

THE RIGHT TO RELIGIOUS EQUALITY UNDER THE GREEK LAW

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I. In generally

The general principle of equality, in accordance with the teachings of the Greek Constitutional law, derives directly from the equally important concepts of freedom and democracy, which constitute the common foundation of any modern and democratic rule of law. The right to equality has been entrenched as of this day by all Greek Constitutions following the liberation of the country from the Ottoman thrall, namely, as from the first revolutionary Constitution of Epidaurus (1822) to the currently applicable Constitution (1975).

Equality is presently protected as regards both its general form (Article 4 § 1 of the Greek Constitution) and its multiple individual expressions, one of which is religious equality.

II. The constitutional protection of religious equality

Pursuant to Article 13 § 1 subparagraph (b) of the Greek Constitution on the entrenchment of the right to religious equality: *"The enjoyment of individual and political rights does not depend on the individuals' religious beliefs"*.

Furthermore, the legislature, the administration and the courts apply the provisions of the European Convention of Human Rights (Rome, 1950) in relation to the protection of the same right.

Religious equality exists in a society whose members enjoy various individual, political, civil, tax or other rights under the relevant law, irrespective of their religious beliefs or inclusion in a particular religious community¹. In other words, the effective and full entrenchment of religious equality under the Greek Constitution and other law does not allow the enjoyment of any individual rights be subject to or affected (manifestly or not) by criteria of religious inclusion of citizens - thus resulting in their unequal treatment by the State or State's bodies and institutions, contrary to the principles of the modern rule of law.

In this sense, religious equality is a constitutionally protected right for everyone, whether a national or not, who lives in the Greek territory legally or illegally². In addition to individuals, holders of such right may also be the entities, provided that this is consistent with both the nature of the right and that of the entity in question, as well as the unincorporated associations.

The effective protection of religious equality is very important for the coherence and balance of the contemporary Greek society, which has now acquired a multi-religious and multi-cultural character. The difficulties in the implementation of religious equality are many everyday, a fact that leads to the conclusion that such right *is the most strenuous expression of religious freedom in terms of its actual implementation*. The actual entrenchment (and not merely

¹ From the rich literature, see in particular (in greek): CH. PAPASTATHIS, *Religious Freedom and Prevailing Religion*, Thessaloniki 2000 and *Ecclesiastical Law, vol. A*, Thessaloniki 2003, pp. 83-97; S. TROIANOS – G. POULIS, *Ecclesiastical Law*, Athens ²2003, pp. 79-185; S. TROIANOS – K. PAPAGEORGIU, *Religious Law*, Athens 2009, p.8 et seq]; K. BEYS (ed.), *Religious Freedom. Theory and Practice in the Greek Society and Legal System*, Athens 1997; D. SALAHAS, *The legal position of the Catholic Church in Greek territory*, Athens 1978; K. PAPAGEORGIU, «Freedom of Religion: A case of discrepancy between the Greek and the European Legal Order, before the European Court of Human Rights», in: *Jurisdiction in Europe. Towards a Common Legal Method*, Germany, Münster 1997.

² Since the Constitution does not make a relevant distinction, the subjects or holders of the individual right of religious equality are not only the Greek citizens but any person within the Greek territory, be it a national or a foreigner, irrespective of whether such foreign national is found in Greece legally or illegally, voluntarily or against their will.

nominal, as is most often the case) of religious equality strengthens the full and effective enjoyment of all other manifestations of religious freedom within such country.

III. Law 3304/2005 and the Greek Ombudsman

The enactment of Law 3304/2005 on "*the implementation of the principle of equal treatment irrespective of racial or ethnic origin, religion or belief*" constituted a critical point for the promotion of the principle of equality and the protection of human rights in Greece. This Law incorporated the EU Directives 2000/43/EC and 2000/78/EC into Greek law.

