



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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 3007/06
by Yuriy SAMODUROV and Lyudmila VASILOVSKAYA
against Russia

The European Court of Human Rights (First Section), sitting on
15 December 2009 as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 13 December 2005,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Yuriy Vadimovich Samodurov and Ms Lyudmila Viktorovna Vasilovskaya, are Russian nationals who were born in 1951 and 1958 respectively and live in Moscow. They are represented before the Court by Ms A. Stavitskaya, Ms K. Kostromina and Ms Y. Liptser, lawyers practising in Moscow.

A. The circumstances of the case

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

At the material time the first applicant was the director of the Andrei Sakharov “Peace, Progress, and Human Rights” Museum and Community Centre (“the Sakharov Museum”) in Moscow. The second applicant was employed by the Sakharov Museum, with responsibility for organising exhibitions.

1. *The “Caution, religion!” exhibition and its destruction*

On 14 January 2003 the exhibition “Caution, religion!” («Осторожно, религия!») opened in the exhibition hall of the Sakharov Museum. It was open to the public and admission was free.

The exhibition featured forty-five exhibits by contemporary Russian artists around the theme of the dangers of rising clericalism. They included, in particular, the following works:

- a poster for the exhibition “Caution, religion!” (by Ms Magidova), consisting of a photocopy of an empty icon frame with the road sign symbolising danger (an exclamation mark in a red triangle) inside;

- twelve copies of the same frame on one page under the title “The Holy Place Is Never Empty” (by the same artist) with various symbols in place of the face, including a car, a pair of headphones, a cup of coffee, a television set and a skull and crossbones;

- a cardboard imitation of an icon under the title “You Shall not Make for Yourself an Idol” (by Ms Zrazhevskaya) featuring holes instead of the face, hands and open New Testament into which the visitor could stick his or her face and any book. The exhibit included a camera on a tripod and the sign “Cheap photos”;

- a triptych under the heading “In the Beginning Was the Word” (by Ms Dorokhova) showing on the first panel a crucified man against a backdrop of some text from the Gospels; on the second a five-pointed star against a backdrop of text from the “Communist Party Manifesto”; and on the third a swastika against a backdrop of text from Hitler’s *Mein Kampf*;

- a photograph of a wooden cross on a hill under the title “Iksisos” which is the Russian word for “sausages” spelled backwards (by Ms Elagina). The whole surface of the cross was covered with Soviet warning posters such as “Avoid Hand Injury” and a string of sausages was hung over the arms of the cross;

- a Coca-Cola advertising poster in colour (by Mr Kosolapov), which included the face of Jesus Christ and the inscription in English: “Coca-Cola – This is my blood”;

- eight photocopied icons under the common heading “Cardboard Icons” (by Mr Ter-Oganyan), with inscriptions including “Revolution”,

“Vodka”, “Kalashnikov”, “Russian Art”, “50 %”, “Lenin” and “1917”, and in one case a drawing of a hammer and sickle;

- a two-part work (by Mr Orlov and Ms Mitlyanskaya) entitled “The Last Supper”, consisting of a video showing the cut-off, writhing head of a fish, and three photographs showing bloodied fish heads and fins lying on a plate;

- a large panel entitled “Hello Dolly!” (by Ms Valdron) showing a sheep and bearing the following inscriptions in English: “Hello, Holy! Hail Dolly, Lamb of God”;

- a wooden panel entitled “RPTs”, which is a Russian abbreviation for the Russian Orthodox Church (by Mr Florenskiy), to which the styrofoam letters “P”, “II”, “II” were attached and decorated with Christmas lights;

- a coarsely-woven garment similar to a tunic, to which a tag with the title “Clothing for Messiah” was attached (by Mr Kazhdan);

- a photographic collage under the title “Caution, religion!” (by Mr Mamyshev-Monroe) showing a reclining man draped in a star-decorated garment whose face was partly a picture of a crescent and partly a portrait of President Putin. The man was raising his index finger, which gradually transformed into the Orthodox cross;

- seven colour photos under the common title “Seven deadly sins” (by Mr Batynkov), featuring the same family in their daily life: a family supper stood for gluttony, watching TV implied sloth, a room decorated with movie posters suggested idolatry, etc.;

- a stack of paper sheets under the title “Notes for an artist” (by Mr Sigutin), on which short quotations from the Old and New Testament were printed. The sheets were cut up in the same manner as notices on a notice board, so as to allow people to tear off a quotation they liked;

- an untitled composition of three empty vodka bottles with dome-shaped onions placed on top of them, a half-eaten fish and three pieces of rye bread (work by Mr Gurevich).

