



Breach of the principle of legal certainty in a case concerning the restitution of a place of worship

In today's **Grand Chamber** judgment¹ in the case of [Lupeni Greek Catholic Parish and Others v. Romania](#) (application no. 76943/11) the European Court of Human Rights held:

- by 12 votes to five, that there had been **no violation of the Article 6 § 1** of the European Convention on Human Rights in respect of **the right of access to a court**;
- unanimously, that there had been **a violation of Article 6 § 1 on account of the breach of the principle of legal certainty**;
- unanimously, that there had been **a violation of Article 6 § 1 on account of the length of the proceedings**;
- by 12 votes to five, **that there had been no violation of Article 14 (prohibition of discrimination) taken together with Article 6 § 1 in respect of the applicants' right of access to a court in comparison with the Orthodox parish**;
- by 16 votes to one, **that it was not necessary to examine separately the complaint under Article 14 (prohibition of discrimination) taken together with Article 6 § 1 in so far as it concerned an alleged difference of treatment compared with other Greek Catholic parishes.**

The case concerned a request for the restitution of a place of worship that had belonged to the Greek Catholic Church and was transferred during the totalitarian regime to the ownership of the Orthodox Church.

The applicants' claim for restitution was dismissed by the Romanian courts in application of a special law (Legislative Decree no. 126/1990) establishing the criterion of the wishes of the worshippers in the communities in possession of the properties, who had refused in the present case to return the properties in question.

The Court held, firstly, that the applicants' right of access to a court had been respected, finding that they had not been deprived of the right to obtain a decision on the merits of their claim, and that the difficulties encountered by them had resulted from the applicable substantive law and were unrelated to any limitation on the right of access to a court.

The Court then held that there had existed a conflicting case-law with regard to the interpretation of Article 3 of Legislative Decree no. 126/1990, originating in the case-law of the High Court, which between 2007 and 2012 had adopted diametrically opposed solutions and delivered several contradictory judgments. In the Court's view, the context of case-law uncertainty in which the action brought by the applicants had been examined, coupled in this case with a failure to make prompt use of the mechanism foreseen under domestic law for ensuring consistent practice even within the highest court in the country (request for interpretation by the High Court, through an appeal in the interests of the law), had undermined the principle of legal certainty and had had the effect of depriving the applicants of a fair hearing.

The Court also held that the applicants' case had not been heard within a reasonable time.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Lastly, the Court held that the applicants had not suffered a difference in treatment compared with the defendant Orthodox parish in respect of the possibility of applying to the courts and obtaining a judicial decision on the action to recover possession of the place of worship.

Principal facts

The applicants are the Lupeni Greek Catholic Parish, the Lugoj Greek Catholic Diocese and the Lupeni Greek Catholic Archpriesthood, all located in Romania. They belong to the Romanian Church United to Rome (Greek Catholic or Uniate Church).

Following the dissolution in 1948 of the Greek Catholic Church, a church building and an adjoining courtyard that belonged to the Lupeni Greek Catholic Parish (the first applicant) were transferred in 1967 to the ownership of the Romanian Orthodox Church. The Lupeni Greek Catholic Parish was legally re-established on 12 August 1996; it belongs to the Lugoj Greek Catholic Diocese (the second applicant) and the Lupeni Greek Catholic Archpriesthood (the third applicant).

After the fall of the communist regime in 1989, the Romanian legislation (Legislative Decree no. 126/1990 as amended by Law no. 182/2005, hereafter “the special law”) provided that the legal status of property that had belonged to the Uniate parishes and been transferred to the ownership of the Orthodox Church would be determined by joint committees made up of representatives of both Uniate and Orthodox clergy, who would take into account “the wishes of the worshippers in the communities in possession of these properties”. In the event of disagreement, the party with an interest in bringing judicial proceedings could do so under ordinary law.

