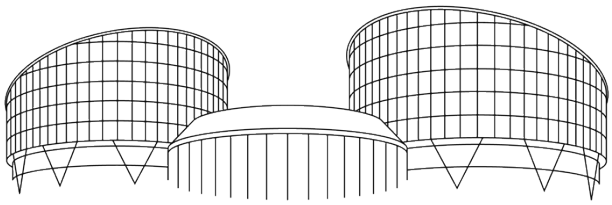

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF HOLY SYNOD OF THE BULGARIAN ORTHODOX CHURCH (METROPOLITAN INOKENTIY) AND OTHERS v. BULGARIA

*(Applications nos. 412/03 and 35677/04)*

JUDGMENT
(just satisfaction)

STRASBOURG

16 September 2010

**FINAL**

*21/02/2011*

*This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.*

**In the case of Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria,**

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 June 2010,

Delivers the following judgment, which was adopted on that date:

# PROCEDURE

1. The case originated in two applications against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"). Application no. 412/03 was lodged by MetropolitanInokentiy on behalf of the "alternative Synod" of the Bulgarian Orthodox Church, one of its two rival leaderships ("the applicant organisation"). Application no. 35677/04 was lodged by six individuals, Christian Orthodox believers who used to be employed by the applicant organisation.

2. In a judgment delivered on 22 January 2009 ("the principal judgment"), which became final on 5 June 2009, the Court held that there had been a violation of all the applicants' rights under Article 9 in that "the pertinent provisions of the 2002 Religious Denominations Act, which did not meet the Convention standard of quality of the law, and their implementation through sweeping measures forcing the community to unite under the leadership favoured by the Government went beyond any legitimate aim and interfered with the organisational autonomy of the Church and the applicants' rights under Article 9 of the Convention in a manner which cannot be accepted as lawful and necessary in a democratic society, despite the wide margin of appreciation left to the national authorities". It also found that no separate issue arose in respect of the complaints of the applicant organisation under Article 6 and Article 1 of Protocol No. 1 and that there had been no violation of the same provisions in respect of the six individual applicants. It further found no violation of Article 13 in respect of any of the applicants (see *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others*

*v. Bulgaria*, nos. 412/03 and 35677/04, §§ 159, 160, 169, 172, 174 and 179 and points 1-4 of the operative provisions, 22 January 2009).

3. In their submissions under Article 41 of the Convention, the applicants sought, *inter alia*, an award for pecuniary and non-pecuniary damage and costs.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary and non-pecuniary damage, the Court reserved it and invited the Government and the applicants to submit, within three months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach. However, it awarded the applicants 8,000 euros (EUR) in respect of costs and expenses (ibid., §§ 182, 188 and 189 and points 5-7 of the operative provisions).

5. The applicants and the Government each filed observations.

# THE LAW

6. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

## A. The parties' submissions

### *1. The applicants*

7. The applicants submitted that the Court should order a return to the *status quo ante* as it existed prior to the events which violated Article 9 of the Convention. In particular, they formulated the following claims:

(i) The restitution to the applicant organisation of 107 properties which were taken away from it as a result of the State action violating Article 9 of the Convention, and, failing such restitution, the payment of adequate pecuniary compensation in the amount of EUR 678,054,000;

(ii) The payment of EUR 194,708 to the six individual applicants in application no. 35677/04 for pecuniary and non-pecuniary damage resulting from the fact that they lost their employment as a consequence of the State interference in the internal affairs of the Church;

(iii) The restitution to those concerned of all personal and legal documents, such as employment contracts and books and property deeds, retained as a result of the 2004 forced evictions from Church premises;

(iv) The payment of EUR 4,262,400 to the applicant organisation as compensation for the pecuniary and non-pecuniary damage suffered by 121 persons (64 clergy members and 57 auxiliary personnel) who lost their positions with the Church allegedly as a consequence of the State interference in its internal affairs, these persons being applicants in other applications pending before the Court (*Pantusheva and Others*, nos. 40047/04 et al. and *Asenova and Others*, no. 25729/09);

(v) The payment of EUR 1,000,000 for non-pecuniary damage in respect of the suffering caused to over 720 clergy members, staff and believers belonging to the applicant organisation and the prejudice caused to the applicant organisation itself. The 720 or more persons in question are applicants in the above-mentioned cases of *Pantusheva and Others* and *Asenova and Others*, pending before the Court; and

(vi) The repeal of sections 10, 15(2), 18 and 36 of the Religious Denominations Act and of paragraphs 2 and 3 of its transitional provisions.

