

2015

# We Have Just Enough Religion to Make us Hate, but not Enough to Make us Love one Another.

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## Recommended Citation

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## I. Introduction

*"We have just enough religion to make us hate, but not enough to make us love one another."*

-Jonathan Swift, 1706

World history is tainted with numerous wars fought in the name of religion, dating back to the Spanish Reconquista and the Crusades and to the modern day Israeli-Palestinian conflict and the Syrian civil war. The European religious wars of the sixteenth and seventeenth centuries within the Christian-dominated society led to the development of the notion of freedom of religion, with a goal of preventing further conflict.<sup>1</sup> This novel idea of freedom of religion developed differently across European countries, with England establishing the Church of England as the national church but allowing the existence of other religions, and the Netherlands allowing freedom of conscience and private devotion through the Union of Utrecht, while the countries that did not implement freedom of religion on their own, such as Spain, France, Austria and Italy, were forced to do so by their own people via revolutions.<sup>2</sup> By geographically rearranging or otherwise by tolerating those with a minority religion, Europe prevented further conflict and hence gave birth to the idea of freedom of religion that we see today.<sup>3</sup>

It is not a secret that the world is mainly split into three religious groups, those who associate with and practice a religion, those who associate with a religion but do not practice it, and those who have no religion at all. The formation of these groups has led to the creation of separate religious identities in which each group sees the other two as outsiders and sometimes even as enemies.<sup>4</sup> In turn, each country has to decide how to treat each of these groups and how

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<sup>1</sup> A. VAN DE BEEK, ED A. J. G. VAN DER BORGHT & B. P. VERMEULEN, STUDIES IN REFORMED THEOLOGY, 19 FREEDOM OF RELIGION 9 (2010).

<sup>2</sup> *Id.* at 2. (These revolutions were fought because of several fundamental freedoms and not exclusively because of freedom of religion. Nonetheless they were able to achieve freedom of religion because it was related to these other fundamental freedoms that embodied the West).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

to regulate clashes resulting from these religious ideologies. As a result, many countries have articulated and enforced laws and policies that favor either freedom of religion or freedom of expression. Specifically, Article 9 of the European Convention is of importance in this paper because the European Court of Human Rights decides case law by giving a binding interpretation of the European Convention, which serves as precedent for future cases.<sup>5</sup> This paper will examine several decisions within the past two decades from the European Court of Human Rights dealing with violations of freedom of religion. The examination will articulate a pattern not only of the Court's view of freedom of religion but also a pattern in Greek and Russian violations of this freedom.

Furthermore, freedom of religion may also encroach on freedom of expression in several countries, especially those of Islamic majority faith. In his 2008 Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, Doudou Diene, states that defamation of religion is "marked by the rise of racism, racial discrimination, xenophobia and related intolerance, with its roots in the current political and ideological context."<sup>6</sup> In the past decade and a half there has been a major movement, especially within the United Nations, to deal not only with national laws and policies that legitimize discrimination based on religion, but also with national laws pertaining to defamation of religion.<sup>7</sup> This movement stems from a strong divide between those who see laws prohibiting defamation of religion as a violation of freedom of expression and those who specifically use

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<sup>5</sup> Article 9 of the Convention: 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitation as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. EUROPEAN COURT OF HUMAN RIGHTS. *Council of Europe*. F-67075 Strasbourg cedex. June 1, 2010. *available at* [www.echr.coe.int](http://www.echr.coe.int).

<sup>6</sup> <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/153/97/PDF/G0815397.pdf?OpenElement>

<sup>7</sup> See G.A Res.65/224, Combating Defamation of Religions, U.N. Doc. A/RES/65/224 (Dec. 21, 2010). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/525/98/PDF/N1052598.pdf?OpenElement>

such laws to curtail freedom of expression.<sup>8</sup> Hence, this paper will also examine defamation of religion in Greece and Russia and compare it to a few cases of similar defamation across the globe.

The official religion of Greece, Eastern Orthodox Church of Christ, comprises 98 percent of its 10,772,967 population, making Greece one of the few non-secular European states.<sup>9</sup> Furthermore, Greece is currently the only country to name Eastern Orthodox Church of Christ as the “prevailing” religion of the state in its constitution.<sup>10</sup> Greece also has 1.3 percent of its population who are followers of the Islamic faith and 0.7 percent of followers of other religions, including Judaism and Catholicism.<sup>11</sup> Greece has one of the world’s largest proportions of Eastern Orthodox followers to population, with Russia having the other. Out of a population of 142,500,482, 15 to 20 percent of the Russians follow the Russian Orthodox faith, 10 to 15 percent follow the Islamic faith, and 2 percent follow other (the Christian faith), with the remainder of the population being either non-practicing believers or non-believers.<sup>12</sup>

Both Greece and Russia have Orthodox Christianity as a prevalent religion. Greece has a much higher Orthodox Christianity to population percent ratio than does Russia. On the other hand, Russia has a much higher minority religion (Islam) to population percent ratio than Greece. This clash between the majority and minority religions brings about violations of the articulated freedom of religion by both Russia and Greece.

<sup>8</sup> See G.A. Res. 4/9, U.N. Doc. A/HRC/4/123 (Mar. 30, 2007); G.A. Res. 7/19, Combating Defamation of Religions, U.N. Doc. A/RES/7/19 (Mar. 27, 2008); UNHRC Decision 1/107.

<sup>9</sup> *Greece. People and Society: Religions*. THE WORLD FACTBOOK. (last visited September 10, 2013). <https://www.cia.gov/library/publications/the-world-factbook/geos/gr.html>.

<sup>10</sup> See Article 3 states that “the prevailing religion in Greece is that of the Eastern Orthodox Church of Christ.” THE CONSTITUTION OF GREECE, May 27, 2008, art 3. available at <http://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20agglisko.pdf>. Other non secular European states are Liechtenstein, Monaco and the Vatican City (Catholic); Denmark, Iceland and England (Anglican). THE WORLD FACTBOOK. (last visited September 10, 2013).

<sup>11</sup> Greece, *supra* note 9.

<sup>12</sup> *Russia. People and Society: Religions*. THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/rs.html> (last visited September 10, 2013).

