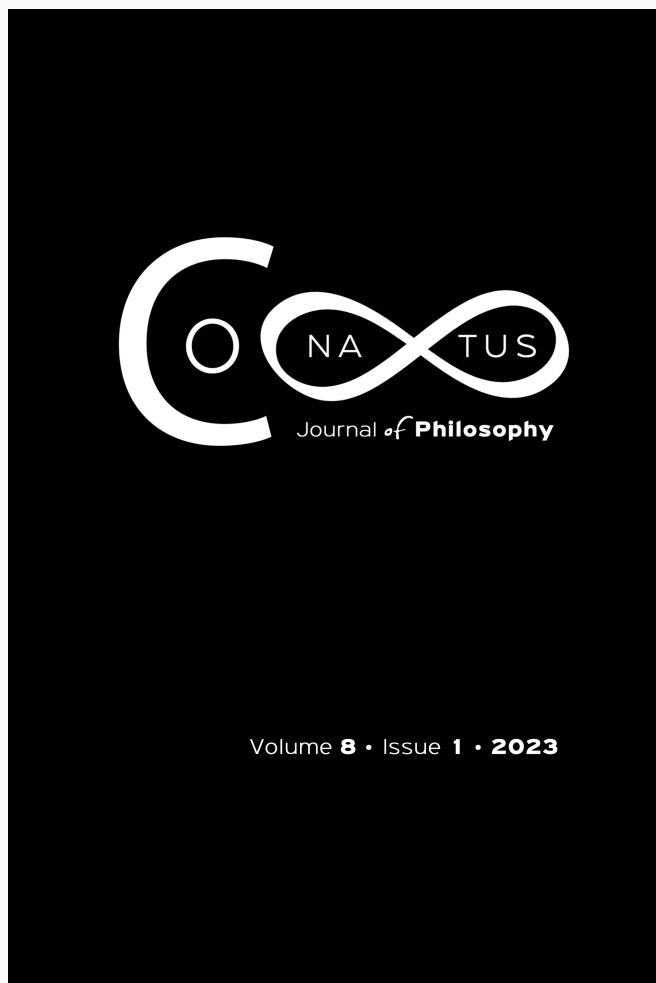


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The Philosophical Background and the Adventures of Religious Studies: The Case of Greece

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Abstract

The teaching of Religious Studies in Greece has always been the subject of intense debate and controversy. The case law of the Council of State mandates a denominational course, allowing exemption only on the grounds of religious conscience. The Supreme Administrative Court even considered the introduction of a compulsory Religious Studies course for all students to be unconstitutional. In this sense, the Religious Studies course in Greece is seen as outdated, and an increasing number of students are seeking to be exempt from it. In a recent case, the Council of State, in an attempt to depart from its previous case law on the exemption, essentially referred the decision on the matter in question to the Greek Data Protection Authority, which was requested to give its opinion on the status of the currently applicable exemption. In the context of this contribution, we argue that: a) The Council of State erred in its approach of shifting the burden of this decision to the Data Protection Authority. b) These issues should not be decided by the courts or independent authorities but by the democratically legitimized legislature. c) Religious knowledge is an indispensable element of education and, as such, the Religious Studies course should have an encyclopedic, rather than a narrowly developed denominational character and remain compulsory for all pupils.

Keywords: *religious studies; philosophy of education; philosophy of religion; conscience; exemption; personal data*

I. The ongoing debate about the teaching of Religious Studies in Greece

The teaching of Religious Studies in Greece has always been the subject of heated debate and controversy. The case law of the Council of State mandates a denominational course, allowing exemption only on the grounds of religious conscience.¹ The Supreme Administrative Court even considered the introduction of a compulsory Religious Studies course for all students to be unconstitutional.

