Copy – Art. 792 – C.J.
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Art. 280.2 Code of [illegible]

No. *[handwritten:] 2575*
2006/KR/223

PUBLIC HEARING
OF 12/07/2006

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The APPELLATE COURT OF BRUSSELS, 21st Chamber,
renders the following decision:

No. *[illegible handwriting]*

In the case of

A.S.B.L. FAMILY FEDERATION FOR WORLD

PEACE AND UNIFICATION,

with headquarters located at 1070 BRUSSELS, rue Erasme 31,

appellant,

represented by Atty. DELNOIS Charles, lawyer at 1180 BRUSSELS, Rue Edith Cavell 124, and Atty. WOUTERS Inès, lawyer at 1050 BRUSSELS, Avenue Louise 208,

vs.

1. **THE BELGIAN STATE,**

represented by the Minister of the Interior, with offices located at 1000 BRUSSELS, rue de la Loi 2,

respondent,

represented by Atty. DERRIKS Elisabeth, lawyer at 1050 BRUSSELS, Avenue Louise 486/8,

No. *[handwritten:] 2576*
2006/KR/223

[stamp:] 12/07/2006

in the presence of

1. **JACQUES, Philippe,**
domiciled at 1325 CHAUMONT-GISTOUX, Rue Collebrine 7,

2. **DELENS, Jean-Pierre,**
domiciled at 1380 LASNE, Chemin du Lanternier 77,

3. **BRUFFAERTS, Yvo,**
domiciled at 3078 EVERBERG, Heuvelstraat 2,

4. **KAYEMBE, Modeste,**
domiciled at 1800 VILVOORDE, Vijfhoek Straat 40,

5. **BIERNAUX, Jacqueline,**
domiciled at 1082 BRUSSELS, Rue de l'Eglise 57,

6. **VERACX, Hugo,**
domiciled at 1790 AFFLIGEM, Steenbergstraat 26,

7. **OGBEIDE, Christopher,**
domiciled at 1000 BRUSSELS, Zvenue [sic] de la Brabançonne 80/18,

8. **BATANGA, Marco,**
domiciled at 1050 BRUSSELS, Rue du Bourgemestre 5,

9. **AFANSALA, Gilbert,**
domiciled at 1190 BRUSSELS, Rue des Alliés 370,

10. **CUNNINGHAM, Zidan,**
domiciled at 7543 MOURCOURT, Rue Cache Ferrain 4,

11. **ROBINET, Simon,**
domiciled at 7030 SAINT-SYMPHORIEN, Rue Dehon 26,

voluntary intervening parties,
represented by Atty. DELNOIS Charles, lawyer at 1180 BRUSSELS, Rue Edith Cavell 124, and Atty. WOUTERS Inès, lawyer at 1050 BRUSSELS, Avenue Louise 208,

After reviewing the documents of the proceedings and in particular:

- the order rendered in adversarial proceedings by the President of the Court of First Instance of Brussels, ruling in summary application on April 28, 2006, for which no service document has been produced;
- the appeal petition filed by A.S.B.L. FAMILY FEDERATION FOR WORLD PEACE AND UNIFICATION with the court office on May 26, 2006;
- the petition for voluntary intervention filed with the court office on August 24, 2006;
- the synthesis conclusions filed with the court office on September 15, 2006 by which the Belgian State files a cross-appeal.

I. Presentation of the pertinent facts

According to the exhibits and the statements of the parties, the pertinent facts related to the petitions filed with the court may be presented as follows.

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On September 16, 2005, the counsel of Mr. Sun Myung Moon, founder of the Unification Church, and of his wife, Mrs. Hak Ja Han, both of Korean nationality, requests a meeting with a member of the Office of Foreigners in order to present the case of his clients invited to go to Belgium on next November 5 in order to present the Universal Peace Federation. Indeed, Sun Myung Moon, who is a Korean national and should be exempt from requesting a visa, is obligated to obtain one to go to Belgium, because he is listed in the Schengen Information System following the issuance of an alert by Germany.

