



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

FIFTH SECTION

**CASE OF RELIGIOUS COMMUNITY OF JEHOVAH'S
WITNESSES v. AZERBAIJAN**

(Application no. 52884/09)

JUDGMENT

Art 10 • Freedom of expression • Domestic authorities' refusal to allow import of some of the applicant community's religious books, thus preventing their distribution in the respondent State • Books found hostile towards other religions and capable of leading to public disturbances • Domestic courts' failure to examine impugned remarks within the general context of the books and as part of a religious text • Domestic courts' failure to carry out the requisite balancing exercise • No sensitive background of interreligious tensions

STRASBOURG

20 February 2020

FINAL

20/06/2020

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

v. Azerbaijan,

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

Síofra O'Leary, *President*,
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Lətif Hüseynov,
Anja Seibert-Fohr, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 28 January 2020,

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

PROCEDURE

1. The case originated in an application (no. 52884/09) against the Republic of Azerbaijan 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 ("the applicant community"), on 28 September 2009.

2. The applicant community was represented by Mr R. Cook, Mr A. Carbonneau and Mr R. Kohlhofer, lawyers practising in London, New York and Vienna respectively. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

3. The applicant community complained under Articles 9, 10 and 14 of the Convention that the domestic authorities had unlawfully interfered with its rights to freedom of religion and freedom of expression.

4. On 23 March 2017 the Government were given notice of the complaints under Articles 9 and 10 of the Convention and Article 14 read in conjunction with Articles 9 and 10 of the Convention, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

5. On 13 June 2017 the non-governmental organisation Alliance Defending Freedom International (ADF) was given leave to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant community is the Religious Community of Jehovah's Witnesses, registered by the Ministry of Justice on 22 December 1999.

According to its charter, the purpose of the applicant community was “to satisfy the religious needs of believers in the Christian religion, with reference to Bible”.

7. According to the applicant community, from 2002 it had applied on a regular basis to the State Committee for Work with Religious Associations (“the Committee”) for permissions to import religious literature to be used in their religious activity and for sharing with those who were interested in it. Permissions had been granted by the Committee in a rather contradictory manner, namely that the same title had been allowed for import on one occasion but denied on another.

8. On 13 June 2008 the Committee granted one of the applicant community’s regular requests in part allowing import of three out of six requested titles, arguing that the remaining three could not be imported as they contained passages which were hostile towards other religions and beliefs.

9. On 11 July 2008 the applicant community lodged an action against the Committee with the Sabail District Court, asking the court to declare the decision of the Committee unlawful and quash it. Relying on the provisions of the Constitution, which provided for freedom to express one’s religion and conscience, and freedom to acquire and distribute information, and on Articles 9, 10 and 14 of the Convention, the applicant community submitted that the banned literature was based on the Holy Scriptures, which aimed to spread spiritual knowledge.

10. On 13 August 2008 the first-instance court rejected the claim. Finding that the Committee’s decision did not amount to a violation, the court referred to an expert report that had been commissioned, which stated:

“The book entitled “*Worship the Only True God*” presents subjects that reflect Jehovah’s Witnesses’ religious views. On page 25 it is emphasised that members of the Christian religion are two-faced and their involvement in politics is condemned. It is noted that such actions by Christians can be the cause of people’s negative attitude towards the Bible. Moreover, governments and all nations of the world are reproached for not submitting to Jesus Christ, the king designated by Jehovah. The incorrectness of these religions is established by citing examples [such as] the wars between adherents of the world’s religions [which have been] ignited by racial segregation. In addition, international religions are compared to a ‘rotting tree’.

On page 64 of the book entitled “*What Does the Bible Really Teach?*” it is claimed that other religions which do not agree with the religious views of ‘Jehovah’s Witnesses’ were created under the influence of Satan. Teaching for a religious purpose that a person suffers after death is unquestionably considered satanic. The author claims that every person [who is an] adherent of a false religion should immediately leave it and accept Jehovah. It is claimed that the celebration of Christmas is not correct, and that this was incorporated from idolatry. It is further noted that the Christian understanding of belief in the cross is not correct.

