Spidlik (Genève: ed. Ad Solem, 1997); Fr. Gautier, *La retraite et le sacerdoce chez Grégoire de Nazianze* (Tournhout: Brepols, 2002); Stelios Ramfos, *The Yearning for the One: Chapters in the Inner Life of the Greeks*, translated by N. Russell (Brookline, MA: Holy Cross Orthodox Press, 2011), p. 111-118; P. Kalaitzidis, "Theology and Literature: The Case of Nicolae Steinhardt," *Journal of Eastern Christian Studies*, p. 69.1-2 (2017).

patristic perspective outlined above, “knowing oneself” and “attention to oneself” will not only be essential in making the subject capable of receiving, appropriating and communing in the truth, but will also shape the history of subjectivity, ultimately leading in the long term to the emergence of the subject.<sup>43</sup> The elements and practices just mentioned do not mean that the subject is closed in on itself, but are a precondition for a true opening to the o(O)ther; while the slow and laborious emergence of the subject, which reaches its climax in the modern era, creates not only a sphere in which the group or herd spirit is transcended, but also the prospect of actualizing a theology or ontology of the personhood in a way that is authentic (and not merely superficial). This fine distinction, which we consider may turn out to be decisive for the hoped-for dialogue between Orthodoxy and modernity, and for a positive assessment and reception of human rights on behalf of the Orthodox, often seems to escape many Orthodox theologians who are concerned with the person and the theology of personhood. The result is that it has become traditional in recent decades to dismiss not only the individual but also the subject, while those same circles would also probably consider problematic any reference to psychology or psychoanalysis, to the psychological self and psychological identity.<sup>44</sup>

<sup>43</sup> See e.g. St. Basil, *On “look to yourself,”* PG 31: 197-217; Gregory of Nyssa, *On virginity* IV-VI, XIII, Sources Chrétiennes (SC), 119, 302-348, 422-430=PG 46, 337A-352A, 376A-377B; *id.*, *On the Life of Moses*, SC 1, 43=PG 44, 337C-337D; *id.*, *On the Song of Songs* IV, Jaeger, 6, 123; *id.*, *On the Beatitudes* V, PG 44, 1272A. Cf. Pierre Courcelle, *Connais-toi toi-même. De Socrate à saint Bernard*, Vol. I (Paris: Etudes Augustiniennes, 1974), esp. the chapter “D’Origène aux Cappadociens,” p. 97-111; Pierre Hadot, *Exercices spirituels et philosophie antique*, esp. the chapter “Exercices spirituels antiques et ‘philosophie chrétienne,’” 75-98, esp. 81-92; M. Foucault, *L’herméneutique du sujet. Cours au Collège de France (1981-1982)*, édition établie sous la direction de Fr. Ewald et Al. Fontana, par Fr. Gross (Paris: Hautes Études/Gallimard/Seuil, 2001), p. 11-20. P. Hadot, “Un dialogue interrompu avec Michel Foucault. Convergences et divergences,” in *id.*, *Exercices spirituels et philosophie antique*, 304-311, esp. 309-311, sets out his own approach and interpretation, different from Foucault’s, of the issues relating to subjectivity and the emergence of the self. On this whole question cf. also P. Adnès, “Garde du cœur,” in *Dictionnaire de Spiritualité* Vol. 6, p. 100-108.

<sup>44</sup> See further S. Ramfos, *Like the Lightning of the Last Days, Chronicle of a New Year* (Athens: Indiktos, 1996), p. 191-248; *id.*, *The Yearning for the One: Chapters in the Inner Life of the Greeks*, translated by N. Russell (Brookline, MA: Holy Cross Orthodox Press, 2011); N. Loudovikos, *Psychoanalysis and Orthodox Theology* (Athens: Armos, 2003) [all in Greek]; E. Clapsis, “Ambivalence, Subjectivity and Spiritual Life,” in Emmanuel Clapsis (ed.), *Violence and Christian Spirituality* (Geneva/Brookline, MA: World Council of Churches Publications/Holy Cross Orthodox Press, 2006), p. 255-267. Also the papers (in Greek) by V. Thermos, “Theology, Modernity and ‘Sciences’

f) It may be that the emergence of the genre of spiritual autobiography during the first Christian centuries is inherently bound up with the dimension of inwardness and cultivation of the inner man, of the “digging within oneself” etc., which the Christian calling and message introduced (which is not to detract from the communal structure and social dimension of Christianity). Indeed, here it is worth noting that the personal reception and acceptance of the gospel message and most certainly one’s entry into the church body cannot be understood on the basis of collectives such as a people, nation, language, culture etc., but only on the basis of an absolutely personal act, free from any sort of biological, cultural or ethnic determinism. Thus, the radically new element introduced by the ecclesial way of life is the personal calling addressed to us by God through Jesus Christ, a call to evangelization, to an encounter and relationship with him, as well as the response to this calling, which is equally personal. Hence, God’s calling and revelation address the person but at the same time they also create a community (as it became clear from the number of the twelve disciples of Jesus, who symbolically represented the twelve tribes of Israel); Christ’s message is foundational for the person as well as for the community of the faithful. It is probably unnecessary to emphasize that “personal” does not mean simply “individual,” but nor does it mean collective; that personal calling and the response to that calling do not establish either individualism or collectivism, but the ecclesial communion of persons, the communion of saints. In this manner, the New Testament transcends the Old Testament pattern, where God’s calling and his agreement-covenant with his people Israel, while not ignoring the personal element, could not be understood apart from the notion of the nation or the peculiar people, apart from the relationship with the land of the fathers. The New Testament seems to ignore this perspective. We may take a few examples from the Gospels and Acts such as the calling of the twelve,<sup>45</sup> followed by a similar

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of the Psyche’,” and K. Agoras, “Sacramental Christo-logy, Cultural Modernity and Eschatological Gospel,” in Kalaitzidis-Ntontos, *Orthodoxy and Modernity*, p. 263-291, p. 293-322 respectively. Cf. I. Papayiannopoulos, “Person and Subject. Notes for an Eschatological Anthropology,” in P. Kalaitzidis, A. N. Papathanasiou, Th. Ambatzidis (eds.), *Turmoil in Post-war Theology. The ‘Theology of the 60s’* (Athens: Indiktos, 2009), 119-164 [in Greek]. On the issue of subjectivity and individualism cf. also C. Taylor, *The Ethics of Authenticity* (Cambridge, MA: Harvard University Press, 1992), p. 25-29, p. 55-69.

<sup>45</sup> See Mt 4:18-22, 10:1-4; Mk 1:16-20, 3:13-19; Lk 5:1-1; 6:12-16.

invitation addressed by Jesus to others,<sup>46</sup> Paul's conversion on the road to Damascus,<sup>47</sup> the parable of the Good Samaritan,<sup>48</sup> Jesus' encounters with Zacchaeus,<sup>49</sup> the pagan Canaanite woman,<sup>50</sup> the Roman centurion<sup>51</sup> or even the Samaritan Woman at Jacob's well.<sup>52</sup> These are absolutely personal events and choices not mediated by any form of corporate entities or communities, by religious, ethnic, linguistic, cultural or class collectives. And furthermore, these personal choices very often run counter to or against the specific communities that people belong to, just as they violate the framework and boundaries laid down by those communities; interestingly, however, such acts of autonomy do not lead to a private religiosity or an individual version of faith and salvation.

#### 4. Conclusions and future perspectives

I have attempted, then, to point out and highlight, albeit in an incomplete and unsystematic way, some scattered pieces of evidence for an affirmation of the subject, and even of the individual/personal element, on behalf of the Orthodox tradition. This is precisely the material that, in our view, Orthodox theology is nowadays charged with the duty to study and discuss in depth.

Greek American Orthodox theologian Aristotle Papanikolaou, in his informed and well-argued attempt to show that this particular understanding of personhood is not inimical to the notion of human rights, is highlighting the important contribution of the theology of personhood to this end.

“After centuries of neglect, Christian theologians renewed their attention to the doctrine of the Trinity in the latter half of the twentieth century. This revival of interest in the Trinity was not restricted simply to an understanding of God: perhaps for the first time in the history of Christian thought, Christian theologians were claiming that the affirmation that God is Trinity has radical implications for theological anthropology, in other words, for thinking about what it means to be human. Christian thinkers, of course, had always linked the understanding of being human to the being of God,

<sup>46</sup> Cf. Mk 10:21; Lk 9:59-62.

<sup>47</sup> See Acts 9:1-19. Cf. Acts 22:6-16, 26:12-18.

<sup>48</sup> Lk 10:25-37.

<sup>49</sup> Lk 19: 1-10.

<sup>50</sup> Mt 15:21-28; Mk 7:24-30.

<sup>51</sup> Mt 8:5-13; Lk 7:1-10; Jn 4:43-54.

<sup>52</sup> Jn 4:4-42.

but only in the twentieth century was the more explicit claim made that since God's being is persons in communion, then human 'personhood' must be defined in terms of relationality and communion. In other words, humans are truly persons when they image the loving, perichoretic communion of the persons of the Trinity. [...] Such an understanding of personhood emerges from what constitutes the core of the Orthodox tradition – the affirmation of divine-human communion. Unlike contemporary Protestant and Roman Catholic theologies, there is a remarkable consensus among Orthodox theologians that the very starting point of theology is the affirmation of divine-human communion. There is no disagreement on this point, but rather on the implications of this central axiom for thinking about God, Christ, theological anthropology, ecclesiology, and epistemology."<sup>53</sup>

We have to confess that this remarkable theology of personhood not only very often remained socially inert (especially regarding a series of issues related to aspects of the modernist phenomenon but also to its ecclesial self-understanding) but, in addition, was understood – even by its initiators, mainly Christos Yannaras – as opposed to modernity, and particularly to human rights. There is an urgent need to overcome this misfortunate and tragic misunderstanding. In the words of Fr. John A. McGuckin,

“The extremely pressing agenda is for the Orthodox world, and especially its most visible leaders, to reflect much more on the profundities of the deep Orthodox tradition of human rights philosophy, and not to dismiss the language simply as an alien concept from the West. There is a great need for Orthodoxy to clarify and re-pristiniate its ancient deep traditions. It will find there beautiful things: things that put it squarely on the side of the liberation of humanity from oppressive forces. For the church is the servant of the kenotic Christ who came to set the world free, not to enslave it.”<sup>54</sup>

It is therefore hoped that the new generation of Orthodox theologians, taking into account insights and contributions provided by human and social sciences,<sup>55</sup> will be able to re-interpret and further develop in new directions the theology of personhood, which despite representing a

<sup>53</sup> Papanikolaou, *The Mystical as Political*, p. 98-99, p. 100.

<sup>54</sup> McGuckin, “The Issue of Human Rights in Byzantium and the Orthodox Christian Tradition,” p. 188.

<sup>55</sup> See for instance H. Joas, *The Sacredness of the Person: A New Genealogy of Human Rights* (Washington, DC: Georgetown University Press, 2013). In this work, the internationally renowned sociologist and social theorist traces back the origin of the idea of human rights and the universal value of human dignity not only to secular sources and the French Enlightenment, but also to Christian tradition, and

radically anti-individualistic way forward for the church, faith, life and man, nevertheless makes no sense apart from the questions raised by modernity and its overarching agenda, since in essence those are what it is trying to confront.<sup>56</sup> The challenge today for the theology of the personhood and for Orthodox theology in general, after the first bold and very significant steps taken in the 1970s and 1980s, is to take up the anthropological consequences of its pioneering theological formulations about person and otherness, and to link the above-mentioned theological premises with the on-going discussion about the emergence of the subject and its significance for the formation of modernity and late or post-modernity and the autonomous self. Insofar as the theology of the personhood unites the individual and the social/communal, it may further contribute to the achievement of the sought synthesis of Orthodoxy with modernity/post-modernity, and to the correction of the excesses of both individualism and communitarianism.

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especially to the process of “sacralization” of every human being, i.e., to the increasing significance and sacred character the human person acquires with Christianity.

<sup>56</sup> This idea is explored in more detail in Th. Ambatzidis, “Theology of Personhood and Modern Individuality,” in Kalaitzidis, Ntontos (eds.), *Orthodoxy and Modernity* (Athens: Indiktos Publications, 2007), p. 211-262 [in Greek].

# **Ecclesiology and Human Rights**

Grigorios D. PAPATHOMAS

## **1) Introduction: Ecclesiology and Human Rights brought to dialogue**

When two poles, two magnitudes, are brought to a dialectical comparison and relationship, two consecutive actions need to take place before addressing the broader scope of the dialogue. The first action relates to highlighting distinctions between their *otherness (alterity)*, in order to illustrate their ontic limits and substantial features, and to make known to the interlocutors (discourers) in the dialogue and the participants therein the requirements of the two poles (*a priori*) and, through the latter, their points of resemblance and contact, of their convergence and divergence. The second action relates to the *identity* of these two magnitudes, to their ontic content, to the completeness of their knowledge, as well as to the methodology that they employ. Therefore, when these two actions are fulfilled, it becomes easier for these two magnitudes to be brought into dialogue and for us to proceed to objective assessments. Both these magnitudes are already described in the title: *Ecclesiology* and *Human Rights*.

*Human Rights* are well known and have even been adequately studied since the period of their historical birth and existence and over the last two centuries. Their study and implementation culminated in the 20<sup>th</sup> century, and has been characterized by the congruency of benevolent views in their acceptance. However, the same does not apply on *Ecclesiology* of the second Millennium, as it appears multifaceted and multilateral, due to centrifugal divergences resulting in the elapsed [2<sup>nd</sup>] Millennium, which remain immutable until today and aggravate the multilateral ecclesiastical character of the Church's realization. This feature of Ecclesiology is directly related to both: the ubiquitous implementation of Human Rights and to something whose range we do not expect.

This is the direct correlation between Ecclesiology and Human Rights, since the ecclesiological divergences of the second Millennium are the main operative factors supporting the request for the establishment and declaration of Human Rights. This finding facilitates our understanding of this question not only as a matter of a dialectical relationship and an actual dialogue between these two magnitudes, but also as a matter of the existential causal link between them.

Let's examine the issues one by one and consider the levels of convergence and divergence between these two magnitudes.

### **1<sup>st</sup> pole: Ecclesiology**

1. The ontological and eschatological content of Ecclesiology (1<sup>st</sup> Millennium).
2. The centrifugal and overlapping *multi-ecclesiality* of Ecclesiology (2<sup>nd</sup> Millennium).

### **2<sup>nd</sup> pole: Human Rights**

3. The *assertive multi-ecclesiality* [and *multi-religiousness*] as the operative event of Human Rights [and the necessity for their implementation].
4. The existing *heterocentricity* of Ecclesiology consolidates the *Eonism* of Human Rights and makes relative the realization of the Church within History.

## **2. The ontological and eschatological content of Ecclesiology (1<sup>st</sup> Millennium)**

Ecclesiology constitutes a paramount issue for Christian Theology both in the Church body and in its Universal and, later as well as recently, Ecumenical perspective. In other words, Ecclesiology is neither detached nor separated from the witness and mission of the Church within History and the universe world.

The Kingdom of God and His Church, as the latter has been realized within History, are not separated, but at the same time they are not identical. Within History, the Church is (not only) “image”, (but) icon of the Kingdom, it is the Kingdom of God, which is “already here and not yet”, it is the bearer as well as the point of the coming Kingdom<sup>1</sup>. In this sense,

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<sup>1</sup> See Rev. 22, 20.

the Ecclesiology of the Church during the first Millennium is composed of a clear Eucharistic and Eschatological orientation in a catholic-universal (all inclusive) and in a unique territorial (in terms of its realization in a place) perspective. These two features compose the inclusive attitude of Ecclesiology in a given place as it is perceived by the Church in its historical beginning. Indeed, the Church in her existence has no limits; instead it constitutes the cradle, which contains the whole world. On the other hand, its territorial realization requires ecclesiological exclusivity and uniqueness as the features, which will guarantee the unity of the Ecclesial body in any given place. Therefore, Ecclesiology is composed in an antinomic manner, namely of both exclusive and inclusive terms simultaneously, which are precisely the elements that ensure the ontological unity.

The fact that the Church brings iconically the Kingdom to a place reveals the character of a pole in History, which is always in process of realization, increasing and struggling to transform the world. It is not characterized by the evasion from History and the world, but by the effort to transform History and the falling world. Thus, the Church does not represent a sacerdotalist and legal foundation based on constituted “laws”, as very often and quite wrongly the sacred Canons of the Church are regarded, but it is a transformative being, invited to fulfill its mission in History: a *foretaste* (πρόγευσις) of the Kingdom of God.

### **3. The centrifugal and overlapping multi-ecclesiality of Ecclesiology (2<sup>nd</sup> Millennium)**

This apparently exclusive attitude of Ecclesiology in a given place has historically proven that it can function and is converted into an open, inclusive attitude. It has functioned (and can still function) as a vivid and effective witness in a divided falling world. This witness expresses the ontological vision of Ecclesiology for the unity of the Church, and this unity is not one of the properties of the Church, but constitutes her primary nature and her most profound essence. The most important witness of Ecclesiology is that the Church can only exist as *one*.

This Ecclesiology of the Church, however, was altered during the second Millennium. Its fundamental feature is the prismatic ecclesiality with confessional mentality and features or, simply put, the confessional multi-ecclesiality with overlapping Ecclesial entities in a given place. So this is why we talk about *Ecclesiology in plural*, or about *plural Ecclesiologies*.

Therefore, in the second Millennium, most of the particular Ecclesiologies are marked by the event of their division, their eventual ontic autonomy and isolation. This is exactly the reason why, during that time, the Churches had identified and supported their identity based on their confessional differences and perceptions. This is what gave birth to the *Ecclesiastical Confessiocracy* during the second Millennium, which brought along its homologous [*confessional*] Ecclesiology. This new and novel perspective, under each resulting in an ecclesial confession, which identified itself as [an adjectival-confessional] Church, did not acknowledge any Church outside their ecclesial communion and described the “other” Churches as schismatic, even heretical sometimes, following in this respect the infamous western scholastic method, which arranges the “other” Churches in gradual/concentric circles around a center. This adopted anti-ecclesiological gradation led to frictions and conflicts between these confessional Churches and created the need for neutral extra-ecclesiastical objective criteria for the resolution of such disputes. This need precisely, accentuated by specific criteria, is what fleshed out the System of Human Rights, to which the Confessional Churches always seem to resort in order to resolve their unavoidable differences.

So, Christians nowadays within History, within the world and the society, do not represent an ontological unity, and, therefore, do not represent a single territorial Church in a given place, as well as the Apostle Paul and the whole Biblical Ecclesiology strictly demand. The ecclesial pluralism, the historical and centrifugal multi-ecclesiality in one place in the second Millennium gave birth to unilateral exclusivities, and to requests for ecclesiastical unilateralism; it highlighted claims that resulted in the historic shrinkage of the Church and in communal introspections, caused rivalries that led to clashes, to ecclesio-communal conflicts and to religious wars, actions and situations that have nothing to do with the Church or with her Ecclesiology. When these very crucial events disrupted the Church, as soon as they occurred and were established, they brought the imperative need for safeguarding and ensuring both the personal and collective (communal) choices of the confessionalized Christians, who did not want to commonly identify themselves, according to the Ecclesiology of the first Millennium, but instead they wanted to identify themselves distinctly and separately, according to the new *Ecclesial Confessions* that developed, within the same place, the same society and state. As we all know, this caused tensions, frictions and religious wars in Europe. Such an atmosphere made the emergence of objective criteria necessary for elementary Human Rights.

The conclusions stemming from these historical findings are numerous. Here we only need one for the stated dialectical relationship between these two poles: The decline of Ecclesiology of the 1<sup>st</sup> Millennium and the increase of *Ecclesial Confessiocracy* in the 2<sup>nd</sup> Millennium which in turn produced the dire need for the genesis of Human Rights, as we shall later see in more detail.

#### **4. The assertive multi-ecclesiality and multi-religiousness as the operative event of, and necessity to implement Human Rights**

The post-evolution and, consequently, the transformation of Ecclesiology (1099 and onwards)<sup>2</sup> brought the Church from the spectrum of local mono-ecclesiality and unity (1<sup>st</sup> Millennium) to the spectrum of confessionalistic multi-ecclesiality and confessionalistic religious pluralism in a given place (2<sup>nd</sup> Millennium), which, in fact, represents for the Ecclesiology of the Church a prismatic ontology, a fragmentation and annihilation of the Church herself. What is called today comparable [adjectival] Churches or *plural* Churches is what resulted precisely from the above-mentioned fact.

Ecclesiology aspires to the ontological transcendence of the falling differences and to the ontological unity, while Human Rights, as a product of the falling world, aspire exclusively to the legal safeguarding of individual (or collective) rights. Thus, the enforcement of Human Rights in Churches of same place, emphasizing to the constituent feature of [multi-altar] multi-focality and their absolutism make relative the composition of the Church in one place, just because they encourage

<sup>2</sup> See our article “Au temps de la post-ecclesialité. La naissance de la modernité post-ecclesiologique (In the Age of the Post-Ecclesiality. The Emergence of Post-Ecclesiological Modernity)”, in *Kanon*, Vol. 19 (2006), p. 3-21, and in *Istina*, t. 51, No. 1 (2006), p. 64-84. The same, in *The Messenger* [London], No. 1 (2/2007), p. 26-47, and in *Inter* [Cluj-Napoca], t. II, No. 1-2 (2008), p. 40-54 (in English), in *Usk ja Elu*, t. 3 (1/2007), p. 31-56 (in Estonian), in *Derecho y Religión* [Madrid], Vol. III (2008), p. 133-150 (in English), in *Mevtron-Mira* [Lviv], Nos. 5-6 (2009), p. 63-88 (in Ukrainian), in Archim. Grigorios D. PAPATHOMAS, *Κανονικά ἄμωρφα (Δοκίμια Κανονικῆς Οικονομίας) (Ecclesio-Canonical Questions [Essays on the Orthodox Canon Law])*, Thessaloniki-Katerini, “Epektasis” Publications (series: Nomocanonical Library, No. 19), 2006, ch. IV, p. 145-173 (in Greek), *Irenikon* [Chevetogne-Belgium], t. 79, No. 4 (2006), p. 491-522, and in *Overdruk uit Collationes* [Belgium] Vol. 37 (2007), p. 407-428 (in Flemish).

the *Ecclesial Confessiocracy*, rather than restrict it. This means that *Ecclesiological unity* in one place does not constitute a priority for Human Rights; the only priority is the legal equality of the divided Christians and plural and co-territorial Churches in one place. In this sense, we cannot concur, from a theological point of view, to Churches that systematically prioritize Human Rights and not the vision of the Ecclesiology of the Church. Ecclesiology, of course, does not reject Human Rights, but does not prioritize them, when it comes to the composition of the Church in view of her *uniqueness* in a given place<sup>3</sup>. In other words, Ecclesiology affirms the fact that the Church is polycentric and multi-altar, obviously, in different places, inter-locally, and around the world, but does not accede to the fragmentation, the multi-focality and the ecclesial polyarchy in one place, while, on the other hand, Human Rights consolidate co-territorial and plural Churches and legalize them.

## 5. The existing *heterocentricity* of Ecclesiology consolidates the *Eonism*<sup>4</sup> of Human Rights and relativizes the realization of the Church within History

According to the contemporary English historian Steven Runciman, “The Church in the Roman era until the Crusades was the most civilized

<sup>3</sup> Compare canon 5/1st Ecumenical Council of Nicaea I-325.

<sup>4</sup> Or *Aeonism*. See an analytic development of this theological question in *Épiskepsis*, t. 41, No. 712 (30-04-2010), p. 29-32 and 26-28 (bilingual: in Greek and in French respectively), and in *Big Orthodox Christian Encyclopaedia* (MOXE), t. 2, Athens, ed. Strategic Publisher House, 2011, p. 22 [col. a, b, g, d]-23 [col. a] (in Greek). This theological neologism denotes the mentality of people who certainly believe in God, but are unable (Ephesians 2:2) to make God *Almighty*, that is, the “centre of their lives” (Abbot Dorotheos). This fact (Matthew 13:22; Mark 4:19) leads to the consequence of an “heterocentric perspective” (rejection of God in the transcendence and in “what is to come” [Acts 26:22]), which takes (2 Cor 4:4) man away from God “for having loved this present world” (2 Tim. 4:9) and traps him by placing him (Luke 20:34) in the dimension of “this world” (John 18:36-37). This is a category and a “*intra-creational*” perspective, i.e. of containment and introversion to what is (now fallen) created, forgetting its *eschatological orientation* (Ephesians 1:21, Hebrew 6:5 and 11:20; 1 Tim. 4:8; Tit. 2:12), which is based on the standard (Romans 12:2) [*civitas terrena*] “this present world” (worldly eschatology), or giving a dominant lead **in** this century (“this Century”, “this present world”) against the future century (the “future century” [Ephesians 1:21]). In other words, Aeonism is above all an *ontological entrapment and restriction of man in the world, history and nature*, placing him on an *aeonistic* course without any eschatological substance. It is an aeonistic way of existence, as a way of life at the expense of the eschatological perspective of man.

institution of the Empire the world knew up to that time"<sup>5</sup>. This means, to be more specific, that Church's theology as expressed by her Ecclesiology was the one suggested by the cultural elite until that time. The divisions of the Christians later on (from 1099 and onwards) and throughout the course of the 2<sup>nd</sup> Millennium alienated this Ecclesiology and turned it from a champion and bearer of civilization into an actor of low significance and cleanser of the Ecclesial *Confessiocracy* and the Ecclesiastical Culturalism. Its position was occupied by the humanitarian Renaissance and its ideological representative, a new cultural asset whose need did not emerge before the Crusades, by *Human Rights*, the only ones which currently lead civilization and global developments, leaving behind and far away the protector of civilization and global human progress in the 1<sup>st</sup> Millennium, namely *Ecclesiology* of the Church.

