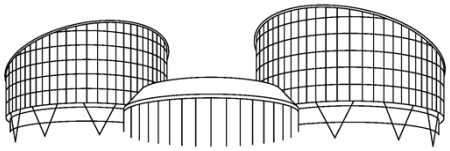

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KRUPKO AND OTHERS v. RUSSIA

(Application no. 26587/07)

JUDGMENT

STRASBOURG

26 June 2014

FINAL

17/11/2014

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

In the case of Krupko and Others v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 3 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 26587/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Russian nationals, Mr Nikolay Alekseyevich Krupko, Mr Dmitriy Gennadyevich Burenkov, Mr Pavel Anatolyevich Anorov, and Mr Nikolay Viktorovich Solovyov ("the applicants"), on 20 June 2007.

2. The applicants were represented by Mr A. Chimirov and Mr R. Daniel, lawyers practising in St Petersburg, Russia, and Norfolk, United Kingdom, respectively. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 17 June 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are Jehovah's Witnesses belonging to various congregations in Moscow. In 2004, the Moscow courts banned the local religious organisation of Jehovah's Witnesses in Moscow.[1]

1. See *Jehovah's Witnesses of Moscow v. Russia* (no. 302/02, 10 June 2010).

A. Disruption of the service of worship and the applicants' detention

5. In early 2006, the applicant Mr Krupko, acting on behalf of the Administrative Centre of Jehovah's Witnesses, signed a rental contract with the Academy of Agriculture for the purpose of holding religious meetings in the academy's assembly hall (*актовый зал*) twice a week. By the time of the events, the meetings had been being held for approximately ten weeks.

6. The most solemn and significant religious meeting for Jehovah's Witnesses, their families and supporters, known as the annual celebration of the Memorial of the Lord's Evening Meal, was scheduled to begin at approximately 8 p.m., after sundown on 12 April 2006. Around four hundred people, including the four applicants, gathered for the service.

7. At 8:50 p.m. police officers, led by the chief of the Lyublino police station, arrived in substantial numbers at the building. The building was cordoned off by the police units whose deployment included ten police vehicles, two minibuses, an armed unit of the Special Police Force (OMON) and dozens of other officers in uniform.

8. The police chief went on stage, took over the microphone and announced that the meeting was unlawful and that the participants were to disperse. Those in attendance complied with the order. The police officers segregated the male individuals from the rest of the group and made them stand in the corridor behind the hall. Fourteen male members of the congregation were escorted into the minibuses waiting outside. The police then proceeded to search the premises and took away a few boxes of religious literature and some documents from the notice board.

9. The applicants were brought to the Lyublino police station where they were placed in a holding room and collectively photographed. Their identity documents were taken away. Their lawyer, Mr S., was not allowed to visit them at the police station.

10. The applicants were released shortly after midnight.

11. On the following day, more than twenty press agencies, including a federal television channel, reported on the disruption of the service and the detention of participants.

B. Domestic proceedings

12. The four applicants brought proceedings before the Lyublinskiy District Court of Moscow, seeking a declaration that the police had unlawfully disrupted a service of worship, removed religious literature, taken them to the police station, photographed and detained them and hindered the work of their counsel. They claimed compensation in respect of non-pecuniary damage.

13. On 15 June 2006 the District Court gave judgment, making the following findings of fact:

"It was established that the plaintiff[s] and approximately 400 fellow believers ... had gathered for a service of worship on 12 April 2006 in the assembly hall ... The service was stopped by police officers of the Lyublino police station who declared the meeting illegal and demanded that the hall be vacated. Mr Krupko, Mr Burenkov, Mr Solovyov and Mr Anorov were detained and escorted to the Lyublino police station to give statements.

These circumstances, including the curtailment of the religious service ... were confirmed by the representative of [the Lyublino police station]. His arguments that the plaintiffs were not detained, but went of their own accord, are unfounded. The fact of detention is corroborated by the testimonies of witnesses ... the entries in the register of persons detained or escorted to the police station ... which read that the plaintiffs were escorted to the police station [for the reasons contained in] report no. KUS-5172, and the written statements of the detainees. Records of the detention and escorting to the police station were not compiled."

14. The District Court held that the police had lawfully stopped the service of worship:

"Pursuant to section 16 §§ 2 and 5 of the Religions Act ... religious organisations shall conduct religious services ... in religious buildings ... and in other places provided to religious organisations for such purposes ...

In other cases, public religious services ... shall be conducted in accordance with the procedure established for conducting meetings, marches and demonstrations.

The assembly hall of the Academy of Agriculture ... does not meet the requirements established by the above-mentioned legal provisions for buildings, structures and other places provided for conducting religious rites by religious organisations. That is, since the plaintiffs belong to a religious organisation, the public religious service [they held] in a secular establishment should have been carried out in accordance with the procedure established by the Public Gatherings Act, as provided for by section 16 § 5 of the Religions Act ...

As follows from the statements of the plaintiffs, they are not members of the Moscow Community of Jehovah's Witnesses – the religious organisation whose activity was banned in Moscow by the judgment of the Golovinskiy District Court dated 26 March 2004 – and they exercise their right to freedom of religion ... having united not as a religious organisation but as the Lyublinskaya and Krasnodonskaya religious groups. In light of the above, the court considers that, in accordance with section 7 of the Religions Act, only premises provided for the use of the religious group by its members could be used for conducting services of worship ...

The court considers that the actions of the police officers in stopping the religious ritual in the building of the Academy of Agriculture ... in which around 400 people were participating, without having observed the [notification] procedure for conducting meetings, marches and demonstrations, were well grounded."

15. Nevertheless, the District Court considered that the police officers had acted unlawfully in detaining the applicants:

"In accordance with Article 20 § 2 of the Code of Administrative Offences, violations of the established procedure for organising or conducting meetings, marches and demonstrations is a ground for instituting administrative offence proceedings. However, as follows from the testimony of [the representative of the police station], no elements of an administrative offence were established in the

actions of the plaintiffs and no records of an administrative violation, detention, escorting to the police station and administrative arrest were compiled. That is, there were no grounds for detaining [the plaintiffs] or escorting them to the police station."

16. The District Court summarily rejected the remainder of the claims:

"The claims concerning the removal of religious literature and passports, the photographing [of the applicants] or impediments caused to counsel are unsubstantiated. The applicants' and their witnesses' statements in that connection are contradictory, thus making it impossible to establish the relevant facts ..."

17. The applicants lodged an appeal, submitting that the District Court had misinterpreted the law in that the premises for the service of worship had been legally provided under a rental contract entered into by the Administrative Centre of Jehovah's Witnesses, a registered legal entity, of which the local religious groups were structural divisions.

18. On 22 March 2007 the Moscow City Court quashed the District Court's judgment in the part concerning the finding of unlawfulness in the actions of the police:

"It appears from the register of persons detained or escorted to the police station that the plaintiffs were taken to the police station to give statements ... and spent no more than three hours at the police station, which cannot be considered as detention.

Thus, the actions of the police patrol unit of the Lyublino police station in escorting the plaintiffs to the police station were carried out within the framework of the Police Act, and there is no basis for pronouncing unlawful their actions in stopping the unlawful religious service and escorting the plaintiffs to the police station for the purposes of taking their statements and inspecting [their] identity documents."

19. The City Court upheld the remainder of the judgment and dismissed the applicants' arguments in a summary fashion:

"The fact that the service of worship held by the Lyublinskaya and Krasnodonskaya religious groups, which are part of the centralised religious organisation 'The Administrative Centre of Witnesses' [*sic*], was conducted on behalf of that organisation and on premises paid for by it does not in itself exempt it from [the need to meet] the requirements [applicable to] religious groups when conducting religious services, since the activity of that organisation is banned in Moscow.

The court has considered the other arguments in the appeal ... [They] involved in essence a different interpretation of the law and a re-evaluation of evidence ... and these cannot constitute grounds for reversing a court decision on appeal".

