

11-1-1996

The Hellenic Republic and the Prevailing Religion

Charalambos K. Papastathis

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Recommended Citation

Charalambos K. Papastathis, *The Hellenic Republic and the Prevailing Religion*, 1996 BYU L. Rev. 815 (1996).

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The Hellenic Republic and the Prevailing Religion

*Charalambos K. Papastathis**

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I. THE SYSTEM OF CHURCH-STATE RELATIONS

The 1821 Revolution of the Hellenes against the Ottoman Empire ended in 1827 when Greece was organized into a state, with Ioannis Kapodistrias (1828-31) as its president. Greece's independence was recognized internationally by the London Protocol on February 28, 1830, which also established a monarchy. Otto, the second-born son of the King of Bavaria, Ludwig I, was chosen as king and came to Greece in January 1833. However, because he was still a minor, a three-member regency made up of Bavarian officials ruled Greece until 1835. Otto was a paradoxical combination of a Greek nationalist and an authoritarian sovereign. After the revolution of September 3, 1843, the constitution of 1844 was promulgated.

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

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

The revolutionary constitutions, however, did not address the state's right to legislate in ecclesiastical matters. Those provisions referring to religion were characterized by the drafters' self-restraint in not intervening in matters of the Church. The sole exception was a bestowal of special protection to the prevail-

1. For a summary of this period, see CHARLES A. FRAZEE, *THE ORTHODOX CHURCH AND INDEPENDENT GREECE: 1821-1852* (1969).

2. SYNTAGMA [Constitution] of 1827, art. 24 (Greece).

ing religion, but without a concurrent bestowal of such protection to other cults and denominations. The constitutions of the revolution introduced a system of "coordination" of relations between the state and the Orthodox Church. Each handled its own affairs and cooperated only in matters of common interest. The revolutionaries of 1821 had conceived of "coordination"; this system would be further expanded a few decades later in the West between various states and the Catholic Church by means of concordats.

The system of coordination of the democratic constitutions of the period from 1822 to 1827, as well as communal self-administration—directly related to parishes—was set aside by the Bavarian regency. The regency introduced a more specific form of state supremacy into church-state relations: the system of "state-law" rule over the Orthodox Church. This system has been in effect in Greece since publication of a decree of April 3 (15)/14 (27), 1833, which stated that "the establishment of Synodal Authorities, the supervision of their acts and the publication of the decisions issued thereof," and "the royal rights in reference to the appointment to Church offices and to the permission for the ordination of priests and deacons" were under the jurisdiction of the "Secretariat [Ministry] of Ecclesiastical Affairs and Public Education."³

In a more distinct manner, the same framework of church-state relations was repeated in the regency's declaration of July 23/August 4, 1833, "On the Independence of the Greek Church,"⁴ which was planned to cause significant damage to Hellenic national interests in the regions of the Balkans and the Near East. The declaration established the state as the exclusive legislative authority of the Church and made the Church a pawn in the hands of the monarch by declaring that the Orthodox Church of Greece did not recognize "in spirit any other head than the founder of the Christian Faith, our Lord and Savior Jesus Christ, while as regards administrative aspects having the King of Greece as its leader."⁵ It was also determined that the "supreme Ecclesiastical power lies in the hands of the Synod,

3. Decree of Apr. 3 (15)/14 (27), 1833.

4. Decree of July 23/Aug. 4, 1833.

5. *Id.* art. 1.

under the sovereignty of the King,"⁶ and that the members of the Holy Synod were to be appointed by the government.⁷ The sessions of the Holy Synod were to be held in the presence of a royal trustee⁸ and any decision made in his absence would be void.⁹ Moreover, no synodal decision could be "published or executed" without the government's approval.¹⁰ Synod decisions, including those that had been recognized by the declaration as pertaining to the Church's internal affairs under article 10, could not be executed "unless they were first sanctioned by the government and in compliance with the existing laws."¹¹

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

During the discussions accompanying the drafting of the current constitution,¹² established tradition was used as a justification for preserving the state-law system. I am afraid that this view (1) does not afford due weight to the vital needs of the Orthodox Church for substantial self-administration; (2) ignores the unfavorable consequences brought about by the existence of a "prevailing church" doctrine in the field of religious freedom; and (3) overlooks, even though it calls upon tradition, the historical fact that during the 1821 struggle for independence, a different framework of church-state relations had been constitutionally established.

By establishing the state-law system, the Bavarian regency bequeathed the Hellenic state with a kind of caesaropapism, which was constitutionally established for the first time in 1844. Here it should be pointed out that articles 1 and 2 of the 1844 constitution, which establish a "prevailing religion," were, with

6. *Id.* art. 2.

7. *Id.* art. 3.

8. *Id.* art. 6.

9. *Id.* art. 7.

10. *Id.* art. 9.

11. *Id.* art. 17.

12. SYNTAGMA (adopted in 1975). An English translation of the relevant provisions of the 1975 constitution is reproduced in the appendix to this Article.

few changes, repeated in all the consecutive constitutions.¹³ Neither article, however, refers to state-law rule, but only to the status of the Orthodox Church. From a constitutional point of view, the right of legislators to intervene in Church matters, or state-law rule, was imposed and limited by article 105 of the 1844 constitution, which stated that

by way of special Laws, and as soon as possible, provisions must be made concerning the following issues: a) the number of the Bishops of the State, the provision for all those that are necessary for the maintenance of the clergy, according to the dignity of their character, and the holy offices and those who officiate or lead monastic lives therein; b) Church property.¹⁴

In subsequent constitutions, there has been no stipulation concerning the relevant legislative jurisdiction of the state, with two exceptions: the legislative text of article 1, sections 2 and 5 of the 1968 constitution¹⁵ and article 72, section 1 of the current constitution,¹⁶ which have returned the Hellenic Republic to the monarchic models of 1844.

Throughout the period spanning 1864 to 1968, the state's right to control the administrative affairs of the Church was maintained by the various charters of the Church of Greece, which were and still are laws of the state, as well as by other laws pertaining to the Church. Thus, the system of state-law rule was not based on constitutional command, but on conventional laws, despite the self-governing regime that had been established by all the constitutions for the Church ("administered by the Holy Synod of Bishops"),¹⁷ without including in this provision the phrase "as law stipulates," which had previously been assumed to be necessary in similar cases. Therefore, although the 1864, 1911, 1927, and 1952 constitutions established the self-governed status of the Church and the

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

14. SYNTAGMA of 1844, art. 105.

15. SYNTAGMA of 1968, art. 1, §§ 2, 5.

16. SYNTAGMA art. 72, § 1.

17. The relevant constitutional provisions are article 2 of the 1844, 1864, 1911, 1927, and 1952 constitutions, and article 1 of the 1968 constitutional text.

autonomous and independent status of the Church and the state, they made no mention of the legislative power of the state regarding the Orthodox Church. This lack of constitutional prescription was exactly what those agonizing efforts of theory and judicial precedent were trying to cover up with their meteoric caesaropapic fabrications, such as "the King as head of the executive power bears the obligation to protect the prevailing religion of the Hellenes, and this same obligation is born by the administration, which is also headed by the King."¹⁸ These fabrications grounded state-law rule in the constitutional recognition of the Orthodox Church as the prevailing religion, in the King's oath to protect the prevailing religion, or in whatever requirements the principle of the so-called constitutional provision for the holy canons (which, as we will see, is directly aimed at other goals) imposed on legislators. Therefore, from 1864 to 1968, the system of state-law rule was supported by a constitutional fallacy.