8. The applicants submitted the following arguments in support of their claims.

9. They stressed that the violation found concerned unlawful and unjustified interference in the internal organisation of the Bulgarian Orthodox Church, including unlawful and arbitrary action by prosecutors and the police to remove the applicants from temples and other church property and considered, therefore, that nothing short of undoing the result of those actions would be compatible with observance of the law. Thus, the applicant organisation's control over the temples and other property should be restored and, once this was done, the Holy Synod presided over by Patriarch Maxim would be free to claim the disputed properties before the domestic courts which – as the Court had noted in the principal judgment - were the only proper authorities to decide on private property disputes.

10. The applicants further stated that failing restitution of the temples and other premises, the Court should award compensation corresponding to their full value.

11. The applicants submitted a list of Church premises from which persons belonging to the applicant organisation had been forcibly removed in July 2004 and opinions of real estate experts on the value of some of the properties. The applicants acknowledged that disputes might arise as regards ownership rights and the value of the properties and suggested that, as a last resort, the Court might consider directing that a special commission be established to deal with these issues.

12. As to the Government's submission that in 1992 and for several years thereafter the applicants had occupied unlawfully some of the buildings at issue, the applicants submitted that no such findings had been made by the domestic authorities and that this question was in any event without relevance to the issue currently before the Court, namely reparation

for the serious violations of the applicants' rights committed by the authorities in 2002, 2004 and the years thereafter.

13. In respect of their claims concerning the alleged loss of employment and livelihood, the applicants submitted a statement by one of the applicants, the former accountant of the applicant organisation, and documents concerning the income and employment status of some of the clergy and Church staff. The applicants emphasised that they were unable to present further documentation as the applicant organisation's files had never been restored following the police action of 21 July 2004. The authorities should therefore be ordered to secure the return of the confiscated documents.

*2. The respondent Government*

14. The Government argued that the finding of a violation of Article 9 was sufficient just satisfaction for the applicants.

15. In the event of the Court deciding to award compensation, the Government stated that it should be limited to the direct and immediate damage resulting from the violation of the Convention found in the present case. As the Court had only found a breach of Article 9 and had rejected the applicants' complaints under Article 6 and Article 1 of Protocol No. 1, the applicants were not entitled to claim restitution of properties or compensation for them.

16. The Government further explained that the buildings claimed by the applicants belonged to the Bulgarian Orthodox Church and the Bulgarian people and that the authorities had no power to order their restitution. Some of them had been built centuries ago. Moreover, the applicants, who had occupied these buildings unlawfully in 1992 and the years thereafter, were not entitled to profit from their own wrongdoing.

17. As regards the amount claimed in respect of the value of the temples, the Government stated that the expert assessments submitted by the applicants were arbitrary and deceitful, as a number of the buildings in question were historic landmarks which enjoyed special legal protection. Such buildings did not have a “market” value.

18. The Government's position on the alleged loss of income was that it was unrelated to the violation of the Convention found in the present case and that in any event the persons concerned were free to claim unpaid salaries or other compensation in the domestic courts. The Government also submitted copies of documents demonstrating that a number of the persons concerned had realised other income after the events complained of and could not, therefore, maintain that as a result of the events of July 2004 they had suffered damage corresponding to their salaries. Finally, the lists of persons concerned were inaccurate, unclear and not supported by evidence.

19. With regard to non-pecuniary damage, the Government asked the Court to take into consideration the fact that Metropolitan Inokentiy had

participated in the events at the beginning of the 1990s and had therefore contributed by his behaviour to "the events that had followed". The Government also averred that the claims were excessive and unclear in so far as they concerned unspecified persons who were not applicants in the present case. In the Government's view, EUR 3,000 for Metropolitan Inokentiy and EUR 1,000 for each of the six individual applicants would be sufficient just satisfaction.

