



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

FOURTH SECTION

CASE OF FÖDERATION DER ALEVITEN GEMEINDEN IN ÖSTERREICH v. AUSTRIA

(Application no. 64220/19)

JUDGMENT

Art 9 • Freedom of religion • Refusal to register applicant association as a religious community • Domestic authorities' failure to provide relevant and sufficient reasons • Interference not "necessary in a democratic society"
Art 6 § 1 (civil) • *Ratione materiae* • Registration of applicant association did not constitute a "civil right" falling under the scope of Art 6 § 1 • Applicant association had legal personality and was able to operate • No property or non-pecuniary claims at stake

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 March 2024

FINAL

05/06/2024

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

**In the case of Föderation der Aleviten Gemeinden in Österreich
v. Austria,**

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

Tim Eicke, *President*,
Gabriele Kucsko-Stadlmayer,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Anne Louise Bormann, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 64220/19) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an association registered in Austria, Föderation der Aleviten Gemeinden in Österreich (“the applicant association” or “the applicant”), on 11 December 2019;

the decision to give notice to the Austrian Government (“the Government”) of the complaints concerning Article 6 § 1 and Article 9 of the Convention and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 30 January 2024,

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

INTRODUCTION

1. The application concerns the refusal to register the applicant association as a religious community (*religiöse Bekenntnisgemeinschaft*) under the Legal Status of Registered Religious Communities Act (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*, Federal Law Gazette I no. 19/1998 – hereinafter “the Religious Communities Act”, see paragraph 27 below). It raises issues under Article 6 § 1 and Article 9 of the Convention.

THE FACTS

2. The applicant association was registered in 1998 and has its seat in Vienna. It was represented by Mr W. Schwartz, a lawyer practising in Vienna.

3. The Government were represented by their Agent, Mr H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

4. The facts of the case may be summarised as follows.

I. FIRST SET OF PROCEEDINGS

5. The applicant is an umbrella association (*Dachverband*) of several Alevi cultural associations (*alevitische Kulturvereine*) in Austria. Between 2008 and 2009, the applicant association was in correspondence with representatives of the Federal Ministry of Education, Arts and Culture, with a view to preparing its request to be granted legal personality as a registered religious community under the Religious Communities Act (see paragraph 1 above and paragraph 27 below), under the name “Alevi Religious Society in Austria” (*Alevitische Religionsgesellschaft in Österreich* – hereinafter “ARÖ”). In particular, the applicant association submitted the draft statutes of ARÖ to the representatives of the Federal Ministry of Education, Arts and Culture, who provided comments on how to improve their compliance with the Religious Communities Act.

6. In March 2009 one of the applicant association’s members, the regional Alevi Cultural Association in Vienna (*Kulturverein der Aleviten in Wien* – hereinafter “the Vienna Alevi Cultural Association”) made a request to the Federal Minister of Education, Arts and Culture (hereinafter “the Federal Minister”) for recognition as a legally recognised religious society under the Recognition Act (see paragraph 26 below), under the name “Islamic Alevi Denomination in Austria” (*Islamische Alevitische Glaubensgemeinschaft in Österreich* – hereinafter “ALEVI”) and, in the alternative, for acquisition of legal personality as a registered religious community under the Religious Communities Act (see paragraph 27 below). The applicant association claims that this request was made without its prior knowledge or consent.

7. On 9 April 2009 the applicant association requested the Federal Minister to issue a declaration to the effect that ARÖ (see paragraph 5 above) had acquired legal personality as a registered religious community under the Religious Communities Act (see paragraph 1 above and paragraph 27 below). In its request, the applicant association argued that, as an umbrella association of several Alevi cultural associations, it represented the 6,000-plus followers of Alevism in Austria who were members of those cultural associations. In ARÖ’s statutes, attached to the request, Alevism was defined as “an independent and syncretic faith with particular links to Islam” (*eigenständiger und synkretischer Glaube mit besonderen Bezügen zum Islam*) as well as an “independent entity within Islam” (*eigenständige Größe innerhalb des Islams*). The term “member” of ARÖ was defined as any person professing Alevism (*Alevitentum*) and having his or her principal place of residence in Austria.

8. On 20 May and 4 September 2009 the applicant association submitted amended versions of ARÖ’s statutes. In the amended versions, the definition of membership remained unchanged, while the passage “independent entity within Islam” had been removed and the member congregations were now permitted to add a chosen affix to the standard names set out in the statutes,

so as to reflect their specific tradition within Alevism. While in the statutes of 20 May 2009 “Alevi-Islamic” was one of the examples of such name affixes, the version of 4 September 2009 listed only “Alevi-Bektashi” as such an example.

9. On 25 August 2009 the Federal Minister dismissed both of the requests from the Vienna Alevi Cultural Association (see paragraph 6 above). The Islamic Denomination in Austria (*Islamische Glaubensgemeinschaft in Österreich* – hereinafter “the IGGÖ”), the legally recognised body representing followers of Islam in Austria, as an interested party, had commented unfavourably on the requests and asked the Federal Minister to deny them, arguing that they constituted an interference in its internal affairs. IGGÖ had argued that Alevism was a syncretic faith that was diametrically opposed to the religious doctrine of Islam. Any description of the religious group as “Islamic” and any reference in the request to “Islam” was therefore to be removed. In rejecting the requests, the Federal Minister held that since ALEVI described its faith as Islamic and given that a legally recognised religious society for Islam already existed and was recognised under the Islam Act (see paragraph 26 below), it was not possible for another religious association which defined itself as “Islamic” to be registered or recognised. On 7 October 2009 the Vienna Alevi Cultural Association lodged a complaint with the Constitutional Court against the Federal Minister’s administrative decision. On the same date, the Federal Minister decided to suspend the proceedings in the applicant association’s case (see paragraph 7 above) until judgment had been delivered on the Vienna Alevi Cultural Association’s constitutional complaint.

10. In a judgment of 1 December 2010 (B1214/09, VfSlg. 19.240/2010), the Constitutional Court set aside the contested administrative decision on account of a violation of the Vienna Alevi Cultural Association’s constitutionally guaranteed right to freedom of religion under Article 9 of the Convention. It held that the State, which had the duty to remain neutral in questions of religion, was not allowed to impose unity between a legally recognised religious society and another religious community, where such unity would run counter to the latter’s self-identification, did not exist in fact and was not sufficiently corroborated by theological criteria. The authorities should have assessed on the basis of the existing documents whether the legal requirements were fulfilled, in particular whether there existed a sufficient distinction in doctrine from that of existing religious communities. The impugned administrative decision had thus failed to apply the provisions of the Religious Communities Act (see paragraph 27 below) in line with Article 9 of the Convention.

11. On 16 December 2010 the Federal Minister declared that ALEVI had acquired legal personality as a registered religious community under the Religious Communities Act (see paragraph 6 above). On the same day the Federal Minister dismissed the applicant association’s request for registration

and acquisition of legal personality (see paragraph 7 above), finding that the latest version of its statutes, which it had submitted on 4 September 2009, was to a large extent not only similar but virtually identical in wording to those of ALEVI. Their doctrines differed solely with respect to their position towards Islam. While ALEVI described its faith as Islamic (*islamische Glaubensrichtung*), Article 2 § 1 of ARÖ's statutes, submitted by the applicant association, defined Alevism as an independent and syncretic faith with particular links to Islam (*eigenständiger und synkretischer Glaube mit besonderen Bezügen zum Islam*; see paragraph 7 above). The repeated amendments to the applicant association's submissions (see paragraph 7 above), the open wording of the statutes which allowed for its religious congregations to use name affixes such as "Alevi-Islamic" and the conduct of the applicant association's representatives showed that the supposed differences in doctrine did not in fact exist. In the absence of a sufficiently distinguishable doctrine, the statutes submitted by the applicant association did not fulfil the requirements of section 4(1)(2) of the Religious Communities Act (see paragraph 27 below).

