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

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
(merits)

STRASBOURG

22 January 2009

**FINAL**

*05/06/2009*

*This judgment 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,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 16 December 2008,

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").

2. Application no. 412/03 was lodged on 12 December 2002 by Metropolitan Inokentiy on behalf of the "alternative Synod" of the Bulgarian Orthodox Church, one of its two rival leaderships ("the applicant organisation") (see paragraphs 14-19 below).

3. Application no. 35677/04 was lodged on 28 September 2004 by six Bulgarian nationals, Mr Assen Iordanov Milushev, Mr Petar Ivanov Petrov, Mr Stoyan Ivanov Gruichev, Ms Liubka Borisova Nikolova, Ms Rositsa Danailova Grozdanova and Ms Liliana Markova Shtereva. They are Christian Orthodox believers who used to be employed by the applicant organisation. They all live in Sofia.

4. The applicants, who had been granted legal aid, were represented by Mr L. Popov, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Mrs M. Karadjova and Mrs M. Dimova, of the Ministry of Justice.

5. The applicants alleged, in particular, that the State authorities had arbitrarily intervened in the internal leadership dispute in the Bulgarian Orthodox Church ("the Church").

6. Third-party comments were received from the Holy Synod of the Bulgarian Orthodox Church presided over by Patriarch Maxim, which had been given leave by the President to intervene in the written procedure

(Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court). The parties replied to those comments (Rule 44 § 5).

7. The Chamber decided to join the proceedings in the applications (Rule 42 § 1). By a decision of 22 May 2007 the Court accepted that the applicant organisation had *locus standi* under Article 34 of the Convention and declared the applications partly admissible.

8. The applicants and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. The Bulgarian Orthodox Church between 1949 and 1989

9. In 1949 the authorities in Bulgaria enacted legislation regulating the organisational structure and functioning of religious denominations (the Religious Denominations Act 1949).

10. In accordance with the Act, 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 of Religious Denominations ("the Directorate") attached to the Council of Ministers. The local leaderships were registered by the municipal authorities.

11. In reality, the leadership of religious denominations was pre-approved or even directly nominated by the Bulgarian Communist Party.

12. The Bulgarian Orthodox Church was no exception. A document dating from 1949, submitted by the applicants, attests that in 1949 the Central Committee of the Bulgarian Communist Party discussed the need for "cleansing" in the leadership of the Church and took measures to promote persons loyal to the authorities to leading positions in the Church. In 1971, following the death of Patriarch Cyril, the Central Committee of the Bulgarian Communist Party, in a decision dated 8 March 1971, nominated Metropolitan Maxim for Patriarch and instructed a Mr K., a government employee, to "undertake the necessary preparation so as to secure the election of Metropolitan Maxim as Patriarch". Contrary to the Statute of the Church, which provided that each eparchy had to hold elections for seven electors to a special Church Convention empowered to

elect a new Patriarch, Maxim was elected by the electors nominated in 1957, when Cyril had become Patriarch.

13. It is unclear whether Patriarch Maxim's leadership was validly registered by the Council of Ministers under the 1949 Act. At all events, in administrative practice and for all legal purposes, until 1990 his leadership was recognised as being lawfully registered.

### B. Divisions and claims to leadership between 1989 and 2003

14. Soon after the beginning of the democratisation process in Bulgaria in late 1989, a number of Christian Orthodox believers sought to replace the leadership of the Bulgarian Orthodox Church. They considered that Patriarch Maxim had been proclaimed Bulgarian Patriarch in violation of traditional canons and the statute of the Church and that he had been responsible for acts incompatible with the duties of the Patriarch.Patriarch Maxim also had supporters. This situation caused divisions and internal conflict within the Church.

15. Each of the conflicting groups in the Church naturally associated with one of the main political forces at the time – those who sought changes with the newly created Union of Democratic Forces (anti-communist) and those who represented the status quo with the Bulgarian Socialist Party (the reformed Communist Party).

16. At the end of 1991, following parliamentary elections, a new government was formed by the Union of Democratic Forces and the Movement for Rights and Freedoms.

17. On 25 May 1992 the Directorate of Religious Denominations attached to the Council of Ministers ("the Directorate") issued a decision stating that the nomination of Maxim as Bulgarian Patriarch and head of the Church in 1971 had been in violation of its statute and ordered his replacement by an interim council pending the election of a new leadership by a Church Convention. Metropolitan Pimen was appointed chair of the interim council.

18. The leadership presided over by Patriarch Maxim appealed to the Supreme Court. In judgments of 2 July 1992 and 5 November 1992 the Supreme Court dismissed the appeal, holding that the Directorate had merely certified that another person represented the Church and that, for that reason, Patriarch Maxim's rights had not been affected. Although it dismissed the appeal in its entirety, the Supreme Court stated that in so far as the Directorate had appointed an interim leadership, its decision was null and void as being *ultra vires*, since the Directorate lacked the power to make appointments in the Church.

19. In the following years, the leadership dispute within the Church continued, each of the two leaderships having its supporters among the clergy and the believers. A number of churches and monasteries became known as "belonging" to the applicant organisation, popularly referred to as "the

alternative Synod", since the religious ministers in those places recognised the leadership of the applicant organisation.

20. There were also a number of cases where the applicant organisation took possession of existing buildings by force and, in some instances, with the assistance of the prosecuting authorities and the police, on an unclear legal basis.

21. The relations between State and religious denominations continued to be regulated by the 1949 Act, which was interpreted in the administrative practice of the Directorate and the Council of Ministers as requiring each religious denomination to have a single leadership. Parallel organisations of the same religious denomination were not allowed. Thus, despite the divisions in the two main religious communities in the country, the Christian Orthodox and Muslim communities (within which separate leaderships exercised *de facto* control over local structures and places of worship), the law continued to treat each religious denomination as a unified legal person represented and governed by the leadership registered with the Council of Ministers under the 1949 Act.

22. At the end of 1994, parliamentary elections took place in Bulgaria. The Bulgarian Socialist Party obtained a majority in Parliament and formed a new government, which took office in January 1995. The position of the new government was that Patriarch Maxim was the sole legitimate leader of the Bulgarian Orthodox Church. On 9 November 1995 the Deputy Prime Minister issued a decision (no. R-63), noting that "the majority of the Bulgarian Christian Orthodox clergy" supported Maxim as Patriarch, "in full conformity with the canon ...", and that it was essential to put an end to the acts of those who "had profited from the 1992 [State] intervention". The order further stated that it was not necessary to proceed with a fresh registration of the leadership presided over by Patriarch Maxim since the courts had decided that the 1992 decision purporting to remove him had not been valid.

23. On 4 July 1996 a Church Convention, organised by several religious leaders of the "alternative Synod" (the applicant organisation) and attended by several hundred clergy members and believers, elected Metropolitan Pimen as Patriarch and head of the Church and Inokentiy as Metropolitan of Sofia.

24. In 1996 Patriarch Pimen applied to the Directorate, seeking registration as the official leadership of the Bulgarian Orthodox Church. The Directorate did not reply. Patriarch Pimen appealed to the Supreme Court against the tacit refusal.

25. In a judgment of 13 December 1996 the Supreme Court, noting that the Church was a registered religious denomination and that the Directorate was under a duty to examine requests for changes in the leadership of religious denominations, found that the Directorate's tacit refusal to examine the applicant organisation's request was unlawful.

26. On 13 December 1996, the day of the Supreme Court's judgment, the Directorate examined and granted a request submitted by Patriarch Maxim for the registration of amendments in the structure of the Church.

27. That decision was appealed against by the applicant organisation to the Supreme Administrative Court.

28. In a judgment of 5 March 1997 the Supreme Administrative Court declared the Directorate's decision of 13 December 1996 null and void. The court noted, *inter alia*, that it was unclear whether the Holy Synod presided over by Patriarch Maxim had been validly registered in accordance with the Religious Denominations Act of 1949. Furthermore, the Directorate's decision of 13 December 1996 had been issued at a time when another request for registration of the Holy Synod's leadership, the request by Patriarch Pimen, had been pending before the Directorate. In these circumstances, the Directorate was not entitled to proceed with the registration of the amendments requested by Patriarch Maxim without informing all interested parties, such as the applicant organisation, and without considering those parties' arguments.

29. As a result of the judgment of 5 March 1997, the 1996 registration of the Church as presided over by Patriarch Maxim (see paragraph 26 above) was null and void.

30. In February 1997 the government of the Bulgarian Socialist Party stepped down and an interim cabinet was appointed. Following parliamentary elections, a new government of the Union of Democratic Forces was formed. A number of politicians from that political party, including the President of Bulgaria, elected at the end of 1996 by universal suffrage, supported the applicant organisation.

31. In January 1997 the newly elected President of Bulgaria took oath in the presence of Patriarch Pimen, thus recognising the applicant organisation as the legitimate leadership of the Bulgarian Orthodox Church.

