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Roadblock to Religious Liberty: Religious Registration

The heart of man is of a larger mold: it can at once comprise a taste for the possessions of earth and the love of those of heaven; at times it may seem to cling devotedly to the one, but it will never be long without thinking of the other  
Alexis de Tocqueville

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### A Contextual Approach

The treatment of the issue under examination cannot be but contextual if it is to preserve its integrity and this means first of all that we start from the events of the 11th of September 2001 and our wholehearted expression along with many people all over the world of condolences for the loss of all those who died in the ruins of New York and Washington DC, but also of our resolve to stand firmly united in the good fight for the strengthening of our open and democratic societies against the irrational powers of chaos and destruction.

It has always been the case throughout history that upon the ruins piled up an ever greater and more blessed present and future has been built. On November 1950, the Foreign Ministers of the founding Member States of the Council of Europe met in order to sign the European Convention on Human Rights; their aim was to "lay the foundations for the new Europe which they hoped to build on the ruins of a continent ravaged by a fratricidal war of unparalleled atrocity". The international treaties ever since the end of World War II, in light of the grim experience of that which had preceded and the fear of what could come about in the future in the face of the always close to us danger of totalitarianism, were put to place.

Only this time, they were concerned not simply with the furthering of peaceful relations. They went beyond the mere treatment of the facts of war to the treatment of its causes, as this becomes clear in the Preamble to the Charter of the United Nations and the second paragraph, where we have the first reference to human rights in an international treaty, that is "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small". Enlightening as to the endeavor's goals and the corresponding to it understanding was a statement by the Irish Minister, Mr. Sean Mac Bride, in Rome in November 1950 who said, when the Convention on Human Rights was signed at the sixth session of the Committee of Ministers, that:

"The present struggle is one, which is largely being fought in the minds and consciences of mankind."

Our era ever since has been characterized by a heightened sensitivity for human rights and an immense preoccupation both with the "politics of -for - human rights" and the "law explosion" that the proliferation of entitlements - rights, in short - accompanies it. Politically, the ultimate criterion of our modern democracies is the preservation of human rights as this is manifested concretely in the principle of limited government which -limited by division of powers and by the independence of

church, press, conscience-is more essential feature in modern political systems which are called democratic than is the reference of authority to the people. The ever-growing acceptance of the concept of judicial review as one of the distinctive features of the modern democratic systems, originally characteristic of the American political and constitutional landscape ascertaining the enjoyment of rights by examining the constitutionality of state and federal statutes and carried out by the courts, testifies as to that.

Human Rights theory ingrained in political institutions and preserved through jurisprudence constitutes currently the major paradigm of our domestic and international systemic order; it has demonstrated, and continues to do so, its authoritative explanatory and regulatory power within our domestic vertical legal orders and also in the mainly and for the time being international horizontal one. It does not stop there, however; it shapes not only our understanding of what Domestic and International Law is and how it is applied, but also our self understanding and correspondingly what we believe we ought to enjoy! It is this paradigm that the recent terrorist attacks tried to overthrow.

### Religious Liberty in OSCE

Among the human rights religious liberty stands out as one of those sine qua non conditions for an atmosphere of respect for the rights of individuals or whole communities. If the protection of the individual is considered the cornerstone of our modern, legal and not only, consciousness of rights, Religious Freedom should be considered the cornerstone of all other rights . The right itself is one of the most recent to be recognized and protected, yet it embraces and reflects the inevitable outworking through the course of time of the fundamental beliefs in the value of the human person (a preferable term than this of the individual) and for that matter of the theory of Human Rights. Moreover, it is a formative factor in the modern understanding of Human Rights and thus it lies at the roots of open society! Alexis de Tocqueville, cited at the beginning, recorded and published in 1835 his impressions of his 9 months visit to the United States, soon to become a best seller under the title "Democracy in America". Among his many acute observations he writes about religion:

"...for if it does not impart a taste of freedom, it facilitates the use of it..."

