Table of Contents

Jehovah's Witnesses win a case against Austria at the European Court

HRWF (16.10.2012) – On 25 September, Jehovah's Witnesses, a religious community established in Austria under the Religious Communities Act 1998 ("the applicant community") on 20 July 2005, won a tax discrimination case against Austria at the European Court of Human Rights. It had claimed that it had been discriminated against before May 2009 when it was a religious community, as it had been subject to laws concerning employees and tax from which it would have been exempt had it been a recognised religious society. In particular, it would have been able to employ two ministers from the Philippines in 2002 for the benefit of its Tagalog speaking members in Austria and it could have been exempt from inheritance and gift tax for a donation made to it in 1999.

The case originated in an application (no. 27540/05) against Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").
The applicant community was represented by Mr R. Kohlhofer, a lawyer practising in Vienna. The applicant community alleged, in particular, that it had been discriminated against in the exercise of its rights under Article 9 of the Convention and Article 1 of Protocol No. 1 to the Convention, as it had been subject to laws concerning the employment of foreigners and tax from which recognised religious societies had been exempted.

The Court unanimously held that there has been a violation of Article 14 of the Convention taken in conjunction with Article 9 of the Convention as regards the proceedings under the Employment of Aliens Act. It also held that Austria is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,834.45, plus any tax that may be chargeable.

European Court of Human Rights to examine Hungary's church law

CERF Institute (14.10.2012) - The Strasbourg Court of Human Rights has sent its questions regarding Hungary's church laws to the Hungarian government and started to examine the legislation, news website index.hu said on Wednesday.

Several religious organisations have turned to Strasbourg over the new laws which have reduced the number of recognised churches in Hungary.

The Court had asked the government to state whether rights to a free practice of religion had been infringed in connection with the new law.

Index.hu said altogether 17 organisations who lost their church status as a result of the law have turned to the Court.

The Human Resources Ministry told Hungarian National News Agency in a statement on Wednesday that the Strasbourg court expected an answer from Hungary until January 23 next year.

Contrary to press reports, one of the aims of the Hungarian church law was to eliminate abuse of a church status, rooted in a law from 1990, under which any organisation applying for a church status was automatically granted the title, the statement said.

It added that the ministry continued to be open for dialogue with religious organisations.

According to the ministry, the Hungarian legislation is "one of the most generous" such laws in Europe, which does not curb religious freedom and "maintains the religious diversity of Hungarian society".

Hungary's parliament passed the church law on December 30 last year. The number of religious organisations with church status dropped from over 300 to 14, index.hu said.

The law had been axed by the Constitutional Court in December last year for procedural reasons, but parliament reopened it for debate and passed essentially the same law at an extraordinary session at the end of the year.

The church law has been criticised in the European Union, as well as by US Secretary of State Hillary Clinton.

Daniel Karsai, the legal representative of six organisations, said the government had four months to respond to the questions from Strasbourg and that a verdict would be passed by May or June next year.

The Hungarian Civil Liberties Union (TASZ) will represent nine religious organisations in the Strasbourg case, index.hu said.

Human rights 'agenda' is new totalitarianism, bishop warns judges

Human rights are becoming a new form of totalitarianism, being used to drive Christians out of public life and even their jobs, European judges will be warned next week.

The Daily Telegraph (01.09.2012) - Laws originally designed to protect basic freedoms are instead being used to strip British society of its Christian foundations while upholding the rights of minorities, they will hear.

The warning, from a prominent Church of England bishop, comes as part of a landmark case on religious freedom in Britain to be heard at the European Court of Human Rights in Strasbourg next week.

In a powerful submission to the judges, the Rt Rev Michael Nazir-Ali, the former Bishop of Rochester, warns of a distorted "human rights agenda" which he likens to the atheist communist regimes in Eastern Europe which also suppressed Christianity by preventing public manifestations of faith.

Unless basic Christian values are upheld, human rights will become "another inhuman ideology", like the totalitarian regimes of the past, suppressing individuals, he says.

The case is being brought by four workers including Shirley Chaplin, a former nurse, and Nadia Eweida, a British Airways check-in clerk who were denied the right to wear a cross as a visible manifestation of their faith.

They are joining with Gary McFarlane, a relationship counsellor, and Lillian Ladele, a registrar, who were refused the right to opt out of tasks which went against their beliefs on homosexuality.

All four cases have already been rejected by British employment tribunals and courts which concluded that wearing a cross or holding traditional views on sexuality were not "core" parts of the Christian faith.