32. In 1997 the mayor of Sofia granted the request for registration of the applicant organisation's local leadership. In the ensuing judicial proceedings instituted by the other leadership, in a judgment of 18 October 2000 the Supreme Administrative Court noted the developments in the Church in the previous years and concluded that two religious organisations bearing the name Bulgarian Orthodox Church existed in Bulgaria. Therefore, the church presided over by Patriarch Maxim had no standing to appeal against decisions concerning the Church presided over by Patriarch Pimen. The Supreme Administrative Court thus dismissed the appeal as inadmissible.

33. In 1998 and 1999 the State authorities urged the two opposing leaderships to unite and adopted the view that pending such unification none of them could claim to unite all clergy and believers and represent the Church. On several official festive occasions, breaking with tradition, the President of Bulgaria refused to invite any representative of the Church, as that would have required choosing between the two opposing groups.

34. On 22 June 1998 the applicant organisation decided to convene in October or November 1998 a national congregation of clergy and believers with the ambition to unite the Church.

35. On 30 September and 1 October 1998 the Holy Synod presided over by Patriarch Maxim held a national convention with the same ambition. The convention, which was proclaimed as a Holy Expanded and Supra-jurisdictional Pan-Orthodox Council, was attended by patriarchs and other senior clergy from Orthodox Churches from Russia, Romania, Cyprus, Greece, Israel, Albania, Poland, the Czech Republic and Slovakia. According to the minutes, submitted by the third party, a number of adherents of the applicant organisation, including Patriarch Pimen and Metropolitan Inokentiy, made statements of repentance and were accepted under the leadership of Maxim but were demoted to lower ranks in the clergy. The minutes contained language strongly condemning the applicant organisation for having caused a schism.

36. The Church Convention of 30 September and 1 October 1998 did not bring about reconciliation. The applicant organisation continued its efforts to unite the believers under a new leadership and refused to accept the leadership of Patriarch Maxim. It appears that Patriarch Pimen and Metropolitan Inokentiy either did not make statements of repentance at the Church Convention or retracted them.

37. On 9 and 10 November 1998 the applicant organisation held a national congregation organised by it. It was attended by approximately 1,100 participants, including more than 350 members of the clergy. The participants voted for the removal of Patriarch Maxim and adopted a new statute of the Church.

38. Patriarch Pimen passed away in April 1999. The applicant organisation appointed Metropolitan Inokentiy to act as Chair of the Holy Council and its representative, pending the nomination of a new Patriarch.

39. On 28 June 2001 the applicant organisation asked the Directorate to register the new leadership. As no reply was received, the applicant organisation submitted an appeal to the Supreme Administrative Court. On 9 July 2002 the court dismissed the appeal, finding that the issue had already been decided by the judgment of 13 December 1996 (see paragraph 25 above).

40. The Directorate and the Council of Ministers never registered the applicant organisation.

41. At all relevant times, Patriarch Maxim’s leadership enjoyed international support from Orthodox Churches and other religious organisations worldwide. It appears that the applicant organisation has never had significant international support from Orthodox Churches outside Bulgaria.

## C. The authorities' measures to put an end to the divisions in the Bulgarian Orthodox Church

### *1. The new legal regime*

42. In June 2001, following parliamentary elections, the government of the Union of Democratic Forces was replaced by a government formed by the National Movement Simeon II.

43. Representatives of the new ruling political party, including its leader, publicly expressed their opinion that Patriarch Maxim was the legitimate leader of the Church and stated their intention to introduce legislation with the aim of putting an end to the divisions in the Church.

44. That was done with effect from 1 January 2003, when the new Religious Denominations Act 2002 came into force.

45. The official record of the parliamentary debates during the passage of the Act reveal an almost unanimous opinion that the unity of the Bulgarian Orthodox Church was of crucial national importance because of its historical role in shaping and preserving the Bulgarian national identity over the centuries.

46. The records also reveal that a number of deputies from the political groups which introduced the bill and voted for it were of the view that the correct reading of the Church canons demonstrated that Patriarch Maxim was the canonical head of the Church and that for that reason it was justified to adopt provisions enshrining in law the legitimacy of the canonical leadership of the Church and excluding the other leadership. Some deputies emphasised, in addition, the need to remedy the 1992 unlawful State interference in the organisation of the Church. The opposition deputies considered that the bill was unconstitutional as it interfered in the internal affairs of the religious community. Some of them also relied on the fact that Patriarch Maxim had been nominated by the Communist Party and had ruled the Church according to its policy and contrary to canon.

47. The new Act 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 (see for more details paragraphs 70-74 below).

48. It is unclear whether the representation of the Church has been recorded (вписано) in the public register at the Sofia City Court. The Government's position, supported by a statement issued by the Register Department of the Sofia City Court on 24 July 2007, appears to be that no such recording was necessary and that it has not been done. No reference

was made in this statement to section 18 of the 2002 Act and the fact that the Supreme Court of Cassation had stated that the recording requirement contained in that provision applied to the Bulgarian Orthodox Church (see paragraph 74 below). Contradictory information as regards the recording of the Church is contained in a publication submitted by the applicants[1]. According to one statement contained in that publication, such recording has been made, apparently indicating Patriarch Maxim as the Church's representative, on the basis of an "expert opinion by the Directorate of Religious Denominations attached to the Council of Ministers". According to a report by the President of the Register Department of the Sofia City Court contained in the same publication, the Bulgarian Orthodox Church has not been entered in the register.

*2. The applicant organisation's attempts to obtain recognition under the new legal regime*

49. On an unspecified date in 2003 the applicant organisation applied to the Sofia City Court for the registration of its local organisation in Sofia. The request was made by Metropolitan Inokentiy, who stated that he headed and represented the Holy Synod and the Bulgarian Orthodox Church.

50. On 23 September 2003 the Sofia City Court rejected the request. The court noted that registration could only be granted if requested by the person representing the Church. In accordance with section 10 of the 2002 Act, the Church was presided over by its Patriarch. The court further stated that the fact that the Bulgarian Patriarch was Maxim was "publicly known and internationally recognised". The opinion of five judges of the Constitutional Court in a judgment of 15 July 2003 allegedly supported that view (see paragraphs 75-79 below). On that basis the court declared the request inadmissible as it had not been submitted by Patriarch Maxim.

51. On appeal, the Sofia City Court's judgment was upheld by the Sofia Court of Appeal on 4 November 2003. In these proceedings, the Sofia City Court sought the opinion of the Directorate of Religious Denominations attached to the Council of Ministers on the situation in the Church but noted in its judgment that it was not bound to follow the opinion of the executive branch. In its judgment, the Court of Appeal noted that the applicant organisation had not submitted a copy of the statute of the Church and had not proved that Metropolitan Inokentiy represented it. In particular, the

[1] "Law and religion: monitoring religious freedoms in Bulgaria", p. 208, reports and discussion from a national conference held in Sofia (18-19 December 2003) and seminars in Plovdiv (26 January 2004) and Varna (18 March 2004), Iktus Print, Sofia, 2004 („Вероизповедания и закон: мониторинг на религиозните свободи в Република България", доклади и становища от Национална конференция, София, 18-19.12.2003 и семинари в Пловдив, 26.01.2004 и Варна, 18.03.2004. Издателство Иктус Принт, София, 2004 ).

judgments of the Supreme Court of 1992 (see paragraph 18 above), relied upon by the applicant organisation, did not prove the relevant facts.

52. The final decision was that of the Supreme Court of Cassation of 8 January 2004. The Supreme Court of Cassation upheld the lower courts' reasoning and stated that the request was inadmissible in the absence of proof about the leadership of the Church and its representatives.

53. The attempts of the applicant organisation to achieve recognition of its local church councils under the new Act were refused in most cases for the same reason. In its judgment of 20 October 2003 judgment (in case no. 258/2003) refusing such a request, the Veliko Tarnovo Court of Appeal stated that Metropolitan Inokentiy had not submitted proof about the identity of the head of the Church, as recorded at the Sofia City Court under section 18 of the Act, and could not, therefore, act on behalf of the Church. Also, "it was publicly known that the Bulgarian Orthodox Church had a Patriarch" and the court could not deal with the question whether the Patriarch's nomination in 1971 had been lawful.

54. In at least two regional courts, however, the applicant organisation obtained decisions registering its local church councils – in the Dobrich Regional Court by two decisions of 22 May 2003 and in the Blagoevgrad Regional Court by several decisions of 30 September 2003. The courts apparently accepted that the applicant organisation represented the Church.

### *3. Dismissal of religious ministers associated with the applicant organisation and their eviction from places of worship and other buildings*

55. During the relevant period some religious ministers who associated with the applicant organisation decided to return under the leadership of Patriarch Maxim. In respect of those who did not do so, in 2003 and on subsequent occasions the leadership of the Bulgarian Orthodox Church presided over by Patriarch Maxim issued decisions terminating their functions as religious ministers. Some of the ousted ministers unsuccessfully challenged their dismissal before the civil courts.

