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## [2022] PILARS CC 2

### *Stavropoulos and Others v Greece: The importance of context in the Article 9 assessment*

Dr Caroline K Roberts<sup>1</sup>

An examination of the European Court of Human Rights (ECtHR) case law relating to the right to freedom of thought, conscience, and religion in Article 9 reveals that disclosure of religion or belief is a particularly contentious issue in Greece. Since 2008, applicants have regularly brought complaints against this Member State concerning the obligation to disclose religion or belief in the context of giving testimony in court<sup>2</sup> and, more recently, as a result of the procedure for exempting pupils from compulsory religious education.<sup>3</sup> In these cases, the ECtHR has consistently found violations of Article 9 or Article 2 of Protocol 1 interpreted in light of Article 9. *Stavropoulos and Others v Greece* adds disclosure of religion or belief in the context of birth registration to this list as another area in which the ECtHR has found a violation of Article 9.<sup>4</sup>

It must be noted that complaints about disclosure of religion or belief are not limited to Greece. Over the past decade, the ECtHR has also found violations of Article 9, and of Article 14 taken in conjunction with Article 9, in similar cases concerning Turkey and Poland.<sup>5</sup> For the purposes of gaining a deeper understanding of the ECtHR's protection of Article 9, this growing body of jurisprudence concerning disclosure of religion or belief is fascinating because it illuminates the nuanced and holistic approach that the ECtHR takes to the protection of the right to freedom of thought, conscience and religion. Like the preceding cases in this area, *Stavropoulos and Others* again illustrates that the Article 9 assessment in cases concerning disclosure of religion or belief is heavily influenced by the context in which the complaint arises.

#### 1. Background

When Mr Stavropoulos and Ms Kravari registered the birth of their daughter at the Amarousio registry office, the registry office employee added an abbreviation of the word 'naming' (*ονοματοδοσία*) in brackets next to their daughter's name on the birth certificate. The applicants argued that, in the context, the note indicated that their daughter received her name through the civil act of naming rather than through christening. They contended that this violated the negative aspect of the freedom to manifest their religious beliefs, namely the right not to disclose religion or beliefs, under Article 9 and also breached Article 8 as it revealed sensitive personal data.

The government argued that because naming was the only legal way of acquiring a name, the note in question had been made 'inadvertently' by the registry office employee and, as such, the applicants

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<sup>1</sup> Dr Caroline K Roberts is an Associate Lecturer in Law at Oxford Brookes University, a Research Associate at the Centre for Law and Religion at Cardiff University, and Consultant on Freedom of Thought, Conscience and Religion.

<sup>2</sup> *Alexandridis v Greece* App. no 19516/06 (ECtHR, 21 February 2008) [French]; *Dimitras and Others v Greece* App. no 42837/06 and 4 others (ECtHR, 3 June 2010) [French]; *Dimitras and Others v Greece (no 2)* App. no 34207/08 and 6365/09 (ECtHR, 3 November 2011) [French]; *Dimitras and Others v Greece (no 3)* App. no 44077/09 and 2 others (ECtHR, 8 January 2013) [French]; *Dimitras and Gilbert v Greece* App. no 36836/09 (ECtHR, 2 October 2014) [French]; *Dimitras and Others v Greece* App. no 46009/11 (ECtHR, 27 June 2017) [French].

<sup>3</sup> *Papageorgiou and Others v Greece* App. nos 4762/18 6140/18 (ECtHR, 31 October 2019).

<sup>4</sup> *Stavropoulos and Others v Greece* App. no 52484/18 (ECtHR, 25 June 2020).

<sup>5</sup> See e.g., *Sinan Işik v Turkey* ECHR 2010-I 341; *Grzelak v Poland* App. no 7710/02 (ECtHR, 15 June 2010).

could have applied for the register to be corrected.<sup>6</sup> Additionally, the government claimed that it could not be a basis for discrimination as the note ‘naming’ did not appear on the copies and extracts of the birth certificate that the applicants would be obliged to provide to the authorities.

## 2. Objections to Admissibility

Before proceeding to examine the Article 9 assessment in this case, it is useful to explore the government’s objections to admissibility and the ECtHR’s responses. This is because, through the ECtHR’s responses to the objections to admissibility, the significance of the alleged Article 9 violation for the ECtHR is revealed, and the tone for the subsequent Article 9 assessment is set.

