

# EUROPEAN COURT OF HUMAN RIGHTS

## FIRST SECTION

### APPLICATION NO 52484/18 "STAVROPOULOS & OTHERS V GREECE"

#### INTERVENTION BY THE GREEK OMBUDSMAN

The Greek Ombudsman is a constitutionally enshrined independent authority<sup>1</sup>. The mission of the authority, as stipulated in law, centres around "*protecting citizen's rights, combating maladministration and ensuring respect of legality*", with particular reference to protecting and promoting the rights of the child<sup>2</sup>. Additionally, the Ombudsman is recognized by law –domestic and EU- as the '*equality body*' of Greece<sup>3</sup>.

It is within this framework that the Ombudsman notes a particular interest in reviewing Greek administrative practice in the acquisition and registration of a name, and in combating phenomena that may harbor, tolerate or even promote discrimination. It should also be noted, that the Ombudsman has a long-standing interest in the matter, having an established position as early as 2006, as will be further set out below.

#### 1. The legal/legislative framework

According to law 344/1976 on registrar's acts, registrations of naming and baptism are completely distinct and unrelated.

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<sup>1</sup> "A law defines the issues pertinent to the formation and the jurisdictions of the Greek Ombudsman, which functions as an independent authority" (art. 103§9 Constitution).

<sup>2</sup> "The independent authority entitled "The Ombudsman", has as its mission to mediate between citizens and public services, local authorities, private and public organizations as defined in article 3, par. 1 of this Law, with the view to protecting citizens' rights, combating maladministration and ensuring respect of legality. The Ombudsman also has the mission of defending and promoting children's rights" (art 1§1 law 3094/2003).

<sup>3</sup> The Greek Ombudsman is the "body to monitor and promote the application of the principle of equal treatment irrespective of race, color, national or ethnic origin, pedigree, religious or other beliefs, disability or chronic illness, age, family or within the scope and definitions of this Act in the private, public and wider public sector"(art.14§1 law 4443/2016, transposing articles 13 of Directive 2000/43/EC and 4 of Directive 2014/54/EU).

- Naming is the exclusive process of acquiring a newborn's name; it is the declaration by the parents of the name of the newborn to the registry. It requires the consent or authorisation of both parents<sup>4</sup>. Naming is required even in cases of prior or simultaneous registration of baptism.
- Baptismal registration has the sole effect of denoting religion and has no effect on the already or simultaneously declared name, while it can be done without parental authorisation or even on the initiative of third persons<sup>5</sup>.

Even if at times they coincide in practice (simultaneous declaration of naming and baptism by the parents, simultaneous registration by the registrar), the validity of each of them relies and is conditioned on the separate minimum legality requirements provided for by the law. The fact that the law, in describing the content of the baptismal statement, includes for historical reasons also "*the name given to the newborn*" does not establish an alternative naming procedure separate from the normal, for, as is settled case-law<sup>6</sup>, naming is not a component of baptism.

## 2. The interventions of the Ombudsman

The Ombudsman has long dealt with problems emanating from the confusion of these two processes. Specifically, a number of complaints indicated that

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<sup>4</sup>Article 25 law 344/1976, as replaced by article 15 law 1438/1984, reads: "*the name of the newborn shall be registered ... after the declaration of his or her parents exercising parental custody or of one of them if he has written authorization of the other, with the signature authenticated...if one of the parents does not exist or does not share custody, the name declaration is made by the other parent*" (unofficial translation by author). The choice of name falls within the core of parental custody, that is, is the right of both parents irrespective of the eventual assignment of parental case to one of them (Decision 1321/1992 Supreme Court "Areios Pagos").

<sup>5</sup>Article 26 law 344/1976 as replaced by article 26§8 law 2130/1993 reads: "*Baptism is registered at the margin of the birth registrar ... upon the filing of a statement by the perpetrator or associate in the religious service of a bishop.... Baptism must be declared by the baptised,...the father or mother..., the godfather/mother and the blood relatives of the baptized up to the third degree ... The noted baptism includes the chronology of the baptism, the newborn's given name, the name and surname of the declarant, the godfather/mother, the priest ...*". Unofficial translation by author.

