



## Churches have the right to manage ecclesiastical appointments without State intervention

In its decisions in the cases of **Baudler v. Germany** (application no. 38254/04), **Reuter v. Germany** (application no. 39775/04) and **Müller v. Germany** (application no. 12986/04), the European Court of Human Rights, by a majority, has declared the applications inadmissible. The decisions are final.

The cases of **Baudler** and **Reuter** concerned decisions by the Protestant Church to place one clergyman on leave of absence and to oblige another to take early retirement. The case of **Müller** concerned a decision by the Salvation Army to terminate the missionary service of two officers.

### Principal facts

#### (a) Baudler and Reuter

The applicants, Andreas Baudler and Roland Reuter, are American and German nationals respectively who were born in 1950 and 1955 and live in Ravensburg and Moers (Germany).

Mr Baudler had been serving as a minister in a Protestant parish in Böblingen since 1982, while Mr Reuter had been a minister in the Protestant parish of Utfort since 1986. In 1994, following disagreements with their respective parishes, they were placed on leave of absence by the Church authorities and had their income reduced. Mr Baudler was transferred in June 1999 to a post teaching religious education in a school. Mr Reuter was ordered by the Church to take early retirement in 1998.

Mr Baudler and Mr Reuter lodged several appeals with the ecclesiastical authorities against these decisions and the automatic effects triggered by them (for instance, the reduction in their salaries and their social security cover). Their appeals were dismissed on the basis of the Ecclesiastical Ministry Act.

In 1999 the Federal Constitutional Court declared the constitutional complaints lodged by the applicants inadmissible on the ground that the applicants had not exhausted remedies before the administrative courts.

The applicants accordingly applied to the administrative courts. Their applications were declared inadmissible on the ground that measures concerning the status and mission of members of the clergy were an internal Church matter. The administrative courts pointed out that the right to Church autonomy guaranteed by Article 137 § 3 of the 1919 Weimar Constitution (a provision incorporated in the German Basic Law) encompassed not only the right to make ecclesiastical appointments without State intervention, but also the right to determine the qualities required for such appointments and the attendant rights and responsibilities. The administrative courts further found that the Church authorities had not availed themselves of the option of making such measures subject to judicial review, as provided for by the Status of Civil Servants (General Principles) Act. Consequently, it was not possible to apply to the national courts to have the measures examined.

On 27 January 2004 the Second Section (*Senat*) of the Federal Constitutional Court declined to accept Mr Baudler's constitutional complaint for adjudication. Mr Baudler had based his reasoning on a new line of case-law established by the Federal Court of Justice which allowed the State to exercise limited judicial review over the decisions of the ecclesiastical authorities and to examine the validity of such measures but not their lawfulness (in other words, to examine whether the measure complained of infringed fundamental principles of the legal order such as the general prohibition on arbitrariness and the principles of public morals and public policy). The Constitutional Court considered that the applicant's constitutional complaint would have failed, as there was no evidence to suggest that his placement on leave of absence had been arbitrary or invalid. In May 2004 the Federal Constitutional Court dismissed Mr Reuter's constitutional complaint without giving reasons.

(b) Müller

The applicants, Hanna and Peter Müller, are Swiss and German nationals respectively who were born in 1951 and 1952 and live in Aarau (Switzerland). In 1975 they joined the Salvation Army and signed a declaration in which they expressly undertook not to be employed by the Salvation Army and not to enter into an employment contract with it.

During their missionary service in Germany they were the subject of complaints relating, among other things, to their accounts and to the state of their premises. After transferring the applicants to Switzerland and placing them on leave of absence, the Salvation Army terminated their service as officers in January 2001, chiefly on the ground that they were no longer fit to perform such service.

Without first bringing their case before the Salvation Army board of inquiry, Mr and Mrs Müller complained before the civil courts about the termination of their service as officers and claimed remuneration for the period from March to November 2001. The Court of Appeal and the Federal Court of Justice declared their application admissible but dismissed it as unfounded, on the basis of a new line of case-law of the Federal Court of Justice on the subject, established in 2000. The Federal Court of Justice stressed in particular that the question whether an ecclesiastical measure was or was not subject to review by the national courts should be examined not at the admissibility stage but in the course of the examination on the merits. However, this did not mean that the national courts had unlimited powers of review. If, after weighing up the right to Church autonomy and the individual's rights, the conclusion was reached that the ecclesiastical measure was governed solely by the autonomous law of the Church, the national courts could not review the lawfulness of such a measure but only its validity. In other words, they could examine whether the disputed measure infringed fundamental principles of the legal order such as the general prohibition on arbitrariness and the principles of public morals and public policy. In the applicants' case the Federal Court of Justice held that there was no evidence to suggest that their dismissal had been in breach of those principles.

## Complaints, procedure and composition of the Court

Mr Baudler's application was lodged with the European Court of Human Rights on 22 October 2004; Mr Reuter's application was lodged on 8 November 2004 and that of Mr and Mrs Müller on 2 April 2004.

Relying, in particular, on Article 6 § 1 (right of access to a court), the applicants complained that they had not had access to a court in order to obtain a review of the ecclesiastical measures taken concerning them, because the national courts had ruled that the impugned decisions were an internal Church matter and were therefore not subject to judicial review.

The decisions were given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
Elisabet **Fura** (Sweden),  
Karel **Jungwiert** (the Czech Republic),  
Boštjan M. **Zupančič** (Slovenia),  
Mark **Villiger** (Liechtenstein),  
Ganna **Yudkivska** (Ukraine),  
Angelika **Nußberger** (Germany), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### [Article 6 § 1 \(right of access to a court\)](#)

The Court observed in the cases of *Baudler* and *Reuter* that the impugned measures relating to ecclesiastical appointments had been based on the rules of the respective Churches governing the service of members of their clergy. They had therefore not been governed by the law of the State, but solely by ecclesiastical law. In line with their settled case-law, the administrative courts had ruled that the measures complained of clearly constituted an internal Church matter which was not subject to review by the national courts. In 2000 the Federal Court of Justice had established a new line of case-law on the subject; however, in the Court's view, the applicants had not demonstrated that this case-law was applicable to their situation.

The Court concluded that the proceedings instituted by the applicants had not related to a right recognised under German law such that Article 6 of the Convention could be brought into play.

In the case of *Müller*, the Court noted that the Court of Appeal and the Federal Court of Justice had found that they had limited powers to review the decision of the Salvation Army to dismiss the applicants, by examining whether the decision had been compatible with fundamental principles of the German legal order such as the general prohibition on arbitrariness and the principles of public morals and public policy. The Court concluded that, unlike in *Baudler* and *Reuter*, the applicants could rely on a right recognised under German law, and that Article 6 of the Convention was therefore applicable.

The Court noted that the applicants had been able to raise their complaint before the civil courts, but that they complained of the limited scope of the courts' review. This limitation arose out of the right to autonomy of Churches and religious societies under Article 137 § 3 of the Weimar Constitution. The Court observed that the German courts had attached weight to the fact that the applicants had not appealed against their dismissal before the Salvation Army board of inquiry. The courts had concluded that there were no grounds for finding that the Salvation Army's decision had been arbitrary or contrary to public morals or public policy.

Accordingly, in the Court's view, the applicants could not argue that they had been deprived of the right to obtain a decision on the merits of their claim.

The Court, by a majority, declared the three applications inadmissible.

*The decisions are available only in French.*

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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.