The first objection raised by the government was that the applicants had not exhausted domestic remedies because they could have applied for the register to be corrected. The ECtHR dismissed this objection because it agreed with the applicants that the birth certificate was correct; the birth certificate reflected the fact that their daughter had been named and, as such, an application for correction would not have provided sufficient redress.

Secondly, the government claimed that the applicants lacked significant disadvantage. In terms of laying the ground for the Article 9 assessment, the ECtHR’s reason for dismissing this objection is more relevant. The Court reiterated the principle that ‘a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court’.<sup>7</sup> However, it also pointed out that this ‘minimum level’ is relative and ‘depends on all the circumstances of the case’, including the applicant’s subjective perceptions and what is objectively at stake.<sup>8</sup>

The ECtHR explained that in this case the applicants considered that there had been an interference with their Article 9 rights and, as a result, they risked discrimination in their dealings with administrative authorities. The ECtHR emphasised the centrality of the right to freedom of thought, conscience and religion in a democratic society and explained that any application of the no significant disadvantage criterion should take due account of its importance and be subject to careful scrutiny by the Court.<sup>9</sup> The ECtHR considered that the alleged violation in this case concerned “‘important questions of principle’”<sup>10</sup> and was thus satisfied that the applicants had suffered significant disadvantage.

*Stavropoulos and Others* is one of the few cases, since the introduction of the ‘significant disadvantage’ admissibility criterion (under ECHR Article 35(3)(b)) in 2010, in which a government has raised this objection in relation to an Article 9 complaint.<sup>11</sup> The purpose of the ‘significant disadvantage’ criterion is to enable the ECtHR to dispose more rapidly of unmeritorious cases and to allow it to focus on providing legal protection to ECHR rights.<sup>12</sup> Given that the ECtHR has regularly found violations of Article 9 in similar cases concerning disclosure of religion or belief against Greece, it is remarkable that the government raised this objection in *Stavropoulos and Others*. Added to this, the fact that this criterion is usually used to dismiss complaints about small sums of money, means that it is unsurprising

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<sup>6</sup> *Stavropoulos and Others v Greece* App. no 52484/18 (ECtHR, 25 June 2020), para. 17.

<sup>7</sup> *Stavropoulos and Others v Greece* App. no 52484/18 (ECtHR, 25 June 2020), para 28.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, para 29.

<sup>10</sup> *Ibid.*, para 30.

<sup>11</sup> Another example can be found in *Vartic v Romania* which concerned a Buddhist’s diet in prison, see *Vartic v Romania (no 2)* App. no 14150/08 (ECtHR, 17 December 2013), para 39.

<sup>12</sup> *Ștefănescu v Romania* App. no 11774/04 (ECtHR, 12 April 2011), para 35.

that the ECtHR decided not to filter out the complaint at this stage. Indeed, by raising the objection, the government seems to have provided the ECtHR with an opportunity to stress the centrality of Article 9 and the importance of the alleged violation of the right to freedom of thought, conscience and religion at an early stage in the judgment.

### 3. Article 9: General Principles

In terms of the Article 9 assessment, the ECtHR opened by reiterating the importance of the right to freedom of thought, conscience and religion. This was followed by the principle that the (positive) right to manifest one's religion or belief also contains a 'negative aspect', namely the right not to be obliged to disclose one's religion or beliefs, and not to be obliged to act in such a way that it is possible to conclude that one holds or does not hold such beliefs.<sup>13</sup> This principle was first introduced explicitly into the jurisprudence in *Alexandridis v Greece* in 2008<sup>14</sup> and is now typically included in all cases concerning disclosure of religion or belief.<sup>15</sup> Like other cases concerning this issue, in *Stavropoulos and Others v Greece*, the ECtHR also reiterated the principle that 'State authorities are not entitled to intervene in the sphere of an individual's freedom of conscience and seek to discover his or her religious beliefs or oblige him or her to disclose such beliefs'.<sup>16</sup> Taken together, these principles clearly indicate that if such interference were found on the facts of the case, the ECtHR would offer a very high degree of protection.

