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Refusal to provide a public service to followers of the Alevi faith

ECtHR (26.04.2016) - <http://bit.ly/2cD7PZq> - In today's Grand Chamber judgment¹ in the case of İzzettin Doğan and Others v. Turkey (application no. 62649/10) the European Court of Human Rights held:

by 12 votes to 5, that there had been a violation of Article 9 (right to freedom of religion) of the European Convention on Human Rights, and

by 16 votes to 1, that there had been a violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 9 of the European Convention.

The case concerned the domestic authorities' refusal to provide the applicants, who are followers of the Alevi faith (the country's second-largest faith in terms of the number of followers), with the public religious service which, in the applicants' assertion, is provided exclusively to citizens adhering to the Sunni understanding of Islam.

The applicants had requested that the Alevi community be provided with religious services in the form of a public service; that Alevi religious leaders be recognised as such and recruited as civil servants; that the cemevis (the places where Alevi practise their religious ceremony, the cem) be granted the status of places of worship; and that State subsidies be made available to their community. Their requests were refused on the grounds that the Alevi faith is regarded by the authorities as a religious movement within Islam, more akin to the "Sufi orders".

The Court held in particular that the authorities' refusal amounted to a lack of recognition of the religious nature of the Alevi faith and its religious practice (cem), depriving the Alevi community's places of worship (cemevis) and its religious leaders (dedes) of legal protection and entailing numerous consequences with regard to the organisation, continuation and funding of the community's religious activities. In the Court's view, the Alevi faith had significant characteristics that distinguished it from the understanding of the Muslim religion adopted by the Religious Affairs Department. The Court therefore found that there had been interference with the applicants' right to freedom of religion and that the arguments relied on by the State to justify that interference were neither relevant nor sufficient in a democratic society.

The Court further observed a glaring imbalance between the status conferred on the understanding of the Muslim religion adopted by the Religious Affairs Department and benefiting from the religious public service, and that conferred on the applicants, as the Alevi community was almost wholly excluded from the public service in question and was covered by the legal regime governing the "Sufi orders" (tarikats), which were the subject of significant prohibitions. The Court therefore held that the applicants, as Alevi, were

subjected to a difference in treatment for which there was no objective and reasonable justification.

Principal facts

The applicants are 203 Turkish nationals who are followers of the Alevi faith. On 22 June 2005 they submitted a petition to the Prime Minister complaining that the Religious Affairs Department (RAD) confined its activities to a single school of Islamic thought while disregarding all other faiths, including the Alevi faith. They argued that their rights had been infringed, that their places of worship (cemevis) were not recognised and that numerous obstacles prevented cemevis from being built, that no provision was made in the budget for running the cemevis and that the exercise of Alevis' rights and freedoms was subject to the good will of public officials. The applicants requested, in particular, that the services connected with the practice of the Alevi faith constitute a public service, that cemevis be granted the status of places of worship, that Alevi religious leaders be recruited as civil servants and that special provision be made in the budget for the Alevi community.

In a letter of 19 August 2005 the Prime Minister's public relations department refused the applicants' requests, stating that the RAD's services were general and supra-denominational in nature and were available to everyone on an equal footing; that it was impossible to confer the status of places of worship on the cemevis; that civil servants were recruited on the basis of nationality and that no privileges could be granted to a group of persons on the basis of their faith or beliefs; and that it was impossible to make provision in the budget for services not provided for in the Constitution or by law.

Following that reply, 1,919 followers of the Alevi faith, including the applicants, lodged an application for judicial review with the Ankara Administrative Court, complaining of the arbitrary attitude of the authorities towards Alevi citizens and the fact that they were not provided with any service. On 4 July 2007 the Administrative Court dismissed the application, ruling that the administrative authorities' refusal had been in conformity with the legislation in force. The applicants lodged an appeal on points of law with the Supreme Administrative Court, which dismissed the appeal on 2 February 2010.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion) of the Convention, the applicants complained about the refusal of their requests seeking to obtain for the followers of the Alevi faith, to which they belong, the same religious public service hitherto provided exclusively to citizens adhering to the Sunni branch of Islam. They maintained that this refusal implied an assessment of their faith on the part of the authorities, in breach of the State's duty of neutrality and impartiality with regard to religious beliefs.

