

Press release issued by the Registrar

CHAMBER JUDGMENT
RELIGIONSGEMEINSCHAFT DER ZEUGEN JEHOVAS AND OTHERS v.
AUSTRIA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Relionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (application no. 40825/98).

The Court held:

- by six votes to one, that there had been a **violation of Article 9** (freedom of thought, conscience and religion) of the European Convention on Human Rights on account of the Austrian authorities only having granted the Jehova's Witnesses religious community legal personality 20 years after their request;
- by six votes to one, that there had been a **violation of Article 14** (prohibition of discrimination) read in conjunction with **Article 9** of the Convention in that the applicants had been treated differently to other religious communities;
- unanimously, that there had been a **violation of Article 6** (right to a fair hearing within a reasonable time) concerning the excessive length of the second set of proceedings with regard to the applicants' request for recognition as a religious society; and,
- unanimously, that there had been **no violation of Article 13** (right to an effective remedy).

Under Article 41 (just satisfaction), the Court awarded the applicants 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 42,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicants are four Austrian nationals, Franz Aigner, Kurt Binder, Karl Kopetzky and Johann Renolder who were born in 1927, 1935, 1927 and 1930 respectively and live in Vienna and the *Relionsgemeinschaft der Zeugen Jehovas* (Jehovah's Witnesses religious community), the fifth largest religious community in Austria.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The case concerned, in particular, the Austrian authorities' refusal to grant the Jehova's Witnesses legal personality for approximately 20 years.

On 25 September 1978 the first four applicants made a request to the Federal Minister for Education and Arts, under the 1874 Legal Recognition of Religious Societies Act, to have the Jehova's Witnesses' recognised as a religious society and granted legal personality.

The Ministry refused to grant that request on the ground that, under the 1874 Recognition Act, they had no right to obtain a formal decision.

Following complex legal proceedings in which the domestic courts declined jurisdiction, on 4 October 1995 the Constitutional Court found that the applicants had the right to have a decision, be it positive or negative, concerning their request to be recognised as a religious society.

On 21 July 1997 the Minister for Education and Cultural Affairs dismissed the applicants' request, finding that the Jehovah's Witnesses could not be recognised as a religious society because their internal organisation was not clear and they had a negative attitude to the State and its institutions, notably as regards their refusal to do military service, to participate in local community life and elections or to have certain types of medical treatment such as blood transfusions. The Constitutional Court subsequently quashed that decision on the grounds that it was arbitrary and violated the principle of equality, the Minister not having carried out a proper investigation or submitted a case file on which the applicants could comment.

On 20 July 1998, an Act having been passed in January 1998 on the Legal Status of Registered Religious Communities, the Jehova's Witnesses were granted legal personality as a religious community. From that point, the Jehova's Witnesses religious community had legal standing before the Austrian courts and authorities and was allowed to acquire and manage assets in its own name, establish places of worship and disseminate its beliefs.

The applicants nonetheless brought a second set of proceedings still requesting recognition as a religious society. Their request was dismissed on 1 December 1998 as the Federal Minister found that, pursuant to the 1998 Religious Communities Act, a religious community could only be registered as a religious society if it had already existed for a minimum of ten years. The applicants' complaint about that decision was ultimately dismissed in October 2004 on the ground that a ten-year qualifying period was in conformity with the Constitution.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 February 1998 and declared partly admissible on 5 July 2005.

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

Christos **Rozakis** (Greek), *President*,
Nina **Vajić** (Croatian),
Anatoly **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),

Dean **Spielmann** (Luxemburger),
Sverre Erik **Jebens** (Norwegian), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 9 (freedom of thought, conscience and religion) read alone and in conjunction with Article 14 (prohibition of discrimination), the applicants complained about the Austrian authorities' refusal to recognise the Jehova's Witnesses as a religious society and that, although eventually granted legal personality as a registered religious community, that status was inferior to that of a religious society and more limited than other religious communities. The applicants also complained about the excessive length of the proceedings concerning their request for recognition as a religious society, in breach of Article 6 (right to a fair hearing within a reasonable time).