The protection of the international and domestic legal documents ascribed to religious liberty is specific enough to clearly be distinguished from notions and secular claims of rights of conscience, since it refers to claims of rights of religious conscience and it is broad enough to also ensure the protection of religiously motivated conduct, either for individuals alone or in communities. It is thus preserved the integrity and diversity of religious life.

The Helsinki Final Act (HFA), which was signed in Helsinki, Finland in 1975, enshrines in its "Decalogue" the commitment by the participating States to respect religion and the corresponding freedom of professing and practicing it alone or in community with others. In subsequent OSCE Documents the commitment is enriched by obligations the contracting parties bear to foster a climate of mutual tolerance and respect, the enhancement of the freedom to manifest one's religion (in public or in private, through worship, teaching, practice and observance, the granting upon their request recognition of the status provided for them in the respective countries), the exercise of these rights subject only to such restrictions as are prescribed by law and are consistent with international standards, the respect of the religious communities to organize themselves according to their own hierarchical and institutional structure, the selection, appointment and replacement of their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their States, the solicitation and acceptance of voluntary financial and other contributions, the freedom to communicate and the exchange of information.

Through these successive agreements, the OSCE participating States gradually have expanded and refined their commitment to Religious Freedom. The perspective thus built over the years in the OSCE context in regard to religious freedom points towards religious pluralism, rather than assimilation or secularism and conceives religious factions not as destabilizing factor but to the contrary as a source of peace and welfare for the countries.

It is often the case, however, that countries either desiring to be "politically correct" or succumbing to competing interests and pressures in the midst of such an all permeating international culture of rights, concede to a provision in principle, only to undermine it through the concrete operation of national laws, rules, or regulations. It is then when the paradigm suggested before manifests internal systemic malfunctions; it is when roadblocks are set on the road towards a fullest enjoyment of Religious Liberty.

### Religious Registration: Jurisprudence and Legitimacy

The picture would be misleading if we isolate or focus our attention only at the specific incidents of obstruction of religious liberty in various countries. Obviously we start from there and they are important as such to be noted. But if an inquiry wants to suffice has to be all-inclusive if not systemic, since we always face the constant interaction of more than one components, constituent parts of a diverse but interrelated and interdependent environment; individuals and collective entities operating independently or in networks, formally or informally, states and non state actors, international and domestic institutions, acting in the traditional hierarchical, vertical or horizontal manner but also in the way of the "day" that is, in a manner befitting the realities of the global civil society, should be taken into account. Of course, the full range of such an inquiry is far beyond what the economy of our presentation allows us to treat, however, our far narrower approach would move along these lines.

For the purposes of better facilitating our examination of the subject within its given economy, we will make, albeit arbitrary, reference to two only major issues: (a) the issue of establishing common standards on Human Rights or of a *jus communis*, and (b) the issue of national standards and of the legitimacy of the laws pertaining to religious liberty. Our case study would be Greece.

#### a. Jurisprudence

The free exercise of religion is tested against the registration regulations required and it is affected by the way these regulations are interpreted and applied by the courts, the administration, even by the pace the administrative agencies respond to and handle respective requests. The registration of churches and religious societies in their pursuit to manifest their religion (in public or in private, through worship, teaching, practice and observance), the respective granting upon their request of recognition of their status, their ability to organize themselves according to their own hierarchical and institutional structure, of course subject only to such restrictions as are prescribed by law consistent with international standards, are fundamental aspects of the free exercise of religion. We focus therefore at religious registration regulations because interestingly enough, these most often we find being at stake.

Europe, either within and through the Union or the Council of Europe arrangements and processes, tends more and more towards a sharper tuning in on matters of Human Rights and it is characterized by the strong influence of the European Convention on Human Rights and the respective judicial safeguards of compliance with it. This influence far exceeds the European Union judicial parameters within the "narrower" context of which we have also another court, the Court of Justice. Thus, the issue appears and actually is not simply a matter of individual states but also of international European jurisprudence, as it is the jurisprudence of the European Court of Human Rights that signals the direction the domestic legal orders ought to take in so many fields, and of course in the field of religious liberty.

