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CASE OF KIMLYA AND OTHERS v. RUSSIA

Application no.76836/01 and 32782/03

Application date: 17 August 2001 and 2 October 2003, respectively.

Alleged violations: Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms("The Convention")

✓Judgment date: 1 October 2009

<http://cmiskp.echr.coe.int/tkp197/search.asp?sessionid=10182872&skin=hudoc-en>

The link is to the ECHR Portal Search, you can find the full decision by inserting the application number.

Ruling: The court

1. Holds that there has been a violation of Article 9 of the Convention read in the light of Article 11;

2. Holds that no separate examination of the complaints under Articles 10 and 14 of the Convention is required;

3. Holds

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros) to each of the first and second applicants, plus any tax that may be chargeable, in respect of nonpecuniary damage;

(ii) EUR 10,000 (ten thousand euros) to the applicants jointly in respect of costs and expenses, plus any tax that may be chargeable to the applicants;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses the remainder of the applicants' claim for just satisfaction.

European Court decision on the ban of crucifixes in Italy's public schools : Written Declarations

HRWF (22.12.2009) - Website: <http://www.hrwf.net> - Email: info@hrwf.net - Two groups of MEPs have initiated two opposing written declarations concerning the European Court decision on the ban of crucifixes in Italy's public schools.

A written declaration is a text of a maximum of 200 words on a matter falling within the European Union's sphere of activities. Written declarations are printed in all the official languages, distributed and entered in a register. MEPs can use written declarations to launch or relaunch a debate on a subject that comes within the EU's remit.

The adoption procedure is as follows:

A group of up to five MEPs can submit a written declaration by presenting a text to be signed by their colleagues.

If the declaration is signed by a majority of the MEPs, it is forwarded to the President, who announces it in plenary.

At the end of the part-session, the declaration is forwarded to the institutions named in the text, together with the names of the signatories.

It is included in the minutes of the sitting at which it is announced.

Publication in the minutes closes the procedure.

Declarations lapse after three months in the register if they have not been signed by at least half the MEPs.

Written declarations are printed and posted on a board at the entrance to the Chambers in Strasbourg and Brussels.

Declarations are also published on Parliament's website.

Written declaration on the freedom to display religious symbols representative of a people's culture and identity on public premises

By Sergio Silvestris, Mario Mauro, David Maria Sassoli, Mario Borghezio, Magdi Cristiano Allam (23 November 2009)

The European Parliament,

- having regard to Rule 123 of its Rules of Procedure,

A. whereas it is customary and traditional in many European countries to display crucifixes and other religious symbols in classrooms, courtrooms, public offices, the seats of institutions and town halls,

B. whereas the displaying on public premises of Christian symbols, or of images evoking other religions, is not meant either to impose on the free religious choice of the individual or to serve as a religious or catechistic point of reference,

C. whereas, in this regard, a recent ruling of the European Court of Human Rights in Strasbourg qualified the presence of crucifixes in classrooms in Italy as a violation of 'the right of parents to educate their children in conformity with their convictions', and whereas this seemed to conflict with an Italian cultural identity strongly influenced by Christian roots that are fundamental to the history and tradition of certain peoples,

1. Calls for recognition of the full right of every Member State to display religious symbols, among others, on public premises and at the seats of institutions, wherever such symbols are representative of the traditions and identity of the country as a whole, and are therefore factors unifying the nation as a community while respecting the religious orientations of the individual citizen;

2. Instructs its President to forward this declaration, together with the names of the signatories, to the Council, the Commission and the parliaments of the Member States.

Written declaration on freedom of thought, conscience and religion, the right to education and the prohibition of discrimination in relation to religious symbols

By Sophie in 't Veld, Gianni Vattimo, Miguel Ángel Martínez Martínez, Stanimir Ilchev, Jean-Marie Cavada (14 December 2009)

The European Parliament,

- having regard to freedom of thought, conscience and religion, the right to education and the prohibition of discrimination, as protected by Articles 9 and 14 of the European Convention on Human Rights (ECHR), Article 2 of Protocol No 1 thereto and Articles 10, 14 and 21 of the Charter of Fundamental Rights of the European Union,

- having regard to the judgment of the European Court of Human Rights in the case of *Lautsi v. Italy*,

- having regard to the Treaty of Lisbon and the future accession of the EU to the ECHR,

- having regard to Rule 123 of its Rules of Procedure,

1. States its attachment to the principle of separation of church and state, freedom of thought, conscience and religion, the right to education and the prohibition of discrimination as core values of the EU;

2. Considers that public institutions, at national and EU level, should represent all citizens, regardless of belief, religion or philosophy, without discrimination;

3. Calls on Member States to respect the right to freedom of thought, conscience and religion and to fully recognise and respect the confessional relevance and nature of religious symbols;

4. Calls on Member States to abide by the European Court of Human Rights ruling and ensure that religious symbols are not displayed in premises used by public authorities;

5. Instructs its President to forward this declaration, together with the names of the signatories, to the parliaments of the Member States.

EUROPEAN COURT/ ITALY

Lautsi v. Italy

Chamber judgment1[1]

[Lautsi v. Italy](#) (application no. 30814/06)

**CRUCIFIX IN CLASSROOMS:
CONTRARY TO PARENTS' RIGHT TO EDUCATE THEIR CHILDREN IN LINE WITH
THEIR CONVICTIONS AND TO CHILDREN'S RIGHT TO FREEDOM OF RELIGION**

**Violation of Article 2 of Protocol No. 1 (right to education)
examined jointly with Article 9 (freedom of thought, conscience and religion)
of the European Convention on Human Rights**

Press release issued by the Registrar (03.11.2009) - Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 5,000 euros (EUR) in respect of non-pecuniary damage. (The judgment is available only in French.)

Principal facts

The applicant, Ms Soile Lautsi, is an Italian national who lives in Abano Terme (Italy). In 2001-2002 her children, Dataico and Sami Albertin, aged 11 and 13 respectively, attended the State school "Istituto comprensivo statale Vittorino da Feltre" in Abano Terme. All of the classrooms had a crucifix on the wall, including those in which Ms Lautsi's children had lessons. She considered that this was contrary to the principle of secularism by which she wished to bring up her children. She informed the school of her position, referring to a Court of Cassation judgment of 2000, which had found the presence of crucifixes in polling stations to be contrary to the principle of the secularism of the State. In May 2002 the school's governing body decided to leave the crucifixes in the classrooms. A directive recommending such an approach was subsequently sent to all head teachers by the Ministry of State Education.

On 23 July 2002 the applicant complained to the Veneto Regional Administrative Court about the decision by the school's governing body, on the ground that it infringed the constitutional principles of secularism and of impartiality on the part of the public authorities. The Ministry of State Education, which joined the proceedings as a party, emphasised that the impugned situation was provided for by royal decrees of 1924 and 1928. On 14 January 2004 the administrative court granted the applicant's request that the case be submitted to the Constitutional Court for an examination of the constitutionality of the presence of a crucifix in classrooms. Before the Constitutional Court, the Government argued that such a display was natural, as the crucifix was not only a religious symbol but also, as the "flag" of the only Church named in the Constitution (the Catholic Church), a symbol of the Italian State. On 15 December 2004 the Constitutional Court held that it did not have jurisdiction, on the ground that the disputed provisions were statutory rather than legislative. The proceedings before the administrative court were resumed, and on 17 March 2005 that court dismissed the applicant's complaint. It held that the crucifix was both the symbol of Italian history and culture, and consequently of Italian identity, and the symbol of the principles of equality, liberty and tolerance, as well as of the State's secularism. By a judgment of 13 February

2006, the Consiglio di Stato dismissed the applicant's appeal, on the ground that the cross had become one of the secular values of the Italian Constitution and represented the values of civil life.

