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SWITZERLAND: Swiss can deport Iranian Christian, says European Court

Mohabat News (22.12.2017) - http://mohabatnews.com/en/?p=3820 - An Iranian asylum seeker who converted to Christianity in Switzerland can be sent back to Iran, the European Court of Human Rights has ruled. The Strasbourg-based court deemed that the security of the 35-year-old man would not be in danger if he were sent back to his native country.

The decision on Tuesdayexternal link goes in favour of the Swiss authorities, which had expressed doubts about the asylum seeker's conversion. However, the court found that this was not the reason for rejecting his asylum application and deciding to deport him. It said Switzerland was therefore not in violation of Convention on Human Rights provisions on the right to life and prohibition of torture, as argued by the asylum seeker.

The 35-year-old Iranian had entered Switzerland in 2009 and immediately filed for asylum. He brought three sets of asylum proceedings, all of which were rejected. He said he had been arrested and imprisoned in Iran for demonstrating against the presidential elections but had managed to escape and flee the country, after which an Iranian court sentenced him in absentia to 36 months in jail. The asylum authorities found that his account was not credible or sufficiently substantiated.

In his second application, he argued he would be in danger if he returned to Iran because he had meanwhile converted from Islam to Christianity. The asylum authorities doubted that his conversion was genuine and lasting, and again rejected his application.

Rejected appeals

In 2014, the Swiss Federal Administrative Court dismissed an appeal by the applicant against that decision. It considered that Christian converts would only face a risk of ill-treatment upon return to Iran if they were particularly exposed in the public arena, and that this was not the case for the complainant.

His asylum application was rejected again in 2016 and he was due to be deported in October that year. This was stayed pending the outcome of his case before the European Court of Human Rights.

The European Court said it "has regard to the reasoning advanced by the domestic authorities for their conclusions and the reports on the situation of Christian converts in Iran" and "it sees no grounds to consider that the assessment made by the domestic authorities was inadequate".

It also decided to indicate to the Swiss government "not to expel the applicant until such time as the present judgment becomes final or until further order".

GREECE: Grand Chamber hearing in a case concerning the application of Islamic religious (Sharia) law to an inheritance dispute

Molla Sali v. Greece

HRWF (08.12.2017) - On 6 December, the European Court of Human Rights held a **Grand Chamber** hearing in the case of **Molla Sali v. Greece** (application no. 20452/14). The case concerns the application by the Greek courts of Islamic religious (Sharia) law to a dispute concerning inheritance rights over the estate of the late husband of Ms Molla Sali, a Greek national belonging to the country's Muslim minority. After the hearing the Court, the deliberations were held in private. Its ruling in the case will, however, be made at a later stage.

Registrar of the European Court of Human Rights (06.12.2017) - On the death of her husband, Ms Molla Sali inherited his entire estate under the terms of a will drawn up by her late husband before a notary. The deceased's two sisters contested the will, on the grounds that their brother had belonged to the Thrace Muslim community and that all matters relating to his estate were therefore subject to Islamic law and to the jurisdiction of the mufti rather than to the provisions of the Greek Civil Code. They relied in particular on the 1920 Treaty of Sèvres and the 1923 Treaty of Lausanne, which provided for Islamic customs and Islamic religious law to be applied to Greek nationals who were Muslims.

The two sisters' claims were dismissed by the Greek courts at first instance and on appeal. In September 2011 the Thrace Court of Appeal found that the decision by the deceased, a Greek Muslim and a member of the Thrace religious minority, to request a notary to draw up a public will, determining for himself the persons to whom he wished to leave his property and the manner in which this was done, was an expression of his statutory right to have his estate disposed of after his death under the same conditions as other Greek citizens. However, the Court of Cassation quashed that judgment on the grounds that questions of inheritance within the Muslim minority should be dealt with by the mufti in accordance with the rules of Islamic law. It therefore remitted the case to a different bench of the Court of Appeal for fresh consideration. On 15 December 2015 the Court of Appeal ruled that the law applicable to the deceased's estate was Islamic religious law and that the public will in question did not produce any legal effects. Ms Molla Sali appealed against that judgment on points of law, but the Court of Cassation dismissed the appeal on 6 April 2017.

The applicant, Ms Chatitze Molla Sali, is a Greek national who was born in 1950 and lives in Komotini (Greece).

On the death of her husband, Ms Molla Sali inherited his entire estate under the terms of a will drawn up by her late husband before a notary. The deceased's two sisters contested the will, on the grounds that their brother had belonged to the Thrace Muslim community and that all matters relating to his estate were therefore subject to Islamic law and to the jurisdiction of the mufti rather than to the provisions of the Greek Civil Code. They relied in particular on the 1920 Treaty of Sèvres and the 1923 Treaty of Lausanne, which provided for Islamic customs and Islamic religious law to be applied to Greek nationals who were Muslims.

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statutory right to have his estate disposed of after his death under the same conditions as other Greek citizens. However, the Court of Cassation quashed that judgment on the grounds that questions of inheritance within the Muslim minority should be dealt with by the mufti in accordance with the rules of Islamic law. It therefore remitted the case to a different bench of the Court of Appeal for fresh consideration. On 15 December 2015 the Court of Appeal ruled that the law applicable to the deceased's estate was Islamic religious law and that the public will in question did not produce any legal effects. Ms Molla Sali appealed against that judgment on points of law but the Court of Cassation dismissed the appeal on 6 April 2017.

Relying on Article 6 § 1 (right to a fair hearing), taken alone and in conjunction with Article 14 (prohibition of discrimination), Ms Molla Sali complains of the application to her inheritance dispute of Sharia law rather than the ordinary law applicable to all Greek citizens, despite the fact that her husband's will was drawn up in accordance with the provisions of the Greek Civil Code. She also alleges that she was subjected to a difference in treatment on grounds of religion.

Under Article 1 of Protocol No. 1 (protection of property), Ms Molla Sali contends that, by applying Islamic religious law rather than Greek civil law to her husband's will, the Court of Cassation deprived her of three-quarters of her inheritance.

Procedure

The application was lodged with the European Court of Human Rights on 5 March 2014.
Notice of the application was given to the Greek Government, together with questions from the Court, on 23 August 2016.
On 6 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.
The following organisations were granted leave to intervene in the written proceedings as third parties: Greek Helsinki Monitor (GHM), Christian Concern et Hellenic League for Human Rights.

Composition of the Court

The case will be heard by a Grand Chamber, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),
Robert **Spano** (Iceland),
Ledi **Bianku** (Albania)
Kristina **Pardalos** (San Marino),

RUSSIA: "Beware: Sects" campaign in the dock at the European Court

Hare Krishna accused the public authorities of dissemination of false information about their movement (Application no. 37477/11)

HRWF (23.10.2017) – Earlier this year, the European Court addressed a number of questions to the parties in the case "Centralised Religious Organisation Centre of Krishna

Consciousness Societies in Russia and Mikhail Aleksandrovich FROLOV against Russia" (Application no. 37477/11) lodged on 29 May 2011.

The Krishna Centre complained under Article 9 of the Convention regarding a public campaign targeting and labelling them as a "totalitarian sect" and tarnishing their religious beliefs, presenting followers of the Krishna movement as inferior or disabled people and inciting religious hatred and enmity.

The Krishna Centre accused public authorities of disseminating false information about their movement in the form of a "Beware of Sects" project. The project provided guidelines to local secondary schools concerning the Krishna movement as well as Jehovah Witnesses, Mormons, Scientology and others.