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Russian Federation

20. Article 29 guarantees freedom of religion, including the right to profess, either alone or in community with others, any religion or to profess no religion at all, to freely choose, have and share religious and other beliefs and to manifest them in practice.

B. Religions Act (Law no. 125-FZ of 26 September 1997)

21. The relevant provisions of the Act read as follows:

Section 7: Religious groups

"1. A religious group for the purposes of this federal act is a voluntary union of citizens formed with the aim of collectively professing and disseminating faith; it functions without State registration or acquiring the status of a legal entity. Members of the group shall provide it with premises and any other property that is necessary for its operation ...

3. Religious groups have the right to conduct divine services, other religious rites and ceremonies ..."

Section 16: Religious rites and ceremonies

"2. Divine services, other religious rites and ceremonies may be conducted without hindrance in religious buildings and structures and their adjacent areas, on other premises made available to religious organisations for these purposes, in places of pilgrimage ... and on living premises.

3. Religious organisations have the right to hold religious rites at hospitals and medical institutions ...

4. Military commanders shall not prevent servicemen from taking part in divine services ...

5. In other cases, public divine services, other religious rites and ceremonies shall be conducted in accordance with the procedure established for conducting meetings, marches and demonstrations."

C. Public Gatherings Act (Law no. 54-FZ of 19 June 2004)

22. The relevant parts of the Public Gatherings Act provide as follows:

Section 1: Legislation of the Russian Federation on assemblies, meetings, demonstrations, marches and picketing

"2. ... The holding of religious rites and ceremonies shall be governed by [the Religions Act], federal law no. 125-FZ of 26 September 1997."

Section 2: Basic notions

"1) a public event (*публичное мероприятие*) is an open, peaceful action accessible to everyone that is conducted in the form of an assembly, meeting, demonstration, march or picket or in various combinations of those forms ...

2) an assembly (*собрание*) is a collective presence of citizens at a specially allocated or adapted place with the aim of having a collective debate on socially important issues;

3) a meeting (*митинг*) is a mass gathering of citizens at a certain place to publicly express public opinions regarding important current issues ...

4) a demonstration (*демонстрация*) is an organised public manifestation of public sentiment by a group of citizens carrying placards, streamers or other visual campaigning aids;

5) a march (*шествие*) is a mass passage of citizens along a route specified beforehand with the aim of attracting attention to certain issues;

6) picketing (*пикетирование*) is a form of public expression of opinion that does not involve movement or the use of loudspeaker equipment, where one or more citizens with placards, banners and other means of visual expression are stationed outside the target object of the picket;

7) notice of holding a public event (*уведомление о проведении публичного мероприятия*) shall be taken to mean a document by which the [local authorities] are given information ... about the holding of a public event in order to enable them to ensure security and law and order during that event ...”

Section 7: Notice of holding a public event

“1. Notice of holding a public event (except for an assembly or a picket by a single participant) shall be sent by its organiser in writing to the regional executive authority or the municipal authorities within a period no earlier than fifteen and no later than ten days prior to the scheduled date of the event.”

D. Education Act (Law no. 3266-1 of 10 July 1992)

23. The Education Act prohibits structural units of political parties, political and religious movements and organisations from being set up and operated in State and municipal educational establishments and education management bodies (section 1 § 5).

24. An educational establishment may lease and rent out property. Rental income must be used for educational needs (section 39 § 11).

E. Case-law of the Russian courts

25. On 30 July 1999 a deputy President of the Supreme Court of the Russian Federation ruled on a complaint brought by the local authorities of Kaluga against an elder of the local community of Jehovah’s Witnesses who had allegedly failed to give notice of a religious meeting to the local authorities:

“... according to the Religions Act, the phrase ‘without hindrance’ means that no permission from, or clearing of the matter with, the secular authorities is required for performing religious ceremonies on the premises provided [for that purpose].”

26. On 14 August 2001 a deputy President of the Supreme Court ruled on a similar complaint brought by the authorities of Kislovodsk against a Jehovah’s Witness in connection with an allegedly unauthorised religious gathering:

“According to section 16 of the Religions Act, divine services and other religious rites and ceremonies can take place without any hindrance ... on other premises made

available to religious organisation for that purpose ... Therefore, the local religious organisation was not required to inform the State authorities of its gathering."

27. On 5 December 2012 the Constitutional Court issued judgment no. 30-P on a complaint by the Russian Ombudsman that was lodged on behalf of two Jehovah's Witnesses who had been found liable in administrative proceedings for failure to give notice to the local authorities about a forthcoming religious assembly. It held as follows:

"3.2. ... Divine and religious assemblies (as well as certain services of worship and rites) as varieties of public religious events ... in the existing legal framework correspond to the legal definition of an assembly, which, under section 2 of the Public Gatherings Act, is a collective presence of citizens at a specially allocated or adapted place with the aim of having a collective debate on socially important issues ...

3.3. Having regard to the differences between secular and religious gatherings, the legislator was entitled to establish different legal requirements for conducting them. However, it is contrary to the constitutional principles of equality, justice and proportionality to extend the legal procedure for conducting meetings, marches and demonstrations to any divine and religious assembly, insofar as both the Public Gatherings Act and the Religions Act fail to distinguish between, on the one hand, services of worship and religious assemblies that require the public authorities to take measures for the protection of public order and the security of the participants and other persons, and, on the other hand, assemblies that do not require any such measures (in which case the procedure for conducting them may be different and less rigorous than that established for conducting meetings, marches and demonstrations).

Requiring [the organisers] to give written notice to the competent State or municipal authorities about such a public religious event and to discharge other lawfully established obligations only because it is to be conducted outside specifically allotted premises amounts to an illegitimate interference by the State with the freedom of religion guaranteed by Article 28 of the Russian Constitution and Article 9 of [the Convention] and to an unjustified restriction on the right to freedom of assembly under Article 31 of the Russian Constitution that is not necessary for the purposes listed in Article 17 § 3 and 55 § 3 of the Russian Constitution and paragraph 2 of Article 11 [of the Convention].

It follows that section 16 § 5 of the Religions Act – insofar as it has extended the procedure for conducting meetings, marches and demonstrations under section 7 of the Public Gatherings Act to any public religious assembly that is being conducted outside the places listed in section 16 §§ 1-4, without distinguishing between, on the one hand, services of worship and religious assemblies that may require the public authorities to take measures for the protection of public order and security, and, on the other hand, assemblies that do not require any such measures, including where a service of worship or religious assembly is held on non-residential premises and neither the nature of the assembly nor the location of the premises are indicative of any danger to public order, morals or the health of the participants of the assembly or third parties – is incompatible with Articles 17 § 3, 18, 19 §§ 1 and 2, 28, 31 and 55 § 3 of the Russian Constitution."

28. In the operative part, the Constitutional Court directed the federal legislature to amend the federal legislation in the relevant part:

"3. The federal legislature – in accordance with the requirements of the Russian Constitution and on the basis of this Judgment – will have to make necessary

amendments to the procedure for conducting public divine services, other religious rites and ceremonies, including prayers and religious assemblies, that are being held in places other than those listed in paragraphs 1 to 4 of section 16 of the Religions Act. The amendments should take into account the specific nature of such public religious events since not all of them require the public authorities to take measures for the protection of public order and security of the participants and third parties ...

4. Pending the adoption of the necessary amendments ... the law-enforcement authorities and the courts ... shall be guided by the Russian Constitution and by this Judgment."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

29. The applicants complained that their arrest and detention on 12 and 13 April 2006 was without just cause and in breach of Article 5 of the Convention, which provides in its relevant part as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Submissions by the parties

30. The Government denied that the applicants had been deprived of their liberty or restricted in their movements. In their submission, the police had merely invited a few participants of the religious meeting, including the applicants, to the Lyublino police station with a view to obtaining

statements about the unlawful gathering and identifying its organisers. There was no deprivation of liberty because the applicants were not placed in a cell or subjected to any restrictive measures. They were able to move around freely within the building of the police station and talk on their mobile phones.

