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Strasbourg court rules Turkey must return orphanage to Ecumenical Patriarchate

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AsiaNews (16.06.2010) / HRWF (17.06.2010) - Website: http://www.hrwf.net - In a unanimous decision, the European Court of Human Rights in Strasbourg ruled that Turkey must return the former Greek Orphanage on Büyükada Island, the largest of the Princes' Islands, back to Fener Greek Patriarchate. This concludes the long legal case between the Ecumenical Patriarchate of Constantinople and Turkish authorities. The case had begun in 1997 when Turkey tried to use various legal means to take the building away from the Patriarchate in order to upgrade the area without compensation.

The orphanage is a large, wooden building—an architectural jewel built in 1898 by a French company and bought in 1903 by Eleni Zarifi, the member of a rich Istanbul Greek family who donated it to the Ecumenical Patriarchate for Christian orphans. The orphanage was closed down in 1964 and the building left to decay.

The sentence is very important because for the first time the European Court requires the Turkish state to return the property without compromise (restitutio in integrum); for example, paying compensation in order to keep the building.

Another important feature of the ruling is the explicit recognition of the legal status of the Patriarchate. The Turkish state has never recognised the Ecumenical Patriarchate despite improved relations between Ankara and the Fener (the Istanbul neighbourhood where the Patriarchate is located), especially since Prime Minister Erdogan's Justice and Development Party (AKP) came to power.

The prime minister accompanied by the Ecumenical Patriarch Bartholomew I visited the former orphanage for the first time on 15 August 2009, and since then has said on several occasions that he would not oppose the sentence of the European Court in Strasbourg.

Since the Ecumenical Patriarchate is not legally recognised by the Turkish state, it cannot own property in Turkey. It is only allowed to meet the religious needs of the Orthodox

community of Istanbul. Even its headquarters in the Fener belong to the Saint George Foundation (Vakif). The same is true for other religious minorities in Turkey.

Political and diplomatic circles in Strasbourg point out that the ruling now opens new perspectives for religious minorities recognised by Turkey, most notably Jews and Armenians, based on the Treaty of Lausanne (1923). The same is true for the Catholic minority, whose members live in an unclear legal status and survive by maintaining a few buildings amid difficulties and uncertainties.

Given its importance, Turkish media have given the sentence an extensive coverage. Turkish European Union Affairs Minister Egemen Bağış told reporters that the government was not surprised by the ruling but could not say whether recognition would be given or not.

Some time ago, Prime Minister Erdogan asked Bartholomew what the Patriarchate would do with the orphanage if it were handed back. The ecumenical patriarch answered that the intention was to turn one section into an international centre for the environment, and the other into a centre for inter-faith dialogue.

Jehovah's Witnesses of Moscow v. Russia

10.06.2010

Press release issued by the Registrar

Chamber judgment1[1]

Jehovah's Witnesses of Moscow v. Russia (application no. 302/02)

UNJUSTIFIED DISSOLUTION AND REFUSAL TO RE-REGISTER THE JEHOVAH'S WITNESSES RELIGIOUS COMMUNITY IN MOSCOW

Unanimously:

Violation of Article 9 (freedom of thought, conscience and religion)
Violation of Article 11 (freedom of assembly and association)
Violation of Article 6 § 1 (right to a fair trial within a reasonable time)
of the European Convention on Human Rights

Principal facts

The applicants are the religious community of Jehovah's Witnesses of Moscow ("the applicant community"), established in 1992, and four individuals who are members of that community and live in Moscow.

Jehovah's Witnesses have been present in Russia since 1891. They were banned after the Russian Revolution in 1917 and persecuted in the Soviet Union. After the adoption of the 1990 law on Freedom of Conscience and Religious Organisations, the applicant community, which is the Moscow branch of the Jehovah's Witnesses, obtained legal-entity status in December 1993 from the Moscow City Justice Department. According to its charter, its purpose was the "joint profession and dissemination of their faith and carrying on religious activity to proclaim the name of God the Jehovah".

