

The European Court of Human Rights in National Struggles around Religion and Education*

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Abstract: This paper analyzes comparatively the indirect effects of the European Court of Human Rights (ECtHR) judgments related to religion and education in four countries: Greece, Italy, Romania, and Turkey. It examines whether and how ECtHR jurisprudence on religion and education influences the views and the strategies deployed by various categories of actors. Do religious, secularist, minority, and other actors invoke these judgments and their normative principles in their discourse and mobilization strategies to promote religious pluralism or conversely religious values, in education? How are the norms that are enunciated in these judgments perceived by a diverse array of nationally situated actors who mobilize in this domain?

The place of religion in education forms a dynamic terrain of social contestation and struggle in the four country cases explored in this symposium. Conflicts revolve around whether and how religion classes (“religious education” or RE), heavily influenced by the majority faith, should be taught in public schools. Specifically, controversies bear, among others, on whether such classes should be organized at all; who should teach them; what should be taught; as well as whether participation

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in RE classes should entail an opt-in by those interested, or an opt-out by those espousing minority faiths, and others, such as secularists or atheists. Attempts to introduce sex education and anti-discrimination campaigns in schools have also encountered strong opposition from civil society and institutional actors defending religious morality and traditional family values. Last but not least, the presence of religious icons and symbols or the organization of prayers in public schools has been a powerful bone of contention, not only in Italy, where the infamous *Lautsi* case emerged but also in Romania and Greece.

In all of the above areas of contestation, the European Court of Human Rights (ECtHR or the (Strasbourg) Court) and its judgments cast a distinctive shadow over the social struggles that are waged around the place of religion in education. By drawing on the empirical findings of the preceding articles on Greece, Italy, Romania, and Turkey, this paper analyzes comparatively the indirect effects of the ECtHR judgments. It examines whether and how ECtHR jurisprudence on religion and education influences the views and the strategies deployed by various categories of actors (majority and minority religious groups, secularizing, and counter-secularizing civil society organizations). Specifically: Is the ECtHR, in these countries, a part of the political and legal opportunity structure (OS) within which competing interests and claims related to religion in education are pursued? Do religious, secularist, minority, and other actors invoke these judgments and their normative principles in their discourse and mobilization strategies to promote religious pluralism or conversely religious values, in education? How are the norms that are enunciated in these judgments perceived by a diverse array of nationally situated actors who mobilize in this domain?

It should be noted at the outset that the four core symposium pieces do not rely on an identical research design. They do, however, pursue a similar set of questions and a common research agenda (the study of the indirect effects of court decisions, in particular on social mobilizations). They all employ a qualitative research methodology based on in-depth interviews, on participant observation, and on the analysis of documents such as case files, *amici curiae* and other interventions, communiques, etc. As such, the articles offer a general basis for comparison, with the limitations inherent in the absence of a unique design across the set of case studies.

Each of the case studies of this symposium makes claims that, in fact, rely on a data set richer than religion and education. Each article draws on background research which explored matters such as legal status, court awareness, perceptions of the European Union (EU) and the ECtHR, rights-talk, etc. well beyond the confines of the field of religion and

education. This should not be surprising. In the religious field, educational questions are entangled with numerous other matters. Many of the actors discussed in the articles (religious groups most obviously) are not single-issue organizations but have broader agendas, dealing with a gamut of problems. Focusing on the intersection of religion and education, the articles in this symposium are interested less in the issues *per se*, and more in how the actors behave strategically around them, in particular in relation to the relevant ECtHR case law.

The actors who mobilize in the field of religion and education deploy a variety of strategies: litigation in domestic courts and in the ECtHR, administrative petitions, campaigns, raising public or community awareness, and pressure politics, among others. Litigation is only one, and rarely the dominant one, among the strategies that they pursue. Litigating can be understood in relation to the opportunities and constraints that are partly shaped by the legal-judicial and political system in a country. Where the political system is perceived as unfavorable or unresponsive to their goals, religious and civil society groups which are sufficiently determined and resource-endowed seek to engage in human rights litigation domestically and in the Strasbourg Court.