<sup>6</sup>Decision 240/1975 Supreme Court "Areios Pagos".

many registry offices, in the absence of clear instructions from the Ministry of Interior, either

- registered the baptism of a newborn as a naming declaration, without considering the specific requirements for the latter, or
- misled the concerned parents that there are allegedly two alternatives, both in force and equally valid, pro rata to political and religious marriage<sup>7</sup>.

In past interventions<sup>8</sup>, the Ombudsman remarked:

*"the opinion, that only those who are not baptized are named, or that there is no need for naming to those who have been baptized..., not only does it not comply with the above provisions, but it also results in forcing citizens to inadvertently register a religion"*.

The authority has also pointed out to the obligation of the administration to make clear, in each case, the difference between the proceedings:

*"the manner of registration of the baptismal statements referred to in Article 26 of law 344/1976, and even more the acceptance of the baptismal statements by the Registry, without simultaneously reminding the declaring parent of his/her outstanding legal obligation for a separate ...naming statement under Article 26 of law 344/1976, provides ample ground for the creation and perpetuation of a legal error in the identification of these two acts"*.

The Ombudsman paid from the outset particular attention to highlighting the specific illegal practice of the administration<sup>9</sup>:

*"A large number of issues related to religious freedom in Greece are mainly due to inflexibility and misunderstandings demonstrated by public administration as to the religious neutrality of the state. Although the legislator has, for several decades, decided on total secularization of the state, public administration,*

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<sup>7</sup>Article 1367 of the Civil Code reads: *"Marriage is done either with the simultaneous declaration of the spouses... or with a hierology by a priest of the Eastern Orthodox Church or by an official of another doctrine or religion known in Greece "*.

<sup>8</sup><https://www.synigoros.gr/resources/docs/203083.pdf>

<sup>9</sup>Annual Report 2006, <https://www.synigoros.gr/resources/docs/en2006.pdf>.

*either trapped by inertia or by other obstacles, or simply following societal prejudice, still maintains some active remnants of the power of the Church”.*

### 3. Legal Council of State Opinion 431/2006

Following the above-mentioned interventions of the Ombudsman, the Ministry of Interior ordered for an opinion by the Legal Council of State (LCS).

The LCS in its opinion came to exactly the same conclusion as the Ombudsman's interventions, even expressly rejecting the possibility of accepting the baptismal statement as an accomplished denomination on condition of both parents' consent:

*“in cases where a naming statement is not made simultaneously or at an earlier stage than a baptism statement, parents have an obligation to make a special statement as the mere note of the name when registering the baptism does not suffice for the acquisition of a name... if the parents do not declare a name, the newborn, even if the baptism has been registered, does not acquire a first name and therefore cannot have a name listed in the extracts of the registry issued until the naming process has taken place”<sup>10</sup>.*

The Ministry of Interior has since refrained from accepting the above opinion, which by law would give it binding content<sup>11</sup> and would decidedly resolve the confusion, but preferred to continue the method of individual answers to registry questions, explicitly tolerating the alternative practice of associating baptismal statements with naming legal consequences, as is characteristically exemplified in its circular of 2006:

*"a baptism statement cannot be interpreted also as a naming statement, if it is not done under the terms of article 25 of law 344/1976...that is, if it is not done*

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<sup>10</sup> Unofficial translation by author.

<sup>11</sup>Article 7§4 law 3086/2002 reads: *“after their acceptance, the [LCS] opinions are acts which are mandatory for the administration”* (unofficial translation by author).

*by both parents or if it is not accompanied by the authorization of the absent parent*"<sup>12</sup>.

The Ministry of Interior has not seemed to derogate from the abovementioned position even today:

*"baptism is considered and acquiring a master's name when both parents make the statement together. If both parents make the statement of baptism together (or each other with the authorization of the other), then it is also considered a denomination (main name assignment)"*<sup>13</sup>.

As a result, the Ministry seems to argue that baptism and naming are two equally legitimate and feasible alternatives to name-giving, a position not based on or supported by existing provisions.