Relying on Article 14 (prohibition of discrimination) taken in conjunction with Article 9, the applicants claimed to be victims of discrimination on grounds of their religion.

The application was lodged with the European Court of Human Rights on 31 August 2010. On 25 November 2014 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 3 June 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows: Guido Raimondi (Italy), President, Dean Spielmann (Luxembourg), András Sajó (Hungary), Işıl Karakaş (Turkey), Josep Casadevall (Andorra), Mark Villiger (Liechtenstein), Ledi Bianku (Albania), Julia Laffranque (Estonia), Helen Keller (Switzerland), André Potocki (France), Paul Lemmens (Belgium), Johannes Silvis (the Netherlands), Faris Vehabović (Bosnia and Herzegovina), Robert Spano (Iceland), Iulia Antoanella Motoc (Romania), Jon Fridrik

Kjølbros (Denmark), Yonko Grozev (Bulgaria), and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 9 (right to freedom of religion)

In the Court's view, the authorities' refusal of the applicants' requests amounted to a lack of recognition of the religious nature of the Alevi faith and its practices (cem). This had the effect of denying legal protection to Alevi places of worship (cemevis) and religious leaders (dedes), and entailed numerous consequences for the organisation, continuation and funding of their religious activities. The Court therefore considered that there had been interference with the applicants' right to freedom of religion, which the Government sought to justify by means of various arguments.

The State's duty of neutrality and impartiality with regard to religions

The Government contended that, in keeping with its duty of neutrality and impartiality towards religions, the State did not define the Alevi faith but took as its basis the definition provided by the applicants themselves. In the proceedings before the Court they referred to an opinion written by a number of experts who argued in particular that cemevis were merely places where followers of the Alevi faith carried on their customs and ceremonies rather than places of religious worship. The applicants argued that their faith had significant characteristics which were particular to it and which distinguished it from the Sunni understanding of the Muslim religion. They also observed that it was for Alevis alone to define their faith, that the cem ceremony constituted their main religious practice and that the cemevis were their places of worship.

The Court reiterated that, in accordance with the principle of autonomy for religious communities established in its case-law, only the highest spiritual authorities of a religious community, and not the State (or even the national courts), could determine to which faith that community belonged. Accordingly, the Court considered that the State's attitude towards the Alevi faith infringed the right of the Alevi community to an autonomous existence. The Court also observed that the Alevi community had significant distinguishing characteristics. Accordingly, the framing and definition of the Alevi faith should be entirely and exclusively a matter for Alevis. While they did not dispute the existence in Turkey of a sizeable Alevi community that practised the cem ceremony in the cemevis, the Government, basing their view on a classification of religious groups, asserted that the community in question was simply a "Sufi order". The Court observed that this assessment, which made no allowances for the specific characteristics of the Alevi community, resulted in the latter coming within the category of religious groups covered by Law no. 677, which entailed a number of significant prohibitions.

The Court therefore considered that the attitude of the State authorities towards the Alevi community, its religious practices and its places of worship was incompatible with the State's duty of neutrality and impartiality and with the right of religious communities to an autonomous existence.

Free practice by Alevis of their faith

The Court noted that the Alevi community came within the legal framework of the "Sufi orders" (tarikats). This entailed a number of prohibitions punishable by a term of imprisonment and a fine (notably with regard to the use of the title dede – denoting an Alevi spiritual leader – and the designation of premises for Sufi practices). Even though failure to abide by these prohibitions was tolerated in practice, the free practice of a faith characterised in domestic law as a "Sufi order" seemed to depend primarily on the good will of the administrative officials concerned, who apparently enjoyed a degree of

discretion in applying the prohibitions in question. The Court therefore had serious doubts as to the ability of a religious group that was thus characterised to freely practise its faith and provide guidance to its followers without contravening the legislation. The Court could not regard the tolerance shown by the Government towards the Alevi community as a substitute for recognition, which alone was capable of conferring rights on those concerned.