The legislation of the dictatorship of April 21, 1967, as well as the Constitution of the Hellenic Republic of 1975, reverted to the monarchic constitution of 1844. The drafters of the 1975 constitution, like the drafters of the 1968 constitutional text, omitted those provisions of sections (a) and (b) of article 105 of the 1844 constitution that restrictively determined on what Church matters Parliament could legislate. They also dropped article 1, section 5 of the legislative text of 1968, which stipulated that without the consultation of the Holy Synod, a draft or a legislative proposal regarding the organization and administration of the Church shall not be discussed in Parliament before the expiration of a twenty-day term. For these reasons, I cannot subscribe to the prevailing opinion that the 1975 constitution currently approaches a system of coordination in which church-state relations stand between state-law rule and a regime or intermutuality or quasi intermutuality.¹⁹ This is because under article 72, section 1 of the constitution, there is no "tendency for mutual disengagement," but only a unilateral gradual disengagement of the state from the Orthodox Church.

18. Judgment No. 1661/1947, Council of State [CS], 58 THEMIS 510, 511 (1947).

19. See Aristovoulos Manassis & Constantinos Vavouscos, *Gnōmodótēsis* [Expert Opinion], 52 ECCLESIA 304 (1975); see also 1 ARISTOVOULOS MANASSIS, SYNTAGMATIKA DIKAIOMATA: A' ATOMIKES ELEFTHERIES (CONSTITUTIONAL RIGHTS: CIVIL LIBERTIES) 256 (2d ed. 1979).

From a purely institutional point of view, the present constitution secularizes the state and politicizes the Church.

In summary, according to the 1975 constitution, the system that regulates relations between the Greek state and the Orthodox Church is state supremacy (*Staatskirche*), or state-law rule. The state legislates on religious matters, as the provisions of article 72, section 1 of the constitution make clear. The plenary session of Parliament is the competent legislative body for debating and voting on bills and law proposals which refer, *inter alia*, to matters falling under article 3 and article 13 of the constitution. Article 3 and article 13 cover matters concerning the Orthodox Church²⁰ and pertaining to freedom of religious conscience and worship of all religions, as well as of atheism and agnosticism in Greece. We can now consider how the aforementioned provisions led to the establishment of the Orthodox Church.

II. THE STATUS OF THE ORTHODOX CHURCH

A. *The Constitutional Provisions*

Article 3, section 1 of the constitution of 1975 is the primary reference to the status of the Orthodox Church in the Hellenic Republic. Other relevant provisions are included in article 13 (concerning religious freedom), article 18, section 8 (protecting the property of the patriarchates in Greece), and article 105 (referring to Mount Athos).²¹

Article 3, section 1 of the constitution contains the following fundamental principles, which determine the status of the Church of Greece and of the Orthodox Church in general, in Greece: (1) The Orthodox faith constitutes the prevailing religion; (2) the Church of Greece is inseparably united in spirit with the Ecumenical Patriarchate (which has its see in Istanbul, Turkey) and with all the other churches of the same denomination; (3) the existing autocephalous regime is

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

21. See Charalambos Papastathis, *Le régime constitutionnel des cultes en Grèce*, in *THE CONSTITUTIONAL POSITION OF CHURCHES IN THE EUROPEAN UNION COUNTRIES* 163 (European Consortium for Church-State Research ed., 1995).

maintained; and (4) the Church is self-governed. The provisions of article 3 of the constitution are not all novel. They are found, with amendments at times, in all constitutions which were in force before 1975.

B. The Prevailing Religion

The constitution currently in force differs greatly from the provisions of the 1952 Constitution concerning some of the specific manifestations of the recognition of the Orthodox religion as prevailing. First, the heir to the throne (and thus indirectly the king as well), the guardian of the minor heir, and the viceroy all had to be Orthodox.²² No similar provision about the president of the Republic is found in the 1975 constitution. Second, when assuming his duties, the king was required to vow to protect the prevailing religion,²³ a provision which has been removed from the current constitution.²⁴ Third, the aforementioned oath was supposed to be taken by the king in the presence of the Holy Synod,²⁵ a provision which has also been left out of the current constitution.²⁶ Fourth, proselytism and "any other intervention against the prevailing religion" was prohibited by article 1, section 1 of the 1952 constitution.²⁷ In the current constitution, section 2 of this provision has been obliterated; proselytism is now only generally prohibited against any known religion.²⁸ Fifth, the ideological principles of "Graeco-Christian culture,"²⁹ which the interpretation of the constitution associated directly with the Orthodox Church, were a mandatory basis for public education. This provision has been replaced by one which includes the development of religious conscience among the goals of education.³⁰ Sixth, the confiscation of journals and printed matter was permitted in "an offense against the Christian Faith."³¹ The existing constitution permits confiscation

22. SYNTAGMA of 1952, arts. 47, 51, 52.

23. *Id.* art. 43, § 2.

24. SYNTAGMA art. 33, § 2.

25. SYNTAGMA of 1952, art. 42, § 2.

26. SYNTAGMA art. 33, § 2.

27. SYNTAGMA of 1952, art. 1, § 1.

28. SYNTAGMA art. 13, § 2.

29. SYNTAGMA of 1952, art. 16, § 2.

30. SYNTAGMA art. 16, § 2.

31. SYNTAGMA of 1952, art. 14, § 2.

on the grounds of "an offense against the Christian and any other known religion."³²

The invocation to the 1952 constitution ("In the Name of the Holy and the Consubstantial and Indivisible Trinity") remains unaltered in the 1975 constitution.³³ Moreover, in the oath of the president of the Republic³⁴ and of the members of Parliament,³⁵ the invocation of the Holy, Consubstantial, and Indivisible Trinity is maintained. But while this nature of the Holy Trinity is taught by almost all Christian churches,³⁶ the constitution stipulates in article 59, section 2 that the members of Parliament who are of a different religion or cult are sworn in according to their own religion or cult—a provision which does not appear in the article about the president of the Republic.³⁷ In other words, it seems that the constitutional drafters considered the invocation of the Holy Trinity as fitting only to the teachings of the Orthodox Church. Therefore, from the identical invocation of article 33, section 2 and the concurrent lack of a provision about a non-Orthodox president, one could argue that the constitution indirectly authorizes the choice of only an Orthodox president of the Republic. But I do not think this is true. We can attribute the wording of article 59, section 2 of the constitution to the theological ignorance of the drafters of the constitution. At the same time, the provisions of article 4 (on equality) and article 13, section 1 (on religious freedom) of the constitution would be grounds for an interpretation that is contrary to the aforementioned hypothesis.