Starting in 1995, a non-governmental organisation aligned with the Russian Orthodox Church and called "the Salvation Committee" complained five times of the applicant community's management before the district prosecution office. As a result, criminal investigations were opened and subsequently discontinued upon the recommendation of an investigator to bring a civil action against the applicant community seeking its dissolution and the banning of its activities. In April 1998, the prosecutor brought a civil action to that effect. The relevant district court, having heard over forty witnesses and experts and examined religious literature and documents, found the complaints unfounded. Upon an appeal by the prosecutor, the case was remitted for a fresh examination by a different composition of the court.

In the meantime, a new Law on Freedom of Conscience and Religious Associations ("the Religious Act") entered into force in October 1997. It required all religious associations that had previously been granted legal-entity status to bring their articles of association into conformity with that Act and to obtain re-registration from the competent justice department. Between 20 October 1999 and 12 January 2001 the applicant community applied for re-registration five times, unsuccessfully. In August 2002, the competent domestic court held that the Moscow Justice Department's refusals were unlawful but did not order re-registration referring to the need for the applicants to submit a fresh application for re-registration as the documents' form had changed in the meantime.

A new round of the 1998 civil proceedings against the applicant community ended in March 2004 with a court decision ordering its dissolution and imposing a permanent ban on its activities. The court found the applicant community responsible for, among other things, luring minors into religious associations against their will and without the consent of their parents; coercing believers into destroying the family; infringing the personality, rights and freedoms of citizens; inflicting harm on the health of citizens; encouraging suicide or refusing on religious grounds medical assistance to persons in life- or health-threatening conditions; and inciting citizens to refuse to fulfil their civil duties. The applicant community was ordered to bear the costs of the expert studies used in the proceedings and to pay costs of 102,000 Russian roubles to the State. Their appeal was dismissed.

Complaints, procedure and composition of the Court

Relying on Articles 9, 11 and 14 (prohibition of discrimination), the applicants complained about the dissolution of the community and the banning of its activities, and about the refusal of the Russian authorities to re-register their organisation. Relying further on Article 6, they also complain of the excessively long dissolution proceedings.

The application was lodged with the Court on 26 October 2001.

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

Christos **Rozakis** (Greece), ***President***,
Nina **Vajić** (Croatia),
Anatoly **Kovler** (Russia),
Khanlar **Hajiyev** (Azerbaijan),
Dean **Spielmann** (Luxembourg),
Sverre Erik **Jebens** (Norway),
George **Nicolaou** (Cyprus), ***judges***,

and Søren**Nielsen**, ***Section Registrar***.

Decision of the Court

Dissolution of the applicant community (Article 9 in the light of Article 11)

The Court recalled its settled case law in which it had held that freedom of thought, conscience and religion was one of the foundations of a democratic society. It was also one of the most vital elements for the identity of believers but also a precious asset for the atheists, agnostics, sceptics and the unconcerned. The pluralism, dearly won over the centuries and not dissociable from a democratic society, depended on it.

The decision of the Russian courts to dissolve the applicant community and to ban its activities had resulted in its inability to exercise its right to own or rent property, to maintain bank accounts, to hire employees and to ensure judicial protection of the community, its members and its assets. That decision had been based on the Religious Act and had pursued the legitimate aim of the protection of health and the rights of others in accordance with Articles 9 and 11.

However, having examined in detail the arguments of the Russian authorities, including the domestic courts, the Court found that the decision on the applicant community's dissolution had not rested on an appropriate factual basis. In particular, the domestic courts had not adduced relevant and sufficient reasons to show that the applicant community had forced families to break up, that it had infringed the rights and freedoms of its members or third parties, that it had incited its followers to commit suicide or refuse medical care, that it had impinged on the rights of non-Witness parents or their children, or that it had encouraged members to refuse to fulfil any duties established by law. The limitations imposed by the applicant community on its members, such as the expectation to pray, preach door-to-door and the regulation of their leisurely activities, had not differed fundamentally from similar limitations imposed by other religions on their followers' private lives. In addition, the domestic courts' conclusion that coercion had been used to force members to join the community had been made without any evidence for it. As regards the fact that the applicant community had preached the abstaining from blood transfusions, even in life-threatening situations, that had been insufficient to trigger such a far-reaching measure as the ban on its activities since Russian law had granted patients the freedom of choice concerning the medical treatment to undergo.

