

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

Neofytou Vamva 6 (3rd floor), GR 106 74 Athens, Greece, Tel: +30 210 7233221-2;
fax: +30 210 7233217; e-mail: info@nchr.gr, website: www.nchr.gr

<p>Recommendations regarding the Cremation of the Deceased</p>

The issue of the cremation of the dead was first raised in 1987 by the then Mayor of Athens, Miltiades Evert, in a letter to the Holy Synod, which failed to take the matter any further.

In late 1992, a round-table discussion of the question was organised by the present Minister of Education and Religious Affairs. The Church's views were expressed by the present Archbishop of Athens, Christodoulos, who said that the Church recognises the right of the State to introduce the cremation of the dead and that, by its own nature, the Church does not compel anyone to do what it considers right (To Vima newspaper, 08.11.1992, pp. A40-41).

In 1998, under pressure from a group of citizens taking an initiative in favour of cremation, two legislative proposals on the regulation of the matter were tabled. These had in common the introduction of the institution only for those who do not belong to the Orthodox Christian Church. The first took the form of an independent draft law entitled 'Cremation of the dead of persons who do not belong to the Orthodox Church' and was signed by 49 Members of Parliament of all shades of political opinion. At the same time, during the debate on the draft law entitled 'Financial resources of prefectural local government and other provisions', an amendment on the matter was proposed by 13 MPs of all political persuasions. The Government, through the then Deputy Minister of the Interior, G. Floridis, gave a commitment on 15 December 1998 on the issue: it announced that within the coming three months (December

1998 - March 1999) it would put before Parliament a comprehensive draft law which would regulate the whole matter and assured the MPs whose initiative this was that the issue "was in the pipeline" (Ta Nea newspaper, 16.12.1998).

The need for the regulation of the issue

Provisions of domestic law taken in conjunction (Article 2, para. 1 of Emergency Law 445/1968 'concerning cemeteries and the burial of the dead', Article 2, para. 3 of Emergency Law 582/1968, and Decision of the Minister of the Interior A5/1210/1978) currently prohibit burial outside municipal cemeteries.

The issue has also been examined by case law. Two judgments of the Athens Court of First Instance held the articles of constitution of associations which had as their purpose the dissemination of views in favour of the cremation of the dead to be contrary to public order (Athens Court of First Instance 4314/1984 and 1819/1986). On the other hand, the Athens Appeal Court and the Prosecutor of the Court of Cassation held them to be compatible with it (Athens Appeal Court 1702/1988 and Opinion 11/1962, Rapporteur of the Court of Cassation: M. Kallimopoulos).

Nevertheless, the need for the introduction by legislation and the regulation of the cremation of the dead becomes constantly more acute in Greece for a variety of reasons. First of all, it is essential for practical reasons having to do with the shortage of space, the high price of graves, and, generally, the more than onerous expenses for a burial and funeral as those are carried out today, with their connection with major economic interests.

Furthermore, for reasons of their philosophical convictions, many prefer cremation to burial, regardless of their religion or, more particularly, of the denomination to which formally and by chance they belong (it is certain that in infancy, when they were baptised, they were not in a position to choose their religion or denomination).

Even those who belong substantively to a certain religion or denomination observe the dictates of their churches as to their conduct in life and in their approach to the great and overwhelming event of death in the light of the religious conscience of each. Thus, some attend church more and some less frequently, some fast and some do not, some have a civil and some a religious marriage, and some prefer cremation to burial (we should not forget the examples of the great - Greek Orthodox - artists Dimitris Mitropoulos and Maria Kallas, whose ashes were accorded honours by the State).

More specifically in the case of followers of the Christian religion generally - who all, regardless of denomination, recognise the same source of principles and teaching: Holy Scripture - it is observable that in most of the countries of the world where Christians happen to live, they have the acknowledged right of choosing cremation of the body after death. No General Council of the Church has concerned itself with the matter.

It is instructive that the new Canon Law of the Roman Catholic Church, which has been in force since 1983 (Canon 1176, Article 3), in revising the Code of 1917, permits the cremation of the dead, considering that this is not contrary to the doctrines of the Christian religion, but expressing a preference for burial (see in this connection Athens Appeal Court 1702/1988).

In France, the cremation of the dead was permitted by a decree of April 1789 and the matter was regulated by Article 3 of a law on the subject of 15 November 1887.

Article 8 of the Spanish law on religious freedom (17 July 1945) also permits it.

Provisions of the German legislation, taken in conjunction, safeguard respect for the authentic will of the deceased and the law on cremation of the dead of 15 May 1934 equates cremation with burial.

A court judgment of 1884 permitted cremation from then on in Great Britain (R v. Price - 1884 - 12 QBD 247).

Today, cremation is permitted for three-quarters of the world's population. Cremations in Great Britain, Switzerland, Sweden and Denmark account for more than 50% of the dead.