The distancing of the current constitution from only the secondary provisions of the 1952 constitution regarding the prevailing religion has led to the view that "prevailing" currently means the religion of the majority of the Hellenic people.³⁸ I

32. SYNTAGMA art. 14, § 13(a).

33. *Id.* invocation.

34. *Id.* art. 33, § 2.

35. *Id.* art. 59, § 1.

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

37. SYNTAGMA art. 33, § 2.

38. See SPYROS TROJANOS, *PARADOSEIS EKKLESIASTIKOU DIRAIJOU* [LECTURES ON ECCLESIASTICAL LAW] 94-95 (2d ed. 1984); see also ANASTASIOS MARINOS, *SKHISESIS EKKLESIAS KAI POLITELIAS* [CHURCH-STATE RELATIONS] 22 (1984).

cannot embrace this opinion because this whole rationale assumes its conclusion. The prevailing religion is prevalent because it is inextricably connected with the traditions and the majority of Hellenes. The question is discovering the legal content of the provision of the constitution, not an analysis of statistical data from the population census. At the same time, by not adopting the secondary provisions of the 1952 constitution, the current constitution demonstrates that the legal weight of the constitutional protection of the prevailing religion is insubstantial in comparison to the 1952 constitution. This is only in reference to the more secondary consequences of the existence of such a religion, whereas the framework of the more general provision of article 3, section 1 of the constitution remains intact and identical with that of the preexisting constitutional regime.³⁹

"Prevailing," therefore, signifies several other things. First, the Orthodox cult constitutes the official religion of Greece. Second, the Church, which expresses this cult, has its own legal existence. It is a legal entity of public right as regards its legal relations, and the same holds for its various organizations.⁴⁰ Third, the state approaches it with increased interest and it enjoys preferential (institutional, moral and financial) treatment, which does not ipso jure extend to other cults and faiths. This, however, does not mean that the prevailing religion is dominant; this preferential treatment is not contradictory to constitutional principles of equality, despite the execution of the decisions of the Church authorities of the prevailing religion by state officials,⁴¹ the pure Orthodox character of the religious service of the armed forces,⁴² and the assumption on the part of the state of the founding and maintenance of Orthodox ecclesiastical schools.⁴³

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

39. See 1 CHARALAMBOS PAPANATHIS, *STOICHEIA EKKLESIASTIKOU DIKAIΟΥ* [ELEMENTS OF ECCLESIASTICAL LAW] 59-60 (2d ed. 1994).

40. "On the Statutory Charter of the Church of Greece," Law 590/1977, art. 1 § 4.

41. "On Ecclesiastical Courts and the Procedure Before Them," Law 5388/1932, arts. 53, 54, 62, 107.

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

43. See "On Ecclesiastical Education," Law 476/1976.

Preferential treatment concerns primarily the Church of Greece and the other metropolises of the Ecumenical Patriarchate which have their see in Greece, but preferential treatment is also enjoyed by the Hellenic Orthodox churches of the East and the Diaspora. I also believe that preferential treatment should be of general content and should not turn specifically against a particular religion or cult, or against their worship, and should not conflict with any prohibitive or prescriptive provision of the constitution.⁴⁴

It should be noted that if we leave out the characterization of the Orthodox cult as the official, or state religion, the other two elements of its recognition⁴⁵ do not correspond exclusively and solely to this particular cult. For example, at least a part of the theory has supported the idea that both the Catholic and the Protestant churches in Greece are also legal entities of public right. Consequently, the exercise of public administration is not restricted only to the principles of the prevailing religion, but also extends to those of known cults, as was the case before Law 1250/1982 "On the Establishment of the Civil Marriage" came into effect, with the issuance of a marriage license by a non-Orthodox bishop to a member of his congregation.⁴⁶

As to the preferential treatment reserved for the prevailing religion by legislators, there are three things that should be remembered. First, the other known religions and cults are also granted many privileges. For example, article 6, section 1(c) exempts from military service all clergymen, monks, postulants, and seminarists, regardless of their religion,⁴⁷ and the churches, temples, mosques, synagogues, and monasteries of the Orthodox Church and other cults and religions are exempt from paying income tax on legal entities,⁴⁸ as well as property tax.⁴⁹ It became accepted that the text of article 21 of Legislative Decree

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

45. See *supra* text accompanying notes 40-43.

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

47. "On the Recruitment of the Hellenes," Law 1763/1988.

48. Legal Decree 3843/1958.

49. Law 1249/1982.

22.4/1926, stipulating that the rights of the state, the aircraft defense, and the holy monasteries on real estate are not subject to statutory limitation, is also applicable to Catholic monasteries.⁵⁰

Second, there are "privileges" of the prevailing religion that are contrary to the provisions of the holy canons of the Orthodox Church. An indicative example is that the state pays the wages of the Church's metropolitans and parish priests (parsons) but does so with exchanges specifically as to the wages of the latter. These exchanges include the devolvement to the state of the largest and most profitable portion of ecclesiastical property, and the imposition on Orthodox churches of a special contribution of thirty-five percent of all their gross earnings.⁵¹

Third, legislation has established preferential treatment in favor of the adherents of some denominations, even though judicial opinions still debate whether or not they conform to the article 13 concept of "known religion."⁵² For example, the provisions of Law 731/1977 regulate the military service of all those who refuse to bear arms on the basis of their religious convictions.⁵³ The law does not require that conscientious objectors belong to a "known religion."

C. *The Spiritual Unity of the Orthodox Church*

From an administrative point of view, the Orthodox Church all over the world is distinguished into specific autocephalous and autonomous churches. The autocephalous churches are the Ecumenical Patriarchate, the Patriarchates of Alexandria, Antiocheia, Jerusalem, Russia, Serbia, Romania, Bulgaria, and Georgia, and the Archdioceses of Cyprus, Greece, Poland, and Albania. The Orthodox churches of the Czech Republic, Slovakia, and of Finland are autonomous. The autocephalous churches are

50. See Judgment No. 1161/1983, App. Ct. of Thessaloniki, 23 CHRISTIANOS 33-35 (1984).

51. Article 2, section 2 of Mandatory Law 536/1945 had set a percentage of 25%, which was increased to 35% by article 5 of Mandatory Law 469/1968. See Charalambos K. Papastathis, *State Financial Support for the Church in Greece*, in CHURCH AND STATE IN EUROPE: STATE FINANCIAL SUPPORT, RELIGION, AND THE SCHOOL 9-13 (European Consortium for Church-State Research ed., 1992).

52. SYNTAGMA art. 13.

53. See the relevant judicial decisions in IOANNIS KONIDARIS, *NOMIKE THEORIA KAI PRAKTIKI GIA TOUS MARTYRES TOU IECHOVA* [LEGAL THEORY AND PRACTICE ON JEHOVAH'S WITNESSES] (3d ed. 1991).

administratively independent from each other. But this independence is circumscribed by a framework of dogmatic and canonical nature, the exit from which leads respectively to sects and schism. This framework represents the spiritual unity (or simply the unity) of Orthodoxy. The dogmatic unity consists of compliance with the teachings of the Holy Scriptures, of reverence towards sacred traditions, and of the faithful observance of the creeds, as laid down by the ecumenical and local Synods. The canonical unity is expressed by the observance of at least the fundamental institutions of the Church's administration, which were in turn set forth and recognized by the same Synods, as well as through the relations between the various Orthodox churches.