Consequently, the dissolution of the community had been an excessively severe and disproportionate sanction compared to the legitimate aim pursued by the authorities. There had accordingly been a violation of Article 9 of the Convention, read in the light of Article 11.

Refusals to re-register the applicant community (Article 11 in the light of Article 9)

The Court noted that the ability to establish a legal entity is one of the most important aspects of freedom of association without which that right would be deprived of meaning. The applicant community had existed and operated lawfully in Russia since 1992. Following the adoption of the 1997 Religious Act, several applications for re-registration filed by the applicant community had been rejected, which had had the effect of barring the possibility of filing further applications for re-registration. The Moscow Justice Department had acted arbitrarily having consistently omitted to specify why it deemed the applications incomplete. TheCourt further noted that while the Religions Act had not made re-registration conditional on the use of specific forms, the applicant community had nonetheless been requested to resubmit its re-registration request using new forms. It had done that in its fifth and final application, which had also been rejected. No reference had been made by the authorities, however, to the specific legal provisions which could have been used by the applicant community in order to resubmit an

application for re-registration after the expiry of the time-limit allowed by law on 31 December 2000.

The Court concluded that in denying re-registration to the Jehovah's Witnesses of Moscow, the Moscow authorities had not acted in good faith and had neglected their duty of neutrality and impartiality *vis-à-vis* the applicant community.

There had therefore been a violation of Article 11 of the Convention read in the light of Article 9.

Excessive length of dissolution proceedings (Article 6)

The Court noted that the applicant community's actions or inaction had caused a delay of about six month to those proceedings. However, the authorities had been accountable for approximately five and a half years of the duration of the proceedings. Given that States had the duty to organise their judicial system in a way so that courts could decide cases within a reasonable time, the Court found that the length in the dissolution proceedings had been excessive, in violation of Article 6 § 1.

The Court found no reason to examine separately the applicant community's complaints under Article 14 and rejected all other complains.

Just satisfaction (Article 41)

The Court held that Russia had to pay to the applicants jointly 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 50,000 for costs and expenses.

(The judgment is available only in English.)

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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.
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

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10 European states join Italy to defend crucifix

Catholic and Orthodox Join in Alliance

Zenit.org (01.06.2010) / HRWF (02.06.2010) - Website: http://www.hrwf.net - The "crucifix trial" in the European Court of Human Rights has given rise to an unprecedented intervention of 10 member States as third parties.

The European Centre for Law and Justice, which was also authorized to become a third party in the court hearing regarding the legitimacy of displaying crucifixes in Italian schools, reported today that ten other States will have this amicus curiae status in the "Lautsi vs. Italy" case.

This case was referred to the Grand Chamber when the Italian government appealed a decision issued by the Second Section of the court last November, which spoke against the presence of the crucifix in classrooms.

These States, all of which are supporting Italy in the desire to overturn last November's decision, include: Armenia, Bulgaria, Cyprus, Greece, Lithuania, Malta, Monaco, San-Marino, Romania, and The Russian Federation.

The third party status allows the States to submit to the court their written and oral observations as official parties to the case.

The court's Grand Chamber will hold a public hearing on June 30, and the final judgment on the case is expected by the end of the year.

The director of the European Centre for Law and Justice, Gregor Puppinck, stated in a communiqué today that this is "an important precedent in the practice of the court, because usually member States abstain from intervening, or intervene only when the case affects a national of their State."