## II. The European Court of Human Rights

The European Court of Human Rights, established by the 1950 European Convention of Human Rights, hears complaints alleging violations of human rights by its member states.<sup>13</sup> Individuals who belong to national, ethnic or religious minorities have also sought protection by the European Court of Human Rights when domestic laws do not offer adequate protection and as a result of the number of cases decided by the court, the importance of the court's judicial review has also expanded.<sup>14</sup> Throughout history, the courts have been a method for minorities to voice the injustices they are facing when their injustice claims are not heard through the political electoral and legislative systems of their native state. In order to bring a claim to the European Court of Human Rights, the individual or the group has to have exhausted all available domestic remedies.<sup>15</sup> Even though Article 46 of the European Convention on Human Rights articulates that its member states are to abide by the final judgment of the court, the European Court of Human Rights has no means of enforcing these rulings or enacting sanctions punishing the states that do not comply, which gives the states an incentive to prolong providing a remedy

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<sup>13</sup> Specifically, the court rules on individual or state applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. THE COURT IN BRIEF, *available at* [http://www.echr.coe.int/Documents/Court\\_in\\_brief\\_ENG.pdf](http://www.echr.coe.int/Documents/Court_in_brief_ENG.pdf)

<sup>14</sup> EVANGELIA PSYCHOGIOPOULOU & DIA ANAGNOSTOU, THE EUROPEAN COURT OF HUMAN RIGHTS AND THE RIGHTS OF MARGINALISED INDIVIDUALS AND MINORITIES IN NATIONAL CONTEXT 2, 3 (2010). Article 34 ECHR gives the right to file an application to "any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right." EUROPEAN COURT OF HUMAN RIGHTS. *Council of Europe*. F-67075, Strasbourg cedex. June 1, 2010. *available at* [www.echr.coe.int](http://www.echr.coe.int).

<sup>15</sup> Article 35, Provision 1 of the European Convention on Human Rights states that "the court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken." EUROPEAN COURT OF HUMAN RIGHTS. *Council of Europe*. F-67075, Strasbourg cedex. June 1, 2010. *available at* [www.echr.coe.int](http://www.echr.coe.int).

to the situation or never even provide one.<sup>16</sup> The Council of Europe, specifically the Committee of Ministers, is charged with the supervision of execution of the rulings and may expel a state from the Council of Europe if it does not comply with the Court's rulings.<sup>17</sup> Therefore, the court is highly influential in practice and a majority of the states ultimately follow the judgments delivered by the Court.<sup>18</sup> The immediate effect of the Court's ruling is the benefit to individual litigants party of that specific case, while the longer effect is on the state's decision of how best to comply with the ruling, which sometimes might involve a modification of national law close up.<sup>19</sup>

Although the Court hears cases on numerous violations of minority rights, this paper will focus on and discuss the violations of freedom of religion and how they impact the overall freedom of expression in the country. From 1993 to the present, the European Court of Human Rights has heard 10 cases alleging violations of Article 9 of the European Convention: freedom of thought, conscience and religion by the state of Greece, with the most recent allegation being brought in 2010. Similarly, the Court has also heard 10 cases alleging violations of Article 9 by the state of Russia, with the most recent allegation being brought in 2013. In nearly two decades, the court has established a pattern of giving deference to the applicants in the claims of violations

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<sup>16</sup> Article 46, Provision 1 of the European Convention on Human Rights states that "the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties." EUROPEAN COURT OF HUMAN RIGHTS. *Council of Europe*. F-67075 Strasbourg cedex. June 1, 2010. available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>17</sup> NINA-LOUISA AROLD, *THE LEGAL CULTURE OF THE EUROPEAN COURT OF HUMAN RIGHTS* 30 (2007). (in the case of monetary judgments, the Committee of Ministers might vote to exclude the state from representation at the Council of Europe until the delinquent financial obligation is made).

<sup>18</sup> *Id.* at 30-31. (as of 2007 no state has been expelled from the Council of Europe. Ukraine was close to being expelled in 2001 for repeatedly ignoring the Court's judgments but was granted a two month extension to prove substantial progress by the Parliamentary Assembly, which it did and is hence still an member state).

<sup>19</sup> *Id.* at 31. (in *Scozzari and Giunta v. Italy*, the Court stated that the state is "free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment."); (the Court judgments on the Netherland's violations of the right to a fair trial in Dutch criminal proceedings led to the implementation of new procedures in the Dutch legal system. Similarly, the Court rulings led to the enactment of the Human Rights Act of 1998 in the United Kingdom, specifically pertaining to prisoners' rights and their access to justice, even if it took 40 years for the Court's impact to be felt).

of Article 9, unless the applicant's actions and beliefs are directly in conflict to the views and beliefs of the European Convention on Human Rights. Furthermore, as the cases below will show, the applicants who seek protections from the Court in cases of violation of freedom of religion are those that belong to the minority religious groups within that state. The most troubling concern is the fact that for a society we claim is advanced and respects the religious beliefs of all, the majority of cases filed for violation of freedom of religion have occurred in the past decade. It seems that the international treaties and resolutions we sign are not effective as they claim to be.

### III. Case Law Study: Greece

Article 28 of the Constitution of Greece, which discusses the hierarchical position of international law and treaties, expressly states that the Constitution of Greece takes precedence over international treaties, such as the European Convention of Human Rights, signed by Greece on November 28, 1950.<sup>20</sup> Therefore, in the event that the decision made by the European Court of Human Rights conflicts, the laws of the Constitution of Greece will trump the decision and again leave the religious minorities without any security and protection. In addition, as was stated earlier, one must exhaust all domestic remedies in order to have standing to bring a claim to the European Court of Human Rights.<sup>21</sup> If all of the domestic remedies have been exhausted and the state refuses to follow the judgment of the Court, the petitioners are left with no recourse.

