

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 13999/05
by Lambrin Dimchev SOTIROV and Others
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 5 July 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Lech Garlicki,
Ljiljana Mijović,
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 5 April 2005,

Having deliberated, decides as follows:

THE FACTS

The names of the applicants, two hundred and ninety-two Bulgarian nationals, are available for consultation in the Court's file. They were represented before the Court by Mr I. Gruykin, a lawyer practising in Sofia.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The applicants, their parish priest, temple and the church council

The applicants are two hundred and ninety-two Christian Orthodox believers, including the person who used to be their parish priest. For many years until the impugned events they attended religious services at the St Anastassiy Temple in Varna.

In accordance with the Statute of the Bulgarian Orthodox Church ("the Church"), the "temple" is a legal person and part of the Church. It is governed by a church council, a body elected at a meeting of the parish and approved by the relevant eparchy.

Some of the applicants are members of the church council governing the St Anastassiy Temple.

Since 1991 and until the events at issue the parish priest at the St Anastassiy Temple was Mr L. Popov, one of the applicants. In accordance with the procedure set out in the Statute of the Church, priests are ordained after approval by the respective eparchy and by the Holy Synod and elections conducted by secret ballot at a meeting of the parish.

During the same period, by virtue of a decision of 9 November 1991 of the Varna and Veliki Preslav Metropolitan Cyril, Mr L. Popov was also chairman of the church council at the St Anastassiy Temple.

At the time of the impugned events, in 2003, the persons elected at a parish meeting held at the end of 2000 were the remaining members of the church council. The results of those elections were approved by the eparchy and registered at the Varna municipality in the beginning of 2001, in accordance with the Religious Denominations Act 1949, which provided for such registration.

2. The divisions in the Church in the period 1990-2003 and the adoption of the Religious Denominations Act 2002

For a number of years after the fall of communism and the beginning of the democratic changes in Bulgaria after, the Bulgarian Orthodox Church ("the Church") was divided. Two groups of leaders claimed legitimacy and sought to unite the believers under their leadership. Over the years, successive governments supported one or other of the two leaderships. Also, each group had supporters among the clergy and the believers. A number of churches and monasteries became known as "belonging" to "the alternative Synod" presided over by metropolitan Inokentiy, since the ministers in those places recognised his leadership. After 1998, two different versions of the Statute of the Church existed. Contradictory acts registering one or the other central leadership were issued between 1992 and 2002 and some of them

were later quashed by the courts (see for a detailed account of these events, the Court's judgment in the case of *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, nos. 412/03 and 35677/04, 22 January 2009).

The applicants supported the "alternative Synod" presided over by Metropolitan Inokentiy and did not accept the leadership of Patriarch Maxim and the Synod presided over by him.

On 1 January 2003 the new Religious Denominations Act 2002 came into force. It provided, *inter alia*, for the *ex lege* recognition of the Bulgarian Orthodox Church. It also introduced a provision which stated that the Church "is headed by the Holy Synod and is represented by the Bulgarian Patriarch ..." The Act prohibited more than one denomination carrying the same name and stated, in its transitional provisions, that persons who had seceded from a registered religious institution were not entitled to use its name or assets.

On 23 March 2003 the church council governing the St Anastassiy Temple in Varna gathered and adopted a decision declaring that the temple recognised the leadership of the Holy Synod presided over by Metropolitan Inokentiy.

On 24 March 2003 Sofia Metropolitan Inokentiy, the leader of the "alternative Synod", issued a decision which stated that Mr L.Popov was reappointed as parish priest and chairman of the church council at the St Anastassiy Temple in Varna.

3. The events of 20 May 2003 and ensuing proceedings

On 20 May 2003 several priests and other ministers led by Archimandrite Serafim, the Protosyngel of the Varna and Veliki Preslav Eparchy, entered the area around the St Anastassiy Temple and occupied it, refusing to let in members of the church council and the parish priest. They claimed that they were the true representatives of the Church whose true head was Patriarch Maxim.

Mr L. Popov and some of the other applicants informed the police and the prosecuting authorities and requested urgent action.

The district prosecutor initially issued a decision ordering the restoration of the situation but on the next day, 21 May 2003, having received a letter from the Varna and Veliki Preslav Metropolitan Cyril, annulled his decision on the basis that urgent action was not called for. The decision of 21 May 2003 was upheld on 28 May and 9 June 2003 by the regional and appeals levels of the prosecuting service on the basis that prosecutors should not intervene in an internal Church dispute and having regard to the special procedure under Article 126zh of the Code of Civil Procedure (see below).

