

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PAPAGEORGIOU AND OTHERS v. GREECE

(Applications nos. 4762/18 and 6140/18)

JUDGMENT

Art 2 P1 • Respect for parents' religious convictions • Parents obliged to submit solemn declaration, with teacher's countersignature, as to non-Orthodox Christian status of children for exemption from religious education course

STRASBOURG

31 October 2019

FINAL

31/01/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Papageorgiou and others v. Greece,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President,*
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Tim Eicke,
Jovan Ilievski, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 24 September 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 4762/18 and 6140/18) 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") by five Greek nationals ("the applicants"), whose name appear in the annexed list, on 5 and 8 January 2018 respectively.

2. The applicants were represented by Mr V. Sotiropoulos, a lawyer practising in Athens. The Greek Government ("the Government") were represented by their Agent's delegates, Mr K. Georghiadis, Senior Advisor to the State Legal Council, and Mrs A. Magrippi, Legal Assistant at the State Legal Council.

3. The applicants alleged violations of Articles 8, 9 and 14 of the Convention and of Article 2 of Protocol No. 1.

4. On 26 March 2018 notice of the applications was given to the Government.

5. On 31 May and 14 June 2018, under Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court, the Vice-President of the Section granted the National Secular Society, the Greek Helsinki Monitor and the Grassrootsmobilise Research Programme based at ELIAMEP leave to intervene as third parties in the proceedings.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first two applicants in application no. 4762/18 are the parents of the third applicant, a school student who at the time of the application (during the school year 2017/18) was in the third and final grade of the General High School on the small island of Milos. The first applicant in

application no. 6140/18 is the mother of the second applicant, a school student who at the time of the application was in the fourth grade of the only primary school on the small island of Sifnos.

7. The first two applicants in application no. 4762/18 and the first applicant in application no. 6140/18 never submitted, on behalf of their respective children, any application for exemption, either for the school year 2017/18 or for any of the previous school years, from the religious education course to be taught at each grade. Furthermore, they never took any legal action, by filing an application for annulment with the Supreme Administrative Court, against the circular of the Ministry of Education, Research and Religious Affairs dated 23 January 2015, which sets out the procedure for exemption from the religious education course.

8. However, in relation to two further decisions of the Minister of Education, Research and Religious Affairs, entitled "General and vocational high school religious education programme", dated 13 June 2017, and "Primary and middle school religious education programme", dated 16 June 2017, the applicants in both applications filed an application with the Supreme Administrative Court for annulment on 12 July 2017 – about two months before the start of the school year 2017/18 and during the courts' summer recess between 1 July and 15 September. They challenged these decisions on the grounds that they did not provide for an objective, critical and pluralist religious education course that would not need the exemption procedure since it would involve all students, not because of a legal obligation, but because it would not harm their religious beliefs.

9. In their applications, the applicants also extensively argued that the procedure for exemption from the religious education course, as established by the above-mentioned circular, was contrary to Articles 8, 9 and 14 of the Convention.

10. On 12 and 24 July 2017 the applicants asked to have their cases examined by the Holidays Section under the urgent procedure, in accordance with Article 11 of Presidential Decree no. 18/1986, before the start of the new school year 2017/18 on 11 September 2017. However, the Supreme Administrative Court dismissed the requests for lack of importance.

11. The application for annulment was scheduled to be heard before the Third Section on 12 October 2017. The hearing was adjourned several times and rescheduled to take place on 9 November 2017, 14 December 2017, 8 February 2018, 22 March 2018, 19 April 2018, 4 May 2018, 1 June 2018 and 21 September 2018.

12. The Government submitted that the Third Section had adjourned the hearing because it had anticipated the issuance of judgments by the Plenary on two applications for the annulment of two ministerial decisions regarding the primary, middle and high school religious education programme which had become effective as from the school year 2016/17. The applicants

contended that in the decisions postponing the hearing, the Third Section had not mentioned the reason alleged by the Government and could not have done so since the other cases had involved other parties and concerned the curriculum for the school year 2016/17.

13. The Supreme Administrative Court, sitting in plenary, published judgments no. 660/2018 (concerning the primary and middle school religious education programme for the school year 2016/17) and no. 926/2018 (concerning the high school religious education programme for the school year 2016/17) in the above-mentioned cases on 20 March 2018, following an appeal led by the Greek Orthodox metropolitan bishop of Pireus, who had challenged the implementation of the reform of religious education classes proposed in the programme. The Plenary held that the ministerial decisions were contrary to Article 4 § 1, Article 13 § 1 and Article 16 § 2 of the Constitution, Article 2 of Protocol No. 1 to the Convention, and Article 14 taken in conjunction with Article 9 of the Convention, as they deprived students abiding by the Orthodox Christian dogma of the right to be exclusively taught the dogmas, moral values and traditions of the Eastern Orthodox Church.

14. Following publication of the above-mentioned judgments, the applicants' application for annulment was struck off the list of the Third Section of the Supreme Administrative Court and brought for a hearing before its Grand Chamber on 4 May 2018. The application was subsequently adjourned anew and scheduled to be heard on 21 September 2018 before the Plenary due to its importance, so that it could be heard jointly with another two applications for annulment lodged by other individuals against the same ministerial decisions as those challenged by the applicants. The other applications, brought by parents of students, a theology teacher, a diocese, a metropolitan bishop and an association, requested the annulment of the same ministerial decisions and syllabuses, but on grounds that were diametrically opposed to those relied on by the applicants. In these applications, the applicants, identifying their religious affiliation as Orthodox Christian, complained, *inter alia*, that the disputed new religious education programme for the school year 2017/18 sought to "transform the course from an Orthodox confessional one into a 'religiology' course (*θρησκειολογικό*)", in breach of Articles 4 and 13 of the Constitution and the applicable relevant legislation.

15. The Church of Greece intervened before the Supreme Administrative Court. In their intervention, the Church of Greece stated that their representatives had visited the official State committee six times during the drafting of the new religious education course. They also stated that they wanted the course to be of a confessional nature, as ruled by the Supreme Administrative Court in its judgment no. 660/2018.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

16. The relevant Articles of the Constitution read as follows:

Article 3 § 1

"The dominant religion in Greece is that of the Eastern Orthodox Church ...."

Article 4 § 1

"All Greeks are equal before the law."

Article 13 § 1

"Freedom of conscience in religious matters is inviolable. The enjoyment of personal and political rights shall not depend on an individual's religious beliefs.

..."