On 18 January 2003 an organised group of self-professed Orthodox believers – Mr Smakhtin, Mr Garbuzov, Mr Kulberg, Mr Sergeyevev, Mr Zyakin and Mr Lyukshin – broke into the exhibition hall and destroyed a significant number of exhibits by tearing them down or daubing them with spray paint from cans they had brought with them.

On the same day the Taganskiy district police opened a criminal investigation concerning the six perpetrators for the offence of aggravated disorderly acts committed in conspiracy by a group of individuals (Article 213 § 2 (a) of the Criminal Code). The first applicant, thirteen artists and the curator of the exhibition were granted victim status in the criminal proceedings. Three artists were given leave to join the proceedings as civil parties.

On 8 July 2003 an investigator from the Tsentralniy district police office in Moscow charged Mr Zyakin and Mr Lyukshin with the offence of aggravated disorderly acts and made them sign an undertaking to appear.

Mr Zyakin and Mr Lyukshin challenged on procedural grounds the decisions to institute criminal proceedings and to bring charges against them.

On 11 August 2003 the Zamoskvoretskiy District Court of Moscow examined their complaints and found as follows:

“The materials of the investigation on which the decision to institute criminal proceedings was based indicate that the case was opened in connection with the complaint by Ms Kholina [an employee of the Sakharov Museum]; however, the investigation did not establish sufficient evidence of a criminal offence in the actions of the above-mentioned persons.

Furthermore, the documents submitted show that on 28 February 2003 the Taganskiy district prosecutor’s office opened criminal case no. 4616 concerning the exhibition organisers for incitement to religious hatred under Article 282 of the Criminal Code. This fact was confirmed in court by the investigator, Mr Frolov.

Accordingly, the lawfulness and reasonableness of the decision to institute criminal proceedings against Mr Zyakin and Mr Lyukshin under Article 213 § 2 of the Criminal Code could not be confirmed in court following the examination of the materials submitted.”

The District Court held that the decision of 18 January 2003 to institute criminal proceedings had been unlawful.

On 22 August 2003 the prosecutor of the Tsentralnyi district of Moscow gave instructions for the decision of the District Court to be enforced. On the same date the investigator Mr Frolov issued a decision discontinuing the criminal prosecution of the six perpetrators. The reasoning read as follows:

“The inquiry has established the following circumstances: on the morning of 18 January 2003 Mr Smakhtin, Mr Garbuzov, Mr Kulberg, Mr Sergeyev and Mr Zyakin were in St Nicolas in Pyzhy Church in Moscow, where they learnt from Mr Lyukshin about the exhibition under the title ‘Caution, religion!’ being held in the Sakharov Museum; they then conspired to commit disorderly acts at the exhibition. In order to carry out their criminal plan [they] arrived in two cars at the museum building ... where Mr Smakhtin, together with Mr Zyakin, entered the premises, made sure that the only person present was the exhibition curator, Ms Kholina, and that no one would be able to prevent them from carrying out the planned crime, and informed their accomplices accordingly. They took out the spray cans they had brought with them, entered the exhibition area and began brazenly to destroy the exhibits. Mr Smakhtin, for instance, deliberately daubed the insulting slogans “You scum” and “You demons” on [one of the exhibits] ... [A detailed description of the damage follows.] While committing the disorderly acts, the participants encouraged each other through words and personal example. This induced in them a particular emotional and psychological state characterised by excitement and emotional energy and the drive to destroy the works of famous artists. On witnessing these events the curator, Ms Kholina, locked the entrance door, thereby preventing Mr Smakhtin and the other perpetrators from fleeing the crime scene...

By decision of the Zamoskvoretskiy District Court of 11 August 2003, the decision on the institution of criminal proceedings dated 18 January 2003 was declared

unlawful... This suggests that, by declaring that decision unlawful, the District Court established that there was no evidence of a criminal offence in the actions of the [six perpetrators].”