31. The applicants objected to the misleading use by the Government of the word "invite". An "invitation" implies the freedom to accept or to refuse, but no such choice was given to them. The police separated them from the other believers and loaded them into police vehicles. A refusal to comply or an attempt to resist would have been taken as violence against a police officer and exposed them to the risk of receiving heavy penalties. Referring to the Court's findings in *Guzzardi v. Italy* (6 November 1980, § 95, Series A no. 39) and *Storck v. Germany* (no. 61603/00, § 74, ECHR 2005-V), the applicants submitted that the loss of liberty to which they had been subjected comprised both an objective element, first at the rear of the lecture hall and later in the police vehicles and at the police station, and a subjective element, in that they had not consented to the confinement in question. The applicants reiterated that the deprivation of liberty had not been in accordance with the law and had not pursued any legitimate aim.

B. Admissibility

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

C. Merits

33. The Court draws attention to the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the rights of individuals in a democracy to be free from arbitrary detention by the authorities. It has constantly emphasised that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5 of the Convention, namely, to protect the individual from arbitrary detention (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 104, ECHR 1999-IV, with further references).

34. The parties disagreed as to whether or not the applicants were "deprived of their liberty" within the meaning of Article 5 of the Convention. In order to determine whether there has been a deprivation of liberty, the starting-point for the Court's assessment is the concrete situation of the individual concerned, and account must be taken of a whole range of factors arising in a particular case, such as the type, duration, effects and

manner of implementation of the measure in question. The distinction between deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance (see *Nada v. Switzerland* [GC], no. 10593/08, § 225, ECHR 2012, with further references).

35. The Court reiterates that the protection against arbitrary detention enshrined in Article 5 § 1 of the Convention applies to deprivation of liberty of any duration, however short it may have been (see *Shimovolos v. Russia*, no. 30194/09, 21 June 2011, in which the applicant spent forty-five minutes at the police station; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, ECHR 2010 (extracts), where the applicants were stopped for a thirty-minute search; *Novotka v. Slovakia* (dec.), no. 47244/99, 4 November 2003, where the transportation to the police station, search and confinement in a cell did not exceed one hour; and *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 317-318, ECHR 2010 (extracts), where the applicant's daughter's alleged detention lasted about two hours).

36. On the facts, the Court notes that upon the arrival of the police officers in substantial numbers at the assembly hall the applicants found themselves surrounded by police. They were taken to minibuses under police escort and driven to the police station, where they remained until after midnight, that is, for approximately three hours. Their names were recorded in the official register of persons who were escorted to and detained at the police station. The claim that the applicants proceeded to the police station of their own accord was rejected by the District Court as untenable on the facts (see paragraph 13 above). This factual finding was not overruled on appeal inasmuch as the City Court rejected the claim solely by reference to the fact that the applicants' stay at the station had not been long enough to be characterised as "detention" under Russian law (see paragraph 18 above). In their submissions before the Court, the Government indicated that the applicants had been able to walk around inside the police station but they did not claim that they had been free to leave it, at least not until such time as they had been allowed to do so. In these circumstances, the Court considers it established that there was an element of coercion which, notwithstanding the short duration of the detention, was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *M.A. v. Cyprus*, no. 41872/10, § 193, ECHR 2013 (extracts); *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010; *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008, and *I.I. v. Bulgaria*, no. 44082/98, § 87, 9 June 2005).

37. The Court further reiterates that the characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect its conclusion as to the existence of a deprivation of liberty (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012). Thus, the fact that the Moscow City Court and the respondent Government

considered that the applicants had not been "detained" within the meaning of the Russian law does not automatically mean that the applicants were not deprived of their liberty under the terms of the Convention.

38. Having regard to the factual elements of the case and the case-law cited in paragraph 31 above, the Court finds that the applicants were deprived of their liberty within the meaning of Article 5. The Court must next ascertain whether the deprivation of liberty complied with the requirements of Article 5 § 1. It reiterates in this connection that the list of exceptions to the right to liberty set out in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely, to ensure that no one is arbitrarily deprived of his liberty (see, among many others, *Giulia Manzoni v. Italy*, 1 July 1997, § 25, *Reports of Judgments and Decisions* 1997‑IV).

39. The deprivation of the applicants' liberty clearly did not fall under sub-paragraphs (a), (d), (e) and (f) of paragraph 1 of Article 5. Nor was it covered by sub-paragraph (b), since there is no evidence that they failed to comply with any lawful court order or to fulfil any obligation prescribed by law. As it happened, they produced their identity documents at the request of the police officers, answered the officers' questions and obeyed their orders (see, by contrast, *Vasileva v. Denmark*, no. 52792/99, §§ 36-38, 25 September 2003). It remains to be determined whether the deprivation of liberty could fall within the ambit of sub-paragraph (c).

40. The applicants were not formally suspected of, or charged with, any offence and no criminal or administrative proceedings were instituted against them. The representative of the police station explicitly acknowledged in the domestic proceedings that "no elements of an administrative offence [had been] established in the actions of the plaintiffs" (see paragraph 15 above). The Court also observes that no records of an administrative violation, detention or arrest had been compiled (ibid.). It follows from the above that the applicants' arrest could not have been effected "for the purpose of bringing [them] before the competent legal authority on reasonable suspicion of having committed an offence" within the meaning of Article 5 § 1 (c) (compare with *Makhmudov v. Russia*, no. 35082/04, §§ 82-85, 26 July 2007). Hence, the deprivation of liberty to which the applicants were subjected did not have any legitimate purpose under Article 5 § 1 and was arbitrary.

41. In the light of the above considerations, the Court concludes that there has been a violation of Article 5 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

42. The applicants complained that the premature termination of their religious meeting on account of the arrival of the police amounted to a violation of Articles 5, 8, 9, 10 and 11 of the Convention, taken alone and in

conjunction with Article 14 of the Convention. The Court reiterates that, where the nature of a meeting is primarily religious, as it was in the present case, where the applicants had gathered for a service of worship, a complaint about the disruption of the meeting is to be examined from the standpoint of Article 9 alone (see *Kuznetsov and Others v. Russia*, no. 184/02, § 53, 11 January 2007), 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. Submissions by the parties

43. The Government claimed firstly that the service of worship, involving, as it did, many participants, had created noise and disturbed the public order and that the police had acted in response to a complaint about that disturbance. Secondly, they submitted that the Academy of Agriculture was not a "religious building" within the meaning of section 16 § 2 of the Religions Act. That section allowed believers to carry out services and rites on "other premises which were provided for that purpose" but it did not specify what premises fell into that category. The Government further pointed out that section 5 § 1 of the Education Act prohibited political and religious organisations from being set up or operating in educational establishments. Moreover, by law the two religious groups which had conducted the service on 12 April 2006 could only use premises provided by their members, whereas the rental contact for the premises in question had been entered into between the Academy and the Administrative Centre of Jehovah's Witnesses. In such circumstances, the applicants had to exercise their constitutional right to freedom of assembly in accordance with section 16 § 5 of the Religions Act, that is, in compliance with the procedure established for holding public gatherings. Section 7 § 1 of the Public Gatherings Act required the organisers to notify the local authorities in advance in writing, which the applicants had failed to do. In the Government's view, failure to provide advance notice was contrary to the principle of lawfulness in section 3 § 1 of the Public Gatherings Act and was a sufficient ground for its termination on account of its unlawfulness.