Therefore, after the improper appearance of the *prismatic ecclesiality* of the 2<sup>nd</sup> Millennium, the now confessional Churches do not recourse to the Ecclesiology of the Church in order to establish their collective personality, but they instead resort, through an unprecedented confessional introversion to the Ecclesial being and through confessional bottlenecks, to the Human Rights, so as to justify and consolidate from a political and legal point of view their existence and independent disruptive progress.

## Conclusions

The *Ecclesiology* of the first Millennium, because of the prior culturalistic choices of Christians, turned into an *ecclesial Confessiocracy* during the second Millennium. This gave rise to the negative historical consequences, which mankind has been facing in this Millennium, and, in order to face them, it preceded to the *Declaration of Human Rights*. In other words, Christians have renounced the *Ecclesiology* of the Church, her considerable power of unity and cohesion, which constitute her core at the local and social level, and for purely shortsighted, *eonistic* and collective culturalistic reasons, they implemented something which literally crushes and annihilates the Church: the *Ecclesial Confessiocracy*. This novel and multiple Ecclesiology of coexistence and co-territoriality [conviventia] of Churches (prismatic Ecclesiology), besides the fact that, it day by day, constantly gains ground, also gives a completely different

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<sup>5</sup> Steven Runciman, *Byzantine Civilization*, London, 1961, p. 100 and later [See the chapter *Religion and Church*].

reality of the Church than the one envisioned by the Bible, the entire Conciliar Tradition and the entire Christian Patristic literature and experience.

Ecclesiology has no need of Human Rights to bring about unity of people, because of the ontological and eschatological existence of the Church herself. The ecclesial *Confessiocracy* of the 2<sup>nd</sup> Millennium needs, on a permanent basis, Human Rights within a society or a state, when the ecclesial *Confessiocracy* wants to become institutionalized as well as when it seeks to fulfill the same purpose as Ecclesiology.

The Church is established by specific ontological terms, which Human Rights, methodologically, are not aware of or cannot conceive in all their completeness, because they [the terms] lie beyond the concrete universe and History, or rather and more precisely, because these terms clearly involve not only sensible realities but also *noetic* realities.

The points of similarity-convergence and the points of dissimilarity-divergence between Ecclesiology and Human Rights lie in three fields. The first two are common points of similarity-convergence, while the third is a point of dissimilarity-divergence between them and Ecclesiology, which is active only in this field. This last, third field is the one highlighting their specific distinctions, which are the following:

**Common points of *similarity-convergence***

1. The description of reality (History)
2. The interpretation of reality (Sociology).
3. Identifying the *noetic* meaning of reality (Ecclesiology).

**Point of *dissimilarity-divergence***

Therefore, the Ecclesiology lies and acts by definition both within the field of Human Rights, and outside the field of Human Rights, for it is not limited to their context, because it draws its essence in order of precedence from the *Eschata* and the Kingdom.

Moreover, during the 2<sup>nd</sup> Millennium, de facto, we have destroyed and eroded Ecclesiology (-ies), hence the obvious and broad demand and interest for permanent recourse to Human Rights. Nevertheless, Ecclesiology should neither discredit Human Rights, nor accept the absolution of Human Rights, but rather keep its prophetic (eschatological) word intact, and attempt within History a synthesis between the realization of the Church and the vision of Human Rights.

Let's examine in more detail and through a comparative insight, both poles under consideration.

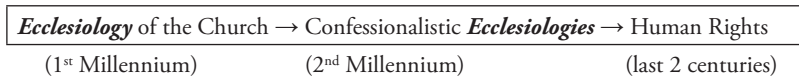
*Human Rights*, inter alia, consist of the following fundamental features:

1. The belief precedes the integration in a body.
2. Integration is a substantial element, but, nevertheless, an external and sociological one.
3. Integration is a subjective request.

*Ecclesiology*, inter alia, comprises the following fundamental features:

1. It *ontologically* identifies belief-faith with the integration in a Church body.
2. Integration is a substantial element, but also an ontological and hypostatic one.
3. Integration is a *communional charisma*.

The alienation of the Ecclesiology of the 1<sup>st</sup> Millennium Church from the plural confessionalistic Churches of the 2<sup>nd</sup> Millennium brought about the creation of multiple confessional Ecclesiologies, which led to various conflicts between Confessional Churches (cf. Religious wars, etc.) and the consequent emergence of Human Rights and recourse to their legal assistance from the Confessional Churches themselves. So the relation, which distinguishes the Confessionalistic Ecclesiologies with the genesis of Human Rights is a *cause and effect* relation. The figure below shows, simply and diachronically, the (post-) evolution, the transformation and sequence of the events that occurred.



Today, the plural culturalistic Churches resort to Human Rights and do not perceive their traitorous word and downfall, which they themselves caused in History worldwide.

Finally, always under the same comparative insight into the two poles, "ecclesiality" is not something abstract, a utopia or a mystical reality. It is an area where Ecclesiology attempts to guide in a joint perspective the plural Churches, which resort to eonistic heterocentricities (Human Rights, etc.), to facilitate their ecclesial self-identity, and which, nevertheless, continue to be members of the *one* Church. However, these

do not represent *the one Church*. This is because mutual integration in the common reality of “ecclesiality”, which the Ecclesiology envisions, is called to assume its canonical form. And when this happens, then Ecclesiology will acquire its hypostatic standards. Eventually, the need for Human Rights, especially for the Churches and the ecclesial area, will vanish. However, this path, in an age of intense “ecclesiological agnosticism” like ours, which marks the contemporary *plural Churches*, will prove long and arduous, because the Ecclesiology of the *common Ecclesiality* is still in a (re)nascent stage.

# Human Rights and the Orthodox Church

## The Dignity of Human Beings Created in the *Imago Dei*

Tamara GRDZELIDZE

The concerns of this chapter are twofold, in relation to human rights; on the one hand, the relationship of human rights to newly emerging democracies, where the Orthodox Church is considered *the* national symbol and, on the other hand, the difference in the way human rights are addressed in societies with a long history of democracy; and a *status questionis*: can the gap between orthodox dogmatic theology and orthodox pastoral theology be reduced? It is in pastoral theology that the orthodox living tradition finds “soft spots” to be revealed in its fullness.

In March 2013 (Helsinki, Finland), the Conference of European Churches, organized the “Churches Together for Human Rights” Conference. According to the press release, participants agreed on the spiritual roots of human rights, but were concerned that churches are neither implementing human rights in their structures, nor advocating for human rights in society, and they affirmed that many churches often reject the rights of “others” in a pluralistic society.<sup>1</sup> In this context, it is remarkable to note that a number of Orthodox theologians have written on the issue of human rights. It is also important to keep in mind a recent discourse on human rights in the political sciences, wherein religions are considered “indispensable allies in the modern struggle for human rights, and (...) religious communities must reclaim their own voices within the

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<sup>1</sup> CEC Press Release at [http://www.ceceurope.org/news-and-media/news/?tx\\_ttnews\[tt\\_news\]=394&tx\\_ttnews\[backPid\]=17&cHash=a3fbdcc464b23729915c5de8d0d3d90d](http://www.ceceurope.org/news-and-media/news/?tx_ttnews[tt_news]=394&tx_ttnews[backPid]=17&cHash=a3fbdcc464b23729915c5de8d0d3d90d) Churches in Europe under the umbrella of the Conference of European Churches express dedication to the issue of Human Rights in *Charta Oecumenica*, Guidelines for the Growing Cooperation among the Churches in Europe, ed. by the Conference of European Churches and the Council of European Bishops’ Conferences, Geneva/St Gallen, 2001, §III.7

secular human rights dialogue, and reclaim human rights voices within their internal religious dialogue.”<sup>2</sup>

Undoubtedly, human rights are a modern issue that the Orthodox Church has to consider with seriousness.

Following the Universal Declaration of Human Rights (1948), there have been new developments in the area of Human Rights. In 1981 and 1992, various UN declarations supported the rights of people who experience discrimination on the basis of their religious beliefs, as well as religious minorities. These rights regulated – and until now have been doing so – a world with increasing pluralism and migration.<sup>3</sup>

It seems, however, that without a corresponding culture concerned about upholding and protecting rights in society, such rights cannot be ensured. Even if, at the State level, a promotion of human rights norms is hugely important for advancing the accountability of nations in the global community, it does not guarantee the socialization of these norms.<sup>4</sup>

In ex-Soviet countries, human rights discourse is unavoidable at the time of emerging democracy and religious self-identification. In the post-Soviet societies undergoing transition, ages – old faith communities are in the process of self-identification; the interruption in organized church life has had long-term implications for their Christian identity.

The ground on which the exchange of human rights discourse and theology occurs, shows the contextualization of the modern issues.<sup>5</sup> How far does the Orthodox Church maintain the contextualization of such modern issues, and to what extent in each place?

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<sup>2</sup> *Christianity and Human Rights*, edited by J. Witte, Jr. and F. S. Alexander (CUP, 2010), p. 41.

<sup>3</sup> In many parts of the world, including the developed world, where human rights are penetrated into everyday life of citizens, equal rights to new religious movements is still an issue under discussion. Christopher Marsh and Daniel P. Payne, “The Globalisation of Human Rights and the Socialization of Human Rights Norms” at <http://lawreview.byu.edu/archives/2007/3/4MARSH-PAYNE.FIN.pdf>, p. 674.

<sup>4</sup> Marsh & Payne, p. 665, p. 672.

<sup>5</sup> In his paper presented at the conference in Finland in 2013, Dr Michael Hälm comments on the importance of not reducing human rights to the level of laws (nomos) but to have an opportunity of interpreting them within the orthodox concepts. The authentic accommodation of human rights within orthodox tradition is possible only through dialogue with others by using one’s own intellectual and cultural resources. I express gratitude to Michael Hälm for allowing me to read through his presentation.

Some newly emerging democracies in Eastern Europe have shown that, in spite of efforts by civil authorities to formally recognize human rights norms by signing corresponding treaties and declarations, there is an urgent need for a rights culture to be in place, so that human rights be effective.<sup>6</sup> Developing a culture in this context, means providing a space where these topics can be discussed and interpreted.<sup>7</sup> The responsibility for such a provision belongs to the State and to the non-governmental agencies. These conversations, however, are also expected to happen within the church and the sphere of theological reflection.

Providing an effective deliberation over human rights norms in the context of the Orthodox Church, firstly requires a clear understanding of what the separation of church and State is in reality. As the article by Marsh and Payne indicates, it was not until post-WWII that Thomas Jefferson's metaphor about a "wall of separation" (1802) was effectively amended in the American education system (1947).<sup>8</sup> So, for newly emerging democratic States where the Orthodox Church is the majority faith community, these are most urgent issues to be addressed and discussed, in order for the Orthodox Church to be able to gain credibility, rather than risking losing it, by not demonstrating an understanding of the realities wherein the former is situated – both globally and locally –, in regard to the State and church's differentiated spheres of authority.<sup>9</sup> To take this point a little further, a better understanding of the church-State separation may also result in the differentiation of ecclesial authority in church services – liturgy, mysteries, rites – from the institutional ecclesial authority. The latter, in practice, exercises (or, at least must do so) a fair involvement of laity and maintains ongoing relations with the world beyond its canonical boundaries. What local Orthodox churches in the post-Soviet space attempt to do, is retain the function of the cultural and moral component. It is also true that, under these circumstances, existing

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<sup>6</sup> Witte & Alexander, 1. On some similar problems within the newly emerging democracy in Georgia see Tamara Grdzeldze, "The Orthodox Church of Georgia: Challenges under Democracy and Freedom (1999-2009)", *International Journal for the Study of the Christian Church*, Vol. 10, issue 2-3, May 2010, p. 160-175.

<sup>7</sup> *Ibid.*, p. 13.

<sup>8</sup> Marsh & Payne, p. 677-678.

<sup>9</sup> See a general discussion on the theme, not particularly on the Orthodox Church in M&P, 685. See also the paper by Michael Hälm speaking about the importance of *differentiating* things like Human Rights from International Rights or holistic claim of one particular confession from universal claims intended for all humanity.

cultures show a tendency to welcome the ecclesial “dominance” instead of “freedom of choice”.

After taking into account what has preceded, it must be noted that many Orthodox commentators in the field of Orthodoxy and human rights, insist on the importance of keeping church and State separate, as opposed to following the Byzantine concept of *symphonia*, whereby church and State act in harmony.

What one would wish to see more explicitly within the Orthodox discussions, is a shift to addressing diverse theories of Human Rights.<sup>10</sup> One development in this direction worth exploring further, for example, and from the viewpoint of Orthodox ecclesiology, is the discussion around climate change.<sup>11</sup>

## 1. A brief point about Orthodox commentators of Human Rights

Early Orthodox commentators on human rights, it seems, found it difficult to make a profound connection between Orthodox doctrine and human rights, and were even quite anti-human rights, considering it something alien to Orthodox theology (Yannaras, Yannoulatos, Guroian). However, recently there has been a substantial criticism against the view that human rights are hostile to the Orthodox teaching (Kalaitzidis, Delikonstantis, Papanikoloau, McGuckin, etc.).

Present commentators have been far more sympathetic towards the issue, searching authentic threads between the two, strongly advocating for the exposure of further links and nurturing a dialogue. Human rights issues are viewed as part of “the fundamental fabric of Orthodoxy’s ancient constitution,” says John McGuckin. Long before the Enlightenment, the Orthodox Church recognized the human rights principle through

<sup>10</sup> It must be noted that the ROC document makes a reasonable suggestion on the issue: “The realization of human rights should not lead to the degradation of the environment and depletion of natural resources.” (III.5).

<sup>11</sup> See Th. Rathgeber, *Climate Justice, Human Rights and the Role of Churches* (Geneva: WCC Publications, 2012) where the author advocates compatibility of human rights with the protection of the environment; actually the two may go together and human rights should not harm environment since the latter would be the violation of the rights of the others; all must live in the protected environment. See also T. Grdzeldze, “The Church” in *Systematic Theology for Climate Change*, (eds.) Peter Scott & Michael Northcott (Routledge, forthcoming).

the symphonia of civil law and ecclesiastical law, both of which strive to protect the individual in society.<sup>12</sup>

In *Mystical as Political*, Papanikolaou tackles the issue of human rights from the perspective of theological anthropology, Orthodox personhood, in light of the overarching theme of divine-human communion. Although human rights language “falls short of expressing all that the human is created to be”<sup>13</sup>, it is not unacceptable to the Orthodox teaching on deification.<sup>14</sup> Noting that interest towards the Trinity in the twentieth century had direct implications for the theological anthropology of personhood, Papanikolaou brings into discussion the contribution of John Zizioulas. The latter stated clearly that personhood is the only guarantee of human uniqueness expressed in freedom.<sup>15</sup>

“It is in Zizioulas’ reflection on the monarchy of the Father that one sees clearly how his relating a theology of the Trinity to a theology of personhood cannot be labeled as a simple social trinitarianism, nor as a top-down approach. The constitutive aspects of Zizioulas’ theology of the Trinity are grounded in the Eucharistic experience of God in Christ by the Holy Spirit ... Personhood is not a capacity of an achievement but a mode of being realized in particular relations of love and freedom.”<sup>16</sup>

At the same time, Papanikolaou remarks about how rights, though a concept not alien from Christian theology, are a result of the world’s alienation from God.<sup>17</sup> He makes a helpful claim for all who are truly concerned about the actual presence of the Orthodox Church in this world, about the church retaining its prophetic voice, about the church being heard under multi-religious or secular circumstances: the divine-human communion and relational notions of personhood *imply* the rhetoric of human rights.<sup>18</sup>

Reflection in this paper gleans from these writings and maintains the conviction that the core of human rights discourse is in fact not alien to the Orthodox Church, its teaching or the Fathers of the Church.

<sup>12</sup> Witte & Alexander, p. 173-190.

<sup>13</sup> A. Papanikolaou, *The Mystical as Political, Democracy and Non-Radical Orthodoxy* (Indiana: University of Notre Dame Press: Notre Dame, 2012), p. 88.

<sup>14</sup> *Ibid.*, p. 120.

<sup>15</sup> *Ibid.*, p. 100.

<sup>16</sup> *Ibid.*, p. 113. Also see M. Hälm on the ultimate definition of human being by love.

<sup>17</sup> *Ibid.*, p. 124.

<sup>18</sup> *Ibid.*, p. 125.

Furthermore, there has been a general shift in Orthodox thinking about this issue in the last 10-15 years or so. For example, in 1979 a distinction was made by Archbishop Anastasios Yannoulatos between human rights and Christian ethics: “the original concern of human rights declarations was to protect citizens from the arbitrary use of power by the state. ... Human rights, therefore, are concerned with the relationship that exists between the individual and the state. ... Christian faith starts and ends with God.”<sup>19</sup> This was a fair observation at the time; it must also be noted that Yannoulatos was not hostile to human rights conversation and suggested it was a kind of universal basis for conversation in the modern world. However, the paradigm of Orthodox thought on this issue has shifted in another direction, it seems to me. Today, while some Orthodox theologians are tackling issues of political theology, the Orthodox may find themselves on the margins if they attempt to draw a line of demarcation in their discourse between the Orthodox Christian vision and the rest of the pluralistic world, instead of advancing a more inclusive eschatological perception. Orthodox ecclesiology extends to political sphere and thus also to human rights.

## 2. Document of the Russian Orthodox Church

The document of the Russian Orthodox Church (ROC) “The Russian Orthodox Church’s Basic Teaching on Human Dignity Freedom and Rights”<sup>20</sup> remains a major source of criticism among those who comment on human rights and the Orthodox Church. Since it does not have the status of Orthodox conciliar documents its constructive criticism and gradual improvement may play a useful role for a discourse on Orthodox theology and Human Rights.

In his rather extensive article, Alexander Agadjanian criticizes the claims in the Russian document regarding the Christian roots of freedom and dignity, but not of rights.<sup>21</sup> Therefore, a kind of “hierarchy” of admissible rights is proposed which turns the whole concept of rights –

<sup>19</sup> A. Anastasios (Yannoulatos), *Facing the World, Orthodox Christian Essays on Global Concerns*, Translated by Pavlos Gottfried (Geneva: WCC Publications, 2003), p. 50-51.

<sup>20</sup> <https://mospat.ru/en/documents/dignity-freedom-rights/>.

<sup>21</sup> A. Agadjanian, “Liberal Individual and Christian Culture: Russian Orthodox Teaching on Human Rights in Social Theory Perspective”, *Religion, State & Society*, Vol. 38, No. 2, June 2010, p. 97-247, p. 99.

indispensable in the pluralistic context – into a domain controlled by one particular agent. Another place where the ROC promotes such a moral-controlling role for rights discourse is when ‘sobornost’, the Russian version of catholicity, is proposed as a way to limit the political and civil rights.<sup>22</sup> The document also reduces rights to the individual rather than the collective.<sup>23</sup> An emphasis upon the latter could have attracted more attention because of the important role of community life in the Orthodox Church and the importance of personhood in Orthodox anthropology.

The church, according to the document, claims moral and cultural hegemony<sup>24</sup>, and rights themselves are viewed as culture-centered rather than individual/person-centered. As Agadjanian points out, the document is at the same time inward-oriented and outward-oriented<sup>25</sup>, thus creating uncertainty about its character and destiny. Clearly, the ROC attempts at catechizing its own flock on issues that would be difficult for them to figure out by themselves, but the church also speaks to the outside world, and not necessarily very far, to the world nourished by Western liberal tradition. The document is also problematically unclear as it refers to a double discourse: it speaks about “anti-Western” language used for insiders who are protected by the fact that they adhere to the Orthodox Church and it speaks about the “harmonization” of religious and civil discourses for outsiders.<sup>26</sup> The confusing double discourse is a well-known phenomenon in the post-Soviet space among the political and religious elite. Another source of confusion about the document is its tendency to combine absolutist and pluralist discourses.<sup>27</sup> There is an interesting observation related to the understanding of human rights as described here, according to which, since the 1990s, the Russian Orthodox Church

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<sup>22</sup> *Ibid.*, p. 101.

<sup>23</sup> *Ibid.*, p. 106.

<sup>24</sup> *Ibid.*, p. 104.

<sup>25</sup> *Ibid.*, p. 103.

<sup>26</sup> Document says in II.2: “The social system should be guided by both freedoms, harmonizing their exercise in the public sphere.” Or again in III.3: “The development and implementation of the human rights concept should be harmonized with the norms of morality, with the ethical principle laid down by God in human nature and discernable in the voice of conscience.” This kind of intentions towards ‘harmonization’ is a result of a struggle to substitute temporality by eternity; in other words a rejection of the contextualisation of the Gospel.

<sup>27</sup> V. L. Horsfjord, “The Russian Orthodox Church: Two Discourses on Human Rights”, *Nordic Journal of Human Rights*, Vol. 4 (2012), p. 429-453.

has been pursuing “civilizational nationalism”, a new type of nationalism proposing Russia as the core of Orthodox civilization. The latter does not focus on nation-state but rather has an imperialistic character.<sup>28</sup>

In her Master’s thesis on “The Interpretation of the Human Rights from the Perspective of the Russian Orthodox Church”, Natallia Vasilevich points out that the document in discussion aimed at producing a legitimate anti-Western political discourse for internal state politics as well as for external church relations. Through this document, and not only, the Russian Orthodox Church is trying to formulate its own human rights teaching, an alternative to the Western democratic ideal.<sup>29</sup> In spite of the fact that the text is a document of the local church, it still has claims and style for serving the Orthodox Church worldwide.

The Russian Orthodox Church’s “Basic Teaching on Human Dignity” systematically expresses negativity towards human rights discourse while the concept of human rights, as Rowan Williams says, “is a global benchmark for identifying injustices to those who have never been able to make their voices heard.”<sup>30</sup> The Orthodox Church has an ample opportunity to focus on defending the defenseless – advocate for Human Rights – that is in full accordance with its own teaching.

### **3. The Orthodox Church attacks Human Rights: 17 May 2013, Tbilisi, Georgia**

On 17 May, an international day of fighting homophobia and transphobia, representatives and supporters of the LGBT community were not able to hold a peaceful march in Tbilisi, Georgia, which they had announced two weeks in advance. In the central streets of Tbilisi, groups of clergy and people mobilized to protest the LGBT peaceful

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<sup>28</sup> Верховский, Александр Национализм руководства Русской Православной Церкви в первом десятилетии XXI века [Verkhovsky, Alexander Nationalism Among Russian Orthodox Church’s Leadership in the First Decade of *the 21<sup>st</sup> Century*] Малашенко, Алексей, Филатов, Сергей (ред.) Православная Церковь при новом Патриархе [Malashenko, Alexey, Filatov, Sergey (ed.) The Orthodox Church with New Patriarch], (Moscow Carnegie Centre, 2012) 141-170.

<sup>29</sup> I would like to thank Natallia Vasilevich to let me use a manuscript of her thesis. Vasilevich, p. 36.

<sup>30</sup> R. Williams, “Human Rights and Religious Faith”, Lecture delivered at the World Council of Churches on 28 February 2012, <http://rowanwilliams.archbishopofcanterbury.org/articles.php/2370/human-rights-and-religious-faith>.

marchers in the their own march against “immorality”. These groups managed to avoid police defenses and followed the peaceful movement, arming themselves with wooden sticks and chairs as well as crosses, icons and ecclesial banners. Police moved LGBT march participants away from their route by special buses but protesters still managed to seize a couple of busses and break the glass by throwing stones. The protesting groups were screaming and shouting offensive words against the LGBT march participants, many of whom were just supporters.

This was evaluated as one of the most aggressive expressions of homophobia in Georgia. Without support from the police, the march would have turned into bloodshed. The protesting groups were three times larger than the LGTB marchers. Several Orthodox priests spoke openly about their protest against the immorality of the LGBT marchers, saying that a march like this cannot take place in a country like Georgia. Some of the protesters were holding nettles to punish “advocates of immorality” in an Orthodox way, not by bullets but by nettles. These protesters against the LGBT march claimed to be Orthodox Christians and patriots defending their country against immorality. Their aggressive behavior was far too disproportionate to the initial scale of the peaceful march. A large group of citizens who witnessed this aggression also complained that Georgia was a country where minorities were defenseless and any crime could be committed in the name of “Christian morality.”<sup>31</sup> At the end of the day, 28 persons were registered with injuries, 14 out of whom were hospitalized. One group was saved from the aggression by being taken out in a bus; they said they were helped by a priest.

