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

FIFTH SECTION

CASE OF SVYATO-MYKHAYLIVSKA PARAFIYA v. UKRAINE

(Application no. 77703/01)

JUDGMENT

STRASBOURG

14 June 2007

FINAL

14/09/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Svyato-Mykhaylivska Parafiya v. Ukraine,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 22 May 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 77703/01) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a religious association, the Svyato-Mykhaylivska Parafiya ("the applicant association"), on 4 January 2001.

2. The applicant was represented by Mr K. Buzadzhy, a lawyer practising in Kyiv. The Ukrainian Government ("the Government") were represented by their Agents (Ms V. Lutkovska, Ms Z. Bortnovska and Mr Y. Zaytsev).

3. On 22 May 2003 the Court decided to communicate the applicant association's complaints concerning an alleged infringement of Article 9 and Article 1 of Protocol No. 1 to the respondent Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. On 31 August 2004 the Court requested additional information and comments from the parties on the applicant association's claims under Article 9, taken alone and in conjunction with Article 11 of the Convention, and Article 1 of Protocol No. 1 to the Convention.

THE FACTS

5. The applicant association, the Svyato-Mykhaylivska Parafiya ("the Parish") of the Ukrainian Orthodox Church of the Kyiv Patriarchate "Church of 1,000 years of Baptisms in the Kyivan Rus" in the Darnytsky District of Kyiv, is a religious group. On 6 October 2000 it had 29 members,

a figure which had increased to 30 by 2005 according to information provided by its representative on 9 February 2005. All the members sit on the Parishioners' Assembly. The head of the applicant association is Mr Volodymyr Makarchykov.

I. THE CIRCUMSTANCES OF THE CASE

A. The functioning of the Parish prior to the decision to change denomination

6. On 5 April 1989 a group of 25 people, including the head of the Parish, decided to form a religious association under the auspices of the Russian Orthodox Church. On the same date they decided to build a church and name it the "Svyato-Mykhaylivska Church of 1,000 years of Baptisms in the Kyivan Rus'". The group lodged a request to register the association with the Religious Affairs Council at the Cabinet of Ministers *(Рада з питань релігій при Кабінеті Міністрів)* and the State Executive Committee.

7. On 22 February 1990 the Religious Affairs Council registered the group as a religious association of the Russian Orthodox Church in the Darnytsky District of Kyiv (the "religious association").

8. On 26 February 1990 the Kyiv City Council informed Mr Makarchykov that the religious association had been granted permission to build a church for the use of its members.

9. On 4 March 1990 the religious association approved its statute and elected its governing bodies (the Parishioners' Assembly, Parishioners' Council and the Supervisory Board). It decided to admit twelve new members to the Parishioners' Assembly and to elect six of its members to the Parishioners' Council and the Supervisory Board. Mr Makarchykov was elected as a member of the Parishioners' Council and became its chairman.

10. On 29 March 1990 the Religious Affairs Council registered changes to the governing bodies of the religious association. Mr Makarchykov was registered as its chairman, F.L.E. as deputy chairman and O.L.V. as a treasurer of the religious association. The Council also registered the changes to the composition of the Supervisory Board.

11. From the date of its creation in April 1989 to December 1999 the Parishioners' Assembly membership varied from about 20 to 27 members. In the course of this period the Parishioners' Assembly was actively involved in making important decisions as to the management and administration of the religious association (appointment of Chairman, treasurer, supervisory board, approval of appointment of a priest, approval of the statutes of affiliates, missions and brotherhoods of the church, important financial and logistical matters and issues related to construction

of a new church, etc.). Throughout this period My Makarchykov acted as a Chairman of the religious association and frequently as a secretary during the meetings of the Parishioners' Assembly.

12. On 22 March 1992 the Parishioners' Assembly passed resolutions for the religious association to change denomination, as it was dissatisfied with the leadership of Archbishop Filaret, the head of the newly registered Ukrainian Orthodox Church of Kyiv Patriarchate, and for it to become independent in its organisational, religious and commercial activities. It was also decided that it should act under the religious guidance of the Archbishop of the Finnish Orthodox Church in canonical issues.

13. On 19 November 1992 the Parishioners' Assembly adopted a new statute seeking its registration as a legal entity. The Assembly requested Archbishop Volodymyr of the Ukrainian Orthodox Church (Moscow Patriarchate) to approve the statute. The name of the association was changed to "Svyato-Mykhaylivska Parafiya of the Ukrainian Orthodox Church of the Kyiv Eparchy Church of 1,000 years of Baptisms in the Kyivan Rus'" (the "Parish"; *Свято-Михайлівська парафія Української православної церкви Київської єпархії «Храму на честь 1000-ліття хрещення Київської Русі»*).

14. On 8 February 1993 the representative of the President of Ukraine in Kyiv made a formal decision to register the statute of the Parish (*статут релігійної організації*). From that date onwards the Parish, as a registered legal entity, belonged to the Ukrainian Orthodox Church (Moscow Patriarchate). The new statute stated:

> "(...) 1.1. Svyato-Mykhaylivska Parafiya (a religious group) is a religious association of the Ukrainian Orthodox Church of the Kyiv Patriarchate "Church of 1,000-years of Baptisms in the Kyivan Rus" (hereinafter the 'Parish') and is created for the purposes of mutual affiliation and the spreading of Orthodox religion and faith. It is composed of secular priests, ministers and laymen and is a part of the Ukrainian Orthodox Church of the Kyiv Eparchy (*Київської єпархії Української Православної Церкви*).
>
> (...) 2.1. The highest governing body of the Parish is the Parishioners' Assembly, which is eligible in presence of not less than 2/3 of members of the Parishioners' Assembly. Resolutions of the Parishioners' Assembly shall be adopted by a simple majority.
>
> 2.2. In its religious activities, the Parish shall be guided by the priest – prior, who shall be elected by the Parishioners' Assembly. In its administrative-financial activities, it shall be subordinate to the Parishioners' Assembly.
>
> (...) 2.12. The Parishioners' Assembly shall accept new members from clergymen and laymen at their request, provided they are at least 18 years of age, attend religious services and confession, follow the canonical guidance of the prior and have not been excommunicated by the church or are being judged by the religious court.

(...) 2.5. All official Parish documents shall be signed by the prior and the chair of the Parishioners' Council; banking and other financial documents shall be signed by the chair of the Parishioners' Council and the treasurer.

(...) 6.1. Decisions as to changes and amendments to the statute shall be proposed by the Parishioners' Council and adopted by the Parishioners' Assembly...

6.2. Changes and amendments to the statute shall be made in the same manner and within the same time-limits as those applicable to the registration of the statute."

15. On 9 April 1994 the Parishioners' Assembly, in accordance with a proposal by the new prior, refused to introduce changes and amendments to the statute until the construction of the new church building for the use of religious association was finalised. The proposed statute had to conform to the standard statutes of religious associations belonging to the Ukrainian Orthodox Church (Moscow Patriarchate).

16. In 1994 and 1999 Mr Makarchykov signed a number of documents relating to the construction of the new church in his capacity as chairman of the Parishioners' Council. These documents, which included contracts and decisions of the architectural and State bodies, were accepted by him as the head of the Parishioners' Assembly and countersigned in a number of instances by various State officials.

17. On 6 October 1999 the Parishioners' Assembly examined complaints about the management of the church that had been sent to Archbishop Volodymyr by new lay members. The Assembly also decided not to make the changes and amendments to the statute of the Parish necessary for its conformity with the standard statute used by the Ukrainian Orthodox Church (Moscow Patriarchate)".

18. On 14 October 1999, the Parishioners' Assembly examined the construction works at the site of the new church and decided not to make any changes to the statute until the works had been completed. It also heard complaints from Assembly members about Mr Makarchykov's alleged abuse of funds that had been raised for the construction of the church and against a prior of the Parish, who allegedly had no authority to act.

19. On 4 November 1999 a commission set up by the Moscow Patriarchate condemned the economic activities of the Parish, as being badly managed and removed the books of account.

20. On 10 November 1999 the Parishioners' Assembly resolved not to retain Father Tesliuk as prior and requested Archbishop Volodymyr of the Moscow Patriarchate to appoint a different prior. They also condemned the activities of the former prior, Father Nikolay, who had allegedly misused charitable aid from Italy and acted fraudulently. The Parishioners' Assembly also decided to proceed with criminal complaints it had lodged with the police against Father Tesliuk and Father Nikolay.

21. On 1 December 1999 26 members of the Parishioners' Assembly allowed requests from two members of the Assembly not to participate in its activities owing to pressure from the Moscow Patriarchate on the Parish and

the attempts of Father Nikolay to split the Parish. Six members of the Assembly were elected as honorary members, with a right of "advisory vote". One new member was admitted to the Assembly. The Assembly condemned the report of 4 November 1999 and the decision to remove the Parish's accounting papers. Mr Makarchykov also informed the Assembly that Father Nikolay had unlawfully withheld charitable aid given to the Parish in the amount of 2,880,000 United States dollars (USD). The Assembly decided not to retain Father Nikolay and Father Tesliuk as their priors and requested their transfer away from the Parish. The Assembly was also informed by one of its members that Archbishop Volodymyr refused to discuss with him the internal conflict in the Parish.