In this sense, the Religious Studies course in Greece is seen as outdated and an increasing number of students are seeking to be exempt from it. In a recent case, the Council of State, in an attempt to depart from its previous case law on the exemption, essentially referred the decision on the matter in question to the Greek Data Protection Authority, which was requested to give its opinion on the status of the currently applicable exemption. In the context of this contribution, we argue that:

- a) The Council of State erred in its approach of shifting the burden of this decision to the Data Protection Authority.
- b) These issues should not be decided by the courts or independent authorities but by the democratically legitimized legislature.
- c) Religious knowledge is an indispensable element of education and, as such, the Religious Studies course should have an encyclopedic, rather than a narrowly developed denominational character and remain compulsory for all pupils.

Even though it refers to earlier decisions, this issue is both intense and timeless, as it affects and touches upon the way Religious Studies have been traditionally perceived and taught in Greece, whilst posing new challenges for the future.

Moreover, it is important to bear in mind that Religious Studies are not inherently linked to religious practice but instead constitute a primarily secular pursuit. We refer specifically to the philosophical aspect of religion, which is referred to as the philosophy of religion. This academic field showcases the importance of Religious Studies.

¹ See, indicatively, Council of State decision Nos. 660/2018, 926/2018, and 1749-1750/2020.

II. From the Greek Council of State to the Hellenic Data Protection Authority

The Council of State recently made a decision (No. 1748/2022) that annulled a joint ministerial decision of the Minister and the Deputy Minister of Education and Religious Affairs² regarding exemptions for pupils from the Religious Studies course. The Council deemed the decision invalid because it failed to fulfill an essential procedural requirement of obtaining an Opinion from the Hellenic Data Protection Authority (HDPa). Subsequently, the Data Protection Authority issued an Opinion³ stating that Orthodox Christians are also entitled to seek exemption from the Religious Studies course. Previously, only non-Orthodox Christians were eligible for exemption.

The Authority expressed Opinion 2/2022, according to which the exercise of the right to exemption from Religious Studies, in accordance with the current Greek Constitution and the European Convention on Human Rights (ECHR), requires only a declaration by the parents or pupils concerned, simply stating that reasons of conscience prevent participation in religious education. In practice, this means that Orthodox Christians can now seek exemption from the course in question, regardless of whether they belong to the denomination that the course is currently centered around. This expands the right to exemption from the course to all pupils who have reasons of conscience barring them from attending it, rather than restricting it solely to non-Orthodox Christians.

In contrast to this Opinion, the Ministry of Education previously maintained⁴ that only non-Orthodox Christians were eligible for exemption, while Orthodox Christians were not.

In compliance with Council of State decision No. 1748/2022, the HDPa issued an Opinion on the matter, finding that the provision of an Opinion on its part before the issuance of the Ministerial Decision constitutes an essential procedural requirement. Consequently, the absence of such an Opinion leads to the annulment of the act. Bearing in mind the above, the provision of an Opinion by the Authority was deemed as an essential procedural requirement (Article 48 of Presidential Decree No. 18/1989) before the adoption of the contested act,⁵ according to the view assumed by the Court. The decision on

² See decision 61178/ΓΔ4/28.5.2021.

³ See HDPa Opinion No. 2/2022.

⁴ See decision No. 106646/ΓΔ4/2.9.2022.

⁵ By virtue of Article 36, par. 4 of the GDPR, "Prior consultation," "Member States shall

whether this is an essential procedural requirement rests solely with the bench,⁶ which went on to rule on the matter. In the interest of administrative efficiency,⁷ only the omission of acts that constitute essential procedural requirements can serve as grounds for annulment,⁸ rather than any breach of the rules of procedure. The criteria for determining whether a procedural requirement is essential are: (a) the importance of the procedural act for the protection of the person being administered, the orderly functioning of the administration, and the judicial review of the act, and (b) the impact of the omission of the procedural requirement on the regulations laid down by it.⁹

III. Is the provision of an Opinion by the HDPa an essential procedural requirement?

The classification of the provision of an Opinion as an essential procedural requirement is not without its challenges. Along with broadening the scope of what is considered an essential procedural requirement, there are concerns that mandating the provision of an Opinion by the HDPa on any act may cause significant delays in the legislative process. As data protection affects every aspect of modern life, requiring an Opinion for every regulatory act could result in an overwhelming burden that would cause substantial legal uncertainty and potentially invalidate numerous decisions.