"The Lautsi case is unique and unprecedented," he continued. "Ten States are in fact explaining to the court what is the limit of its jurisdiction; what is the limit of its ability to create new 'rights' against the will of the member States."

"This can be seen as a kind of counter-balancing of power," he explained.

The communiqué also noted the "tremendous importance" of the fact that this is "an unprecedented alliance between Catholics and Orthodox countries in the face of the liberal and secularist ideology."

"Those countries are uniting their forces to protect their religious heritage and freedom to reaffirm that the Christian symbols have a natural right to be displayed in public within Christian countries," it added.

The center pointed out that the court's role is to apply the European Convention on Human Rights, which says nothing about "duties to secularize education in Europe" nor about "the nature of the relationship between the State and the church."

Case Lautsi v. Italy: The European Centre for Law and Justice admitted as a Third Party

ECLJ (01.06.2010) / HRWF (02.06.2010) - Website: http://www.hrwf.net - The European Centre for Law and Justice (ECLJ), which has been admitted as a Third Party (Amicus Curiae) in what's become known as the Italian "crucifix case" before the European Court of Human Rights (ECHR), said today that legal support for display of the crucifix in Italian schools continues to increase.

For the first time in the record of the ECHR, ten member States are simultaneously intervening as 'third party' in one single case. The case at stake is the Lautsi case - also known as the "crucifix case" - which will go before the Grand Chamber of the ECHR on June 30th.

The Court has communicated to the ECLJ the list of the following Member States:
Armenia;
Bulgaria;
Cyprus;
Greece;
Lithuania;
Malta;
Monaco;
San-Marino;
Romania;
The Russian Federation.

The ten States, out of the 47 of the Council of Europe, have formally asked the Court to be admitted as a "third party" into the procedure before the Grand Chamber of the Court. The "third party" status, also known as "Amicus Curiae," permits to the States to become an officially party to a case and to submit to the Court their written and oral observations. They are all intervening in support of the Italian State seeking to overturn last November's decision. No State, nor any Non-Governmental Organization (NGO), has intervened in support of the Court ruling banning the crucifix.

In addition to the ten member states, several other States took positions against the November 3rd, 2009 decision, even publicly such as Austria and Poland which both made political statements on November 19th and December 3rd 2009 respectively. Twelve NGOs, including the ECLJ, have also been admitted as third party (list below).

The Lautsi case has been referred to the Grand Chamber after the Italian Government appealed (on January 28th, 2010 – see the appeal at http://www.eclj.org/pdf/LAUTSI_ricorso_italia.pdf) a first decision (see the decision at http://www.eclj.org/pdf/CEDH-AFFAIRE_LAUTSI_c._ITALIE.pdf) issued by the Second Section of the Court last November 3, 2009. In this first decision, the Court ruled that the presence of the crucifix in classrooms is "contrary to parents' right to educate their children in line with their convictions and to childrens' right to freedom of religion" because the Italian pupils would feel "educated in a school environment bearing the stamp of a given religion."

"This is really an important precedent in the practice of the Court because usually, member States abstain from intervening, or intervene only when the case affects a national of their State as permitted by Article 36(1). The Lautsi case is unique and unprecedented. Ten States are in fact explaining to the Court what is the limit of its jurisdiction; what is the limit of its ability to create new "rights" against the will of the member States. This can be viewed as a kind of counter balancing of power," according the Dr. Gregor Puppinck, Director of the European Centre for Law and Justice.

This particular alliance of member States is also of tremendous importance since it is an unprecedented alliance between Catholics and orthodox countries in the face of the liberal and secularist ideology. Those countries are uniting their forces to protect their religious heritage and freedom, and to reaffirm that the Christian symbols have a natural right to be displayed in public within Christian countries.

"This is culturally and religiously very important," said Dr. Puppinck. In fact, the orthodox countries do not want to be forced to adopt everything from Western modern culture. They also refuse to return, in the name of Human Rights, to the extreme secularism of the former communist era.