The Office of Foreigners answered immediately *"I am drawing your attention as of now to the fact that the registration in the SIS leads in principle to a rejection of any request for visa for the 'Schengen' space. It is up to the interested party to file an application with the country(ies) concerned in order to be removed from the alert list."* The next September 29, the counsel of the Moon spouses sent him the conclusions of advocate general J. Kokott , filed with the Commission of European Communities against the Kingdom of Spain, according to which each State must examine, case by case, whether or not it is appropriate to grant entry to the territory or to deliver a visa, when the persons concerned are listed in the SIS.

Then, the Office of Foreigners wanted to know the practical modalities of the trip planned. It was answered that the Moon spouses should arrive at Brussels National Airport on November 5, 2005 in the morning and were to leave the next morning.

Since the answer of the Minister of the Interior was not forthcoming, the day of the event was postponed to December 2005, and then to February 2006.

Finally, by letter of January 5, 2006, the Minister of the Interior informed the counsel of the Moon spouses:

"*I received your letters concerning the visit Mr. Moon wishes to make in Belgium as part of his worldwide tour and following the invitation of the appellant 'Interreligious and International Federation for World Peace.'*

However, I am sorry to inform you that I did not find it appropriate to derogate to the access rules to the Schengen space.

Since Mr. Moon is listed in the Schengen Information System following the issuance of an alert by Germany for reasons of public policy, he does not meet all the conditions to gain access to the Schengen territory. Until today, this country did not remove the alert for this person, in spite of the steps that would have been taken in this sense.

As long as this alert is in force, Mr. Moon will not be authorized to enter Belgian territory."

II. History of the proceedings

On January 30, 2006, the a.s.b.l. Family Federation for World Peace and Unification summoned the Belgian State before the President of the Court of First Instance of Brussels ruling in summary application. Called urgently, it requested the sentencing of the Belgian State to authorize the entry of the Moon spouses into Belgian territory for the conference of March 4, 2006, for the preceding two days and following two days, and if said conference could not take place on that date, rule that the authorization will also be valid for the replacement conference.

By order of April 28, 2006, the President of the Court of First Instance decided that the petition was admissible, but unfounded and sentenced the appellant to pay costs.

III. Petitions filed with the court

The appellant repeats before the court its request for sentencing of the Belgian State to authorize the entry of the Moon spouses into Belgian territory for the "*replacement*" conference it will organize, including the preceding and the following two days, under daily penalty of 250,000 € per day of delay. Secondarily, it urged the court to file a preliminary point of law with the Court of Justice of the European Union.

The spouses P. Jacques, J.P. Delens, Y. Bruffaerts, M. Kayembe, J. Biernaux, H. Veracx, C. Ogbeide, M. Batanga, G. Afansala, A. Cunningham and S. Robinet voluntarily intervene for the admission of the petition of the appellant, in which they are members.

The Belgian State contests the admissibility of the appeal. It also contests the voluntary interventions.

On the original petitions, it considers that the order must be reformed for the main reasons that the ordinary jurisdictions do not have jurisdiction to hear the petition and, secondarily, that the petition is inadmissible. Further, secondarily, it considers that it is not founded.

IV. Discussion and decision of the court

1. The admissibility of the appeal

According to the Belgian State, the appeal would be inadmissible for the cause of action of the appellant because it lacks object, since Sun Myung Moon's European tour ended and no other date is scheduled.

However, the appellant, whose corporate object is in particular to spread its ideas especially through conferences, discussions and seminars, declares that it wishes to organize soon, given their old age, a conference in which the Moon spouses would participate and for that purpose it requests that a temporary stay authorization be granted to them. Consequently, the appeal does have an object.

2. The jurisdiction

According to the Belgian State, the appellant does not have any subjective right whose violation would justify the measure it requests from the judicial courts. Consequently, the latter would not have jurisdiction to force the Belgian State to grant the litigious stay authorizations, which depend exclusively on its power of appreciation at discretion.

The appellant invokes the violation by the Belgian State of international commitments, such as the Schengen Convention and the European Convention on Human Rights and Fundamental Freedoms, in short E.C.H.R. [European Convention on Human Rights], in particular its Articles 8, 9, 11 and 14.

