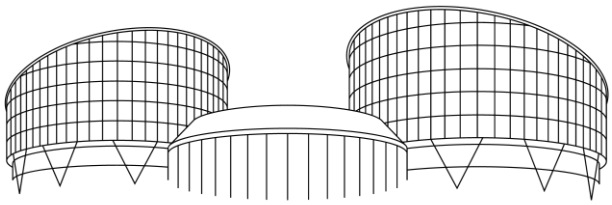

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF FUSU ARCADIE AND OTHERS
v. THE REPUBLIC OF MOLDOVA

(Application no. 22218/06)

JUDGMENT

STRASBOURG

17 July 2012

FINAL

17/10/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Fusu Arcadie and Others v. the Republic of Moldova,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Corneliu Bîrsan,
Egbert Myjer,
Ján Šikuta,
Ineta Ziemele,
Nona Tsotsoria, *judges,*
Tatiana Răducanu, ad hoc *judge,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 26 June 2012, delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22218/06) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by eight Moldovan nationals, Mr Arcadie Fusu, Mr Petru Botezat, Ms Tatiana Rusu, Ms Svetlana Covalciuc, Ms Galina Bujor, Ms Vera Boţoc, Mr Vladimir Ţurcanu and Mr Iacob Ciobanu ("the applicants"), on 12 May 2006.

2. The applicants were represented by Mr V. Zamă from "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that the failure to issue them with documents necessary for registering their church had violated their rights under Articles 6 § 1, 9 and 11 of the Convention.

4. On 20 January 2010 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. As Mr Mihai Poalelungi, the judge elected in respect of the Republic of Moldova, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber has appointed Mrs Tatiana Răducanu to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1964, 1949, 1965, 1959, 1952, 1937, 1951 and 1930 respectively and live in Floreşti.

7. In 2004 the applicants asked the Floreşti Regional Council ("the Regional Council") to issue them with confirmation of the existence, in Floreşti, of a religious denomination of the Christian Orthodox Church ("the Church"), subordinate to the Metropolitan Church of Bessarabia.

8. On an unknown date the Regional Council rejected the request, finding that another religious denomination of the Church, subordinate to the Metropolitan Church of Moldova, had already been registered in Floreşti since 1999. Moreover, there was an ongoing conflict between the two denominations and civil proceedings were in progress to determine which of them had the right to own certain church property.

9. The applicants initiated court proceedings, seeking a court order for the Regional Council to issue them with the relevant document, which was necessary for the official registration of the applicants' church as a legal person.

10. On 24 December 2004 the Bălţi District Court rejected the application as unfounded.

11. On 30 March 2005 the Supreme Court of Justice quashed that judgment and delivered a new one, finding in the applicants' favour. It ordered the Regional Council to issue the relevant confirmation to the applicants. The court relied expressly on Articles 9 and 11 of the Convention in reaching its decision.

12. On 20 May 2005 the applicants asked the Enforcement Department of the Ministry of Justice to take action in order to enforce the final judgment in their favour.

13. On 25 November 2005 they formally submitted an enforcement warrant to the Floreşti Enforcement Office. That office accepted it on the same day.

14. On 1 December 2005 the enforcement authorities invited the Regional Council to abide by the judgment. On 23 December 2005 the Regional Council replied that it was "not opportune" to enforce the judgment at the time, given the ongoing conflict and legal proceedings. Enforcement had thus been postponed pending the outcome of the civil proceedings concerning the church property.

15. On 17 February 2006 an enforcement officer asked the court to clarify the manner of enforcing the judgment. By April 2006 the court had not yet examined that request.

16. On 17 March 2006 the Floreşti Enforcement Office repeatedly asked the Regional Council to enforce the judgment. Since the Regional Council

again refused to comply, the enforcement officer asked the court to penalise its members. It is unknown whether penalties were applied.

17. Various complaints to the prosecuting authorities also remained unanswered.

18. On an unknown date in 2006 one of the applicants (Mr Petru Botezat) initiated civil court proceedings against the State Service for Religious Denominations, asking for the registration of the religious denomination which he represented. On 20 April 2006 the Chişinău Court of Appeal rejected the claim as unfounded. The court found that Mr Botezat had asked for the registration of a denomination with the same name and address as one already registered with the authorities, which was contrary to legal requirements. Moreover, the court noted the absence from the documents submitted by Mr Botezat of the confirmation by the Floreşti Regional Council of the existence of the religious denomination in question.

19. On 11 May 2007 the Moldovan Parliament adopted the Religious Denominations Act which eliminated, *inter alia*, the requirement of confirmation by the local authorities of the existence of religious denominations before they could be registered by the State authorities. The law came into force on 17 August 2007.