22. According to the applicant association, on 24 December 1999 the Parishioners' Assembly consisted of 27 individuals: Mr B.S., Ms B.I., Mr B.M., Mr G.S., Mr G.V., Mr D.S., Mr Ye.S., Ms Z.N., Mr K.A., Ms K.L., Mr K.V., Ms L.V., Mr V.I. Makarchykov (the Chairman of the Parishioners' Assembly), Ms M.S., Mr M.A., Ms N.M., Ms R.V., Mr R.V., Mr S.S., Mr T.L., Mr Ts.L., Ms Ch.V., Ms Ch.I., Mr Sh.Ye., Mr Sh.M., Mr Sch.D. and Ms Ya.V.

B. The Parishioner's Assembly resolution of December 1999 to change denomination

23. On 24 December 1999 the Parishioners' Assembly, with 21 of its 27 members present, decided to withdraw from the jurisdiction and canonical guidance of the Moscow Patriarchate and to accept that of the Kyiv Patriarchate. The following 6 members of the Assembly were not present during the meeting and did not vote for a change of jurisdiction: Mr G.S., Mr G.V., Mr D.S., Mr K.V., Mr M.A. and Mr Sh.M. The Assembly gave authority to two members of the Assembly, Mr Makarchykov and Mr Sh.Ye., to lodge a request with the Head of the Kyiv City State Administration for the registration of the changes and amendments to the Parish's statute. The Assembly requested Archbishop Filaret of the Kyiv Patriarchate to approve the changes and amendments.

24. On 25 December 1999 and 10 January 2000 Archbishop Filaret declared the Parish a part of the Kyiv Patriarchate. He also appointed Mr Pavlo Osnovyanenko as a prior and spiritual counsellor of the Parish.

25. On 27 December 1999 Mr Makarchykov and Mr Ye.Sh. lodged an application with the Kyiv City State Administration to register the amendments to its statute as a result of the change of denomination.

26. On 28 December 1999 Mr Makarchykov signed a contract on behalf of the Parish with a private contractor "Khades" to ensure the security of the church premises and the partly-constructed new church.

C. Events in January and February 2000

27. The applicant association alleges that on 1 January 2000 the church premises were taken over by approximately 150-200 clerics and lay people supporting the Moscow Patriarchate, who had arrived at the church in the evening. All the members of the Parishioners' Assembly signed a statement condemning this intrusion into their internal affairs by the representatives of another denomination. The construction work on the new church was also disrupted. According to the private firm responsible for security at the church officials of the Darnytsky District Department of the Interior had warned them not to intervene in the conflict.

28. On 2 January 2000 Archbishop Volodymyr of the Moscow Patriarchate authorised Archpriests Filaret (Lukyanchuk), V. Rusynka, M. Tereschuk and D. Grygorak and a lawyer of the Kyiv Metropolis, V.F. Volynets, to hold a meeting of the Parishioners' Assembly in the Svyato-Mykhaylivska Church.

29. On the same day, 309 supporters of the Moscow Patriarchate, who the applicant association alleged were from different churches in the city (although, according to the Government, 295 were active members of the Parish), held a meeting at which they passed a vote of no confidence in Mr Makarchykov as chairman of the Parishioners' Assembly and elected new governing bodies for the church. In particular, they elected a new Parishioners' Assembly composed of 19 members (the "New Assembly"), a treasurer and a supervisory board.

The Assembly also adopted the model statute for churches belonging to the Ukrainian Orthodox Church (Moscow Patriarchate). It approved a proposal from Archpriest Filaret (Lukyanchuk) of the Moscow Patriarchate to elect Father Nikolay (Mykola) as the Chairman of the Parishioners' Assembly. The minutes of the meeting of the Assembly were approved by the secretary of the Moscow Patriarchate, Archpriest V. Kosovsky, on 3 January 2000.

30. On 2 January 2000 the members of the original Parishioners' Assembly requested the Minister of the Interior, the Head of the Kyiv City State Administration, the General Prosecutor and other law-enforcement authorities to protect their church and property.

31. On 3 January 2000 the Deputy President of the Darnytsky District Court of Kyiv informed Mr Makarchykov that he should address his complaints concerning the confiscation of church property to the courts in accordance with Articles 137 and 138 of the Code of Civil Procedure. The Deputy President also advised that any criminal complaints concerning alleged offences had to be lodged with the police or prosecutor with territorial jurisdiction.

32. On 4 January 2000 Archbishop Filaret of the Kyiv Patriarchate publicly protested against the "seizure of the church" by representatives of the Moscow Patriarchate. In particular, he stated in letters to the Chairman

of the Kyiv City State Administration, the Minister of the Interior, the General Prosecutor, the Head of the Kyiv Department of the Interior, the Human-Rights Ombudsman and the Chairman of the Parliament that the Parishioners' Assembly that had resolved to withdraw from the jurisdiction of the Moscow Patriarchate was the legitimate governing body of the Parish.

33. On 8 January 2000, 21 members of the original Parishioners' Assembly composed of 27 members held a meeting to discuss the events of 1-3 January 2000. They elected a Parishioners' Council with the following composition: Mr Makarchykov, Chairman; Mr Burtovy, Treasurer; and Mr Krasnook, Assistant to the Chairman. Mr Pavlo Osnovyanko was approved as a prior of the Parish, upon a proposal from the Kyiv Patriarchate. The Assembly elected the Supervisory Board and asked Archbishop Filaret to approve their decisions.

34. On the same date Archbishop Volodymyr of the Moscow Patriarchate informed the Kyiv City State Administration that the documents that had been submitted for registration of the change of denomination were forged as the majority of the Parish members and its prior opposed the change of denomination to the Kyiv Patriarchate.

35. On 10 January 2000 Archbishop Filaret of the Kyiv Patriarchate issued a decree approving the composition of the original Parish governing bodies. He also confirmed that Mr Pavlo Osnovyanenko could serve as a prior of the Parish.

36. On 10 and 14 January 2000 two private individuals, Ms A.M.I. and Mr Z., sought membership of the original Parishioners' Assembly following their decision of 24 December 1999 on the change of denomination.

37. On 11 January 2000 the State Tax Inspectorate found a number of infringements of economic regulations by the former managers of the Parish.

38. On 12 January 2000 a group of 9 members of the Ukrainian Parliament (*Verkhovna Rada*) lodged complaints with the President of Ukraine seeking his support in resolving the dispute between the Kyiv and Moscow Patriarchates over the church premises and the decision of its members to change denomination.

39. On 16 January 2000 the Darnytsky District Police Department in Kyiv prohibited access to the church or other Parish property until a court had ruled on the change of denomination. Thereafter, the church premises and its property were guarded by the police.

40. On 15 January 2000 the Registry of the Moscow Patriarchate informed the State Religions' Department that the denomination had been changed as a result of Mr Makarchykov's involvement in financial fraud. It also stated that the Parishioners' Assembly was illegitimate as it had been convened in violation of Article 2.1 of the statute. Moreover, membership of the Parish was not based on observance of the prior's canonical guidance, contrary to Article 2.12 of the statute, as Mr Makarchykov had influenced

decisions not to accept new members who were not loyal to him. The Registry added that the change of denomination was contrary to the current statute of the Parish and the Moscow Patriarchate's internal regulations, including the recommended model statutes (*типовий статут парафії Української православної церкви*) for religious associations within the Moscow Patriarchate.

41. Between 17 and 31 January 2000 the Parish members and the Archbishop of the Kyiv Patriarchate lodged a series of formal complaints with a member of parliament (V.P. Nechyporuk), the Committee on Organised Crime, the Minister of the Interior and the Prosecutor of Kyiv asking them to take action to prevent the police, who, they said, supported the Moscow Patriarchate, unlawfully interfering in Parish affairs.

42. On 21 January 2000 the Kyiv City State Administration refused to register the amendments, according to the request of 24 December 1999 (see paragraph 23 above), on the grounds that they contravened Article 2.5 of the Parish statute, in that the documents submitted for registration had not been signed by the prior and the Chairman of the Parishioners' Assembly.

43. On 29 January 2000 the Parishioners' Assembly, composed of 22 members, condemned the actions of the Moscow Patriarchate in relation to their Parish and its property. They decided to file complaints with the law-enforcement authorities to ensure protection from its unlawful interference with their activities.

44. On 31 January 2000 the President of the original Parishioners' Assembly Mr Makarchykov complained to the Darnytsky District Prosecutor about the interference in the activities of the Parish. In particular, he alleged that the Moscow Patriarchate and the police had failed to comply with the resolution of 16 January 2000 prohibiting access to all the premises of the Parish until the case had been resolved by a court.

45. On 31 January 2000 the prior of the Parish and the Chairman of the original Parishioners' Assembly lodged a second request for the registration of changes and amendments to the statute of the Parish with the Kyiv City State Administration. The Assembly again informed the Kyiv City State Administration that on 8 January 2000 it had decided that Mr Pavlo Osnovyanenko would be its prior and Mr Makarchykov its chairman and that both had power under the statute to sign documents on behalf of the Parish. No response was received to this request.

46. On 3 February 2000 the Kyiv City Council established a committee composed of four of its members (deputies of the Council K.Y.G., D.D.G., O.P.K. and V.O.B.) and the Head of the Department of Religious Affairs of the Kyiv City Council to examine the conflict over the Svyato-Mykhaylivska Parish.