These contractual provisions create subjective rights and allow persons found in the territory to claim compliance therewith by the Belgian State, refraining from acts of interference incompatible with the E.C.H.R., or even by carrying out positive acts in order to assure their enforcement.

Subject to the good grounds of the charges made by the appellant, according to which the refusal of the visa to Sun Myung Moon is contrary to these international provisions or some of them, suffice it to find at this stage that, under Article 144 of the Constitution, the court has the power to hear the petition.

3. Admissibility of the original petition

Standing to act

According to the Belgian State, the appellant would not have legal personality because, 1) it has amended its bylaws in order to make them consistent with the law of June 27, 1921 "on not-for-profit associations, not-for-profit international associations and foundations" as amended by the law of May 2, 2002, beyond the deadline of December 31, 2005; 2) it did not file its new bylaws with the court office until February 22 and 27, 2006, after filing the action and finally, 3) the new bylaws would not be consistent with the aforementioned law because they do not mention the last names, first names, address, and each founder.

The Belgian State also objects that the decision of the general meeting of January 21, 2006 appointing Ph. Jacques president was neither filed with the court office, nor published on the date of filing of the petition.

The bylaws of the appellant, as well as the last names, first names, domicile of its three founders and directors were published on April 3, 1997; consequently, the appellant was created under the governance of the law of June 27, 1921, prior to its amendment by the law of May 2, 2002, which implies that it acquired legal personality as of said publication (Article 3 of the aforementioned law) and that, in the absence of legal filing otherwise, it kept it, notwithstanding the *tardy* adjustment of its bylaws to Article 2 of the law of June 27, 1921, as amended in 2002.

On January 21, 2006, the general meeting of the appellant was held in order to amend the bylaws and appoint new directors. The minutes indicate the last names, first names and domiciles of seven members – but not their dates and places of birth –, the new headquarters of the appellant, and it contains a new Article 8 concerning the board of directors. This new bylaws provision specifies that the appellant is validly represented in court by the president or a member of the board designated for this purpose by the board of directors (Article 8.7), while decisions are made of the board of directors, by majority of votes (Article 8.4).

Following these amendments, the bylaws of the appellant have become partially consistent with Article 2 of the law of June 27, 1921, as amended by that of May 2, 2002, the date and place of birth of each founding member being however omitted.

Still, this omission did not have the effect of making the appellant lose its legal personality, since the nullity indicated in Article 3bis of the law of June 27, 1921 when the bylaws do not contain certain mentions is not indicated in this case.

Consequently, the appellant has legal personality.

Under Article 26novies of the law of June 27, 1921 cited above, it had to *file* these bylaws amendments and appointments with the office of the Commercial Court and have them *published* in the addenda of the Moniteur Belge. According to §3, the acts, documents and decisions whose filing is mandatory are *unenforceable* against third parties until said formality is carried out or, when their publication is also required, until such publication in the addenda of the Moniteur Belge, *unless* the appellant proves that the third parties had prior knowledge thereof.

The dilatory defense that may be opposed by third parties under Article 26 cited above refers only to the formalities indicated in Articles 10, 23 and 26novies, §1, subparagraph 2.5. The formalities so protected are to keep a register of the members at the headquarters of the association, the decisions concerning its dissolution or nullity, and filing with the court office of the annual accounts and, therefore, are unrelated to those debated in this case.

However, in the case at hand, it is the temporary unenforceability that is legally indicated.

Such being the case, and although the appellant did not *file* the minutes of its general meeting of February 27, 2006 until February 22, 2006 [sic], after it filed its action, and it did not prove the publication in the addenda of the Moniteur Belge, its action is admissible. In fact, these decisions, as well as the powers granted to Ph. Jacques to represent it in court, are enforceable against the Belgian State, notwithstanding their possible lack of publication, since the State is aware of it.

Standing to sue

According to the Belgian State, the appellant would not prove a personal and direct interest to obtain the measure it requests, because it would not indicate what are its possible connections with Sun Myung Moon and it would not be the author of the invitation issued for the meeting of November 5, 2005.