Furthermore, the mandatory nature of the Authority's Opinion could shift the decision-making responsibility to authorities outside the hierarchical pyramid, which are far removed from the mechanisms responsible for the attribution of political responsibility.¹⁰ Indeed, the position adopted by the Supreme Court concerning the provision of an Opinion by the Authority could be misinterpreted as passing on the onus of a difficult decision or even the burden of changing or developing its

consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing.”

⁶ Epameinondas Spiliotopoulos, and Vassilios Kondylis, *Administrative Law* (Athens: Nomiki Vivliothiki Publications, 2022), n. 500.

⁷ Panos Lazaratos, *Administrative Procedural Law* (Athens: Ant. Sakkoulas Publications, 2013), note 725.

⁸ Spiliotopoulos, and Kondylis, n. 500.

⁹ *Ibid.*

¹⁰ Fereniki Panagopoulou, “Issues of Constitutionality of Independent Agencies in US: Their Extensions in the Greek Legal Order,” *Society of Administrative Studies* 6 (2004): 95-147.

previous case-law to the HDPa,¹¹ thus somehow rendering it a general Authority for the application of individual rights. Moreover, if the HDPa adopted a different position than the Court's previous case-law, which decision should the administration comply with? The answer to this is that it would need to comply with the decision of the Council of State; but which decision would that be? The one referring the matter to the HDPa or its previous case-law, where it issued an ad hoc ruling?¹²

If every pupil were allowed to seek exemption from the Religious Studies course on the basis of conscience, it could create a precedent for seeking similar exemptions from other courses. For example, if a parent could request exemption, on grounds of conscience, from the part of a course that teaches Darwin's theory of evolution, who could prevent them from doing so?

IV. The need for an encyclopedic, rather than a denominational, Religious Studies course

The road ahead is lengthy and fraught with difficulties. Opinion 2/22 of the HDPa was a step in the right direction, insofar as it provided an expert and insightful interpretation of how the Greek Constitution and the ECHR should be applied correctly. Consequently, it was established that providing an Opinion prior to issuing a Ministerial Decision was an essential procedural requirement, leading to the nullification of the previous, limiting Ministerial Decision. Therefore, it transpired that an exemption from the Religious Studies course, as it is currently structured and taught, should be available to anyone who objects to attending it on grounds of conscience. Even so, the Opinion did not (and, arguably, could not) address the crux of the matter, which is how a contemporary Religious Studies course should be structured and what it should contain in a culturally diverse country like Greece.

In this sense, it would have been preferable if the Court had been bolder from the outset by opting for an encyclopedic Religious Studies course, with emphasis on the Greek Orthodox Christian tradition, enriched with various other elements exploring different religions. Developing a sense of mature religious consciousness that contributes to the development of one's personality requires engaging in discourse

¹¹ In accordance with Council of State decision No. 1479/2019, the request for an exemption from the Religious Studies course must have the following content: "Reasons of religious conscience do not allow (my or my child's) participation in the Religious Studies course."

¹² See, indicatively, Council of State decision Nos. 660/2018, 926/2018, and 1749-1750/2020.

with diversity.¹³ Anyone who lives and, most importantly, attends school in Greece should be familiar with certain structural features of the formation of the Greek nation¹⁴ and the foundations of European civilization, which are largely based on the Christian tradition.