2. Criminal prosecution of the applicants

On 5 February 2003 Ms Astrakhankina, a member of the State Duma (Parliament) for the Communist Party, filed a criminal complaint concerning the anti-religious nature of the works that had been exhibited at the “Caution, religion!” exhibition. She claimed that the exhibits had offended the sensitivities of religious believers, incited religious hatred and undermined respect for religion.

On 28 February 2003, acting in response to Ms Astrakhankina’s complaint, the prosecutor’s office of the Taganskiy district of Moscow opened a criminal investigation concerning the exhibition organisers on suspicion of an offence of incitement of religious hatred under Article 282 § 1 of the Criminal Code.

On 29 May 2003 the senior investigator from the prosecutor’s office of the Tsentralniy district of Moscow commissioned a comprehensive forensic examination of the exhibits and put the following questions to the experts:

- “1. Do these materials employ any verbal or visual means (specify) attributing humiliating or negative characteristics to any ethnic, racial or religious group (specify) or any member thereof?
2. Do these materials contain any information (specify) that incites others to take action (specify) against any nation, race or religion (specify) or any member thereof?
3. Do these materials employ any special linguistic or other means (specify) in order to convey humiliating or negative characteristics or calls for action against any nation, race or religion or any member thereof?
4. Do these materials contain any images, objects or texts which convey a religious meaning or purpose or traditional and ethnic values? If so, which ones?
5. Are the images, objects or texts used in these materials significant for the historical and social memory of the peoples of Russia? If so, which peoples?”

On 23 October 2003 the senior investigator discontinued the criminal proceedings against the artists who had donated their works to the exhibition. She found that the submission of their works did not amount to a public display and that there had accordingly been no public incitement, which was a required element of the offence under Article 282 of the Criminal Code.

On 28 November 2003 a panel of six experts returned their findings, which are cited below in the District Court’s judgment.

On 24 and 25 December 2003 the investigator in charge of particularly serious cases in the same prosecutor’s office brought charges under Article 282 § 2 of the Criminal Code against the first and second applicants. The charges read, in particular, as follows:

“Between August and December 2002 Mr Samodurov ... conspired with his subordinate Ms Vasilovskaya ... to organise jointly and stage an exhibition in Moscow which was clearly aimed at conveying publicly, in a graphic and demonstrable manner, humiliating and offensive views towards the Christian religion in general and Orthodox Christianity and the Russian Orthodox Church in particular ... by displaying in public specially selected exhibits which incited hatred and enmity and were degrading to the dignity of individuals who belonged to the Christian religion in general and Orthodox Christianity and the Russian Orthodox Church in particular...”

The investigator noted that the offence was aggravated by the fact that it involved “use of an official position”, namely that of employees of the Sakharov Museum.

On 8 January 2004 similar charges were brought against Ms M., one of the artists who had taken part in the exhibition.

On 20 April 2004 the case was submitted for trial before the Taganskiy District Court of Moscow.

3. Judicial proceedings

On 15 June 2004 the Taganskiy District Court held a preparatory hearing. However, on the following day it remitted the case to the prosecution for the correction of some procedural defects in the indictment. That decision was subsequently quashed by the Presidium of the Moscow City Court and the trial finally began on 3 November 2004.

The prosecution presented its evidence first. The defence objected, in particular, to the admission in evidence of the so-called “collective letters” which had been drafted by unspecified individuals in identical terms and addressed to the prosecutor’s office, and the experts’ report, which was procedurally defective. The court dismissed their objections.

The defence called a number of experts in modern art to the witness stand. Ms Kikodze, a professional art critic and director of a prominent Moscow art gallery, criticised what she saw as the biased choice of experts by the prosecution:

“Of the six individuals selected by the prosecution, there was not a single art expert specialising in contemporary art. Furthermore, half of the persons to whom the expert examination was entrusted were not art critics... Three non-professional individuals who are actively engaged in pursuing an Orthodox Christian agenda were selected only because of the incompetent approach of the investigator...”

Mr Girenko, the leading Russian expert on Article 282 cases, testified in the same vein:

“The expert examination of the exhibits was carried out, in my opinion, for the sole purpose of determining whether the fragments of the dismantled exhibition corresponded to the precepts of the Orthodox Christian religion (as understood by the experts themselves) and, accordingly, was subjective.”