Excerpt of the Communication of the European Court on 23 January 2017

On 23 September 2008 the first applicant (the Krishna Centre) lodged a complaint with the St Petersburg Office of the Federal Agency of Mass Communications ("the Agency"), alleging that there was an adverse public campaign and that it fell within the purview of anti-extremist legislation, because it incited enmity and hatred on the grounds of religious belief. The Agency submitted the impugned material to a private company providing expert advice, and sought a report from it as to whether that material could be perceived as inciting racial, national or religious hatred or enmity. The company's report concluded that the material could not be perceived in that manner. On 28 January 2009 an official of the Agency dismissed the complaint, with reference to the above report. On 29 April 2009 a complaint against that dismissal, lodged by the first applicant with a higher authority within the same Agency, was dismissed. The first applicant sought judicial review of the decisions of 28 January and 29 April 2009 under the Code of Civil Procedure. By a judgment of 10 November 2009 the Taganskiy District Court of Moscow dismissed the judicial review challenge. On 30 November 2009 the Moscow City Court upheld the judgment.

As an example to indicate the existence of an adverse public campaign, the first applicant refers to the "Beware: Sects!" project which was carried out in 2008 in the Ulyanovsk Region. Information about the project was published on the website of the regional administration, specifying that the main goal of the project was to prevent the negative activities of destructive religious groups.

As part of the project's activities, at the regional government's request, staff members of Ulyanovsk State University compiled "Be vigilant: Sects!" guidelines which concerned the Krishna movement, as well as Jehovah's Witnesses, Mormons, Scientology, and others. As regards krishnaites, the document read:

> "On the streets of our towns you can see colourful groups of people wearing white and yellow clothing and chanting hymns ... You should know that those are members of the International Society of Krishna Consciousness, a totalitarian religious organisation ...
>
> Their goals are frequently commercial, to procure money by any means. They beg for money, sell their literature; in some countries, they have been caught stealing or selling drugs. All income is submitted to the leaders of the sect ... Even a brief overview of their teachings brings us to the conclusion that such religious teaching is extremely destructive to our society. It is not connected to our people, genetically, historically or geographically. It is a specific spiritual culture of the East. Psychological manipulation and zombification constitute a serious threat to our future."

These guidelines were distributed to the teaching staff of local secondary schools.

The first applicant lodged a non-criminal complaint with the Prosecutor General's Office under the Prosecutors' Service Act. The complaint was then forwarded to the regional prosecutor's office for examination. On 29 December 2008 the regional prosecutor's office replied that: the public authorities had acted within their remit in relation to the "Beware: Sects!" project and guidelines; the primary objective of the project was to discuss acute issues relating to interfaith dialogue, and build the best possible framework for the relationship between the State and religious organisations; it remained open to the first applicant to institute civil proceedings, if they considered that the impugned guidelines impinged upon their rights or freedoms.

The first applicant's renewed complaints to a higher authority were dismissed on 26 March and 6 June 2009 by, among others, the Prosecutor General's Office.

The first applicant sought judicial review of those administrative decisions under the Code of Civil Procedure.

By a judgment of 27 October 2010 the Tverskoy District Court of Moscow dismissed the first applicant's complaint, finding that the relevant decisions had been issued by a competent authority acting within its remit, and had disclosed the absence of sufficient grounds for action on the part of the prosecution service. On 16 March 2011 the Moscow City Court upheld the judgment.

Second applicant

The second applicant, Aleksandrovich Frolov, complained that he was prohibited from holding a public meeting to disseminate information about their values. The municipality ruled that the meeting ran counter to section 7 of the Public Events Act and the District Court dismissed the case.

Both applicants complain of Article 9 violations of the Convention. The Court questions whether the applicants exhausted domestic remedies, if they have standing, and if the interference with the public meeting was lawful under Russian law at the time.

RUSSIA: Controversial dissolution of the Russian Orthodox Free Church

The Russian Orthodox Free Church argues the authorities take sides with the official Orthodox Church (Application no. 32895/13).

HRWF (23.10.2017) – In the case Bryansk-Tula Diocese of the Russian Orthodox Free Church against Russia lodged on 19 April 2013, the European Court addressed a number of questions to the parties in May of this year. The case concerns the decision of the Russian Supreme Court to dissolve the church for allegedly failing to bring its founding documents into conformity with The Religious Act of 1997. The applicant complained under Article 9 and 11 of the Convention, taken on their own and in conjunction with Article 14, about its dissolution which was prompted, in its submission, by the Russian authorities' determination to eradicate any competition with the Moscow Patriarchate of the Russian Orthodox Church.

Excerpt of the Communication of the European Court on 15 May 2017

"On 28 August 1995 the applicant church was officially registered as a religious association having legal-entity status under the RSFSR Religions Act of 25 October 1990.

On 1 October 1997 a new Religions Act entered into force. It required all religious associations that had previously been granted legal-entity status to bring their articles of

association into conformity with the Act and obtain re-registration from the competent Justice Department (section 27(4)). The time-limit for doing so expired on 31 December 2000.

In 2004, the Ministry of Justice brought an action for the dissolution of the applicant church, claiming that it had failed, firstly, to submit information demonstrating continuity of its operation and, secondly, to secure re-registration under the new Religions Act.

On 17 May 2004 the Trubchevskiy District Court in the Bryansk Region rejected the claim. It held that the Ministry of Justice did not produce any evidence showing that the applicant church had committed any repetitive or gross breaches of the legislation or had wound up its operations. In the court's view, its articles of association did not contain any provisions incompatible with the effective revision of the Religions Act. It further referred to the Constitutional Court's ruling of 7 February 2002 to the effect that the dissolution was not an automatic sanction for failure to secure re-registration in the absence of evidence that the religious organisation had ceased its operations or had engaged in unlawful activities.

The Ministry of Justice did not appeal against the judgment. Nevertheless, the applicant church inquired the Ministry about the conditions and procedure for obtaining re-registration. By letter of 20 September 2004, the Ministry replied that re-registration was no longer possible since the time-limit had expired on 31 December 2000.

On 30 June 2010 the Ministry of Justice informed the applicant church that it had studied its file and uncovered a number of irregularities, such as a failure to bring its founding documents into conformity with the Religions Act, a failure to specify "the aims, purposes and main forms of operations" of the religious organisation, the procedure for electing the Diocesan Assembly and Council and the rights and obligations of parishioners, as well as to change its name from "Russian Orthodox Free Church" to "Russian Orthodox Autonomous Church" to reflect the change in the name of the affiliated church that occurred in 1998. The Ministry listed further failings, including non-inclusion in the State Register of Legal Entities, non-submission of an authority form for the bishop Mr Nonchin, failure to submit annual reports on the continuation of operations and the closing down of local parishes of the Bryansk and Tula region.

The applicant organisation unsuccessfully sought to challenge the Ministry's demands before a court.

On 24 June 2011 the bishop submitted a proof of his appointment to the Ministry of Justice and asked it to provide a copy of the founding documents from their archives because the originals had been misplaced.

By letter of 8 August 2011, the Ministry replied that the appointment letter had not been properly certified and that the provision of copies of the founding documents was outside the Ministry's mandate.

The Ministry brought a new action for the dissolution of the applicant church on the ground that it had committed gross and repetitive breaches of the laws it had outlined in its warning letter of 30 June 2010.

The applicant organisation submitted in its defence that all the irregularities could be remedied by way of registering amendments to the founding documents. However, it could not apply for registration of amendments because the procedure required the presentation of the founding documents or their certified copies which it did not have.

On 4 July 2012 the Supreme Court of the Russian Federation allowed the Ministry's action for the dissolution. It held that the applicant church had failed to bring its founding documents into conformity with the law and that there was "no credible evidence that the Ministry of Justice had prevented it from obtaining re-registration". The Supreme Court

restated the grounds contained in the Ministry's letter of 30 June 2010 and declared them to amount to "gross and repetitive" violations of the law which warranted its dissolution.

On 23 October 2012 the Appeals Panel of the Supreme Court upheld that judgment."

RUSSIA: Ban of Muslim movement Tabligh Jamaat

Applications nos. 2841/10 and 79469/13 : Fatikh Gayazovich BASYROV against Russia - Farit Ravkhatovich BIKEYEV and Others against Russia lodged on 21 December 2009 and 5 November 2013 respectively.