On 28 May 2003 Mr Popov, acting as chairman of the church council governing the St Anastassiy Temple, submitted an application to the Varna District Court for an order under Article 126zh of the Code of Civil

Procedure to recover possession of the temple. Under that provision the claimant had to prove that he enjoyed the possession of a real property and that the defendant had deprived him thereof secretly or through violence.

On 18 June 2003 the District Court delivered its decision dismissing the application. It reasoned as follows.

As to the admissibility of the application, it noted that under Article 165(12) of the Statute of the Church, a church council could initiate judicial proceedings only with the authorisation of the eparchy or, in cases of eparchies comprising one sole parish and a sole priest, of the Holy Synod. In the case under examination the claimant had submitted a document demonstrating that the Holy Synod presided over by Metropolitan Inokentiy had approved the church council's decision to bring the proceedings at issue. Given the existence of two religious communities bearing the name Bulgarian Orthodox Church, as noted by the Supreme Administrative Court in its judgment of 18 October 2000 (as to that judgment, see *Holy Synod and Others v. Bulgaria*, cited above, § 32), it was unclear which leadership was competent to give the requisite authorisation. This lack of clarity should not, however, hamper the possibility for each of the two communities to seek judicial protection. Therefore, the authorisation presented by the claimants was sufficient and the application was admissible.

The District Court accepted that the application was made on behalf of the local temple, which was a legal person under the Statute of the Church, and that it had been made in the name of a local unit of the Church governed by the "alternative" Synod.

It noted, however, that Mr L. Popov had been appointed parish priest and chairman of the local church council by decision approved by the Varna and Veliki Preslav Metropolitan Cyril, who had also approved other decisions of the same church council. The Holy Synod presided over by Patriarch Maxim had certified that Metropolitan Cyril was the head of the Varna and Veliki Preslav Eparchy. In these circumstances, contrary to what was claimed in the application, the claimant had not possessed the disputed property on behalf of the religious organisation presided over by Metropolitan Inokentiy but for the organisation presided over by Patriarch Maxim. Seeing that those who had entered and occupied the property belonged to the same organisation, it followed that there had been no deprivation of possessions.

Upon the appeal submitted by Mr Popov on behalf of the local temple, on 20 June 2003 the Varna Regional Court annulled the District Court's decision and terminated the proceedings. The court noted that the claimant and the defendants belonged to the religious organisation of the Christian Orthodox community in Bulgaria. However, the State was not entitled to intervene in intra-religious matters and the courts were not competent to decide whether or not there had been a deprivation of possessions as in the particular circumstances the events concerned the manner in which the

Church governed its property. The courts could only deal with matters touching upon an internal conflict in a religious organisation if there was an issue of liability other than liability under canon law.

The court further stated that even if it were accepted that the courts were competent to examine the application, it was in any event inadmissible. In particular, it was unclear whether it was made on behalf of the local temple as a legal person or on behalf of the church council which did not have legal personality separate from the temple and could not claim to have possessed the temple in its own name. That should have been clarified by the District Court.

Furthermore, there was no valid authorisation to institute proceedings, as required by Article 165(12) of the Statute of the Church. Such authorisation could be issued by the Holy Synod solely in respect of eparchies comprising one sole parish, which was not the case in the Varna and Veliki Preslav Eparchy. The authorisation in the particular case thus had to be issued by the bodies governing the eparchy. It had not been shown that such authorisation had been given.

The decision of the Varna Regional Court was final and was not amenable to further appeal.

B. Relevant domestic law and practice

In accordance with Article 13 of the Constitution of 1991, religious institutions are separate from the State. In its judgment no. 5 of 11 June 1992 the Constitutional Court stated, *inter alia*, that the State must not interfere with the internal organisation of religious communities and institutions, which must be regulated by their own statutes and rules.

The Religious Denominations Act 1949 governed the organisational structure and functioning of religious denominations between 1949 and 1 January 2003. It provided that each religious denomination had to apply for registration and approval of its statute by the Council of Ministers and to register its leadership with the Directorate. The local leaderships were registered by the municipal authorities.

