



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

FIFTH SECTION

CASE OF TSERKVA SELA SOSULIVKA v. UKRAINE

(Application no. 37878/02)

JUDGMENT

STRASBOURG

28 February 2008

FINAL

28/05/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tserkva Sela Sosulivka v. Ukraine,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 37878/02) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by *Tserkva Sela Sosulivka* (“the applicant”), on 30 August 2002.

2. The applicant was represented by Mr Vladyslav Avdeyenko, a lawyer practising in Ternopil. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. The applicant complained under Article 6 § 1 of the Convention that there had been a violation of its right of access to a court. It also invoked Article 13 of the Convention, arguing that it had had no effective remedies in respect of its complaints under Article 6 § 1 of the Convention.

4. On 24 October 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

5. The applicant, the Ukrainian Greek-Catholic Church of the village of Sosulivka in the Chortkiv Region (*Tserkva Sela Sosulivka*), is a religious group belonging to the patriarchate of the Ukrainian Greek-Catholic Church («Українська греко-католицька церква села Сосулівка Чортківського району Тернопільської області»). The head of the applicant association is its priest, Father Roman Gamratsey.

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

6. In accordance with a decision by the Ternopil Regional State Administration (“Ternopil Regional Administration”) on 26 June 1997, the applicant was entitled to use church premises situated in the village of Sosulivka in the Ternopil Region (“*церква Покрови Пречистої Діви Марії у с. Сосулівка*”) for religious ceremonies. It was required to share the premises with another church of the Ukrainian Orthodox Church of the Kyiv Patriarchate (“UOP KP”; “*Української Православної Церкви Київського Патріархату*”). In accordance with paragraph 3 of the decision, the Chortkiv District State Administration of the Ternopil Region (“Chortkiv District Administration”) was to conclude separate agreements on the use of the church premises and its property with religious denominations, specifying particular times, procedures and conditions for their use. The decision itself did not provide specific details on how the premises and property were to be used.

7. On 10 July 1997 the applicant concluded agreement on the use of the church premises with the Chortkiv District Administration and agreed to share it with the UOP KP on the conditions specified in this agreement. The agreement contained no details as to how the premises were to be used. The applicant also alleged that the UOP KP continued to use the premises without any agreement with the Chortkiv State Administration and impeded its own use of the premises.

8. On 6 October 2000 the applicant requested the Ternopil Regional Administration to transfer the church premises to it for its sole use and its religious needs. It also informed the Ternopil Regional Administration that the UOC KP had refused to comply with the decision of 26 June 1997 and the agreement concluded with the Chortkiv State Administration on 10 July 1997. In reply, on 20 December 2000 the Department of Religious Affairs of the Ternopil Regional Administration informed the applicant that disputes over the use of religious premises that had been transferred to religious organisations in accordance with agreements on their use were within the competence of the State Bailiffs Service (section 14(3) of the Enforcement Proceedings Act).

B. First set of proceedings

9. On 5 February 2001 the applicant lodged complaints with the Higher Arbitration Court against the Ternopil Regional Administration, seeking a transfer of the use of the church premises, as specified in the agreement with the Chortkiv District Administration. In particular, the applicant stated that

the church sharing the premises had failed to comply with the decision of 26 June 1997. It further stated that under section 17 of the Freedom of Conscience and Religious Organisations Act, the State as the owner had to manage the sharing and use of the church premises on the basis of agreements with the occupiers.

10. On 19 February 2001 a judge of the Higher Arbitration Court rejected the applicant's complaint on the ground that it should have been lodged with a court of general jurisdiction, not an arbitration court dealing with commercial matters. In particular, he referred to the fact that the applicant had complained about the lack of arrangements for the use of the premises following the decision of the Ternopil Regional Administration of 26 June 1997 (see paragraph 6 above).

