

BUSCARINI and OTHERS v. SAN MARINO

Freedom of thought, conscience and religion – violation

Article 9

Requiring elected representatives of the people to swear allegiance to a particular religion was not compatible with Article 9

In a judgment delivered at Strasbourg on 18 February 1999 in the case of *Buscarini and Others v. San Marino*, the European Court of Human Rights held unanimously that there had been a violation of Article 9 (freedom of thought, conscience and religion) of the European Convention on Human Rights.

1. Principal facts

The applicants, Mr Cristoforo Buscarini, Mr Emilio Della Balda and Mr Dario Manzaroli, are San Marinese nationals. They were born in 1943, 1937 and 1953 respectively and live in San Marino.

On 18 June 1993 the applicants, who had been elected to the San Marinese parliament (the *Consiglio Grande e Generale*), took their oath of office in writing, omitting the reference to the Gospels required by section 55 of the Elections Act. On 26 July 1993 the parliament ordered the applicants to retake the oath, this time on the Gospels, on pain of forfeiting their seats. The applicants complied with this order, albeit complaining that their right to freedom of religion and conscience as guaranteed by Article 9 of the European Convention on Human Rights had been infringed.

In October 1993 Law No. 115 introduced a choice for Members of Parliament between the traditional oath and one in which the reference to the Gospels was replaced by the words “on my honour”. The traditional wording is still mandatory for other categories of public office.

2. Procedure of the Court

The application was lodged with the European Commission of Human Rights on 17 November 1993. Having declared the application admissible, the Commission adopted a report on 2 December 1997 in which it expressed the unanimous opinion that there had been a violation of Article 9 of the Convention. The case was referred

to the Court by the first applicant on 10 March 1998, by the Government of the Republic of San Marino on 16 March 1998 and by the second applicant on 3 April 1998. The third applicant stated that he did not wish to take part in the proceedings.

Under the transitional provisions of Protocol No. 11 to the Convention, the case was referred to the Grand Chamber of the European Court of Human Rights on the entry into force of the Protocol, on 1 November 1998.

3. Summary of the judgment

Complaint

The applicants complained that ordering them to swear on the Gospels on pain of forfeiting their parliamentary seats had infringed their right to freedom of religion and conscience guaranteed under Article 9 of the European Convention of Human Rights.

Decision of the Court

The Government's preliminary objections

The Court first dismissed the respondent Government's preliminary objections, which were that the application was an abuse of process, that it had been lodged out of time and that domestic remedies had not been exhausted.

The merits of the complaint

The Court began by reiterating the relevant principles of its own case-law (see the *Kokkinakis v. Greece* judgment of 25 May 1993, Series A no. 260-A, p. 17, section 31, 4 HRCED 90 [1993]).

The Government's arguments had focused on, *inter alia*, the importance of the oath taken by elected representatives of the people; the special character of San Marino, the history and national traditions of which were linked to Christianity since the Republic had been founded by a saint; and the assertion that the religious significance of the oath had now been replaced by "the need to preserve public order, in the form of social cohesion and the citizens' trust in their traditional institutions". Dealing with these points, the Court observed that, regardless whether the aims referred to by the Government were legitimate or not – a matter on which it did not consider it necessary to rule – it was not in doubt that, in general, San Marinese law guaranteed freedom of conscience and religion. In the instant case, however, requiring the applicants to take the oath on the Gospels had been tantamount to requiring two elected representatives of the people to swear allegiance to a particular religion, a requirement which was not compatible with Article 9 of the Convention. As the Commission had rightly stated in its report, it would be

contradictory to make the exercise of a mandate intended to represent different views of society within parliament subject to a prior declaration of commitment to a particular set of beliefs. The limitation complained of accordingly could not be regarded as “necessary in a democratic society”.

As to the Government’s argument that the application had ceased to have any purpose when Law No. 115/1993 was enacted, the Court noted that the oath in issue had been taken before the passing of that legislation.

Application of Article 41 of the Convention

The Court considered that, in the circumstances of the case, the finding of a violation of Article 9 of the Convention constituted sufficient just satisfaction. As regards costs and expenses, the applicants’ claim was not quantified and the Court accordingly dismissed it.

Judgment was given by a Grand Chamber of 17 judges, composed as follows:

Luzius Wildhaber (Swiss), President, Elisabeth Palm (Swedish), Luigi Ferrari Bravo (Italian), Lucius Cafilisch (Swiss), Pranas Kuris (Lithuanian), Jean-Paul Costa (French), Willi Fuhrmann (Austrian), Karel Jungwiert (Czech), Marc Fischbach (Luxemburger), Boštjan Zupancic (Slovenian), Nina Vajic (Croatian), Wilhelmina Thomassen (Dutch), Margarita Tsatsa-Nikolovska (FYROMacedonian), Tudor Pantiru (Moldovan), Egils Levits (Latvian), Kristaq Traja (Albanian), and Snejana Botoucharova (Bulgarian), Judges.