20. As regards general measures in execution of the Court's judgment on the merits, the Government expressed the view that the applicants should seek their reintegration into the Bulgarian Orthodox Church presided over by Patriarch Maxim, the canonical leader. Some of the applicants' former adherents had already done so. In so far as the applicants sought the reinstatement of clergy members in their functions in specific temples, this was an issue to be decided by the Church in accordance with canon. The Government, being neutral in religious matters, could not interfere with such internal Church matters, although they had expressed willingness to help through mediation.

21. As to the applicants' request for legislative amendments, the Government submitted that Parliament was independent in its assessment of whether legislation must be amended. One of the relevant provisions, section 118 of the Judiciary Act 1994, which had served as the basis for the prosecutors' orders in the applicants' case, had been repealed in 2007. As to the Religious Denominations Act 2002, it reflected the "national view" that its provisions did not contravene Article 9 of the Convention and were based on millennial traditions of the Bulgarian Orthodox Church. In particular, it was not true that the Act left it to State organs to determine who the canonical leader of the Church was.

## B. The Court's assessment

### *1. Scope of the case*

22. As it did in the principal judgment, the Court finds it necessary to reiterate that the scope of the present case is limited to the complaints submitted by the applicant organisation, the Holy Synod of the Bulgarian Orthodox Church presided over by Metropolitan Inokentiy, and the six individual applicants (see paragraph 1 above and paragraphs 82 and 83 of the principal judgment).

### *2. Claim for a return to the* status quo ante

23. A judgment in which the Court finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to the violation and make reparation for its consequences in such a way as to

restore as far as possible the situation existing before the breach. If the internal law allows only partial reparation to be made, Article 41 of the Convention gives the Court the power to award compensation to the party injured by the act or omission that has led to the finding of a violation of the Convention. The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest. Among the matters which the Court takes into account when assessing compensation are pecuniary damage, that is the loss actually suffered as a direct result of the alleged violation, and non-pecuniary damage, that is reparation for the anxiety, inconvenience and uncertainty caused by the violation, and other non-pecuniary loss. In addition, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

24. The Court observes that as a result of the violation of Article 9 in the present case the applicant organisation was prevented from continuing to manage the affairs of part of the Christian Orthodox community in Bulgaria and thus lost control over temples and other buildings (see paragraphs 102, 107-110, 112, 139, 140, 156 and 159 of the principal judgment).

25. The applicants considered that, therefore, undoing the consequences of the violation of the Convention required the restitution of the buildings concerned and, in general, a return to the *status quo ante*.

26. As the Court has already noted, however, there was no dispossession of the legal person of the Bulgarian Orthodox Church by the State. The violation of the Convention found in the present case concerned State interference in the internal organisation of the Church and its leadership by way of legislation and judicial and prosecutors' decisions (see paragraphs 159 and 173 of the principal judgment).

27. Furthermore, as the Court noted in the principal judgment, at all the relevant times the applicant organisation and the leadership headed by Patriarch Maxim were *de facto* two rival structures, each of them considering itself to be the legitimate personification of the Bulgarian Orthodox Church. Neither the applicant organisation nor the supporters of Patriarch Maxim have ever sought legal personality or a separate existence from the Church. Each of the two rival groups regarded the Bulgarian Orthodox Church as one indivisible whole in law and in canon and sought recognition as its sole legitimate leadership (see paragraph 170 of the principal judgment). The applicant organisation, the leadership which was ousted, cannot claim a separate proprietary interest in buildings or other assets which were the property of parishes that adhered to it or the Church as a whole.

28. In addition, it is noteworthy that the situation that obtained prior to the State interference in the affairs of the Church was not one flowing from

clear rules but a *de facto* state of affairs which evolved in contradictory directions between 1992 and 2002 and, most importantly, was ultimately dependent on decisions to be taken by the Bulgarian Orthodox Church (see paragraphs 14-41 of the principal judgment).