Required religious knowledge can help people understand art and attitudes toward life. Most art is based on theological themes. For example, Verdi's *Nabucco* is based on the corresponding biblical story.¹⁵ The conduct of other nations can also be explained by their religious traditions. A classic example is the insistence of Protestants on observing the canon and having savings, the abomination of abortion by Catholics, and so on. To understand these attitudes, one must understand the theological background of these people. This type of knowledge is just as important as historical, mathematical, and philological knowledge.

Therefore, one should not be entitled to be exempt from acquiring such knowledge, provided it is offered in an objective and critical manner. Additionally, knowledge and interpretation of the Bible can guide the interpretation of other sciences. For instance, Hermeneutics, which includes the interpretation of the Constitution as one of its branches, starts with the interpretation of Homer and Paleo-Diaspora texts. Karl Schmitt's political theology is based on religious foundations. Therefore, pupils should not make themselves "exempt" from necessary knowledge, which is essential for all those residing in the Greek territory to understand themselves and others.

In this light, the Religious Studies course can be conceived as a compulsory encyclopedic course for everyone, covering the history of the Old and New Testament and the history of the Church (not as mythology) and presented as factual Christian content, without a denominational or catechetical character. Most European countries follow this direction. This approach is an unbiased perspective of the religious phenomenon with an emphasis on the prevailing religion and Christianity from a quantitative standpoint. However, an open-minded outlook toward non-Christian monotheistic religions should also be maintained. This course should be mandatory for all students residing

¹³ Fereniki Panagopoulou-Koutnatzi, *The Contemporary Adventures of Teaching Religious Studies. A Moral-Constitutional Approach* (Athens: Papazissi Publications, 2021), 139.

¹⁴ *Ibid.*, 145.

¹⁵ But not only regarding the content, but also ontological concepts, such as time and space; for a seminal analysis see Risto Solunchev, "Ontology of Time as a Deconstruction of Space. An Essay on the Philosophy of Byzantine Music," *Conatus – Journal of Philosophy* 4, no. 1 (2019): 109-122.

in Greece, as they should be aware of the significant role played by Orthodoxy in the history of the Greek nation and by Christianity in the wider context of European civilization.

V. The philosophy of religion and the necessity of Religious Studies

The problem of the study of religion is very closely related to that of the study of ethics. The central question of this problem is how one can examine something like religion, scientifically, without being subjective.¹⁶ The fundamental principle of religious experience is subjective and the distinction between explanation and understanding is important. Accordingly, explanation refers to the positive spirit, whereas understanding refers to the humanities.¹⁷

To comprehend the human biosphere, the philosophy of religion posits a basic distinction between the sacred and the profane.¹⁸ The religious cannot be merely simplified to a philosophical idiom: it requires the unifying role of experience in shaping both social space and distinct individuality. At the same time, the sacred is binary, given that it is transcendent but also immanent, as it concerns the celestial sphere but also the mundane, as the latter is constantly referred to in various ways and meanings.¹⁹ It is a question of whether the ego is completed without an arrangement of the sacred element. If, however, this is indeed the case and religious experience requires an understanding from within, without reduction to positivisms, it transpires that religious studies, in their epistemological and encyclopedic form, become indisputably necessary.

The ritualistic aspect of the sacred, on the other hand, serves as a means of reflecting society back onto itself. However, this introspection is only comprehensible when we acknowledge that it pertains to the recognition of the sacred boundaries of both society and subjectivity.

¹⁶ An answer to the conundrum could be provided by an expert committee; Tsitas and Verdis in their article “Proposing a Frame of Ethical Principles for Educational Evaluation in Modern Greece,” *Conatus – Journal of Philosophy* 6, no. 1 (2021): 135-158, discuss the Delphi Method as a useful tool for this.

¹⁷ For an excellent account of Hume’s view of “human science” see Natalia Borza, “Animating Sympathetic Feelings. An Analysis of the Nature of Sympathy in the Accounts of David Hume’s Treatise,” *Conatus – Journal of Philosophy* 4, no. 1 (2019): 31-60, especially 33ff.