The Court further noted that Alevis faced numerous problems with regard to the organisation of their religious life, the rights of Alevi parents with children attending primary and secondary schools, and the fact that Alevi religious leaders had no legal status and that there were no institutions able to train the personnel associated with the practice of the Alevi faith. That faith was excluded from all the benefits enjoyed by the recipients of the religious public service. Furthermore, the absence of a clear legal framework governing unrecognised religious minorities such as the Alevi faith caused numerous additional legal, organisational and financial problems. The ability to build places of worship was uncertain and was subject to the good will of the central or local authorities; the communities in question could not officially receive donations from members or State subsidies; and, since they lacked legal personality, these communities did not have access to the courts in their own right but only through foundations, associations or groups of followers.

Hence, the Court was not convinced that the freedom to practise its faith which the authorities left to the Alevi community enabled that community to fully exercise its rights under Article 9 of the Convention.

Margin of appreciation

Although the States enjoyed a certain margin of appreciation with regard to the forms of cooperation with the different communities, the Court considered that in the present case the State had overstepped its margin of appreciation. The Court reiterated that, according to its case-law concerning Article 9 of the Convention, the State's duty of neutrality and impartiality was incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs were expressed. The right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of a religion, such as the Alevi faith, of legal protection.

Absence of consensus within the Alevi community

The Court considered that the fact that there was a debate within the Alevi community regarding the basic precepts of the Alevi faith and the demands of the Alevi community did not alter the fact that it was a religious community with rights protected by Article 9 of the Convention. That argument did not therefore constitute grounds for the refusal by the authorities, who in the course of the workshops held in 2009-2010 had had the opportunity to identify the demands common to Alevi citizens, in particular concerning issues pertaining to the autonomy of the Alevi community and the fundamental elements of the faith, such as the place occupied by the cem and the cemevis and the role of its religious leaders.

Consequently, the Court held that the situation described above amounted to denying the Alevi community the recognition that would allow its members, including the applicants, to effectively enjoy their right to freedom of religion. It considered, firstly, that the refusal complained of had had the effect of denying the autonomous existence of the Alevi community and had made it impossible for its members to use their places of worship (cemevis) and the title denoting their religious leaders (dede) in full conformity with the legislation. Secondly, the State had overstepped its margin of appreciation

without relevant and sufficient reasons. The Court therefore held that the authorities' interference with the right of the applicants, as Alevis, to freedom of religion had not been necessary in a democratic society. Accordingly, **the Court found a violation of Article 9 of the Convention.**

Article 14 (prohibition of discrimination) taken in conjunction with Article 9

The Court considered that, with regard to their need for legal recognition and for a religious public service pertaining to their Alevi faith, the applicants could claim to be in a comparable situation to other citizens who had received such recognition and benefited from the religious public service. The Court noted that the State provided religious services pertaining to the Muslim religion as a public service, in particular by granting that religion a status within the State administration. Although in theory everyone could benefit from these services on an equal footing, in practice they were aimed first and foremost at the adherents of the understanding of Islam adopted by the RAD and not at those who subscribed to a different understanding. Irrespective of the place occupied by the Alevi faith in Muslim theology, it constituted a religious conviction with deep roots in Turkish society and history, and the needs of its followers in terms of recognition and the provision of a religious public service were thus comparable to the needs of those for whom religious services were regarded as a public service. However, the applicants, as Alevis, received less favourable treatment than the beneficiaries of the religious public service provided by the RAD despite being in a comparable situation.