11. On 13 April 2001 the Higher Arbitration Court, sitting in a chamber composed of two judges, examined the applicant's request to review the case in the course of supervisory review proceedings and upheld the decision of 19 February 2001. In particular, it referred to section 17 of the Freedom of Conscience and Religious Organisations Act of 23 April 1991, which stated that disputes over the use of religious premises were to be examined under the Code of Civil Procedure by the courts of general jurisdiction and not by the arbitration (commercial) courts. It further mentioned that the decision of the Ternopil Regional Administration was an "enforceable document" and could have been enforced in accordance with Articles 348 and 349 of the Code of Civil Procedure.

12. The applicant appealed to the President of the Higher Arbitration Court seeking his intervention by means of a supervisory review appeal against the decisions of 19 February and 13 April 2001.

13. On 19 July 2001 the President of the Higher Commercial Court (as the Higher Arbitration Court was now called) rejected the applicant's request owing to the changes introduced to the Code of Commercial Procedure, which made the ruling of 13 April 2001 final and not subject to any appeal.

C. Second set of proceedings

14. On 24 April 2001 the applicant instituted proceedings in the Ternopil Court (*Тернопільський міський суд*), the local first instance court of general jurisdiction, against the Ternopil Regional Administration for a transfer of the premises to its sole use.

15. On 4 May 2001 the court rejected this claim, stating that the courts of general jurisdiction had no authority to deal with disputes between legal entities. It also made an order for the dispute to be referred to the Ternopil Court of Arbitration, which, in its view, had jurisdiction over the matter. The applicant did not appeal in cassation and the ruling of 4 May 2001

became final. Instead, it lodged a request with the Ternopil Regional Court for supervisory review of the ruling of 4 May 2001.

16. On 20 June 2001 the Ternopil Regional Court refused to initiate supervisory review proceedings in the case. In particular, the Deputy President of the Ternopil Regional Court informed the applicant that disputes between legal entities were within the jurisdiction of the arbitration courts and that there were thus no reasons for lodging a supervisory review appeal. He referred to Articles 24 of the Code of Civil Procedure and Article 1 of the Code of Arbitration Procedure.

17. On 8 August 2001 the Deputy President of the Supreme Court refused to initiate supervisory review proceedings in the case, informing the applicant that disputes involving ownership claims over church premises were within the jurisdiction of the commercial courts and disputes involving their use were to be examined by the local courts of general jurisdiction. It advised the applicant to clarify its claims.

D. Third set of proceedings

18. The applicant then instituted proceedings in the Kyiv Commercial Court for the transfer of the premises to its sole use.

19. On 23 October 2001 the court refused to consider the applicant's claims, referring to the ruling of 13 April 2001 and the decision of the TRSA of 26 June 1997 by which the TRSA had already resolved the dispute. The court also made reference to a practice direction that had been issued by the HAC on 29 February 1996 (see paragraph 32 below).

20. On 19 March 2002 the HCC upheld the ruling of 23 October 2001. It also held that the commercial courts had no jurisdiction over the case as it did not concern property issues, but a challenge against a decision taken by a State body, which was a matter to be dealt with in the course of administrative, not judicial, proceedings.

21. On 20 June 2002 the Supreme Court refused to institute cassation proceedings in the case having found no grounds for doing so.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of 28 June 1996

22. The relevant provisions of the Constitution of Ukraine read as follows:

Article 125

“In Ukraine the system of courts of general jurisdiction is formed in accordance with the territorial principle and the principle of specialisation.

The Supreme Court of Ukraine is the highest judicial body in the system of courts of general jurisdiction.

The respective higher courts are the highest judicial bodies of specialised courts.

Courts of appeal and local courts shall operate in accordance with the law.

The creation of extraordinary and special courts shall not be permitted.”

B. Code of Commercial Procedure (former Code of Arbitration Procedure)

23. In accordance with Article 1 of the Code of Arbitration Procedure, in force at the material time, that is to say before 21 June 2001, legal entities and private entrepreneurs engaged in business activities were entitled to apply to the arbitration courts, in accordance with the relevant jurisdictional rules, for the protection of their legal rights and interests. Any agreement waiving the right to apply to an arbitration court was deemed null and void.

