



Dismissal of civil action on grounds of Holy See's jurisdictional immunity did not violate Convention

In today's **Chamber** judgment¹ in the case of [J.C. and Others v. Belgium](#) (application no. 11625/17) the European Court of Human Rights held, by a majority (six votes to one), that there had been:

no violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.

The case raised the question of the immunity of the Holy See from the jurisdiction of domestic courts. It concerned in particular an action for compensation brought by 24 applicants against the Holy See and against a number of leaders of the Catholic Church of Belgium and Catholic associations, claiming that damage had been caused by the structurally deficient manner in which the State had dealt with the problem of sexual abuse in the Church. As the Belgian courts had found that they did not have jurisdiction in respect of the Holy See, the applicants argued that they had been deprived of access to a court and relied on Article 6 § 1 before the European Court of Human Rights.

The Court found that the dismissal of the proceedings by the Belgian courts in declining jurisdiction to hear the tort case brought by the applicants against the Holy See had not departed from the generally recognised principles of international law in matters of State immunity, and the restriction on the right of access to a court could not therefore be regarded as disproportionate to the legitimate aims pursued.

Principal facts

The applicants are 24 Belgian, French and Dutch nationals. They allege that they were victims of sexual abuse by Catholic priests when they were children.

In July 2011 the applicants filed a class action in the Ghent Court of First Instance, complaining of the structurally deficient way in which the Church had dealt with the known problem of sexual abuse within it. The action was brought against the Holy See as well as an archbishop of the Catholic Church in Belgium and his two predecessors, several bishops and two associations of religious orders.

Basing their action on Articles 1382 and 1384 of the Civil Code, the applicants requested primarily that the defendants be held jointly and severally liable for the damage they claimed to have sustained as a result of the alleged sexual abuse by Catholic priests or members of religious orders. They also claimed that the defendants should be jointly and severally liable to pay compensation of EUR 10,000 to each of them because of the Catholic Church's policy of silence on the issue of sexual abuse.

In October 2013 the Ghent Court of First Instance declined jurisdiction in respect of the Holy See.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In February 2016 the Ghent Court of Appeal upheld this judgment. It found, in particular, that it did not have a sufficient jurisdictional basis to rule on the claimants' action because of the Holy See's immunity from legal proceedings. It also stated that Belgium's recognition of the Holy See as a foreign sovereign with the same rights and obligations as a State was conclusively established. This recognition resulted from a series of commonly agreed elements of customary international law, foremost among which were the conclusion of treaties and diplomatic representation. The Holy See therefore enjoyed diplomatic immunity and all State privileges under international law, including jurisdictional immunity. The Court of Appeal also noted that the dispute did not fall within any of the exceptions to the principle of State immunity from jurisdiction.

In August 2016 a lawyer at the Court of Cassation gave a negative opinion on the chances of success of a possible appeal to the Court of Cassation.

Subsequently, all but four claimants who did not apply were able to obtain compensation through the arbitration centre for sexual abuse claims set up within the Catholic Church.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right of access to a court), the applicants complained that the application to the Holy See of the principle of State immunity from jurisdiction had prevented them from asserting their civil claims against it.

The application was lodged with the European Court of Human Rights on 2 February 2017.

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

Georgios A. **Serghides** (Cyprus), *President*,
Paul **Lemmens** (Belgium),
Georges **Ravarani** (Luxembourg),
María **Elósegui** (Spain),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

[Article 6 § 1 \(right of access to a court\)](#)

The present case was the first one to deal with the immunity of the Holy See.

The Court noted that the Court of Appeal had found that the Holy See was recognised internationally as having the common attributes of a foreign sovereign, with the same rights and obligations as a State. The Court of Appeal had noted in particular that the Holy See was a party to some major international treaties, that it had signed agreements with other sovereign entities and that it enjoyed diplomatic relations with some 185 States worldwide. As regards Belgium, more specifically, diplomatic relations with the Holy See dated back to 1832 and it was recognised as a State.

The Court did not find anything unreasonable or arbitrary in the detailed reasoning which led the Court of Appeal to reach that conclusion. It pointed out that it had itself previously characterised agreements between the Holy See and other States as international treaties². Therefore the Holy See

² *Fernández Martínez v. Spain* [GC], no. 56030/07, § 118, ECHR 2014 (extracts), and *Travaš v. Croatia*, no. 75581/13, § 79, 4 October 2016.

could be recognised as having characteristics comparable to those of a State. The Court of Appeal had thus been justified in inferring from those characteristics that it was a sovereign power with the same rights and obligations as a State.

The Court pointed out that it had also accepted that the granting of State immunity in civil proceedings pursued the legitimate aim of observing international law for the sake of comity and good relations between States, by ensuring respect for the sovereignty of another State.

As to the proportionality of the limitation sustained by the applicants in their right of access to a court, the Court found that the Court of Appeal's approach corresponded to international practice in such matters. It had not noted anything arbitrary or unreasonable in the Court of Appeal's interpretation of the applicable legal principles, or in the way it had applied them to the facts of the case, taking account of the basis of the applicants' action.

The Court also noted that the question whether the case could fall within one of the exceptions to the application of the jurisdictional immunity of States³ had also been discussed before the Court of Appeal. The exception invoked by the applicants applied to proceedings relating to "an action for pecuniary compensation in the event of the death or physical injury of a person, or in the event of damage to or loss of tangible property". The Court of Appeal had rejected this exception on the grounds, among others, that the misconduct of which the Belgian bishops were accused could not be attributed to the Holy See, as the Pope was not the principal in relation to the bishops; that the misconduct attributed directly to the Holy See had not been committed on Belgian territory but in Rome; and that neither the Pope nor the Holy See had been present on Belgian territory when the misconduct attributed to the leaders of the Church in Belgium had been committed. It was not for the Court to substitute its own assessment for that of the national courts, since their assessment on this point had not been arbitrary or manifestly unreasonable.

The Court also noted that the proceedings brought by the applicants in the Ghent Court of First Instance had not been directed solely against the Holy See, but also against officials of the Catholic Church in Belgium whom the applicants had identified. However, the applicants' claim on this ground was unsuccessful owing to the applicants' failure to comply with procedural rules laid down in the Judicial Code and substantive rules concerning civil liability in summoning the other defendants. The reason why the applicants' action had been totally unsuccessful had thus been the result of procedural choices that they failed to cure in the course of the proceedings in order to specify and individualise the facts submitted in support of their claims.

Consequently, the Court found that the dismissal of the proceedings by the Belgian courts in declining jurisdiction to hear the tort case brought by the applicants against the Holy See had not departed from the generally recognised principles of international law in matters of State immunity and the restriction on the right of access to a court could not therefore be regarded as disproportionate to the legitimate aims pursued. **There had therefore been no violation of Article 6 § 1 of the Convention.**

Separate opinion

Judge Pavli expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in French.

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³ They are enshrined by the European Convention on State immunity and the United Nations Convention on Jurisdictional Immunities of States and Their Property.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel : + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel : + 33 3 88 41 35 30)

Denis Lambert (tel : + 33 3 90 21 41 09)

Neil Connolly (tel : + 33 3 90 21 48 05)

Jane Swift (tel : + 33 3 88 41 29 04)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.