Complaints, procedure and composition of the Court

The applicant alleged, in her own name and on behalf of her children, that the display of the crucifix in the State school attended by the latter was contrary to her right to ensure their education and teaching in conformity with her religious and philosophical convictions, within the meaning of Article 2 of Protocol No. 1. The display of the cross had also breached her freedom of conviction and religion, as protected by Article 9 of the Convention.

The application was lodged with the European Court of Human Rights on 27 July 2006.

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

Françoise Tulkens (Belgium), President,
Ireneu Cabral Barreto (Portugal),
Vladimiro Zagrebelsky (Italy),
Danutė Jocienė (Lithuania),
Dragoljub Popović (Serbia),
András Sajó (Hungary),
Isil Karakas (Turkey), judges,
and Sally Dollé, Section Registrar.

Decision of the Court

The presence of the crucifix - which it was impossible not to notice in the classrooms - could easily be interpreted by pupils of all ages as a religious sign and they would feel that they were being educated in a school environment bearing the stamp of a given religion. This could be encouraging for religious pupils, but also disturbing for pupils who practised other religions or were atheists, particularly if they belonged to religious minorities. The freedom not to believe in any religion (inherent in the freedom of religion guaranteed by the Convention) was not limited to the absence of religious services or religious education: it extended to practices and symbols which expressed a belief, a religion or atheism. This freedom deserved particular protection if it was the State which expressed a belief and the individual was placed in a situation which he or she could not avoid, or could do so only through a disproportionate effort and sacrifice.

The State was to refrain from imposing beliefs in premises where individuals were dependent on it. In particular, it was required to observe confessional neutrality in the context of public education, where attending classes was compulsory irrespective of religion, and where the aim should be to foster critical thinking in pupils.

The Court was unable to grasp how the display, in classrooms in State schools, of a symbol that could reasonably be associated with Catholicism (the majority religion in Italy) could serve the educational pluralism that was essential to the preservation of a "democratic society" as that was conceived by the Convention, a pluralism that was recognised by the Italian Constitutional Court.

The compulsory display of a symbol of a given confession in premises used by the public authorities, and especially in classrooms, thus restricted the right of parents to educate their children in conformity with their convictions, and the right of children to believe or

not to believe. The Court concluded, unanimously, that there had been a violation of Article 2 of Protocol No. 1 taken jointly with Article 9 of the Convention.

1[1]Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

European Human Rights Court rules in favor of Turkish church

Christians hope decision will lead to greater religious freedom

By Will Morris

Compass Direct News (18.12.2009) / HRWF Int. (19.12.2009) – Email: info@hrwf.net – Website: <http://www.hrwf.net> – In a decision many hope will lead to greater religious freedom in Turkey, the European Court of Human Rights (ECHR) found that a Turkish court ruling barring a church from starting a foundation violated the congregation's right to freedom of association.

Orhan Kemal Cengiz, a Turkish attorney and legal advisor for the litigants, said the decision earlier this year was the first time the ECHR has held that religious organizations have a right to exist in Turkey. Other issues the court addressed dealt with organizations' rights to own property, he said.

Cengiz added that this case is just the first of many needed to correct conflicts within the Turkish legal system in regard to freedom of association, known in Turkey as the concept of "legal personality."

"This case is a significant victory, but it is the first case in a long line of cases to come," Cengiz said.

Ihsan Ozbek, pastor of Kurtulus Church in northeast Turkey, which set out to establish the foundation, said he was pleased with the court's decision.

"It's a good thing to have that decision," he said. "It will help future churches and Christian organizations."

On Dec. 21, 2000, Ozbek and 15 other Turkish nationals applied to a court in Ankara to form the "Foundation of Liberation Churches," to provide assistance to victims of disasters. The court referred the matter to the Directorate General of Foundations, which opposed it because, according to its interpretation of the organization's constitution, the foundation sought to help only other Protestants. Such a purpose would be in violation of the Turkish civil code, which states that establishing a foundation to assist a specific community at the exclusion of others was prohibited.

On Jan. 22, 2002, the church group appealed the decision to the higher Court of Cassation. They agreed that the constitution should be changed to more accurately

reflect the true nature of the organization, which was to give assistance to victims of natural disasters regardless of their spiritual beliefs. In February of the same year, the court rejected their appeal.

Later that year, on Aug. 29, 2002, under the guidance of Cengiz, the group appealed the decision to the ECHR. Founded in 1959 by the European Convention on Human Rights, the ECHR is the highest civil human rights court in Europe. Of the 47 countries that are signatories to the convention, Turkey accounts for more than 11 percent of the court's caseload.

On Oct. 11, 2005 the court agreed to hear the case. More than four years later, on June 10, it publicly issued a verdict.

In its decision, the court unanimously found that the Turkish Courts' "refusal to register the foundation, although permitted under Turkish law, had not been necessary in a democratic society, and that there had been a violation of Article 11."

Article 11 of the convention deals with the rights of people to associate and assemble with others.

"The applicants had been willing to amend the constitution of their foundation both to reflect their true aims and to comply with the legal requirements for registration," the court decision stated. "However, by not allowing them time to do this - something they had done in a similar case - the Court of Cassation had prevented them from setting up a foundation that would have had legal status."

The decision was issued by seven judges, one of them Turkish. The court awarded 2,500 euros (US\$3,600) to each of the 16 members of the group, in addition to 5,200 euros (US\$7,490) to the group as a whole.

After being forbidden to open a foundation, the Protestant group opened an association in 2004, after Turkish law had been amended allowing them to do so. Foundations and associations in Turkey differ mostly in their ability to collect and distribute money. The aims of the association were similar to that of the proposed foundation, with the exception of reference to supporting one particular community.

Ozbek said the directorate's office has been the main obstacle in preventing people from forming Christian foundations.

"Now that they have the decision, they will be forced to say yes," he said.

MIROLUBOV AND OTHERS v. LATVIA

Application no 798/05

Press release issued by the Registrar (15.09.2009) / HRWF (04.09.2009) - Website: www.hrwf.net - Email: info@hrwf.net - In this case concerning the unwarranted intervention of the state in internal dispute within Old Orthodox Community, the European Court ruled that there had been a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 4,000 euros (EUR) each in respect of non-pecuniary damage. (The judgment is available only in French.)

Principal facts

The applicants are Father Ivans (Ioanns) Mirolubovs, a Latvian national, Sergejs Picugins, a "permanent resident non-citizen" of Latvia and Albina Zaikina, also a Latvian national. At the relevant time Father Mirolubovs was an Old Orthodox "spiritual master" and the other two applicants were members of the Riga Grebenscikova Old Orthodox parish (Rigas Grebenscikova vecticibnieku draudze - "the RGVD").

The Old Orthodox faith originated from the great schism of the Russian Orthodox Church in the mid-17th century. The main difference with the Orthodox Church concerns acts of worship. The RGVD is the largest of Latvia's 69 Old Orthodox communities.

In 1995 Father Mirolubovs was appointed chief spiritual master of the RGVD. The same year, the adoption by the community of new statutes - found by the Ministry of Justice to be lawful - led to a split between the parishioners and to violent incidents.