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<sup>20</sup> PSYCHOGIOPOULOU & ANAGNOSTOU, *supra* note 14, at 117; See Article 28 of the Constitution of Greece states, in part "the generally recognized rules of international law, as well as international conventions as of the time they are ratified by statute and become operative according to their respective conditions, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law." THE CONSTITUTION OF GREECE, May 27, 2008, art. 28; Contrast this to the Netherlands where the European Convention on Human Rights is directly applicable and is given preference over national legislation. MARK W. JANIS ET AL., EUROPEAN HUMAN RIGHTS LAW: TEXT AND MATERIALS 489 (Clarendon Press, Oxford, 2nd ed., 2000). Additionally, in Austria, the Convention is equated to its national Constitution, hence the Court's decisions are directly applicable and enforced. EUROPEAN COURT OF HUMAN RIGHTS: THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN AUSTRIA AND IN THE EU. *Federal Ministry for European and International Affairs*. <http://www.bmeia.gv.at/en/austrian-mission/strasbourg/council-of-europe/european-court-of-human-rights.html>

<sup>21</sup> ECHR, *supra* note 15.

Therefore, in the event that Greece does not follow the Court's judgment, it can be inferred that the Greek judiciary is not willing to uphold minority rights and provide minority groups protection and security they seek.<sup>22</sup>

The religious cases brought before the European Court of Human Rights deal with the religious rights of minority groups and therefore there has not been a case heard by the Court dealing with a violation of rights of someone belonging to the Eastern Orthodox Church of Christ, which is the majority religious group in Greece comprised of 98% of its population.<sup>23</sup> This is because the close interconnection between the Greek state and the Eastern Orthodox Church of Christ has allowed the Orthodox Church to employ substantial control over the construction, exertion and applicability of state law and policy.<sup>24</sup> Hence, members belonging to the majority religious group do not claim that Greece violated their freedom of religion because, simply put, they may have trouble expressing the oppression they suffer as long as the Eastern Orthodox Church of Christ is the national religion of Greece.

The largest group of violation by Greece brought under Article 9 are cases concerning Muslim minority rights where the European Court of Human Rights court unanimously found violations of religion.<sup>25</sup> One such case is *Serif v. Greece*, where the state appointment process of a Muslim religious leader, a Mufti, was challenged by an independently organized election at a mosque, where Mr. Ibrahim Serif, the applicant, was elected as Mufti of Rudopi by those in attendance, therefore challenging the state's prior appointment of another man as the community's religious leader.<sup>26</sup> As a result, Mr. Serif was convicted under the Greek Criminal

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<sup>22</sup> PSYCHOGIOPOULOU & ANAGNOSTOU, *supra* note 14, at 116.

<sup>23</sup> Greece, *supra* note 9.

<sup>24</sup> PSYCHOGIOPOULOU & ANAGNOSTOU, *supra* note 14, at 122.

<sup>25</sup> AROLD, *supra* note 17, at 132.

<sup>26</sup> *Serif v. Greece*, Eur. Ct. H.R. para. 49 (1999), <http://www.echr.coe.int>.

Code for outright claiming to be a minister of a certain religion and for publically dressing as such a minister without being entitled to do so.

Mr. Serif brought a claim to the European Court of Human Right claiming that his conviction interfered with his right to manifest his religion in front of others and hence violated his rights under Article 9 of the European Convention on Human Rights, specifically the right to “freedom of thought, conscience and religion...includ[ing] freedom to change his religion or belief and freedom, either alone or in a community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.”<sup>27</sup> Here the European Court of Human Rights ruled that “punishing a person for merely acting as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society” and the court awarded Mr. Serif 2,700,000 Greek drachmas, approximately USD 9,476.98, based on 2005 exchange rates, for pecuniary and non-pecuniary damages.<sup>28</sup>

There are several interesting facts about this case. First, the case was heard by a panel of three Eastern judges and four Western judges, comprised of three former judges, two former professors and two former public officials.<sup>29</sup> This makeup shows that even with such a diverse panel, the judges were all able to reach a consensus and find a violation of the freedom of religion. Second, the fact that the national judge from Greece, Rozakis, did not dissent supports the view that there is no tendency of national judges to defend their respective countries if a

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<sup>27</sup> See Subsection 2 of Article 9 also states that “freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.” EUROPEAN COURT OF HUMAN RIGHTS, *Council of Europe*, F-67075, Strasbourg cedex. June 1, 2010. available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>28</sup> *Serif v. Greece*, Eur. Ct. H.R. at para. 51; AROLD, *supra* note 17, at 132, 135; Anadolu News Agency, ‘Serif Donates Compensation to Greek Quake Survivors’, 21 July 2000.

<sup>29</sup> AROLD, *supra* note 17, at 133. (two of the judges came from the Anglo/Scandinavian region, two others from the Latin/Western Mediterranean region, one judge from the Western Central European region, one from the Eastern Central European region and one from the Latin/Western Mediterranean region).

violation of one of the freedoms is found.<sup>30</sup> This ensures that the trial is fair, especially to the minority victims. Third, although there was no reaction to the ruling in the Greek press, there was a reaction amongst the Turkish press as well as a BBC summary report on the case.<sup>31</sup> The Turkish press also confirmed a political reaction to the ruling when they reported on the Turkish foreign minister meeting with Mr. Serif and other Greek Muslim religious leaders to express his support.<sup>32</sup> This reaction by the Turkish media and foreign minister furthers the notion that the rulings of the European Court of Human Rights matter and not only to the country in question, but to other countries as well.

In a very similar series of cases a few years later titled *Agga v. Greece*, the Court dealt with an issue where the plaintiffs again presented themselves as the religious leaders of a group that willingly followed them despite the state appointing a new Mufti.<sup>33</sup> The court ruled that because the plaintiffs did not attempt to exercise judicial and administrative functions of the Mufti, and rather were just issuing messages of religious content that did not cause any religious disturbances, they were in turn acting within religious pluralism in a democratic society. Hence Greece violated Article 9 of the European Human Rights Convention when it convicted the plaintiffs of criminal offenses because their arrest was not needed for the protection of public order, especially when no disturbances of that order are to be found.

Here, the court is recognizing that misconduct with religious undertones should be afforded separate treatment from other punishable misconduct. The court does consider the implications of falsely claiming to be a religious leader on the legal relationships of people wishing to be married, however the court states that such a concern is not present in this case and

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<sup>30</sup> *Id.* at 134.