56. On an unspecified date the Church, as represented by Patriarch Maxim, invited the applicant organisation to vacate all churches and religious buildings it controlled. On 2 July 2004 a complaint to the prosecution authorities was filed, in which Patriarch Maxim requested them to carry out an inquiry and, where appropriate, institute criminal proceedings against Metropolitan Inokentiy and his supporters. He also requested, accordingly, the search and seizure of seals and other belongings, as well as the institution of civil proceedings on behalf of the Church.

57. On an unspecified date in July 2004 the Chief Public Prosecutor's Office instructed local prosecutors to assist the Church in recovering its property. On 19 and 20 July 2004 local prosecutors throughout the country

issued orders for the eviction of persons "unlawfully occupying" churches and religious institutions.

58. The text of all those decisions was almost identical as, apparently, it had been copied from the instructions given by the Chief Public Prosecutor's Office. The prosecutors noted that the Religious Denominations Act 2002 did not allow the existence of more than one religious denomination bearing the same name and prohibited the use of the name and property of a religious denomination by persons who had seceded from it. The prosecutors further observed that the courts had rejected the applicant organisation's request for registration in Sofia and that its representatives in local parishes had been invited to leave voluntarily the premises they occupied. The prosecutors concluded that the persons associated with the applicant organisation unlawfully prevented the legitimate religious ministers appointed by the Church from performing their duties. For these reasons police evictions were ordered.

59. On 21 July 2004 early in the morning the police blocked more than fifty churches and monasteries in the country, evicted the religious ministers and staff who identified themselves with the applicant organisation and transferred the possession of the buildings to representatives of the other leadership. The applicant organisation submits that among those buildings there were several new churches, built entirely under its leadership.

60. Some of the ousted religious ministers sought the assistance of the prosecuting authorities against the forceful evictions. Their requests were refused in decisions stating that the persons who had entered into possession of the disputed buildings were legitimate representatives of the Bulgarian Orthodox Church, to which the buildings belonged.

61. The six individual applicants were evicted on 21 July 2004 from the church of St Paraskeva in Sofia.

*4. Other developments*

62. In 2005 criminal proceedings were opened against Metropolitan Inokentiy and Metropolitan Gavrail, who belonged to the applicant organisation, for usurping the functions of religious ministers, contrary to Article 274 of the Criminal Code.

63. On 24 November 2006 the Sofia District Court acquitted Metropolitan Inokentiy. The prosecutor appealed. In a final judgment of 11 July 2007 the Sofia City Court upheld the acquittal. Metropolitan Gavrail was also acquitted, by a judgment of 20 February 2007 of the Blagoevgrad Regional Court.

64. The reasoning of the courts in the above two cases was essentially identical. They noted that since 1992 the Bulgarian Orthodox Church had been divided and that after 1996 neither Patriarch Maxim nor Patriarch Pimen or his successor had been lawfully registered as the head of the Church. Furthermore, Metropolitan Inokentiy and Metropolitan Gavrail had

been registered, prior to the entry into force of the Religious Denominations Act 2002, as leaders of the respective local divisions of the Church, the Sofia Eparchy and the Nevrokop Eparchy. In these circumstances the accused persons had been entitled to act as religious ministers and had done so in the belief that they were lawfully exercising their function. It followed that they had not committed the offence under Article 274 of the Criminal Code.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Constitution

65. The relevant constitutional provisions read as follows.

**Article 13**

"(1) Religions shall be free.

(2) Religious institutions shall be separate from the State...

(4) Religious institutions and communities and religious beliefs shall not be used for political ends."

**Article 37**

"(1) The freedom of conscience, the freedom of thought and the choice of religion or of religious or atheistic views shall be inviolable. The State shall assist in the maintenance of tolerance and respect between the adherents of different denominations, and between believers and non-believers.

(2) The freedom of conscience and religion shall not be exercised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others."

66. In a judgment of 11 June 1992 the Constitutional Court, interpreting the 1991 Constitution, stated, *inter alia*, that the State should not interfere with the internal organisation of religious communities and institutions except in accordance with Article 13 § 4 and Article 37 § 2 of the Constitution.

### B. The Religious Denominations Act 1949

67. The Act 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.

68. The 1949 Act was interpreted in administrative practice as prohibiting parallel organisations of the same religious denomination and requiring that each religious denomination must have a single leadership.

69. During the relevant period, the judicial practice in appeals against the Council of Ministers' decisions on the registration of religious denominations and their leaderships was contradictory. In some cases the courts took the view that the Council of Ministers and the Directorate enjoyed unfettered discretion in such registrations. In other cases the courts reviewed the change-of-leadership decisions for compliance with the statute of the religious denomination, as registered by the Directorate. In one case the Supreme Court of Cassation recognised the existence of two parallel organisations of one and the same religious denomination (see the following judgments of the Supreme Administrative Court: judgment no. 4816 of 21 September 1999 in case no. 2697/99, judgment no. 2919 of 28 April 2001 in case no. 8194/99 and judgment no. 9184 of 16 October 2003 in case no. 6747/02).

### C. The Religious Denominations Act 2002

70. The Act 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.

71. 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. In accordance with the same provision, the Church "is headed by the Holy Synod and is represented by the Bulgarian Patriarch ..."

72. Section 15(2) provides that there can be no more than one religious denomination with the same name. Under section 36, persons acting on behalf of a religious denomination without authorisation are to be fined by the Directorate of Religious Denominations.

73. Paragraph 3 of the transitional provisions of the Act provides that persons who had seceded from a registered religious institution before the Act's entry into force in breach of the institution's internal rules are not entitled to use the name of the religious institution or its assets.

74. 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) (see also paragraph 48 above).

### D. The Constitutional Court's judgment of 15 July 2003

75. In February 2003 fifty members of Parliament asked the Constitutional Court to repeal certain provisions of the new Religious Denominations Act 2002 as being unconstitutional and contrary to the Convention.

76. Paragraph 3 of the transitional provisions of the new Act was among the provisions challenged. Some of the other provisions that are relevant to the applicants' complaints, such as sections 15(2) and 36 of the new Act, were not challenged.

77. The Constitutional Court gave judgment on 15 July 2003. It could not reach a majority verdict, an equal number of justices having voted in favour of and against the request to declare paragraph 3 of the transitional provisions unconstitutional. According to the Constitutional Court's practice, in such circumstances the request for a legal provision to be struck down is considered to be dismissed by default.

78. The justices who voted against the request considered, *inter alia*, that the principle of legal certainty required that persons who had seceded from a religious denomination should not be allowed to use its name. Further, it was obvious that they could not claim part of its assets, as the assets belonged to the religious denomination as a legal person.

79. The justices who considered that the provision was unconstitutional stated that it purported to regulate issues that concerned the internal organisation of religious communities and thus violated their autonomy. Those justices further stated that the provision, applied in the context of existing disputes, favoured one of the groups in a divided religious community and therefore did not contribute to maintaining tolerance but rather frustrated that aim. It thus violated Article 9 of the Convention.

### E. Article 274 of the Criminal Code

80. This provision makes it punishable to usurp the functions of a public figure or to wear attire or symbols to which one is not entitled. The punishment is imprisonment of up to one year or community labour (пробация).

## III. RELEVANT INTERNATIONAL MATERIAL

81. In Resolution 1390 (2004), adopted on 7 September 2004, the Parliamentary Assembly of the Council of Europe criticised the new Religious Denominations Act 2002 and stated, among other things:

> "The strongest doubts concern the state interference allowed for, or even operated directly by the [Religious Denominations Act 2002], in the internal affairs of religious communities. This concerns in particular the leadership quarrel between the two Bulgarian Orthodox synods led, respectively, by Patriarch Maxim and by Metropolitan Inokentiy, who disputes the legitimacy of Maxim as Patriarch. The *ex lege* recognition of the Bulgarian Orthodox Church, as defined meticulously in [section 10(1)], exempting this institution from the usual registration procedure, which also includes a check on the legitimacy of the leadership, is generally seen as intended to settle the dispute between Maxim and Inokentiy in favour of the former. The alternative synod is effectively barred from registering as a new religious institution by the prohibition against the registration of another institution using the same name and headquarters and the punitive provisions empowering the Directorate of Religious Affairs to sanction 'unauthorised representatives'...
>
> The Assembly therefore recommends to the Bulgarian authorities: ... as regards [section 10(2) of the Act] (*ex lege* recognition of the Bulgarian Orthodox Church): either to delete this provision outright, thereby subjecting the Bulgarian Orthodox Church to the same registration requirements as other religious communities; or to ensure in other ways without interference by the executive that the leadership of the Bulgarian Orthodox Church is legitimate according to Orthodox canonical law; ... as regards [section 15(2)] (no registration of an identical religious community): either to delete this provision, or to ensure its interpretation in such a way that only the strict and literal identity of names and headquarters precludes the registration of a breakaway group; ..."