As to the justification for this difference in treatment, the Court observed that in Turkey legal recognition entailed substantial advantages for religious denominations and undoubtedly facilitated the exercise of the right to freedom of religion. In the present case the religious services provided in respect of the Muslim religion, which were regarded as a public service, received substantial funds from the State budget, making it possible to recruit and manage religious functionaries and to carry out a variety of religious activities. Accordingly, that religion was almost entirely subsidised by the State. By contrast, the applicants, as Alevis, were almost wholly deprived of a comparable status and of the numerous advantages attendant on that status, on the ground that their faith was classified as a "Sufi order" by the national authorities. The Alevi faith did not enjoy any legal protection as a religious denomination: the cemevis were not recognised as places of worship, its religious leaders had no legal status and its followers did not enjoy any of the benefits of the religious public service. By failing to take account of the specific needs of the Alevi community, the State had thus considerably restricted the reach of the religious pluralism that characterised a democratic society.

The Court therefore noted a glaring imbalance between the applicants' situation as Alevis and that of persons who benefited from the religious public service. Firstly, the Alevi community, which was regarded as a "Sufi order" (tarikati), was made subject to a legal regime that entailed numerous restrictions, and the members of the community were denied the benefits of the religious public service. Secondly, whereas the Muslim religion as understood by the RAD was almost wholly subsidised by the State, virtually none of the religious public services benefited the Alevi community, and its specific characteristics were almost entirely overlooked. Moreover, Turkish law made no provision for any compensatory measures to remedy that marked discrepancy. The Court also failed to see why the preservation of the secular nature of the State – the legitimate aim invoked by the national courts – should necessitate denying the religious nature of the Alevi faith and excluding it almost entirely from the benefits of the religious public service. The Court therefore considered that the Alevi community was deprived of the legal protection that would allow it to effectively enjoy its right to freedom of religion. Moreover, the legal regime governing religious denominations in Turkey appeared to lack neutral criteria and to be virtually inaccessible to the Alevi faith, as it offered no safeguards apt to ensure that it did not become a source of discrimination towards the adherents of other religions or beliefs. In the Court's view, whatever form was chosen, the State had a duty to put in

place objective and non-discriminatory criteria so that religious communities which so wished were given a fair opportunity to apply for a status which conferred specific advantages on religious denominations.

Hence, the Court considered that the choice made by the State appeared manifestly disproportionate to the aim pursued. It found that the difference in treatment to which the applicants, as Alevi, had been subjected had no objective and reasonable justification, and held that there had been **a violation of Article 14 of the Convention taken in conjunction with Article 9.**

Article 41 (just satisfaction)

The Court held, unanimously, that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained by the applicants. It ruled, by 16 votes to 1, that Turkey was to pay 3,000 euros (EUR) to the applicants jointly in respect of costs and expenses.

Separate opinions

Judges M. Villiger, H. Keller and J.F. Kjølbrog expressed a joint partly dissenting and partly concurring opinion. Judges J. Silvis and F. Vehabović each expressed a dissenting opinion and Judge R. Spano made a declaration. These are annexed to the judgment.

EU High Court rules against deportation of Christian converts to Iran, urges grant of asylum

Religious and human rights groups are applauding a European court decision that ruled governments must grant a fair evaluation of Christian converts before they are denied asylum and sent back to Iran.

See European Court decision at <http://bit.ly/1UetFCQ>

Mohabat News (13.04.2016) - <http://bit.ly/1Sx1Np2> - This week, the Grand Chamber of the European Court of Human Rights ruled in the case of F.G vs. Sweden that the Swedish government would be violating Articles 2 and 3 of the European Convention on Human Rights, which protect life and safeguard against inhumane treatment, if it deported the applicant.

"The lower chamber (of the court) underestimated the severe danger to this convert's life," Robert Clarke, director of European Advocacy for the Alliance Defending Freedom (ADF) International, told the Catholic News Agency (CNA).

"The Grand Chamber rightly noted that Christian converts are one of the most persecuted religious minorities in Iran. Moreover, the Islamic regime governing Iran has systematic mechanisms in place to identify all Christian converts – even those practicing in secret," Clarke added.

Roger Severino, director of the DeVos Center for Religion and Civil Society at The Heritage Foundation, said: "Asylum should be granted to individuals who are being persecuted and fear for their lives because of converting to a different religion.