44. The applicants countered the Government's argument that the service had caused a disturbance by pointing out that it did not transpire from the domestic proceedings that the police had received any applications, complaints or phone calls to the effect that the service was creating noise or

disturbance. The service was held in a purpose-built auditorium at the university from which little, if any, sound escaped. The traffic noise from a busy street outside would have far exceeded any minimal noise that might have escaped. It was not a rock concert with heavily amplified music but a solemn religious rite which the congregation opened with a hymn, the singing of which was not amplified, and was thereafter addressed through a single speaker amplified merely to a sufficient level to reach the audience in the hall. The applicants further pointed out that the deployment of major resources of police manpower and vehicles was not indicative of an impromptu response to a complaint about noise but was, rather, evidence of a well-planned raid that was conducted for the purpose of harassing Jehovah's Witnesses in Moscow.

45. The applicants further submitted that they had been lawfully using the premises under the terms of a valid rental contract and without complaint for approximately ten weeks prior to the incident. They pointed out that the Court had already found the Government's reliance on the Education Act misconceived in the *Kuznetsov and Others* judgment (cited above, § 72). In that judgment, the Court also determined that there was consistent case-law of the Russian Supreme Court to the effect that religious assemblies did not require any prior authorisation from, or notice to, the local authorities (ibid., § 70). Even assuming that there had been a technical breach of the law in the organisation of the meeting, the disruption of a solemn service had not been "necessary in a democratic society". This was one of twenty-three similar services held in Moscow that night and the only one to be interrupted, while the others proceeded without incident or disruption of public order, actual or alleged. The senior police officer in charge of the operation should have exercised his discretion to permit the service to continue to its close and only then to remonstrate with those responsible for organising it for any alleged breach. The massive display of force, including the deployment of armed units of the Special Police Force against a group of peaceable Christian believers, was a disproportionate and discriminatory measure.

B. Admissibility

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

C. Merits

47. 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. It 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. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 114, ECHR 2001-XII, and *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A).

48. The Court notes that on 12 April 2006 the applicants gathered with their fellow believers for a service of worship. The service was a form of manifestation of their religion that attracted the protection of Article 9 of the Convention (compare with *Kuznetsov and Others*, cited above, § 57).

49. Shortly after the beginning of the service, the police officers arrived and ordered that the meeting be stopped. The early termination of the service constituted an interference with the applicants' right to freedom of religion (see *Kuznetsov and Others*, cited above, § 62) and the Court is accordingly called upon to examine whether the interference was justified, that is, whether it was "prescribed by law", whether it pursued one or more legitimate aims enumerated in paragraph 2 of Article 9 and whether the interference was "necessary in a democratic society".

50. The parties disagreed as to whether the interference had been "prescribed by law". The Government advanced several legal grounds for the actions of the police and the Court will examine these grounds in turn.

51. In so far as the Government claimed that the police had intervened in response to a complaint about noise and a disturbance of public order, the Court observes that this allegation was not raised or tested in the domestic proceedings and that the Government advanced it for the first time in their pleadings before the Court. The Government did not produce any evidence capable of corroborating that claim, such as, for instance, a written complaint or a registered phone call from aggrieved neighbours. Furthermore, it does not appear plausible, as the applicants rightly pointed out, that dozens of police officers, including armed riot police, would have been despatched to look into a complaint of ordinary neighbourhood nuisance.

52. The Government further claimed, as they did in the *Kuznetsov and Others* case, that the holding of the meeting on the premises of the Academy had been contrary to section 1 § 5 of the Education Act (cited in paragraph 23 above). Once again, this particular justification for the interference was not invoked before the domestic courts and was first put forward in the Strasbourg proceedings. In any event, it had already been examined and rejected by the Court in the *Kuznetsov and Others* judgment,

in which the Court concluded that the Education Act expressly authorised educational establishments to rent out their premises (see paragraph 24 above) and that the provision on which the Government relied did not prohibit the physical use of college space by third parties, but rather the clericalisation of schools through the setting-up of religious structures involving students or staff (see *Kuznetsov and Others*, cited above, § 72). In the present case the service was held "after sundown", that is, outside normal academy hours, and there is no evidence that it interfered in any way with the educational process or involved college students or teachers. Thus, the Education Act could not serve as a legal basis for the interference.

53. Lastly, the Government asserted that the religious meeting had been illegal because the organisers had not notified the local authorities in advance in writing, which was allegedly required pursuant to a combination of provisions of the Religions Act and the Public Gatherings Act. The Court reiterates in this connection that the expression "prescribed by law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Bayatyan v. Armenia* [GC], no. 23459/03, § 113, ECHR 2011).

54. Section 16 § 2 of the 1997 Religions Act provides that divine services may be conducted "without hindrance" in religious buildings but also "on other premises made available to religious organisations for those purposes". In *Kuznetsov and Others* the Court took note of the consistent case-law of the Supreme Court of the Russian Federation, which interpreted the phrase "without hindrance" in the sense that religious meetings, even those conducted on rented premises, did not require any prior authorisation from, or notice to, the authorities (see the case-law cited in paragraphs 25 and 26 above, and *Kuznetsov and Others*, cited above, § 70). In all cases – including those that had come before the Supreme Court, the *Kuznetsov and Others* case and the present one – the premises had been rented from a third party by the Administrative Centre of Jehovah's Witnesses, a religious organisation legally registered at national level, and made available to local religious groups for the purpose of conducting services of worship. Neither the domestic courts in their judgments nor the Government in their observations pointed to any legislative amendments or evolution of the case-law that could have rendered the above-mentioned findings by the Supreme Court obsolete and warranted a different interpretation of section 16 of the Religions Act. Inasmuch as the District Court pronounced section 16 § 2 inapplicable because the Academy of Agriculture was a secular establishment, the Court is unable to find any support for that interpretation in the text of the provision, which speaks alternatively of

"religious buildings" or "other premises ... made available for these purposes", without specifying that such premises must be non-secular. It follows that the interpretation of the Religions Act by the domestic courts in the instant case was not in line with the text of the act or established case-law and was therefore unforeseeable for the applicants.

55. As to the requirements of the Public Gatherings Act, the Court observes that the applicants had gathered indoors with their fellow believers for a service of worship. Accordingly, it seems that their gathering had the features of an "assembly" within the meaning of section 2 (2) of the Act which would apparently not require any advance notice to the authorities in accordance with section 7 of the Act (see also point 3.2 of the Constitutional Court's judgment, cited in paragraph 27 above). The Court, however, does not consider it necessary to rule on the question whether the interference in issue was in this respect "prescribed by law" because, in any event, it was not "necessary in a democratic society" for the reasons set out below (see *Serif v. Greece*, no. 38178/97, § 42, ECHR 1999-IX).

56. The Court has consistently held that, even in cases where the authorities had not been properly notified of a public event but where the participants did not represent a danger to the public order, dispersal of a peaceful assembly by the police could not be regarded as having been "necessary in a democratic society" (see *Kasparov and Others v. Russia*, no. 21613/07, §§ 95-96, 3 October 2013; *Bukta and Others v. Hungary*, no. 25691/04, §§ 37-38, ECHR 2007-III, and *Oya Ataman v. Turkey*, no. 74552/01, §§ 42-43, ECHR 2006-XIII). This finding applies *a fortiori* in the circumstances of the present case where the assembly in question was not a tumultuous outdoors event but a solemn religious ceremony in an assembly hall which was not shown to create any disturbance or danger to the public order. The intervention of armed riot police in substantial numbers with the aim of disrupting the ceremony, even if the authorities genuinely believed that lack of advance notice rendered it illegal, followed by the applicants' arrest and three-hour detention, was disproportionate for the protection of public order.

57. In the light of the above considerations, the Court finds that there has been a violation of Article 9 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. Lastly, the applicants complained that the domestic proceedings were unfair, that no criminal proceedings were instituted against the police officers, and that they had not had an effective remedy for their substantive grievances at national level.

59. Having regard to all the material in its possession and in so far as the matters complained of are within its competence, the Court finds that these complaints do not disclose any appearance of a violation of the rights and

freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicants claimed 30,000 euros (EUR) in respect of non-pecuniary damage, which corresponded to the Court's award in the *Kuznetsov and Others* case (cited above).

