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A strange court decision: Catholic bishops to pay 1500 EUR on a gender-based issue

Only men can become deacons in the Catholic Church. The judges say they cannot change this but can sentence Catholic authorities to indemnify the woman.

By Massimo Introvigne

Bitter Winter (02.07.2024) - On June 25, the Civil Tribunal of Malines, in Belgium, rendered a strange decision against two Roman Catholic Bishops. Jozef De Kesel, the former Archbishop of Malines-Brussels, and the current Archbishop of the same Archdiocese, Luc Terlinden, have been sentenced to pay Euro 1,500 to a woman called Veer Dusauchoit.

The woman tried twice to enroll in training to become a Catholic deacon and was rejected with the motivation that only men can become deacons in the Roman Catholic Church. While the matter whether women can be ordained as deacons (a lesser position with respect to priests) is being discussed in the Catholic Church, Pope Francis has repeatedly expressed his negative opinion on the issue.

The decision is both surprising and dangerous since it is yet another intrusion of secular courts into the internal affairs of a religious organization. It would be inconceivable in the United States and in other countries that affirm the principle that the corporate freedom of religion of religious organizations prevails on the individual rights of the devotees.

However, the decision should be read in its entirety, and has been somewhat misinterpreted by some international media. First, the decision does not compel the Belgian Catholic Church to ordain women as deacons. It emphasized that its subject matter was Dusauchoit's right to attend a training, irrespective whether at the end of the training she might be ordained or not.

Second, the decision was very cautious in affirming that, not to violate principles of religious liberty, the court cannot compel the Catholic Church to admit Dusauchoit to the training. It can only sentence her bishops to pay to her a monetary indemnification.

It is difficult to avoid the impression that the court wanted to accommodate prevailing feminist orthodoxy without violating general principles of religious liberty in a way that would compel the European Court of Human Rights, if not higher Belgian courts, to intervene (unless the Catholic Church would prefer to settle and close the case for public relations reasons).

As it is, the decision is a legal monstrosity. Churches and other religious organizations have the right to organize trainings and courses restricted to certain categories of persons (a man cannot train to become a nun either). The religious liberty of individual devotees such as Dusauchoit is protected by their possibility to leave the Roman Catholic Church and join one among many other Christian churches that ordain women as deacons and even as priests. Nobody compels Dusauchoit to remain in the Roman Catholic Church. But as long as she stays there, she should respect its rules—which should be left to the Holy See and the bishops, not to secular Belgian courts.

Ban on Islamic headscarf in Flemish schools admissible

Ban on visible symbols of belief in the official education system of the Flemish Community not incompatible with Article 9 of the Convention

Registrar of the European Court (16.05.2024) - In its decision in the case of Mikyas and Others v. Belgium (application no. 50681/20) the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned three young women who identify as Muslims. They complained that they were unable to wear the Islamic headscarf in their secondary schools (except during religious education classes), following the prohibition on wearing any visible symbols of one's beliefs in the official education system of the Flemish Community.

The Court stated that the concept of neutrality in the Community's education system, understood as prohibiting, in a general manner, the wearing by pupil of visible symbols of one's beliefs, did not in itself run counter to Article 9 of the Convention and the values underlying it.

The Court noted in the present case that the contested ban did not concern solely the Islamic veil, but applied without distinction to all visible symbols of belief. It considered that the national authorities had been entitled, having regard to the discretion ("margin of appreciation") enjoyed by them, to envisage that the Flemish Community's education system would provide a school environment in which pupils did not wear religious symbols.

The contested restriction could therefore be said to be proportionate to the aims pursued, namely the protection of the rights and freedoms of others and of public order, and thus was "necessary" "in a democratic society". It followed that the applicants' complaint under Article 9 of the Convention was manifestly ill-founded. Their other complaints were rejected for failure to exhaust the domestic remedies.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

Belgium is a federal State, in which education comes within the competence of the Communities (Article 127 of the Constitution).

The three applicants are Belgian nationals who were born between 2001 and 2004 and live in Maasmechelen (Belgium). They stated that they identified as Muslims and that they wore the Islamic veil in accordance with their religious beliefs.

At the relevant time they were pupils in schools which belonged to the 14 Maasland school group and were part of the official education system organised by the Flemish Community (according to the Flemish education system's statistical yearbook for the 2022-23 academic year, this category concerned approximately 17% of the Flemish school population for the primary level and about 22% for the secondary level).