In 2001 the applicants brought proceedings to obtain, among other things, the restitution of the church and the adjoining courtyard. The Hunedoara County Court granted the applicants’ action for the restoration of possession in 2009, but the Alba-Iulia Court of Appeal subsequently dismissed it in 2010, holding that the legal situation of places of worship and parish buildings ought to be determined on the basis of the wishes of the worshippers, in application of Article 3 of Legislative Decree no. 126/1990, and that they had indicated their refusal to return the place of worship. By a final judgment of 15 June 2011, the High Court of Cassation and Justice confirmed the judgment of the Court of Appeal, considering that it had been acted correctly in applying the special law and the criterion of the wishes of the (predominantly Orthodox) worshippers in the community in possession of the property, while simultaneously emphasising the unlawfulness of the reasoning of the first-instance court, which had merely compared the title deeds and ignored the special law.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time/right of access to a court) and Article 13 (right to an effective remedy) of the Convention, the applicants alleged a breach of their right of access to a court, and criticised the national courts for not deciding their case under ordinary law, but instead in accordance with the criterion set out in Legislative Decree no. 126/1990, which was applicable to the friendly settlement procedure, namely the wishes of the worshippers in the community in possession of the property. The applicants also alleged that the application of this criterion had not been foreseeable and that it had rendered illusory their right of access to a court. They further complained about the length of the proceedings. The Court considered that it was appropriate to examine the applicants’ complaints under Article 6 § 1 of the Convention, and more specifically under the right of access to a court, respect for the principle of legal certainty and the length of the proceedings.

Under Article 14 (prohibition of discrimination) read in conjunction with Article 6 § 1, the applicants also alleged that they had suffered discrimination in the exercise of their right of access to a court.

The application was lodged with the European Court of Human Rights on 14 December 2011. On 19 May 2015 a Chamber of the Third Section delivered a judgment in which it concluded, unanimously, that there had been no violation of Article 6 § 1 of the Convention with regard to the right of access to a court and respect for the principle of legal certainty; no violation of Article 14 of the Convention taken in conjunction with Article 6 § 1; and a violation of Article 6 § 1 with regard to the length of the proceedings. On 19 August 2015 the applicants requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 19 October 2015 the panel of the Grand Chamber accepted that request. A hearing was held on 2 March 2016.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
András **Sajó** (Hungary),
İşıl **Karakaş** (Turkey),
Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”),
Angelika **Nußberger** (Germany),
George **Nicolaou** (Cyprus),
Kristina **Pardalos** (San Marino),
Paulo **Pinto de Albuquerque** (Portugal),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Síofra **O’Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Alena **Poláčková** (Slovakia),
Pauliine **Koskelo** (Finland),

and also Françoise **Elens-Passos**, *Deputy Registrar*.

Decision of the Court

[Article 6 § 1 of the Convention \(right to a fair hearing\)](#)

1. The right of access to a court

The applicants alleged that the application of the criterion of the worshippers’ wishes (Legislative Decree no. 126/1990) to their action amounted to a restriction that had rendered their right of access to a court illusory.

The Court noted at the outset that the applicants had not been prevented from bringing their action before the domestic courts. Their case had been litigated at three levels of jurisdiction and no procedural bar or limitation period had been invoked against them. They had been able to submit evidence and benefited from adversarial proceedings, at the close of which the domestic courts had examined that evidence and delivered reasoned judgments. The national courts had examined the action brought before them by the applicants, carrying out an analysis of the facts and applicable law. They had taken account of the specific features of the subject of the dispute, and applied a combination of the provisions of ordinary law and of the special law in this area. They had also explained, with convincing reasons, how they had applied the substantive law in the case before them, with the result that this application could not be regarded as manifestly arbitrary. The domestic courts had attempted to identify the factors which had led the party in possession of the church building to refuse to return the property, and had established the worshippers’ wishes. In so doing, the Court of Appeal, whose findings of fact were endorsed by the High Court, had examined

the circumstances surrounding the construction of the contested place of worship, the financial contributions made by the various parties, the way in which the building had been used, and how the structure of the Lupeni community had developed. Thus, the domestic courts had verified that the worshippers' wishes had a genuine basis in fact, taking account of the historical and social aspects. Moreover, they had established that the criterion of the worshippers' wishes had not been used arbitrarily against the applicants in the present case.