<sup>31</sup> *Id.*

<sup>32</sup> Reuters, 'Turkey's Cem Meets Rebel Greek Moslem Clerics', 4 February 2000.

<sup>33</sup> *Agga v. Greece*, Application no. 32186/02, July 13 2006. The European Court of Human Rights (First Section). available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-76317>.

hence they need not decide the issue.<sup>34</sup> Therefore, this is an issue that the court might not find to be a violation of Article 9 if it were to arise in the future because the state will then have a legitimate concern that warrants the conviction of those who falsely claim to be ministers in marriage ceremonies. When people decide to get married and pick a religious leader to officiate, they are under the impression that the religious leader performing the ceremony has the legal ability to do so. If that legal ability is not present, then their marriage ceremony is void and this becomes a legitimate concern of the state because the state regulates marriage.

In *Alexandridis v. Greece*,<sup>35</sup> the plaintiff, who was seeking admittance to practice as an attorney in the Athens Court of First Instance, was required under Greek Law to take a religious oath or make a solemn declaration by revealing his other religious beliefs and declaring that he is not a Greek Orthodox Christian before the court.<sup>36</sup> Here the court held that Greece violated Article 9 of the European Convention on Human Rights by requiring Mr. Alexandridis to reveal to the court that he was not a Greek Orthodox Christian.<sup>37</sup> Ultimately, the state received no reasonable or legal benefit by knowing what Mr. Alexandridis' religious affiliation is. The revelation of Mr. Alexandridis' religious status would not have affected his eligibility to be admitted to practice law in that particular courthouse.<sup>38</sup> Therefore this requirement is arbitrary and serves no legitimate state purpose, but instead violates a citizen's right to express his religious beliefs in the public or private sphere.<sup>39</sup> Once again the Court is giving deference to the

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<sup>34</sup> *Id.* at para. 57.

<sup>35</sup> See *Dimitras v. Greece*, Application Nos. 42837/06, 3269/07, 35793/07 and 6099/08. (*Dimitras v. Greece* is a more recent case, which also includes the plaintiff from this case, Mr. Alexandridis, however the court's opinion is in French and not available in an English translation).

<sup>36</sup> *Alexandridis v. Greece*, Chamber Judgment. Application No. 19516/06. February 21, 2008. available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"respondent":\["GRC"\],"documentcollectionid2":\["GRANDCHAMBER"\],"CHAMBER":\["CHAMBER"\],"violation":\["9","9-1"\],"itemid":\["001-85189"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{). (Greek Law presumes that attorneys and civil servants appearing before the court are Greek Orthodox Christians).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

applicant and placing a burden on the state to show that there is some legitimate need for the state court to know what the applicant's religion is. However, Greece in its very constitution declares the Greek Orthodox Church as the national religion, therefore it does not seem so clear that the state should not have the right to know which of its attorneys are not members of the majority religion.

Similarly, in *Thlimmenos v. Greece*, Mr. Iakovos Thlimmenos, a Jehovah's Witness, was denied appointment to the position of chartered accountant due to an earlier criminal conviction resulting from his refusal, due to religious beliefs, to obey the order to wear the military uniform.<sup>40</sup> Here, the Court did not explicitly decide if Greece had violated Article 9, but the Court did find a breach of Article 14<sup>41</sup> of the European Human Rights Convention when considered in conjunction with Article 9.<sup>42</sup> Mr. Thlimmenos was discriminated against because the law failed to distinguish between regular serious crimes that limit one's post to civil service and those serious crimes which result from one's exercise of his or her religious freedom.<sup>43</sup> The Court based its decision on its belief that the state must provide an objective and reasonable justification for discrimination, especially when the situation is greatly different as was the case here. Therefore, the court reasons that crimes committed due to religious beliefs should be afforded different treatment from crimes committed for other reasons. This leads to the presumptions that religious beliefs are somehow special and should be afforded separate treatment, which coincides with the court's ruling in *Alexandridis v. Greece*, where one's

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<sup>40</sup> *Thlimmenos v. Greece*. Application no. 34369/97. April 6, 2000. available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58561>.

<sup>41</sup> Article 14 of the European Convention on Human Rights states that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." EUROPEAN COURT OF HUMAN RIGHTS, *Council of Europe*, art. 14. June 1, 2010. available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>42</sup> *Thlimmenos v. Greece*, Application no. 34369/97.

<sup>43</sup> *Id.*

religious affiliation should be separated from application to practice law in a particular courthouse.

The European Court of Human Rights does not hear applications brought only by individuals, it also considers applications by religious facilities. In the *Case of Canea Catholic Church v. Greece*, the Canea Catholic Church was estopped from bringing a claim in regard to property rights to the courts due to a question of legal personality.<sup>44</sup> The court here concluded that the Canea Catholic Church suffered discrimination within the meaning of Article 14 because the plaintiff was prevented from bringing legal proceedings for the protection of its land and buildings, while the Orthodox Church, as well as the Jewish community do not have such restrictions.<sup>45</sup> This is a clear discrimination between religious denominations because the facility of a minority denomination cannot do what the religious majority can do to protect its property rights.

In the *Case of Valsamis v. Greece*, Ms. Victoria Valsamis, an elementary student and a Jehovah's Witness, was denied her request to be exempt from the National Day parade by the school authorities, which was being held on the same day as the military parade.<sup>46</sup> Ms. Valsamis's religious beliefs "forbade her [from] joining in the commemoration of a war by taking part, in front of the civil, Church and military authorities, in a school parade that would follow an official Mass and would be held on the same day as a military parade."<sup>47</sup> Ms. Valsamis had already been granted her original request to be excused from religious-education lessons and Orthodox Mass due to her religious beliefs. This request for an exception, which was

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<sup>44</sup> *Case of Canea Catholic Church v. Greece*, Court A, November 29, 1997. available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58124>.

<sup>45</sup> *Id.*

<sup>46</sup> *Case of Valsamis v. Greece*, Application no. 21787/93, December 18, 1996. available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58011>.