In 2009 the Education Council of the Flemish Community (*GO ! Onderwijs van de Vlaamse Gemeenschap* ("the GO!")) decided to extend the ban on wearing visible symbols of one's beliefs throughout its network. The measure was intended to apply to all school activities, with the exception of religious education and non-denominational ethics classes. The schools attended by the applicants implemented this ban.

When the applicants were enrolled in their respective secondary schools, their parents signed school regulations containing the prohibition in question.

In 2017 the applicants' parents, in their capacity as legal representatives, brought proceedings against the GO!, relying on the applicants' right to freedom of religion. The following year, the Tongeren Court of First Instance found that the prohibition in question was incompatible with Article 9 of the Convention. In 2019, however, the Antwerp Court of Appeal quashed that decision and held that the applicants' claims were unfounded. In 2020 a lawyer at the Court of Cassation indicated to the applicants that there was little prospect of lodging a successful appeal on points of law. The applicants decided not to lodge an appeal on points of law.

Complaints

Before the Court, the applicants alleged that the prohibition in question infringed their rights and freedoms as guaranteed by Articles 8 (right to respect for private and family life), 9 (freedom of thought, conscience and religion), 10 (freedom of expression) of the Convention and Article 2 of Protocol No. 1 (right to education) to the Convention, taken alone and in conjunction with Article 14 (prohibition of discrimination). They also submitted that they had been discriminated against in the enjoyment of those rights.

Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 12 November 2020. The decision was given by a Chamber of seven judges, composed as follows:

Arnfinn **Bårdsen** (Norway), *President*, Jovan **Ilievski** (North Macedonia), Pauliine **Koskelo** (Finland), Saadet **Yüksel** (Türkiye), Frédéric **Krenc** (Belgium), Diana **Sârcu** (the Republic of Moldova), Davor **Derenčinović** (Croatia), and also Hasan **Bakırcı**, *Section Registrar.* Decision of the Court

The Court held that the part of the application which concerned Articles 8, 10 and 14 of the Convention and Article 2 of the Protocol No. 1 to the Convention were inadmissible for failure to exhaust the domestic remedies, since the applicants had failed to submit to the national authorities (either expressly or in substance) any legal arguments concerning the rights guaranteed by those Articles.

With regard to Article 9 of the Convention, the Court noted that the present case concerned a type of public education, namely the official education system in the Flemish Community. In accordance with Article 24 § 1 (3) of the Constitution, this education had to be neutral. Under this constitutional provision, neutrality implied, in particular, respect for the philosophical, ideological or religious convictions of parents and pupils.

In order to comply with this constitutional requirement, the GO! Council had decided to introduce a general prohibition on wearing visible symbols of belief within its establishments, and the Constitutional Court had held that this concept of neutrality was compatible with Article 24 § 1 (e) of the Constitution. Detailed reasons were given for the GO! Council's decision, taking into account both the context of the education system put in place by the Flemish Community and the various interests at stake under Article 9 of the Convention.

Referring to its previous case-law and reiterating that the national authorities enjoyed a certain discretion ("margin of appreciation") in regulating the wearing of symbols of belief in State educational establishments, the Court considered that the concept of neutrality in the Community's education system, understood as prohibiting, in general, the wearing by pupils of visible symbols of belief, did not in itself run counter to Article 9 of the Convention and its underlying values.

In this connection, it noted that the contested ban was not confined to the Islamic veil but applied without distinction to any visible symbols of one's beliefs.

Moreover, the applicants had freely chosen to attend schools within the Community education system, and could not have been unaware that the relevant governing bodies were required by the Constitution to ensure compliance with the principle of neutrality in such schools. The applicants had also been informed in advance of the rules applicable in the schools concerned and had agreed to abide by them.

In so far as the contested ban had been intended to protect pupils from any form of social pressure and proselytization, the Court reiterated that it was important to ensure that, in keeping with the principle of respect for pluralism and the freedom of others, the manifestation by pupils of their religious beliefs on school premises did not take on the nature of an ostentatious act that would constitute a source of pressure and exclusion. In this connection, it saw no reason to call into question the findings of the GO! Council with regard to problematic acts, nor those of the Antwerp Court of Appeal, according to which incidents had occurred in certain schools coming under the remit of the Community education system.