European Court (31.08.2017) - http://bit.ly/2xI1qZJ - The applications concern the ban on a religious Islamic association Tabligh Jamaat and prosecution of its members. On 7 May 2009 the Supreme Court of the Russian Federation, sitting in camera, declared Tabligh Jamaat an extremist organisation and banned it. The judgment was never published. On 30 July 2009 the Cassation Chamber of the Supreme Court refused Mr Basyrov's application for a leave to appeal, finding that he was not a party to the proceedings and that his rights were not affected by the judgment. On 9 September 2009 a prosecutor's office issued a written warning to Mr Basyrov. The warning stated that Mr Basyrov was a member of Tabligh Jamaat which had been declared an extremist organisation. The prosecutor therefore warned Mr Basyrov that his membership of Tabligh Jamaat made him liable under Article 282.2 § 2 of the Criminal Code.

On 9 April 2013 the Justice of the Peace of the Sol-Istetskiy District of the Orenburg Region convicted Mr Bikeyev, Mr Bimukhanov, Mr Dubertalayev and Mr Krushenov of leadership (Mr Bikeyev) and membership (Mr Bimukhanov, Mr Dubertalayev and Mr Krushenov) of an extremist organisation, an offence under Article 282.2 §§ 1 and 2 of the Criminal Code and sentenced them to fines ranging from 50,000 to 250,000 Russian roubles. She found that they had participated in the activities of Tabligh Jamaat from May 2009 to June 2011, that is after it had been declared an extremist organisation. On 31 May 2013 the Sol-Istetskiy District Court of the Orenburg Region upheld the conviction on appeal.

Questions to the Parties

1. The Government are requested to submit a copy of the judgment of 7 May 2009 by the Supreme Court of the Russian Federation and copies of expert reports on which it relies, if any. Was that judgment officially published? If it was published, the Government are requested to produce a copy of the official publication of the full text or, at least, the operative part of the judgment.

2. The parties are requested to submit copies of the judgments made in the judicial review proceedings instituted by Mr Basyrov against the warning of 9 September 2009.

3. As regards the Supreme Court's decision to declare Tabligh Jamaat an extremist organisation and ban it, was there a violation of Mr Basyrov's rights to freedom of religion, expression and association under Articles 9, 10 and 11 of the Convention? In particular, what legitimate aim did that measure pursue, was it proportionate to that legitimate aim and necessary in a democratic society?

4. Given that members of Tabligh Jamaat were not notified of the date of the hearing of 7 May 2009, that the judgment delivered on that date had been never published and that Mr Basyrov was refused leave to appeal against the judgment, has there been a violation of Article 13 of the Convention in conjunction with Articles 10 and 11 of the Convention in

respect of Mr Basyrov (see the Constitutional Court's judgment no. 10-P of 21 April 2010, point 3.1)?

5. Did the warning issued against Mr Basyrov interfere with his rights under Articles 9, 10 or 11 the Convention? Was the interference prescribed by law? In particular, if the judgment of 7 May 2009 was not officially published, can the applicable law be considered sufficiently accessible and foreseeable? Was the interference "necessary in a democratic society" within the meaning of Articles 9 § 2, 10 § 2 and 11 § 2 of the Convention?

6. If the judgment of 7 May 2009 was not officially published in the period from May 2009 to June 2011, can the law on the basis of which Mr Bikeyev, Mr Bimukhanov, Mr Dubertalayev and Mr Krushenov were convicted be considered sufficiently accessible and foreseeable, as required by Article 7 of the Convention (see Kasymakhunov and Saybatalov v. Russia, nos. 26261/05 and 26377/06, §§ 89-95, 14 March 2013)?

7. As regards Mr Bikeyev's, Mr Bimukhanov's, Mr Dubertalayev's and Mr Krushenov's conviction, was there an interference with their right to freedom of religion, expression or association under Articles 9 § 1, 10 § 1 or 11 § 1 of the Convention? If so, was that interference justified in terms of Articles 9 § 2, 10 § 2 and 11 § 2?

Appendix

Application no 2841/10

Fatikh Gayazovich BASYROV is a Russian national who was born in 1954, lives in Kazan.

Application no 79469/13

1. Farit Ravkhatovich BIKEYEV is a Russian national who was born in 1961, lives in the Orenburg Region and is represented by Mr N. Dolubayev.

2. Akhmetkali Mendgaliyevich BIMUKHANOV is a Russian national who was born in 1958, lives in the Orenburg Region and is represented by Mr N. Dolubayev.

3. Temrbulat Urangaliyevich DURBELTAYEV is a Russian national who was born in 1965, lives in the Orenburg Region and is represented by Mr N. Dolubayev.

4. Kanat Muratovich KRUSHENOV is a Russian national who was born in 1977, lives in the Orenburg Region and is represented by Mr N. Dolubayev.

HRWF Comment

Tabligh Jamaat is a revivalist missionary movement within Islam, founded in India in the early twentieth century. The term means 'those who preach' and is sometimes called the 'Society for Spreading Faith.' The Tabligh Jamaat movement seeks to revitalise Muslims in their faith and encourage them to follow Islamic religious practices more vigorously.

Human Rights Without Frontiers and Sova-Center (Moscow) view the ban of the religious association Tabligh Jamaat inappropriate, since the organisation was engaged in promotion of Islam and was never implicated in incitements to violence. Human Rights Without Frontiers and Sova-Center (Moscow) consider the repression of the Tabligh Jamaat members to be unjustified.

See our description of the Tabligh Jamaat's teachings at http://hrwf.eu/wp-content/uploads/2017/04/AR-Tablighi-Jamaat.2015.pdf

RUSSIA: Ban of Said Nursi's writings and prosecution of his readers

Rashid Dzhabrail-Ogly ABDULOV against Russia (Application no 32040/12) and 8 other applications

European Court (31.08.2017) – http://bit.ly/2gmLEvI - The applications concern prosecution of members of religious movement Nurculuk ("Нуржулар") based on the writings of Said Nursi, a Muslim Turkish scholar who lived in the first half of the 20th century.

In May 2007 Risale-I Nur Collection, a body of commentary on the Quran written by Said Nursi, was declared extremist materials and banned by the Koptevskiy District Court of Moscow.

On 10 April 2008 the Supreme Court of the Russian Federation, sitting in camera, declared Nurculuk an extremist 10rganization and banned it. Mr Merazhov's, Mr Odilov's and Mr Salimzyanov's applications for a leave to appeal were rejected on the ground that they were not a party to the proceedings and their rights were not affected by the ban.

On various dates between 2011 and 2015 the applicants were convicted of leadership or membership of an extremist 10rganization, an offence under Article 282.2 §§ 1 and 2 of the Criminal Code and sentenced to fines, correctional labour or imprisonment ranging between one year conditional on one year's probation and one year and six months really served. The courts found that they had participated in the activities of Nurculuk after it had been declared an extremist 10rganization, in particular by reading in groups extremist books by Said Nursi, books by Muhammed Fethullah Gülen and other Islamic books some of which had been also declared extremist.

Mr Abdulov was also convicted, for the same activities, of incitement of hatred or discord as well as abasement of human dignity, an offence under Article 282 § 1 of the Criminal Code.

In August 2013, while the criminal proceedings against Mr Salimzyanov were still pending, his name was included in the list of persons suspected of extremist or terrorist activities. That information was widely published by the media and on Internet. The applicant's bank account was blocked and he was unable to open a new bank account. He was also unable to find employment. His judicial review complaint was rejected.

In December 2014 Mr Merazhov was dismissed from his post as a professor of mathematics at a university on the ground that he had been convicted of leadership of an extremist 10rganization, a criminal offence against the constitutional foundations and security of the Russian Federation.

Questions to the Parties

1. Was the judgment of 10 April 2008 by the Supreme Court of the Russian Federation officially published? If it was published, the Government are requested to produce a copy of the official publication of the full text or, at least, the operative part of the judgment.