<sup>47</sup> *Id.* at para. 9.

granted to her by the school officials, is in conformity with Article 9 because it would have violated her freedom of religion if she was forced to attend religious-education lessons and Orthodox Mass.<sup>48</sup> The majority of the court ruled that her request to be exempt from the National Day parade solely because it occurred on the same day as the military parade did not offend her religious beliefs and therefore did not violate her right to freedom of religion under Article 9.<sup>49</sup> However, two out of the nine judges dissented, stating that if Ms. Valsamis sees the parade as having character and symbolism that is contrary to her pacifist and religious beliefs, the court should accept her judgment, regardless of the fact that the National Day parade for most people is just an “expression of national values and unity.”<sup>50</sup> The notion that freedom of religion violations are not always easy to determine has been brought up so far and a lot of deference is given to prior handling of religious accommodations.

What makes the cases listed above interesting is the vast amount of issues that arise under a violation of freedom of religion. It is not simply one not being allowed to practice his religion, but also pertains to one being forced to divulge his religious beliefs, or one facing suspension if he or she does not participate in a parade. Furthermore freedom of religion does not only pertain to individuals but it also pertains to religious groups as a whole that have been harmed. In the cases above, the applicants were all citizens of Greece and yet none of them belonged to the national religion. Since the establishment of religion there have always existed minorities who have been persecuted by the majority denomination and the cases above are no exception. The only difference is that today the majority denomination uses the state as a vehicle to further its religious beliefs and suppress the minority groups. However, the establishment of the European Court of Human Rights is a small step in the right direction. Even though the Court does not

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* Dissenting Opinion.

have a real enforcement mechanism, it has been successful of implementing some real change in these states, even if it took a few decades to see the results.

#### IV. Case Law-Russia

Prior to the 1917 Russian revolution, the Russian Orthodox Church followers comprised 72% of the population of 125 million and the remaining 28% of the population followed Islam, Protestantism, Roman Catholicism, Buddhism and Baptist evangelicalism.<sup>51</sup> The new Soviet state however abolished the Russian Orthodox Church as the national religion and implemented equality among all religions with no privileges being given to one religion over the other.<sup>52</sup>

Article 14 of the Constitution of Russia states that “no religion may be established as the State religion” and that “religious associations shall be separate from the state and shall be equal before law.”<sup>53</sup> To further this goal, in 1997, Russia enacted the Law on Freedom of Conscience and Religious Associations (“the Religions Act”) which required all religious associations previously granted legal-entity status to conform to various provisions of the Act and request re-registration from the Justice Department.<sup>54</sup> Following this act, sixty-nine cases have been filed in Russia alleging amongst other claims, harassment and denial of a place to worship, criticism

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<sup>51</sup> GEORGE MCKAY, *SUBCULTURES AND NEW RELIGIOUS MOVEMENTS IN RUSSIA AND EAST-CENTRAL EUROPE* 228 (Oxford: P. Lang 2009).

<sup>52</sup> *Id.* at 228.

<sup>53</sup> THE CONSTITUTION OF THE RUSSIAN FEDERATION, December 12, 1993, art 14. (the Russian Federation shall be a secular state/ No religion may be established as the State religion or as obligatory).

<sup>54</sup> MCKAY, *supra* note 51, at 240. (McKay states that even though this new law was passed by the Russian parliament, with a vote of 358 to 6, the law was heavily backed by the Russian Orthodox Church and hence Russia is not neutral and instead favors the Russian Orthox Church above other religions in the state); *See also* Robert C. Blitt, *Russia's "Orthodox" Foreign Policy: The Growing Influence of the Russian Orthodox Church in Shaping Russia's Policies Abroad*, 33 U. PA. J. INT'L L. 363, 417-418 (2011).

of their international leaders, issues with re-registration, use of violence and prohibitions on charity work.<sup>55</sup>

In February 2010, the Russian government bought a plot of land for ninety million dollars near the Eiffel Tower in France where it plans to build a new “Russian spiritual and cultural center.”<sup>56</sup> Furthermore, the Russian government wanted to be the highest bidder and stated that the sale of the land to anyone else other than them would be an ‘unfriendly act.’<sup>57</sup> At the close of the transaction an international architectural competition was opened for the submittal of the best design of the first Russian Orthodox cathedral in France.<sup>58</sup> Hence, the Russian government’s commitment to spending ninety million dollars on the promotion of one faith outside its borders signals that in Russia, the term spiritual translates into Russian orthodoxy alone and not into Buddhism, or Islam or Judaism.<sup>59</sup> Furthermore, the Russian government allows only the Russian Orthodox Church, and no other religious group, to build up its revenue by importing duty-free tobacco and liquor for sale to the public.<sup>60</sup> By granting funds and special privileges, the Russian government, even though it claims to be secular, clearly favors the Russian Orthodox Church. As was the case in Greece, the applications brought against Russia in the European Court of Human Rights that claim violations of Article 9 and 10 are being brought by the religious

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<sup>55</sup> MCKAY, *supra* note 51, at 238. (out of the sixty-nine cases, thirty seven were filed by Protestants, eleven by foreign organizations, eight by Catholics and five by ‘cults.’ Furthermore, nineteen of these cases “involved harassment and denial of a place to worship; fourteen led to criticism of their international leaders; eight had problems with registration; eight involved prohibitions on their charity work and finally eight cases led to the use of violence. The largest number of cases were in the Moscow region (twenty) and the Far East(nine)”).

<sup>56</sup> Matthew Campbell, Onion Domes to Rise in Paris, *The Times of London*, June 6, 2010.

<sup>57</sup> *Id.*

<sup>58</sup> *See* International Contest for Best Design of Russian Orthodox Religious and Cultural Center Announced in Paris, Dep’t for External Church Rel. of the Russian Orthodox Church (Oct. 1, 2010), <http://www.mospat.ru/en/2010/10/01/news27203/> (announcing that the design of the cathedral will be determined by contest).

<sup>59</sup> Blitt, *supra* note 54, at 418.

<sup>60</sup> Robert C. Blitt, *How to Entrench a De Facto State Church in Russia: A Guide in Progress*, B.Y.U.L.Rev. 707, 722 (2008).

minorities and not by those belonging to the Russian Orthodox Church, the dominant religion of Russia.