Lastly, the Court was not unaware of the different situation in which teachers and pupils found themselves. While the former were symbols of authority *vis-à-vis* the latter and could accordingly be subject to restrictions on the expression of their beliefs, underage pupils were, for their part, more vulnerable. The Court had already held in this connection that a prohibition on pupils wearing religious symbols could correspond to a specific concern to prevent any form of exclusion or pressure, while respecting pluralism and the freedom of others.

In the present case, the national authorities had been entitled, having regard to the discretion available to them, to envisage that the Flemish Community's education system would provide a school environment in which pupils did not wear religious symbols. The Court had emphasised on several occasions that pluralism and democracy were to be based on dialogue and a spirit of compromise, necessarily entailing various concessions on the part of individuals that were justified in order to maintain and promote the ideals and values of a democratic society. The contested restriction could therefore be regarded

as proportionate to the aims pursued, namely the protection of the rights and freedoms of others and of public order, and thus "necessary" "in a democratic society". It followed that the complaints under Article 9 of the Convention were manifestly ill- founded.

Sikhism's quest for recognition

Request for Sikhism to be officially recognized as a religion in Belgium is set to be discussed in parliament before the current legislative session ends in June.

La Croix International (15.04.2024) - In early April, Belgium's Justice Minister Paul Van Tigchelt revealed that Sikhs had sought official recognition of their religion, and comes at a time when a similar plea for Buddhism is under consideration. Belgium officially recognizes six religious denominations Catholicism, Judaism, Anglicanism, Protestant-Evangelicalism, Islam, Orthodoxy -- along with one philosophical belief -- liberal-humanism. Currently, there are more than 10,000 Sikhs in Belgium, and Sikhs have played a role in Belgian history for years, fighting as part of the British troops in Belgium during World War I.

Sikhism, established in the 15th century in the Punjab region of northwest India, bordering Pakistan, is a religion followed by Sikhs, meaning "disciple" in Punjabi. Sikhs believe in an eternal, creator God, who is both immanent and transcendent. The faith promotes an honest life, eschewing the consumption of meat, alcohol, and tobacco. Sikhism was founded by Guru Nanak (1469-1539), followed by nine other Gurus. Following the death of the tenth Guru in 1708, the Sikh holy scripture, the Guru Granth Sahib, was designated as the eternal Guru.

Fifth-largest religion in the world

As the fifth-largest religion globally, Sikhism boasts 30 million followers, primarily in Punjab, where it surpasses Buddhism, Christianity, Hinduism and Islam. Sikhs assert their faith's distinctiveness from Hinduism, although some Western scholars view it as an offshoot of Hinduism with potential Islamic influences through historical interactions with the Mughal Empire that dominated India in the 16th century.

A significant evolution of Sikhism occurred under the sixth Guru, Guru Hargobind, who added a temporal authority to his spiritual leadership, challenging the Mughal Empire. This political endeavor eventually led to the foundation of an independent state in 1799, later annexed by the colonial British in 1894. Guru Gobind Singh, the tenth and final Guru, established the Khalsa, a warrior order, selecting its first members from disciples willing to sacrifice themselves.

The "Five Ks"

Contemporary Sikhs, by joining the Khalsa, adhere to distinctive practices and the markers of Sikh identity, known as the "Five Ks," including **uncut hair (kesh)** covered by a specific type of turban, and a beard; a **wooden comb (kangha)** for the hair; a **bracelet (kara)**; an **undergarment (kachera)**, and a **small curved sword or knife (kirpan)**. Many Sikh men adopt the name "Singh," meaning "lion," as seen in former Indian Prime Minister Manmohan Singh, while women often carry the name "Kaur," meaning "princess," like Canadian poet Rupi Kaur.

Since the 1970s, a faction of Sikhs in India has been pushing for the establishment of a theocratic state. This culminated in the tragic 1984 event where hundreds were killed in the Golden Temple by the Indian army, which then led to the retaliatory assassination of Prime Minister Indira Gandhi by two of her Sikh bodyguards.

Kassasjonsdomstolen stadfester Jehovas vitners rett til å ekskludere medlemmer

En endelig avgjørelse som i stor grad er blitt ignorert av belgiske medier

English version

HRWF (05.01.2023) – Den 19. desember 2023 avgjorde den belgiske kassasjonsdomstolen at Jehovas vitners religiøse tro og praksis i forbindelse med eksklusjon, inkludert å begrense kontakten med tidligere medlemmer som er ekskludert, er helt lovlig og er en del av forsamlingsfriheten, så vel som religionsfriheten.