On page 6 of the book entitled “*What Is the Purpose of Life?*” it is stated that the world’s religions often hinder people’s progress and lead to hatred and wars. Furthermore, it is claimed that only the Bible is an accurate book and that other

ancient holy books contain scientifically fictitious, inaccurate and inexplicable lies. Moreover, liturgical rites in traditional Christian churches are criticised and portrayed as being contrary to the Bible. On page 18 it is stated that ‘in addition to the false doctrines taught, the Christian world has also betrayed God and the Holy Book with its deeds.’”

In summarising the parties’ submissions, the conclusion of the expert report, and applicable legal provisions, the court held:

“... the defendant, being an authority in charge of the production, import and distribution of religious literature and other religious material, examined the content of the literature listed in the Religious Community of Jehovah’s Witnesses’ request, and by the letter dated 13 June 2008 banned the import and unrestricted distribution [of that literature], as those titles contained information concerning religious hatred, sectarian discrimination, a threat to national security, religious and political sabotage, and so on. The reasons for not allowing the import of three titles have been explained in detail in the expert report ... the content of these books referred to detrimental ideas and other negative influence[s] which can adversely affect common understanding, mutual tolerance and reciprocal respect between religious communities of various faiths. Therefore, having considered the relevant expert report, the court finds that the defendant acted correctly in banning the import of the literature in question.”

11. On 3 December 2008 the Baku Court of Appeal rejected an appeal lodged by the applicant community, endorsing the reasoning of the first-instance court in a summary fashion.

12. On 16 June 2009 the Supreme Court dismissed a cassation appeal by the applicant community and upheld the decision of the Baku Court of Appeal. In response to an argument by the applicant community that the ban on the import of particular titles was subjective and must be considered unlawful, the Supreme Court held as follows:

“... the import of the books in question was banned because of the views [expressing] religious intolerance which they contained. Moreover, religious intolerance can seriously damage the interests and security of the State, as such statements, [when] expressed by members of any religious community, may lead to [people having] a sense of dissatisfaction towards the members of other religious communities, and cause religious clashes and other negative consequences, as well as undermine religious tolerance and existing normal relations between various religious communities [which are] currently present in Azerbaijani society.”

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

13. At the material time, the relevant provisions of the Constitution provided as follows:

Article 47. Freedom of thought and speech

I. Everyone enjoys freedom of thought and speech.

II. No one shall be forced to proclaim or repudiate his or her thoughts and beliefs.

III. Agitation and propaganda inciting racial, ethnic, religious [or] social discord and hostility are not allowed.”

Article 48. Freedom of conscience

“I. Everyone enjoys freedom of conscience.

II. Everyone has the right to freely determine his [or her] attitude towards religion, to profess, individually or together with others, any religion, or to profess no religion, [and] to express and disseminate his or her beliefs concerning his or her attitude to religion. ...”

B. Relevant domestic legislation concerning religious activities

14. Article 22 (Religious literature and items of a religious nature) of the Law on Freedom of Religious Belief of the Republic of Azerbaijan, as in force at the material time, provided that individuals and religious communities might obtain and use religious literature and other items and material of a religious nature in any language. With the consent of the relevant executive authority for religious affairs, religious communities might import and freely distribute literature, items of a religious nature and other material containing religious content.

15. Paragraph 9.2 of the Regulation on the State Committee for Work with Religious Communities, as in force at the material time, provided that in fulfilment of its duties, the Committee should have the right to control and authorise the production, import and distribution of literature and items of a religious nature and material containing religious and non-religious content at the request of religious communities or relevant public authorities.

III. RELEVANT INTERNATIONAL MATERIAL

16. The European Commission against Racism and Intolerance (the ECRI) Report on Azerbaijan, Fourth Monitoring Cycle (Strasbourg, 31 May 2011) states:

“70. As regards the specific issue of the importation of religious literature, this is prohibited without the prior authorisation of the SCRRO [the State Committee for Relations with Religious Organisations]. Authorisation may be refused if the work in question promotes religious intolerance or includes insults to other religions. The SCRRO indicated that, in 2009, the distribution of 2 332 religious works was authorised, compared with 380 works that were banned. In 2010, the figures were approximately 1750 works authorised versus 375 banned. Some civil society sources underline that, even where the importation of a work is authorised, the SCRRO stipulates the number of copies that can be brought into the country, which is often far lower than the quantity requested and which the community that made the request may need.