In 2001 a new registration certificate was issued to the RGVD by the Religious Affairs Directorate ("the Directorate"), which in May 2002 also approved the new statutes adopted by the RGVD in which the latter stressed its complete independence from other religious organisations.

On 14 July 2002 an extraordinary general meeting of the RGVD took place. In parallel with that meeting, which was held in the temple in Riga and in which the applicants participated, another meeting gathered outside attended by, among others, Old Orthodox spiritual masters. The two rival groups each claimed to constitute the legitimate general meeting.

The outside meeting decided to elect new members and change the RGVD's statutes on the ground that Father Mirolubovs and his followers, by inviting a Russian Orthodox priest to celebrate the liturgy in the RGVD church, had renounced their Old-Rite beliefs and had effectively converted to the Orthodox Church, thereby forfeiting all their rights within the community.

Both factions requested formal approval from the Directorate. The latter, in a decision of 23 August 2002, recognised the outside meeting as legitimate, formally approved it and registered it as the new RGVD parish council on 10 September 2002.

The applicants and their fellow worshippers were expelled by force from the temple and no longer admitted. From that point on they operated informally under the name of "the RGVD in exile".

On 10 January 2003, on a request by the applicants, the Court of First Instance set aside the Directorate's decisions of 23 August and 10 September 2002. The Directorate appealed against that judgment and the Regional Court found in its favour. On 14 January 2004 an appeal by the applicants on points of law was dismissed by the Senate of the Supreme Court.

Complaints and procedure

The applicants alleged, in particular, that the manner in which the domestic authorities had intervened in an internal dispute within their religious community had infringed their right to freedom of religion under Article 9. They also relied on Articles 8 (right to respect for private life) and 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 16 June 2004.

Decision of the Court

On the objection as to inadmissibility raised by the Latvian Government

In a letter of 3 December 2008 the Government informed the Court that documents relating to the negotiations with a view to a friendly settlement had been sent to the Latvian Prime Minister via a third party. The Government concluded that the application should be declared inadmissible on the ground of an abuse of the right of petition as there had been a breach of the confidentiality requirement under the friendly-settlement procedure.

The Court stressed that the confidentiality requirement was designed to facilitate friendly settlements by protecting the parties and the Court against possible pressure, and that an intentional breach of confidentiality by an applicant could indeed amount to abuse of the right of petition and result in the application being rejected.

However, the Court noted the difficulty of monitoring compliance with this requirement and the threat to the applicant's defence rights if it were imposed as an absolute rule. What the parties were prohibited from doing was publicising the information in question, for instance in the media or in correspondence liable to be read by a large number of people. In the instant case, as the Latvian Government had not adduced evidence that all the applicants had consented to the disclosure of the confidential documents, the Court was unable to find that the applicants had abused the right of individual petition.

Article 9

The intervention of the Latvian authorities in the dispute between the two groups of parishioners of the RGVD had pursued the legitimate aim of preventing disorder and protecting the rights and freedoms of others.

The autonomy of religious communities was an essential component of pluralism in a democratic society, where several religions or denominations of the same religion co-existed. While some regulation by the authorities was necessary in order to protect individuals' interests and beliefs, the State had a duty of neutrality and impartiality which barred it from pronouncing itself on the legitimacy of beliefs and their means of expression.

The authorities had failed to fulfil that duty as they had not adduced evidence of sufficiently serious reasons warranting withdrawal of the recognition granted to the RGVD bodies in 1995 and May 2002, and had implicitly determined the applicants' status as members of the Orthodox Church. The Directorate's decision had not given sufficient reasons; in particular, it had been issued in spite of the opinion expressed by the Holy Synod of the Russian Orthodox Church that the applicants had not converted to that faith.

Furthermore, the Directorate ought to have taken account in this sensitive case of the specific characteristics of the Old Orthodox faith, namely its very heterogeneous structure.

Lastly, the Court stressed that the Latvian courts had not examined the case on the merits or afforded redress for the damage sustained by the applicants.

The Court therefore held that there had been a violation of Article 9 and that no separate issue arose under Articles 8 and 11.

Judge Myjer expressed a dissenting opinion, which is annexed to the judgment.

This summary by the Registry does not bind the Court. The judgments, with the composition of the Court, are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

USCIRF expresses concern about European Court decision on religious garb

USCIRF (07.08.2009) - The European Court of Human Rights on July 17 rejected claims to allow Muslim girls and Sikh boys to cover their hair while attending public school in France. The U.S. Commission on International Religious Freedom (USCIRF), a bipartisan U.S. government panel that monitors religious freedom abroad, faulted the ruling for its failure to cite any evidence to support its conclusion that the head coverings constituted a genuine threat to public order.

"International standards guarantee to every individual the freedom to peacefully manifest his or her religious beliefs, in public as well as in private, which includes wearing religious clothing or head coverings," said Leonard Leo, USCIRF chair. "It is unfortunate that, in the absence of actual evidence of a legitimate threat to public order, France and the European Court of Human Rights have interpreted a general notion of secularism so radically that it has trumped religious belief. Secularism does not mandate a ban on peaceful individual religious expression, including the decision to wear religious articles that other believers or non-believers may associate with religious extremism."

The European Court of Human Rights in Strasbourg rejected six cases filed by four Muslim girls and two Sikh boys who were expelled from French schools in 2004-05 for wearing headscarves or keskis (Sikh under-turbans). The youngsters were challenging France's 2004 law that prohibits public school students from wearing conspicuous symbols of their religious affiliation. Many Muslims and Sikhs consider it a religious obligation to cover their heads.

The Court found that the French law did restrict the students' freedom of thought, conscience, and religion guaranteed under Article 9 of the European Convention on Human Rights but the restriction was permissible based on secularism and the need to protect the rights and freedoms of others and the public order. "The Court justified the

restriction as necessary to reconcile the interests of various religious groups in a diverse society and ensure that everyone's beliefs are respected, yet everyone's beliefs were not respected," said Mr. Leo. "The Muslim and Sikh students believe that their religion requires them to cover their hair."

"The Court also stated that pluralism and democracy require 'a spirit of compromise necessarily entailing various concessions,' yet it rejected the students' attempts to compromise," said Mr. Leo. The Muslim girls were willing to wear hats rather than headscarves, but the Court found that hats also would constitute a conspicuous manifestation of religious affiliation. The Court also rejected the Sikh boys' argument that because a keski is smaller than the traditional Sikh turban, it should be permitted.

USCIRF previously has expressed concern about the French religious symbols law. (See USCIRF Press Release, France: Proposed bill may violate freedom of religion, February 3, 2004.)

USCIRF is an independent, bipartisan U.S. federal government commission. USCIRF Commissioners are appointed by the President and the leadership of both political parties in the Senate and the House of Representatives. USCIRF's principal responsibilities are to review the facts and circumstances of violations of religious freedom internationally and to make policy recommendations to the President, the Secretary of State and Congress.

To interview a USCIRF Commissioner, contact Tom Carter, Communications Director at tcarter@uscirf.gov, or (202) 523-3257

European Court rules against the Sikh turban in French schools

By Tejinder Singh

Examiner.com (17.07.2009) / HRWF (18.07.2009) - Website: <http://www.hrwf.net> - Email: info@hrwf.net - Sikhs feel let down once again in history, now by the European Court of Human Rights (ECHR), the apex European judicial body supposed to be the guarantor of human rights and human dignity.

The Court in its judgement confirmed what French President Nicolas Sarkozy had told me (Tejinder Singh) last September at the concluding press conference of the European Union/India Summit in Marseille, France.