The underlying principle in all these of course is the one of conformity and of *jus communis*, a major theme also in the agreements signed by the contracting States in the context of OSCE; the 1989 Vienna Concluding Document stated, "In this context, [the participating States] confirm...they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments."

The extensive jurisprudence of the European Court of Human Rights (ECHR) strongly upholds the principle of a *jus communis* in the protection of human rights:

In 1990 the Home Secretary in Great Britain decided that a separatist Sikh leader, Karamjit Singh Chahal, living in England, should be deported to India, the country of which he was a citizen. This was for national security reasons because of his alleged involvement in terrorist acts in Punjab. Chahal claimed political asylum. He relied on Article 3 of the European Convention on Human Rights, which states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". The ECHR ruled in 1996 that, because there was a real risk of Chahal being subjected to ill treatment in India, he could not be removed to that country and the protection guaranteed by Article 3 is absolute and so "the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration", although the ECHR also stated that it was "well aware of the immense difficulties faced by states in modern times in protecting their communities from terrorist violence".

However, when it moves away from cases such as these or others pertaining to the right for a fair trial, etc and comes to issues of religious liberty, it can only be described as centrifugal. It acknowledges "national sensitivities" and allows on the grounds of the domestic peculiarities of the individual states only a relative constraint upon them and usually retreats in observations on the application of the law or the juridical syllogism.

In the case of Greece, which practically has begotten the major body of the religious freedom cases the ECHR has examined (thirteen on the issue of religious heterodoxy), it means leaving intact the antiquated laws as such and instead an engagement with the application of these laws and the respective reasoning of the agencies involved, away from the fundamental issues of the cases brought before the Court. That results in legal difficulties in religious registration, intensifies the administrative

obstruction tactics and many law-abiding citizens are being harassed as they are brought to courts, one or more times successively, on the basis of the "misapplication of the laws", but really on the grounds of their "heterodoxy" as it is ill treated by the unaffected by the ECHR jurisprudence registration laws:

Religious assimilation: On the 12th of December 2000, sixteen Churches and religious societies in the city of Thessalonica, in northern Greece, were charged and brought to court on the basis of an antiquated set of laws regarding the operation of Churches and religious organisations. They were all allegedly violators of the religious registration laws. The criminal charges were based on the alleged operation of all of the Churches without proper licence, although when originally asked by the police, who filed the report, they had all produced copies of their licences. The list of the churches and religious organisations thus charged, covered the religious spectrum of the city, since it included Evangelical Churches, Seventh Day Adventists, Pentecostal Churches, Mormons, Jehovah's Witnesses, and the Catholic Church.

The Greek laws in question were enacted in 1938-39 (AN 1363/1938, 1672/1939) during a time when Greece was under the authority of a dictator. It requires Protestants and non-Greek Orthodox to accept the authority of the local Greek Orthodox Bishop. Towards that end any religious group must get the permission of the local Orthodox Bishop in order to be licensed. The interpretation of the Supreme Administrative Court has reduced it down to a requirement of a simple opinion of the Greek Orthodox Bishop on any religious registration petition Greek citizens desiring to exercise their religious rights bring forth ! That, still, leads to the paradox, Churches distinguished by an ecclesiology different from that of the Greek Orthodox Church being pulled by the State to an indirect yet clear recognition of that which, to begin with, they denounce according to the integrity of their doctrinal identity. Therefore, the defendants representing their own Churches and religious societies had to produce once more before the Court their licence granted to them by the Greek Ministry of Religious Affairs, which encompassed of course the corresponding for each one of these Churches consent of the local Greek Orthodox Bishop.

