

# SAVEZ CRKAVA “RIJEČ ŽIVOTA” AND OTHERS v. CROATIA

(Application no. 7798/08)

## 1. Reference Details

Jurisdiction: European Court of Human Rights (First Section)

Date of decision: 9 December 2010

Case Status: Not final

Link to full court judgment:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Croatia&sessionid=63444321&skin=hudoc-en>

## 2. Facts

The applicants were three Reformist churches which are registered as religious communities under Croatian law – (i) Savez crkava “Riječ života” (Union of Churches “The Word of Life”), (ii) Crkva cjelovitog evanđelja (Church of the Full Gospel) and (iii) Protestantska reformirana kršćanska crkva u Republici Hrvatskoj (Protestant Reformed Christian Church in the Republic of Croatia) (the Applicants).

Having been entered in the register of religious communities in Croatia in 2003, the Applicants twice submitted requests to the Government’s Commission for Relations with Religious Communities, in 2004 and 2005, in order to conclude an agreement with the Government of Croatia, under section 9(1) of the Religious Communities Act, which would regulate their relations with the State and allow them certain privileges, including the ability to (i) provide religious education in public schools and nurseries, (ii) provide pastoral care to their members in medical and social-welfare institutions, and prisons and penitentiaries, and (iii) perform religious marriages with the effects of a civil marriage.

On both occasions, these requests were refused on the basis that the Applicants did not satisfy the criteria set out in the Instruction issued by the Government in December 2004 (the Instruction) as they had not been present in Croatia since 6 April 1941, and the number of their adherents did not exceed 6000. The Government also claimed that pursuant to the 2004 Health Care Act and the 1999 Enforcement of Prison Sentences Act, members of the Applicants’ churches still had the right to receive pastoral care in medical and social-welfare institutions as well as in prisons and penitentiaries.

The Applicants appealed to both the Administrative Court and the Constitutional Court for protection of their “constitutional right to equality of all religious communities before the law”, but both courts found their claims to be inadmissible.

## 3. Law

### National Law

- Constitution of the Republic of Croatia
- The Religious Communities Act 2002

- The Family Act 2003
- The Health Care Act 2003 & 2009
- The Enforcement of Prison Sentences Act 1999
- The Government of Croatia Act 1998
- The Administrative Disputes Act 1991
- The Obligations Act 2006
- The Anti-Discrimination Act 2009

### **European Convention of Human Rights**

- Article 14 (prohibition of discrimination) in conjunction with Article 9 (freedom of religion)
- Article 9 (freedom of religion)
- Article 1 of Protocol No. 12 (general prohibition of discrimination)
- Article 6(1) (right to a fair hearing)
- Article 13 (effective remedy)
- Article 12 (right to marry)
- Article 2 of Protocol No. 1 (right to education)

## **4. Legal Arguments**

### ***Applicants***

The Applicants argued that they had been discriminated against because they had been prevented from concluding agreements with the Government of Croatia under section 9(1) of the Religious Communities Act due to their failure to meet certain criteria, whilst other religious communities, including the Bulgarian Orthodox Church, the Croatian Old Catholic Church and the Macedonian Orthodox Church, had been able to conclude such agreements despite not satisfying the same criteria. On this basis, the Applicants claimed violations of Article 14 in conjunction with Article 9, Article 9 alone and Article 1 of Protocol No. 12.

The Applicants also complained that they had not had access to a court (in violation of Article 6(1)) or an effective remedy (in violation of Article 13) on the basis that their complaints to both the Administrative Court and the Constitutional Court had been ruled inadmissible. Finally, the Applicants complained that the refusal of the Government to enter into an agreement to grant them special privileges violated their rights under Article 12 (the right to marry) and Article 2 of Protocol No. 1 (the right to education).

### ***Government of Croatia***

The Government challenged the admissibility of the Applicants' claim of a violation of Article 14 in conjunction with Article 9 on the grounds that (i) they had failed to exhaust domestic remedies, (ii) Article 9 could not be interpreted to mean that the State must allow religious education in public schools and nurseries or recognise religious marriages, and (iii) the aspect of the claim concerning the right to provide pastoral care in medical and social-welfare institutions, prisons and penitentiaries was manifestly ill-founded given that the Religious Communities Act protects such a right irrespective of whether any agreement

has been concluded between a religious community and the Government under the Religious Communities Act.