### 4. Article 9: Application of the Principles

An interesting point about *Stavropoulos and Others* is that, when the ECtHR turned to examine the facts, it found that naming was the only legal way of a child acquiring a name, so the note 'naming' itself on the birth certificate did not 'have a religious connotation or indicate the absence thereof'.<sup>17</sup> However, the ECtHR did not simply move to a conclusion because there was no flagrant violation of the right not to disclose religion or belief in this case. Rather, it emphasised that it was 'mindful that the context must also be taken into account' in the assessment.<sup>18</sup>

After referring to the observations submitted by the Greek Ombudsman, the Court held that there was a widespread belief, reflected in the practice of some registrars, that naming and christening were alternative methods of a child acquiring a name. Given that the civil act of naming was the only legal way of acquiring a name in Greece, the Court found it difficult to see why it would be necessary to include the note 'naming' on a birth certificate, unless it was 'to distinguish it from something else'.<sup>19</sup> The Court observed further that the structure of the birth certificate itself was problematic. It included a section for christening details, which was left blank on the certificate in question, adding further weight to its view that the word 'naming' had not been included inadvertently on the certificate but rather indicated the way in which the child had acquired its name.

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<sup>13</sup> *Stavropoulos and Others v Greece* App. no 52484/18 (ECtHR, 25 June 2020), para 44.

<sup>14</sup> See *Alexandridis v Greece* App. no 19516/06 (ECtHR, 21 February 2008) [French], para 38.

<sup>15</sup> Elsewhere, the ECtHR has been emphatic about the importance of the right not to disclose one's religion or belief, explaining that 'falls within the *forum internum* of each individual', see *Sinan İşik v Turkey* ECHR 2010-I 341, para 42. In the more recent case of *Papageorgiou and Others v Greece*, the ECtHR has emphasised that it has 'always stressed that religious convictions are a matter of individual conscience', see *Papageorgiou and Others v Greece* App. nos 4762/18 6140/18 (ECtHR, 31 October 2019), para 88.

<sup>16</sup> *Stavropoulos and Others v Greece* App. no 52484/18 (ECtHR, 25 June 2020), para 44.

<sup>17</sup> *Ibid.*, para 50.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

The ECtHR agreed with the applicants that, in the circumstances, the reference to ‘naming’ carried ‘a connotation’, i.e., that the child was named rather than christened.<sup>20</sup> The Court also found—contrary to the government’s claims—that the copies and extracts supplied to the applicants did contain the note ‘naming’. It considered that the inclusion of such information on a public, State issued, document interfered with the applicants’ right not to be obliged to manifest their beliefs under Article 9. And, given the frequent requirement to present the birth certificate to the administrative authorities, the ECtHR considered that the applicants were exposed to the risk of discrimination in the context.

Having established that there was an interference with Article 9 in this case, the ECtHR moved on to consider whether the interference with Article 9 could be justified under Article 9.2. The examination of permissible limitations was brief because the Court found that the interference was not prescribed by law which, in terms of the Article 9 jurisprudence as a whole, is an unusual finding. It observed that Article 25 of Law no. 334/1976 does not provide that it is necessary to write ‘naming’ next to the names of children who acquire their names through the civil act of naming rather than through christening and, therefore, found a violation of Article 9 on this basis. In light of this finding, the Court did not consider it necessary to conduct a separate examination of the complaint under Article 8.

#### 5. Comment

It is clear to see from the judgment in *Stavropoulos and Others* that the context—the specific situation in Greece—was a critical factor leading to the finding of a violation of Article 9. Context has long been an important factor taken into account by the ECtHR in Article 9 cases, both implicitly and explicitly. In many ways, the ECtHR’s approach in *Stavropoulos and Others* echoes its approach in earlier cases concerning disclosure of religion or belief. Take *Grzelak v Poland*, for example, which concerned the disclosure of religion or belief (or lack thereof) on school reports. The ECtHR found that the fact that a mark was missing for religion/ethics on the pupil’s school report indicated that he had not taken religious education classes, which were widely available, and as a result meant that he was likely to be regarded as non-religious. In this case, the ECtHR showed an awareness of the politically sensitive nature of the complaint, and took into account the fact that, in countries like Poland where there is a dominant religion, the lack of a mark on a school report for religion/ethics had a ‘specific connotation’ and ‘distinguished’ individuals without a mark from those with a mark for the subject.<sup>21</sup> This language of ‘connotation’ creates a direct connection between *Stavropoulos and Others* and *Grzelak*.<sup>22</sup>