By 1844, constitutional drafters had already determined that the Church of Greece exists in inseparable spiritual unity with the Great Church of Constantinople (Ecumenical Patriarchate) and with every other Orthodox Church.⁵⁴ Constitutional drafters have wished the prevailing religion in Greece to be the Orthodox religion. This is why, being led down theological paths, they have imposed the unity of the Church of Greece with the other Orthodox churches. But how is unity maintained? The constitution provides that the Church of Greece is "inseparably united in doctrine" with the other Orthodox churches by "observing unwaveringly, as they do, the holy apostolic and synodal canons and sacred traditions."⁵⁵

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

54. The relevant constitutional provisions are article 2 of the 1844, 1864 and 1911 constitutions; article 1, section 2 of the 1927 constitution; article 2 of the 1952 constitution; article 1, section 2 of the 1968 constitutional text; and article 3, section 1 of the 1976 constitution.

55. SYNTAGMA art. 3, § 1.

power of the holy canons is a recurrent one in Greek constitutional law.

The problem of the constitutional guarantee of the holy canons emerged because of trivial reasons. According to the text of article 114, section 2 of the Law of December 27, 1833, regarding the institution of municipalities, Church councils were constituted for the administration of ecclesiastical establishments, composed of the mayor, the parson and two to four citizens registered in the particular municipality and appointed by the mayor. On the basis of this statute, many local politicians started to appoint choristers and sacristans to the parishes of their provinces. But the bishops reacted to this, claiming that both from the aspect of holy canons and from that of the laws of the state, the appointment of these positions came under their jurisdiction. The matter of these appointments ended in a compromise—the Church councils recommended and the bishop appointed—but the purely legal issue of whether the holy canons superseded the laws of the state, or vice versa, remained open in theory.

Two basic views have since been put forth. One view suggests that all the holy canons in general, whether they concern the creed and the worship, or the administration of the Church, are safeguarded by the constitution. Hence, the laws that counter their provisions are unconstitutional. According to the other view, only the so-called dogmatic holy canons—those which deal with the creed of the Church and do not merely concern administration—are enveloped by the constitutional guarantee. Consequently, the legislators should be free to regulate all matters pertaining to the administration and the organization of the Church. For many years, this has been the preferred view of the judicial decisions issued by political and administrative courts alike.⁵⁶

These views require distinction between the phrases “is inseparably united in doctrine” and “observing unwaveringly, as they do, the holy apostolic and synodal canons and the sacred traditions.”⁵⁷ According to the two views, the constitution

56. For a detailed analysis of the particular views, see 1 PANAYOTIS POULITSAS, *SCHESIS POLITEIAS KAI EKKLESIAS, IDIA EPI EKLOGES EPISKOPON* [THE RELATION BETWEEN STATE AND CHURCH, ESPECIALLY REGARDING THE ELECTION OF BISHOPS] (1946).

57. SYNTAGMA art. 3, § 1.

introduces two distinct principles: the unity of the creed, and the constitutional guarantee (or nonguarantee) of the holy canons and the sacred traditions. I cannot agree with this conclusion. I believe that in the constitution there is one and only one principle: the obligation of the state and the Church of Greece to respect and preserve the unity of the Church. Otherwise, how can one interpret "as they do," which is interposed in the self-existing statute on the constitutional force of the holy canons? For this reason, and also because the first view leads to hierocracy and the second one to a severe caesaropapism—regimes which are absolutely contradictory with the principles of the Constitution of the Hellenic Republic—I believe that here the constitution does not refer directly to the protection of the holy canons, but to the spiritual unity of the Church of Greece with the other Orthodox churches. Preservation of the spiritual unity of the Church is achieved by ensuring dogmatic unity⁵⁸ and canonical unity.⁵⁹

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

In terms of results, the Council of State treated the matter in a somewhat similar fashion in 1967 by abandoning the strict view that the constitution guarantees exclusively the dogmatic

58. *Id.* ("is inseparably united in doctrine").

59. *Id.* ("observing unwaveringly, as they [the other Orthodox churches] do, the holy apostolic and synodal canons and the sacred traditions").

holy canons and declaring that "the legislator . . . in the spirit of Article 2, § 1 of the Constitution [of 1952] . . . cannot by the amendments effected by him bring about fundamental changes to basic administrative institutions, which have been deeply entrenched and long established within the Orthodox Church."⁶⁰ The Council of State, with these decisions and in accordance to the "spirit" of the provisions of article 2, section 1 of the 1952 constitution, which is analogous to that of article 3, section 1 of the current constitution, then held that the constitution fully guaranteed the doctrines and all that is pertinent to Orthodox worship and that the constitution did not fully guarantee the administrative institutions which were contained in the holy canons in general. These administrative institutions (but not administrative holy canons) were to be classified as basic or nonbasic. Legislators could proceed as far as a fundamental change of a nonbasic institution, and a nonfundamental change of a basic institution.

The disadvantage in the rationale of the Council of State's approach—which no doubt marked a definite progress compared to its prior rigid stance—lies, in my opinion, in classifying the administrative institutions of the holy canons as basic or nonbasic. In my opinion, making this distinction, although it is "deeply entrenched and long established within the Orthodox Church," is shaky and calls for an intertemporal approach on the part of the legislator—in other words, something that is not always easy.

Nevertheless, the line of judicial decisions issued by the supreme administrative court also went through a third phase, this time under the regime of the current constitution. More specifically, without abandoning article 3, section 1 of the constitution, the Council of State now confers primary status on article 13, sections 1 and 2 of the constitution, which safeguard the individual right of religious freedom of, among others, the followers of the prevailing religion. Thus, it foils any action on the part of legislators which would infringe upon the freedom of religious conscience and the freedom of worship. But the protection of articles 3, section 1 and *especially* of article 13, sections 1 and 2 of the constitution cannot be regarded as extending to those holy canons and sacred traditions which

60. Judgment No. 610/1967, CS.; Judgment No. 609/1967, CS.

relate to matters of exclusively administrative nature, because these cannot have the internal meaning of the dogmatic canons and, moreover, because these same matters are regulated according to the needs of society and under the influence of more contemporary attitudes. Therefore, according to the Council of State, those holy canons and sacred traditions which refer to administrative issues are by necessity variable, in the common interest of both the Church and the state, and are subject to amendment by legislators. However, legislators cannot make fundamental changes in those primal administrative institutions which have been long established in the Orthodox Church. Thus, the more recent decisions of the supreme administrative court, without abandoning the distinction of ecclesiastical administrative institutions into basic and nonbasic, adopt *especially* article 13, sections 1 and 2 of the constitution as a constitutional basis for the protection of the holy canons and the sacred traditions and as a standard for its range.