2. As regards the Supreme Court's decision to declare Nurculuk ("Нуржулар") an extremist 10rganization and ban it, was there a violation of Mr Salimzyanov's rights to freedom of religion, expression and association under Articles 9, 10 and 11 of the Convention? In particular, what legitimate aim did that measure pursue, was it proportionate to that legitimate aim and necessary in a democratic society?

3. Given that members of Nurculuk were not notified of the date of the hearing of 10 April 2008 and that Mr Salimzyanov was refused leave to appeal against the judgment, has there been a violation of Article 13 of the Convention in conjunction with Articles 10

and 11 of the Convention in respect of Mr Salimzyanov (see the Constitutional Court's judgment no. 10-P of 21 April 2010, point 3.1)?

4. Has Mr Kazikhanov complied with the six-month time-limit laid down in Article 35 § 1 of the Convention?

5. As regards each applicant's conviction, was there an interference with his or her right to freedom of religion, expression or association under Articles 9 § 1, 10 § 1 or 11 § 1 of the Convention? Was the interference prescribed by law? In particular, if the judgment of 10 April 2008 was not officially published, can the applicable law be considered sufficiently accessible and foreseeable? Was the interference "necessary in a democratic society" within the meaning of Articles 9 § 2, 10 § 2 and 11 § 2 of the Convention?

6. As regards the confiscation and destruction of religious books belonging to Mr Merazhov and Mr Odilov and the retention and destruction of files with religious contents on their computers, was there an interference with their right to freedom of religion or expression under Articles 9 § 1 or 10 § 1 of the Convention? Was the interference prescribed by law and "necessary in a democratic society" within the meaning of Articles 9 § 2 and 10 § 2 of the Convention?

7. As regards the inclusion of Mr Salimzyanov's name in the list of persons suspected of extremist or terrorist activities:

– Was there an interference with his right to freedom of religion, expression or association under Articles 9 § 1, 10 § 1 or 11 § 1 of the Convention? Was the interference prescribed by law? Was it "necessary in a democratic society" within the meaning of Articles 9 § 2, 10 § 2 and 11 § 2 of the Convention?

– Given the repercussions of this measure on Mr Salimzyanov's everyday life, was there an interference with his right to respect for private life under Article 8 § 1 of the Convention? Was the interference prescribed by law? Was it "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention?

– Did Mr Salimzyanov have an effective domestic remedy in respect of his complaints under Articles 8, 9, 10 and 11 of the Convention, as required by Article 13 of the Convention?

8. As regards Mr Merazhov's dismissal from his post as a university professor:

– Was there an interference with his right to freedom of religion, expression or association under Articles 9 § 1, 10 § 1 or 11 § 1 of the Convention? Was the interference prescribed by law, in particular in the light of the Constitutional Court's ruling no. 19-П of 18 July 2013? Was the interference "necessary in a democratic society" within the meaning of Articles 9 § 2, 10 § 2 and 11 § 2 of the Convention?

– Was there an interference with his right to respect for private life under Article 8 § 1 of the Convention? Was the interference prescribed by law? Was it "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention?

HRWF Comment

Said Nursi followers are prosecuted for religious activities that do not pose any public danger. They deny that there is any movement named Nurculuk or Nurcular. Nursi himself never advocated or incited violence, called for the overthrow of the regime or favoured the establishment of a caliphate. Nursi's teachings were moderate in character and appeal to Muslims wishing to reconcile Islamic teaching and modernity. Followers meet to discuss his works in private homes and do not pose any threat.

See our description of the Turkish theologian's teachings at http://hrwf.eu/wp-content/uploads/2017/04/AR-Said-Nursi-Readers.2015.pdf

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RUSSIA: A complaint in Strasbourg against Russia about the right to share one's beliefs

Application no. 27227/17 Donald Jay OSSEWAARDE against Russia

HRWF (02.08.2017) - On 30 March 2017, Donald Jay Ossewaarde lodged a complaint against Russia and on 6 July, the European Court communicated questions to the parties.

Statement of facts

The applicant, Mr Donald Jay Ossewaarde, is a citizen of the United States of America (USA) who was born in 1960 and who has been living in Oryol, Russia, since 2005 on the basis of renewable residence permits. He is represented before the Court by Ms T. Glushkova, Ms T. Chernikova, Mr D. Shvedov, and Mr K. Koroteyev, lawyers practising in Moscow.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarized as follows. The applicant is a Baptist Christian. Since moving to Oryol in Russia, he and his wife have regularly gathered people at their home for prayer and Bible reading. The applicant personally invited people to those meetings or put invitations in people's mailboxes.

On Sunday, 14 August 2016, as the applicant was holding a Bible-reading meeting in his home, the police officers walked in through the
door that was not locked. The police waited for the end of the service to ask questions and take statements from the applicant and the participants. At about 1 p.m. they took the applicant to the police station to take his fingerprints.

At the station the applicant was shown a statement by a "concerned resident" who had complained to the police about "foreign religious
cultists" pasting Gospel tracts to a bulletin board at her apartment block. In the subsequent proceedings, it transpired that the "concerned resident" Ms B. was a deputy chairman of the Oryol Regional Government in charge of security matters.

The police charged the applicant with the offence under Article 5.26(5) of the Code of Administrative Offences for placing invitations to religious services on bulletin boards, which was interpreted as spreading of information about his religion among non-members of his religious group, and for conducting "missionary activities" without notification of establishment of a religious group.

After two-and-a-half hour's detention at the police station the applicant was taken before the Zheleznodorozhnyy District Court in Oryol. He pleaded his innocence, maintaining that he was not a member of any religious association in Russia and could not exercise "missionary activities" within the meaning of the Religions Act. At approximately 7 p.m. the District Court convicted the applicant for conducting "missionary activities" without having notified the authorities of establishing a religious group, and fined him 40,000 Russian roubles.

On 30 September 2016 the Oryol Regional Court rejected the applicant's appeal.

On 28 February 2017 the Constitutional Court dismissed the applicant's constitutional complaint. It held in particular that it was not competent to determine the question of fact whether the applicant "had been a member of any religious association and carried out missionary activities on its behalf by involving other persons into the activities of the religious association or whether he simply disseminated his religious beliefs in public".

Complaints

The applicant complains under Articles 9 and 11 of the Convention that he was punished for manifesting his religion in community with others. He also invokes Article 14 in conjunction with the above provisions to complain about a difference in treatment between Russian and foreign nationals under Article 5.26 of the Code of Administrative Offences.

The applicant also complains under Article 5 § 1 of the Convention that his detention at the police station was not necessary because nothing prevented the police for drawing up the offence record on the spot.

Source:
https://www.strasbourgconsortium.org/common/document.view.php?docId=7365

BELGIUM: Ban on wearing face covering in public in three Belgian municipalities was not in breach of the Convention

Registrar of the European Court (11.07.2017) - In today's **Chamber** judgment (1) in the case of Dakir v. Belgium (application no. 4619/12) the European Court of Human Rights held, unanimously, that there had been: **no violation of Articles 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion)** of the European Convention on Human Rights**, no violation of Article 14 (prohibition of discrimination), taken together with Articles 8 and 9 of the Convention, and a violation of Article 6 § 1 (right of access to a court).**

The case concerned a by-law adopted in June 2008 by three Belgian municipalities (Pepinster, Dison and Verviers) concerning a ban on the wearing in public places of clothing that conceals the face, and the subsequent proceedings before the *Conseil d'État*.

The Court found in particular that the ban imposed by the joint by-law of municipalities in the Vesdre police area could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others. It therefore held that the contested restriction could be regarded as "necessary" "in a democratic society", and that – similarly to the situation which had previously arisen in France (*S.A.S. v. France2*) – the question whether or not it should be permitted to wear the full-face veil in public places in Belgium constituted a choice of society.