They claim that British laws failed to uphold their freedom of religion under article nine of the European Convention on Human Rights and protect them from discrimination, under article 14.

The case is being viewed as a watershed moment for religious freedom in Britain and could determine whether in future workers can object on grounds of conscience to tasks they believe are morally wrong.

Material before the judges includes a written statement by Bishop Nazir-Ali warning that Christians are being "vanquished" in the courts as part of a deliberate agenda to drive their faith out of public life.

In the submission, seen by *The Daily Telegraph*, he warns against what he calls an "increasingly aggressive secularism" at work in Britain and Europe as a whole.

Describing himself as "unashamed" of the Christian faith, he challenges the judges to recognise openly the central place of Christianity in Europe.

Bishop Nazir-Ali explains to the court how he came to Britain from Pakistan in the 1980s because his life was in danger.

"The Christian faith and our Judeo Christian values are the cornerstone of our freedoms, prosperity and liberty in Europe," he tells the court.

"As such, the Cross is part of our culture and reflects Christian values of love, sacrifice and service so central to European culture."

But he warns that Christianity is now under threat from a "human rights agenda" which he argues is denying Christians their rights while upholding those of others.

In a reference to the suppression in communist countries before the fall of the Berlin Wall, he adds: "The abuse of human rights by secular Governments in Central and Eastern Europe is all too recent.

"The new Human Rights agenda must respect Judaeo-Christian values if it is not to become another inhuman ideology imposing restrictions on individuals.

"There is a deep fear in the United Kingdom that the Human Rights agenda is becoming set against human rights; and seeking to remove Judaeo-Christian values from the public square."

His submission, in support of Mrs Chaplin, continues: "In case after case in the United Kingdom, the rights of Christians have been vanquished.

"We have reached the stage where Christians in the United Kingdom risk their employment if they wear a Cross."

He insists that freedom of religion must be given "its pre-eminent place in European society".

"It is not a hobby, but a fundamental right as precious as privacy or even free speech," he writes.

"In the background are a number of social factors: increasingly aggressive secularism, the drive to remove Judaeo-Christian values from the public square and the emergence of a multi faith Europe.

"Thus, there is a paradox; as the institutions of the West become more secular, the place of religion is becoming more important in Europe as 'minority' faiths have to be accommodated.

"A sensible solution is needed."

But in a strongly-worded counter argument, Lord Lester, QC, the Liberal Democrat peer and leading human rights lawyer, insists that expressions of religious faith should not be given special treatment over beliefs based on philosophy or "rational analysis".

In a submission to the court on behalf of the National Secular Society, he warns that giving workers a right to wear a cross could create a "hierarchy of rights" and could make it impossible for employers to ban other "grossly offensive" symbols.

Pointing to a case where two French chemists were convicted for refusing to sell the contraceptive pill, he also argues that those who object to parts of their job on grounds of conscience could always resign.

"Employers are entitled to require that those who voluntarily undertake to provide services to the public must do so in a non-discriminatory fashion, even if they believe it is morally wrong to do so," he writes.

Gender equality and religious freedom in politics; Dutch SGP case declared inadmissible

By Alexandra Timmer

Strasbourg Observers (23.08.2012) - The ECtHR has brought a turbulent Dutch legal saga to a close. In the highly interesting Staatkundig Gereformeerde Partij v. the Netherlands (http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340) the Court has declared the complaint by the Dutch political party 'SGP' inadmissible. The SGP is, in the words of the Court, "a confessional political party firmly rooted in historical Dutch Reformed Protestantism" (par. 4). The party does not allow women to stand for election, as it believes that God teaches that men and women have different roles in life. It believes that "man is the head of the woman" and "participation of women in both representative and administrative political organs" is "incompatible with woman's calling" (par. 9). After a prolonged debate and legal struggle in the domestic courts, the Dutch Supreme Court ruled that, on the ground of Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'), the State is obliged to ensure that political parties allow women to exercise their right to stand for election. The SGP complained to the Strasbourg Court that this ruling of the Supreme Court infringed Articles 9 (right to freedom of religion), Article 10 (right to freedom of expression) and Article 11 (right to assembly) of the ECHR.

Frankly, what I expected to find was a terse decision, basically referring to the State's margin of appreciation. I was wrong. The reasoning is brief, but includes three steps that combine to make this a memorable ruling. I will discuss these steps below. By the way, this case has provoked a lot of controversy in the Netherlands over the past years (most of it is in Dutch, but see this article in the Human Rights Quarterly, http://muse.jhu.edu/journals/human_rights_quarterly/summary/v033/33.1.oomen.html)

With this post, I cannot do justice to the whole debate; I just aim to give you my first impressions of the decision.