12. On 31 January 2011 the applicant association lodged a complaint with the Constitutional Court, relying on Article 9 of the Convention, and provided an expert opinion by two professors from the University of Vienna dated 25 January 2011 in support of its claim. It submitted, among other arguments, that the Vienna Alevi Cultural Association had been one of its member associations, but that it had requested registration as a religious community (see paragraph 9 above) without the applicant association's knowledge or consent as an umbrella association (see paragraph 5-6 above). The wording of the earlier versions of the statutes had been based on an attempt to find a compromise with the Vienna Alevi Cultural Association, with which disagreement had arisen over the position towards Islam. The statutes submitted with the request of 9 April 2009 (see paragraph 7 above), and those of 20 May 2009 (see paragraph 8 above), had thus used wording which would include member associations identifying as Islamic. When it became clear that the dispute with the Vienna Alevi Cultural Association could not be resolved, the applicant association had amended its statutes, with the version of 4 September 2009 ultimately removing "Alevi-Islamic" as a possible name affix. On 28 November 2011 the Constitutional Court declined to deal with the complaint. The applicant lodged an extraordinary appeal with the Supreme Administrative Court, reiterating its arguments.

13. On 5 November 2014 the Supreme Administrative Court set aside the Federal Minister's administrative decision of 16 December 2010 (see paragraph 11 above) as unlawful. It held that the Federal Minister's refusal to grant legal personality as a registered religious community pursuant to section 5(1)(2) of the Religious Communities Act (see paragraph 27 below) should have been based solely on an evaluation of the statutes submitted by the applicant association and not on the conduct of its representatives.

II. SECOND SET OF PROCEEDINGS

14. On 11 May 2015, on the basis of the statutes dated 4 September 2009 (see paragraph 8 above), the Federal Minister once again dismissed the applicant association's request of 9 April 2009 (see paragraph 7 above), upholding his reasoning that the applicant's doctrine did not differ sufficiently from that of ALEVI, which had in the meantime become a legally recognised religious society under the Act on the External Legal Relations of Islamic Religious Societies (*Bundesgesetz über die äußeren Rechtsverhältnisse islamischer Religionsgesellschaften*, Federal Law Gazette I no. 39/2015 – hereinafter “the Islam Act”), which had entered into force on 31 March 2015 (see paragraph 26 below). Therefore, the applicant's statutes did not fulfil the requirement of section 4 (1)(2) of the Religious Communities Act (a religious doctrine which differs from the doctrines of existing religious communities). Furthermore, the requested name – namely, “Alevi Religious Society in Austria” (*Alevitische Religionsgesellschaft in Österreich* – see paragraph 5 and 7 above) – wrongly implied the status of a legally recognised religious society rather than that of a registered religious community and did not prevent confusion with ALEVI, as required by section 4(1)(1) of the Religious Communities Act (see paragraph 27 below).

15. On 10 June 2015 the applicant appealed against the decision of 11 May 2015 and requested an oral hearing before the Federal Administrative Court. It argued that it had conducted talks in January 2015 with an official from the Federal Ministry and had informed her that the statutes were currently being amended in order to clarify distinctions in relation to the doctrine of ALEVI. The Federal Minister had overlooked that fact in his decision.

16. The Federal Minister upheld his reasoning in his preliminary decision on the appeal (*Beschwerdevorentscheidung*) on 7 August 2015. He added that the announcement in January 2015 that the applicant association's statutes were being amended had not had any legal effect. At the request of the applicant, he referred the complaint to the Federal Administrative Court. On 11 March 2016 the Federal Administrative Court, without holding an oral hearing, dismissed the applicant's complaint as ill-founded. It concluded that the religious doctrine presented in the statutes of the applicant association did not in fact differ from that of ALEVI. In the meantime, in October 2015, ALEVI had changed its name from “Islamic Alevi Denomination in Austria (ALEVI)” (see paragraph 9 above) to “Alevi Denomination in Austria (ALEVI)” (*Alevitische Glaubensgemeinschaft in Österreich* (ALEVI)).

17. The applicant lodged a complaint with the Constitutional Court and referred to its amended statutes dated 7 May 2015. In her submissions in reply, the Federal Minister noted that the applicant had never submitted those allegedly amended statutes. On 22 April 2016 the applicant lodged an appeal with the Supreme Administrative Court. In her submissions in reply, the

Federal Minister reiterated that the applicant had still not submitted the allegedly amended statutes. On 24 November 2016 the Constitutional Court declined to deal with the complaint. On 22 November 2017 the Supreme Administrative Court set aside the Federal Administrative Court's judgment of 11 March 2016 (see paragraph 16 above) as being unlawful owing to lack of jurisdiction. The matter lay within the competence of the Vienna Regional Administrative Court and not the Federal Administrative Court. On 15 December 2017 the Federal Administrative Court rejected the applicant's appeal of 10 June 2015 (see paragraph 14 above) for lack of jurisdiction.

18. On 8 February 2018 the Federal Minister referred the appeal to the Vienna Administrative Court. On 27 April 2018 the applicant association requested that several witnesses be heard, with a view to demonstrating that its religious doctrine was distinct from that of other religious bodies. On 4 June 2018 the applicant made additional observations. It submitted for the first time its amended statutes, dated 7 May 2015 (see paragraph 17 above), declarations of membership signed by more than 300 persons accompanied by their addresses and copies of their identity cards, and an additional list allegedly containing a further 4,000 members. In the amended statutes, the term "member" continued to be defined as any person professing Alevism and having his or her principal place of residence in Austria (see paragraph 7 *in fine* above).

19. On 10 December 2018 the Vienna Administrative Court set a date for an oral hearing in the applicant's case on 28 December 2018. On 14 December 2018 the applicant requested that the hearing be moved to a later date because, among other reasons, the short notice given did not allow it to bring its witnesses (see paragraph 18 above) to the court. On 17 December 2018 the Vienna Administrative Court rejected the request and asked the applicant to indicate, by the date of the hearing, which declarations of support were still valid. The applicant submitted that it was impossible to review 335 pages of declarations of support within five business days but that it could, however, ensure the presence of at least 300 persons who could confirm their support at the hearing. The applicant asked the court to make provision for them to be heard as witnesses at the hearing.

20. On 28 December 2018 the Vienna Administrative Court held the oral hearing. The applicant submitted that it had changed the name of the religious community to "Alevi-Bektashi Denomination in Austria" (*Alevitisch-Bektaschi Glaubensgemeinschaft in Österreich*) in order to distinguish itself more clearly from the existing religious community ALEVI which – despite its recent name change (see paragraph 16 above) – still perceived itself as an Islamic faith. The applicant once again submitted the amended statutes of 7 May 2015. Its requests to hear witnesses in order to prove the differences between their religious doctrine and that of ALEVI were dismissed. Its request that the court hear the testimony of those

followers who were present to confirm their adherence to the religious community was also denied.

