THIRD SECTION

DECISION

Application no. 9025/15
DIETHNIS AKADIMIA AGIOS KOSMAS O AITOLOS
against Greece

The European Court of Human Rights (Third Section), sitting on 12 December 2023 as a Committee composed of:

 Yonko Grozev*, President*,
 Ioannis Ktistakis,
 Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy* *Section Registrar,*

Having regard to:

the application (no. 9025/15) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 12 February 2015 by Diethnis Akadimia Agios Kosmas O Aitolos (“the applicant organisation”), registered in 2000 and based in Paliampela in Vonitsa at Aitoloakarnania in Greece and was represented by Mr K. Charanas, a lawyer practising in Athens;

the decision to give notice of the application to the Greek Government (“the Government”), represented by their Agent’s delegates, Mr K. Georgiadis, legal counsellor, and Ms A. Dimitrakopoulou, senior adviser at the State Legal Council;

the parties’ observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1.  The application concerns an alleged violation of Article 9 § 1 of the Convention because of the dismissal of the applicant organisation’s action for annulment against the revocation of the operating licence and the closure of a church.

2.  By notarial deed no. 537 of 10 November 1980 the former community of Paliampela in Vonitsa of Aitoloakarnania donated to the applicant organisation, an association chaired by A.P. (monastic name A.), a land plot of 2,500 square metres (sq. m) where the church of 90 sq. m was built. By notarial deed no. 88 of 7 October 2008 the applicant organisation donated the above property to the Municipality of Anaktorio, on condition that the latter would contribute to the functioning of the applicant organisation, including contribute to certain celebrations, such as the annual celebration of Agios Kosmas Aitolos. The applicant organisation retained the right to shared use of the church.

3.  In 2008 the Metropolitan bishop of Aitolia and Akarnania (“the Bishop”) consecrated the church in accordance with the rites of the Orthodox Church of Greece.

4.  In 2012 A.P. joined the Church of Old Calendarists. By act no. 55 of 16 August 2012 the Bishop revoked the licence of the church, banned its operation and ordered its closure. The act stated that the privately owned church of Agios Kosmas Aitolos had ceased to serve its purpose, namely to run the annual holy celebration and operate on other occasions when the Bishop granted leave. The reason for that was that it was not run by a lawful and regular cleric of the Orthodox Church, under the direction of the Bishop, but by a schismatic priest. The act aimed at protecting the ecclesiastical order and preventing the misleading of the believers of the Greek Orthodox Church, since the church was operated by a schismatic religious community.

5.  The act cited Regulation no. 8/1979 on “Churches and Parishes”. Article 13 § 1 of the Regulation provided that privately owned churches could be built upon an authorisation of the competent bishop and operate under his authority. In accordance with Article 13 § 2, privately owned churches remained property of, and were managed by, their owners, provided that they served the religious needs of the owners and their family. Their closure could be ordered if they: a) were constructed or operated without the relevant authorisation of the bishop; b) opened for public worship; and c) ceased to serve their intended purpose.

6.  By letter no. 746 of 22 August 2012 the Bishop prohibited A.P. to perform sacred acts and participate in religious gatherings in the metropolitan region on the ground that he had joined the schismatic Church of Old Calendarists and had cut any spiritual relation with the Orthodox Church.

7.  The applicant organisation lodged an application for annulment of act no. 55 of 16 August 2012 before the Supreme Administrative Court. By judgment no. 2750/2014 the Supreme Administrative Court dismissed the applicant organisation’s action. It ruled that the act was lawful and sufficiently reasoned. In particular, it was not contested that the church was founded and licensed to operate as a church of the Orthodox Church of Greece; therefore once its functioning was pursued under a different religious community, it ceased to serve its purpose, namely the religious needs of those belonging to the Orthodox Church. It also held that freedom of religion enshrined in Article 13 of the Constitution and Article 9 of the Convention included the freedom to change religion or belief, but from this no right could be derived for the one who changed his beliefs to use a church founded to serve the needs of the religious community which he had left. The prohibition to use a church founded under the rules of one religious community for another community cannot be considered contrary to the principle of proportionality. As the act was based on objective elements which were not contested by the application for annulment, there was no obligation to invite the applicant association to be heard.

8.  The applicant organisation complained under Article 9 of the Convention that as the church had been founded to serve the religious needs of the applicant organisation’s chair, board and members and as these needs coincided with the annual celebration of Agios Kosmas Aitolos, the Supreme Administrative Court’s refusal to annul the revocation of the licence violated its freedom of religion.

1. THE COURT’S ASSESSMENT

9.  The Government raised objections of the lack of victim status and failure to exhaust domestic remedies because the applicant organisation did not attempt to obtain an authorisation for the church to function lawfully. The Court does not consider it necessary to examine these objections as the application is in any event inadmissible for the reasons stated below.

10.  According to the Court’s case-law, Article 9 protects, in principle, the right to use the places or buildings devoted to religious worship. Issues relating to the operation of religious buildings may, in certain circumstances, have a significant impact on the exercise of the right of members of religious groups to manifest their religious beliefs (see *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfi v. Turkey*, no. [32093/10](https://hudoc.echr.coe.int/eng%22%20%5Cl%20%22%7B%22appno%22%3A%5B%2232093/10%22%5D%7D%22%20%5Ct%20%22_blank), § 41, 2 December 2014).