Mr Bazhanov, artistic director of the State Modern Art Centre, Mr Yerofeyev, head of the modern art section of the Tretyakov Gallery, Ms Degot, curator of exhibition projects in the Central House of Artists and

Mr Furman, director of the European Studies Institute of the Russian Academy of Sciences, stated that they had been unable to discern any intention to offend or insult believers. Mr Furman added, in particular:

“This exhibition was organised for those who like that kind of art... What does it mean, ‘to offend’? To offend means to approach the persons concerned and inflict offence on them. That did not happen here... Here, the offended persons came to the place where they could take offence.”

The defence also called on other witnesses who gave similar testimonies.

On 28 March 2005 the Taganskiy District Court gave judgment. It found both applicants guilty; the third defendant, Ms M., was acquitted. The finding of the applicants’ guilt was based on the following evidence:

– testimony by four of the persons who had destroyed the exhibition. They claimed, in similar terms, that they had learnt about the exhibition from a newspaper article and had decided to visit the exhibition “to check whether the article was true”. For them, “the animosity of all the exhibits towards the Orthodox religion had been absolutely obvious” and they had therefore decided to “put to an end to the crime of desecration of Orthodox symbols and holy objects”;

– testimony by three other persons who had visited the exhibition before it was destroyed. They stated that the exhibits had “disturbed”, “outraged” or even “shocked” them and that the artists had intended to “humiliate believers”;

– testimony and written statements made at the pre-trial stage by several artists who explained the meaning of their works and stated that the actual selection of works had been made by Mr Z. rather than by the first or second applicant;

– the findings of a panel of six experts:

(i) Ms Tsekhanskaya, the expert in charge of the ethnographic and religious aspects of the examination, found as follows:

“...The purpose of the exhibition is to discredit Christianity by ... defiling and distorting easily recognisable Christian symbols in an emphatic manner... A mocking distortion of sacred religious symbols, such as the Life-giving Cross with sausages around it or a naked woman who has been crucified, is an attempt at neural-object coding of personality [*sic*]... The title of the exhibition does not correspond to its content. Instead of a discussion on spiritual and religious freedoms, as announced by the organisers, the exhibits are aimed at insulting the feelings of Orthodox believers by means of a deliberate distortion of Christian symbols and Orthodox cultural archetypes... The desecration of objects that are sacred for believers results from their being juxtaposed and equated with mundane objects of everyday life; this amounts to obvious humiliation and mockery...”

(ii) Ms Markova, the expert who carried out a social and cultural study of the exhibits, expressed the following view:

“An analysis of the ideological underpinning of the exhibits reveals a more or less explicit anti-Christian orientation typical of Western counter-culture. The sociological

functions of these works are: the profanation of Orthodox Christian values, the de-Christianisation of society and support for anti-Christian religious movements...

It is no exaggeration to say that Orthodox believers experienced a shock, and not just in the metaphorical sense... Frustration-aggression theory explains the subsequent aggressive behaviour of religious people who came to the exhibition, as a response to the frustration caused by destructive socio-cultural effects..."

(iii) the experts Ms Kozlova and Ms Bekeneva, specialists in Old Russian art, gave the following opinion on the artistic value of individual exhibits:

"The exhibit 'You Shall Not Make For Yourself An Idol' by Ms Zrazhevskaya has an explicitly insulting and blasphemous character which is offensive to Orthodox Christians, as, according to old written sources, the icon frame has throughout the ages been the icon's decoration and an inherent conceptual part of the holy image..."

The exhibit by Mr Kosolapov entitled 'Coca-Cola'... is deliberately shocking and provocative, as the sacred and holy on the one hand and the profane and vulgar on the other are knowingly and deliberately juxtaposed and equated here. Thus, the author consciously provokes a hostile response and aggressive behaviour ... on the part of the viewer and incites religious hostility...

The very title of Mr Dorokhov's work 'In the Beginning Was the Word' is blasphemous, as it is a quotation from the Gospels..."

(iv) the expert Ms Eneyeva, a specialist in modern art, gave the following view:

"All the works presented are what they claim to be – examples of so-called Actual Art, a product of the era of post-modernism. However, modern art critics cannot say unambiguously whether or not "Actual Art" is art..."

