

Press release issued by the Registrar

JUDGMENT IN THE CASE OF HASAN AND CHAUSH v. BULGARIA

In a judgment delivered at Strasbourg on 26 October 2000 in the case of Hasan and Chaush v. Bulgaria, the European Court of Human Rights held unanimously that there had been **violations of Article 9** (freedom of thought, conscience and religion) **and of Article 13** (right to an effective remedy) of the European Convention on Human Rights and that there had been **no violation of Article 6** (right to a fair trial). Under Article 41 (just satisfaction) of the Convention, the Court awarded 10,000 Bulgarian lev (BGL) for non-pecuniary damage to the first applicant, Mr Hasan, and a total of BGL 10,000 to both applicants, for legal costs and expenses.

1. Principal facts

The applicants are Bulgarian nationals. The first applicant, Fikri Sali Hasan, was born in 1963 and lives in Sofia. He used to be the Chief Mufti of the Bulgarian Muslims. The second applicant, Ismail Ahmed Chaush, was born in 1940 and also lives in Sofia. He is a Muslim believer and Islamic teacher.

On 19 September 1992 a national conference of Muslim believers elected Mr Hasan as Chief Mufti of the Bulgarian Muslims along with a Supreme Holy Council, and adopted a new statute. The Directorate of Religious Denominations (*Direktzia po veroizpovedaniata*), a government agency, registered the new statute and leadership. However, Mr Hasan's predecessor Nedim Gendzhev, and his supporters, claimed that he remained Chief Mufti. This gave rise to a leadership dispute.

Throughout 1993 and the first half of 1994 the Directorate of Religious Denominations officially recognised Mr Hasan and the Supreme Holy Council elected in 1992.

However, on 22 and 23 February 1995 the Government issued decisions registering a new leadership and statute adopted by Mr Gendzhev's rival faction.

On 27 February 1995 Mr Hasan's staff were forcefully evicted from their offices in Sofia by private security guards led by the newly-registered leaders. His request for assistance to the prosecution authorities was rejected, on the ground that the new occupants of the building were the legitimate representatives of the Muslim community, and his appeal to the Supreme Court against the decisions of 22 and 23 February 1995 was also dismissed.

In 1996 and 1997 the Supreme Court twice granted Mr Hasan's appeals against the refusal of the Government to register changes in the statute and leadership of the Muslim community led by him. The Council of Ministers refused to comply, however, noting it had already registered the Muslim community's leaders.

The leadership dispute continued until a unification conference was held in October 1997.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 22 January 1996 by four applicants. Having declared the application admissible, and following its report of 17 September 1998 striking out the complaints of the Chief Mufti Office and another applicant, the Commission adopted a report on 26 October 1999 in which it expressed the unanimous opinion that in respect of the remaining two applicants, Mr Hasan and Mr Chaush, there had been violations of Articles 9 and 13 of the Convention, that it was not necessary to examine separately the complaint under Article 11 and that there had been no violations of Article 6 and Article 1 of Protocol No. 1 to the Convention. The Commission referred the case to the Court on 30 October 1999.

Under the transitional provisions of Protocol No. 11 to the Convention, the case was transmitted to the Grand Chamber of the European Court of Human Rights. Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Luzius **Wildhaber** (Swiss), *President*,
Jean-Paul **Costa** (French),
Antonio **Pastor Ridruejo** (Spanish),
Luigi **Ferrari Bravo**¹ (Italian),
Giovanni **Bonello** (Maltese),
Jerzy **Makarczyk** (Polish),
Pranas **Kūris** (Lithuanian),
Françoise **Tulkens** (Belgian),
Viera **Strážnická** (Slovakian),
Volodymyr **Butkevych** (Ukrainian),
Josep **Casadevall** (Andorran),
Hanne Sophie **Greve** (Norwegian),
András **Baka** (Hungarian),
Rait **Maruste** (Estonian),
Egils **Levits** (Latvian),
Snejana **Botoucharova** (Bulgarian),
Mindia **Ugrekhelidze** (Georgian), *judges*,

and also Maud **de Boer-Buquicchio**, *Deputy Registrar*.