It is true that those States are giving a political answer to the Court ruling, but this political answer is not illegitimate since firstly, the States are the ones that drafted the Convention, and secondly, the November ruling has been perceived as a political decision, exceeding the scope of the competency of the Court by imposing secularization of public schools. The role of the ECHR is to apply the European Convention on Human Rights and to give an interpretation of it. It does not have a general jurisdiction over the national constitutions on any issue related to Human Rights. Its competency is subsidiary and limited to make sure that the 47 Member States properly respect the rights guaranteed in the Convention.

Dr. Gregor Puppinck, who also participates in the work of the Council of Europe's "Committee of Experts on the reform of the Court" noted that this political move from a consistent number of States has to be understood in the context of the "Interlaken Declaration" from February 2010. In this declaration, adopted in conjunction with the "High Level Conference on the Future of the European Court of Human Rights," the 47 member States insisted on the subsidiary role of the Court in the application of the Convention. This declaration was already perceived as an answer to the November decision and as a call to the Court to self-restraint. In ruling for the secularization of schools the Court last November went too far into the creation of new obligations on the member States disregarding national sovereignties.

By intervening, the States are explaining that the Court has superseded itself in the creation of rights. Those States explained that it can not be found in the Convention that there are any duties to secularize education in Europe. In fact, the Convention says nothing on the nature of the relationship between the State and the church.

"Laïcité" or secularization is not part of the Convention."

A large proportion of the member States were confessional when they drafted and signed the Convention and still are. According to the "traditional" case law of the Court, each State is free to organize its relationships with the religions of its county and even to grant privileges to the religion of the majority of its population. No obligation to secularize public schools, even implicit, can found in the Convention.

Until now, rules regarding religious freedom have mainly been elaborated from the 'western liberal thought' and this is the model that lead to the November decision. It is now being challenged. The ECLJ contends that it's imperative to develop rules that can acknowledge the cultural and religious diversity of Europe. Those rules may not only grant respect to the rights of the non-believers and of the religious minorities, as it is today, but shall also be able to recognize the rights of the majority religion and to respect the cultural sovereignty of the member States.

Other Interveners are:
European Centre for Law and Justice
Together, 33 Members of the European Parliament

Greek Helsinki Monitor
Associazone azionale del libero Pensiero
Eurojuris
International Commission of Jurists, Interights and Human Rights Watch
Together, Zentralkomitee des deutschen Katholiken, Semaines sociales de France et Associazioni critiane lavoratori italiani

In its amicus brief submitted today the ECLJ, made the argument that the religious freedom of the applicant's children have not been violated by the simple presence of the crucifix in the classroom. In addition the ECLJ's amicus brief demonstrates that the crucifix cannot be interpreted as indoctrination. It also demonstrates that the court could not create ex nilo a duty of secularization of the educational system.

The European Centre for Law and Justice (ECLJ) is an international law firm focusing on the protection of human rights and religious freedom in Europe and worldwide. The ECLJ is affiliated with the American Center for Law and Justice (ACLJ) which focuses on protecting religious freedom in the United States. Attorneys for the ECLJ have served as counsel in numerous cases before the European Court of Human Rights. Additionally, the ECLJ has special Consultative Status with ECOSOC of the United Nations, and is accredited to the European Parliament.

Lautsi v. Italy: The European Court a rejected the European Humanist Federation request for third party intervention

Humanist Federation (01.06.2010) / HRWF (02.06.2010) - Website: http://www.hrwf.net - The European Court of Human Rights has rejected the EHF's request to be allowed to intervene in the hearing on Lautsi v Italy.

The President of the Grand Chamber of the Court has decided that othe intervention of the European Humanist Federation 'is not necessary in the interests of the administration of justice'.

