



Action for recovery of possession of a former Uniate Church place of worship: right of access to court was respected but length of proceedings was excessive

The European Court of Human Rights delivered today its **Chamber judgment**¹ in the case of [Lupeni Greek Catholic Parish and Others v. Romania](#) (application no. 76943/11).

The case concerned the restitution of places of worship belonging to the Greek Catholic Church which were transferred to the Orthodox Church under the totalitarian regime, and more specifically the question of the application of a special law to determine the legal status of such property.

The Court held, unanimously, that there had been:

No violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights as regards the right of access to a court and the question of legal certainty;

A violation of Article 6 § 1 concerning the length of proceedings; and

No violation of Article 14 (prohibition of discrimination) in conjunction with Article 6 § 1 (right of access to a court).

The Court found in particular that the mere fact that the applicants considered the criterion laid down in a special law (Legislative Decree no. 126/1990) unfair was insufficient to render their right of access to a court ineffective.

It further held that the Romanian courts had weighed up the interests at stake and delivered detailed judgments containing reasons. Reiterating the State's role as the neutral and impartial organiser of the practice of religions, the Court noted that the Constitutional Court had emphasised the need to protect the freedom of religious communities and the freedom of others, while having due regard to the historical background to the case.

Principal facts

The applicants are the Lupeni Greek Catholic Parish, the Lugoj Greek Catholic Diocese and the Lupeni Greek Catholic Archpriesthood, all of which are situated in Romania. They belong to the Eastern-Rite Catholic (Greek Catholic or Uniate) Church.

After the fall of the communist regime in 1989, legislation was passed in Romania (Legislative Decree No. 126/1990 – hereafter “the special law”) specifying that the legal status of property which had belonged to the Greek Catholic Church would be determined by joint commissions made up of representatives of both denominations, who were to take account of the “wishes of the adherents of the communities in possession of these properties”. In the event of disagreement, the party with an interest entitling it to bring proceedings could do so under ordinary law.

Following the dissolution in 1948 of the Lupeni Greek Catholic Parish, the Lugoj Greek Catholic Diocese and the Lupeni Greek Catholic Archpriesthood, a church and an adjoining courtyard that had belonged to the Lupeni Greek Catholic Parish were transferred to the ownership of the Romanian

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Orthodox Church in 1967. The applicant parish was legally re-established on 12 August 1996 and comes under the authority of the Lugoj Greek Catholic Diocese (the second applicant) and the Lupeni Greek Catholic Archpriesthood (the third applicant). In 2001 the applicants instituted judicial proceedings, seeking restitution of the church and adjoining courtyard.

In 2009 the County Court found in favour of the applicants, but their action was subsequently dismissed by the Court of Appeal in 2010. In a final judgment of 15 June 2011 the High Court upheld the Court of Appeal's judgment, finding that it had correctly applied the special law and its criterion of respecting the wishes of the (mostly Orthodox) adherents of the community in possession of the property, while at the same time highlighting irregularities in the reasoning of the first-instance court, which had merely compared the title deeds and disregarded the special law.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court) and Article 13 (right to an effective remedy) of the Convention, the applicants complained that in determining their case, the Romanian courts had not applied the rules of ordinary law but a law containing a special criterion whose application had not been foreseeable. They also relied on Article 6 § 1 (right to a fair hearing within a reasonable time) in respect of the length of the proceedings. Under Article 14 (prohibition of discrimination), they alleged that they had been discriminated against in the enjoyment of their right of access to a court on account of their adherence to what was a minority religion at national level.

The applicants complained, lastly, that the manner in which the national courts had determined the dispute in their case and the refusal to order the restitution of the church had infringed their right to freedom of religion, in breach of Article 9, read separately and in conjunction with Article 14 of the Convention, and their right to the peaceful enjoyment of their possessions, in breach of Article 1 of Protocol No. 1, read separately and in conjunction with Article 14 of the Convention.

The application was lodged with the European Court of Human Rights on 14 December 2011.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep Casadevall (Andorra), *President*,
 Luis López Guerra (Spain),
 Ján Šikuta (Slovakia),
 Kristina Pardalos (San Marino),
 Johannes Silvis (the Netherlands),
 Valeriu Grițco (the Republic of Moldova),
 Branko Lubarda (Serbia),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

Article 6 § 1

Right of access to a court

The Court noted firstly that this case was to be seen in the particular context of restitution of places of worship belonging to the Greek Catholic Church which had been transferred to the Orthodox Church under the totalitarian regime. Restitution of these religious buildings was a relatively large-scale problem and a socially sensitive issue.

The applicants had instituted judicial proceedings for the determination of the legal status of the religious site in question, bringing an action in the County Court against the Orthodox Church, which

was now in possession of the property. The point for the Court to examine was the criterion, laid down in the special law, of the “wishes of the adherents of the communities in possession of these properties”; in the applicants’ view, the application of this criterion had hindered their right of access to a court because it gave precedence to the wishes of the defendant in the proceedings.

The Court considered that the Romanian courts had been able to apply and interpret domestic law without being bound by the refusal of the Orthodox Church to reach a prior friendly settlement. In addition, they had explained precisely why they had applied the criterion laid down in the special law, taking account of considerations including historical and social factors, the different financial contributions to the building and its use. The courts’ judgments had contained careful reasoning and the applicants’ main arguments had been examined in depth. The mere fact that the applicants considered the criterion laid down in the special law unfair was insufficient to render their right of access to a court ineffective. The Court therefore concluded that there had been no violation of Article 6 § 1 on that account.