47. On 8 February 2000 the Head of the Darnytsky District Police Department in Kyiv warned Mr Makarchykov that he would be prosecuted if he continued to incite laymen to occupy the church and to confront the supporters of the Moscow Patriarchate.

48. On 9 February 2000 Mr Makarchykov lodged fresh complaints with the Darnytsky District Police Department asking them to institute criminal proceedings against unlawful occupiers of the church premises and those responsible for denying him access to the premises or to his personal belongings in the church.

49. On 14 February 2000 the Kyiv Patriarchate certified that the Parish had been within the Patriarchate since 25 December 1999.

D. Court proceedings against the decision refusing registration

50. On 17 February 2000 the applicant association instituted proceedings in the Kyiv City Court claiming that the Kyiv City State Administration's refusal of 21 January 2000 to register the amendments to the statute of the Svyato-Mykhaylivska Parafiya was unlawful.

51. On 21 April 2000 the Kyiv City Court, composed of three judges, rejected the applicant association's claims, finding that the decision of 21 January 2000 was lawful (see paragraph 42 above). In particular it found that the Parishioners' Assembly composed of 27 members did not represent the entire religious community, that the documents submitted for registration had not been signed by the authorised persons (the prior and the chairman of the Parishioners' Assembly) and that the members of the Parishioners' Assembly of 24 December 1999 no longer belonged to the Moscow Patriarchate, as this minority group had chosen a different denomination. The court concluded that the applicant association was not able to prove that the decision of the Kyiv City State Administration was unlawful.

The Kyiv City Court held in particular:

> "...the refusal of the Kyiv City State Administration to register the amendments to the statute was based on the fact that they had been adopted contrary to the statute and would infringe believers' rights.
>
> The judicial division holds that the decision [of the Kyiv City State Administration] corresponds to the actual circumstances of the case, and reflects the rights of both religious communities, and the statute of the Parish ... and the Law 'on consciousness and religious organisations'.
>
> ... In accordance with Articles 6.1.and 6.2 of the statute ... decisions with regard to changes and amendments to the statute must be proposed by the Parishioners' Council and adopted by the Parishioners' Assembly ...
>
> ... As can be seen from the minutes of the meeting of the Parishioners' Assembly of 24 December 1999 the religious community of the Svyato-Mykhaylivska Parish adopted changes and amendments to the statute of the religious community belonging to the Ukrainian Orthodox Church [Moscow Patriarchate], but was already affiliated to the Ukrainian Orthodox Church of Kyiv Patriarchate.

> ... such a method of making changes and amendments to the statute contravenes the Law and Articles 6.1 and 6.2 of the statute and undoubtedly infringes the rights of the religious community belonging to the Ukrainian Orthodox Church [Moscow Patriarchate] which adopted this statute. Changes to the statute could only be adopted by the Parishioners' Assembly of this community.
>
> It can be seen that the complaint was lodged by Mr Makarchykov on behalf of the religious group belonging to the Ukrainian Orthodox Church [Moscow Patriarchate]. However this church did not authorise him to act on their behalf, in fact he represents the interests of the religious community belonging to the Ukrainian Orthodox Church of Kyiv Patriarchate, which was established on 24 December 1999 and has a right to exist in accordance with the Law "on freedom of consciousness and religious organisations" ...
>
> Taking into account all of the above, the judicial division considers that the representative of the religious community of the Ukrainian Orthodox Church of Kyiv Patriarchate, Mr V.I. Makarchykov, failed to prove in court that the refusal of the Kyiv City Administration of 21 January 2000 ... was unlawful. Therefore the complaint must be rejected."

52. On 5 July 2000 a panel of the Supreme Court composed of three judges upheld the judgment of 21 April 2000. It rejected the applicant association's cassation appeal because the provisions of the Parish statute contravened the relevant legislation. It also held that the provisions of the statute concerning fixed membership were contrary to the legislation because they did not allow the majority of the religious group to manifest their religion by participating in the administration of church affairs.

In particular the Supreme Court held:

> "... the statute (articles of association) of the religious group has to correspond to the legislation in force.
>
> As long as the legislation in force does not provide for a mandatory or other form of fixed membership of the believers with the same religious beliefs, in a legal sense "parishioners' assembly" and the "general assembly of the religious group" are identical notions. The judicial division therefore considers that Articles 2.12, 2.13 of the statute ... do not fully correspond to the legislation. This led to the creation of factual obstacles for a majority of the religious community in deciding statutory issues and a violation of their right to manifest their religion...
>
> The judicial division also finds unsubstantiated the submission that there were no defects in the documents concerning the changes and amendments to the statute of the parish filed on behalf of the religious community."

53. On 5 March 2001 fifteen members of the original Parishioners' Assembly lodged a petition with the General Prosecutor's Office requesting it to initiate supervisory-review proceedings in the Supreme Court. No supervisory-review proceedings were initiated, however.

E. Further proceedings before the domestic authorities

54. On 22 February 2000 the Head of the Darnytsky District Police Department in Kyiv informed Mr Makarchykov, in response to his complaints of 9 February 2000, that it had found no evidence of the offences alleged in his complaints. He was also informed that he was free to collect his personal belongings from the church to which he had allegedly been denied access.

55. On 23 February 2000 the prior of the Parish and Chairman of the Assembly lodged new complaints with the Kyiv City Prosecutor and the State Religious Affairs Department requesting them to institute criminal proceedings against those involved in the unlawful seizure of the Parish's premises and property. They also complained of the refusal of the Kyiv City State Administration to register the changes to the statute of the Parish on the basis of the joint decision of its members to change denomination.

56. On 25 February 2000 the Kyiv City State Administration's Department of Religious Affairs asked Mr Makarchykov to provide it with the minutes of the Parishioners' Assembly that had elected Mr Pavlo Osnovyanenko as its prior, confirmation that the Parish's prior belonged to the Moscow Patriarchate and confirmation that the prior's position had been vacant from December 1999 to 8 January 2000.

57. On 6 March 2000 Mr T., Archbishop of the Kyiv Patriarchate, wrote to the head of the district electricity network asking it to cut off the electricity supply to the church as it had been unlawfully occupied by the Moscow Patriarchate and the Kyiv Patriarchate was unable to gain access.

58. On 23 March 2000 the Kyiv Prosecutor's Office informed Mr Makarchykov and Mr Osnovyanenko that it had not found any wrongdoing on the part of the Moscow Patriarchate in relation to the church prosecutor's inquiries had revealed no unlawfulness whatsoever as alleged by the applicant.

59. On 10 April 2000 a Committee of the Kyiv City Council prepared a draft opinion on the situation surrounding the Parish. The opinion was not adopted for examination by the Kyiv City Council as it was signed by only three of the five members of the Committee.

60. On 5 June 2000 the Parishioners' Assembly composed of 30 members, 21 of whom were present, decided that Mr S.G. could not remain a member as he had joined a new religious group. The Parishioners' Assembly discussed the judgment in which the Kyiv City Court had found that the Parishioners' Assembly contained 309 members. However, it reiterated its view that as from 24 December 1999 it had been composed of only 27 members. Two of the members of the Assembly (K.V. and T.L.) reported that their witness statements had been taken incorrectly. The Assembly also re-elected the Parish's governing bodies (Mr Makarchykov was re-elected as Chairman).

61. On 13 June 2000 Mr Makarchykov lodged a complaint with the Darnytsky District Prosecutor alleging that he had been attacked and injured on 2 April 2000 by an unknown person who had stolen a briefcase containing official documents belonging to the Parish. He also stated that he had already complained about attacks on him to the police, but that they had failed to act (the police issued two decisions on 8 April and 13 June 2000 refusing to initiate criminal proceedings following allegations by the applicant association).

62. On 21 June 2000 the Parishioners' Assembly resolved that a car owned by the Parish should be used for the repayment of the Parish's debts.

63. On 18 August 2000 Mr Makarchykov was arrested by police officers from the Darnytsky District Department of the Interior and "invited for a conversation" at the Department. He was informed that an inquiry was pending in relation to him. In the course of the "conversation" it is alleged that Mr Makarchykov started to curse and swear at the police officers. He was warned that he could be reprimanded, but did not stop. On 19 August 2000 the judge of the Darnytsky District Court of Kyiv reprimanded Mr Makarchykov for his behaviour; however, he did not impose any administrative or criminal sanctions on him.

64. On 30 August 2000 the Darnytsky District Department of the Interior discontinued criminal proceedings against the applicant association that had been instituted on the basis of a complaint lodged by Mr B. Shtym the newly appointed prior of the Svyato-Mykhaylivska Parish (Moscow Patriarchate), as it had found no evidence of an offence on Mr Makarchykov's part.

65. On 8 September 2000 the Darnytsky District Prosecutor refused to institute criminal proceedings into allegations of abuse of power by the police.

66. On 29 September 2000 Mr B. Shtym requested the Kyiv City State Administration to register further amendments to the statute of the Parish. A request was signed by 10 members of the new Assembly, only one of whom (G.S.) was a member of the original Parishioners' Assembly.

67. On 6 October 2000 the Parishioners' Assembly, composed of 29 members, of whom 22 were present, condemned the ruling of the Supreme Court of 21 April 2000 and decided that the Parish would apply to the European Court of Human Rights for the protection of their rights. The Assembly gave authority to Mr Makarchykov to represent it in the proceedings before the European Court. It also discussed pressure that had been imposed on Ts.O., K.A., Mr Makarchykov and S.S. by the domestic law-enforcement authorities and private individuals.