1) Explicit grounding of the decision in a commitment to democracy

The Court starts off by stressing that:

the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy . . . is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, and likewise of Articles 8, 9 and 10 of the Convention , the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a "democratic society" (par. 70).

The Court does not often feel itself called upon to revisit the foundations of its human rights protection regime, which is why I reproduce this quote.

2) Discrimination Analysis

Next, the Court introduces Article 14 (the prohibition of discrimination) and Article 3 of Protocol 1 (the right to free elections) into the analysis. In some ways this is a rather unusual step, as the Court is not apt to invoke Article 14; especially when the applicant did not do so. However, the prohibition of discrimination has obviously played a crucial role in the domestic proceedings so it is no wonder that the Court relies on it.

The Court refers to the well-known 'very weighty reasons test': "very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention (par. 72)." More concretely, the Court holds that:

nowadays the advancement of the equality of the sexes in the member States of the Council of Europe prevents the State from lending its support to views of the man's role as primordial and the woman's as secondary (see, mutatis mutandis, Ünal Tekeli, cited above, § 63, and Konstantin Markin, cited above, ibidem). (par. 73)

Regular readers of this blog will appreciate how pleased I am with this statement that shows that the case of Konstantin Markin v. Russia is making school (see my post about Konstantin Markin at http://strasbourgobservers.com/2012/03/22/gender-justice-in-strasbourg) and here the amicus brief of Ghent's Human Rights Centre in that case at http://www.ugent.be/re/publiekrecht/en/department/human-rights/publications/amicus.pdf).

The Court has clearly taken a stance against gender stereotyping, something that I have advocated in my own work (see my article "Towards an Anti-Stereotyping Approach for the ECtHR" at http://hrlr.oxfordjournals.org/content/11/4/707.full.pdf?keytype=ref&ijkey=OH1kPWcui9ZYcn5)

3) No margin of appreciation argument, but an endorsement of the position of the Supreme Court

So what is the Court's conclusion out of all this? What I expected to find in this decision was a statement to the effect that since this issue has been thoroughly debated in the Netherlands - both in Parliament and at all levels of the domestic courts - the Court finds that the State has not overstepped its margin of appreciation in this delicate issue. But no! The Court actually says that - from the perspective of the Convention - it agrees with the Supreme Court of the Netherlands:

The Supreme Court, in paragraphs 4.5.1 to 4.5.5 of its judgment, concluded from Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women and from Articles 2 and 25 of the International Covenant on Civil and Political Rights taken together that the SGP's position is unacceptable regardless of the deeply-held religious conviction on which it is based (see paragraph 49 above). For its part, and having regard to the Preamble to the Convention and the case-law cited in paragraphs 70, 71 and 72 above, the Court takes the view that in terms of the Convention the same conclusion flows naturally from Article 3 of Protocol No. 1 taken together with Article 14. (par. 77)

Conclusion

From a women's rights perspective, this is a decision that includes some welcome and innovative reasoning. From the perspective of the right to freedom of religion, however, this decision might be unsatisfactory. The Court does not even use the whole "conflict of rights"-language that was used in the domestic proceedings; there is no weighing here between religious freedom and gender equality.

It remains to be seen what kind of action the Dutch Government will undertake. The Court refuses to mingle: "the Court must refrain from stating any view as to what, if anything, the respondent Government should do to put a stop to the present situation. The Court cannot dictate action in a decision on admissibility" (par. 78). So far, the Government has been extremely reluctant to actually comply with the Supreme Court's judgment. It had announced its decision to wait for the ruling of the Strasbourg Court; now the waiting-time is up.

This article was communicated to HRWF by Dr Aaron Rhodes

Seminar on the autonomy of the Church in the recent case-law of the European Court of Human Rights and of the USA Supreme Court

Reported by the **European Centre for Law and Justice**

Strasbourg Consortium (13.07.2012) - The *European Centre for Law and Justice* organized a seminar on the recent case law of the European Court of Human Rights (ECHR) and of the USA Supreme Court on Church autonomy, in cooperation with the *Centre d'Etudes et de Recherches Européennes: Religion et Société* (Bruxelles - CERERS), the *Catholic University of Louvain* (UCL) and the *Strasbourg Consortium on Freedom of Conscience and Religion* at the Council of Europe.