"Iran's anti-conversion laws violate the fundamental human right to be able to choose your own religion and live out your beliefs, which includes the right to change your religion without the government threatening imprisonment or in the case of Iran, death for apostasy," he told CNA.

In 2009, an Iranian citizen reportedly applied for asylum and a resident permit in Sweden after suffering political persecution. Two years later, the Swedish Migration Office denied his request, which he appealed.

The lower chamber of the court ruled in January 2014 that Sweden's denial was "justified" because the applicant's life was reportedly not in jeopardy, since Iranian authorities were unaware of his conversion and he could keep his faith private.

The ADF, however, filed a brief on behalf of the Iranian citizen with the European Human Rights Court of Human Rights, arguing that the lower court's decision "violated his religious freedom" and that converts to Christianity face numerous threats in Iran.

The judgment states: "The applicant's conversion to Christianity is a criminal offence punishable by death in Iran. In addition to the risk of social persecution as a Christian, the applicant risks criminal prosecution for the crime of apostasy. The order for the applicant's deportation to Iran, where he could be tried under the above-mentioned criminal and procedural law, equates to a violation of principles deeply enshrined in the universal legal conscience."

Iran ranked as the ninth worst country for Christian persecution. It considers conversion from Islam a crime punishable by death.

Clarke warned that if a convert to Christianity is identified by the Iranian government, he or she is very likely "to suffer substantial harm, deprivation of liberty, assaults and continual harassment. In the worst case the individual could face severe ill-treatment or death."

In its 2014 religious freedom report, the U.S. State Department indicated that "Christians, particularly evangelicals, continued to experience disproportionate levels of arrests and high levels of harassment and surveillance."

The U.N. Special Rapporteur for Human Rights in Iran also reported "that authorities held at least 49 Protestant Christians in custody, many for involvement in informal house churches," according to CNA.

Hamidović v. Bosnia and Herzegovina: Statement of facts & Questions to parties

EctHR (24.03.2016) - <http://bit.ly/2ciy8II> - The applicant, an adherent of a group advocating the Saudi-inspired Wahhabi/Salafi version of Islam, was summoned to appear as a witness in a trial involving other adherents of the group, who attacked the US Embassy in Sarajevo in October 2011. During the trial the applicant refused to remove his cap in the courtroom as ordered and was expelled from the courtroom. An Appeals Chamber reduced the fine charged but otherwise found the order reasonable, holding that the requirement to remove any and all headgear at the premises of public institutions was one of the basic requirements of the life in society and that in a secular State, such as Bosnia and Herzegovina, any manifestation of religion in the courtroom was forbidden. The fine was converted into a prison term of 30 days. The Constitutional Court found no breach of ECHR Articles 9 (freedom of religion) and 14 (discrimination), and the applicant brought these complaints to the ECtHR.

Statement of facts

The applicant, Mr Husmet Hamidović, is a citizen of Bosnia and Herzegovina, who was born in 1976. He is represented before the Court by Mr O. Mulahalilović, a lawyer practising in Brčko.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows. On 28 October 2011 M. J., an adherent of the local group advocating the Saudi-inspired Wahhabi/Salafi version of Islam (1), attacked the US Embassy in Sarajevo. In April 2002 M. J. and two other adherents of that group were indicted on terrorism charges in relation to that event.

In the context of that trial, the State Court summoned the applicant, who belongs to the same religious group, to appear as a witness on 10 September 2012. The applicant appeared, as summoned, but refused to remove his cap, despite an order of the President of the Trial Chamber to do so. He was then expelled from the courtroom, convicted of contempt of court and sentenced to a fine of 10,000 convertible marks (BAM) under Article 242 of the Code of Criminal Procedure of Bosnia and Herzegovina.(2)

On 11 October 2012, an Appeals Chamber of the same court, reduced the fine to BAM 3,000 and upheld the remainder of the first-instance decision.

It held that the requirement to remove any and all headgear at the premises of public institutions was one of the basic requirements of the life in society.