¹⁸ This line of demarcation between the sacred and the profane, though, is neither fixed, nor clear; probably the most iconic example for this would be the way alchemy has been conceived through time. See Athanasios Rinotas, “Alchemy and Creation in the Work of Albertus Magnus,” *Conatus – Journal of Philosophy* 3, no. 1 (2018): 63-74.

¹⁹ Rudolf Otto, *The Idea of the Holy*, trans. John W. Harvey (New York: Oxford University Press, 1970).

Thus, the religious experience yields a cultural inheritance, given that it is the origin of the iconography of various societies and the production of languages. Hence, understanding it requires a prior consideration of the concept of sanctity, as even absolutely mundane movements challenging the religious experience cannot be understood without prior knowledge thereof.

The religious experience, on the other hand, refers to another, secondary distinction that is absolutely necessary for the perception of social and public space, namely, the distinction between the pure and impure elements. This differentiation is central to understanding the phenomenon of social power and is based on the reality of two states: the manifest and the latent.²⁰ Repelling impurity is an often unconscious aspect of social behavior. Understanding the social function of impurity helps us comprehend aspects of the human biosphere that are hard to articulate. Again, it follows that religious studies emerge as an essential part of modern education.²¹

Another aspect of the issue is that the religious experience expands the primary fact of the Cosmos solely to the immanent element and direct attention towards the openness of the world, in the direction of the *totaliter aliter*. This aspect cannot be overlooked because it is not only constitutive of divine transcendence, but also of the transcendentalism of consciousness or the cultural being, outside of any determinism that is nothing more than a social imaginary in a reified form. Humanity is full of signs of the sacred, which are not symbols of submission but rather elements of freedom. The insistence on religious experience by most people demonstrates this fundamental fact. This core of humanity is not an element of regression, as recent history has shown, but a rooted belief of a theoretical and reflective nature. It is also in this sense that religious studies can be considered necessary.²²

The primary objection that can be raised is that the religious experience is ultimately nothing more than a selfish need that involves

²⁰ Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London: Routledge, 1966).

²¹ The newly established branch of Christian Bioethics by Tristram Engelhardt Jr shows the permanence of a Western pious anthropology; see Hugo Tristram Engelhardt Jr, "Christian Bioethics in a Post-Christian World: Facing the Challenges," *Christian Bioethics* 18, no. 1 (2012): 93-114. Also Ana S. Iltis, "Engelhardt on the Common Morality in Bioethics," *Conatus – Journal of Philosophy* 3, no. 2 (2018): 49-59.

²² The establishment of Christian Bioethics by Engelhardt Jr. is a quite telling example of the interplay between religious studies and other fields, with which the former may interact in a way that advances both. For Engelhardt's contribution to bioethics see, among others, Claudia Paganini, "We Live in the Ruins of Christendom: Bioethics in a Post-Engelhardtian Age," *Conatus – Journal of Philosophy* 3, no. 2 (2018): 99-110.

two aspects: denying the beliefs of others and influencing others by invoking a high Authority that exists precisely to protect the influencer. This position belongs, as claimed, to a philosophy of suspicion and is exemplified in Nietzsche's philosophy.²³ Religious experience, in this respect, is nothing more than a disguised will to power and constitutes part of a general bad faith. This view aspires to achieve absolute adherence to philosophical immanence. This insistence challenges personal religion, a religion of revelation that aims at personal salvation. In this sense, religion refers to a form of utilitarianism and is disconnected from a general and grounded ethical stance. Hence, the religious experience does not constitute a dimension of the self but a loss of the self, a retreat to religious traditionalism and a surrender to the spirit of suffering.

Continuing this perspective is the view that religion is a general narcotic, a reward mechanism at the level of individual emotions. Society develops towards the secular spirit as the child slowly matures and becomes an adult human being. Religion is seen as the product of a child's fear and love of the father.²⁴ The tyranny of the father gives birth to rebellion, and guilt towards the symbolic rejection of the father figure gives birth to religion. Guilty consciousness is evident in the phenomenon of religious rituals. Religious rituals demonstrate guilt-induced obsessions through their repetitiveness, and constitute a diffusion of the psychopathological guilt-induced personality.

