



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

**CASE OF RELIGIOUS COMMUNITY OF JEHOVAH'S
WITNESSES OF KRYVYI RIH'S TERNIVSKY DISTRICT
v. UKRAINE**

(Application no. 21477/10)

JUDGMENT

STRASBOURG

3 September 2019

FINAL

03/12/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

**In the case of Religious Community of Jehovah's Witnesses of
Kryvyi Rih's Ternivsky District v. Ukraine,**

The European Court of Human Rights (Fourth Section), sitting as a
Chamber composed of:

Jon Fridrik Kjølbro, *President*,

Paulo Pinto de Albuquerque,

Ganna Yudkivska,

Faris Vehabović,

Egidijus Kūris,

Iulia Antoanella Motoc,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 2 April and 18 June 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 21477/10) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by the Religious Community of Jehovah's Witnesses of Kryvyi Rih, Ternivsky District, Dnipropetrovsk Region ("the applicant community"), on 13 April 2010.

2. The applicant community was represented by Mr V. Karpov, a lawyer practising in Kropyvnytskyi, Ukraine, and Mr A. Carbonneau, a lawyer admitted to practice in Quebec, Canada, and in Armenia. The Ukrainian Government ("the Government") were represented by their Agent, Mr I. Lishchyna.

3. The applicant community alleged, in particular, that the Kryvyi Rih City Council's ("the City Council") failure to allow it to establish a place of worship had breached its rights under Article 9 of the Convention and Article 1 of Protocol No. 1, and that the domestic courts' decisions refusing to order the Council to issue the necessary decision had breached its right of access to court and the right to an effective remedy in respect of its other complaints.

4. On 22 November 2017 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Situation of Jehovah's Witnesses in Kryvyi Rih and the applicant community's purchase of a residential property

5. In 2004 the applicant community purchased from private individuals a single-family one-story residential house of 50 sq. m, with annexes, on Pokrysheva Street in the Ternivsky district of Kryvyi Rih ("the city"). It purchased the property with the purpose of subsequently erecting a place of worship, a "Kingdom Hall", on the site. The house and annexes are located on a plot of land measuring about 0.07 ha and surrounded on three sides by single-family homes ("the plot of land"). The sellers had no formal title to the land, which belongs to the city.

6. Ternivsky district is one of the seven administrative districts of Kryvyi Rih.¹ In 2009 the city's total estimated population was 675,600.² The city is spread out over a considerable area, the measurements of the distance between its northernmost and southernmost points vary from 48 to 126 km.³

7. The applicant community *de facto* uses the above-mentioned residential building for worship. According to the applicant community, that building is used by about 240 Jehovah's Witnesses who all live within a 4-km radius from it.

8. There are three other places of worship for Jehovah's Witnesses in the city. According to the applicant community, whose submissions in that connection the Government did not contest, those places of worship are all located more than 30 km away from the Pokrysheva Street site. According to Google Maps estimates, the place of worship on Baturynska Street is about 32 km from the Pokrysheva Street site, representing about a thirty-eight-minute one-way trip by car and a two-hours-twenty-eight-minute one-way trip by public transport on a weekday; the one on Alushtynska Street is 47.7 km, fifty-seven minutes, three hours away; and the one on Taganrozka Street is 33.8 km, forty-five minutes and two hours twenty-five minutes away respectively.

1. Адміністративні райони, https://krmisto.gov.ua/ua/house_links/by_admreg.html

2. Oxford Dictionary of English (3 ed.), available at http://www.oxfordreference.com/view/10.1093/acref/9780199571123.001.0001/m_en_gb0449980?rsk=0oRA8I&result=1

3. В Кривом Роге развеяли миф о протяженности города в 126 км, <http://krlife.com.ua/news/v-krivom-roge-razveyali-mif-o-protyazhennosti-goroda-v-126-km>; https://en.wikipedia.org/wiki/Kryvyi_Rih

B. The applicant community's attempts to obtain rights to land and planning approvals to build a place of worship

9. On 7 September 2004 the applicant community lodged an application with the mayor seeking a five-year lease on the plot of land for the construction of a Kingdom Hall on the Pokrysheva Street site.

10. On 24 February 2005 the city's Architecture and Planning Council approved the placement of a Kingdom Hall on the land and its planned design.

11. On 21 July 2005 a commission composed of representatives of the land management authority and the planning, public health and fire safety authorities also approved the placement.