24. Under Article 12 of the Code in force before 21 June 2001, the arbitration courts had jurisdiction over commercial disputes involving execution of the commercial contracts and applications for orders declaring certain normative acts null and void. The following were excluded from the jurisdiction of the arbitration courts: disputes as to technical standards and conditions; prices for particular products, services or goods; bankruptcy cases; and cases involving the Monopolies Commission or the State Accounting Chamber. Disputes concerning the validity of legal acts or concerning public-procurement contracts were within the exclusive jurisdiction of the arbitration courts.

25. Article 14 of the Code established that the Higher Arbitration Court had jurisdiction over complaints against the Regional State Administration. In accordance with the rules on exclusive jurisdiction, under Article 16 of the Code, cases involving the enjoyment of possessions were to be examined in the arbitration court with jurisdiction for the area in which the property was situated. Under Article 17 of the Code, the court was required to transfer the case-file to another court which had jurisdiction over claims which had been lodged with the wrong court. A ruling on the transfer of the case to a different court on jurisdictional grounds could be reviewed in the course of supervisory review proceedings.

26. The relevant extracts from the Code, as amended on 21 June 2001, read as follows:

Transitional Provisions

“1. This law shall become effective from the date of its publication, save for Article 81-1 [of the Code], which shall become effective on 28 June 2002.

...9. Decisions of the judicial divisions of the Higher Arbitration Court of Ukraine or of the Presidium of the Higher Arbitration Court of Ukraine¹ that were not challenged by way of supervisory review proceedings before this Law entered into force, as well as resolutions of the Plenary Higher Arbitration Court of Ukraine, shall be final but may be appealed against to the Supreme Court of Ukraine on the basis of and pursuant to the procedure prescribed by the Code of Commercial Procedure of Ukraine.”

C. Code of Civil Procedure, 1963 (relevant provisions in force before 21 June 2001)

27. In accordance with Article 24 of the Code of Civil Procedure the jurisdiction of the civil courts extended to disputes relating to civil, family, labour and cooperative legal relations, if at least one of the parties to a dispute is a natural person (unless these disputes are within the jurisdiction of other authorities). The jurisdiction of the civil courts also extended to administrative legal relations referred to in Article 236 of the Code of Civil Procedure (complaints against acts of State authorities, juristic persons or public officials, complaints against decisions given in relation to religious organisations and other disputes involving administrative legal relations).

28. In accordance with Article 348 § 17 of the Code of Civil Procedure (which concerns enforcement proceedings), decisions of State bodies, adopted with regard to the ownership and use of religious premises (buildings) and property are regarded as enforceable by the State Bailiffs Service. Decisions of the Regional State Administrations were enforceable, without any court order, as they were equated to writs of execution issued on the basis of a judicial decision (Article 349 of the Code of Civil Procedure).

D. Freedom of Conscience and Religious Organisations Act of 23 April 1991 (as worded at the material time)

29. Under the Act, religious organisations have the right to use property, land, buildings and premises owned by the State, non-governmental organisations or citizens (section 17, Chapter III “Property Status of Religious Organisations”). Such property can be transferred to religious organisations under lease agreements.

¹. After the reform of the judicial system in June 2001 all “arbitration courts” were renamed “commercial courts”.

30. In accordance with section 17 of this Act, the use or ownership of religious premises and property belonging to the State may be transferred without consideration on the basis of a decision of the Regional State Administration. Religious premises and property belonging to the State can be used jointly by two or more religious communities if they consent. In the absence of consent, the State authority has to decide on the arrangements for the use of the premises, by concluding separate agreements with each of the communities. Requests for the transfer of ownership of religious premises or property or for their use without charge shall be examined within one month of the date of receipt.

31. Under the relevant subparagraphs of section 17, agreements on the use of religious premises and other buildings and property may be terminated or suspended in accordance with the procedure and on the grounds specified in the civil legislation of Ukraine. Decisions of the State authorities with regard to the ownership and use of religious premises and property may be appealed against to the courts, in accordance with the Code of Civil Procedure.