Georgian civil society reacted in a very direct way to this unfortunate aggression displayed by Orthodox believers and clergy. Protesters of the LGBT march were unmistakably called a “mob driven by hatred against human beings who have different convictions from their own”; sympathy was expressed towards those Christians who truly believe in Christian virtues and cannot accept such violence against others; but also, considering the paramount authority of the Orthodox Church of Georgia among the majority of the Georgian population, the liberal media spoke about the danger that aggressive actions done for the sake of “defending morality” might become contagious.

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<sup>31</sup> According to Eka Kevanishvili for Radio Liberty (in Georgian language), 17.05.2013 <http://www.radiotavisupleba.ge/content/saprotesto-aqcia-rustavelze/24988917.html>.

There were also more radical views expressed: that on 17 May, the Orthodox Church of Georgia orchestrated the most shameful violence and misanthropy. Again and again, the unconditional authority of the Orthodox Church of Georgia was at the center of fear that this behavior and attitude could become exemplary for many. The Baptist bishop in Georgia, Malkhaz Songulashvili, wrote how in those days he prayed in the church not only for persecuted Christians but also for those persecuted by Christians.<sup>32</sup>

The international community, supporting the Georgian integration into the European Union, was also alarmed. According to the report of Thomas Hamarberg, advisor on Human Rights of the European Union, a former Commissioner for Human Rights in the Council of Europe, the events of 17 May considerably damaged the reputation of the Georgian state within the international community. International media took this violation of human rights seriously: the *New York Times* and the *Economist*, among others, commented on the event. According to the World Value Survey, after this event Georgia moved to the third place on the list of most homophobic countries in the world.<sup>33</sup>

The government made an adequate and timely statement with regard to the incident. The Patriarchate of the Orthodox Church of Georgia brought a formal accusation against two priests for their violent behavior at the peaceful demonstration. In the view of some critics, however, neither the government nor the Patriarchate reacted strongly enough by issuing general messages against such violent conduct. On 16 July 2013, the Parliamentary Committee of Human Rights Protection issued a report condemning the violence of 17 May and confirming that the Orthodox Church of Georgia had not provoked it. The Georgian liberal media found this report not accurate, and accused the Committee for overlooking the insufficient protection of citizens by state police as well as spurring on the part of the Orthodox Church.<sup>34</sup>

Certainly, this aggression against the LGBT group members and their supporters needs to be viewed in a broader perspective of the ongoing political changes and social difficulties that Georgia has been facing

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<sup>32</sup> <http://www.radiotavisupleba.ge/content/liberty-diaries-malkhaz-songulashvili/24997844.html>.

<sup>33</sup> <http://www.radiotavisupleba.ge/content/irakli-vacharadze/25001773.html>.

<sup>34</sup> <http://www.radiotavisupleba.ge/content/adamianais-uplebata-komitetis-daskvna/25049172.html>.

since the collapse of the Soviet Union. In spite of the progress towards the de-Sovietization of the nation, there is a huge gap in the society. I attribute this violence done in the name of faith and morality to a clash between “traditional” and “modern” perspectives in a society that is not prepared for dealing with such “clashes”. Generally, this can be seen as a social problem that involves all sectors of the society. The church – clergy and faithful – are as much a part of this society as others who are more open to a modern way of thinking. The majority of the population – which accepts Church authority unconditionally and even places it above the law – thinks and acts so because of a lack of understanding about where (or, even when!) they live and about the aspirations and policies of their homeland. The responsibility goes to a whole range of sectors of society, from the government to a very large non-governmental segment.

Violence and aggression in the name of morality or Christian values with regard the rights of sexual minorities or other minority groups is an anomaly in states with a long history of democracy and a developed culture of human rights. Tolerance towards and reception of Christians, citizens and human beings with different convictions from one’s own, evidently, is in many states part of a larger social context where reflection on modern issues, such as human rights, has become an everyday reality. The following pages will illustrate the difference between “traditional” and “modern” treatments of the clashes by Orthodox clergy in contexts of Western liberal democracy.

The comparison makes sense because Georgia, in which the majority of the population is Orthodox, is trying to become an integrated part of the European family. The reason for the incompatibility of the modern issues with the traditional Orthodox society, however, transcends social-political causes and merges into the rigid interpretation of church teaching itself. This rigidity will be discussed further on.

#### **4. The Orthodox Church considers Human Rights in the context of liberal democracy**

I had the privilege to pose to five Orthodox priests (two from Britain, USA, Scandinavia, Australia) with a substantial pastoral experience the following question: How does the Orthodox spiritual guidance deal with human person confessing sinful behavior while the same behavior, according to the Human Rights declarations, has been a matter of one’s

individual choice? I am glad to admit that the responses converge on the love of God as the alpha and omega of the Orthodox spiritual guidance. Every member of a faith community is equally precious, whether they are in crisis, live a balanced life or live differently from the majority of the faithful. Even so, a further analysis of the responses is very interesting.<sup>35</sup>

The faithful seek spiritual guidance within the sacramental context, mostly during confession leading towards Eucharistic communion. A confessor may find oneself in conflict between one's faith – the message of the Gospel, and what the world is encouraging. The understanding is that the worldly regulations come in conflict with the life of the Church. The sacramental context of the guidance embraces the mediation of a clergyman (sometimes women superiors of monasteries also hear confessions) for the confessor of sins and the clergyman offers actual guidance if there is a need or expectation for it.

“A case of conflicted life which seem impossible in the eyes of the world or the church is never impossible for God,” says priest from Britain, “because God always looks at the person's heart and recognizes love even in and through the rebellious or weak deeds. It is always a matter of encouraging the person to live on in the fuller joy of the Gospel despite repeated errors and wanderings – even endless feelings of being lost or massively conflicted – because each and every moment we can only make one true prayer to God and that is: ‘deliver me from my sorrow’. And this prayer itself is deliverance.” The repenting soul illumines the darkened conflict, the suffering brings them to a new vision; “the *repentant heart* in this sorrow is serving as the illumination.”

If one begins from the centrality of the person, confession (or spiritual guidance) becomes more about restoring the relationship which has become broken between the penitent and Christ than about punishment for transgressions, although this latter does, of course, play a part. Over the question of people whose life situation does not conform to the ideal upheld by the church, again the overriding question must be “What can I do to help this person come closer to Christ?” (Priest from Scandinavia) In other words, if a strict application of the canon will break the person, it is better not to apply it but to relax it in order to save life rather than kill it. In fact, the Christ of the Gospels always meets the person where they are and allows them to come closer to him. In like manner, perhaps it is best for the confessor to work to bring the person closer to Christ

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<sup>35</sup> The anonymity of priests participating in this exercise is being preserved.

through repentance, in spite of, or perhaps because of, what they are by nature.

If one confesses actions deemed sinful in the church, even if the secular world finds it acceptable, it must be made clear to the person that his/her conduct is sin and thus it is against God; if we do not then we rob the individual from repenting because in effect we tell him/her there is nothing to repent from. Any spiritual guidance means to care for the person and his/her eternal salvation; this requires love and acceptance of the person despite one's sins.<sup>36</sup> As a spiritual guide, the priest sees his role as being the nurse at the hospital who helps the person in pain come to the true physician – Christ. (Priest from Australia)

The spiritual guide advises a confessor to do what is best for a stable and chaste life. "It is the priestly confessor's job to be the shepherd who does not frighten the sheep or let them go astray, but always represents to them the ineffable beauty of the love of Christ. There are times when a confessor makes a hard shell – based on the secular rights – so that Christ has no room to speak to the heart." (Priest from No. 2 Britain)

One priest advised that in a situation of conflict, one should be thoughtful and graceful to others involved in the conflict; one must not undermine other's interests for the sake of one's own. In a way, one must think about the outside world and the well-being of others. (Priest from the USA)

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<sup>36</sup> "If a person comes to me confessing for example that he is suffering with homosexuality, I would first understand from him his understanding of this problem. I.e. Does he think it is something against God or not? If he does not think there is anything wrong with it I would then explain to him the Churches view that this is a sin, like any other sin. However, this is all done with great sensitivity and love towards the individual. If he then agrees to struggle against the sin I would give him some advice depending on his individual circumstances to help him with his struggle. If he/she is genuine in this struggle I would not deny him of the Eucharist, as it is my view that the Eucharist is medicine required to heal us. At all times, I would try to make the person feel as a member of the church, however if his situation ever becomes public then unfortunately this can become difficult due to peoples view. If the person does not view this as a sin and shows no intention to struggle against the sin, then I could not in good conscious allow him the Eucharist. However, I would still make every effort to make him feel loved and welcomed to come to church and be part of the community. Another example is drug addiction. First and foremost, they are made to feel loved and not to be isolated from the church. I would then counsel him to seek professional help and counseling to overcome the addiction." (It is very interesting that two orthodox priests, from Britain and Australia, referred to homosexuality as a possible case of a conflict between the worldly acceptable behavior not accepted in the Orthodox Church but one sees it as a sin but the other does not see it as a sin.)

In the world-Gospel conflict resolution one pastoral approach emphasizes contextualizing the Orthodox concept of “personhood” that is founded on taking up the cross and identifying oneself with Christ. This pastoral framework is as large as the Orthodox teaching and maybe as resilient as well. Then each case requires interpretation of one’s identification with Christ anew. It is hard to imagine that the prevailing image of Christ in such an interpretation will not be his abundant love towards the repentant soul. (Priest fno. 2 rom Britain)

In spiritual guidance, everything takes place between the human being and God and the clergyman is a witness to the graceful love of God the Father. In this context, not only is condemnation not acceptable but also any moralization is out of place. The clergyman helps the repentant in his/her to strive to live according to the will of God, transform oneself, cleanse one’s desires by the fire of the divine love and bring oneself in harmony with the primordial human dignity. Moral norms make sense only as points of orientation but cannot serve as the criteria for judgment and condemnation. “The sabbath was made for humankind, and not humankind for the Sabbath” (Mark 2: 27). (Priest No. 1 from Britain)

Under any circumstances, love is the only way.

## **5. Orthodox pastoral theology and Human Rights**

There are two different examples from two different settings which demonstrate how the Orthodox Church may interpret the issue of theological anthropology (personhood), the dignity of each human being created in the image of God: the above-mentioned episode from Georgia in 2013 and results of interviews conducted with Orthodox priests in Western Europe, the USA and Australia. The first example shows the reality of the church under a newly emerging democracy where traditional Orthodox society is struggling to catch up with pluralism and concepts of individual freedom. The other examples speak to the well-established democratic systems. In the first case, the Orthodox teaching leads to violence, in the other, to tolerance; in the first case, hatred overcomes the Christian virtue of love; in the second, love prevails. Even though Christian theological anthropology has been interpreted in mutually exclusive ways in countries with different social and political cultures, this difference bears some significant overtones. For example, in the western world sexual minorities are treated as sick persons in need of healing.

Who is responsible for such a divergence? Which interpretation is genuinely linked with Orthodox teaching: one that begets violence or one that begets tolerance? The responsibility for interpretation, certainly, lies within the people who represent the church and the society. In a society with weak democratic structures and civil consciousness anti-human rights violence finds substantial support that proves the urgency for profound discussions on orthodox interpretation of such modern issues as Human Rights. The issue, however, is not only socio-cultural but also hermeneutical: how does orthodox dogmatics transform into orthodox teaching that feeds the living tradition of the church?

Then, is it a matter of dogmatic theology or of the living tradition that the orthodox spiritual guidance, based on the conviction of the dignity of every human person created in the image and likeness of God, may show different patterns of reflection within the Orthodox Church?

It seems, though, that the issue needs a more profound examination than this paper provides – that the living church tradition finds ways to overcome in pastoral theology the rigid nature and implications of more formal ecclesial interpretations of personhood. Pastoral theology in this case reflects the fullness of the living tradition as it is connected with the existential reality of one who seeks spiritual comfort and of one who assists in this search. Treating a person in confession or under one's spiritual guidance in a loving way, rather than in a punitive way, and caring about one's dignity is not a matter of *oikonomia*, as some respondents stated. In my view, this kind of treatment is not so much the result of *oikonomia* as a proper understanding of Christian anthropology/personhood. If it were *oikonomia*, it would be a particular case. (For example, it is *oikonomia* if a bishop or a priest allows under special circumstances a non-orthodox person to receive communion.) But to have an established practice of treating repentant sinners with love rather than punishing and alienating them from the body of Christ, this is more than *oikonomia*, it is the Church teaching – *ex doctrina ecclesiae*.

Sergei Bulgakov attempted at convincing his fellow Orthodox of the necessity for opening up the Orthodox dogmas, especially the one of the God-Human, to historical reality at every stage of human history.<sup>37</sup> There

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<sup>37</sup> S. Bulgakov, "Dogma and Dogmatic Theology", Translated by Peter Bouteneff, in *Tradition Alive, On the Church and the Christian Life in Our Time/ Reading from the*

are only a small number of dogmas, says Bulgakov, and most dogmatic questions are discussed by means of church teaching.

The dogmatic field is larger than dogmas, embracing issues of Pneumatology, human being and world, divine Providence, church, grace, mysteries and eschatology. Church life must be fully and dogmatically expressed by means of doctrinal theological interpretation, and then be transformed into dogmatic definitions. Teaching is turned into a dogma through the living tradition of the church. Bulgakov, on the basis of the life of the church, identifies dogma not as something *given* but something *in search*. The Word of God, on the other hand, the absolute criterion to test theology, does not bind the free inspiration of creativity but determines it as the given precious truth.<sup>38</sup> In other words, Bulgakov understands church dogmas as immovable truths sustaining life in the living tradition of the church.

Orthodox ecclesiology, with its emphasis on catholicity, allows the church to be open and inclusive – contrary to how it has often been formally demonstrated by the Orthodox Church. The Orthodox Tradition, which all are happy to call the living tradition, indeed has potential to be in conversation with the world here and now. However, to be in a conversation must not mean dominating the scene, as the church tends to do when speaking formally to its own flock or to those outside of the church (i.e. the ROC document). Not least is the Orthodox understanding of sin and free will that supports this aspect of pastoral theology. Sin, in the Orthodox teaching, does not destroy the divine image in human beings so that “the sin is condemned but not the sinner”.<sup>39</sup>

The contextualization of modern issues is a twofold phenomenon that equally concerns the people of God and the teaching of church. When interpreters of church teaching are faithful to the principles of modernity, contextualization takes a natural turn. Most importantly, Orthodox theology has to be more sensitive to the gap between the rigidity of

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*Eastern Church*, edited by M. Plekon (Oxford, UK: Rowman&Littlefield Publishers, 2003).

<sup>38</sup> This close paraphrase of Bulgakov’s text is given from the Russian original *Догма и Догматика, Живое Предание, Православие и Современность*, Paris: YMCA Press, 1937; repr. Moscow 1997, p. 8-25.

<sup>39</sup> McGuckin, chapter 7. Two wills, natural and gnostic, are united in Christ thus giving an opportunity to human beings for the redemption of will.

the formal ecclesial teaching and the flexibility of the pastoral theology nurtured by the living tradition of the Orthodox Church.

I came across the expression recently that, the city of Gaza – where human rights are non-existent –, is called “the absence of dignity”. Because, in fact, where there is respect for human rights there is “a culture of dignity”<sup>40</sup>, a cultivation of the uniqueness of the human person.

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<sup>40</sup> R. Williams, *ibid.*



# On the Moral Content of “Human Rights” and of “Theosis”

## A Reassessment

Alfons BRÜNING

### 1. Introduction: A dialogue at a (temporary) dead end

A couple of years have passed since in August 2008 the Russian Orthodox Church (ROC) had published its official document about its “Basic Teaching on Human Dignity, Freedom and Rights”.<sup>1</sup> According to statements which by then accompanied the release of this document, it was meant as a first, and admittedly incomplete draft containing basic assessments, from the perspective of Russian Orthodox theology, about the themes included in its title. Also because of this preliminary character, it was meant to serve the purpose of facilitating further discussions with Human Rights organizations inside Russia and abroad, and with other religious denominations.<sup>2</sup> The chances for such a dialogue seemed to be even better because also defenders and supporters of the Human Rights concept could readily admit the incompleteness of “their” concept in various respects. So there were two standpoints admittedly being, despite standards already achieved, still under development – a situation which seemed to open a path for dialogue and mutual enrichment. Now, almost seven years later, there might be the time for a first evaluation of whether and to what extent these expectations have been fulfilled.

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<sup>1</sup> “Basic Teachings of the Russian Orthodox Church concerning Human Dignity, Freedom and Rights”, on <https://mospat.ru/en/documents/dignity-freedom-rights/1/> [accessed August 18, 2014]; also published in the journal *Cerkov' i vremia* [Church and Time] 44, 2008, No. 3, p. 145-164.

<sup>2</sup> Cf. among others the final sequence of the document itself, and the accompanying speech of (by then) Metropolitan Kirill (now patriarch) in *Cerkov' i vremia*, loc. cit. [fn. 1], p. 100. See also the statement of archimandrite Cyril (Hovorun) on occasion of the 7. theological consultations of the ROC with the German bishop's conference in december 2011, *Pressemitteilungen der Deutschen Bischofskonferenz*, 188a, December 8, 2011, p. 2.

The impression delivered by such interim evaluation can only be called disappointing. Since some time the dialogue has reached a dead end. On a couple of fields which initially turned out to deserve a more thorough exploration, regardless of some promising initial steps the dialogue has not continued. Instead, stereotypes and polarizations increasingly determine the tone and the content of debates. In the Orthodox East it is anti-Western resentments again which re-entered the scene on large scale. Such anti-Westernism, among others, continuously qualifies also the Human Rights concept as a mere expression of Western libertarianism, godlessness and moral decay. On the opposite part, i.e. in a good part of the Western media, other old stereotypes are widespread again of an Orthodox Christianity being mainly a servile handmaiden of authoritarian states, theologically backward and underdeveloped, preaching and practicing nothing but an old-fashioned and pharisean moralism that is, and even wants to be, completely at odds with most relevant aspects of modern society.

What can be witnessed are several layers of politicization. Sure, the one and the other stereotypes are oversimplified and distorted images, as stereotypes usually are, but their simplicity makes them even more persistent, also because it is due to this shape that they are suitable and useful for ideological instrumentality. Anti-Western stereotypes, which always played a certain role in the Eastern, predominantly Orthodox hemisphere<sup>3</sup>, have been taken up by more or less radical Orthodox and fundamentalist groups of a kind that also Orthodox scientists like Anastasia Mitrofanova or Aleksandr Verkhovskii have described as “politicized Orthodoxy”.<sup>4</sup> Patterns of anti-Westernism have often been turned into key stones of a political agenda. Such themes then function as markers of allegedly distinct “civilizations” in which adherents of Human Rights and Orthodox believers are almost appearing as inhabitants of different

<sup>3</sup> On the variety of Orthodox Anti-Western attitudes see V. N. Makrides, “Orthodox Anti-Westernism Today: A Hindrance to European Integration?”, in *International Journal for the Study of the Christian Church*, Vol. 9, 2009, No. 3, p. 209-224. For the Russian Orthodox Church, cf. N. Mitrokhin, *Russkaia pravoslavnnaia cerkov'. Sovremennoe sostoianie i aktual'nye problemy* [The Russian Orthodox Church. Present State and Actual Problems] (Moscow: Biblioteka Zhurnala Neprikosnovennyi Zapas, 2004), p. 258-261.

<sup>4</sup> Cf. A. Mitrofanova, *The Politicization of Russian Orthodoxy* (Berlin: *ibid.*, 2007); Aleksandr Verkhovskii, *Politicheskoe pravoslavie: russkie pravoslavnye nacionalisty i fundamentalisty, 1995-2001 g.* [Political Orthodoxy. Russian Orthodox nationalists and fundamentalists, 1995-2001] (Moscow: Sova Centr, 2003).

planets. The theme of Human Rights is being prominently inscribed into this agenda, identified with an undue libertarianism that allegedly predominates in the Western hemisphere, whereas the Orthodox East stands for the preservation of moral values (with the implicit suggestion, that there would be, vice versa, a lack of morality in the West, and no tradition of freedom in the Orthodox East).<sup>5</sup>

For example, the controversial performance of the Russian punk band “Pussy Riot” in the Christ the Savior-Cathedral in Moscow in February 2012 made it to the rank of a *pars pro toto*, a central reference point for a discussion about societal values in Russia and the West. Soon allegedly irreconcilable positions were used to add to the definition of something like distinct civilizations. Another equally ominous *pars pro toto* issue: The question of Homosexuals and LGBT rights, adequately or not, meanwhile has achieved almost the character of some kind of a litmus test for the degree of either “freedom” or “moral values” realized in a particular society (or, again, civilization), also leading many discussions to a dead end and frozen (or heated, but equally fruitless) confrontation.

To be sure, these issues do point at more substantial questions concerning the Human Rights agenda, but the confrontation usually remained at the noisy surface. Only by exception and somewhere in the background, such peaks of confrontation led to an identification of the potential to highlight hitherto unresolved tensions also within the Human Rights concept. However, conciliatory, well-informed and at the same time differentiating positions which tried to give due credit to the actual complexity of the problems behind the spectacular events<sup>6</sup> are barely heard in the growing noise of ideological confrontation.

<sup>5</sup> There are in fact numerous indications that within wide circles of the ROC models of a division of the globe into spheres of distinct civilizations (like those of Huntington, Spengler, Danilevskii and others) continue to enjoy significant popularity. For further evidence and a more thorough treatment of this question cf. A. Brüning, “‘Freedom’ vs. ‘Morality’ – On Orthodox Anti-Westernism and Human Rights,” in Alfons Brüning, Evert van der Zweerde (eds.), *Orthodox Christianity and Human Rights* (Leuven: Peeters, 2012), p. 125-152.

<sup>6</sup> For such differentiating statements concerning the “Pussy Riot” affair and the more basic problems of e.g. “freedom of press and art” versus “non-discrimination of believers” see e.g. K. Richters, “Pussy Riot, the Media and Church-State Relations in today’s Russia” (working paper) in *Religion & Culture Web Forum*, University of Chicago, School of Divinity, November 2012, available at <http://divinity.uchicago.edu/martycenter/publications/webforum/>; D. Uzlaner, “‘The Pussy Riot Case’ and the Peculiarities of Russian Postsecularism,” in *Religion, State, Church* 2, 2013,

## 2. “Morality” as a keyword

An atmosphere shaped by allegedly unbridgeable differences can be felt on various levels, and on different international forums. Many of these differences are presented in connection with questions of morality. Questions of moral discernment already for some time divide the members of the ecumenical World Council of Churches, and here again it is the issue of homosexuality and “non-traditional sexual orientations” that serve as indicator for more traditional or libertarian approaches among Christian denominations – including regular disqualifications of the opponent as “deviating from true Christian teaching”.<sup>7</sup> Here, however, despite several dead ends that also occurred, apparently there is still a kind of dialogue kept alive. Elsewhere, ideological confrontation has made it to the field of geopolitical confrontation. On the purely political scene the mentioned noise reached a previously unknown peak in the ideological warfare accompanying the crisis in Ukraine since the “Maidan” events starting in late November 2013, when often and again the conflict was simplified and described as just a clash between “European values” (the latter mostly identified with Human Rights) and an “Orthodox civilization” (with epithets often changing into more polemical forms like “GayEurope” versus “Orthodox authoritarianism” and the like).<sup>8</sup> The bitterness of confrontation takes much of its energy from an alleged opposition of values. To put it roughly, just like in the other cases mentioned above it ultimately came down to a black and white juxtaposition of the two principles of “morality” versus “freedom”, or, in other words, of “moral values” versus “human rights”.

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p. 93-133; Joachim Willems, *Pussy Riots Punk-Gebet. Religion, Recht und Politik in Russland* (Berlin: Berlin University Press, 2013).

<sup>7</sup> These differences are reflected in the document on “Moral discernment in the Churches” issued by the WCC in 2013 (A Study Document. Faith and Order Paper No. 215 (Geneva: WCC Publications, 2013). Cf. also Metropolitan Hilarion’s speech at the latest WCC general assembly in Busan, Korea, in 2013, on <http://www.oikoumene.org/en/resources/documents/assembly/2013-busan/plenary-presentations/address-by-metropolitan-hilarion-of-vologolamsk> [accessed 09-23-2014].

<sup>8</sup> “The long Orthodox tradition of criticism of Western theology, some aspects of which are legitimate, others exaggerated, has been transformed into a simple minded anti-Western agenda” writes father Cyril Hovorun of the Ukrainian Orthodox Church (Moscow Patriarchate), “The Church in the Bloodlands,” *First Things*, October 2014, p. 41-44, quotation p. 43.

It is perhaps needless to repeat that this is again an oversimplification. The following *essay*, which wants to address once more the question of morality *within* the concept of Human Dignity and Rights also through the lens of an Orthodox theological perspective, is meant as another cautious attempt to revitalize the more promising beginnings of the early dialogue.