The provisions of Law 3304/2005 seek to combat the effects of both direct and indirect discrimination (Articles 3 and 7) while organizing a complex network of mechanisms for the protection of the individuals, which far exceeds the traditional model of sanctions. New administrative and penal sanctions are provided for (Articles 16 and 17), the emphasis being on the actions to be taken by specific public bodies so as to promote equal treatment and take positive measures.

This act is primarily implemented by the Greek Ombudsman whose role is strengthened and enhanced by the addition of new functions and competences, which contribute to the effective fulfillment of its mission. The Greek Ombudsman, as shown by the annual reports as of this day, has already spent part of his activity in investigating citizens' complaints regarding unequal treatment on the part of State bodies. As of entry into force of Law 3304/2005 (27.1.2005), the Greek Ombudsman has been receiving complaints of citizens in protest of unfair discrimination, which, according to the Greek Ombudsman, had taken place against those citizens by the administration, also by reason of their religious beliefs.

IV. Case-law regarding protection of religious equality

With respect to Courts, we should mention two very important decisions thereof.

First, the decision No. 1700/1983 of the Athens Administrative Court of Appeals, whereby the Administration act rejecting the appointment of a secondary-education language teacher on the grounds that she was not a member of the Orthodox Church was annulled. According to the same Court,

the enjoyment of individual and political rights, such as the provision of education at schools, may not be dependent on the religious beliefs of the individual, while the freedom of religious conscience is protected at all times.

The second decision, issued by the Thessaloniki Administrative Court of First Instance (No. 1064/1983), interpreted the constitutional principles of religious and tax equality. According to said decision, the exemption from Property Tax (Article 24 § 7 Law 2130/1993) must apply, for reasons pertaining to religious equality, to any property owned by any "known religion" (as per Greek law, "known religion" is deemed the religion that does not involve secret doctrines and secret worship). The foregoing applies even if the property is used also for educational purposes - in addition to worship - given that there do not apply any similar restrictions for the prevailing religion. The same decision states that tax relief may not pertain exclusively to the Orthodox Church. Unless there are substantial and justified grounds for the preferential treatment of the Orthodox Church, the tax-exempt provisions must be interpreted in favor of all known religions within the territory of the State. This should be accepted especially when the economic factor predominates in the context of such regulation, in the sense that such preferential treatment is not associated with the spiritual role of the Orthodox Church, but relates primarily to its status as an economic person and holder of rights, and also of obligations, in the Greek State.

V. Concluding remarks

The realistic outlook on things requires that we acknowledge that the absolute achievement of the goal of religious equality of citizens is impossible. It is inevitable that at least some minor cases shall be neglected, and it is required that the justice and administrative bodies undertake the task and initiative, respectively, regarding the restriction of those cases. However, it is absolutely feasible the willingness to continuously adapt, improve and specialize the legislative and administrative measures and institutions, which are related to the effective implementation of religious equality. The responsibility here lies with the legislation, administration and also justice, which is required to apply fairly the relevant regulations through case-law in order for the combat against any religious inequalities to be an unceasing pursuit. The need to follow such direction is deemed imperative especially nowadays, when the revival of the social phenomenon of religion has resulted

in the religion's emergence as a most important factor of modern life and behavior of large social strata in our country and elsewhere³.

³ Indicatively, see the comparative data cited by the European Social Research (ESR) dated 2003, in the article by M. DRETTAKIS, «The religiousness of Greeks», newspaper: *The Kathimerini (Sunday edition)*, issue dated 11.04.2004, p. 15, where, on a scale 0-10, the averages of religiousness are the following: Greece (7.68), Italy (6.14), Ireland (5.78), Portugal (5.71), Finland (5.57), the Netherlands (5.06), Belgium (4.96), Spain (4.40), Denmark (4.36), United Kingdom (4.30), Germany (4.24), Luxembourg (3.96), Sweden (3.70). Also, see the similarly high rates contained in the survey conducted by GFK-Market Analysis and published in newspaper: *The Eleftherotypia*, issue dated 17.01.2005, p. 62.