

Freedom of Conscience and Church Establishment in Greece: The Kokkinakis Affair¹

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Abstract

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The Kokkinakis Affair is presented as an inquiry into whether or not Greek Law, as legislated and/or put into practice and interpreted by the Greek Courts, complies with the European Convention on Human Rights. Mr. Mikos Kokkinakis, a retired Greek businessman who is a Jehovah's witness, was arrested more than sixty times for proselytism, and interned and imprisoned on several occasions. The European Court of Human Rights ruled that while member States of the European Union are entitled to maintain State Churches, the treatment of Mr. Kokkinakis violated his rights. In the Appendix, Dr. de Passalacqua brings to our attention several relevant quotations from national and international documents for the Kokkinakis case, regarding freedom of religion and State establishment of a Church: the *Universal Declaration of Human Rights*, the *International Covenant In*

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Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, the American Convention on Human Rights ("Pact of San José, Costa Rica"), the Conference on Security and Cooperation in Europe (Helsinki, August 1975), the Constitutions of the United States of America, of the Commonwealth of Puerto Rico, Greece, Norway, the Slovak Republic, and the Russian Federation.



Introduction

Contemporary Western States are more or less heterogenous societies in which citizens belong to a variety of religious denominations. The European Convention on Human Rights has established that, in all member States of the European Community, freedom of conscience shall be a fundamental human right for all persons within the borders of the member States. The Constitution of the Greek Democracy establishes that Greek citizens and others residing within the Greek State shall enjoy complete freedom of conscience in religious affairs.

The Kokkinakis Affair brings before the European Court of Human Rights at Strasbourg the issue of whether Greek Law, as legislated and/or put into practice and interpreted by the Greek Courts, complies with the European Convention on Human Rights. The arrest, sentencing and punishment of Mr. Minos Kokkinakis, a retired Greek businessman who became a Jehovah's Witness in 1936, were appealed. In its judgment of the appeal, the Strasbourg Court issued a divided opinion. It found a breach of Article 9 of the Convention, but not of Article 7, and judged it unnecessary to examine the case under article 10 or under article 14 taken together with article 9. Of particular interest is the Court's assertion that the existence of an established Church in a Member State is compatible with the Convention, notwithstanding a strong dissent by Judge Pettiti. In this decision, the European Convention of Human Rights finds that the individual's right to profess the religion of choice is

not incompatible with the collective right, belonging to the majority of the inhabitants of that same State, to establish a particular confession as the official State religion.

This paper will examine the extent to which this decision condones, subject to the Convention, 1) the establishment of religion within Member States, 2) the exclusion of other religions, and 3) the prohibition of proselytism.

Situation of the Kokkinakis Case

Mr. Minos Kokkinakis, a retired businessman of Greek nationality, was born into a Greek Orthodox family at Sitia on the Island of Crete, in 1919. After becoming a Jehovah's Witness in 1936, he was arrested more than sixty times for proselytism. He was also interned and imprisoned on several occasions.³

I. European Community Law

a) Treaty Law

The Greek Democracy, or contemporary Greek State, is a Member of the European Community. Greece is party to the European Convention on Human Rights.⁴ Mr. Kokkinakis' case raised violations under articles 7, 9 and 10. The pertinent articles are:

Article 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty

³ *Case of Kokkinakis v. Greece* (3/1992/348/421) Judgment, Council of Europe, European Court of Human Rights (Strasbourg: 25 May 1993).

⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 213 as amended (4 November 1950).