12. On 28 September 2005 the City Council decided to give preliminary consent to the applicant for the placement of a Kingdom Hall on the land and instructed the applicant to prepare, within a year, a planning application file (*проектна документація*) for the allocation of the land to it and for the construction of the place of worship. The city's land management authority was instructed to submit to the Council a draft decision for the allocation of the plot of land to the applicant community.

13. In 2006 the applicant community ordered and obtained from a specialist company a planning application file for the allocation of the land. It was approved by the city's planning authority, by the land management, land register, environmental protection, and public health authorities and the authority for the protection of cultural heritage.

14. On 6 September 2006 the city's planning authority submitted to the City Council a draft decision to approve the land allocation project and to grant the applicant the lease. On the same day the authority informed the applicant community that new owners of two of the houses adjoining the plot were objecting to the placement of the place of worship there.

15. On 15 September 2006 the applicant community sought copies of the neighbours' letters from the city authorities.

16. It appears that on 26 September 2006 a meeting of the neighbourhood residents concerning the project was held.

17. On 27 September 2006 the draft decision was to be examined at a Council meeting. However, it was not adopted either because it was withdrawn from the agenda or because the Council took a vote on the draft decision but it failed to garner a sufficient number of votes to be adopted.

18. On 17 October 2006 the city's planning authority informed the applicant community that copies of the neighbours' complaints could not be provided.

C. First set of judicial proceedings and subsequent events

19. On 14 February 2007 the applicant community lodged a claim against the City Council, seeking to have its inaction declared unlawful.

20. On 7 June 2007 the Dnipropetrovsk Regional Commercial Court ("the Regional Court") allowed the applicant's claim and declared the Council's failure to approve the land allocation project and to grant the applicant a lease unlawful. The court held, in particular, that the applicant had complied with all the legal requirements needed to obtain a lease. As to the neighbours' objections, the court held that under the relevant legislation the opinions of individual citizens who disagreed with the plaintiff's religious activities could not provide valid grounds for the Council's inaction. No appeal was lodged and the judgment became final.

21. On 11 June 2007 the city's land management authority informed the applicant community that on 14 May 2007 it had re-submitted a draft positive decision to the City Council but that on 30 May 2007 it had been withdrawn from the Council's agenda owing to the conflict which had arisen between the community and the local residents and their opposition to the development project on the basis of the concentration of people and cars that would be generated when meetings and services were held.

22. On 11 July 2007 the applicant community again asked the City Council to examine and approve its application.

23. On 29 August 2007 the City Council examined the draft positive decision but it failed to garner the necessary number of votes to be adopted: of the 70 Council members, 43 did not vote at all, there were 2 votes "in favour", 23 "against" and 2 abstentions.

D. Second set of judicial proceedings

24. In January 2008 the applicant community lodged a second claim against the City Council, seeking (i) to have it declared that it had the right to lease the plot of land in question, and (ii) that the City Council be ordered to enter into a lease agreement with the applicant community in respect of the land. It argued that, as established in the first set of proceedings, it met all the requirements to be granted the right to use the land and it was the Council's obligation to allocate land to it but it had failed to do so. By failing to do so the Council was abusing its rights and the situation was in breach of Article 13 of the Convention.

25. On 11 December 2008 the Regional Court rejected the claim under both heads, holding in particular that: (i) the applicant community had not obtained the title to the land from its predecessor in title to the buildings located on it because the latter had had no formal title to the land either; (ii) land-allocation decisions fell within the exclusive competence of the relevant council; (iii) the right to use land could only be based on a

municipal council's decision allocating such land and there had been no such decision in the present case, ordering the council to rent land to the applicant in the absence of a council decision to this effect would be in breach of the council's exclusive constitutional competence to exercise the rights of the land's owner; (iv) the fact that the applicant community had complied with all the legal requirements and that the Council was breaking the law in not issuing the relevant decision did not mean that the court could break the law in its turn by arrogating the Council's authority, substituting itself for the Council and making the respective decision in its place; (v) the plaintiff's rights could only be protected through the use of remedies set out in the Land Code and order to enter into a lease agreement was not one of them.

26. The above-mentioned passages (ii) to (v) in the Regional Court's judgment were almost verbatim quotes from the decision of the High Commercial Court ("the HCC") presented as an example to follow in the HCC's circular letter of 30 November 2007 to the lower commercial courts. In that decision the HCC, on the basis of a number of provisions of domestic law, had held that the courts could not order municipal councils to enter into land lease agreement (see paragraphs 40 and 41 below).

27. On 26 March 2009 the Dnipropetrovsk Commercial Court of Appeal upheld the Regional Court's judgment, reaffirming in particular that even though the unlawfulness of the Council's inaction had been established by the Regional Court's judgment of 7 June 2007, the courts could still not replace the City Council and take the decision in its place.