En kort oppsummering av saken

I 2015 oppsøkte et tidligere Jehovas vitne statsadvokatens kontor og hevdet at medlemmene som forlot samfunnet, ble utfryst og fullstendig sosialt isolert etter ordre fra organisasjonen.

Statsadvokatens kontor i Gent stevnet Jehovas vitner på fire punkter: oppfordring til diskriminering av en person og mot en gruppe på religiøst grunnlag og oppfordring til hat eller vold mot en person og mot en gruppe.

I 2020 tok påtalemyndigheten ut tiltale mot Jehovas vitner for angivelig å ha brutt Belgias diskrimineringslov, paragraf 22. Saken fikk utstrakt mediedekning i mars 2021, da dommeren avsa en kontroversiell kjennelse i favør av aktor og hver av saksøkerne. Rettsavgjørelsen ble i stor grad kritisert av internasjonale juridiske eksperter. Den belgiske foreningen av Jehovas vitner anket avgjørelsen.

Den 7. juni 2022 omgjorde ankedomstolen i Gent dommen som ble avsagt i førsteinstansdomstolen, ved å anvende Den europeiske menneskerettighetsdomstolens omfattende rettspraksis, og frikjente Den belgiske foreningen av Jehovas vitner uforbeholdent for alle anklager om diskriminering og oppfordring til hat. Ankedomstolen i Gent bekreftet dermed at Jehovas vitners bibelske praksis med å begrense eller unngå kontakt med tidligere medlemmer var lovlig og ikke oppfordrer til diskriminering, segregering, hat eller vold.

Human Rights Without Frontiers dekket rettsforhandlingene i stor utstrekning i Bitter Winter i 2021 og The European Times i 2022.

Kassasjonsdomstolen avviste anken til UNIA, et interføderalt senter mot diskriminering

Det interføderale senteret for likestilling og bekjempelse av diskriminering og rasisme (The inter-federal center for equal opportunities and fight against discrimination and racism, UNIA) tok parti med de tidligere medlemmene av Jehovas vitner, men anken ble avvist 19. desember 2023 av kassasjonsdomstolen.

I kjennelsen avviste kassasjonsdomstolen bestemt alle argumentene til UNIA og de individuelle saksøkerne og ga sin fulle støtte til avgjørelsen til ankedomstolen i Gent. Kassasjonsdomstolen avgjorde at Jehovas vitners «policy for unngåelse» (av ankedomstolen i Gent omtalt som «passiv sosial unngåelse») er lovlig, og at Den europeiske menneskerettskonvensjon garanterer at «alle», også menigheter, har rett til å bestemme hvem de vil ha sosial kontakt med.

Kassasjonsdomstolens dom er helt i tråd med Den europeiske menneskerettighetsdomstolens rettspraksis og samsvarer med lignende kjennelser fra ankedomstoler og høyesterettsdomstoler i mange land over hele verden, for eksempel Argentina, Brasil, Canada, England, Irland, Italia, Japan, Polen, Sør-Afrika, Tyskland og USA.

Jehovas vitner uttrykte i en pressemelding takknemlighet overfor de høyeste juridiske institusjonene i Belgia for at de har renvasket deres gode navn og rykte.

Den første rettsavgjørelsen mot Jehovas vitner skapte store overskrifter i pressen, men kassasjonsdomstolens endelige avgjørelse, som var i deres favør, ble ignorert, deriblant av UNIA, som per 30. desember fortsatt ikke har publisert noe om saken.

De få mediene som publiserte Belgas pressemelding om saken, slik som RTL Info, La Dernière Heure Les Sports, La Libre Belgique og Het Nieuwsblad, fortjener ros.

The Ghent saga ends: Cassation Court confirms shunning is legal

On December 19, 2023, the Belgian Court of Cassation confirmed the appeal decision favorable to the Jehovah's Witnesses.

By Massimo Introvigne

Bitter Winter (04.01.2023) - "Bitter Winter" and its parent organization CESNUR, the Center for Studies on New Religions, have followed with great interest a legal case in Belgium concerning the so-called "shunning" practiced by the Jehovah's Witnesses (and, in different forms, by other religions as well). Jehovah's Witnesses counsel their members in good standing not to associate with ex-members who have been disfellowshipped for serious sins, and have not repented, or have publicly disassociated himself from the organization. Cohabiting relatives are not shunned, nor are those "lapsed" members who simply become inactive without publicly disassociating themselves from the Jehovah's Witnesses either through a declaration or by joining a different religion or an organization whose membership in the Witnesses regard as incompatible with Biblical teachings.