According to Article 1 of its bylaws, the appellant *"is member of the Unification Church International"* which is *"founded by Reverend Sun Myung Moon"* and as already indicated by the court, its corporate object is, in particular, (Article 3 of the bylaws) the organization of conferences.

Consequently, it does have an interest to Sun Myung Moon to obtain a visa to go to Belgium and meet his followers there, including the members of the appellant.

4. The admissibility of the voluntary intervention

According to the Belgian State, the intervention of the voluntary interveners would be inadmissible because it does not *"contain any precise object"* and if it were specified in its object, it would not be admissible at appeal level because it would deprive the Belgian State of a degree of jurisdiction. Secondarily, the intervening parties would not prove any standing to sue.

The interveners declare that they are members of the appellant and that they suffer an impairment of their freedom of religion. They ask the Court to admit them as intervening parties and declare to intervene in order to support the appellant's original petition.

Four interveners prove that they are members of the appellant, as it appears from their participation in the general meeting of January 21, 2006, amending the bylaws to make them consistent with the new law. Both these interveners and the others, who declare their desire to participate in the planned event and to meet Sun Myung Moon there, prove sufficient moral interest to join the appellant in order to obtain satisfaction for its petition.

This intervention, whose object is sufficiently precise and which is none other but the original petition of the appellant, can be formed for the first time at appeal level.

5. On the merits

The urgency

According to the Belgian State, there would be no urgency, since the date of November 5, 2005 has passed.

However, given the old age of Sun Myung Moon, over 80, the urgency condition has been met. On the other hand, the condition of urgency is necessarily met when there is a need to put an end to the violation of one of the fundamental rights guaranteed by the E.C.H.R., which is the case here.

The appearance of right

The appellant challenges the refusal of the Belgian State to give a visa, because it would be contrary, on the one hand, to the Convention implementing the Schengen Agreement of June 14, 1985 between the Governments of the States of the Benelux Economic Union,

the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, hereinafter the Schengen Convention, and on the other hand, to international provisions, including Articles 9 and 11 E.C.H.R.

1. The Schengen Convention

While it organizes the abolition of checks on internal borders and movement of persons within the territory consisting of the States which are parties to the Schengen Agreement, the Schengen Convention implements uniform rules to control the passing of external borders.

It also organizes, in particular, the creation and maintenance of a Schengen Information System, S.I.S. The purpose of the system is the following: *"the purpose of the Schengen Information System shall be in accordance with this Convention to maintain public policy and public security, including national security, in the territories of the Contracting Parties and to apply the provisions of this Convention relating to the movement of persons in those territories, using information communicated via this system."* **(Article 93)**.

a) The alert

The alert can include only *the categories of data* established by **Article 94**, which must be necessary for the purposes indicated in Articles 95 to 100, i.e., in particular and, like in the case at hand, for the purposes of refusing entry. These data include "*reason for the alert*."

On the other hand,

- *access* to data entered in the Schengen Information System and *the right to search such data directly* shall be reserved exclusively to the authorities responsible for issuance of visas and residence permits (**Article 101**), while the person concerned cannot access the data concerning him other than in compliance with the right of the Contracting Party within which it enforces said right;
- only the Contracting Party "*issuing the alert*" shall be authorized to *modify, add to, correct or delete* data which it has entered. The interested person may have factually or legally inaccurate data corrected and for this purpose, if necessary, bring before the courts or the authority competent of said Party an action to correct, delete or obtain information or to obtain compensation in connection with an alert involving them (**Articles 106, 110 and 111**);
- data shall be *kept for a maximum* of 10 years (**Article 113**).

When, as in the case of Sun Myung Moon, the alert is issued for the purposes of refusing entry, **Article 96** indicates that:
"1. Data…shall be entered on the basis of a national alert resulting from decisions taken by the competent administrative authorities or courts in accordance with the rules of procedure laid down by national law (of the State issuing the alert).

2. Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose. This situation may arise in particular in the case of:

(a) an alien who has been convicted of an offence carrying a penalty involving deprivation of liberty of at least one year;

(b) an alien in respect of whom there are serious grounds for believing that he has committed serious criminal offences, including those referred to in Article 71, or in respect of whom there is clear evidence of an intention to commit such offences in the territory of a Contracting Party.

(c) 3. "(...) (not related to this case)*"*

b) The effects of issuing an alert

Article 5 of the Schengen Convention states:

"**1.** *For stays not exceeding three months, aliens fulfilling the following conditions may be granted entry into the territories of the Contracting Parties:*

(a) that the aliens possess a valid document or documents, ..., authorising them to cross the border;

(b) that the aliens are in possession of a valid visa if required;

(c) that the aliens produce, if necessary, documents justifying the purpose and conditions of the intended stay and that they have sufficient means of subsistence, both for the period of the intended stay and for the return to their country of origin or transit to a third State into which they are certain to be admitted, or are in a position to acquire such means lawfully;

(d) that the aliens shall not be persons for whom an alert has been issued for the purposes of refusing entry;

(e) that the aliens shall not be considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.

2. An alien who does not fulfil all the above conditions must be refused entry into the territories of the Contracting Parties unless a Contracting Party considers it necessary to derogate from that principle on humanitarian grounds, on grounds of national interest or because of international obligations. In such cases authorisation to enter will be restricted to the territory of the Contracting Party concerned, which must inform the other Contracting Parties accordingly.

…
3. (...) (not related to this case)

Article 3 of the law of December 15, 1980 on the access to the territory, residence, establishment and removal of aliens transposes this contractual rule *"Except for the exceptions indicated in an international treaty or the law, the authorities in charge of the control of the borders may remove the alien who is in one of the following cases: ... 5 if an alert is issued against him for nonadmission in the Party States to the Convention for the Application of the Schengen Agreement signed on June 19, 1990, either because his presence constitutes a danger to public order or national security, or because he was subject to a removal measure not postponed or suspended, including interdiction of entry, based on violation of national regulations concerning the entry or residence of aliens."*

It arises from these provisions that, based on an alert, the Belgian State may refuse access to the national territory. However, notwithstanding such alert, it must grant access if it is required by other international obligations.

c) Manifest illegality of the litigious decision for absence of verification of the regularity and validity of the alert

Furthermore, when based only on the existence of an alert issued by another contracting Party, the Belgian State must make sure that it is valid and up to date, in other words, it must make sure that the provisions of the Schengen Convention were respected by the "alerting" State.

Indeed, under **Article 105** of the Schengen Convention, the Contracting Party issuing the alert "*shall be responsible for ensuring that the data entered into the Schengen Information System is accurate, up-to-date and lawful...*" However, according to **Article 116**, each Contracting Party, in this case the Belgian State, shall be liable, "*in accordance with its national law,*" for any injury caused to a person through the use of the national data file of the S.I.S. The Party issuing the alert shall be required to reimburse the sums paid out as compensation, "*unless the data were used by the requested Contracting Party in breach of this Convention*."

The decision to refuse the litigious visa of the Belgian State is based on the only reason that the interested party had been listed, and in addition, the Minister of the Interior decided that "*Until today, this country* (Germany) *did not remove the alert for this person, in spite of the steps that would have been taken in this sense. As long as this alert is in force, Mr. Moon will not be authorized to enter Belgian territory*."

However, the Minister was obligated to make sure that **the validity term** of the listing was still ongoing because, contrary to what his decision indicates, a listing ends not only by decision of the "alerting" State, but also by the arrival of the term indicated by the Schengen Convention. The German decisions required under Article 96 of the Convention for the alert were not produced, and neither was the alert. By letter of November 8, 2005, the counsel of Sun Myung Moon invited the Minister to consult an Internet site "*in order to paint you a precise picture of his situation vis-à-vis the Schengen Space*" and according to this site, which was consulted by the court since it is mentioned in the above letter, the listing would date back to ***November 1995***.