28. On 21 July 2009 the HCC upheld the lower courts' decisions.

29. On 1 October 2009 the Supreme Court refused to institute proceedings for review of the lower courts' decisions on points of law.

E. Subsequent events

30. According to the applicant community, after the above-mentioned procedures had been completed, it continued to hold discussions with the city officials in an attempt to resolve the dispute.

31. On 29 April 2011, allegedly at the suggestion of the City Council officials, the applicant community lodged a new application for permission to use the plot of land permanently to build a place of worship.

32. On 17 May 2011 the application was rejected. The city's planning authority informed the applicant community that in March 2011 the planning legislation had been reformed (see paragraph 38 below) but implementing regulations based on the new legislation had not yet been enacted.

33. On 16 January 2014, allegedly at the suggestion of City Council officials, the applicant community lodged a new application for permission

to prepare a new planning application file to use the land permanently to build a place of worship.

34. On 6 May 2014 the city's planning authority informed the applicant community that there were no undeveloped sites for places of worship in Ternivsky district. The community was invited to consider the possibility of leasing public or private non-residential premises for its needs.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Land Code of 2001

35. Article 120 establishes the principle according to which, in the event of transfer of ownership of a building, the right of ownership or use the underlying land follows, as provided by contract.

36. Article 123 § 6 of the Code provides that a project for land allocation shall be approved by the land, environment, sanitary, planning and cultural heritage authorities. For certain major projects additional expert analysis may be required. After that the project is submitted to the respective municipal council which "shall" examine it within a month and must "make a decision on allocation of the land" (*розглядають його у місячний строк і... приймають рішення про надання земельної ділянки*).

37. Article 123 § 9 of the Code provided, at the material time, that refusal by a municipal or executive authority to allocate land or failure to examine the relevant questions was subject to judicial review. Any decision by such authorities refusing to allocate land had to contain reasons and to refer to the relevant provisions of legislation or planning documentation.

B. Planning legislation

38. At the time the application was lodged the matters of planning were primarily regulated by the Spatial Planning and Development Act of 2000. On 12 March 2011 that Law was replaced by the Regulation of Development Activities Act of 2011.

C. Local Self-Government Act of 1997

39. Section 77(2) provides that disputes arising from violations of rights resulting from decisions, acts or inaction of the municipal authorities and officials must be resolved by the courts.

D. The High Commercial Court's circular letter of 30 November 2007

40. The HCC's letter of 30 November 2007 no. 01-8/918 presented to the lower commercial courts a number of HCC decisions on land matters, as examples to follow. In one of the decisions the HCC had held that commercial courts could not order municipal councils to enter into land lease agreements. That decision was based on the following constitutional and legislative provisions:

(i) Article 13 of the Constitution providing that land is the property of the Ukrainian people (*є об'єктами права власності Українського народу*). Ownership rights on behalf of the people are exercised by State authorities and bodies of local self-government within the limits determined by the Constitution;

(ii) Article 12 of the Land Code providing that the management of municipally-owned land was within the competence of municipal councils;

(iii) Article 116 of the Land Code providing that individuals and legal entities can obtain rights to State and municipally-owned land on the basis of decisions of State executive or municipal authorities.

41. In the above decision the HCC held that the plaintiffs' rights could only be protected through remedies for which the Land Code (Article 152) provided, namely: (i) a declaration of recognition of rights; (ii) an order to restore a piece of land to the state in which it had been prior to the violation of rights and to prevent acts which would violate rights or create a risk that rights would be violated; (iii) invalidation of contracts; (iv) declaration that decisions of executive authorities of the State and municipal authorities were unlawful; (v) damages; (vi) other remedies where an Act of Parliament (*закон*) explicitly provided for them.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

42. The applicant community complained of a violation of Article 9 of the Convention, which reads:

“1. Everyone has the right to freedom of thought, conscience and religion; 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.

2. 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.”

A. The parties' submissions

1. The Government

43. The Government submitted that general legislation which applies on a neutral basis without any link whatsoever to an applicant's personal beliefs cannot in principle be regarded as an interference with his or her rights under Article 9 of the Convention (citing *Skugar and Others v. Russia* (dec.), no. 40010/04, 3 December 2009). Ukrainian legislation provided that allocation of land was within city councils' jurisdiction and this jurisdiction extended to all "participants in land relations" irrespective of their nationality, language, religious views or other factors. The City Council had neither allocated land to the applicant community nor refused to do so. There was no indication that the Council had examined this issue through the prism of the applicant community's views. Likewise, there was nothing to indicate that the neighbours' opposition to the placement of a Kingdom Hall in their neighbourhood had been motivated by religious prejudice. The Government considered that this part of the application was manifestly ill-founded.