62. The Government replied that the applicants did not specify what "mental suffering" had been caused to them by the Russian authorities. In their view, the finding of a violation would constitute sufficient just satisfaction.

63. The Court notes that the Public Gatherings Act has not been amended to date in conformity with the Constitutional Court's judgment of 5 December 2012 (see the operative part of the judgment cited in paragraph 28 above). In these circumstances, it does not consider that the finding of a violation would constitute sufficient just satisfaction. It awards each applicant EUR 7,500 in respect of non-pecuniary damage, that is a total sum of EUR 30,000, plus any tax that may be chargeable. The award is to be paid into the bank account specified by the first applicant.

B. Costs and expenses

64. The applicants also claimed a total of EUR 6,987 in costs and expenses, including EUR 1,250 for the work and travel expenses of Russian attorneys in the domestic proceedings, EUR 500 representing the costs of making an application to the Court, and EUR 5,237 for eighteen hours' work and six hours' travel by Mr R. Daniel, who represented them before the Court. The applicants submitted a fee note from Mr Daniel.

65. The Government, considering that the applicants' claim amounted to EUR 12,224, commented that the applicants had not provided any "agreements with lawyers, cheques or receipts" showing that the expenses had actually been incurred. They also submitted that the applicants could have found less expensive legal assistance in Moscow instead of employing London-based counsel.

66. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 6,000 covering costs under all heads, plus any tax that may be chargeable to the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the disruption of the service of worship and the applicants' detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 of the Convention;

3. *Holds* that there has been a violation of Article 9 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement and transferred into the first applicant's bank account:
      (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 26 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

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

I.B.L
S.N.

CONCURRING OPINION OF JUDGE PINTO DE ALBUQUERQUE

1. Freedom of religious assembly in Russia has already been the object of attention by the European Court of Human Rights ("the Court"). In this new case, the Court does not go further than in its previous case-law. Although I agree with the findings of the judgment, I do not consider that they suffice. The Court should have gone further, on the basis of Article 46 of the European Convention on Human Rights ("the Convention"). The specific purpose of this opinion is to submit that the Russian Religions Act (Law no. 125-FZ of 26 September 1997) must be reformed, in view of the international standards on freedom of religious assembly and the domestic case-law of the Russian Constitutional Court and Supreme Court. In other words, this opinion explicitly states what the Chamber has implicitly affirmed in paragraphs 55 and 63 of the judgment. Moreover, this opinion is intended to provide guidance for the respondent State in performing this task in accordance with its international obligations[1].

The dispersal of indoor religious assemblies in Russia

2. The Government submitted that section 16 § 5 of the Religions Act, interpreted in conjunction with section 7 § 1 of the Public Gatherings Act, required the organisers of religious assemblies in non-residential premises to notify the local authorities, in writing and in advance. Moreover, the Government claimed that section 5 § 1 of the Education Act prohibited religious assemblies from being held in educational establishments. Both justifications are unfounded, and have already being rejected by this Court in *Kuznetsov and Others*[2]. More specifically, in that seminal case the Court found a violation of Article 9 of the Convention on account of the disruption of an indoor religious meeting. The Court found that the State's interference was not even prescribed by law, since the Government neither specified the nature of the allegedly missing documents in accordance with the Religions Act, nor produced any documents relating to the official powers of the commissioner and two senior police officers to interrupt and disperse the indoor religious meeting. In addition, the fact of holding the religious meeting on college premises outside normal college hours had not been contrary to the Education Act. In that same judgment, the Court referred to the case-law of the Russian Supreme Court, dating from at least 1999, to the effect that religious assemblies do not require any prior authorisation from,

1. Such guidance is particularly timely at this moment, since the Duma is currently discussing a bill for reform of above-mentioned Religions Act, submitted by the Government in March 2014.
2. *Kuznetsov and Others v. Russia*, no. 184/02, § 72, 11 January 2007.

or notification to, the public authorities[3]. There is no valid reason to change this precedent[4]. On the contrary, as will be shown, the subsequent practice of the respondent State justifies insistence on this case-law[5].

3. More recently, the Russian Constitutional Court delivered a crucial judgment on this same issue, concluding that section 16 § 5 of the Religions Act is unconstitutional in so far as it does not distinguish religious assemblies which may require measures for the protection of public order and security and those which may not, such as assemblies "held in non-residential premises, [where] neither the nature of the assembly nor the location of the premises are indicative of any danger to public order, morals or the health of the participants of the assembly or of third parties"[6]. The national legislature has to date ignored the Constitutional Court's and the Court's judgments. Worse still, the domestic practice of disrupting and dispersing peaceful religious assemblies through police raids, confiscation of religious works and the arrest and detention of worshipers has not abated, and ill-treatment of and discriminatory behaviour towards religious minorities continues to be common practice in the respondent State[7].

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3. See *Kuznetsov and Others*, cited above, §§ 50 and 51.

4. On the *stare decisis* effect of the Court's judgments and the reasons justifying a change in the Court's case-law, see my separate opinion in the case of *Herrmann v. Germany* [GC], no. 9300/07, 26 June 2012.

5. The difference between *Kuznetsov and Others* and the present case lies in the latter's more timid approach. While in *Kuznetsov and Others* the Court clearly censured the unlawfulness of the State's interference, the majority in the present case have preferred to avoid this question in paragraph 55 and instead to resolve the case on the basis of the principle of proportionality in paragraph 56. This approach is all the more incomprehensible if one considers that the Chamber refrained from considering the State's interference as not "prescribed by law" in paragraph 55, although it had established in paragraph 54 that the domestic authorities' legal interpretation was not foreseeable. In so doing, the Chamber diverted its attention from the core of the case, which is evidently the question of the quality of the Russian legal framework on religious freedom. This is exactly what this opinion seeks to address.

6. Russian Constitutional Court judgment no. 30-P, of 5 December 2012.

7. For an overview of the current situation, see European Commission against Racism and Intolerance (ECRI), the Fourth Report on Russia, 15 October 2013, CRI(2013)40, paragraph 141; Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on the Russian Federation, 25 July 2012, ACFC/OP/III(2011)010, paragraph 148; Venice Commission Opinion No. 660 / 2011 on the Federal Law on Combating Extremist Activity of the Russian Federation, 20 June 2012, CDL-AD(2012)016, paragraphs 74-75; SOVA, Centre for Information and Analysis, "Inappropriate enforcement of anti-extremist legislation in Russia in 2013", 4 June 2014, "Misuse of anti-extremism in April 2014", 19 May 2014, and "Freedom of conscience in Russia: Restrictions and challenges in 2013", 2 June 2014; FORUM 18 News Service on Russia, for example, "Russia: "They'll punish you whether or not you committed a crime", 1 May 2014; and United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2013, Russia, p. 1 of the executive summary, and International Religious Freedom Report for 2012, Russia, p. 1 of the executive summary. The current situation is aggravated by the use that has been made

4. Moreover, these precedents correspond to the European constitutional tradition, in which the right to assemble outdoors may be submitted to various limitations related to the protection of the rights and freedoms of others and of public order and health, whereas the right to assemble indoors is guaranteed without any limitations (see Article 19 of the Czech Charter of Fundamental Rights and Freedoms, Section 79 of the Danish Constitution, Article 8 of the German Basic Law, Article 11 of the Greek Constitution, Article 17 of the Italian Constitution and Article 21 of the Spanish Constitution)[8]. In those countries where a general rule of prior notice to the authorities is foreseen, indoor assemblies are not submitted to this rule, regardless of the assemblies' purpose. As was stated by the 2012 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, this is also the universal standard today[9].