21. On 4 January 2019 the Vienna Administrative Court held another oral hearing, at which 600 members of the religious community were present and willing to confirm their adherence to it. They were not heard by the judge. The representative of the Federal Minister maintained his argument that the statutes submitted by the applicant were not sufficiently different from those of ALEVI. At the hearing, the applicant received, for the first time, a complete copy of ALEVI's statutes. On 22 January 2019 the applicant again submitted amended statutes, dated 19 January 2019, according to which the name of the religious community had been changed to "European-Alevi Denomination in Austria" (*Europäisch-Alevitische Glaubensgemeinschaft in Österreich*). In the statutes, the term "member" continued to be defined as any person professing Alevism and having his or her principal place of residence in Austria (see paragraphs 7 and 18 *in fine* above). The amended statutes now included an annexed table, in which the differences in the religious doctrines between the European-Alevi Denomination in Austria and ALEVI were illustrated with reference to the relevant provisions of their respective statutes. On 24 January 2019 the Vienna Administrative Court held another oral hearing. The representative of the Federal Minister argued, for the first time, that the start of membership, as defined in the statutes, was questionable (*bedenklich*), since it did not require a constitutive act. The applicant responded that the concept of membership fulfilled the legal requirements and could be specified if required. The judge did not comment further on that issue.

22. On 29 January 2019 the Vienna Administrative Court gave its decision and, dismissing the applicant's appeal, upheld the decision by the Federal Minister of 11 May 2015 (see paragraph 14 above). It examined the version of the applicant association's statutes dated 7 May 2015 (see paragraph 18 above) and found that they were still, to a large extent, identical to those of ALEVI. Apart from removing the word "Islamic", ALEVI had not changed the doctrine in its statutes. When comparing the doctrines in the statutes, they appeared to the judge to be copy-pasted. The Vienna Administrative Court further stated that the applicant's submission of the revised statutes, dated 19 January 2019, only a few days after they had received ALEVI's statutes (see paragraph 21 above) showed that the amendment was only made to further distinguish the applicant's statutes from those of ALEVI. The repeated amendments to the applicant's statutes gave the impression that the religious community was not really committed to its statutes but rather saw them as a means to achieve the goal of registration. Owing to the frequent amendments, it was not possible to establish what exactly ARÖ's doctrine was, and it was not clear whether the persons who had signed declarations of support were in favour of those amendments. If the version of the statutes dated 19 January 2019 (see paragraph 21 above)

really expressed their actual religious practice, as submitted by the applicant association, this would mean that the applicant had misled the authorities when it had submitted previous versions of its statutes and stated that these reflected its religious doctrine. The Vienna Administrative Court further noted that the concept of membership in the applicant association's statutes was too vague and did not clearly define who was a member. For example, members of ALEVI would also qualify as members of the applicant association, according to the definition given.

23. The applicant lodged an appeal with the Supreme Administrative Court and a complaint with the Constitutional Court. It argued, among other things, that the Vienna Administrative Court should have examined the latest version of the statutes rather than those of 2015, that none of its requests for evidence had been accepted, and that no expert opinion had been obtained to examine the differences between the doctrine of ALEVI and that of the applicant association. The court's decision of 29 January 2019 had been surprising and unlawful. It had violated the applicant's right to freedom of religion. The applicant suggested that the constitutionality of section 4(1)(2) of the Religious Communities Act (see paragraph 27 below) be examined under Article 140 of the Federal Constitution. It did not complain about the reasoning that the concept of membership had not been sufficiently clear.

24. On 28 May 2019 the Supreme Administrative Court rejected the applicant's appeal, arguing that it had not raised any legal questions of fundamental importance. It did not find it necessary to examine the applicant's argument that the Vienna Administrative Court had failed to consider the latest version of its statutes, in particular when determining whether its doctrine differed sufficiently from that of ALEVI, as that court's decision was also based on a viable alternative reasoning (*tragfähige Alternativbegründung*) on the concept of membership which the applicant had not challenged in its appeal (see paragraph 23 above). The imprecise concept of membership was also evident in the latest version of the statutes dated 19 January 2019 (see paragraphs 20 and 22 above). On 11 June 2019, referring to its case-law (VfSlg. 19.240/2010 – see paragraph 10 above), the Constitutional Court declined to deal with the applicant's complaint. The final decision was served on the applicant on 27 June 2019.

III. SUBSEQUENT DEVELOPMENTS

25. Following the present application, lodged with the Court on 11 December 2019, on 30 April 2020 the European-Alevi Denomination in Austria (*Europäisch-Alevitische Glaubensgemeinschaft in Österreich*), represented by the applicant association, submitted a request under the Religious Communities Act (see paragraph 27 below) to obtain registration as a religious community. Revised statutes dated 2 November 2019, which have not been submitted to the Court, were attached to that request. On

19 October 2021 a meeting was held at the Federal Ministry to clarify outstanding questions concerning the request, at which the applicant association informed the Ministry that registration was being sought under a new name, the “Free-Alevi Denomination in Austria” (*Frei-Alevitische Glaubensgemeinschaft in Österreich*). Updated statutes were submitted on 7 February 2022, specifying that membership required a personal declaration to an official of the religious community. On 14 March 2022 the Federal Minister declared that the Free-Alevi Denomination in Austria had acquired legal personality as a publicly registered religious community under the Religious Communities Act. In so far as relevant, it reasoned that the name was clearly distinguishable, the experts consulted had concluded that the doctrine was distinguishable from that of ALEVI, and there was no evidence to suggest that the doctrine did not exist in practice in Austria. The provision on membership gave no cause for objections.

RELEVANT LEGAL FRAMEWORK

26. The relevant domestic law was summarised in *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, §§ 37-55, 31 July 2008). Austrian law currently provides for two kinds of special legal personality for religious groups. Under the Law of 20 May 1874 concerning the legal recognition of religious societies (*Gesetz betreffend die gesetzliche Anerkennung von Religionsgesellschaften*, published in Imperial Law Gazette 1874/68 – hereinafter “the Recognition Act”) religious groups not yet recognised by law may be granted recognition as “legally recognised religious societies” (*gesetzlich anerkannte Religionsgesellschaften*), a public law status (*Körperschaft öffentlichen Rechts*) to which certain legal privileges are attached. Since 1998, religious groups not already enjoying legal personality under public law as either legally recognised church or religious society may request registration as a “registered religious community” under the Religious Communities Act. In addition, several other religious denominations have obtained recognition through specific laws. In particular, Islam was recognised by the Law of 15 July 1912 concerning the recognition of followers of the Hanafi rite of Islam as religious society (*Gesetz betreffend die Anerkennung der Anhänger des Islam nach hanefitischem Ritus als Religionsgesellschaft*, published in Imperial Law Gazette 159/1912 – hereinafter “1912 Islam Recognition Act”). In 1988, after a judgment of the Constitutional Court, the words “of the Hanafi rite” (*nach hanefitischem Ritus*) were removed from the 1912 Islam Recognition Act, making it applicable to all followers of Islam (Federal Law Gazette no. 164/1988). In 2015 the 1912 Islam Recognition Act was replaced by the Islam Act (see paragraph 14 above) which, among other things, provided for the possibility for Islamic religious groups to be granted legal personality as legally recognised religious societies.