The EHF's request and proposed intervention are on its website at
http://www.humanistfederation.eu/download/277-EHF%20cov%20ltr%20to%20ECtHR%20re%20Lautsi.pdf

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Criminal conviction of members of a religious group for their manner of dressing in public held to be unjustified

Ahmet Arslan and Others v. Turkey (no. 41135/98)

Principal facts

Press release issued by the Registrar (23.02.2010) / HRWF (24.02.2010) - Website: http://www.hrwf.net - Email: info@hrwf.net – The applicants are 127 Turkish nationals, including Mr Ahmet Arslan. They belong to a religious group known to its members as Aczimendi tarikatÿ.

In October 1996 they met in Ankara for a religious ceremony held at the Kocatepe mosque. They toured the streets of the city while wearing the distinctive dress of their group, which evoked that of the leading prophets and was made up of a turban, "salvar" (baggy "harem" trousers), a tunic and a stick. Following various incidents on the same day, they were arrested and placed in police custody.

In the context of proceedings brought against them for breach of the anti-terrorism legislation, they appeared before the State Security Court in January 1997, dressed in accordance with their group's dress code.

Following that hearing, proceedings were brought against them and they were convicted for a breach both of the law on the wearing of headgear and of the rules on the wearing of certain garments, specifically religious garments, in public other than for religious ceremonies. They appealed against their conviction, but without success. In addition, their application to the Ministry of Justice, seeking leave to lodge a reference by written order was also dismissed.

Complaints, procedure and composition of the Court

Relying on Article 9, the applicants complained that they had been convicted under criminal law for manifesting their religion through their clothing.

The application was lodged with the European Court of Human Rights on 14 November 1997.

Judgment was given by a Chamber of seven judges, composed as follows:
Françoise ***Tulkens*** (Belgium), ***President***,
Ireneu ***Cabral Barreto*** (Portugal),
Vladimiro ***Zagrebelsky*** (Italy),
Danutė ***Jočienė*** (Lithuania),
Dragoljub ***Popović*** (Serbia),
András ***Sajó*** (Hungary),
Işıl ***Karakaş*** (Turkey), ***Judges***,

and also Sally Dollé, ***Section Registrar***.

Decision of the Court

It was established that the applicants had not received criminal-law convictions for indiscipline or lack of respect before the State Security Court, but rather for their manner of dressing in public areas that were open to everyone (such as public streets or squares), a manner that was held to be contrary to the legislative provisions.

The applicants' conviction for having worn the clothing in question fell within the ambit of Article 9 – which protected, among other things, the freedom to manifest one's religious beliefs – since the applicants were members of a religious group and considered that their religion required them to dress in that manner. Accordingly, the Turkish courts' decisions had amounted to interference in the applicants' freedom of conscience and religion, the legal basis for which was not contested (the law on the wearing of headgear and regulations on the wearing of certain garments in public).

It could be accepted, particularly given the importance of the principle of secularism for the democratic system in Turkey, that this interference pursued the legitimate aims of protection of public safety, prevention of disorder and protection of the rights and freedoms of others. However, the sole reasoning given by the Turkish courts had consisted in a reference to the legal provisions and, on appeal, a finding that the disputed conviction was in conformity with the law.

The Court further emphasised that this case concerned punishment for the wearing of particular dress in public areas that were open to all, and not, as in other cases that it had had to judge, regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.

There was no evidence that the applicants represented a threat for public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. In the opinion of the Religious Affairs Organisation, their movement was limited in size and amounted to "a curiosity", and the clothing worn by them did not represent any religious power or authority that was recognised by the State.

Accordingly, the Court considered that the necessity for the disputed restriction had not been convincingly established by the Turkish Government, and held that the interference with the applicants' right of freedom to manifest their convictions had not been based on sufficient reasons. It held, by six votes to one, that there had been a violation of Article 9.

In application of Article 41 (just satisfaction), the Court held, by six votes to one, that the Turkish State was to pay 10 euros (EUR) to each of the applicants for pecuniary damage, and EUR 2,000 jointly for costs and expenses.

Judge Sajó expressed a concurring opinion and Judge Popović a dissenting opinion; the texts of these opinions are annexed to the judgment.