The Jehovah's Witnesses of Moscow were not allowed to re-register under the Religions Act and after exhausting all domestic remedies filed an application with the European Court of Human Rights.<sup>61</sup> The Russian courts had upheld the Justice Department's decision not to grant the re-registration to the Jehovah's Witnesses of Moscow because the community had been damaging the health of its followers by teaching them to refuse blood transfusions.<sup>62</sup> In the *Case of Jehova's Witnesses of Moscow and Others v. Russia*, the European Court of Human Rights reiterated its past ruling and stated that under the Convention the state does not have the power to determine which religious beliefs are to be taught and which not because freedom of religion as granted under Article 9 of the European Convention on Human Rights prohibits the states from passing judgment on the legitimacy of religious beliefs.<sup>63</sup>

Similarly, in the *Case of Church of Scientology Moscow v. Russia*, the court found that Russia violated Article 9 of the European Convention on Human Rights when it denied the re-registration of the applicant branch without a legal basis.<sup>64</sup> In both of these cases the applicant religious group had complied with the Act, but the Russian government denied the several re-registration applications of the group in each resubmitted application because of a different non-legal reason. Therefore, it can be implied that the rights of these minority groups to re-register their religious organization have been violated on purpose by the Russian government and hence they are entitled to protection by the European Court of Human Rights.

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<sup>61</sup> See generally *Case of Jehova's Witnesses of Moscow and Others v. Russia*, Application no. 302/02, 10 June 2010.

<sup>62</sup> *Id.* at para. 143.

<sup>63</sup> *Id.* at para 141. (previous ruling was *Manoussakis and Others v. Greece*, 26 September 1996).

<sup>64</sup> *Case of Church of Scientology Moscow v. Russia*, Application no. 18147/02, para 97-8, April 5, 2007.

In the *Case of Nolan and K v. Russia*, the appellant claims that his exclusion from Russia resulted as a penalty for manifesting and spreading the views of the Unification Church.<sup>65</sup> The Russian government did not provide any plausible justification as to why it believed that the appellant's religious beliefs and activities affected the rights and freedoms of Russian citizens.<sup>66</sup> Therefore the court concluded that the Russian government did not advance a legal and factual justification for Mr. Nolan's exclusion from Russia as they relate to his religious activities and hence violated Article 9 of the Convention.<sup>67</sup> Here, the Court dwells on the notion that not only does the state need to provide a justification for its actions, but it also needs to have plausible legal basis in support of those justifications. This two prong requirement serves as a deterrent to states who intentionally violate the freedom of religion rights belonging to the religious minorities within their borders.

On the other hand, there are instances where the state acts with a legal basis in curtailing freedom of religion and the European Court of Human Rights upholds the state's decision. In the *Case of Kasymakhunov and Saybatalov v. Russia*, the plaintiffs are members of Hizb ut-Tahrir al-Islami,<sup>68</sup> an international Islamic organization named as one of the fifteen terrorist organizations by the Supreme Court of the Russian Federation on February 14, 2013 and they alleged that their arrest violated Article 9, amongst other allegations.<sup>69</sup> The court found that a group whose goal is to bring about the destruction of democracy, and in turn destroy the rights and freedoms set forth in the European Human Rights Convention, can not rely on the protection of Article 9 of the Convention when the group holds views and has aims contrary to the values of

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<sup>65</sup> Case of Nolan K. v. Russia, Application no. 2512/04, February 12, 2009. *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-91302>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Hizb ut-Tahrir al-Islami is an International Islamic organization that promotes the overthrow of current governments and their subsequent replacement by an Islamic state.

<sup>69</sup> Case of Kasymakhunov and Saybatalov v. Russia, Application nos. 26261/05 and 26377/06, March 14, 2013. *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117127>.

the Convention, including “the commitment to the peaceful settlement of international conflicts and to the sanctity of human life.”<sup>70</sup> Here, the court takes the time to remind everyone the importance of democracy and religious freedom and that one must promote such views in order to gain the protection of the Court.

These four cases highlight the courts thinking in relation to claims of violations of freedom of religion by its member states. Although it is important for the applicant to have exhausted all available domestic remedies, the applicant must also hold the same views and values of the Convention. The applicant religious group cannot seek security and protection if the group’s ultimate goal is to destroy democracy or threaten national and public security. Furthermore, amongst the applications there is a pattern of claims stemming from minority religious groups and no claims from the dominant religious group, the Russian Orthodox Church. This signifies that when a dominant religious group exists, everyone else will simply just be a minority and hence their rights and entitlements come second, as was evidenced by the Russian government’s growing support of the Russian Orthodox Church. Lastly, the Court gives deference to the minority religious groups and not to the government’s justification of its actions. This furthers the notion that the government must have a valid legal reason to curtail rights provided under freedom of religion and cannot simply violate these rights because the group in question is a religious minority group. Otherwise, the state would be allowed to discriminate and outlaw any religious group that no longer suits their interests and goals.

## **V. Freedom of Expression**

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms protects freedom of expression but it also includes a limitation clause in

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<sup>70</sup> *Id.*

a case of several instances, such as national security, territorial integrity and necessities in a democratic society.<sup>71</sup> Freedom of expression has its roots in the Greek and Roman republics where freedom of expression was seen as a necessary element to guarantee democracy.<sup>72</sup> The European Court of Human Rights relates the right to freedom of expression to “its functional contribution to democratic society.”<sup>73</sup> Furthermore, the United Nations Human Rights Committee agrees that every democratic society needs freedom of expression, which is “essential for the promotion and protection of human rights.”<sup>74</sup> The relationship between democracy and freedom of expression is important because the democratic process stems from the “free exchange of information and public discussion.”<sup>75</sup> The association between freedom of expression and democracy has led the United Nations to include freedom of expression as a universal human right under the 1948 Universal Declaration of Human Rights.<sup>76</sup>

However, freedom of expression does have limits as prescribed by section two of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of

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<sup>71</sup> Convention on the Protection of Human Rights and Fundamental Freedoms, art. 10, Nov. 11, 1950, C.E.T.S. No. 5. Article 10: Freedom of Expression. 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

<sup>72</sup> Catherine Bratic, Student Note, *A Comparative Approach to Understanding Developments in Privacy Rights in the European Court of Human Rights*, 19 COLUM. J. EUR. L. 341, 345 (2013).