68. On 5 December 2000 the Deputy Minister of the Interior and the Head of the City Department of the Interior reviewed Mr Makarchykov's complaints and found them unsubstantiated. They further stated that criminal proceedings against Mr Makarchykov on allegations of theft of property from the church had been discontinued and that the investigator in

the case had incurred administrative liability. Similar, complaints were rejected by the Kyiv Prosecutor's Office on 15 December 2000.

69. On 25 December 2000 the Kyiv City State Administration decided to register the changes to the statute of the Svyato-Mykhaylivska Parish pursuant to Mr Shtym's request of 29 September 2000.

70. On 20 May 2001 22 members of the Parishioners' Assembly held a meeting at which they discussed various pressures that had been exerted on them by the law-enforcement authorities. They decided to seek protection and assistance from the Administration of the President of Ukraine and the General Prosecutor's Office to resolve the dispute surrounding the Parish. They also accepted a request from Ye.S., who had been a member of the Parishioners' Assembly since 25 July 1991, to resign her membership owing to pressure that had been put on her brother, a priest of the Moscow Patriarchate.

71. On 21 February 2003 the Dniprovsky (the successor to the Darnytsky) Prosecutor's Office reviewed complaints lodged by Mr Makarchykov's sister of attacks on her and her son and her allegedly unlawful dismissal from the Parish. It advised her to take her complaint of unlawful dismissal to the domestic courts.

72. In 2003-2004 Mr Makarchykov's sister requested asylum in Norway on the grounds of alleged persecution in Ukraine. She stayed in Norway while her request for political asylum was being reviewed.

73. The Government informed the Court that on 7 August 2003 and 30 September 2004 the prior of the Parish, B. Shtym, informed them that Mr Makarchykov had never been given authority to apply to the European Court on behalf of the Parish, as he had ceased acting as the Chairman of the Parishioners' Assembly on 2 January 2000. Mr Shtym also informed the Government that seven of the original members (G.S., G.V., D.S. Ye.O., R.V., Ya.V and M.A.) had decided to remain members. Three of these (Ye.O, R.V. and Ya.V.) had withdrawn their signatures from the minutes no. 5 of 24 December 1999, by which the Parishioners' Assembly had resolved to change its denomination to the Kyiv Patriarchate.

74. On 25 February 2004 the Religious Affairs Department of the Kyiv City State Administration informed the applicant association's representative that their religious group had separated from the remainder of the Parish and become a religious group within the Kyiv Patriarchate. It noted that they had not registered as a group with the Kyiv City State Administration.

75. On 8 February 2005 the Kyiv Patriarchate informed the Court that the Parish, consisting of 30 members, was unable to satisfy their religious needs, as they were unable to use their property or premises. It stated that this was due to the refusal of the Kyiv City Administration to register the changes and amendments to the statute of the Parish that had been made in January 2000.

76. In a letter of March 2005, K.A., Sh.Ye., N.M., Ch.L., R.V., T.L., Z.N., Z.V., A.M., Ch.A., Ch.V., L.V., Ryb.V., K.V., S.S. and B.M., all confirmed the complaints made by Mr Makarchykov to the European Court and stated that they were unable to use the church premises or to practise their religion in the church, which they had previously used for a long period as a religious association.

F. Court proceedings concerning the recovery of property owned by the Parish

77. On 31 January 2002 Mr Makarchykov and B.M. (a member of the applicant association) instituted proceedings against the Svyato-Mykhaylivska Parish (Moscow Patriarchate) seeking the return of their personal property that had allegedly been confiscated by the new Assembly in January 2000. They also sought compensation for damage.

78. On 25 February 2004 the Dniprovsky District Court of Kyiv rejected Mr Makarchykov's and B.M's claims as unsubstantiated.

79. It appears from the documents in the case-file that this judgment was upheld by the Court of Appeal on 18 August 2004 (the parties have not provided a copy of the ruling). It also appears from the case-file that this ruling was not appealed against.

80. In November 2002 K.S. instituted proceedings against the Darnytsky District Department of the Interior for the return of the car that had been transferred into his ownership for the repayment of Parish's debts before being unlawfully seized by the police. The outcome of these proceedings is unknown.

81. The applicant association also provided the Court with a number of documents confirming that Mr Makarchykov had acted on behalf of the Parishioners' Assembly from 1991 to 1999 representing its interests in dealings with third parties.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine of 26 June 1996

82. The relevant provisions of the Constitution of Ukraine read as follows:

Article 35

"Everyone has the right to freedom of personal philosophy and religion. This right includes the freedom to profess or not to profess any religion, to perform alone or collectively and without constraint religious rites and ceremonial rituals, and to conduct religious activities.

The exercise of this right may be restricted by law only in the interests of protecting public order, the health and morals of the population, or the rights and freedoms of others.

The Church and religious organisations in Ukraine are separated from the State, and the school from the Church. No religion shall be recognised by the State as mandatory."

B. Freedom of Conscience and Religious Organisations Act of 23 April 1991 (as worded at the material time)[1]

83. The relevant provisions of the Act read as follows:

Section 7

Religious organisations

"Religious organisations in Ukraine shall be created to meet citizens' religious needs to manifest and disseminate their faith, and shall operate in accordance with their hierarchical and institutional structure, electing, appointing and changing their personnel in accordance with the provisions of their statutory documents...

Religious organisations in Ukraine are religious groups, departments and centres, monasteries, religious brotherhoods, missionary societies (missions), religious educational institutions, and also unions composed of such bodies. Religious unions shall be represented by their centres (departments).

No other organisation established on the basis of religion shall be covered by this Act."

Section 8

Religious group

"A religious group (*релігійна громада*) is a local religious organisation of believers belonging to a sect, religious manifestation, persuasion, trend or devotion, who voluntarily unite for the purposes of the common satisfaction of religious needs.

The right of the religious group to belong to any church acting within Ukraine and outside its territorial religious centres (departments) for canonical or organisational

1. The Act has since been amended six times, the most recent occasion being on 17 December 1996.

purposes, and voluntarily to change their affiliation to a particular denomination shall be recognised by the State.

There is no mandatory obligation to inform the State authorities of the creation of a religious group."

Under section 12 of the Act, the statutes of a religious organisation determine its legal capacity. They are adopted at a "general assembly" of the believers or during religious assemblies or conferences. The statute must contain information, *inter alia*, on the type of religious organisation, its religion, current address, place in the structure of the religious union, property status, the rights of the organisation to establish enterprises, mass media sources, other religious organisations or educational institutions, the procedure for making changes or amendments to the statute, and the procedure for deciding property and other issues on the termination of the religious organisation's activities. The statute must not contravene the law.

In accordance with section 13 of the Act a religious organisation becomes a legal entity from the moment its statute is registered by the relevant body.

Under section 14, a religious organisation wishing to become a legal entity must lodge a request for registration on behalf of a minimum of 10 natural persons and the statute of the organisation with the regional, city or Sevastopol City State Administrations, and in the Republic of Crimea with the Government of the Crimea. These documents have to be examined within a month and the relevant body is required to notify the religious organisation of its decision. Changes and amendments to the statute of a religious organisation must be registered in accordance with the same procedure and within the same time-limits. Representatives of the religious organisation attend the meeting of the board which examines the request for registration.

In accordance with section 15 of the Act, registration can be refused if the statute of the organisation or its activities contravene the law. A reasoned decision refusing registration must be notified to the organisation within 10 days.

Under section 16 of the Act the activities of the religious organisation must cease on its reorganisation (division, merger, consolidation) or liquidation. New organisations are registered in accordance with section 14.

Religious organisations have the right to use property, land, buildings and premises owned by the State, non-governmental organisations or citizens (section 17). Under section 18 these organisations have a right to own, use and dispose of their property. These rights are protected by law (section 18). Under section 19 religious organisations have the right to create, in accordance with the provisions of their statutes, publishing, commercial, agricultural and other enterprises and charitable institutions have the rights of a legal person.

Religious organisations also have the right to create and maintain places for religious services and ceremonies (section 21), to acquire religious literature and objects (section 22), to conduct charitable and other cultural activities (section 23) and to maintain international contacts with foreign religious organisation and believers (section 24).

C. Other applicable normative acts

84. The relevant provisions of the rules regulating the activities of religious organisations are as follows.

Under section 1 of the Humanitarian Aid Act of 22 October 1999 only registered religious organisations have the right to receive humanitarian aid.

Sections 12 and 25 of the Publishing Act of 5 June 1997 specify that religious organisations have no right to publish and disseminate publications without being registered with the specialised State register of publishing organisations.

Under Article 55 of the Commercial Code of 16 January 2003 only registered organisations or legal entities may engage in commercial activities or have capacity to trade.

Under the provisions of the Land Code of 21 January 1994 and the Water Resources Code of 6 June 1995 religious organisations have the right to use land and water resources for their needs.

In accordance with recommendation no. 132 of the Religious Council of the Cabinet of Ministers of Ukraine of 15 July 1992 every religious organisation owns its own property and in the event of a transfer from one denomination to another, property and financial matters must be resolved on the basis of the statute of each organisation separately and in accordance with the applicable law.