The “freedom” versus “morality” pattern was already present in the first phase of discussion after the release of the ROC document in 2008 – in a sense, by the way, that connected “freedom” with “individualism” and a liberal approach, whereas “morality” often appeared in connection with “communitarian values”, and with minority rights.<sup>9</sup> The same “freedom” vs. “morality” issue, however, also determined debates that have preceded, and accompanied already the immediate publication of the above-mentioned document. Earlier drafts as the one compiled by the All Russian People’s Council (*Всемирный Русский Народный Собор*) in 2006, which was widely regarded as a rather deficient first attempt, had undergone a serious revision before the 2008 publication.<sup>10</sup> At the same time participants in the debate on the part of the ROC have published their views and approaches also in Western media. After August 2008, the statement of the ROC has met various comments, and has generated at least some debates and critical remarks inside and outside the Russian Federation and the immediate sphere of influence of the Russian Patriarchate.<sup>11</sup>

<sup>9</sup> Cf. for example the statements by H. Ph. Bulekov, “Evolution of Moral Principles and Human Rights in a Multicultural Society”, in *Religion in Eastern Europe* 27, No. 1, (February 2007), p. 35-40; A. Kyrlezhev, “Relationship Between Human Rights Concept and Religious Values”, *ibid.*, p. 41-47; A. Verkhovskiy, “In Search of Compromise Between ‘The Liberals’ and ‘The Orthodox’”, *ibid.*, p. 48-52.

<sup>10</sup> For a more detailed outline of the consultation process and its conditions cf. K. Stoeckl, *The Russian Orthodox Church and Human Rights* (London: Routledge, 2014), esp. p. 43-65.

<sup>11</sup> For a survey of the first inner-Russian reactions see for example S. Egorov, ‘Prava cheloveka po-archiereiski. RPC-MP brosaet vysov mezhdunarodno priznannym pravam cheloveka, [Clerical Human Rights. ROC Moscow Patriarchate challenges internationally acknowledged human rights],’ in *Civitas*, September 5, 2008, on <http://www.civitas.ru/article.php?pop=0&code=932&year=2008> [last access 09-24-2014]; Stanislav Minin, ‘Srazhenie s vetrianyimi mel’nicami’ [A Fight with windmills], *Nezavisimaja gazeta*, July 2, 2008, on [http://www.ng.ru/events/2008-07-02/3\\_windmill.html?scroll=1](http://www.ng.ru/events/2008-07-02/3_windmill.html?scroll=1) [last access 10-07-2014].

### 3. Anthropology in the center of attention

In these early debates, it was the term of “Human Dignity” in particular, and in connection with this the entire field of philosophical and theological anthropology, which attracted special attention. First and foremost, this was due to a controversial passage in the ROC document from 2008, which tried to introduce a more dynamic understanding of “Human Dignity”: Adopting the concept of *theosis* (deification), a central pattern in patristic writing concerning man’s unique role in the world and in the history of salvation alike, in the ROC’s considerations the term “Human Dignity” received a different accent. According to the authors of the document, there has to be made a difference between a core value of every human person on the one hand, and his or her actual dignity on the other, which latter is also conditioned by life conduct and moral status. The concomitant passages of the document read:

“Therefore, in the Eastern Christian tradition the notion of ‘dignity’ has first of all a moral meaning, while the ideas of what is dignified and what is not are bound up with the moral or amoral actions of a person and with the inner state of his soul. Considering the state of human nature darkened by sin, it is important that things dignified and undignified should be clearly distinguished in the life of a person.”

“A morally undignified life does not ruin the God-given dignity ontologically but darkens it so much as to make it hardly discernable [*sic*]. This is why it takes so much effort of will to discern and even admit the natural dignity of a villain or a tyrant.”

“[...] Thus there is a direct link between human dignity and morality. Moreover, the acknowledgement of personal dignity implies the assertion of personal responsibility.”<sup>12</sup>

So the authors of the ROC document on the one hand agree with other Christian churches in their adoption of the *imago dei* concept, founding the bases of human dignity on Biblical tradition, according to which man is created by God, and after God’s image (Gen 1, 26). They continue, however, by specifying this reference<sup>13</sup>: In a further step that

<sup>12</sup> “Basic Teachings” (as in fn. 1), I.2, I.4, and summary of chapter I.

<sup>13</sup> Hans van der Ven is probably right in pointing at the fact, that reference to the *imago dei* pattern, although a kind of inter-confessional commonplace in Christian anthropology, is of a less homogenous meaning than usually presumed. Cf. J.A.

brings them closer to the Eastern Christian tradition, and in particular to such themes as the relationship between the original and the image, or between the Creator and the creature, “Human Dignity” is interpreted in accordance with the concept of *theosis* (deification, Russ. *обожение*). According to this teaching, being created after God’s image for every human person does not found an already given status of dignity once and for all, but is rather to be understood in a twofold sense, simultaneously as a core value and a potential, that needs yet to become manifest in the life of this very person. In order to realize the, as it were, inner nobility that forms a God-given heritage of man, a human being is supposed to observe certain moral norms in relation to God and to his neighbor. In case he or she does not, his dignity does not completely disappear, but “can be darkened to an extent that makes it hardly discernible”.<sup>14</sup> As we shall see, it is exactly this step, namely to base the Orthodox approach to a political concept like that of Human Dignity on a rather spiritual teaching as that of *theosis* which forms the ground for a number of further problems that wait for solution.

Protest to this position first came from the Vienna based Community of Protestant Churches in Europe (CPCE), and this protest was formulated in the name of a more static or egalitarian idea about “Human Dignity”. Human Dignity, according to the clarifications formulated in the CPCE statement, was to be regarded as a quality belonging to every human person in a basic and therefore unconditional sense, regardless not only of his believe, race, gender or ethnic origin, but also of his moral status. This static and unconditional idea about “Human Dignity” of course can somehow be related to the “core value” about which also the Russian document speaks. Yet the crucial point in this argument is to which aspect of “Human Dignity” the *rights* of a person in a given community

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van der Van, *Human Rights or Religious Rules* (Leiden: Brill, 2010), p. 173f. Further evidence about concurrences and differences one can also get from the article by Vladimir Shmalyi, L.L. Taivan, s.v. ‘Antropologija’ [Anthropology] in *Pravoslavnaia Enciklopediia*, Vol. 2 (Moscow: Izdat. Pravosl. Enciklopediia, 2008), col. 700-709.

<sup>14</sup> “Discernable” in the original, cf. fn. 11, and Basic Teachings, I.2 and I.3. For an English language introduction into the concept of *theosis* cf. Norman Russell, *Fellow Workers with God: Orthodox Thinking on Theosis* (Crestwood, NY: St Vladimir’s Seminary Press, 2009). See also the stringent summary of J. Meyendorff, ‘Theosis in the Eastern Christian Tradition,’ in L. Dupré, D. E. Saliers (eds.), *Christian Spirituality. Post-Reformation and Modern* (NY: Crossroad Publishing, 1989), p. 470-476. One should add that the understanding of *theosis* among Orthodox theologians is also not always completely consistent, as a comparison of the aforementioned titles reveals.

would then pertain – a point that actually still is waiting for definite clarification. The Orthodox approach widely operates with the notion of “sin”, which in her view is precisely the factor that tends to damage the dignity of man and to darken it. The crucial question that emerges from here is obvious: How can a notorious sinner claim rights?

The question is not new, even in this provocative formulation. By introducing the category of “sin” into the debate, the ROC not only gave a non-secular, theological character to the debate (as “sin” is obviously a theological term, whereas “rights” is not), but also took up an old controversy about the “sacred” or “fallen” nature of man that probably sounded still familiar to many Western Christian theologians. Earlier this very controversy had also left its traces into Western discourses on “Human Rights”. Indeed, for Christian churches in the West, the image of Adam expelled from paradise, and the “sinful nature” of man initially had equally caused quite a row of difficulties in adopting the idea of “Human Rights”. Space and the need for stringency do not allow here to reflect the entire controversy that was necessary during more than a century in order to overcome such anthropological paradoxes in the Christian tradition of the West.<sup>15</sup> As further replications by Western theologians to the Orthodox draft illustrated, shadows of this inner tension of Christian anthropology appear to be still present to this day: At least, some Catholic authors betrayed more readiness to connect the actual dignity of a person with his or her moral conduct than Protestant theologians usually did. The latter, as can be assumed, found it easier to plea for an unconditional idea of “Human Dignity”, probably on the grounds of the Protestant concept of justification *sola gratia*, which puts much less emphasis on the conscious effort of man in the surmounting of temptation and sin. But this is a rough summary. At any rate, it was a Protestant theologian who was yet also familiar with the Orthodox tradition, Stefan Tobler from Sibiu in Romania, who finally suggested a conciliatory position, mainly on the grounds of his more thorough reading of Western enlightenment authors

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<sup>15</sup> Suffice it here to refer to the debates preceding the publication of the papal encyclical “*dignitatis humanae*” during the II Vatican Council, cf. e.g. W. Simon, “Das Menschenrecht Religionsfreiheit in christlicher Perspektive,” in H. G. Zieberts (ed.), *Menschenrechte, Christentum, Islam* (Berlin: LIT, 2010), p. 113-126; generally on the process of Western Christian Churches adopting the Human Rights concept Ch. Villa-Vicencio, “Christianity and human rights,” *Journal of Law and Religion*, 14, (1999-2000), No. 2, p. 579-600.

as Immanuel Kant in particular.<sup>16</sup> Tobler finds it appropriate to concede that “Human Dignity” does indeed have what he calls an “empirical aspect” that can well be connected with the moral status and life conduct of a human person, whereas “Dignity” as the actual starting point for the implementation of rights, or the “right to have rights” (as Hannah Arendt has put it) remains unaffected by one’s moral achievements or failures. In short, in this understanding a person’s rights flow from the static, unconditional understanding of “Dignity”, whereas an empirical, moral component emerging from this dignity can be conceded.

This is a first rapprochement of positions. Tobler’s clarifying and at the same time conciliatory statement has been published in 2010, another four years ago. Positions like his shared the fate of other differentiating approaches, as named above: Neither did his suggestions for directions of a further dialogue meet the echo they might have deserved, in spite even of some positive comments also from the Orthodox side. Nor are there other substantial contributions to be accounted, neither in Russian Orthodoxy, nor from elsewhere. Despite occasional and cautious convergences that occurred during several talks between Orthodox and Western Christian representatives, the potential of this approach seems to have remained unexplored so far. Various other consultations rather reveal both the importance the two sides are ready to give to the discipline of anthropology, and the remaining tensions about which aspect of “Human Dignity” should be given prevalence in an appropriate understanding of “Human Dignity” and “Human Rights”.<sup>17</sup>

The dispute is, to be sure, neither simply about “moral” against “libertarian” foundations of “Human Dignity”, nor can it, in its depth,

<sup>16</sup> S. Tobler, “Menschenrechte als kirchentrennender Faktor? Die Debatte um das russisch-orthodoxe Positionspapier von 2008,” in *Zeitschrift für Theologie und Kirche* 107, 2010, p. 325-347. Several contributions to the previous debate since 2008 have also been published in Russian translation, cf. *Cerkov’ i Vremia* [Church and Time] 48 (2009), No. 3.

<sup>17</sup> Cf. e.g. generally the theological consultations between the German Bishops’ Conference and the ROC about Christian Anthropology in the years 2009-2013: *Pressemitteilungen der Deutschen Bischofskonferenz*, No. 154 (December 10, 2009), No. 188a (December 8, 2011), No. 172a (October 11, 2013); see also *Sinappi, St. Petersburg and Siikaniemi. The 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> theological discussions between the Evangelical Lutheran Church of Finland and the Russian Orthodox Church* (Helsinki: Church Council, 2013), esp. p. 156-271. On the central significance of anthropology in the eyes of Orthodox theologians see also Kallistos (Ware), Metropolitan of Diokleia, *Orthodox Theology in the Twenty-First Century* (Geneva: WCC Publications, 2012), p. 19-33.

be ultimately reduced to an unbridgeable opposition between secular and religious views – despite all importance this opposition certainly has.<sup>18</sup> The crucial point here is that there is a strong moral aspect also at work even in the secular understanding of “Human Dignity” and “Human Rights” which easily escapes attention. It is this notion that might deliver a starting point for some further clarifications. A contemporary encyclopedia describes this as follows: “The Human Rights concept bears a moral impulse, but is meant for realization in secular positive law.”<sup>19</sup> What does this exactly mean?

To be accurate, the debate we just referred to, was a debate among theologians, and by its very nature sometimes tended to blur the boundary between religious ethics and secular law. Human Rights, however, are designed to be implemented into the legal codices of secular states in the first place. Tobler himself, when concluding his explorations, makes this point in order to ultimately vote for an unconditional understanding of “Human Dignity”.<sup>20</sup> Seen from this angle, therefore, the moral demands of a religious community are second in rank in relation to the unconditional and inalienable dignity of every person. It is yet just this point that needs further explanation.

It does not mean at all, that “Human Dignity and Rights” are immoral by nature, or completely beyond morality. Just the opposite: “morality” is at stake, including the possible interpretations of the term: a moral impulse can be, and actually is effective also in agreements of secular character. This does not blur, but rather takes serious the difference between the sphere of the secular and that of the sacred. Much of the present ideological noise almost annihilates a consensus that had already been reached earlier. This preliminary consensus delivers another point to take off from – it concerns the secular character of “Human Dignity and Rights” in relation to their moral content. Stating the afore-mentioned

<sup>18</sup> I have argued earlier, that stating an opposition between secular and religious views does more justice to the problems of the current debate than to construct a difference between “East” and “West” or between different civilizations, as a comparison between Orthodox and Catholic statements of recent decades can illustrate. However, this preliminary diagnosis does not make the opposition insurmountable – secular and religious approaches also do have common points of reference. Cf. Alfons Brüning, “Freedom” vs. “Morality” – On Orthodox Anti-Westernism and Human Rights, *loc. cit.* (as in fn. 5).

<sup>19</sup> Cf. H. J. Sandkühler, s.v. “Menschenrechte”, in *Enzyklopädie der Philosophie*, Vol. 1 (Hamburg, 1999), p. 818-823, esp. p. 821.

<sup>20</sup> Tobler, “Menschenrechte”, *loc. cit.*, p. 345f.

about “Human Rights” – “coming from a moral impulse, but meant for realization in secular positive law” – means first and foremost, that they are not sacred themselves, but – from a religious point of view – can rather be regarded as a sober precondition for the sacred to become manifest. Among others because of their secular character, they are a necessary means, not an end in themselves.

Agreement on this issue existed already between theologians from various Christian denominations, including the Orthodox, and even conservative Russian Orthodox theologians showed ready to acknowledge this.<sup>21</sup> Furthermore, at the given state of affairs, a certain agreement exists also, that there is both a static and a dynamic (“empirical”) aspect of “Human Dignity”, and that the latter can also be connected to the moral conduct, the adoption of certain virtues and the observation of ethical norms of a certain person. The remaining questions concern in particular the balance between the two aspects, and whether the claim for individual rights and freedoms should be derived mainly from the first or the second aspect. The consequences of the second among these approaches are obvious. According to the Orthodox interpretation, rights can be claimed only in a narrow connection with the fulfillment of some basic ethical standards, or, vice versa, could be lost in case such basic standards are neglected. The ROC document remains regrettably vague, however, about the actual content of such norms, and whether they have to be in full congruence with Christian ethics.

By the way, there is another point in the named document, linked with the same problem (or the same dichotomy), about the notion of “freedom”. The ROC document makes a distinction between the outward freedom of decision and choice (in Greek ἀντεξουσία) and the inner freedom of a person, which is rather defined as “freedom from sin” and is mainly achieved through a moral life (ἐλευθερία).<sup>22</sup> Again, also these two

<sup>21</sup> This agreement among others became manifest during the first panel of a workshop on “Orthodoxy and Human Rights” organized by the German Konrad Adenauer Foundation, in Bucharest in September 2009. Cf. the account of the meeting on [http://www.kas.de/wf/doc/kas\\_18408-1522-1-30.pdf?100112135933](http://www.kas.de/wf/doc/kas_18408-1522-1-30.pdf?100112135933) [last access September 23, 2014]; a conservative Russian Orthodox statement in the same sense is that of Fr. Makarii (Markish), “Prava cheloveka – eto sredstvo, a ne cel” [Human Rights are a means, not an end], Interview on <http://archive.today/bscgp#selection-281.0-281.42> [accessed August 19, 2014].

<sup>22</sup> “Basic Teachings”, chapter II. Cf. A. Agadjanian, “Russian Orthodox Vision on Human Rights: Recent Documents and their Significance,” *Erfurter Vorträge zur Kulturgeschichte des Orthodoxen Christentums*, 7, 2008, p. 8.

aspects of “freedom” have an either static or a dynamic (in other words a moral) character – the division concerns, as it were, a basic, essential freedom and a “moral freedom”. This approach in the ROC document is not entirely new, as it can be traced already in earlier statements of Orthodox theologians on the issue of “Human Rights”.<sup>23</sup> However, similar to the passages about “Human Dignity”, the actual relationship between the two freedoms as outlined in the Russian document also at this point still remains unclear.

#### 4. The moral impulse at the core of “Human Dignity”

So the general relationship between “unconditional” and “moral” (“static” and “dynamic”) aspects of “Human Dignity, Freedom and Rights” stands central. In other words, if “Human Dignity and Rights” are not sacred, are they immoral? We are probably touching the heart of the matters here, also insofar “Western” (including Western Christian) standpoints usually represent a stronger emphasis on the “static” aspects of all these terms, whereas the Orthodox part apparently emphasizes the “moral” dimension (including the occasional blame for an inherent tendency towards “immorality” of the Human Rights concept in general). But, again, is the static approach really immoral? And would a reference to *theosis* necessary lead to just an emphasis on morality? The actual question to be asked at this point is, on which base a statement like “Every human person is the bearer of unconditional and inalienable Dignity and Rights” can be made.

First, the statement is not empirical. Sure, one would perhaps spontaneously prefer to have it as an objective statement in the sense that, the “Human Dignity and Rights” of every human person designate, or correspond to an objective essence. Several authors from various philosophical schools in fact operate with an idea of “Human Dignity” as being something evident in itself, be it, as it were, intuitively, or be it as something that at least becomes noticeable in the ultimate case of its violation through discrimination, persecution, torture and the like.<sup>24</sup> Seen

<sup>23</sup> Cf. A. Anastasios (Yannoulatos), “Orthodoxy and Human Rights,” in *id.*, *Facing the World. Orthodox Christian Essays on Global Concerns* (Crestwood, NY: St Vladimir’s Seminary Press, 2003), p. 49-78.

<sup>24</sup> Cf. K. A. Appiah, “Grounding Human Rights”, in A. Gutman, M. Ignatieff (eds.), *Human Rights as Politics and Idolatry* (Princeton: Princeton UP, 2001), p. 101-116; H. Joas, *Die Sakralität der Person. Eine neue Genealogie der Menschenrechte* (Frankfurt

in this way, “Human Dignity” would in itself form an unquestionable starting point for further reflection.

Yet despite all sympathies this approach might have, it has some obvious weaknesses. Sobriety forces us to recognize the vulnerability of “Human Dignity” in both practice *and* theory. One is forced to take into account, that “Human Dignity” in the just mentioned – as one may say – naive and innocent understanding is being questioned in many ways. To understand this and to gain instead some less naive idea of “Human Dignity” one would have to dig through various sets of both history of ideas and every days experience. Several layers deliver several problems, but do not touch the heart of the matter, as it seems. The problem basically does not so much lie in all the contesting narratives about “human misery”, the “fallen man” and the like delivered throughout the history of ideas in both Christian religious and secular philosophic tradition, which made numerous efforts necessary to safeguard just some untouchable rest of dignity in the conception of man. This is the layer of philosophical tradition. The problem is also not only connected with the fact, that there currently exists a whole variety of such philosophical and theological approaches to justify human dignity, operating with either natural law and the stoic tradition of Late Antiquity, or human creativity and reason, or human agency and political arguments as possible starting points, none of which can claim yet a wider consensus so far. This is the layer of possible responses to the challenge of human condition (*conditio humana*), and Adam’s sin, at the same time delivering a notion of discord and plurality which is not likely to change in the near future.<sup>25</sup> Added to this story told by scholars can be another “crisis of modernity”, concerning the various contestations that a term like “Human Dignity” currently experiences through diseases, but also technical innovations in medicine and biology, and also through critical discussions of the term

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a.M.: Suhrkamp, 2011). (English translation Hans Joas, *The Sacrality of the Person. A New Genealogy of Human Rights* (Georgetown: Georgetown Univ. Press, 2013).

<sup>25</sup> A brief overview of traditions and current problems is given e.g. by K. Hilpert, s.v. “Menschenwürde”, in *Lexikon für Theologie und Kirche*, 3<sup>rd</sup> edition, Vol. 7 (Freiburg: Herder, 2006), col. 132-138; for further recent developments see the entry by J. Nickel, s.v. “Human Rights”, in *Stanford Encyclopedia of Philosophy*, online <http://plato.stanford.edu/entries/rights-human/#ExiHumRig> [last access July 18, 2014], both with further references to German and English language literature.

and its applicability for legislation and law by legal scholars.<sup>26</sup> And a final, but equally important phenomenon of modernity are various forms of sectarianism and fundamentalist ideologies of both religious and atheist nature. Although the connectedness of these phenomena with modernity has long been demonstrated<sup>27</sup>, the systematic story of the violations these extremist ideologies actually commit against “Human Dignity” in whatever understanding is not yet written.

All this taken together already illustrates best, that “Human Dignity” remains something rather difficult to grasp in theory, hard to defend in border situations of life, and easy to be neglected. If in the mentioned Orthodox document sin appears as the main threat to dignity, this has to be understood in a broader sense at least: Nowadays the dignity of man can as easily and as often be darkened also by disease, ethical conflicts generated through technical innovation, and by destructive ideologies and hatred. (Notably, all these in the Orthodox understanding are also consequences of sin.) Perhaps also a problematic issue has become the inflationary and excessive invocation of the term.<sup>28</sup> However, it is just this disturbing state of affairs, the continuous threat of “Human Dignity” in both theory and practice that leads to the moral implications of the above-mentioned statement: “Every human being bears an equal and inalienable dignity”. To put it roughly, it is the weakness, the vulnerability of the empirical dimension which always delivered the ground for a moral foundation of universal “Human Dignity”.

<sup>26</sup> H. Bielefeldt, *Auslaufmodell Menschenwürde? Warum sie in Frage steht und warum wir sie verteidigen müssen* (Freiburg: Herder, 2011). For a critical discussion from the point of view of legal scholarship cf. Christopher McCrudden, “Human Dignity and Juridical Interpretation of Human Rights,” in *European Journal of International Law*, 19, 2008, p. 664-675; some further hints to the German discussion on the application in positive law, which goes in a similar direction, are given in J. P. Wils, s.v. ‘Würde’, in *Handbuch Ethik* (Stuttgart: J.B. Metzler, 2002), col. 537-542.

<sup>27</sup> Cf. K. Armstrong, *The Battle for God. A History of Fundamentalism* (London/ New York: Random House, 2001).

<sup>28</sup> “Today the concept of human dignity has become ubiquitous to the point of cliché – a moral trump frayed by heavy use, a general principle harried by constant invocation.” – J. Witte Jr., “Between Sanctity and Depravity: Human Dignity in Protestant Perspective,” in R. P. Kraynak, G. Tindler (eds.), *In Defense of Human Dignity* (Notre Dame, Indiana: Univ. of Notre Dame Press, 2003), p. 121. Witte’s diagnosis currently is shared by many, and has led mainly Protestant theologians to plea for a contextualization and re-evaluation of the concept. Cf. R. K. Soulen, L. Woodhead, “Contextualizing Human Dignity” in *id.* (eds.), *God and Human Dignity* (Grand Rapids: B. Eerdmans, 2006), p. 1-24.

The problem likewise concerns general deficits of language, and the limits to make “Human Dignity” an operational category on an abstract level. This “empirical weakness”, to be sure, rather designates a difficulty to express than a difficulty to perceive: We probably all think to know what “Human Dignity” is, but at the same time we struggle with attempts for its appropriate expression. St. Augustine’s famous notion about time can equally be applied to “Human Dignity”: “I know it as long as no one asks me, but when I try to explain it to someone asking, then I don’t.”<sup>29</sup> No doubt there is a substance, on the one hand. Even though theory tells us that it is difficult to identify the actual substance of “Human Dignity” both in terms of experience and language, to speak about “Human Dignity” is more than mere poetry. But if there is no obvious essence to be easily identified and to be defined, a certain moral impulse is required to acknowledge what is nevertheless present, in whatever, say, non-theoretical sense. Some authors even went so far as to apply a purely constructivist approach in order to better understand what it means to speak about someone’s “Human Dignity”.