<sup>73</sup> *Id.* at 352.

<sup>74</sup> UN Human Rights Comm., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, PP 2-3, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).

<sup>75</sup> Clare Boronow, Note, *Silencing the Media in Sri Lanka: How the Sri Lankan Constitution Fuels Self-Censorship and Hinders Reconciliation*, 53 VA. J. INT'L L. 725, 728 (2013).

<sup>76</sup> Universal Declaration of Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., at 71. U.N. DOC. A/810 (1948).

health or morals, for the protection of the reputation of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 18 of the International Covenant on Civil and Political Rights also follows in the footsteps of Article 10 of the European Convention and limits freedom of expression if so necessary to protect national security and to respect the rights of others.<sup>77</sup> Freedom of expression can be limited in cases of religious defamation as well. For example, article 13 of the American Convention on Human Rights makes advocacy of religious hatred punishable by law.<sup>78</sup>

Although a majority of the international resolutions regarding religious defamation are aimed specifically at protecting the sanctity of Islam, other religious groups also use the notion of defamation of religion as a means of preventing strangers from criticizing or mocking their religious beliefs.<sup>79</sup> For example, in *Otto Preminger Inst. v. Austria*, the European Court of Human Rights allowed the Austrian government to seize a film based on the necessity to ensure religious peace in their country.<sup>80</sup> If the film had been shown it would have offended the Catholic religion and the religious feelings of the people of Tyrol, and here the court found that the hurt to the people of Tyrol and need for religious peace outweighed any benefits of freedom of expression that were claimed by the film producers.<sup>81</sup>

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<sup>77</sup> International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 999 U.N.T.S. 171. (Paragraph 3 states that the “[f]reedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”).

<sup>78</sup> American Convention on Human Rights art. 13, Nov. 22, 1969, 1144 U.N.T.S. 123. (Paragraph 5 states that “[a]ny propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”).

<sup>79</sup> Nicole McLaughlin, *Spectrum of Defamation of Religion Laws and the Possibility of a Universal International Standard*, 32 LOY. L.A. INT’L & COMP. L. REV. 395, 397 (2010).

<sup>80</sup> *Otto Preminger Inst. V. Austria*, App. No. 13470/87, 295 Eur. Ct. H.R. para. 48 (1994).

<sup>81</sup> *Id.* at para. 57.

Similarly, in *Wingrove v. United Kingdom*, the European Court of Human Rights allowed censorship of pornographic material that was “blasphemous” to Christianity.<sup>82</sup> The film, titled “Visions of Ecstasy” involved erotic scenes between Jesus and St. Theresa d’Avila, and such depictions of Jesus are punished under the criminal law of blasphemy in the United Kingdom.<sup>83</sup> Here, the court states that within the freedom of expression “in the context of religious belief, may legitimately be included a duty to avoid as far as possible an expression that is, in regard to object of veneration, gratuitously offensive to others and profanatory.”<sup>84</sup> Lastly, in *Faurisson v. France*, the U.N. Human Rights Commission held that persecution of those voicing anti-Semitic views was a valid restriction on free speech.<sup>85</sup> The introduction of the Gayssot Act in France was intended to deal with the problem of racism and anti-Semitism in the country, so that the Jewish community can live free from fear of anti-Semitic surroundings.<sup>86</sup>

The leading case in regard to religious defamation in Greece is *Kokkinakis v. Greece*.<sup>87</sup> Here, the applicant was arrested in excess of sixty times over his life span for proselytism, conscientious objection and holding a religious meeting in a private house.<sup>88</sup> Additional examples, among many others, of what the Greek Courts have labeled as proselytism are those who preach while displaying a painting showing a crowd of wretched people in rags, offered a

<sup>82</sup> *Wingrove v. United Kingdom*, App. No. 17414/90, 24 Eur. H.R. Rep. 1 (1996).

<sup>83</sup> *Id.* at para. 19.

<sup>84</sup> *Id.* at para. 52.

<sup>85</sup> *Faurisson v. France*, Judgment, U.N. Human Rights Comm., Commc'n No. 550/1993, U.N. Doc. CCPR/C/58/D/550/1993 (Dec. 16, 1996).

<sup>86</sup> *Id.* at para 9.6-7.

<sup>87</sup> See generally *Kokkinakis v. Greece*, App. No. 14307/88 (1993). available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57827#{"itemid":\["001-57827"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57827#{).

<sup>88</sup> *Id.* at para. 6. (the Supreme Administrative Court of Greece gave the following definition of proselytism: “ Article 1 of the Constitution, which establishes the freedom to practice any known religion and to perform rites of worship without hindrance and prohibits proselytism and all other activities directed against the dominant religion, that of the Christian Eastern Orthodox Church, means that purely spiritual teaching does not amount to proselytism, even if it demonstrates the errors of other religions and entices possible disciples away from them, who abandon their original religions of their own free will; this is because spiritual teaching is in the nature of a rite of worship performed freely and without hindrance. Outside such spiritual teaching, which may be freely given, any determined, importunate attempt to entice disciples away from the dominant religion by means that are unlawful or morally reprehensible constitutes proselytism as prohibited by the aforementioned provision of the Constitution.”).

scholarship for study abroad to those that would ascribe to their faith, promised an employee an improvement in position if she left the Orthodox Church, and distributed religious booklets to young schoolchildren.<sup>89</sup> The European Court of Human Rights stated that “the Court must weigh the requirements of the protection of the rights and liberties of others against the conduct of which the applicant stood accused.”<sup>90</sup> The Court ruled that Greece violated Article 9 here because the state did not specify in what way exactly the applicant attempted to convince his neighbor by improper means to leave his own faith and hence “pressing social need is required in order to criminalize religious proselytizing.”<sup>91</sup>

The United Nations has seen both sides of the argument in regards to religious defamation.<sup>92</sup> For example, this precise dilemma was seen during the UN General Assembly meeting in September 2012 which amongst other matters discusses the controversial video titled “Innocence of Muslims” which portrayed a person of Islamic faith in a very offensive manner.<sup>93</sup> The United States did not vote to ban the film because the film falls under the free speech protections of the First Amendment of the Bill of Rights. However, other state leaders claimed the video disrespects religious beliefs and insults the people of the Islamic faith.<sup>94</sup> Although no consensus has been reached on religious defamation, the UN independent experts on issues of freedom of expression and freedom of religion agree that the international human rights regime as it stands does not ban speech solely because it offends religious sensibilities of others.<sup>95</sup>

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<sup>89</sup> *Id.* at para. 18.