The Court then found that what was at stake in the present case was not a procedural obstacle hindering the applicants' access to the courts, but a substantive provision which, while it was such as to have an impact on the outcome of the proceedings, did not prevent the courts from examining the merits of the dispute. In reality, the applicants were complaining about the difficulty in satisfying the conditions imposed by the substantive law in order to obtain restitution of the place of worship. According to the Court's case-law, however, the scope of the guarantees of Article 6 of the Convention could not apply to substantive limitations on a right existing under domestic law. Thus, the criterion of the worshippers' wishes in issue in the present case could not be considered as limiting in any way the courts' jurisdiction to decide actions for recovery of possession in respect of places of worship, but as qualifying a substantive right. The domestic courts in the present case had had full jurisdiction to apply and interpret the national law, without being bound by the refusal of the Orthodox parish to reach a friendly settlement in the context of the procedure before the joint committee.

Lastly, the Court specified that, when examining a case under Article 6 of the Convention, it was not for it to substitute its own view for that of the national legislature as to what was the most appropriate legislation to enact and apply in settling disputes, particularly in cases involving disputes between different religious communities concerning places of worship. In addition, the Contracting States enjoyed a certain margin of appreciation in drawing up the rules concerning the right of access to a court.

In consequence, the Court considered that the applicants had not been deprived of the right to obtain a decision on the merits of their claims and concluded that **their right of access to a court had been respected in this case. It therefore concluded that there had been no violation of Article 6 § 1.**

2. Compliance with the principle of legal certainty

The Romanian legislature had amended the text of Legislative Decree no. 126/1990 to the effect that if the members of the clergy representing the two denominations failed to reach an agreement within the joint committee, the party with an interest in bringing judicial proceedings could do so under ordinary law. The concept of "ordinary law" had been the source of differing interpretations: some courts had assigned it the usual meaning in the area of protection of the right of ownership and had dealt with actions for recovery of possession in the traditional manner, on the basis of the provisions of the Civil Code; other courts had considered that they were required to take into account the wishes of the worshippers, on the basis of Article 3 § 1 of Legislative Decree no. 126/1990. Depending on the interpretation given by the courts to the concept of ordinary law, the substantive law applicable to a dispute could thus differ: in the first scenario, the domestic courts compared the title deeds, whilst in the second the courts sought to establish the wishes of the worshippers in the religious community which was in possession of the property at the time when the legal situation of the place of worship was being examined.

The Court noted that the conflicting interpretation of the concept of "ordinary law" existed within the High Court itself, called upon to settle these disputes at last instance. In a judgment delivered in 2007, the High Court had confirmed the application of the criterion of the wishes of the worshippers as provided for by Legislative Decree no. 126/1990; in a judgment in 2008, it had remitted a case for judgment to the lower courts, indicating that the criterion of the worshippers' wishes was applicable only in the procedure before the joint committees. In 2011 and 2012, the High Court had again

delivered judgments containing divergent interpretations. Yet the role of a supreme court was precisely to resolve such conflicts. If conflicting practice developed within one of the highest judicial authorities in a country, that court itself became a source of legal uncertainty, thereby undermining the principle of legal certainty and weakening public confidence in the judicial system. The conflicting case-law existing within the High Court had been reflected in the decisions taken by the lower courts, which had also delivered contradictory judgments. Thus, a large number of Greek Catholic parishes had been affected by these differences in approach by the domestic courts with regard to the interpretation of the applicable law. Admittedly, from 2012 onwards the High Court and the Constitutional Court had aligned their respective positions and confirmed that the criterion laid down in Article 3 of Legislative Decree no. 126/1990 was to be applied in procedures concerning the restitution of places of worship. In practice, this had resulted in harmonisation of the case-law of the lower courts. The Court thus noted that one and the same legal provision, namely Article 3 of Legislative Decree no. 126/1990, had given rise to conflicting interpretations by the national courts over several years and, more specifically, until 2012. **In consequence, it considered that in the present case “profound and long-standing differences” had existed in the case-law.**

The Court specified that the Contracting States had a responsibility to organise their legal systems in such a way as to avoid the adoption of discordant judgments, particularly where this involved an inconsistency affecting a large number of persons bringing proceedings before the courts. It reiterated that it had already been required to examine whether the Romanian judicial system contained a mechanism for remedying a conflict in its case-law², and had noted the existence of an appeal in the interests of the law, provided for at the relevant time by Article 329 of the Code of Civil Procedure, under which various judicial structures could request that the High Court provide guidance on the interpretation of the relevant provisions of domestic law, in order to harmonise the case-law by issuing a binding decision on how the legal provisions in issue were to be interpreted. In the present case, however, the relevant authorities had not made use of that form of appeal.