This was the occasion to discuss the protection afforded in Europe and in the USA of the internal freedom enjoyed by Churches in their relationship with their religious members and employees and also to discuss the problematic aspects of the recent judgment ***Sindicatul "Pastorul cel bun" v. Romania,*** which is currently before the panel of the ECHR for a potential referral to the Grand Chamber.

Approximately 80 people participated in the two hours seminar, including around 20 ambassadors of the Council of Europe member States, representatives of different Churches in Europe, law professors, staff of the Council of Europe, lawyers and other practitioners in this field. The discussions were moderated by **Dr. Grégor PUPPINCK**, Director of *European Centre for Law and Justice*.

The first part of the seminar addressed "the principle of autonomy: fundamental guarantee of the distinction between States and religious communities":

- Prof. Cole DURHAM, Director of the *International Center for Law and Religion Studies*, USA, and member of the Panel of Experts of the OSCE / ODIHR on freedom of religion and belief, gave an overview of the principle of autonomy of Churches and religious communities, as it is established in the ECHR and USA Supreme Court's case-law.

- Prof. Dr. Georg RESS, judge at the ECHR between 1998 and 2004 (Germany); mentioned the principle of autonomy, as guaranteed by the Constitution of Germany, wondering whether a Church can exist without such a guarantee and affirming that Churches should benefit of a presumption of autonomy even for functions that are not strictly religious (choir members, hospital employees, etc), as all its employees participate in the Church mission. He also recalled the Court's case-law in cases against Germany and drew the attention on some errors in the *Obst v. Germany* and *Schuth v. Germany* judgments, namely the application of the "proportionality test" instead of a proper definition of the principle of autonomy of the Church that would exclude the

applicability of certain issues of private life and the qualification of "adultery by the Court from its scope.

- Javier BORREGO-BORREGO, judge at the ECHR between 2003 and 2008 (Spain), presented *Lombardi Vallauri v. Italy* case in which, for the first time, the Court found a violation of the right to freedom of expression on its procedural limb, judging that approach unrealistic and in violation of the principle of autonomy of religious communities, as the judges found themselves in a position being obliged to consider the affirmations of Mr. Lombardi Vallauri in the light of the Doctrine of the Church. He also discussed the *Fernandez Martinez v. Spain* judgment which was found to be very respectful for the Church autonomy, as the judgment expressly mentioned the relationship based on confidence between a religion teacher and his Bishop, the increased obligation of loyalty and the principle of religious autonomy.

- Eric RASSBACH, National Litigation Director at the *Becket Fund for Religious Liberty*, presented the issue of Church autonomy before the USA courts, exemplifying it with the *Hosanna Tabor* case which was decided in January this year by the Supreme Court, the principles established in this case being applicable also in cases in Europe, as they are common to any democratic society. As Mr. Rassbach said, the Justices of the Supreme Court were actually confronted with the issue of "who has to pick the priest or the rabbi, the Church or the judges?" and that at the end they unanimously decided that the doctrine of "ministerial exception" is valid and that the Church's autonomy in hiring and firing clergy is absolute, without balancing it with other values. He also said that one should not forget that those issues are not only about the autonomy, but also about the meaning for the State in doing that, as history showed what kind of States interfered with Church autonomy.

The second part of the seminar addressed the principle of autonomy and the case *Sindicatul "Pastorul cel bun" v. Romania*:

- Prof. Igor PONKIN, Director of the *Institute of relations between the State and religious denominations and Law* (Moscow), addressed various errors of the judgment: the Court's interpretation of the principle of separation between Church and State and of the relationship between the Church and its priests, reducing the hierarchical relationship of the priests to a labor relationship and attributing an absolute character to the latter, which inevitably leads to a violation of the freedom of religion of the Christian community. He also mentioned that the Court wrongly considered that religious organizations should be assimilated to any other organization and that the rules of the Church should not prevail over some of the civil rights. As consequences of that judgment, he could enumerate the risk for the State, and finally for the ECHR, arbitrarily to interfere with the internal affairs of the Church and the double standard of the Court when judging such cases.

- Prof. Louis-Léon CHRISTIANS, *Catholic University of Louvain la Neuve*, Chair of Law and Religion (Belgium), raised certain issues related to the principles and procedural and substantive ambiguities of the judgment *Sindicatul "Pastorul cel bun" v. Romania*, such as whether the internal courts should have better developed their reasoning, whether the reproach made to the priests was that they wanted to form a union or whether it was to the Church to sanction them. He also mentioned the ambiguity of the references to the *Negrepontis v. Greece* case which concerned an unclear religious customary law and the statute of family law, meanwhile the *Sindicatul* case concerned the Status of the Orthodox Church, which was integrated to the Romanian legal order and the internal organization of the Church.

- Prof. Patriciu VLAICU, Professor of Canon Law at the University of Cluj (Romania), presented the relevant provisions of the Status of the Orthodox Church,

underlying the fact that the Church is a community and therefore a relationship of the type interior/exterior cannot exist inside of it, the judgment of the Court being a severe violation of the principle of community of the Church. He affirmed that according to canon law, the issue in *Sindicatul* is related to the manifestation of the doctrine and not a disciplinary matter, as the priest in his entire life represents the Church. He mentioned that the Church does not forbid the freedom of association, on the contrary, and that is proved by the existence of 189 associations in the Church in Romania, but the exercise of this freedom should be reasonable and not blind, in order not to introduce antagonism in the Church and not to double the institutions of the Church. He also recalled that only once the State imposed unions in the Church, in 1945 by a totalitarian regime and in order to weaken the Church.

- Mr. Costel GILCA, Lawyer, employment law and labor law in Bucharest (Romania), explained, , the nature of the employment relationship of the clergy and their duty of loyalty from the point of view of the Romanian legal order.

- Irina CAMBREA, co-agent of the government of Romania to the ECHR, raised the question of the relationship, under articles 9 and 11 of the Convention, between the Church and the priest's union, as the relationship between the mother association and the daughter association.

The third part of the seminar was opened for discussion and questions, questions being put from the perspective of the individual freedom of association under the European Convention of Human Rights.

Manzanas Martin v. Spain

Difference between retirement pensions of Catholic priests and Evangelical ministers amounted to discrimination

European Court (03.04.2012) / HRWF (11.04.2012) – In today's Chamber judgment in the case Manzanas Martin v. Spain (application no. 17966/10), which is not final1, the European Court of Human Rights held,unanimously, that there had been a: Violation of Article 14 (prohibition of discrimination) taken together with Article 1 of Protocol No.1 (protection of property) of the European Convention on Human Rights.

The case concerned a difference in treatment between priests of the Catholic Church and Evangelical ministers regarding the calculation of their pension rights. Whilst priests could have their previous years of religious service taken into account in calculating their retirement pension – by paying the corresponding contributions – Evangelical ministers could not bring into account their years of service prior to joining the social-security scheme.

Principal facts

The applicant, Mr Francisco Manzanas Martin, is a Spanish national who was born in 1926 and lives in Barcelona (Spain).

Mr Manzanas Martin was a minister of the Evangelical Church from 1 November 1952 until 30 June 1991, when he retired. During his years as a minister, he received remuneration from the Evangelical Church. However, the latter did not pay any social security contributions on his behalf. Mr Manzanas Martín had previously worked as an employee before being ordained and had also been in paid employment for part of his

time as a minister. When he applied to the National Social Security Agency ("INSS") for a retirement pension, his application was refused on the grounds that he had not completed the minimum period of pensionable service. Mr Manzanas Martín unsuccessfully sought a review of that decision and subsequently brought proceedings against the INSS.

On 12 December 2005 the Barcelona Employment Tribunal upheld Mr Manzanas Martín's claims and ordered the INSS to pay him a pension. The court found that the legislation had given priests preferential treatment as compared with ministers, which went against the Constitution of 1978. It also noted that Article 1 of the Royal Decree of 27 August 1977 had already established that priests and ministers of all churches registered with the Ministry of the Interior should be treated as salaried employees and be covered by the social-security scheme, but this was of immediate application only in respect of Catholic priests. Two decrees of 1998 also allowed the latter to have their previous years of service taken into consideration in calculating their pension on condition that they made the capital payments corresponding to the recognised contribution years. Ministers only started being treated as salaried employees twenty-two years later, also on the basis of a decree, but without any possibility of counting their earlier years of service towards the minimum period of pensionable service.

The court found that the fact that Mr Manzanas Martin had been deprived of access to a retirement pension on the same terms as priests infringed his rights to equal treatment and to religious freedom recognised by the Constitution. In order to satisfy his fundamental rights, the court applied by analogy to Mr Manzanas Martin the provisions applicable to priests. Accordingly, it declared that from 22 July 2004 onwards he was entitled to a pension on the basis of 398.44 euros per month.

The INSS appealed. The High Court of Justice of Catalonia set the decision aside on the ground that the inability to take into account Mr Manzanas Martin's previous years' pastoral work was not because of negligence or delay on the part of the State, but because of a lack of legislation on account of the absence of a permanent agreement between the State and the Evangelical church authorities. The court held that Mr Manzanas Martin did not satisfy the statutory conditions to qualify for a retirement pension.

