

**Islam and Human Rights
in the European Union**

**Islam et droits de l'homme
dans l'Union européenne**

**Proceedings of the XXXIInd Annual Conference
Thessaloniki, 23–25 September 2021**

**Actes du XXXII^{ème} colloque annuel
Thessalonique, 23–25 Septembre 2021**

**LINA PAPADOPOULOU
(ed.)**

**EUROPEAN CONSORTIUM FOR CHURCH AND STATE RESEARCH
EDITORIAL COMARES**

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ARISTOTLE UNIVERSITY OF THESSALONIKI

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The organisers of the XXXIInd Annual Conference of the European Consortium for Church and State Research (September 2021) dedicate the present book to Charalampos Papastathis (1940-2012), Professor of Ecclesiastical Law at the Aristotle University of Thessaloniki, Greece, in honour of his active membership in the Consortium and his invaluable offer as teacher and researcher at his alma matter studiorum, which he served with excellence throughout his academic life.

* * *

Les organisateurs de la XXXIIE Conférence annuelle du Consortium européen pour la recherche sur l'Église et l'État (septembre 2021) dédient le présent livre à Charalampos Papastathis (1940-2012), professeur de droit ecclésiastique à l'Université Aristote de Thessalonique (Grèce), pour rendre hommage à sa qualité de membre actif au Consortium et son offre inestimable en sa qualité d'enseignant et chercheur en matière de son alma matter studiorum, qu'il a servi parfaitement pendant toute sa vie universitaire.

The European Consortium dedicates these Proceedings to Professor Salvatore Berlingò, Professor of Canon and Ecclesiastical Law, at the University of Messina, Italy, in honour of his active membership in the Consortium.

* * *

En hommage au Professeur Salvatore Berlingò, Professeur de Droit Canonique et Ecclésiastique, Université de Messine (Italie), à sa qualité de membre actif au Consortium.

TABLE OF CONTENTS

MESSAGE BY HIS ALL-HOLINESS	XI
<i>Ecumenical Patriarch Bartholomew</i>	
PROLOGUE	XV
<i>Evaggelos Venizelos</i>	
RESPECTER LES DROITS HUMAINS EN CONCILIANT LES DROITS DES COMMUNAUTÉS MUSULMANES ET LES POLITIQUES RELIGIEUSES DE L'ÉTAT	1
<i>Francis Messner</i>	
MUSLIM COMMUNITIES IN THE EU COUNTRIES. AN OVERVIEW BASED ON THE ATLAS OF RELI- GIOUS OR BELIEF MINORITY RIGHTS	15
<i>Silvio Ferrari</i>	
ISLAM IN THE EUROPEAN UNION – SOME LEGAL ASPECTS, IN PARTICULAR THE MOST RECENT JUDGMENTS OF THE COURT OF JUSTICE OF THE EU	25
<i>Michał Rynkowski</i>	
NATIONAL REPORTS	
LE CADRE JURIDIQUE DE L'ISLAM EN AUTRICHE	39
<i>Wolfgang Wieshaider</i>	
L'ISLAM COMME TEST POUR LE MODÈLE CONSTITUTIONNEL BELGE	53
<i>Louis-Léon Christians</i>	
ISLAM AND SECULARISM IN BULGARIA	67
<i>Galina Evstatieva / Simeon Evstatiev</i>	
ISLAM AND HUMAN RIGHTS IN EUROPEAN UNION: THE EXAMPLE OF CROATIA	87
<i>Ankica Marinović</i>	

