

9 June 2009

MOLDOVA: Controversial new penalties for religious activity

By Felix Corley, Forum 18

Moldova's new Administrative Code replaces an article condemned by the European Court of Human Rights (ECtHR) in Strasbourg with an almost identical article, Forum 18 News Service notes. Article 54 Part 3, which came into force on 31 May, less than three weeks after the article it replaces was condemned by the ECtHR, punishes unregistered religious activity "which contradicts the Law on Religious Denominations and its constituent parts." The only change from the condemned former Article 200 Part 3 is the replacement of the last phrase, which read "which contradicts the current legislation." The ECtHR condemned the Article, as a breach of the European Convention on Human Rights, in a May judgement in the case of local Muslim Talgat Masaev who was punished for conducting unregistered religious worship. Christian, Muslim and Jehovah's Witness religious communities are also concerned at other parts of the Administrative Code, including a ban on "violating the exclusive rights of religious denominations to the publication, printing, preparation, sale or distribution by other means of cult objects."

Moldova's new Code of Administrative Offences, which came into force on 31 May, contains a controversial Article with a range of punishments for peaceful religious activity, Forum 18 News Service notes. Article 54 punishes those who conduct religious activity without state registration – a provision already condemned by the European Court of Human Rights (ECtHR) in Strasbourg in a judgement handed down in May. The Article also prescribes a fine and deportation for foreigners who conduct religious activity without notifying the local authority in advance – a provision condemned by the Council of Europe's Committee of Ministers.

One source told Forum 18 from the capital Chisinau that provisions of this article relating to foreigners have been suspended, but the Interior Ministry has failed to respond to Forum 18 over whether this is so or not. However, Tatyana Filatova of the Justice Ministry insists that "there can't have been such an order". "Only parliament could have taken such a decision," she told Forum 18 from Chisinau on 8 June.

In a May judgement in the case of a local Muslim Talgat Masaev who had been punished for conducting religious worship without state registration, the ECtHR described the then Article 200 Part 3 as a "limitation on the right to freedom of religion" (see below). Masaev was punished after his Muslim community – along with many others – had been repeatedly denied legal status, a problem that persists today.

As well as the Muslim community, Protestant communities, individual parishes of the Bessarabian Metropolitanate of the Romanian Orthodox Church, the Ukrainian Orthodox Church of the Kiev Patriarchate, and the Falun Gong movement have all been denied registration (see F18News 29 January 2008 http://www.forum18.org/Archive.php?article_id=1077).

One local human rights observer described the new provisions of the new Article 54 to Forum 18 as "quite controversial", adding that they "do not exactly follow the requirements of the ECtHR".

The new punishments

The new Code of Administrative Offences was adopted by parliament on 24 October 2008 and published in the Official Monitor on 16 January 2009, the Justice Ministry's legal database website records. Several other articles of the new Code have been amended since it was adopted by Parliament, though not Article 54.

Article 54 Part 3 punishes "performing religious services and rituals in the name of a registered or unregistered religious denomination or in one's own name which contradict the Law on Religious Denominations and its constituent parts" with a fine of between ten and twenty units. (Article 34 of the Code sets each unit at 20 Lei – currently 12 Norwegian Kroner, 1.3 Euros or 1.8 US Dollars). Officials are likely to interpret this Article as allowing punishment for unregistered religious activity.

The only difference between this provision and the old Article 200 Part 3 condemned by the ECtHR in the Masaev case (see below) is the replacement of the phrase "which contradicts the current legislation" with the phrase "which contradict the Law on Religious Denominations and its constituent parts." Both the old article and its replacement have the same effect – to punish unregistered religious worship and activity.

Article 54 Part 4 punishes "performing religious activity by foreign citizens in public places without prior notification to the mayor's office of the corresponding centre of population" with a fine of between 40 and 50 units and deportation.

Article 54 Part 5 punishes "insulting the religious feelings of physical people and causing outrage to their honoured objects, premises, monuments and their conceptual symbols" with a fine of 20 to 30 units or community service of 40 to 60 hours.