And in *Papageorgiou and Others v Greece*, the ECtHR was also clear about the importance of the broader context in the Article 9 assessment. In this case, which concerned an obligation on parents to submit a solemn declaration stating that their children were not Orthodox Christians in order to have them exempted from religious education classes, the ECtHR considered that the system was capable of placing an ‘undue burden’ on parents.<sup>23</sup> Further it noted that the potential for conflict may deter minorities from making requests to have their children exempted from religious education, especially if they live in ‘small and religiously compact’ societies like Sifnos and Milos, where the risk of stigmatisation is higher than in large cities.<sup>24</sup>

Nevertheless, what seems to set *Stavropoulos and Others* apart from these cases is the *degree* of emphasis that the ECtHR placed on context; arguably, it was the driving force in this case. On its own,

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<sup>20</sup> *Ibid.*, para 51.

<sup>21</sup> *Grzelak v Poland* App. no 7710/02 (ECtHR, 15 June 2010), para 95.

<sup>22</sup> *Stavropoulos and Others v Greece* App. no 52484/18 (ECtHR, 25 June 2020), para 51.

<sup>23</sup> *Papageorgiou and Others v Greece* App. nos 4762/18 6140/18 (ECtHR, 31 October 2019), para 87.

<sup>24</sup> *Ibid.*

the note ‘naming’ on the birth certificate did not disclose a religion or belief or lack thereof but, in light of the immediate context (the content and layout of the birth certificate itself) and the broader context (the situation in Greece), the ECtHR considered that there had been an interference with Article 9, and this interference was not prescribed by law. Had the context been different, it is highly likely that the outcome would have been different in this case.

It is intriguing that one of the very earliest Article 9 complaints before the ECtHR concerned disclosure of religion or belief on a birth certificate. In *X and Y v Austria*, a father complained about the Registrar’s refusal to issue a birth certificate for his child because he declined to inform the Registrar of the religion of the child’s parents. In terms of the complaint under Article 9, he argued that the ‘right to religious freedom and the right to change one’s religion must include the right not to reveal one’s religion’.<sup>25</sup> Bearing in mind that this complaint was raised in 1967, it was very much ahead of its time in terms of the understanding of the scope of Article 9 because it was not until 2008 that the ECtHR explicitly recognised the right not to reveal one’s religion or belief under this Article. Ultimately, the Article 9 complaint was not examined in *X and Y* because the ECtHR found that the applicant had failed to exhaust domestic remedies, but it would have been very interesting to have seen the Commission’s approach to such a complaint.

The body of ECtHR jurisprudence relating to the negative aspect of the freedom to manifest religion or belief—or the right not to be obliged to disclose a religion or belief—continues to grow. The ECtHR’s decision in the communicated case of *Papanikolaou v Greece*, for instance, is awaited, in which the applicant has complained under Articles 8 and 9 about the requirement to state her religion on her daughter’s birth certificate in accordance with Section 22 of Law no. 344/1976. The importance of this complaint is reflected in the fact that the President of the First Section has decided to give priority to this application under Rule 41.<sup>26</sup> Given the ECtHR’s consistent pattern of considering context a critical factor in cases concerning the right not to disclose religion or belief it is likely that, if the case is considered under Article 9, the specific situation in Greece will be influential to the outcome.

In terms of understanding the ECtHR’s approach to Article 9, *Stavropoulos and Others* is significant because it shows that context is not just viewed as additional factor to be taken into account in the balance under Article 9; context can be a driving force in Article 9 complaints. The ECtHR’s consideration of the particular circumstances in Greece enabled it to ascertain the precise impact of this note on the birth certificate on the applicants and thus to offer the level of protection it deemed appropriate under Article 9.

28 July 2022



<sup>25</sup> *X and Y v Austria* App. no 2854/66 (Commission decision, 18 December 1967).

<sup>26</sup> See Council of Europe, ‘European Court of Human Rights, Rules of Court’ (Council of Europe, 3 June 2022), available at: [https://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](https://www.echr.coe.int/documents/rules_court_eng.pdf).