3. Summary of the judgment²

Complaints

The applicants complained under Articles 9 (freedom of religion) and 11 (freedom of assembly and association) of the European Convention on Human Rights that there had been an unlawful and arbitrary interference with their religious liberties and the right of the believers and the religious community to govern their own affairs and to choose their leadership. They also raised complaints under Article 6 (right to a fair trial), and Article 13 (right to an effective remedy).

¹ Judge elected in respect of San Marino.

2. This summary by the Registry does not bind the Court.

Decision of the Court

Government's preliminary objections

The Court rejected the Government's objection concerning alleged non-exhaustion of domestic remedies, because it was raised only after the Commission's decision declaring the application admissible.

Article 9 of the Convention

a) applicability

The Court first examined whether or not the events under consideration, which all concerned the organisation and leadership of the Muslim community in Bulgaria, affected the individual applicants' rights to freedom to manifest their religion and, consequently, whether or not Article 9 of the Convention applied.

The Court recalled that religious communities traditionally and universally existed in the form of organised structures. They abided by rules which were often seen by followers as being of a divine origin. Religious ceremonies had their meaning and sacred value for the believers if they had been conducted by ministers empowered for that purpose in compliance with these rules.

The Court held, therefore, that participation in the life of the community was a manifestation of one's religion, protected by Article 9.

The Court further found that where the organisation of the religious community was at issue, Article 9 should be interpreted in the light of Article 11 of the Convention which safeguards associative life against unjustified State interference. Seen in this perspective, the believer's right to freedom of religion encompassed the expectation that the community would be allowed to function peacefully free from arbitrary State intervention. Indeed, the autonomous existence of religious communities was indispensable for pluralism in a democratic society and was thus an issue at the very heart of the protection afforded by Article 9.

The applicants having been active members of the religious community, the Court found that the events complained of concerned their right to freedom of religion, as enshrined in Article 9. That provision was therefore applicable.

b) whether there was an interference with the internal organisation of the Muslim community and, consequently with the applicants' rights under Article 9.

The Court considered that facts demonstrating a failure by the authorities to remain neutral in the exercise of their powers in respect of administrative registration of religious communities must lead to the conclusion that the State had interfered with the believers' freedom to manifest their religion within the meaning of Article 9. It found that State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would constitute an interference with freedom of religion. In democratic societies the State did not need to take measures to ensure that religious communities are brought under a unified leadership.

The Court noted that in 1995 the Government had proclaimed changes in the leadership and statute of the Muslim religious community. No reasons had been given for this decision. There had been no explanation why preference had been given to one faction, and not to the first applicant, who had had the support of another part of the community.

The Court further observed that in Bulgaria the legitimacy and representation powers of the leadership of a religious denomination were certified by a government agency. Mr Hasan had been refused assistance by the prosecuting authorities against his forced eviction from his offices. The impugned decisions had clearly had the effect of putting an end to his functions as Chief Mufti and removing the hitherto recognised leadership of the religious community. The acts of the authorities had operated, in law and in practice, to deprive the excluded leadership of any possibility of continuing to represent at least part of the Muslim community and of managing its affairs according to the will of that part of the community.

There had therefore been an interference with the internal organisation of the Muslim religious community and with the applicants' right to freedom of religion protected by Article 9.

c) whether the interference was justified

The Court reiterated that the expressions "prescribed by law" and "in accordance with the law" in Articles 8 to 11 not only required that the impugned measure should have some basis in domestic law, but also referred to the quality of the law in question.

The Court held that domestic law must therefore afford a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities.