Anger of Sarkozy, silence of Singh

Standing next to Indian Prime Minister Manmohan Singh, a Sikh wearing a light blue turban, Sarkozy answered this reporter's (Tejinder Singh) question about the wearing of turbans by Sikhs in France.

Regarding the required Sikh head covering, an integral part of their religious identity, Sarkozy, replied curtly, "Sir, we respect Sikhs. We respect their customs, their traditions. They are most welcome to France."

Visibly irritated, Sarkozy continued in French, "But sir, we have rules, rules concerning the neutrality of civil servants, rules concerning secularism, and these rules don't apply only to Sikhs, they apply to Muslims or others. They apply to all on the territory of the French Republic."

The practice by Sikhs of allowing one's hair to grow naturally is a symbol of respect, the most important of the five outward symbols required of all Sikhs, and the turban is worn to cover the uncut hair. Sarkozy explained that the banning of turbans is not discrimination, that, "These rules apply to everybody, to everybody with no exception. There is no discrimination whatsoever."

Making it clear to the Sikh community in France that they have no option other than to conform to the rules, Sarkozy made the paradoxical statement, "We respect their traditions and their customs and we are convinced that they too respect the laws, traditions and customs of the French Republic."

During this whole episode, Indian Premier Singh stayed silent on the subject even though I had put the question to both the leaders.

Discrimination begins early in France

In 2004, three Sikh boys, Jasvir Singh, Bikramjit Singh and Ranjit Singh, were expelled from French schools for wearing turbans. These students were the first victims of the ban instituted which prohibits Sikh students from covering their hair at school, a decision that prompted world-wide protest from the Sikh community.

The European court ECHR dismissed last month the first legal challenge, since France passed a law in 2004 banning religious signs in schools, filed by UNITED SIKHS on behalf of Jasvir Singh.

The decision, against which there is no leave to appeal, and which was communicated to UNITED SIKHS lawyers yesterday, strengthened the resolve of the Sikh community globally to rise to the challenge and defy odds to regain their right, commented UNITED SIKHS in a statement.

The Court, without requiring France to respond to Jasvir Singh's legal arguments, followed the decision it made last November in the Islamic headscarf physical education cases (which pre-dated the 2004 law), by ruling that the ban on turbans is a proportionate response to the aims of protection of the rights and freedoms of others and the protection of public order.

UNITED SIKHS filed, last December, another legal challenge before the United Nations Human Rights Committee on behalf of Bikramjit Singh, who was expelled from the school with Jasvir Singh when they refused to remove their turban in school. France has filed a response to Bikramjit's claim and UNITED SIKHS lawyers are preparing a reply, the organization stated.

Human rights violations

Jasvir Singh was 14 years old when he, along with two other Sikh students, was expelled from Michel High School in Bobigny, France for wearing a keski. The keski is a small, discreet piece of cloth, which acts as an under-turban, covering the unshorn hair that is considered sacred in the Sikh religion. It is frequently worn by young Sikhs as a prelude, or as an alternative, to wearing a larger turban.

In the appeal filed to the ECHR, UNITED SIKHS lawyers had argued that the 2004 law interfered with Jasvir's human rights in a way that was disproportionate to the aim of the protection of the rights and freedoms of others. The lawyers added, that there was no pressing social need which dictated that members of the very small Sikh minority in France should not be able to wear a discreet head-covering.

Moreover, a Sikh's uncut hair is a much more conspicuous sign of adherence to the Sikh religion than the keski which covers it. Accordingly, requiring a Sikh pupil to remove his keski, revealing his uncut hair tied in a tress knot, makes his religious affiliation more conspicuous rather than less.

The principal of the high school had asked the Jasvir to stop wearing the keski to school, but he declined to do so because it represents a fundamental aspect of his religion, beliefs, and identity. Jasvir was initially removed from the classroom and made to sit in a separate study area in order to pursue his education. He was placed in the school canteen, where he undertook self-study and was provided with educational materials by a teaching assistant if he requested them. No teacher taught him during the period of three weeks that he spent in the canteen. This separation continued for three weeks before he was excluded from school altogether.

Legal reactions

Commenting on the decision, Mejjindarpal Kaur, UNITED SIKHS Director for International Civil and Human Rights Advocacy stated, "Today is the day, 264 years ago, when a Sikh martyr, Bhai Taru Singh, was scalped alive by the oppressive rulers of the day because he refused to give up his faith that required him to wear his hair unshorn. Today our lawyers learnt that the European Court of Human Rights has dismissed Jasvir Singh's right to wear his religiously mandated turban to school, denying him a right to practice his faith."

"Yet we have faith that we will win the battle to win the hearts and minds of the French government," she added.

Jasvir Singh's London Lawyer, Stephen Grosz of Bindmans LLP stated, "Sikhs are striving for a society in which all faiths coexist in harmony, where the expression of religion and culture is a celebration of diversity. By contrast, the Court's decision allows states to suppress expressions of religious diversity, apparently as a means of promoting peace. It is a depressingly negative view of the state's role in promoting religious tolerance."

Commenting on Bikramjit Singh's case before the UN Human Rights Committee, he added, "The UN Human Rights Committee, which is also considering this issue, has called on France to justify its ban on the wearing of religious signs."

Worldwide Sikhs comment

Singh Sahib Gurbachan Singh Ji, Jathedar Sri Akal Takhat Sahib, head of the 400 year old temporal seat of 25 million Sikhs globally said: "This decision has hit the Sikh community in a much bigger way than France has gained from it. Sikhs have always defended the rights of others by making the ultimate sacrifice. Now the time has come for us to turn to all religious leaders to work together to put an end to this attack on religious freedom. The leaders of all the five Takhat are meeting at the Akal Takhat on 20th July when we will take a decision on the way forward."

Avtar Singh President, Shromani Gurdwara Parbandhak Committee (SGPC), the largest elected body of Sikhs commented: "The solution now is at the political level. We have left no stone unturned to achieve a result through the courts and diplomatically. There is no choice for Sikhs except to turn to the Indian Prime Minister to do the right thing."

Paramjit Singh, President, Delhi Sikh Gurdwara Management Committee (DSGMC) in a statement said, "We will fight the decision politically through the Indian Government. If the French government can honor the turban wearing Indian PM during their national day parade recently, we must surely be able to convince them that the Court's decision cannot stand."

Gurdial Singh, a French Sikh community leader and father of Jasvir Singh, bitterly disappointed with the decision, said: "The judges didn't listen to the voice of their souls or humanity when making this political decision. They will regret one day that they have made a grave mistake by hurting humanity and snatching away from a peace loving community their right to practice their faith. On our part, the battle continues."

Kuldip Singh, UNITED SIKHS president resolved to continue saying: "The Sikh community will have to respond with all its strength. You don't have to be a numerical majority to bring change through social politics. Guru Nanak was in the minority when he preached love for humanity to the majority communities of his day," he added, dismissing any doubts that France will take Sikhs seriously.

Jassi Singh Khangura, MLA, elected representative of the Punjab state assembly added: "I am very disappointed with the European court's decision, coming in the 21st Century, on behalf of a developed country. The Punjab assembly has passed a resolution in favor of fighting for the turban and we will carry on fighting. There are strong economic ties between India and France and we will lobby through them. It is time to move the Sikh youth globally who will have to move French youths, the future decision makers in France."