However, it is important to note that the philosophies of suspicion reduce religion to malevolence or psychopathology, contrary to the basic principle that religious experience is irreducible. One could argue that religion is responsible for creating and maintaining the utopian spirit, making it a cause rather than a derivative. Ultimately, these views constitute deeply engrained beliefs and must be protected under the right of free belief.

In our view, it obviously transpires from the above that religious studies constitute an integral part of the educational encyclopedism and the overall formation of the modern spirit. As such, religious studies should not be subject to executive decisions but rather democratic deliberation. By definition, and in accordance with what we described above, religious studies are part of the general social philosophy of a collectivity and should be entrusted to democratic institutions.

²³ Friedrich Nietzsche, *On the Genealogy of Morality*, trans. Carol Diethe, ed. Keith Ansell-Pearson (Cambridge: Cambridge University Press, 1994).

²⁴ Sigmund Freud, *Totem and Taboo*, James Strachey (Boston: Beacon Press, 1913).

VI. Leaving the last word to the democratically elected legislative bodies

When it comes to socially and morally controversial issues such as the teaching of Religious Studies, which often divides society based on philosophical, ideological, religious, and moral concepts rather than purely legal arguments based on the letter of the Constitution, the primary responsibility for decision-making is vested primarily in the democratically elected legislature. Accordingly, judges must limit their interpretative competence to strict legal criteria, to the control of the outer limits of legislative choice,²⁵ without exceeding their role as annulment judges.²⁶ Judges must exercise self-restraint to avoid turning an ideological and political choice made by the democratically elected legislature “either into a constitutional necessity or an excluded choice by virtue of constitutional mandate.”²⁷ Under this approach,

the common legislature in socially contentious matters has a broad range of different policy options, none of which can be perceived as being the only one that is constitutionally sound,²⁸

as it has the authority of choosing among these options.²⁹

Author contribution statement

This is a re-worked and elaborated version in English of a paper published by Fereniki Panagopoulou-Koutnatzi in Greek in *Syntagma Watch* on May 9, 2022 (see References list below). Both authors contributed equally to the conception and design of this paper. Fereniki Panagopoulou has written Chapters I, II, III, IV and VI, and Georgios

²⁵ Spyros Vlachopoulos, *The Dynamic Interpretation of the Constitution* (Athens: Eurasia Publications, 2014), 84.

²⁶ Lina Papadopoulou, “Religious Education in Schools—an Overall Assessment of Case-Law,” *The Constitution Journal* 1-2 (2020): 866ff.

²⁷ Ioannis Drosos, “Ideology as an Illustration of Decision no. 660/2018 of the Council of State,” in *The Constitution in Progress, Volume in Honor of Antonis Maniatakis* (Athens, and Thessaloniki: P. Sakkoulas Publications, 2019), 565ff.

²⁸ Haralabos Anthopoulos, “Constitutional Interpretation and Fundamental Rights. The approach of Dimitris Th. Tsatsos,” in *Constitution and Interpretation. The Contribution of D. Th. Tsatsos* (Athens, and Komotini: Ant. N. Sakkoulas Publications, 2008), 51ff.

²⁹ Fereniki Panagopoulou, “Some Thoughts on the Occasion of Decision No. 1478/2022 of the Council of State and Opinion No. 2 / 2022 of the HDPA Concerning the Exemption from the Religious Studies Course,” *Syntagma Watch*, last modified May 9, 2022. <https://www.syntagmawatch.gr/trending-issues/merikes-skepseis-me-afomh-thn-apofash-1478-2022-tou-ste/>.

Arabatzis has written Chapter V. Both authors reviewed the results and approved the final version of the manuscript.

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