Then, it appears from Exhibit 8 produced by the Belgian State, which is a note from the Office of Foreigners of October 14, 2005 to the Minister of the Interior, that the Office did not obtain from the Federal Republic of Germany the specifications it had requested as to the reasons of the alert. However, he recommended to give unfavorable outcome to the visa application "*basing our decision on the presence of the interested party in the S.I.S.*" Consequently, the litigious decision was adopted without knowing the reasons of the alert and without making sure that they corresponded to those indicated in the Schengen Convention.

The litigious decision is thus obviously based on inexact and insufficient reasons. However, the Court cannot order the measure requested other than contingent upon finding that it is required by the protection of a subjective right of the appellant.

2. The violation of Article 9 interpreted in light of Article 11 E.C.H.R.

The Schengen Convention and the Agreement from which it stems, do not constitute, in the hierarchy of norms, contractual agreements higher than those that arise for the Belgian State from the European Convention on Human Rights and Fundamental Freedoms and the correlated rights created by this Convention concerning persons found in Belgian territory, such as the appellant and its members.

Yet, although the addressee of the litigious decision to refuse the visa is Sun Myung Moon, this decision whose obvious illegality was found by the court also violates the subjective rights guaranteed by Articles 9 and 11 E.C.H.R. against the appellant and its members.

a) The principles

Article 9 E.C.H.R. recognizes the right to freedom of thought, conscience and religion. The European Court of Human Rights indicated several times that "*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. 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*." and that "*freedom of thought, conscience and religion is one of the foundations of a democratic society pursuant to the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset to atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it*" (see in particular **Decision in Metropolitan Church of Bessarabia and Others v. Moldova, December 13, 2001, § 114**).

After the model of the Commission, the European Court considers that "*except in highly exceptional cases, the right to the freedom of religion as it is understood in the Convention excludes any appreciation of the State as to the legitimacy of religious beliefs or modalities of expression thereof"* (**Decision in Hassan and Tchaouch v. Bulgaria, October 26, 2000, § 78).**

The fundamental character of these rights is also reflected by the language of the clause concerning their restriction. Unlike the second paragraph in Articles 8, 10 and 11, which gathers together rights mentioned in the first paragraph, the one in Article 9 refers only to the freedom of manifesting one's religion or convictions. "*It recognizes that in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected*" **(Decision in Kokkinakis v. Greece, May 25, 1993, § 33)**.

b) Right of the appellant and its members

The freedom of religion implies the freedom to manifest one's religion or beliefs collectively, in public and within the circle of those who share it or them. The European Court of Human Rights considers that "*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. Seen in that 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*" (**Metropolitan Church of Bessarabia and Others v. Moldova, § 117 et seq.**).

According to its bylaws, the appellant "*will encourage people to become interested in the fundamental questions of the meaning and purpose of life, as well as the religious, philosophical, scientific, social and cultural fields.*
The appellant will spread its ideas by conferences, discussions, seminars, courses and apprenticeships lasting one weekend or longer, by international meetings, books, brochures, journals, magazines and all types of printed matter, by correspondence courses, private and public actions and all other appropriate means.

It will create centers for information and practical application of divine principles.
It will collaborate with any person, group and organization that pursues the same or similar goals."

In 1979, in connection with the Church of Scientology, the European Commission admitted that when an ecclesiastic entity files a petition under the Convention, in reality it does so in the name of its believers and that it is necessary to admit that such an entity can possess and exercise personally, as representative of the believers, the rights stated in Article 9, paragraph 1 (**Decision of the Commission of May 5, 1979 No. 7805/77).**

On the other hand, the debate concerning the qualified organizations of sects, the religious movement created by Sun Myung Moon being considered as such especially in Germany, is, according to the Court, "*a general interest debate,*" as proven by the Recommendations of the Parliamentary Assembly of the Council of Europe 1178 and 1412 which advise against adopting national legislations that would restrict the freedom of the sects or would prohibit them, and recommend adopting laws designed to give a framework to their activities and inform the public, especially adolescents (http://assembly.coe.int/documents), while "*certain deviations contrary to the values that underlie the Convention may justify using specific measures* (against the sects) *by the member States*" (**Decision of the European Court in Paturel v. France, December 22, 2005, § 31).**

Consequently, even when it may be qualified as a sect, a religious movement enjoys in principle the right to freedom of thought, conscience and religion guaranteed under Article 9 of the E.C.H.R.