Article 54 Part 6 punishes "violating the exclusive rights of religious denominations to the publication, printing, preparation, sale or distribution by other means of cult objects" with a fine of 25 to 35 units.

Article 54 replaces the controversial Article 200 of the old Code of Administrative Offences, which included similar punishment for unregistered religious activity and provided for fines and deportation of foreigners who conducted religious activity without local authority permission. The punishment for those who invited the foreigners has now been removed.

Religious communities' concerns

Religious communities within Moldova told Forum 18 of concerns over many of the new Article's provisions. Valeriu Ghiletschi, a parliamentary deputy of the opposition Liberal Democratic Party and until recently the head of the Baptist Union, told Forum 18 on 1 June that the new punishments in Article 54 were "part of a desire by Moldova's Communist government to control and limit religious freedom". He points to vague wording in Article 54 Part 3 over what actions constitute "contradicting" the Religion Law. He said his party had tried to object to the inclusion of punishments for foreigners who conduct religious activity.

Victor Pavlovski, deputy head of the Pentecostal Union, says that everything depends on how Article 54 is interpreted by the courts. "The Article could be used to defend or offend religious rights," he told Forum 18 from Chisinau on 1 June. However, he remains sceptical about the authorities' intentions. "They want religious communities to be more and more under their control."

Masaev fears that Article 54 could be used to punish him and members of his Muslim community just as he was earlier fined under Article 200. "When they [the authorities] get the command, they'll do it," he told Forum 18 from Chisinau on 27 May. "The police always say to us 'we're just little people who are just fulfilling the orders we get from above'."

The Muslim community Masaev leads has often faced police raids during or immediately after Friday prayers (see F18News 29 January 2008 http://www.forum18.org/Archive.php?article_id=1077).

Anatoly Cravciuc of the Jehovah's Witnesses told Forum 18 that the punishment prescribed for foreigners is "harsh", but said his community has not suffered problems under the parallel provision of the old Code. He said they notify the authorities in advance whenever foreign speakers attend their congresses. He said it is "difficult to see" how Article 54 Part 5 will be implemented. He believes that Article 54 Part 6 is most likely to be used in the battle between competing Orthodox jurisdictions.

Cravciuc adds that he remains sceptical that the Jehovah's Witnesses will be able to use the new Article 54 Part 1 – which punishes those who obstruct others from enjoying their right to religious activity – to defend themselves. He points to numerous cases where police and prosecutors have failed to take action against those he says have physically attacked their members and their property, whether local officials, Orthodox priests or local people.

Council of Europe criticism

The punishments in the new Code for foreign citizens were heavily criticised by the Committee of Ministers of the Council of Europe at its 4 December 2008 meeting (see http://wcd.coe.int/ViewDoc.jsp?id=1378849&Site=CM#P174_19595). It welcomed the scrapping of the requirement for foreigners to have permission before the conduct religious activity. "It is nonetheless difficult to see the proportionality criteria which permit such a heavy sanction (expulsion from the country) for the simple failure to give prior notification to the public authorities of involvement in religious activities," it added. "In this respect it is also noted that under the current formula, expulsion is not dependant on any challenge to public order or other excessive behaviour on the part of those involved."

The Committee also questioned the "exclusive rights" that religious denominations have to produce religious literature.

Possibly as a result of such criticism, on 9 February the Permanent Government Commission established in September 2008 to implement ECtHR decisions urged the Interior Ministry, Prosecutor General's Office and Supreme Court to take the necessary steps in order to prevent expulsion of foreign religious believers who hold religious activity in public places without first notifying the mayor's office, one Chisinau-based observer told Forum 18. As a result, on 23 February the Interior Ministry is said to have issued an order not to apply at least some provisions of Article 54 until the necessary amendments to the Code are confirmed.

Despite repeated requests for information, the Interior Ministry has failed to respond to Forum 18's written question sent on 1 June as to whether some or all of the provisions of Article 54 have been suspended.