Article 16 § 2

"Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious conscience and at their formation as free and responsible citizens."

B. Other legislative texts

17. The current Law on Education (Law no. 1566/1985 – "the Education Act") states that the course entitled "Orthodox Christian Instruction" is mandatory for all schoolchildren throughout primary and secondary education and includes the objective that students should be helped:

"[to] develop into free, responsible, democratic citizens ... in whom is instilled faith in their homeland and the genuine elements of Orthodox Christian tradition. Freedom of their religious conscience is inviolable."

18. Section 22 of Law no. 344/1976 on civil status reads as follows:

"1. A birth certificate ... shall contain:

...

b. the place, time, day, month and year of birth.

c. the sex of the infant and his or her birth order.

...

e. the name, surname, nationality, religion, occupation, residence and registration details in the parents' register ..."

19. Parents must provide a copy of their child's birth certificate to the school. "Religion" as a subject is compulsory in primary, middle and high

school, as well as in certificates of studies, under the relevant ministerial decisions.

20. The relevant sections of Law no. 1599/1986 on relations between the State and its citizens provide as follows:

Section 8 – Solemn Declaration (*Υπεύθυνη δήλωση*)

"1. Facts or elements not evidenced by an identity card or the corresponding documents referred to in section 6 may be brought before any public authority or department with a solemn declaration ...

...

4. Public sector services which are subject to a solemn declaration can check their accuracy by verifying them against the records of other services."

Section 22(6) – False Solemn Declaration

"Any person knowingly declaring false facts or denying or concealing the truth with a written statement under section 8 shall be punished by imprisonment of at least three months ..."

21. Article 37 of the Code of Criminal Procedure reads as follows:

"1. Investigating officials shall promptly inform the competent public prosecutor of any information that they have received in any way whatsoever of an offence [subject to public prosecution].

2. Other civil servants, as well those to whom the exercise of a public service has been assigned temporarily, are under the same obligation for the offences referred to in paragraph 1 if they have been informed of them in the exercise of their duties."

22. Section 105 of the Introductory Law to the Civil Code reads as follows:

"The State shall be under a duty to make good any damage caused by the unlawful acts or omissions of its organs in the exercise of public authority, except where the unlawful act or omission is in breach of an existing provision but is intended to serve the public interest. The person responsible and the State shall be jointly and severally liable, without prejudice to the special provisions on ministerial responsibility."

C. "New School" Programme

23. The "New School" programme was introduced in 2011 by the Minister of Education and Religious Affairs and brought about a series of reforms to the curriculum. In particular, in relation to religion, it sought to introduce a more open and pluralistic approach to its teaching, to reflect the increased religious diversity in Greece following mass immigration into the country. Due to political and social tension over the potential change to religious education classes, the "New School" programme was not formally implemented until the 2017/18 school year. In religious education, the programme included studying the Christian traditions of Europe as well as

Judaism, Islam, Hinduism, Buddhism, Taoism and Confucianism, with a special focus on Judaism and Islam.

24. The sole Article of ministerial decision no. 99058 entitled "General and vocational high school religious education programme" sets out the objectives, teaching hours and methods of teaching of the religious education course as follows:

> "1. General objectives of high school religious education
>
> The design of the new high school religious education programme takes into account:
>
> - The general and specific objectives of education, in line with the existing legal framework, which is based on the Greek Constitution and the basic laws on education. ...
>
> - The scientific recommendations of modern religious teaching, combined with new theories of learning and teaching methodology.
>
> - The pedagogical characteristics of teenage students ...
>
> - ...
>
> - The educational orientation and contents of the new primary and middle school religious education programme.
>
> - The prevailing local religious tradition as a fundamental pillar of students' religious literacy and its wider religious and cultural framework.
>
> - The complexity of the contemporary social and cultural fabric, as formed at local, European and global level, and the specific learning and educational needs arising therefrom.
>
> Therefore, the objectives of high school religious education are:
>
> (a) to develop personal identity, with inputs from religiousness and its critical understanding, whether one is religiously affiliated or not. The perception of self-image and the role of the self in relation to others are important in adolescence and determine adulthood. Personal identity and the emergence of personality depend on "religious conscience", which the school nurtures freely mainly through religious education. This brings into play the moral development and behaviour of the teenager, since religious education involves an acquaintance with the diverse and complex phenomenon of religion and discusses the moral and existential questions of teenage students ...
>
> (b) to foster humanitarian and Hellenic education ...
>
> (c) religious literacy ... Knowledge of the framework that generates and shapes the concepts, as well as of their cultural content, is the essence of religious literacy, which is part of multiculturalism in education ...
>
> (d) critical religiousness, in the sense of development of holistic intelligence in the education process, in which mind and heart participate and which shapes humans with a "living desire" for justice and democracy. Since man is by nature a being that believes, religious education enables him to "believe well".
>
> (e) acquaintance and communication with the "other". The student becomes familiar with the multicultural society he or she lives in, becomes aware of its religious

elements, as well as the multiplicity of his/her personal identity and its developmental dynamics in its collective and social manifestations ...

(f) socialisation, not as passive adoption of the social system but as process of individualisation based on the relationship between personality development and social inclusion ...

(g) developing a learning community ... Religious education, through the pedagogical and teaching method as well as its theological content, has great potential to radically promote the creation and development of a community, which, as a concept, is related to the faith and tradition of the country ...”

25. The sole Article of ministerial decision no. 101470 entitled “Primary and middle school religious education programme” sets out the objectives, teaching hours and methods of teaching of the religious education course as follows:

“...

In particular, it is recognised that the religious [education] course needs to:

- provide knowledge and understanding of religious beliefs and experiences;

- gear students’ interest towards the variety of religious approaches and moral beliefs inherent in religious experiences; and

- encourage students to become sensitive to religion and religious aspects of life.

This approach, despite doing away with obsolete practices of confessional exceptionalism, does not give the religious education course a phenomenological cognitive orientation, or make it a formal religiological subject that does not meet the pedagogical characteristics, deeper questions and real interests of students ...

Ultimately, this view of the religious education course emphatically raises the question of religious literacy as a crucial aspect of religious education, which contributes to producing citizens with religious consciousness, open to dialogue and diversity. This religious literacy is based on the rules of pedagogical and scientific knowledge and aims at the critical development of students’ religious conscience through the knowledge, values and attitudes it provides about religions and faiths, applying an explorative, interpretative and interactive learning approach.

...

2. Organisation of the religious education course

The present proposal concerns a course that, while maintaining its traditional cognitive and pedagogical character, also opens up to the Christian traditions of Europe and other religions. By providing the orientations of this course, we are developing a programme that starts from, and focuses on, the country’s religious tradition, the tradition of the Orthodox Church, as embodied in the cultural monuments of the country. Every student, regardless of religious identity, needs to know the religion of their country of origin or domicile. This is the first and main orientation of the course. The second includes a basic acquaintance with the major Christian traditions in Europe and the world beyond Orthodoxy, such as Roman Catholicism and Protestantism with its main confessions. The third orientation includes elements from major religions beyond Christianity, especially those of most interest to Greek society, namely the monotheistic traditions of Judaism and Islam, as well as religions that occasionally present increased interest. Therefore, it is a broader,

theologically documented course that examines in an explorative, critical and dialectical manner the contribution of each religious tradition to civilisation, aiming at promoting religious literacy and students' awareness of, and speculation about, their own religious beliefs and how these are reflected in the dynamics of social relations. Certainly, it would not be possible for the Greek school not to have a strong focus on Orthodox theology and tradition, which through the religious education course is called on to go even beyond modernity, accepting pluralism and diversity, without however underrating, relativising or abandoning its self-consciousness ... In conclusion, the new programme promotes a religious education proposal that is pedagogically sensitive, has realistic learning objectives, and is flexible and multivalent, based on the applicable legislative framework and meeting modern social needs. It focuses on Orthodox tradition but differs from indoctrination, striking a fair balance between native tradition and otherness, while not turning religious education into a religiology course.

3. [The] general aims and orientations of the religious education course [are]:

1. to build a solid educational background in Christianity and Orthodoxy both as the cultural tradition of Greece and Europe and as a living source of inspiration, faith, morality and meaning ...

2. to provide students, regardless of religious affiliation, with satisfactory knowledge of the nature and the role of the phenomenon of religion, both as a whole and in its various manifestations ...

These general aims of the religious education course may be specified in the following educational orientations and objectives/priorities:

1. critically understanding the doctrinal, cultic, existential and cultural expressions of the Orthodox Church, other major Christian confessions, as well as other religions;

2. highlighting the universal values of both Christianity and the other religions of the world;

...

4. approaching religious faith in general and Christianity in particular through multiple criteria;

...

9. respecting everyone's right to freedom of religion, quest [for religion] and religious self-determination;

10. recognising and respecting each student's religious and cultural origins;

..."

26. Furthermore, two circulars of the Ministry of Education, Research and Religious Affairs, dated 9 and 20 October 2017 respectively, provided detailed teaching instructions concerning the religious education course in high schools and primary schools for the school year 2017/18.

D. Circular of 23 January 2015 on exemption from the religious education course

27. The circular of the same Ministry dated 23 January 2015 sets out the procedure for exemption from the religious education course as follows:

> "The religious education course is compulsory for all students (Article 16 § 2 of the Constitution). [It] is taught in primary and middle schools in accordance with the official syllabuses, pursues the general objectives of education and is addressed to all students. However, non-Orthodox Christian students, [that is to say] students with different religious or doctrinal affiliation or non-religious students, who rely on grounds of religious conscience, may be exempted from attending this course.
>
> Therefore, exemption from the religious education course is legally granted solely to protect freedom of religious conscience, as enshrined in the Constitution and described in the relevant laws and judgments of the Greek and international courts.
>
> Because there have been abuses of the right to exemption from the religious education course on grounds not associated with freedom of religious conscience, the attention of school principals is drawn to the need to verify the documentation [in support of] the grounds relied on by those seeking exemption, cautioning them about the seriousness of the solemn declaration they have filed, before granting the legal exemption to the student concerned, always within the prescribed time-limits.
>
> It is necessary for the teacher to countersign the solemn declaration, so that he or she knows which students will be attending the religious education course.
>
> Students exempted from the religious education course shall have no right to remain in the classroom during the teaching of the course and may under no circumstances roam inside or outside the school premises or be unjustifiably absent; they shall instead engage in the tasks indicated in this circular.
>
> Exemption from the religious education course shall be granted following submission of a solemn declaration under Law 1599/1986 by the student him or herself, if he or she is [over the age of majority], or by both his or her parents (if he or she is a minor), stating that the student is not an Orthodox Christian and therefore relies on grounds of religious conscience, without being required to disclose their religious affiliation, unless they wish to do so."

28. In February 2015 the Atheist Union, relying on the judgment in the case of *Alexandridis v. Greece* (no. 19516/06, 21 February 2008), requested the Hellenic Data Protection Authority's intervention as regards the above circular to protect the rights of parents who, for reasons of conscience, wished their children to be granted an exemption. In August 2015 the Hellenic Data Protection Authority stated that since no religious or non-religious justification had to be provided in the exemption form, the current procedure did not violate Law no. 2472/1997 on the protection of the personal information of students.

29. On 25 September 2015 the then Alternate Minister of Education announced her intention to simplify the exemption process, adding that parents should be allowed to simply ask for their children not to attend religious education classes, with no reference – either positive or negative – to their religion. Following the reaction of the Archbishop of Greece,

however, the Alternate Minister revoked her position. The above exemption procedure was maintained in force by Article 25 § 3 of a decision of the Minister of Education, Research and Religious Affairs dated 23 January 2018.

30. According to information provided by the Government, this right of exemption was exercised by 2,467 high school students and 799 primary school students during the school year 2015/16, 4,703 high school students and 978 primary school students during the school year 2016/17 and 2,859 high school students and 876 primary school students during the school year 2017/18.

THE LAW

I. JOINDER OF THE APPLICATIONS

31. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATIONS OF ARTICLES 8 AND 9 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL NO. 1, READ IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

32. The first two applicants in application no. 4762/18 and the first applicant in application no. 6140/18 complained that they were obliged to submit a solemn declaration declaring that their daughters, the third applicant in application no. 4762/18 and the second applicant in application no. 6140/18, were not Orthodox Christians, in order for the latter to be exempted from the religious education course. They also complained that such declarations had to be kept with the school records and that the school principal had to enquire as to whether their content was true. They alleged that the third applicant in application no. 4762/18 and the second applicant in application no. 6140/18 had been victims of violations of Article 9 of the Convention taken in conjunction with Article 14. They also alleged that the requirement for them to solemnly declare that the third applicant in application no. 4762/18 and the second applicant in application no. 6140/18 were not Orthodox Christians in order to have them exempted from the religious education course and the retention of these declarations in the school archives constituted an unacceptable interference with their private life, as protected under Article 8 of the Convention.

33. The applicants also complained that in exercising its functions in matters of education and teaching, the State had not ensured that the information included in the religious education programme for the school year 2017/18 would be spread (a) in an objective, critical and pluralistic manner, in conformity with the first sentence of Article 2 of Protocol No. 1

with respect to the third applicant in application no. 4762/18 and to the second applicant in application no. 6140/18, and (b) in conformity with their parents' religious and philosophical convictions (second sentence of Article 2).

34. The above-mentioned Articles read as follows:

Article 8

"1. Everyone has the right to respect for his private life ....

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 9

"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 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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... religion ...."

Article 2 of Protocol No. 1

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

A. Preliminary remarks and method followed

35. The Court emphasises that, by its very nature, the substantive content of Article 9 of the Convention may sometimes overlap with the content of other provisions of the Convention; in other words, one and the same complaint submitted to the Court can sometimes come under more than one Article. In such cases, the Court usually opts to assess the complaint solely under the Article which it considers most relevant in the light of the specific circumstances of the case; however, in so doing, it also bears the other Article(s) in mind and interprets the Article which it has opted to consider in the light of the latter.

36. The Court has chosen to consider cases solely under Article 2 of Protocol No. 1, for example as regards the administration of compulsory classes in religious culture and morals in State schools, and the restricted opportunities for administering such classes (see *Mansur Yalçın and Others v. Turkey*, no. 21163/11, 16 September 2014), or a refusal to exempt a State school pupil whose family was of the Alevi faith from mandatory lessons in religion and morals (see *Hasan and Elyem Zengin v. Turkey*, no. 1448/04, 9 October 2007), or again a refusal by educational authorities to grant children complete exemption from compulsory classes on Christianity (see *Folgerø and Others v. Norway* [GC], no. 15472/02, ECHR 2007).

37. In the field of education and teaching, Article 2 of Protocol No. 1 is basically a *lex specialis* in relation to Article 9 of the Convention. This applies at least where, as in the present case, the issue at stake is the obligation on the Contracting States – as set out in the second sentence of this Article – to respect, in the exercise of any functions which they assume in relation to education and teaching, the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions (see *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, § 90, 10 January 2017, and *Lautsi and Others v. Italy* [GC], no. 30814/06, § 59, ECHR 2011).

38. The complaints in question in the present case should therefore be examined mainly from the standpoint of the second sentence of Article 2 of Protocol No. 1.

39. Nevertheless, that provision should be read in the light not only of the first sentence of the same Article, but also, in particular, of Article 9 of the Convention (see, for example, *Folgerø*, cited above, § 84), which guarantees freedom of thought, conscience and religion, including the freedom not to belong to a religion, and which imposes on Contracting States a "duty of neutrality and impartiality". When read as it should be in the light of Article 9 of the Convention and the second sentence of Article 2 of Protocol No. 1, the first sentence of that provision guarantees schoolchildren the right to education in a form which respects their right to believe or not to believe (*Lautsi and Others v. Italy* [GC], no. 30814/06, § 78, ECHR 2011).

B. Admissibility

1. Non-exhaustion of domestic remedies

(a) Arguments of the parties

40. The Government alleged that the applicants had neither used nor exhausted domestic remedies.

Firstly, they emphasised that the application for annulment of the two decisions of the Minister of Education, Research and Religious Affairs

entitled “General and vocational high school religious education programme” and “Primary and middle school religious education programme”, filed by the applicants with the Supreme Administrative Court, was still pending.

Secondly, they maintained that the applicants had failed to file: (i) an application to suspend enforcement of the above-mentioned ministerial decisions and for an interim injunction; (ii) an application for annulment of the circular of the Minister of Education dated 23 January 2015 regarding the procedure for exemption from the religious education course; (iii) an application for exemption on behalf of the third applicant in application no. 4762/18 and the second applicant in application no. 6140/18, which would result in the school principals actually verifying their declaration that the children were not Orthodox Christian; and (iv) an application for annulment of any rejection of such an application for exemption.

41. Lastly, the Government submitted that although the third applicant in application no. 4762/18 had known that her application, even if the Court were to find a violation of her human rights, could only lead to an award of just satisfaction for non-pecuniary damage, she had filed the application without giving the domestic courts the opportunity to decide such a claim, by bringing an action for damages under section 105 of the Introductory Law to the Civil Code.

42. The applicants submitted that the applications for annulment had been the only remedy available against the ministerial decisions in question and that the proceedings before the sole responsible State authority, the Supreme Administrative Court, had not constituted an effective remedy since the applications had not even led to a hearing before the start of the school year 2017/18. They also maintained that submitting an application to suspend enforcement and for an interim injunction was not part of the mandatory form of domestic remedies and there was no prior domestic case-law justifying such applications. They also argued that there had been no requirement, nor had it been feasible, to initially challenge the 2015 circular before challenging the 2017 ministerial decisions.

43. The applicants disputed the religious neutrality of the members of the Supreme Administrative Court. They maintained that it had not adjourned their case because another important case of the same type had already been pending before it. The previous case had concerned the curriculum for the year 2016/17. The real reason for adjourning the case had been to delay matters until the end of the school year 2017/18 and make the applicants lose their standing as the third applicant in application no. 4762/18 had been in the final grade of the public education system.

44. As regards an action for damages under the above-mentioned section 105, the third applicant in application no. 4762/18 maintained that she had chosen the most appropriate legal remedy – an application for annulment before the Supreme Administrative Court – which had not

concealed a "self-serving" objective, as the only result would have been the annulment of the ministerial decisions and not an award of damages.

(b) The Court's assessment

45. The Court reiterates that under Article 35 § 1 of the Convention, it may only deal with an application after the exhaustion of those domestic remedies that relate to the breaches alleged and are also available and sufficient. The Court also reiterates that it is incumbent on the Government pleading non-exhaustion to satisfy it that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, in particular, *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V; *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II; *Vučković and Others v. Serbia* (preliminary objection) [GC], no. 17153/11 and 29 others, § 74, 25 March 2014, and *Gherghina v. Romania* [GC] (dec.), no. 42219/07, § 85, 9 July 2015). Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government was in fact used or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Prencipe v. Monaco*, no. 43376/06, § 93, 16 July 2009).

46. The Court further reiterates that, where several remedies are available, the applicant is not required to pursue more than one and it is normally that individual's choice as to which (see *Karakó v. Hungary*, no. 39311/05, § 14, 28 April 2009; *Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000; and *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32) Under the established case-law, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required (see, *inter alia*, *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009, and *Kozacıoğlu v. Turkey* [GC], no. 2334/03, § 40, ECHR 2009).

47. In the present case the Court notes that on 12 July 2017 the applicants applied to the Supreme Administrative Court for annulment of the two ministerial decisions which had established the primary, middle and high school religious education programme for the school year 2017/18. On 12 and 24 July 2017 the applicants lodged requests for their case to be examined under the urgent procedure, before the start of the new school year on 11 September 2017. A hearing was initially scheduled for 12 October 2017 and was then adjourned and rescheduled for 9 November 2017, 14 December 2017 and again on six other dates in 2018. It cannot be denied that the application for annulment at the Supreme Administrative

Court, coupled with a request for the case to be examined under the urgent procedure was an effective remedy to exhaust for the purposes of Article 35 § 1. However, in the circumstances, notably the successive adjournments of the examination of the case and taking into account the need for the applicants to have their case decided before the start of the new school year, the remedy lost much of its effectiveness. As a result, it cannot be reasonably claimed by the Government that the lodging of the applications with the Court on 5 and 8 January 2018 had rendered them premature, as more than three months had already passed since the start of the new school year.

48. As regards the Government's argument that the applicants did not file an application to suspend enforcement or for an interim injunction, the Court does not consider this remedy effective: having regard to the Supreme Administrative Court's stance on the applicants' request to have the urgent procedure applied, the Court considers that the probability of having a course curriculum suspended because of a pending application for annulment were less than slim.

49. Furthermore, by filing an application with the Supreme Administrative Court, the applicants sought to obtain the annulment of the ministerial decisions in question and not compensation. Moreover, for section 105 to apply, the alleged damage had to have been caused by the unlawful acts of State organs. However, the Government did not specify which unlawful act was at stake in this situation. The Government have not given any examples of case-law in order to demonstrate that an action for damages could have restored the applicants' rights under Articles 8 and 9 of the Convention and Article 2 of Protocol No. 1. An action for damages under section 105 was therefore not an effective remedy in the present case.

50. Finally, as regards the failure of the applicants to use the exemption procedure and file a "recourse" in the event that their application for exemption was dismissed, the Court considers that this could be understood as an indication that the adult applicants and their children were people without religious beliefs or people adhering to a religion other than Orthodox Christian. Consequently, this aspect of the non-exhaustion argument raised by the Government is closely related to the substance of the case, and should be joined to the merits.

51. Accordingly, with the exception of the above-mentioned aspect of the non-exhaustion argument, the Court dismisses the Government's objection based on the premature nature of the applications and the applicants' failure to exhaust domestic remedies.

2. Loss of victim status

52. The Government asserted that at the time of the application the third applicant in application no. 4762/18 had been in the last months of the final grade of high school and would not be taught at school again, and that she

had now completed her studies and was about to reach adulthood. On her reaching adulthood, the first and second applicants would have no right to complain of human rights violations in her name.

53. The applicant maintained that it was at least provocative for the Government to invoke inaction on the part of the State authorities throughout the year 2017 in order to claim that the applicants were no longer victims, as the applicants had made timely use of domestic remedies. Furthermore, the present application had been brought in January 2018, when the third applicant had still been a student and would have been for at least another six months or so.

54. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. Hence, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings before the Court (see *Scordino v. Italy (no. 1)* [GC], no.36813/97, § 179, ECHR 2006-V). In this regard, the applicant must be able to justify his or her status as a victim throughout the proceedings (see *Burdov v. Russia*, no. 59498/00, § 30, 7 May 2002, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 80, ECHR 2012). The issue of whether a person may still claim to be a victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his situation (ibid., § 82).

55. The Court notes that the applicants filed an application for annulment of the two impugned ministerial decisions dated 13 and 16 June 2017 before the judgment of the Supreme Administrative Court adopted on 2 July 2017, that is, approximately two months before the start of the school year 2017/18. On the same date and again on 24 July 2017 the applicants asked to have their case urgently heard by the Holidays Section so that they could be served with the decision prior to the start of the new school year, but the court dismissed their requests for lack of importance. As a result, the new school year started at the beginning of September 2017 with both applicant students being obliged to follow the religious education course during the whole school year. On 5 January 2018 the applicants lodged their application with the Court. On that date and during the whole school year 2018 the Supreme Administrative Court did not adjudicate the case and kept on adjourning the hearing until 21 September 2018, by which time the school year had already finished.

56. Having regard to the specific circumstances of the case, the Court considers that that the most appropriate and adequate redress in the present case would not have been the payment of compensation to the applicants, particularly as regards the third applicant in application no. 4762/18, who was in her last year at school, but a decision on the substance of the complaints raised in their application to the Supreme Administrative Court.

57. The Court therefore considers that all the applicants were victims on the date of the application and can still claim to be victims, because to date no judgment has yet been delivered in their cases.

58. Accordingly, the Government's objection must be dismissed.

3. Conclusion

59. Noting that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

C. Merits

1. The parties' submissions

(a) The applicants

60. The applicants claimed in the first place that decisions no. 9902/2017 and no. 101470/2017 issued by the Minister of Education in the course of summer 2017 provided that the religious education course was of a confessional nature, promoting the "prevailing religion". It appeared from the decisions that the purpose of the new programme was to develop a certain form of "religious personality", develop believers of the Orthodox Christian dogma, enable students to "believe well" and not just provide them with information and knowledge. If the course was not of a catechetical and confessional nature, the State would have abolished the exemption procedure instituted by the circular of 23 January 2015, because there would have been no ground of conscientious objection. Maintaining such a procedure amounted to admitting that the course itself was an interference by the State with the formation of the religious beliefs of students. In order to ensure the mandatory nature of the course and compel students to attend the confessional religious education course, the State required those who had conscientious objections not only to express them, but also to declare explicitly and officially that they were not Orthodox Christians.

61. The applicants contended that if they had decided to make a solemn declaration in view of the exemption, they would have exposed themselves to criminal proceedings if the school principal had considered their content false. Moreover, submitting a solemn declaration to be held in the school records would have amounted to disclosing beliefs and personal sensitive data which did not fall within the ambit of the guarantees of either Directive 95/46/EC (on the protection of individuals with regard to the processing of personal data) or Law no. 2472/1997 (on protection from processing of personal data).