32. Under section 18 these organisations have the right to own, use and dispose of their property. These rights are protected by law (section 18). Under section 19 religious organisations have the right to create, in accordance with the provisions of their statutes, publishing, commercial, agricultural and other enterprises and charitable institutions have the rights of a juristic person.

E. Enforcement Proceedings Act of 21 April 1999 (in force at the material time)

33. In accordance with section 3(14) of this Act, the State Bailiffs Service is responsible for the enforcement of decisions of the State authorities adopted with regard to the ownership and use of religious premises and property.

34. Article 18(1) of the Act states that the State Bailiff shall initiate enforcement proceedings upon request of the creditor or his representative in so far as it concerns the enforcement of one of the decisions mentioned in Article 3 of this, on the basis of the writ of enforcement.

F. Practice Direction issued by the Higher Commercial (former Arbitration) Court on 29 February 1996

35. The Practice Direction states that disputes that relate to the amendment, termination or enforcement of an agreement on the use of the premises shall not be within the jurisdiction of the commercial (former arbitration) courts (paragraph 5 of the Practice Direction). It further establishes that decisions concerning the transfer of ownership of religious

premises or property may be appealed against to the commercial courts (paragraph 8 of the Practice Direction) and are not within the jurisdiction of the courts of general jurisdiction. Moreover, under paragraph 10 of the Practice Direction, the commercial courts must decline jurisdiction to hear actions for recovery of property improperly taken (*віндикаційні позови*) or actions to eliminate obstacles in free enjoyment of possessions (*негативні позови*), if a State authority has already adopted a decision on that issue in an “enforceable document” in accordance with the section 3(14) of the Enforcement Proceedings Act.

III. RELEVANT INTERNATIONAL LAW INSTRUMENTS

A. Report of the Parliamentary Assembly's monitoring committee “Honouring of obligations and commitments by Ukraine” (doc. 10676, 19 September 2005) on the issue of return of the previously nationalised religious premises to religious organisations

36. The relevant extracts from the Report read as follows:

“(...) F. Freedom of conscience and religion

(...) 269. Ukraine undertook to (...) find a legal solution for the restitution of church property. The present Law on freedom of conscience and religious organisations dates back to 1991. Despite the fact that it is regarded as one of the best freedom of religion laws in the region, some of its provisions lack clarity. (...) The law also contains a number of other ambiguous provisions, which leave a wide discretion to the implementing authorities. Hence, the quite progressive law for the time of its adoption now requires significant rewording. (...)

270. The Ukrainian legislation still lacks effective legal tools for restitution of church property. So far restitution was carried out occasionally on the basis of the parliament's 1991 resolution and several presidential decrees. The legal problem of restitution mainly stems from the fact that religious associations have no right to obtain a legal entity status and thus cannot possess property. Most of the organisations, which owned the property that should be restituted, ceased to exist and the Orthodox Church is represented by several organisations. This leads to an *ad hoc* restitution practice totally depending on the local authorities' preferences and which in most cases entails not the return of the ownership rights but transfer of property into a gratis rent. We, therefore, call on the Ukrainian authorities to elaborate clear rules on the restitution of religious property.”

B. Report of the monitoring committee of the Council of Europe on “Honouring of obligations and commitments by Ukraine” (doc. 8272 of 2 December 1998) on the issue of return of the previously nationalised religious premises to religious organisations

37. The relevant extracts from the Report read as follows:

“(…) C. Freedom of conscience and of worship

51. One of Ukraine's commitments, listed in paragraph 11, *xi.* of Opinion No. 190, is to facilitate 'peaceful solution to the disputes existing among the Orthodox churches (...) while respecting the Church's independence vis-à-vis the State; a new non-discriminatory system of church registration and a legal solution for the restitution of church property should be introduced'.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. The applicant complained under Article 6 § 1 of the Convention that there had been a violation of its right of access to a court. This provision provides in so far as relevant:

“In the determination of his civil rights and obligations (...), everyone is entitled to a fair (...) hearing (...) by [a] (...) tribunal (...)”

