

The Autonomy of Religious Communities and the Freedom of Worship in the Coronavirus Era: The Example of the Orthodox Church of Cyprus

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Abstract

The freedom of worship constitutes the quintessence of religious freedom and is also affiliated with the autonomy enjoyed by church organisations. In the times of a pandemic, the freedom of worship is subject to restrictions in accordance with the requirements of the principle of proportionality. This topical version of religious freedom is influenced significantly by the autonomy enjoyed by the different religious denominations in line with the current State, which outlines the relationships between them. In Cyprus, where the homotaxy system applies to the autocephalous Orthodox Church of Cyprus, a remarkable autonomy pursuant to the State and canon law is generally enjoyed. This is evidenced by the management of the restrictive measures imposed on the freedom of worship during the lockdown phase and the period of the gradual easing of the restrictive measures.

Keywords: autonomy, religious freedom, freedom of worship, coronavirus, Orthodox Church of Cyprus

Introduction

The coronavirus pandemic (COVID-19) has indisputably affected every facet of the daily life of modern man and continues to do so. Church life² and the worship of the divine could not be an exception. The conflictual relationship between the freedom of worship and the protection of public health, as well as the effort to harmonise them is a perennial matter which recurs in current affairs from time to time and has been the prime cause of scholarly debates, dissensions, and the respective judicial decisions.³

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² Petros Vasiliadis (ed.), *The Church in a Period of Pandemic: Can the Present Pandemic Crisis Become a Meaningful Storm for Renewal in our Churches?*, CEMES 25 (Cemes and Fordham Publications, 2020).

³ The discussion of whether vaccinations should be compulsory or not in the United States (US) led to the famous Jacobson vs. Massachusetts case law and to the respective decisions based on and aligned

The purpose of the first, more general part of the present study is to investigate the freedom of worship and the autonomy of religious organisations (or communities) as forged over the last six months, when the unprecedented pandemic of the coronavirus emerged and spread in Europe and, consequently, in Cyprus. In the second and more specific part, the conjunction of religious autonomy and the freedom of worship amidst the emergency circumstances of the management of the pandemic will be presented by means of a concrete example: The Orthodox Church of Cyprus. The significance of this perspective lies in the ascertainment of the interactions between the State and the Church in the management of the pandemic and the extent to which they influence and are influenced by the standing system of relationships between the State and the religious communities. Furthermore, the understanding of the way in which the specific religious community manages its autonomy and regulates 'its own matters' in the midst of a pandemic is particularly interesting.

Lastly, a delimitation of a dual nature is necessary. The treatment of an issue currently in progress,⁴ where almost every week, if not every day, new added bits and pieces compose a novel mosaic of information, involves a significant risk, namely that what is written may be superseded by the normative power of reality. Thus, a time limit of examination is set (1 August 2020), when, according to a decree of the competent Minister of Health, Constantinos Ioannou, the use of the protective mask will have been rendered mandatory, inter alia, among people in places of worship under the threat of a fine amounting to 300 EUR in the event of non-compliance.⁵ Furthermore, the matter of permitting the practice of Holy Communion⁶ in times of a pandemic will not be touched upon, not even roughly. This is a self-standing, sensitive issue with highly intense metaphysical references and a radical conflict of interest between the objective researcher and the conscientious believer, which dictates how each person responds.

to it. See Harlan, John Marshall, and Supreme Court of The United States, *Jacobson v Massachusetts* (1905), 197 U.S. 11, 25 S.Ct. 358, 49 L. Ed. 613, 3 Ann. Cas. 765.

⁴ At the same time as writing this paper (end of July 2020), several scientists are expressing fears for the onset of the second wave of the COVID-19 pandemic in the northern hemisphere.

⁵ Cyprus Government Gazette, *Quarantine Law (Ο περί Λοιμοκαθάρσεως Νόμος)* (2020), available at <https://www.pio.gov.cy/coronavirus/diat/55.pdf> (last accessed 4 September 2020) (in Greek).

⁶ Nikolaos Asproulis, Nathaniel Wood (eds), *Tempus Faciendi: Orthodoxy Faced with the Coronavirus Pandemic (Καιρός του Ποιήσαι: η Ορθοδοξία ενόπιον της Πανδημίας του Κορωνοϊού)* (Volos, Ekdotiki Dimitriadou, 2020) (in Greek).

Religious Autonomy and Freedom of Worship in a Pandemic Era

The Autonomy of Religious Communities and the Freedom of Worship as Substantive –albeit Receptive of Restriction– Constituents of Religious Freedom

Religious freedom is one of the first fundamental rights to have been asserted and subsequently enshrined since the 16th century in Europe, and which constitutes a common element among the legal systems of the member countries of the European Union (EU).

Religious freedom comprises the freedom of religious conscience and the freedom of worship. The latter consists in the freedom of each person to manifest their religious beliefs privately and individually on the one hand and in public with the people who espouse the same religious beliefs on the other. Consequently, the right of believers to assemble peacefully to exercise worship in accordance with the more specific ritual prescriptions of their religion is also protected. The Cypriot Constitution protects this right in article 18, while the protective shield of the right is strengthened by the European Convention of Human Rights (ECHR)⁷ and the Charter of Fundamental Rights (CFR) of the EU⁸. Religious worship constitutes the quintessence of religious freedom, as the non-externalisation of religious beliefs renders their protection the letter of the law devoid of the spirit.

As a first-generation right, religious freedom necessitates a claim towards the State to abstain from actions which could be detrimental to the right. At the same time, the obligation to take affirmative measures for the safeguarding of religious freedom is established. Thus, a more specific manifestation of the right of religious freedom, namely religious autonomy, emerges to create an obligation of the State towards the religious community, which is treated as a single organism. Within the framework of the ECtHR, religious autonomy is encountered as the ‘principle of the autonomy of religious organisations’.⁹ The cases of the ECtHR with religious freedom at their core are numerous, while a part of those contain the right of re-

⁷ European Court of Human Rights (ECtHR), *European Convention on Human Rights (ECHR)* (2010), available at https://www.echr.coe.int/documents/convention_eng.pdf (last accessed 4 August 2020), at 11.

⁸ Official Journal of the European Communities, *Charter of Fundamental Rights of the European Union (CFR)* (2000), available at https://www.europarl.europa.eu/charter/pdf/text_en.pdf (last accessed 4 August 2020), at 10.

⁹ ECtHR, *Guide on Article 9 of the European Convention on Human Rights* (2020), available at https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf (last accessed 4 August 2020), at 69.

ligious autonomy,¹⁰ which is wider than the narrow self-government of religious communities.

