

**Executive Summary**  
**Discrimination on the grounds of religion and belief**  
**GREECE**  
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**Introduction**

The “prevailing religion” in Greece from the 1822 Constitution (article a) until that of 2001 (revisable article 3.1) has been “that of the Eastern Orthodox Church of Christ”. Modern Greek statehood has thus been intertwined with the “Orthodox Church of Greece”. Arguably the legal meaning of “prevailing religion” in Greece has been that Eastern Christian Orthodoxy is the religion of the vast majority (approximately and nominally 90%) of Greece’s population (currently 11 million). Given that there are no relevant official data, there are estimates according to which, among other religious minorities, Old Calendarists account for approximately 500,000, Muslims (excluding the legal and illegal economic immigrants, mainly Albanians, who may reach one million) are estimated to be approximately 100,000, Jehovah’s Witnesses are estimated at 50,000, Greek Catholics at 50,000, Protestants at 30,000, Jews at 5,000.

The existence and legal recognition, *per se*, of a “prevailing religion” in the Constitution of Greece has not been regarded, in principle, as being contrary to contemporary human rights standards. Nonetheless, in practice serious problems have arisen in the attempt to reconcile the above “constitutional statement” with freedom of “religious conscience” enshrined in non-revisable article 13.1 of the Greek Constitution. The European Commission against Racism and Intolerance (ECRI) has stressed that even though the Greek Constitution provides for freedom of religion, “non-Orthodox religious - notably other Christian - groups have faced administrative obstacles and legal restrictions on religious practice and their members often experience intolerant behaviour and sometimes discrimination”. This is corroborated by the fact that the first judgment delivered by the European Court of Human Rights in 1993 with relevance to article 9 ECHR (freedom of thought, conscience and religion) was on a successful application of a Greek Jehovah’s Witness against Greece. A series of violations by Greece of article 9 ECHR have ensued since then.

Under the 1923 Lausanne Peace Treaty, and by virtue of a series of Greek statutory provisions, the “Muslim [Turkish] minority” in western Thrace has a special protective status in issues regarding its education and religion. According to Greek state data there are currently more than 200 primary and secondary “minority schools” in Thrace, employing more than 400 “Muslim” teachers. Also there has been established a “special quota of 0.5% for the admission of these “Muslim” minority students to Greek higher education institutions”. A reform project of the Greek Ministry of Education and the University of Athens, regarding “Muslim” minority education in western Thrace has also been under way since 1997.

A (pending) Bill for the transposition of Directives 2000/43/EC and 2000/78/EC was brought to surface by the socialist opposition in May 2004. The Bill had not been preceded by any extensive consultations with competent governmental or non-governmental organisations.

## **1. Main legislation**

In current Greek legislation the major framework that puts into effect the principle of equal treatment on the basis of religion or belief may be found in constitutional, all-inclusive (universalistic) provisions enshrining fundamental civil and social rights, in particular:

### ***Article 5:***

*“1. All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, insofar as they do not infringe the rights of others or violate the Constitution and the good usage.*

*2. All persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided for by international law...”*

### ***Article 13:***

*“1. Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual’s religious beliefs.*

*2. All known religions shall be free and their rites of worship shall be performed unhindered and under the protection of the law. The practice of rites of worship is not allowed to offend public order or the good usage. Proselytism is prohibited.*

*3. The ministers of all known religions shall be subject to the same supervision by the State and to the same obligations toward it as those of the prevailing religion...”*

### ***Article 14:***

*“1. Every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State.*

*...*

*5. Every person offended by an inaccurate publication or broadcast has the right to reply, and the information medium has a corresponding obligation for full and immediate retraction. Every person offended by an insulting or defamatory publication or broadcast has also the right to reply, and the information medium has a corresponding obligation for immediate publication or transmission of the reply... [this new provision inserted into the Constitution in 2001]”*

It has been an established opinion in Greek doctrine and case law that article 13.1 of the Constitution enshrines the civil right of religious freedom, subject only to constitutional restraints. Religious freedom consists of two basic principles: freedom of religious conscience and freedom of expression of religious beliefs and practice. Greek Council of State case law has established that the above constitutional provision, subject to no constitutional revision, “prescribes equality of treatment, irrespective of religious beliefs, in the enjoyment not only of civil and political rights but also of all rights recognized by domestic legal order”.

Criminal anti-discrimination Law 927/1979 has so far been the only statutory legislation expressly offering protection from religious discrimination in Greece. *Article 1 of Law 927/1979* provides for the penalty of maximum imprisonment of two years and/or pecuniary penalty of anyone who publicly, orally or in writing or through pictures or any other means

wilfully incites people to perform acts or carry out activities which may result in discrimination, hatred or violence against other persons or groups of persons on the sole ground of the latter's racial or ethnic origin or religion. *Article 2 of Law 927/1979* is of a different nature compared to article 1 of the same Law. It actually proscribes the expression, in any manner whatever, of ideas offending persons or groups of persons on the ground of the latter's racial or ethnic origin or religion. The penalty provided for in this case is imprisonment of a maximum of one year and/or pecuniary penalty. Law 927/1979 has never been effectively applied by Greek courts. Actually the above offences used to be prosecuted only *ex officio* until 2001 when (Immigration) Law 2910/2001 entered into force.

The (pending) Bill of May 2004, transposing both the Race and the Framework Directives, includes "religious or other beliefs" in the discrimination grounds covered by the draft legislation.

## **2. Main principles and definitions**

The principle of equal treatment irrespective of "religious or other beliefs" is planned to be introduced into Greek legislation by the aforementioned Bill of May 2004. The wording regarding the definitions of indirect and direct discrimination, harassment and victimisation employed by this Bill is almost identical to that provided for by the two anti-discrimination Directives.