The right to cremation

However, the recognition of the right of religious freedom as a fundamental human right is world-wide, and this calls for respect for the religious convictions of every human being and of their differing variations, even between followers of the same religion (Article 13 of the Greek Constitution, Articles 18, 26 and 27 of the International Covenant on Civil and Political Rights - ratified by Law 2462/1997 - Articles 9 and 14 of the European Convention on Human Rights - ratified by Legislative Decree 53/1974 - Article 18 of the Universal Declaration of Human Rights [1948], and the Declaration of the United Nations on the elimination of all forms of intolerance and of discrimination based on religion or belief [1981]). The epithet of 'heretic' is not compatible, in the age in which we live, with the norms which prevail internationally. It is a constant interpretation that religious freedom includes atheism and agnosticism - and a fortiori the variations of worship and, generally, of expression of these convictions, even if these are seen as disobedience to the lines laid down by the church to which, as a formality or substantively, the individual belongs. This freedom is understood as having - like the exercise of all rights - non-infringement of the rights of others as its limit.

In the case of the treatment of the body after death, this right calls for the freedom of each human being to choose the fate of his/her corpse in accordance with his/her philosophy of life (religious or otherwise), or simply with his/her ideas and desires in the matter.

Another human right also militates in favour of this position: the right of the development of the personality (Article 5, para. 1 of the Greek Constitution), in conjunction with the provision on the protection of human value (Article 2 of the Greek Constitution, Article 1 of the

Universal Declaration of Human Rights), as that has been constantly interpreted by our own legislation, which extends it to what happens after death.

More specifically, the penal Legislator has established as criminal offences insulting behaviour towards the dead (Article 201 of the Penal Code, where, moreover, insulting behaviour towards the ashes of the dead is expressly mentioned) and the desecration of graves (Article 373 of the Penal Code).

In addition, the law of inheritance gives priority in the disposal of the property of the deceased to his will (testament). A fortiori, each individual has this right as to his/her own body. The same line is followed by the legislation on transplants of the organs of the body, the disposal of which is made first and foremost by the donor, in life, for a time after his/her death (Law 2737/1999).

The state has no interest in nor is it entitled to interest itself in these options of each individual. The only thing which it can and should do is to provide regulations which ensure that the method of disposal which the deceased has chosen does not infringe the human rights of others, beginning with the right to health.

It is obvious that cremation of the dead, when regulated by the state, is less dangerous to the health than burial. Naturally, there is no danger of fire, etc.

Moreover - and this is of great importance - it breaks up the organised interests in connection with the acquisition or use of graves, burial ceremonies, etc.

In connection with the formulation of the proposal on legislation of certain MPs referred to above, we would point out that it contains a violation of a fundamental right, the right of equality before the law without discrimination (Article 4, para. 1 of the Constitution), which has very important support in international instruments binding upon Greece (Articles 14 of the European Convention on Human Rights and 26 of the International Covenant on Civil and Political Rights).

The exception of those belonging to the "Orthodox Christian Church" - to which, in any event, the greater part of the population of Greece formally belong - from choosing, if they so desire, cremation rather than burial, is discrimination by reason of religion against this category of individuals. Consequently, it infringes equality and at the same time restricts religious freedom and the manner of its expression as well as the right of determining for oneself the fate of one's body after death, in the sense argued above.

It is, therefore, obvious that this exception is contrary to basic human rights.

Conclusion

We would propose the introduction and regulation by legislation of cremation of the dead which the fundamental rights of human value, religious freedom and of free development of the personality demand.

We reject any discrimination against any category as contrary to the fundamental right to equality of treatment by the law without (religious) discrimination.

At the same time, we would issue a reminder that respect for the above human rights in the matter under discussion serves urgent social needs, described above.

We recommend:

(1) the introduction of cremation of the dead for all those who die on Greek soil and choose of their own free will this manner of disposal of their corpse;

(2) without any discrimination whatsoever;

(3) the regulation of related matters in connection with the implementation of cremation in practice. These proposals serve the substantive safeguarding of human rights which relate to the matter.

(4) Where the deceased has not expressed any special preference as between cremation and burial, his/her family (in order of priority: spouse,

adult children, siblings, as in the case of the donation of organs of the body) should be able to choose.

The above recommendations-opinions have been formulated by us within the bounds of the competences of the National Commission for Human Rights, and particularly those provided for in Article 1, para. 6, sub-para. (b): The National Commission "shall submit recommendations and proposals ... on the taking of legislative, administrative or other measures which contribute to the improvement of the protection of human rights".

Though this is hardly necessary, we would add that the 'Committee for the setting up of a Centre for the Cremation of the Dead in Greece for citizens whose religion permits post mortem cremation' has sent us a letter in which it seeks the assistance of the National Commission for Human Rights (No. of incoming correspondence 34/31.10.2000) in its efforts to achieve the amendment of the relevant provisions and the setting up of a cremation centre in Greece.

Athens, 7 December 2000