The ECtHR has found that the principles of State neutrality and religious autonomy prohibit State agencies from intervening with decisions on admission and exit, as well as with the criteria which are laid down by the religious communities.¹¹ By the same decisions of the hereinabove Court, it was made clear that the autonomous existence of religious communities is necessary for pluralism in a democratic society; thus, it lies in the very heart of religious freedom.¹²

The result of the analysis of the aforementioned case law was, inter alia, the theory that religious autonomy may sometimes be regarded as being antagonistic to other claims and interests which are also protected by internal and international rules. However, the coercion of a religious community into the admission of new or different religious practices or members against the will of the community cannot be regarded as acceptable. This coercion not only harms the religious community but also interferes with the normal functioning of democracy itself, according to the ECtHR.¹³

The preservation of the autonomy of religious communities is necessary for the fulfilment of individual freedom and personal autonomy of their members. Without the internal instructions provided by the religious communities, an individual is not capable of following the religious way of life. Without the ability of the religious group to determine itself, the personal choice of leading a religious life does not make any sense. The right of the members of the religious community to participate in a religious organisation which functions as an entity and with accordance with a specific internal manner could also be infringed upon. As a social benefit, the autonomy of religious communities constitutes a necessary structural element for actual pluralism, freedom of thought and peaceful coexistence. In conclusion, any case law rooted in the international commitments of the States reflects a well-established model which protects religious autonomy, especially so when decisions on membership and self-determination are involved.

¹⁰ Gerhard Robbers (ed.), *Church Autonomy: A Comparative Survey*, (Frankfurt am Main: Peter Lang, 2001), available at <https://www.iclrs.org/church-autonomy-a-comparative-survey/> (last accessed 4 August 2020).

¹¹ *Sindicatul "Păstorul cel Bun" v Romania*, Appl. no 2330/09 (ECtHR, 9 July 2013), para 137.

¹² *Hasan and Chaush v Bulgaria* Appl. no 30985/96 (ECtHR, October 2000); *Metropolitan Church of Bessarabia & al. v Moldavia* Appl. no 45701/99, (ECtHR, December 2001).

¹³ *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy)* and *Ors v Bulgaria* Appl. no 412/03 and 35677/04 (ECtHR, 22 January 2009) paras 119-120.

At this point, it is worth pausing to reflect on the case law *Fernández Martínez v. Spain* of the ECtHR and the landmark decision on religious autonomy.¹⁴ More specifically, in this decision which is generally concerned with how private life is influenced by the religious community and its internal legislation, the concept of religious autonomy or ‘autonomy of religious communities’ is supplemented by the principle of State neutrality.¹⁵ As far as the autonomy of faith groups is concerned, the ECtHR observed that since those groups constitute organisational structures, the matters strictly related to the organisation of a religious community will have to be subjected not only to Article 9 of the ECHR but also to Article 11 which functions interpretively as to the said autonomy in the present case.¹⁶ Furthermore, the ECtHR focuses on the concept of the internal autonomy of faith groups —also mentioned as the ‘internal autonomy of religious groups’— having as a maxim the rejection of a member’s right upheld by Article 9 in the ECHR to dissent from the religious community on doctrinal or organisational matters, in the sense that, in the event of such a dissension the exercise of the individual right of religious freedom will be achieved by leaving the religious community, as the State is not allowed to intervene for the sake of neutrality.¹⁷ Likewise, the State cannot force a religious community to admit or expel a member or assign a religious duty.¹⁸

Religious autonomy is receptive of restrictions like all rights and their special manifestations are. In the present decision, the limitations are specified on the basis of the actuality or the potentiality of a threat that a religious community receives. The restriction of the rights of its members will have to be in direct relevance to the preservation of the autonomy of the community, which the community will have to prove in conjunction to the *in concreto* factual circumstances, so that it becomes apparent that the risk is genuine and the result, namely the restriction of the rights, is absolutely necessary.¹⁹ In addition, the obligation of faith is a decisive factor for the labour relations inside the religious community. Therefore, the nature of its position and its mission should be taken into account by the State or the religious community in the process of implementing a restriction.²⁰

¹⁴ *Fernández Martínez v Spain* Appl. no 56030/07(ECtHR, June 2014).

¹⁵ *Ibid* 69 (In 127 the term ‘autonomy of the Church’ is also mentioned).

¹⁶ *Ibid* 127.

¹⁷ *Ibid* 128.

¹⁸ *Ibid* 129.

¹⁹ *Ibid* 132.

²⁰ *Ibid* 131.

The Effect of the Coronavirus Pandemic on the Autonomy of Religious Communities: Are we Heading Towards the Formation of a New ‘Topical’ right?

The autonomy of religious communities does not extend to the point of supplanting the State legal order but is included therein and is restricted by its imperatives. Inspired by the example set out by the ECHR, the Cypriot Constitution expressly institutes the restrictions which may be imposed on religious freedom, as well as all the fundamental rights which the legal order establishes as unconditional. The legislative restrictions in fundamental constitutional rights, among which religious freedom is undeniably included, must be imposed on the basis of the principle of proportionality, which also determines the limit for their constitutionality.

More specifically, the permissibility of the restrictions when exercising such a fundamental right is delimited by the appropriateness and the necessity of the adopted measure, as is its proportion to the pursued end. In fact, State intervention into religious freedom, in the present case, must correspond to a pressing social need and, thus, the notion of necessity cannot be perceived as merely ‘useful’ or ‘desirable.’²¹ The principle of proportionality finds its origins in ancient Greece and, more specifically, in the principle of *mesotes*, which goes hand in hand with the concept of *metron ariston*, according to which everything must be done with moderation in its relevant proportions. In its positive formulation²² and in the area of EU law, the first trace of the formal expression of proportionality can be traced back to the 1794 General State Laws for the Prussian States (*Allgemeines Landrecht für die Preussischen Staaten*).²³

²¹ *Svyato-Mykhaylivska Parafiya v Ukraine* Appl. no 77703/01 (ECtHR, 14 June 2007) para 116. Cf. Ernst Hirsch Ballin, Gerhard Van der Schyff, Maarten Stremmer (eds), *Judicial Power: Safeguards and Limits in a Democratic Society-European Yearbook of Constitutional Law 2019* (The Hague: TMC Asser Press, 2020) 329. Both stress relevantly to the stance of the ECHR vis-à-vis the application of the proportionality by the national courts that ‘where a balancing exercise has been undertaken at the national level in conformity with the criteria laid down in the Court’s jurisprudence, the Court has generally indicated that it will not substitute its own assessment for that of the domestic courts, unless there are strong reasons for doing so’.

²² Vasilis Tzemos, ‘Mature Proportionality. The Proportionality of the Restriction of Fundamental Rights as a Rule of Constitutional Law and EU Law which Does not Include Proportionality Stricto Sensu’ (‘Η «Ωριμη» Αναλογικότητα. Η Αναλογικότητα των Περιορισμών των Θεμελιωδών Δικαιωμάτων ως Κανόνας του Συνταγματικού Δικαίου και του Δικαίου της ΕΕ που δεν Περιλαμβάνει την Αναλογικότητα σε Στενή Έννοια’ (2019) 2 *Διοικητική Δίκη* 200 *et seq* (in Greek).

²³ Gino Scaccia, ‘Proportionality and the Balancing of Rights in the Case-law of European Courts’ (2019) 4 *Federalismi.it*.