71. The ECRI takes note that according to the information provided by the authorities, any interference by the State in the exercise of religious freedoms is

carried out in strict conformity with the law. It observes that the introduction of restrictive legislation with regard to religious communities and a certain number of the restrictive practices described above seem to be the authorities' way of responding to the fear that forms of politically motivated religious extremism may emerge in Azerbaijan. The ECRI underlines that, even if they are legitimate, fears of this kind must not cause the authorities to lose their objectivity vis-à-vis religious minorities or to introduce practices imposing unreasonable requirements on them. The ECRI refers to its concerns, as set out above, regarding the conformity of the legislation in force with the European Convention on Human Rights. In the same context, it also refers to its above considerations warning against the use with regard to persons belonging to minorities of provisions intended to safeguard national security or to prohibit incitement of hatred in such a way as to stifle the legitimate, peaceful expression of minority identities. It again underlines that such practices involve a danger of generating or heightening feelings of mistrust within the minorities being targeted and may thus prove counter-productive. It also points out that opening up to diversity and dialogue among the different groups in society helps both to combat racism and to reinforce national security."

17. The Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the European Commission for Democracy through Law (the Venice Commission) and the OSCE/ODIHR (Venice, 12-13 October 2012) states:

"102. ... [the] provision requesting prior consent before spreading information would appear to be in direct breach of Article 10 (1) of the ECHR and Article 19 (1) of the ICCPR. Freedom of expression entails the right to impart and receive information and ideas without interference by public authorities and regardless of frontiers. The requirement of prior consent for the production and dissemination of religious literature is arguably unnecessary in a democratic society and may violate both freedom of expression and freedom of religion norms. The UN Human Rights Committee has stated that 'the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts [...]; the practice and teaching of a religion or belief includes [...] the freedom to prepare and distribute religious texts or publication'. The UN General Assembly has similarly called upon States to ensure 'the right to all persons to write, issue, and disseminate relevant publications in these areas [of religion or belief]. The OSCE Vienna Concluding Document (1989) likewise provides that OSCE participating States shall 'respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications [...] and other articles and materials related to the practice of religion or belief' and 'allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials'. Any restriction of this right must satisfy the criteria of a pressing social need in a democratic society. To comply with international human rights, it is recommended that this clause is omitted."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 9 AND 10 OF THE CONVENTION

18. The applicant community complained that the persistent refusal of the domestic authorities to permit import of Jehovah's Witnesses'

publications effectively banning their possession and distribution had constituted an unlawful interference with its right to freedom of religion and freedom of expression. Articles 9 and 10 of the Convention read:

Article 9

“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.”

Article 10

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

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

B. Merits

1. The parties’ submissions

20. The applicant community submitted that the applicable domestic law lacked foreseeability, as Article 22 of the Law on Freedom of Religious Belief and Article 9.2 of the Regulation on the State Committee for Work with Religious Communities granted the Committee an unfettered power to control and consent to the production, import and distribution of literature. Nor did the legislation in question govern how the Committee must exercise its power, as there were no accessible objective criteria to be applied when deciding whether to allow the import of religious publications.

21. The applicant community also argued that the domestic authorities' actions had not pursued a legitimate aim and had not been necessary in a democratic society. They argued that the expressions in the banned books which were allegedly "directed against Christian and Jewish communities" had never caused any complaint from the Jewish religious community in Azerbaijan, while those which related to the Christian religion contained mild doctrinal and historical discussions about different perspectives on Christian teachings. In addition, as they were sincerely held religious beliefs, the expressions in question did not constitute hate speech and did not incite violence, discrimination or intolerance.

