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RELIGIOUS SELF-ADMINISTRATION IN THE HELLENIC REPUBLIC

I. Introduction

In Greece, state and church are closely connected institutionally. Greece is not an *•tat laique*, but a confessional one. The state is religious, adhering to the doctrines and the teachings of the Eastern Orthodox Church. The latter is the "prevailing religion" under the Constitution (3, § 1) and enjoys a privileged regime. In parallel, the other Christian creeds and religions subsist under the regime of article 13 of the Constitution, which concerns religious freedom. The said article establishes both the inviolability of freedom of religious conscience and the unhindered practice of worship under the protection of the laws of any religion, as long as the religion is "known" (Constitution 3, § 2). "Known" denotes the religion that has no secret doctrines and occult worship. The courts make a case-by-case specification of the existence of the "known" character of a religion.

Both the prevailing and all the creeds in general enjoy self-administration. I do not use the term "autonomy". In Greek legal terminology, an "autonomous" organization -such as religion in general- signifies that it acts on its own initiative and responsibility, without being supervised. Something which does not hold for the creeds -prevailing and not. In contrast, all these creeds are under a regime of self-administration, *-potestas delegata* on the part of the state-, that is, they act on their own initiative and responsibility, but are supervised by the state.

We will refer to the self-administration of the official Orthodox Church and then to that of other creeds.

II. Prevailing Religion

In the period when Greece was ruled by the Bavarian regency -while King Otto, prince of Bavaria, was still a minor-, two decrees were issued, that have left an indelible mark on State - Church relations until today. R.D. of 3 (15) / 14 (27) April 1833 imposed the "state-law rule" on the Church,

meaning that church matters were regulated by state law. By way of the R.D. of 23.7/4.8.1833, the Orthodox Church of Greece was declared autocephalous. That is, administratively independent and spiritually autonomous in regard to any other Church. The same decree regulated matters of its administration. This was assigned to a Holy Synod, comprised of prelates and priests. This was charged with handling the internal affairs of the Church "regardless of any secular authority" (article 9). Internal affairs were related to doctrine, worship and pastoral theology (article 10). Any matters pertaining to the "domain and the worldly benefit of the inhabitants" came under the jurisdiction of the Synod, but the latter could issue no order without the consent and the collaboration of state authority (articles 13-15). Under this decree, the Church was institutionally self-governed as regards its internal affairs.

The Constitution of 1844, - the first, in chronological order, since the promulgation of the aforementioned royal decrees-, stipulated (article 2) that the Church "is governed by a Holy Synod of Prelates." The same statute was repeated in all subsequent Constitutions (1864, article 2; 1911, article 2; 1927, article 1, § 2; 1952, article 2; 1968, article 1, § 2). The constitutional legislator has permanently entrusted the governance of the Church to an organ of its own, composed of prelates. The existing Constitution (1975) has not distanced itself from the said self-administration. It has, however, introduced more explicit provisions. More particularly: "...The Orthodox Church of Greece ... 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". From this provision, the following observations can be derived:

1. The highest administrative organ of the Church of Greece is the Synod of its serving prelates. That is, the total number of its prelates who have administrative duties, since each of them has jurisdiction over a single province. These prelates bear the title of "metropolitan". But they have to continue to be serving bishops. Metropolitans in Greece are permanent, but there are some who have retired from active service. The latter do not participate in the Holy Synod of the Hierarchy, as is the official name of the Statutory Charter of the Church (article 3 §, 1). In the Church of Greece, the total number of metropolitans who exert pastoral authority over metropolises comes to approximately eighty. The Synod of the Hierarchy is headed by the Archbishop of Athens and has its seat in Athens.
2. The Permanent Holy Synod, as an organ of the Holy Synod of the Hierarchy, also wields

administrative authority. The Permanent Holy Synod is comprised of twelve members and the Archbishop of Athens, who is in the chair.

3. The reason why the existing Constitution added the term "serving" to characterize the bishops of the Synod of the Hierarchy, -therefore also to those of the Permanent Synod- is the fact that in anomalous political circumstances, the state interfered in Church affairs by way of Synods that it composed itself. In such "meritorious" Synods, it appointed prelates favorably disposed to the government, regardless if they were still serving or not. Under the current constitutional provision, this possibility is ruled out. (something like this cannot possibly happen).