As it is generally accepted, the principle of proportionality in practice is, perhaps, the most significant principle with which every restriction of a fundamental right must comply. In particular, its application follows three control stages: the restriction is required to be (a) appropriate to cause the pursued result, (b) necessary,²⁴ namely a *sine qua non* condition,²⁵ which means that there do not exist other equally appropriate means for the attainment of the end which is less onerous for the person whose freedom is restricted,²⁶ and (c) proportional, *stricto sensu*, in the sense that the hindrance caused by the restriction of freedom must not outweigh the positive result for the public interest caused by the restriction.²⁷ In this last phase (see item c) there is a place to be found for a privileged application of the interpretive principle of ‘practical concordance’ (praktische Konkordanz), which dictates the synthesis or at least the coexistence between the opposed constitutional interests.²⁸ If mutual relativisation is not possible, then priority must be given to the constitutional good with the most gravity in the concrete case. It is necessary that the assessment techniques be applied in the effort to achieve a balancing between religious freedom and objective ends having constitutional fortification and validity, as is the protection of public health in the case of the emergence and spread

²⁴ Cf. Julian Rivers, ‘Proportionality and Variable Intensity of Review’ (2006) 65(1) *The Cambridge Law Journal* 174. By attempting to conceptualise the term ‘necessary’, Rivers remarks that ‘the test of necessity asks whether the decision, rule or policy limits the relevant right in the last intrusive way compatible with achieving the given level of realization of the legitimate aim. This implies a comparison with alternative hypothetical acts (decisions, rules, policies etc.), which may achieve the same aim to the same degree but with less cost to rights’, 198.

²⁵ T. Jeremy Gunn, ‘Permissible limitations on the Freedom of Religion or Belief’ in John Witte & M. Christian Green (eds), *Religion and Human Rights: An Introduction* (Oxford: Oxford University Press, 2012), 254. Gunn notes characteristically that ‘it is a strong term suggesting that no other option is possible or that the consequences will be dire if the restriction is not imposed’, 261.

²⁶ *Biblical Centre of the Chuvash Republic v. Russia* Appl. no 33203/08 (ECtHR, 12 June 2014), para 58. Cf. Javier Martínez-Torrón, ‘Limitations on Religious Freedom in the Case Law of the European Court of Human Rights’ (2005) 19 *Emory International Law Review* 587.

²⁷ Gerhard Robbers, ‘The Permissible Scope of Legal Limitations on the Freedom of Religion or Belief in Germany’ (2005) 19 *Emory International Law Review* 841, 859. Cf. Norman Doe, *Law and Religion in Europe: A Comparative Introduction* (Oxford: Oxford University Press, 2011). In the unit ‘Limitations on the Right to Manifest Religion’, 56 *et seq.*, Doe highlights that ‘as the Spanish Constitutional Court has pointed out, whether a limit on religious freedom is proportionate depends on whether ‘the measures adopted are disproportionate for the defence of the juridical good that has given rise to the restriction’, 62.

²⁸ Cf. Scaccia (no 22) 7, who speaks of a ‘balancing of interests’.

of a pandemic just like the one we have been experiencing lately. Of course, this balancing is not calculable but rather controlled.²⁹

The issue of the harmonisation of religious freedom with the protection of public health is not novel. On the contrary, it is old and is based on the premise that freedom of belief may be absolute, but freedom of action is not.³⁰ On this premise, the US Supreme Court ruled in the famous *Jacobson vs. Massachusetts*³¹ in 1905, where the principle of mandatory vaccination—a case law which was affirmed some years later in 1922 in the ruling of the Texas case of *Zucht vs. King*³²—was introduced. From the case law which has been observed *to this day*³³ and which concerns the restrictions of religious freedom imposed on account of the COVID-19 pandemic, a reference to the jurisprudence which has arisen from the Federal Court of Justice of Germany and the French Council of State is worth making.

In an effort to trial an interim measures procedure, the German federal court issued two cases³⁴ which seek to achieve some balance between the freedom of worship and the protection of public health. The former was issued during lockdown measures while the latter was issued when those restrictive measures were eased. In the first case, the applicant requests the issue of a provisional order involving the annulment of the ruling under number 8B 892/20.N of the Administrative Court of Appeals of Hessen on 7 April 2020 and the suspension of the arrangement of Article 1, par. 5 of the 4th Regulation of the government of the federal State of Hessen pursuant to which assemblies in churches, mosques, synagogues as well as the assemblies of the communities of other denominations are prohibited, until issued otherwise.

²⁹ Christoph Engel, 'Law as a Precondition for Religious Freedom (2011) 6 *MPI Collective Goods Preprint*.

³⁰ James A. Tobey, *Public Health Law* (3rd edn, New York: Commonwealth Fund, 1947) 52.

³¹ *Jacobson v Massachusetts* (no 2).

³² *Zucht v King* (1922), 260 U.S. 174, 43 S. Ct. 24, 67 L. Ed. 194.

³³ 'To this day' refers to the matter of legality of the absolute prohibition of the religious assemblies to deter the dispersion of the virus within the community. A possible invention of a vaccine is certain to multiply appeals to the courts on the grounds of the violation of religious freedom.

³⁴ BVerfG, Decision of the 2nd Chamber of the First Senate (Beschluss der 2. Kammer des Ersten Senats) of 10 April 2020 – 1 BvQ 28/20, paras 1-16, available at https://www.bundesverfassungsgericht.de/e/qk20200410_1bvq002820.html (last accessed 4 August 2020) (in German); BVerfG, Decision of the 2nd Chamber of the First Senate (Beschluss der 2. Kammer des Ersten Senats) of 29 April 2020 - 1 BvQ 44/20, paras 1-19, available at https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2020/04/qk20200429_1bvq004420.html (last accessed 4 August 2020) (in German).

The applicant was a Christian Catholic who regularly attends Holy Mass. Owing to the aforementioned Regulation, it is not possible for him to participate in a festive liturgy. This applies equally to the weekly attendance of Holy Mass (Feast of the Eucharist) as well as the Holy Week Easter Liturgies. When in conflict with the fundamental right to life and bodily integrity, the complete collapse of the essential right of religious freedom under the weight of the unimpeded collective exercise of religious duties was regarded as disproportionate by the applicant.

With regard to the declarations of the Second Vatican Council³⁵ and the Catechism of the Catholic Church,³⁶ the applicant clearly alleges that, according to the Catholic belief, the collective celebration of the Eucharist is a basic component of faith, the lack of which cannot be substituted by alternative forms of practice of faith such as the broadcasting of the church liturgy on the internet or individual prayer. Therefore, the prohibition of this celebration constitutes an extremely serious interference with the right of religious faith and the freedom of religious beliefs pursuant to Article 4, paragraphs 1 and 2 of the Constitution of the Federal Republic of Germany. This infringement of the said right is reinforced in accordance with the reasonable allegations of the applicant insofar as the prohibition of the Liturgy of the Eucharist extends into the days of Easter, which constitutes the pinnacle of the religious life of Christians.