Lilia Grimalschi, a Justice Ministry official who is also on the Permanent Government Commission, told Forum 18 on 1 June that the Commission had discussed the issue of the deportation of foreigners who conducted religious activity without notifying the local authorities. She said the Commission sent several letters to the Interior Ministry asking it not to put that part of Article 54 into effect. However, she referred all further enquiries to fellow Justice Ministry official Filatova.

Filatova, who heads the Ministry's Directorate for Issuing Normative Acts, insisted that no Interior Ministry order could be issued to suspend provisions of the Code of Administrative Violations.

Strasbourg victory for one Muslim

On 12 May the ECtHR ruled unanimously that the Moldovan government had violated the rights of Talgat Masaev, a Muslim, to practice his faith freely after police broke up unregistered religious worship he and others were attending in a private home back in January 2004. He was subsequently fined under Article 200 part 3 of the then Code of Administrative Offences, which punished "unlawful" religious rituals.

In the judgement in the case (Application No. 6303/05

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=850292&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>), the Court rejected the Moldovan government's argument that punishing "individual members of an unregistered religious denomination for praying or otherwise manifesting their religious beliefs" is compatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

"To admit the contrary would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to admitting that a State can dictate what a person must believe," the judgement ruled. "The Court cannot agree with such an approach and considers that the limitation on the right to freedom of religion provided by Article 200 part 3 of the Code of Administrative Offences constituted an interference which did not correspond to a pressing social need and was therefore not necessary in a democratic society."

The Court noted that Article 200 of the old Code of Administrative Offences has now been replaced by Article 54 of a new Code of Administrative Offences, which similarly punishes so-called "unlawful" religious activity.

The Court ordered the government to repay Masaev 26 Euros – the fine levied on him in 2004 – and also awarded him 1,500 Euros for "non-pecuniary damage" and 1,000 Euros in costs. The fine becomes payable when the court decision becomes final (three months after it is delivered, unless the government challenges the ruling) and is payable in the three months thereafter.

What will government's response be?

"It is too early to say if we will challenge the ruling," Vladimir Grosu, the Moldovan government's agent at the ECtHR, told Forum 18 from Chisinau on 1 June. "We are still studying what the Court said." He added that given the political crisis in Moldova, the government cannot take any decision now. (Violent protests followed the disputed 5 April parliamentary elections and on 3 June parliament failed on the second attempt to elect a new president, opening the way for new parliamentary polls.)

But Grosu pointed out that the ECtHR judgement solely concerned the punishment for unregistered activity and the way the courts handled the case. He stressed that the court made no reference to the long-running denial of registration to Masaev's Muslim community, unlike the 2001 ECtHR judgement on the Bessarabian Orthodox Metropolitanate and the 2007 ECtHR judgement on the True Orthodox Church, both of which the Moldovan government also lost. The government was forced to register both jurisdictions in the wake of these judgements, though President Voronin subsequently threatened to strip the Bessarabian Metropolitanate of its registration (see F18News 29 January 2008 http://www.forum18.org/Archive.php?article_id=1077).

Grosu told Forum 18 that the government would have to reconsider Article 54 Part 3 of the new Code in the light of the Strasbourg judgement. However, he refused to speculate on whether any other controversial provisions of the Article would be changed.

Masaev welcomed the ECtHR's finding in his favour. "Europe hasn't turned its back on us Muslims," he told Forum 18. He regretted the time, effort and money it had taken on both sides to reach the judgement in Strasbourg, blaming the government officials who had denied his community registration over many years. "If those who had taken the wrong decisions had to pay the fine, they would have taken better decisions." He said he has had no contact with the government since the decision was handed down. (END)

Further coverage of freedom of thought, conscience and belief in Moldova is available at <http://www.forum18.org/Archive.php?query=&religion=all&country=18&results=50>.

A printer-friendly map of Moldova is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=europe&Rootmap=moldov>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY