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## **Masaev v. Moldova**

Press release of the Registrar

European Court (12.05.2009) / HRWF (16.07.2009) - Email: [info@hrwf.net](mailto:info@hrwf.net) – Website: <http://www.hrwf.net> - The European Court of Human Rights has today notified in writing its Chamber judgment<sup>1[1]</sup> 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;
- 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.

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<sup>1[1]</sup> 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.

## 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<sup>2[2]</sup>

### 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

#### 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.

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<sup>2[2]</sup> This summary by the Registry does not bind the Court.

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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.*

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## **Government repeatedly acts against ECHR judgements**

By Felix Corley

Forum 18 (16.06.2009) / HRWF (23.06.2009) - Email: [info@hrwf.net](mailto:info@hrwf.net) - Website: <http://www.hrwf.net> - Despite seeking state registration for the past decade and a judgement against the Moldovan government in the European Court of Human Rights (ECHR) in Strasbourg, no Muslim communities have yet gained legal status, Forum 18 News Service has found. Also denied legal status and challenging the denial in Strasbourg is the local diocese of the Ukrainian Orthodox Church of the Kiev Patriarchate, as is the Falun Gong movement.

Since the adoption of a controversial Religion Law, which came into force on 17 August 2007, no Pentecostal Union or Baptist Union congregations have been able to gain registration either.

Asked why there have been no registrations of these communities, Boris Galan, acting head of the Registration Department of the Justice Ministry, told Forum 18 on 22 May that he had "a lot of work to do" and refused to answer any telephone enquiries. Forum 18 submitted written questions on 25 May, but by the end of the working day in Chisinau on 16 June had not yet received a response.

Anatolie Munteanu, the official Parliamentary Human Rights Advocate, told Forum 18 on 1 June that "this is the first time" - despite the ECHR judgements - he had heard about long-running denials of registration to religious communities. "Let them come to us and we can help them," he added.

The most recent list of registered religious organisations publicly available on the Justice Ministry website - which dates back to summer 2008 - includes 2,387 religious organisations and individual communities. It records only two organisations having gained registration in the ten months between the adoption of the new Law and summer 2008.

Fr Octavian Mosin of the Russian Orthodox Church in Moldova told Forum 18 that his Church faces no problems gaining registration.

## **State fails to remove underlying problem ECHR judgements condemned**

Moldova has twice been fined by the ECHR for denying legal status to religious communities: in December 2001 for denying registration to the Bessarabian Metropolitanate of the Romanian Orthodox Church, and in February 2007 for denying registration to the Moldovan True Orthodox Church.

Both communities were eventually registered in the wake of the decisions, the Bessarabian Metropolitanate on 30 July 2002 and the True Orthodox Church on 16 August 2007.

However, Moldova continues to deny registration to communities the Government dislikes. Under the European Convention for the Protection of Human Rights and Fundamental Freedoms, states are required to execute ECHR judgements, pay reparations - and to avoid similar violations. The Government has repeatedly taken actions which oppose this third element in the execution of ECHR judgements.

In May, the ECHR found that the Moldovan Government had violated the rights of a local Muslim, Talgat Masaev, by punishing him for conducting religious worship without state registration.

Masaev's Muslim community is among many religious communities repeatedly denied legal status.

### **Will Muslim registration denials be overturned?**

Masaev's community began seeking legal status in 2000. It was still seeking this as the ECHR case was continuing, most recently with Galan's Justice Ministry department. In 2008 the community received two rejections, both apparently drawn up by Galan's department but signed by the Justice Minister Vitalie Pirlog.

The February 2008 rejection, seen by Forum 18, declares that the Islamic League for Preaching and Instruction of the Republic of Moldova cannot be registered for three reasons. Firstly, the founding documents made no provision for how assets should be handled if the organisation is wound up. Secondly, the documents state that communities can become members of the organisation, while in law only individuals can be members of religious organisations. And thirdly, the title "League" is misleading.