Society cannot simply tolerate everything human beings can create. No social order can tolerate murder or robbery; even a minor violation of traffic regulations is unacceptable since it entails the death of people and leads to chaos in the economic and other spheres. Similar things occur in the domain of symbols: when a symbolic object which is associated by all normally educated people with certain values is first shown to the viewer and then a sign of negation, destruction, profanation, insult or prohibition is somehow attached to that symbol, this constitutes a crime against the symbol itself. Not even the most democratic countries allow artists unlimited freedom to do what they want. For instance, the famous American rock musician Frank Zappa was jailed in the USA for having burnt the flag of his country in public, although he claimed that his act was an art performance."¹

(v) finally, the expert Ms Abramenkova concluded that:

"...the exhibition carries a manifold message: on the one hand, the annihilation, discrediting and erasing of the Orthodox religion as the basis of Russian culture from the social memory of the people; on the other hand, the propagation of another religion which can be traced back to occult teachings and is characterised by religious hatred and intolerance towards Christianity..."

1. Note by the Registry: Frank Zappa never burnt the American flag and was never imprisoned for any such act. Moreover, in 1989, the US Supreme Court held that the act of flag burning amounted to protected speech under the First Amendment to the United States Constitution (*Texas v. Johnson*, 491 U.S. 397).

– testimonies by Mr Kalashnikov, a member of the Artists’ Union of Russia, Mr Yamshikov, a leading expert of the State Restoration Research Institute, Mr Ryakovskiy, co-Chair of the Council of Protestant Churches in Russia and Mr Obukhov, an Orthodox priest, all of whom spoke of the “blasphemous” and “insulting” character of the exhibition and of the “hostility” of the exhibition organisers towards Christianity and Orthodox Christians;

– written statements from two editors of the Orthodox Encyclopaedia, a leading researcher from the World History Institute of the Russian Academy of Sciences and an Orthodox prior; the request to open criminal proceedings made by the Duma member Ms Astrakhankina; an open letter written by thirty-eight persons and published in the *Sovetskaya Rossiya* newspaper; collective statements by unidentified individuals; and letters from representatives of other religious denominations (a mufti, a rabbi and a Lutheran pastor). All of them claimed that the exhibition had been a “deliberate provocation” which expressed hostility towards believers and towards the Russian Orthodox Church.

On the basis of the above evidence the District Court came to the following conclusions:

“Following analysis of the aforementioned evidence the court concludes that, by permitting the public display of the exhibits cited in the present judgment in the exhibition entitled ‘Caution, religion!’, the defendants committed actions aimed at inciting hostility and undermining the dignity of a group of persons on the basis of their nationality and religious views.

The display of the aforementioned exhibits ... aroused, in a large segment of the population mainly made up of Orthodox believers, hostility not only towards the defendants and participants in the exhibition, but also towards other persons who share their views.

The exhibition also produced the opposite effect, as some groups of people began to believe that the Russian Orthodox Church and the Orthodox religion in general showed obvious signs of religious fundamentalism; such groups openly denounce the failings of the Church, and also criticise, in unacceptable terms, Orthodox principles based on the sacred and the spiritual.

The most striking evidence of this view can be found in the numerous articles published in the mass media (totalling 400 according to Mr Samodurov’s estimate) by both opponents and supporters of the exhibition, as well as the manifest hostility shown by a group of believers towards their ideological opponents in the courthouse.

The organisers of the exhibition undermined the dignity of a group of people on the basis of their ethnicity and religious views; this statement by the investigator has been confirmed in the course of the trial... This is demonstrated by the exhibits in question.

For instance, the majority of works related to the Russian Orthodox Church, most of whose followers are ethnic Russians. In many of its aspects, Russian culture emerged from the traditions and rites of the Russian Orthodox Church; hence, anything which defiles and denigrates images depicting Orthodox holy objects is perceived by believers as undermining their ethnic dignity.

Besides, the analysis of the exhibits listed in the judgment proves that the defendants are guilty of the actions imputed to them. That analysis, which is quite comprehensive and clear, is set forth in an assessment of the detailed examination of the exhibits; the court shares the conclusions of the experts...”

The District Court rejected the testimony of the witnesses for the defence for the following reasons:

“As regards the testimony of the specialists Shabelnikov, Kikodze, Yakovenko, Levada, Pilipenko, Bazhanov, Furman, Girenko, Gudskov, Stefanenko, Pinus, Yerofeyev, Degot and Abalakova, witnesses for the defence, the court finds that their opinion was given without regard for Article 17 § 3 of the Constitution, which provides: ‘The exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of others’ and Article 29 § 2 of the Constitution, which reads: ‘Propaganda or agitation instigating social, racial, national or religious hatred and strife shall be prohibited.’ In the present case the defendants’ actions, namely the public display of hostile exhibits which undermined the human dignity of believers in the ‘Caution, religion!’ exhibition, violated the rights and freedoms of those people.”