Mr Manzanas Martin lodged an amparo appeal with the Constitutional Court which was dismissed on the ground that it lacked the requisite constitutional importance.

Complaints, procedure and composition of the Court

Relying on Article 14 taken in conjunction with Article 1 of Protocol No. 1, Mr Manzanas Martin complained that the decision to refuse him a retirement pension was in breach of the principle of non-discrimination enshrined in the Convention. He submitted that the domestic legislation discriminated against Evangelical ministers compared with Catholic priests, in so far as the latter had been admitted to the general social-security scheme earlier. Lastly, once they had joined the scheme, ministers had not been allowed to count their earlier years of service towards the minimum period of pensionable service.

The application was lodged with the European Court of Human Rights on 26 March 2010.

Judgment was given by a Chamber of seven judges, composed as follows:
Josep Casadevall (Andorra), President,
Corneliu Bîrsan (Romania),
Alvina Gyulumyan (Armenia),
Ján Šikuta (Slovakia),
Luis López Guerra (Spain),
Nona Tsotsoria (Georgia),

Mihai Poalelungi (Moldova), Judges,
and also Santiago Quesada, Section Registrar.

Decision of the Court

Article 14 taken in conjunction with Article 1 of Protocol No. 1 According to the Court's established case-law, discrimination meant treating differently, without objective and reasonable justification, people in similar situations.

The Court observed that, prior to promulgation of the Constitution of 1978, the Royal Decree of 27 August 1977 had provided that priests and ministers of churches registered with the Ministry of the Interior had to be treated as salaried employees and brought within the general social-security scheme.

In its judgment of 12 December 2005, the Employment Tribunal held that the fact that Mr Manzanas Martin was not entitled to a pension on the same terms as those available to priests infringed his constitutional rights to equal treatment and religious freedom. It considered that the legislation applicable to the present case gave preferential treatment to priests as compared with ministers, which went against the secular nature of the State as established by the Constitution of 1978.

Ministers were brought within the general social-security scheme twenty-two years later, in 1999, following the conclusion of an agreement between the State and the Federation of Evangelical Religious Entities of Spain (the "FEREDE"). According to the Government, it was because Evangelical churches were not particularly deeply rooted in Spain that a certain period of time had been necessary for these negotiations. The Court agreed with the Government that there had been objective and non-discriminatory reasons for integrating religious ministers into the general social-security scheme at different times.

However, the refusal to recognise Mr Manzanas Martin's right to receive a retirement pension and to count his earlier years of service towards the minimum period of pensionable service amounted to a different treatment from that applied, by law, to other situations which appeared to be similar, the only difference here being one of religious faith.

Whilst the reasons for the delay in joining ministers into the general social-security scheme fell within the States' margin of appreciation, the Court considered that the Government had failed to justify the reasons why a difference of treatment between similar situations, based solely on grounds of religious belief, had been maintained.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that the question regarding Mr Manzanas Martin's claim in respect of pecuniary damage was not ready for decision and reserved it in its entirety.

The Court held that Spain was to pay the applicant 3,000 euros (EUR) in respect of nonpecuniary damage and EUR 6,000 in respect of costs and expenses.

Press contacts

echrpress@echr.coe.int | tel: +33 3 90 21 42 08
Denis Lambert (tel: + 33 3 90 21 41 09)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Nina Salomon (tel: + 33 3 90 21 49 79)

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.

Austria says crucifixes in public nursery schools not unconstitutional

Strasbourg Consortium (16.03.2012) - The Constitutional Court of Austria (Verfassungsgerichtshof, VfGH) has ruled that the display of crucifixes in classrooms of state-run nursery schools does not violate Austria's constitution. In Austria as elsewhere in Europe the European Convention on Human Rights enjoys the status of constitutional law, and interpretation of the Convention generally follows the ECtHR's case law. Hence, in this case, filed by an atheist following the ECtHR's *Lautsi* decision, a different result might have been expected.

The burqa challenged at the European Court

S.A.S. v. France (no. 43835/11) (01.02.2012) - The applicant is a French national, a practicing Muslim, who declares that she wears the burqa in order to comply with her faith, her culture, and her personal convictions. For her it is a matter of covering her entire body, including a fine veil covering her face as well the niqab, a veil covering the face with the exception of the eyes. She emphasizes that neither her husband nor any other member of her family puts any pressure upon her to dress in this fashion.