The main part of this chapter explores the variable degree to which different religious and secularist groups deploy domestic and ECtHR litigation in disputes related to the presence of religion in schools across the four countries covered in this symposium. It also briefly analyzes the conflicting perceptions triggered by ECtHR judgments, often as part of a broader construct of “Europe”, and their salience as discursive resources for secularists as well as conservative religious actors who defend national religious traditions against human rights norms. The ECtHR judgments, but also the policy impact (or lack of it) that such judgments have, inspire and motivate, or conversely discourage and undermine further litigation and legal mobilization. They provide an important source of norms, argumentative inspiration, and discursive leverage for a wide variety of religious, institutional, secularist, and minority actors who advocate and seek to advance pluralism and secularism. ECtHR judgments are also increasingly invoked by actors who resist secularization and who advocate a more prominent place for religion in the public sphere (Bob 2012; Fokas 2016). While most of the actors do not litigate, they invoke the Court and its judgments in their discourse, with varying degrees of accuracy and clarity, in order to defend and advance their claims.

Generally speaking, the ECtHR judgments related to the teaching of religion in schools most strongly reverberate in countries that have been the

target of human rights litigation that led to them. By contrast, and notwithstanding exceptional cases, ECtHR rulings against other countries are rarely known and invoked in domestic struggles beyond the circle of court-focused activists. Among the four countries under study, ECtHR litigation related to the teaching of religion in schools has primarily originated from Turkey, and specifically from Alevis.¹ In two major adverse rulings (the cases of *Hasan and Eylem Zengin*, and in *Mansur Yalcin and Others v Turkey*), the ECtHR found Turkey in violation of the right of parents to ensure their children's education in conformity with their own convictions. On the other hand, individual and civil society actors engaging in this issue in Greece, Italy, and Romania have been far less interested or able to pursue human rights litigation in Strasbourg. A notable exception in this regard has been the case of *Lautsi v Italy* on the different but related issue regarding the presence of religious icons in schools. It originated from humanist/atheist actors and has raised an unprecedented interest across several countries, including Greece and Romania (but not Turkey).

TO WHAT EXTENT DO RELIGIOUS AND CIVIL SOCIETY ACTORS MOBILIZE AROUND HUMAN RIGHTS AND IN COURTS?

Mobilization around religion and education takes a variety of forms—social, legal-judicial, and political. For individual organizations, legal mobilization is usually part of a broader repertoire of strategic action, which includes various forms of pressure and advocacy politics. Although a legal-judicial strategy may be an organization's main mode of action, it is most often pursued as complementary to political mobilization rather than in place of the latter. Legal mobilization involves litigation, but it also extends and continues well beyond the latter. In the aftermath of an adverse judgment issued by the Strasbourg Court, petitioners, their supporters, and their opponents follow through to construct their arguments and position in response to it. They may mobilize to call for an exceptional referral to the Court's Grand Chamber, or to press for its implementation, as has been the case in the Turkish cases analyzed, or conversely, to resist compliance with the norms and standards that it pronounces. Naturally, the same processes take place in response to domestic decisions.

Litigation in the ECtHR specifically related to the teaching of religion in schools has been pursued mainly by Alevis in Turkey. Alevis challenged the compulsory nature of religious instruction and the Sunni Islamic bias of the

relevant textbooks in domestic courts, and eventually—though this may have been the initial plan—before the ECtHR. In Italy and Romania, litigation in Strasbourg and in domestic courts has been pursued as a strategy primarily by secular humanist associations, particularly in disputes related to the presence of religious symbols (crucifixes and, respectively icons) in schools. In Italy, the seminal judgment of *Lautsi* has been the focus of extensive national and transnational mobilization, with considerable indirect effects. In Romania, the religious group that has been most active in Strasbourg (the Greek-Catholic Church) is also the only actor so far with a successful bid for a Court judgment on the teaching of RE (pending). On the other hand, actors mobilizing around religion in education in Greece have not resorted to courts, despite a long record of religious freedom litigation in the Strasbourg Court originating from minorities (mostly from Jehovah's Witnesses and Muslims).

