FREEDOM OF RELIGION



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FREEDOM OF RELIGION

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The full, effective and speedy implementation of the judgments of the European Court of Human Rights by the States parties to the Convention makes a major contribution to the achievement of common observance and enforcement of human rights in Europe.

The European Court has underlined that freedom of religion is one of the foundations of a "democratic society" within the meaning of the Convention. Pluralism, which is intrinsically linked to democratic society, depends on it. Over the years the Court has developed a rich case-law concerning freedom of religion while the execution by States of the relevant judgments has been supervised by the Committee of Ministers. The present factsheet sets out several examples of measures adopted and reported by States, in the context of the execution of the European Court's judgments, in order to safeguard and protect freedom of religion.

1. RECOGNITION, ORGANISATION, OPERATION AND LEADERSHIP OF CHURCHES AND RELIGIOUS COMMUNITIES

Adoption of legislation providing for an effective remedy and ensuring protection against unlawful and arbitrary interference by the administrative authorities in religious communities' registration process

A Religious Denominations Act adopted in 2002 confers to the judiciary, and no longer to the executive, the competence to register religious communities seeking to obtain legal personality. The data on governing bodies and legal representatives of a religious organisation are now recorded in a public register at the Sofia City Court. However, remaining issues related to the administrative authorities' role in the organisation of religious communities require further amendments to the Religious Denominations Act and are addressed in the context of other pending cases.

As to the measures directly concerning the applicant religious community, the latest national conference of the Muslim community elected new governing bodies and adopted a new statute. Based on a final judgment of the Sofia Court of Appeal its results were registered in 2011. Moreover, the domestic authorities undertook to abstain from any measure which could have the effect of favouring one of the rival factions.

BGR/ Hasan and Chaush (30985/96)

Judgment final on 26/10/2000

Final Resolution CM/ResDH(2011)193

Repealing of a discriminatory legislative provision imposing on religious communities and associations unjustified conditions before conferring them a religious society status

In a 2010 judgment, the Constitutional Court repealed the legal condition under which an existence for at least twenty years as a religious association or an at least 10-year existence as a registered religious community was required for being recognised as a religious society. In 2011, the Religious Communities Act was amended to provide for more flexible conditions for the legal recognition of a religious society.

As to fiscal benefits of registered religious societies, in its judgment of 2009, the Constitutional Court concluded, in line with the ECtHR's judgment in this case, that the limitation of fiscal benefits to legally recognised churches and religious societies is contrary to the Convention, if a religious community is deprived of religious society status in a discriminatory manner.

AUT/ Religionsgemeinschaft der Zeugen Jehovas and Others (40825/98)

Judgment final on 31/10/2008

Action report

Adoption of new legislation providing for an effective remedy and ensuring protection against disproportionate and unnecessary interference by administrative authorities in the religious communities' registration process and in the conduct of religious activities

The first amendments to the Law on Religious Denominations were adopted in 2002 but were insufficient and a new Law on Freedom of Conscience, Thought and Religion entered into force in 2007. Subsequently, the former State Service for Religious Denominations was dissolved, and all registration files were transferred to the Ministry of Justice. Simultaneously, the government abolished its order of 1994 which had made registration of component parts of recognised cults dependent on a certificate of presence issued by local authorities. Furthermore, the registration procedure was clarified through a set of guidelines in 2009. Finally, new laws (abolishing the sanction of expulsion in case of disrespect by foreigners of the requirement of prior authorisation for certain religious activities in public and limiting the punishable activities) of November 2009 ensured judicial review of the registration procedure including of refusal of registration, suspension of activities or liquidation. Together with the Law on Administrative Procedure, they also provided for judicial review in case of absence of reply or unreasonable delay.