22. The Government admitted that the ban had constituted an "interference" with or "limitation" of the exercise of the rights protected by Articles 9 and 10 of the Convention. However, in democratic societies where several religions coexisted within one and the same population, it was necessary to place restrictions on the freedom to manifest one's religion or belief in order to reconcile the interests of the various groups and ensure that everyone's beliefs were respected. In this context, they referred to *Leyla Şahin v. Turkey* ([GC], no. 44774/98, § 106, ECHR 2005 XI). Given that the books in question implied religious superiority and incited religious discord and could therefore damage the peaceful coexistence of several religious communities in a multireligious society, the ban on their import had pursued the legitimate aim of protecting the rights and freedoms of others, namely Christian and Jewish communities in Azerbaijan, as the books contained disparaging expressions directed against those communities. Moreover, the interference had been based on provisions of domestic law which were accessible to the applicant community and which had been formulated with sufficient precision to enable the community to foresee the consequences which a given action might entail. Furthermore, the lawfulness of the ban had been endorsed by the domestic courts, which had carefully examined submissions made by the Committee and the applicant community and had concluded that the books in question promoted religious segregation and discrimination.

2. *The third-party intervener*

23. The third-party intervener, ADF International, submitted that a decision by domestic authorities to intervene and restrict religious practice or the dissemination of religious publications could not be disproportionate and must be in response to a particular pressing social need. As freedom of expression constituted one of the essential foundations of a democratic society, it must be protected in order to safeguard tolerance, broadmindedness and pluralism.

3. *The Court's assessment*

24. At the outset, the Court notes that the applicant community relied on two separate Convention provisions in relation to the same facts: Article 9 and Article 10 of the Convention. Given that the present case concerns a ban on the import of books purported for further distribution by the applicant community (see paragraph 7 above), the Court considers that the applicant community's complaints fall to be examined under Article 10. That being said, the Court notes that the issues of freedom of expression and freedom of religion are closely linked in the present case. Indeed, the books at issue are a commentary on the religious teaching of Jehovah's Witnesses, and the applicant community intended to use them for religious purposes. The case must therefore be considered in the light of the Court's case-law on freedom of religion. The Court will therefore examine the present case under Article 10, interpreted, where appropriate, in the light of Article 9 (see *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, § 78, 28 August 2018).

(a) **Existence of an interference**

25. The Court notes, there is no dispute between the parties, that banning the import of books published or commissioned for publication by the applicant community amounted to "interference by a public authority" with the applicant community's right to freedom of expression, interpreted in the light of its right to freedom of religion to take account of the religious nature of the books and its intention to use them for religious purposes. The Court reiterates that such interference will infringe the Convention unless it satisfies the requirements of paragraph 2 of Article 10. It must therefore be determined whether the interference was "prescribed by law", pursued one or more of the legitimate aims set out in that paragraph, and was "necessary in a democratic society" to achieve those aims.

(b) **"Prescribed by law"**

26. The Court finds that the interference had a basis in national law – Article 22 of the Law on Freedom of Religious Belief and Article 9.2 of the Regulation on the State Committee for Work with Religious Communities – and that the relevant provisions were accessible. Rather, the applicant community called into doubt the foreseeability of those provisions, arguing that they had not been formulated with sufficient precision.

27. The Court reiterates that one of the requirements flowing from the expression "prescribed by law" is foreseeability. Thus, a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable people to regulate their conduct; they must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which

a given action may entail. Those consequences need not be foreseeable with absolute certainty. Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see, for example, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 141, ECHR 2012, and *Delfi AS v. Estonia* [GC], no. 64569/09, § 121, ECHR 2015).

28. The level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover, and the number and status of those to whom it is addressed (see *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 142, and *Delfi AS*, cited above, § 122).

29. In the present case, the applicant community argued that the applicable domestic legislation was vague to the point of making the legal rule in question unforeseeable in its application. In particular, the domestic law did not contain a legal definition of the key elements to be applied when deciding whether to allow the import of religious publications. The Government argued that the Law on Freedom of Religious Belief was sufficiently clear to enable the applicant community to foresee the consequences of its actions.

30. The Court notes that the Venice Commission, in its Opinion of 12-13 October 2012 (see paragraph 17 above), considered that the provision which set out that prior consent must be sought before information could be distributed appeared to be in direct breach of Article 10 § 1 of the Convention, and recommended that the provision be amended so as to omit the requirement of prior consent.

31. The Court notes that, in the present case, there may be a serious question as to whether the interference was “prescribed by law” within the meaning of Article 10, in particular since the relevant law did not specify the grounds for not allowing the import of religious publications. However, the Court considers that the applicant community’s grievances principally fall to be examined from the point of view of the proportionality of the interference. The Court will therefore leave open the question of whether the interference with the applicant community’s right to freedom of expression may be regarded as “prescribed by law” within the meaning of Article 10 § 2 of the Convention (see *Ibragim Ibragimov*, cited above, § 86).