ISLAM AND HUMAN RIGHTS IN CYPRUS: A COMPLEX RELATIONSHIP	97
<i>Achilles C. Emilianides</i>	
HISTORY AND PRESENT OF MUSLIMS IN THE TERRITORY OF TODAY'S CZECH REPUBLIC.	105
<i>Jiří Rajmund Tretera / Záboj Horák</i>	
ISLAM, MUSLIMS AND HUMAN RIGHTS IN DENMARK.	119
<i>Niels Valdemar Vinding</i>	
ISLAM AND HUMAN RIGHTS IN ESTONIA	147
<i>Merilin Kiviorg</i>	
ISLAM, HUMAN RIGHTS, AND STATE POLICY IN FINLAND.	161
<i>Matti Kotiranta</i>	
ISLAM AND HUMAN RIGHTS IN FRANCE	203
<i>Anne Fornerod</i>	
ISLAM AND HUMAN RIGHTS – REPORT FROM GERMANY	217
<i>Matthias Pulte</i>	
MUSLIMS IN GREECE	235
<i>Konstantinos Tsitselikis</i>	
ISLAM AND HUMAN RIGHTS IN HUNGARY. RELIGIOUS FREEDOM ISSUES AND SOME CHALLENGES OF A COEXISTENCE	251
<i>Balázs Schanda</i>	
ISLAM AND HUMAN RIGHTS IN ITALY IN AN AGE OF RELIGIOUS DIVERSITY.	259
<i>Francesco Alicino</i>	
ISLAM AND HUMAN RIGHTS IN LITHUANIA: A CASE OF SUCCESSFUL POLITICS OF INCLUSION AND BELONGING	293
<i>Egdūnas Račius</i>	
ISLAM AND LAW IN THE NETHERLANDS	309
<i>Sophie van Bijsterveld</i>	
ISLAM AND HUMAN RIGHTS IN POLAND.	327
<i>Piotr Stanisz</i>	
ISLAM AND HUMAN RIGHTS IN PORTUGAL	341
<i>Jónatas E.M. Machado</i>	
ISLAM AND HUMAN RIGHTS IN ROMANIA.	355
<i>Emanuel Tăvală</i>	
ISLAM AND HUMAN RIGHTS IN THE REPUBLIC OF SLOVENIA	369
<i>Blaž Ivanc</i>	

THE LONG AND WINDING ROAD OF SPANISH ISLAM	381
<i>Agustín Motilla</i>	
ISLAM IN SWEDEN	397
<i>Lars Friedner</i>	
ISLAM AND THE CHANGING CHALLENGES TO HUMAN RIGHTS IN THE UK	405
<i>Paul McDonough</i>	
AFTERWORD	425
<i>Lina Papadopoulou</i>	

NOTE: This volume contains the *proceedings of the XXXIst Annual Meeting of the European Consortium for Church and State Research*, held in Thessaloniki (Greece) during the days 23-25 September 2021, concerning the topic '*Islam and Human Rights in The European Union*'.

MESSAGE BY

HIS ALL-HOLINESS ECUMENICAL
PATRIARCH BARTHOLOMEW

Esteemed Professors,
Distinguished participants,
Dear friends,

It is with gladness that we accepted the kind invitation to deliver a message at this first open session of the International Conference “Islam and Human Rights in the European Union,” co-organized by the European Consortium for Church and State Research and the Aristotle University of Thessaloniki. Despite the fact that we were unable to be physically present among you this morning, the means of modern technology have made it possible for us to virtually deliver this address, with the same joy and honor, we can assure you, as if we were in your midst.

We would like to take this opportunity to congratulate the organizers of this Conference, especially Professor Mark Hill QC, Acting President of the Consortium, and Associate Professor Lina Papadopoulou, Director of the Jean Monnet Centre of Excellence “European Constitutionalism and Religion(s),” with their colleagues, because in such a challenging year, they have shown us all a great example of how not to be downcast by our tribulations, but instead to take courage and find ways of turning them into opportunities for research creativity and academic productivity. We pray to the Father of Lights to illumine and guide the members of the Consortium, of this unique network of Europe’s leading scholars in Church and State research, as they resume their significant work after the trial of the coronavirus. The ongoing pandemic has proved the vitality of the continuation of the Consortium’s notable contribution in this particular field, as both States and Churches still cope with the health crisis and its ramifications.

