

June 2010

Jehovah's Witnesses of Moscow v. Russia - 302/02

Judgment 10.6.2010 [Section I]

Article 9

Article 9-1

Freedom of religion

Dissolution of religious community without relevant and sufficient reasons:
violation

Article 11

Article 11-1

Freedom of association

Refusal to re-register community as religious organisation without lawful basis:
violation

Article 46

Article 46-2

Execution of judgment

Individual measures

Respondent State required to take measures to review decisions dissolving and refusing to re-register religious community

Facts – The applicant community – the Moscow branch of the Jehovah's Witnesses – obtained legal-entity status in December 1993. In October 1997 the Federal Law on Freedom of Conscience and Religious Associations entered into force. It required all religious associations with legal-entity status to amend their articles of association in line with the new statutory requirements and to re-register with the justice department. The applicant community made five unsuccessful applications for re-registration but, even after obtaining a court ruling in 2002 that the refusals to re-register it were unlawful, remained unregistered. In the meantime, following complaints by a non-governmental organisation aligned with the Russian Orthodox Church, a prosecutor brought a civil action for the community's dissolution. The proceedings ended in 2004 when a district court ordered its dissolution and a permanent ban on its activities after upholding various allegations of misconduct. An appeal by the applicant community was dismissed.

Law – Article 9 in the light of Article 11 (dissolution): The dissolution order, which had effectively stripped the applicant community of its legal personality and prohibited it from exercising the rights it had previously enjoyed, had amounted to interference. That interference was prescribed by law and pursued the legitimate aim of protecting health and the rights of others. It had not, however, been necessary in a democratic society as, firstly, the domestic courts had failed to adduce relevant and sufficient reasons to justify the measure and, secondly, it had been disproportionate to the legitimate aim pursued.

(a) *Absence of relevant and sufficient reasons* – Many of the district court's findings in support of the dissolution order had not been substantiated and were not grounded on an acceptable assessment of the relevant facts. For instance, there had been no evidence to support allegations that the applicant community or its members had engaged in coercion, lured children into the organisation or encouraged suicide. Indeed, some of the court's findings had attested to preconceived ideas about Jehovah's Witnesses that had resulted in its wrongly excluding defence evidence. The remaining allegations that had been made against the applicant community – that it had breached its members' right to respect for their private life, infringed the parental rights of non-community parents, encouraged members to refuse blood transfusions and incited them not to comply with civic duties – were also rejected by the Court for the following reasons:

(i) *Respect for private life and, in particular, the right to choose one's occupation:* Many religions determined doctrinal standards of behaviour and, by obeying such precepts, believers manifested their desire to comply strictly with the religious beliefs they professed. The community members had testified that they followed the doctrines and practices of the Jehovah's Witnesses of their own free will and personally determined for themselves their place of employment, the balance between work and free time, and the amount of time devoted to preaching or other religious activities. Those who had carried out religious service at the community centre were not employees but unpaid volunteers, and so were not subject to employment regulations. Voluntary work or part-time employment or missionary activities were not contrary to the Convention principles and the Court was unable to discern any pressing social need that could have justified the interference.

(ii) *Parental rights of non-community parents:* While it was true that children of mixed marriages had participated in the community's activities despite objections from the non-community parent, this did not appear to have stemmed from any improper conduct on the part of the community or its members but to have been approved and encouraged by the parent who was a Jehovah's Witness. The States were required by Article 2 of Protocol No. 1 to respect the rights of parents to ensure education and teaching in conformity with their own religious convictions and Article 5 of Protocol No. 7 established that spouses enjoyed equality of rights in their relations with their children. The domestic legislation did not make a child's religious education conditional on the existence of an agreement between the parents. Accordingly, any disagreements between the parents over the necessity and extent of a child's participation in religious practices and education were private family-law disputes that had to be resolved in accordance with the set procedure.

(iii) *Blood transfusions:* Freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, was vital to self-determination and personal autonomy. Many established jurisdictions had examined the cases of Jehovah's Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was

undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life. Russian law itself explicitly provided a right to refuse medical treatment or to request its discontinuation provided the patient had been given full accessible information about the possible consequences. There was no evidence that the applicant community had applied any improper pressure or undue influence on its members. Where the patient was a child, domestic law enabled a parent's decision to refuse treatment to be reversed by the courts. In sum, no pressing social need or relevant and sufficient reasons capable of justifying a restriction on the individual's right to personal autonomy in the sphere of religious beliefs and physical integrity had been shown.

(iv) *Alleged incitement to refuse civic duties*: The religious admonishment to refuse military service was in full compliance with domestic law, which permitted conscientious objection, and no instances of any community members unlawfully refusing alternative civilian service had been cited at the trial. The domestic courts had not cited any domestic legal provision that would require Jehovah's Witnesses to pay respect to State symbols (as opposed to refraining from desecrating them); nor was there any duty in law to participate in celebrations during State holidays. Accordingly, it had not been shown that community members had been incited to refuse to carry out lawfully established civil duties.

(b) *Proportionality* – Before its dissolution in 2004, the applicant community had existed and legally operated in Moscow for more than twelve years, without any of its elders or individual members being found responsible for any criminal or administrative offence or civil wrong. However, in common with other religious organisations perceived by the Moscow authorities as "non-traditional", it appeared to have been singled out for differential treatment. Forced dissolution and a ban on activities was the only sanction the domestic courts could apply to religious organisations found to have breached the requirements of the Law on Freedom of Conscience and Religious Associations, and was thus applied indiscriminately without regard to the gravity of the breach in question. That drastic measure had denied thousands of Jehovah's Witnesses in Moscow the possibility of joining fellow believers in prayer and observance. Accordingly, even assuming there had been compelling reasons for the interference, it had been disproportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 11 in the light of Article 9 (refusal to re-register): The grounds invoked by the domestic authorities for refusing re-registration of the applicant community had had no lawful basis. The authorities had failed to give adequate reasons for their decisions or had imposed unduly burdensome requirements without any basis in law. By the time the re-registration requirement was introduced, the applicant had lawfully existed and operated in Moscow as an independent religious community for many years, without it or any of its individual members being found to have breached any domestic law or regulation governing associative life and religious activities. In these circumstances, the reasons for refusing re-registration should have been particularly weighty and compelling. In denying re-registration, the authorities had not acted in good faith and had neglected their duty of neutrality and impartiality towards the applicant community.

Conclusion: violation (unanimously).

The Court also found that the length of the dissolution proceedings had been unreasonable, in violation of Article 6 § 1 (unanimously).

Articles 41: EUR 20,000 to the applicant community and the four individual applicants jointly in respect of non-pecuniary damage. A review of the domestic judgments in the light of the Convention principles would be the most appropriate means of remedying the violations that had been identified in the applicant community's case.

* See *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006, Information Note no. 90, and *Church of Scientology Moscow v. Russia*, no. 18147/02, 5 April 2007, Information Note no. 96.

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