D. The Extent of the Autocephalous Regime

Article 3, section 1 of the constitution stipulates that "the Orthodox Church of Greece . . . is autocephalous." This mention is not merely an observation, but also a directive that the Church of Greece remain autocephalous. For the autocephalous regime to be lifted, a revision of this statute is necessary.

The "Orthodox Church of Greece" of article 3, section 1 of the constitution does not minister to the Orthodoxy of the Hellenic territory as a whole. The limits of its jurisdiction do not coincide with the borders of the state. The Hellenic territory is divided into five separate ecclesiastical districts, which are subject either to a different Orthodox church or to the same church but under a different administrative and spiritual regime. These districts are (1) the autocephalous Church, (2) the New Lands, (3) Crete, (4) the Dodecanese, and (5) Mount Athos. The autocephalous Church encompasses Central Greece (Roumeli), the Peloponnese, the Cyclades Islands (1833), the Ionian Islands (1866), Thessaly, and the province of Arta in Epirus (1882).

The metropolises that today constitute the autocephalous Church of Greece were for centuries under the jurisdiction of the Ecumenical Patriarchate. During the Revolution of 1821, there was no contact with the Patriarchate because of the war. From the first year of the Revolution, Adamantios Koraes, a great

intellectual figure of Hellenism, proposed the declaration of an autocephalous ecclesiastical regime in the areas under revolt and the undertaking of the Church's administration by a Synod, whose members would be elected by priests and lay persons.⁶¹ After the founding of the modern Hellenic state, there were many who favored the autocephalous regime for ecclesiastical and political reasons. The attempts of the Patriarchate to bridge the gap and revert to the prerevolutionary regime met with the opposition of President Kapodistrias, who charged Minister of Justice Genatas with drafting a bill on church-state relations.⁶² Genatas submitted a memorandum in 1830, leaving the draft law for later, when the relevant views of political and ecclesiastical agents would have been expressed. This memorandum, with a detailed account of all that was happening in the Church and a profound knowledge of its needs and of the national interest, concluded as to the matter of the autocephalous regime, that the relations between the Ecumenical Patriarchate and the ecclesiastical provinces of liberated Greece should be regulated by way of a treaty.⁶³

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

61. See ADAMANTIOS CORAES, *ARISTOTELOUS POLITIKON TA SOZOMENA* [EXTANT EXCERPTS FROM ARISTOTLE'S POLITICS] 31 (1821).

62. See generally Menelaos Tourtoglou, *Schéseis Politelas kai Ekkliéstas (Prospátheia rythmíseōs autōn epi Kapodístrias)* [Relations Between State and Church (An Attempt for Their Regulation During the Time of Kapodistrias)], 16 *PELOPONNISIACA* 5 (1985-86).

63. The memorandum was discovered and analyzed by Menelaos Tourtoglou. See *id.*

of all the Orthodox living there. Finally, on June 29, 1850, the Patriarchate issued a synodal tome, by which the Church of Greece was declared autocephalous *ex nunc*. After the annexation of the Ionian Islands and, later, of Thessaly, the province of Arta and certain villages of Epirus with Greece, the Ecumenical Patriarchate conceded these regions to the autocephalous Church of Greece with its Acts of July 9, 1866, and of May 1882, respectively. With the Patriarchal and Synodal Act of 1882, the extent of the jurisdiction of the autocephalous Church was finalized. Since that time, any territories that were liberated and came under Hellenic state rule were not subject to the jurisdiction of the autocephalous Church.

With the Balkan Wars (1912-13) and the First World War, regions were liberated and incorporated into Greece, including Epirus, Macedonia, the Aegean Islands, and Western Thrace, whose metropolises and dioceses were subject to the Ecumenical Patriarchate. There were many debates and deliberations regarding the ecclesiastical regime of these new territories, which were called "the New Lands." Their subjection to the full jurisdiction of the Ecumenical Patriarchate gave rise to concerns of a political and ecclesiastical nature because of the wars of the 1912 to 1922 period and strained relations between Greece and Turkey. The metropolitan of Thessaloniki Gennadios (Alexiades) had suggested in 1925 that the spiritual subordination to the Patriarchate be continued and that an autonomous administrative regime be established, with central organizations having their see in Thessaloniki. This solution was the most suitable one, given that in this way the Ecumenical Patriarchate, which after the exchange of populations was in a difficult state, did not lose the provinces of the New Lands, and there were no dangers from a potential lack of communication between Istanbul and Thessaloniki, due to the administratively autonomous regime. But another solution was preferred, paradoxical from the *nomo-canonical* standpoint. The New Lands continued to be spiritually subject to the Ecumenical Patriarchate, but their administration was heretofore carried out "in trust" by the autocephalous Church of Greece. "In trust" means (1) at the entreating request of the Ecumenical Patriarchate, the autocephalous Church of Greece took on "the direct governance" of the New Lands, by extending thereupon "to all the system of administration and the order of its own

Provinces;" (2) that "hence the Holy Synod of the Orthodox Autocephalous Church of Greece in Athens is henceforth recognized as the direct central and superior to these Provinces' ecclesiastical authority;"⁶⁴ and (3) this regime is temporary.

This solution was reached following deliberations between the Hellenic Republic, the Ecumenical Patriarchate, and the autocephalous Church of Greece. It was enacted in Law 2615 of July 10/11, 1928, and in the Patriarchal and Synodal Act of September 4, 1928, which also determined the general conditions of the operation of this administrative regime. However, the two texts significantly differ regarding the number of these conditions.⁶⁵

Ever since Law 2615/1928 and the Patriarchal and Synodal Act of 1928 were put into effect, the autocephalous Church of Greece and the patriarchal dioceses of the New Lands have constituted the "Church of Greece." Hence, the wording of article 3, section 1 of the constitution ("The Orthodox Church of Greece . . . is autocephalous"), as well as the identical wording of article 1, section 2 of the Statutory Charter of the Church of Greece,⁶⁶ are erroneous from a legal/technical aspect. The Hellenic Parliament, without due examination, repeated in the current constitution and in the Statutory Charter the exact same provision of the 1844, 1864, 1911, and 1927 constitutions, which contained wording that was correct and congruous with the facts of their time. The 1952 constitution contains an identical provision as well.

The struggle of the Cretans for independence resulted in the formation of the autonomous Cretan state (1898-1912), which signed a treaty with the Ecumenical Patriarchate on October 14, 1900. This treaty regulated the canonical dependence and the organization of the local church. The local Cretan church remained under the spiritual jurisdiction of the Patriarchate and administratively came under a semiautonomous regime. Crete retained this ecclesiastical regime until after its annexation to Greece in 1912. The Statutory Charter of the Church of Crete is also a law of the Hellenic state.⁶⁷

64. See Patriarchal and Synodal Act of Sept. 4, 1928.

65. See Charalambos Papastathis, *The Incorporation of Macedonia into the Greek State*, in 2 MACEDONIA 33-34 (Ioannis Koliopoulos et al. eds., 1993).