The Greek Police and the respective City Department of the State Security without prior examination of the records of the "Department of Heterodox" of the Ministry of Religious Affairs, filed the report against the Churches utilizing the existing registration laws which have been left intact by the ECHR. High-ranking State officials who were contacted on the occasion of the trial were concerned that this law will be the source of continued embarrassment for Greece. The extend of the burden these registration laws impose upon unsuspected, law abiding citizens on the basis simply of their heterodoxy, is the case the Pastor of a local Pentecostal Church of the city of Thessalonica, N. Demetriadis. For him it was the second time within one year that he had been called to appear before the court on the same false charge. Pastor Demetriadis is seventy years old and a war hero, yet he was forced twice to come to court to prove his innocence on facts already known by the administrative and police authorities!

The Thessalonica criminal court (!) of first instance, finally acquitted all sixteen churches that had been charged as operating without a licence, since it was "proven" that they did adhere to religious registration requirements, among which of course the opinion of the local Greek Orthodox Bishop still stands strong.

Therefore, apart from the obvious dysfunctional legal framework of Greece on this matter, we need to make a note in this regard of the equally influencing and enabling such a legal framework cautious jurisprudence of the ECHR. Substantiating even further our contention we highlight how much more complicated thus becomes the enjoyment of religious liberty:

Religious legal entities and procrustean measures: The Orthodox Church and her institutions are recognised within the Greek legal framework as legal entities of public law. The non-Orthodox Churches however, apart from the Muslim and Jewish institutions, are not recognised as such.

The case of the Catholic Church of Chania. This major insufficiency of the religious registration laws, which licence a community to operate as a Church but do not allow it to engage in any transactions of legal significance associated with its very existence as a Church, led recently to the judicial diagnosis of the lack of any legal personality of the Greek Catholic Church!

Under the existing laws in order to assume such a legal personality a Church has to resort to the format of the common legal entities of the private law. The substantial technical difficulties and not only of the non-Orthodox Churches having to adapt their church life into the structure and the form of non religious associations or other private law entities are easy to discern. The probability to have procrustean solutions is very serious, when two distinct entities could develop out of such an arrangement one owning the property and another one being the church, per se; it has been considered serious enough recently and by the ECHR, which convicted Greece in the case of the Catholic Church of Greece.

Interestingly enough, ever since the decision of the ECHR the administration has not yet given a satisfactory solution to the problem of legal existence of the Catholic Church of Greece. It only accommodated the minimum solution for the deadlock created with the specific Catholic Church of Chania and for all those Catholic institutions that had been established until 1943; all the other Catholic institutions after that date are still in a legal state of limbo, let alone their continuous inability under the

existing framework to organize themselves according to their own hierarchical and institutional structure!

The case of the Evangelical and Pentecostal Radio Stations. What however, makes clearer why and how religious registration can be characterized as a roadblock to religious liberty, enabled by a more than cautious jurisprudence, is the case of the two religious radio stations recently closed down by the Greek administration.

Upon the major insufficiency of the Greek laws pertaining to the legal personality of the non-Orthodox churches, we recently had the build-up of the administration's closure of the only two non-Orthodox radio stations, the one of the Free Apostolic Church of Pentecost ("Christianity") and the one of the Free Evangelical Church of Greece ("Channel 2000"), while the two Orthodox radio stations, of the Greek Orthodox Church and of the local Orthodox Church of Piraeus are still operating.

According to the Greek law regulating private television and radio stations a candidate to qualify for a licence has to be either a legal entity of "public law" or a commercial company. The law of course, as is the case in most European countries, came a posteriori to regulate, that is retrospectively, the already existing field of private radio waves and to put order by granting licences to those meeting the standards it set up. In light of what we explained before, however, the Orthodox Church's stations didn't have but remain as such, due to their legal nature of being public law entities. On the other hand the Evangelical and Pentecostal radios stations were thus forced to take a different route that of becoming commercial companies, although they were clearly religious organizations and simple extensions of the respective Churches.