The Court noted that it was confronted in the present case with a situation of general legal uncertainty which had originated in the High Court’s case-law but which was also perceptible in the case-law of the lower courts. This uncertainty had related successively to the question of access to a court and to that of the applicable substantive law, and this conflicting case-law had affected a large number of persons bringing judicial proceedings. In consequence, the Court concluded that the context in which the action brought by the applicants had been examined, namely one of uncertainty in the case-law, coupled in the present case with the failure to make prompt use of the mechanism foreseen under domestic law for ensuring consistent practice even within the highest court in the country, had undermined the principle of legal certainty and, in so doing, had had the effect of depriving the applicants of a fair hearing. **It concluded that there had been a violation of Article 6 § 1 of the Convention on account of the breach of the principle of legal certainty.**

3. Length of the proceedings

The Court noted that the length of the proceedings had been about ten years and three weeks, for three levels of jurisdiction, for the second applicant, and about five years for the first and third applicants, again for three levels of jurisdiction. Having regard to all of the elements submitted to it, particularly the fact that the applicants could not be criticised for any delay, the Court concluded that **their case had not been heard within a reasonable time, and held that there had been a violation of Article 6 § 1 of the Convention.**

² *Albu and Others v. Romania*, 10 May 2012.

Article 14 (prohibition of discrimination), taken together with Article 6 § 1 (right of access to a court)

As to the allegations of a difference in treatment compared with the Orthodox parish in respect of the right of access to a court, the Court noted firstly that the applicants had essentially complained of a breach of their right of access to a court on account of the content of the substantive law. In this connection, the Court pointed out that it had emphasised that Article 6 § 1 of the Convention did not in itself guarantee any particular content of the substantive law of the Contracting Parties. It specified that it had held that, in the present case, there had not been a restriction on the right of access to a court, since both parties to the dispute had enjoyed the same right to apply to the courts and to obtain a decision on the merits of the case. In the absence of any such restriction, the Court considered that it had not been shown that the criterion of the worshippers' wishes had created a difference in treatment between the Greek Catholic parishes and the parishes of the Orthodox Church in the exercise of their right of access to a court.

Admittedly, the conditions imposed by the substantive law were clearly such as to have an impact on the outcome of the proceedings. However, given that the applicants, like the Orthodox parish, had enjoyed access to domestic courts which had full jurisdiction to apply and interpret the domestic law and which had exercised a review that was sufficiently wide to satisfy the requirements of Article 6 § 1, this factor had not created a difference in treatment between the two parties to the proceedings in terms of access to a court.

In consequence, **the Court did not discern a difference in treatment between the applicants and the defendant Orthodox parish in respect of the possibility of applying to the courts and obtaining a judicial decision** on the action to recover possession of the place of worship. **It therefore concluded that there had been no violation of Article 14 of the Convention** taken together with Article 6 § 1 in the present case.

Article 41 (just satisfaction)

The Court held, by sixteen votes to one, that Romania was to pay the applicants jointly 4,700 euros (EUR) in respect of non-pecuniary damage and EUR 696.33 in respect of costs and expenses; EUR 8,567 in respect of costs and expenses, to be paid to Ms D.O. Hatneanu; and EUR 3,858 for costs and expenses, to be paid to Ms C. T. Borsányi.

Separate opinions

Judges A. Sajó, I. Karakaş, P. Pinto de Albuquerque and M. Mits expressed a joint partly dissenting opinion; Judge I. Karakaş expressed a partly dissenting opinion with regard to Article 41 (just satisfaction); and Judge E. Kūris expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.