27. The relevant parts of the Religious Communities Act (see paragraph 1 above) read as follows:

**Statutes
Section 4**

“(1) The statutes shall include:

1. the name of the religious community, which shall be such that it can be linked to the doctrine of the religious community and prevents confusion with registered religious communities having legal personality and with legally recognised churches and religious societies or their institutions;

2. a presentation of the religious doctrine, which must differ from the doctrine of existing religious communities under this Act, as well as from the doctrines of legally recognised churches and religious societies;

...

4. provisions regarding the start and termination of membership ...;

...”

**Refusal to grant legal personality
Section 5**

“(1) The Federal Minister of Education and Cultural Matters shall refuse to grant legal personality [to the religious community] if

1. in view of its teachings or practice, this is 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; this shall in particular be the case if its activities involve incitement to commit criminal offences, obstruction of the psychological development of adolescents, the undermining of the mental integrity of individuals and the application of psychotherapeutic methods, notably for the purpose of imparting faith;

2. the statutes do not comply with section 4.

...”

**Additional requirements for recognition under the Recognition Act
Section 11**

“To obtain recognition the following requirements shall be fulfilled in addition to the requirements laid down in the Recognition Act:

1. The community shall

(a) have existed for at least twenty years in Austria, of which ten years in an organised manner, [and] at least five years as a religious community with legal personality in accordance with this Act; or

(b) be integrated administratively and in the doctrine of an internationally active religious society which has existed for at least a hundred years, and [the community shall] have been active in Austria in an organised manner for at least ten years, or

(c) be integrated administratively and in the doctrine of an internationally active religious society which has existed for at least 200 years, and

(d) have a number of adherents amounting to at least two per thousand of the population of Austria as established in the latest census. ...

2. Income and assets may be used solely for religious purposes, which includes non-profit and charitable purposes based on religious aims.

3. The community shall have a positive general attitude towards society and the State.

4. There shall be no unlawful interference with the relationship with existing churches and religious societies recognised by law and other religious communities.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

28. The applicant association complained that the refusal to register it as a religious community had violated its right to freedom of religion as provided for in Article 9 of the Convention, which reads as follows:

“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. Application of Article 37 of the Convention

29. Referring to, among other authorities, *Pisano v. Italy* ((striking out) [GC], no. 36732/97, § 38, 24 October 2002), the Government argued that the situation the applicant complained of no longer existed, since the Federal Minister had registered the community on 14 March 2022 (see paragraph 25 above). The domestic authorities had adequately and sufficiently redressed the situation complained of. By making a new request and revising its statutes, the applicant association had indicated that it agreed with the legal view in the ruling of 11 May 2015 (see paragraph 14 above). The Government were therefore of the opinion that the case should be struck out of the list of pending cases in accordance with subparagraph (b) or, alternatively, subparagraph (c) of Article 37 § 1 of the Convention.

30. The applicant association disagreed, arguing that by granting it legal personality as a religious community following its request dated 30 April 2020 (see paragraph 25 above), the authorities had not undone the violation of Article 9 resulting from the dismissal of its initial request (see paragraph 5 above). This violation had inevitably led to an unlawful delay in the community’s legal recognition as a religious society under the Recognition Act (see paragraph 26 above). The applicant expressly disputed that by lodging a new request with revised statutes, it had expressed its agreement

with the authorities' legal view in the decision of 11 May 2015 (see paragraph 14 above). Instead, it had felt compelled to submit a new application with revised statutes in order to obtain registration. The domestic authorities had failed to recognise precisely the violation of rights that the applicant had been asserting before the national authorities for more than ten years. Therefore, that violation had not been redressed.

31. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may "... at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...". In order to ascertain whether that provision applies to the present case, the Court must examine, firstly, whether the circumstances complained of by the applicant still obtain and, secondly, whether the effects of a possible Convention violation on account of those circumstances have also been redressed (see *Pisano*, cited above, § 42; *Vadalà v. Italy* (dec.), no. 14656/15, § 29, 7 November 2023; *Łuczkiewicz v. Poland* (dec.), no. 1464/14, § 76, 5 December 2023).

32. In the Court's opinion, the circumstances complained of, namely the refusal of the applicant association's request of 9 April 2009 to be registered as a religious community (see paragraph 7 above) and the consequences thereof, namely a delay in the procedure for obtaining legal recognition as a religious society under the Recognition Act (see paragraphs 34 et seq. below), still obtain. Although the applicant was eventually registered as a religious community following a new request, the alleged violation caused by the dismissal of its initial request has not been redressed (*ibid.*). On the contrary, the Government argued that by lodging a new application the applicant had itself accepted the refusal of its initial request (see paragraph 29 above). The Court cannot agree with that view and concludes that the applicant has a legitimate interest in pursuing its application. Therefore, the Court rejects the Government's request for the application to be struck out.

B. Admissibility

33. The Government did not make an objection on account of non-exhaustion of domestic remedies. The Court will accordingly continue to examine the complaint, which is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It should therefore be declared admissible.

C. Merits

1. The parties' submissions

(a) The applicant association

34. The applicant association argued that the right to an autonomous existence formed a core guarantee of Article 9. It had been the legitimate aim

of the applicant to be registered as a religious community in order to fulfil the requirements to be legally recognised as a religious society with certain legal benefits. The rejection of the applicant's request meant a denial of the autonomy of its Alevi faith and thus an interference with its right to freedom of religion. The fact that the applicant had enjoyed legal personality as an association could not compensate for the long period during which it had not been granted legal personality as a religious community.

35. In addition, the arguments put forward by the authorities had assigned the applicant to Islam despite its own point of view. This was contrary to the Court's case-law in *İzzettin Doğan and Others v. Turkey* ([GC], no. 62649/10, 26 April 2016). A neutral State was precluded from making an assessment of the content of a religion. It was not the State's task to judge whether Alevism, as the applicant association understood it, was identical with ALEVI's Alevism. Making such an assessment violated the requirement of neutrality and objectivity in matters of religious law.

36. The State was obliged to provide objective and non-discriminatory criteria so that religious communities had a fair opportunity to apply for a status granting special advantages to religious denominations (*ibid.*). However, section 4(1)(2) of the Religious Communities Act (see paragraph 27 above) did not comply with the principles of the Convention and the Court's case-law, notably the case of *Metropolitan Church of Bessarabia and Others v. Moldova* (no. 45701/99, ECHR 2001-XII), according to which even religious groups with the same doctrine could be recognised separately. The applicant had suggested that the domestic courts review the constitutionality of section 4(1)(2) of the Religious Communities Act under Article 140 of the Federal Constitution. The authorities had ignored that request (see paragraphs 23-24 above).

37. The interference with the applicant's registration as a religious community under the Religious Communities Act had not been necessary for reasons of public safety, public order or protection of the rights of others. If the applicant had posed a threat to public interests, it would have had to be dissolved in accordance with the provisions of the Federal Act on Associations (*Bundesgesetz über Vereine*, Federal Law Gazette I no. 66/2002 – hereinafter “the Association Act”). Since that had not happened, the national authorities had obviously assumed that the existence of the applicant association was compatible with the Austrian legal system. There had consequently been a violation of Article 9 of the Convention.

(b) The Government

38. The Government, relying on *Metropolitan Church of Bessarabia and Others* (cited above, §§ 102-05), *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (cited above, §§ 64-69), and *Metodiev and Others v. Bulgaria* (no. 58088/08, §§ 34 et seq., 15 June 2017), argued that Article 9 did not confer any right to a specific legal status. It merely required that

religious groups had the possibility of acquiring legal personality under civil law (they referred to *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, nos. 70945/11 and 8 others, § 91, ECHR 2014 (extracts)). Since the applicant association had legal personality and legal capacity (*Rechtspersönlichkeit und Rechtsfähigkeit*) and its members could freely practise their religion under Austrian constitutional law irrespective of their status as a registered religious community, there had not been an interference with the applicant's freedom of religion.