Decision of the Court

Article 9

The Court noted that the period between the submission of the applicants' request for recognition as a religious society and the granting of legal personality was substantial, some 20 years, and that, during that period, the Jehova's Witnesses had had no legal personality in Austria. It therefore considered that there had been an interference with the applicants' right to freedom of religion. That interference, based on Section 2 of the 1874 Recognition Act which required religious denominations to be recognised by the relevant federal minister, had been "prescribed by law" and pursued the "legitimate aim" of protecting public order and safety.

The Court reiterated that the right of a religious community to an autonomous existence was indispensable for pluralism in a democratic society. Even the creation of auxiliary associations with legal personality could not compensate for the authorities' prolonged failure to grant legal personality. The Government not having provided any "relevant" and "sufficient" reasons to justify that failure, the Court concluded that the interference had gone beyond any "necessary" restriction on the applicants' freedom of religion. There had therefore been a violation of Article 9.

Article 14 read in conjunction with Article 9

The Court observed that under Austrian law religious societies enjoyed privileged treatment in many areas, notably taxation. In view of those privileges, it was up to the authorities to remain neutral and to give all religious groups a fair opportunity to apply for a specific status, using established criteria in a non-discriminatory manner.

¹ This summary by the Registry does not bind the Court.

That duty to remain neutral and impartial also raised delicate questions when imposing a qualifying period on a religious association which had legal personality before it could obtain a more consolidated status as a public-law body.

The Court accepted that making a religious community wait for ten years before granting it the status of a religious society could be necessary in exceptional circumstances such as in the case of newly established and unknown religious groups. However, it hardly appeared justified in respect of religious groups which were well-established both nationally and internationally and therefore familiar to the relevant authorities, as was the case with the Jehovah's Witnesses. In respect of such a religious group, the authorities should have been able to verify within a considerably shorter period whether the requirements of the relevant legislation had been fulfilled.

Indeed, the Court noted the example submitted by the applicants of The Coptic Orthodox Church which had been recognised in 2003 as a religious society although, having been established in Austria since 1976, it had only been registered as a religious community in 1998. In contrast, the Jehova's Witnesses had existed in Austria for considerably longer but still only had the status of a religious community. That showed that Austria did not consider it essential for its policy in the field to apply the same ten-year qualifying period to all.

Accordingly, the Court concluded that that difference in treatment had not been based on any "objective and reasonable justification", in violation of Article 14 taken in conjunction with Article 9.

Article 6

As concerned the first set of proceedings, the Court found that the period to be taken into consideration had started on 4 October 1995 when the Constitutional Court had found that the applicants had a right to have a decision concerning their request to be recognised as a religious society. The proceedings had ended on 29 July 1998 when legal personality had been granted. In the Court's view those proceedings had been complex, as the domestic authorities had had to decide on the applicants' case on the basis of a change in the Constitutional Court's case-law and new legislation. In those circumstances, the Court did not find that the first set of proceedings having lasted approximately two years and ten months had been excessive and therefore held that there had been no violation of Article 6 § 1.

However, the Court found that the second set of proceedings, which had lasted almost five years and 11 months, had had two periods of inactivity, one of which had not been explained by the Government. The second set of proceedings had not therefore complied with the reasonable-time requirement, in violation of Article 6 § 1.

Article 13

The Court observed that on the whole the applicants had successfully used the remedies available under the Federal Constitution and had eventually obtained redress at domestic level for their complaint. In particular, the Constitutional Court, in its decision of 4 October 1995, had resolved the conflict of jurisdiction between the two highest courts. After having been granted recognition as a religious community on 20 July 1998, the applicants had again applied to the Constitutional Court and had been able to challenge particular provisions of that act. It followed that there had been no violation of Article 13.

Judge Steiner expressed a partly dissenting opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.