66. Law 590/1977.

67. Law 4149/1961.

The Dodecanese was annexed to Greece on March 7, 1947. This political change did not cause changes in the ecclesiastical regime. Thus, the four metropolises and the exarchate of Patmos continue to be subject, spiritually and administratively, to the Ecumenical Patriarchate. Finally, the peninsula of Aghion Oros (Mount Athos), which was united with Greece in 1912, preserves unaltered its ancient privileged self-governing regime and is spiritually under the supervision of the Ecumenical Patriarchate.⁶⁸

E. The Self-Administration of the Church

The current constitution is innovative as to the wording of that provision of article 3, section 1 regarding the self-administration of the Church of Greece. There was technical self-administration under the previous constitutions as well, which stipulated that the Church "is administered by a Holy Synod of Bishops,"⁶⁹ regardless of the practical extent of this self-administration and of the degree of consideration that the state demonstrated towards it. The 1975 constitution introduces more explicit provisions, especially as to the central administrative organs, as it stipulates that it "is administered by the Holy Synod of serving Bishops and the Permanent Holy Synod originating thereof and assembled as specified by the Statutory Charter of the Church."⁷⁰ From this provision it follows that the Holy Synod is comprised of those bishops who minister over a province, whereas the preceding constitutions referred to a Holy Synod of bishops, a phrase which in practice gave the state the possibility to intervene in Church matters with the appointment of a Synod according to merit.

The provisions of the present constitution have the following effects: (1) The appointment of a Synod according to merit is thwarted; (2) inactive bishops, associate bishops and assistant bishops are excluded from participating in the Holy Synod, as are representatives of the presbyters, the deacons and lay

68. See Charalambos K. Papastathis, *The Status of Mount Athos in Hellenic Public Law, in MOUNT ATHOS AND THE EUROPEAN COMMUNITY* 55, 55-75 (Institute for Balkan Studies ed., 1993).

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

70. SYNTAGMA art. 3, § 1.

people; and (3) administration is also exercised by the Permanent Holy Synod, originating from the Holy Synod of the Hierarchy and constituted in a manner determined by the Statutory Charter of the Church⁷¹ (which is a law of the state according to article 72, section 1 of the constitution). On this point, the constitution once more introduces a pioneering provision in article 3, section 1: "in compliance with the provisions of the Patriarchal Tome of June 29, 1850, and the Synodal Act of September 4, 1928."⁷²

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

The constitution of 1975 is the first one to establish the Patriarchal Tome and the Patriarchal Act as sources of law of increased formal authority. One theory has held that the reference of the constitution to these two texts does not end with the specific matter of the bearer of the administration of the Church, that is, with the composition of the Permanent Holy Synod, but alludes to the administration of the Church in general. Under this view, the Church of Greece should be "basically" administered as the patriarchal texts specify. And, given that the Patriarchal and Synodal Tome of 1850 provides that the Holy Synod administers "Church matters according to the divine and holy canons freely and unimpededly from all temporal interventions," it would follow that the way towards the substantial self-administration of the Church of Greece

71. *Id.*

72. *Id.*

would be opened. At the same time, the matter of the general conditions of the Patriarchal Act and of Law 3615/1928 would be conclusively resolved in favor of the former.

However, the Council of State ruled that the constitution imposes the force of the patriarchal texts only as to the composition of the Permanent Holy Synod restrictively, and not in their totality.⁷³ Using this specific judgment of the Council of State as our standard, we cannot but conclude that the self-administration of the Church is necessarily limited to the regime of the state-law rule or, more emphatically, that "under a regime of State-law rule, the autonomy of the Church has solely theoretical significance."⁷⁴

III. STATE SUPERVISION OF RELIGION

A. *The Supervising Agencies*

1. *Ministry of National Education and Cults*

General state supervision of all the religions in Greece is entrusted to the General Secretariat of Cults of the Ministry of National Education and Cults, which was instituted under Presidential Decree 417/1987. Its duties include (1) The supervision of the implementation of government policy in the area of cults and (2) the duties of the departments of Ecclesiastical Administration, of Ecclesiastical Education and Religious Instruction, and of Persons of a Different Cult and of a Different Religion, which were already provided for in the Ministry of National Education and Cults.⁷⁵

a. *Department of Ecclesiastical Administration.* This department is divided into two branches: the Ecclesiastical Administrative Affairs Division; and the Division of Holy Churches (parishes), Holy Monasteries, and Parish Priests. Their duties are limited exclusively to matters of the prevailing religion and only within the Hellenic territory. Thus, the Ecclesiastical Administrative Affairs Division is responsible for

73. See Judgment No. 546/1978, CS; Judgment No. 545/1978, CS; Judgment No. 3178/1976, CS.

74. See Nikos Rotis, *Syntagmatikē táxē kai Ierol kanónes (StE 2336/80)* [Constitutional Order and Holy Canons (Council of State 2336/80)], in 7 TO SYNTAGMA 428, 428-29 (1981).

75. "Organization of the Central Agency of the Ministry," Presidential Decree 147/1976, arts. 5-7.

recognition and matters pertaining to the status of the bishops of the Churches of Greece and Crete; supervision of the implementation of the constitution and of the legislation on the organization and the administration of the Churches of Greece and Crete, of the metropolises of the Dodecanese, of the religious associations and foundations, as well as their supervision according to the laws and the sanction of their acts; the founding, the abolishment and the merger of metropolises; the exercise of supervision of the management of the property of the Churches of Greece and Crete, as well as of the ecclesiastical legal entities of public right.⁷⁶ The Division of Holy Churches, Holy Monasteries, and Parish Priests concerns itself with the implementation of legislation on monasteries and hermitages (but not those of the peninsula of Mount Athos), churches, vicarages and their personnel; the expropriation of land for the purposes of erecting or enlarging churches; and the constitution of collection committees for collections in favor of churches when these collections are carried out beyond the boundaries of a single prefecture.

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

76. Exempted from this division is the "Apostolic Diaconia." See *infra* part III.A.1.b. The Apostolic Diaconia is a legal entity which belongs to the Church of Greece and looks after the programming, the organization, and the realization of its educational and missionary work.

to those of other public schools and to their diplomas; and affairs of religious instruction and of religious associations and foundations.

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

2. *Ministry of Foreign Affairs*

The Ministry of Foreign Affairs is also charged with responsibilities concerning the various cults. To my knowledge, it is internationally the only Ministry of Foreign Affairs to be institutionally assigned to religious affairs. More specifically, its Department of Ecclesiastical Affairs (or Churches) "is responsible, according to the existing legislation and in cooperation with the other co-responsible agencies and religious authorities, for the supervision, study and recommendation for the solution of all matters and affairs pertaining to the Orthodox and other Christian and non-Christian churches"⁷⁷ outside Greece, to the Orthodox Divinity Schools and Ecclesiastical Centers outside Greece, to the Clergy living abroad and to the Administration of Mount Athos.⁷⁸

The Department of Ecclesiastical Affairs includes three offices. The first is the Office of Patriarchates-Autocephalous

77. "Non-Christian churches" is a solecism of the legislator. The term "church" always refers to Christianity.

