



Inability of Christian Congregation of Jehovah's Witnesses in Italy to enter into an agreement with the State, resulting in its exclusion from funding system for religious denominations, amounted to discrimination

In today's **Chamber** judgment¹ in the case of [Christian Congregation of Jehovah's Witnesses v. Italy](#) (application no. 49687/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights in conjunction with Article 9 (freedom of thought, conscience and religion) and Article 1 of Protocol No. 1 (protection of property).

The case concerned a religious association which complained that it had been unable, since 1977, to enter into an agreement with the Italian State, notwithstanding several attempts to do so. Article 8 of the Italian Constitution allowed non-Catholic denominations to enter into such an agreement in order to regulate their relations with the State and thus benefit from the distribution of the "eight per thousand" (*otto per mille*) raised from income tax. This distribution, which was the funding system for religious denominations in Italy and was intended to support religious activities, was carried out in accordance with, and proportionally to, the choice indicated by citizens on their tax returns.

The Court found in particular that the Government had submitted no arguments capable of leading it to consider that the grounds they had relied on – in particular the applicant association's position *vis-à-vis* the prohibition on receiving blood transfusions and donating blood, and also the choice not to vote in elections –, constituted a breach of the domestic legal order justifying the difference in treatment complained of. In view of those circumstances and notwithstanding the discretion (margin of appreciation) enjoyed by the domestic authorities in this area, the Court considered that it had not been shown that the difference in treatment between the applicant association and the other religious denominations that had been able to enter into agreements with the Italian State had had an "objective and reasonable justification".

Principal facts

The applicant is a duly registered religious association of Jehovah's Witnesses in Italy. It was granted legal personality by Presidential Decree no. 783 of 31 October 1986.

It complained in the present case that it had been unable to enter into an agreement with the Italian State on the basis of Article 8 § 3 of the Italian Constitution, notwithstanding several attempts to do so since 1977. It also complained that, despite three favourable opinions issued by different Cabinets in 2000, 2007 and 2014 respectively, and two bills introduced after lengthy negotiations, Parliament had not yet ratified an agreement.

The applicant association also claimed that, since 2016, the governmental authorities had refused to reopen negotiations, in spite of several requests to do so. In addition, during the same period, agreements had been reached between the State and other religious denominations, which benefited

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

from a series of privileges, in particular the distribution of the “eight per thousand” (*otto per mille*) raised from income tax, which was the funding system for religious denominations in Italy and was intended to support religious activities. The law provided that that part of the revenue collected by the State in income tax was to be distributed in accordance with, and proportionally to, the choice indicated by citizens on their tax returns. The funds thus allocated had to be used to pursue the religious objectives previously defined by the religious denominations.

Complaints, procedure and composition of the Court

Relying on Articles 9 (freedom of thought, conscience and religion), 13 (right to an effective remedy) and 14 (prohibition of discrimination) and Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant association complained that there had been an unjustified interference with its right freely to manifest and exercise religious beliefs, as well as with its right to property, and discrimination based on religion. It also submitted that there was no remedy available under domestic law to provide redress for the complaints made before the Court.

The application was lodged with the European Court of Human Rights on 22 August 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Frédéric **Krenc** (Belgium),
Alain **Chablais** (Liechtenstein),
Artūrs **Kučs** (Latvia),
Anna **Adamska-Gallant** (Poland),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

[Article 14 in conjunction with Article 9 and Article 1 of Protocol No. 1](#)

Under domestic law, in order to be entitled to benefit from distribution of the “eight per thousand” raised from income tax, it was necessary to have entered into an agreement with the State. That distribution was the system by which religious denominations in Italy were funded, and was intended to support religious activities².

The sole criteria for a religious denomination to enter into such an agreement were that it acted in accordance with the domestic legal order and be registered as a legal person with legal personality. Between 1984 and 2021, 13 religious denominations entered into such agreements with the Italian State.

The Court was not aware of any instances of another duly registered religious denomination being unable to enter into this specific agreement. It therefore considered that the applicant association was in a comparable situation to that of the registered religious communities which had entered into an agreement with the State under Article 8 of the Constitution.

The procedure relating to such an agreement was not governed by any legislative or regulatory provision. It was an administrative practice with no time-limit for dealing with requests and which did

² Law no. 222 of 20 March 1985.

not provide for any formal decision in the event of a refusal. Nor were there any specific provisions providing for an effective remedy in cases of disputes.

The initiative to begin the agreement procedure lay with the governmental authorities and its conclusion was entirely at Parliament's discretion. That context had placed the applicant association in a situation of uncertainty and had deprived it of sufficient safeguards against the risk of discriminatory treatment.

Turning to the question whether the difference in treatment in question had been based on objective and reasonable grounds, the Court noted that, according to the Government, the failure to enter into an agreement with the applicant association had primarily been justified by the prohibition imposed on all of its members on receiving blood transfusions, which constituted a danger to public health, particularly to minors, and by the prohibition on donating blood. Furthermore, the applicant association's stance on civic duties such as military service in the past and the "duty to vote" at present had also justified, in their view, the refusal in question.

The Court noted, however, that the applicant association had been called upon on several occasions, in the course of the various agreement procedures, to provide explanations to the domestic authorities with the aim of clarifying the Jehovah's Witnesses' position on blood transfusions and donations. The information it had provided had not prevented the national authorities from expressing a favourable opinion as to the compliance of its activity and beliefs with the domestic legal order; nor had it prevented the text of the agreement from being signed by three different Prime Ministers.

Furthermore, the Government had not shown that the Jehovah's Witnesses' opposition on religious grounds to blood transfusions constituted a genuine risk to citizens' health. Moreover, domestic law protected individuals' freedom of choice in matters concerning decisions relating to their healthcare and recognised the right of all competent adult patients to refuse specific medical treatments. As to minor patients, a decision by parents to refuse medical treatments could be overruled by means of a judicial decision where there existed a risk to the best interests of the child.

The Government had also submitted no arguments capable of leading the Court to consider that the applicant association's position on blood donation constituted a breach of the domestic legal order justifying the difference in treatment complained of. Nor had they shown that the Jehovah's Witnesses' choice not to vote in elections and refusal to perform military service was incompatible with the domestic legal order.

In view of those circumstances and notwithstanding the discretion (margin of appreciation) enjoyed by the domestic authorities in this area, the Court considered that it had not been shown that the difference in treatment between the applicant association and the other religious denominations that had been able to enter into agreements with the Italian State had had an "objective and reasonable justification". **There had therefore been a violation of Article 14 of the Convention in conjunction with Article 9 and Article 1 of Protocol No. 1.**

[Just satisfaction \(Article 41\)](#)

The Court held that Italy was to pay the applicant association 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 8,000 in respect of costs and expenses.

Separate opinion

Judges Krenc and Chablais expressed a joint concurring opinion, which is annexed to the judgment.

The judgment is available only in French.