2. The applicant community

44. While the applicant community was indeed using the residential building for its religious needs, it was totally inadequate for its purposes as it did not meet the basic needs of adequate space for the more than 240 Jehovah's Witnesses it represented. It did not have adequate plumbing, sewage, electricity, ventilation and lighting for a building used for public meetings. This placed the community in a "situation of perceived inferiority" *vis-à-vis* other mainstream religions (citing *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11 and 8 others, § 94, ECHR 2014 (extracts)).

45. The status of the place of worship was undoubtedly of importance to every member of the community (citing *Association for Solidarity with Jehovah's Witnesses and Others v. Turkey*, nos. 36915/10 and 8606/13, § 89, 24 May 2016).

46. The interference had not arisen from the legislation itself, which had been neutral, but from the arbitrary refusal to apply it. It had not been prescribed by law as the domestic courts had recognised that the applicant community had met all requirements of the Land Code to be granted a lease to the land. Article 123 § 6 of the Land Code (see paragraph 36 above) had required the City Council to decide within a month, but it had never done so. The City Council's inaction had been owing only to complaints from "religiously intolerant" neighbours.

47. The City Council's unfettered discretion went against the principle, pronounced in the Court's case-law, that "it would be contrary to the rule of

law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power” (*Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI).

B. The Court’s assessment

1. Admissibility

48. The Court notes that the complaint under Article 9 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

49. While the Convention does not guarantee the right to be given a place of worship as such (see *Griechische Kirchengemeinde München and Bayern E.V. v. Germany* (dec.), no. 52336/99, 18 September 2007), restrictions on establishment of places of worship may constitute an interference with the right guaranteed by Article 9 (see, for example, *Manoussakis and Others v. Greece*, 26 September 1996, § 38, *Reports of Judgments and Decisions* 1996-I; *Vergos v. Greece*, no. 65501/01, §§ 36-43, 24 June 2004; and *Association for Solidarity with Jehovah’s Witnesses and Others v. Turkey*, nos. 36915/10 and 8606/13, §§ 90 and 91, 24 May 2016).

50. The personality of the religious ministers and the status of their places of worship are of importance to members of religious community. Therefore, the possibility of using buildings as places of worship is important for the participation in the life of the religious community and thus for the right to manifestation of religion (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 111, 26 April 2016).

51. The Court has been confronted with a number of situations where restrictions on establishment of places of worship were imposed for planning-related reasons (see, for example, *Johannische Kirche and Horst Peters v. Germany* (dec.), no. 41754/98, 10 July 2001; *Vergos*, cited above, §§ 40-43; and *Tanyar and Küçükergin v. Turkey* (dec.), no. 74242/01, 7 June 2005). It is a well-established principle of the Court’s case-law that domestic authorities enjoy a wide margin of appreciation in the choice and implementation of planning policies (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001-I, and *Association for Solidarity with Jehovah’s Witnesses and Others*, cited above, § 103). The Government argued that the difficulties faced by the applicant community were caused by such neutral considerations (see paragraph 43

above). The Court will examine that argument below (see paragraph 54 below).

52. Turning to the circumstances of the present case the Court notes that the applicant community is the owner of a residential house located on land belonging to the municipality. For a number of years it has been using that house as a place of worship. The applicant community sought a lease of the plot and a permission to build a new place of worship on it. It considered that the existing residential house measuring 50 sq.m did not meet its needs as a place of worship as regards available space and facilities.

53. The Court sees no reason to doubt the veracity of the applicant community's submissions (see paragraph 44 above) that it faces practical difficulties in using the building it owns as a place of worship. Moreover, while the authorities tolerate the *de facto* use of land for the religious community's purposes, their refusal officially to recognize that use creates legal uncertainty for the applicant community (compare *İzzettin Doğan and Others*, cited above, § 130).

54. The Court cannot agree with the Government's argument that the applicant community's inability to build a place of worship was a mere effect of the application of generally applicable neutral rules (see paragraph 43 above) precisely because the domestic authorities failed to cite any valid neutral planning-related reason for failure to grant the applicant community's application (contrast, for example, *Johannische Kirche and Horst Peters and Vergos*, §§ 40-43, both cited above). The only reason they cited – the vaguely described opposition from neighbours – was dismissed by the domestic court as not constituting sufficient legal grounds for the refusal. That court, in a final decision, held, to the contrary, that the applicant community had complied with all domestic legal requirements needed to build its place of worship (see paragraph 20 above).