As a general rule, the ECtHR judgments addressing other states are for the most part unknown in the four countries under study, with the exception of a few landmark cases such as *Folgero v Norway* and *Lautsi v Italy*. Therefore, as far as religion and education issues specifically are concerned, judgments against other states are less likely to form points of contestation and to be invoked by actors in mobilization and domestic politics.²

Why do actors in certain countries engage in litigation in the ECtHR, or domestically but with an eye to jurisprudence coming out of Strasbourg, while others do not? The country-based studies in this symposium suggest that a combination of three sets of factors may partly account for variable patterns of litigation across countries and groups: (a) divergence of national law and policy from ECtHR norms, (b) OS, and (c) the presence of religious or social-legal actors with the determination and the resources to deploy human rights law in their struggle against state policy around religion and education.

(a) Divergence from ECtHR norms

Turkey's legal and policy frame regarding the teaching of religion in schools clearly diverges from ECtHR principles as interpreted by the European Court. Exemption of religious minorities from compulsory religious courses has been highly restricted. By disallowing Alevis to opt out from religious classes, where the curriculum thoroughly reflects the dominance of Sunni Islam, the legal frame in Turkey is clearly and directly at odds with the norms and standards established by the ECtHR case law.

The official refusal to grant an opt-out is linked to the failure by the Turkish state to recognize Alevi as a distinctive cultural and religious identity group. Alevi have at times been vindicated in domestic courts in seeking exemption from religious and morality classes. Yet, the dominant judicial-legal approach and political stance remain overwhelmingly against this, rendering the ECtHR a likely outlet and unique forum where Alevi could challenge the prevailing Turkish standard.

In fact, the language of law and human rights has become a central resource in the development of the Alevi movement as well as the key to forging alliances with social and political actors advocating political and legal reform. As Ozgul's article on Turkey shows, ECtHR rulings are regularly deployed to legitimate Alevi claims and to pressure for a secular and pluralist education. These judgments have also empowered Alevi organizations in their broader struggle to gain recognition of Alevism as a distinct identity and religious community. The failure of the Turkish government to give full effect to the *Eylem Zengin* and *Mansur Yalcin* judgments has frustrated the hopes of Alevi actors, but also prompted further mobilization, seeming to confirm the group's victimization, and justify its struggle (Massicard 2014, 96).

In Greece, Italy, and Romania, on the other hand, religious minorities are exempted, or given the right to opt out from religious classes in schools, notwithstanding the administrative and other barriers that in practice create some difficulties in obtaining such an exemption. In Italy and Romania, officially recognized denominations may also organize their own religious classes provided there is sufficient demand from parents and pupils for it—the subject of a pending Strasbourg case in the latter country.

The opt-out possibility provided for by national law in these countries waters down the claim that the confessional nature of religious classes infringes on the religious freedom of non-Christian pupils and their parents. This is visible not only in the absence of related litigation in Strasbourg but also more generally in the ways in which religion and education issues are framed. In Italy, secular actors are more likely to invoke anti-discrimination norms emanating from the respective EU legal frame. Vague references to the ECtHR and its case law tend to be subsumed under the broader and widely invoked construct of a liberal "Europe". As for Romania, a recent 2014 Romanian Constitutional Court decision found the RE opt-out system to be inherently discriminatory and prescribed its change to an opt-in. This decision shows that on some issues at least, the domestic legal system is sufficiently receptive to render recourse to the ECtHR unnecessary.