# THE LAW

## I. SCOPE OF THE CASE

82. The Court notes that in their submissions the parties relied, among other things, on arguments concerning the eviction in July 2004 of hundreds of clergy members and believers associated with the applicant organisation from a number of churches, monasteries and other buildings. Some of those facts are the subject matter of other applications submitted to the Court by individuals alleging violations of their Convention rights as a result of the same events as those at issue in the present case.[1]

[1] Applications nos. 40047/04, 40092/04, 40176/04, 40179/04, 40187/04, 40194/04, 40199/04, 40208/04, 40212/04, 40215/04, 40235/04, 41081/04, 41114/04, 41161/04, 41163/04, 41290/04, 41338/04, 42105/04, 42112/04, 42118/04, 42125/04, 42129/04,

83. The Court will examine all relevant information submitted by the parties but 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 listed in paragraph 3 above.

## II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

84. The applicants complained that in 2003 and the following years the State had interfered in an arbitrary fashion in the internal dispute in the Bulgarian Orthodox Church with the aim of forcing all clergy and believers under the leadership of the person favoured by the authorities, Patriarch Maxim. They relied on Article 9 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

### A. The parties' general submissions

#### *1. The applicants*

85. The applicants stated that the Religious Denominations Act 2002 in itself constituted an arbitrary interference with their rights under Article 9 of the Convention. They characterised as misleading and inappropriate the Government's argument that the new legal regime resembled the rules governing the status of the predominant religions in other European countries, such as Denmark and Italy. The crucial difference in the present case was, in the applicants' view, that the *ex lege* recognition of the Bulgarian Orthodox Church had been introduced in the Religious Denominations Act 2002 in the context of an ongoing dispute between two leaderships and had, moreover, been aimed at putting an end to this dispute by favouring one of the two leaderships to the exclusion of the other. The applicants referred to the Court's case-law, according to which the use of legislation and decrees to place a religious community under a single leadership and the removal of the opposing group from places of worship or

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42134/04, 42156/04, 42157/04, 42202/04 and several other applications submitted in 2005 or later.

other property constituted arbitrary State interference with the internal organisation of the religious community. The applicants considered that the heavy-handedness and discriminatory intent of the Bulgarian Government in the present case not only mirrored their approach criticised by the Court in *Hasan and Chaush v. Bulgaria* ([GC], no. 30985/96, ECHR 2000-XI), but far surpassed it in gravity.

86. The applicants stressed that the Government's suggestion that they should register as a new religious denomination was no answer to their grievances. The present case did not concern a refusal to register a new religious group but a State interference in an internal dispute within an existing religious denomination. The Government had misleadingly tried to represent the applicant organisation as usurpers of Church property, but omitted important facts such as the fact that the leaders and religious ministers of the applicant organisation had always been part of the Bulgarian Orthodox Church and of its leadership, some of them for decades. Furthermore, many believers did recognise the applicant organisation as the legitimate leadership of the Bulgarian Orthodox Church. Instead of helping the two wings in the Bulgarian Orthodox Church to coexist peacefully, the authorities had decided to remove one of them and give its full support to the other.

87. The applicants also submitted that a number of provisions of the Religious Denominations Act 2002 were vague and that the authorities' refusal to recognise the applicant organisation was arbitrary. The grave deficiencies of the Act had been noted by the Parliamentary Assembly of the Council of Europe in its Resolution 1390 (2004). In particular, since the Act provided that the leadership of the Bulgarian Orthodox Church did not need to register, it was unclear on what basis the authorities had determined in 2004 that Patriarch Maxim and not Metropolitan Inokentiy represented the Bulgarian Orthodox Church.

88. The applicants further stated that the authorities aimed to destroy the applicant organisation by, among other means, depriving it of any property.

*2. The Government*

89. The Government submitted that there had been no State interference with the applicants' rights under Article 9, interpreted alone and in the light of Article 11 of the Convention.

90. In particular, the Religious Denominations Act 2002, which provided that the Bulgarian Orthodox Church, unlike all other religious denominations, did not need to register with the Directorate and thus was subject to a special legal regime, was based on the existing similar legal solutions in a number of European countries, such as, for example, Denmark and Italy.

91. The 2002 Act did not in any way inhibit the free formation and activities of religious communities. The applicants were free to found a

religious organisation and obtain legal personality by registering with the Directorate or, if they so wished, to function as an unregistered group. The applicants had never sought registration under the 2002 Act.

92. It was clear – in the Government's view – that what the applicants were seeking was not the free exercise of their religion but administrative control over an existing religious denomination and its property. However, in the Government's view, the question of who was the leader of the Bulgarian Orthodox Church was not a human rights issue; it was an issue of religious canon and thus fell outside the Court's control.

93. In so far as the applicants drew parallels with the case of *Hasan and Chaush* (cited above), the case at hand was different in that the canons of the Orthodox Church provided that the Patriarch was elected for life. The traditional canons did not allow challenges to his legitimacy. Patriarch Maxim was therefore the legitimate and internationally recognised Bulgarian Patriarch and would continue to hold this title until the end of his life. By recognising that fact the State had not interfered with the internal affairs of the religious community. To accept the contrary would be tantamount to considering that by recognising the Pope as head of the Roman Catholic Church, the member States of the Council of Europe interfered with the rights of believers who did not recognise his leadership.

94. As regards the events of July 2004, the Government stated that the prosecuting authorities and the police had assisted the Bulgarian Orthodox Church in recovering its property, which had been unlawfully occupied by persons associated with the applicant organisation. In 1992 and the following years the applicant organisation had gained control over Church buildings through arbitrary and unlawful acts and it was necessary to restore legality. In accordance with the Religious Denominations Act 2002, the head of the Bulgarian Orthodox Church was its Patriarch. For the prosecuting authorities it had been clear that Maxim was the Patriarch. The Church had sought the help of the public authorities to enable its ministers to take effective control of the Church's property. Had the authorities refused assistance, they would have become liable for a failure to abide by their positive obligations under Article 9 of the Convention to secure the peaceful enjoyment of religious freedoms by the followers of the Bulgarian Orthodox Church. The applicants were free to practise their religion, in private or in public, by opening their own places of worship but could not lay claim to the property of the Church. Indeed, the events of July 2004 illustrated the fact that the applicants' struggle was not about freedom of religion – which they enjoyed – but about control over property.

95. Finally, in the Government's view, Article 9 did not enshrine a duty for the State to secure a right of dissent within a religious organisation. The State authorities' duties under the Convention in respect of a member of a religious denomination who did not accept the religious leadership was limited to securing him or her a right to leave the organisation.

*3. The third party*

96. The third party made submissions on the history of the Bulgarian Orthodox Church and the leadership dispute since 1989. They stated, among other things, that the Bulgarian Orthodox Church was an ecumenical church administered by the Holy Synod. In accordance with its statute, working against the unity of the Church was an offence punishable by excommunication and anathema.

97. Patriarch Maxim had been validly elected in 1971 and had been recognised worldwide as the head of the Bulgarian Orthodox Church, including by the Ecumenical Patriarch Bartholomew and all Orthodox Churches. Moreover, all Orthodox Churches had condemned the efforts of the applicants to divide the orthodox believers in Bulgaria and had expressed their support for the Bulgarian Orthodox Church presided over by Patriarch Maxim.

98. The third party further submitted that the applicant organisation had been the product of direct State interference in the internal affairs of the Bulgarian Orthodox Church, between 1992 and 2002. As had been noted by human rights groups, in 1992 "the new Government [had] sought to remove ... a number of clergy in different religions, including the head of the Orthodox Church ... [on] suspicion that these clergy [had not followed] the Government policy, or [because] they [had] occupied official positions that government supporters [had] had aspirations to obtain" (Bulgarian Helsinki Committee, annual report 1991/92). Following the Government's decision of 1992, offices and churches had been occupied illegally by the "alternative Synod" (the applicant organisation). Also, the Chief Public Prosecutor until 1999 and the mayor of Sofia until 2002 had actively encouraged and assisted the applicant organisation. However, the courts had resisted the efforts of the applicants to obtain full control over the Church.

99. In the submission of the third party, against this background, the events of 2003 and 2004 had been nothing more than restoration of law and justice. The Church had had no choice but to seek the assistance of the prosecuting authorities in recovering its property that was unlawfully occupied by others.

## B. The Court's assessment

*1. Whether the events complained of fall to be examined under Article 9*

100. The Government and the third party expressed doubts as to whether the case was about freedom of religion. They alleged that the applicants' concern was not the practice of religion but their ambition to control property and gain power to administer the Bulgarian Orthodox Church. The

Government also stated that it was not the Court's role to decide who the legitimate leader of the Bulgarian Orthodox Church was and expressed the view that for that reason the case did not concern human rights.