Frits de Lange, for example, a theologian from the Protestant Theological University in Amsterdam, assumes that “dignity” does not refer at all to some objective essence of individual human beings, but to a relationship rooted in social practice. Accordingly, the view on language and terminology would also have to be changed in this context. Notably with reference to Ludwig Wittgenstein he states: “There is no such ‘thing’ as human dignity.”<sup>30</sup> He continues: “Talk about ‘dignity’ never takes the form of factual, neutral statements such as ‘2+2=4’ or ‘it is raining’; it is always embedded in pathos, in powerful emotions of grief, of anger, or of hope.”<sup>31</sup> This leads him to the conclusion that any *invocation* of “Human Dignity” especially if accompanied by appropriate actions in relation to a human being (as for example in the Biblical narrative of the Good Samaritan) is a performative speech act, ultimately a moral act. To refer to “Human Dignity” in either words or deeds is motivated by morality: “Whoever speaks of dignity, acts morally.”<sup>32</sup> Although the pure constructivism in de Lange’s approach has evoked some cautious

<sup>29</sup> Augustinus, *Confessiones*, 11, 14.

<sup>30</sup> F. de Lange, “The Hermeneutics of Dignity”, in L. J. Claassens, K. Spronk (eds.), *Fragile Dignity. Intercontextual Conversations on Scripture, Family and Violence* (Atlanta: Society of Biblical Literature, 2013), p. 9-28, quotation p. 9.

<sup>31</sup> *Ibid.*, p. 10.

<sup>32</sup> *Ibid.*, p. 10.

critique<sup>33</sup>, his approach retains an important and certainly correct point. An important aspect, as has been emphasized elsewhere, is the reciprocity of the act performed within the space of human relations: The dignity of one person requires an appropriate treatment of this person by another – a moral dimension that lies at the core of the whole concept.<sup>34</sup>

On a basic level, that would correspond either to the “static” concept of “Human Dignity” usually at work, or to the above-mentioned “core value” also admitted by Russian Orthodox theology, this “Human Dignity” does not have a homogenous and unique empirical component. We cannot “diagnose” “Human Dignity” as we could do with certain physiological or even psychological dispositions. And currently, despite a pluralism of concepts, no generally acknowledged philosophical or theological perspective exists that would help us to detect what “Human Dignity” is *objectively*. That also means that a dimension of interpersonal relation is indispensable to come to a closer idea about “Human Dignity”. Again, this is still more than “morally inspired poetry”. In our relation to another human being we might feel inclined to see more than just a construction in the other’s “Human Dignity” that would flow exclusively from our own good will. The interpersonal dimension that gives the reserved space to encounter “the other’s dignity” has been a field for reflection for both Western Catholic and Russian Orthodox theologians already in the inter-war period.<sup>35</sup> However, a moral component is always at work when we refuse to neglect the other’s dignity and, opposite to this, to give it due credit in our own conduct.

## 5. Human Dignity on an abstract level

This is yet only one side of the medal. Whereas perhaps everyone might feel able to generalize, up to a certain level, his personal life experience as taken from mutual relations with others in the sense, that

<sup>33</sup> Cf. B. E. Mitchell, “The Givenness of Human Dignity: A Response to the Essays of Frits de Lange and Henrik Bosman”, in *Fragile Dignity* (as fn. 29), p. 65-72.

<sup>34</sup> From a Lutheran perspective cf. J. Hallamaa, “Human Rights in Light of Christianity”, in *Theological Discussions* (as in fn. 17), p. 213-235, here p. 218.

<sup>35</sup> Cf. R. Zwahlen, “Sergey N. Bulgakov’s Concept of Human Dignity”, in B. van der Zweerde, *Orthodox Christianity and Human Rights*, p. 169-186. The closeness of some pre-war Orthodox approaches to concepts of personal philosophy is also demonstrated by another article in the same volume, cf. Elena Pribytkova, “Natural Law and Natural Rights according to Vladimir Solovyov and Jacques Maritain,” loc. cit., p. 69-85.

he or she feels “something that can be called dignity” as being at work everywhere in human relations, it is a different thing to state that “every human being bears an unconditional and inalienable dignity”.

How can we know that? The crucial point lies in the sequence “every human being”, in other words in the fact that this latter sentence is an abstraction – in that sense, that since Medieval philosophy would have to be identified as *nominalistic*. An abstract statement about generally “every human being” (in time and space) cannot be made by humans on the ground of pure experience. In other words, also in this sense the “empirical component” on this basic level is necessarily weak.

It is yet exactly this kind of abstractions that actually is at the roots of many a constitution and legal system of secular states around the world. And it is exactly in this nominalistic or “universalist” shape in which the statement is meant to be implemented in secular positive law. Accordingly, every declaration concerning “Human Dignity and Rights”, mostly at the beginning, contains passages that betray a mixture of acknowledgement and self-commitment concerning such basic features as “Human Dignity”. At the same time, this self-commitment obviously is made not by or on behalf of individuals, but through a political community and its authorized – in whatever way – representatives respectively. This can be felt in many introductory passages of constitutions of states around the world. Already the Universal Declaration of Human Rights adopted by the United Nations in 1948 reads in its preamble, first sentence: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, [...]”<sup>36</sup>

This “recognition” obviously means an act, which can also be refused, and therefore is based on a deliberate decision. Various texts of the constitutions of national states contain quite similar phrases, and do so always at the very beginning. Accordingly, as legal scholars have argued, it is right this commitment in the first place, not the acceptance of a reality seen through the lens of any particular philosophical system,

<sup>36</sup> UNDHR, preamble – cf. <http://www.un.org/en/documents/udhr/>. Correspondingly, as H. van der Ven correctly mentions (cf. *id.*, *Human Rights or Religious Rules*, *loc. cit.*, p. 146), this statement can be characterized as performative, at the same time made by a community that feels authorized to such statement (expressed in the sequence “We, the people of the United nations”).

which forms the actual base of the implementation of “Human Dignity and Rights” into the context of state legislation.<sup>37</sup> The step taken by such a commitment implies the intention to design the legislation system according to these basic principles, and the motives behind this intention again can best be characterized as moral. Seen from this angle, any further invocation of “Human Dignity” within political and social contexts ultimately is an appeal to this kind of self-commitment once performed, a reminder concerning an initial moral intention, and would therefore lack sufficient founding if this moral dimension of a basic commitment and consensus is either shattered or absent in the discourse.

The mentioned statement has several further implications about the quality of this basic “Human Dignity”, which are to form, as must be acknowledged, some serious challenges for a religious approach: This understanding of “Human Dignity” is secular, individual and equal. Furthermore, all these three aspects, as we are about to see, are in various ways interconnected. At the same time, right here lies the potential for controversy with religious systems. Religious worldviews and doctrinal systems will necessarily have to meet these challenges according to their own reference systems, and this in turn shapes the nature of their response both in terms of quality and quantity. Some reason for optimism is yet grounded in the fact, that world religions and their subdivisions do have in their traditional, historically accumulated treasure a whole amount and variety of possible answers to meet the challenge fully. The “Human Rights” concept with its specific moral content therefore would just force them to mobilize this potential, but not in any way to distance themselves from their own fundamentals. Optimism means a well-founded hypothesis here: the concept of “Human Dignity and Rights” only then, and only insofar has a chance to be commonly accepted, as this presumption of a potential within religions to surmount the challenge, on which it is based, is a true one.

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<sup>37</sup> Cf., with special attention for the German context, K. Dicke, “Die der Person inwohnende Menschenwürde und die Frage der Universalität der Menschenrechte,” in H. Bielefeldt (ed.), *Die Würde des Menschen* [Festschrift Johannes Schwartländer] (Würzburg: Königshausen und Neumann, 1992), p. 161-182.

## 6. Orthodox theological resources. The moral approach to “Human Dignity and Rights” and the Orthodox idea of Theosis

In the particular case of an encounter of Orthodox Christian theology with the concept of “Human Dignity and Rights” the problems that might occur seem obvious, especially if a response to this concept is based on the pattern of *theosis* (as is the case in the mentioned ROC document from 2008). Because, different to the “Human Dignity and Rights” concept, *theosis* is certainly not nominalistic, but claims to be based on experience. Furthermore, it is also not secular or purely individual and equal. But perhaps this striking opposition is merely rhetorical: The apparent irreconcilability of both concepts might perhaps become less striking, if the former, that of “Human Dignity and Rights”, is seen in the perspective just described.

The ROC document from 2008, to which we still have to refer, forms one out of very few examples to prepare a base for what might be called an “Orthodox political theology” (forming in this sense a follow-up of the “Bases of a Social Concept” released already in 2000)<sup>38</sup>. The common view still prevails that Orthodox theology generally keeps away from politics, and at the same time looked at respective undertakings of its Catholic and Protestant counterparts with considerable skepticism. If nonetheless attempts were made to formulate at least general guidelines for orientation also in politics, these attempts often resulted in a revitalization of clear-cut anti-Western models, authoritarian pleads for order, both culminating in quasi-philosophical adventures, for example under the label of “political hesychasm”.<sup>39</sup> It was probably only after the end of the Cold War that the necessity of, say, formulating some general guidelines about how the church should refer to political processes and

<sup>38</sup> <https://mospat.ru/en/documents/social-concepts/> [last access 09-07-2014].

<sup>39</sup> For a Greek context cf. D. P. Payne, *The Revival of Political Hesychasm in Contemporary Orthodox Thought: The Political Hesychasm of John S. Romanides and Christos Yannaras* (Lanham: Rowman and Littlefield, 2011). In Russia, some theorists have approved the widely discussed “Bases of a Social Concept” (fn. 36) as a late manifestation of Byzantine heritage in Russia, and therefore as an expression of ‘political hesychasm’: V. Petrunin, *Politicheskii isikhazm i ego traditsii v sotsial’noi kontseptsii Moskovskogo Patriarkha* [Political Hesychasm and its Tradition in the Social Concept of the Moscow Patriarchate] (St. Petersburg: Aleteiia, 2009). For a critical evaluation see K. Stoeckl, “The Revival of Political Hesychasm in Contemporary Orthodox Thought,” *Journal of Contemporary Religion*, 26: 3 (2011), p. 499-502.

social structures in general was perceived and discussed.<sup>40</sup> It is also in this specific context that “Human Dignity and Rights” again make it on the agenda of Orthodox theology.

Where corresponding considerations do not end up with a categorical repudiation of Human Rights (as in the examples of “political hesychasm” mentioned above), this happens mostly with reference to Orthodox theological patterns like *theosis* on the one hand, and to *sobornost’* (the Russian term designating the “conciliar” nature of the church, originating from the lay theologian Alexei Khomiakov)<sup>41</sup>. In his most recent study, the Greek-American Orthodox theologian Aristotle Papanikolaou also feels urged to initially mention the problems that might occur in connection with an application of *theosis* for statements related to the political sphere. “The Christian theological notion of theosis, usually translated as deification, is not intuitively associated with political theology. In fact, some might argue that theosis gets in the way of a Christian political theology, as it focuses attention on the individual striving for a mystical, nonhistorical, world-denying union with God. The monk escapes to the desert to avoid the messy realities of politics, which distract attention away from the acquisition of the divine light.”<sup>42</sup>

If such problems would not seem insurmountable in the end, this is due to an understanding of *theosis* that puts an emphasis on the category of relation. Accordingly – and perhaps appropriately – Papanikolaou therefore perceives the term as a synonym not (or not only) for deification, but for divine-human communion.<sup>43</sup> What seems important here, to my mind, is the attention duly paid to both dimensions, the – as

<sup>40</sup> Whereas in Russia the Orthodox Church increasingly takes the role of a moral arbiter and defender of “traditional values” in society, systematic theoretical reflection on the role the Church should take in relation to politics is still in development. Cf. on both theory and practice I. Papkova, *The Orthodox Church and Russian Politics* (Oxford: Oxford Univ. Press, 2011). A pioneer work concerning “political theology” in the Orthodox Church against a Greek background, also criticizing the numerous “authoritarian” leanings of earlier attempts is P. Kalaitzidis, *Orthodoxy and Political Theology* (Geneva: WCC Publications, 2012).

<sup>41</sup> “Conciliarity” is but one out of several possible translations of the sublime notion. On this concept see the lucid expositions by J. Wasmuth, “Östliche Orthodoxien: Die Verbreitung des Sobornost’-Konzeptes in den orthodoxen Kirchen,” in *European History Online (EGO)*, published by the Leibniz Institute of European History (IEG), Mainz 2012-04-16. URL: <http://www.ieg-ego.eu/wasmuthj-2012-de>.

<sup>42</sup> A. Papanikolaou, *The Mystical as Political. Democracy and Non-Radical Orthodoxy* (Indiana, Notre Dame: Univ. of Notre Dame Press, 2012), p. 1.

<sup>43</sup> *Ibid.*, p. 2.

it were – vertical as to the relation with God, and the horizontal as about the relation of human beings among each other. Both combine in the Biblical “commandment” of love. “In the end, the Christian ascetical tradition took very seriously the command to love God with ‘all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself’ (Lk 10:27).”<sup>44</sup> Our further reflections, even if only for the purpose of some consistency, should focus on these two dimensions (and therefore treat them more separately than it might seem appropriate to some).

With regard to secularity, the secular character of the Human rights concept continues to provoke critical remarks by religious authors, in both East and West. God is painfully missing – especially in connection with the secularity of the Human Rights concept it might seem (and actually has often been criticized), as if this concept is only about the horizontal dimension, whereas any transcendental reference is consciously omitted. What resulted would then be the secular morality of isolated individuals, which for the sake of well-ordered society of citizens make use of their freedom only to that extent that does no harm or damage to the freedom of others. Morality then appears to be just a matter of formal law and social discipline, not of conscience. It is this perspective, described as “exclusive humanism” that has also determined the recent critical evaluation of secularism presented by the Canadian philosopher Charles Taylor. Taylor asks the question how it became possible for inhabitants of the Western world “to experience moral fullness, to identify the locus of our highest moral capacity and inspiration, without reference to God, but within the range of purely intra-human powers”.<sup>45</sup> Taylor, however, in his voluminous study hardly ever directly addresses the issue of Human Rights. There might be a good reason for that, because their “secularity” is obviously of a different kind. This “secularity” is actually, as might be anticipated, of a *preliminary* character that has much to do with how to handle what we have called the vertical, transcendental dimension.

Taylor’s perspective, which is that of a philosopher inspired by Roman Catholicism, might well find the sympathy of Orthodox critics of the West. He might have missed some factors, however. Although it is probably beyond the reach of this article to deal systematically with

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<sup>44</sup> *Ibid.*, p. 3.

<sup>45</sup> C. Taylor, *A Secular Age* (Cambridge, MA: Harvard Univ. Press, 2007), quotation p. 244f.

a work as advanced and sophisticated as this, justice and the state of historical research require to add a few sketches, which can more or less slightly change the view concerning his “exclusive humanism”. The point in question here concerns mainly the pattern of freedom of religion, in more narrow terms freedom of conscience which is not only a central pattern within the concept of Human Rights, but also a bone of contention for a strictly religious worldview in general.

If we presume, as is usually done, that the story of secularism in the West makes an important step forward with the various peace treaties that made an end to religious wars in Early Modern times – best known examples are the treaty of Augsburg 1555, the Warsaw Confederation of 1573, the French edict of Nantes of 1594 – then all these treaties are concluded under condition, that the hope of religious unity has not yet completely failed, and dialogue should continue, whereas on the other hand force and armed conflict are banned as inappropriate measures to restore religious homogeneity. In other words, the transcendental perspectives is not cut off, but left open, while peace (a secular peace, if one wants) is kept *for the time being*, as long as no full agreement *in religiosis* is reached. At this moment, in the West inner-religious motives combined with a certain pragmatism: next to considerations in theological tradition that would allow coercion for religious conversion only in extreme cases or forbid them at all, stood a sense of political realism that increasingly disapproved the damages and the suffering caused by civil wars motivated by religion.<sup>46</sup>

Later on, Enlightenment in some sense preserves this temporary perspective that would not omit the transcendental perspective, but leaves the question for the absolute open, and keeps the quest for truth out of politics. That the European Enlightenment, different from older stereotypes, in general was not hostile to religion, is hardly a new achievement of historical science. It just means to repeat an insight long gained by historians if we state that many, and maybe the most significant

<sup>46</sup> Basic details about the peace treaties mentioned here can be taken for example from J. Lecler, *Geschichte der Religionsfreiheit im Zeitalter der Reformation*, Vol. 1-2 (Stuttgart: Schwaben Verlag, 1965); see also the articles in O. Peter Grell, B. Scribner (eds.), *Tolerance and Intolerance in the European Reformation* (Cambridge: Cambridge Univ. Press, 1996). On the theological and philosophical motives behind Early Modern religious tolerance see also R. Forst, *Toleranz im Konflikt. Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs* (Frankfurt a.M.: Suhrkamp, 2003); a revised English edition is *id.*, *Tolerance in Conflict: Past and Present* (New York: Cambridge Univ. Press, 2013).

tendencies in the Enlightenment period were neither a-religious nor in any way anti-religious. The picture changes in particular, if the horizon is broadened from the earlier narrow focus on the French revolution and its Jacobin excesses to a pan-European perspective, including the development in other countries, like the Netherlands, England, Germany or – not to forget – Poland in the same time.<sup>47</sup> In this context, it is again mostly a religious argument that stands central for the concession of religious tolerance: A certain understanding of piety leaves the ultimate decision about the right faith, and thus also the right approach to God and to the image of man to God himself – that means, in a certain sense, to relativize one’s own standpoint. This indeed does happen with regard to the human dimension – not because this standpoint in itself appears to be questionable, but because religion in relation to one’s neighbor asks for the realization of love as a main virtue, not for political victory. In “vertical perspective”, however it is ultimately up to God, not to man, to make his final judgment. Seen from this angle, the argument in favor of tolerance therefore is ultimately eschatological: “So over thousand years again I’ll invite them to this chair. Then a wiser man than me will sit on this chair, and speak.” This is what Nathan the Wise in Gotthold Ephraim Lessing’s famous ring parable says to his three sons, each of them representing one of the World religions in the Holy Land.<sup>48</sup>

An important point is here that the agreement, which preceded the Universal Declaration of Human Rights (UNDHR) in 1948, was of a similar nature. As the French philosopher Jacques Maritain put it: “Yes, they said, we agree about the rights, but on condition that no one asks us why.”<sup>49</sup> It just left the question open – Jacques Maritain’s slightly sarcastic statement certainly not implied, that all further problems arising in a dialogue about the famous “Why?” should henceforth be avoided. Seen from this angle, the UNDHR did certainly not adopt a decisively nonreligious or even antireligious attitude. The secularity here once again meant a certain self-limitation that made the agreement “foundation open”. The agreement expressed in the Universal Declaration included the shared interest in peace and political and social stability, and the

<sup>47</sup> J. A. van der Ven, *Human Rights or Religious Rules*, *loc. cit.*, p. 152-154 (with further references); see already A. E. McGrath, s.v. ‘Religion,’ in J. W. Yolton *et al.* (eds.), *The Blackwell Companion to the Enlightenment* (Oxford: Blackwell, 1991), p. 447-452.

<sup>48</sup> G. E. Lessing, *Nathan der Weise*, III, 7, verse 534-537, cf. Lessing, *Werke und Briefe*, Vol. 9 (Frankfurt, 1993) p. 559f.

<sup>49</sup> Here quoted after J. A. van der Ven, *Human Rights or Religious Rules*, *loc. cit.*, p. 165.

will to continue a dialogue between all participating institutions about those points where a final consensus was still far away. In other words, where the crucial and disturbing question about the actual foundation of “Human Dignity and Rights” was postponed, this was done in the hope that future consultation and dialogue would once bring about a further convergence of differing standpoints.<sup>50</sup>

About individualism: One might certainly argue that, seen in this light, the act of adoption of, or self-commitment to the concept of “Human Dignity and Rights” is not only made by, but in a way even constitutes a certain kind of community, which is also secular, or temporary in character, and tries to do justice to the reality of pluralism. This self-commitment is, in the light of what we have discussed above, the act of “secular morality” that stands at the beginning of a political entity. This also allows certain further conclusions about the actual nature of the individualism that is at work here. Hannah Arendt’s important remark is still of value at this point, insofar she spoke about the fundamental “right to have rights”: It is always a community that makes the theoretical claim of any individual human being for dignity and rights real, whereas regardless of their theoretical stringency they remain dead letter outside the political community.<sup>51</sup> In some sense, this implies a communitarian aspect: In this perspective, an isolated individual in fact is just not treated according to its dignity, and has little chance to effectively enjoy his or her freedom and rights. He or she is cut off from them, they remain theory.

Another important aspect lies in the fact, that the mentioned self-commitment of this community is an act of will and decision: Being a necessary pre-condition, it can also be refused, or replaced by alternative concepts and consequently by commitments based on less “inclusive” ideologies (like forms of racism as in pre-war Germany, materialism as

<sup>50</sup> On the character of the UNDHR as “foundation open” cf. *ibid.*, p. 161-166. In identifying the motives for this agreement, van der Ven explicitly points at a tradition of empathy with the weak, and the suffering as present in 18<sup>th</sup> century Enlightenment philosophy (166). This is certainly one of the possible foundations.

<sup>51</sup> H. Arendt, ‘Es gibt nur ein einziges Menschenrecht,’ in *Die Wandlung* 4, 1949, p. 754-770. Arendt, of German Jewish origin, wrote her statement under the impression of the large number of refugees, displaced persons and forced émigrés during and after World War II, to which she belonged herself. The same aspect has been highlighted by Hallamaa, Human Rights and Christianity (as in fn. 34), p. 219f., who also emphasizes, that the grant of human rights by a community to a person not only means a protection, but serves as a precondition for both personal growth and “necessary to fulfill a member’s role in that community” (220).

in contemporary Communist countries, or “right faith” in theocratic regimes). Among others, these aspects would lead to a critical remark concerning an Orthodox concept of community that Christos Yannaras, by summarizing many of his previous considerations, has opposed to the allegedly deficient Western concept of “Human Dignity and Rights”.<sup>52</sup> Yannaras idealizes first the Hellenic city as a community not of simple cohabitation of individuals and necessary collectiveness, but as being based on an “exercise of truth” that led to an actual realization of the inviolable dignity and honor of the human person. The actual heir of this “community based on the truth” was then – in Yannaras’ view – the Orthodox Church.

Yannaras, in whose philosophical views the notions of *theosis* and of personhood play an important role, can certainly not be held suspicious of advocating any simplistic forms of theocracy, and also not of being insufficiently familiar with ideas of human free will.<sup>53</sup> However, considering the dilemma concerning the “truth” of Human Dignity that we have tried to expose before – a substance difficult to grasp in terms, and to express in ways appropriate for political contexts – the question remains what an “exercise of truth” could actually mean, and in which sense it differs then from the self-commitment of a political community that we have identified as a precondition for the *realization* of the dignity of every human person. The question includes possible notions of “truth” (about human beings, or about Human Dignity) which might be at work.

It is nevertheless right that the community that – in theory – is constituted through a self-commitment of its political representatives consists of individuals as such, while very little attention is paid to them being parts of particular subdivisions, or sub-communities at the same time (be that families, parishes, ethnic minorities or anything else). At this point, individualism is narrowly connected with equality (understood as *equality before the law* in the first place), because it would be difficult to imagine a full realization of the principle of equality on grounds different

<sup>52</sup> Christos Yannaras, ‘Human Rights and the Orthodox Church,’ in E. Clapsis (ed.), *The Orthodox Churches in a Pluralistic World* (Geneva: WCC Publications, 2004), p. 83-89.

<sup>53</sup> For a summary of Yannaras’ far reaching, and admittedly well-grounded critique at the West and Human Rights in particular cf. Papanikolaou, *The Mystical as Political*, *loc. cit.*, p. 89-92. On Yannaras as one of the followers of Georges Florovsky’s concept of “sacred Hellenism” see also P. L. Gavriilyuk, *Georges Florovsky and the Russian Religious Renaissance* (Oxford: Oxford Univ. Press, 2013), 247-251.

from the individual. That includes in fact a static meaning implied in the category of “Human dignity” that is applied to every human being within this community. “Dignity” at this point must not be confused with “honor” (which is mostly a collectively assessed pattern), or with any concomitant dynamic or “empirical” aspects of “dignity” which are important but secondary. So Peter L. Berger’s observation, who argued already in 1970 that in democratic societies “dignity” has replaced “honor”, is still of relevance, despite some contestations it has experienced.<sup>54</sup>

What results from all these considerations, is still the model of a theoretically imagined community of individuals, of a temporary nature and based on presumptions of both nominalistic and moral character. In a sense, this community is not completely real, although it tries to give some credit to the “reality” of Human Dignity, which is otherwise difficult to grasp. It is important to emphasize these characteristics with regard to religious worldviews. The cornerstone and the bone of contention from a religious point of view concerning the – perhaps necessarily preliminary – acceptance of such a model is the notion of religious freedom. We have briefly touched upon the difficulties, and the processes of inner debate this has brought about in the branches of Western Christianity.