(b) Opportunity structures

Differences in opportunities and constraints render litigation in domestic courts and in the ECtHR a more auspicious strategy for actors mobilizing around religion and education in Turkey and in Romania. Social movement theorists have developed the concept of OS to refer to the set of rules, institutions, and elite stances that shape how open, accessible, and receptive, or conversely closed and unfavorable, a political and legal system is to the claims and demands of particular social–political actors. While this concept originally focused on the political sphere, scholars have brought into its law and courts as arenas where social actors also pursue their interests and goals. Therefore, the OS must be viewed holistically to comprise both political and legal structures and institutions (see Hilson 2002). The key idea underlying the concept of OS is that the structures, institutions and elite attitudes *external* to a social group or organization shape whether and how a group or organization mobilizes, including when and why it chooses to pursue (or not to pursue) a legal and/or political strategy (see Koopmans 1999, 96). By emphasizing these external dynamics, some early OS approaches tended to discount the influence of social agency, namely, the interests, identities, and resources of organizations, groups, and their leaders, as driving forces in shaping why and how they mobilize.

In Italy, strategies to change the place of religion in Italian schools and to provide for greater recognition of religious diversity and humanist views, are constrained by the existence of the Concordat system. The complex national legal regime defined by the Concordat (an international convention that sets out the relationship between the Catholic Church and the state) establishes a legal structure that preserves the dominant position of Catholicism. The existence of this regime makes it particularly difficult to challenge Catholicism's dominance through recourse to law and legal strategies more broadly. Attempts to bring about change in regard to religion in education above all depend on whether a religious group has an agreement with the state. This overarching domestic, legal-political frame, alongside the length of domestic judicial proceedings, discourages litigation and renders it exceedingly burdensome for religious groups with limited resources. Instead, religious and secularist groups have pursued strategies through the political system and local practices. Mobilization by a variety of state and civil society actors, including local faith groups, has taken different non-legal forms: lobbying at the national level and inter-faith activities (lectures, meetings, etc.) at the local level,

all seeking to raise awareness of, and promote knowledge and accommodation of religious diversity and pluralism (see Giorgi & Annicchino in this symposium).

In Greece too, reformists who have sought to change the confessional nature of religion classes in schools have pursued non-legal strategies. The campaign for changing the confessional nature of religious classes in schools has been led by a progressive-minded segment of Orthodox theologians who broke away from the association of theologians, to create their own association “Kairos”. The advent of the Socialist government of PASOK in 2010 and of the left government of SYRIZA that came to power in 2015 opened an opportunity for this break-away association to address directly to the government its views for a secular agenda and for reforming the teaching of religion in schools. In both governments, officials and political elites have exhibited responsiveness and a like-minded view in reforming the catechistic nature of religious classes, and in promoting a secular education cognizant of society’s religious diversity. Thus, opportunities to mobilize through the domestic political system have been greater and more promising than engaging in lengthy and uncertain legal battles through courts.

On the other hand, Alevi organizations pursued human rights litigation domestically and in the Strasbourg Court to contest Turkish law and policy around religious teaching in schools. This legal and human rights strategy was pursued following a shift in OS after 2000 at the national and European level. Throughout the 1990s, Alevi organizations had pursued a domestic political strategy. During that decade, they also turned to national courts to defend their organizations against a restrictive national law that prohibits the founding of an organization whose activities are based on or conducted in the name of race, social class, religion, or faith. Turkish law also prohibits organizations that assert the existence of minorities in Turkey based on racial, religious, and cultural–linguistic differences (Massicard 2014, 83–84). Alevi organizations subsequently litigated in domestic courts to obtain equal treatment and exemption from RE classes. Their mobilization in the legal-judicial arena in the second half of the 1990s was significantly shaped by the limited possibilities to attain their goals through the political system in Turkey. Litigation also enabled the Alevis to gain visibility for their demands and to find allies among journalists and intellectuals.

European-level legal opportunities became more open and auspicious as domestic political conditions in Turkey grew more restrictive and unreceptive in the 2000s, not least with the advent of the Justice and Development

Party (Adalet ve Kalkinma Partisi, AKP) government. Turkey's acquisition of the status of official EU candidate country in 1999 introduced pressures for domestic reforms. In the frame of the EU accession process, it is well known that the ECtHR judgments are central points of reference for the European Commission monitoring human rights progress in a candidate country. In this same process, domestic NGOs working on human rights and religious freedom were invited by the European Commission to submit their views, including in the domain of religion and education, as the article by Ozgul shows. In this way, the EU accession process heightened the political weight of ECtHR judgments and opened up opportunities for NGOs to gain international exposure, including in regard to religion in education. This issue was incorporated in a broader human rights platform that rallied the support of progressive reformists and left activists.