US efforts to embrace Sikhs

Calling for help of the West including the US and Canada, Kashmir Singh, a French Sikh community leader said, "The judges have shown themselves to be partial by not requiring France to reply to our case. The French government knows that the turban is part of the Sikh identity. We should work with politicians in the USA, Canada and the UK to bring a change of heart in France. In the in the end, we will change the law."

Dr. Pritpal Singh, Coordinator, American Gurudwara Prabandhak Committee said: "We condemn the judgment. We call upon all human rights organizations to stand by us. As Americans, we will seek a meeting with the Secretary of State to seek her help to make our case to the French government that we are peace loving people whose identity is under attack."

Earlier, discriminatory incidents involving Sikhs increased dramatically in the US as a consequence of the September 11, 2001 terrorist attacks in the United States. There were numerous cases of discriminatory attacks on Sikhs as they were misunderstood as allies of Osama bin Laden due to their appearance.

While the US is making the effort to remove misunderstanding and give Sikhs their legitimate place in society, it seems that in some member states of the European Union, comparable progress and acceptance has flowed in reverse.

US lawmaker Honda Spoke

US Congressman Mike Honda (Democrat-California), who represents Silicon Valley and who is involved in this issue in his capacity as Chairman of the Congressional Asian Pacific American Caucus, told this correspondent last year, "I don't believe in sacrificing freedom in order to protect freedom. Turbans are part of the religious identity of Sikhs and we must strive to respect their freedom of religious expression. A balance can be struck between national security and religious liberties, but that balance can only be reached by consulting all the parties involved, in this case the Sikh community."

"It would be ironic that many Sikhs, who fled their homeland seeking religious freedom, would find that America curtailed their religious freedoms when they arrived upon our shores," Honda had added.

European lawmaker Gill

Asked to comment, Neena Gill, a member of the European Parliament had said last year, "I am astounded by the level of discrimination that is in fact growing ... it is not confined to France ... it is in Belgium, in Germany and it really smacks against all these initiatives that the European Commission is constantly launching."

However, solutions aimed at nurturing "unity in diversity," the European Union's frequently appearing slogan, are already working in the United Kingdom, one of the member states of the European Union, and across the Atlantic in the United States.

Highlighting the integration and diversity that prevails across the English Channel, Gill, who was born in Punjab, India, said, "If you look at the United Kingdom, you can wear a turban not only in mainstream jobs but also in the police, the army, the air force or the navy. There is no restriction. In fact, the army has special days when they try and recruit people from the Sikh community and the Dastar (turban) is not a problem for them, so I really think we do need to raise awareness, especially from the European Commission in these particular years of Equality and Intercultural Dialogue. We have to target the resources at these issues to ensure that there is greater awareness across the EU in accepting people of different appearances."

The root cause of the discrimination and a pragmatic solution to root it out was aptly summed up by Jennifer Handshew, a seasoned public relations professional in New York who had told this journalist, "I feel that ignorance and fear are the primary factors that fuel this discrimination and believe that education and awareness will help people better understand what the turban means to the Sikhs."

What Handshew and others suggest provide a succinct analysis and a solution, but for now, the door to a respectable life in France for Sikhs has been slammed shut by the ECHR while French President Sarkozy had set the ball rolling last year in the presence of Indian Premier Manmohan Singh, himself a member of the Sikh community.

Masaev v. Moldova

Press release of the Registrar

European Court (12.05.2009) / HRWF (16.07.2009) - Email: info@hrwf.net - Website: <http://www.hrwf.net> - The European Court of Human Rights has today notified in writing its Chamber judgment^{2[1]} in the case of **Masaev v. Moldova** (application no. 6303/05).

The Court held unanimously that there had been:

- a **violation of Article 6 § 1 (right to a fair hearing)** of the European Convention on Human Rights, on account of Mr Masaev not having been invited in time to attend his court hearing;

^{2[1]} Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

- a **violation of Article 9 (freedom of thought, conscience and religion)**, on account of him having been fined for practising Muslim rituals, part of a religion not recognised by the State;
- it had not been necessary to examine separately the complaint under Article 6 § 3 and under Article 13 in combination with Article 9.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 26 euros (EUR) in respect of pecuniary damage, EUR 1,500 in respect of non-pecuniary damage and EUR 1,000 for costs and expenses. ([The judgment is available only in English.](#))

1. Principal facts

The applicant, Talgat Masaev, is a Moldovan national who was born in 1957 and lives in Rezeni. He is a Muslim.

On 30 January 2004, he, together with a group of other Muslims, was praying on private premises, in particular in a house rented by a non-governmental organisation whose leader he was. The gathering was dispersed by the police and Mr Masaev was subsequently charged with the offence of practising a religion not recognised by the State.

In February 2004 Mr Masaev was found guilty as charged by a domestic court which ordered him to pay a fine. Mr Masaev contested this decision before the appellate court, but his application was dismissed without reasons and without inviting him to attend the hearing.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 9 September 2004 and examined together for admissibility and merits on 16 April 2009.

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

Nicolas **Bratza** (United Kingdom), **President**,
 Lech **Garlicki** (Poland),
 Giovanni **Bonello** (Malta),
 Ljiljana **Mijović** (Bosnia and Herzegovina),
 David Thór **Björgvinsson** (Iceland),
 Ledi **Bianku** (Albania),
 Mihai **Poalelungi** (Moldova), *judges*,

and Lawrence **Early**, **Section Registrar**,

3. Summary of the judgment^{3[2]}

Complaints

Relying on Article 6 §§ 1 and 3, and on Articles 9 and 13, Mr Masaev complained of having been fined for practising Muslim rituals, of not having had an effective remedy to challenge this, and of not having been invited to appear at the court hearing of his appeal.

Decision of the Court

^{3[2]} This summary by the Registry does not bind the Court.

Article 9

The Court noted that any person manifesting a religion, which had not been recognised in accordance with the relevant domestic law - the Religious Denominations Act - had been automatically liable to sanctions in accordance with the Code of Administrative Offences. However, while the State had been free to require the registration of religious denominations, it should not have punished individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs. Accepting such an approach would amount to the exclusion of minority religious beliefs not formally registered with the State, which in turn would mean that the State could dictate what a person could believe. The Court held that the limitations imposed on the right to freedom of religion of Mr Masaev, as a result of the application of the Code of Administrative Procedure, had been in violation of Article 9.

Article 13 in combination with Article 9

The Court held that it was not necessary to examine this complaint separately in view of its finding under Article 9.

Article 6 §§ 1 and 3

The Court noted that Mr Masaev had not received in time the summons inviting him to attend the court hearing of his appeal. Further, the Moldovan Government had acknowledged explicitly that this had breached his right to a fair trial. In the light of the latter, and of its earlier case law, the Court held that there had been a violation of Article 6 § 1, and it was not necessary to examine separately his complaint under Article 6 § 3.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

Committee of Ministers to supervise the execution of European Court of Human Rights judgments

Non-execution of court decisions in 4 'religious cases' to be supervised

HRWF (27.05.2009) - Website: <http://www.hrwf.org> - Email: info@hrwf.net - The Council of Europe's Committee of Ministers holds its second special "human rights" meeting" of 2009 from 2 to 5 June. The Committee supervises the adoption of individual measures needed to erase the consequences for applicants of violations established by the Court (including the payment of any just satisfaction awarded) and/or general measures (legislative or other changes) aimed at preventing new similar violations.

476 new cases will be examined, a number of which raises questions related to the adoption of new individual or general measures. The others are either linked to issues which are already examined under other cases, or do not reveal any structural problem.