As for Russian Orthodoxy, history science during recent years has spent some additional attention to the phenomenon of “religious tolerance” and “freedom of conscience” in Russian history. As Geraldine Fagan recently put it, perhaps a bit too pessimistically: “A thin but wiry thread running through their nation’s history, Russian’s pursuit of religious freedom is a tradition visible at intervals that have proved all too brief, however.”<sup>55</sup> Although it is impossible to give an appropriate account of all results within the limited space here, a brief summary of the main arguments would have to mention mainly three points: The first would have to hint at Russia being an empire, which means a multi-ethnic and multi-religious political entity since the 16<sup>th</sup> century at least. Consequently, pragmatic advantages were seen by the Tsarist regime in Imperial Russia in a “prudent tolerance” with regard to several significant religious minorities inside the Empire, and during times of expansion to

<sup>54</sup> P. L. Berger, ‘On the Obsolescence of the Concept of Honor,’ (reprint) in S. Hauerwas, A. MacIntyre (eds.), *Revisions: Changing Perspectives in Moral Philosophy* (Indiana, Notre Dame: Notre Dame Univ. Press, 1983), p. 172-181.

<sup>55</sup> Cf. G. Fagan, *Believing in Russia – Religious Policy after Communism* (London: Routledge, 2014), p. 6-23, quotation p. 8.

the West, South and the East. Such pragmatic attitudes did not prevent the preferential treatment of Orthodoxy by the Tsarist regime up to the early 20<sup>th</sup> century, but they created spaces of religious freedom on the large territory of the empire.<sup>56</sup> Secondly, there is the more theological argument, also present in the Russian Orthodox tradition, that coercion in matters of faith hardly brings about any positive or wishful results.<sup>57</sup> A third point, which might perhaps seem more specifically Orthodox, due to a lesser emphasis on words and theories than usually found in Western theology, is the somewhat irritated perception noted by some Orthodox churchmen that regardless of their errors in faith and doctrine adherents of other confessions nonetheless lead an exemplary moral life, and their convictions sometimes bear even better fruits than those of the true believers.<sup>58</sup>

As it can be seen, apart from the pragmatic argument concerning a certain *raison d'État* applied by political powers, the more faith based and theological arguments are situated in the sphere of inter-human relations. Obviously, it is rather here, more than in the realm of morally inspired, but nominalistic presumptions about “Human Dignity” where the notion of *theosis* truly applies – especially if understood, as Aristotle

<sup>56</sup> For the Early Modern period one may still consult H.-H. Nolte, *Religiöse Toleranz in Russland 1600-1725* (Göttingen: Musterschmidt, 1969) and the summarizing remarks by the same author, “Verständnis und Bedeutung religiöser Toleranz in Russland”, *Jahrbücher für Geschichte Osteuropas*, 17, 1969, 494-530. For later developments in the 19<sup>th</sup> and early 20<sup>th</sup> century see the excellent recent study by P. W. Werth, *The Tsar's Foreign Faiths. Toleration and the Fate of Religious Freedom in Imperial Russia* (Oxford: Oxford Univ. Press, 2014). Werth in his conclusion (p. 265f.) also alludes to the fact, that the controversial 1997 law “On Freedom of Conscience and Religious Associations” in Post-Soviet Russia signaled a partial return to a course “familiar to both servitors and non-Orthodox subjects of the empire.”

<sup>57</sup> Although there seems to be no consistent discourse concerning “religious freedom” in Russia over the centuries, such arguments appeared early and experienced further development also among Slavophiles in Late Imperial Russia. Cf. G. H. Hamburg, “Religious Toleration in Russian Thought, 1520-1825”, in *Religious Freedom and the Problem of Tolerance in Russian History*, special issue of *Kritika. Explorations in Russian and Eurasian History*, 13, 2012, No. 3, p. 515-559, and R. A. Poole, “Religious Toleration, Freedom of Conscience, and Russian Liberalism”, *ibid.*, p. 611-634.

<sup>58</sup> This argument appears several times in the diaries of the Russian emigré priest Alexander Elkhaninov, cf. *The Diary of a Russian Priest* (Crestwood, NY: St Vladimir's Seminary Press, 1969). But it is also used much earlier, as for example in Maxim Grek's account on the events and behavior of people in Savonarola's Florence at the end of the 15<sup>th</sup> century, cf. Hamburg, “Religious Toleration in Russian Thought”, *loc. cit.*, p. 525.

Papanikolaou has recently suggested, as “divine-human communion”, and with regard to the empirical component the *theosis* concept necessarily entails and requires. Yet this also implies a certain perception of what we called “the vertical or transcendent dimension”. Reference to ancient understandings of Christian Universalism, according to which “the human soul is by nature Christian” (*anima naturaliter Christiana*), and “there is no people or group not Christian” (*nulla gens non Christiana*), only form a first step here.<sup>59</sup> Taking this step serious would already mean to assume that “every human being is created after God’s image”, which within the framework of *theosis* should be understood as either “dignity” or “the potential to become truly human” – but it would also designate, in more simple terms, the potential to become Christian, as the actual space where divine-human communion truly happens is the Christian Church.

At this point, one still argues from a genuinely religious point of view: Adopting (temporarily) the “Human Dignity and Rights” concept in this perspective would mean no less and no more than accepting the preconditions for a likewise successful and authentic missionary work. Correct and conclusive as that may be, it is right here where the notion of *theosis* offers a much more distinguished, and in a way much more realistic dimension. It is to be found in the – recently coined, but not yet widespread – notion of an “apophatic anthropology”. This notion actually represents no more and no less than another consistent continuation of the Orthodox teaching about God, which is centrally described by the adjective “apophatic” (ignorant, not-knowing): God in both his substance and image is and remains inaccessible and incomprehensible, a mystery – so that any attempt to circumscribe or even define him must remain of limited, and temporary value. If this is acknowledged, and we also regard every human as being created “after God’s image”, then also the inner truth of any human must ultimately remain a mystery, regardless of all characterizations we might feel able to give from time to time. Furthermore, there is no way to ultimately assess what the God-given image in case of a particular person consists of. So if *theosis* is about realizing this God-given image in the life of a person, paradoxically it is at the same time beyond pure human understanding what this image would

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<sup>59</sup> Cf. e.g. St. Paul’s Epistle to the Colossians 3, 11; on Tertullian cf. N. Brox, “‘Non ulla gens non Christiana’ (zu Tertullian, Ad nat. 1, 8, 9f.)” in *Vigiliae Christianae*, 27, 1973, No. 1, p. 46-49.

specifically consist of or to anticipate in any concrete sense what it would look like once accomplished and realized.<sup>60</sup>

Such a consistent application of the *theosis* notion in all its depth leads to various consequences. The main consequence is yet as simple as demanding, and it is a matter of not only inter-human, but in more narrow terms of inter-personal relations: Doing justice to the mysterious God-given image of a human person means to learn to love him – here we both find the dimension of experience, and the ultimate moral component. It is demanding because it cannot be delegated to neither outward success nor to external authorities: Neither is the task fulfilled if only someone would formally convert to Christianity or Orthodoxy, nor can the realization of one’s God-given image be reduced to the mere observation of a certain moral code (however important that may be). *Theosis* in its consistent application, and also, by the way, the *sobornost’* concept<sup>61</sup>, both include a certain questioning of both moral and political authorities. This is far from any allusion to superficial anarchy, of course, and anything but ideological gunpowder for social turmoil and revolution, but it means a silent, but insisting and realistic limitation of competences.

## Conclusions

Having reached this point, surprisingly enough, one might even feel tempted to state several convergences between the concept of “Human Dignity and Rights” and the consistent application of the Orthodox notion of *theosis*. Whereas the former leaves the “transcendent perspective” open for further dialogue, the Eastern Christian apophatic tradition refrains from absolute definitions and assessment of the divine. That concerns the “vertical perspective”, as it were. In the “horizontal perspective”, the

<sup>60</sup> Metropolitan Kallistos in his above-mentioned book *Orthodox Theology in the Twenty-First Century* (cf. fn. 19) devotes an entire chapter to this “apophatic anthropology”, pointing at the need to further develop the treasure of Orthodox theology, cf. *ibid.*, p. 31-33. Some considerations which take off from the same issue, but with more reference to Western theological tradition (in which *theosis* also does play a role) are presented by L. Woodhead, ‘Apophatic Anthropology’, in R. Kendall Soulen, Linda Woodhead (eds.), *God and Human Dignity* (Grand Rapids/Cambridge: Eerdmann Publishers, 2006), p. 233-246.

<sup>61</sup> The need for concentration forbids again to dwell on this point more extensively. In the place of reference to an abundance of literature that exists, cf. Khomiakov’s 5<sup>th</sup> letter to William Palmer, from 1850, as reproduced in English on [http://reocities.com/heartland/5654/orthodox/khomiakov\\_palmer05.html](http://reocities.com/heartland/5654/orthodox/khomiakov_palmer05.html) [accessed 10-10-2014].

preference that is given to peaceful coexistence of the subjects within a pluralist society, in a way paves the ground for fruitful human relations, which, in the perspective of *theosis*, is ideally determined by faith-based Christian love. In both concepts, one detects a restriction, or limitation of political and also moral authority, not in a destructive sense, but in the sense that none of the tasks occurring in inter-human relations, be they understood in a “humanistic” or in a spiritual way guided by *theosis*, can be delegated to outward institutions. And finally, where the Human Rights concept operates with a preliminary notion called “Human Dignity”, *theosis* leads to an understanding of the mystery of the human person that is yet sacred, as it is based on the “image and likeness of God”.

Certainly, these convergences allow for numerous nuances, in which both concepts still differ significantly from one another – perhaps the most central point being that *theosis* is at the core designed relational and empirical, not nominalistic, and claims a space for experience, which “Human Dignity” not always does (it does not in its abstract application for socio-political and juridical concepts). But this is, as we have seen, beyond politics. Already Orthodox theologians of the first half of the 20<sup>th</sup> century were eager to emphasize the difference between the Western notion of the individual, and the Eastern Christian understanding of personhood.<sup>62</sup> This is another topic that cannot be treated here in detail. However, what can be concluded here, is that for an Orthodox theologian there might probably be much more convincing reasons to adopt the concept of “Human Dignity and Rights” than to reject it, and to imagine the realization of “true humanness” under socio-political conditions shaped by this concept than probably under any other.<sup>63</sup>

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<sup>62</sup> Cf. the concise overview concerning terms like *lichnost'* (personhood) and *sobornost'* (catholicity, conciliarity) provided already by P. Vallière, “Russian Orthodoxy and Human Rights,” in I. Bloom, J. P. Martin and W. L. Proudfoot (eds.), *Religious Diversity and Human Rights* (New York: Columbia University Press, 1997), p. 278-312, here esp. p. 280-284.

<sup>63</sup> Arguing this way, I also follow the conclusion of A. Papanikolaou, *The Mystical as Political*, *loc. cit.*, p. 129f. who does yet elaborate much more, and much more thoroughly on the notion of personhood, cf. *ibid.*, chapter 3 (“Personhood and Human Rights”), p. 87-130.

# Conclusions

## Orthodoxy and Human Rights

Jean-Paul WILLAIME

*Translation from French by Elisabeth A. Diamantopoulou*

In concluding this particularly fruitful conference on “Orthodoxy and Human Rights”, I had two alternatives: either to comment separately each presentation, bringing into light the specificities that each one brought to the general theme, or to make general comments on the papers and the debates they raised by presenting my own perspective as a sociologist of religion. I opted for the second alternative so, even though I took into consideration the various presentations, I am not directly referring to them in my conclusions.

### **1. A multidisciplinary examination beyond stereotypes**

The conference papers were high quality presentations that raised unique debates. Furthermore, during this conference there was no use of academic jargon. Instead, very different and opposing views were expressed in an open academic environment on the relationship between the Orthodox world and human rights. In an environment of socially controversial issues that become the subject of public controversies stigmatizing the positions of opposing sides, university institutions play an important role engaging in discussions using a well-documented and sound critical approach by deconstructing stereotypes and preconceptions, which, sometimes, can permeate the academic sphere. But this was not the case in Louvain-la-Neuve, where everyone involved, both the organisers and speakers of the conference, and the Catholic

University of Louvain (UCL), played an academic role, for which they have to be congratulated.

Orthodoxy and human rights are often at the core of intense conflicts between Orthodox and secular conceptions of human rights. Some speakers in the conference might have been tempted to debate these issues with experts on Orthodoxy who are only historians, legal scholars, sociologists and philosophers, thus addressing Orthodoxy exclusively from the secular viewpoint of humanities and social sciences. This was certainly not the case during the conference in Louvain-la-Neuve, where Orthodox theologians had the opportunity to present several papers. This was a very good choice as it would have been highly inappropriate and questionable, to omit in the contributions and debates the viewpoints of Orthodox theologians in the name of academic research. It would have been inconceivable to organise a conference on “Orthodoxy and Human Rights” without giving a voice to the Orthodox theologians themselves, so that they can have the opportunity to explain the variety of approaches towards human rights that exist within Orthodox theology. Not giving Orthodox theologians a voice, would have introduced an ideological bias according to which only secular views are the legitimate vectors through which to address the issue of human rights, thus automatically considering religious views as illegitimate. Yet, even though it is more than evident that there are inherent tensions and conflicts between secular and religious viewpoints on human rights, it is essential to bring together both secular *and* religious discourses in the debate in order to fully understand and analyse these tensions and conflicts. This is also particularly critical because the Orthodox world is comprised of diverse viewpoints encompassing important internal debates. This, however, does not imply deference to views that call into question the fundamental freedoms of human rights. This stands even more true, given the elective affinity between human rights and democratic freedoms, the latter being intrinsic to the academic world, which has always been fiercely hostile to any argument of authority and particularly attached to individual freedom of thought.

In the academic world, studying social issues that are controversial in society and in religious circles is not always an easy task, especially when distinguishing between social debates and academic discussions. The former can mobilize academic resources to legitimize their views, whereas the latter can rely on the *vox populi* to strengthen the relevance of their own views. But the goal of any academic endeavour is to keep a distance from social and religious debates, in order to determine not only what is at stake, but also

what is at the core of discording views. Our goal is to study the historical conditions of the emergence and evolution of such discords. This raises the following question: what is the subject of discord between the Orthodox churches and Orthodox theologians – this conference confirmed in fact the diversity of Orthodox views – and between the Orthodox churches and the other Christian churches (Catholic and Protestant)? This question raises further questions: is it possible to agree on a common historical approach of discords? In other words, is it possible to agree on a common nature of these discords? Another question raised is whether it is feasible to find a common language to express diverse views. In other words, whether it is possible to agree on a historical contextualization and on a philosophical and sociological expression of the reasons underlying divergent views. In my view, a historical contextualization of such approaches is a prerequisite for any fruitful and authentic dialogue.

During the conference, we heard twelve presentations expressing not only different points of view, but also using various disciplinary approaches: theology, ecclesiology, civil and ecclesiastical law, sociology, political science, history and anthropology. A multidisciplinary approach is always a challenge because, apart from the confrontation of various points of view, it also implies one's understanding of an epistemological and methodological framework. In this conference, the challenge of a multidisciplinary approach was all the more complex since several presentations combined both descriptive and normative approaches.

This conference focused on Orthodoxy, theology and Orthodox ecclesiology, as well as on Church/State relations in countries where national identity assumes a strong Orthodox dimension, especially in Greece and Russia. As regards the dialogue on human rights between different Christian faiths, with the exception of two papers – one on the Catholic Church and the other on the position of the Protestant churches in Europe – this issue was not covered adequately during the conference. The conference was in fact more focused on the understanding of Orthodox views of human rights and on the wish to take human rights into account in order to accurately identify common and diverging points, going beyond stereotypes and polemics. The main objective of the conference was to provide a better understanding of the positions of Orthodox Christianity on human rights, by examining the rich and diverse contributions of theologians and non-theologians with an expertise on Orthodoxy and Orthodox countries. This goal was clearly achieved, something which the readers can confirm after reading this

book. But I would like to emphasize the usefulness of this particular *genre* of academic discussions that bring Orthodox Christianity into the western academic world of teaching and research. This is even more important because, in a truly European perspective, it is important to integrate the Orthodox Christian world into the legal, historical and sociological studies of religions in Europe.

## **2. Bringing the empirical situation of religion into the debate**

First, I would like to emphasize the necessity, whether we like it or not, of taking into account the factual situation of Churches in European societies, as well as the relationship of individuals to religion. Several papers during the conference referred to this factual situation, which was regularly integrated into the debates. This is a situation characterized by a two-fold increasing autonomy, real and/or claimed: by individuals in relation to the ecclesiastical authorities and by states in relation to religious institutions. In Europe, we are witnessing the end of Christianity as a form of power over individuals and societies, thus a reconfiguration of Christianity in its religious diversity, as a religious choice among others in secularized and pluralistic societies. From a sociological perspective, this empirical starting point is not surprising, but it needs to be fully understood. I do not mean that churches should be obliged to adopt secular trends and evolutions. On the contrary, it is normal that, in the context of their self-understanding and the divine mission they feel they are entrusted with, churches develop their own logic, even if in practice this implies their opposition to certain contemporary dominant trends. From a sociological point of view, while respecting fully the autonomy of the theological approach, accepting or refusing to take into account factual societal changes constitutes a conscious theological choice. This raises the following question: to what extent and in what ways are Orthodox Churches and Orthodox intellectuals willing to take into account ongoing societal evolutions in their theological and ecclesiological reasoning? If theological reasoning is part of a several centuries-long tradition, and it is often in this diachronic dimension on which the former builds its legitimacy, then how is synchronicity integrated into contemporaneity? Failure to integrate the empirical situation in theological approaches and, more particularly, not integrating the challenges and new questions raised by human rights, is it not synonymous with exposing the former to

a severe social sanction? Doesn't this entail a loss of legitimacy, or even an increasing secular disqualification of ecclesiastical authorities, including the Orthodox populations themselves?

The development of non-confessional religious studies, especially history and sociology of religions, was difficult in the context of Western Christianity. "Religious sciences" have triggered misunderstandings and conflicts, and they were often perceived as a hostile secular approach to religion, questioning the very foundations of Christianity. Let us not forget, in the early 20<sup>th</sup> century, the arguments over modernism within the Catholic Church and the fundamentalist reactions in the Protestant world. But gradually these historical-critical and sociological approaches gained ground and were integrated into the curricula of the Catholic and Protestant theological faculties. I think that it would be interesting and useful to collect more data on the situation of non-confessional religious studies in Orthodox countries, particularly in the Orthodox theological faculties. What is the role of secular religious studies in the training of Orthodox clergy and theologians? The issue of integrating secular religious studies in the theological self-understanding of Orthodox Christianity is important. It is not about reducing theology to the history of theological thought, but allowing theological reasoning to spread, while taking into account existing and developing secular approaches. This can allow the inclusion of theological thought in the socio-cultural conditions of the present, which does not mean condoning the world as it is and as it evolves. I can understand that it is not possible for religions to "become human rights", which are conceived as a type of "secular religion". But it is important for religions to express their message and develop their mode of presence in society in a democratic socio-political environment, where human rights are a fundamental value. Appropriating religiously human rights does not exclude the fundamental questions raised by religious conceptions, nor the tensions that can be generated.

### **3. Contributing to the debates and addressing the challenges**

The topic of our conference was "Orthodoxy and Human Rights". The philosophical, political and historical genealogy of human rights, in particular the Universal Declaration of 1948 and the European Convention of 1950, has been extensively studied, also in a confrontational manner.

According to the secular version of this genealogy, human rights are a conquest of secular movements and forces against the power of religions and their claims. This is partly true. But there is another version in the genealogy of human rights, one that also has its share of the truth, emphasizing the contribution of Judaism and Christianity to the emergence of freedom of conscience and human rights.

The emergence of human rights was a confrontational process, as were the various narratives of this process. But in this matter as in others, one must distinguish between the historical process in the emergence of human rights in the past and today, and the various social perceptions that this process is subject to, including religious and philosophical perceptions. Even if, from a historical point of view, these social perceptions are not relevant, they remain a reality. In other words, even if social perceptions are false from a historical standpoint, they are nevertheless realities that have to be taken into account. The fact that human rights are intrinsic to a genealogy of tolerance and part of the emergence of fundamental freedoms, allows an interpretation in terms of the emancipation of people and the affirmation of individual autonomy under the rule of law, in the context of a humanistic culture, sustained by a diversity of sources, including religious traditions. Yet, this fact allows for more radical interpretations, according to which, individual autonomy is the very foundation of values, in the sense that the individual is the unique source of the elaboration of norms and rules of law. This kind of radical interpretation disregards the distinction between autonomy and independence, or between “personalism” and individualism. What is at stake, is the very interpretation of human rights; the critical acceptance of human rights by the Orthodox churches can be useful in identifying the stakes underlying certain unilaterally “individualist” interpretations of such rights. Let us also emphasize that human rights cannot be simply reduced to the social perceptions of various actors and *milieus*, as this would imply that the very definition of human rights depends on the use that individuals make of such perceptions.

It is not only legitimate, but also necessary, to question interpretations of human rights. All issues relative to this question, stemming more specifically from Orthodox Christianity, constitute a valuable contribution to the debate. It would be detrimental, especially for human rights, not to take these issues into consideration. The Orthodox point of view raises questions regarding issues, such as the relations between individual and collective rights, or between human rights and morality. It is both

legitimate and necessary to raise such questions, even more so because the significance of these issues goes beyond Orthodoxy. These issues are also inherent in debates that were historically part of the elaboration of human rights, and they emerge in the context of ultramodernity, which is characterized by the radicalization of individualism, and is also conducive to the re-emergence of such debates. Faced with the radicalization of individual rights that raise issues, such as euthanasia, eugenics, the right to having a child, there is a potential risk of undermining the humanistic foundations of human rights. A great deal of importance has been given to the recognition of human rights as individual rights, along with the tendency to extend these individual rights, leading to the re-emergence of the issue of the relationship between individual rights and collective rights, on the one hand, and between individual rights and morality, on the other hand.

The various issues raised by human rights and their implementation are manifested in a context that is characterized by the relativization of all types of boundaries: political, religious, gender related, between children and adults, between the human species and the animal species, etc. Today, as the paper on *Pussy Riot* clearly demonstrated, it becomes very difficult to distinguish the sacred from the profane, the religious from the secular. If the legal and civil authorities have to decide what is religious and what is not, the situation becomes highly problematic, because in order to make this determination, it is necessary to know which legal provision applies. Is the display of a cross in public schools, or the wearing of a veil by a young woman, a cultural or a religious symbol? As we know, in Europe, these issues are judged differently from one person to another and across different countries. The judge does not have the luxury of time, that the sociologist has, to raise questions and bring into light the different factors that need to be taken into consideration in the various circumstances. The judge must make a decision quickly. This situation is particularly delicate because, in reality, the definition of what is religious depends on several objective and subjective factors, and a simple and unequivocal answer does not seem possible. The blurring or the relativization of boundaries, constitutes a socio-cultural feature of our times. We are witnessing the secularization of the religious, which seeks to assert itself in the profane, while the spiritualization of the secular is taking place, and new forms of the sacred are seeking to be recognized. This situation contributes to the blurring of boundaries between the religious and the secular. However, in reality, this is not a new phenomenon; it is actually an ongoing issue

that we have witnessed throughout the history of the various religious traditions. Today, for some people, the mere existence of sacred religious places becomes so unbearable, that they reinvent the sacred through provocative acts of desecration (see the activities of *Femen*). It seems that we go further into transgression, to “resurrect” the sacred. This can be explained as an expression of nostalgia for the sacred, by people who are deemed to be extremely secular. It is not only the boundaries between the religious and the secular that are being questioned, but also those between believers and non-believers. The process of differentiation between Western civilization and Christianity, is reinforced by an additional factor: the flows of missionaries from North to South are now reversed, i.e. from South to North, something that has contributed to the significant development of African, Caribbean and Asian expressions of Christianity in Western Europe. Although Eastern Christianity is much less concerned by these reconfigurations, it will be gradually increasingly affected.

As a sociologist of religion, I observe the changes in attitudes towards religion, as well as the changes of religious behaviour, at the individual, collective and institutional levels. Both phenomena of *believing without belonging* as well as *belonging without believing* can be observed in Europe. In other words, the fact of not belonging to a religious institution is not a synonym of being a non-believer. Similarly, affiliation to a religious institution is not a guarantee of being a believer. One can be attached culturally or politically to a religious tradition, without being a believer. In the European values surveys, it is impossible to identify *ipso facto* individuals claiming to be “without religion” as atheists; it is, therefore, necessary to make the distinction between “believers without religion” and “non-believers without religion.” It is important to understand the meaning behind the claim of being respectively a believer or a non-believer. For instance, according to French anthropologist Marc Augé, “only the non-believers believe that believers believe.” The Dutch sociologists of religion use the term “ietsers” (“iets” in Dutch means “something”) to describe people who claim to believe in something without being able to define what their belief is. In fact, it is important to remember that religion is not so much a matter of belief or unbelief, but rather a matter of trust and hope. In this sense, it is a way of understanding the human condition of life and death, a symbolic language that depicts the human condition in relation to a divine figure, a communication between the visible and the invisible. In terms of the evolution of religion and non-religion, the boundaries have become less clear-cut, less visible. It has in fact become

difficult to delineate the clear boundaries between, on the one hand, “doubting believers” – i.e. those that identify themselves as “believers” while having at the same time moments of doubt and questioning – and, on the other hand, agnostics who are open to various forms of spirituality. Today, although minorities claim and display religious orthodoxies and orthopraxis, there are indeed fewer “firm believers” and “strong atheists”.