A. Admissibility

1. Applicability of Article 6 § 1 of the Convention

39. The Government contended that the dispute at issue concerned the applicant's inability to use the church for its religious needs and so did not concern its civil rights and obligations. They concluded therefore that Article 6 § 1 of the Convention was not applicable to the proceedings.

40. The applicant contested that argument.

41. The Court notes that according to the principles enunciated in its case-law (see, *inter alia*, *Pudas v. Sweden*, judgment of 27 October 1987, Series A no. 125-A, p. 14, § 31), the dispute over a “right” which can be said at least on arguable grounds to be recognised under domestic law, must be genuine and serious; it may relate not only to the actual existence of the right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question.

Furthermore, whether or not a right is to be regarded as civil within the meaning of this expression in the Convention must be determined by reference to the substantive content and effects of the right – and not only its legal classification – under the domestic law of the State concerned (see *König v. Germany*, judgment of 28 June 1978, Series A no. 27, § 89). Accordingly, in ascertaining whether the present case concerned the determination of a civil right, only the character of the right at issue is of relevance (see *König v. Germany*, cited above, § 90).

42. The Court observes that the proceedings at issue concerned the determination of the applicant's right to use religious premises which belonged to the State, a right stipulated by the legislation in force. The Court further notes that under Article 17 of the Freedom of Consciousness and Religious Organisations Act, the applicant had the right to complain to the courts about the local authorities' failure to comply with the agreement on the use of the church premises, in particular, by seeking to oblige the State to enforce the unilateral decision granting the use of the premises. In the Court's view, the existence of the right to “use the church” in Ukrainian domestic law, the assertion of that right by the applicant and the applicant's ultimate inability to use the church for its religious needs were directly decisive for the applicant's “civil rights and obligations”. In particular, as this matter related to the administration of the fabric of the applicant association. Accordingly, Article 6 § 1 of the Convention was applicable to the proceedings in this case.

2. Exhaustion of domestic remedies

43. The Government further submitted that the applicant had failed to exhaust all domestic remedies, as it had not applied to the State Bailiffs Service for execution of the decision of 26 June 1997 under sections 3 and 18(1) of the Enforcement Proceedings Act. They noted that the applicant had been informed about this by letter of the Ternopil Regional Administration of 20 December 2000 and the ruling of the Kyiv City Commercial Court of 23 October 2001, but had failed to seek execution. They referred to the relevant case-law of the Court in respect of non-exhaustion (see *Konyukhov v. Ukraine*, no. 1858/03, § 20, 17 January 2006) and concluded that the applicant had not given the State bodies any opportunity to remedy the situation over the use of the church premises.

44. The applicant disagreed. In particular, it stated that the decision of 26 June 1997 was unclear as to the arrangements for using the premises and therefore, by virtue of section 3(14) of the Enforcement Proceedings Act, could not be enforced.

45. The Court finds that the question of effectiveness of this remedy and accordingly the issue of exhaustion are closely linked to the substance of the applicant's complaint under Article 6 § 1 of the Convention. It should, therefore, be joined to the merits.

3. *Conclusions*

46. The Court considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits of the application. It finds that the applicant's complaints as to lack of access to a court are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. *Submissions of the parties*

47. The applicant complained that there has been a violation of its right of access to a court. It referred in this respect to the Court's case-law in *Golder v. the United Kingdom* (judgment of 21 February 1975, Series A no. 18, §§ 35-36). In particular, it stated that the refusal of the domestic courts to examine its complaints on the merits had amounted to a violation of its rights under Article 6 § 1 of the Convention.

48. The Government disagreed with this statement and noted that the ruling of the Kyiv City Commercial Court of 23 October 2001 had by no means infringed the applicants' right of access to a court, as the applicant's complaint had been examined from the point of view of admissibility. They added that it had been adopted according to the legislation in force and upheld by the Higher Commercial Court and the Supreme Court. Further, the dispute as to the use of the church premises had already been examined on the merits in the Ternopil Regional Administration's decision of 26 June 1997. Thus, the main concern should have been to enforce that decision at the domestic level and thus give the State Bailiffs Service the opportunity to perform the obligations it had been entrusted with by law.