D. Rulings of the Constitutional Court of 5 June 2002 (case no. 2-36/2002)

85. On 5 June 2002 the Constitutional Court refused to institute constitutional proceedings following a request lodged by 51 Ukrainian Members of Parliament for an interpretation of the notion of “church” which is contained in Article 35 of the Constitution of Ukraine. In its ruling, the Constitutional Court recognised the existence of misinterpretations in the legislation of Ukraine regarding the definition of the notions of “church” and “religious organisation”. In some instances, these notions were treated as having analogous meanings while in others they were given different meanings.

III. COUNCIL OF EUROPE INSTRUMENTS AND THE RELEVANT NGO REPORTS

A. Documents of the Council of Europe

86. The relevant extracts from Opinion No. 190 (1995) on the application by Ukraine for membership of the Council of Europe read as follows:

> "... 11. Accordingly, in the light of assurances given by the highest authorities of the state (letter of 27 July 1995 from the President of Ukraine, the President of the Parliament and the Prime Minister), and on the basis of the following considerations, the Assembly believes that Ukraine is able and willing, in the sense of Article 4 of the statute of the Council of Europe, to fulfil the provisions for membership of the Council of Europe as set forth in Article 3: 'Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council...':
>
> ... xi. a peaceful solution to the disputes existing among the Orthodox churches will be facilitated while respecting the Church's independence vis-à-vis the state; a new non-discriminatory system of church registration and a legal solution for the restitution of church property will be introduced; ..."

87. The relevant extracts from the Report of the Parliamentary Assembly's monitoring committee 'Honouring of obligations and commitments by Ukraine' (doc. 10676, 19 September 2005) read as follows:

> "... **F. Freedom of conscience and religion**
>
> 269. Ukraine undertook to introduce a new non-discriminatory system of church registration and to find a legal solution for the restitution of church property. The present Law on freedom of conscience and religious organisations dates back to 1991. Despite the fact that it is regarded as one of the best freedom of religion laws in the region, some of its provisions lack clarity. The Law limits the forms in which a religious organisation can be created, limits the minimum number of founders to have the statute of the organisation registered to ten adults (whereas the same requirement for other civic associations is three persons), bans creation of local or regional divisions without legal entity status, provides no possibility for granting legal entity status to religious associations, discriminates foreigners and stateless persons. There is a lack of clarity with regard to which organisations are registered by regional state administrations and which by the State Committee on Religious Affairs. The law also contains a number of other ambiguous provisions, which leave a wide discretion to the implementing authorities. Hence, the quite progressive law for the time of its adoption now requires significant rewording. At the same time, the current principle of registration of religious organisation statutes in order to obtain the legal entity status and the absence of a requirement for registration of religious organisations as such should be maintained in line with the Assembly's Recommendation 1556 (2002).
>
> 270. The Ukrainian legislation still lacks effective legal tools for restitution of church property. So far restitution was carried out occasionally on the basis of the

parliament's 1991 resolution and several presidential decrees. The legal problem of restitution mainly stems from the fact that religious associations have no right to obtain a legal entity status and thus cannot possess property. Most of the organisations, which owned the property that should be restituted, ceased to exist and the Orthodox Church is represented by several organisations. This leads to an *ad hoc* restitution practice totally depending on the local authorities' preferences and which in most cases entails not the return of the ownership rights but transfer of property into a gratis rent. We, therefore, call on the Ukrainian authorities to elaborate clear rules on the restitution of religious property."

88. The Report of the monitoring committee of the Council of Europe on 'Honouring of obligations and commitments by Ukraine' (Doc. 8272 of 2 December 1998) read as follows:

"C. Freedom of conscience and of worship

51. One of Ukraine's commitments, listed in paragraph 11, *xi*. of Opinion No. 190, is to facilitate 'peaceful solution to the disputes existing among the Orthodox churches [...] while respecting the Church's independence vis-à-vis the State; a new non-discriminatory system of church registration and a legal solution for the restitution of church property should be introduced.'

52. Following accession, the dispute within the three Orthodox churches in Ukraine, amongst themselves and with the State, has not ended.

53. Complaints are also expressed by the representatives of various confessions regarding the lack of cooperation by the authorities at local level and the system of taxation. ... There is no sufficiently good coordination between state and local authorities in this respect.

89. The relevant extracts from Recommendation no. 1556 (2002) 'Religion and change in central and eastern Europe' read as follows:

"*... Legal guarantees and their observance*

i. to promote conformity of national legislation with the European Convention for the Protection of Human Rights and Fundamental Freedoms, paying special attention to Article 9, which states that religious freedoms shall be subject only to limitations prescribed by law and necessary in a democratic society, and to the ruling of the European Court of Human Rights (1983) that restrictions on human rights must be motivated by a 'pressing social need', and be 'proportionate to the legitimate aim pursued';

ii. to guarantee all churches, religious associations, centres and communities the status of legal entities, if their activity does not violate human rights or international law ...;

vi. to offer to mediate between conflicting parties, in cases where the latter accept this, for the purpose of settling disputes, while taking care to ensure that government bodies do not interfere in dogma or other internal religious matters; ..."

B. NGO Reports

90. The relevant extracts from the 2004 joint report of the Ukrainian Human Rights Organizations on Ukraine reads as follows:

> "... ***1.2. The procedure for registration***
>
> Courts often do not recognize obstacles placed by executive bodies before the registration of religious organizations as being a violation of the right to freedom of religion and worship.
>
> ... In Ukraine the importance of gaining certain legal status is increased since only in this way can religious formations receive buildings for worship, print and disseminate literature, invite representatives of foreign organizations, organize public actions and receive charitable status, as well as carry out charitable activity. All of this is practically impossible in Ukraine without the registration of a religious formation, with legal entity status.
>
> ... Positive points are the voluntary nature of registration of religious organizations and the possibility for communities to exist without registering themselves. However the status of such unregistered communities and their rights are not defined by the law. Following the positivist logic which prevails in the State Committee on Religious Affairs and in other executive bodies, such organizations do not have any rights at all, since they are not set out in law. This applies, for example, to the right of worship in public places, invitations to foreign priests, the right to alternative military service of those who belong to such communities, and many others.
>
> According to the law, religious organizations register their charter (regulations), however they submit far more documents and all of these are checked in accordance with Articles 12 and 15 of the Law on religious organizations. That is, in effect, registration is carried out not of the charter, but of the organization itself.
>
> In practice, documents are not checked for their compliance with legislation, but rather the actual religion is assessed. ...
>
> ... The procedure for registering a primary religious organization consists of submitting registration documents together with an application signed by not less than 10 Ukrainian citizens. This application should be considered within a month, or in exceptional cases, three months. In practice the application is considered, on average, within three months, and where a special opinion is needed, and as a precautionary measure, this is deemed necessary in the majority of cases, registration can drag on for six months. This violation of the law is established administrative practice which has no reasonable justification. ...
>
> No clear grounds are set out in legislation for turning down an application to register a religious organization, and such grounds are substituted by the general phrase: 'the charter of the organization contravenes legislation' ...
>
> Legislation does not permit the registration of religious organizations with canonical subordination to a spiritual leader (charismatic organizations), since canonical or economic subordination are permitted only to a religious centre (an organization which unites several religious communities), which is already registered. In this way, it is impossible to create religious organizations which belong to new religions and

which do not have religious centres. It is similarly impossible to create new churches, since these are understood to be already hierarchical structural unions.

During registration, the State bodies return the documents submitted with their comments and their suggestions as far as the charter is concerned, although this is nowhere allowed for by legislation. The State bodies' comments frequently relate to aspects of religious practice and limit the rights of the individual.

There is a general suggestion to move the focus of regulation from the process of registration to monitoring of the activities of religious organizations. ...”

91. The relevant extracts from the 2005 Human Rights Organizations' Report on Ukraine read as follows:

“... ***4. The procedure for registration of religious organisations***

In Ukraine one needs to have a status of a 'legal entity' in order to engage in virtually any formal religious activities, at least for those involving worship in a building, holding public services or inviting representatives of foreign religious figures, printing or otherwise disseminating literature, etc.

Unregistered communities encounter problems with organizing religious events, inviting religious figures from abroad, arranging alternative (non-military) service, etc. Clearly such restrictions are a violation of religious freedom since the right to organize religious services, study and teach religion, publicize ones own beliefs and other activities have a direct impact on the human right to freedom of religion and should not be contingent upon the legal status of an organization.

... The law lacks any clear definition of the legal status of the activities of unregistered religious groups, as a result of which there are sometimes cases of abuse of this status. For example, we are aware of cases where unregistered religious communities rent premises for religious activities from state or educational institutions which in Ukraine is prohibited by law.

Although according to the law religious organizations have to register their charter, in practice they are required to provide many other documents as well. That means that essentially it is not the charter which is registered, but the organization itself. It is important to note that the establishment by the legislators of an exhaustive list of forms of religious organizations: a religious congregation, departments and centres, monasteries, religious brotherhoods, missionary societies (missions), seminaries and associations made up of the said religious organizations are a clear violation of the right of individuals to determine the form of their own religious association, as well as of the right to autonomy of the religious group itself, an element of which being able to decide independently on the structure and its form of management.

As regards the time required for registration – in accordance with Article 14 of the Law 'On freedom of conscience and religious organizations', this constitutes three months, including all necessary consultations. However, in practice, the process can drag on for six months or more. ...