Vis-à-vis those threats to life and limb, whose protection the State is also obliged to provide by virtue of Article 2, par. 2 of the Constitution of the Federal Republic of Germany, the protected fundamental right of the collective celebration of Divine Worship must, for the time in question, subsist. The German federal court held that the Administrative Court of Essen correctly pointed out that in accordance with the assessment of the Robert Koch Institute at this early stage of the pandemic, the aim has been to decelerate the spread of the highly contagious viral disease by limiting the number of COVID-19 positive cases to a minimum in order to prevent the collapse of the State's health care system and numerous deaths. Thus, the extremely serious interference with religious freedom for the protection of health and life is, for the time in question, acceptable, as the Regulation issued on 17 March 2020—and thus the standing prohibition of assemblies in churches—is temporally restricted until 19 April 2020. This ensures that the regulation will be updated in the

³⁵ Pope Paul VI, 'Dogmatic Constitution on the Church - Lumen Gentium' (Vatican: The Holy See, Rome: 21 November 1964) para 11.

³⁶ Catholic Church, 'The Eucharist – Source and Summit of Ecclesial Life' in *The Catechism of the Catholic Church* (Vatican City: Libreria Editrice Vaticana).

light of new developments regarding the coronavirus pandemic. In this context –as also in any further update of the Regulation– the Court emphatically highlights that a strict review of proportionality in respect of the prohibition of church assemblies must be performed, as well as a review of whether in the light of the new findings (for example with regard to the transmission of the virus or the risk of the health care system overloading) it is possible to sensibly relax the prohibition of the expressions of worship events on strict –if necessary– terms and, possibly, even only at a local level. The second case which the Court was seized of is more complex and interesting and proceeds to reveal subtle judgements on proportionality in the period of the relaxation of the strict restrictive measures, while the arguments of the applicant were based on the principle of the autonomy of his religious community.

The applicant, a devoted Muslim, petitioned before the Supreme Administrative Court pursuant to Article 47, par. 6 of the German Code of Administrative Court Procedure, for the issue of a provisional order permitting him and the members of his religious community to assemble in the mosque in the weeks between 23 April to 23 May 2020 for the Friday prayer, subject to the observance of the prescribed hygiene measures.

To this end, he ensured that the guarantees upon which the shops would be permitted to open to the public would be observed. As for concrete measures, he states that a minimum distance of 1.5 meters will be maintained among the faithful and that the number of participants on the respective Friday prayers will drop to 24; the mosque has a space for 300 people and the members of the local community are known to him. Therefore, he claims he could call the believers individually on separate Friday prayers, thus avoiding the formation of queues in front of the mosque. To guarantee compliance with the safety distance, floor markings will be applied. Upon consultation with the theological authorities, he also received permission to perform more Friday prayers on a given Friday. Prior to the entry into the mosque, a ceremonial washing with soap will take place. Appropriate hygiene spaces will be available in the mosque, while mask protection will be requested from the attendants. Doorknobs and other surfaces will have been disinfected, and other disinfectant products will be at their disposal. Spaces will be strictly aired, while the ill will not be allowed in to participate in the communal prayer under the prescriptions of Islam. Unquestionably, this will also apply in the case of a single contamination from the coronavirus. The applicant thereupon would proceed to receive instruc-

tions yet again. As per his religious doctrine, hymns will not be chanted in the worship ceremony, but the prayer will be recited loudly only by the Imam.

The Supreme Administrative Court based the dismissal of the forenamed petition on the following assessments: the spread of the disease must be decelerated as much as possible to prevent the overloading of the health care system. To this end, it would be necessary to achieve social distancing. However, the prohibition of the communal Friday prayer during the fasting month of Ramadan constitutes an especially serious infringement of the protected freedom of faith pursuant to Article 4 of the Constitution of the Federal Republic of Germany. In particular, during Ramadan, the Friday prayer has a key liturgical significance. Also, the applicant referred to various sections in the Quran claiming that, according to the rites of Islam, a complete religious participation in the Friday prayers requires physical presence.

The Court further proceeded to compare the places of worship to other closed spaces and discovered that the prohibition of worship in mosques continues to be necessary for the prevention of infections. The position of the applicant according to which the mosques could open anew similarly to trade spaces and shops on similar restrictions and terms (observance of the standing provisions on distance and area regulations for retail shops, the respective restriction on the number of individuals with control of access, the use of face masks, the supply of disinfectants, and the ritual washing with soap) could not be accepted. The assemblies in mosques would then have a substantially higher probability of risk compared to the visits to sale outlets and shops if comparable protective measures were added to the ones provided for by the regulation on their opening. In contrast to the situation in the market shops, worship services in mosques constitute targeted, longer-term communal activities in which, especially owing to the simultaneous prayer and the chants, a high spread of the virus is expected to occur. During Ramadan and due to the large number of mosque-goers and the limited structural quality of many places of prayer, the risk of failed regulations and safety distances is plausible. Therefore, meetings in mosques, churches, and synagogues are clearly closer in nature to the prohibited or the strictly restricted events such as concerts, sport events, and recreational activities, than in the permitted sale outlets in much larger areas. This assessment was also evidently shared by Muslim organisations, the Court concludes.

The partial suspension of the prohibition of assemblies in mosques must in any case be examined by the competent authority –as well as in coordination with the competent health care authorities where necessary– following a respective re-

quest as the one submitted hereinafter by the applicant, whereupon worship services could be subject to derogation under conditions and restrictions appropriate for the situation, insofar as an associated increase of contamination risks are dismissed on reasonable grounds. Determining factors for the assessment are both the size of the interference with the freedom of religion linked to the prohibition, which is especially large with regard to the Friday prayers throughout Ramadan, as well as, *inter alia*, the ability to effectively control the observance of terms and restrictions, the local conditions, the structural size of each mosque community, and lastly, the current assessment of the risks to life and limb emerging from social contacts, which is also probably linked to area size. Upon this reasoning, the judges suspended the prohibition of worship by assessing the factual circumstances of the specific case and by comparing the criteria on the mode of action of other religious communities side by side to decide on the suspension of worship.

The French Council of State also proceeded to a similar weighing of worship and public health³⁷ by also ruling in proceedings of interim judicial protection on the restrictions of worship during the phase of easing strict confinement measures. In particular, the Council of State was asked to deliberate on the legality of the decision whereby all religious worship assemblies were prohibited with the mere exception of funerals where participation was limited to only ten individuals.

Firstly, it is not disputed that huge worship assemblies of, say, 1,000 people on which the administration focused when it came to the protective measures are not representative of all worship ceremonies. Secondly, the decree of 11 May 2020, whose provisions were disputed, provides for many activities which do not necessarily present a risk equivalent to the one posed by worship ceremonies, such as passenger carriage services, which are not subject —taking into account the economic restrictions of their function— to the restriction of ten people per assembly, and meeting in public roads or in a public space. Such assemblies and meetings cannot, even within this limit, be made in worship facilities, except for funeral services. Secondly, the decision continues, the same applies to sales outlets and malls, educational institutions, and libraries which can welcome the public for economic, educational, and cultural reasons by adhering to the provisions applying to them. Thirdly, if, in the first phase of the relaxation of the restrictive measures, assemblies

³⁷ Conseil d'État, 18 May 2020, available at https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2020/05/conseil_detat_ord._18_mai_2020_no_440366.pdf (last accessed 4 August 2020) (in French).

and meetings are not permitted in facilities which are open to the public —except for places of worship in application of the decree in dispute— the activities exercised there will not be of the same nature, and therefore the fundamental freedoms in jeopardy are not considered to be the same. Lastly, the prohibition of any assembly or meeting in places of worship, with the exclusive exception of funerals in which fewer than twenty people are present, is justified mainly by the desire to restrict —in the first phase of the ‘decongestion’— activities with a larger risk of viral transmission. Therefore, they are neither justified by a probable difficulty in the drafting of safety rules adjusted to the activities in question or by considering the risk that the people in charge of the worship facilities will not be able to ensure the application of the precautionary measures or even that the State authorities cannot exercise effective control on the matter nor due to the insufficient availability of treatment over the course of the first phase of contamination chains. Based on the above, the Court decided that the measures are disproportionately unbalanced.