The organisation renamed itself Islamic Preaching and Instruction in the Moldovan Republic and resubmitted its documents. In the September 2008 rejection, also seen by Forum 18, the Ministry justifies its further rejection with four reasons. Firstly, the statute allows the organisation to form communities when only individuals can do this. Secondly, foreign citizens and religious communities can be members of the organisation. Thirdly, the statute contains "confusing and contradictory" provisions without a "clear delimitation of the competencies of the organs of leadership". And fourthly, the statute does not provide a mechanism for removing the president from office.

Masaev complained to Forum 18 on 27 May that without legal status, the Muslim community cannot gain a separate plot in Chisinau's cemetery. "The cemetery management ask us who we are and say they can only deal with registered religious communities." He said Muslims who die have to buy expensive individual plots in the general part of the cemetery.

He also complained of retaliation for applying for registration. He said Galan was "very unpleasant" and addressed him "as though he was a little boy" when he applied for registration in February 2008. "He asked why I have such a beard."

Masaev said those who signed the registration applications also received personal calls, possibly from Galan, even though the application had not included their telephone

numbers. The calls included bullying questions like: "Aren't you afraid?" Masaev said the police chief in the southern town of Cahul summoned three local signatories to the registration application and was "very unpleasant". However, after the September 2008 application no further threats were issued.

Some days after that application was lodged, tax inspectors armed with a "verbal order" inspected the activities of the charity he leads and found a mistake of five Leis of unpaid tax. Masaev was then fined. "Of course this was connected with our registration application."

### **Ukrainian Orthodox challenge registration denials**

The Ukrainian Orthodox Church's East Moldova Diocese – which is led by Bishop Filaret (Pancu) of Falesti - is also challenging the denial of registration at the ECHR in Strasbourg. "All the internal procedures within Moldova are exhausted and we are now awaiting a decision from Strasbourg," their lawyer Constantin Tanase told Forum 18 on 27 May from Chisinau.

The Diocese's application to the ECHR (No. 46157/07), lodged in October 2007, complains that the denial of registration violates Article 6 Paragraph 1 (right of access to a court) and Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights.

The Diocese has been seeking legal status in vain since 2005.

After the adoption of the 2007 Religion Law, the Justice Ministry went to court, claiming that clarification was needed in the wake of the new Law, Tanase told Forum 18. "The Ministry claims the actual court decision can't be carried out and is trying to find a formal possibility not to carry it out." He said that although Galan's Department prepared the case, the decision to go to court was taken by Justice Minister Pirlog and Deputy Minister, Elena Mocanu.

Tanase said the Justice Ministry's two attempts to challenge the earlier court rulings were unsuccessful, with the Supreme Court finally rejecting the Ministry's case in May 2009.

The ECHR told Forum 18 from Strasbourg on 16 June that an admissibility decision on the case is still pending.

### **Protestant congregations denied registration**

Victor Pavlovski, deputy head of the Pentecostal Union, says that registration is "much more difficult" since the Justice Ministry took over the responsibility in 2008 in the wake of the new Religion Law. "We haven't been able to register any new congregations," he told Forum 18 from Chisinau on 1 June. He said they had applied for registration for about four, but these had been rejected. "They always find 'corrections' we need to make."

Pavlovski said these four and other congregations face difficulties in functioning without legal status. "They are covered by the Pentecostal Union, but this means the Union has to do everything, from buying a building to paying bills," he explained. "When they need to pay an electricity bill they have to bring it to us in the capital and we have to pay it for them – it's expensive and complicated." He said local mayors will not recognise the congregations as they do not have registration. "We have to come and explain to them that they are part of our Union."

The Pentecostals have also tried to register House of Hope, a rehabilitation centre for trafficked women, as a constituent part of the Union, but have three times been refused.

Pavlovski stated that the Justice Ministry insists that such organisations be registered as a non-governmental organisation. "But if we register the centre as a social organisation or an NGO, we won't be allowed to introduce any religious element in our work, such as prayer or use of the Bible," he told Forum 18. "We have a holistic approach to this work."

Pavlovski speculated that "perhaps they don't have qualified people", but believed it possible that the Justice Ministry has a "hidden agenda". "We're suspicious," he told Forum 18.