MDA/ Metropolitan Church of Bessarabia and Others (45701/99)

Judgment final on 27/03/2002

Final Resolution CM/ResDH(2010)8

Protection of the right to manifest religious beliefs and of religious cults The former Law on Religious Denominations, was replaced in 2007 by the Law on Freedom of Conscience, Thought and Religion which guarantees everyone's right to freedom of thought, conscience and religion, including *inter alia* the freedom of practising a religion or belief, either individually or in group, publicly or privately. The concept of a *"cult recognised by the State"* was removed and religious cults are now free to set up and to operate freely under the conditions prescribed by the law. Religious service can be conducted in places of worship but also in the private premises of the persons practising the cult. The limitations imposed restate the provisions of Article 9§2 of the Convention and the practising of a non-registered cult is not illegal anymore. Furthermore, in 2008, the Code of Administrative Offences was abolished and replaced by the Code of Misdemeanour Offences. The new Code excludes the reference to *"registered or unregistered cult"* and concerns practices that go against the prohibitive or directive norms of the Law on Freedom of Conscience, Thought and Religion, and practising of a non-registered religious cult is not listed as a prohibition in the law.	***MDA/ Masaev (6303/05)*** Judgment final on 12/08/2009 Action report Final Resolution CM/ResDH(2020)29
Ensuring State's neutrality in religious matters and protection against disproportionate interference of administrative authorities in the registration and organisation of religious communities Through the amendments of 2008 and 2009 to the Law on Religious Organisations the registration of religious organisations was transferred from the Ministry of Justice to the Enterprise Register which maintains the Registry of Religious Organisations. Prior to the registration of a religious organisation, the Enterprise Register is required to seek the opinion of the Ministry of Justice on whether the aims and tasks indicated in the statutes of the particular organisation comply with the law and would not endanger human rights, democratic state order, public order, well-being and morals. A registration refusal is based on an opinion of the Ministry of Justice, which is subject to review by administrative courts. Furthermore, the competent authorities can no longer impose an obligation on parishes to unite under one leadership.	***LVA/ Mirolubovs and Others (798/05)*** Judgment final on 15/12/2009 Action report Final Resolution CM/ResDH(2016)319
New regulations on minimum size for worship places, allowing access by members of small religious groups Places of worship must comply with the zoning regulations and can be built after obtaining an authorisation from the local administrative authorities. A new Regulation on Spatial Planning, in force since 2014, i.e. when the case was pending before the Court, reduced the minimum size requirement for small places of worship to 1 000 square meters (and 15 000 square meters for large places of worship). If the minimum size requirement cannot be met, the zoning plan may be amended. The relevant domestic authority shall either *ex officio* propose such an amendment or shall be consulted if such a request is made.	***TUR/ Association of Jehovah's Witnesses and Others (36915/10)*** Judgment final on 17/10/2016 Action plan
Lifting restrictions on the freedom of movement of Greek Cypriots in Northern Cyprus to ensure protection of their freedom of religion In addition to the lifting of restrictions on the freedom of movement of the Greek Cypriot population living in northern Cyprus, the request for the appointment of a second priest to officiate in the Karpas region presented by the Cypriot authorities in 2006 was approved by the authorities of the "Turkish Republic of Northern Cyprus".	***TUR/ Cyprus (25781/94)*** Judgment final on 20/05/2001 Interim Resolution CM/ResDH(2020)185
Measures aiming to grant legal recognition to the Alevi faith, impartial and non-discriminatory treatment of Alevis and protection of their right to education The government programme and Action Plan of December 2015 aimed to grant legal status in the near future to *cemevis* and spiritual knowledge centres (*geleneksel irfan merkezleri*). In 2016 and 2017 workshops were organised, notably to discuss the religious culture classes and ethic	***TUR/ Izzettin Dogan and Others (62649/10)*** Judgment final on 26/04/2016 Action plan