In the remaining cases, the Committee will examine progress made, notably as far as some 400 legislative or other reforms are concerned.

Four "religious" cases are on the list of the court decisions to be supervised

Case name : MOSCOW BRANCH OF THE SALVATION ARMY v. Russia Appl N° : 72881/01

Judgment of : 05/10/2006

Final on : 05/01/2007

Violation : Payment status : Paid in the time limit

Theme / Domain :

Next exam : 1059-4.2(02/06/2009)

Last exam : 1043-4.2(02/12/2008)

First exam : 992-2(03/04/2007)

NOTES OF THE AGENDA

72881/01 Moscow Branch of the Salvation Army, judgment of 05/10/2006, final on 05/01/2007

18147/02 Church of Scientology Moscow, judgment of 05/04/2007, final on 24/09/2007

The cases concern the refusal to re-register the applicant associations, resulting in the loss of legal status (violation of Article 11 read in the light of Article 9). The Religious Act which entered into force in 1997 required all religious associations that had been previously granted legal-entity status to amend their articles of association in conformity with the new Act so as to be "re-registered" before the end of 2000.

Moscow Branch of the Salvation Army: The European Court observed that the grounds for refusing re-registration of the applicant branch were not consistent throughout the domestic proceedings. As to the first reason adduced for refusing the applicant's re-registration request, namely the applicant's "foreign origin", the Court found that this was neither "relevant and sufficient", nor "prescribed by law". As to the second reason, namely the applicant's omission to set out its religious affiliation and practices in a precise manner, the Court observed that the Religions Act did not lay down any guidelines as to the manner in which the religious affiliation or denomination of an organisation should be described in its founding documents. Regarding the arguments that the applicant should be denied registration as a "paramilitary organisation" because of the use of the word "army" in its name and the fact that its members wore uniform, the Court found that there was no evidence to suggest that the applicant advocated violence, contravened any Russian law or pursued objectives other than those listed in its articles of associations.

Church of Scientology Moscow: The European Court noted that the Justice Department had refused to process four applications for re-registration on account of the applicant's alleged failure to submit a complete set of documents. The Department, however, had not specified the missing information or documents, claiming that it had not been competent to do so. Thus, the applicant association was prevented from amending and re-submitting its application. Furthermore, as domestic law required any refusal to be justified, the Court considered that the refusal had not been "in accordance with the law". The Court also stated that the domestic court had not explained why the book submitted by the applicant had not contained sufficient information on the basic creed, tenets and practices of Scientology, and therefore had failed in its task to clarify the applicable legal

requirements and give the applicant clear instruction on how to prepare a complete and adequate application. As regards the applicant's failure to secure re-registration within the established time-limit, the Court found this to be a direct consequence of arbitrary rejection of its earlier applications. The Court also found unlawful the latest requirement to produce the document showing the applicant's fifteen-year presence in Moscow.

Individual measures

1) Moscow Branch of the Salvation Army: According to the information provided by the authorities, the Federal Registration Service of the Russian Federation invited the representatives of the religious organisation "Moscow Branch of the Salvation Army" to submit, in accordance with the procedure provided by law, the documents required to registrar the modifications in its statute. No document has been presented by the representatives of this organisation.

2) Church of Scientology Moscow: In its judgment the European Court established the government's obligation to take appropriate measures to remedy the applicant's individual situation. It further noted that it falls to the respondent state to decide whether such measures involve granting re-registration of the applicant, removing the requirement to obtain re-registration from the Religious Act, re-opening of the domestic proceedings or a combination of these and other measures.

According to information provided by the applicant on 29/04/2008, the application for re-opening of the case was refused by the Nikulinsky District Court on 11/03/2008. The district court stated that there was no provision in domestic law allowing re-opening of a civil case on the basis of a finding of a violation of the Convention by the European Court. The applicant's submissions have been transmitted to the government. Their comments are awaited.

General measures

Publication and dissemination: The Representative of the Russian Federation at the European Court has informed the Federal Registration Service and the Supreme Court of the Russian Federation of the European court's judgment in the case of Moscow Branch of Salvation Army so that they may adopt individual and general measures and take the findings of the European Court into account in their daily practice.

The Federal Registration Service has summarised the implementation practice of its territorial departments with regard to the refusal of documents submitted by the religious organisations. This information was notified to all territorial departments for use in their daily practice, with a view to preventing new, similar violations.

These issues, including the judgment of the European Court in the case of Moscow Branch of Salvation Army, were also discussed at a seminar of all heads of territorial departments on 27-28 September 2007.

· Information is awaited on publication and dissemination of the judgment in the case of Church of Scientology Moscow. More details would be useful on concrete measures (instructions, circular letters, etc) taken as a result of the judgments and in particular as to whether the judgments have been sent out to all domestic courts with a circular letter of the Supreme Court.

The Deputies decided to resume consideration of these items at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided concerning individual and general measures.

Case name : KUZNETSOV AND OTHERS v. Russia Appl N° : 184/02

Judgment of : 11/01/2007

Final on : 11/04/2007

Violation : Payment status : Paid outside time limit, interest paid

Theme / Domain :

Next exam : 1059-4.2(02/06/2009)

Last exam : 1043-4.2(02/12/2008)

First exam : 997-2(05/06/2007)

NOTES OF THE AGENDA

184/02 Kuznetsov and others, judgment of 11/01/2007, final on 11/04/2007

10519/03 Barankevich, judgment of 26/07/2007, final on 26/10/2007

The cases concern interference with a religious event organised by members of the Chelyabinsk community of Jehovah's Witnesses (Kuznetsov case) found by the Court not to be prescribed by law (violation of Article 9) and the ban imposed on a service of worship planned by the "Christ's Grace" Church of Evangelical Christians in a town park (Barankevich) (violation of Article 11 interpreted in the light of Article 9).

In the Kuznetsov case the Court also found that the domestic courts, in dismissing the applicants' civil complaints, failed in their duty to state the reasons on which their decisions were based and to demonstrate that the parties had been heard in a fair and equitable manner (violation of Article 6).

Individual measures

1) Barankevich case: The European Court awarded the applicant just satisfaction in respect of non-pecuniary damage. According to the information provided by the authorities, no further application for permission to hold a service in public has been received from the applicant.

· Assessment: no further measure appears necessary.

2) Case of Kuznetsov and others: The applicants informed the Secretariat on 04/05/2007 that the premises of the Jehovah's Witnesses were raided by the police in April 2006 in Moscow and in April 2007 in Satka (Chelyabinsk region). They also submitted that the judgment of the European Court had been disregarded by the domestic courts in Moscow seized by members of Jehovah's Witnesses.

The Russian authorities have indicated that following the applicants' submission to the Committee of Ministers the local department of the Ministry of the Interior in Satka carried out an internal inquiry into the facts which took place on 2/04/2007 in Satka (Chelyabinsk region). As a result of this inquiry, disciplinary sanctions were imposed on the First Deputy to the Head of the Local Department, the Chief of the Criminal Police Tsvilev, and the District Police Officer Spiridonov.

On 16/11/2007, the applicants' representative informed the Committee of Ministers of the Russian courts' failure to comply with the Kuznetsov judgment in other similar cases pending before them, in particular in Moscow.

On 6/12/2007, this submission was forwarded to the Russian authorities.

· Their comments are still awaited.