In sum, it was the shift towards a more restrictive domestic political system, and at the same time more open and receptive European-level governance structures that prompted Alevis to resort to domestic litigation in the first place, and subsequently to take recourse to the ECtHR in the 2000s. Turkey had accepted the right to individual petition in 1987 and recognized the ECtHR's compulsory jurisdiction in 1990. Even though in earlier cases brought by Islamic actors, the ECtHR had upheld the official vision of Turkish state secularism, it adopted a more interventionist approach in regard to the Alevis. This became apparent in the *Hasan and Eylem Zengin* ruling that bolstered the perception of the ECtHR as an open judicial structure, receptive to the Alevis' cause. At the same time, as the article by Ozgul shows, the government's failure to implement the *Zengin* and the *Mansur Yalcin* judgments has triggered disillusionment about the effectiveness of human rights litigation in bringing about actual change.

In Romania, the EU accession process between 2000 and 2007 similarly bolstered the salience and impact of the ECtHR and its judgments, after the country had already ratified the European Convention in the summer of 1994. During the accession process, in particular, the European Commission monitored judgments against Romania in seeking to promote reforms related to human rights and rule of law in the country. This gave political weight and "teeth" to the ECtHR and its rulings, already well known and widely cherished among the Romanian public (Bogdan and Mungiu-Pippidi 2013, 73–74). Litigation drawing on the Court's case law has been pursued rather intensely in domestic courts. Legal claims on a variety of religion-and-education issues were also

brought before the national anti-discrimination body that was founded in response to the accession process. The most controversial among those claims were those concerning the presence of religious icons in public schools and the opt-out provisions concerning the RE classes. In 2006, Romania's national anti-discrimination body issued a decision that considered the presence of icons in public schools outside the RE class to be a discriminatory practice. That decision was subsequently overturned by the country's highest appellate court after an extended legal battle. The anti-discrimination body also found passages in RE textbooks used in public schools, which referred to minority religious groups, to be discriminatory.

The qualified successes of secularist activists in domestic courts and in the anti-discrimination body partly explain why recourse to the ECtHR was not necessary for relation to religion-and-education issues.³ It also shows, however, why the Strasbourg Court's judgments, such as *Folgerov v Norway*, have represented an important discursive and strategic resource for secularists in particular. Before the opt-out case reached the Constitutional Court and was resolved favorably, they threatened with litigation in the ECtHR. At the same time, dominant religious actors also invoke ECtHR judgments to normatively buttress their claims. It must be noted that in judgments like *Folgero*, the ECtHR reasoned in a carefully balanced and contextual manner to assess the need for an opt-out in relation to the content of religious classes. Thus, *Folgero v Norway* and *Zengin v Turkey* were also invoked by the Patriarchate of the Romanian Orthodox Church in order to buttress the argument that states have the right to convey through public education religious or philosophical information even with a confessional character, provided they grant the right to exemption.

(c) Litigation expertise and other resources

Irrespective of national-level opportunities and constraints, some groups have been more interested and eager to engage in ECtHR litigation than others, as the country-based articles show. In particular, secular and humanist/atheist NGOs in Italy and in Romania have displayed a keen interest in deploying rights litigation in domestic courts and even in the Strasbourg Court. In Italy, the landmark ECtHR case of *Lautsi* signaled the pursuit of human rights litigation strategies on the part of secularist and atheist groups to contest the presence of religious symbols in schools. The prime mover behind *Lautsi* was the Union of Rationalist

Atheists and Agnostics based in Italy. This judgment rallied widespread support but also provoked far-reaching opposition across several European states. Following a referral request, in which several EU states intervened, the Grand Chamber's judgment in *Lautsi* reversed the ECtHR section decision. It did so by acknowledging a large margin of appreciation for the Italian state in regulating its religious affairs in accordance with national traditions. Thus, the Court frustrated the expectations of secularists that human rights law and courts could serve well the struggle for a more secular school environment.

