

GREEK HELSINKI MONITOR (GHM)

Address: P.O. Box 60820, GR-15304 Glyka Nera

Telephone: (+30) 2103472259 **Fax:** (+30) 2106018760

e-mail: office@greekhelsinki.gr **website:** <http://cm.greekhelsinki.gr>

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Greece: Written contribution on European Court of Human Rights judgment that religious oath violates freedom of religion and refusal to implement it

Greek Helsinki Monitor (GHM) was greatly satisfied with the 21 February 2008 **European Court of Human Rights (ECtHR)** **unanimous conviction of Greece** in the **Case of Alexandridis v. Greece**. The application No. 19516/2006 was submitted to the ECtHR by **GHM** and concerned GHM's legal counselor **Theodore Alexandridis**. According to the ECtHR, Greece violated Articles 9 (freedom of thought, conscience and religion) and 13 (right to an effective remedy) of the **European Convention on Human Rights** concerning the fact that the applicant had had to reveal to the court that he was not an Orthodox Christian in order to take a non-religious affirmation rather than an oath to the Gospel and there was no remedy to offer redress for the violation of his freedom of religion. The ECtHR awarded the applicant 2,000 euros (EUR) for non-pecuniary damage. The ECtHR press release with a link to the full judgment follows.

Moreover, two new applications on the procedure of religious oath before the Greek courts have been communicated to Greece by the ECtHR on 29 January 2008 (**Dimitras v. Greece** <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=828716&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>) and on 15 September 2008 (**Alexandridis and Papanikolatos v. Greece** <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=841185&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>). In addition, on 29 May 2008, the **Greek National Commission for Human Rights** issued a decision based on the *Alexandridis* judgment considering the various oath procedures in violation of Article 9 of the Convention and asking for the introduction of an affirmation throughout the Greek State. Yet, the competent **Minister of Justice Sotiris Hatzigakis**, on 1 April 2008, replying to a parliamentary question on the implementation of the *Alexandridis* judgment, informed the Greek Parliament that the State does not consider amending the relevant legal provisions on the oath-taking procedure, following the *Alexandridis v. Greece* Court judgment.

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21.2.2008

Press release issued by the Registrar

CHAMBER JUDGMENT ALEXANDRIDIS v. GREECE

The European Court of Human Rights has today notified in writing its Chamber judgment in the case of **Alexandridis v. Greece** (application no. 19516/06).

The Court held unanimously that there had been

- **a violation of Article 9** (freedom of thought, conscience and religion) of the European Convention on Human Rights; and,
- **a violation of Article 13** (right to an effective remedy) of the Convention.

Under Article 41 (just satisfaction), the Court awarded the applicant 2,000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in French at <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=829214&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.)

1. Principal facts

The applicant, Theodoros Alexandridis, is a Greek national who was born in 1976. He was admitted to practise as a lawyer at Athens Court of First Instance and took the oath of office on 2 November 2005, which was a precondition to practising as a lawyer.

The main issue in the case was the applicant's allegation that when taking the oath of office he had been obliged to reveal that he was not an Orthodox Christian.

The facts are in dispute between the parties.

Mr Alexandridis alleged that, in accordance with usual practice, the court secretariat had provided him with a form containing a standard text to the effect that he swore the oath "after having placed his right hand on the Holy Bible". On 2 November 2005, at a public hearing, he had given the form, duly completed, to the president of the court and informed her that he was not an Orthodox Christian and wanted to make a solemn declaration, which he had been allowed to do.

The Greek Government, for their part, confirmed that the president of the court had granted the applicant's request. However, in their initial observations the Government had indicated that the applicant had not complied with standard practice because he had presented himself directly before the president on 2 November 2005 and sought permission to make a solemn declaration. He had then gone to the secretariat and filled in the form for religious oaths, whereas there were two different forms, one for the religious oath and the other for a solemn declaration.

In their observations in reply to those of Mr Alexandridis the Government mentioned, however, that the applicant had indeed taken a form for religious oaths with him when he went before the president of the court. He had then asked the secretariat to provide him with copies of the form, but had not taken any steps to have the document rectified.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 3 May 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Loukis **Loucaides** (Cypriot), **President**,
Christos **Rozakis** (Greek),
Nina **Vajić** (Croatian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian),
Giorgio **Malinverni** (Swiss), **judges**,

and also Søren Nielsen, Section Registrar.

3. Summary of the judgment

Complaints

Relying on Article 9 and Article 13, the applicant alleged that he had been obliged to reveal his religious beliefs when taking the oath of office.

Decision of the Court

Article 9

The Court noted that the parties' submissions diverged as to certain factual elements. It pointed out that the Greek Government had submitted two versions that were inconsistent with each other, and added that none of the documents showed that the applicant had not followed the standard procedure for taking the oath. Indeed, the record of the hearing before the Athens Court of First Instance of 2 November 2005, which was the only official document that had been drawn up following the proceedings in question, corroborated the applicant's version of events.

The Court observed, further, that the freedom to manifest one's beliefs also contained a negative aspect, namely, the individual's right not to be obliged to manifest his or her religion or religious beliefs and not to be obliged to act in such a way as to enable conclusions to be drawn regarding whether he or she held – or did not hold – such beliefs.

In the present case the Court considered that when Mr Alexandridis went before the court he was obliged to declare that he was not an Orthodox Christian and, consequently, to reveal in part his religious beliefs in order to make a solemn declaration. The Court observed that this procedure reflected the existence of a presumption that lawyers going before the court were Orthodox Christians. The record of the hearing, which was the only official document certifying that the oath had been taken, did indeed present the applicant as having sworn a religious oath, contrary to his beliefs. In that connection the Court also noted that, under Greek law, the oath that any civil servant was invited to take was in principle the religious oath (first paragraph of Article 19 of the Civil Service Code). In order to be allowed to make a solemn declaration, the applicant was obliged to state that he was an atheist or that his religion did not allow him to take the oath.

Regarding the existence of two different forms, the Court noted that the copies produced by the Greek Government in support of their submissions dated from 2007. Consequently, the Court could not conclude that the two forms existed at the relevant time. In any event, even supposing that there

had been two different forms the Court considered that the applicant could not be blamed for failing to obtain the correct one. The president and registry of the court should have informed him that there was a specific form for solemn declarations.

The Court held that the fact that the applicant had had to reveal to the court that he was not an Orthodox Christian had interfered with his freedom not to have to manifest his religious beliefs. There had therefore been a violation of Article 9.

Article 13

The Court considered that the Greek Government had failed to show the existence of any effective remedy by which the applicant could have sought redress for the violation of his freedom of religion. Accordingly, there had been a violation of Article 13.