29. In these circumstances the principle of *restitutio in integrum* cannot be seen as requiring the respondent State to engage in yet further interference in the internal organisation of the Church in order to restore the applicant organisation's control over assets, reinstate clergy members in their previous positions or otherwise force a return to the *status quo ante*. Such actions would encroach on the internal autonomy of the Bulgarian Orthodox Church.

30. In the Court's view, therefore, just satisfaction in the present case must mainly take the form of compensation to be paid by the State.

31. In so far as the applicants also claim restitution of personal documents, the Court notes that they have not shown that these were retained by the State authorities.

*3. Damage*

**(a) The applicant organisation**

*(i) Pecuniary damage*

32. For the reasons set out in paragraphs 25-28 above, the Court considers that the alternative leadership of the Church (the applicant organisation) did not have a separate proprietary interest in buildings or other assets which were the property of parishes that adhered to it or the Church as a whole. The State action which violated Article 9 of the Convention did not encroach on property rights but interfered with the free choice of the Church's leadership (see paragraphs 159, 170 and 173 of the principal judgment).

33. The claims of the applicant organisation for compensation in respect of pecuniary damage must therefore be dismissed.

*(ii) Non-pecuniary damage*

34. Noting that the unjustified and unlawful State action against the "alternative Synod" resulted in its practical elimination (see paragraph 156 of the principal judgment) and having regard to the fact that it is not possible to restore the situation that obtained prior to the violation of the Convention found in the present case (see paragraphs 24-29 above), the Court considers that the applicant organisation, as the leadership of all those who were affected, must be paid compensation in respect of non-pecuniary damage.

35. The absence of legal personality of the applicant organisation is not an obstacle in this respect (see, in particular, *Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97, § 116, 16 December 2004; *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 146, ECHR 2001-XII; and *Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova*, no. 952/03, § 61, 27 February 2007).

36. In determining the amount the Court has had regard to the awards made in the above-mentioned judgments, which disclose certain similarities with the present case. It considers, however, that a significantly higher award is justified in this case having regard to the nature and scale of the violation of the applicant organisation's rights under Article 9. In particular, the State interference was the result of legislative provisions adopted with the aim of forcing the religious community to "unite" and those provisions were enforced through arbitrary judicial decisions and the massive unlawful police operation of 21 July 2004, when the Chief Public Prosecutor sent the police to "resolve" an intra-communal dispute by evicting hundreds of religious ministers and believers from more than fifty churches and other buildings throughout the country (see paragraphs 57-60, 107-109 and 140 of the principal judgment).

37. In determining the award, the Court also has regard to the fact that the applicant organisation's claims are made on behalf of the religious community it leads (see paragraph 7 above). An ecclesiastical or religious body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 72, ECHR 2000-VII).

38. Lastly, the Court cannot accept the Government's argument that the applicants had their share of responsibility in the impugned events and should not, therefore, be awarded just satisfaction. In so far as this argument is based on the Government's view that the alternative Synod was not canonical, the Court refers to its conclusions in the principal judgment that in a democratic society canonical legitimacy, which is solely for the religious community to determine, cannot justify the sweeping measures taken against the applicants by unlawful means against a background of divisions and an internal leadership dispute within the Church. Furthermore, in so far as the Government refer to the unlawful decisions of 1992 which proclaimed the removal of Patriarch Maxim, these were State acts (see paragraphs 17, 128, 137, 142, 147-149 and 155 of the principal judgment).

39. Deciding on an equitable basis, the Court awards the applicant organisation EUR 50,000 in respect of non-pecuniary damage, to be paid to Metropolitan Inokentiy, its leader at the relevant time, for the benefit of the religious community.

**(b) The six individual applicants**

*(i) Pecuniary damage*

40. The six individual applicants were employees of the Bulgarian Orthodox Church. They were not religious ministers (see paragraph 3 of the principal judgment). With regard to their claim for compensation for loss of salary, the Court observes that none of these applicants has sought to enforce their rights under the Labour Code through the courts. The applicants' claim being that since 21 July 2004 they have not been allowed to continue working and have not been paid, there is nothing in the file to indicate that they could not bring an action under the Labour Code.

