

## THE CONSTITUTIONAL AND LEGAL PROTECTION OF THE RELIGIOUS GROUP OF LATIN IN A NUTSHELL \*

MAIN ELEMENTS OF THE PROTECTION	BRIEF DESCRIPTION OF THE PROTECTION
<p><b>Constitutional Definition of the Latin Religious Group</b></p>	<p>“ <i>Religious Group</i> ” means a group of persons ordinarily resident in Cyprus professing the same religion and either belonging to the same rite or being subject to the same religious jurisdiction, the number of whom , on the date of the coming into operation of the Constitution , exceeds one thousand , out of which at least five hundred become on such date citizens of the Republic of Cyprus (<u>Article 2.3 of the Constitution of the Republic of Cyprus - “ the Constitution ”</u> ).</p> <p>The constitutionally recognized religious groups in Cyprus are those of the Armenians, the Maronites and the <b>Latins</b> (<u>The Cyprus Act enacted by the British Parliament on 29 July 1960, Part II - Appendix E : Statement by Her Majesty’s Government concerning the Rights of Smaller Religious Groups in Cyprus</u> ).</p> <p>There is no possibility to recognize in the future a new religious group ,even if such group fulfils the numerical criteria provided for in <i>Article 2.3 of the Constitution</i> .</p> <p>Nor is it possible to remove the constitutional status of a religious group from any of the three religious groups, even if the number of their members is diminished so that the numerical criteria provided for , in <i>Article 2.3 of the Constitution</i>, are no longer fulfilled.</p>
<p><b>Composition of the Latin Religious Group</b></p>	<ul style="list-style-type: none"> <li>• There is no any express provision which determines who the State should consider to be a member of the Latin religious group. The only available criteria are three, namely : <ul style="list-style-type: none"> <li>- An ecclesiastical law criterion as set by the Case law of the Supreme Court of Cyprus (<u><i>Tsivitanides v. Tsivitanides</i> (1956) 21 CLR 111</u>) : Whether a person is a member of the Latin religious group depends primarily upon the law of the Roman Catholic Church and not upon any State legal provisions (thus, confirming a universally recognised legal principle) ;</li> <li>- Whether the person is a citizen of the Republic of Cyprus ( <u>Article 2. 3 of the Constitution</u>), and</li> <li>- Whether the person resides ordinarily in Cyprus ( <u>Article 2.3 of the Constitution</u> ).Case law of the Supreme Court of Cyprus ( <u><i>Achcar v. Saad</i> (1979) 1 CLR 627</u>) : A person may not belong to a religious group , if such person is not ordinarily resident in Cyprus .</li> </ul> </li> </ul>

\* This document was prepared with the contribution of Dr. Anthony A. MADELLA , Doctor of Laws ( Aix-Marseille III). Member of the Latin community of Cyprus.

	<ul style="list-style-type: none"> <li>• According to a survey effected in 2002 by the General Vicar of the Latins of Cyprus , the official number of the Latins citizens of the Republic, amounts to about 2000 persons. Therefore, the Latin minority holds the position that the Cyprus Government must accept this figure.</li> <li>• The Advisory Committee of the Council of Europe on the <u>1995 Framework Convention for the Protection of National Minorities (CE Convention ETS no. 157)</u><sup>1</sup> noted in its Opinion on Cyprus adopted on 6 April 2001<sup>2</sup> that with regard to Article 4 of the <i>Framework Convention</i> (principle of equality and non-discrimination) , - as the Cyprus Government recognises - there is a possibility that census data of the Republic do not accurately reflect the number of persons belonging to national minorities (i.e. also religious groups) and that discrepancies in figures can hamper the ability of the Republic of Cyprus and of the Council of Europe to assess the size of the national minorities and to implement the <i>Framework Convention</i> .</li> <li>• A relevant legal opinion of the Attorney General of the Republic delivered <b>in 2004</b> considers as unconstitutional the fact to admit in a religious group any person who acquires the citizenship of the Republic of Cyprus at a later stage , after 1960 ( i.e. following the expiration of the three months period upon the date of entry into force of the Constitution ) .</li> <li>• The Latin minority does not share the above position in view of <i>Article 2.4 of the Constitution</i> . Furthermore, any person has the right at any given time to opt to become member of a religious community ( <b>right to religious freedom</b> ) ( <u>Article 18 of the Constitution</u> ; and <u>Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950</u> )<sup>3</sup> : Consequently, the composition of the Latin religious group is <b>not static</b> ( as a priori fixed-defined by the 1960 constitutional arrangements ) and new members may be added at any given time : If a person considers that he/she belongs to the Latin religious group and further the said religious group considers that such person is indeed a member of the Latin religious group, it would be unconstitutional and in violation of fundamental human rights (including of the <b>right of non-discrimination</b>, as provided by <u>Article 28 of the Constitution</u> and <u>Article 14 and Protocol 12 of the European Convention for the Protection Human Rights and Fundamental Freedoms of 1950</u>), should the Republic of Cyprus</li> </ul>
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<sup>1</sup> The Republic of Cyprus ratified the relevant Framework Convention in 1995, by virtue of *Ratification Law 28(III)/1995* and the Convention entered into force for Cyprus on 1<sup>st</sup> Febr. 1998.