Freedom of religious assembly in international law

5. Freedom of religion includes, as one of its basic elements, the freedom to assemble in community with others, in public or private, with a view to manifesting one's religion in worship, observance, practice and teaching. The word religion derives from the Latin term *religare*, which means to bind, to bring together, to unite each woman and man with the deity (*forum internum*) and all women and men with one another (*forum externum*). The latter is no less important than the former from the believer's point of view[10]. For the believer, where the latter is hindered, the

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of the so-called Extremism Act, as has been stressed by the above-mentioned international and domestic organisations. For the previous situation, see the ECRI Third Report on the Russian Federation, 16 May 2006, CRI(2006)21, paragraphs 103-107; the ECRI Second Report on the Russian Federation, 13 November 2001, CRI(2001)41, paragraphs 52-55; and the ECRI Report on the Russian Federation, 26 January 1999, CRI(99)3, paragraphs 52-55.

8. It is significant to note that most of these countries lived through long dictatorships, under which citizens were not allowed to assemble freely in residential and non-residential premises for any political or religious purpose.

9. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, paragraph 28: "Prior notification should ideally be required only for large meetings or meetings which may disrupt road traffic."

10. This is reflected in the so-called "golden rule", which can be found in almost all religions (for some significant examples, see, in Buddhism: "a state that is not pleasing or delightful to me, how could I inflict that upon another?", *Samyutta Nikaya* v. 353; "Hurt not others in ways that you yourself would find hurtful", *Udana-Varga* 5:18; in Confucianism: "Do not do to others what you do not want them to do to you", *Analects* 15:24; in Christianity: "So whatever you wish that others would do to you, do also to them, for this is the Law and the Prophets", *Matthew* 7:12, and "And as you wish that others would do to you, do so to them", *Luke* 6:31; in Hinduism: "This is the sum of duty: do not do to others what would cause pain if done to you", *Mahabharata* 5:1517; in Islam: "None of you [truly] believes until he wishes for his brother what he wishes for himself", Number

former is *per se* encroached upon[11]. Therefore, freedom of religion requires the amplest guarantee of the freedom of believers to assemble and worship together[12].

6. The *forum externum* of freedom of religion has four constituent components: time, space and the institutional and substantive components. These four constituent components of the external, collective dimension of freedom of religion are related to free access to the space where the members of the community gather and worship, the possibility of gathering and worshiping at certain specially meaningful times, the organisation and direction of religious gathering and worship without any outside constraint and the free dissemination of the community's religious beliefs, ethical principles and moral teachings. The State's positive obligations provide an additional guarantee to the exercise of these freedoms and rights by believers.

7. Article 9 of the Convention excludes any State assessment of the legitimacy of religious beliefs or the ways in which those beliefs are put in practice in the society[13]. The State's neutral role regarding religious beliefs is compatible only with a narrow margin of appreciation for State interference with religious matters[14]. The more the Court has stressed the

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13 of Imam Al-Nawawi's *Forty Hadiths*; in Judaism: "thou shalt love thy neighbor as thyself.", *Leviticus* 19:18, "What is hateful to you, do not to your fellow man. This is the law: all the rest is commentary", *Talmud*, Shabbat 31a, "And what you hate, do not do to anyone", *Tobit* 4:15; and, in Taoism: "The sage has no interest of his own, but takes the interests of the people as his own. He is kind to the kind; he is also kind to the unkind: for Virtue is kind. He is faithful to the faithful; he is also faithful to the unfaithful: for Virtue is faithful", *Tao Te Ching*, by Lao Tzu, Chapter 49.

11. A caveat must be added: in non-theistic religions like Buddhism, only the former aspect is relevant.

12. Commission on Human Rights resolution 2005/40, 20 April 2005, E/CN.4/RES/2005/40, paragraph 4 (d); Human Rights Council resolution 6/37, 14 December 2007, A/HRC/RES/6/37, paragraph 9(g); General Assembly resolution 65/211, 21 December 2011, A/RES/65/211, paragraph 12 (g); and HRC General Comment no. 22, CCPR/C/21/Rev.1/Add. (1993), paragraph 4.

13. On the State's duty of neutrality and impartiality with regard to religious beliefs or the ways in which those beliefs are expressed, see *Religionsgemeinschaft der Zeugen Jehovahs and Others v. Austria*, no. 40825/98, §§ 97-99, 31 July 2008; *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, § 119, 10 June 2006; *Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97, §§ 93 and 96, 16 December 2004; *Metropolitan Church of Bessarabia and Others v. Moldova*, no 45701/99, § 116, ECHR 2001-XII; *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 78, ECHR 2000-XI; *Serif v. Greece*, no. 38178/97, §§ 49, 52 and 53, ECHR 1999-IX; and *Manoussakis and Others v. Greece*, no. 18748/91, § 47, Reports 1996-IV.

14. The Court's case-law on this topic has not always been uniform. On the one hand, the *Wingrove* judgment affirmed, in 1996, that "a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion" (see *Wingrove v. the United Kingdom*, judgment of 25 November 1996, § 58, Reports 1996 V, reiterated in *Murphy v. Ireland*, no. 44179/98, § 67, 10 July

State's neutrality, the less discretion it has allowed the State. The practical consequence of this principled stance is self-evident: the less discretion the State has, the narrower its margin of appreciation with regard to the believer's speech and conduct. This is not only a corollary of logic, but also of modern political philosophy teaching on the inadmissibility of State control of ethics, morals and religious beliefs[15].

This conclusion is not dependent on the traditional nature of the religious community, and even less on the number of its followers. The extent of the State's margin of appreciation cannot depend on these factors. The Court cannot allow States a wide margin of appreciation when they interfere with traditional, majority religious communities, and impose on States a narrow margin of appreciation when they interfere with non-traditional, minority religious communities. Traditional, majority religious communities do need, and deserve, protection before the State as much as their non-traditional, minority counterparts. The State's task is not to change the balance of religious communities under its jurisdiction, but to ensure an ambiance of tolerance for all believers, atheists and agnostics to live their lives according to their intimate religious or non-religious convictions.

8. The space component consists in the freedom to keep religious sites, shrines, places of worship (such as churches, mosques and synagogues) and other religious premises (including ecclesiastical accommodation, such as monasteries and convents, and educational institutions, such as seminaries),

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2003). But in that same year of 1996, the Court also stated, in the ground-breaking case of *Manoussakis and Others*, that "In delimiting the extent of the margin of appreciation in the present case the Court must have regard to what is at stake, namely the need to secure true religious pluralism, an inherent feature of the notion of a democratic society... Further, considerable weight has to be attached to that need when it comes to determining, pursuant to paragraph 2 of Article 9, whether the restriction was proportionate to the legitimate aim pursued. The restrictions imposed on the freedom to manifest religion by the provisions of Law no. 1363/1938 and of the decree of 20 May/2 June 1939 call for very strict scrutiny by the Court" (*Manoussakis and Others*, cited above, § 44). The alleged "wide margin" is evidently not consistent with the Court's "very strict scrutiny" of the restrictions imposed on freedom of religion. The Court therefore abandoned the "wide margin" in the case-law which followed *Manoussakis and Others*, referred to in the previous footnote, and even affirmed, in peremptory terms, a "limited margin" for the State when it interferes in religious matters (see *Bayatyan v. Armenia* [GC], no. 23459/03, § 123, 7 July 2011, and *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, § 76, ECHR 2006-XI). Indeed, such a narrow margin is warranted, not only by the Court's above-mentioned case-law on the neutral role of the State with regard to religious beliefs, but also by the evolving international standards, set out in this area by the OSCE and the Venice Commission after the turn of the century (Guidelines for review of legislation pertaining to religion or belief, prepared by the OSCE/ODIHR advisory panel of experts on freedom of religion or belief in consultation with the Venice Commission, 2004, pp. 9 and 15: "While laws of different States do not need to be identical, and while they should be allowed some flexibility, this flexibility should nevertheless respect the important underlying rights.").