(b) The Government

62. In the first place, the Government claimed that in the instant case, the first two applicants in application no. 4762/18 and the first applicant in application no. 6140/18 had never submitted an application for exemption, either with or without a declaration that their daughters were not Orthodox Christians, and therefore no such declaration had been processed by anyone or kept in the school records. Besides, the circular of 23 January 2015 did not recognise any "power" or "jurisdiction" of verification to school principals; it only "urged" them to verify the documentation in support of the grounds relied on by applicants, "cautioning them about the seriousness of the solemn declarations they ha[d] to file, before granting the legal exemption". Furthermore, any processing and keeping of such declarations in the school records would be subject to the applicable data protection legislation.

63. Likewise, there was no question of "proselytism" or "indoctrination" through the new religious education programme, despite the allegations of the applicants and the third parties to the contrary, nor had any, even possible, "stigmatisation" of the applicants been proved; besides, the applicants lived on the Central Aegean islands which had remarkable cultural activity and high influxes of tourists, and where residents of various ethnic, cultural and religious backgrounds coexisted harmoniously.

64. Since the religious education course was not optional and it was the State's mission under the Constitution to develop the religious conscience of students that were Orthodox Christians, exemption from the course was necessarily associated with a lack of religious affiliation.

65. A student was not required to disclose his or her religious convictions and to only make a negative declaration to the effect that he or she was not an Orthodox Christian. This declaration served the purpose of avoiding circumvention of the State's constitutional mission because, when a student was not an Orthodox Christian, the State was not required to develop his or her religious conscience. Furthermore, precisely because it was impossible and unacceptable for State organs to verify the religious convictions of a student, the declaration was equivalent to confirmation that real grounds of religious conscience for exemption existed, so as to prevent the submission of false declarations that would undermine the fair and equal teaching of courses and conceal illegitimate purposes – in particular to reduce the courses in which a student had to be examined and assessed. Under the new, pluralistic programme, the possibility of exemption was maintained even though the religious education course was not confessional and not exclusively addressed to Orthodox Christians.

66. The Government claimed that the State provided the right to full exemption from the religious education course which, as its teaching had been established and conducted under the new programme, constituted no indoctrination or proselytism. The exemption procedure, through the

submission of an application and a solemn declaration, served the purpose of transparency and preventing a mass submission of applications that could have led to full abolition of the course. Besides, the exemption procedure protected students against possible abuses of this right by exempted students, who would thus gain an advantage over the former in assessments or otherwise.

67. The Government also emphasised that the applicants had not actually sought to obtain an exemption from the religious education course because they had actually wanted to have a course drawn up and taught as per their beliefs. But the right to have a State draw up a religious education course as per parents' wishes was not derived from any of the Articles of the Convention. The State should have been supported for having maintained the right of exemption while having at the same time introduced a new pluralistic religious education programme. It was also noteworthy that following the adoption of the new programme, applications for exemption had been submitted by Greek Orthodox parents stating, among other things, that the course itself and the way it was taught did not inspire towards the Orthodox faith and contained chapters which had absolutely no relation to that faith.

68. Finally, the Government contended that the implementation of the new programme as from the school year 2017/18 had been general and universal, in all primary and secondary schools. On the basis of information and a survey presented before the 2nd Panhellenic Conference of Teachers of Theology in 2018, it was estimated that the new programme had been fully implemented in primary education, while in secondary education it had been implemented by 60 to 70% of schools. Between 5 and 10% had not implemented it at all, because the teachers had either not been trained or had not agreed with its orientations.

2. Third party interveners

(a) National Secular Society

69. The National Secular Society stated that the system for exemption from religious education classes operated by Greece appeared to be in conflict with key elements of the Court's case-law. It depended on treating those of a particular faith as a cohesive group in defiance of the need to treat freedom of religion or belief primarily as an individual right that flowed from the Court's case-law. It also imposed oppressive conditions on parents seeking to obtain an exemption from religious education classes for their children by obliging them to reveal their or their children's religious beliefs and subjecting those beliefs to scrutiny by a third party (the school principal), and requiring records of those beliefs to be retained unnecessarily and indefinitely. These were features which the Court had

repeatedly found to be in violation of Article 9 read in conjunction with Article 14.

70. The National Secular Society submitted that the policy of the Greek State seemed to have the effect of making the availability of protection of the rights of parents under Article 2 of Protocol No. 1 dependent on whether or not their children adhered to the Orthodox faith. If parents who saw themselves as Orthodox Christians but who dissented from certain teachings of the Orthodox Church wished to bring their children up in accordance with their own individual interpretation of Orthodox Christianity, they had the same right under Article 2 to ensure that those philosophical beliefs were not undermined by the education system as a person whose beliefs fully aligned with mainstream Orthodox Christian teaching or a person who was an atheist or member of another faith. Moreover, a policy requiring that parents were answerable for the religious and philosophical beliefs of children who could be of sufficient maturity to form their own views failed to show respect for matters of individual conscience.

(b) Greek Helsinki Monitor

71. The Greek Helsinki Monitor emphasised that soon after the Court's judgment on religious oath taking in Greece in *Alexandridis v. Greece* (no. 19516/06, 21 February 2008), the Ministry of Education had issued two circulars, in July and August 2008, confirming and solidifying the year-long practice that exemption from religious education would be granted when requested by students or their parents for reasons of consciousness without any declaration of religious beliefs being requested. However, not only had the change introduced by the circular of 23 January 2015 been unnecessary, it had also led to a disturbance in the democratic functioning of the education system. This disturbance had been caused by the imposition of institutional discrimination and a violation of the Convention for those who had to declare their (non-) religious beliefs in order to enjoy another right, that of the exemption from religious education. Moreover, both the Court (*Folgerø and Others*, cited above) and the UN Human Rights Committee (in its views on *Leirvag v. Norway* – Communication no. 1155/2003) had ruled that asking parents to provide reasons as to why they sought to exempt their children from religious education was contrary to the Convention and the International Covenant on Civil and Political Rights.

72. Referring to the above-mentioned *Folgerø and Others* judgment, the Greek Helsinki Monitor stated that a comparison between the Norwegian and Greek religious education curricula indicated that the Greek curriculum was much less objective, critical and pluralistic, and much more a form of indoctrination into the official State religion, as it admittedly had a "confessional" character. Whereas in Norway half of the items listed referred to Christianity alone, in Greece, according to an official report by the Church of Greece in June 2017, 82% of the items in primary religious

education had a confessional character (of which only 10% had an inter-confessional character) and 18% had a non-confessional character. The respective percentages for middle religious education were 74% confessional (of which 20% were inter-confessional) against 26% non-confessional. Both in the legislation and the circulars, as well as in practice, there was a thorough teaching of Orthodox Christianity and usually a superficial teaching of other Christian and non-Christian religions or other beliefs. In that report, the Church of Greece expressed its satisfaction with the confessional character of religious education.