<sup>2</sup> This first Opinion on Cyprus, resulted in the adoption in February 2002 by the Committee of Ministers of the Council of Europe of *Resolution Res CMN (2002) 3 on the implementation of the Framework Convention for the Protection of National Minorities by Cyprus*. The same Advisory Committee adopted at a later stage, on 7 June 2007, a second Opinion on Cyprus ( not yet public ) .

<sup>3</sup> The Republic of Cyprus ratified the said Convention in 1962, by virtue of *Ratification Law 39/1962*.

	<p>refuses to recognise such person as member of the relevant religious group, simply due to the fact that such person became a member of the Latin religious group at a later stage ( after 1960 ).</p>
<p><b>Right of a Religious Group to opt to belong to either the Greek or to the Turkish Community of Cyprus</b></p>	<ul style="list-style-type: none"> <li>• Right of a religious group to opt to belong to either the Greek Community or to the Turkish Community of Cyprus within a three months period upon the date of entry into force of the Constitution (<i>Article 2.3 of the Constitution</i>; and <i>The Cyprus Act enacted by the British Parliament on 29 July 1960, Part II - Appendix E : Statement by Her Majesty's Government concerning the Rights of Smaller Religious Groups in Cyprus</i> ).</li> <li>• In a referendum held on <b>14 November 1960</b>, the <b>Latins</b>, as a religious group (together with the Armenians and the Maronites), voted in favor of adhering to the Greek Community, and are since that date deemed to be members of the Greek Community<sup>4</sup> (<i>The Religious Groups and Citizens ( Method of Option ) Law of 1960 -Law 7/1960</i> ).</li> <li>• The Advisory Committee of the Council of Europe on the <i>1995 Framework Convention for the Protection of National Minorities</i> noted in its Opinion on Cyprus adopted on 6 April 2001 that the constitutional obligation of each religious group to choose –as a group –once and for all, adherence to one or other of the two Communities recognised by the Constitution, in some of its aspects, is not compatible with Article 3 of the <i>Framework Convention</i> ( freedom of a person belonging to a national minority to choose to be treated or not to be treated as such ). The European Union (EU) adopts also this Council of Europe finding (see <i>European Commission Regular Report on Cyprus's Progress Towards Accession of 2002</i> ).</li> </ul>
<p><b>Constitutional Right to be Represented in the Legislative Power</b></p>	<p><b><u>Evolution and rules of the current system of representation</u></b></p> <ul style="list-style-type: none"> <li>• <i>Article 109 of the Constitution ( The Composition of the Greek Communal Chamber Law of 1960 - Communal Law 8/1960 )</i> : With the establishment of the Republic of Cyprus, each one of the three religious groups elected a representative in the <i>Greek Communal Chamber</i>, a Body having legislative powers in some matters, particularly with regard to religious, educational, cultural and personal status matters.</li> <li>• <i>The Transfer of the Exercise of the Competence of the Greek Communal Chamber and the Establishment of a Ministry of Education Law of 1965 ( Law 12 /1965 as amended )</i> : Due to the inter communal clashes of 1963-64 and the relevant constitutional</li> </ul>