The District Court summarised its findings as to the applicants’ guilt as follows:

“The defendants’ unlawful actions were open and public; the mass media had been involved; the exhibition was widely covered in the press; admission to the exhibition was free.

The items of evidence collected and examined before the court definitely show that the defendants were conscious of the provocative, insulting and humiliating character of the exhibition they organised; they foresaw that socially dangerous consequences were possible and even inevitable, such as incitement to hostility and undermining of the human dignity of a group of people on the basis of their ethnicity and religious views, and they desired those consequences.

Hence, in the present criminal proceedings, proof has been furnished both of the existence of a criminal act – actions aimed at inciting hostility as well as the undermining of the human dignity of a group of people on the basis of their ethnicity and religious views, committed in public by a person acting in his or her official capacity – and of the guilt of Mr. Samodurov and Ms. Vasilovskaya of this criminal offence.”

The District Court found that the applicants had committed an offence under Article 282 § 2 (b) of the Criminal Code and fined them 100,000 Russian roubles (RUR) (approximately 3,000 euros (EUR)) each.

The applicants’ lawyers submitted a statement of appeal. They submitted, in particular, that the self-professed Orthodox believers had come to the museum with intent to destroy the exhibits, as they had brought spray cans with them, and that the exhibition had in no way infringed anyone’s religious freedom:

“In what sense was their religious freedom infringed by a small exhibition held in isolated premises, far away from any churches or temples, which visitors could not reach by accident but could only visit with the express purpose of so doing and with a clear understanding as to where and why they had come? The answer is: it was not. The rights of those who today portray themselves as victims and denounce an attack on freedom of religion by the exhibition organisers have not been breached. Those

same loudmouths are in fact religious extremists who want things to be just as they like them: no atheism, no other religion, no artistic freedom if it does not fit with their views on faith, religion and its attributes and symbols. They could not care less about the fact that their views infringe other people's rights and freedoms."

Counsel for the applicants alleged a violation of Article 10 of the Convention and referred to the Court's case-law.

On 5 July 2005 the Moscow City Court upheld the judgment in its entirety, reiterating parts of the wording. It did not address the Convention argument.

B. Relevant domestic law

The Criminal Code of 13 June 1996 (as amended on 8 December 2003) provides as follows:

Article 282. Incitement to hatred or hostility and undermining of human dignity

"1. Acts aimed at incitement to hatred or hostility towards, or undermining of the human dignity of, an individual or group of individuals on account of their sex, race, ethnicity, language, social origin, attitude to religion...

2. The same acts if committed:

...

(b) by using one's position...

– shall be punishable by a fine equal to between 100,000 and 500,000 roubles or, in the case of a convicted person, to his or her wages or other income for a period of one to three years, or by a prohibition on holding specific positions or engaging in specific activities for a period of up to five years, 120 to 140 hours' compulsory works, one to two years' community works or up to five years' imprisonment."

COMPLAINTS

The applicants complain under Article 6 §§ 1 and 3 (a) of the Convention that the charges against them were unspecific and that the trial court went beyond the charges levelled by the prosecution.

The applicants complain under Article 6 §§ 1 and 3 (b) that the trial court dismissed their objections as to the admissibility of the experts' report and that they did not have an effective opportunity to put questions to the experts.

The applicants complain under Article 7 of the Convention that they were convicted of the offence under Article 282 of the Criminal Code with retrospective effect, as the provision in question was amended on 8 December 2003 whereas the acts imputed to them had been committed in January 2003.

The applicants complain under Article 10 of the Convention of a violation of their right to freedom of artistic expression.

THE LAW

The applicants complained under Article 10 of the Convention that their conviction for organising the “Caution, religion!” exhibition had not pursued any legitimate aim and had not been necessary in a democratic society. Article 10 of the Convention provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

The Court has further examined the remainder of the applicants’ complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants’ complaint concerning the organisation of the “Caution, religion!” exhibition;

Declares the remainder of the application inadmissible.

Søren Nielsen
Registrar

Christos Rozakis
President