In its judgment no. 5 of 11 June 1992 the Constitutional Court, while agreeing that certain provisions of the Religious Denominations Act 1949 were clearly unconstitutional, found that it was not its task to repeal legal provisions adopted prior to the entry into force of the 1991 Constitution, the ordinary courts being competent to consider them superseded by the 1991 Constitution, which has direct applicability.

The Religious Denominations Act 2002, which entered into force on 1 January 2003, provides for judicial registration of all religious denominations except the Bulgarian Orthodox Church, which is recognised as a legal person *ex lege*. In accordance with paragraph 2 of the transitional

provisions, the Bulgarian Orthodox Church need not be re-registered under the new Act, unlike all other religious denominations.

Section 10 of the new Act provides, *inter alia*, that the Bulgarian Orthodox Church is a legal person whose structure is determined by its internal statute.

Section 18 provides that information about religious denominations, including the names of the persons representing them for all legal purposes, is recorded (вписване) in a public register at the Sofia City Court. The Supreme Court of Cassation has stated that this requirement applies to the Bulgarian Orthodox Church (judgment no. 120 of 11 March 2005 in case no. 496/2004; see also the same interpretation in other judgments: the Veliko Tarnovo Court of Appeal, judgment of 20 October 2003 in case no. 258/2003, and the Sliven Regional Court, judgment no. 245 of 30 June 2004 in case no. 94/2004).

Section 19 provides that local religious leaderships must register with the relevant municipality.

Section 20 provides that the central leadership may decide to seek the registration of its local organisations as legal persons by applying to the relevant regional court.

In accordance with the transitory and final provisions to the Religious Denominations Act 2002 (paragraph 2(4)), local organisations which have obtained legal personality under the previous legal regime shall be registered *ex officio* at the respective regional court on request by the denomination's national leadership.

In civil or administrative proceedings involving local units of religious denominations (опред. № 8362 от 14.09.2007г. на ВАС по адм.д. № 7914/2007; опред. № 1574 от 05.02.2009 г. на ВАС по адм. д. № 930/ 2009; реш. от 11.11.2009г. по гр. д. № 17/2009 г. на Районен съд Сливен; опред. № 15 от 28.01.2010 г. по гр.д. № 474/2009г. на ВКС; реш. от 18.11.2010г. по гр.д. № 314/2010 на Окръжен съд Разград), the courts have accepted such units' *locus standi* without proof of registration at the relevant regional court, reasoning that the Religious Denominations Act 2002 recognised the continuity of legal status acquired under previous legislation (see also, реш. № 3429 от 19.04.2004г. на ВАС по адм.д. № 10111/2003 and опред. № 1154 от 11.02.2003 г. на ВАС по адм. д. № 6748/2002 г., where the same interpretation of the relevant law was implicit).

In the initial period after the entry into force of the 2002 Act there was contradictory judicial practice on the question whether registration under section 20 of the 2002 Act was needed in respect of local organisations of the Bulgarian Orthodox Church. In its interpretative decision No. 1 of 23 November 2010, the Supreme Court of Cassation decided that local organisations of the Church were not subject to the registration requirement,

having regard to the special status of the Bulgarian Orthodox Church as a legal person *ex lege*.

An account of additional relevant domestic law and practice has been set out in the Court's judgment in the above-cited case of *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria.*

COMPLAINTS

The applicants complained under Article 9 of the Convention that their priest and their church council were forcibly removed in an unlawful manner and that by refusing to offer protection or take other remedial action the State *de facto* legalised and upheld an arbitrary intervention in their religious life. Moreover, the authorities' attitude was motivated by the fact that the applicants did not recognise the leadership of Patriarch Maxim, which was the leadership favoured by the Government. The applicants submitted that the violation of their religious rights continued as they were obliged to perform religious rituals outside their temple and their priest and church council have not been reinstated. They also invoked Article 1 of Protocol No. 1 as they were deprived of the possibility to use and govern their temple.

The applicants further complained, relying on Article 13 of the Convention, that they did not have an effective remedy in respect of the above violations of their Convention rights. The prosecutors refused to assist them in respect of the forcible removal and their decisions were not amenable to judicial appeal. Furthermore, as a result of the adoption of the Religious Denominations Act 2002, which provided for *ex lege* recognition of the Bulgarian Orthodox Church without a registration procedure, it was impossible for the local religious community, represented by Mr Popov, to institute judicial proceedings. In particular, the Regional Court held that the internal authorisation required by Article 165(12) of the Statute of the Church for the institution of proceedings had to be given by the very person who had ordered the unlawful action complained of – the head of the Varna and Veliki Preslav Eparchy Metropolitan Cyril.