It further held that in a secular State, such as Bosnia and Herzegovina, any manifestation of religion in the courtroom was forbidden.

As the applicant had failed to pay the fine, on 27 November 2012 the fine was converted into 30 days of imprisonment pursuant to Article 47 of the Criminal Code of Bosnia and Herzegovina. That decision was upheld on 13 December 2012. The applicant served his prison sentence immediately.

On 9 July 2015 the Constitutional Court found no breach of Articles 9 and 14 of the Convention, fully endorsing the reasoning of the State Court.

At the same time, it found a breach of Article 6 of the Convention because of the automatism with which fines were converted into imprisonment and ordered that Article 47 of the Criminal Code of Bosnia and Herzegovina be amended.

However, it decided not to quash the decision converting the fine into imprisonment in this case relying on the principle of legal certainty.

Relevant domestic law

The relevant part of Article 242 § 3 of the Code of Criminal Procedure of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 8/08, 12/09, 16/09, 93/09 and 72/13) reads as follows:

“Should ... a witness ... cause a disturbance in the courtroom or fail to comply with an order of ... the presiding judge, ... the presiding judge shall warn him or her. If the warning is ineffective, ... the presiding judge may order that the person be expelled from the courtroom and be fined in the amount of up to BAM 10,000. ...”

Article 47 of the Criminal Code of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15 and 40/15) reads as follows:

- “(1) Fine shall not be collected by force.
(2) If a fine is not paid within the period determined in the judgement, the court shall, without delay, convert the fine into imprisonment.
(3) The fine shall be converted into imprisonment in such a way that ... each BAM 100 started is converted into 1 day of imprisonment, provided that it does not exceed the punishment prescribed for that particular offence.
(4) If the convicted person has only paid a portion of the fine, the remaining amount will be proportionally converted into imprisonment and if he then pays the remaining amount, the execution of imprisonment ceases.”

Complaints

The applicant complains under Articles 9 and 14 of the Convention because he was punished for having refused to remove a religious cap in the courtroom.

Questions to the parties

1. Has the punishment of the applicant because of his refusal to remove a religious cap in the courtroom amounted to a breach of Articles 9 and/or 14 of the Convention? Notably, is the prohibition of the wearing of religious symbols applied equally to all those who appear in the courtroom, including imams, bishops, nuns and rabbis? The Government are requested to provide the relevant domestic case-law in this connection, if any.
2. The Government are also requested to submit the decision (zaključak) concerning the wearing of religious symbols in the courtroom adopted by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina on 21 September 2015, the related study (analiza) prepared by the Council, any and all submissions of the Islamic Community of Bosnia and Herzegovina and other third parties deposited with the Council in this connection, any and all replies of the Council and all other relevant documents from that file.

Footnotes

- (1) According to International Crisis Group, the Salafiyya began as a movement of modernist reform in the Middle East in the late nineteenth century. Its founders, the Persian Shiite Jamal al-Din al-Afghani (1838-1897) and the Egyptian Sunni Mohammed Abduh (1849-1905), were concerned above all to enable the Muslim world to rise to the challenge of Western power. This reformist combination of selective “back to basics” fundamentalism and selective modernism (accepting Western science and political ideas, notably liberal democracy and constitutional government) went into eclipse following the First World War. In the political turmoil in the Middle East following the destruction of the Ottoman empire, the abolition of the Caliphate, the expansion of Jewish settlement in Palestine and the establishment of British and French protectorates (Iraq, Palestine, Syria, Transjordan), the Salafiyya movement evolved in a markedly anti-Western and conservative direction under the guidance of Rashid Rida (1865-1935). This involved an explicit rapprochement from the late 1920s onwards between the Salafiyya movement and the Wahhabi doctrines championed by the triumphant Al-Saud dynasty in Arabia (see International Crisis Group’s report Understanding Islamism of 2 March 2005, p. 9).
 - (2) The convertible mark uses the same fixed exchange rate to the euro that the German mark has (1 euro = 1.95583 convertible marks).
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