The applicant wears the niqab in private as well as in public, but in a systematic way. For example, she does not wear it when consulting a doctor, or when she meets friends in a public place, or seeks to make acquaintances. She therefore agrees not to wear the niqab in public all the time, but she wishes to be able to make the choice, under certain appropriate spiritual conditions, as, for example, for religious events during Ramadan. Her goal is not to create a nuisance for others, but to be able to be in accord with her own religious feelings and beliefs.

The applicant agrees that she should remove the face covering for security checks, at a bank, or when taking a plane. However, under French law she is forbidden to cover her face in public at all.

The applicant therefore complains that when she wears the veil in public she could be subject, under law, to penalties as well as to harassment and discrimination, constituting degrading treatment in violation of ECHR Article 3. She furthermore invokes Article 8 of the Convention, violation of her right to respect for her private life. Invoking Articles 9, 10, and 11 she complains of violation of freedom of religion, freedom of expression, and freedom of association or assembly. Finally, invoking Article 14, she complains that the legal prohibition of wearing a face covering in public generates discrimination on the basis of sex, religion, and ethnic origin, to the detriment of women, such as herself, who wear the total veil.

Refusal to register an Orthodox clergy trade union breached right to freedom of association

European Court (31.01.2012) - In today's Chamber judgment in the case Sindicatul "Pastorul cel Bun" v. Romania (application no. 2330/09), which is not final1, the European Court of Human Rights held, by a majority, that there had been: **A violation of Article 11 (freedom of assembly and association)** of the European Convention on Human Rights. The case concerned a union set up by members of the clergy and lay members of the Orthodox Church, and its entry in the trade unions register.

Principal facts

The applicant union, Păstorul cel Bun, was established on 4 April 2008 by 35 clerics and lay members of the Romanian Orthodox Church, the majority of them Orthodox priests in parishes of the Metropolis of Oltenia (a region in south-western Romania). The aim of the union, as set forth in its statutes, is to defend the professional, economic, social and cultural interests of its members, both clerics and lay members, in their dealings with the Church hierarchy and the Ministry of Cultural and Religious Affairs.

The union made an application to the district court to be granted legal personality and to be entered in the official register of trade unions. The representative of the Archdiocese objected to the application, arguing that the internal regulations of the Orthodox Church prohibited the creation of any kind of association without the prior consent of the Archbishop. The public prosecutor supported the application, arguing that the establishment of the union was compatible with the law and that the Church's internal regulations could not prohibit it, as the priests and lay persons concerned were all employed by the Church and as such were entitled to form an association to defend their rights.

In a judgment of 22 May 2008 the court ordered the entry of Păstorul cel Bun in the register of trade unions, thereby granting it legal personality. The court found that, since the members of the union carried out their duties on the basis of an employment contract, their right to organise could not be made subject to the prior consent of their employer, in the absence of compelling reasons relating to public safety or the protection of the rights and freedoms of others.

The Archdiocese appealed against this judgment, submitting that the constitutional principles of freedom of religion and the autonomy of religious communities could not be made subordinate to freedom of association. In a judgment of 11 July 2008 the county court set aside the first-instance judgment and rejected the application for Păstorul cel Bun to be granted legal personality and to be entered in the trade unions register. It noted that no reference to trade unions was contained in the Statute of the Orthodox Church, according to which the establishment and management of religious associations had to receive the blessing of the Church Synod. If a union were to be set up, the Church hierarchy would be obliged to work together with a new body which operated outside the rules and traditions of canon law governing decision-making.

Complaints, procedure and composition of the Court

Relying on Article 11 (freedom of assembly and association), the applicant union complained that the refusal of its application for registration had infringed its members' right to organise.

The application was lodged with the European Court of Human Rights on 30 December. Judgment was given by a Chamber of seven. The Archdiocese of Craiova and the non-governmental organisation the European Centre for Law and Justice submitted

observations in their capacity as third-party interveners (Article 36 § 2 of the Convention).

Decision of the Court

Article 11

The Court pointed out that Article 11 permitted States to impose restrictions on the right to organise only in the case of members of the armed forces, the police or the administration of the State, and then only provided the restrictions were legitimate. In Romania, priests and laypersons carried out their duties within the Orthodox Church on the basis of individual employment contracts. Their salaries were financed mainly by the State and they were covered by the general social insurance scheme. The Court considered that a relationship based on an employment contract could not be "clericalised" to the point of being exempted from all rules of civil law. Members of the clergy, and to a still greater extent lay employees of the Church, could not be excluded from the scope of protection of Article 11. The Court therefore had to ascertain whether the restriction imposed by the State on the applicant union's freedom of association had responded to a "pressing social need".