101. The applicants reiterated that they were complaining about arbitrary State interference in the Church's internal leadership dispute.

102. The Court observes that the events complained of concern State action which, in the context of an ongoing dispute between two groups claiming leadership of the Bulgarian Orthodox Church, had the effect of terminating the autonomous existence of one of the two opposing groups and providing the other group with exclusive representative power and control over the affairs of the whole religious community (see paragraphs 42-46 and 70-74 above). These events, which included police eviction of hundreds of clergy and believers from their temples, affected adversely not only the religious leaders but also the Christian Orthodox believers and their community as a whole (see paragraphs 56-61 above). The Court considers that in principle such events fall to be examined under Article 9 of the Convention, the provision protecting freedom of religion.

103. It is true that the conflict in the Bulgarian Orthodox Church was not about divergent religious beliefs and practices but mainly about the choice of leadership (see paragraphs 14-41 above). As the Court has noted in previous cases, however, the personality of the religious leaders is of importance to the members of the religious community. Participation in the organisational life of the community is a manifestation of one's religion, protected by Article 9 of the Convention. For these reasons, the Court has held that under Article 9 of the Convention, interpreted in the light of Article 11, the right of believers to freedom of religion encompasses the expectation that the community will be allowed to function free from arbitrary State intervention in its organisation. The autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 of the Convention affords. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable (see *Hasan and Chaush* (cited above), § 62, and *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 118, ECHR 2001-XII).

104. The Court finds, therefore, that the State actions complained of – which concerned the leadership and organisation of the Christian Orthodox community in Bulgaria – must be examined under Article 9. The Court's task is to examine whether the enactment of the 2002 Act and its implementation constituted, as alleged by the applicants, an unlawful and unjustified State interference with the internal organisation of the Bulgarian Orthodox Church and the applicants' rights under Article 9 of the

Convention. It is certainly not the Court's task to determine the canonical legitimacy of Church leaders.

*2. Whether there has been State interference*

105. Despite the nature and effects of the State action complained of (see paragraph 102 above), the Government averred that there had not been State interference. They relied on two main points, which the Court will address below.

**(a) Whether the State did nothing more than recognising the leadership that was legitimate under canon law**

106. The Government stated that the enactment of the 2002 Act and its implementation amounted to nothing more than recognition of the leadership of the Church, as determined by its own canons. Those canons enshrined the unity of the Church and prohibited alternative leaderships and divisions in organisational or property matters. In the Government's view the recognition of the canonical leadership of the Church by the State was an act of respect for its autonomy and canons, not interference with them. The third party was of the same opinion. The applicants disagreed (see paragraphs 86-99 above).

107. In the Court's view, the Government's argument fails to take into account the fact that the impugned State actions were undertaken in conditions involving genuinely deep division and incompatible claims to legitimacy by two opposing groups of leaders of the Christian Orthodox community in Bulgaria, each supported by decisions of separate Church conventions. Moreover, the State actions complained of were not limited simply to recognition. They included legislation passed with the aim of restoring the unity of the Church and sweeping measures throughout the country enforced by the prosecuting authorities against a large group of clergy members who were seen as their religious leaders by part of the clergy and believers belonging to the Christian Orthodox community in Bulgaria (see paragraphs 42-64 above).

108. The present case is thus different from the case of *Kohn v. Germany* ((dec.), no. 47021/99, 23 March 2000), in which the domestic civil courts merely took note of a decision of the religious community's competent adjudication body, which had dealt with an internal dispute about one of its local representatives.

109. In the case at hand the Church conventions which supported the two rival leaderships were each attended by hundreds of representatives of local parishes and other clergy and believers (see paragraphs 23, 35 and 37 above). At the relevant time, therefore, the question of which leadership was canonical was in dispute within the religious community itself and there was no authoritative decision by the community settling this dispute. Despite these realities, the 2002 Act declared the *ex lege* recognition of the

Bulgarian Orthodox Church as a single legal person led by a single leadership and forced the religious community under one of the two existing leaderships (see paragraphs 42-48 and 70-74 above). The authorities thus took sides in an unsettled controversy deeply dividing the religious community.

110. The above is sufficient, in the Court's view, for it to conclude that, contrary to the Government's submission, the authorities' involvement was not limited to mere recognition of the existence of the Church's leadership. The respondent Government's remaining arguments in support of their view that Patriarch Maxim was the canonical leader of the Church concern the justification for and proportionality of this intervention and will be examined by the Court under that head.

**(b) Significance of the fact that the applicants are free to practise their religion and found a new church**

111. The Court observes that the applicant organisation and the individual applicants are not prevented from founding and registering a new religious organisation and engaging in worship, teaching or other religious activities. It would be sufficient for the applicants to agree to register and act under a different name from that of the Bulgarian Orthodox Church. Although such registration would not help them recover the buildings they were evicted from, it would allow them to build new churches.

112. As the applicants rightly pointed out, however, the present case is not about a refusal to register a new religious group bearing a name identical to an existing one but about State action to "resolve" a leadership dispute in a divided religious community by assisting one of the opposing groups to gain full control, to the exclusion of the rival group. It is obvious that but for the State actions complained of, the applicants would have continued to administer autonomously the affairs of the part of the Christian Orthodox community in Bulgaria which recognised the applicant organisation as its leadership.

113. Therefore, the possibility for the applicants to found a new religious organisation, while it may be relevant in the assessment of proportionality, cannot lead to the conclusion that there was no State interference with the internal organisation of the Bulgarian Orthodox Church.

**(c) Conclusion as regards the existence of State interference**

114. The Court concludes that the actions complained of constituted State interference with the internal organisation of the Bulgarian Orthodox Church and, therefore, with the rights of the applicant organisation and the individual applicants under Article 9 of the Convention, interpreted in the light of Article 11.

115. Such an interference entails a violation of the Convention unless it is prescribed by law and necessary in a democratic society in pursuance of a legitimate aim (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, §§ 75 and 84, ECHR 2000-VII).

*3. Lawfulness*

116. The interference with the applicants' rights was based on a legislative act – the 2002 Act – and effected through judicial decisions and prosecutors' orders (see paragraphs 42-64 above).

117. The Court considers that the question whether this legal basis met the Convention requirements of lawfulness, in the sense of compliance with the principles of rule of law and freedom from arbitrariness, must be examined in the context of the main issue in the present case – whether or not the impugned interference pursued a legitimate aim and could be considered necessary in a democratic society for the achievement of such aim. This approach is not unusual, in particular, in cases concerning complex situations arising in the unique conditions of transition from a totalitarian State to democracy and the rule of law (see a similar approach in *Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97, § 90, 16 December 2004, and *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 131, 14 June 2007).

*4. Legitimate aim, proportionality and necessity in a democratic society*

**(a) General principles**

118. The Court refers to its settled case-law to the effect that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is of central importance to believers, but also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society depends on it (see *Church of Scientology Moscow v. Russia*, no. 18147/02, § 71, 5 April 2007).

119. States enjoy a wide margin of appreciation in the particularly delicate area of their relations with religious communities (see *Cha'are Shalom Ve Tsedek*, cited above, § 84). While it may be necessary for the State to take action to reconcile the interests of the various religions and religious groups that coexist in a democratic society, the State has a duty to remain neutral and impartial in exercising its regulatory power and in its relations with the various religions, denominations and groups within them. What is at stake here is the preservation of pluralism and the proper functioning of democracy (see *Kokkinakis v. Greece*, judgment of 25 May

1993, Series A no. 260-A, p.18, § 33; *Metropolitan Church of Bessarabia and Others*, cited above, § 123; and *Hasan and Chaush*, cited above, § 78).

120. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs. Furthermore, in democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership. The role of the authorities in a situation of conflict between or within religious groups is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. State measures favouring a particular leader of a divided religious community or seeking to compel the community, or part of it, to place itself under a single leadership against its will would constitute an infringement of the freedom of religion (see *Serif v. Greece*, no. 38178/97, §§ 49, 52 and 53, ECHR 1999-IX; *Hasan and Chaush*, cited above, §§ 62 and 78; *Metropolitan Church of Bessarabia and Others*, cited above, §§ 118 and 123; and *Supreme Holy Council of the Muslim Community*, cited above, § 96).

121. As has been stated many times in the Court's judgments, not only is political democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. By virtue of the wording of the second paragraphs of Articles 8, 9, 10 and 11 of the Convention, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from "democratic society" (see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-89, ECHR 2003-II).

**(b) Application of those principles in the present case**

122. The Court accepts that one of the aims of the 2002 Act, taken as a whole, was to improve the legal regulation of religious denominations. Such improvement had long been overdue (see *Hasan and Chaush*, cited above, § 86) and its realisation was undoubtedly in the public interest.