The Court also held that the decision by the *Conseil d'État* to declare Ms Dakir's application inadmissible on the ground that it was based only on Article 113*bis* of the by-law, without reference to Article 113, had been excessively formalistic, and that Ms Dakir's access to the *Conseil d'État* had been limited to such an extent that it had upset the fair balance that ought to be struck between, on the one hand, the legitimate concern to ensure that the formal procedure for appealing to courts was complied with and, on the other, the right of access to the courts. The Court noted that Ms Dakir's arguments

on the merits had been set out in a substantiated and structured manner and were of particular significance.

Principal facts

The applicant, Fouzia Dakir, is a Belgian national who was born in 1977 and lives in Dison (Belgium). In June 2008 the municipalities of Pepinster, Dison and Verviers adopted a municipal by-law providing in Article 113*bis* thereof for a ban on the wearing of clothing concealing the face, at all times and in all public places.

In August 2008 Ms Dakir, presenting herself as a Muslim who had decided on her own initiative to wear the niqab – a veil covering the face except for the eyes – applied to the *Conseil d'État* for the annulment of the ban. She claimed, among other things, that the provision expressly concerned the Islamic veil that she wore and that the resulting ban constituted an interference with the rights secured by Articles 8, 9, 10 and 14 of the European Convention on Human Rights. She also contended that the interference had no legitimate aim as secularism was not a constitutional principle and the wearing of the veil could not be subject to a blanket ban. In June 2011 the *Conseil d'État* dismissed the case for failure to comply with an admissibility condition that it raised of its own motion.

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), and 10 (freedom of expression), taken separately and together with Article 14 (prohibition of discrimination) of the Convention, Ms Dakir complained about the ban on wearing of the full veil in public spaces in the three municipalities.

Ms Dakir also relied on Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy); she submitted that the *Conseil d'État* did not examine the merits of her arguments on the grounds that she had not lodged her application against Article 113 of the by-law but instead against Article 113*bis* which, according to the *Conseil d'État*, was its duplication.

The application was lodged with the European Court of Human Rights on 22 December 2011.

The non-governmental organisation Liberty and the Human Rights Centre of Ghent University were granted leave to intervene in the written procedure as third parties.

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

Robert **Spano** (Iceland), *President*,
Julia **Laffranque** (Estonia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),
and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Articles 8 (right to respect for private and family life) and 9 (right to freedom of thought, conscience and religion)

The Court noted, firstly, that the contested ban had a legal basis – the joint by-law of the municipalities included in the Vesdre police area – and thus met the criteria set out in its case-law concerning Articles 8 and 9 of the Convention.

Secondly, as in the case of *S.A.S. v. France2*, the Court considered that the aim of ensuring the observance of the minimum requirements of life in society could be considered as part of the protection of the rights and freedoms of others, and that the contested ban could be regarded as justified in its principle solely in so far as it sought to guarantee the conditions of "living together".

Thirdly, the Court indicated that, by reason of their direct and continuous contact with the vital forces of their countries, the State authorities were in principle better placed than an international court to evaluate local needs and conditions. In matters of general policy, on which opinions within a democratic society could reasonably differ widely, the role of the domestic policy-maker was to be given special weight. With regard to Article 9 of the Convention, the State should thus, in principle, be afforded a wide margin of appreciation in deciding whether and to what extent a limitation of the right to manifest one's religion or beliefs was "necessary".

In the present case, the Belgian State had intended in adopting the contested provisions to respond to a practice that the State deemed incompatible, in Belgian society, with the ground rules of social communication and, more broadly, with the creation of the human relationships that were essential to life in society. The State was seeking to protect a principle of interaction between individuals that was, in its view, essential to the functioning of a democratic society. From this perspective, and similarly to the situation which had previously arisen in France (*S.A.S. v. France*), it seemed that the question whether or not it should be permitted to wear the full-face veil in public places constituted a choice of society. Furthermore, while it was true that the scope of the ban was broad, because all places accessible to the public were concerned, the contested provisions did not affect the freedom to wear in public any garment or item of clothing – with or without a religious connotation – which did not have the effect of concealing the face. Lastly, there was no consensus within the member States of the Council of Europe as to whether or not there should be a blanket ban on the wearing of the full-face veil in public places, which justified, in the Court's opinion, leaving the respondent State significant room for manoeuvre ("a very large margin of appreciation").

In consequence, the Court considered that the ban imposed by the joint by-law of the municipalities in the Vesdre police area could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others. It therefore held that the contested restriction could be regarded as "necessary" "in a democratic society" and concluded that **there had been no violation of Articles 8 and 9 of the Convention**.

Article 14 (prohibition of discrimination), taken together with Article 8 or with Article 9

The Court having found that the contested measure had an objective and reasonable justification for the reasons set out above, it held that there had been no violation of Article 14 of the Convention taken together with Articles 8 and 9.

Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy)

The *Conseil d'État* had rejected Ms Dakir's application on the grounds that it had been based solely on Article 113*bis* of the by-law, without referring to Article 113.

The Court noted that Article 113 could be considered as a general provision and that Article 113*bis* represented a particular application of it; the municipalities in question had used Article 113*bis* in the by-law because they considered that Article 113 was insufficient to prohibit the wearing of the burqa. It also noted that the submissions on the merits made by Ms Dakir had been set out in a substantiated and structured manner and were of particular significance, and that they had been discussed in the context of the adversarial written proceedings before the *Conseil d'État*. In consequence, the Court considered that the decision by the *Conseil d'État* to declare the application inadmissible had been excessively formalistic and that Ms Dakir's access to the *Conseil d'État* had been limited to such an extent that it had upset the fair balance that ought to be struck between, on the one hand, the legitimate concern to ensure that the formal procedure for appealing to courts was complied with and, on the other, the right of access to the courts. In consequence, it held that **there had been a violation of Article 6 § 1 of the Convention**.

Article 41 (just satisfaction)

The Court held that Belgium was to pay Ms Dakir 800 euros (EUR) in respect of costs and expenses.

Separate opinion

Judge Spano expressed a concurring opinion, joined by judge Karakaş which is annexed to the judgment.

The judgment is available only in French at *http://hudoc.echr.coe.int/eng/#{"itemid":["001-175139"]}*.

(1) Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.

Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

(2) *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts).

BELGIUM: Ban on wearing face covering in public in Belgium did not violate Convention rights

Registrar of the European Court (11.07.2017) - In today's **Chamber** judgment (1) in the case of Belcacemi and Oussar v. Belgium (application no. 37798/13) the European Court of Human Rights held, unanimously, that there had been: **no violation of Articles 8 (right to respect for private and family life) and 9 (freedom of thought, conscience and religion)** of the European Convention on Human Rights**, and no violation of Article 14 (prohibition of discrimination)** taken together with Articles 8 and 9.

The case concerned the ban on the wearing in public of clothing that partly or totally covers the face under the Belgian law of 1 June 2011.

The Court found in particular that the restriction sought to guarantee the conditions of "living together" and the "protection of the rights and freedoms of others" and that it was "necessary in a democratic society".

Firstly, as in the case of *S.A.S v. France2*, the Court found that the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the "protection of the rights and freedoms of others" and that the ban was justifiable in principle, solely to the extent that it sought to guarantee the conditions of "living together". In that connection, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context. Therefore, in adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which, for the State, was essential to ensure the functioning of a democratic society. The question whether the full-face veil was to be accepted in the Belgian public sphere was thus a choice of society.

Secondly, as regards the proportionality of the restriction, the Court noted that the sanction for noncompliance with the ban under Belgian law could range from a fine to a prison sentence. Imprisonment was reserved, however, for repeat offenders and was not applied automatically. In addition, the offence was classified as "hybrid" in Belgian law, partly under the criminal law and partly administrative. Thus, in the context of administrative action, alternative measures were possible and taken in practice at municipal level.

Principal facts

The applicants, Samia Belcacemi (a Belgian national) and Yamina Oussar (a Moroccan national), were born in 1981 and 1973 respectively and live in Schaerbeek and Liège (Belgium). The case concerns the Belgian law of 1 June 2011 banning the wearing in public places of clothing which partially or totally covers the face.

Ms Belcacemi and Ms Oussar present themselves as Muslims who have decided on their own initiative to wear the niqab – a veil covering the face except for the eyes – on account of their religious convictions.

Following the enactment on 1 June 2011 of the law in question, Ms Belcacemi initially decided to continue wearing the veil in the street. However, under pressure, she subsequently decided to remove her veil temporarily, being afraid that she might be stopped in the street and then heavily fined or even sent to prison. Ms Oussar, for her part, states that she has decided to stay at home, with the resulting restriction on her private and social life.

On 26 July 2011 Ms Belcacemi and Ms Oussar brought actions for the suspension and annulment of the law before the Constitutional Court. Their cases were dismissed by that court in October 2011 (application for suspension) and in December 2012 (application for annulment).

Complaints, procedure and composition of the Court

Relying on Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), and 10 (freedom of expression), taken separately and together

with Article 14 (prohibition of discrimination) of the European Convention on Human Rights, Ms Belcacemi and Ms Oussar complained about the ban on wearing the full-face veil.

Ms Belcacemi and Ms Oussar also relied on Articles 3 (prohibition of inhuman or degrading treatment), 5 § 1 (right to liberty and security), 11 (freedom of assembly and association) and Article 2 of Protocol No. 4 (freedom of movement) to the Convention, taken separately or together with

Article 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 31 May 2013.

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

Robert **Spano** (Iceland), *President*,
Julia **Laffranque** (Estonia),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Stéphanie **Mourou-Vikström** (Monaco),
and also Hasan **Bakırcı**, *Deputy Section Registrar.*

Decision of the Court

Article 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion)

The Court took the view that this part of the application had to be examined in the light of the liberty secured by Article 9 of the Convention, as in the *S.A.S. v. France2* case.

Firstly, the Court observed that the Law of 1 June 2011 – whose wording was very similar to that ofthe French Law of 11 October 2010 (2) – could be regarded as worded with sufficient precision to satisfy the requirement of foreseeability required by Articles 8 and 9 of the Convention.

Secondly, the Court found that the drafting history of the Belgian Law used three aims to justify the ban in Belgium: public safety, gender equality, and a certain conception of "living together" in society. It noted that, as it had found in *S.A.S. v. France(2)*, the concern to ensure respect for the minimum guarantees of life in society could be regarded as an element of the "protection of the rights and freedoms of others" and that the ban was justifiable in principle solely to the extent that it sought to guarantee the conditions of "living together".

Thirdly, the Court explained that, through their direct and constant contact with the stakeholders in their country, the State authorities were in principle better placed than an international court to assess the local needs and context. Where questions of general policy were at stake, concerning which there might be profound disagreements in a democratic society, particular importance had to be given to the national decision-maker. In addition, under Article 9 of the Convention the State had a broad margin of appreciation to decide whether and to what extent a restriction on the right to manifest one religion or convictions was "necessary". In adopting the provisions in question, the Belgian State had sought to respond to a practice that it considered to be incompatible, in Belgian society, with social communication and more generally the establishment of human relations, which were indispensable for life in society. It was a matter of protecting a condition of interaction between individuals which for the State was essential

to ensure the functioning of a democratic society. The question whether the full-face veil was accepted in the Belgian public sphere was thus a choice of society. As it had emphasised in *S.A.S. v. France*, the Court explained that in such cases it had to show reserve in its scrutiny of Convention compliance, in this case in assessing a decision taken democratically within Belgian society. It noted that the decision-making process leading to the ban in question had taken several years and had been marked by comprehensive debate in the lower house of Parliament and by a detailed examination of the various interests by the Constitutional Council. In addition, there was currently no consensus in such matters among the member States of the Council of Europe, whether for or against a blanket ban of the full-face veil, thus justifying a broad margin of appreciation for the Belgian State.

Fourthly, as regards the proportionality of the restriction, the Court noted that that the sanction for non-compliance with the ban under Belgian law could range from a fine to a prison sentence. The main sanction was the fine, being the lightest penalty. Imprisonment was reserved for repeat offenders and was not applied automatically. In addition, the offence was classified as "hybrid" in Belgian law, partly under the criminal law and partly administrative. Thus, in the context of administrative action, and contrary to what the applicants had contended, alternative measures were possible and taken in practice at municipal level. Moreover, the present application did not concern a specific sanction imposed on the applicants themselves. Consequently, having regard to the broad margin of appreciation afforded to the Belgian authorities, the Court found that the ban under the Law of 1 June 2011, even though it was controversial and undeniably carried risks in terms of the promotion of tolerance in society (see *S.A.S. v. France*), could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others".

The Court thus found that the impugned restriction could be regarded as "necessary in a democratic society", explaining that this conclusion applied both under Article 8 of the Convention and under Article 9. **Consequently, there had been no violation either of Article 8 or of Article 9 of the Convention.**

Article 14 (prohibition of discrimination), taken together with Articles 8 and 9

The Court reiterated that a general policy or measure which had disproportionate prejudicial effects on a group of individuals could be regarded as discriminatory – even if it did not specifically target the group and there was no discriminatory intent – if that policy or measure lacked "objective and reasonable" justification, if it did not pursue a "legitimate aim" or if there was no "reasonable relationship of proportionality" between the means used and the aim pursued. In the present case, the measure had an objective and reasonable justification for the same reasons as those developed above. **Consequently, there had been no violation of Article 14 of the Convention taken together with Articles 8 and 9 of the Convention.**

Other Articles

The Court took the view that no separate question arose under Article 10 (freedom of expression), taken separately and in conjunction with Article 14 of the Convention, and it dismissed the other complaints raised by Ms Belcacemi and Ms Oussar, pursuant to Article 35 §§ 3 and 4 (conditions of admissibility) of the Convention.

Separate opinion

Judge Spano expressed a concurring opinion, joined by judge Karakaş, which is appended to the judgment.

The judgment is available only in French at
http://hudoc.echr.coe.int/eng#{"itemid":["001-175141"]}

(1) Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.

Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

(2) *S.A.S. v. France* [GC], no. 43835/11, ECHR 2014 (extracts).

BULGARIA: Registration of a Muslim association denied

Refusal of Bulgarian authorities to register an association promoting the rights of the Muslim minority was not "necessary in a democratic society"

Registrar of the European Court (08.06.2017) - In today's **Chamber** judgment (1) in the case of **National Turkish Union and Kungyun v. Bulgaria** (application no. 4776/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 11 (freedom of assembly and association) of the European Convention on Human Rights.

The case concerned the refusal of the Bulgarian authorities to register an association promoting the rights of the Muslim minority in Bulgaria.
Referring back to its case-law, the Court found that there was no "pressing social need" to require any association wishing to pursue political aims to constitute a political party if it was not the intention of the founders to take part in elections.

The Court further noted that the domestic courts had not referred to any action of the association or its members which might have compromised the territorial integrity or unity of the nation, or any action or speech which might have been regarded as a call to hatred or violence.
It concluded that the refusal to register the applicant association had not been "necessary in a democratic society".

Principal facts

The applicants are the association National Turkish Union, and Menderes Mehmet Kungyun, a Bulgarian national who was born in 1950 and lives in Kazanlak. Mr Kungyun, a founder member and chair of the association, complained of the Bulgarian authorities' refusal to register the association.

In 2006 Mr Kungyun announced his intention to form an association dedicated to promoting the rights of the Muslim minority in Bulgaria. Following his announcement several hostile articles appeared in the press, criticising the association's aims and claiming variously that the applicant wanted to create an ethnic Turkish party and that he was receiving funding from secret services abroad. In May 2006 Mr Kungyun and five

other founder members applied to the Plovdiv Regional Court to have the association registered. The court refused their application on the grounds that one of the association's declared aims was political. Under the Constitution, only political parties were allowed to conduct political activities. The court also observed that commercial activities could not feature among the primary aims of a non-profit association. Lastly, the court noted a lack of precision in the association's constitution concerning its representative bodies.

Mr Kungyun appealed. The Court of Appeal upheld the original judgment and observed that an association's name should not be misleading or contrary to public morals. The name "National Turkish Union" referred to the existence of a Turkish nation in Bulgaria and implied a separatist
objective. Mr Kungyun appealed on points of law.

On 10 July 2007 the Supreme Court of Cassation dismissed his appeal and upheld the Court of Appeal's judgment.

Complaints, procedure and composition of the Court

The applicants alleged that the refusal to register the association "National Turkish Union" constituted a breach of their rights under Article 11 of the Convention (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 4 January 2008.

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

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan) and,
Pavlina **Panova** (Bulgaria)*, ad hoc Judge*,
and also Milan **Blaško**, *Deputy Section Registrar.*

Decision of the Court

Article 11

The Court observed that, in refusing registration of the association, the Supreme Court of Cassation had based its judgment on two grounds: the fact that the purpose of the association was political in nature and that the association sought to conduct political activities; the aims and name of the association breached Article 44 of the Constitution and presented a danger to national security. The other grounds set out by the lower courts had not been used by the highest court.

As regards the political nature of the association's aims, the Court had already taken the view in its case-law that such a ground could not justify a refusal to register an association. It found that there was no "pressing social need" to require any association wishing to pursue political aims to set up a political party if it was not the intention of its founders to take part in elections. The Court took the view that in the present case, the association's declared aim to "contribute to the development of political pluralism in the country" did not seem to imply that the association wished to take part in elections or in the exercise of power. Otherwise it could have been justified to impose on its founders the more restrictive legal form of political party.

Concerning the possibility of danger to national security, the Court observed that the expression of separatist views did not in itself imply a threat to the territorial integrity of the State or national security and did not as such justify a restriction of the rights secured by Article 11 of the Convention.

The use of the words "National Turkish" in the name of the association did not appear capable of undermining the territorial integrity or unity of the Bulgarian nation. Moreover, the Court did not see how the association's challenge to the monopoly of a political party in ethnically mixed regions would represent a risk for ethnic peace and would thus compromise the country's security.

The Court noted that the domestic courts had not referred to any action of the association or its members which might have compromised the territorial integrity or unity of the nation, or any action or speech which might have been regarded as a call to hatred or violence. It further observed that the national authorities would not have been powerless if that were the case. The regional court could order the dissolution of an association whose activities were incompatible with the Constitution, with the law, or with public morals. The mere supposition that an association could have engaged in such activities did not therefore justify a refusal to register it.

The Court thus concluded that the refusal to register the applicant association was not "necessary in a democratic society" and constituted a violation of Article 11.

Article 14

Having regard to its finding of a violation of Article 11, the Court took the view that it did not need to examine the complaint under Article 14 of the Convention.

Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicants 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

The judgment is available only in French.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution.

Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

GREECE: Application of shariah law to an inheritance dispute

Relinquishment in favour of the Grand Chamber in a case concerning the application of Islamic religious (Sharia) law to an inheritance dispute between Greek citizens who are Muslims

Registrar of the European Court (08.06.2017) - The Chamber of the European Court of Human Rights to which the case **Molla Sali v. Greece** (application no. 20452/14) was allocated has **relinquished jurisdiction in favour of the GrandC hamber of the Court [1].**

Molla Sali v. Greece (application no. 20452/14) concerns the application by the Greek courts of Islamic religious (Sharia) law to a dispute concerning inheritance rights over the estate of the late husband of Ms Molla Sali, a Greek national belonging to the country's Muslim minority.

Principal facts

The applicant, Ms Chatitze Molla Sali, is a Greek national who was born in 1950 and lives in Komotini (Greece).

On the death of her husband, Ms Molla Sali inherited his entire estate under the terms of a will drawn up by her late husband before a notary. The deceased's two sisters contested the will, on the grounds that their brother had belonged to the Thrace Muslim community and that all matters relating to his estate were therefore subject to Islamic law and to the jurisdiction of the mufti rather than to the provisions of the Greek Civil Code. They relied in particular on the 1920 Treaty of Sèvres and the 1923 Treaty of Lausanne, which provided for Islamic customs and Islamic religious law to be applied to Greek nationals who were Muslims.

The two sisters' claims were dismissed by the Greek courts at first instance and on appeal. In September 2011 the Thrace Court of Appeal found that the decision by the deceased, a Greek Muslim and a member of the Thrace religious minority, to request a notary to draw up a public will,

determining for himself the persons to whom he wished to leave his property and the manner in which this was done, was an expression of his statutory right to have his estate disposed of after his death under the same conditions as other Greek citizens. However, the Court of Cassation quashed that judgment on the grounds that questions of inheritance within the Muslim minority should be dealt with by the mufti in accordance with the rules of Islamic law. It therefore remitted the case to a different bench of the Court of Appeal for fresh consideration. On 15 December 2015 the Court of Appeal ruled that the law applicable to the deceased's estate was Islamic religious law and that the public will in question did not produce any legal effects. Ms Molla Sali appealed against that judgment on points of law.

Complaints and procedure

Relying on Article 6 § 1 (right to a fair hearing), taken alone and in conjunction with Article 14 (prohibition of discrimination), Ms Molla Sali complains of the application to her inheritance dispute of Sharia law rather than the ordinary law applicable to all Greek citizens, despite the fact that her husband's will was drawn up in accordance with the provisions of the Greek Civil Code. She also alleges that she was subjected to a difference in treatment on grounds of religion.

Under Article 1 of Protocol No. 1 (protection of property), Ms Molla Sali contends that, by applying Islamic religious law rather than Greek civil law to her husband's will, the Court of Cassation deprived her of three-quarters of her inheritance.

The application was lodged with the European Court of Human Rights on 5 March 2014. It was communicated2 to the Greek Government, with questions from the Court, on 23

August 2016. A statement of facts (http://bit.ly/2sm7X98) submitted to the Government can be found on the Court's website.

On 6 June 2017 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

[1] Article 30 of the European Convention of Human Rights and Article 72 of the Rules of the Court.

SWITZERLAND: Swiss Muslim girls must learn to swim with boys, court rules

Switzerland has won a case at the European Court of Human Rights (ECHR) obliging Muslim parents to send their children to mixed swimming lessons.

BBC (10.01.17) - http://bbc.in/2ii28n3 - It said authorities were justified in giving precedence to enforcing "the full school curriculum" and the children's "successful integration" into society.

The ECHR acknowledged that religious freedom was being interfered with.

But judges said it did not amount to a violation.

The case was brought by two Swiss nationals, of Turkish origin, who refused to send their teenage daughters to the compulsory mixed lessons in the city of Basel.

Education officials, however, said that exemptions were available only for girls who had reached the age of puberty - which the girls had not reached at the time.

In 2010, after a long-running dispute, the parents were ordered to pay a combined fine of 1,400 Swiss Francs ($1,380, £1,136) "for acting in breach of their parental duty".

They argued that such treatment was a violation of article nine of the European Convention on Human Rights, which covers the right to freedom of thought, conscience and religion.

In a statement, the ECHR said the refusal to exempt the girls had interfered with the right to freedom of religion.

But it also said the law involved was designed to "protect foreign pupils from any form of social exclusion" and Switzerland was free to design its education system according to its own needs and traditions.

Schools, it said, played an important role in social integration, and exemptions from some lessons are "justified only in very exceptional circumstances".

"Accordingly, the children's interest in a full education, thus facilitating their successful social integration according to local customs and mores, prevailed over the parents' wish to have their children exempted from mixed swimming lessons," the court said.

The court also noted that "very flexible arrangements" had been offered as a compromise, including allowing the girls to wear burkinis during lessons rather than traditional swimwear, and allowing them to change clothes with no boys in the room.

Additional Information

Swimming, burkinis, and integration

- In 2016, officials in Basel suspended the citizenship process for the family of two teenage Muslim brothers who refused to shake hands with female teachers.

- Switzerland has also applied the law to other cases - a man of Bosnian origin was fined last year for refusing to allow his daughter to take part in swimming lessons during school hours, among other activities.

- Germany also battled with the issue of mixed swimming lessons in 2013, when a judge ruled that a 13-year-old girl must attend - but allowed the wearing of a burkini.

- In France, in 2009, a woman was banned from swimming in a public pool in her burkini. That would be followed in 2016 by a controversial official ban on the garment in public spaces - which was eventually overturned by French courts.

- France, Belgium, and the Netherlands all have bans on Muslim veils in public, to varying degrees.

SWITZERLAND: The European Court rejects the exemption of Muslim girls from compulsory mixed swimming lessons

By refusing to exempt two Muslim pupils from compulsory mixed swimming lessons, the Swiss authorities had given precedence to the children's obligation to follow the full school curriculum and had not infringed the right to freedom of religion

Registrar of the Court (10.01.17) - http://bit.ly/2j0ckzt - In today's Chamber judgment in the case of Osmanoğlu and Kocabaş v. Switzerland (application no. 29086/12) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights.

The case concerned the refusal of Muslim parents to send their daughters, who had not reached the age of puberty, to compulsory mixed swimming lessons as part of their schooling and the authorities' refusal to grant them an exemption.

The Court found that the applicants' right to manifest their religion was in issue and observed that the authorities' refusal to grant them an exemption from swimming lessons had been an interference with the freedom of religion, that interference being prescribed by law and pursuing a legitimate aim (protection of foreign pupils from any form of social exclusion).

The Court emphasised, however, that school played a special role in the process of social integration, particularly where children of foreign origin were concerned. It observed that the children's interest in a full education, facilitating their successful social integration according to local customs and mores, took precedence over the parents' wish to have their daughters exempted from mixed swimming lessons and that the children's interest in attending swimming lessons was not just to learn to swim, but above all to take part in

that activity with all the other pupils, with no exception on account of the children's origin or their parents' religious or philosophical convictions. The Court also noted that the authorities had offered the applicants very flexible arrangements to reduce the impact of the children's attendance at mixed swimming classes on their parents' religious convictions, such as allowing their daughters to wear a burkini. It also noted that the procedure in the present case had been accessible and had enabled the applicants to have the merits of their application for an exemption examined.

The Court accordingly found that by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities had not exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education.

Principal facts

The applicants, Aziz Osmanoğlu and Sehabat Kocabaş, are two Swiss nationals who also have Turkish nationality. They were born in 1976 and 1978 respectively and live in Basle (Switzerland).

Mr Osmanoğlu and Ms Kocabaş refused to send their daughters, born in 1999 and 2001, to compulsory swimming lessons as part of their schooling, on the ground that their beliefs prohibited them from allowing their children to take part in mixed swimming lessons. They were advised by the Public Education Department of the Canton of Basle Urban that they risked a maximum fine of 1,000 Swiss francs (CHF) each if their daughters did not attend the compulsory lessons, as the girls had not yet reached the age of puberty and as such could not claim exemption under the legislation.

Despite attempts at mediation by the school, Mr Osmanoğlu's and Ms Kocabaş's daughters continued not to attend the swimming lessons. As a result, in July 2010 the education authorities ordered Mr Osmanoğlu and Ms Kocabaş to pay a fine of CHF 350 per parent and per child (a total of approximately 1,292 euros (EUR)) for acting in breach of their parental duty. The applicants appealed to the Court of Appeal of the Canton of Basle Urban, which dismissed their claims in May 2011. They lodged a further appeal with the Federal Court which was dismissed in March 2012 on the grounds that there had been no breach of the applicants' right to freedom of conscience and belief.

Complaints, procedure and composition of the Court

Relying on Article 9 (right to freedom of thought, conscience and religion), Mr Osmanoğlu and Ms Kocabaş alleged that the requirement to send their daughters to mixed swimming lessons was contrary to their religious convictions.

The application was lodged with the European Court of Human Rights on 23 April 2012. Judgment was given by a Chamber of seven judges, composed as follows:

Luis López Guerra (Spain), *President*,
Helena Jäderblom (Sweden),
Helen Keller (Switzerland),
Branko Lubarda (Serbia),
Pere Pastor Vilanova (Andorra),
Alena Poláčková (Slovakia),
Georgios A. Serghides (Cyprus),
and also Stephen Phillips, *Section Registrar.*

Decision of the Court

Article 9 (right to freedom of thought, conscience and religion)
The Court observed that the case concerned a situation in which the applicants' right to manifest their religion was in issue. It also noted that the refusal by the authorities to exempt the applicants' daughters from compulsory mixed swimming lessons had been an interference with the applicants' right to their freedom of religion, that interference being prescribed by law and seeking to protect foreign pupils from any form of social exclusion. It also pointed out that the States enjoyed a considerable discretion ("margin of appreciation") concerning matters relating to the relationship between State and religions and the significance to be given to religion in society, particularly where these matters arose in the sphere of teaching and State education. Whilst refraining from pursuing any aim of indoctrination, the States were nonetheless free to devise their school curricula according to their needs and traditions.

With regard to weighing up the competing interests, the Court observed that school played a special role in the process of social integration, and one that was all the more decisive where pupils of foreign origin were concerned; that given the importance of compulsory education for children's 3 development, an exemption from certain lessons was justified only in very exceptional circumstances, in well-defined conditions and having regard to equality of treatment of all religious groups; and that the fact that the relevant authorities did allow exemptions from swimming lessons on medical grounds showed that their approach was not an excessively rigid one.

Accordingly, the children's interest in a full education, thus facilitating their successful social integration according to local customs and mores, prevailed over the parents' wish to have their children exempted from mixed swimming lessons. Sports education, of which swimming was an integral part in the school attended by the applicants' children, was of special importance for children's development and health. A child's interest in attending those lessons was not just to learn to swim and to take physical exercise, but above all to take part in that activity with all the other pupils, with no exception on account of the child's origin or the parents' religious or philosophical convictions. Moreover, the authorities had offered the applicants very flexible arrangements: their daughters had been allowed to wear a burkini during the swimming lessons and to undress with no boys present. Those arrangements had been such as to reduce the impact of the children's attendance at mixed swimming classes on their parents' religious convictions.

Another factor to be taken into consideration was the seriousness of the punishment imposed on the applicants. The fines (a total of CHF 1,400) imposed by the authorities on the applicants, after duly warning them, had been proportionate to the aim pursued, namely, to ensure that the parents sent their children to the compulsory lessons, above all in their own interests: the children's successful socialisation and integration.

With regard to the procedure followed in the present case, the authorities had published a guideline on dealing with religious matters in schools, in which the applicants were able to find the relevant information; the relevant authority had warned them of the fine they would incur; following a meeting with the school authorities and two letters sent to the applicants, the relevant authority had imposed the fines prescribed under domestic law which the applicants had been able to challenge first before the Court of Appeal of the Canton of Basle Urban and then before the Federal Court. At the end of fair and adversarial proceedings those two courts, in duly reasoned decisions, had arrived at the conclusion that the public interest in following the full school curriculum should prevail over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters. The applicants had therefore had the benefit of an accessible procedure enabling them to have the merits of their application for an exemption examined for the purposes of Article 9 of the Convention.

Consequently, the Court found that, by giving precedence to the children's obligation to follow the full school curriculum and their successful integration over the applicants' private interest in obtaining an exemption from mixed swimming lessons for their daughters on religious grounds, the domestic authorities had not exceeded the considerable margin of appreciation afforded to them in the present case, which concerned compulsory education. The Court therefore held that there had been no violation of Article 9 of the Convention.

See the judgement (only in French) at http://hudoc.echr.coe.int/eng#{"itemid":["001-170346"]}