15. As I have already demonstrated in my separate opinion, joined to the judgment in the case of *Mouvement Raëlien Suisse v. Switzerland* [GC], no. 16354/06, 13 July 2012.

out of undue control or surveillance by the State, in times both of peace[16] and armed conflict[17]. In privately-owned buildings (including residential and non-residential premises), the State has simply no say in what believers do in pursuance of their spiritual lives, and therefore the State is not even competent to interfere when a religious assembly takes place in such buildings. In State-owned buildings, such as public hospitals, health centres, nursing homes, orphanages, school and university meeting facilities, the State enjoys a narrow margin of appreciation over believers' decisions to assemble indoors. Believers may hold or participate in religious assemblies in State-owned buildings whenever the chosen places qualify as limited public *fora*[18]. In these cases, the State may establish certain conditions for the exercise of freedom of assembly in accordance with the particular characteristics of the State buildings in question, so long as these conditions do not deprive the Convention freedom of its essence. The same applies *a fortiori* to outdoor assemblies, both on State-owned property and on privately-owned property[19]. In contrast, religious assemblies in State-owned

16. United Nations General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, A/RES/36/55, 25 November 1981 (the 1981 UNGA Declaration), Article 6 (a); General Assembly resolution 55/97, A/RES/55/97, 1 March 2001, paragraph 8; Commission on Human Rights resolution 2001/42, 10 December 2001, E/CN.4/2002/73/Add.1, paragraph 4 (d); Human Rights Council resolution 6/37, cited above, paragraph 9 (g); Human Rights Council resolution 22/20, 12 April 2013, A/HRC/RES/22/20, paragraph 8 (h); and HRC General Comment no. 22, cited above, paragraph 4. The ECRI Fourth Report on Russia, cited above, paragraph 131, recommended that the authorities grant permission for Muslim communities to build a sufficient number of mosques in order for them to exercise their right to manifest their religion in worship. The Advisory Committee on the Framework Convention for the Protection of National Minorities, Third Opinion on the Russian Federation, cited above, paragraph 149, also noted that there was a lack of places of worship for persons belonging to some national minorities and to some religious groups in particular, such as Protestants and Muslims.

17. Article 53 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Article 16 of the Protocol Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), which protect places of worship in times of armed conflict. In *Cyprus v. Turkey* [GC], no. 25781/94, §§ 242-246, 10 May 2001, the Court censured restrictions on access to places of worship, even during an armed conflict.

18. For the qualification of a place as a traditional or designated public *forum*, limited public *forum* or non-public *forum*, and the legal consequences derived from this qualification, see my separate opinion in *Mouvement Raëlien Suisse v. Switzerland* [GC], no. 16354/06, 13 July 2012.

19. See *Vergos v. Greece*, no. 65501/01, §§ 36-43, 24 June 2004. Regrettably, the Court approached the case from the perspective of the State's margin of appreciation in matters of town and country planning, affirming that the public interest should not be made to yield precedence to the need to worship of a single adherent of a religious community in his town, who was not authorised to construct a prayer-house for that community on his own plot of land. The Special Rapporteur on freedom of religion took a different position, for example, in his Report on Turkey, A/55/280/Add.1, paragraph 160: "The following

buildings and property which qualify as non-public *fora*, such as prisons and military bases, are submitted to a wide margin of appreciation.

9. The time component refers to the right to observe special days and times of worship and gathering, in accordance with the precepts of one's religion[20]. In principle, the believer has freedom to comply with his or her religious obligations without prejudice to his or her civil obligations. Where they conflict, the State must provide for the possibility to accommodate both interests, for example by exempting the believer from the performance of his or her civil obligation or permitting that the believer's civil obligations be performed by a third person[21]. Nonetheless, the believer may have to bear the burden of proof of the legal and contractual conditions for being exempted from his or her civil obligations, namely evidence of his or her religious affiliation[22]. In any event, persons subject to certain constraints related to their personal status, such as school-age children, servicemen and inmates, continue to enjoy their right to manifest their religious beliefs and to assemble to the fullest extent compatible with the specific nature of the constraint[23].

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recommendations are made to the Turkish authorities with respect to the Christian, Greek Orthodox and Armenian minorities:... (d) The Government should guarantee minorities the right to establish and maintain their own places of worship, and should allow them to build such facilities in places where new communities have taken root. Any limitations in this respect, for example urban development regulations, should be consistent with international jurisprudence (see General Comment of the Human Rights Committee), and this means that any non-conforming regulations should be repealed or revised."

20. 1981 UNGA Declaration, Article 6 (h); the Report of the Special Rapporteur for the freedom of religion, 4 March 1987, E/CN.4/1987/35, paragraph 57; the Report of the Special Rapporteur for freedom of religion on Australia, E/CN.4/1998/6/Add.1, paragraphs 37 and 47; the Report of the Special Rapporteur for freedom of religion on Argentina, E/CN.4/2002/73/Add.1, paragraphs 29-32 and 125; and HRC General Comment no. 22, cited above, paragraph 4.

21. In *Francesco Sessa v. Italy*, no. 28790/08, 3 April 2012, the lawyer had the possibility of being replaced at a judicial hearing scheduled for the same day as a religious holiday which he wished to attend. There was therefore no violation of Article 9, bearing in mind that domestic law allowed for the replacement of the applicant-lawyer by another lawyer. This case-law followed and developed the standard previously established by *Stedman v. the United Kingdom* (dec.), no. 29107/95, 9 April 1997, *Konttinen v. Finland* (dec.), no. 24949/94, 3 December 1996, and *Knudsen v. Norway* (dec.), no. 11045/84, 8 March 1985.

22. See *Kosteski v. the former Yugoslav Republic of Macedonia*, no. 55170/00, § 39, 13 April 2006.

23. On restrictions derived from the status of civil servants, see *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], § 94; of servicemen, *Kalaç v. Turkey*, 1 July 1997, Reports 1997-IV,§§ 28-31; of inmates, the European Prison Rules, rules 29 (2) and (3); of school-age children, *Appel-Irrgang and Others v. Germany* (dec), no. 45216/07, 6 October 2009, and *Casimiro and Ferreira v. Luxembourg* (dec.), no. 44888/98, 7 April 1999; and, in general, HRC General Comment no. 22, cited above, paragraph 8, and the OSCE/ODIHR Guidelines for review of legislation pertaining to religion or belief, cited above, pp. 22-23.

10. The institutional component consists in believers' right to organise themselves, both administratively and financially, without any undue State interference[24]. Freedom of religion is certainly not limited to members of registered religious communities, but voluntary registration and related benefits constitute a fundamental complementary guarantee of religious communities' autonomy *vis-à-vis* the State. While the State may regulate the legal conditions for registration, it may not impose registration, nor establish excessive formal requirements in terms of the number of members, the length of time a religious community must have existed before registration or the availability of suitable premises for the purpose of carrying out religious rituals and ceremonies, nor may it make the registration procedure dependent on a substantive review of the beliefs of the requesting community or on a decision by a competing religious community[25]. After registration of the religious community, the State may not interfere in any form whatsoever in the manner in which the religious community chooses its ministers and collaborators, organises its assemblies and conducts its rituals and ceremonies[26]. Equally, the State may not oblige

24. See *Supreme Holy Council of the Muslim Community*, cited above, § 73; *Metropolitan Church of Bessarabia*, cited above, § 118; and *Hasan and Chaush*, cited above, § 62.

25. The respondent State has been censured several times on this account (see *Jehovah's Witnesses of Moscow*, cited above; *Church of Scientology Moscow v. Russia*, no. 18147/02, 5 April 2007; and *Moscow Branch of the Salvation Army*, cited above). The ECRI Fourth Report on Russia, cited above, paragraph 147, recommends that the authorities revise their position and open the way for the re-registration of "non-traditional" religions. The same call was made by the Advisory Committee on the Framework Convention for the Protection of National Minorities, in its Third Opinion on the Russian Federation, paragraph 152. In their observations to the ECRI Second Report, the Russian authorities affirmed that "even [an] organisation that [has been] refused registration may conduct divine services, perform other rites and ceremonies, as well as religious instruction and training of its followers, and undertake other activities that do not require legal person capacity". This however does not absolve the respondent State from the international obligation to provide the necessary means for the legal acknowledgment of "non-traditional" religious communities. It is particularly worrying that the Russian authorities distinguish between "reputable" and "non-reputable" religious communities, as they themselves admitted in their observations to the ECRI First Report. This equates to an inadmissible content-based assessment by the State of the various religious communities (see also Human Rights Committee communication No. 1207/2003, *Malakhovsky and Pikul v. Belarus*, 23 August 200,; CCPR/C/84/D/1207/2003, paragraph 7.6, in consonance with the position of the Report of the Special Rapporteur on freedom of religion, E/CN.4/2005/61, paragraphs. 56-58; and the OSCE/ODIHR Guidelines for review of legislation pertaining to religion or belief, cited above, p. 17).