#### 4. The challenge of pluralism

Pluralism, which is taking into account diverse populations and mindsets as part of a more positive conception of pluralism, constitutes a major challenge for the Orthodox churches and Orthodox majority countries. The religious and political transformations that took place in Western European societies, led to the transition from the Westphalian system of *cujus regio eius religio*, representing a territorialisation of religion (each territory with its own religion), to the social and legal acceptance of a plurality of religions and world views, even within the context of a political community. These changes, and the conflicts they have triggered throughout this long process, led to the transition from various forms of confessional or confessionally-oriented States to a diversity of secular States. As part of these developments, there were movements that were not limited to advocating the neutrality of the secular State from religion, calling instead for the establishment of secularist States, aiming at undermining as much as possible the influence of religions, something, which has been identified with conservatism and obscurantism. Yet, the neutrality of the secular State is not only a neutrality with respect to different religions, but also a neutrality among religions and various forms of atheism. The communist regimes that had turned atheism into the official ideology of the State were not secular.

In France, the growth of the Muslim minority among the population, has contributed significantly to the re-emergence of a certain form of activism, in favour of atheism and the promotion of a secularist – rather than secular – state. Yet, it is certainly not the role of the state to promote the criticism or abandonment of religion, or to endorse secularization. Secularization is a socio-cultural process that develops in different ways and countries, and the various states and churches cannot ignore this phenomenon. A sign of the process of secularization is that, in a certain way, “we are all secular”, in the sense that both believers and non-believers, both religious and non-religious people, tend to be gradually

less tolerant towards the power of clerics and ecclesiastical institutions, especially when the latter exercise their power in an authoritarian way, or they impose their beliefs without any discussion or consensus. The fact is that today, the conscience of believers and non-believers alike has endorsed internally the principle of pluralism. Only a minority believes that its own religion is “the only true” religion, while the majority disapproves any exclusive claim to the truth. Pluralism is not merely a fact; it has become a value in a society of free choice and respect for individual autonomy. Pluralism is both external and internal; on the one hand, there is a diversity of religious and philosophical views and, on the other hand, even within a specific religion – be it Orthodox, Catholic, Protestant, Jewish, or Muslim –, there is a great diversity in the way of living and identifying with this tradition.

In the area of Church-State relations, human rights seem to challenge, not only religious institutions and authorities, but also the political establishment. A characteristic example in this respect is the dissatisfaction of the secular Republic of France, following its condemnation by the European Court for Human Rights (ECtHR), regarding the French State’s attitude towards Jehovah’s Witnesses. Even a secular state like France has difficulties implementing all the effects of freedom of religion and the necessity of a true neutrality that this implies. In other words, human rights are a challenge, not only for religious traditions, but also for secular States and secular humanist movements. Yet, the overall social acceptance and legal institutionalization of the secular State have prevailed in Europe. The clear distinction between the State and religions, and their sphere of activities, is reflected, as shown above, by various systems of “separation-recognition”, that is to say systems that, while guaranteeing the separation of religion and State, recognize the place and role of religion in social life and develop Church-State partnerships in different areas (education, social action, etc.). The processes of State-building and nation-building are specific to each country, and have each entered the political modernity at their own pace and in their own way. Today, in Europe, this phenomenon is still visible in the close ties that remain, despite the separation of Church and State, between national identity and religion (for example, between the Irish identity and Catholicism, the Danish identity and Lutheranism, the French identity and secularity, etc.). But significant changes have taken place in most countries that have inherited these close links between national identity and religion. In Western European societies, churches

gradually adapted to the new socio-cultural conditions. The question that emerges is whether another choice is possible. While churches can choose to consider themselves as “besieged citadels” refusing to yield any of their privileges, the question remains what the social and religious consequences of such a choice could be. The close links between national identity and the Orthodox Christianity are challenged by globalization, Europeanization and transnational migration. This issue raises several questions: What is the relationship between religion and territory in Orthodox ecclesiology? What about the Orthodox globalization? Is there a specific role for the Orthodox diaspora in the West? Is there an Orthodox pathway in the West? Is there an Orthodox theology in the West? Is this a question between East and West, or between the Orthodox tradition and other Christian traditions?

The two main challenges that all churches face today are the challenges of pluralism and individualization (not individualism). Orthodox Christian populations are also affected by these processes. But individualization does not necessarily mean absolute privileges granted to the individual to the detriment of the community. In my work on evangelical Protestantism, I have used the concept of “communitarian individualism”. Evangelical Protestants make an individual choice by choosing their church; also by their own choice, they make the commitment to follow the orthodoxy and orthopraxy of their church. This is an example of individualization combined with communalization, which is why I used the term “communitarian individualism”.

## **5. A new landscape marked by the secularization of Human Rights**

As several contributors to this conference have shown, the Orthodox Churches have their own theological resources with which to develop a positive approach to human rights. The various forms of criticism towards human rights by the Orthodox Churches should not be immediately rejected or criticized on the grounds that they are politically and religiously incorrect, expressing reservations over certain interpretations and uses of human rights. If human rights become progressively “sacred secular”, on the basis of a highly individualistic conception of these rights, one could justify the tendency of religious actors to perceive human rights as problematic from a religious point of view. If, indeed, human rights become increasingly the vector and legitimization of radical secularism,

this would reactivate the following scenario: human rights *versus* the rights of God. It is, therefore, particularly important that religions in general, and Orthodox churches in particular, take on their own role by contributing, practically and actively, to the reinforcement, respect and legitimization of human rights. In this way, religions can gain legitimacy to discuss human rights and, eventually, criticize certain human rights conceptions and practices. In fact, if religions do not challenge the fundamental achievements of individual freedoms and the secular character of the State, their questions can be taken into consideration. Especially, since one cannot exclude the scenario of a situation in which Christianity becomes the main defender of human rights, particularly those of the poor and the disabled, against the brutal ultra-liberal competition of individual performance. The historical emergence of human rights was part of the process of democratization and secularization of societies. Since individuals and societies have been emancipated from clerical power and church authorities have been desacralized, there may be a tendency towards the sacralisation of human rights, towards transforming the individual into the new figure of the sacred in societies that are becoming increasingly autonomous from religion. Yet, through the process of both expansion and radicalization of these rights today, it seems that we are witnessing a real secularization of human rights. On the one hand, we are witnessing a secularization of human rights through the expansion of these rights not only to children, but also to animals and plants; at the same time, environmental rights have restricted human rights in the exploitation of nature and energy resources. On the other hand, the secularization of human rights in question is quite paradoxical and leads to a radicalization of human rights. In the name of human rights, for instance, one claims the right to die, when life is viewed as no longer worth living (the issue of euthanasia); the right not to give birth to a disabled child (risk of eugenics); or, the right to medically-assisted procreation (for same sex couples). The relativisation and absolutism of human rights mentioned above, has led to the secularization of the humanist conception that dominated the development of human rights.

European societies today are post-Christian, but also post-secular. This means that secular utopias and concepts are themselves desacralized and secularized, especially in the field of politics. There is a transition from a situation where secular expectations have attempted to replace religions, to one where these very same secular expectations are themselves disenchanting. This process consists of a radicalization of

secularization, and this radicalization paves the way for the return and reconfiguration of religions. It does not entail a confrontation between religions and the domination of secularization, in the sense of creating a secular front against churches, nor perceiving the secular as a “liberation” or “emancipation” from religions. The radicalization of secularization, which I call ultramodern, is accompanied by a reconfiguration of the relationship between State, religion and society. In this context, Church-State separation and the differentiation between national identity and religion and between cultural identity and religion, offer the opportunity to redefine the place and role of churches in secularized and pluralistic democratic societies. In this context, churches become more significant and active minorities, acting like symbolic resources within a secular global society, which is no longer the vector of religion, but rather of a widespread secularism. The paradox is that in a context of secularization of the secular, religious groups regain legitimacy and relevance. It is the radicalization of secularization that is conducive to a return of religion. This process, far from being a return to the previous situation of the political and cultural domination of religion, is about the reconfiguration of religion within a secularized and pluralistic context. Today, this process has also an impact on countries with an Orthodox tradition, even though historically they experienced this influence belatedly, compared to Western countries. We could say that the traditional opposition between East/West is no longer relevant. The fall of the Berlin Wall also triggered the collapse of the religious boundaries between East and West. In some respects, one could say that Eastern European countries are experiencing a cultural and political secularization, whereas the Catholic and Protestant branches of Western Christianity are being gradually de-westernized. This process is conducive to the emergence of new junctions between East and West, especially as regards the following issues: religious protectionism and proselytism; the formulation of religious rights through secular civil law; the implementation of freedom of worship and religious freedom; ways of demarcating the respective powers of the State and the churches; and the historical and cultural importance of a given religious tradition in the national identity of each country. We find ourselves in an increasingly paradoxical context, marked by both a separation of the secular and the religious (radicalization of secularization), and a hybridization of the religious and the secular that challenges once again the differentiation between the two spheres. Thus, both the secular and the religious are undergoing a process of reconfiguration.

As regards new issues and challenges, such as same-sex marriage, euthanasia, or eugenics, the question is raised whether there is a division between East/West, between Orthodox Christianity and Roman Catholic/Protestant Christianity. Or, is there an internal division within each denomination, i.e. a cleavage between the radical opponents of these new developments, and those who adopt more accommodating views? More critically, one can consider that the cultural and political de-westernization of Catholic and Protestant Christianity could have a fruitful encounter with the cultural and political de-orientalisation of Orthodox Christianity. Such a positive encounter could enhance ecumenical dialogue, even more so if one considers the risk of radical secularization of human rights, which could lead to the relativisation of humanism. If such a scenario became a reality, then Christian humanism could turn out to become the leading defender of human rights, by addressing the risk of a secular and nihilistic barbarism.

## Bibliography

- ALFEYEV, H., *Towards a Catholic-Orthodox Alliance*, Interview on 24 April 2005, the day of enthronement of Pope Benedict XVI, <http://orthodoxeurope.org/page/14/65.aspx#3>.
- ALIVIZATOS, N. (1999), "A new role for the Greek Church?", *Journal of Modern Greek Studies*, Vol. 17, No. 1, pp. 23-40.
- ALTHUSSER, L. (2001), "Ideology and Ideological State Apparatuses: Notes towards an Investigation," in Louis Althusser, *Lenin and Philosophy and Other Essays*, trans. Ben Brewster, New York: Monthly Review Press, pp. 85-126.
- ASAD, T. (2003), *Formations of the Secular: Christianity, Islam, Modernity*, Stanford: Stanford University Press.
- BERGER, P. (1969), *The Social Reality of Religion*, London: Faber & Faber.
- BRUBAKER, R. (2002), "Ethnicity without groups," *European Journal of Sociology*, 43 (2), pp. 163-189.
- BRÜNING, A. & Evert van der Zweerde (ed.) (2012), *Orthodox Christianity and human rights. Eastern Christian studies 13*, Leuven: Peeters.
- BRÜNING, A., "'Freedom' vs. 'Morality' – on Orthodox Anti-Westernism and Human Rights," in Brüning, *Orthodox Christianity*, pp. 125-152.
- BULEKOV, H.P. (2009), *Die ökumenische Diskussion über die Menschenrechte*, <http://www.bogoslov.ru/de/text/480131.html>.
- BULGARIAN HELSINKI COMMITTEE (1993), Report on 'Religious freedom and church-state relations'. Available online at <http://issuu.com/bghelsinki/docs/relig-1->.
- BÜNKER, M. & Martin Friedrich (ed.) (2007), *Law and Gospel. A study, also with references to decision-making in ethical questions*, Leuvenberg Documents 10, Frankfurt a.M.: Lembeck.
- CHAPLIN, V. (2012), "Koshchunstvo u Tsarskikh vrat." [Blasphemy at the Royal Gates], *Live Journal of Vsevolod Chaplin*, February 22 [<http://www.pravoslav-pol.livejournal.com/8714.html>, accessed March 30, 2013].

- CHRISTIANS L.-L., “Autonomie des cultes et bras séculier des normes religieuses à propos de CEDH 31 janvier 2012, *Sindicatul Pastoral Cel Bun c. Roumanie*”, disponible dans [www. uclouvain.be/chaire-droit-religions](http://www.uclouvain.be/chaire-droit-religions) (consulté le 14 avril 2013).
- CHRISTOFILOU E., *Constitution et prosélytisme (Syntagma kai problytismos)*, [www.greeklaws.com/pubs/uploads/2960.pdf](http://www.greeklaws.com/pubs/uploads/2960.pdf) (consulté le 11 mai 2014).
- CHRISTOPOULOS D. (2000), *Droit, Europe et minorités – Critique de la connaissance juridique*, Athens: Sakkoulas.
- CONSEIL DE L'EUROPE (1993), “Liberté de conscience”, Actes du séminaire organisé par le Secrétariat Général du Conseil de l'Europe en collaboration avec le Centre d'études des droits de l'Homme “F.M. van Asbeck” de l'Université de Leiden (Pays-Bas), 12-14 novembre 1992, Conseil de l'Europe, Strasbourg.
- CONSEIL DE L'EUROPE (2013), Groupe de travail “Droits de l'Homme et Religions”, Rapport provisoire du Groupe de travail constitué au sein de la Commission Droits de l'Homme de la Conférence des OING du Conseil de l'Europe, NV6b. février (141 p.).
- DANCHIN G. P. (2011), “Islam in the Secular Nomos of the European Court of Human Rights”, *Michigan Journal of International Law*, (32), pp. 663-747.
- DELMAS-MARTY M. (1997), *Trois défis pour un droit mondial*, Paris: Seuil.
- DEMERTZIS N. (1996), “La place de la religion dans la culture politique grecque”, in ed. S. Mappa, *Puissance et Impuissance de l'État: les Pouvoirs en Question au Nord et au Sud*, Paris: Karthala, pp. 233-244.
- DEPRET I. (2014), “Ioannis Metaxás et le religieux (1936-1941): expérience historique et débats actuels en Grèce”, *Cahiers balkaniques* [En ligne], 42, mis en ligne le 21 mai 2014 (consulté le 14 septembre 2014). URL: <http://ceb.revues.org/5120>; DOI: 10.4000/ceb.5120.
- DIAMANTOPOULOU A. E. (2012), “Religious Freedom in the light of the Relationship Between the Orthodox Church and the Nation in Contemporary Greece”, *IJSCC*.
- Die Bekenntnisschriften der evangelisch-lutherischen Kirche. Herausgegeben im Gedenkjahr der Augsburgischen Konfession 1930*, 12<sup>th</sup> edition, Göttingen: Vandenhoeck & Ruprecht, 1998.
- DIMA V. (2005), “Freedom of Religion in the Romanian Legislation”, *Libertatea Religioasa în Context Românesc și European*, Bucuresti: Simpozion

- international, 12-13 septembrie 2005, Acta, Bucuresti: Editura Bizantina, pp. 269-285.
- DIMITROPOULOS P. (2001), *State and Church: a Difficult Relationship*, Athens: Kritiki [in Greek].
- DOBBELAERE K. (2000), "Toward an Integrated Perspective of the Processes Related to the Descriptive Concept of Secularization," in William H. Swatos and Daniel V.A. Olson (eds.), *The Secularization Debate*, Lanham: Rowman & Littlefield.
- DOBROKHOTOV R. (2012), "Bunt pipisek VS RPTs" [The Revolt of the Pussies [Pussy Riot] vs. the Russian Orthodox Church], *Live Journal of Roman Dobrokhotov*, February 22 [<http://dobrokhotov.livejournal.com/568315.html>, accessed March 30, 2013].
- DURHAM C. (1996), "Perspectives on Religious Liberty: a Comparative Framework", in eds. Johan D. Van der Vyver and John Witte, Jr., *Religious Human Rights in Global Perspective: Legal Perspectives*, The Hague: Martinus Nijhoff Publishers.
- EKD (Evangelische Kirche in Deutschland), *Kirche der Freiheit* (2006), <http://www.ekd.de/download/kirche-der-freiheit.pdf>.
- EKD (Evangelische Kirche in Deutschland) (2014), *Rechtfertigung und Freiheit. 500 Jahre Reformation 2017*, Güterloher Verlagshaus: Gütersloh.
- FAGAN G. (2012), *Believing in Russia – Religious Policy after Communism*, Abingdon: Routledge.
- FAIST T. (2000), *The volume and dynamics of international migration and transnational social spaces*, Oxford: Clarendon Press.
- FENN, R. K. (1978), *Toward a Theory of Secularization*, Storrs, CT: Society for the Scientific Study of Religion.
- FITZGERALD T. (2004), "Playing Language Games and Performing Rituals: Religious Studies as Ideological State Apparatus," *Method and Theory in the Study of Religion*, 15(3), pp. 209-54.
- FOKAS, E. (2004), "The role of religion in national-EU relations: the cases of Greece and Turkey", Unpublished PhD thesis, London School of Economics. Available at <http://etheses.lse.ac.uk/904/>.
- FOKAS E. (2008), "A new role for the church? Reassessing the place of religion in the Greek public sphere", August, *Hellenic Observatory Papers on Greece and Southern Europe* (GreeSE) Paper Series No. 17. Published in-house and online, London School of Economics. Available at

- <http://www.lse.ac.uk/collections/hellenicObservatory/pdf/GreeSE/GreeSE17.pdf>.
- FOKAS E. (2009), "Religion: towards a post-secular Europe?", in ed. Chris Rumford, *Sage Handbook of European Studies*, Sage, pp. 401-419.
- FOKAS E. (2014), "Pluralism and religious freedom in majority Orthodox contexts", *ELIAMEP Working Paper No. 49*, available at [http://www.eliamep.gr/wp-content/uploads/2014/06/49\\_2014\\_-WORKING-PAPER\\_Effie-Fokasfinal.pdf](http://www.eliamep.gr/wp-content/uploads/2014/06/49_2014_-WORKING-PAPER_Effie-Fokasfinal.pdf).
- FORST, F. (2003), *Toleranz im Konflikt. Geschichte, Gehalt und Gegenwart eines umstrittenen Begriffs*, Frankfurt a.M.: Suhrkamp (English translation: *Toleration in Conflict. Past and PRESENT*, Cambridge: University Press, 2013).
- FRAGOUDAKI A. (2013), *Nationalism and the raise of the Extreme Right*, Athens: Alexandria Publishers) (in Greek).
- GARAY A. (2005), "L'Islam et l'ordre public européen vus par la Cour Européenne des Droits de l'Homme", *Revue de Droit International et de Droit Comparé*, Bruxelles, pp. 117-155.
- GEORGIADOU V. (1995), "Greek Orthodoxy and the politics of nationalism", *International Journal of Politics, Culture and Society*, Vol. 9, No. 2, pp. 295-315.
- GOLYSHEV V. (2012), "Linia zashchity dlia Pussy Riot" [A Line of Defense for Pussy Riot], *Live Journal of Vladimir Golyshev*, March 4 [<http://golyshev.livejournal.com/1918458.html>, accessed March 30, 2013].
- HALLINAN D. (2012), "Orthodox Pluralism: Contours of Freedom of Religion in the Russian Federation and Strasbourg Jurisprudence", *Review of Central and East European Law*, 37, pp. 293-346.
- HALMAN, Loek and Veerle Draulans (2005), "How secular is Europe?", *British Journal of Sociology*, Vol. 57, No. 2, pp. 263-288.
- HSAINI H. (2002), *Le prosélytisme et la liberté religieuse à travers le droit franco-grec et la CEDH*, Masters in Comparative Public Law, Université Panthéon-Sorbonne; [http://www.memoireonline.com/09/09/2684/m\\_Le-proselytisme-et-la-liberte-religieuse-a-travers-le-droit-franco-grec-et-la-CEDH8.html](http://www.memoireonline.com/09/09/2684/m_Le-proselytisme-et-la-liberte-religieuse-a-travers-le-droit-franco-grec-et-la-CEDH8.html) (Accessed 22 February 2013).
- <http://www.pewforum.org/2012/09/20/rising-tide-of-restrictions-on-religion-findings/>.

- HUBER W. & TÖDT H. E. (1978), *Menschenrechte. Perspektiven einer menschlichen Welt*, Stuttgart.
- HÜFFMEIER W. (ed.) (1999), *The Christian Witness on Freedom. Documents with Guides for Parish Use*, Leuenberg Documents 5, Frankfurt a.M.: Lembeck.
- Human Rights and Morality, A Response of the Community of Protestant Churches in Europe (CPCE) – Leuenberg Church Fellowship – to the Principles of the Russian Orthodox Church on “Human Dignity, Freedom and Rights”* (2009), [http://www.leuenberg.net/sites/default/files/Human\\_rights\\_and\\_morality%20%28final%29.pdf](http://www.leuenberg.net/sites/default/files/Human_rights_and_morality%20%28final%29.pdf).
- ILIADIS C. (2013), “The Emergence of Administrative Harassment Regarding Greece’s Muslim Minority in a New Light: Confidential Discourses and Politics of Inclusion and Exclusion”, *Nationalism and Ethnic Politics*, 19, pp. 403-423.
- IORDACHE R. (2008), “The 2006 Romanian Law on Religious Denominations and Religious Freedom: High Expectations, Sober Returns”, paper delivered to INFORM/CESNUR Conference at London School of Economics, 16-20 April.
- IORDACHE R. (2013), “Registration of religious entities and religious autonomy in Romania – Old Limitations and New Challenges”, *Religion and Human Rights*, Vol. 8, pp. 77-91.
- KALKANDJIEVA D. (2011), “A Comparative Analysis on Church-State Relations in Eastern Orthodoxy: Concepts, Models, and Principles”, *Journal of Church and State*, Vol. 53, No. 4, pp. 587-614.
- KALKANDJIEVA D. (2012), “Bulgarian Orthodoxy and the European Court of Human Rights: The case of the Holy Synod of the Bulgarian Orthodox Church”, *Orthodox Christianity and Human Rights*, Alfons Bruening and Evert van der Zweerde (eds.), Eastern Christian Studies, Leuven: Peeters, pp. 315-334.
- KAREV I., and Alexey Krizhevskii (2012), “Pank po predvaritel’nomu sgovoru” [A Punk Performance by Premeditated Conspiracy], *Gazeta.ru*, March 6 [[http://www.gazeta.ru/culture/2012/03/06/a\\_4029145.shtml](http://www.gazeta.ru/culture/2012/03/06/a_4029145.shtml)], accessed March 30, 2012].
- KARPOV V., LISOVSKAYA E., BARRY D. (2012), “Ethnodoxy: How Popular Ideologies Fuse Religious and Ethnic Identities”, *Journal for the Scientific Study of Religion*, 51 (4), pp. 638-655.