General measures:

1) Legislative amendments: At the material time, domestic law provided that a person wishing to hold an assembly or a service of worship in a public place should obtain prior authorisation from the authorities. In 2004 a new law on assemblies, meetings, demonstrations, marches and picketing entered into force and the requirement of authorisation was replaced by simple notification.

2) Publication and dissemination: The Kuznetsov judgment has been sent to all domestic courts by letter of the Deputy President of the Supreme Court of the Russian Federation.

· Information is awaited on dissemination of the Barankevich judgment and publication of both judgments.

3) Other measures: Following the adoption of the Kuznetsov judgment, the Ministry of the Interior has taken measures to reinforce its control over the activities of its officers and to prevent new, similar violations: in particular, additional training was organised with the officers of the Satka local department, during which they studied material concerning freedom of thought and of religion as well as the legislation governing demonstrations and meetings.

Moreover, the Ministry of the Interior has notified all local departments of their obligation to comply unconditionally with the judgment of the European Court.

· The need for further measures is being assessed by the Secretariat.

The Deputies decided to resume consideration of these items at the latest at their 1043d meeting (2-4 December 2008) (DH), in the light of information to be provided on individual and general measures.

No improvement in the situation of the conscientious objector despite judgment of the European Court

CoE (25.03.2009) / HRWF (25.03.2009) - Website: <http://www.hrwf.net> - Email: info@hrwf.net -The Committee of Ministers last week adopted a second Interim Resolution in the case of Ülke. In this case the European Court of Human Rights found that the applicant's repeated convictions and imprisonment for having refused to perform compulsory military service on account of his beliefs as a pacifist and conscientious objector amounted to degrading treatment in violation of the European Convention on Human Rights.

Despite the European Court's judgment, the applicant was summonsed in July 2007 to present himself in order to serve his outstanding sentence resulting from a previous conviction. He is at present in hiding and is wanted by security forces for execution of his sentence.

In its Interim Resolution, the Committee of Ministers strongly regretted that, despite the Committee's first Interim Resolution, no concrete steps have been taken by the Turkish authorities to bring to a close the continuing effects of the violation. Therefore, the Committee strongly urged Turkey to take without further delay all necessary measures to put an end to the violation of the applicant's rights. It further urged Turkey to make the legislative changes necessary to prevent similar violations of the Convention.

The Committee will continue examining the implementation of the Ülke case at each human rights meeting until the necessary urgent measures are adopted.

Under the European Convention on Human Rights, the European Court's judgments require the adoption by the respondent states, under the Committee of Ministers' supervision, of all measures necessary to grant the applicants appropriate redress and to prevent new similar violations in the future.

Further information on the execution of judgments by member states, including the Committee of Ministers' annual report for 2007 on its supervision of judgments - are available at www.coe.int/t/cm/home_en.asp and www.coe.int/Human_rights/execution

Interim Resolution CM/ResDH(2009)45 1: Execution of the judgment of the European Court of Human Rights Ülke against Turkey

(Application No. 39437/98, judgment of 24 January 2006, final on 24 April 2006 – Interim Resolution [CM/ResDH\(2007\)109](http://www.coe.int/t/cm/resolutions/CM/ResDH(2007)109))

CoE Committee of Ministers (19.03.2009) - The Committee of Ministers, under the terms of Article 46, paragraph 2, of the Convention for the Protection of Human Rights and Fundamental Freedoms, which provides that the Committee supervises the execution of final judgments of the European Court of Human Rights (hereinafter “the Convention” and “the Court”);

Having regard to the judgment in the case of Ülke transmitted by the Court to the Committee for supervision of its execution once it became final on 24 April 2006;

Recalling that, in its judgment, the Court found that the applicant’s repeated convictions and imprisonment for having refused to perform compulsory military service on account of his beliefs as a pacifist and conscientious objector amounted to degrading treatment within the meaning of Article 3 of the Convention;

Emphasising that, according to the Court, the numerous prosecutions already brought against the applicant and the possibility that he is liable to prosecution for the rest of his life amounted almost to “civil death” which was incompatible with the punishment regime of a democratic society within the meaning of Article 3;

Recalling that the Court further found that the existing legislative framework was insufficient, as there was no specific provision in Turkish law governing the sanctions for those who refused to perform military service on conscientious or religious grounds and that the only relevant applicable rules appeared to be the provisions of the Military Criminal Code, which made any refusal to obey the orders of a superior an offence;

Noting with grave concern that, despite the Court’s judgment, the applicant was summonsed on 09 July 2007 to present himself in order to serve his outstanding sentence resulting from a previous conviction and that his request for a stay of execution of his sentence was rejected by the Eskişehir Military Court on 27 July 2007;

Recalling the Committee’s first interim resolution adopted at the 1007th meeting (October 2007) in which it urged “the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant’s rights under the Convention and to adopt rapidly the legislative reform necessary to prevent similar violations of the Convention”;

Strongly regretting that, despite the Committee’s interim resolution, no concrete steps have been taken by the Turkish authorities to bring to a close the continuing effects of the violation;

Noting with concern that, in the absence of any measures taken by the Turkish authorities, the applicant's situation remains unchanged in that he is at present in hiding and is wanted by the security forces for execution of his sentence;

FIRMLY RECALLS the obligation of every state, under Article 46, paragraph 1, of the Convention, to abide by the judgments of the Court, including through the adoption of individual measures putting an end to the violations found and removing as far as possible their effects for the applicant, as well as general measures to prevent similar violations;

STRONGLY URGES the Turkish authorities to take without further delay all necessary measures to put an end to the violation of the applicant's rights under the Convention and to make the legislative changes necessary to prevent similar violations of the Convention;

DECIDES to continue examining the implementation of the present judgment at each human rights meeting until the necessary urgent measures are adopted.

1 *Adopted by the Committee of Ministers on 19 March 2009 at the 1051st meeting of the Ministers' Deputies.*

Chamber judgment: Nolan and K. v. Russia

Press release of the Registrar (12.02.2009) / HRWF Int. (17.02.2009) – Email: info@hrwf.net – Website: <http://www.hrwf.net> - The European Court of Human Rights has today notified in writing its Chamber judgment^{4[1]} in the case of **Nolan and K. v. Russia** (application no. 2512/04) concerning the applicant's expulsion from Russia.

The Court held:

- by six votes to one, that the Russian Government **failed to comply with Article 38 § 1 (a)** (obligation to furnish necessary facilities for the examination of the case) of the European Convention on Human Rights;
- unanimously, that there had been a **violation of Article 5 §§ 1 and 5** (right to liberty and security) of the Convention;
- unanimously, that there had been a **violation of Article 8** (right to respect for private and family life) in respect of Mr Nolan and his son;
- unanimously, that there had been a **violation of Article 9** (freedom of thought, conscience and religion); and,
- by six votes to one, that there had been a **violation of Article 1 of Protocol No. 7** to the Convention (procedural safeguards relating to expulsion of aliens).

Under Article 41 (just satisfaction), the Court awarded Mr Nolan 7,000 euros (EUR) in respect of non-pecuniary damage and EUR 810 for costs and expenses. The judgment is available in English at

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=2512/04&sessionid=10182872&skin=hudoc-en>

^{4[1]} Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

1. Principal facts

The applicants, Patrick Francis Nolan, and his son, K., are citizens of the United States of America who were born in 1967 and 2001 respectively and live in Tbilisi (Georgia). Mr Nolan is the sole custodial parent of K. He is a member of and missionary for the Unification Church, a spiritual movement founded by Mr Sun Myung Moon in 1954.