For this reason, we find it most fitting that this first Conference of the Consortium in the Covid-19 era is dedicated to the memory of one of the Consortium’s founding members and most prominent experts in Church-State relations, the late Professor Charalambos Papastathis. We had the privilege to know Professor Papastathis since our early post-doctoral years and to appreciate his thoroughness and thoughtfulness,

as well as his humility and generosity of heart. With Charalambos we shared not only the same age, nor just our love for Ecclesiastical and Canon Law, but above all our commitment to the defence and promotion of the canonically prescribed and sanctified through the centuries-old practice of the Church, responsibilities of the Ecumenical Throne, which Professor Papastathis safeguarded with an unwavering commitment not simply through his scholarship, especially in the field of Mount Athos law, but equally as Archon Nomophylax of the Holy Great Church of Christ. May God give rest to his soul with the righteous and may his memory be eternal before God! We are certain that his presence and scientific contribution shall be long-lasting not only because his extensive scholarship adorns the shelves of prominent legal libraries around the world, but also because the love, admiration and respect of his many students remain alive, as the organization of this Conference aptly testifies.

And despite the fact that Professor Papastathis was not a specialist in Islamic Law, we believe that he would rejoice with the general topic of this Conference, because the issue of the relation between Islam and human rights, or more broadly religion and human rights, goes to the heart of the question of the relationship between religion and law. We are cognizant of the critique often levied against religions, that despite their contribution to the modern human rights revolution, with many religious ideas to act as sources of inspiration for the “trinity” of “liberté, égalité, fraternité,” their internal policies and external advocacy have often propagated fundamentalism, intolerance and violence, while their sacred texts know only the language of commandments and prohibitions, without highlighting the dimension of individual rights and freedoms.

We don't deny the reality that religion has a formidable force, capable of both good and evil. Nevertheless, the proper response to the atrocities that have been made in the name of religion should not be its ostracism to the private sphere, as a mere scaffolding that was used once for the erection of the edifice of the human rights and, since now has outlived its purpose, it should be demolished in order not to obstruct any longer the majestic view of these rights' enjoyment. To the contrary, religions should be invited to cultivate their virtues through a process of reengaging the regime of human rights, not as a Trojan horse bearing secular ideas imposed on them *from without*, but by being open *from within* to fresh methods of interpretation of their sacred texts that will allow them to reassume their traditional patronage of human rights. The goal will be not the creation of a religious construction of the human rights, but the reclaim from the religious communities of their legitimate contribution to the secular human rights dialogue in a non-monopolistic fashion and with a listening and prayerful heart that will simultaneously nurture and challenge the human rights regime.

Therefore, not only religions are in need of human rights, but the latter also need religions. First, the right to religion is considered as the mother of many other individual and associational rights. Please do not understand this phrase in a corporatist

sense, as if made by a trade union leader concerned about his members' benefits. The point here is that for both the religious individual and the religious association, from the right to religion flows a series of other depending rights. In no case believers should be forced to suppress a part of themselves—their faith—in order to enjoy these rights. Moreover, indeed, the religious sacred texts contain many obligations, but these obligations are those prophetic voices needed in order to prevent the rights from becoming mere libertarian claims of self-indulgence. Last but not least, as the recent economic crisis and the ongoing pandemic has shown, the state cannot serve as the sole guarantor of human rights. The various faith traditions can and should contribute to the development, deepening and realization of these rights.

In short, all of us, religious and civic communities are invited to perceive the relationship between human rights and religion or, if you prefer, more broadly, between law and religion, as two communicating vessels, *συγκοινωνούντα δοχεία*, with the one being in constant need of the other. We sincerely hope that the Conference proceedings will significantly contribute to the further clarification and elaboration of this relationship.

With these thoughts in mind, we wish you thoughtful deliberations and productive outcomes, which we look forward to reading in print, in continuation of the Consortium's praiseworthy practice of publishing the proceedings of the past conferences, with the goal of reaching the widest possible audience. May the grace and the rich mercies of the God of righteousness be with all of you!

Thank you very much for your kind attention.

PROLOGUE

EVAGGELOS VENIZELOS¹

I have to apologize because extraordinary obligations deprived me of the joy of physical presence at the conference and the opportunity to welcome you in my city, Thessaloniki, and our University. I therefore ask for your understanding for the use of digital means.

Congratulations are in order for my dear colleague, my old student, Lina Papadopoulou, whom I watch with admiration, along with the other members of the Organizing Committee for the impeccable preparation of this relevant, crucial and ambitious conference.

Such a conference is the most appropriate, substantial and sensitive way to honor the memory of Professor Charalambos Papastathis, a dear friend and colleague at the Law School of the University and a founding member of the Consortium.