From the foregoing observations, a new topical right of religious freedom, whose application is *de facto* and *de jure* forced, is being formulated. Yet, its extent or duration could eventually lead to the infringement of religious freedom. More specifically, since the pandemic emerged³⁸ and for as long as it lasts, the right to religious worship is restricted. The measure of its restriction, namely the degree to which it is restricted each time, is uncertain and will be judged individually in each case. Only the criterion of restricting of the principle of proportionality is certain. Who will, however, judge whether there is a state of emergency owing to a pandemic and then specify and implement the stages of the principle of proportionality for each actual case? In the first phase, the measures are reviewed by the administration and, insofar as they are disputed, they are reviewed by the judge in the second phase. The views of the scientist have a consultative function. A decision-making competence lies only with the current government, and its decision has a political character by definition. At this point, the risks run for the protection of religious freedom and, in general, of all the rights restricted due to emergency circumstances are visible. The executive power defines both elements which compose the restriction; it verifies the urgency of the circumstances and the extent of this extraordinary condition, and it also applies the principle of proportionality. An erroneous or intentionally mistaken description of the emergency conditions inevitably leads to a mistaken

³⁸ 11 March 2020: the date of the COVID-19 pandemic declaration by the World Health Organisation (WHO).

application of the principle of proportionality. The final arbiter in judicial power finds oneself before a most difficult duty: that of tackling the final question on how to control the commencement of the logical sequence which ends the restriction of the rights; in other words, how to depend a political decision on the verification of extraordinary circumstances owing to the pandemic. At this point, however, the legal system reaches its limits. The absolutisation of the judicial power and its competences is not a solution, as it leads to the ‘state of judges’, and neither is the demonisation of the executive power, which is eventually either elected or indirectly legitimated by the electorate. Lastly, an absolute, objective judgement cannot exist when all the key institutional actors as well as the author are not at a distance from the events but have rather been experiencing a phase with an unknowable course.

The Orthodox Church of Cyprus and its Adaption in the Coronavirus Era

The Orthodox Church of Cyprus and its Constitutional Position

The Orthodox Church of Cyprus is an ancient religious community espoused by the majority of the citizens of the Republic of Cyprus and constitutes one of the five largest religions of the island. Its administrative organisation and the autonomy enjoyed by it are determined by the system of the State-Denominations relationship in Cyprus and domestic law (see below).

The System of the State-Denominations Relationship in Cyprus

With the establishment of the Republic of Cyprus, the Constitution of 1960³⁹ came into force and applies, to this day, upon revision on the basis of emergency law.⁴⁰ The system of the State-Denominations relationship⁴¹ arises from the combined

³⁹ For a modern interpretation of the Constitution of Cyprus see, inter alios, Achilles C. Emilianides, *Constitutional Law in Cyprus* (2nd edn, Wolters Kluwer, 2019) 10.

⁴⁰ On emergency law and its significance for the legal system of the Republic of Cyprus following the events of 1963 see Achilles C. Emilianides, Christos Papastylianos, Kostas N. Stratilatis, *The Republic of Cyprus and the Doctrine of Necessity (Η Κυπριακή Δημοκρατία και το Δίκαιο της Ανάγκης)* (Athens-Thessaloniki: Sakkoulas, 2016) 5 *et seq* (in Greek).

⁴¹ The term ‘denominations’ is preferable to the —also regularly used term— ‘Church’ to denote the relationship of a religious community with the State for reasons of accuracy and neutrality. Although the term ‘Church’ (Ekklesia) existed prior to Christianity (see ‘Ekklesia tou Demou’ in Ancient Athens) in the Anno Domini era, and especially since the prevalence of Christianity during the Roman Empire, the term is dogmatically charged as it refers to the Christian religion. On the contrary, the term ‘denominations’ occupies every organised doctrine, present or future, with reference —positive or even negative— to the Divine. Thus, see also Ioannis M. Konidaris (in cooperation with Georgios Androutsopoulos),

interpretation of a sizeable number of constitutional provisions.⁴² Typologically speaking, the 1960 Constitution establishes the system of homotaxy for the five largest religions of the island: Greek Orthodox, Muslim, Maronite, Armenian and Roman Catholic. These religious groups hold recognised privileges without any of them being established as the official prevailing or State religion⁴³ and without there being a differentiation, priority or ranking among the five privileged religions which enjoy the same treatment vis-à-vis the Constitution. According to what we noted earlier, the Cypriot State is neutral and does not follow a specific religion. When being assigned their duties, the State functionaries do not take a religious oath or a so-called civil oath but swear their faith and respect to the Constitution and the laws, as well as the preservation of the independence and the territorial integrity of the Cypriot Republic instead.⁴⁴ The Constitution of 1960 was not original in arranging the State-Denominations relationship. It rather adopted the renowned system of Hatt-I Humayun introduced in the Ottoman Empire in 1852, which was implemented in Cyprus when the island was under the Ottoman yoke and remained in force throughout the British rule. Naturally, there is one fundamental amendment: Islam is regarded as one of the five privileged religions. The revision of Article 111 in 1989 by which the jurisdiction of the Orthodox Church was amended did not change the character of the system of relationships. Its basic feature is the equivalence between the Church and the State.

The five largest denominations have an exclusive competence of arrangement of their internal matters with which the State is not able to intervene. On the matters

Ecclesiastical Law Lessons (Μαθήματα Εκκλησιαστικού Δικαίου) (Athens-Thessaloniki: Sakkoulas, 2020), 52 (in Greek).

⁴² For a detailed analysis and a reference to the case law see Achilles C. Emilianides, *Religion and Law in Cyprus* (3rd edn, Wolters Kluwer, 2018) 95.

⁴³ The opposite claims that the Cypriot Constitution establishes an official or prevailing religion (in the same sense of the term appearing in Article 3 of the Greek Constitution) are unfounded, either in the latter case or in the spirit of the constitutional charter. See Ioannis M. Konidaris, Achilles C. Emilianides, *Elements of Greek and Cypriot Law on Religion (Στοιχεία Ελληνικού και Κυπριακού Εκκλησιαστικού Δικαίου)* (Athens-Thessaloniki: Sakkoulas, 2016) 216-218 (in Greek). Furthermore, this is also not the case of the institutionalisation of the system of the polity governing under the law; a neologism adopted to describe the Greek system in accordance with which the State respects the religious doctrine and the basic administrative institutions of the Church while intervening with and freely regulating other administrative matters. See Konidaris (no 38) 63. The fact that the Cypriot Constitution dedicates so much text to the arrangements concerning the Orthodox Church is explained by the fact that this religion is espoused by the majority of the citizens of the Republic and because its first president, Archbishop Makarios III, was the head of the autocephalous Church of Cyprus at the same time of his presidency.