78. "Duties and Structure of the Central Agencies of the Ministry of Foreign Affairs," Presidential Decree 11/1992, art. 27, § 1.

Churches. This Office is responsible for (a) overseeing relations of Greece with the Patriarchates and the other autocephalous churches, the World Council of Churches ("WCC"), the various cults and non-Orthodox churches, as well as the resolution of any relevant matter that arises; (b) supervising the relations among the Orthodox churches; (c) supervising the relations of the Orthodox churches with the other churches, the WCC and religious organizations; (d) providing every possible assistance to the senior Patriarchates and the Monastery of Mount Sinai; and (e) supervising the relations of the Ecumenical Patriarchate with the metropolises of the Dodecanese, the semi-autonomous Church of Crete, and the patriarchal monasteries and foundations in Greece. The second office deals with Mount Athos and with the "Foreign Cults and Religions in Greece." This office's duties include the regulation of any matter that refers to the exercise of state supervision on Mount Athos, and the supervision of cases that regard matters "of heterodox Churches, foreign Religions and foreign Ecclesiastical Educational Establishments, Foundations and Associations in Greece."⁷⁹ The third office of the department is the Office of Ecclesiastical Affairs of Greeks Living Abroad, Orthodox Divinity Schools and Ecclesiastical Centers. This Office is responsible for (a) protecting all ecclesiastical matters of Hellenes living abroad; (b) providing assistance to Hellenic clergy and lay persons for the study of Orthodox theology; (c) developing the activities of clergy, schools, foundations, and associations situated abroad; and (d) promoting cooperation between the Church of Greece and the Hellenic divinity schools with the Greek Orthodox churches abroad.

*B. State Supervision of the Self-Administration of the
Prevailing Religion*

The acts of self-administration of the Orthodox Church are subject to state control. Under the regime of article 26, section 1 of Law 590/1977, this is a review of legitimacy and is exercised in three situations. The first situation is when for the completion of an act of the ecclesiastical authority, the law demands the cooperation of the state either (a) with the participation of state

79. *Id.*

agencies in the final form of the act and within the boundaries of the joint administrative action (for example, in the election of a bishop as archbishop or metropolitan, which is completed only with the issuance of a presidential decree),⁸⁰ or (b) in the form of the provision of sanction, so that the act of an ecclesiastical administrative organ is rendered executable. For example, for the erection of a place of worship of any religion, Mandatory Law 1369/1938 "On Holy Churches and Vicarages," article 41, section 1 demands a license issued by the local Orthodox metropolitan and final sanction by the Ministry of Education and Cults.⁸¹

Second, the review of legitimacy can be exercised with the participation of state officials in Church collective administrative organs. Two examples of this would be the participation of a judge and a tax official (an employee of the Public Revenue Services) in the metropolitan councils, and the presence of a government delegate, appointed by a state presidential decree⁸² in the Holy Synod of the Church of Crete.

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

1. Appellate review of the Council of State

The Orthodox Church in Greece is a spiritual and religious foundation, but, at the same time, it exercises a granted administrative power, implementing, as a public legal entity, the provisions of state legislation. Since the first years following its institution, the Council of State has subjected to its review all acts that pertain to administrative matters of agencies to which the state grants the administration of the Orthodox Church, to the extent these agencies are called upon to implement provisions of legislation. The Council of State uses three relevant criteria. First, the act should originate from those agencies to which the state has entrusted the administration of the Church (for example, the Holy Synod, the metropolises, the parish

80. Law 590/1977, art. 15, § 6; *id.* art. 26, § 1.

81. Judgment No. 721/1969, CS.

82. "The Statutory Charter of the Church of Crete," Law 4149/1961, art. 8.

councils). Second, the contested act should be issued in compliance with state legislation. Third, the contested act should be both an exercise of administration—that is, it should regulate an administrative matter, not doctrines, worship, or general matters of a spiritual nature—and be executory.

These acts may pertain to either the internal or the external affairs of the Church. Reviewable acts relating to the internal affairs of the Church consist of two types. One type includes those acts that refer to the general position, formation, operation, exercise of administration, etc., of the central and peripheral organs charged with Church administration, as well as the official status of its employees. This is so because all these are subject to a legislative regime which is established by the state. Examples of acts which have been reviewed include:

1. A decision of the Holy Synod concerning the appointment of members of the Permanent Holy Synod and the synodal committees.⁸³

2. Acts by a metropolite concerning the transfer,⁸⁴ discharge,⁸⁵ and dismissal of a parish priest for relinquishing his duties,⁸⁶ and dismissal of a temporary parish priest from his position.⁸⁷

3. An act of a metropolitan council refusing to grant credit for the payment of wages to a parish priest.⁸⁸

4. A decision of the Permanent Holy Synod to file a document issued by the Ecumenical Patriarchate that constituted a retrial of the judicial case of a metropolite—who had already been sentenced by an ecclesiastical court—and had been issued by the Patriarchate after the exercise of appeal, according to the old privileges of the Ecumenical Throne.⁸⁹

5. A metropolite's decision concerning an objection, submitted against the validity of the election of members of a superior parish delegacy⁹⁰ or concerning the appointment of an abbot and the regulation of the administration of a monastery.⁹¹

83. Judgment No. 1175/1975, CS.

84. Judgment No. 5761/1974, CS; Judgment No. 628/1951, CS.

85. Judgment No. 824/1949, CS; Judgment No. 1930/1946, CS.

86. Judgment No. 507/1983, CS; Judgment No. 1665/1949, CS.

87. Judgment No. 4625/1985, CS.

88. Judgment No. 669/1942, CS.

89. Judgment No. 1983/1979, CS.

90. Judgment No. 250/1954, CS.

91. Judgment No. 2403/1965, CS.

6. A decision of the Permanent Holy Synod rejecting an appeal against the election of an abbot.⁹²

7. Acts surrounding the election of a metropolitane.⁹³

8. The decision of a metropolitane concerning an appointment of a member of a monastery board.⁹⁴

9. Decisions of a monastic brotherhood on the election of an abbot.⁹⁵

10. An act of the Organization for the Administration of Ecclesiastical Property which granted a license for construction of a temporary building made of aluminum and meant to be used as a church.⁹⁶

11. A decision of the Permanent Holy Synod, transferring a parish priest.⁹⁷

The second type of internal affairs acts subject to review include those dealing with the administrative division of the Church, by which the local jurisdiction of ecclesiastical authorities is influenced. Examples of these acts include decisions of the Holy Synod subjecting a church to the jurisdiction of a specific metropolis⁹⁸ or setting of boundaries of metropolises,⁹⁹ and acts of a metropolitan council concerning the detachment of the territory of a parish and its subjection to another¹⁰⁰ or concerning the setting of boundaries of a parish.¹⁰¹

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

1. The orders of a metropolitane to a police authority to seal a private church, because the church had been unlawfully offered