In Romania, Popa and Andreescu point to the strategic part played by "front line" human rights NGOs, whether more generalist human rights associations or single-issue secularist groups, in litigation over religion and education. They forged alliances with lawyers and activists from a highly active and resourceful human rights movement that flourished in the post-communist period in the country, to contest the presence of religious icons, and the role of religion in education, before domestic courts. The first *Lautsi* judgment issued by the regular section of the ECtHR additionally energized Romanian secularist NGOs, which had already pursued a similar case about the presence of religious icons in schools in 2006. In response to the petition that they had lodged, the National Council for Combatting Discrimination (CNCD, the anti-discrimination body), drawing heavily on ECtHR case law, ruled that the unrestricted presence of religious icons in public educational institutions undermines the principle of religious neutrality of the state and must be regulated in order to prevent discrimination against religious minorities. That decision created a great deal of public controversy. Besides pursuing domestic litigation and bringing claims in quasi-judicial bodies like the CNCD, the secularists have also eyed the ECtHR as a potential arena where they could contest issues related to religious freedom. Yet, the final Grand Chamber judgment in *Lautsi* undermined the momentum of secularist human rights litigation at the Court, albeit not domestically.

Thus, through the efforts of these activists, a few landmark ECtHR judgments have cast their "shadow" over state policy in this domain, even if they often go unmentioned. In some of the countries under study, various institutional actors and decision-makers in the sphere of religion and education are well-aware of the rulings and take them into account alongside other international and European norms, such as the Toledo principles. In Greece, the Ministry of Education and Religious Affairs and the Hellenic Data Protection Agency were aware of the judgment's main points, as Markoviti's article shows. In Italy too, institutional

anti-discrimination actors invoked *Folgero* to support their view that religious classes in schools cannot be of a catechistic nature, but should be about ethics, history, and a comparative approach to religions. In the light of this judgment, they argue that the uncertain status of alternative teaching in Italy may produce discriminatory effects.

Religious minorities, unlike secularist organizations and activists, have for the most part been disinclined to engage in legal action in domestic courts or in Strasbourg. Only a few “old” religious minority groups, such as the Alevis in Turkey (already considered), Jehovah’s Witnesses in Greece and elsewhere (Romania and Turkey), the Greek-Catholics in Romania, and the Evangelicals and the Waldensians in Italy, have engaged with litigation either in domestic courts and/or the ECtHR. Other religious minorities though, especially migrant minorities, have been reluctant to pursue litigation, including on issues related to religion in education.⁴ In Italy, some “new” minority religious groups choose to eschew the legal system, expressing—to quote Giorgi and Annicchino—“a clear preference towards extra-judicial remedies”. What often underpins the reluctance of minorities to resort to courts and to the ECtHR is the concern not to be (or appear to be) confrontational vis-à-vis state authorities, not least because their position and status in national society are either contested or uncertain (in the case of migrant religious groups). Instead of going to court, such minorities often prefer to resolve emerging conflicts through accommodation at the local level.

There is a great deal of variety in how religious minorities view the ECtHR and their legal strategies in relation to it. For some minorities, litigating in the Strasbourg Court is a strategy of last resort, when other channels of action and pressure are closed or fail. In Greece, minority religions are relatively content with the system of exemption and use other means to resolve their concerns with specific religious teaching problems, such as the contents of textbooks. Jehovah’s Witnesses, for instance, have sought to resolve their concern about how their faith is depicted in school textbooks by petitioning to the Greek Ombudsman, as Markoviti shows. In Romania, minority groups that were in strong conflict with the Orthodox Church in the 1990s and in the first half of the 2000s, now express a predilection for the resolution of local conflicts directly with the Orthodox hierarchy.⁵ One possible explanation for this relatively recent non-confrontational attitude is the *actual* success in the resolution of local cases, against the background of increasing acceptance of religious pluralism in society and within the Romanian Orthodox establishment in particular.⁶

