

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Decision on the Replacement of Religious Oath by Civil Oath
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Introduction

In the light of the recent judgment of the ECtHR in the case of *Alexandridis v. Greece* the NCHR decided to address once more the question of religious oath. In the said judgment the ECtHR held that the fact that the complainant had to disclose before the Greek court that he is not orthodox and that he did not wish to take the religious oath, in order to take the attorney's license, was in violation of his freedom of religion. The judgment exposes the problematic practice of religious oath and the need to amend its legislative framework. The NCHR wishes to stress that it has already recommended the abrogation of religious oath and its replacement by civil oath on two different occasions.

The question

Freedom of religion is provided for by article 13 of the Greek Constitution, article 9 of the ECHR and article 18 of the ICCPR. The Constitution protects both aspects of freedom of religion: freedom of religious conscience and freedom of religious beliefs' manifestation. Freedom of religious conscience includes the freedom to choose, preserve, change or abandon a specific religion or religion in general. The ECtHR has held in its judgment *Kokkinakis v. Greece* that freedom of religion is "one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned." Furthermore, in its judgment

Buscarini v. San Marino, it held that freedom of religion “entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion.”

In the judgment *Alexandridis v. Greece*, the ECtHR held that “the freedom to manifest one’s religion or belief has also negative content, the right of one not to be forced to manifest his religious beliefs nor to act in a way on the basis of which his religious beliefs can be presumed”.

Therefore the obligation to manifest one’s religious beliefs, as a consequence of the existing legal framework regarding oath taking, given that civil oath taking is provided for only for those who expressly state that they are not Greek-orthodox (articles 194, 218, 220, 236 & 398 Code of Criminal Procedure, article 19 Code for Civil Servants, article 3 Military Service Regulation), cannot be considered as constitutional. Since the negative content of freedom of religion is also protected, it becomes evident that it is violated when for example an atheist witness has to manifest his religious beliefs and to convince the Court for them so as not to take the religious oath.

In order to make the practice of oath taking compliant with the Constitution and international conventions -, in the cases it is prescribed , the religious oath must be replaced by the civil oath. Civil oath taking does not violate *a priori* “negative” freedom of religion because it is a general and neutral measure that does not presuppose adherence to a particular religion.

The NCHR also needs to note that rendering religious oath optional, as in the case of article 408 of the Civil Procedure Code according to which a witness is asked whether they want to take the religious or the civil oath, is not satisfactory for the following reasons: a) given that Greeks are, in their vast majority, Greek Orthodox, the choice of the civil oath by any individual would automatically be interpreted as admitting that they are not Greek orthodox, which, in turn, could lead to any kind of prejudice against them; b) it has been observed that judges do not offer witnesses the choice as to which oath they want to take. As a result, the witness

themselves need to express their affirmative wish to take the civil oath, thus generating the presumption that they are not Greek orthodox.

Due to dominant stereotypes in the Greek society alternative oath taking equals with admission on the part of a civil oath taker that they are not Greek orthodox. Thus, this is a practice that allows for assumptions to be drawn regarding the religious beliefs. Therefore, in order to sufficiently protect the 'negative' freedom of religion, the only solution is the replacement of the religious oath by the civil one. The NCHR also notes that the Conseil d'Etat has held that both religious and civil oath are equally valid.

Furthermore, it has been argued that religious oath taking is unconstitutional also when practiced by Greek orthodox individuals. On the basis of the Gospel, Holy Church Rules and a Circular issued by the Ecumenical Patriarch, it has been maintained that religious oath taking is not allowed in Christian religion; therefore, such practice is unconstitutional since it obliges individuals to act in a way that is in violation of their religious beliefs.

Recommendations

On the basis of all the above, the NCHR recommends the replacement of the religious oath by the civil one and as a consequence the amendment of the following provisions: a) article 408 Code of Civil Procedure (oath for witnesses); b) article 218 Code of Criminal Procedure (oath for witnesses); c) article 217 Code of Criminal Procedure (verification of witness's identity); d) article 194 Code of Criminal Procedure (oath for experts); e) article 236 Code of Criminal Procedure (oath for interpreters); article 398 Code of Criminal Procedure (oath for the juries); f) article 19 Code for Civil Servants; g) article 3 Military Service Regulations.

Athens, 29 May 2008