

Table of Contents

- ***MIROLUBOV'S AND OTHERS v. LATVIA***
-

MIROLUBOV'S AND OTHERS v. LATVIA

Application no 798/05

Press release issued by the Registrar (15.09.2009) / HRWF (04.09.2009) - Website: www.hrwf.net - Email: info@hrwf.net - In this case concerning the unwarranted intervention of the state in internal dispute within Old Orthodox Community, the European Court ruled that there had been a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants 4,000 euros (EUR) each in respect of non-pecuniary damage. (The judgment is available only in French.)

Principal facts

The applicants are Father Ivans (Ioanns) Mirolubovs, a Latvian national, Sergejs Picugins, a "permanent resident non-citizen" of Latvia and Albina Zaikina, also a Latvian national. At the relevant time Father Mirolubovs was an Old Orthodox "spiritual master" and the other two applicants were members of the Riga Grebenscikova Old Orthodox parish (Rigas Grebenscikova vecticibnieku draudze - "the RGVD").

The Old Orthodox faith originated from the great schism of the Russian Orthodox Church in the mid-17th century. The main difference with the Orthodox Church concerns acts of worship. The RGVD is the largest of Latvia's 69 Old Orthodox communities.

In 1995 Father Mirolubovs was appointed chief spiritual master of the RGVD. The same year, the adoption by the community of new statutes - found by the Ministry of Justice to be lawful - led to a split between the parishioners and to violent incidents.

In 2001 a new registration certificate was issued to the RGVD by the Religious Affairs Directorate ("the Directorate"), which in May 2002 also approved the new statutes adopted by the RGVD in which the latter stressed its complete independence from other religious organisations.

On 14 July 2002 an extraordinary general meeting of the RGVD took place. In parallel with that meeting, which was held in the temple in Riga and in which the applicants participated, another meeting gathered outside attended by, among others, Old Orthodox spiritual masters. The two rival groups each claimed to constitute the legitimate general meeting.

The outside meeting decided to elect new members and change the RGVD's statutes on the ground that Father Mirolubovs and his followers, by inviting a Russian Orthodox priest to celebrate the liturgy in the RGVD church, had renounced their Old-Rite beliefs and had effectively converted to the Orthodox Church, thereby forfeiting all their rights within the community.

Both factions requested formal approval from the Directorate. The latter, in a decision of 23 August 2002, recognised the outside meeting as legitimate, formally approved it and registered it as the new RGVD parish council on 10 September 2002.

The applicants and their fellow worshippers were expelled by force from the temple and no longer admitted. From that point on they operated informally under the name of "the RGVD in exile".

On 10 January 2003, on a request by the applicants, the Court of First Instance set aside the Directorate's decisions of 23 August and 10 September 2002. The Directorate appealed against that judgment and the Regional Court found in its favour. On 14 January 2004 an appeal by the applicants on points of law was dismissed by the Senate of the Supreme Court.

Complaints and procedure

The applicants alleged, in particular, that the manner in which the domestic authorities had intervened in an internal dispute within their religious community had infringed their right to freedom of religion under Article 9. They also relied on Articles 8 (right to respect for private life) and 11 (freedom of assembly and association).

The application was lodged with the European Court of Human Rights on 16 June 2004.

Decision of the Court

On the objection as to inadmissibility raised by the Latvian Government

In a letter of 3 December 2008 the Government informed the Court that documents relating to the negotiations with a view to a friendly settlement had been sent to the Latvian Prime Minister via a third party. The Government concluded that the application should be declared inadmissible on the ground of an abuse of the right of petition as there had been a breach of the confidentiality requirement under the friendly-settlement procedure.

The Court stressed that the confidentiality requirement was designed to facilitate friendly settlements by protecting the parties and the Court against possible pressure, and that an intentional breach of confidentiality by an applicant could indeed amount to abuse of the right of petition and result in the application being rejected.

However, the Court noted the difficulty of monitoring compliance with this requirement and the threat to the applicant's defence rights if it were imposed as an absolute rule. What the parties were prohibited from doing was publicising the information in question, for instance in the media or in correspondence liable to be read by a large number of people. In the instant case, as the Latvian Government had not adduced evidence that all the applicants had consented to the disclosure of the confidential documents, the Court was unable to find that the applicants had abused the right of individual petition.

Article 9

The intervention of the Latvian authorities in the dispute between the two groups of parishioners of the RGVD had pursued the legitimate aim of preventing disorder and protecting the rights and freedoms of others.

The autonomy of religious communities was an essential component of pluralism in a democratic society, where several religions or denominations of the same religion co-existed. While some regulation by the authorities was necessary in order to protect individuals' interests and beliefs, the State had a duty of neutrality and impartiality which

barred it from pronouncing itself on the legitimacy of beliefs and their means of expression.

The authorities had failed to fulfil that duty as they had not adduced evidence of sufficiently serious reasons warranting withdrawal of the recognition granted to the RGVD bodies in 1995 and May 2002, and had implicitly determined the applicants' status as members of the Orthodox Church. The Directorate's decision had not given sufficient reasons; in particular, it had been issued in spite of the opinion expressed by the Holy Synod of the Russian Orthodox Church that the applicants had not converted to that faith.

Furthermore, the Directorate ought to have taken account in this sensitive case of the specific characteristics of the Old Orthodox faith, namely its very heterogeneous structure.

Lastly, the Court stressed that the Latvian courts had not examined the case on the merits or afforded redress for the damage sustained by the applicants.

The Court therefore held that there had been a violation of Article 9 and that no separate issue arose under Articles 8 and 11.

Judge Myjer expressed a dissenting opinion, which is annexed to the judgment.

This summary by the Registry does not bind the Court. The judgments, with the composition of the Court, are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

[1] Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.