curriculums at school. A new curriculum for the compulsory "religious culture and ethics" classes in primary and secondary schools entered into force in 2018 and includes information on the Alevi faith and parents may initiate legal proceedings requesting exemption of their children.	***TUR/ Zengin (1448/04)*** Judgment final on 09/01/2008 Action Plan
Measures to prevent unforeseeable taxation of manual gifts to religious associations Following the facts of the case, which concerns lack of foreseeability in law of the consequence which the receipt of manual gifts and the submission of an association's accounts to the tax authorities might entail, a 2005 circular by the Finance Ministry provided explicitly that manual gifts to moral persons (such as associations) which are declared to the tax authorities are subjected to taxation. Also, the Court of Cassation, in two 2013 judgments, clarified that manual gifts are not considered as declared when found during the submission of accounts to the tax authorities, by moral or physical persons.	***FRA/ Association les Témoins de Jéhovah (8916/05)*** Judgment final on 30/09/2011 Action report Final Resolution CM/ResDH(2013)184
Change in domestic courts' case-law concerning elected muftis' freedom to manifest their religion in worship and teaching Following the Court's first judgment, the interpretation by the domestic courts of the Criminal Code, based on which the usurpation of religious function (of muftis) was criminally punishable, has changed. According to the new Convention-compliant case-law, an elected mufti is not usurping the functions of minister of a known religion by addressing religious messages to a group of people who voluntarily follow him as their religious leader, but simply exercises his right to manifest his religion, as guaranteed by Article 9 of the Convention.	***GRC/ Serif (38178/97)*** Judgment final on 14/03/2000 ***GRC/ Agga No 2 (50776/99)*** Judgment final on 17/01/2003 Final Resolution CM/ResDH(2005)88 ***GRC/ Agga No. 3 and Agga No. 4 (32186/02 and 33331/02)*** *Judgment final on 13/10/2006 and 13/10/2006* Final Resolution CM/ResDH(2011)118
Convention-compliant interpretation by prosecutors and courts of provisions concerning proselytism To remedy disproportionate and unnecessary interferences with freedom of religion of Jehovah's Witnesses, the prosecutors and the indictment chambers adapted their practice following the publication and dissemination of the Court's judgment. The interpretation of the national legislation was adapted to the requirements set by the judgment of the Court, so that domestic courts were involved only in a very few cases of proselytism and no convictions were pronounced in such cases.	***GRC/ Kokkinakis (14307/88)*** Judgment final on 25/05/1993 Final Resolution DH(97)576
New administrative practice and court case-law concerning use of private premises for religious ceremonies of Jehovah's Witnesses Prosecution for using private premises for religious ceremonies of Jehovah's Witnesses without prior authorisation from a recognised ecclesiastical authority and the Minister of Education and Religious Affairs, ended following the Court's judgment and in all similar cases the administration has granted permissions. This practice was confirmed notably by the Court of Cassation which in 2001 held, in the context of a criminal case regarding the unlawful opening of a place of worship, that the *"absolute discretion"* granted to the administration by law, constituted *"an unacceptable limitation of the freedom of religious worship"* in contravention with the requirements of the Convention. In addition, the Council of State now supervises the respect of the correct application	***GRC/ Manoussakis and Others (18748/91)*** Judgment final on 26/09/1996 Final Resolution CM/ResDH(2005)87

of the purely formal requirements to be respected when applying for the construction or operation of a place of worship. Moreover, the Council of State had already held in 1991 that the *"authorisation"* of the ecclesiastical authority required by the law was not binding on the Ministry of Education and Religious Affairs.