⁴⁴ In accordance with articles 42§1, 59§4, 69 and 100 of the Cypriot Constitution.

of common interest, the representatives of the State and the five largest religious groups discuss equally, and yet, solely the State has the decision-making competence of the establishment of legal rules. The other smaller denominations enjoy the religious freedom ensured by Article 18 of the Cypriot Constitution but not the privileges which the Constitution reserves only for the five largest religions. It becomes evident that the system of homotaxy characterised by equivalence and pluralism is harmonised with the bicomunal principle which transverses the entire constitutional text. Eventually so, the respect of religious freedom is also advanced.

*The Church of Cyprus as a Church Organisation
and Bearer of the Right of Religious Autonomy*

The Orthodox Church of Cyprus is an ancient Church whose establishment dates back to the Apostolic era and is mentioned in the book of the Acts of the Apostles.⁴⁵ A main feature of this Church is its administrative autonomy and independence from the significant neighbouring Churches of the East (Alexandria, Antioch) throughout the period of the first centuries of Christianity. When the Archbishop of Antioch tried to impose himself on the bishops of the island, they reacted and resorted to the Synod of Ephesus denouncing his actions. The Third Ecumenical Council,⁴⁶ as later recognised, defended the Cypriot archpriests and conferred the validity of the autocephaly of the Church of the island (previously only expressed as a sacred canon) which had applied until then and without ever having been disputed in accordance with the tradition ('the ancient customs ought to prevail' - sixth canon of the First Ecumenical Council). The autocephaly of the Cypriot Church was also affirmed by the thirty-ninth canon⁴⁷ of the Quinisext Ecumenical Council.⁴⁸ This independence was in fact retained despite the transfer of the clergy and the people of the said Church from Cyprus to the area of Cyzicus of Asia Minor due to enemy raids. The aim of the adoption of this holy canon does nothing more than to ensure the autonomy of the autocephalous Church of Cyprus despite the relation and the subjection of the former archpriests to the Archbishop of Cyprus rather than the Throne of Constantinople, for as long as the relation lasted.

⁴⁵ Luke Timothy Johnson, Daniel J. Harrington, *The Acts of the Apostles* (1992) 13:4.

⁴⁶ Canon 8. See G. Rallis, M. Potlis, *Constitution of the Holy and Sacred Canons*, 2 (Γ. Πάλλη, Μ. Ποτλή, *Σύνταγμα τῶν Θείων καὶ Ἱερῶν Κανόνων*) (Athens, 1852) 203 (in Greek).

⁴⁷ *Ibid.*, 395-396.

⁴⁸ Georgios Gavardinias, *The Quinisext Ecumenical Synod (Council) and its Legislative Work (Ἡ Πενθέκτη Οἰκουμενικὴ Σύνοδος καὶ τὸ Νομοθετικὸ τῆς Ἔργου)* (Katerini: Epektasi, 1998) 147 (in Greek).

The independence of the Cypriot Church was respected throughout the Byzantine Empire, while it was restricted to a great extent—if not entirely abolished—during the Frankish rule. During the Ottoman rule and the British rule that succeeded it, the special role of the Orthodox Church on the island was highlighted, as not only it retained the right to be governed by its domestic law but was also elevated to an acting-as-ethnarch Church⁴⁹ which played a significant role in the struggle of the Cypriots for independence⁵⁰. However, despite the self-organisation and its self-government, its First Charter—which was a decision of the Church itself and not an act of the State—was only published in 1914⁵¹ after centuries of being applied according to the sacred canons and the holy tradition. As already noted, the extensive autonomy⁵² of the autocephalous Church of Cyprus was established by the Cypriot Constitution of 1960 which (officially) adopted the preexisting system of homotaxy. Article 110 of the Constitution establishes the exclusive right⁵³ of the Orthodox Church to arrange and manage its domestic matters. It does not include, however, any reservation on the restriction of these rights from other provisions of the Constitution. This element led the theory⁵⁴ that the Orthodox Church is not subject to the provisions of Part II of the Constitution. On the one hand, this view is strengthened by Article 111 of the Constitution, which, contrary to Article 110, focuses on the enshrinement of the sacred canons which pertain to the administration of the internal matters of the Church and the management of its property. Pursuant to the sacred canons and to the current Charter⁵⁵ of the Church, the autocephalous Church of Cyprus is obliged to manage all its internal matters. For the

⁴⁹ On the term and its meaning see Emilianides (no 41) 45.

⁵⁰ John Hackett, *A History of the Orthodox Church of Cyprus* (London: Methuen & Co., 1901) 12-63.

⁵¹ For the period up to the voting of the Charter see Eric Sergiou, *The Statutory Legislation of the Church of Cyprus. Until the voting of the 1979 Charter (Η Καταστατική Νομοθεσία της Εκκλησίας της Κύπρου: Μέχρι και την Ψήφιση του Καταστατικού Χάρτη του 1979)* (Nicosia: Kykkos Monastery Centre of Studies, 2007) 61 (in Greek).

⁵² Emilianides (no 41) 102.

⁵³ Whatever applies to the Orthodox Church also applies to the other four religious groups.

⁵⁴ Konidaris, Emilianides (no 42) 187.

⁵⁵ The new Charter (the third in order) applies from 1 January 2010 in the history of the Church of Cyprus. For the text see Frixos Kleanthous (ed.), *The Statutory Charter of the Holy Church of Cyprus (Ο Καταστατικός Χάρτης της Αγιοτάτης Εκκλησίας της Κύπρου)* (2010), available at https://churchof-cyprus.org.cy/wp-content/uploads/2015/12/ΚΑΤΑΣΤΑΤΙΚΟ_DIMOTIKI.pdf (last accessed 1 September 2020) (in Greek). On a critical view on the new arrangements see Achilles C. Emilianides, Costas Katsaros, *The New Charter of the Church of Cyprus (Ο Νέος Καταστατικός Χάρτης της Εκκλησίας της Κύπρου)* (Nicosia: Hippasus, 2013) 5 *et seq* (in Greek).

protection of the dogmatic canons, Article 110 is not necessary; Article 18 which enshrines religious freedom suffices.⁵⁶

From all of the above, it becomes evident that the autocephalous Church of Cyprus enjoys a remarkable autonomy both in the framework of the system of Orthodox Churches, that is in canon law, but also by virtue of the Cypriot Constitution and the ECHR at the level of State law.

The Freedom of Worship in the First Phase of the Restrictive Measures

In Cyprus, the first phase of the restrictive measures for the protection from the coronavirus starts with the address⁵⁷ to the people of the Republic by their President on 13 March 2020. After a two-day meeting of the Council of Ministers, the measure of restricting assemblies to a maximum of 75 people by maximum permissible capacity in large interior spaces, including places of worship and especially parish churches which are being examined in the present study, was introduced. It must be noted that in the announcements following the government briefing to a certain extent—as was evident *ex post*—the specification of the protective measures during church congregations was reserved for the Church itself.⁵⁸ This choice on the part of the executive power must not be seen as an indication of respect and courtesy but as a result of the system of the State-Church relationship and the increased autonomy of the Church, which equally manifested itself in the following phases of the implementation of restrictive measures.