... for multi-religious Ukraine ... this is not a simple issue. Legal entity status for a religious association or the Church as an institution would, in the first instance, give property rights to, for example, the churches which are presently in the possession of individual religious organizations (under the law's classification communities,

monasteries, etc). Theoretically they belong to one of the faiths, yet the tendency to change, for various reasons, jurisdiction complicates any clear distribution. Current legislation guarantees the right of a particular religious entity in the event that confessional jurisdiction for whatever reason changes to retain the property which that organization acquired. In other words, for the legislators the parish of the UGCC can in several months become the parish of the UOC MP together with its church and property, or vice versa. With the issue remaining unresolved of former property of religious organizations, expropriated under the Soviet regime which is now in the possession of another order, is used by several religious organizations, or which belonged to one organization and has now been transferred to another – the forcing of the granting of legal entity status to religious associations could heighten old conflict.

At the same time, such a method of regulation violates the structural integrity of a particular religious association, if not *de jure*, then *de facto*, and demands if not amendments, then review. Ideally, the state should ensure both possibilities – for the existence of separate religious groups which do not form part of any association, and the right of a religious association with clear hierarchical and other structure.

On 1 June 2005 the Supreme Court of Ukraine reversed the resolution of the former Governor of the Zhytomyr region, S. Ryzhuk, on cancelling amendments made to the charter of the Svyato-Pokrovsk Parish of the town of Malin, according to which the parish had transferred to the jurisdiction of the Russian Orthodox Church Abroad. The Supreme Court thus declared as lawful the transfer of the parish from the UOC MP to the jurisdiction of the ROCA abroad. The parish also retained their church over which there had been conflict with the other members of the parish who did not wish to change their confessional affiliation."

THE LAW

I. SCOPE OF THE CASE

92. The Court observes that further new complaints were submitted after communication based on an alleged infringement of Article 6 § 1 of the Convention, read in conjunction with Article 13. These were based on the applicant association's allegations of a failure by the domestic authorities to examine the criminal-law complaints lodged by the applicant association and its leader (see paragraphs 54-55, 58, 65, 68 and 71 above). Article 13 reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

93. The Court considers it unnecessary to take up these matters separately as they do not merely elaborate on the original complaint lodged with the Court on 4 January 2001 (see *Piryanik v. Ukraine*, no. 75788/01, § 20, 19 April 2005).

II. ADMISSIBILITY

A. Government's objections

1. Alleged abuse of the right of petition

94. The Government submitted that, in lodging the application with the Court on behalf of the religious group, Mr Makarchykov had abused the right of application, within the meaning of Article 35 § 3. In particular, they submitted that the application had deliberately been based on a description of the facts in which events of central importance were omitted by Mr Makarchykov.

95. The applicant association disagreed.

96. The Court, having regard to the submissions of the parties and its case-law on the subject (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 89, 20 June 2002; and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X), does not find that the right of application was abused in the present case. The Government's objections are wholly unsubstantiated and must be dismissed.

2. The alleged lack of standing of the applicant association's representative and the applicant association's victim status

(a) Submissions of the parties

97. The Government observed that the applicant association, the Svyato-Mykhaylivska Parish, was a religious community allegedly represented by Mr Makarchykov. However, they submitted that on 29 March 2001, when the application was lodged with the Court, Mr Makarchykov was no longer a member of the applicant association and was not empowered to lodge an application on its behalf with the Court. They referred in this respect to the decisions of the domestic courts (see paragraphs 50-52 above). Furthermore, the applicant association itself had never lodged any applications with the Court or authorised Mr Makarchykov to act on its behalf (see paragraph 73 above).

98. The Government further maintained that, since the date of his dismissal on 2 January 2000 as Chairman of the Parishioners' Assembly to present day, Mr Makarchykov had belonged to the Ukrainian Orthodox Church of Kyiv Patriarchate to which the Parish had never belonged. They stressed that Mr Makarchykov and the group he allegedly represented belonged to a different church and had left the applicant association in December 1999. The Government requested the Court to strike the application out of the list of cases, as no complaint had been lodged by the victim of the alleged violation or its authorised representative.

99. The applicant association disagreed. They stated that Mr Makarchykov was acting on behalf of the members of the Parishioners' Assembly that had decided to change the denomination of their church to the Ukrainian Orthodox Church of Kyiv Patriarchate and to apply to the European Court of Human Rights for protection of their right to manifest their religion, as the State authorities had failed to protect the applicant association. They further noted that in their decisions the domestic courts had not contested the authority of Mr Makarchykov to represent the Parish, and had examined the complaints he had lodged on behalf of the applicant association on their merits.

(b) The Court's assessment

100. As to the Government's first objection regarding Mr Makarchykov's lack of standing, the Court finds that there is sufficient documentary evidence to conclude that he is acting on behalf of a religious group which on 24 December 1999 decided to change its denomination and source of canonical guidance from the Moscow Patriarchate to the Kyiv Patriarchate. This group was directly affected by the Kyiv City State Administration's refusal, which was upheld by the domestic courts, to register changes and amendments to the statute (see paragraphs 42 and 50-52 above). The same group also approved a decision to apply to the Court on 6 October 2000 (see paragraph 67 above). The Court therefore rejects the Government's preliminary objection as to the group's and Mr Makarchykov's lack of standing.

101. Additionally, the Court observes that the Parish is a religious group recognised by the Kyiv Patriarchate (see paragraphs 24, 49 and 75 above), which as such was entitled to exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 72, ECHR 2000-VII). Therefore Mr Makarchykov, as an elected leader of the association of believers recognised by the Kyiv Patriarchate, had standing to represent this group in the proceedings before the Court.

102. As to the religious group's victim status, the Court reiterates that the term “victim” used in Article 34 denotes the person directly affected by the act or omission which is at issue (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 30, § 66). Moreover, the concept of “victim” in Article 34 of the Convention should be interpreted autonomously and independently of domestic law concepts (see *Zamula and Others v. Ukraine*, no. 10231/02, § 34, 8 November 2005).

103. Taking into account the aforementioned principles and the fact that the group's current position is no different from that in which it had found itself after the refusal of the domestic authorities to register the changes to the statute in January 2000, the Court considers that the applicant association may claim to be a victim of the violations complained of for the

purposes of Article 34 of the Convention. In order to ascertain whether it was in fact a victim, it is necessary to examine the merits of its contentions.

B. Complaints under Article 1 of Protocol No. 1

104. The applicant association complained that the refusal of the domestic authorities to register the changes and amendments to the statute of the Parish led to the expropriation of their property by the Ukrainian Orthodox Church of Moscow Patriarchate, which effectively managed the property and assets that had previously belonged to the Parish as a legal entity. They relied on Article 1 of Protocol No. 1, which provides:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

105. The Government contested that argument. They added that the applicant association had failed to exhaust all the remedies available to it under Ukrainian law.

106. The applicant association disagreed.

107. As regards the proceedings concerning the refusal of the domestic authorities to register the changes and amendments to the statute (see paragraphs 50-53 above), the Court notes at the outset that they did not directly concern the applicant association's allegations of an infringement of their property rights, as the competent "national authority" did not deal with the substance of its complaints under Article 1 of Protocol No. 1 and was unable to grant appropriate or adequate relief. The applicant association's complaint under Article 1 of Protocol No. 1 is therefore premature and must be rejected under Article 35 §§ 1 and 4 of the Convention (see *Merit v. Ukraine*, no. 66561/01, § 48, 30 March 2004).

C. Complaints under Article 9 of the Convention

108. The applicant association complained that the refusal to register the amendments to its statute and the subsequent decisions of the domestic courts were in breach of Article 9 of the Convention, which provides:

> "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."

They further stated that their right to freedom of assembly had been infringed as the domestic authorities had refused to register the relevant changes and amendments to the statute of the association, contrary to Article 9 of the Convention, read in the light of Article 11 of the Convention, which provides as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

109. Raising substantive objections as to the admissibility of the complaints, the Government stated that there had been no interference with the applicant association's rights under Article 9 of the Convention They submitted that the refusal to register the changes to the statute was lawful.

110. The applicant association disagreed. They stated that there had been interference with its rights under Article 9 of the Convention, both taken alone and read in the light of Article 11, and that it could not be justified by the exceptions mentioned in Article 9 § 2 of the Convention.

111. The Court reiterates, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

III. THE ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

A. General principles enshrined in the Court's case-law

112. The Court recalls that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion" alone and in private or in community with others, in public and within the circle of those whose faith one shares. 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.

113. Seen from this 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. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see *Metropolitan Church of Bessarabia*, cited above, §§ 118 and 123; and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI).

114. The Court reiterates that the list of exceptions to freedom of religion and assembly, as contained in Articles 9 and 11 of the Convention, is exhaustive, they must be construed strictly and only convincing and compelling reasons can justify restrictions. The States have only a limited margin of appreciation in these matters (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 84, ECHR 2001-IX).

115. As has been stated many times in the Court's judgments, by virtue of the wording of the second paragraph of Article 11, and likewise of Article 9 of the Convention, an interference can be justified if it is "prescribed by law" and "in accordance with the law", as the impugned measures must not only 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*, judgment of 24 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 378, § 40; and *Metropolitan Church of Bessarabia*, cited above, § 109).

116. The Court further notes that the interference must be "necessary in a democratic society" (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, §§ 43-45; and *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, §§ 86-89, ECHR 2003-II). Any interference must correspond to a "pressing social need"; thus, the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Gorzelik*, cited above, §§ 94-95, with further references).