(c) ELIAMEP (Hellenic Foundation for European and Foreign Policy – Grassrootsmobilise Research Programme)

73. ELIAMEP emphasised that in the new religious education course Orthodoxy remained predominant in the teaching of religion in terms of the time and space allotted to it in the course, but also in that students did not only learn about Orthodoxy but were taught it as the faith of the nation. The fact that the course was exclusively taught by Orthodox theologians supported the latter notion. In primary school the course was taught by the one teacher in charge of the entire curriculum, but in secondary education (grades 7 to 12), the course was exclusively taught by Orthodox theologians graduating from one of the two Orthodox Faculties of Theology in Athens and Thessaloniki. Moreover, in many schools across Greece, the previous version of the religious education course was taught, wherein not only was Orthodoxy taught in a directly catechetical manner, but many minority faiths were presented in a derogatory way. Few theologians made use of the new books and chose, instead, not to implement the new programme; this was largely due to the fact it allowed a degree of flexibility as to the ways in which each theologian chose to implement the guidelines. A call for a return to the previous approach to the teaching of religious education had been supported in judgment no. 660/2018 of the Supreme Administrative Court.

74. Furthermore, ELIAMEP pointed out that the stringent requirements regarding exemption from religious education classes had a highly distressing effect on students, who often preferred to keep their religious affiliation hidden or lie about it rather than risk being exposed to the school authorities. Because of the catechetical nature of the course, parents of religious minority children often chose the right to exemption which was available to them, but in so doing were forced to weigh the benefits of their children not attending a course which indoctrinated their children in a different faith against the potential stigmatisation of their children in their being singled out for opting out of the course.

3. The Court's assessment

(a) General principles

75. The first sentence of Article 2 of Protocol No. 1 provides that everyone has the right to education. The right set out in the second sentence of the Article is an adjunct of the right to education set out in the first sentence. Parents are primarily responsible for the education and teaching of their children; it is in the discharge of this duty that parents may require the State to respect their religious and philosophical convictions (see *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, 7 December 1976, § 52, Series A no. 23). The second sentence of Article 2 of Protocol No. 1 aims at safeguarding the possibility of pluralism in education, a possibility which is essential for the preservation of the "democratic society" as conceived by the Convention. It implies that the State must take care that information included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions (see *Folgerø and Others*, § 84, and *Lautsi and Others*, § 62, both cited above).

76. The word "respect" in Article 2 of Protocol No. 1 means more than "acknowledge" or "take into account"; in addition to a primarily negative undertaking, it implies some positive obligation on the part of the State (see *Lautsi and Others*, cited above, § 61, and *Campbell and Cosans v. United Kingdom*, 25 February 1982, § 37, Series A no. 48). Nevertheless, the requirements of the notion of "respect" imply that the States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals. In the context of Article 2 of Protocol No. 1, that concept implies in particular that this provision cannot be interpreted to mean that parents can require the State to provide a particular form of teaching (see *Lautsi and Others*, cited above, § 61, and *Bulski v. Poland* (dec.), nos. 46254/99 and 31888/02, 30 November 2004).

77. In order to examine the disputed legislation under Article 2 of Protocol No. 1, interpreted as above, one must, while avoiding any evaluation of the legislation's expediency, have regard to the material situation that it sought and still seeks to meet. Although, in the past, the Convention organs have not found education providing information on religions to be contrary to the Convention, they have carefully scrutinised whether students were obliged to take part in a form of religious worship or were exposed to any form of religious indoctrination. In the same context, the arrangements for exemption are also a factor to be taken into account (see *Hasan and Elyem Zengin*, cited above, § 53).

78. Such an interpretation of the second sentence of Article 2 of Protocol No. 1 is consistent with the first sentence of the same provision,

with Articles 8 to 10 of the Convention and with the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society. This is particularly true in that teaching is an integral part of the process whereby a school seeks to achieve the object for which it was established, including the development and moulding of the character and mental powers of its students as well as their personal independence (ibid., § 55).

79. The Court further draws attention to its fundamentally subsidiary role in the Convention protection system. The Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in the Convention and the Protocols thereto, and in so doing enjoy a margin of appreciation, subject to the supervisory jurisdiction of the Court. Through their democratic legitimation, the national authorities are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions (see, *inter alia*, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 97, ECHR 2003-VIII, and *Garib v. the Netherlands* [GC], no. 43494/09, § 137, 6 November 2017).

80. Where the legislature enjoys a margin of appreciation, the latter in principle extends both to its decision to intervene in a given subject area and, once having intervened, to the detailed rules it lays down in order to ensure that the legislation is Convention compliant and achieves a balance between any competing public and private interests. However, the Court has repeatedly held that the choices made by the legislature are not beyond its scrutiny and has assessed the quality of the parliamentary and judicial review of the necessity of a particular measure (see *Lekić v. Slovenia* [GC], no. 36480/07, § 109, 11 December 2018).

(b) Application of these principles

81. In the first place, the Court considers that the main issue raised in the present case is that of the obligation imposed on the parents to submit a solemn declaration declaring that their children were not Orthodox Christians, in order for the latter to be exempted from the religious education course. In the circumstances of the case, the content of religious education lessons as such is not directly connected to that of exemption from the course and the Court will not consider it separately.

82. The Court reiterates the Contracting Parties' positive obligation under the second sentence of Article 2 of Protocol No. 1, which gives parents the right to demand from the State respect for their religious and philosophical convictions in the teaching of religion. Where a Contracting State includes religious instruction in the curriculum for study, it is then necessary, in so far as possible, to avoid a situation where pupils face a conflict between the religious education given by the school and the religious or philosophical convictions of their parents. In this connection,

the Court notes that, with regard to religious instruction in Europe and in spite of the variety of teaching approaches, almost all of the member States offer at least one route by which pupils can opt out of religious education classes, by providing an exemption mechanism or the option of attending a lesson in a substitute subject, or making attendance at religious studies classes entirely optional (see *Hasan and Elyem Zengin*, cited above, § 71).