2. RIGHT TO CONSCIENTIOUS OBJECTION

Recognition of Jehovah's Witnesses as a religious society ensuring exemption from military or civil service Shortly after the delivery of the Court's judgment, Jehovah's Witnesses were recognised as a religious society through a decree. This recognition as a religious society made possible their exemption from military or civil service. To avoid future violations based on discriminatory provisions of the law, the Constitutional Court changed its case-law in a judgment of July 2009 holding that the law must be interpreted in conformity with the Court's findings and quashed the administrative authorities' decision.	***AUT/ Loffelmann (42967/98)*** Judgment final on 16/06/2009 Final Resolution CM/ResDH(2011)41
Legislative amendment to protect right to conscientious objection and prevent prosecution conscientious objectors The Law on Alternative Service of 2004 was amended in 2013 to take into consideration the Venice Commission's 2011 opinion. According to the amended Law, the duration of alternative military and labour services was reduced to 30 and 36 months respectively (the duration of the regular military service is of 24 months). Furthermore, the alternative labour service is currently organised and supervised by relevant government agencies and no military control over this service is allowed. In addition, a permanent body composed of representatives of the concerned governmental agencies (the Republican Commission on Alternative Service) was established to deal with applications for alternative service. The Commission holds special sessions where the applicants and independent experts may take part as well.	***ARM/ Bayatyan (23459/03)*** Judgment final on 07/07/2011 Action report Final Resolution CM/ResDH(2014)225
Introduction of alternative service protecting the right to conscientious objection Conscientious objectors that were convicted between the entry into force of the Constitution in 1991 and the adoption of the Law on the Replacement of Military Obligations by an Alternative Service in 1998, for refusing to perform military service in the exercise of their constitutional freedom of conscience, have been pardoned by a decision of Parliament in 2002. In accordance with the 1998 Law, citizens who perform an alternative service have the same rights as all citizens to express their convictions, individually or collectively, apart from when they are in their place of employment. The law also provides that alternative service may be performed if the person concerned so requests, under the supervision of an entirely civil administration.	***BGR/ Stefanov (32438/96)*** Judgment final on 03/05/2001 Final Resolution DH(2004)32
Statutory and constitutional amendments providing for alternative service by conscientious objectors In order to end discrimination regarding freedom of religion, the right to perform civilian instead of military or unarmed service in the army was granted by law to conscientious objectors in 1997. Subsequently, the right to an alternative service was enshrined in the Constitution in 2001. Furthermore, an amnesty law of 2001 provided for the removal from criminal records of all sentences imposed before the law of 1997.	***GRC/ Thlimmenos (34369/97)*** Judgment final on 06/04/2000 Final Resolution ResDH(2005)89

3. PROTECTION FROM RELIGIOUS DISCRIMINATION

Protection from discrimination on religious grounds in the labour market

To prevent discriminatory treatment on account of religious beliefs, particularly in the labour market, the principle of non-discrimination enshrined in the 1991 Constitution was transposed to the Religious Denomination Act of 2002 and the Protection Against Discrimination Act of 2003 the latter expressly forbidding any dismissal based on religious convictions. This Act alleviates the burden of proof for plaintiffs. In addition, the Labour Code now prohibits discrimination based on religion in the exercise of labour rights.

BGR/ Ivanova (52435/99)

Judgment final on 12/07/2007

Action report

Final Resolution CM/ResDH (2012)155

Constitutional, statutory and administrative changes aiming to ensure freedom of religion of religious minorities and their protection against discrimination

A new Constitution which guarantees the right to equality, the freedom of belief, religion and conscience as well as the freedom of assembly entered into force in 2018. The new Constitution notably eliminated the earlier references to *"national security", "prevention of crime"* and *"administration of justice"* as justifications for interferences with freedom of religion. The Opinion of the Venice Commission had been taken into account by the State Constitutional Commission during the process of review and amendments to the project were adopted accordingly.

The Law on the Elimination of All forms of Discriminations was adopted in 2014, notably to provide an effective legal framework to remove religious discrimination. This law was amended in 2019 to extend the principle of equal treatment to the spheres of labour and all stages of pre-contractual relations, as well as education, social security, healthcare, goods and services, thus considerably extending the protection against religious discriminations. In addition, this law is effectively referred in practice by domestic courts.

As to administrative measures, the Human Rights Protection and Monitoring Department was established in 2018 and was given the task of investigating intolerance and discrimination crimes as well as monitoring all crimes with signs of discrimination.