20. On 5 September 2007 the enforcement office returned the enforcement warrant to the applicants, noting that in view of the legislative amendments enforcement was no longer necessary. The applicants did not challenge that decision in court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

21. The applicants complained that the failure to register their church had breached their rights guaranteed under 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. Admissibility

22. The Government submitted that following the entry into force of the Religious Denominations Act on 17 August 2007 the applicants no longer had any need for the document which the courts had ordered to be issued. Moreover, after the law had changed and the enforcement warrant had been returned without enforcement, the applicants had not applied for registration of their denomination. This, in the Government's opinion, proved the absence of a real intent by the applicants to register a denomination and thus the absence of an interference with their rights. The Government submitted that the applicants had lost their victim status as a result of the legislative amendments and their subsequent failure to act.

23. The applicants disagreed, referring to their attempts to have their denomination registered even without the document issued by the local authority (see paragraph 18 above).

24. The Court recalls that a decision or measure of the domestic authorities favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-181, ECHR 2006-V). In the present case, the Court notes that the domestic courts adopted judgments in the applicants' favour. However, they were not enforced. Moreover, while a new law was adopted which improved the applicants' chances of having their denomination registered, there was no express or implicit acknowledgment of a violation in their specific case and they were not awarded any compensation.

The Government's objection must therefore be rejected.

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

26. The applicants complained of a violation of their rights guaranteed under Article 9 of the Convention as a result of the failure to issue them with a document necessary for the registration of their religious denomination. They submitted, *inter alia*, that the interference with their rights had not been prescribed by law because it had been contrary to the domestic courts' judgments ordering the issuance of the relevant document.

27. The Government submitted that there were serious reasons for the local authorities not to enforce the final judgment in the applicants' favour: the existence of an on-going dispute as to the church property between two

competing denominations; the risk that registering the applicants' denomination could provoke unrest; and the fact that another denomination with the same name had already been registered in the same town. Moreover, in practice the applicants had not been prevented from exercising their religious rights, as they did not need registration for that purpose. They considered that the refusal of the Regional Council to issue the relevant document had been based on clear legal provisions, notably the prohibition on registering two organisations with the same name and the same address. Moreover, after 17 August 2007 no confirmation in a separate document had been required.

2. The Court's assessment

(a) Whether there was an interference

28. The Court must determine whether there was an interference with the applicants' right to freedom of religion on account of the authorities' refusal to issue them with a document required for registering their religious denomination.

29. The Court recalls that the Convention "is to protect rights that are not theoretical or illusory but practical and effective" (see, e.g., *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 100, ECHR 1999-III).

30. The Court considers that, despite the adoption of the judgments in favour of the applicants, the authorities' failure to issue the document required for registering the applicants' denomination and therefore to endow it with legal personality prevented it and its followers from carrying out a number of essential functions (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 105, ECHR 2001-XII). In essence, the refusal of the authorities to issue the relevant documents despite the judgment in the applicants' favour resulted in a situation which did not differ, in practice, from a rejection by the courts of their claim. It is important to note that at the time of the events and until 17 August 2007 presenting the relevant document was mandatory for the registration of any new denomination.

31. As for the Government's argument that the applicants had not seriously intended to register a denomination as they had failed to ask for registration throughout the relevant period, the Court notes that the applicants had not remained passive. In 2006 their representative asked for the registration of their denomination without submitting the document which should have been issued by the Regional Council (see paragraph 18 above). However, the court rejected that request.

32. The Court therefore considers that the authorities' refusal to issue the registration document to the applicants constituted an interference with the

right of the applicants to freedom of religion, as guaranteed by Article 9 § 1 of the Convention.

(b) Whether the interference was prescribed by law

33. The Court refers to its established case-law to the effect that the terms "prescribed by law" and "in accordance with the law" in Articles 8 to 11 of the Convention not only require that the impugned measures have some basis in domestic law, but also refer to the quality of the law in question, which must be sufficiently accessible and foreseeable as to its effects: that is, formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct (see *Larissis and Others v. Greece*, 24 February 1998, § 40, *Reports of Judgments and Decisions* 1998-I, and *Metropolitan Church of Bessarabia*, cited above, § 109).

34. For domestic law to meet these requirements, it must afford a measure of legal protection against arbitrary interference by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for any legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI).

35. Moreover, since religious communities traditionally exist in the form of organised structures, Article 9 must be interpreted in the light of Article 11 of the Convention, which safeguards associative life against unjustified State interference. Seen in that perspective, the right of believers to freedom of religion, which includes the right to manifest one's religion in community with others, encompasses the expectation that believers will be allowed to associate freely, without arbitrary State intervention. Indeed, 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 affords (see *Metropolitan Church of Bessarabia*, cited above, § 118, and *Miroļubovs and Others v. Latvia*, no. 798/05, § 80, 15 September 2009).