In the following⁵⁹ press release of the Archdiocese of Cyprus, there are quite a few memorable points worth keeping (besides the anticipated invitation to prayer). First, the Church not only harmonises with the restrictive measures but also provides ardent support to the executive power of the State of whose stance it overtly approves. Furthermore, it calls the faithful to abstain from worship ‘as the benefit

⁵⁶ Konidaris, Emilianides (no 42) 221.

⁵⁷ ‘Statement by the President of the Republic, Mr. Nicos Anastasiades, following the extraordinary meeting of the Council of Ministers’ (‘Δήλωση του Προέδρου της Δημοκρατίας κ. Νίκου Αναστασιάδη κατά τη συνέντευξη Τύπου, στο Προεδρικό Μέγαρο, μετά την έκτακτη συνεδρία του Υπουργικού Συμβουλίου’), available at <https://www.pio.gov.cy/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%89%CE%B8%CE%AD%CE%BD%CF%84%CE%B1-%CE%AC%CF%81%CE%B8%CF%81%CE%BF.html?id=12670#flat> (last accessed 4 August 2020).

⁵⁸ *Ibid.*, directly quoted: ‘In relation to the issue of church attendance and the measures decided by the Government, I informed His Beatitude the Archbishop of Cyprus, who, realizing the seriousness of the situation, will make announcements this afternoon.’

⁵⁹ Archdiocese of Cyprus, ‘Press Release’ (‘Δελτίο Τύπου’), 15 March 2020, available at www.churchof-cyprus.org.cy/60386 (last accessed 4 August 2020).

which will arise with the elapse of this trial will be significantly greater'.⁶⁰ Last but not least, a significant point made in the press release is the adoption of 'digital worship'⁶¹ and the exhortation to the faithful to settle with this arrangement for the period of abstention from worship.

During this first phase, the abstention from worship remained at the level of recommendation and was not in any way enforceable. At the same time, the administration of the Church⁶² informally adopted an additional measure: it permitted the entry and stay of the first ten people in the church by assigning to the church commissioners the responsibility⁶³ to control the entry of the permitted number of people and to prevent more from entering.

The Period of Complete Restriction of the Freedom of Worship

The period of mild restrictive measures was short-lived, as the spreading of the coronavirus forced the government to take more, significantly stricter measures which were also implemented in the places of worship. Pursuant to the Decree of the Minister of Health which was issued on the law on quarantine to protect public health, restrict the disease of COVID-19, and deter a probable collapse of the health care system due to the virus, a prohibition of large gatherings of citizens in places of religious worship, such as churches, temples and other places of prayer was imposed. This prohibition was extended and was valid until 3 May 2020.

During this time, which included the Holy Week and Easter Day, the clergy officiated at the liturgies 'on camera' in the presence of the absolutely essential members: the priest, church chanters, the sacristan and some of the commissioners. Insofar as the necessary equipment was in place, the liturgies were broadcast via TV, radio, and the internet. However, churches never halted their operation, despite the use of technology.

It is quite interesting to note the differences between the restrictive measures taken by the Cypriot administration for the places of worship and the ones taken

⁶⁰ Ibid.

⁶¹ By this neologism an effort is made to describe the participation of the faithful in liturgies via live TV and radio transmission of the holy liturgies or through the internet. These live broadcasts have always been available to the public. However, in the pre-coronavirus era the rule was that 'listening to the Liturgies and the Holy Mass in no case replaces the physical presence and participation of the faithful in the parish life'. See <https://ecclesiaradio.gr/> (last accessed 4 August 2020).

⁶² At least in the geographical region which is subject to the administrative boundaries of the Archdiocese of Cyprus.

⁶³ On the function of the church commissioners in the Church of Cyprus see, inter alia, Konidaris, Emilianides (no 42) 288 *et seq.*

by the Greek administration during the same period and for the approach of the same risk both prior to and during the lockdown. As the decision of the Church of Greece⁶⁴ was not deemed adequate for the protection of human health, a decision⁶⁵ was issued by the Minister of Education and the Minister of Health upon order of the Prime Minister, whereby the temporary prohibition of the officiation of any type of liturgies and rituals in all spaces of religious worship was adopted on preventive grounds of public health and for the period from 16 to 30 March 2020. Only the arrival of individuals for prayer was permitted until its suspension⁶⁶ a few days later when movement restriction measures were introduced.

Thus, a paradoxical phenomenon emerged: the prohibition by law of the performance of any rites in a male holy monastery with a hieromonk resident among the fraternity, even though this is the case of a convent where, by definition, everything is communal (e.g. lunch and dinner) and, therefore, the risk of viral transmission is the same as the one in a multi-member family whose members reside under the same roof. The prohibition was extended until 11 April 2020, while for the Holy Week and Easter Day, the performance of rituals and sacraments was permitted in the presence of only the most essential members of church.

⁶⁴ In its customary session of 16 March 2020, the Standing Holy Synod of the Church of Greece decided that the churches would stay open for the individual prayer of the faithful and that from 22 March 2020 until Lazarus Saturday on 11 April 2020, the holy mass would be held in the presence of the churchgoers from 7 to 8 am, in a sensible fashion. Enrica Martinelli, 'The Greek Orthodox Church in the Time of the Pandemic' ('La Chiesa Ortodossa Greca ai Tempi dell' Epidemia da SARS-CoV-2') 25 March 2020, available at <https://diresom.net/> (last accessed 4 August 2020) (in Italian) and Georgios Androutsopoulos, 'Public Health and Freedom of Worship in the Covid-19 Era' ('Δημόσια Υγεία και Θρησκευτική Λατρεία στην Εποχή του Covid-19'), available at http://www.publiclawjournal.com/docs/2020/1_2/2020_5_1_2_androutsopoulos.pdf (last accessed 4 August 2020) (in Greek) believe that with these measures the Church of Greece exhausted all the margins of its conciliation. It is thought that the decision of the Church of Greece was not bold and realistic but such to shift the burden to the State. On the contrary, the proposal that followed in view of the Holy Week and the Easter Day, involved the possibility of holding church service with the participation of only the absolutely essential members (priest, chanter, sacristan and one of the church commissioners).

⁶⁵ Greek Government gazette, A' 42. Cf. L. 4682/2020 Greek Government gazette A' 76 (3 April 2020).

⁶⁶ The ability to visit places of worship for individual prayer was suspended following the Joint Ministerial Decision, see Greek Government Gazette, 'Introducing the Measure of Temporary Restriction of Travel for the Limitation of the Covid-19 Contagion' ('Επιβολή του Μέτρου του Προσωρινού Περιορισμού της Κυκλοφορίας των Πολιτών προς Αντιμετώπιση του Κινδύνου Διασποράς του Κορωνοϊού') B' 986, Δ1α/Γ.Π οικ 20036, (22 March 2020) (in Greek) as it was not justified as a reason for travel and was not included in the Joint Ministerial Decision, Δ1α/ΤΠοικ 23093/6.4.2020 (Greek Government gazette B' 1178) which followed.