In relation to the merits of the claim, the Government argued that the difference in treatment between the Applicants and the other religious communities to which they compared themselves, and with which the Government had entered into agreements, had an “objective and reasonable justification”. The Government submitted that it would not be feasible to allow all 42 registered religious communities in Croatia to provide religious education and to have religious marriages officially recognised. They submitted that it was within the State’s margin of appreciation to establish conditions which must be fulfilled in order for such privileges to be granted, and criteria such as historical or cultural relevance were sufficiently objective and reasonable to avoid being discriminatory. The Government also challenged the argument of the Applicants that certain religious communities had been able to conclude agreements with the Government without satisfying the criteria set out in the Instruction. They claimed that even though the other religious communities referred to by the Applicants had not satisfied the historical and numerical criteria set out in the Instruction, they did, unlike the Applicants, satisfy the alternative “cultural criterion” by belonging to “the European cultural circle” as “they had made a contribution to religious and cultural diversity and gained a certain level of trust and recognition in society”.

The Government argued that the Applicants’ complaints of violations of Article 6 and 13 were manifestly ill-founded on the basis that they “had resorted to inappropriate remedies in order to protect their rights”.

## **5. Decision**

### ***Article 14 taken in conjunction with Article 9, Article 9 and Article 1 of Protocol No. 12***

In a unanimous decision, the Court found a violation of Article 14 taken in conjunction with Article 9 of the Convention.

On the issue of admissibility, the Court held the claim relating to the provision of pastoral care to be inadmissible for the reasons argued by the Government. The Court found, however, that the Applicants had exhausted all domestic remedies that were available to them at the time that they submitted their claim to the Court.

In relation to the Government’s claim that Article 9 was inapplicable, and therefore Article 14 was equally so, the Court reiterated that for Article 14 to apply, it is not necessary to demonstrate a breach of the article with which it is claimed in conjunction. In order for Article 14 to apply, it is simply necessary to demonstrate that the facts “fall within the ambit” of Article 9. The Court found that whilst Article 9 does not impose obligations on States “to have the effects of religious marriages recognised as equal to those of civil marriages” or “to allow religious education in public schools or nurseries”, such activities “represent manifestations of religion within the meaning of Article 9(1)”. Given that Croatia does grant such additional rights to some religious communities, then the prohibition of discrimination in Article 14 applies to those additional rights. The Court held that:

*“Consequently, the State, which has gone beyond its obligations under Article 9 of the Convention in creating such rights cannot, in the application of those rights, take discriminatory measures within the meaning of Article 14.”*

In relation to the merits of the claim of a violation of Article 14 in conjunction with Article 9, the Court noted that as the difference in treatment between the Applicants and the other religious communities was not in dispute, it was therefore necessary only for the Court to consider whether such difference in treatment had an objective and reasonable justification, whether it pursued a legitimate aim and whether it was proportionate to the aim pursued. Referring to the decision in *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, 31 July 2008), the Court reiterated that the imposition of criteria which a religious community that already had legal personality had to satisfy in order to obtain special privileges raised delicate questions, “[a]s the State had a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs”. As the Government of Croatia had been unable to provide any meaningful explanation as to why some religious communities satisfied the criteria of belonging to “the European cultural circle” whereas others, including the Applicants, did not, the Court found that such distinction was without “objective and reasonable justification” and, as such, a violation of Article 14 taken in conjunction with Article 9 was found.

The claim under Article 9 was found to be manifestly ill-founded on the basis that, as set out above, Article 9 does not impose obligations relating to religious education in public schools and the recognition of religious marriages equally with civil marriages. The Court considered that it was not necessary to examine separately whether there had been a violation of Article 1 of Protocol No. 12 given that it had found a violation of Article 14.

### ***Articles 6(1) and 13***

In relation to the alleged violations of both Article 6(1) and Article 13, the Court held that pursuant to the Administrative Disputes Act, the Applicants did have a judicial remedy available to them and that the fact that they did not obtain a favourable outcome does not mean that they did not have access to a court or an effective remedy. These claims were therefore held to be manifestly ill-founded.

### ***Article 12 of the Convention and Article 2 of Protocol No. 1***

The Applicants’ claims of violations of Article 12 of the Convention and Article 2 of Protocol No. 1 were held to be incompatible *ratione personae* with the provisions of the Convention on the basis that only individuals can claim to be victims of a violation of these provisions and not religious communities as a whole.