Table of Contents

Georgian Muslim Relations and Others v. Georgia

A bleeding pig's head and other expressions of religious hatred with no police intervention

by dr. Cathérine Van de Graaf[1]

Strasbourg Observers (23.04.2024) - On 30 November, the Fifth Division of the European Court of Human Rights ruled in the case of "Georgian Muslim Relations and Others v. Georgia." The Court ruled that Georgia had violated its positive obligations under Articles 8 and 9 of the Convention in conjunction with Article 14 as the applicants were not afforded the required protection against overtly religiously biased acts of violence. In addition, the Court found a violation of Article 1 of Protocol No. 1 since, on the one hand, the applicants were denied access to their building due to unlawful acts of private individuals and to the failure of the authorities to take adequate measures against them, and, on the other hand, since their use of the building was impeded by the failure to connect the school building to the sewerage system. This last element will not be tackled in the blogpost.

The Facts of the Case

The application was submitted by a non-profit organisation whose main objective is to promote support for religious education and provide free education to socially vulnerable children, along with seven Georgian nationals belonging to the Muslim minority. In August 2014, the 'Georgian Muslim Relations' organisation obtained the right to use a piece of land under a lease agreement and decided to open a boarding school for Muslim children at that location. Already in June of that same year (when they had learned about the upcoming plan), members of the local Orthodox Christian population started protesting against the possible opening. During these protests, barricades were constructed to prevent the applicants' access to the building (including on the day of the school's opening) and insults were hurled at them on several occasions. On 10 September, the protesters slaughtered a pig in front of the school building and nailed the bleeding head to the entrance door. At the same time, a metal cross was fixed in front of the building. One of the protesters stated during a television interview that this was done 'because Muslims hate pigs'.

On the day of the pig slaughter, criminal proceedings were initiated based on threats received by the seventh applicant that the school building would be set on fire and vandalised. In the following days, several applicants were interviewed, who confirmed the events as well as previous altercations. The local residents interviewed stated that they had nothing against Muslims, but that opening a Muslim school was not necessary as the area was mainly home to Orthodox Christians. Several other proceedings ran parallel to the criminal proceedings. The applicants' legal representative repeatedly wrote to the Georgian Minister of the Interior and the chief prosecutor about the events around the school and complained about the ineffective police response. It was stated that the police had patrolled the area from 15 September but had never intervened. Several additional hate statements were also reported. Among other things, protesters stated that the

applicants were participating in Turkish expansion, that one applicant was 'a son of Turks' for which there is no place there, they were 'Tatars', that if he was a Georgian he should go to church and also that they did not need a religion with foreign money in the area. In addition, they were denied service in a local grocery shop because they were Muslims. After reporting another incident in June 2015, an investigator found two bullet-like fragments on the ground and damage to a window. Forensic expert examination determined that they were shell casings from a pneumatic rifle that did not constitute ammunition.

In 2019, the prosecutor issued a decision changing the qualification of the alleged crime from 'threat' to 'persecution on religious grounds' and denied a legal basis to grant procedural victim status to any of the applicants. Additional investigative measures were taken in 2019 and 2020, and the applicants regularly voiced complaints about the inadequacy of the investigation and police misconduct. The criminal investigation is still ongoing.

In November 2014, some applicants filed a civil suit against the Ministry of the Interior and three private individuals, asking the Batumi court to order the defendants to stop their ongoing discriminatory acts against the applicants. The Ministry's representative explained that it was not part of their responsibility to remove barricades on private property. On 19 September 2016, the Batumi court granted the applicants' claims and concluded that the attitude of three private individuals was Islamophobic. However, the Kutaisi Court of Appeal found that there was no evidence that the Ministry had failed to perform its duties and that it had done so on discriminatory grounds. Furthermore, it considered the applicants' argument that the police's inaction was motivated by religious bias was to be unconvincing. Since the Kobuleti police had not received any complaints about a possible interference with the functioning of the boarding school in the period between 1 January 2016 and 1 January 2019, there was no reason to believe that there was any interference with the functioning of the boarding school.

The Court's Decision

First, the Court held that it was not satisfied that the contested acts were so serious that they caused the applicants – all adults – the kind of anxiety, fear or feelings of inferiority necessary to reach the threshold of Article 3. The Court did accept the applicants' claim that acts were intended to publicly mock, humiliate or frighten the applicants. It went on to state that an individual's ethnic and religious identity may fall within the personal sphere protected by Article 8, as 'any negative stereotyping of a group, when it reaches a certain level, is capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group' (par. 78). The Court further noted that all the individual applicants were Muslims who were active members of the Muslim religious community in the region concerned and involved in the establishment of the boarding school, an activity related to education within the meaning of Article 9 of the Convention. One applicant was the head of Georgian Muslims Relations and two applicants were *khojas* (Islamic teachers). The Court decided to assess their complaints simultaneously under Articles 8 and 9 of the Convention in conjunction with Article 14 on the basis that the acts were caused by religious hatred and prejudice. The applicants' complaint was not about direct involvement of the police or other public authorities in the hate campaign, but rather their inadequate response to it The Court ruled that the public authorities had a positive obligation to safeguard the applicants' rights without discrimination and thus to take prompt and adequate measures to stop unlawful 'mob action', hate speech and other discriminatory acts on the part of local people. They were therefore expected to take proactive steps that would 'realistically' enable the applicants to exercise their religious rights.