117. 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 *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 118, ECHR 2001-XII).

118. The Court will, therefore, examine the aforementioned elements in turn. Additionally, it must satisfy itself whether the State sufficiently ensured judicial protection of the religious community concerned.

B. Whether there was interference with the applicant association's rights

1. The parties' submissions

119. The Government stated that they had not interfered with the affairs of the applicant association, which had acted without any control or supervision on the part of the State. Moreover, in refusing to register the changes and amendments to the statute of the Parish the domestic authorities had been guided by the domestic legislation and the provisions of the statute, which was adopted by the Parish itself. The State had not taken any active steps to force the community to join one Patriarchate or the other. Nor had the actions of the State concerned the religious group's leader, Mr Makarchykov.

120. The applicant association stated that its right to change religious orientation, as guaranteed by Article 9 of the Convention, had been interfered with. There had been interference with its freedom of religion as the State had refused to register the changes and amendments to its statute for no legitimate reason as all the conditions for making the changes and amendments were met. Furthermore, the applicant association had been prevented from using the church premises it had built for its religious ceremonies and even from using its chosen name.

2. Court's assessment

121. The Court has consistently stated that a refusal by the domestic authorities to grant the status of a legal entity to an association of believers amounts to an interference with the right to freedom of religion under Article 9 of the Convention (see *Metropolitan Church of Bessarabia*, cited above, § 105) and to freedom of association (see *Gorzelik*, cited above, §§ 52 et seq., and *Sidiropoulos*, cited above, §§ 31 et seq.). The believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI).

122. With regard to the Government's statement that there was no legal requirement to register the religious group and thus no interference took place in relation to refusal to register changes to the statute of the religious association at issue as the applicant association could function without registration, the Court notes that section 7 of the Act did indeed permit religious groups to operate without legal registration and thus without legal

personality. However, the domestic legislation restricted the legal capacity of unregistered religious groups, who were not authorised to perform a number of acts, including certain acts directly related to their religious activities (see paragraphs 83 – 84 and 90 - 91 above).

123. The Court considers that in circumstances where a religious organisation is in apparent conflict with the leadership of the church to which it is affiliated (see paragraphs 17 – 21 and 23 above) and is obliged to amend its statute and register the amendments or risk being excluded from a legal entity originally created by it, required an extremely sensitive, neutral approach to the conflict on the part of the domestic authorities. It concludes that the refusal of the Kyiv City State Administration to register the changes and amendments the applicant association's statute, as upheld by the Kyiv City Court and the Supreme Court (see paragraphs 42 and 50–52 above), constituted an interference with the applicant association's right to freedom of religion under Article 9 of the Convention, taken alone or read in the light of Article 11. In particular, the Court notes that by this interference the domestic authorities restricted the ability of the religious group concerned, which had no legal entity status, to exercise the full range of religious activities and activities normally exercised by registered non-governmental legal entities (see paragraphs 83 – 84 and 90 - 91 above). It also prevented it from joining the Kyiv Patriarchate as an independent religious group administering the affairs of a church it had built and been accustomed to worship in.

124. The Court must now determine whether such interference satisfied the requirements of paragraph 2 of these provisions, that is whether it was "prescribed by law", pursued one or more legitimate aims and was "necessary in a democratic society" (see, among many other authorities, *Metropolitan Church of Bessarabia*, cited above, § 106).

C. Whether the interference was prescribed by law

1. The parties' submissions

125. The Government submitted that the interference was lawful. In particular, they noted that the Ukrainian legislation contained certain requirements as to the statutes of religious organisations. These requirements were of a general nature and formulated in such a way as to avoid State interference with religious freedom. The Government referred, in particular, to section 12 of the Freedom of Conscience and Religious Organisations Act (hereinafter the "Act"), which had particular requirements concerning the statutes of religious organisations. It was because of the failure of these documents to comply with the applicant association's statute that the Kyiv City State Administration had refused to register the amendments (see paragraph 42 above).

126. The applicant association disagreed. In particular, it stated that the documents submitted for registration complied with the requirements of the statute, including those specified in Articles 6.1 and 6.2 (see paragraph 14 above). It further noted that the refusal to register the changes was unlawful.

2. The Court's assessment

127. The Court reiterates that a "law" must be formulated with sufficient precision to enable the citizen to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III; and *Ukrainian Media Group v. Ukraine*, no. 72713/01, § 48, 29 March 2005). The degree of precision depends to a considerable degree on the content of the instrument at issue, the field it is designed to cover, and the number and status of those to whom it is addressed (see *Groppera Radio AG and Others v. Switzerland*, judgment of 28 March 1990, Series A no. 173, p. 26, § 68).

128. In addition, there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by the Convention. It would be contrary to the rule of law for the legal discretion granted to the executive in areas affecting fundamental rights to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see, among many other authorities, *Amann v. Switzerland* [GC], no. 27798/95, ECHR 2000-II, §§ 55 and 56; *Rotaru v. Romania* [GC], no. 28341/95, ECHR 2000-V, §§ 55-63).

129. The Court considers that the interference with the applicant association's rights was prescribed by law, within the meaning of Article 9 § 2 of the Convention, as it was based on the provisions of section 15 of the Act. It is also of the opinion that this provision was sufficiently accessible.

130. As to "foreseeability" of the law, as applied to the present case, the Court considers that this requirement compelled the respondent State to enact legal provisions that listed in detail all the possible reasons and grounds for refusing to register changes and amendments introduced to the statutes of religious associations (see paragraphs 86 – 89 above). It notes that section 15 of the Act mentioned only one vague reason for refusal to register a religious association or changes to it: if "the statute of a religious organisation or its activity contravenes existing legislation". Moreover, section 15 of the Act required the registering body to give reasons for a refusal to register a religious association or its statute (see paragraph 83 above). However, the Act did not specify how detailed this reasoning should

be or whether the reasoning should refer only to the textual incompatibility of the Statute with the provisions of the law or substantive incompatibility of the aim and activities of the religious association with the requirements of the law. Thus, the Court finds it doubtful whether the provision at issue was "foreseeable" and provided sufficient safeguards against arbitrariness, not able to prevent possible abuse by the State registration body, which had unfettered discretionary powers in registration matters.

131. However, the Court further considers that the issue of "quality of the law" should be seen in the context of the circumstances of the present case, being closely linked with legitimate aim of the interference and its "necessity in a democratic society". These elements must therefore be discussed below and a conclusion reached as to whether there had been a violation of the aforementioned provisions.

D. Whether the interference pursued legitimate aim and was necessary in a democratic society

1. Legitimate aim

132. The Court notes that under Articles 9 § 2 and 11 § 2 of the Convention exceptions to freedom of religion and association must be narrowly interpreted, such that their enumeration is strictly exhaustive and their definition is necessarily restrictive (see, *mutatis mutandis*, *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, , § 38). Legitimate aims exhaustively listed in this provision include: the interests of public safety, the protection of public order, health or morals, or for the protection of the rights and freedoms of others (see paragraph 114 above).

133. In the Government's view, the refusal to register the changes to the statute served a legitimate aim, namely the protection of the rights of the majority of the religious group, who were also laymen and clerics of the Parish. The Government reiterated that the decision to change the denomination was taken by a minority of the Parish members – 21 out of a total of about 300 – who sought to impinge on the religious rights of the majority of the religious group. Further, once they had decided to join the Kyiv Patriarchate, the minority group could have established a different religious group within that Patriarchate and registered its statute under the auspices of another denomination, eventually becoming a legal entity affiliated to its chosen church. The applicant association had thus had every opportunity to freely exercise their right to manifest their religion, even without registration, and to enjoy their freedom of association, and the State had in no way interfered with those rights. Also, the members of the minority group could have stayed with the officially registered Parish and continue to manage its church affairs.

134. The applicant association submitted that the interference did not pursue a legitimate aim, as required by Article 9 § 2 of the Convention. In particular, a distinction had to be drawn between the members of the Parish and laymen, who attended religious ceremonies, but never participated in the management of church affairs or meetings of the Parishioners' Assembly. The laymen had never asked to become members of the Parish. In particular, the composition of the applicant association had been virtually unchanged since 1989, with the governing body – the Parishioners' Assembly – consistently having between 22 and 30 members. The Assembly had always complied with Article 2.12 of the statute when admitting new members.

135. The applicant association further stated that the Government had tried to substitute the real Parish with its previously non-existent clone composed of persons who had never belonged to the Parish, but had been compelled by Moscow Patriarchate representatives to participate in the "general assembly of the Parish" in January 2000 to force the original members of the Parish out and to prevent the transfer of the church and the religious association to the Kyiv Patriarchate. Under the statute (see paragraph 14 above) new members could only be admitted in accordance with the conditions specified in it (see Article 2.12 of the statute) and on a majority vote of the Parishioners' Assembly (Article 2.1). The applicant association therefore considered that it had been unlawfully expelled from the church it had previously occupied and managed.

136. Having regard to the circumstances of the case and the reasoning of the domestic courts, which upheld refusal of the Kyiv City State Administration to register changes and amendments to the statute, the Court considers that the interference complained of essentially pursued a legitimate aim under Article 9 § 2, namely protection of public order and safety and the rights of others.