41. In so far as the six individual applicants may be understood to be claiming that as believers they felt unable to continue to perform their functions, and thus lost income, as a result of the fact that the State forcibly imposed on them religious leaders whom they did not accept as legitimate, the Court considers that the causal link between the violation of Article 9 found in this case and the loss of income claimed is merely indirect. The violation found concerned the applicants' freedom of religion and their right to a religious life free from unjustified State interference. It did not concern their professional activities as employees of the Bulgarian Orthodox Church.

42. The claims of the individual applicants for pecuniary damage must therefore be dismissed (see, for a similar approach, *Miroļubovs and Others v. Latvia*, no. 798/05, § 118, 15 September 2009).

*(ii) Non-pecuniary damage*

43. The Court observes that in previous cases concerning forced change of leadership of a religious community it has awarded sums in respect of non-pecuniary damage only to the ousted leaders or members of governing bodies (see *Miroļubovs and Others v. Latvia*, cited above, §§ 7 and 123; *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, §§ 9 and 121, ECHR 2000-XI; and, *mutatis mutandis*, *Serif v. Greece*, no. 38178/97, §§ 11 and 61, ECHR 1999-IX).

44. Moreover, in the case of *Hasan and Chaush,* cited above, the Court rejected the claim for non-pecuniary damage submitted by the second applicant, a believer and employee of the religious organisation who was not a religious leader, taking the view that the finding of a violation of the Convention constituted sufficient just satisfaction for him (ibid., § 121).

45. The same conclusion is valid in respect of the six individual applicants. As the Court has previously stated in the context of Article 13, individual believers' interests in respect of claims concerning State interference with the organisation of a religious community can be safeguarded by their turning to their leaders and supporting any legal action

which the latter may initiate (see *Hasan and Chaush*, cited above, § 98). Similarly, in the Court's view, since the leadership directly affected by the violation of Article 9 in the present case claimed compensation for the non-pecuniary damage suffered by the religious community it leads, there is no room for separate awards to the six individual applicants.

46. The remaining claims for just satisfaction submitted by the six individual applicants must therefore be dismissed.

*4. Other measures*

47. The Court reiterates that, in the context of the execution of judgments in accordance with Article 46 of the Convention, a judgment in which the Court finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order. Furthermore, it follows from the Convention, and from Article 1 in particular, that in ratifying the Convention the Contracting States undertake to ensure that their domestic legislation is compatible with it (see *Maestri v. Italy* [GC], no. 39748/98, § 47, ECHR 2004-I).

48. Contracting States' duty in international law to comply with the requirements of the Convention may require action to be taken by any State authority, including the legislature (see, as a recent example, *Viaşu v. Romania*, no. 75951/01, 9 December 2008).

49. In the principal judgment, the Court made the following relevant findings:

> "In the Court's view, the 2002 Act did not meet the Convention standards of quality of the law, in so far as its provisions disregarded the fact that the Bulgarian Orthodox Church was deeply divided and left open to arbitrary interpretation the issue of legal representation of the Church ... Moreover, although the *ex lege* recognition of the Church cannot be seen as incompatible with Article 9 in principle, its introduction in a time of deep division was tantamount to forcing the believers to accept a single leadership against their will. Those provisions of the 2002 Act – still in force - continue to generate legal uncertainty, as it can be seen from the contradictory judicial decisions that have been adopted and the events that have unfolded since the Act's entry into force ...
>
> In addition, as the Court found above, the massive evictions carried out in July 2004 by prosecutors' orders cannot be considered lawful, having regard to the provisions of the Bulgarian Constitution on freedom of religion, the lack of clear basis to identify the 'valid' leadership of the Church and the fact that they purported to 'resolve' private disputes, including about property, which fell under the jurisdiction of the courts ..."

50. In view of these findings, in order to assist the respondent Government in the execution of their duty under Article 46 of the Convention, the Court expresses the view that the general measures in

execution of its judgments in this case should include such amendment to the Religious Denominations Act 2002 as to ensure that leadership conflicts in religious communities are left to be resolved by the religious community concerned and that disputes about the civil consequences of such conflicts are decided by the courts.