<sup>4</sup> 1077 Armenians, 1046 Maronites and 322 Latins voted in favor of adhering to the Greek Community, while only 5 Armenians and 1 Latin voted in favor of adhering to the Turkish Community ( see *Elefteria* Newspaper 15/11/1960 ).

crisis, the said Law decided in March 1965 under the *law of necessity doctrine* the dissolution of the *Greek Communal Chamber*, and transferred its legislative powers to the *House of Representatives (Parliament)* and its administrative powers to the newly created Ministry of Education. By virtue of the same Law (section 10) it was then admitted that on a transitory basis and until the end of their office, the elected representatives of the three religious groups at the former *Greek Communal Chamber*, could continue to represent their group at the level of the *House of Representatives* and have an **advisory role, without the right to vote only** in religious and educational matters affecting their group, matters which were previously under the competence of the *Greek Communal Chamber*.

- The above **1965 arrangement** was renewed and extended on various occasions and finally today is still in force, regulated by *The Religious Groups (Representation) Law of 1970 (Law 58/1970 as amended)*. Furthermore, *The Religious Groups (Representation) (Temporary Provisions) Law of 1976 (Law 38/1976)* provides that the members of the three religious groups, in addition to their right to vote and stand as candidates for the *House of Representatives* in parliamentary elections, can elect - under their capacity as members of their respective religious groups - one representative of each religious group, who represents their group in the House of Representatives. *The Election of Members of the House of Representatives Law of 1979 (Law 72/1979 as amended)* and *the Registration of Electors and Electoral Register Law of 1980 (Law 40/1980 as amended)* apply also for the election of the representatives of the three religious groups.

#### **Legal weaknesses of the current system of representation**

- The Advisory Committee of the Council of Europe on the *1995 Framework Convention for the Protection of National Minorities* noted in its Opinion on Cyprus adopted on 6 April 2001 that the current system of representation of the three religious groups in the Cyprus Parliament by representatives who attend as observers and have an advisory role on religious and educational matters affecting their group, but without any legislative powers, might not be sufficient to ensure effective participation in public affairs under *Article 15 of the Framework Convention*. The Advisory Committee encourages the Cyprus Government to discuss this issue in consultation with the religious groups with a view to improving their participation. The EU adopts also this Council of Europe finding (see *European Commission Regular Report on Cyprus's Progress Towards Accession of 2002*).
- The Latin minority holds the position that there is a **shrinkage** of the relevant right of effective participation in public affairs of the three religious groups, as their elected representatives have today only **an advisory role without the right to vote** in religious and educational matters, while originally under the 1960 constitutional