Ion Miron, General Secretary of the Baptist Union, told Forum 18 that no congregations in his Union have been able to gain registration since the Justice Ministry took over registration. "More than fifty of our congregations want to and have tried to register, but they have been refused," he told Forum 18 on 1 June. "Such refusals are always given verbally, not in writing."

Miron said that in some cases, the Justice Ministry is demanding not just that the 100 required founding members sign the application and give their personal details, but all the adult members, even if there are more than a thousand.

He added that the Justice Ministry is also demanding that the Baptist Union itself and the congregations which had registration before the new Law was adopted need to re-register. "They insist every single congregation needs to register from zero – imagine that," Miron maintained. "The Law has no retroactive force and we don't consider we need to re-register, so we haven't done so."

Forum 18 is not aware of any other religious community which has been asked to re-register its main body or its individual congregations in the wake of the new Law.

Smaller Protestant churches which are not part of a bigger union or association also face problems gaining legal status.

### **No new registrations for Bessarabian parishes**

The Bessarabian Metropolitanate received state registration in 2002, but only after a 2001 ECHR judgement in its favour. Its four dioceses were registered in 2006, but only 120 of its individual parishes out of some 150 have been able to get legal status. "After initial difficulties, registering our parishes between 2002 and 2007 was possible," Fr Andrei Deleu, head of the chancellery, told Forum 18 from Chisinau on 16 June.

"We have lodged applications since 2007 but the Justice Ministry simply doesn't want to register our parishes." Fr Deleu complains that the Justice Ministry finds "constant quibbles" with the applications and insists on changes.

In January 2008, then Moldovan President Vladimir Voronin threatened to strip the Bessarabian Metropolitanate of its registration.

Fr Deleu points out that without legal status a parish cannot seek land from the local authorities to build a church, cannot run a bank account and cannot have an official stamp for legal documents. He said the Metropolitanate is reluctant to name a priest to a parish if it does not have registration. "The police could come and check up on his documents, and drive him out," Fr Deleu pointed out. "We prefer to avoid this – we try to work within the law."

Without legal status, Fr Deleu said that founding a new parish is hard and local church members have to travel some distance to attend registered churches

He told Forum 18 that the Metropolitanate is working with their lawyer to prepare

documentation for a possible legal challenge to the denials of registration in the local courts.

Given the unwillingness of Galan of the Justice Ministry to explain his Department's actions, Forum 18 has been unable to find out why registration of individual Bessarabian parishes has been halted. However, in a press statement in July 2008 posted on its website, the Justice Ministry rejected Bessarabian Metropolitanate complaints about the denial of registration to its parishes as "unsubstantiated". It said the applications for six of its parishes had been rejected because of "violations", which had been pointed out in the rejection letters.

The Ministry complained that "most" registration applications contained violations of the terms of the Religion Law. It said it had organised a meeting on 1 July 2008 to "help" religious communities overcome gaps in their knowledge.

Fr Vasily Ikizli, who leads one of four parishes in Moldova of the Russian Orthodox Church Abroad under the jurisdiction of Archbishop Agafangel (Pashkovsky) of Odessa, noted that they still function without registration. "We still serve without registration – we haven't tried again since the refusal," he told Forum 18 on 22 May from the village of Congaz in the southern Comrat District. "We opened a church on private property and the authorities have created no problems for us." He said they are considering whether to try again to get registration.

His parish was denied registration in 2006.

### **Falun Gong also denied registration**

The Justice Ministry has also denied legal status as a social organisation to the Falun Gong spiritual movement, its leader in Moldova Tatiana Chiriac told Forum 18 on 2 June. The movement had four registration applications rejected, most recently in September 2008. She said the movement challenged the denials in court.

Chiriac told Forum 18 that the reason given by the Justice Ministry for the denial "was that one of our books has an emblem which includes a small swastika, an ancient symbol that for us has nothing to do with the Nazis. They considered it extremist."

She said Galan of the Justice Ministry had asked the Chinese Embassy in Chisinau about the movement and had found that it is banned in China. "So he told me it won't be allowed here."

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