*5. Costs and expenses*

51. The applicants did not claim any costs incurred after the principal judgment.

*6. Default interest*

52. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT

1. *Holds* by six votes to one
   (a) that the respondent State is to pay the applicant organisation, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 50,000 (fifty thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Bulgarian levs at the rate applicable at the date of settlement, this amount being payable into the bank account of the applicant organisation's representative, Metropolitan Inokentiy (Mr Ivan Stoyanov Petrov);
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
2. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Kalaydjieva is annexed to this judgment.

P.L.
C.W.

# PARTLY DISSENTING OPINION OF JUDGE KALAYDJIEVA

I fully subscribe to the conclusions reached in the principal judgment in the present case, which reflect the long history and regrettable history of state interference with the leadership of the Bulgarian Orthodox Church. The Court's conclusions in this case come hardly as a surprise after the judgments of the Court in the cases of *Hasan and Chaush v. Bulgaria* [GC] (no. 30985/96, ECHR 2000 XI) and of *Supreme Holy Council of the Muslim Community v. Bulgaria* (no. 39023/97, 16 December 2004), and Resolution 1390 (2004) of PACE in regard of the 2002 Denominations Act. In my view the absence of legal certainty and the events following the adoption the 2002 Denomination Act demonstrate a continuing potential risk that the "recognised", rival or future candidate central leaders will remain equally vulnerable to the imposed preferences of each future government to step in power.

Having noted that the parties in the two present applications no. 412/03 and 35677/04, relied among other things, on arguments concerning the subject matter of other applications (see § 82 of the principal judgment), the Court examined all relevant information and concluded that "there has been a violation of Article 9 of the Convention, interpreted in the light of Article 11 (see § 160). In the operative part it held that "there has been a violation of Article 9 in respect of all applicants", that is, the "applicant organisation" – the Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) in the first of the joined applications no. 412/03 - and the six (remaining after the withdrawal of Mr. Balachev's complaints) individual applicants in application no. 35677/04 who complained among other things, of their forceful eviction from the St. Paraskeva Church in Sofia in 2004.

In its principal judgment the Court did not specify its findings as to the victim status of the different applicants and/or the manner and the extent to which each of them was affected by any aspect of the generally described interference or how far they sustained distress and suffering as a result. These circumstances are the major elements scrutinized by the Court in the determination of the appropriate compensation in each individual case. I agree with the majority's views and conclusions in rejecting the applicants' claims for pecuniary damages including the restoration of a high number of temples, monasteries and other estates or their "market price". I also fully share the view that the exceptional scale and the gravity of the sweeping measures of forced police evictions in the present case call for the determination of a higher amount to compensate the suffering sustained.

My misgivings concern some of the elements taken into consideration in the determination of the applicant's suffering and their appropriate compensation. As correctly indicated "in previous similar cases concerning forced change of leadership of a religious community, [the Court] has awarded sums in respect of [resulting] non-pecuniary damage only to the ousted leaders or members of governing bodies"(see § 43 of the present judgment with further reference). Indeed, the Court defined such individuals as directly affected by a violation of "Article 9 interpreted in the light of Article 11 of the Convention" and has so far not interpreted Article 9 of the Convention to involve or guarantee an individual right to a preferred spiritual leader or a *"right to a free choice of Church leadership"* (see § 32). In my view - even if the rights of individual believers or followers of a certain spiritual leader under Article 9 may be considered affected by the authorities' interference with their leadership, the level of their suffering may hardly be compared to that of the leaders concerned. I regret the fact that the majority failed to express their views on these aspects of the situation of the six individual applicants in Appl. no. 35677/04 and instead follow a logic which placed the compensation allegedly claimed by the first applicant organisation among the elements to determine the appropriate award for the different applicants.