(c) Legitimate aim

32. Having regard to the Government’s submissions (see paragraph 22 above), the Court will proceed on the assumption that the contested

measures sought to pursue the legitimate aim of protecting the rights of others (see *Ibragim Ibragimov*, cited above, § 87).

(d) “Necessity in a democratic society”

(i) General principles

33. The applicable general principles under Articles 9 and 10 have been set out in the case of *Ibragim Ibragimov* (cited above, §§ 88-99).

(ii) Application to the present case

34. The Court notes at the outset that the decision not to allow the import of the books in question resulted in a ban on their distribution in the respondent State. The Court reiterates in this regard that a certain margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of religion or to incite religious hatred or intolerance. The authorities’ margin of appreciation, however, is not unlimited. It goes hand in hand with Convention supervision (see *Otto-Preminger-Institut v. Austria*, 20 September 1994, § 50, Series A no. 295-A). It is for the European Court to give a final ruling on the restriction’s compatibility with the Convention and it will do so by assessing in the circumstances of a particular case, *inter alia*, whether the interference corresponded to a “pressing social need” and whether it was “proportionate to the legitimate aim pursued”. Indeed, such supervision can be considered to be all the more necessary given the rather open-ended notion of respect for the religious beliefs of others and the risks of excessive interference with freedom of expression under the guise of action taken against allegedly offensive material (see *Murphy v. Ireland*, no. 44179/98, § 68, ECHR 2003-IX (extracts). Cases which involve prior restraint call for special scrutiny by the Court (see *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports of Judgments and Decisions* 1996-V, and *Ibragim Ibragimov*, cited above, § 96). The Court will therefore examine whether such a serious measure as banning a book was compatible with freedom of expression (see *Editions Plon v. France*, no. 58148/00, § 53, ECHR 2004-IV) and whether the domestic courts gave relevant and sufficient reasons for their decisions.

35. The Court notes that in its judgment of 13 August 2008 declaring the ban on the import of three titles (“*Worship the Only True God*”, “*What Does the Bible Really Teach*” and “*What Is the Purpose of Life?*”) lawful, the first-instance court found that they contained statements which could negatively affect mutual relations between the religious communities of various faiths.

36. The Court reiterates that it was first of all for the national authorities to carry out a comprehensive assessment of the impugned remarks in the

context, putting forward relevant and sufficient reasons for justifying the interference and carefully balancing the applicant community's right to freedom of expression with the protection of the right of religious people not to be insulted on the grounds of their beliefs.

37. In the instant case the Court notes that the first-instance court's judgment was essentially based on the expert report, and the court limited its analysis to summarising the parties' submissions, the conclusion of the expert report, and the applicable legal provisions (see paragraph 10 above). In particular, it failed to carry out a comprehensive assessment of the impugned remarks by examining them within the general context of the books. On the contrary, it assessed the statements in question when they were detached from their immediate textual context, and failed to examine which ideas they sought to impart. Moreover, the first-instance court did not take into account the fact that they were part of a religious text (see *Ibragim Ibragimov*, cited above, § 116). The Court, therefore, cannot accept the reasons provided by the first-instance court as relevant and sufficient for the purpose of justifying the interference in question.

38. Furthermore, although the first-instance court perceived that those expressions were capable of leading to public disturbances, the domestic courts did not refer to any specific circumstances indicative of a sensitive background at the material time – such as the existence of interreligious tensions or an atmosphere of hostility and hatred between religious communities in Azerbaijan – in which the impugned statements might have unleashed violence, given rise to serious interreligious frictions, or led to similar harmful consequences (see *Ibragim Ibragimov*, cited above, § 118).