GEO/ Members of the Gldani Congregation of Jehovah's Witnesses and Others (71156/01)

Judgment final on 03/08/2007

Action report

Abrogation of criminal sanctions for wearing religious clothing in the public space

The Criminal Code was amended in 2014, revoking the provision providing for criminal sanctions for wearing religious headgears and garments, in contravention of the Law on the Wearing of Headgear and of the Law on the Wearing of Religious Garments in Public other than for Religious Ceremonies.

TUR/ Ahmet Arslan and Others (41135/98)

Judgment final on 04/10/2010

Action report

Final Resolution CM/ResDH(2016)330

Abolition of mandatory indication of religion on identity cards

The Law on Civil Registry was amended in 2016 and the indication of religion was removed from identity cards. The new identity cards contain an electronic chip, which may comprise information on a person's religious affiliation only if they expressly consent to it in the application form. Furthermore, the 2016 Law on Protection of Personal Data defines *"Specific Personal Data"* which includes notably one's religion. The law prohibits processing and sharing of such data, except in circumstances provided for by the law, without obtaining the explicit consent of concerned individuals. In addition, as regards civil registers, all citizens have the right to request in writing to register, change or leave blank their religious affiliation in civil registers.

TUR/ Sinan Isik (21924/05)

Judgment final on 02/05/2010

Action report

Final Resolution CM/ResDH(2018)221

4. FREEEDOM OF RELIGION IN COURTS

Wearing religious symbols in courts The breach of the Convention in this case resulted from the punishment for contempt of court of a witness belonging to the Wahabi/Salafi version of Islam, in a criminal trial, for refusing to remove his skullcap. The wearing of religious symbols by private citizens in courtrooms is not forbidden, as such, by the law. The witness was not punished pursuant to any such general ban but rather on the basis of an inherent power of the trial judge to regulate the conduct of proceedings in the State Court. In order to prevent any similar violation, domestic courts adapted their practice following the Court's judgment.	***BIH/ Hamidovic (57792/15)*** Judgment final on 05/03/2018 Action report Final Resolution CM/ResDH(2018)427
Alternative to religious oath by lawyers entering the Bar The Lawyers Code was amended in 2013 and it is no longer obligatory to reveal one's religious beliefs during the procedure when taking the oath of office before a court. The Lawyers Code now offers a choice, at the lawyer's discretion and without other formalities, between taking a religious oath and making a solemn declaration.	***GRC/ Alexandridis (19516/06)*** Judgment final on 21/05/2008 Action report Final Resolution CM/ResDH(2016)312
Alternative to religious oath in criminal proceedings The disputed obligation to reveal one's religion when taking an oath in criminal proceedings has been repealed following the 2012 amendment of the Code of Criminal Procedure. A witness appearing before a criminal court can now, at their discretion and without other formalities, choose between taking a religious oath and making a solemn declaration. This procedure is now harmonised with the one followed in civil courts.	***GRC/ Dimitras (42837/06)*** Judgment final on 03/09/2010 Final Resolution CM/ResDH(2012)184
Legislative change to strengthen religious freedom In response to the violation of Article 9 found by the European Court due to the unjustified interference with the applicant's freedom of religion, following her exclusion from a courtroom for refusing to remove her hijab, the Belgian authorities amended Article 759 of the Judicial Code to no longer prevent the authorisation in principle, during hearings before Belgian courts, of the wearing of religious symbols or head coverings on medical grounds. Article 759 previously stipulated that "those who attend the hearings stand uncovered, respectful and silent". A law of 28 November 2021 (published on 30 November) amended this article by deleting the word "uncovered" to no longer refer to "uncovered head" but only to the notions of attending hearings in "respect and silence".	***BEL/ Lachiri (3413/09)*** Judgment final on 18/12/2018 Final Resolution CM/ResDH(2022)24

5. FREEDOM OF RELIGION AND EDUCATION

Alternative classes of ethics in schools

The Ordinance of the Minister of Education on the Organisation of Religious Instruction of 1992 was amended in 2014. This amendment annulled the threshold of a minimum of three pupils interested in ethics classes for organising ethics classes in school and guaranteed the possibility to participate in ethics classes to every pupil willing to do so. This put an end to discriminatory treatment of agnostic pupils due to the absence of marks for *"religion/ethics"* in school certificates, which was due to the authorities' earlier failure to provide alternative ethics classes.

