MOLDOVA – ECHR: Property disputes and Orthodoxy: Orlović and Metropolitan Church of Bessarabia

By Frank Cranmer

Law & Religion UK (08.10.2019) – https://bit.ly/2ATS4Jy – Though the Iron Curtain came down in 1989/90 and the civil wars in the former Yugoslavia ended in the mid-1990s, outstanding property disputes between rival religious groups arising out of adherence to different jurisdictions or previous dispossession continue to take up the time of the courts – as the following two recent cases show.

In ***Metropolitan Church of Bessarabia and Nativity of the Virgin Mary Parish v The Republic of Moldova*** **[2019] ECHR 658** [*in French*], the Nativity Parish had sought recognition in 2005 of its ownership of a plot of land in Mihalaşa to finalise the construction of a church. The court had acknowledged the Metropolitan Church's right of ownership and the judgment had become final in November 2005.

According to the applicants, Act No. 979 of 1992 on cults, in force at the material time, was not explicit about the property rights of the Church as opposed to those of the Parish. In 2006 the land was registered to the Metropolitan Church and the Parish obtained a planning certificate to construct the church [1-9]. In 2009, however, the Assumption of the Virgin Mary Parish of the rival Orthodox Church of Moldova (under the Moscow Patriarchate) succeeded in overturning those decisions in the Bălţi Court of Appeal, which ordered a re-examination of the case [10-21]. The

applicants complained that the Court of Appeal’s admission of the application for review and the annulment of the earlier judgment was, in fact, a disguised and improper appeal [22], while the Government argued that the purpose of the review had been to correct a miscarriage of justice [23].

The Court noted that the final judgment in 2005 in favour of the Metropolitan Church had been annulled after the admission of the application for revision from the Orthodox Church of Moldova. However, the domestic law at the material time had not provided such a ground for review, it did not appear that another ground had been raised, and the lower court had rejected the request because it had not revealed any of the grounds provided in Article 449 of the Code of Civil Procedure [25]. The Court of Appeal, however, had held that a registration certificate alleging ownership of the disputed land by the Assumption Parish was a new fact justifying a review [26].

It was clear both from law and practice that only new facts of essential importance to a case could justify a retrial. The certificate presented as a “new fact” had a different registration number and had apparently related to a different parcel of land, nor had the Bălţi Court of Appeal explained the relevance and importance of the alleged “new fact”. The certificate was not, therefore, a genuine piece of new evidence with which to resolve the case [27].

In reality, the review proceedings had indeed been a “disguised appeal” intended to obtain a new examination rather than the proper review provided for in the Code of Civil Procedure [29]. There had therefore been a violation Article 1 of Protocol No 1 ECHR (respect for property) [30]. As to the complaint under Article 6 (fair trial), there had been a violation in relation to the Nativity Parish, but not in relation to the Metropolitan Church itself [32].

In ***Orlović and Others v Bosnia and Herzegovina*** [[2019] ECHR 653], Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, which put an end to the 1992–95 war, guaranteed the free return of refugees to their homes and restitution of their property. To comply with it, the Republika Srpska (one of the two constituents of Bosnia and Herzegovina) enacted the Restitution of Property Act in 1998. Under it, the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") had granted the applicants full restitution in 1999, confirmed by a further decision of the Ministry for Refugees and Displaced Persons in 2001. Both were final and enforceable; but when the land was returned, a plot on which a church had been built was not.

The applicants failed in their administrative claim for repossession and in a civil suit against the Serbian Orthodox Church. In the meantime, in 2004 the Orthodox parish obtained planning permission for the church. The applicants complained that they had been prevented from using their property, contrary to Article 1 of Protocol No. 1 ECHR (protection of property), because the church – built unlawfully – had not been removed from their land and that the domestic courts' judgments in their civil claim had violated Article 6 (fair trial).

The Court noted that there was no dispute that the applicants owned the property and that, as internally displaced persons, they had been entitled under Annex 7 to the Framework Agreement to have their land restored. That right had been established in the decisions of 1999 and 2001 but the authorities had not implementing them, nor had the Government had given any justification for the authorities' inaction. There had therefore been a violation of A1P1 and, given that finding, there was no need to examine the complaint under Article 6.

Further, to comply with Article 46 (binding force and execution of judgments), the state had to enforce the CRPC’s and the Ministry for Refugees’ decisions – including, in particular, *the removal of the church from the applicants’ land* – without further delay and at the latest within three months of the judgment becoming final. The first applicant was awarded €5,000 and the others €2,000 each in respect of pecuniary damage. Judge Kjølbro expressed a partly dissenting opinion, which is annexed to the judgment.

Frank Cranmer, “Property disputes and Orthodoxy: *Orlović* and *Metropolitan Church of Bessarabia*” in *Law & Religion UK*, 8 October 2019, http://www.lawandreligionuk.com/2019/10/08/property-disputes-and-orthodoxy-orlovic-and-metropolitan-church-of-bessarabia/