The Alevis of Turkey, on the other hand, apparently interpreted human rights law and legal strategies not as a strategy of confrontation, but rather as a means to gain legitimacy for their struggle. As Massicard interestingly argues, the recourse of Alevis to law and legal strategies has been part and parcel of their organizational identity. Their demands have been framed in legal terms arguably in an attempt to show that they seek to advance not particularistic but universal values, such as equality and non-discrimination, religious freedom, etc. In this way, they have sought to gain legitimacy and to express that their wish was not to overturn the legal system but to pressure it to hold on to its promises (Massicard 2014, 87–88). This framing of legal mobilization strongly resembles the discourse of similarly active groups such as the Jehovah's Witnesses, who furthermore emphasized the group's "apolitical" or "depoliticized" efforts (Côté and Richardson 2001; Ozgul in this volume).

Finally, majority religious actors and organizations have rarely engaged in litigation in domestic courts and in the ECtHR. Traditional majority religions have enjoyed a special partnership with the state. This partnership is cemented in special conventions (as with Italy's Concordat), in explicit constitutional provisions (Greece), or in a plethora of laws, administrative arrangements and normative understandings (Romania). Thus, majority religions have privileged access to channels of communication with administrative authorities and public institutions. In all three European countries under discussion and in Turkey too, the dominant religions are influential in politics. Under these circumstances, their use of litigation on religion and education issues has not been necessary, and it has been done in a few cases only reactively. Their legal arguments are generally framed in terms of constitutionally sanctioned conventions such as the Concordat, or constitutional provisions like those in Greece.

Interestingly, one of the most distinctive and largely unintended indirect effects of the ECtHR judgments related to religion and education—above all of *Lautsi*—has been to trigger counter-mobilization among a variety of religious actors. Majority religious actors in particular, in Greece, Italy, and Romania, saw the first *Lautsi* judgment issued by the section of the ECtHR as a signal that human rights could be deployed to challenge their dominant position and privileges. In Greece, Christian Orthodox religious actors view ECtHR judgments as a potential challenge or threat to national religions and traditions. Traditional religious actors such as the theologians' association of PETHI invoke the language of rights to support their claims for preserving the confessional nature of religious classes in schools. They argue that requiring students to learn about

different religions in a reformed curriculum while reducing the weight given to Christian Orthodox faith would infringe on the religious freedom of Orthodox students and that of their parents.

In Italy, Catholic NGO actors deploy the language of rights, invoking religious freedom, to defend the moral views, and values of Catholicism. They do so against what they see as an ideologically tainted approach of the ECtHR that is arguably biased and used to advance a partisan ideological agenda. In a country where Catholic associations are traditionally strong and active, the “gender theory” school controversy signaled a strategic swing in their discourse toward arguments based on freedom of religion and beliefs. This is part of a broader normative and discursive reorientation whereby dominant majority religions deploy human rights norms to frame their views. For instance, Catholic-affiliated associations frame debates such as those over the “beginning of life” in terms of defending “the rights of the weakest” (Giorgi 2016; Ozzano and Giorgi 2016). This seems to have sparked a preoccupation with monitoring the international courts, and misinterpretation of the rulings that they issue.

In Romania, energetic pro-life NGOs affiliated with the Romanian Orthodox Church and with Evangelicals have mobilized and invoked ECtHR judgments to contest mandatory sex education in public schools, which they claim infringes on freedom of religion and the parent’s rights. As Andreescu and Popa show, an unintended effect of ECtHR judgments with a socially progressive tint, but also similar decisions of the domestic discrimination body or courts (e.g., the 2014 ruling of the Romanian Constitutional Court on RE), has been to trigger counter-mobilization by religious conservatives. In response, religious actors developed transnational links with U.S.-based Evangelicals interested in the defense of Christian family values and with jurists from the European Center for Law and Justice, and the Alliance Defending Freedom, to defend RE in schools, and to change the Law on National Education, among other goals.

