

uk. The Court expressly rejected that as a correct proposition of law, stating that the liability had to be assessed using the test propounded in *Wise v Metcalfe* (1829) 10B&C 299 and *Pell v Addison* (1862) F&F 291. The matter was put beyond doubt by section 2 of the Chancel Repairs Act 1932. The Court rejected the defendants' arguments that the claimant was asking for a 'Rolls Royce job', that the Church ought 'to act in accordance with its own teaching and temper the wind to the shorn lamb' and that the law was anachronistic and unfair, pointing out that law reform was not the job of the courts, which had to take the law as they found it. The Court rejected the claimant's claim for the costs of surveys and a contingency fund as these were not required to put the chancel into a state of proper repair, and granted the claimant its full costs as the amount found to be due exceeded a without prejudice offer of settlement made by the claimant prior to the hearing. [JG]

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True Orthodox Church in Moldova and Others v Moldova

European Court of Human Rights: February 2007¹

Registration of churches – court order – ECHR Articles 9 and 13

The claimants joined together to form the True Orthodox Church in Moldova (*Biserica Adevărat Ortodoxă din Moldova*) and applied for registration by the Government on the basis of the Religious Denominations Act (Law No 979-XII of 24 March 1992). When the authorities refused to register the Church, the claimants initiated court proceedings and, in August 2001, the Moldovan Court of Appeal ordered the government to register the Church and awarded each of the claimants a small sum in damages. On 29 May 2002, the Supreme Court of Justice upheld that judgment. In spite of repeated requests by the claimants and intervention by the Decisions Enforcement Department, the State Service for the Protection of Religious Denominations failed to register the Church. The government made three attempts to reopen the proceedings, claiming that there was new and relevant information that had not been previously available: all three were rejected by the courts. In June 2004, the claimants submitted a new application, with accompanying documentation, requesting registration. They received no reply.

The claimants complained to the European Court of Human Rights, *inter alia*, that the refusal of the state authorities to register the Church had amounted

¹ The provisional full text is available under its Romanian title (*Biserica Adevărat Ortodoxă din Moldova and Others v Moldova*) through <<http://cmiskp.echr.coe.int/tkp197/default.htm>>, accessed 29 March 2007.

to a violation of their right to freedom of religion as guaranteed by Article 9 §1 of the Convention and that the failure to enforce the judgment in their favour had violated their rights under Article 6 §1 and Article 1 of Protocol No 1. The Court concluded that the failure of the Moldovan authorities to register the Church (and therefore give it legal personality) prevented it and its followers from carrying out a number of essential functions. In essence, the refusal of the authorities to comply with the final judgment of the domestic courts and to register the Church had brought about a situation that, from the claimants' point of view, had the same effect as a rejection by the domestic courts of their claims. The Court therefore held that the authorities' inaction constituted an interference with the right of freedom of religion under Article 9 §1. Moreover, since the claimants had not had any effective remedy available to them in respect of their request to have the Church registered, there had also been a violation of Article 13 (right to an effective remedy). It should be noted that this is not the first time that the Court has found against Moldova under Article 9 in a registration case: see *Metropolitan Church of Bessarabia and Others v Moldova* [2001] ECHR (45701/99).

Case note supplied by Frank Cranmer

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Re All Saints, Burbage

Salisbury Consistory Court: Wiggs Ch, February 2007

Re-ordering – no necessity

The petitioners sought leave to remove all the remaining pews in the church and to replace them with chairs, to lower the pew platforms to the level of the surrounding floor and to relocate the font. The chancellor refused the petition, having concluded, applying the *Bishopsgate* test, that the petitioners had not proved that the re-ordering was necessary. [JG]

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R (on the application of Gibbs) v Bishop of Manchester

High Court, Queen's Bench Division: Munby J, February 2007

Revocation of licence on notice – reasons – right of appeal

After a risk assessment of G had been conducted, the bishop revoked G's licence to serve as a Church Army captain within the diocese. In so doing, the bishop