55. The Court considers that, in such circumstances, having regard to the practical difficulties and legal uncertainty the applicant community faces in using its building as a place of worship, the City Council's failure to permit the construction of a new place of worship and to enter into a lease agreement for that purpose, in spite of a final domestic judicial decision holding that the community met the domestic legal requirements to be granted such a permit and lease brought the situation within the ambit of Article 9 of the Convention.

56. This conclusion is supported by the fact that in the first set of proceedings the domestic court declared unlawful, in terms of domestic law, the City Council's failure to approve the applicant community's application (see paragraph 20 above). It implicitly reaffirmed that finding in the second set of proceedings (see paragraph 25 (iv) above). There is no indication that, after that decision, there was any relevant change in the circumstances which would make that assessment not valid or no longer applicable. The

City Council failed to respect those decisions and persisted in its failure to act without citing any relevant reasons to justify its conduct.

57. It follows that the municipal authorities' conduct was arbitrary and not "in accordance with the law".

58. This conclusion dispenses with the need to examine whether the other requirements of paragraph 2 of Article 9 were complied with (see, for example, *Moroz v. Ukraine*, no. 5187/07, § 108, 2 March 2017) or for the Court to take a definitive stance on whether the situation is to be examined in terms of "negative obligations" or "positive obligations".

59. There has, therefore, been a violation of Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

60. The applicant company complained of a violation of Article 1 of Protocol No. 1 to the Convention which reads:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. The parties' submissions

1. *The Government*

61. It was an established principle of the case-law of the Convention institutions that Article 1 of Protocol No. 1 did not guarantee the right to acquire possessions. The domestic courts had rejected the applicant community's claim to impose on the authorities the obligation to let the land to it. Therefore, it cannot claim to have had a legitimate expectation to rent that land. In any event, the Government stressed that the applicant community was in any case using the house it owned on Pokrysheva Street for its needs (see paragraph 7 above).

2. *The applicant community*

62. Far from rejecting the applicant community's claim, in the first set of proceedings the domestic court had in fact allowed its claim and had declared the City Council's inaction unlawful. The courts had recognised that the applicant community had met the legal requirements to be granted a lease. They had only dismissed the applicant community's second claim because they had considered that they had lacked jurisdiction to either order

the City Council to grant the lease or make this decision in the Council's place.

63. Therefore, the applicant community had had a "legitimate expectation" that the City Council would have granted it the lease, as required by law and by the enforceable judgment in the first set of proceedings.

64. The City Council's inaction had been arbitrary and had breached the express provision of Article 123 § 6 of the Land Code (see paragraph 36 above). If the City Council could simply ignore the applicant community's application, then application of the Land Code would have to be seen as unforeseeable and not compatible with the rule of law (citing *Broniowski v. Poland* [GC], no. 31443/96, § 47, ECHR 2004-V).

65. As a result of the City Council's unlawful and arbitrary inaction the local congregations, made up of some 240 Jehovah's Witnesses, found themselves in the humiliating and demeaning situation of using a small inadequate residential property for their religious services. Even that use had to be taken as only temporary since the authorities could, without notice and at any time, disallow the use of that residential property for meetings.

B. The Court's assessment

1. Admissibility

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

67. The Court notes that the applicant community is the owner of a residential house located on land belonging to the municipality. The applicant community has had the *de facto* uninterrupted use of that land for a number of years. It sought a lease of the land and a permission to construct a new building of it. The domestic courts, in the first set of proceedings, established that the applicant community satisfied all legal requirements to have that application granted. Under such circumstances the Court concludes that there has been an interference with the applicant company's "possessions" within the meaning of Article 1 of Protocol No. 1 (see, *mutatis mutandis*, *Allan Jacobsson v. Sweden* (no. 1), judgment of 25 October 1989, § 54, Series A no. 163, and *Hellborg v. Sweden*, no. 47473/99, § 45, 28 February 2006).

68. The Court reiterates that in this area, the planning policy, the domestic authorities enjoy a wide margin of appreciation (see, for example, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 69, Series A no. 52). However, Article 1 of Protocol No. 1 above all requires that any

interference by a public authority with the enjoyment of possessions be in accordance with the law: under the second sentence of the first paragraph of this Article, any deprivation of possessions must be “subject to the conditions provided for by law”; the second paragraph entitles the States to control the use of property by enforcing “laws”. Moreover, the rule of law, which is one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 292, 28 June 2018).