CONCLUDING REMARKS

The four country-based case studies show notable cross-national variation in the deployment of litigation in religion and education matters, but also variation among different religious groups. In the first place, the greater interest in and use of human rights litigation in the Strasbourg Court in Romania and in Turkey cannot be understood independently from the

EU accession process that they two countries underwent in the 2000s. By requiring democratization and rule of law reforms from candidate countries, and by taking ECtHR judgments as a yardstick in this regard, the EU accession process added political “teeth” to a variety of human rights claims. It thus made litigation in the ECtHR a particularly attractive and expedient strategy for those actors who were able and willing to pursue it.

Regarding variation across different groups, secularist and atheist groups are more prone to engage in court action and/or in efforts involving other agencies tasked with enforcing European norms, such as anti-discrimination bodies or ombudspersons. In broad terms, they are more attuned to developments in Strasbourg, possess the requisite expertise in-house or can more easily access it, and tend to refer more to the Strasbourg Court, even though occasionally only as a threat. Highly politicized and often transnationally organized religious minorities are also more likely to pursue domestic and European human rights litigation. Prime examples include the Waldensians-Methodists in Italy, the Alevi in Turkey, the Greek-Catholics in Romania, and the Jehovah’s Witnesses more generally. By contrast, other religious minority groups, whether more recent (e.g., migrant) or more established, have tended to eschew legal conflict in preference for less confrontational solutions.

The majority churches, on the other hand, have tended to resort either to campaigns to “educate” the public on the contentious issues arising on this subject, or to pressure the authorities to preserve existing arrangements or prevent undesirable changes. Courts have surfaced as a venue for action for majority religious groups, to quote Giorgi and Annicchino, mostly in cases of “defensive mobilization”, but due to their recent “activist” rulings, they have generally been viewed with suspicion.

Last but not least, there are signs that, more recently, civil society actors among the dominant majority religions have also engaged in rights-centered terms in the debate on religion and education. They have mounted a systematic defense of their interests based on different readings of ECtHR judgments. The Romanian case study, in particular, explores how civil society actors struggling to maintain a prominent presence of religion in public life have grown adept at leveraging the “language of rights” in their actions. This seems to be part of a broader international trend (Bob 2012) so there are reasons to believe similar developments are underway elsewhere in Europe.

What causes these differential patterns of engagement with the European Court and its case law across the various types of actors in

the field of religion and education? The case studies in the symposium suggest that the first factor is the existence of a gap between the domestic practices and norms on the one hand, and ECtHR principles on the other. Here, Turkey stands out for a particularly egregious distance from the latter in the field of religion and education. Secondly, how (un)favorable the domestic political or legal systems are to the relevant actors' specific interests partly determines these actors' susceptibility of engaging the courts, and the European Court particularly. In this respect, groups promoting secularism and/or religious pluralism have made important strides through the courts, changing established practices. Alternatively, litigation proved less tempting where the political channels adequately served groups' interests, as in Italy. Thirdly and finally, previous legal experience and access to specific expertise facilitate and promote engagement with the European Court. This is visible in the case of secularist organizations as well as a few litigation-prone minority religious groups.

NOTES

1. Alevism is a branch of Shi'a Islam that is practiced in Turkey (but also in the Balkans).
2. This being said, there are good indications that, with respect to other issues relevant for secularizing or counter-secularizing actors, such as the rights of gays and lesbians, ECtHR decisions travel considerably better transnationally, and activists are more sensitive to the Court's jurisprudence.
3. There is currently one case pending before the ECtHR, *Jula v Romania*, on the conditions for the formation of a RE class.
4. Jehovah's Witnesses in Greece and elsewhere have regularly pursued litigation in the ECtHR but not in regard to religion in education.
5. One particularly frequent example of such feuding is the question of access to public cemeteries, many administered de jure or de facto by the ROC.
6. The 2006 law on religious denominations has also helped cement, at an incremental but steady pace, this increasing mutual tolerance among the recognized denominations.

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