The refusal to register the union had been based on the laws on freedom of association and religious freedom, interpreted in the light of the Statute of the Orthodox Church, and had therefore had a legal basis. The Court was prepared to accept that the refusal had pursued the legitimate aim of protecting public order by seeking to prevent a disparity between law and practice concerning the establishment of unions for Church employees. However, the county court had not established that the union's programme was incompatible with a "democratic society", still less that it represented a threat to democracy. The criteria defining a "pressing social need" had therefore not been met.

In examining the Archdiocese's appeal the court, referring only to the need to preserve the Church's traditional hierarchy, had not considered the repercussions of the employment contract on the employer-employee relationship, the distinction between members of the clergy and lay employees of the Church or the issue whether the ecclesiastical rules prohibiting union membership were compatible with the domestic and international regulations enshrining the right in question; these issues, however, had been of crucial importance in balancing the various interests at stake.

The Court observed that the refusal to register the applicant union had not been based on the clauses of the employment contracts but on the provisions of the Church's Statute. The latter had entered into force in 2008, that is to say, after the employees in question had taken up their duties within the Orthodox Church. The particular position occupied by the Orthodox religion in Romania, of which the Court was aware, could not in itself justify the refusal to register the union, particularly since the right of employees of the Orthodox Church to join a union had already been recognised by the Romanian courts. While that recognition had pre-dated the entry into force of the Statute of the Orthodox Church, the fact remained that two unions had been set up within the Orthodox clergy without this having been found to be unlawful or incompatible with democracy.

Accordingly, in the absence of a "pressing social need" or of sufficient grounds, a measure as radical as the refusal to register the applicant union had been disproportionate to the aim pursued and therefore not necessary in a democratic society, in breach of Article 11.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay the applicant union 10,000 euros (EUR) to cover all heads of damage.

Separate opinion

Judges Ziemele and Tsotsoria expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

European Human Rights Court bans Al Qaeda preacher's deportation

A preacher suspected of bombings in Jordan will soon be free in Britain because the European Court of Human Rights blocked his deportation.

By Amiel Ungar

Israel National News (19.01.2012) - Back in 2009, Michael Chertoff, Secretary of Homeland Security in the Bush Administration, wrote an article for the Harvard Journal of Law and Public policy. In his article, Chertoff contended that international human rights law was hampering the fight against terrorism and as a classic example he cited the case of a radical Islamist Jordanian preacher named Abu Qatada.

The worthy preacher had earned the nickname of "Al Qaeda's Ambassador to Western Europe". Qatada entered the United Kingdom illegally from Jordan where he was suspected of terrorism. However, given the contemporary law regarding migration (that is also hampering Israel's ability to stem the flow of illegal migrants pouring over the Egyptian border into Israel) Chertoff claimed that a Catch-22 had been created.

The same open advocacy of terrorism that makes someone a threat to a host country allows that same person to argue that he will not be treated fairly in his home country. Once that argument is raised, Western Civilization's hands are often tied. The individual cannot be deported, nor can he be held for something he has not yet done. The result is that a person who has no legal right to be in a country and poses a clear danger to its citizens cannot be jailed in that country nor removed from it.

Yesterday came the sequel to this saga. The British government believed that it had actually found a way to deport Abu Qatada back to Jordan. It had reached an agreement with the Jordanian government under which the Jordanian authorities pledged not to employ torture or other human rights violations against Qatada. Pending his deportation, Qatada was lodged at a high-security prison.

The British government failed to reckon with the European Court of Human Rights. That court ruled that the British government could not deport Qatada. While Qatada was immune from torture, some of the evidence that would be used against him could have been procured via torture. Therefore, although the court believed that the agreement between Britain and Jordan would be honored and Qatada would not be ill-treated, he still would not receive a fair trial in Jordan and therefore must be allowed to stay in Britain.

This means that Qatada, who has cost the British tax payer more than £1 million in prison costs, legal fees and welfare benefits could be back on the streets in three months and enjoying the hospitality of the British government together with his wife and five children.

The decision may also set a precedent that one cannot deport a person to a country where the standards of justice to not match up to British standards.

The British government's is already upset at some of the ECHR rulings, for example, the decision ignoring British law that would give prisoners the right to vote.

The Cameron government has made no secret of the fact that it would like to limit the court's jurisdiction. Yesterday's verdict may provide it with more ammunition.