69. In the first set of proceedings the domestic court found the Council’s refusal to approve the land allocation application and to grant the applicant community the land lease unlawful (see paragraph 20 above). They implicitly reaffirmed that conclusion in the second set of proceedings (see paragraph 25 (iv) above). There is no indication that, after that decision, there was any relevant change in the circumstances which would invalidate that assessment or make it no longer applicable.

70. The Court sees no reason to question that conclusion and finds that the interference was not lawful (compare, for example, *Iatridis v. Greece* [GC], no. 31107/96, §§ 58, 61 and 62, ECHR 1999-II; *Antonetto v. Italy*, no. 15918/89, §§ 35-38, 20 July 2000; *Frascino v. Italy*, no. 35227/97, §§ 32-34, 11 December 2003; and *Paudicio v. Italy*, no. 77606/01, §§ 40-47, 24 May 2007).

71. There has, accordingly, been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

72. The applicant community complained that, owing to the decisions of the domestic courts in the second set of proceedings, the binding court decision in the first set of proceedings remained without effect and the City Council was allowed to exercise its discretion in an arbitrary and illegal manner. This had breached the applicant community’s rights to access to court and to an effective domestic remedy under Article 6 and Article 13 of the Convention respectively. Those provisions read, in so far as relevant:

Article 6

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

73. The Court considers that, in the particular circumstances of the present case and in view of its findings above, the above complaints are subsumed by the applicant community's complaints under Article 9 of the Convention and Article 1 of Protocol No. 1 and raise no separate issue.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

75. The applicant community claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

76. The Government considered the claim fully unsubstantiated.

77. The Court, ruling on an equitable basis, awards the applicant community EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant community claimed EUR 2,000 for the legal fees of the lawyer who had represented it before the domestic courts and EUR 6,000 for the legal fees of its two representatives before the Court. In support of its claims, the applicant community submitted invoices addressed to it by the representatives requesting lump-sum payments for various portions of the work done.

79. The Government contested those claims. They considered that the applicant community had not submitted sufficient documentation in support of its claims.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

81. In the present case, the Court considers that the documentation submitted by the applicant community is sufficient to show that it incurred legal fees in connection with the proceedings before the Court and the domestic courts. However, the present case, the applicant's initial application to the Court included several other complaints under Articles 6 and 14 of the Convention, which were declared inadmissible at the communication stage (see paragraph 4 above). Therefore, the claim cannot be allowed in full and a reduction must be applied (see *Bayatyan v. Armenia* [GC], no. 23459/03, §§ 133-35, ECHR 2011).

82. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 6,000 covering costs under all heads.

C. Default interest

83. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 9 of the Convention;
3. *Holds*, unanimously, that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds*, unanimously, that the complaints under Articles 6 and 13 of the Convention raise no separate issue;
5. *Holds*, unanimously,
 - (a) that the respondent State is to pay the applicant community, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicant community, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses*, unanimously, the remainder of the applicant community's claim for just satisfaction.

Done in English, and notified in writing on 3 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Jon Fridrik Kjølbro
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) joint concurring opinion of Judges Yudkivska and P. Pinto de Albuquerque;
- (b) partly dissenting opinion of Judge Vehabović.

J.F.K
M.T.

JOINT CONCURRING OPINION OF JUDGES YUDKIVSKA AND PINTO DE ALBUQUERQUE

1. We voted together with the majority on all points in the operative part of the present judgment, including for a violation of Article 9 of the European Convention on Human Rights (“the Convention”). We cannot, however, fully subscribe to their reasoning, for the majority shy away from specifying the respondent State’s positive obligation under Article 9 of the Convention.

2. The applicant – a religious community of Jehovah’s Witnesses – clearly identified that the interference with their Article 9 right had arisen from the inaction of the City Council to implement the Regional Court’s decision¹. The majority address this point but refrain from indicating that this inaction precisely led to the violation of the domestic authorities’ positive obligations. Therefore, the judgment represents a missed opportunity to further elaborate on the content of substantive positive obligations flowing from the right to freedom of religion under Article 9 of the Convention.

3. The facts are not disputed by the parties and can be summed up as follows. The applicant community purchased residential property with the intention of using it as a place of worship. Although the community *de facto* uses the residential property that it owns for worship, it sought to construct a bigger place. To do so, a lease from the local authorities was required. This lease was not, however, approved by the City Council. Despite the Regional Court’s decision determining that the City Council’s failure to approve the applicant community’s lease request was unlawful, the City Council failed, a second time, to authorise the applicant community’s request for a lease due to the lack of a sufficient majority of votes. As a result, the applicant community did not receive the lease it needed and thus was unable to construct a place of worship.