	<p>arrangements ( at the level of the <i>Greek Communal Chamber</i>) for exactly the same matters, they had a right of an <b>effective</b> participation and a <b>right to vote, with legislative powers</b> .</p> <ul style="list-style-type: none"> <li>• The Latin minority holds the position that alignment with the requirements of the <u>1995 Framework Convention for the Protection of National Minorities</u> and relevant recommendations of the Council of Europe addressed to the Cyprus Government for <b>improving the participation of the religious groups in the Legislative power</b> requires the adoption of the ad hoc formula originally in force in 1960 (at the level of the <i>Greek Communal Chamber</i>), i.e. the right to an <b>effective</b> participation and a <b>right to vote, with legislative powers exclusively in religious and educational matters</b> .</li> <li>• The Latin minority holds the position that extending the right of representation to <b>all matters</b> which are discussed-examined in the <i>House of Representatives</i> , will lead the Latin community to its <b>politicization</b> and will constitute a clear distortion of its ad hoc representation, as originally and correctly conceived by the drafters of the 1960 Constitution .</li> </ul>
<p><b>Other Constitutional Rights of the Latin Religious Group</b></p>	<ul style="list-style-type: none"> <li>• <b>Right to administer Church’s internal affairs and property</b> : The three religious groups of the Republic continue to have every right with respect to religious matters that they had under the British rule : that means safeguarding the rules of the Roman Catholic Church regarding the administration of the Church’s <b>internal affairs and property</b> (<u>Article 110.3 of the Constitution</u> ; and <u>The Cyprus Act enacted by the British Parliament on 29 July 1960, Part II- Appendix E: Statement by Her Majesty’s Government concerning the Rights of Smaller Religious Groups in Cyprus</u> ).</li> <li>• <b>Church doctrine safeguarded</b> : Canons related to the Roman Catholic Church doctrine are safeguarded ( <u>Article 18 of the Constitution</u> ).</li> <li>• <b>Protection of the ecclesiastical property</b> : The right of property over any movable or immovable property belonging to the Church of the Latin religious group is protected. The State ( Republic of Cyprus ) cannot deprive , restrict or limit such right, except with the written consent of the ecclesiastical authority being in control of such property (<u>Article 23.9 of the Constitution</u>).</li> <li>• <b>Recourse as a group to the Supreme Constitutional Court</b> : The Latin religious group, in common with other bodies, can file a recourse as a group to the Supreme Constitutional Court of Cyprus to complain for any breach of the Constitution or abuse of power made by the State authorities and directly affecting the group as a body (<u>The Cyprus Act enacted by the British Parliament on 29 July 1960, Part II- Appendix E: Statement by Her Majesty’s Government concerning the Rights of Smaller Religious Groups in Cyprus</u> ; also <u>Article 146.2 of the Constitution</u> ).</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Access to the Civil Service</b> : Members of the Latin religious group are eligible for the Public Service of the Republic (<i>The Cyprus Act enacted by the British Parliament on 29 July 1960, Part II- Appendix E: Statement by Her Majesty's Government concerning the Rights of Smaller Religious Groups in Cyprus</i> ; see also in conjunction with <i>Article 123 of the Constitution</i> as to the quantitative distribution of relevant posts between members of the Greek and Turkish Community ). The Advisory Committee of the Council of Europe on the <i>1995 Framework Convention for the Protection of National Minorities</i> noted in its Opinion on Cyprus adopted on 6 April 2001 that under <i>Article 15 of the Framework Convention</i> , the Cypriot authorities should ascertain whether a fair number of persons belonging to religious groups are in fact recruited and employed in the civil service and, should the result prove to be unsatisfactory , adopt the necessary measures to better the situation.<sup>5</sup></li> </ul>
<p><b>Additional Legal Protection against Discrimination</b></p>	<p>Since 2004, due to the accession of Cyprus to the EU, members of the Latin religious group are also protected by the anti-discrimination harmonizing legislation in force , namely by :</p> <ul style="list-style-type: none"> <li>• <i>The Equal Treatment ( Racial or Ethnic Origin ) Law of 2004 (Law 59(I)/2004 as amended )</i>, transposing the <i>EU Council Directive 2000/43/EC (Racial Equality Directive)</i>, which prohibits discrimination on any of the relevant grounds in both public and private sectors , in matters of social protection , health treatment, social services, education and access to goods and services Violation of these provisions constitutes a criminal offence.</li> <li>• <i>The Combating of Racism and Other Discrimination ( Commissioner ) Law of 2004 ( Law 42(I)/2004 )</i> , transposing the <i>EU Council Directive 2000/43/EC (Racial Equality Directive)</i>, which vests the Commissioner for Administration ( Ombudsman ) - an independent Officer - with special competences, duties and powers for combating and eliminating discrimination in both public and private sectors. Under this Law any person or group of persons may lodge a complaint before the Ombudsman for having been subjected to discrimination prohibited by any legal provision , including by the <i>Framework Convention for the Protection of National Minorities</i>.</li> </ul>
<p><b>The Issue of modifying /adjusting the Name of the Latin Religious Group</b></p>	<ul style="list-style-type: none"> <li>• In recent years, the Latin religious group holds the view that the term “ <i>Latins</i> ”, used by the Cyprus Government to designate its members , does not properly reflect the essential element of the identity of its members , namely the Roman Catholic rites they</li> </ul>

<sup>5</sup> According to statistical data of the Cyprus Public Service Commission , in 1999 a total of 112 persons belonging to the three religious groups ( 103 Maronites, 6 Armenians , 3 Latins ) were members of the civil service , representing **0.9%** of the total number of civil servants (12.481) . According to official statistics, the three religious groups represent **1.1%** of the total population of Cyprus. In parallel, the three relevant religions, represent **4%** of all the religions currently existing in Cyprus .