4. With the Patriarchal Tome of 1850 the Ecumenical Patriarchate endowed through the canonical way the Church of Greece with an autocephalous regime. With the Synodal Act of 1928, the patriarchal dioceses of the so-called New Lands, - i.e. Epirus, Macedonia, the Aegean Islands and Western Thrace, which were incorporated into Greece with the Balkan Wars (1912-1913) and the First World War -, 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 Synodal Act of the Ecumenical Patriarchate 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 Synodal 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 Tome of 1850 provides that the Holy Synod of Greece administers "Church matters according to the divine and holy canons freely and unimpededly from all temporal interventions", it would follow that the way forwards the substantial self-administration of the Church of Greece would be opened. At the same time, the matter of the general conditions of the Synodal Act of 1928 and of law 3615/1928 would be conclusively resolved in favor of the former.

However, the Council of State (i.e. the supreme administrative court in Greece) 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.

Besides, it is a fact of fundamental importance for the self-administration of the Orthodox Church that the State has the right to promulgate laws concerning it and in particular laws which are contrary to the rules of its holy canons.

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.

a. Department of Ecclesiastical Administration. This department is divided into two branches: the Ecclesiastical Administrative Affairs Division; and the Division of Holy Churches (parishes), Holy Monasteries, and Parish Priests. Their duties are limited exclusively to matters of the prevailing religion and only within the Hellenic territory. Thus, the Ecclesiastical Administrative Affairs Division is responsible for recognition 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. 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 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 outside Greece, to the Orthodox Divinity Schools and Ecclesiastical Centers outside Greece, to the Clergy living abroad and to the Administration of Mount Athos."

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

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 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); 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.

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 decree 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 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.
2. Acts by a metropolite concerning the transfer, discharge, and dismissal of a parish priest for relinquishing his duties, and dismissal of a temporary parish priest from his position.
3. An act of a metropolitan council refusing to grant credit for the payment of wages to a parish priest.
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.
5. A metropolite's decision concerning an objection, submitted against the validity of the election of members of a superior parish delegacy or concerning the appointment of an abbot and the regulation of the administration of a monastery.
6. A decision of the Permanent Holy Synod rejecting an appeal against the election of an abbot.
7. Acts surrounding the election of a metropolite.
8. The decision of a metropolite concerning an appointment of a member of a monastery board.
9. Decisions of a monastic brotherhood on the election of an abbot.
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.
11. A decision of the Permanent Holy Synod, transferring a parish priest.

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 metropolis or setting of boundaries of metropolises, and acts of a metropolitan council concerning the detachment of the territory of a parish and its subjection to another or concerning the setting of boundaries of a parish.

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 metropolite to a police authority to seal a private church, because the church had been unlawfully offered for public worship or had been put into operation without legal license. 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. 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. 4. The refusal of a metropolite to grant a marriage license or to spiritually dissolve a marriage pursuant to a judicial decision of divorce.

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. 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.

Those acts of ecclesiastical authorities which have "spiritual and purely religious content" 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 faults 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. However, if an act is of double-natured content -both spiritual and administrative in nature- then it may be contested, but only as to its administrative elements.

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. Consequently, the Council of State called upon the very nature of the decisions of ecclesiastical courts, 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. More shifts in position in the Council of State's line of decisions followed. The Council of State finally concluded 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.

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. The Self-Administration of Christian Creeds and Religions

In contrary to current practice vis-à-vis the Orthodox Church, the State has refrained from interfering with the self-administration of the other cults. Moreover no laws concerning their administration have been issued. The only exception being the laws concerning the organization of the Israelite communities and of the *evkaf* foundation for the Muslims. Both are bodies corporate under public law.

Most cults are organized as societies of civil law. A necessary supplement to the right of the adherents of every cult to constitute religious associations, -a right derived from the freedom of religious conscience (Constitution 13, §1)-, is their right to be administered according to their own religious law. Otherwise the civil right of religious freedom is canceled out.

However, in any case, the various cults enjoy a broader self-administration in comparison with that of the Orthodox Church. Using the specific judgment of the Council of State as our standard, we cannot but conclude that the self-administration of the Orthodox Church in Greece is necessarily

limited in the regime to the state-law rule.

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