The differences between Cyprus and Greece in the management of the pandemic with respect to worship by both the State and the Church are evident. This discrepancy could be explained in terms of the relationships between the heads of the Church and the State or even the differences in their personalities, as well as the very structure of the organisation of each of the Churches. In Cyprus, the Church is a self-governed and self-sufficient legal entity which exists independently of the State and which is, in fact, experienced with the concept of autonomy the management of situations regardless of State regulation. On the contrary, in the modern Greek State the Orthodox Greek Church has been the official Church since 1975 and has been always regulated by the State. Even under its current constitutional status,⁶⁷ the Church of Greece does not constitute a public service in compliance with the organic criterion, as its Charter is a formal law, and its officiators are salaried by the State budget. Therefore, the Greek Orthodox Church has obtained the mentality of a Greek public service and is content with being regulated by State acts, having repudiated all autonomy granted by the working relationship between Church and State in Greece.

Current Period: The Proportionality of Restriction of Worship and its Safeguarding by the Religious Community

The date 4 May 2020 constitutes a landmark date for the exercise of public worship in Cyprus. From this day onwards, the absolute prohibition of congregation in places of worship was waived, and terms and conditions were stipulated in accordance with the hygiene protocols on the protection from the coronavirus in large indoor areas. For the Church of Cyprus, the observance of these protocols was assigned to the church committee of each parish church. In fact, the head of the Church of Cyprus officially communicated with the President of the Cypriot Republic and guaranteed the accurate application of the protection measures. A typical token of self-organisation is the adoption (at least by the Archdiocese) of stricter social distancing measures in the churches and their yards in relation to the instruc-

⁶⁷ The majority opinion upholds the term ‘prevailing religion’ in Article 3 of the Greek Constitution to refer to the fact that the majority of the Greek people espouse the Orthodox denomination. The term has restricted regulatory consequences. See Konidaris (no 40) 97. The Council of State endorses this view and yet, in one of its recent decisions, argued that Article 3 applies to other provisions of the Constitution and delimits their interpretation. See the Judgment of the Council of State (Plenary Session) (Ολ. ΣτΕ) 926/2018 in (2018)2 *Nomokanonika* 113 (in Greek).

tions and the precautionary measures published by the Ministry against the new coronavirus.⁶⁸

While the State made the number of people congregating in a church depended on its square meters, the Archdiocese adopted a fixed criterion: The Holy Week Liturgies would be held with open gates while the church commissioners would be entrusted with the duty to monitor the number of people entering the church so that they do not exceed ten at any given time, regardless of the size of the church. Since, as a rule, parish churches are sizable, the above measure is indicative of the determination of the administration of the Church, however strict it might be. Similar measures were adopted for those who desired to receive Holy Communion. The faithful would come to the Church at a fixed time, and care would be taken by the church commissioners to make sure the total number of those simultaneously present in the church for Holy Communion does not exceed ten, while also ensuring the observance of safety distances prescribed by the law. As a general rule, only after one of the church attendants who has received Communion has left, another one can enter. Subsequently, the duties of the church commissioners were multiplied, as they were basically entrusted with the joyless role of implementing measures supervising the church attendants. In this manner, the active involvement of the laic element in the operation of the church organisation in times of a pandemic is increased⁶⁹ in relation to other homodox Churches.⁷⁰ To these measures, the mandatory use⁷¹ of the protective facemask was recently added; until then, it had been optional but also recommended for their use by vulnerable groups.

Inevitably, a question is raised: can the measures adopted in the post-lockdown era be described as proportional and thus co-exist with the freedom of religion? The

⁶⁸ Church of Cyprus, 'Instructions and Protective Measures Against COVID-19 in Church Premises' ('Οδηγίες και Μέτρα Προφύλαξης από τον Νέο Κορωνοϊό (SARS-CoV-2) στους Ορθοδόξους Ιερούς Ναούς, Εξωκλήσια και Ιερές Μονές της Εκκλησίας της Κύπρου'), available at www.churchofcyprus.org.cy/61889 (last accessed 5 August 2020).

⁶⁹ Laymen in the Church of Cyprus participate decisively in all the levels of administration of the Church with the most prominent example of their participation being the election of an Archbishop, the Metropolitans, and the Chorepiscopi. For more details see Konidaris, Emilianides (no 42) 288.

⁷⁰ In the Church of Greece, the church commissioners are appointed by decision of the relevant Metropolitan Council. The placement of the church commissioners by election, a residue of the community organisation which had been valid in Greece since before the Ottoman rule, was abolished by the dictatorship of Ioannis Metaxas. See Konidaris, (no 40) 183. The laic element is completely precluded in the elections of Metropolitans and the Archbishop.

⁷¹ From 1 August 2020, as per the relevant Decree of the Ministry of Health addressing the increase of the recorded coronavirus cases in Cyprus.

answer to this question is neither self-evident nor easy to provide, as it is important to cross-examine more evidence. First, the fact that contrary to other countries, which have already been examined, as well as Greece, where the petition for annulment was rejected and the trial was dismissed as being unfounded,⁷² the legality of the measures concerning the places of worship in Cyprus was not contested judicially, which is admirable in its own right. Nevertheless, the element on which greater emphasis should be placed is the following: in the logical and legal sequence of the introduction of the restrictive measures, the initiative belonged to the State, but in the framework of the system of homotaxy, the Church either consented to or adopted the protective measures. This endorsement and specification of the measures is not at all negligible. It represents the exercise of autonomy which the Cypriot constitution confers upon the autocephalous Church of Cyprus, allowing it to arrange its own internal matters and supporting the will of the Church to exploit the benefits of this autonomy without having to accept any form of subrogation from the State, even amidst such unforeseeable and extraordinary circumstances, or force majeure, dictated by the pandemic. In this light, the measures implemented by the Church of Cyprus cannot be regarded as disproportionate to and disconnected from the fundamental right of religious freedom, as this is not just an imposition of a set of restrictions by the State onto the church organisation but rather a parallel self-restriction on the actions of church organisation itself, where self-restriction constitutes an exercise of autonomy.

In Conclusion: Experience as a Guide

It has become clear that the freedom of worship in the era of the COVID-19 pandemic is a restricted type of freedom in accordance with the principle of proportionality. The religious freedom enjoyed by every ecclesiastical organisation is, to a great degree, dependent on the standing system of relationships between a State and the Denominations, as well as on the standards of the protection of fundamental rights of each State. The autocephalous Church of Cyprus operates under the rule of law and enjoys extensive autonomy which grants discretion in the specification of these restrictions. This balancing act has been vividly reflected in the course of the restriction of religious freedom in Cyprus so far. It is precisely this experience that helps design the interpretive tools for the restrictions of religious freedom in the occasion of a second wave of the present pandemic. At the same time, this expe-

⁷² See the Ruling of the Council of State 161/2020.

rience is a valuable aid in the case of emergency restrictions of fundamental rights in unprecedented circumstances. The principle of proportionality ad hoc and *in concreto* requires subtle and arduous work to prove how deep the democratic nature of a constitutional society is and how much it respects fundamental freedoms.

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