Equality irrespective of religion or belief in labour relations is founded, inter alia, upon article 178 of the Greek Civil Code prescribing that juridical acts contrary to "good morals" are void and on article 281 of the same Code proscribing the abuse of a civil law right that may take up the form of transgression of the limits imposed by "good faith or good morals or the social or financial purpose of the above right". The notions of "legitimate objective and proportionate requirement" contained in article 4 of the Framework Directive may be covered by the aforementioned fundamental principles of Greek law, if the latter are appropriately constructed by Greek case law and the administration.

It has been a generally accepted legal opinion in Greece that (non-) employment or (non-) occupation of specific persons with certain religious or other beliefs is to be considered as lawful if the nature of the above employment or occupation is identified with specific ideology or religious beliefs or if the latter are incompatible with the former. Such a case for example is employment of a teacher in a religious institution or of medical personnel in a religious medical institution.

The above-mentioned Bill of May 2004 provides for differentiated occupational treatment on the basis of all discrimination grounds (including "religious or other beliefs") provided that there are proportionate occupational requirements in place, as foreseen by article 4.1 of the Framework Directive. The Bill provides the clause of "legitimate aim" prescribed by the Directive in these cases. Also the Bill, transposing article 4.2 of the Framework Directive, provides that "it does not affect any existing provisions and practices concerning occupational activities within churches, organisations or associations whose ethos is based on religion or other beliefs". Finally the Bill does not purport to affect "the right of churches or other public or private organisations whose ethos is based on religion or other beliefs, to require from their personnel a conduct based on good faith and their abidance by the former's ethos, in accordance with the Constitution the present statute and the rest of Greek legislation".

### **3. Material scope**

Apart from the above-mentioned (supra 2.) general principles of Greek civil law covering equality of treatment in labour relations irrespective of religion or belief no other special relevant legislation is in place in Greece.

However the Bill of May 2004 has specified that in the scope of the law covering equality of treatment in the area of employment and occupation, irrespective of “religious or other beliefs”, disability, age or sexual orientation, the following are to be included:

- (a) Conditions for access to employment and occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, conditions of service and professional development including promotion;
- (b) Access to all types and to all levels of vocational guidance, vocational training, advance vocational training and retraining, including practical work experience;
- (c) Employment and working conditions, including dismissal and pay;
- (d) Membership of, and involvement in, an organisation of workers or employers or any other professional organisation, including the benefits provided for by such membership or involvement.

It is to be noted that the Bill in fact transposes almost verbatim the entire article 3 paras 1, 2, 3 and 4 of the Framework Directive. It does not refer to any further areas covered by the Race Directive.

### **4. Equality Bodies**

The Bill of May 2004 introduces three different equality bodies competent to act in cases of discrimination *on all grounds covered by both Directives*:

- (a) The (already existing) *Greek Ombudsman* with competence in the field of discrimination emanating from the public sector;
- (b) The (already existing) *Labour Inspection Body* (LIB, Labour Ministry) will deal with issues of discrimination by natural or legal persons (excluding public services that will be covered by the Greek Ombudsman) in the areas of employment and occupation;
- (c) Finally the new *Committee for Equal Treatment* (Justice Ministry) will focus on discrimination cases occurring in the private field (excluding employment and occupation which are covered by LIB).

As a consequence, the Greek Ombudsman will extend his mediation services to the above-mentioned area. The Ombudsman also undertakes to carry out investigations and to publish special reports on the application and the promotion of equal treatment irrespective of all the discrimination grounds entrenched in both Directives. The action of the other two equality bodies will focus on conciliation between complainants and respondents, the publication of “conclusions” if the conciliation effort fails, the publication of explanatory opinions on the interpretation of the anti-discrimination law and drafting reports on the implementation of the same law. LIB also undertakes “the dissemination of information as well as the sensitisation with a view to promoting social cohesion”.

The Bill does not provide for any kind of legal assistance by the above equality bodies to victims of discrimination. However in a country like Greece where legal aid is currently non-existent (a Bill on legal aid was finally passed in January 2004) and anti-discrimination litigation is a terra incognita, the above legal services by the equality bodies will be absolutely necessary in practice.

It is also considered necessary that the Bill expressly should provide that these equality bodies undertake the continual updating and education of public servants, employees of mass media, judges and lawyers all over Greece, preferably in cooperation with the Greek Economic and Social Committee that is tasked by the Bill with “social dialogue”. The equality bodies should in particular place emphasis on the continuing education of judges and lawyers, given the non-existence in Greece of any legal background /history regarding protection against discrimination while judges have never so far applied the existing anti-discrimination law 927/1979. The effectiveness of the equality bodies may also be greatly enhanced by the creation of equality body branches out of Athens (which should be expressly provided for by the Bill).

## **5. Enforcing the law**

Currently victims of discrimination on the ground of religion or belief in Greece may lodge complaints either with the Greek Ombudsman (now he deals only with relations between the state and individuals and his opinions are not legally enforceable) or with criminal courts (Law 927/1979). No shift or easing of the burden of proof in these cases is provided for by current Greek statutory legislation but this will change after the entry into force of the aforementioned draft legislation. Greek courts have never as yet effectively applied anti-racism Law 927/1979. A series of criminal proceedings targeting the publication of anti-Semitic, xenophobic/racist texts in the press, brought before Greek criminal courts by an NGO (Greek Helsinki Monitor), have not had any effect mainly due to misinterpretation by Greek courts of the above statute.