4. In examining the present case, the majority conclude that “the City Council’s failure to permit the construction of a new place of worship and to enter into a lease agreement for that purpose ... brought the situation within the ambit of Article 9 of the Convention”². The majority also state that the European Court of Human Rights (“the Court”) is not required “to take a definitive stance on whether the situation is to be examined in terms of ‘negative obligations’ or ‘positive obligations’”³.

5. In our view, leaving this important question open, however, is problematic, as this approach fails to clearly define and delimit the respondent State’s obligations under the Convention, thereby making it difficult for the authorities to identify and thereafter comply with such obligations.

¹ See paragraph 46 of the judgment.

² See paragraph 55 of the judgment.

³ See paragraph 58 of the judgment.

6. It is the long-standing and well-established position of the Court that the boundaries between the State's positive and negative obligations do not lend themselves to precise definition⁴. In both instances a fair balance must be struck between the competing interests at stake. However, whether a case is to be analysed in terms of the negative or positive obligations arising from the Convention will affect the margin of appreciation afforded to the State, since the Court takes the view that this margin is, in principle, narrower in the case of negative obligations⁵.

7. Considering the facts of the case, we find that they concern the respondent State's positive obligations (i.e. to protect the applicant community's rights under Article 9) rather than its negative obligations (i.e. not to interfere with the applicant community's rights under Article 9). And there are four fundamental reasons for this.

8. Firstly, the restrictions on the applicant community's ability to manifest its religion did not stem from any act of the domestic authorities that interfered with such a right, but rather they resulted from the domestic authorities' failure to act (i.e. the failure to grant a lease to the applicant community). The present case can thus be contrasted with *Association for Solidarity with Jehovah's Witnesses and Others v. Turkey*⁶, in which the domestic authorities did not only fail to grant a permit but also closed down the applicant's religious site; with *Manoussakis and Others v. Greece*⁷, in which the applicants were convicted for having used the premises in question without prior authorisation; and with *Juma Mosque Congregation and Others v. Azerbaijan*⁸, in which the applicants were evicted from their place of worship which they had previously occupied for twelve years without any interference. Hence, the present case is fundamentally different from the cases concerning places of worship previously decided by the Court.

9. Secondly, the applicant community was not entirely prevented from practising its religion, but its religious practice was compromised due to the inadequate size of the venue that they possessed for that purpose, which was unfit to provide proper conditions for its members and, according to the applicants, placed them "in a situation of perceived inferiority"⁹ to other religions. Article 9 would be deprived of its meaning if a religious community were unable to have a place suitable for it to collectively manifest its religion and engage in its religious practices¹⁰. In finding a

⁴ See, for example, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland* (no. 2) [GC], no. 32772/02, § 82, ECHR 2009.

⁵ See, for example, *Women On Waves and Others v. Portugal*, no. 31276/05, § 40, 3 February 2009.

⁶ *Association for Solidarity with Jehovah's Witnesses and Others v. Turkey*, nos. 36915/10 and 8606/13, 24 May 2016.

⁷ *Manoussakis and Others v. Greece*, no. 18748/91, 26 September 1996.

⁸ *Juma Mosque Congregation and Others v. Azerbaijan* (dec.), no. 15405/04, 8 January 2013.

⁹ See paragraph 44 of the judgment.

violation in the present case, the Court is not deciding that the respondent State must cease to act in a given manner so as to allow the applicant community to enjoy its Article 9 rights – in fact, the applicant community already enjoys *de facto* use of the property in question – but rather the Court is finding that the respondent State ought to act in such a way as to enable and empower the applicant community to fully enjoy its rights under Article 9. To put it differently, the majority should have asked themselves if the absence of any action by the domestic authorities would have resulted in a violation of the Convention. Had the Council omitted to take any decision regarding the request, it would be at fault, because the Regional Court had acknowledged the applicant's right to be awarded the lease and in consequence imposed on the City Council a legal obligation to accord it. In other words, the applicant's right to be accorded the lease and the City Council's positive obligation to accord it are two sides of the same coin, with no margin of appreciation remaining for the respondent State.