36. In addition, one of the means of exercising the right to manifest one's religion, especially for a religious community, in its collective dimension, is the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 must be seen not only in the light of Article 11, but also in the light of Article 6 (see, *mutatis mutandis*, *Sidiropoulos and Others v. Greece*, 10 July 1998, § 40, *Reports* 1998-IV, and *Canea Catholic Church v. Greece*, 16 December 1997, §§ 33 and 40-41, *Reports* 1997-VIII, and opinion of the Commission, §§ 48-49).

37. In the present case the Court notes that the Supreme Court of Justice, while applying directly Articles 9 and 11 of the Convention (see paragraph 11 above), accepted the applicants' claims and ordered the Regional Council to issue them with the relevant document, which until 17 August 2007 was required in order to have one's denomination registered. In doing so, it expressly rejected the authorities' arguments against issuing such a document, arguments which largely coincide with those advanced by the Government in their observations before the Court. However, the final judgment of 30 March 2005 has not been complied with.

38. In view of the above, the Court considers that the refusal to issue the document required for registering the applicants' denomination had no legal basis under Moldovan law. It follows that the interference with the applicants' freedom of religion was not prescribed by law (see *Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova*, no. 952/03, §§ 35-38, 27 February 2007).

39. Having found, in the preceding paragraph, that the interference with the applicants' right to freedom of religion was unlawful, the Court does not see any need to verify whether that interference pursued a legitimate aim or was "necessary in a democratic society", within the meaning of Article 9 § 2 of the Convention.

40. There has, accordingly, been a violation of Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 11 OF THE CONVENTION

Admissibility

41. The Government submitted that the applicants should have amended their submissions before the Court after 17 August 2007, when the new law entered into force, because as of that date they could no longer complain about a "failure to enforce" but only of "belated enforcement" of the judgment in their favour. They should have done so within six months from the moment when the judgment was *de facto* enforced as a result of the changes in the law, or from the date when the enforcement warrant had been returned without enforcement on 7 September 2007. Since the applicants had failed to make such a new claim within six months from the date of the legislative amendments, their application should be dismissed as lodged out of time (see *Sumila and six others v. Moldova* (dec.), nos. 41369/05, 41556/05, 42308/05, 33566/06, 33567/06, 33568/06, 33570/06, 26 January 2010).

42. Having regard to its finding of a violation of Article 9 (see paragraph 40 above) the Court considers it unnecessary to examine these

complaints separately (see *Biserica Adevărat Ortodoxă din Moldova and Others*, cited above, §§ 39-43).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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. Pecuniary damage

44. The applicants considered that adequate redress for the violation of their rights would be the return of the Church building in Floreşti. Due to the lack of access to that building, which is occupied by another religious denomination, they could not estimate the value of that building. Therefore, they asked the Court to reserve judgment in respect of pecuniary damage.

45. The Government submitted that the applicants did not have any legitimate claim to the relevant Church building and that there was no causal link between the violations complained of and the alleged loss of the building.

46. The Court agrees with the Government's contention that the nature of the violation alleged – the failure to issue the applicants with a document required for their registration – did not have any connection with the alleged loss of the Church building. Moreover, the two competing religious denominations were involved in separate civil proceedings concerning that building and other Church property, which were not the subject of the present case. The Court notes that the applicants did not argue that, due to the failure to obtain the relevant document from the Regional Council, they had been unable to participate in any the relevant court proceedings or to fully exercise their procedural rights in those proceedings.

The Court therefore makes no award in this respect.

B. Non-Pecuniary damage

47. The applicants claimed 2,000 euros (EUR) each in respect of non-pecuniary damage caused to them.

48. The Government submitted that the applicants had not suffered any damage, as was clear from their failure to apply for registration of their denomination after the law had changed.

49. The Court considers that the violation it has found must undoubtedly have caused the applicants some distress. Taking into account the

circumstances of the case and having regard to its case-law, the Court awards the applicants, jointly, EUR 5,000.

C. Costs and expenses

50. The applicants claimed EUR 880 for costs and expenses and submitted a detailed timesheet showing the hours during which their lawyer had worked on the case.

51. The Government disputed the number of hours spent on the case by the applicants' lawyer and noted the absence of evidence of actual payment of the sums owed to the lawyer.

52. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

53. Having regard to the relative lack of complexity of the case and basing itself on the information before it, the Court accepts in full the applicants' claim for costs and expenses (cf. *Metropolitan Church of Bessarabia*, cited above, §149, and *Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova*, cited above, § 65).

D. Default interest

54. The Court considers it appropriate that 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. *Declares* the complaint under Article 9 of the Convention admissible;

2. *Holds* that there has been a violation of Article 9 of the Convention;

3. *Holds* that it is not necessary to examine separately the complaints under Articles 6 and 11 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following

amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 880 (eight hundred and eighty euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 17 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Section Registrar	President