	<p>share in common, and that its official name should be modified /adjusted to “<b><i>Latin, Roman Catholic Religious Group</i></b> ”.</p> <ul style="list-style-type: none"> <li>• The Advisory Committee of the Council of Europe on the <u>1995 Framework Convention for the Protection of National Minorities</u> noted in its Opinion on Cyprus adopted on 6 April 2001, that with regard to Article 3 of the <i>Framework Convention</i> it would be possible for the Government of Cyprus to address this issue in consultation with those concerned without undue difficulties, as it does not appear to require any change (amendment) to the <i>Constitution</i> .</li> <li>• A relevant legal opinion of the Attorney- General of the Republic dated 27 Sept. 2004 advised the Ministry of the Interior that the proposed change / adjustment of the name of the Latin religious group , would not amount to an amendment of the Constitution of Cyprus and that the change / adjustment could be implemented with an amendment of laws where reference is made to the constitutionally recognised religious groups ( see also a previous similar position of the Attorney- General of the Republic in a letter dated 20.12.2001 addressed to the elected representative of the Latins Mr. B. Mantovani ).</li> <li>• In December 2004, a proposal to that effect was submitted to the Council of Ministers for approval of the change/ adjustment of the name of the Latin religious group, but the relevant political decision is still pending .</li> </ul>
<p><b>Access to the Public Radio Television Service</b></p>	<ul style="list-style-type: none"> <li>• The Latin religious group has access to sound and vision broadcasting programmes of the <i>Cyprus Broadcasting Corporation (Cy.B.C.)</i>. In this respect, the Cy.B.C. has an obligation to ensure the provision of a public radio television service with unbiased attention and respect to the interests and sensitivities of the three religious groups ( <u>Section 19(1) of the Cyprus Broadcasting Corporation Law – Cap 300A as amended in 2003 ; also in conjunction with Article 171 of the Constitution / Article 9 of the 1995 Framework Convention for the Protection of National Minorities</u> ).</li> <li>• Since 1999, the Cy.B.C (<i>First Programme</i>) broadcasts a weekly special radio programme for the Latin minority .</li> <li>• The Advisory Committee of the Council of Europe on the <u>1995 Framework Convention for the Protection of National Minorities</u> noted in its Opinion on Cyprus adopted on 6 April 2001, that under Article 9 of the <i>Framework Convention</i> it would encourage the Cyprus Government to review the area of public television broadcasting with a view to enhancing access for persons belonging to national minorities.</li> </ul>
<p><b>State Financing-Subsidies</b></p>	<ul style="list-style-type: none"> <li>• In respect of education and cultural matters, in 1960 the President and Vice – President of the Republic of Cyprus have given an assurance that the smaller religious groups will not be at a disadvantage in the future in the allocation of public funds (<u>The</u></li> </ul>