In 1994 the Unification Church invited Mr Nolan to assist in its activities in Russia. He was granted leave to stay by the Ministry of Foreign Affairs of the Russian Federation, renewable on a yearly basis. He was based in Rostov-on-Don (Southern Russia) where he worked with local branches of the Family Federation for World Peace and Unification (FFWPU).

In January 2000 the Concept of National Security of the Russian Federation was amended by the acting President of the Russian Federation, to read: "Ensuring the national security of the Russian Federation also includes opposing the negative influence of foreign religious organisations and missionaries...".

In August 2001 the Rostov FFWPU was dissolved by the District Court on the ground that, for more than three consecutive years, it had failed to notify the registration authorities of the continuation of its activities.

In October 2001 Mr Nolan was summoned by the Rostov police who demanded his passport and stamped it to the effect that his residence registration was "terminated".

The applicant subsequently obtained registration with the police through other FFWPU branches, first in Novorossiysk and then in Krasnodar. His residence registration in Krasnodar was valid until 19 June 2002.

On 19 May 2002 Mr Nolan travelled to Cyprus. His son stayed in Russia with his nanny. On his way back, on arrival at Moscow airport on the night of 2 June 2002, passport control directed Mr Nolan to the airport transit hall. Asked to wait, he was locked in a small room with no phone, ventilation or windows. Informed that his visa had been cancelled, he was told to lie down and sleep until the morning.

On the morning of 3 June 2002, after knocking and shouting for 20 minutes, the applicant was allowed to leave under guard and use the toilet. He was told that he would not be allowed to cross the Russian border, without further explanation.

Mr Nolan bought a ticket to Tallinn (Estonia) and was accompanied by a border guard until he boarded his flight. His passport was returned to him, but not his visa.

In June 2002 Mr Nolan sent letters to several official bodies, asking why he had been denied entry and detained. He also complained that he had been detained for over nine hours, and that as a result his 11-month-old son had been left behind in Russia without his parents. He requested assistance to be reunited with him. Many of his complaints did not receive a response.

In July 2002, although in possession of a new valid multiple-entry visa, he was denied entry when trying to cross the Finnish-Russian border.

In August 2002 Mr Nolan challenged the decision refusing his return to Russia and in March 2003 Moscow Regional Court dismissed his complaint. The judgment, relying on a report of 18 February 2002 by Russian Federal Security Service (FSB) experts, stated that "the [applicant's] activities in our country are of a destructive nature and pose a threat to the security of the Russian Federation." As to Mr Nolan's overnight detention,

the Regional Court ruled that the applicant had not been deprived of his liberty. It further noted that the Russian authorities had not prevented the applicant from reuniting with his son in any country other than Russia.

The Supreme Court of the Russian Federation also subsequently dismissed Mr Nolan's appeal, basing their decision on the administrative competence of the FSB and the Border Control in the field of national security and border control.

On 12 April 2003 the applicant was reunited with his son; his nanny, a Ukrainian national, having brought him to Ukraine.

Despite repeated requests by the European Court, the Russian Government has failed to provide a copy of the FSB report of 18 February 2002 in order to clarify why the applicant was expelled from Russia.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 18 December 2003 and declared partly admissible on 30 November 2006.

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

Christos **Rozakis** (Greece), **President**,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway), **judges**,
and also Søren **Nielsen**, **Section Registrar**.

3. Summary of the judgment

Complaints

Relying in particular on Articles 5, 8 and 38 § 1 (a) and Article 1 of Protocol No. 7, Mr Nolan complained that, on the basis of a report which the Russian authorities have never produced, he was detained overnight at Moscow airport, expelled from Russia even though he had a valid visa and separated from his infant son for ten months. Mr Nolan further complains that he was prevented from re-entering Russia in order to punish him for manifesting and spreading his religion, in breach of Articles 9 (freedom of thought, conscience and religion) and 14.

Decision of the Court

Article 38 § 1 (a)

The Court noted that, despite its repeated requests, the Russian Government had failed to produce a copy of the FSB's report of 18 February 2002 – which apparently served as the basis for Mr Nolan's expulsion – on the ground that Russian law did not lay down a procedure for communicating classified information to an international organisation.

The Court found that the Russian Government could have addressed those concerns by editing out the sensitive passages or supplying a summary of the relevant factual grounds, and concluded that, in not doing so, the Government had fallen short of their obligation to cooperate with the Court, in breach of Article 38 § 1 (a).

Article 5 §§ 1 and 5

The Court found that the conditions of Mr Nolan's overnight stay in the Moscow Airport transit hall had been equivalent in practice to a deprivation of liberty, for which the Russian authorities had been responsible.

Given the lack of accessibility and foreseeability of the Border Crossing Guidelines, the Court concluded that the national system had failed to protect Mr Nolan from arbitrary deprivation of liberty, in violation of Article 5 § 1.

The Court further found that the applicant had not had an enforceable right to compensation, the Russian courts not having considered that Mr Nolan had been deprived of his liberty. The Court therefore concluded that there had been a violation of Article 5 § 5.

The Court held that it was not necessary to examine the complaint under Article 5 § 4.

Article 8

The Court observed that the ten months period of physical separation between K. and his father had directly resulted from a combination of Mr Nolan's expulsion from Russia by the authorities and their failure to notify him of that decision. Mr Nolan had in effect had no opportunity to make arrangements for his son to leave Russia.

Consequently the Court found that there had been a violation of Article 8, on the account of the Government's failure to assess the impact of their decisions on the welfare of the applicant's son.

Article 9

The Russian Government had consistently maintained that the threat to national security had been posed by the applicant's "activities" rather than "religious beliefs". However, it had never specified the nature of those activities and had refused to produce the FSB report which could have clarified the factual grounds for Mr Nolan's expulsion.

Given the primary religious nature of the applicant's activities and the general policy as set out in the Concept of National Security of the Russian Federation, that is to say that foreign missionaries posed a threat to national security, the Court considered it established that Mr Nolan's banning from Russia had been designed to repress the exercise of his right to freedom of religion. However, since the interests of national security were deliberately omitted as a permitted ground for restrictions on the exercise of the right to freedom of religion in Article 9 of the Convention, such interests could not be relied upon as a justification for the measures taken by the Russian authorities against Mr Nolan.

Finding that the Russian Government had not put forward any plausible legal or factual justification for Mr Nolan's expulsion on account of his religious activities, the Court found that there had been a violation of Article 9.

The Court held that it was not necessary to examine the complaint under Article 14 taken in conjunction with Article 9.

Article 1 of Protocol No. 7

The Court found that Mr Nolan, at the relevant time a lawful resident with a valid annual multiple-entry visa, could be considered to have been expelled from Russia. Furthermore,

Mr Nolan had been living in the country since 1994 and, his son still a resident, he could legitimately have expected to continue his residence there.

The Court observed that the Russian Government had not corroborated their claim that Mr Nolan's expulsion had been necessary in the interests of national security or public order, an exception permitted under paragraph 2 of Article 1 of Protocol No. 7. Accordingly, there was no reason to apply that exception and the applicant should have been allowed to exercise the procedural safeguards set out in paragraph 1 prior to his expulsion. The Government, however, had not provided any explanation as to why the decision to expel Mr Nolan of 18 February 2002 had not been communicated to him until such time as he had effectively been removed from the country three months later. Nor had he been allowed to have his case reviewed. The Court therefore found a violation of Article 1 of Protocol No. 7.

Judge Kovler expressed a partly dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

² This summary by the Registry does not bind the Court.