83. The Court notes that, under Article 16 § 2 of the Constitution and the Education Act, the religious education course is mandatory for all students (see paragraphs 16-17 above). However, the circular of 23 January 2015 provides that non-Orthodox Christian students, that is to say students with different religious or doctrinal affiliation or non-religious students, who rely on grounds of religious conscience, may be exempted from attending the course. This exemption procedure was maintained in force by Article 25 § 3 of a decision of the Minister of Education dated 23 January 2018 (see paragraphs 29 and 31 above).

84. In the Court's view, what matters in respect of Article 2 of Protocol No. 1 is to ascertain whether the conditions imposed by the circular of 23 January 2015 are likely to place an undue burden on parents and require them to disclose their religious or philosophical convictions in order to have their children exempted from the religious education course. In this regard, the Court reiterates that that it has always stressed that religious convictions are a matter of individual conscience (see, *inter alia*, *Sofianopoulos and Others v. Greece* (dec.), nos. 1977/02, 1988/02 and 1997/02, ECHR 2002-X).

85. It is clear that the above circular does not require religious justification to be provided in the exemption form. However, the Court notes that the parents are obliged to submit to the school principal a solemn declaration in writing, countersigned by the teacher, stating that their child is not an Orthodox Christian. The school principal has the responsibility to check the documentation in support of the grounds relied on by the parents and draw their attention to the seriousness of the solemn declaration they have filed.

86. Checking the seriousness of the solemn declaration implies that the school principal is to verify whether it contains false information, namely whether the birth certificate of the child which indicates the parents' religion and which must be submitted to the school authorities (see paragraphs 18-19 above) corresponds to the solemn declaration. In addition, "religion" as a subject is compulsory in primary, middle and high school, as well as in certificates of studies, under the relevant ministerial decisions (see paragraph 19 above). Where there is a discrepancy, the school principal must alert the public prosecutor that a false solemn declaration may have been submitted, since it is a criminal offence under Article 22 § 6 of Law no. 1599/ 1986 and Article 37 of the Code of Criminal Procedure (see paragraphs 20-21 above).

87. The Court considers that the current system of exemption of children from the religious education course is capable of placing an undue burden on parents with a risk of exposure of sensitive aspects of their private life and that the potential for conflict is likely to deter them from making such a request, especially if they live in a small and religiously compact society, as is the case with the islands of Sifnos and Milos, where the risk of stigmatisation is much higher than in big cities. The applicant parents asserted that they were actually deterred from making such a request not only for fear of revealing that they were not Orthodox Christians in an environment in which the great majority of the population owe allegiance to one particular religion (see *Grzelak v. Poland*, no. 7710/02, § 95, 15 June 2010), but also because, as they pointed out, there was no other course offered to exempted students and they were made to lose school hours just for their declared beliefs.

88. Although the first two applicants in application no. 4762/18 and the first applicant in application no. 6140/18 were under no obligation to disclose their religious convictions, requiring them to submit a solemn declaration amounted to forcing them to adopt behaviour from which it might be inferred that they themselves and their children hold – or do not hold – any specific religious beliefs (see, *mutatis mutandis*, *Alexandridis*, cited above, § 38, and *Dimitras and Others v. Greece*, nos.42837/06, 3237/07, 3269/07, 35793/07 et 6099/08, § 78, 3 June 2010).

89. In the above-mentioned cases the Court stated that the freedom to manifest one's beliefs also contained a negative aspect, namely the individual's right not to manifest his or her religion or religious beliefs and not to be obliged to act in such a way as to enable conclusions to be drawn as to whether he or she held – or did not hold – such beliefs. The State authorities did not have the right to intervene in the sphere of individual conscience and to ascertain individuals' religious beliefs or oblige them to reveal their beliefs concerning spiritual matters.

Conclusion

90. Having regard to the foregoing, the Court dismisses the Government's objection of non-exhaustion as regards the applicants' omission to use the exemption procedure and concludes that there has been a breach of their rights under the second sentence of Article 2 of Protocol No. 1, as interpreted in the light of Article 9 of the Convention.

III. APPLICATION OF ARTICLE 41OF THE CONVENTION

91. Article 41of the Convention provides:

Article 41

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

92. The applicants in both applications each claimed 8,000 euros (EUR) in respect of non-pecuniary damage.

93. The Government contended that the claim had been made without setting out any specific arguments or indicating the damage personally suffered by the applicants as a consequence of the matters complained of. The Government considered that the finding of a violation would constitute sufficient just satisfaction under Article 41.

94. The Court considers that the applicants sustained, owing to the violation as found, non-pecuniary damage which cannot be redressed by the mere finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards jointly to the three applicants in application no. 4762/18 the sum of EUR 8,000 and jointly to the two applicants in application no. 6140/18 the sum of EUR 8,000 under this head.

B. Costs and expenses

95. The applicants in application no. 4762/18 also claimed EUR 6,566.52 for the costs and expenses incurred before the Supreme Administrative Court. Neither these applicants nor those in application no. 6140/18 claimed any amount for the costs and expenses incurred before the Court.

96. The Government contended that the applicants should not have claimed an amount for a procedure which was pending before the Supreme Administrative Court but which had actually followed in time the procedure before the Court. Recourse to the Court might not have been necessary following the – not yet issued – judgment of the Supreme Administrative Court.

97. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,566.52 concerning costs incurred by the applicant in application no. 4762/18 before the Supreme Administrative Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Decides* to join to the merits the Government's objection related to one of the aspects of the non-exhaustion argument, namely the applicants' omission to use the exemption procedure, and *rejects* it;

3. *Declares* the applications admissible;

4. *Holds* that there has been a violation of Article 2 of Protocol No. 1;

5. *Holds*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) jointly to the three applicants in application no. 4762/18 EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) jointly to the two applicants in application no. 6140/18 EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) jointly to the three applicants in application no. 4762/18 EUR 6,566.52 (six thousand five hundred sixty-six euros and fifty-two cents), plus any tax that may be chargeable, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 31 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Ksenija Turković
Deputy Registrar	President

LIST OF APPLICANTS

Application no. 4762/18

1. Petros PAPAGEORGIOU, born in 1943 and living on Milos
2. Ekaterini BERDOLOGLOU, born in 1965 and living on Milos
3. Maria Rafaella PAPAGEORGIOU, born in 2000 and living on Milos

Application no. 6140/18

1. Rodopi ANASTASIADOU, born in 1972 and living on Sifnos
2. Smaragda RAVIOLOU, born in 2008 and living on Sifnos