123. The more specific question whether the same could be said about those provisions of the Act which resulted in the impugned interference in the organisation of the Bulgarian Orthodox Church is inseparable from the issue of necessity and proportionality in a democratic society and the Court will examine those points together.

124. The Court observes that the Government advanced several arguments in support of their position that the interference with the applicant' rights pursued a legitimate aim and was necessary in a democratic society and proportionate. The Court will analyse these arguments below.

*(i) Necessity to restore legality*

125. The Court has examined carefully the voluminous material submitted by the parties, including detailed and documented information about the history of the division in the Bulgarian Orthodox Church. It has also had regard to facts about the divisions in the Muslim religious community in Bulgaria and the Bulgarian authorities' interference in the organisation of that community in the 1990s, in so far as they are relevant to the present case (see the above-cited cases of *Hasan and Chaush* and *Supreme Holy Council of the Muslim Community*).

126. On this basis, the Court notes that the history of State intervention in the management and organisation of religious communities in Bulgaria dates back decades. Religious freedoms were reduced to a minimum during the communist period and the leaderships of religious communities, including the Bulgarian Orthodox Church, were nominated and controlled by the Communist Party and the State authorities (see paragraphs 9-13 above).

127. The democratic changes after 1989 led to significant reforms which secured the enjoyment of many aspects of freedom of thought, conscience and religion. The Court finds it established, however, that even after the Convention's entry into force in respect of Bulgaria in 1992 a practice of State interference in the internal organisation of the country's two main religious communities, the Christian Orthodox and the Muslim communities, continued, albeit in a different form. Such interference materialised, in particular, following changes of government. Where new parliamentary majorities were formed after elections, the new governments often took action to ensure that the largest religious communities in the country were placed under the control of religious leaders loyal to them. Furthermore, the courts' practice on the application of the 1949 Act was contradictory (see paragraphs 14-48 and 69 above and the above-cited cases of *Hasan and Chaush* and *Supreme Holy Council of the Muslim Community*). The above background is relevant to the assessment of the events in the present case.

128. The Court notes that in 1992 the State authorities "ordered" the removal of Patriarch Maxim and attempted to provide legitimacy in law to an alternative leadership of the Church by leaders loyal to the government then in place. Although the Court is not called upon in the present case to determine whether these events violated Convention rights, it observes that they constituted State intervention to replace leaders of a religious community and were unlawful under domestic law as being contrary to Articles 13 and 37 of the Bulgarian Constitution, as interpreted by the Constitutional Court. Indeed, that was the opinion of the Bulgarian Supreme Court (see paragraphs 16-18 and 65 above).

129. It is also true that some of the temples and other Church property which were under the control of the applicant organisation until their

eviction had been acquired with the assistance of the police and prosecutors on an unclear legal basis. Furthermore, the applicants were unable to disprove the Government's and the third party's assertion that in some instances adherents to the applicant organisation had gained possession of buildings through unlawful and arbitrary acts, including by force (see paragraphs 20, 94 and 98 above).

130. Another relevant consideration was the fact that the ongoing dispute in the Church was a source of friction between the opposing groups and generated legal uncertainty. In particular, each of the rival leaderships endeavoured to obtain control over places of worship and Church assets and it was often difficult to ascertain the representatives of parishes. A number of judicial decisions concerning the Church's leaderships and their representative powers had been issued over the years, some of them contradictory. All this engendered difficulties not only within the religious community but also for persons and institutions entering into relations with the Church (see paragraphs 14-41 above).

131. Having regard to the above, and taking into consideration the margin of appreciation enjoyed by the national authorities in the area of their relations with religious communities, the Court accepts that in 2002 the Bulgarian authorities had legitimate reasons to consider some form of action with the aim of helping to overcome the conflict in the Church, if possible, or limiting its negative effect on public order and legal certainty.

132. The issue before the Court is, however, whether the concrete measures chosen by the authorities could be accepted as lawful and necessary in a democratic society and, in particular, whether those measures were proportionate and struck a fair balance between the declared aim of securing legality and the rights of the individuals and organisations concerned.

133. The Government's main argument on this point was that the applicants were in reality persons who had tried to usurp power in the Bulgarian Orthodox Church and that, therefore, the measures against them, including their eviction from Church property, had been necessary in order to restore legality. The third party agreed (see paragraphs 86-100 above).

134. The Court cannot accept the view that the applicants were nothing more than persons occupying churches unlawfully. The facts demonstrate convincingly that after 1989 genuine dissent and divisions emerged in the Church, which resulted in part of the Church's clergy and believers no longer being willing to accept Maxim as Patriarch, in particular because of his appointment by the Communist Party in 1971 and his role during the communist period. There is no doubt that many believers came to adopt the view that a person appointed by the Communist Party could not claim legitimacy as the canonical Patriarch. This led to believers, church councils and senior clergy members throughout the country accepting the applicant organisation as the legitimate leadership of the Church. As a result, a

number of church councils and clergy members in charge of temples and other Church property became associated with the applicant organisation and the latter thus obtained control over certain Church assets without any arbitrary or unlawful State involvement. The applicant organisation's leaders, in particular Pimen, who was proclaimed Patriarch, were nominated by Church conventions attended by a significant number of clergy and believers (see paragraphs 14-39 above).

135. It is true that the leaders of the applicant organisation had never been validly registered, under the legal regime before 1 January 2003, as the officially recognised national leadership of the Bulgarian Orthodox Church. It is unclear, however, whether Patriarch Maxim himself had ever been validly registered (see paragraphs 13, 22, 26-29 and 40 above). In any event, the parties did not dispute that at the relevant time the system of registrations at the Directorate of Religious Denominations had been highly influenced by political considerations, and the Court has so held in previous cases against Bulgaria (see the above-cited cases of *Hasan and Chaush* and *Supreme Holy Council of the Muslim Community*).

136. While it is very likely that but for the unlawful State acts of 1992 the applicants would have probably gained less influence and would have obtained control over fewer temples, it is nonetheless established that the division in the Church was genuine and had deep roots (see paragraphs 12 and 14-37 above).

137. It is not the Court's task, and indeed it is not the task of any authority outside the Bulgarian Christian Orthodox community and its institutions, to assess the validity under canon law of the opposing claims to legitimacy made by the rival leaderships. In the examination of the events under the Convention, however, the relevant fact is that by 2002, when the State authorities undertook the impugned action to "unite" the Church, it had been *de facto* and genuinely divided for more than ten years and had two rival leaderships, each of them considering, on the basis of arguments which were not frivolous or untenable, that the other leadership was not canonical.

138. In such conditions, the legitimate aim of remedying the injustices inflicted by the unlawful acts of 1992 and the following years, could not warrant the use of State power, in 2003, 2004 and afterwards, to take sweeping measures, imposing a return to the *status quo ante* against the will of a part of the religious community.

139. In the Court's opinion, in the circumstances that obtained in the Bulgarian Orthodox Church in 2002 and the following years, Article 9 of the Convention imposed on the State authorities a duty of neutrality. The need to restore legality, relied upon by the Government, could only justify neutral measures ensuring legal certainty and foreseeable procedures for the settling of disputes. In the present case, however, the State authorities went far beyond the restoration of justice and undertook actions directly forcing

the community under one of the two rival leaderships and suppressing the other (see paragraphs 42-64 above). Such measures must be regarded as disproportionate.

140. The Court observes, in addition, that the police eviction of hundreds of clergy and believers from their temples, ordered by prosecutors in July 2004, constituted an intervention by the prosecutors and the police in a private law dispute which should have been examined by the courts, not by prosecutors (see paragraphs 56-61 above). The Court recalls in this respect that it has criticised the Bulgarian prosecutors for unlawful intervention in private matters (see *Zlínsat, spol. s r.o., v. Bulgaria*, no. 57785/00, §§ 97-101, 15 June 2006). The Government failed to convince the Court that the evictions in the present case had sound legal basis. They were, furthermore, in contradiction with the Bulgarian Constitution which clearly and unconditionally enshrines the separation of State and religion and, as emphasised by the Constitutional Court in 1992, prohibits State intervention in the organisation of religious communities (see paragraphs 65 and 66 above). However, if the authorities' aimed at restoring legality, that could only be achieved by lawful means.

141. The Government pointed out that the Convention does not enshrine a right of dissent within a religious community, it being sufficient that dissenters should be free to leave the community. In the Court's view, while that is undoubtedly so (see *Bror Spetz and Others v. Sweden*, no. 12356/86, Commission decision of 8 September 1988, Decisions and Reports 57), the Government's argument is flawed as it confuses alleged positive State duties to protect dissenters against acts and decisions of the religious community with State action favouring one of the two opposing groups in a divided religious community. While it is true that the secession of a dissenting group from the religious community may prompt civil-law consequences decided by the authorities (see *Griechische Kirchengemeinde München und Bayern E.V. v. Germany* (dec.), no. 52336/99, 18 September 2007), the fact that the Convention does not guarantee a right of dissent within a religious community does not mean that it gives unfettered discretion to the authorities to take sides in an intra-religious dispute and use State power to suppress one of the opposing groups in the dispute.