39. Even assuming that there had been an interference, the Government argued that such interference was prescribed by law and that the applicant's request of 2009 (see paragraph 7 above) had failed to comply with section 4(1)(2) and (1)(4) of the Religious Communities Act (see paragraph 27 above). They referred to *Metodiev and Others* (cited above, §§ 43 and 45) and argued that section 4(1)(2), requiring statutes to contain a doctrine which differed from doctrines of existing religious communities, churches and religious societies, served the legitimate aim of protecting the rights of others and the public order. Referring to the Constitutional Court's case-law (see paragraph 10 above), they argued that that provision did not preclude the co-existence of multiple groups within the same denomination. Its purpose was to ensure that existing groups (even within the same denomination) were distinguishable for third parties to avoid the risk of confusion. By no means was the provision aimed at eliminating religious pluralism.

40. Section 4(1)(4) of the Religious Communities Act required that the statutes of a religious community include provisions regarding the start and termination of membership (see paragraph 27 above). The purpose of that provision was to provide legal certainty and thus to protect the rights of others and public order. It was modelled on a similar provision in the Association Act (see paragraph 37 above) and thus applied to all associations in Austria. It ensured that there was no doubt as to who was or who could be a member and under what conditions and served the freedom of religious beliefs (*Bekenntnisfreiheit*). The Government referred to *Molla Sali v. Greece* ([GC], no. 20452/14, § 156, 19 December 2018). As reasoned by the Vienna Administrative Court and the Supreme Administrative Court, the provision on membership in the applicant association's statutes of 2009, 2015 and 2019 had not been sufficiently precise and thus did not meet the requirement of the law (see paragraphs 7, 18, 20 and 24 above). For example, members of ALEVI would have also qualified as members of the applicant association. Consequently, the two religious groups had not been distinguishable in terms of their membership.

41. The case was different from that of *Metodiev and Others* (cited above), because the statutes of 2009 and 2015 were not only similar but nearly identical in wording to those of ALEVI in terms of religious doctrine and thus did not provide any basis for a distinction between the two religious groups.

42. In so far as the applicant association argued that the doctrines differed in their respective positions towards Islam, both the Federal Minister and the courts had had doubts about the plausibility of that argument; for instance, the statutes in the 2009 version had not excluded religious congregations from being referred to as “Alevi-Islamic” (see paragraph 11 above).

43. Moreover, the name Alevi Denomination in Austria (*Alevitische Religionsgesellschaft in Österreich*; see paragraph 5 above) would have probably led to confusion with ALEVI and given the impression of enjoying the legal status of a legally recognised religious society under the Recognition Act (see paragraphs 11 and 14 above).

44. In view of the need to protect the rights of others and public order in a democratic society and given that the applicant had had legal personality as an association, any interference with the applicant’s right to freedom of religion had been proportionate within the meaning of Article 9 § 2 of the Convention.

2. The Court’s assessment

(a) General principles

45. As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; *S.A.S. v. France* [GC], no. 43835/11, § 124, ECHR 2014 (extracts); and *İzzettin Doğan and Others*, cited above, § 103).

46. The Court reiterates that the enumeration of the exceptions to the individual’s freedom to manifest his or her religion or beliefs, as listed in Article 9 § 2, is exhaustive and that their definition is restrictive (see, among other authorities, *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 132, 14 June 2007, and *Nolan and K. v. Russia*, no. 2512/04, § 73, 12 February 2009). For it to be compatible with the Convention, a limitation of this freedom must, in particular, pursue an aim that can be linked to one of those listed in this provision (see *S.A.S. v. France*, cited above, § 113).

47. If, under the domestic law, religious societies enjoy privileged treatment in some areas, the advantage obtained by them is substantial and this special treatment undoubtedly facilitates a religious society’s pursuance of its religious aims. In view of these substantive privileges accorded to

religious societies, the obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral in the exercise of their powers in this domain requires therefore that if a State sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner (see *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 92, and *Savez crkava "Riječ života" and Others v. Croatia*, no. 7798/08, § 87, 9 December 2010).

48. The Court reiterates that the Convention is designed to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, among other authorities, *Folgerø and Others v. Norway* [GC], no. 15472/02, § 100, ECHR 2007-III, and *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, § 86, ECHR 2009). The right enshrined in Article 9 would be highly theoretical and illusory if the degree of discretion granted to States allowed them to interpret the notion of religious denomination so restrictively as to deprive a non-traditional and minority form of a religion of legal protection. Such limitative definitions have a direct impact on the exercise of the right to freedom of religion and are liable to curtail the exercise of that right by denying the religious nature of a faith (see, in particular and *mutatis mutandis*, *Kimlya and Others*, cited above, § 86). It should be pointed out in this connection that these definitions may not be interpreted to the detriment of non-traditional forms of religion (see *İzzettin Doğan and Others*, cited above, § 114).

49. The Court observes that religious communities traditionally exist in the form of organised structures. They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies – including religious worship – have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI). In that regard the right of a religious community to an autonomous existence is at the very heart of the guarantees in Article 9 of the Convention (see *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 79). That autonomous existence is also indispensable for pluralism in a democratic society. It directly concerns not only the organisation of these communities as such but also the effective enjoyment of the right to freedom of religion by all their active members. Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associations against unjustified State interference. Were the organisational life of the community not protected by Article 9, all other aspects of the individual's freedom of religion would become weakened (see *Hasan and Chaush*, cited above, § 62; *Sindicatul "Păstorul cel Bun" v. Romania* [GC],

no. 2330/09, § 136, ECHR 2013 (extracts); and *İzzettin Doğan and Others*, cited above, § 93).

50. In democratic societies, in which several religions coexist within one and the same population, it may be 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 are respected (see *Kokkinakis*, cited above, § 33). This follows both from paragraph 2 of Article 9 and from the State's positive obligations under Article 1 of the Convention to secure to everyone within its jurisdiction the rights and freedoms defined therein (see *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 106, ECHR 2005-XI; *S.A.S. v. France*, cited above, § 126; and *İzzettin Doğan and Others*, cited above, § 106). The Court has frequently emphasised the State's role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs, and has stated that this role is conducive to public order, religious harmony and tolerance in a democratic society (see *S.A.S. v. France*, cited above, § 127). What is at stake here is the preservation of pluralism and the proper functioning of democracy, one of the principal characteristics of which is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence, even when they are irksome (see *The United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 57, *Reports of Judgments and Decisions* 1998-I).

51. According to the Court's settled case-law, in democratic societies the State does not need to take measures to ensure that religious communities remain or are brought under a unified leadership. In that connection, State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would likewise constitute an interference with freedom of religion. The role of the authorities in such a case is not to adopt measures favouring one interpretation of religion over another (see *Sinan Işık v. Turkey*, no. 21924/05, § 45, ECHR 2010) or to remove the cause of the tensions by eliminating pluralism, but to ensure that the competing groups tolerate each other (see *Serif v. Greece*, no. 38178/97, § 53, ECHR 1999-IX; *Hasan and Chaush*, cited above, § 78; *Metropolitan Church of Bessarabia and Others*, cited above, § 117; and *İzzettin Doğan and Others*, cited above, § 108).