POL/ Grzelak (7710/02)

Judgment final on 22/11/2010

Action report

Final Resolution CM/ResDH(2014)85

6. FREEDOM OF RELIGION IN CIVIL LAW MATTERS

Abolition of mandatory application of the Islamic holy law in family and inheritance matters concerning members of the Muslim minority To remedy the breach of the Convention due to the fact that wills and intestate successions of citizens belonging to the Muslim minority were regulated by the Islamic holy law rather than the Civil Code, thus allowing relevant disputes to fall within the jurisdiction of the mufti, the Law Ratifying the Legislative Act on Muslim ministers of religion was amended in 2018. The law now provides that disputes related to marriage or divorce may come under the mufti's jurisdiction exceptionally, if all parties concerned agree. As regards, in particular, inheritance matters, the Civil Code is from now on always applicable unless the testator makes a notarised declaration explicitly stating their wish to make the succession subject to the Islamic holy law.	***GRC/ Molla Sali (20452/14)*** **Judgment final on 19/12/2018** **Judgment on just satisfaction 18/06/2020** **Action plan** *Status of execution: pending*
Lifting discriminatory regulations hindering one's right to marry In order to remedy the disproportionate interference with the right to marry due to the application of a scheme requesting State approval and the payment of a fee for marriages of persons subjected to immigration control, as well as the discriminatory non-application of the scheme to people willing to marry in the Church of England, the Certificate of Approval scheme was abolished in 2011 by amending primary legislation using a remedial order under the Human Rights Act.	***UK/ O'Donoghue and Others (34848/07)*** **Judgment final on 14/03/2011** **Final Resolution CM/ResDH(2011)288**

7. FREEDOM OF RELIGION IN DETENTION

Freedom of religion while in detention on remand The 2016 Law on Procedure of Detention on Remand contained provisions aimed at ensuring the right of detained persons to attend religious services. Furthermore, the Law established the Latvian Prison Administration's Chaplain Service whose responsibility is to arrange and organise religious activities in detention facilities, as well as to provide detainees with a priest of their own religion. In addition, the 2004 Administrative Procedure Law provides for a new legal remedy to address alleged interferences with detainees' freedom of religion.	***LVA/ Dmitrijevs (61638/00)*** Judgment final on 28/02/2007 Action report Final Resolution CM/ResDH(2017)122
Detainees' access to alternative meals in accordance with their religious beliefs The Law on the Execution of Punishments and Custodial Measures adopted 2013, which entered into force in 2014, provides that the prison administration must ensure adequate conditions for the preparation and distribution of food in accordance with religious beliefs. This measure aimed at enhancing the Law on Execution of Sentences of 2006 which guaranteed detainees' freedom of religion while an Order of the Ministry of Justice of 2001 provided for dietary rules that are compliant with the detainees' religious beliefs.	***ROM/ Vartic No. 2 (14150/08)*** Judgment final on 17/03/2014 Action report Final Resolution CM/ResDH (2014)221
Establishment of a new authority safeguarding pastoral care for detainees To prevent unlawful interference with detainees' freedom of religion an Order of the Ministry of Justice created, in 2017, the Pastoral Council on Religious Care in the Penitentiary System of Ukraine. The Council is a permanent, representative, inter-confessional advisory body responsible for the coordination of pastoral care of all detainees. One of its main aims is to monitor the penitentiary institutions' and detention centres' compliance with the detainees' right to freedom of conscience and religion.	***UKR/ Moroz (5187/07)*** Judgment final on 18/09/2017 Action report Final Resolution CM/ResDH (2019)11

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