- KARPOV V. (2012), "Kontseptual'nye osnovy teorii desekularizatsii" [The Conceptual Foundations of the Theory of Desecularization], *Gosudarstvo, religii, tserkov' v Rossii i za rubezhom*, 2, pp. 114-164.
- KATTAN A. E. (2010) (ed.), *Thinking modernity. Towards a reconfiguration of the relationship between Orthodox theology and modern culture*, Balamand theological conferences 1, Balamand.
- KIRILL (2012), "Patr. Pravoslavnye ne khodiat na demonstratsii" [Patriarch Kirill: Orthodox Christians Do Not Go to Demonstrations], *Rbk.ru*, February 2 [<http://top.rbc.ru/society/02/02/2012/635891.shtml>], accessed February 16, 2013].
- KITSIKIS D. (2002), "La structure politico-religieuse de la synallélie, en tant qu'antithèse du système occidental", *Constructions identitaires et pratiques sociales*, J.-P. Wallot, P. Lanthier et H. Watelet (dir.), Les Presses de l'Université d'Ottawa, pp. 303-313.
- KNOX Z. (2005), *Russian Society and the Orthodox Church. Religion in Russia after Communism*, Abingdon: Routledge.
- KOKOSALAKIS N. (1995), "Greek Orthodoxy and modern socio-economic change", in ed. R. Roberts, *Religion and the Transformation of Capitalism*, London: Routledge, pp. 248-265.
- KOKOSALAKIS N. (1996), "Orthodoxie grecque, modernité et politique", in eds. G. Davie and D. Hervieu-Léger, *Identités religieuses en Europe*, Paris: La Découverte, pp. 131-151.
- KOKOSALAKIS N. (1997), "Orthodoxy and social change in modern Greek society", in *Synaksi*, Issue 62, pp. 101-108 [in Greek].
- "Kommuniqué einer Orthodox-lutherischen Konsultation", in Kyrill, *Freiheit und Verantwortung*, pp. 176-182.
- KONIDARIS I. (1996), "Résidus de la dictature du 4 août" (Kataloipa tis diktatorias tis 4is Aygoustou), 4 août, *Vima Online*, article disponible à: <http://www.tovima.gr/opinions/article/?aid=81392> (consulté le 11 mai 2014).
- KONIDARIS I. (2003), "The legal parameters of Church and State relations in Greece", in eds. T. Couloumbis, T. Kariotis, and F. Bellou, *Greece in the Twentieth Century*, London: Frank Cass, pp. 223-235.
- KOSTIUCHENKO E. (2012), "Delo Pussy Riot: zavershen shestoi den', storony gotoviatsia k preniimam" [The Pussy Riot Case: The Sixth Day Has Concluded; the Sides Prepare for Oral Arguments], *Novaia Gazeta*, August

- 6 [<http://www.novayagazeta.ru/news/58788.html>, accessed February 16, 2013].
- KOSTIUCHENKO E. (2012), “Tak nazyvaemyi protsess: poslednee slovo Nadezhdy Tolokonnikovoi, Marii Alekhinoi i Ekateriny Samutsevich” [The So-Called Trial: Final Statements to the Court by Nadezhda Tolokonnikova, Mariia Alekhina, and Ekaterina Samutsevich], *Novaia Gazeta*, August 10 [<http://www.novayagazeta.ru/society/53903.html>, accessed February 16, 2013].
- KOSTIUCHENKO E. (2012), “Chetvertyi den’ slushaniia dela Pussy Riot v Khamovnicheskom Sude stolitsy. Naval’nogo i Ulitskuiu doprashivat’ ne stanut” [The Fourth Day of the Hearing of the Pussy Riot Case at the Khamovnicheskii Court in Moscow; Naval’nyi and Ulitskaia Will Not Be Questioned], *Novaia Gazeta*, August 2 [<http://www.novayagazeta.ru/news/58736.html>, accessed February 16, 2013].
- KOSTIUCHENKO E. (2012), “Sed’moi den’ slushanii po delu Pussy Riot” [The Seventh Day of the Hearing in the Pussy Riot Case], *Novaia Gazeta*, August 7 [<http://www.novayagazeta.ru/news/58806.html>, accessed February 16, 2013].
- KTISTAKIS G. (1998), “La personnalité juridique de l’Église catholique de la Canée. Commentaire de l’arrêt *Église catholique de la Canée* de la CEDH, Revue *Dini* (en grec); <http://kostasbeys.gr/articles.php?s=5&amid=1479&mnu=3&id=18840> (consulté le 22 février 2013).
- KTISTAKIS Y. (2006), *The Holy Law and the Muslim Greek Citizens: Between Communitarianism and Liberalism* (Ἱερός νόμος του Ισλαμ και Μουσουλμάνοι Ἑλληνες πολίτες: μεταξύ κοινοτισμοῦ και φιλελευθερισμοῦ), Athens/Salonika: Sakoulas Pub.
- KURAEV, A. (2012), “Beznadyoga.ru” [Desperation.ru], *Live Journal of Andrei Kuraev*, February 2 [<http://diak-kuraev.livejournal.com/286877.html>, accessed March 30, 2013].
- KURAEV, A. (2012), “Maslenitsa v Khrame Khrista Spasitelia” [Carnival Week at the Cathedral of Christ the Savior], *Live Journal of Andrei Kuraev*, February 21 [<http://diak-kuraev.livejournal.com/285875.html>, accessed March 30, 2013].
- KYRILL Patriarch von Moskau und der ganzen Rus’, *Freiheit und Verantwortung im Einklang. Zeugnisse für den Aufbruch zu einer neuen Weltgemeinschaft*, edited by Barbara Hallensleben, Guido Vergauwen and

- Klaus Wyrwoll, Freiburg (Switzerland): Institut für Ökumenische Studien, 2009.
- KYRILL (2004), "Das liberale Wertesystem als Bedrohung der Freiheit", in Kyrill, *Freiheit und Verantwortung*, pp. 64-69.
- KYRILL (2006), "Eröffnungsrede zur Konferenz 'Europa' eine Seele geben. Sendung und Verantwortung der Kirche", in Kyrill, *Freiheit und Verantwortung*, pp. 109-113.
- Kyrill (2006), "Die Russische Kirche und die christliche Dimension der Menschenrechte", in Kyrill, *Freiheit und Verantwortung*, pp. 106-108.
- KYRLEZHEV A. (2004), "Postsekuliarnaia epokha" [The Post-Secular Era], *Kontinent*, 120, pp. 252-264.
- LAMBERT P. (2003), *La Grèce devant la Cour européenne des droits de l'Homme*, Bruylant et Sakkoulas, coll. Droit et Justice (51), Nemesis.
- LEGOIDA V., "Reaktsiia na vykhodku 'Pussy Riot' – eto test na zrelost' grazhdanskogo obshchestva" [The Reaction to Pussy Riot's Prank Is a Test of the Maturity of Civil Society], *Pravoslavie i mir*, March 7 (2012) [<http://www.pravmir.ru/vladimir-legojda-reakciya-na-vyxodku-pussy-riot-eto-test-na-zrelost-grazhdanskogo-obshchestva/>, accessed March 30, 2013].
- LEUSTEAN N. L. (2011), "The concept of *symphonia* in contemporary European Orthodoxy", *International Journal for the Study of the Christian Church*, Vol. 11, Nos 2-3, May-August, pp. 188-202.
- LEVINET M. (2006), "Société démocratique et laïcité dans la jurisprudence de la Cour Européenne des Droits de l'Homme", *Laïcité, liberté de religion et Convention européenne des droits de l'homme*, G. Gonzalez (dir.), Bruxelles: Bruylant, pp. 81-114.
- MAKRIDES V. N. (2012), "Die Menschenrechte aus Orthodox-christlicher Sicht: Evaluierung, Positionen und Reaktionen", in Mariano Delgado et al. (ed.), *Schwierige Toleranz. Der Umgang mit Andersdenkenden und Andersgläubigen in der Christentumsgeschichte*, Fribourg: Academic Press, pp. 293-320.
- MARSH Chr. & PAYNE D., "Religiosity, Tolerance and Respect for Human Rights in the Orthodox World", in Brüning, *Orthodox Christianity*, 203 201-214.
- MARTIN D. (2008), "Is there an Eastern European Pattern of Secularization?", in S. Marincak (ed.), *Religion: Problem or Promise? The Role of Religion in the Integration of Europe*, Kosice: Orientalia et Occidentalia, pp. 129-144.

- MAVROGORDATOS G. (2003), "Orthodoxy and nationalism in the Greek Case", 26/1 *West European Politics*, pp. 117-136.
- MEHL R., art., Freiheit V: Ethisch', Theologische Realenzyklopädie, Vol. 11, pp. 511-533.
- MEYENDORFF J. (1974), *Byzantine Theology. Historical Trends and Doctrinal Themes*, New York: Fordham University Press.
- MOCANU C. (2013), Demnitatea omului în contextul ecumenic actual din perspectiva teologiei ortodoxe: Sf. Grigorie de Nyssa și Pr. Dumitru Săniloae, Doctoral Thesis, "Lucian Blaga" University: Sibiu.
- MOROZOV A. (2007), "Nastupila li postsekuliarnaia epokha?" [Has the Post-Secular Era Arrived?], *Kontinent*, 131, pp. 314-320.
- NASKOU-PERRAKI P. (1999), "La jurisprudence de la Cour européenne des droits de l'Homme en matière de liberté de religion en Grèce" (I nomologia toy Eyrwpaikoy Dikasthrioy Dikaiwmatwn toy Anthrwpow sxtika me tin prostasia tis thriskeytikis eleftherias stin Ellada), *Revue Hellénique de Droit Européen*, Centre de droit économique international et européen et Barreau de Thessaloniki, No. 4, pp. 785-814.
- NAVAL'NYI A. (2012), "Pro pussi raiots" [About Pussy Riots], *Live Journal of Aleksei Navalny*, March 7 [<http://navalny.livejournal.com/690551.html>, accessed March 30, 2013].
- NESOGLASNYKH M. (2012), "Koshchunnitsy, khulivshie Putina i Gundiaeva, poimany" [The Blasphemous Women Who Disparaged Putin and Gundyayev (Patriarch Kirill) Have Been Caught], *Live Journal of the Association "March of the Dissidents"*, March 3 [<http://namarsh-ru.livejournal.com/6606803.html>, accessed April 10, 2013].
- NEUMANN, I. B. (1999), *Uses of the Other: The East in European Identity Formation*, Minneapolis: University of Minnesota Press.
- Obvinitel' noe zakliuchenie po delu 'Pussi Raiot' [The Indictment in the Case of Pussy Riot], *Novaia Gazeta* July 11 (2012) [<http://www.novayagazeta.ru/society/53602.html>, made public July 19, 2012; accessed November 19, 2013].
- OSCE, Advisory Panel of Experts on Freedom of Religion or Belief, Guidelines for review of legislation pertaining to religion or belief, Warsaw: ODIHR, 28 September 2004. Article disponible à: <http://www.osce.org/odihr/44459> (English).
- Otkrytoe pis'mo: Advokatskoe soobshchestvo publichno vystupilo v podderzhku Pussy Riot" [An Open Letter: Attorneys' Association Publicly

- Speaks out in Support of Pussy Riot], *Novaia Gazeta* August 2 (2012) [<http://www.novayagazeta.ru/news/58750.html>, accessed February 16, 2013].
- Pank-feministki: kaznit' nel'zia pomilovat'? (MNENIE)" [The Punk Feminists: Execute Them We Should Not Pardon Them? (OPINION)], *Pravoslavie i mir* March 5 (2012) [<http://www.pravmir.ru/pank-feministki-kaznit-nelzya-pomilovat-mneniya/>, accessed March 30, 2013].
- Pank-moleben 'Bogoroditsa, Putina progoni' Pussy Riot v Khrame [Khristos Spasitelia]" [The Punk Prayer 'Mother of God, Banish Putin': Pussy Riot in the Cathedral (of Christ the Savior)], *You Tube* February 21 (2012) [<http://www.youtube.com/watch?v=GCasuaAczKY>, accessed February 5, 2013].
- PAPADOPOULOU L. (2010), "Trapped in History: Greek Muslim Women under the Sacred Islamic Law", *Annuaire International des Droits de l'Homme*, Vol. V, Athens: Sakkoulas/Bruylant, pp. 397-418.
- PAPAGEORGIOU K. G. (2011), "The application of the freedom of religion principles of the European Convention on Human Rights in Greece", *Religious Freedom in the European Union*, Achilles Emilianides (dir.), Leuven: Peeters, pp. 187-197.
- PAPANIKOLAOU A. (2012), *The mystical as political. Democracy and non-radical Orthodoxy*, Notre Dame Ind.
- PAPANIKOLAOU, A. (2003), "Byzantium, Orthodoxy and Democracy", *Journal of the American Academy of Religion*, Vol. 71, No. 1, pp. 75-98.
- PAPARIZOS, A. (1998), "Du caractère religieux de l'Etat grec moderne", 'Ilu revista de ciencias de las religiones, No. 3, pp. 183-207.
- PAPASTATHIS Ch. K. (2003), "La liberté religieuse en Grèce. Entre le passé historique et la réalité internationale actuelle", *L'Année canonique*, 45, pp. 296-310.
- PAPASTATHIS Ch. K. (1997), "Etat et Eglises en Grèce", *Etat et Eglises dans l'Union européenne*, G. Robbers (ed.), Baden-Baden: Nomos Verlagsgesellschaft, pp. 79-99.
- PAPASTATHIS Ch. K. (1999), "La République Hellénique", *Les origines historiques du statut des confessions religieuses dans les pays de l'Union européenne*, B. Badevant-Gaudemet et F. Messner (dir.), PUF, pp. 207-221.
- PAPASTATHIS Ch. K. (2001), "Religious Self-Administration in the Hellenic Republic", *Church Autonomy: A Comparative Survey*, G. Robbers (ed.), Frankfurt am Main: Peter Lang, <http://www.peterlang.com/Index.cfm?vlD=36223&vLang=E> (consulté le 20 mars 2013).

- PAPASTATHIS Ch. K. (2000), "The application of religious laws in the Hellenic Republic", *La religion en Droit comparé à l'aube du 21<sup>e</sup> siècle*, E. Caparos et L.-L. Christians (dir.), Bruxelles: Bruylant, pp. 307-321.
- PAPASTATHIS C. (1996), "State and church in Greece", in ed. G. Robbers, *State and Church in the European Union*, Baden-Baden: Nomos Verlagsgesellschaft, pp. 75-92.
- PAYNE D. (2003), "The Clash of Civilisations: The Church of Greece, the European Union and the Question of Human Rights", *Religion, State and Society*, Vol. 31, No. 3 pp. 261-271.
- Pervaiia ekspertiza GUP "TsIAT" po delu PUSSY RIOT [The First Expert Evaluation by the Center for the Technology of Information Analytics for the Pussy Riot Case], *Live Journal of Mark Feygin* April 2 (2012) [<http://mark-feygin.livejournal.com/93368.html>, posted to Feygin's site July 19, 2012; accessed April 10, 2013].
- PETKOFF P. (2005), "Church-State relations under the Bulgarian Denominations Act 2002", *Religion, State and Society*, Vol. 33, No. 4, pp. 315-337.
- PETKOFF P. (2010), "Religion and the Secular State in Bulgaria", in *Religion and the Secular State: National Reports*, a compilation of reports prepared for and issued upon the occasion of The XVIII<sup>th</sup> International Congress of Comparative Law, 25-31 July 2010 in Washington, DC, pp. 145-182. Available online at <http://www.iclrs.org/content/blurb/files/Bulgaria.pdf>.
- PEW RESEARCH CENTER (2011), Forum on Religion and Public Life Report on 'Global Christianity'. Available at <http://www.pewforum.org/2011/12/19/global-christianity-exec/>.
- PEW RESEARCH CENTER (2012), Religion and Public Life Project Report on 'Rising tide of restrictions on religious freedom'. Available at <http://www.pewforum.org/2012/02/22/restriction-on-religious-freedom/>.
- PIN A. (2014), "Religions, National Identities, and the Universality of Human Rights", *Oxford Journal of Law and Religion*, pp. 1-21.
- POLLIS A. (1992), "Greek national identity: religious minorities, rights and European norms", *Journal of Modern Greek Studies*, Vol. 10, pp. 171-195.
- POPOVICI J. (2002), *Biserica Ortodoxă și ecumenismul*, Petru Vodă: Mănăstirea Sfinții Arhangeli.
- Postsekuliarnaia filosofia" [Post-Secular Philosophy], Special edition of *Logos* 3 (2011): 1-275.

- POTZ, R. (2008), "State and Church in the European countries with an Orthodox tradition", *Derecho y Religión*, No. 3, 33-54; disponible à: [http://www.deltapublicaciones.com/derechoyreligion/gestor/archivos/07\\_10\\_831pdf](http://www.deltapublicaciones.com/derechoyreligion/gestor/archivos/07_10_831pdf) (consulté le 3 décembre 2012).
- PREDA R., "Human Rights and their Reception in Orthodoxy. A Romanian Perspective", in Brüning, *Orthodox Christianity*, pp. 293-313.
- Prigovor po delu 'Pussi Raiot' [The Sentence in the Case of Pussy Riot], *Gazeta.ru* August 17 (2012) [[http://www.gazeta.ru/social/photo/pussy\\_riot.shtml?photo=4733497](http://www.gazeta.ru/social/photo/pussy_riot.shtml?photo=4733497), made public August 22, 2012; accessed November 19, 2013].
- PRODROMOU E. (2004b), "Orthodox Christianity and Pluralism: Moving beyond Ambivalence?" in ed. E. Clapsis, *The Orthodox Churches in a Pluralistic World: an Ecumenical Conversation*, Geneva: WCC Publications, pp. 22-46.
- PRODROMOU E. (2004a), "The Ambivalent Orthodox", *Journal of Democracy*, Vol. 15, No. 2, pp. 62-75.
- PRODROMOU E. (2008), "International religious freedom and the challenge of proselytism", in eds. A. Papanikolaou and E. Prodromou, *Thinking Through Faith: New Perspectives from Orthodox Christian Scholars*, Crestwood, NY: St. Vladimir's Seminary Press.
- Pussy Riot (2012), "Krik Pussy Riot o spasenii plenennykh zhenshchin" [Pussy Riot's Cry to Save the Jailed Women], *Live Journal of Pussy Riot*, March 4 [<http://pussy-riot.livejournal.com/15189.html>, accessed March 11, 2012].
- Pussy Riot (2012), "Segodnia v polden' aktivistki Pussy Riot otsluzhili v Khrame Khrista Spasitelia pank-moleben 'Bogoroditsa, Putina progoni'" [Today at Noon, Pussy Riot Activists Conducted a 'Punk Prayer' Service, 'Mother of God, Banish Putin.'], *Live Journal of Pussy Riot*, February 21 [<http://pussy-riot.livejournal.com/12442.html>, accessed March 30, 2013].
- Pussy Riot (2012), "Vyn' prezhde brevno iz tvoego glaza i togda uvidish'" [First, Take the Plank out of Your Eye, and Then You Will See], *Live Journal of Pussy Riot*, February 23 [<http://pussy-riot.livejournal.com/12658.html>, accessed March 30, 2013].
- RADU M. (1998), "The Burden of Eastern Orthodoxy", *Orbis*, Spring, pp. 283-300.
- Religiia v postsekuliarnom kontekste" [Religion in the Post-secular Context], Special edition of *Gosudarstvo, religïa, tserkov' v Rossii i za rubezhom* 2

- (2012): 1-344 [<http://religion.rane.ru/?q=en/node/138>, accessed March 22, 2014].
- Russian (the) Orthodox Church's Basic Teaching on Human Dignity, Freedom and Rights* (2008), <https://mospat.ru/en/documents/dignity-freedom-rights/>.
- SAMODUROV Y. (2012), "Otkrytoe pis'mo v zashchitu devushek iz gruppy Pussy Riot" [An Open Letter in Defense of the Girls from Pussy Riot], *Grani.ru*, February 29 [<http://grani.ru/blogs/free/entries/196019.html>, accessed March 30, 2013].
- SCHIFIRNET C. (2013), "Orthodoxy, Church, State, and National Identity in the Context of Tendential Modernity", *Journal for the Study of Religions and Ideologies*, Vol. 12, issue 34 (Spring), pp. 173-208.
- SCHMITT C., 1998 [1923], *The Crisis of Parliamentary Democracy*, The MIT Press.
- SCHOUPPE J.-P. (2013-2014), "L'identité et l'autonomie des groupements religieux ne sont pas des notions indéfiniment flexibles: Sindicatul Pastoralul Cel Bun c. Roumanie", *Annuaire Droit et Religions*, Presses Universitaires d'Aix-Marseille, Vol. 7, No. 2, pp. 743-750.
- SCHWYTER Chr. (2013), *Das sozialpolitische Denken der Russischen Orthodoxen Kirche. Eine theologische Grundlegung auf der Basis offizieller Dokumente seit 1988*, *Studia oecumenica Friburgensia* 56, Basel: Friedrich Reinhardt Verlag.
- SHARYI A. (2012), "Sviashchennik Iakov Krotov – o pank-gruppe Pussy Riot" [The Priest Yakov Krotov on the Punk Group Pussy Riot], *Radio Svoboda*, March 7 [<http://www.svoboda.org/content/article/24508098.html>, accessed March 30, 2013].
- SHEVCHENKO M. (2012), "Voina bliadei" [The War of the Whores], *Live Journal of Maxim Shevchenko*, February 21 [<http://shevchenko-ml.livejournal.com/5544.html>, accessed March 30, 2013].
- STANILOAE D. (1985), *Orthodoxe Dogmatik*, Zürich-Einsiedeln-Köln: Benziger/Gütersloher.
- STAVROU T. (1995), "The Orthodox Church and political culture in Greece", in eds. D. Constan and T. Stavrou, *Greece Prepares for the Twenty-first Century*, Washington, DC: Woodrow Wilson Center Press, pp. 35-54.
- STÖCKL K., "The 'We' in Normative Political Philosophical Debates. The Position of Christos Yannaras on Human Rights", in Brüning, *Orthodox Christianity*, 187-198.

- Sud nad Pussy Riot: Svidetelei zashchity ne puskaiut v zdanie, u politseiskogo epilepticheskii pripadok” (The Pussy Riot Trial: Witnesses for the Defense Not Allowed into the Building; Epileptic Seizure at the Police Station), *Gazeta.ru* August 3 (2012) [[http://www.gazeta.ru/social/news/2012/08/03/n\\_2467017.shtml](http://www.gazeta.ru/social/news/2012/08/03/n_2467017.shtml), accessed April 10, 2013].
- SURREL H. (1995), “La liberté religieuse devant la Cour Européenne des droits de l’Homme”, *Rev. fr. dr. adm.*
- TEMPERMAN J. (2012), “Are State Churches Contrary to International Law?”, *Oxford Journal of Law and Religion*, pp. 1-31.
- THESING J., UERTZ, R. (ed.) (2001), *Die Grundlagen der Sozialdoktrin der Russisch-Orthodoxen Kirche. Deutsche Übersetzung mit Einführung und Kommentar*, Sankt Augustin: Konrad Adenauer Stiftung.
- THUAL Fr. (1994), *Géopolitique de l’Orthodoxie*, Paris: Dunod.
- TOBLER St. (2010), “Menschenrechte als kirchentrennender Faktor? Die Debatte um das russisch-Orthodoxe Positionspapier von 2008”, *Zeitschrift für Theologie und Kirche*, 107, pp. 325-347.
- TROÏANOS Sp. (2003), “La situation juridique de la ‘religion dominante’ en Grèce”, *L’Année canonique*, 45, pp. 127-132.
- TSAGARI A. (2005), “Des questions de liberté religieuse dans les ‘affaires grecques’ de la Cour européenne des droits de l’Homme” (Zitimata thriskeytikis eleftherias stis ellinikes ypotheseis toy Eyrwpaikoy dikasthrioy), *Revue juridique Armenopoulos*, Thessaloniki, No. 26, pp. 295-318.
- TSITSELIKIS K. (2007), “Reciprocity as a regulatory pattern for the treatment of the Turkish/Muslim minority of Greece”, S. Akgönül (ed.), *Reciprocity, Greek and Turkish Minorities: Law, Religion and Politics*, Istanbul: Bilgi Univeristy Press, pp. 163-189.
- UZLANDER D. (2013), “The ‘Pussy Riot’ Case: Arguments, Rhetorical Strategies and the Peculiarities of Post-secular Society in Russia”, paper presented at conference on Orthodoxy and Human Rights, Catholic University of Louvain, 25-26 April.
- UZLANER D. (2008), “V kakom smysle sovremennyi mir mozhet byt’ nazvan postsekuliarnym” [In What Sense Can the Modern World be Called Post-Secular?], *Kontinent*, 136, pp. 339-355.
- UZLANER D. (2012), “‘Pank-moleben’ i granitsa religioznoe/svetskoe” [(Pussy Riot’s) ‘Punk Prayer’ and the Religious-Secular Boundary], *Russkii zhurnal*, March 11 [<http://www.russ.ru/pole/Pank-moleben-i-granica-religioznoe-svetskoe>, accessed May 22, 2013].

- UZLANER D. (2008), "Raskoldovyvanie diskursa: 'religioznoe' i 'svetskoe' v iazyke Novogo vremeni" [The Disenchantment of a Discourse: The 'Religious' and the 'Secular' in the Language of the Modern Age], *Logos*, 4, pp. 140-59.
- VEGLERIS Ph. (1995), "Quelques aspects de la liberté de religion en Grèce", *Revue Trimestrielle des Droits de l'Homme*, pp. 555-566.
- VENTURA M. (2003), *Protectionnisme et libre-échangeisme – La nouvelle gestion juridique de la religion en Europe*, Conscience et Liberté, Berne, No. 64.
- VOYATZIS P. (2012), "Pluralismo e Libertà di Religione nella Giurisprudenza della Corte Europea Dei Diritti Dell'Uomo", *Diritto e Religione in Europa. Rapporto sulla giurisprudenza della Corte Europea Dei Diritti Dell'Uomo in materia di libertà religiosa*, R. Mazzola (dir.), Società Editrice Il Mulino, pp. 103-114.
- Vtoraia ekspertiza GUP "TsIAT" po delu PUSSY RIOT [The Second Expert Evaluation by the Center for the Technology of Information Analytics for the Pussy Riot Case], *Live Journal of Mark Feygin* May 14 (2012) [<http://mark-feygin.livejournal.com/93621.html>, posted to Feygin's site July 19, 2012; accessed April 10, 2013].
- WILSON B. (1976), *Contemporary Transformations of Religion*, London: Oxford University Press.
- WILSON B. (1966), *Religion in Secular Society: A Sociological Comment*, London: Watts.
- YANNARAS Chr. (2006), *Orthodoxy and the West. Hellenic Self-Identity in the Modern Age*, Brookline, Mass: Holy Cross Orthodox Press.
- Zakliuchenie komissii ekspertov (po ugovnomu delu No. 177070) [The Opinion of the Commission of Expert Witnesses (Criminal Case No. 177070)], *Live Journal of Mark Feygin* May 23 (2012) [<http://mark-feygin.livejournal.com/89127.html>, posted to Feygin's site June 25, 2012; accessed February 16, 2013].



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