(b) Application of these principles to the present case

52. The Court first reiterates that a Church or an ecclesiastical body may, as such, exercise on behalf of its adherents the rights guaranteed by Article 9 of the Convention (see *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, § 72, ECHR 2000-VII, and *Leela Förderkreis e.V. and Others v. Germany*, no. 58911/00, § 79, 6 November 2008). In the instant case the Government did not challenge in that regard the standing of the applicant association, which sought to be registered as a religious community acting

also in the interests of those followers of Alevism who had adhered to its member associations (see paragraph 7 above).

53. The Court must determine whether there was an interference with the applicant association's right to freedom of religion on account of the refusal to register it as a religious community. The Government argued that there had been no interference with such right, since the applicant had enjoyed legal personality and legal capacity as an association and its members could freely practise their religion under Austrian constitutional law (see paragraph 38 above). The Court does not agree with that argument. It reiterates that if a State sets up a framework for conferring a special status on religious groups entailing specific privileges, all religious groups which so wish must have a fair opportunity to apply for this, and the criteria established must be applied in a non-discriminatory manner (see the case-law quoted in paragraph 47 above, notably *Relionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 92, and *İzzettin Doğan and Others*, cited above, § 164). A particular status is attached to registered religious communities, because the law provides for the facilitation of their legal recognition as religious societies (see paragraph 27 above), which are entitled to various privileges (see paragraph 26 above). The refusal to register the applicant association as a religious community thus constituted an interference with the applicant association's rights under Article 9 of the Convention.

54. The domestic courts based their decisions on section 5 of the Religious Communities Act, as the applicant's statutes had not complied with section 4(1) of the Religious Communities Act (see paragraph 27 above). That provision required the statutes of a religious community to include the presentation of a religious doctrine distinguishable from that of registered religious communities (section 4(1)(2)) and provisions regarding the start and termination of membership (section 4(1)(4)). As the Constitutional Court has stated in its case-law (see paragraph 10 above), section 4(1)(2) of the Religious Communities Act must be interpreted in line with the Constitution and does not exclude pluralism. The Court is thus satisfied that the provision in question can be applied in line with the principles of the Convention. The law was sufficiently accessible and foreseeable as to its effects (see *Relionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 71). The Court therefore accepts that the interference in question was "prescribed by law".

55. The applicant did not dispute that the interference complained of pursued a legitimate aim under Article 9 § 2, namely the protection of public order and of the rights of others. However, it disputed that the interference was necessary in a democratic society to achieve the legitimate aim pursued. As stated above, in democratic societies it may be necessary to place restrictions on the freedom to manifest one's religion in order to reconcile the interests of various groups and ensure that everyone's beliefs are respected (see the case-law cited in paragraph 50 above). Therefore, requiring a

religious association applying for registration to distinguish itself from pre-existing associations is in principle legitimate in view of the need not to create confusion in the eyes of the public. This may include the requirement that the statutes of a religious association clearly define its beliefs and rituals, so that the public can differentiate between the various denominations and in order to avoid confrontation between different religious communities (see *Metodiev and Others*, cited above, § 40). Nevertheless, although States do have a right to scrutiny concerning the conformity of the objectives and activities of a religious association with the rules established by legislation, they must do so in a manner compatible with their obligations under the Convention and subject to the purview of the Court (see “*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*” v. the former Yugoslav Republic of Macedonia, no. 3532/07, § 94, 16 November 2017).

56. While the Government argued that the refusal to register the applicant association had been necessary to protect the rights of others from any confusion, the Court is not convinced that the Vienna Administrative Court sufficiently based its decision of 29 January 2019 on that consideration. While the Vienna Administrative Court began its reasoning by stating that, based on the statutes dated 7 May 2015, the applicant’s doctrine did not differ sufficiently from that of ALEVI, it then went on to reproach the applicant association for a lack of commitment and credibility, on the grounds that it had repeatedly amended its statutes (see paragraph 22 above). According to the Vienna Administrative Court, these amendments demonstrated that the applicant association perceived its statutes only as a means to an end, namely that of registration. They also made it impossible to identify a clear religious doctrine and – according to the administrative court – raised the question whether they were even supported by the applicant association’s followers. It held that the applicant’s submission of the latest version of its statutes, dated 19 January 2019, was motivated only by the desire to distinguish its statutes further from those of ALEVI, and also meant that the applicant had misled the authorities when it submitted older versions of its statutes as reflecting their actual religious practice.

57. The Court finds this reasoning on the part of the Vienna Administrative Court difficult to understand. First, the Vienna Administrative Court concluded in the same decision that the applicant association’s religious doctrine was almost identical to that of ALEVI, whilst also holding that the applicant association’s religious doctrine could not be established due to the frequent amendments to its statutes. Second, the Court notes that although the applicant association had put forward the names of numerous witnesses from among its followers for questioning at the hearings (see paragraphs 19 to 21 above), the Vienna Administrative Court refused to take up this opportunity, but nonetheless subsequently queried in its decision whether the followers supported the amendments to the statutes.

58. Third, the Court observes that the applicant association's request for registration occurred in rather special circumstances, which were known to the authorities throughout the proceedings and explain the need for some of these repeated amendments. In particular, it was known to the Federal Ministry, when it received the first request of the applicant (see paragraph 7 above), that the applicant association had already been preparing its request for registration for a certain time, as it had done so in close consultation with representatives of the Federal Ministry (see paragraph 5 above). The Federal Ministry was furthermore aware that during that time one of the applicant's member associations had applied for registration of ALEVI as a religious community, without the applicant's prior consent or knowledge (see paragraphs 6 and 12 above) and that the cause for their disagreement was their diverging views towards Islam, which the applicant association initially attempted to accommodate in the wording of its statutes (see paragraph 12 above). It also appears to have been undisputed that when the applicant association found out about the request for recognition of ALEVI, which removed the need for compromise in its statutes, it sought to set itself apart from Islam, while ALEVI had – at least initially – considered itself to belong to Islam and later became a legally recognised religious society under the Islam Act (see paragraphs 14 and 26 above). Against this background of difficulties in the administrative proceedings, the Court finds it difficult to understand why the Vienna Administrative Court concluded from the frequent amendments to the applicant association's statutes that it lacked commitment to them and that it intended to mislead the authorities. The earlier amendments to the statutes were motivated by a desire to remove language introduced to accommodate a member association from which it subsequently parted ways (see paragraph 12 above) and the later amendments had been made with a view to bringing the statutes into compliance with the provisions of the Registered Religious Communities Act, by better highlighting the differences between it and an already existing religious community with which the applicant association had initially been intertwined (see paragraph 14 above). The Court notes in this regard that these special circumstances also did not feature in the Federal Minister's decision of 16 December 2010 (see paragraph 11 above), by which she rejected the applicant association's request on the same day she granted ALEVI the status of religious community. They were also not mentioned in the decision of 11 May 2015 (see paragraph 14 above), by which the Federal Minister held that the applicant association's religious doctrine did not differ sufficiently from that of ALEVI.