92. Judgment No. 688/1967, CS.

93. Judgment No. 3856/1980, CS; Judgment No. 545/1978, CS.

94. Judgment No. 511/1983, CS.

95. Judgment No. 2714/1984, CS.

96. Judgment No. 1382/1984, CS.

97. Judgment No. 1416/1989, CS; Judgment No. 708/1983, CS.

98. Judgment No. 2063/1947, CS.

99. Judgment No. 1588/1959, CS.

100. Judgment No. 1162/1967, CS; Judgment No. 1/1945, CS.

101. Judgment No. 981/1959, CS.

for public worship¹⁰² or had been put into operation without legal license.¹⁰³

2. The orders of a metropolite to a police authority to demolish a private church because the church had been erected without observing the legal formalities.¹⁰⁴

3. An omission on the part of the metropolite to issue an order to seal a private church which had been unlawfully offered for public worship.¹⁰⁵

4. The refusal of a metropolite to grant a marriage license¹⁰⁶ or to spiritually dissolve a marriage pursuant to a judicial decision of divorce.¹⁰⁷

These categories of acts are subject to the review of the Council of State whether they are of an individual or of a normative nature. Especially for the latter, it has become accepted that a regulation of the Church of Greece is admissibly contested by a plea in abatement.¹⁰⁸ Therefore, if the time period set to contest it expires, its legitimacy is admissibly reviewed secondarily by contesting an act issued pursuant to this regulation of the ecclesiastical authority.¹⁰⁹

Those acts of ecclesiastical authorities which have "spiritual and purely religious content"¹¹⁰ are not subject to the review of the Council of State. In this broad category one finds those acts which, based on the statutes of the holy canons, regulate matters relating to the creeds, worship, and teachings of the Church. Therefore, the Council of State has excluded from its jurisdiction acts such as a refusal of a metropolite to ordain one elected to the position of parish priest because of spiritual faults¹¹¹ and the election of a bishop as a merely religious minister, which took place with the exclusive invocation of the holy canons and without assigning administrative duties.¹¹² However, if an act is

102. Judgment No. 2915/1983, CS; Judgment No. 1626/1972, CS; Judgment No. 2688/1970, CS; Judgment No. 219/1944, CS.

103. Judgment No. 1731/1971, CS.

104. Judgment No. 1414/1963, CS.

105. Judgment No. 219/1944, CS.

106. Judgment No. 390/1971, CS.

107. Judgment No. 2635/1980, CS.

108. Judgment No. 960/1978, CS; Judgment No. 866/1974, CS.

109. Judgment No. 3234/1971, CS.

110. Judgment No. 583/1940, CS; Judgment No. 491/1940, CS.

111. Judgment No. 583/1940, CS; Judgment No. 491/1940, CS.

112. Judgment No. 5856/1980, CS.

of double-natured content—both spiritual and administrative in nature—then it may be contested, but only as to its administrative elements.¹¹³

The Council of State had for decades excluded from its review the decisions of ecclesiastical courts under the exception of acts with solely spiritual content. In this field, the decisions of the Council of State shifted in focus at different times. It had initially ruled that the decisions of the ecclesiastical courts were not acts of administrative agencies; therefore, they were not subject to review by a plea in abatement.¹¹⁴ Consequently, the Council of State called upon the very nature of the decisions of ecclesiastical courts,¹¹⁵ but excluded them from appeal, because the review is permissible only from the decisions of the administrative courts; ecclesiastical courts are courts of a special penal nature and impose special penalties.¹¹⁶ More shifts in position in the Council of State's line of decisions followed.¹¹⁷ The Council of State finally concluded¹¹⁸ that the ecclesiastical courts

have the character of disciplinary councils, which, in order to safeguard the principles of the welfare state and just administration, should follow, at least as to their composition and the disciplinary procedure, the basic principles of disciplinary law. Moreover, the decisions issued by them, are contested by plea in abatement before the Council of State, as enforceable acts of administrative authorities.¹¹⁹

Recently, decision 1534/1992 of the Council of State has come full circle and annulled the decision of a metropolite issued pursuant to the statutes of article 11 of Law 5383/1932, that is, as a bishop's court.

IV. CONCLUSION

In conclusion, it could be said that the constitutional and common legislative provisions are constructed so as to give to

113. Judgment No. 545/1978, CS; Judgment No. 546/1978, CS.

114. Judgment No. 830/1940, CS.

115. Judgment No. 2279/1953, CS.

116. Judgment No. 2265/1969, CS; Judgment No. 2298/1965, CS; Judgment No. 2024/1965, CS.

117. Judgment No. 368/1977, CS; Judgment No. 36/1975, CS; Judgment No. 2548/1973, CS; Judgment No. 2800/1972, CS.

118. Judgment No. 825/1988, CS; Judgment No. 195/1987, CS.

119. Judgment No. 825/1988, CS.

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

APPENDIX

CONSTITUTIONAL PROVISIONS CONCERNING RELIGIONS

CONSTITUTION OF GREECE (1975)

In the Name of the Holy and Consubstantial
and Indivisible Trinity

THE FIFTH REVISIONARY PARLIAMENT
OF THE HELLENES RESOLVES:

RELATIONS OF CHURCH AND STATE

Article 3.

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

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

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

Article 5.

2. All persons living within the Greek territory shall enjoy full protection of their life, honour and freedom, irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.

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

Article 13.

1. Freedom of religious conscience is inviolable. Enjoyment of individual and civil rights does not depend on the individual's religious beliefs.

2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of law. The practice of rites of worship is not allowed to offend public order or moral principles. Proselytism is prohibited.

3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations toward it as those of the prevailing religion.

4. No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.

5. No oath shall be administered except by law determining the form thereof.

Article 14.

3. The seizure of newspapers and other publications before or after circulation is prohibited.

Seizure by order of the public prosecutor shall be allowed exceptionally after circulation and in case of:

a) an offence against the Christian or any other known religion.

Article 16.

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

Article 18.

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

Article 24.

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

Article 33.

2. Before entering office, the President of the Republic shall take the following oath before Parliament:

"I do swear in the name of the Holy and Consubstantial and Indivisible Trinity to guard the Constitution and the laws, to provide for faithful observance thereof, to defend the national independence and territorial integrity of the Country, to protect the rights and freedoms of the Greeks and to serve the general interests and progress of the Greek People."

Article 59.

1. Before undertaking the discharge of their duties, members of Parliament shall take the following oath in the Chamber and in public sitting.

“I swear in the name of the Holy and Consubstantial and Indivisible Trinity to guard faith in my Country and in the democratic form of government, obedience to the Constitution and the laws and to discharge conscientiously my duties.”

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

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

Article 72.

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

Article 95.

1. The jurisdiction of the Council of State pertains mainly to:

a) The annulment upon petition of executive acts of administrative authorities for abuse of power or violation of the law.

b) The reversal upon petition of final rulings of administrative courts, for abuse of power or violation of the law.

c) The trial of substantive administrative disputes submitted thereto as provided by the Constitution and the laws.

d) The elaboration of all decrees of a regulative nature.

. . . .

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

Regime of Aghion Oros (Mount Athos)

Article 105.

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

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

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

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

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

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

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

Article 110.

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