49. The Government further submitted that the present application could not be examined in the light of the *Beneficio Cappella Paolini v. San Marino* case, which concerned different factual and legal circumstances. In particular, the subject-matter of the latter application had related to the restitution of a plot of land and the issues raised in the claims of the applicant in that case had been examined by the domestic courts. The Government concluded that the right of the applicant in the instant case to access to a court within the meaning of Article 6 § 1 of the Convention had not been limited in any way and its right to a fair hearing had not been infringed.

2. *The Court's assessment*

50. The Court reiterates that, under its case-law, Article 6 § 1 embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect only (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, p. 18, § 36). For the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his or her rights (see *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 42, § 36).

51. The Court reiterates that its task is not to examine whether or not, in particular in the light of section 17 of the Freedom of Consciousness and Religious Organisations Act, the civil and commercial (former arbitration) courts had jurisdiction to determine the merits of the case or to establish which of the courts had jurisdiction to hear the applicant's complaints on their merits. It notes that the applicant had access to those courts but that none of them ruled on the merits of its complaints about its inability to use the church, as they considered that they had no subject-matter jurisdiction over the matter, notwithstanding the fact that procedural admissibility requirements had been complied with.

52. Furthermore, the Bailiffs' Service and the State Administrations could not solve a conflict between the religious denominations and were unable to assist the applicant association in settling the dispute with another religious association over the use of the church premises in the village of Sosulivka, where only one church premise had been available. In particular, these authorities undertook no effective measures in order to enforce the decision of the Regional State Administration of 26 June 1997 and the contract concluded with the applicant association on 10 July 1997, which obliged the other religious denomination to share the church premises with the applicant association, that led to a situation where the applicant association was obliged to seek judicial protection of its rights, however to no avail.

53. In the Court's view, that situation amounts to a denial of justice which impaired the very essence of the applicant's right of access to a court, as secured by Article 6 § 1 of the Convention. There has consequently been a violation of that provision. It follows that the Government's preliminary objection as to exhaustion of domestic remedies (see paragraph 43 above), previously joined to the merits (see paragraph 45 above) must be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

54. The applicant also invoked Article 13 of the Convention, on the ground that it had no effective remedies in respect of its complaints under Article 6 § 1. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

55. The Court notes that this complaint is linked to the complaint examined above and must therefore likewise be declared admissible.

56. Having regard to the finding relating to Article 6 § 1 (see paragraphs 51-53 above), the Court considers that it is not necessary to examine whether there has also been a violation of Article 13, since its requirements are less strict than, and are here absorbed by, those of Article 6 § 1 (see, among other authorities, *Osu v. Italy*, no. 36534/97, § 43, 11 July 2002; and *Dragičević v. Croatia*, no. 11814/02, § 32, 9 December 2004).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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. Damage and costs and expenses

58. The applicant claimed UAH 10,000,000 (about EUR 1,400,000) in respect of non-pecuniary damage, stating that this would be sufficient to build a new church in view of the Government's opposition to the transfer of the old church to the applicant's use.

59. The Government submitted that these claims were exorbitant and not supported by any evidence. Furthermore, they saw no causal link between the alleged violation and the damage claimed.

60. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant, making its assessment on equitable basis, EUR 1,500 in respect of non-pecuniary damage.

61. The applicant claimed no costs and expenses. Accordingly, the Court makes no award.

B. Default interest

62. 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 UNANIMOUSLY

1. *Decides* to join to the merits the Government's preliminary objection as to the exhaustion of domestic remedies in respect of Article 6 § 1 of the Convention;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention and accordingly *dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (b) that the aforementioned sum shall be converted into the national currency of Ukraine at the rate applicable at the date of settlement;
 - (c) 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President