While courts in different countries of the world (including in Belgium itself) had consistently recognized that shunning as taught and practiced by the Jehovah's Witnesses is protected by religious liberty and is not illegal, on March 16, 2021, the Court

of Ghent stated that suggesting that current members of a religious organization do not associate with ex-members who have been disfellowshipped or have publicly left the organization amounts to discrimination and incitement to hatred and should be prohibited. "Bitter Winter" published several articles criticizing the decision as dangerous for religious liberty. CESNUR organized a webinar on the decision on April 9, 2021, with the participation of lawyers, human rights activist, and leading scholars of religion including James T. Richardson, George Chryssides, and Eileen Barker.

On June 7, 2022, the Court of Appeal of Ghent overturned the first-degree decision, ruling in favor of the Jehovah's Witness against both the ex-members who had acted against them and the federal Belgian anti-discrimination agency UNIA, which had entered the proceedings as a civil party. The appeal judges stated that teaching and practicing shunning in the form advocated by the Jehovah's Witnesses, which they characterized as "passive social avoidance" of those shunned, is not illegal and is in fact protected by the principles of religious liberty. It should not be confused with cases (reported about different religions, but not about the Jehovah's Witnesses) where ex-members are "stalked, harassed, bullied, or threatened."

Both the hostile ex-members and UNIA filed an appeal for Cassation. On December 19, 2023, the Court of Cassation ruled again in favor of the Jehovah's Witnesses, and finally put an end to the Ghent saga. Apart from procedural questions, the Belgian Cassation examined two arguments, that shunning as taught and practiced by the Jehovah's Witnesses violates article 8 (on the rights of the family) and article 9 (on religious liberty—in this case, of the shunned ex-members) of the European Convention on Human Rights (ECHR) and the corresponding articles of the Belgian Constitution, and that it amounts to discrimination and harassment of those shunned.

Following the Court of Appeal, the Cassation noted that article 8 does not apply to the case of the Jehovah's Witnesses, as their practice of shunning does not extend to cohabiting spouses and children.

The Cassation also stated that the Jehovah's Witnesses' shunning does not violate the freedom of religion or belief of those shunned and does not imply discrimination or harassment. The Court wrote that in the case of the Jehovah's Witnesses the teachings on shunning consist of "guidelines relating to ordinary social intercourse," which "strongly discourage contacts" with members who have been disfellowshipped or have publicly disassociated themselves from the organization. The guidelines "label them [these contacts] as sinful, without, however, inciting manifestly unlawful conduct," including "stalking, threats, or harassment."

The Cassation acknowledges that it would be forbidden to "harass, threaten, or bully ex-members," but states that this is by no means part of the shunning policy of the Jehovah's Witnesses. It is true that shunning may lead "to social isolation towards other members of the faith community," but this should not be confused with a "generalized social isolation." The Belgian Jehovah's Witnesses are a "small faith community of about 26,000 members across Belgium," and those shunned remain free to associate with all the other people living in the country.

In fact, article 9 of the European Convention on Human Rights (ECHR) should indeed be applied to the case, the judges note, but to protect the religious liberty of the Jehovah's Witnesses to organize themselves as they deem fit. "The circumstance of feeling aggrieved, hurt or socially isolated from the original circle of friends by the shunning policy is not sufficient to neutralize the effect of Article 9 ECHR," the Cassation writes," as

"it must be accepted that conducts protected under Article 9 ECHR may, where appropriate, give rise to alienation vis-à-vis those close to them and hurt their feelings."

At any rate, the Cassation concludes, "Articles 8 and 9 ECHR and Articles 19 and 22 of the Belgian Constitution also imply that everyone has the right to decide independently with whom to maintain social contacts and with whom not. Criminal courts, in accordance with the case law of the European Court of Human Rights, have only a small margin of appreciation to intervene in both (a) choices that people make in their private lives or (b) the pursuit of a religious standard of conduct within the sphere of their personal autonomy."

Through a final decision, thus, Belgium joins several other democratic countries, including most recently the Netherlands, in recognizing that teaching and practicing shunning by the Jehovah's Witnesses is not illegal and is part of their normal exercise of their freedom of religion or belief.