10. Thirdly, to consider whether this interference with the applicant community's right to manifest its religion constitutes a violation of the respondent State's positive obligations, consideration ought also to have been given to the question whether the domestic authorities had exercised due diligence (i.e. did they do all that they reasonably could have done in the circumstances?) to protect the applicant community's rights under Article 9 of the Convention. Given that the Regional Court found the Council to have acted unlawfully when refusing to grant the applicant community's lease request¹¹, the City Council should have acted diligently in order to comply with the Regional Court's decision and award the requested lease as soon as possible. Thus, neither any competing interests of the neighbours nor town planning considerations could be invoked by the City Council to refuse once again to grant the applicant community's request for a lease¹².

11. Fourthly and finally, the majority should also have taken into account the question whether, in the event that there had been a violation of the Convention, a complementary action by the respondent State would be required. If a finding of a violation does imply the need for additional restorative action by the domestic authorities, that indicates the existence of a positive obligation. In the case at hand, restorative action is still possible in so far as the domestic authorities will simply have to accord the lease requested.

¹⁰ *Association for Solidarity with Jehovah's Witnesses and Others v. Turkey*, cited above, § 90. On the importance of the space component of the right to live and manifest one's religion, see Judge Pinto de Albuquerque's opinion in *Krupko and Others v. Russia*, no. 26587/07, 26 June 2014.

¹¹ Contrast this with *Johannische Kirche and Peters*, cited above, wherein the domestic authorities' refusal to grant a permit was based upon a legal provision concerning environmental conservation.

¹² See *Manoussakis and Others*, cited above, and *Iskcon and Other v. the United Kingdom*, no. 20490/92, 8 March 1994.

12. In sum, the majority should not have avoided elaborating on the positive obligations under Article 9 of the Convention. As a matter of fact, we cannot but note that the language employed by the majority themselves evidently corresponds to positive obligations – i.e. “failure to permit”¹³, “failure to act”¹⁴. Consistency would have warranted drawing the necessary conclusions from this “failure to act” on the part of the domestic authorities. Had they done so, the majority would have concluded, as we have in this separate opinion, that the City Council’s inaction cannot be justified on the facts of the case and, therefore, the domestic authorities failed to comply with their positive obligations under Article 9 of the Convention.

¹³ See paragraph 55 of the judgment.

¹⁴ See paragraph 56 of the judgment.

PARTLY DISSENTING OPINION OF JUDGE VEHAHOVIĆ

I regret that I am unable to subscribe to the view of the majority that there has been a violation of Article 9 of the Convention. At the same time I agree with the conclusion of the Chamber in finding a violation of Article 1 of Protocol No. 1 to the Convention.

In the present case, the possibility or otherwise for the Jehovah's Witnesses to have their religious services in a particular location does not prevent them from manifesting their religion. But I would not regard this as conclusive. If the decision of the local authorities imposed any additional obligations on the Jehovah's Witnesses, I would regard that as coming within the ambit of Article 9. But in the present case no burden is imposed on the Jehovah's Witnesses on account of their religion. The applicant community simply complains that, as the owner of a residential house located on land belonging to the municipality, it cannot obtain permission to have that house converted into a new place of worship on the land. That seems to me an altogether different matter.

Furthermore, I think that it may relate only to Article 1 of Protocol No. 1.

In today's world there are many deviant forms of religious practice and belief which should never obtain legitimacy and, by means of such recognition, the opportunity to spread these deviant ideas and ideologies. Of course this case is in no way connected with such ideas, but the issue is relevant in terms of the wide margin of appreciation afforded to States in this area and the possibility of creating a precedent for the future.

In this particular case the applicant community already has three places of worship in Kryvyi Rih without any interference by the State. A request to have the place of worship located on a very specific piece of land in the city is departing too far, in my view, from the real meaning of Article 9 of the Convention.

In short, I do not see this case as falling within the ambit of Article 9 but rather as falling only under Article 1 of Protocol No. 1 to the Convention. There is not a single word concerning any alleged limitation on the right of the Jehovah's Witnesses to manifest their belief or on any other right protected by Article 9 of the Convention; rather, the applicant community's complaints concern property rights. What is more, the applicant community conducted religious ceremonies in this house without any interference by the State.

It is true that a wide margin is usually allowed to the State when it comes to general measures of economic or social strategy. This is because, given their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is "in the public interest" (see *James and Others v. the United Kingdom*, 21 February 1986, § 46, Series A no. 98; see also, for example, *National & Provincial Building Society, Leeds Permanent Building Society and*

Yorkshire Building Society v. the United Kingdom, 23 October 1997, § 80, *Reports of Judgments and Decisions* 1997-VII, and *Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, no. 7552/09, 4 March 2014).

Finally, there is no obligation under the Convention for the State to play an active supporting role in matters of religion.