Principle of legal certainty

The applicants complained of the lack of foreseeability in the application of the criterion laid down in the special law in the context of an action for recovery of possession. The Court found that the Romanian courts had had to determine such actions without having access to a sufficiently clear and foreseeable legislative framework. In deciding whether or not to apply the special law, different Romanian courts had reached different legal conclusions on the same legal issue, and this uncertainty had lasted several years. However, the High Court and the Constitutional Court had subsequently – albeit after the decision delivered in the present case – resolved these discrepancies by bringing their own respective positions into line. Furthermore, the situation in the present case had not involved clarifying divergent interpretations of a legal provision but determining on the basis of precedent when ordinary law or the rules laid down in the special law should apply. The Court therefore concluded that there had been no violation of Article 6 § 1 in this respect.

Length of proceedings

The period to be taken into consideration for the Lugoj Greek Catholic Diocese had lasted approximately ten years and three weeks (from 23 May 2001 to 15 June 2011, the date of the High Court’s final decision), spanning three levels of jurisdiction. For the Lupeni Greek Catholic Parish and the Lupeni Greek Catholic Archpriesthood the relevant period had lasted approximately five years, spanning three levels of jurisdiction (from the restoration of the case to the County Court’s list of cases in 2006 until 15 June 2011).

The Court considered that the applicants could not be held responsible for the length of the proceedings, which was essentially attributable to the Romanian authorities (attempt to reach a friendly settlement, proceedings before the joint commission although the case had already been referred to the courts for examination on the merits, quashing of a judgment because of a procedural defect, etc.). The Court therefore held that there had been a violation of Article 6 § 1 in respect of the length of the proceedings.

[Article 14 in conjunction with Article 6 § 1](#)

The Court observed that the disputed place of worship had been in the possession of the Orthodox Church of Lupeni and noted that, in general, where the special law was applied, the religious sites whose recovery was sought were currently in the possession of Orthodox Church authorities. Accordingly, the special law and the criterion complained of could be interpreted as creating a privileged position for the Orthodox Church. There was therefore a difference in the treatment of two groups – the Greek Catholic Church and the Orthodox Church – which were in a similar situation as regards their claims to ownership of the place of worship at the heart of the dispute.

The State's declared intention in passing the special law had been to protect the freedom of those who had been forced to leave the Greek Catholic faith under the totalitarian regime to express their wishes as to which religion to follow, while retaining the possibility of using the place of worship they had built.

The Court also pointed out that the Romanian courts had weighed up the interests at stake and delivered detailed judgments containing reasons. Moreover, the Constitutional Court had emphasised the need to protect the freedom of religious denominations and the freedom of others, while having due regard to the historical background to the case. In that connection the Court reiterated the State's role as the neutral and impartial organiser of the practice of religions, faiths and beliefs.

Accordingly, in view of the aim pursued and the reasonable justification for it, the adoption of the relevant criterion in Romanian law had not been in breach of the prohibition of discrimination. There had therefore been no violation of Article 14 in conjunction with Article 6 § 1.

[Article 9 taken alone and in conjunction with Article 14](#)

The Court considered that the Romanian courts' refusal to recognise the applicants' ownership of the church in question had not amounted to unjustified interference with the exercise of their right to freedom of religion. In the same vein, it considered that the measure complained of had not been discriminatory and that the Romanian courts had not based their decision on aspects relating to religious affiliation, but on specific factual evidence. The special law had officially recognised the Greek Catholic Church in Romania, and no provision of the law had ordered the automatic restitution of places of worship that had belonged to this church before 1948. The Court then reiterated that no right could be derived from the Convention for a religious community to be guaranteed a place of worship by the public authorities. Lastly, on the matter of State funding, the Court observed that other Greek Catholic parishes that had sought assistance under the law had been granted various types of financing to help them build a new church and that the applicants were still entitled to apply for State assistance via this channel. The Court therefore rejected these complaints as being manifestly ill-founded.

[Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14](#)

The applicants had instituted judicial proceedings for the restitution of the place of worship. Since they could not therefore maintain that this property belonged to them without any intervention by the courts, they did not have an "existing possession".

As to whether they had at least a "legitimate expectation" of any current, enforceable claim being determined in their favour, the Court noted that the restitution claim had been a conditional claim from the outset and could therefore not be said to have been sufficiently established to qualify as an "asset" attracting the protection of Article 1 of Protocol No. 1. Accordingly, this complaint had to be rejected.

In addition, the Court observed that neither the criterion laid down in the law nor the manner in which it had been applied in the present case had amounted to discrimination on grounds of religion. The Court therefore held that the applicants' complaint under this Article in conjunction with Article 1 of Protocol No. 1 was manifestly ill-founded and had to be rejected.

[Just satisfaction \(Article 41\)](#)

The Court held that Romania was to pay 2,400 euros (EUR) to the applicants jointly in respect of non-pecuniary damage and, in respect of costs and expenses, EUR 2,202 and EUR 2,456 to the applicants' respective lawyers and EUR 300 to the Association for the Defence of Human Rights in Romania – Helsinki Committee (APADOR-CH) – which had undertaken to meet the necessary secretarial expenses to support the applicants' application to the Court.

The judgment is available only in French.

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