Apart from the enlightening details of how the administration delayed and even obstructed the whole procedure of the application of the two "heterodox" radio stations ("Channel's 2000" petition was lost for six months, its equipment confiscated on grounds that could not hold under judicial inquiry and then returned creating all kinds of logistical and not just only such problems, it's "peculiar", albeit professional, operation not befitting a "commercial company" with volunteers-members of their Church working in it under adverse assessment by the respective Committee weighing candidacies , etc), and apart from the discrimination issue ensued thus upon them on the basis of the discriminatory regulation of the non-Orthodox entities, we have also the additional handicap within the ECHR jurisprudence context.

Commercial companies, it has been established, although eligible to claim violation of certain rights of the European Convention of Human Rights are not under the protection of all rights; not all rights are of relevance to them and of course in that light they cannot be subjects of religious liberty rights and obligations . A commercial company therefore, as such that the Free Evangelical Church and the Free Apostolic Church of Pentecost were forced to become, operating by definition within the Greek legal framework for commercial purposes, does not constitute a manifestation of religion and of religiously motivated conduct and thus cannot be protected by the Article 9 of the Convention!

The above convincingly attest as to how shrewdly religious registration can temper the fundamental identity of those whom is called supposedly to protect and positively encourage, only rendering them finally with reduced or even at times limited protection. If, as in the case of the radio stations, they conform with what is asked from them and assume commercial legal nature, are cut off from the protection allotted to them; if they do not conform, then they do not qualify and simply they cannot fulfill their religious mission identified with the proclamation of their religious message through radio waves, edifying "believers" and evangelizing "non believers". It is a fair statement to argue that it is not only by what we regulate but also by what we don't in reference to the free exercise of religion that unsurpassable difficulties are created. But then the perspective towards religious pluralism, rather than assimilation or secularism and the acceptance of religious factions not as destabilizing factor but to the contrary as a source of peace and welfare for the countries, fades away.

#### b. Legitimacy

We have been examining how international jurisprudence and the strong current for conformity and jus communis can influence religious registration. However, our inquiry directs us also to domestic juridical and non-juridical agents of meaning against which religious registration needs to be examined. Religious liberty is not just an international juridical phenomenon.

We expressed earlier our concern regarding the cautious stance of the ECHR in interpreting Article 9 of the European Convention on Human Rights so that it does not impose substantial constraints on the individual states and of the enabling effect that such a stance has on dysfunctional domestic legal frameworks pertaining to religious registration. However, the acknowledgement of "national sensitivities" and of domestic peculiarities of the individual states highlights a counterbalancing active factor of influence in the enjoyment of religious liberty equally important to reckon with. It is this factor that directly affects religious registration in the manner it is framed and carried out in actuality.

A Hebrew saying enjoins judges to "reside within their own people" implying the importance of public responsibility and the need for legitimacy of laws and their corresponding application. This is what we mean by speaking of national standards and the legitimacy of the laws pertaining to religious liberty as a counterbalancing active factor of influence. Religious registration is not carried out in a vacuum. It is always contextual, in place, time, and culture, that is people. It differs only in scale from



the broader correlation between culture and human rights.

The 1989 Vienna Concluding Document states that, "In this context [the participating States] confirm that they will respect each other's right freely to choose and develop their political, social, economic and cultural systems as well as their right to determine their laws, regulations, practices and policies. In exercising these rights, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments." In that sense the OSCE framework is well prepared to engage and face the twofold challenge religious liberty poses; conforming to and aiming at international standards and maintaining a sense of ownership that a culturally meaningful legal framework provides.

During the Cold War era, the OSCE was one of the few forums for dialogue between East and West where human rights issues could be discussed and norms could be agreed upon. Today, the OSCE remains an important arena for discussion and action regarding human rights and of course religious liberty, this time promoting not just democracy but what constitutes the real test of an open society, the sense and the degree of ownership of human rights and religious liberty in particular.