2. Whether the interference was "necessary in a democratic society"

137. The Court notes at the outset that it is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups (see *Kokkinakis v. Greece*, judgment cited above, pp. 17 and 18, §§ 31 and 33). However, the list of these restrictions, as contained in Articles 9 and 11 of the Convention, is exhaustive and they are to be construed strictly, within a limited margin of appreciation allowed for the State and only convincing and compelling reasons can justify restrictions on that freedom. Any such restriction must correspond to a "pressing social need" and must be "proportionate to the legitimate aim pursued" (see, among others, *Wingrove v. the United Kingdom*, judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1956, § 53).

138. The Court's task is thus to determine whether the refusal to register changes and amendments to the statute of the applicant association were justified in principle and were proportionate to the legitimate aim pursued. In order to do so the Court must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *United Communist Party of Turkey*, cited above, § 47, and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, no. 46626/99, § 49, ECHR 2005-I (extracts)).

139. In this relation the Court observes that the grounds given by the domestic authorities for refusing registration of the applicant association were not consistent. Although the Kyiv City State Administration initially referred to Article 2.5 of the statute (see paragraph 42 above), this alleged defect in the documents submitted for registration was not the main ground for refusing the applicant association's re-registration in the subsequent judicial decisions (see paragraphs 50 - 52 above). In particular, the first-instance court found that the Parishioners' Assembly held on 24 December 1999 had invalid composition as it did not comprise all the members of the Parish (see paragraph 51 above) and the Supreme Court further ruled that the requirements of the statute regarding fixed membership were incompatible with the Act (see paragraph 52 above).

140. Thus, the Court considers it necessary to examine these three main reasons for refusing the applicant association's re-registration in turn and to test them against the criteria mentioned above (see paragraph 138 above).

i. Compliance with Article 2.5 of the statute

141. The Court observes that the applicant association's registration was originally refused on the basis of Article 2.5 of the statute, which provides that "all official Parish documents shall be signed by the prior and the chair of the Parishioners' Council". No other grounds were given by the Kyiv City State Administration to the applicant association (see paragraph 42 above).

142. The Court notes that it does not follow from Articles 6.1 and 6.2 of the statute (see paragraph 14 above) that the changes and amendments submitted to the State authorities for registration had to be signed by the prior and the chairman of the Parishioners' Assembly. It was clearly stated in Articles 6.1 and 6.2 of the statute and section 14 of the Act that changes and amendments were to be submitted in the same manner as documents produced on the initial registration of the association.

143. Furthermore, even supposing that the requirements of Article 2.5 of the statute were not satisfied, the Court notes that at the material time the

position of prior was vacant as the prior proposed by the Moscow Patriarchate had not been approved by the Parishioners' Assembly (see paragraphs 20 – 21 above), in which the power to appoint a prior was vested by virtue of under Article 2.2 of the statute (see paragraph 14 above). Moreover, on 31 January 2000 the Parishioners' Assembly informed the registration body of the appointment of Mr Pavlo Osnovyanenko, who had been proposed by the Kyiv Patriarchate, as its prior. This information appears to have been disregarded by the Kyiv City State Administration, which did not reply to the second request for registration by the applicant association (see paragraph 45 above).

144. The Court notes that the interpretation given by the domestic authorities to the wording of Article 2.5 of the statute does not reflect its provisions or those of Articles 6.1 and 6.2 of the statute. It follows that the arguments advanced by the Kyiv City State Administration for refusing to register the changes and amendments to the statute were neither "relevant nor sufficient".

ii. The finding that the Parishioners' Assembly held on 24 December 1999 was illegitimate as it did not comprise all the members of the Parish

145. The Court observes that section 7 of the Freedom of Consciousness and Religions Act gave no clear definition of a "religious organisation" (*релігійні організації*). Section 8 also defined religious groups (*релігійні групи*) as local level religious organisations (see paragraph 83 above) composed of "believers of the same religion or religious cult, who voluntarily united for the purposes of satisfying their religious needs". Contrary to the findings of the domestic courts, Sections 7 and 8 of the Act did not specify that a religious group had to be composed of all persons or all believers attending religious services of a particular church. Furthermore, there is a clear inconsistency in the domestic law as to what constitutes a "religious organisation" and what constitutes a "religious group", or whether they have the same meaning, the only difference between the two being the local status of a "religious group" and the lack of any requirement for its official registration under the Act. Moreover, under section 14 of the Act a "religious group" can become a "registered religious organisation" if a minimum of 10 citizens of Ukraine who have reached the age of majority request its registration with the local State administration.

146. Furthermore, section 8 of the Act did not place any restrictions on or prevent a religious organisation from determining at its own discretion the manner in which it would decide whether to admit new members, the criteria for membership and the procedure for electing its governing bodies. For the purposes of Article 9 of the Convention, read in the light of Article 11, these were private-law decisions, which should not be susceptible to interference by State bodies, unless they interfere with the rights of others or the restrictions specified in Articles 9 § 2 and 11 § 2 of the Convention. In other words, the State cannot oblige a legitimately

existing private-law association to admit members or exclude existing members. Interference of this sort would run counter to the freedom of religious associations to regulate their conduct and to administer their affairs freely. The Court must therefore examine the regulations contained in the statute as to membership of the Parish and the factual circumstances of the case.

147. It notes at the outset that the applicant association was created in April 1989 and until January 2000 was continuously composed of some 20 to 30 members (see paragraphs 11 and 22 above). At present it is still composed of 30 members (see paragraph 5 above). Furthermore, under Article 1.1 of the statute (see paragraph 14 above), the Parish is a religious group composed of secular priests, church ministers and laymen. In other words, this Article refers to those who were generally eligible for membership of the Parish. However, under Article 2.1 the highest governing body of the Parish was the Parishioners' Assembly, composed of the founding members and those admitted after the establishment of the Parish, on the conditions specified in Article 2.12 from among those generally eligible for membership of the Parish. The Court considers, therefore, that the Parish's internal organisation was clearly defined in the statute. The domestic authorities, including the courts, disregarded this internal structure of the Parish as a private-law association, stating the religious group concerned was a mere minority of the "permanent members of the religious group" composed of some 300 people, who were not invited to attend the meeting of the Parishioners' Assembly, even though they were part of the group.

148. However, it is not for the Court to substitute its own view for that of the relevant national authorities, by deciding how many members belonged to the Parish or calculating how many of them wished to change its denomination. The Court's task, as mentioned above, is to review the decisions the domestic authorities took in the exercise of their discretion and in accordance with the criteria mentioned above (see paragraph 138 above).

149. The Court notes that both the Kyiv City Court and the Supreme Court ignored the internal regulations of the Parish, and the history of the Parish administration from 1989 to 2000 and based their findings on an unclear reference in section 8 of the Act as to what constituted a "religious group" and to arguably analogous meanings of the words "parish", "group", "general assembly" and "parishioners' assembly". It accordingly finds that the Kyiv City Court's refusal to order the registration of the changes and amendments that had been made to the statute was based on reasoning that was not "relevant or sufficient".

iii. The requirement of "fixed membership"

150. The Court reiterates that religious associations are free to determine at their own discretion the manner in which new members are admitted and

existing members excluded. The internal structure of a religious organisation and the regulations governing its membership must be seen as a means by which such organisations are able to express their beliefs and maintain their religious traditions. The Court points out that the right to freedom of religion excludes any discretion on the part of the State to determine whether the means used to express religious beliefs are legitimate (see *Hasan and Chaush*, cited above, § 78; and *Manoussakis and Others v. Greece*, judgment of 26 September 1996, *Reports* 1996-IV, § 47).

151. The Court considers that the conclusions contained in the Supreme Court's ruling of 21 April 2000 that the requirement of "fixed membership" of a religious organisation was not laid down by legislation and that "parishioners' assembly" and "general assembly of a religious group" had analogous meanings so that the rights of the majority of the religious group and their right to exercise their religion were infringed, were neither "relevant and sufficient".

5. Overall conclusions

152. In the light of the foregoing and conclusions reached with regard to different reasons for refusal to register changes to the statute (see paragraphs 144, 149 and 151 above), the Court considers that the interference with the applicant association's right to freedom of religion was not justified. It also considers that the lack of safeguards against arbitrary decisions by the registering authority were not rectified by the judicial review conducted by the domestic courts, which were clearly prevented from reaching a different finding by the lack of coherence and foreseeability of the legislation. In summary, there has therefore been a violation of Article 9 of the Convention, read in the light of Articles 6 § 1 and 11 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

153. The applicant association complained that the domestic courts had erred in the assessment of the facts and the application of the law, when considering its complaint about the refusal to register the changes and amendments to the statute of the Parish. It referred to Article 6 § 1 of the Convention, which provides as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

154. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention and must be declared admissible. However, having regard to its findings under Article 9 § 1 of the Convention read in the light of Article 6, the Court finds that it is not necessary to examine the issues based on the same factual

circumstances under Article 6 § 1 of the Convention separately (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 118, ECHR 2001-XII).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. 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."

156. The applicant association submitted its claims for just satisfaction out of time. These submissions were not included in the case-file for examination by the Court. Accordingly, the Court considers that there is no call to award any sum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Rejects* the Government's objections as to the admissibility of the application;

2. *Declares* the complaint concerning Articles 6 § 1 and 9 of the Convention admissible and the remainder of the application inadmissible;

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

4. *Holds* that there is no need to examine the complaint under Article 6 § 1 of the Convention.

Done in English, and notified in writing on 14 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President