59. Fourth, the Court cannot overlook that by concluding that the applicant's submission of revised statutes dated 19 January 2019 showed that it was only using them to obtain registration (see paragraph 22 above), the Vienna Administrative Court appears indirectly to pass judgment on the applicant association for pursuing the aim of registration, a possibility

provided by the Religious Communities Act, and for attempting to bring its statutes into compliance with the requirements of that Act. In particular, the Court notes that in the course of the oral hearing on 4 January 2019 the applicant association appears to have received, for the first time, the complete statutes of ALEVI (see paragraph 21 above), similarities with which had been the reason for the continuous denial of its request for registration. The applicant association thus included in its statutes of 19 January 2019 a table illustrating the differences between its statutes and those of ALEVI (see paragraph 21 above). The Court cannot discern any reasons why the Vienna Administrative Court did not consider this version of the statutes in its decision, but instead interpreted the fact of their submission to the detriment of the applicant. Overall, the Court concludes that the Vienna Administrative Court's reasoning with regard to the requirement of a distinct religious doctrine could not sufficiently justify its findings.

60. The Government referred to the reasoning of the Vienna Administrative Court and the Supreme Administrative Court to argue that the refusal to register the applicant association had been justified in the light of the definition of membership set out in its statutes (see paragraph 40 above). In one paragraph of its judgment of 29 January 2019, the Vienna Administrative Court added that the concept of membership in the applicant's statutes was too vague. This was another reason why the applicant's request for registration could not be granted (see paragraph 22 above). This was the first time throughout the entire proceedings that a domestic authority had relied on section 4(1)(4) of the Religious Communities Act (see paragraph 27 above), although the concept of membership in the applicant association's statutes appears to have been the same since 2009 (see paragraphs 7, 18 and 20 above). It was only at an oral hearing on 24 January 2019 (see paragraph 21 above) that the topic was brought up by the representative of the Federal Minister. The applicant offered to explain the concept of membership, if required. The judge did not comment further on this. The applicant did not challenge the reasoning regarding the concept of membership in its appeal to the Supreme Administrative Court (see paragraph 23 *in fine* above). That court found that the applicant had not raised any questions of fundamental importance with regard to that viable alternative reasoning (see paragraph 24 above). It thus did not find it necessary to further engage with the Vienna Administrative Court's reasoning as to the requirements of section 4(1)(2) of the Religious Communities Act (see paragraph 27 above) and the applicant's argument that their latest statutes had not been considered (see paragraphs 23-24 above).

61. Although a question might be asked as to why the applicant did not raise the issue of membership and related concerns in its complaint to the Supreme Administrative Court, the Court is not convinced that at this late stage of the proceedings, any shortcomings in the applicant association's concept of membership (see paragraphs 7, 18 and 21 above) were sufficient

to deny it the status of a registered religious community. It was only almost ten years after the initial request that the Federal Minister expressed concerns to that effect and the applicant immediately expressed its readiness to clarify the statutes if required (see paragraph 60 above). At no earlier point had the domestic authorities asked the applicant association to modify its concept of membership (compare, *mutatis mutandis*, “*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*”, cited above, § 114). Nevertheless, only five days after that aspect was first raised in its final hearing, the Vienna Administrative Court relied on this argument in the reasoning of its decision without having effectively enabled the applicant to adapt the statutes accordingly (see paragraphs 21 and 22 above). Considering that Section 4(1)(4) of the Religious Communities Act does not specify how much detail should be included in the provisions concerning the start and termination of membership (see paragraph 27 above), the applicant association should have been given a realistic opportunity to remedy the alleged shortcoming (compare, *mutatis mutandis*, *Metodiev and Others*, cited above, § 44). The Court also notes that it is unfortunate that the Federal Ministry, whose representatives were consulted early on by the applicant association (see paragraph 5 above), had not advised the applicant association of any shortcoming in that regard. Considering the particularly difficult circumstances which had already occurred in the administrative proceedings, it is all the more regrettable that the Supreme Administrative Court did not subsequently examine the bulk of the applicant association’s complaints about the Vienna Administrative Court’s decision, on the basis that in any event, this decision could be based on the alternative reasoning concerning membership (see paragraph 24 above).

62. The Government also relied on the argument that the name initially sought by the applicant association had not excluded confusion with ALEVI as required by section 4(1)(1) of the Religious Communities Act (see paragraph 27 above) and had given the impression of the legal status of a legally recognised religious society under the Recognition Act (see paragraph 43 above). However, by the time the Vienna Administrative Court took its decision on 29 January 2019, the applicant had already changed the name of the religious community in order to avoid any risk of confusion (see paragraph 20 above). Neither the Vienna Administrative Court nor the Supreme Administrative Court referred to that argument in their reasoning. The Constitutional Court declined to deal with the applicant’s complaint (see paragraph 24 above). The argument can therefore not serve as justification for the denial of the applicant’s registration.

63. Taking into consideration the file as a whole (see *Metropolitan Church of Bessarabia and Others*, cited above, § 119), the Court does not find that the reasons provided by the domestic authorities were relevant and sufficient to justify the interference with the applicant association’s rights under Article 9 to protect public order or the rights of others. The manner in

which the domestic authorities refused to register the applicant association as a religious community cannot be accepted as necessary in a democratic society. There has accordingly been a violation of Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

64. The applicant complained that the length of the proceedings had been incompatible with the “reasonable time” requirement as provided for in Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. The parties’ submissions

1. The Government

65. The Government argued that in the absence of a civil right, the complaint under Article 6 § 1 was inadmissible *ratione materiae*. The applicant had been registered as an association in 1998 and had therefore already obtained legal personality at the time of the first application, could acquire property and could participate in legal transactions. In so far as the applicant argued that being registered as a religious community under the Religious Communities Act was a precondition for being legally recognised as a religious society under the Recognition Act, it had to be noted that that was only one of three alternative options for obtaining recognition (see paragraph 26 above). It was therefore not discernible how registration under the Religious Communities Act could have actually had an influence on the applicant’s civil-law position within the meaning of Article 6 § 1. Also, the applicant had failed to exhaust domestic remedies with respect to its complaint about the length of the proceedings.

2. The applicant association

66. The applicant association argued that the registration it sought in accordance with the provisions of the Religious Communities Act was to be characterised as a civil-law claim within the meaning of Article 6 § 1 of the Convention, since the delay in its registration as a religious community had in turn led to a delay in its legal recognition as a religious society under the Recognition Act. Had its initial request for registration as a religious community been granted in good time, it would by now have attained the status of a legally recognised religious society. The legal status accorded to recognised religious societies (for example, the right to independently administer its internal affairs, as well as the rights guaranteed by Articles 14 and 15 of the Basic Law of 1867 – *Staatsgrundgesetz über die allgemeinen*

Rechte der Staatsbürger – see the references cited in paragraph 26 above) resulted in judicial protection of the religious society, its assets and its members. As a legally recognised religious society, the applicant would have had the right, among other things, to have the children of its members educated in their faith. The proceedings had thus concerned a dispute over civil rights (reference was made to the case of *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above). The applicant also disputed the Government’s objection of non-exhaustion of domestic remedies with regard to the complaint under Article 6.

B. The Court’s assessment

67. The Court reiterates that for Article 6 § 1 in its civil limb to be applicable, there must be a “dispute” (“*contestation*” in French) regarding a “right” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see *Denisov v. Ukraine* [GC], no. 76639/11, § 44, 25 September 2018, with further references, and *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022, with further references). Lastly, the right must be a “civil” right (see *Grzęda*, cited above, § 257).

68. There has been a shift in the Court’s case-law towards applying the civil limb of Article 6 also to cases which might not initially appear to concern a civil right but which may have direct and significant repercussions on a private right (see *De Tommaso v. Italy* [GC], no. 43395/09, § 151, 23 February 2017, with further references; see also *Denisov*, cited above, §§ 51-52, with further references).