The Court noted that in the present case the relevant law did not provide for any substantive criteria for registration of religious denominations and changes of their leadership. There were no procedural safeguards, such as adversarial proceedings before an independent body, against arbitrary exercise of discretion.

The Court concluded that the interference with the internal organisation of the Muslim community and the applicants' freedom of religion had not been "prescribed by law" in that it had been arbitrary and had been based on legal provisions which allowed an unfettered discretion to the executive and had not met the required standards of clarity and foreseeability.

Conclusion: violation of Article 9.

Article 13 of the Convention

The Court recalled that Article 13 guaranteed the availability at national level of a remedy in respect of arguable grievances under the Convention.

It further considered that the scope of the State's obligation under Article 13 varied depending on the nature of the Convention right invoked. In the context of the present case Article 13 could not be seen as requiring a possibility for every believer, such as the second applicant, to institute in his individual capacity formal proceedings challenging a decision concerning the registration of his religious community's leadership. Individual believers' interests in this respect could be safeguarded by their turning to their leaders and supporting any legal action which the latter might initiate. The Court thus found that in such a case the State's obligation under Article 13 might well be discharged by the provision of remedies only accessible to representatives of the religious community aggrieved by a State interference with its internal organisation.

Noting that Mr Hasan was the leader of the faction of the Muslim organisation which was replaced through the State decisions complained of, the Court examined whether or not effective remedies had existed for him in his capacity as religious leader.

The Court observed that the Supreme Court had refused to examine the substance of Mr Hasan's appeal, considering that the Government enjoyed full discretion whether or not to register the statute and leadership of a religious denomination. The appeal to the Supreme Court against the decisions of February 1995 had not been, therefore, an effective remedy. The Government had refused to comply with two other judgments of the Supreme Court. No other remedy had existed.

The Court found, therefore, that the leadership of the faction led by Mr Hasan had been unable to mount an effective challenge to the unlawful State interference in the internal affairs of the religious community and to assert their right to organisational autonomy, as protected by Article 9 of the Convention.

Conclusion: violation of Article 13.

Article 11 of the Convention

Having dealt with the complaint concerning the State interference with the internal organisation of the Muslim religious community under Article 9, interpreted in the light of Article 11, the Court found that no separate issue arose under Article 11.

Conclusion: no separate issue.

Article 6 of the Convention

The Court noted that the applicants had not substantiated their complaint under this provision.

Conclusion: no violation of Article 6.

Article 41 of the Convention

In respect of pecuniary damage, the Court considered that Mr Chaush, the second applicant, had not established a direct causal link between the violation found in the present case and the loss of income or other pecuniary damage allegedly suffered by him. The Court held that the finding of violations of the Convention constituted sufficient just satisfaction.

As regards the first applicant, Mr Hasan, the Court considered that he must have suffered some pecuniary damage as a result of his unlawful removal from the position of Chief Mufti and the forced eviction from the building of the Chief Mufti's Office. His claim in this respect, however, was not supported by reliable documentary evidence. Nevertheless, accepting that the first applicant's inability to furnish documentary proof might to a certain extent have been due to the fact that he had been denied access to his documentation, the Court decided to take these circumstances into account when deciding on the first applicant's claim for non-pecuniary damages. The Court further found that the unlawful State interference with the organisation of the Muslim community had undoubtedly caused distress to the first applicant, who had been removed from his position as head of the second largest religion in Bulgaria. The Court awarded BGN 10,000 to the first applicant in respect of non-pecuniary damage.

The Court also awarded a total of BGN 10,000 to both applicants, for legal costs and expenses.

Judges Tulkens and Casadevall, joined by Judges Bonello, Strážnická, Greve and Maruste, expressed a partially dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

Registry of the European Court of Human Rights

F – 67075 Strasbourg Cedex

Contacts: Roderick Liddell (telephone: (0)3 88 41 24 92)

Emma Hellyer (telephone: (0)3 90 21 42 15)

Fax: (0)3 88 41 27 91

The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.