	<p><u>Cyprus Act enacted by the British Parliament on 29 July 1960, Part II- Appendix E: Statement by Her Majesty's Government concerning the Rights of Smaller Religious Groups in Cyprus ).</u></p> <ul style="list-style-type: none"> <li>• As from 1999, the State - the Republic of Cyprus- has begun to pay salaries to the priests of the Latin religious group.</li> <li>• The Republic of Cyprus provides an annual grant to the Church of the Latin religious group in order to assist it in the fulfilment of its religious duties and financial assistance to the Latin religious group with regard to its worship places, its cultural heritage, for repairs to existing churches and monasteries.</li> <li>• Schools of the Latin religious group are financially assisted by the Republic of Cyprus The State covers part of the fees of students, members of the Latin religious group, who attend private schools as follows:</li> </ul> <p>At Terra Santa College (Nicosia) the subsidy covers education of the pre-elementary reception year, all the junior school years and grammar school till the end of the 6<sup>th</sup> year (the kindergarden is excluded from the subsidy).</p> <p>At St Mary's School in Limassol the subsidy covers all the junior school years and all secondary school years up and including the 6<sup>th</sup> year (i.e. the kindergarden, pre-elementary reception year and the 7<sup>th</sup> year of lyceum are excluded from the subsidy).</p> <p>If the child attends any other recognized private school, then the subsidy is only for secondary education (up to the 6<sup>th</sup> form)</p> <p>The criteria for the subsidy are:</p> <ul style="list-style-type: none"> <li>- The Catholic parent must be Cypriot as well as the child</li> <li>- The school must be presented with a certificate from the relevant parish priest confirming that the child is Catholic</li> </ul>
<p><b>Taxation and Duties</b></p>	<ul style="list-style-type: none"> <li>• Religious institutions in Cyprus, i.e including also the Roman Catholic Church, enjoy exemption from the income tax ( <u>The Income Tax Law –Law 118(I)/2002- section 8(13)</u>).</li> <li>• Religious institutions in Cyprus, i.e including also the Roman Catholic Church, enjoy exemption from various import duties ( see <u>Section 3, Class P of Annex I of The Customs and Excise Duties Regulations ( Exemptions from Import and Excise Duties ) of 2004 – P.I. 380/2004 ; also articles 65-69 of EU Council Regulation (EEC) 918/83 of 28 March 1983</u> ).</li> </ul>
<p><b>Churches, Monasteries,</b></p>	<ul style="list-style-type: none"> <li>• The Republic of Cyprus provides lands and public grants to the Latin religious group for the construction of churches, monasteries</li> </ul>



<p><b>Cemeteries.</b></p>	<p>and cemeteries.</p> <ul style="list-style-type: none"> <li>• Cemeteries of the Latin religious group are governed by their own regime and not subject to the provisions of the <u>Cemeteries ( Burial and Exhumation) Law of 2004 ( Law 257(I)/2004 as amended )</u>.</li> </ul>
<p><b>Family Law Matters</b></p>	<ul style="list-style-type: none"> <li>• In recent years there was a need to adjust Cyprus family law matters to contemporary legal principles, social precepts and to the commitments of the Republic of Cyprus arising from various relevant International Conventions .</li> <li>• Therefore, all matters relating to divorce, judicial separation or restitution of conjugal rights or to family relations of the members of the Latin religious group fall today under the jurisdiction of the <b>Family Court of the Latin Religious Group</b> established in 1994 (<u>Article 111 of the Constitution as amended by the First Amendment of the Constitution ( Law 95/1989) ; and The Family Courts ( Religious Groups) Law of 1994 (Law 87 /1994 as amended )</u>).</li> <li>• The Roman Catholic Church does not recognize the jurisdiction of the <b>Family Court of the Latin Religious Group</b>.</li> </ul>
<p><b>Military Service</b></p>	<ul style="list-style-type: none"> <li>• Since the inter communal crisis of 1963-64 and the creation of the Greek National Guard by the Greek Cypriot Community , male Latins were <u>exempted</u> from the 26 months compulsory military service , by virtue of a relevant decision of the Council of Ministers of the Republic of Cyprus taken from time to time ( in the period 1991-93, this exemption was not in force and therefore Latins served in the Greek National Guard).</li> <li>• The exemption was provided on the basis of the argument put forward by the three religious group that the creation of the Greek National Guard by the Greek Cypriot Community resulted from its conflict with the Turkish Cypriot Community, that the compulsory military service is by extension <b>orthodox oriented</b> and therefore Latins don't wish to be involved in the said conflict and serve the Greek National Guard .</li> <li>• This long standing exemption was finally abolished in 2007, and therefore male Latins must now under the <u>National Guard Law of 1964 ( Law 20/1964 as amended )</u> serve the Army (Greek National Guard ), as all other male citizens of the Republic belonging to the Greek Cypriot Community .</li> <li>• The above recent evolution is today fully understandable and accepted by the Latin Community of Cyprus, due to the fact that after almost half a century, the Latin religious group is now an integrated and active part of the Greek Community, sharing a common future and facing together the still long standing illegal Turkish occupation and threat .</li> </ul>

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**Updated version 22 May 2017**