69. In *Metropolitan Church of Bessarabia and Others* (cited above, § 118), a case in which the applicant church had had no legal personality and could not operate, the Court held that one of the means of exercising the right to manifest one’s religion, especially for a religious community, in its collective dimension, was the possibility of ensuring judicial protection of the community, its members and its assets, so that Article 9 had to be seen not only in the light of Article 11, but also in the light of Article 6. In *Religionsgemeinschaft der Zeugen Jehovas and Others* (cited above, § 107), the Court noted that in principle the civil limb of Article 6 applied to proceedings concerning the registration of associations, by which they obtained legal personality. The Court has also examined under Article 6 § 1 complaints concerning proceedings for the restitution of places of worship or the execution of judgments ordering the shared use of a place of worship (see

the case-law referred to in *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 74, 29 November 2016). In *Leela Förderkreis e.V. and Others* (cited above, § 46-47), a case concerning religious associations, the Court drew attention to its case-law as to the “civil” character of the right to enjoy a good reputation and referred to the case of *Tserkva Sela Sosulivka v. Ukraine* (no. 37878/02, § 42, 28 February 2008), in which it had held that the right to use State-owned premises for religious ceremonies, as provided for by the domestic law, had to be considered directly decisive for the respective applicant’s “civil rights and obligations”, thus leading to the applicability of Article 6. It stated that it did not find it necessary to determine whether the right to freedom of religion in general had to be considered a “civil right” within the meaning of Article 6 § 1.

70. Turning to the instant case, the Government have not denied the existence of a dispute over an arguable claim under the Religious Communities Act. However, they maintained that the dispute in question did not concern the determination of the applicant’s civil rights within the meaning of Article 6 § 1. The applicant argued that the failure to register it as a religious community had led to a delay in its legal recognition as a religious society with certain rights and privileges (see paragraph 26 above). It did not specify which legal right or obligation of a civil character should have been created, modified or annulled through its registration as a religious community (see *Kortessi v. Greece*, no. 31259/04, § 26, 13 July 2006, with further references). Rather, it argued that such rights would have been created later in the event of its recognition as a religious society. However, the law does not provide for automatic recognition of religious communities as a religious society after a certain period of time. The applicant association would have had to prove that it fulfilled all the legal requirements set out in the Recognition Act and in section 11 of the Religious Communities Act (see paragraphs 26 and 27 above). The Court cannot speculate about the outcome of such proceedings.

71. Contrary to the religious communities in *Metropolitan Church of Bessarabia and Others* (cited above, § 129) and in *Religionsgemeinschaft der Zeugen Jehovas and Others* (cited above, § 67), both of which cases were relied on by the applicant, the applicant association did have legal personality and was able to operate. No property claims or non-pecuniary claims, such as the applicant’s reputation, were at stake either. In the absence of any submissions as to the direct effect of the proceedings complained of on the applicant association’s civil-law position (see the case-law cited in paragraph 67 above), the Court does not find that registration as a religious community constituted a civil right under the scope of Article 6 § 1.

72. The Court therefore considers that Article 6 does not apply to the facts of the present case. Consequently, this complaint is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 229,642.27 euros (EUR) in respect of pecuniary damage. It argued that it had suffered loss, firstly because it had had to pay taxes from which it would have been exempted as of 2014 had it been already legally recognised as a religious society. Secondly, it had also suffered loss from other costs and expenses than those incurred before domestic courts and the Court (see paragraph 79 below), such as costs for privately commissioned expert opinions and travel expenses of its member associations to attend meetings, appointments and court hearings. Those costs would not have been incurred had it been registered as a religious community in good time in 2009.

75. The applicant also claimed EUR 20,000 in respect of non-pecuniary damage. It argued that it had suffered considerable damage to its reputation and a significant loss of members.

76. The Government disputed the claims as unsubstantiated and excessive. They further argued that there was no causal link between the damage claimed and the alleged violation.

77. The Court reiterates that there must be a causal link between the violation found and the damage alleged in order for an award to be made in respect of pecuniary damage. Such a causal link would only exist in the present case if, in the absence of the violation found, the applicant would have been entitled to the tax privileges referred to. Even if the applicant had been registered as a religious community earlier, it would not have been automatically entitled to legal recognition as a religious society under the Recognition Act. Instead, other requirements under the Recognition Act would have had to be fulfilled (see paragraph 26 above). The Court cannot speculate about the outcome of proceedings under the Recognition Act (see *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 130 with further references). As to the costs allegedly incurred, the Court does not discern a causal link between those costs and the violation found since it cannot assume that in the absence of such a violation the applicant would have been registered as a religious community immediately after submitting its request in 2009. Turning to the costs allegedly incurred by the member associations of the applicant, there is no evidence that those costs were borne by the applicant and that it therefore suffered any damage on that account.

Overall, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

78. As to the claim in respect of non-pecuniary damage, the Court accepts that the violation found must have caused the applicant some prejudice under this head. Taking into account the amount awarded in another case against Austria relating to the registration of a religious community (*ibid.*, § 129), the Court awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

79. The applicant also claimed EUR 421,071.49 for the costs and expenses incurred before the domestic courts and the Court, in particular fees for legal representation and consulting in relation to various court proceedings.

80. The Government contested that claim as being excessive.

81. 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 were actually and necessarily incurred and are reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *İzzettin Doğan and Others*, cited above, § 192). The invoices submitted by the applicant partly concern costs that had been incurred in proceedings not directly relating to the application. The invoices which actually concern the procedure for recognition as a religious community appear excessive and do not show that all the services rendered were necessary. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 20,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the complaint concerning Article 9 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds*, by six votes to one, that there has been a violation of Article 9 of the Convention;

3. *Holds*, by six votes to one,
- (a) that the respondent State is to pay the applicant association, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable to the applicant association, 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;
4. *Dismisses*, unanimously, the remainder of the applicant association's claim for just satisfaction.

Done in English, and notified in writing on 5 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Tim Eicke
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Vehabović is annexed to this judgment.

T.E.I.
M.I.B.

DISSENTING OPINION OF JUDGE VEHABOVIĆ

I regret that I am unable to subscribe to the view of the majority that there has been a violation of Article 9.

As concluded in the cases of *Metropolitan Church of Bessarabia and Others v. Moldova* (no. 45701/99, §§ 102-05, ECHR 2001-XII), *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, §§ 64-69, 31 July 2008) and *Metodiev and Others v. Bulgaria* (no. 58088/08, §§ 34 et seq., 15 June 2017), Article 9 does not confer any right to a specific legal status. It merely requires that religious groups have the possibility of acquiring legal personality under civil law.

As there is already a registered religious community of Alevis in Austria, it seems to me that the registration of a new religious community almost identical in wording and in terms of religious doctrine does not provide any added value to the right to freedom of religion under Article 9 of the Convention. As the Government rightly noted, members of ALEVI would also have qualified as members of the applicant association. Consequently, the two religious groups were not distinguishable in terms of their membership.

According to its settled case-law, the Court leaves to Contracting States a certain margin of appreciation in deciding whether and to what extent any interference is necessary. It is true that a wide margin is usually afforded to States 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 and 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 *The Church of Jesus Christ of Latter-Day Saints v. the United Kingdom*, no. 7552/09, 4 March 2014).