142. In sum, the Court finds that the need to remedy the unlawful acts of 1992 and the following years cannot justify, in a democratic society, the sweeping use of State power and the unlawful acts that occurred in the present case, namely the suppression of the applicants' activities as an alternative leadership within the Church and their expulsion from temples, monasteries and other Church premises.

*(ii) Importance for the Bulgarian nation to restore the unity of the Bulgarian Orthodox Church*

143. The Government's and the third party's submissions were apparently based on the view that the unity of the Bulgarian Orthodox Church was an important national goal of historical significance, with ramifications affecting the very fabric of the Bulgarian nation and its cultural identity. The Government believed that these considerations justified the impugned interference with the applicants' rights.

144. The applicants agreed with the Government about the importance of Church unity but considered that the authorities should not have imposed "unity" on them by force, under the leadership of Patriarch Maxim.

145. In the Court's view, the fact that policies and actions interfering with fundamental rights have been undertaken in the pursuit of goals viewed as being of primary national importance is relevant in the analysis of the interference's legitimate aim and proportionality but cannot be regarded as a justification in itself. The aims of the interference and the means for achieving them must be scrutinised for conformity with the Convention, which enshrines fundamental principles indispensable for the existence and functioning of the democratic societies that make up the Council of Europe.

146. The Court observes that the Bulgarian Constitution enshrines the separation between State and Church and, as interpreted by the Constitutional Court, prohibits intervention by the State authorities with the leadership and organisation of religious communities (see paragraphs 65 and 66 above). It is significant that as many as half of the members of the Constitutional Court found, in 2003, that the 2002 Act was unconstitutional as it violated the above-mentioned principles. Although the remaining half of the justices upheld the Act, it is nonetheless clear that in the highest court in Bulgaria there was no majority acceptance of the view – advanced by the Government in this case – that the aim of overcoming the divisions in the Bulgarian Orthodox Church could justify State intervention forcing the religious community to unite (see paragraphs 75-79 above).

147. Indeed, the present case is not about the desirability of finding a solution overcoming the divisions in the Church. It is about the fact that the authorities decided to impose a solution through legislative intervention and wide ranging actions eliminating the existence of one of the two opposing leaderships and forcing the believers under the leadership of Patriarch Maxim. The Court's case-law in this respect is clear: in democratic societies it is not for the State to take measures to ensure that religious communities remain or are brought under a unified leadership. State measures favouring a particular leader of a divided religious community or seeking to compel the community, or part of it, to place itself under a single leadership against its will would constitute an infringement of the freedom of religion (see the cases cited in paragraphs 119-122 above).

148. The Court firmly reiterates this principle in the present case. Pluralism, which is the basic fabric of democracy, is incompatible with State action forcing a religious community to unite under a single leadership. As the Court has stated in the context of Article 11 of the Convention – also relevant here – the fact that what was at issue touched on national symbols and national identity is not sufficient. The national authorities must display particular vigilance to ensure that national public opinion is not protected at the expense of the assertion of minority views, no matter how unpopular they may be (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 107, ECHR 2001-IX). The role of the authorities in a situation of conflict between or within religious groups is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (see the cases cited in paragraphs 119-122 above).

149. It follows that the unity of the Bulgarian Orthodox Church, while it is a matter of the utmost importance for its adherents and believers and for Bulgarian society in general, cannot justify State action imposing such unity by force in a deeply divided religious community.

*(iii) Alleged justification on the basis that Patriarch Maxim was the canonical head of the Church*

150. The Government submitted that the interference with the applicants' rights was necessary in a democratic society because the unity of the Bulgarian Orthodox Church was proclaimed by its canons and Patriarch Maxim was its legitimate head, whom the State authorities had to assist. The third party agreed. The applicants did not accept this argument.

151. As the Court has noted above, the measures against the applicants were not based on a binding decision by the religious community itself resolving the internal dispute (see paragraphs 42-64 above). In these circumstances, while it is true that many adherents of the Bulgarian Orthodox Church, as well as Christian Orthodox churches from other countries, considered Patriarch Maxim the canonical leader, it is highly significant that the Bulgarian Orthodox Church was deeply and genuinely divided and that the authorities proceeded to "resolve" the dispute without regard to the constitutional principle of State neutrality in religious matters and to the position of the other part of the religious community.

152. In particular, the Court notes that the Bulgarian courts which refused the applicant organisation's requests for registration after the entry into force of the 2002 Act relied on two main arguments: (i) the applicant organisation had not been recorded at the Sofia City Court as being the Church's leadership; and (ii) Patriarch Maxim was "publicly known and internationally recognised" as the head of the Bulgarian Orthodox Church (see paragraphs 50-53 above).

153. As regards the first argument, the Court observes that it is unclear whether the Sofia City Court, acting under section 18 of the 2002 Act, has recorded Patriarch Maxim as the person representing the Church. Even if it has, there was no clear basis for the Sofia City Court to identify the "valid" leadership of the Church, other than an "expert opinion" submitted to it by the Directorate of Religious Denominations attached to the Government (see paragraphs 48 and 74 above). If no such recording was made, there was, similarly, no clear basis for anyone to identify the legal representative of the Church. That was so because the 2002 Act introduced the *ex lege* recognition of the Church as a body represented by a single leadership at a time when two leaderships claimed legitimacy and used two different versions of the Statute of the Church. Therefore, the courts' first argument – that Metroplitan Inokentiy had not been recorded as the representative of the Church – did not have sound legal basis and, moreover, may be seen as nothing more than a statement that the Government and the majority in Parliament did not consider him to be the canonical leader of the Church.

154. As to the second argument, the courts failed to explain the reasons why they considered irrelevant the fact that Patriarch Pimen and Metropolitan Inokentiy were also "publicly known" to a significant number of believers as the leaders of the Church, albeit probably less so than Patriarch Maxim.

155. In all circumstances, since in passing and implementing the 2002 Act the authorities disregarded the position of numerous Christian Orthodox believers in Bulgaria who supported the applicant organisation, the Court considers that the Government's purported aim of securing respect for the precepts of religious canon cannot justify, in a democratic society, the far-reaching action the State took to impose organisational unity by force on a deeply divided religious community.

*(iv) Significance of the interference and quality of the law*

156. As the Court has already noted, the State interfered in the internal organisation of the Bulgarian Orthodox Church through sweeping measures going as far as imposing on the divided religious community a single leadership and employing State power, including legislative prohibitions and police actions, to put an end to the activities of the alternative leadership, the applicant organisation.

157. The Court considers that the disproportionate nature of the interference complained of was exacerbated by the fact that it was effected through legal techniques of questionable quality, having regard to the Convention principles of the rule of law and clarity and foreseeability of the law. In particular, the Court notes that the impugned provisions of the 2002 Act were formulated with a false appearance of neutrality and that the courts and prosecuting authorities did not have clear basis to identify the "valid" leadership of the Church. Some domestic courts and the prosecuting

authorities did so essentially on the basis of the views of the majority in Parliament and the Government that Patriarch Maxim was the sole legitimate representative of the Church (see paragraphs 42-53, 58 and 70-79 above). 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 (see paragraphs 48, 74 and 150-155 above). 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 (see paragraphs 42-48, 53, 54, 62-64, 70-79, 81 and 140-142 above).

158. 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 (see paragraphs 56-61, 65, 66 and 140 above).

*(v) Conclusion as regards legitimate aim, proportionality and necessity in a democratic society*

159. The Court finds that while the leadership dispute in the Bulgarian Orthodox Church was a source of legitimate concern for the State authorities, their intervention was disproportionate. In particular, the pertinent provisions of the 2002 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.

*5. The Court's conclusion under Article 9*

160. It follows that there has been a violation of Article 9 of the Convention, interpreted in the light of Article 11.

## III. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

161. The applicants complained that as a result of the enactment of the 2002 Act and its implementation they had been denied access to a court to have their civil rights recognised and had been deprived of their property. They relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. These provisions, in so far as relevant, read as follows.

**Article 6 § 1**

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law..."

**Article 1 of Protocol No. 1**

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

### A. The parties' submissions

162. The applicants stated that the enactment and implementation of the 2002 Act had had the effect of barring their access to the courts and was as such an inadmissible intervention by the authorities. The applicant organisation stood no chance of seeking the protection of the civil courts since the courts had refused to recognise it as the legitimate representative of the Bulgarian Orthodox Church and had refused its requests for registration. Moreover, during the evictions of July 2004 the applicants had been deprived of notary deeds and other documents necessary to prove their rights.