11.  While the Convention does not guarantee the right to be given a place of worship as such (see *Griechische Kirchengemeinde München and Bayern E.V. v. Germany* (dec.), no 52336/99, 18 September 2007), restrictions on establishment of places of worship may constitute an interference with the right guaranteed by Article 9 (see, for example, *Association for Solidarity with Jehovah’s Witnesses and Others v. Turkey*, nos. 36915/10 and 8606/13, §§ 90 and 91, 24 May 2016).

12.  Furthermore, Article 9 does not guarantee any right to dissent within a religious body. In the event of a disagreement over matters of doctrine or organisation between a religious community and one of its members, the individual’s freedom of religion is exercised through the freedom to leave the community (see *Sindicatul “Păstorul cel Bun” v. Romania [GC]*, no. 2330/09, § 137, ECHR 2013 (extracts)).

13.  The Court next reiterates that in addition to the primarily negative undertaking by the State to abstain from any interference with the rights guaranteed by the Convention, there “may be positive obligations inherent” in such rights. While the boundaries between the State’s positive and negative obligations under the Convention do not lend themselves to precise definition, the applicable principles are nonetheless similar. In the present case the Court considers that it is not necessary to examine further whether Article 9 also imposed positive obligations on the Greek authorities (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, §§ 96-97, 26 April 2016). The Supreme Administrative Court’s dismissal of the application to annul the Bishop’s act can be construed as a restriction of the right to manifest one’s religion within the meaning of Article 9 § 2 of the Convention in so far as the applicant organisation had lost the right to shared use of the church which they had maintained after its transfer to the Municipality(see paragraph 2 *in fine* above).

14.  The parties agree that the church had been licensed by the Greek Orthodox Church to operate and that in 2008 the Bishop consecrated the church in accordance with the rites of the Orthodox Church of Greece (see paragraph 3 above). The Court notes that the interference in question was prescribed by law as the act in question was issued in accordance with Article 13 of Regulation no. 8/1979. As the parties agree, A.P. converted in 2012 to the Old Calendarists Church. It thus appears justified that a priest belonging to a different religious community could not have continued to serve the church’s purpose, namely to care for the religious needs of those belonging to the Orthodox Church of Greece, such as celebration of the annual rites.

15.  It remains to be considered whether the measure taken at national level, and in particular the Supreme Administrative Court’s decision, was justified in principle and proportionate (see, for instance, *Manoussakis and Others v. Greece,* 26 September 1996, Reports 1996-VI, p. 1364, § 44).

16.  The decision was justified on the basis of the protection of the rights and freedoms of others and preserving public order, in so far as the measure aimed to prevent the unauthorised service at the church by the minister of a different denomination.

17.  In particular, as regards the applicant’s argument that there was no dogmatic or liturgical difference between the two Churches and that A.P. was not schismatic, the Court observes that it is not for the Court to express an opinion on the differences between the dogma of the two Churches (see, *mutatis mutandis, İzzettin Doğan and Others*, cited above, §§ 69-70). Hence, the Court attaches weight to the declaration added in the minutes of the Greek Constitution of 1975 providing that the Old Calendarists may exercise their worship without being hindered (see *Vergos v. Greece*, no. 65501/01, §§ 21‑22, 24 June 2004), their church is autocephalous and administratively autonomous. At the same time, the Orthodox Church of Greece is organised according to its Constitutional Chart, set up by a law voted by the parliament, and the religious community of the Old Calendarists is thus outside of the Church of Greece.

18.  Moreover, the Government invoked judgment no. 493/1997 of the Supreme Administrative Court stating that the Old Calendarists constituted their own religious community, administratively detached from the Greek Orthodox Church. It differs from the latter as regards issues relating to the calendar and the dates of celebrations. They also invoked opinion no. 2/2005 of the Vice-President of the Court of Cassation that the Old Calendarists founded and managed their own communities distinct from the Church of Greece, and their worship (*λατρεία*) was carried out according to their own beliefs, notwithstanding whether this constitutes a derogation from the dogma of the Church of Greece. The differences as regards the calendar and the time of celebrations are linked to the tenacious conviction that the Old Calendarists are obliged to worship God only at a specific time. They are thus a separate religious community and as such an independent known religion.

19.  As noted by the domestic court, the prohibition to use a church founded in accordance with the rules of a certain religious community for the needs of another community cannot be considered as contrary to the principle of proportionality. Moreover, as the Government pointed out, the establishment, construction, or operation of a church or house of worship of any doctrine or religion other than the Orthodox Church of Greece, shall not require an authorisation or opinion from the Orthodox Church of Greece. Such an application is submitted to the Ministry of National Education and Religious Affairs and not to the relevant ecclesiastical authority.

20.  The Court considers that, in the circumstances of the present case, the revocation of the licence and the closure of the church, after its chair converted to a different religious community, and did not thus have a lawful right to use in that capacity, did not amount to an unjustified interference with the applicant organisation’s right to freedom of religion. Given the requirements of domestic law on the authorisation for a church to operate, the Supreme Administrative Court’s decision in respect of what it considered to be an unlawful operation of the church belonging to the Orthodox Church of Greece does not appear either arbitrary or excessive. Taking into account the above, the Court considers that the impugned decision did not constitute an unjustified interference with the applicant association’s right to practice religion, as it did not restrict their right to obtain a licence to operate as a place of worship for the Old Calendarists on the conditions provided for by law (see, *mutatis mutandis*, *Lupeni Greek Catholic Parish and Others v. Romania*, no. 76943/11, § 136, 19 May 2015).

21.  Accordingly, the application is manifestly ill‑founded and should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 25 January 2024.

 Olga Chernishova Yonko Grozev
 Deputy Registrar President