THE LAW

The applicants raised complaints under Articles 9 and 13 of the Convention and Article 1 of Protocol No. 1.

The Court notes at the outset that although some of the relevant facts and the context of this case are similar to those examined in the above-cited case

of *Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria*, part of the events complained of is different.

The Court further observes that the present application was submitted on behalf of individuals and not by the St Anastassiy Temple as a legal person and an organisational unit of the Church.

As regards the complaints raised by the applicants with reference to Article 1 of Protocol No. 1, the Court observes that none of them claimed to have had any personal proprietary interest in the temple. Their complaints do not concern, therefore, "possessions" within the meaning of Article 1 of Protocol No. 1 and this part of the application must be rejected in accordance with Article 35 § 3(a) and 4 of the Convention as being incompatible *ratione materiae* with its provisions. The same is true of the complaints under Article 13 in conjunction with Article 1 of Protocol No. 1, seeing that there was no arguable claim under Article 1 of Protocol No. 1 and, therefore, Article 13 did not apply.

As regards Article 9, taken alone and in conjunction with Article 13, two aspects of the applicants' complaints are distinguishable.

First, they complain about the action of 20 May 2003 and the fact that the authorities did not provide assistance to them despite the attempts of their parish priest and chairman of the church council to seek such assistance.

In so far as this complaint concerns the actions of private individuals or of religious ministers adhering to the Holy Synod presided over by Patriarch Maxim and not of State bodies or agents, the Court notes that such actions cannot engage the responsibility of the State. Article 9 of the Convention does not guarantee to believers a right to choose the religious leaders of their community or to oppose decisions by the religious organisation regarding the election or appointment of ministers (see *Kohn v. Germany* ((dec.), no. 47021/99, 23 March 2000). This part of the complaint is therefore incompatible *ratione personae* with the provisions of the Convention and must be rejected in accordance with Article 35 § 3(a) and 4 of the Convention.

In so far as the applicants complain under Articles 9 and 13 that the State authorities refused to provide protection against the "occupiers", this complaint is time-barred. It was submitted to the Court on 5 April 2005, two years after the events and one year and nine months after the decisions of the prosecuting authorities and the courts. The decision of the Varna Regional Court of 20 June 2003 was final and, moreover, in view of its reasons, it was clear that there was no possibility to attempt other judicial proceedings. In these circumstances, the above complaint must be rejected as having been submitted after the expiry of the six months' time-limit under Article 35 § 1 of the Convention.

There remains to be examined the second aspect of the applicants' complaints under Articles 9 and 13 – their allegation that there is a continuous violation of those provisions imputable to the State authorities.

The applicants submit that they are compelled to carry out their religious services outside the St Anastassiy Temple and that there is therefore a continuing interference with their right to manifest their religion. They do not allege, however, that they are prevented by any State authority from entering and attending religious services in Orthodox churches in general and the St Ananstassiy temple in particular. It appears that in reality they do not want to attend services in the St Anastassiy Temple conducted by a new priest appointed by the relevant religious authorities which recognise Patriarch Maxim.

In so far as the applicants may be understood as complaining that the events of May and June 2003 were the result of the adoption of the Religious Denominations Act 2002 and a State policy to force the Christian Orthodox community to accept the leadership favoured by the authorities, the Court need not examine these complaints, because, at all events, it cannot accept that there was indeed a continuous situation rendering the present application compliant with regard to the six months' rule under Article 35 § 1 of the Convention.

It notes in particular that the State attitude complained of materialised in the form of the decisions of June 2003. The applicants themselves argued that the operation of the Religious Denominations Act 2002 made it impossible for the parish priest and church council to challenge these decisions effectively. All relevant events ended at the latest by June 2003, when the final decision of the Varna Regional Court was delivered.

The applicants have not complained about other events but only allege a continuing situation in general. This averment is unsubstantiated.

In these circumstances, noting that the applicants introduced their application in April 2005, more than six months after June 2003, the Court finds that all remaining complaints are also time-barred under Article 35 § 1 of the Convention and must be rejected in accordance with its Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Lawrence Early
Registrar

Nicolas Bratza
President