26. See *Supreme Holy Council of the Muslim Community*, cited above, §§ 97-99; the 1981 UNGA Declaration, Article 6 (b), (f) and (g); Human Rights Council resolution 6/37, cited above, paragraph 9 (h); Human Rights Council resolution 22/20, cited above, paragraph 8 (i); the Report of the Special Rapporteur for freedom of religion on Greece, A/51/542/Add.1, paragraphs 138-139; the Report of the Special Rapporteur for freedom of religion on Turkey, A/55/280/Add.1, paragraph 160; HRC General Comment no. 22, cited above, paragraph 4; and Article 8 of the Council of Europe Framework Convention for the

the community to report on its religious activities, or on its members' participation in its activities; nor may it require the members themselves to report on such participation or indeed to provide any other personal information on the basis of their membership of a religious community[27].

11. The substantive component consists in the freedom to transmit and disseminate a religious message without prior control by the State[28]. Bearing witness to one's faith by word and deed is a categorical imperative in the believer's mind. On that basis, proselytising is an inherent element of a believer's religious life, and the State may not oppose the communitarian impact of the believers' expression and conduct. In a democratic, pluralistic society, the State must have a content-neutral approach to the multiple messages of the various religious communities. Nevertheless, the State is entitled to control the message disseminated and the conduct performed, but only in cases prescribed by law and in so far as this is absolutely necessary for the protection of public safety, order, health or morals, or the fundamental rights and freedoms of others, such as in the case of religiously-motivated hate speech and coerced proselytism[29].

12. Finally, the State has a positive obligation to protect believers' freedom of assembly, namely by ensuring that they and their places of worship are fully respected by State and non-State actors and, when attacks against them occur, to investigate and punish them[30]. This obligation is

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27. See *Sinin Isik v. Turkey*, no. 21924/05§§ 50-53, 2 February 2010; *Folgerø and Others v. Norway* [GC], no. 15472//02, § 98, ECHR 2007-III; and *Hasan and Eylem Zengin v. Turkey*, no. 1448/04, § 73, 9 October 2007. Within the United Nations, HRC General Comment no. 22, cited above, paragraph 3; Human Rights Council Resolution 22/20, cited above, paragraph 8 (g); and General Assembly resolution 65/211, cited above, paragraph12 (f). However, the State may require the believer to disclose his or her religious convictions when he or she seeks to make use of a legal advantage available under domestic law on the grounds of that belief, as noted above.

28. See *Hasan and Chaush*, cited above, § 78; 1981 UNGA Declaration, Article 6 (d), (e) and (i); Commission on Human Rights resolution 2005/40, cited above, paragraph 4 (d); Human Rights Council resolution 6/37, cited above, paragraph 9 (g); and Human Rights Council resolution 22/20, cited above, paragraph 8 (h); the Report of the Special Rapporteur on freedom of religion on Greece, A/51/542/Add.1, paragraphs 11-12 and 134; the Interim Report of the Special Rapporteur on freedom of religion, A/60/399, paragraphs 59-68; and HRC General Comment no. 22, cited above, paragraph 4.

29. See *Larissis and Others v. Greece*, judgment of 24 February 1998, Reports 1998-I; Articles 5 (1) and 18 (3) of the ICCPR; Article 1 (3) of the 1981 UNGA Declaration; HRC General Comment no. 22, cited above, paragraph 8; Commission on Human Rights resolution 2001/42, cited above, paragraph 5; Commission on Human Rights resolution 2005/40, cited above, paragraph 8 (a); Human Rights Council resolution 6/37, cited above, paragraphs 9 (d) and (l); Human Rights Council resolution 22/20, cited above, paragraph 8 (k); and the OSCE/ODIHR Guidelines for review of legislation pertaining to religion or belief, cited above, p. 20.

30. See *97 members of the Gladani Congregation of Jehovah's Witnesses and 4 Others v. Georgia*, no. 71156/01, §§ 140-142, 3 May 2007; and Commission on Human Rights

particularly acute in the case of religious minorities, refugees and migrants[31]. Violations of public safety, order, health or morals, or the fundamental rights and freedoms of others, or the clear and imminent risk thereof, caused by the expression and conduct of religious communities, may be countered by the State with a palette of various approaches, which may include dispersal of the religious assembly in the particular location concerned, dissolution of the responsible religious organisation or even criminal sanctions against the offenders as measures of last resort[32].

Conclusion

13. It is high time for the respondent State to assume its legislative responsibility and to comply with both the *Kuznetsov and Others* judgment of 2007 and the Russian Constitutional Court judgment of 2012, thus providing a legal basis for less constrained exercise of freedom of religion, fairer treatment of religious minorities and, ultimately, genuine inter-faith dialogue in Russia. While the failure to implement *Kuznetsov and Others*

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resolution 2001/42, cited above, paragraph 4 (a); Commission on Human Rights resolution 2005/40, cited above, paragraph 4 (a); Human Rights Council resolution 6/37, cited above, paragraph 9 (a); Human Rights Council Resolution 22/20, cited above, paragraph 8 (a); General Assembly resolution 65/211, cited above, paragraph 12 (a), which urged States "To ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience, religion and belief to all without distinction, *inter alia* by the provision of effective remedies in cases where the right to freedom of thought, conscience, religion or belief, the right to practise freely one's religion, including the right to change one's religion or belief, is violated"; Commission on Human Rights resolution 2001/42, cited above, paragraph 4 (e); Commission on Human Rights resolution 2005/40, cited above, paragraph 4 (b); Human Rights Council resolution 6/37, cited above, paragraph 9 (e), which urged States "To exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction"; the Report of the Special Rapporteur on freedom of religion on India, E/CN.4/1997/91/Add.1, paragraph 93; the Report of the Special Rapporteur on freedom of religion, E/CN.4/2005/61, paragraphs 48-52; the Report of the Special Rapporteur on freedom of religion on Romania, E/CN.4/2004/63/Add.2, paragraph 104.

31. Commission on Human Rights resolution 2001/42, cited above, paragraph 4 (c); Human Rights Council resolution 6/37, cited above, paragraphs 9 (c) and (l); General Assembly resolution 65/211, cited above, paragraph 12 (j); the Report of the Special Rapporteur on freedom of religion on Romania, E/CN.4/2004/63/Add.2, paragraph 108; and HRC General Comment no. 22, cited above, paragraph 9. At the European level, the ECRI has been stressing, ever since its First Report on Russia, paragraph 54, the need for the Russian authorities not to discriminate against foreign religious communities.

32. See *Jehovah's Witnesses of Moscow*, cited above; *Moscow Branch of the Salvation Army*, cited above; and *Church of Scientology Moscow*, cited above. The ECRI Fourth Report on Russia, cited above, paragraph 147, strongly recommends that the Russian Federation authorities revise Article 14 of the 1997 Religions Act to provide for alternative, less severe sanctions.

for such a long period can hardly be justified, any additional delay would be unforgivable in the light of the present judgment, and would leave the door open for the award of punitive damages in the event of new similar violations[33].

33. For the award of punitive damages under the Convention, see my separate opinion joined to the judgment in *Cyprus v. Turkey (just satisfaction*) [GC], no. 25781/94, 12 May 2014.