Many today live in a constant state of dichotomy between what they have grown up to feel and sense to be true and that which is all around them real, coming "from abroad" permeating every thing they do or want to do; a culture for many where they sing songs and tell stories (that is mainly, watch movies!) that are not "their own" or maybe have come to become "their own" creating a lot of confusion and the need for a catharsis.

Human life is essentially cooperative; we comprehend the world by sharing stories, experiences and purposes with others, which in turn provide us with a familiar frame of meaning and implant in us a corresponding sense of ownership. Being part of a culture is an innate need human beings are born with - culture, whatever its contents, is a natural function and a liberating experience when we grow naturally first into it and then out of it, always transforming it as we become transformed. This participation leads to "evaluations of reality not as scientists...but in active negotiation of creative imaginings" and a norm is successfully and operational when is evaluated as such. This is what Alexis de Tocqueville refers us to when he notes of the American political system:

"Religion in America takes no direct part in the government of society, but it must be recorded as the first of their political institutions;..... I do not know whether all Americans have a sincere faith in their religion - for who can search the human heart? - but I am certain that they hold it to be indispensable to the maintenance of republican institutions. This opinion is not peculiar to a class of citizens or to a party, but it belongs to the whole nation and to every rank of society."

To be joined complementarily by a Colonial Presbyterian Minister who noted that:

"The United States have lately formed their several systems of civil government so as to leave religion free..."

The goal in other words is not to impose norms only on the basis of legal reasoning and external statutory or even foreign structural associations, just to save face, which as practice has shown leads often to legal rationalization, external adherence and ultimately imperils the very thing we try to protect; but to own them. It is important to have a culturally meaningful correspondence of norms and reality, if necessary re-create norms in order to own them, actively drawing from the reservoirs of cooperatively shared and shaped notions of fundamental ideas and ideals. A well known dictum express it very succinctly when it describes laws that do not correspond to the social reality they aim to serve as simply a piece of paper.

We recognize the theory of Human Rights as a Western cultural evolution, having grown up in the Christian West; this does not at all diminish its established value for the whole world, only it raises our awareness as to the issue of its proper applicability and legitimization in diverse cultures. Every time we have roadblocks in the enjoyment of religious liberty, mainly manifested in dysfunctional religious registration frameworks, we need to arise in examining the level of affinity or alienation of the people of the land with the rights in peril.

The Human Rights paradigm derives its authoritative explanatory and regulatory power from the fundamental belief in the empowerment of each person. This is an all-powerful "doctrine" capable of providing a central, ideological and operational coherence even in different from the Western cultural norms, which happen to be collective and communitarian. It is in such settings that we observe the most difficulties with religious pluralism, as in Greece, since it comes against the primary value of the central, cohesive notion of the community against which the value of the individual is measured in terms of his participation in it. However, even in such environments there are always cultural reservoirs, which could support a successful decentralization of the convincing value of the empowerment of each person.

The OSCE forum can encourage such processes of a successful decentralization of the core values at stake, enabling the parts [participating states] to be of "one mind" even though they are diverse in culture and place. If the Cold war dialogue and

agreement processes could be measured in “dinosaur” like sizes and methods, the new reality, especially after the events of Tuesday 11th of September, 2001, can only be pursued through smaller and more flexible forms of engagement; not simply a cross institutional, cross structural, statutory and hierarchy-oriented approach and influence but also a network-oriented approach. When many herald the “network society” in the midst of an ever-deepening global civil society, power and legitimacy are more and more to be fostered and reinforced in networks, pushing us to rethink our typologies. The importance of the social capital in the new morphology of our societies, affecting the conceptualization, establishment and application of rights, starting from, as a core reinvigorating systemic value, and going all the way down to religious registration, would be crucial.

In all these OSCE could play a leading role, through consultative and consensus-building mechanisms, employing the social capital dimension within its broader methodological category of Human Dimension.