It should be noted in the interest of fairness that in reality neither the "applicant organisation", nor Metropolitan Inokentiy claimed compensation on behalf of other individual applicants in the present two or the 40 pending applications before the Court. *"In particular* [the applicants, or more precisely – their common legal represntative], *formulated the following claims* (see § 7 of the present judgment)*:... (v) EUR 1,000,000 for non-pecuniary damages in respect of the suffering caused to over 720 clergy members, staff and believers belonging to the applicant organization and the prejudice caused to the applicant organization itself. The 720 or more persons in question are applicants in the ... mentioned cases of Pantusheva and Others and Asenova and Others, pending before the Court"*. The first applicant also never claimed that it represented these individuals for the purposes of the Convention proceedings or within the meaning of any national or canonical rules. In my view the fact the applicants' claims were formulated in such a global and imprecise manner may not be interpreted as a request by the first applicant on behalf of *"all those who are affected"*, or leading necessarily to the finding *"that the applicant's organisation's claims are made on behalf of the religious community it leads"* (see § 37 with reference to the above quoted § 7). Such a finding may also easily, but unfairly, leave the incorrect impression that the first applicant's representative pursued personal financial interests at the expense of other individuals' suffering. Even if indeed made (and it was not), an imprecisely formulated claim may neither bind the Court, nor

substitute its reasoning in individualizing the suffering and the appropriate compensation of the applicants under Article 41 of the Convention.

While noting correctly the principle that "in previous cases [the Court] has awarded non-pecuniary damage only to ousted leaders or members of governing bodies" (see §§ 43 and 44), the majority considered that *"the applicant organisation must be paid compensation in respect of non-pecuniary damage, as the leadership of all those who were affected"* (§ 34) and that further on *"there is no room for separate awards to the six applicants, since the leadership directly affected by the violation of Article 9 in the present case claimed compensation for the non-pecuniary damage suffered by the religious community it leads"*.

Unlike in the case of *"Hasan and Chaush"*, where the Convention bodies discussed at length the two applicants' victim status (Report of the Commission adopted on 26 October 1999), the manner in which they were affected by the impugned interference, their position as *"active members of the religious community"* and persons who *"actively participated in religious life"* and *"continued to work facing enormous difficulties"* as well as the distress suffered and the individual non-pecuniary damage sustained (see §§ 63, 119 and 121 of this judgment as well as the joint partly dissenting opinion of judges Tulkens, Casadevall, Bonello, Straznicka, Greve and Maruste), the majority in the present case failed to provide detailed views on the six applicants' situation and redirected its consideration to the first applicant, relying on some similarity with the Court's view on ecclesiastical bodies' *locus standi* (§ 37). In my view that *"an ecclesiastic body or religious body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention"* – as found in *Cha'are Shalom Ve Tsedek v. France* [GC] (no. 27417/95, ECHR 2000 VII) - does not necessarily mean that the first applicant organisation did or could have successfully exercised the other individual applicant's rights under Article 41. In my view the question in the present case was not whether the applicant organisation may claim the rights of its followers under Article 9, but the extent to which the declared violation of this provision affected each of the applicants or resulted in any distress or suffering, which calls for pecuniary compensation.

The observed collective determination of this compensation resembles a novel "class action" approach" and appears to unjustifiably "personify" the claimed individual sufferings by awarding a global compensation payable to "the leadership of all those affected". The majority's finding that "since the directly affected leadership claimed compensation for the religious community, there is no room for separate awards to individual applicants"

(see § 45) is apparently equally applicable to "all those affected" and seems to summarily preempt the consideration of their complaints.

In my view the intended Solomonic solution of the original dispute between individuals and the authorities in fact transforms it into a dispute among the complaining community and redirects its resolution to its leader.

This impression is strongly supported by the fact that the majority awarded this global amount "for the benefit of the religious community" (see § 39) – a view that confronts the applicant Metropolitan Inokentiy with a bitter dilemma: whether to accept the unsolicited authorization to complete the exercise of the Court's duty to determine an appropriate part of the obtained global award for each of "all those affected", or – failing to do so in the absence of clear judicial guidelines – to use the award in providing a nation-wide mess of pottage for the entire "religious community" without distinguishing between his spiritual followers and opponents. In the circumstances of the present case it is questionable whether this generously proposed global solution does justice to the individual applicants, or in fact risks to further deepen the division amongst believers along new lines.