39. Moreover, the first-instance court did not even mention the effect of the ban on the applicant community's rights under Articles 9 and 10 of the Convention or its domestic-law equivalent (for similar reasoning, see *Perinçek v. Switzerland* [GC], no. 27510/08, § 277, ECHR 2015 (extracts), and *Ibragim Ibragimov*, cited above, § 107), and did not try to balance the applicant community's right to freedom of expression with the rights of others not to be insulted on the grounds of their beliefs. The Court has, in Article 10 cases, often emphasized its subsidiary role as well as the margin of appreciation which, in a given case, a respondent State enjoys when the balancing exercise has been undertaken by the national authorities with sufficient care. That is not the case here, where, furthermore, the prior restraint aspect requires strict scrutiny and where serious questions arise regarding whether the interference was prescribed by law (see paragraphs 34 and 31 above).

40. Lastly, the Court takes note that the Baku Court of Appeal and the Supreme Court did not address the deficiencies of the Sabail District Court's decision, resorting instead to summary conclusions that the religious intolerance contained in the books in question was a valid reason to ban them (see paragraphs 11-12 above).

41. Having regard to the above considerations and its case-law on the subject, the Court finds that the domestic courts did not carry out careful balancing exercise in conformity with the criteria laid down in its case-law and did not provide “relevant and sufficient” reasons for the interference.

42. The Court therefore finds that there has been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 READ IN CONJUNCTION WITH ARTICLES 9 AND 10 OF THE CONVENTION

43. The applicant community complained that the failure to allow the import of religious literature had been caused by discrimination on the grounds of religious belief. Article 14 of the Convention provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

44. The Court notes that this complaint is linked to the one examined above, and must therefore likewise be declared admissible.

45. The Court reiterates that Article 14 has no independent existence, but plays an important role by complementing the other provisions of the Convention and its Protocols, since it protects individuals placed in similar situations from any discrimination in the enjoyment of the rights set forth in those other provisions. Where a substantive Article of the Convention or its Protocols has been relied on, both on its own and in conjunction with Article 14, and a separate breach has been found of the substantive Article, it is not generally necessary for the Court to consider the case under Article 14 also, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (see *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, § 89, ECHR 1999-III, and *Dudgeon v. the United Kingdom*, 22 October 1981, § 67, Series A no. 45).

46. In the circumstances of the present case, the Court considers that the inequality of treatment, of which the applicant community claimed to be a victim, has been sufficiently taken into account in the above assessment leading to the finding of a violation of a substantive Convention provision (see paragraph 42 above). It follows that there is no cause for a separate examination of the same facts from the standpoint of Article 14 of the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 134, ECHR 2001-XII; *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, §§ 183-188, 10 June 2010; and *Association for Solidarity with Jehovah's Witnesses and Others v. Turkey*, nos. 36915/10 and 8606/13, §§ 109 and 110, 24 May 2016).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant community claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government contested the amount claimed as excessive, submitting that, in any event, a finding of a violation would constitute sufficient just satisfaction.

50. The Court considers that the applicant community has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should therefore be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant community the sum of EUR 3,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

51. The applicant community claimed EUR 8,600 for legal costs incurred in the proceedings before the domestic courts and the Court. It also claimed EUR 38.96 for domestic court fees and EUR 3.60 for postal expenses. In support of its claim for expenses, the applicant community submitted six receipts.

52. The Government submitted that the applicant community had not produced any evidence to show that it had actually paid or was legally bound to pay any fees for its representatives' work, which suggested that they were working free of charge.

53. In the present case, the Court observes that the applicant community did not submit documents showing that it had paid or was under a legal obligation to pay the fees charged by its representatives. It therefore finds no basis on which to accept that the applicant community has actually incurred the costs claimed (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017; *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017; and *Jafarov and Others v. Azerbaijan*, no. 27309/14, §§ 103-106, 25 July 2019). It follows that this part of the claim must be rejected.

54. As to the part of the claim concerning expenses, the Court considers it reasonable to award the applicant community the sum of EUR 42.56, plus any tax that may be chargeable to it on that amount.

C. Default interest

55. 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, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 10;
3. *Holds* that there is no need to examine separately the complaint under Article 14 of the Convention taken in conjunction with Articles 9 and 10;
4. *Holds*
 - (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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 42.56 (forty-two euros and fifty-six cents), 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;

5. *Dismisses* the remainder of the applicant community's claim for just satisfaction.

Done in English, and notified in writing on 20 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Síofra O'Leary
President