#### 4. Subsequent administrative practice and remedies

In the years since the above Ombudsman's interventions, this administrative practice has not only been restricted, but has been rather consolidated in the context of standardization of the relevant forms following the application of the single Citizen's Registry<sup>14</sup>. Thus, the consistent practice of many registries, as has been recorded for a number of years through citizens' complaints filled with the Ombudsman, seems to be still going on, and is even reflected in the single relevant forms, where the terms '*baptism*' and '*naming*' alternate as '*modes of denomination*', as if both of the relevant provisions were foreseen, whereas in reality the legal process of acquiring a name is just one, namely naming.

Especially with regard to the registration of religious affiliation, it is noted that, based on the relevant opinions of the competent Hellenic Data Protection Authority (HDPA), such registration is in principle considered legitimate. In

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<sup>12</sup>Ministry of Interior circular Φ.104770/22433/24.10.2006. Unofficial translation by author.

<sup>13</sup> Ministry of Interior website in the relevant informative text "Frequently Asked Questions": <https://www.ypes.gr/cat-faqs/onomatodosia/>. More recently visited on 17.01.2020. Unofficial translation by author.

<sup>14</sup>Law 4483/2017.

particular, it has been considered that the relevant column in the registry is legally maintained and filled in when requested by the person concerned in the context of the enjoyment of certain rights associated to membership of a religious community, such as the right to choose a religious marriage<sup>15</sup> or the introduction of members of the Muslim minority with a special quota to higher education institutes<sup>16</sup>. However, any relevant information must be kept confidential in the relevant registry unless it is expressly requested to be affixed to a relevant certificate issued for a corresponding legal purpose<sup>17</sup>. Pursuant to the opinions of the HDPA, it is obvious that the administration should, at least in the copies or extracts of birth registration documents, have the religious affiliation recorded (if legally stated) only when its recording is explicitly required, and the first name recorded in any case, without any mention of how it was acquired. Any different practice, whereby publicly displayed copies of birth registries include references to naming or baptism as allegedly alternative ways of acquiring a name, could expose the child and his/her parents to unintentional disclosure of family-related information and religious beliefs; a disclosure that is certainly reviewable in the light of article 9 of the ECHR in accordance with the case law of the European Court of Justice<sup>18</sup>. In particular, the registration of baptism as (presumably) a way of acquiring a name could be construed as a direct disclosure -and an explicit reference to naming as an indirect disclosure- of religious affiliation/belief, provided that it contradicts other registrations in which the acquisition of a name is "*on grounds of baptism*".

It should be noted, to sum up, that the challenges relating to registering first names for newborns, as analysed above, do not spring from the existing registry legislative provisions, which are very clear and unambiguous, but are due solely to the misperception as to their exact content; a misperception that

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<sup>15</sup>Article 1367 Civil Code.

<sup>16</sup>Law 2341/1995.

<sup>17</sup>HDPA 134/2001 opinion reads: "*only where religious affiliation is by law a prerequisite for the exercise of a right*" (unofficial translation by author).

<sup>18</sup>*Buscarini and others vs San Marino*, 18.2.1999.

could be addressed comprehensively if the Ministry of Interior were to accept opinion 431/2006 of the LCS or issue a circular clarifying and interpreting accurately the meaning of the legislative provisions.

Alternatively, the aforementioned challenges to registering first names for newborns could be effectively tackled by legislative means, namely either

- by amending article 25 of law 344/1976, adding a deadline on naming; thus, the greater public interest in having every individual acquire a name is effectively served, without leaving room to parents for rendering the acquisition of the first name dependent on the affiliation of the child to a religious doctrine, or
- by completely scrapping the provisions of article 26 of law 344/1976 on baptismal declaration, so as to render the certification of a child's religious affiliation a matter not for the Citizen's Registry -through the recording of baptism and the issuance of copies or extracts of birth registration certificates containing information on religious affiliation- but for the special registries of the religious community or Church to which a person is affiliated, through registering into it and having special certificates on a person's religious affiliation; in other words, to have a child's adoption of a religious doctrine proven exclusively by a certificate of the religious community concerned<sup>19</sup>.

Athens, 23.01.2020

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<sup>19</sup>Law 4301/2014 on "*organizing the legal form of religious communities*".