163. All the applicants also stated that in 2003 and 2004 they had been deprived of their property through legislative acts and arbitrary decisions by the prosecuting authorities. The applicant organisation provided a list of churches that had been constructed after 1996, when Patriarch Pimen and later Metropolitan Inokentiy had become leaders, and churches for which they possessed notary deeds issued in the name of the church councils which apparently recognised the authority of the applicant organisation. The applicants had been expelled from churches and other premises which belonged to the applicant organisation and its local parishes. As a result, the

individual applicants, employees of the Church, had been deprived of their income.

164. The Government stated that the authorities had never limited the applicants' right of access to the courts. Their requests for registration had been examined and refused. The applicants had not filed actions to seek recovery of property or the determination of other civil rights. The fact that such actions would be probably destined to fail was a separate issue and did not concern access to court.

165. The Government noted that the temples and other assets in question had never been taken away from the Bulgarian Orthodox Church, which was its owner. The applicants in fact claimed a right to have control over the Church and its property. The applicants had not shown that they had their own property rights over the temples or other buildings at issue or any other interest protected by Article 1 of Protocol No. 1. Their lists of churches were unreliable, as was illustrated by the fact that churches built centuries ago figured on it. Their claim that some of the churches from which they had been evicted had been built by them was unproven. In the Government's view, the prosecuting authorities had lawfully acted to remove the applicants from the premises at the request of Patriarch Maxim, the lawful representative of the Church, which was the sole owner of the properties at issue.

166. The third party submitted that it owned the property claimed by the applicants, who had occupied it unlawfully.

## B. The Court's assessment

167. The Court considers that, having regard to the specificity of the issues raised in the present case under Article 6 of the Convention and Article 1 of Protocol No. 1, it must examine separately the complaints submitted by the applicant organisation and the complaints lodged by the six individual applicants.

### *1. Complaints submitted by the individual applicants*

168. The Court notes that the six individual applicants did not allege that they had a proprietary interest of any kind in the temples, office buildings or other property over which the applicant organisation had lost control as a result of the events complained of. In so far as the applicants claimed that they had suffered a loss of income, the Court notes that none of them has clarified the dates and surrounding circumstances of any termination of their functions. In so far as the applicants may be understood to be claiming that 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 leaders whom they did not accept as legitimate, the Court considers that this statement only concerns alleged damage resulting from the violation of Article 9

found in this case and does not disclose a violation of Article 1 of Protocol No. 1 to the Convention. Furthermore, the Court finds that the assertion by the six individual applicants that they could not turn to the civil courts to seek the determination of their own civil rights and obligations is not supported by convincing arguments.

169. The Court thus finds that the complaints of the six individual applicants that the events at issue violated their rights under Article 6 of the Convention or Article 1 of Protocol No. 1 are unsubstantiated and must be rejected as unproven.

*2. Complaints submitted by the applicant organisation*

**(a) Alleged lack of access to court (Article 6 § 1)**

170. The Court notes that at all relevant times the applicant organisation and the organisation headed by Patriarch Maxim have been *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 paragraphs 14-54 above).

171. It is clear, therefore, that the applicant organisation's complaint about denial of access to the courts concerns in reality the impossibility for its leaders to continue to act on behalf of the legal person of the Bulgarian Orthodox Church after the 2002 Act's entry into force. This grievance is indistinguishable from the complaint that the authorities put an end to the applicant organisation's existence as the leadership of the Bulgarian Orthodox Church through an unlawful and unjustified interference resulting from the provisions of the 2002 Act and the measures for their implementation. The Court has already examined this complaint, which is properly dealt with under Article 9 of the Convention.

172. The Court finds, therefore, that no separate issue arises under Article 6 § 1, in so far as the applicant organisation is concerned.

**(b) Alleged deprivation of property (Article 1 of Protocol No. 1)**

173. Having regard to the specificity of the applicant organisation's position, the Court notes that the applicant organisation's complaint about deprivation of possessions does not concern State action dispossessing the legal person of the Bulgarian Orthodox Church but State interference in the internal organisation of the Church by way of legislation and decisions imposing Patriarch Maxim as the sole legitimate head of the Church.

174. However, this is an issue which has already been examined by the Court under Article 9 of the Convention. The applicant organisation's submissions about churches built with the contribution of its supporters or under its leadership and about other assets taken away from it concern aspects of the State interference with the internal organisation of the Church which has been dealt with under Article 9. The Court finds that the complaints about the pecuniary consequences of this interference do not raise a separate issue under Article 1 of Protocol No. 1 to the Convention.

## IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

175. The applicants complained that they did not have effective remedies in respect of the violations of their Convention rights. They relied on Article 13 of the Convention, which 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."

176. The Government stated that no separate issue arose under Article 13 of the Convention. The third party did not comment.

177. The applicants' grievance under Article 9 of the Convention being arguable, the Court finds that Article 13 is applicable in the present case. It reiterates, however, that this provision does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention (see, *mutatis mutandis*, *Maurice v. France* [GC], no. 11810/03, §§ 105-108, ECHR 2005-IX, and *Supreme Holy Council of the Muslim Community*, cited above, §§ 107-109).

178. In the present case the interference with the applicants' rights under Article 9 of the Convention resulted from the 2002 Act and the measures for its implementation (see paragraphs 42-64 above). In the proceedings instituted by the applicants after the Act had come into force, their attempts to obtain protection failed since the courts and the prosecutors interpreted the 2002 Act as directly settling the leadership dispute in the Bulgarian Orthodox Church (see paragraphs 49-53, 58 and 60 above). In these specific circumstances, it cannot be considered that Article 13 required that special remedies to challenge the provisions of the 2002 Act for their conformity with the Convention should have been available to the applicants.

179. It follows that there has been no violation of Article 13.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

180. 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

181. The applicants claimed EUR 679,504,609 in respect of pecuniary damage, which, in their view, included the value of 107 temples and other buildings and unpaid wages and benefits for a number of clergy and support staff who had allegedly lost their jobs as a result of the events at issue. They claimed, in addition, EUR 2,314,546 in respect of non-pecuniary damage. The Government considered that these claims lacked any sound basis and were in any event exorbitant.

182. In the circumstances of the case, the Court considers that the question of the application of Article 41, in so far as pecuniary and non-pecuniary damage is concerned, is not ready for decision and reserves it, due regard being had to the possibility that an agreement between the respondent State and the applicants will be reached, taking into consideration the legitimate interests of all concerned (Rule 75 § 1 of the Rules of Court).

### B. Costs and expenses

183. The applicants claimed EUR 13,400 in respect of legal fees for 130 hours of legal work by their lawyer at the hourly rate of EUR 60 and 140 hours of legal work by lawyers assisting him, at the hourly rate of EUR 40. This claim was supported by a document which the applicant's lawyer described as an invoice.

184. The applicants also claimed EUR 1,000 in respect of expenses such as translation, postage, copying, printing and telephone calls. Part of this claim was supported by copies of relevant invoices.

185. The applicants stated that they claimed the above sums for work done and expenses incurred in relation to 74 cases before the Court but did not indicate the relevant application numbers. The cases in question apparently included the present case and also the applications mentioned in paragraph 82 above. The applicants did not clarify what portion of the costs thus claimed were incurred in relation to the present case.

186. The Government stated that the costs relating to other applications pending before the Court should be deducted, that the hourly rate claimed in

respect of legal fees was excessive and that the invoices presented by the applicants only concerned half of the relevant expenses.

187. The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court notes that the applicants' claims were unclear in that the exact costs relating to the present case were not stated. Also, only incomplete documentary proof was submitted.

188. In these circumstances, taking into consideration that the present case undoubtedly involved substantial legal work and other costs for the applicants, but also having regard to the deficiencies in their claims, the Court awards the applicants jointly EUR 8,000 in respect of all costs and expenses.

### C. Default interest

189. 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. *Holds* that there has been a violation of Article 9 of the Convention in respect of all applicants;

2. *Holds* that there has been no violation of the rights of the six individual applicants under Article 6 of the Convention and Article 1 of Protocol No. 1;

3. *Holds* that, in so far as the rights of the applicant organisation are concerned, no separate issues arise under Article 6 of the Convention and Article 1 of Protocol No. 1;

4. *Holds* that there has been no violation of Article 13 of the Convention in respect of any of the applicants;

5. *Holds* that the question of the application of Article 41 is not ready for decision in so far as pecuniary and non-pecuniary damage is concerned; accordingly,
   (a) *reserves* the said question;
   (b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final in

accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be;

6. *Holds*

(a) that in respect of costs and expenses the respondent State is to pay the applicants jointly (to the six individual applicants and Metropolitan Inokentiy as the representative of 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 8,000 (eight thousand euros), plus any tax that may be chargeable to the applicants, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(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;

7. *Dismisses* the remainder of the applicants' claim for costs and expenses.

Done in English, and notified in writing on 22 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President