<sup>90</sup> *Id.* at para. 47.

<sup>91</sup> *Id.* at para. 49.

<sup>92</sup> G.A. Res. 4/9, U.N. Doc. A/HRC/4/123 (Mar. 30, 2007); G.A. Res. 7/19, Combating Defamation of Religions, U.N. Doc. A/RES/7/19 (Mar. 27, 2008); U.N. Human Rights Council Decision 1/107, Incitement to Racial and Religious Hatred and the Promotion of Tolerance, U.N. Doc. A/HRC/DEC/1/107 (Nov. 13, 2006).

<sup>93</sup> Evelyn M. Aswad, *To Ban or Not to Ban Blasphemous Videos*, 44 GEO. J. INT’L L. 1313, 1314 (2013).

<sup>94</sup> *Id.* at 1314.

<sup>95</sup> *Id.* at 1328.

## VI. Conclusion

In summary, in *Serif v. Greece*, the court ruled that “punishing a person for merely acting as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of religious pluralism in a democratic society.”<sup>96</sup> However, the court did consider the implications of falsely claiming to be a religious leader on the legal relationships of people wishing to be married and this is an issue that the Court might not find as a violation of Article 9 if it were to arise. In *Alexandris v. Greece*, the state received no reasonable or legal benefit by knowing what Mr. Alexandridis’ religious affiliation is and therefore violated his Article 9 rights when it asked him to reveal his religious affiliation on the application to practice law.<sup>97</sup> In *Thlimmenos v. Greece*, Mr. Thlimmenos was discriminated against because the law failed to distinguish between regular serious crimes that limit one’s post to civil service and those serious crimes which result from one’s exercise of his or her religious freedom.<sup>98</sup> In the *Case of Canea Catholic Church v. Greece*, the court concluded that the Canea Catholic Church suffered discrimination within the meaning of Article 14 because the applicant was prevented from bringing legal proceedings for the protection of its land and buildings, while the Orthodox Church, as well as the Jewish community did not have such restrictions.<sup>99</sup> And in the *Case of Valsamis v. Greece*, the court ruled that her request to be exempt from the National Day parade solely because it occurred on the same day as the military parade did not offend her religious beliefs and therefore did not violate her right to freedom of religion under Article 9.<sup>100</sup>

In the *Case of Jehova’s Witnesses of Moscow and Others v. Russia*, the European Court of Human Rights reiterated its past ruling and stated that under the Convention the state does not

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<sup>96</sup> *Serif v. Greece*, Eur. Ct. H.R. at para. 51.

<sup>97</sup> *Alexandridis v. Greece*, Chamber Judgment. Application No. 19516/06.

<sup>98</sup> *Thlimmenos v. Greece*. Application no. 34369/97.

<sup>99</sup> *Case of Canea Catholic Church v. Greece*, Court A, November 29, 1997.

<sup>100</sup> *Case of Valsamis v. Greece*, Application no. 21787/93.

have the power to determine which religious beliefs are to be taught and which not because freedom of religion as granted under Article 9 of the European Convention on Human Rights prohibits the states from passing judgment on the legitimacy of religious beliefs.<sup>101</sup> Similarly, in the *Case of Church of Scientology Moscow v. Russia*, the court found that Russia violated Article 9 of the European Convention on Human Rights when it denied the re-registration of the applicant branch without a legal basis.<sup>102</sup> In the *Case of Nolan and K v. Russia*, the court concluded that the Russian government did not advance a legal and factual justification for Mr. Nolan's exclusion from Russia as they relate to his religious activities and hence violated Article 9 of the Convention.<sup>103</sup> Lastly, in the *Case of Kasymakhunov and Saybatalov v. Russia*, the court found that a group whose goal is to bring about the destruction of democracy, and in turn destroy the rights and freedoms set forth in the European Human Rights Convention, can not rely on the protection of Article 9 of the Convention when the group holds views and has aims contrary to the values of the Convention, including "the commitment to the peaceful settlement of international conflicts and to the sanctity of human life."<sup>104</sup>

The European Court of Human Rights has decided numerous cases dealing with the violations of Article 9 and Article 10 of the European Convention on Human Rights. These Articles guarantee freedom of religion and freedom of expression, respectively. This paper not only examined the cases where violations of the Articles have been found, but it also looked at the cases where the court decided no violations were found. The Court placed a large emphasis on section 2 of Article 10 which imposed limits on the curtailments of the freedom of expression, as well as freedom of religion. Even though the Court did acknowledge that these limitations did

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<sup>101</sup> *Case of Jehova's Witnesses of Moscow and Others v. Russia*, Application no. 302/02.

<sup>102</sup> *Case of Church of Scientology Moscow v. Russia*, Application no. 18147/02.

<sup>103</sup> *Case of Nolan K. v. Russia*, Application no. 2512/04.

<sup>104</sup> *Case of Kasymakhunov and Saybatalov v. Russia*, Application nos. 26261/05 and 26377/06.

exist, the court reemphasized that these limitations are to be used sparingly and on a case by case basis. Given the historical adverse treatment of minority groups, the Court gave deference to these applicants and placed the burden on the state to show why the government did not violate the articles, rather than placing the burden on the applicant to show that the government did violate the articles. Given the fact that most of these cases occurred within the past two decades raises an alarming issue that needs to be addressed by the society. The cases mentioned above point to the fact that the society has not progressed so much as it claims to have. Unless a new system is developed, religious minorities will continue to be oppressed by the states and not much security and protection will be provided to them.