Charalambos Papastathis was an emblematic figure in ecclesiastical and canon law and in the history of Byzantine law. A dedicated and insightful researcher of rare ability for synthesis; a guardian of the Orthodox tradition, while remaining at the same time cosmopolitan and open to the new currents in international scientific discourse. He passionately served university teaching and research, as well as the Hellenic Republic in the critical field of the relationship between State and Church.

Professor Charalambos Papastathis was an authoritative defender of religious freedom, pluralism and tolerance. All these while displaying high-quality scientific discourse, courtesy, a British sense of humor and self-sarcasm, proof of his intellectual level and his great culture.

His son, Professor Konstantinos Papastathis, a member of the conference organizing committee, continues on some very interesting aspects of his father's work.

* * *

¹ Professor of Constitutional Law, Faculty of Law School, Aristotle University of Thessaloniki, former Vice-President and Minister of Foreign Affairs of the Greek Government.

The subject of the conference forces us to once more confront the historical foundations and the foundations of values of European constitutionalism, i.e. the foundations and durability of European democracy as one of the two most comprehensive versions of liberal democracy, the second being American liberal democracy.

The secular nature of European constitutional culture and the formation of European constitutional ethics different than Christian ethics, is the historical, regulatory, normative and jurisprudential result of a complex process full of conflicts and contradictions that has lasted for about two and a half centuries.

The question therefore is whether this *acquis* of European constitutionalism can suffer a setback and whether we can go back to much earlier stages of the relationship between constitutionalism and religion, in order to fully and unrestrictedly protect the religious freedom of Muslims, individuals and communities belonging to the legal orders of European constitutionalism, i.e. the national legal orders, the legal order of the EU and that of the ECHR.

The question concerns the institutional framework in which civil society is constituted and operates, the framework of European constitutionalism, with its internal pluralism, antinomies and conflicts, and the institutional framework in which the relationship between individuals and collective civil society entities with the state and international organizations or hybrid entities operates, such as the Council of Europe and the EU.

As you know, Greece possesses long experience of the special legal status of the Muslim minority in Thrace and the implementation of Sharia in the context of the Greek legal order, and therefore of the legal order of the EU and the legal order of the ECHR. Even with a delay, the Hellenic Republic has the obligation to fully comply with the case law of the ECtHR. As a former rapporteur of the Parliamentary Assembly of the Council of Europe on the implementation of the Court's judgments and as a former member of the Committee of Ministers, I express my satisfaction and hope that the Supreme Court of Civil and Criminal Justice, the Areios Pagos court, will not continue to resist.

Accepting the case law of the ECtHR and the CJEU is, after all, the simplest and safest way to safeguard the European constitutional *acquis*. The Greek Constitution is open to its interpretation in accordance with the ECHR and the EU Charter of Fundamental Rights, so that the "augmented Constitution" can be formed; the Constitution that provides the greatest protection of human rights.

The comparison between European constitutionalism and the so-called Islamic constitutionalism in the light of the latest developments in Afghanistan and in the light of the need to restructure the West as a strategic entity and as a mechanism for protecting democracy, the rule of law and human rights, highlights the stakes at hand.

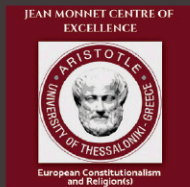
European constitutional democracy is sensitive, flexible, pluralistic, liberal, inclusive, but it must also be self-protective. It must ensure the conditions for its survival.

This is especially true now in times of multiple and continuous crises (economic, health, climate and security crises) that are transformed into interpretative dilemmas for the normative texts of European constitutionalism.

A democratic and liberal legality that undermines liberal democracy itself as a culture and as an institutional *acquis* is reminiscent of the cry of the Bourbons “*la légalité nous tue - legality kills us.*”

History solves the great dilemmas of constitutional theory, the interpretation of the Constitution and national and international judicial control. The history of the eve of World War I, as well as that of the interwar period, teaches us that sleepwalkers, both political and judicial ones, proved to be calamitous.

European constitutionalism respects and protects Islam as a religion and the religious freedom of Muslims, with the only prerequisite being that both Islam and the Muslims under the jurisdiction of the European legal order respect this European constitutionalism as a lesson and a historical *acquis*.



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