However, this right protects only legitimate manifestations of conviction and not acts that are alien to it, such as commercial acts or kidnapping and sequestration of people. On the other hand, religious or conviction manifestations may be subject to measures that constitute interference in order to avoid their excesses.

Still, these interferences must comply with the provisions of Article 9, § 2 of the E.C.H.R.

They must be set forth in a law, which is "foreseeable and accessible," stated with enough precision "to allow the individual to surround himself if needed with enlightened counsels, to remedy his conduct." Internal law "*must offer a certain protection against arbitrary attacks of the public powers against the rights guaranteed by the Convention. In the case of questions having to do with fundamental rights, the law would go against the prevalence of the right,...if the power of appreciation given to the executive were unlimited"* (**Decision in Hassan and Tchaouch, § 84**).

They must respond to a legitimate purpose. The Court admits that "*the States were entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities harmful to the population or public safety* and that the purpose is legitimate. Article 9 enumerates the various forms that may be taken by the manifestation of a religion or conviction. "*It does not protect just any act motivated or inspired by a religion or conviction*" (**Decision in Metropolitan Church of Bessarabia and Others, § 113 and 114).**

They must be necessary in a democratic society. The condition of necessity requires determining whether the interference corresponds to "*a pressing social need,*" which may be, for example, the need to fight against abusive prosyletism which exerts pressure on persons in a situation of distress or need (**Decision in Kokkinakis v. Greece, § 48**).

Finally, the interference must be proportional to the purpose pursued.

In the case at hand, the decision by which the Belgian State refuses to issue a visa to Sun Myung Moon, about whom the Belgian State knows that he is the spiritual leader of followers established in its territory, constitutes an interference in their freedom of religion and in the activities of the appellant.

However, it does not claim to respond to a purpose of public security, which could have been legitimate if proven, or to pressing needs in a democratic society. It is based on the only reason that Sun Myung Moon is listed in the S.I.S.

Consequently, it obviously does not meet the requirements in Article 9 of the E.C.H.R.

The measure requested

The court, ruling in summary application and under the benefit of urgency, is therefore justified to order a provisional measure. The court orders the Belgian State to issue a visa to Sun Myung Moon authorizing him to stay in Belgian territory for a period of five days, provided the request is made by the interested party in order to participate in an event organized in national territory for his followers and provided the event is held within three months from the communication of this decision.

The appellant does not demonstrate that the Belgian State would be likely not to reserve the voluntary execution required under this decision. There is not justification to enforce a daily fine.

Furthermore, it has not been demonstrated that Sun Myung Moon's spouse is not able to enter Belgian territory without a visa, since, according to the exhibits of both parties, the S.I.S. listing and the refusal of visa appear to concern only Sun Myung Moon. Consequently, there is no reason to order any measures concerning her.

ON THESE GROUNDS
THE COURT, ruling in adversarial proceedings,

Pursuant to Article 24 of the law of June 15, 1935 on the use of languages in judicial matters,

Reforms the order rendered, except in the aspect of the liquidation of expenses.

Sentences the Belgian State to issue to Sun Myung Moon, if he requests, a visa allowing him to stay in national territory for a period of five days, in order to participate in an event in the presence of his followers that would be organized in this territory by the appellant within three months from the communication of this decision.

Leaves the expenses of the two levels of the case to be paid by the Belgian State, appeal expenses being calculated at 139 € + 485.88 € for the appellant and 485.88 € for the Belgian State.

No. *[handwritten:] 2599*
2006/KR/223

[stamp:] 12/07/2006

So judged and pronounced in public civil hearing of the 21st Chamber of the Appellate Court of Brussels on 12/07/2006.

In the presence of:

Ch-Ph Vermylen, President
A. Bouché, Judge
M. Salmon, Judge
L. Willem, Court Clerk

[signature]	[signature]	[signature]	[signature]
L. Willem	M. Salmon	A. Bouché	Ch-Ph Vermylen