Where there are conflicting rights, the Court's role is to examine whether the authorities have tried to strike a fair balance between the two. In this regard, the Court noted that the State did not examine how a balance could be struck between respecting the rights of the applicants and those of the protesters. It added that 'attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating xenophobic or otherwise discriminatory speech in the face of freedom of expression exercised in an irresponsible manner' (par. 89). The tension at the boarding school did not arise so spontaneously that it could justify that the police could only avoid physical confrontations. With the religious hostility present, the authorities should have anticipated that the opening of the school would be obstructed. The Court thus held that by failing to identify and punish the perpetrators and restore public order, the police allowed the protesters to engage repeatedly and for lengthy periods of time in what was later qualified as discriminatory treatment by the national courts. Faced with police indifference, the applicants had no choice but to simply tolerate these acts. In addition, the Court also took note of the length of some procedures. It stressed that since the anti-discrimination proceedings against the Ministry of Interior lasted almost eight years, the effectiveness of the remedy was undermined. Certain other proceedings were completed only six years after the events in question.

In conclusion, the discriminatory behaviour, which consisted mainly of hate speech, threats, and degrading treatment, coupled with the inaction of the police, created feelings of fear and insecurity among the applicants and prevented them from opening a boarding school. The Court held that there were clear grounds to believe that the applicants had been insulted and threatened because they were Muslim. It was therefore essential that the relevant national authorities took all reasonable steps to unmask the role of possible religious bias in the events and protect the applicants from it.

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- **Discussion**
- **When does deep humiliation and traumatisation become degrading treatment?**
- **Islamophobia before the Court**
- **Conclusion**
- **On Strasbourg Observers**

Strasbourg Observers is an academic blog that discusses recent developments at the European Court of Human Rights. The editorial team of Strasbourg Observers is based at the Human Rights Centre of Ghent University and the Centre for Government and Law of Hasselt University.

Hearing on blood transfusion administered to a Jehovah's Witness against her will

Watch HERE the video recording of the Grand Chamber hearing in the case Pindo Mulla v. Spain (Application no. 15541/20)

Registrar of the European Court (10.01.2024) - On 10 January, the European Court of Human Rights held a Grand Chamber hearing in the case of Pindo Mulla v. Spain (Application no. 15541/20).

The case concerns blood transfusions administered to the applicant, a Jehovah's Witness, despite her refusal to undergo a blood transfusion of any kind (full blood, red blood cells, white blood cells, platelets or blood plasma).

The case

The applicant, Rosa Edelmira Pindo Mulla, is an Ecuadorian national who was born in 1970 and lives in Soria (Spain). She is a Jehovah's Witness. A core tenet of her religious beliefs is her absolute opposition to blood transfusions and the donation and storage of blood and blood products.

Following medical tests carried out in July 2017, Ms Pindo Mulla was advised to have surgery. She subsequently issued three documents: an advance directive, a lasting power of attorney and an informed consent document. Each recorded her refusal to undergo a blood transfusion of any kind (full blood, red blood cells, white blood cells, platelets or blood plasma) in any healthcare situation, even if her life was in danger, but that she would accept any medical treatment that did not involve the use of blood.

On 6 June 2018, Ms Pindo Mulla was admitted to Soria Hospital. The following day, due to haemorrhaging, she was transferred by special ambulance to a hospital in Madrid.

Upon learning that the applicant was a Jehovah's Witness, anaesthesiologists at that hospital contacted the duty judge for instructions on what to do. The duty judge, who did not know the identity of the patient, nor her precise wishes, and in the absence of concrete information on her state of health, authorised all medical or surgical procedures that were needed to save her life.

Surgery was performed that day and blood transfusions were administered to Ms Pindo Mulla, who had not been informed of the duty judge's order, despite still being conscious when she was taken to the operating theatre. The parties dispute, however, whether she was fully lucid at that time.

This decision of the duty judge was upheld on appeal and her subsequent amparo appeal was declared inadmissible by the Constitutional Court.

Procedure

The application was lodged with the European Court of Human Rights on 13 March 2020.

Relying on Articles 8 (right to respect for private life) and 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights, the applicant complains that while her refusal of certain medical treatment had been, in her view, clearly established in many official documents, they were ignored by the national authorities.

On 16 April 2021 the Spanish Government was given notice of the application, with questions from the Court. A statement of facts is available in English on the Court's website.

The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 4 July 2023.

The French Government and the European Association of Jehovah's Witnesses were granted leave to intervene in the written proceedings as third parties.

After the hearing the Court began its deliberations in private. Its ruling in the case will, however, be made at a later stage.