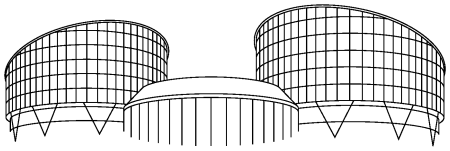

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CHRISTIAN RELIGIOUS ORGANIZATION OF JEHOVAH'S WITNESSES IN THE NKR v. ARMENIA

(Application no. 41817/10)

JUDGMENT

Art 9 read in light of Art 11 • Freedom of religion • Unjustified refusal to register a Jehovah's Witnesses religious community as a religious organisation • Absence of relevant and sufficient reasons

STRASBOURG

22 March 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia,

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

Yonko Grozev, *President,*
Tim Eicke,
Armen Harutyunyan,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 41817/10) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a religious community, Christian Religious Organization of Jehovah's Witnesses in the NKR ("the applicant"), on 23 July 2010;

the decision to give notice to the Armenian Government ("the Government") of the complaints, raised under Articles 9, 11 and 14 of the Convention, about the authorities' refusal to grant the applicant legal personality in the unrecognised "Nagorno Karabakh Republic" ("the NKR") and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 1 March 2022,

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

INTRODUCTION

1. The case concerns complaints, raised under Articles 9, 11 and 14 of the Convention, that the "NKR" authorities' refusal to register the applicant as a religious organisation infringed its right to freedom of religion and association and amounted to discrimination on the grounds of religion.

THE FACTS

2. The applicant, the Christian Religious Organization of Jehovah's Witnesses in the NKR, is a religious community established in the "NKR". It was represented by Mr A. Carbonneau and Mr R. Khachatryan, lawyers practising in Strasbourg and Yerevan respectively.

3. The Government were represented by their Agent, Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights.

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

5. Jehovah's Witnesses have been present in the "NKR" since 1993. At the material time they had approximately 500 members.

6. Since 8 October 2004 Jehovah's Witnesses have been a registered religious organisation in the Republic of Armenia.

7. On 26 November 2008 the "NKR" Freedom of Conscience and Religious Organisations Act ("the Act") was enacted, which made the registration of religious organisations mandatory (see paragraph 44 below).

I. FIRST ATTEMPT TO OBTAIN STATE REGISTRATION

8. On 22 June 2009 the applicant applied to the "NKR" Government for State registration pursuant to section 14 of the Act (see paragraph 43 below), seeking an expert conclusion as to whether it fulfilled the requirements of section 5 of the Act (see paragraph 39 below).

9. On 6 July 2009 the Chief of Staff of the "NKR" Government provided the applicant with an expert opinion issued on the same date ("the expert opinion"). It had been prepared and signed by A.S., Chief of the Department for National Minorities and Religious Affairs of the "NKR" Government.

The relevant parts of the expert opinion read as follows:

> "...[The applicant] confirms that [Jehovah's Witnesses] comply with the requirements of section 3(1) of [the Act] in that they do not coerce or compel anyone ...
>
> Having examined the documents submitted ... and having sufficient information about the activity of more than fifteen years of ... [the applicant] in [the "NKR"], we find that the ministers (preachers) use a number of methods of psychological influence on believers ...
>
> Ministers (preachers) of [the applicant] use mainly psychological methods of persuasion and inspiration. When these methods are used, a person comes under the total influence, that is, his mentality, behaviour, personality type are transformed.
>
> ...
>
> The main methods of psychological influence are manipulation, social provision and support, which keep a person dependent. A dependent person is convinced of unreal opportunities and actions, which creates irrational ideas based on hope, methods of psychological inspiration and persuasion from which new faith is formed. Such influence results in emotional regression and a motivation for the deep layers of the subconscious, which is dangerous for emotional stability and integrity ... Believers are presented with a series of seemingly harmless actions, which gradually draw in an individual, making him obedient and dependent, depriving him of his own will.
>
> ...
>
> The documents submitted do not include information concerning compliance with the requirements of section 3(2) of [the Act] ...
>
> According to the documents submitted, Jehovah's Witnesses assure that they do not engage in soul hunting (religion hunting) as stated in section 8 of [the Act], based on the interpretation of the word 'proselytism' by the European Court of Human Rights.
>
> The expert panel finds that the terms 'soul hunting' ('religion hunting') and 'proselytism' do not have the same meaning and, therefore, it refers to [the Act]...

Under section 17 of [the Act], only the Armenian Apostolic Holy Church has the right to preach freely and spread its beliefs in the territory of the ["NKR"]. All other religious organisations having State registration preach within the circle of their own believers, otherwise it is regarded as soul hunting (religion hunting).

...

According to the documents submitted, the religious organisation of 'Jehovah's Witnesses' is Christian ...

The expert panel finds that the religious organisation of 'Jehovah's Witnesses' cannot be Christian, because the documents presented do not state that the organisation accepts the Nicene Creed, which is a prerequisite for being a Christian organisation or church.

...

Beliefs – civic duties

... Only on those rare occasions when the government demands what is in direct conflict with what God commands do Jehovah's Witnesses refuse to comply. Their publications and public ministry encourage everyone to be law-abiding.

Neutrality: ...Jehovah's Witnesses do not participate in the politics or war of any nation. Their stand of Christian neutrality is well established in history ...

The expert panel considers that such interpretations of 'Jehovah's Witnesses' of 'civic duties' and 'neutrality' result in their believers refusing to perform some of their civic duties to their native land. In particular, 'Jehovah's Witnesses' residing in the ["NKR"] do not participate in presidential or parliamentary elections and in the elections of local self-government bodies, which are conditions for creating a civil society and establishing genuine democracy.

The activity of certain active members of 'Jehovah's Witnesses' in the ["NKR"] since 1993 (especially during the war years) has amounted to weakening and disrupting the defence of the country at war. Such actions in times of war are severely punished, while they are subject to liability as provided for by law if they have taken place during a period when martial law has been declared. At present, martial law has been declared in the ["NKR"] in view of the risk of resumption of war by Azerbaijan.

...

The expert panel refrains from examining purely theological issues but, on the basis of the foregoing, concludes once again that, by their ideology, 'Jehovah's Witnesses' are far from being a Christian organisation.

The documents presented contain information concerning the headquarters of the community, [as well as] the exact number and locations of [its] places of worship.

...

The chairman of the [applicant] has submitted a list of 114 members who are more than 18 years old, in accordance with the prescribed order.

Conclusion

The documents submitted by the chairman of the [applicant] do not satisfy the requirements of section 5 of [the Act]."

10. On 9 July 2009 the applicant applied to the State Registry Department of the "NKR" Ministry of Justice ("the State Registry Department") for State registration.

11. On 3 August 2009 the State Registry Department rejected the application, relying on the expert opinion.

12. On 3 September 2009 the applicant lodged a claim with the "NKR" General Jurisdiction (Administrative) Court ("the Administrative Court"), seeking the annulment of the State Registry Department's decision of 3 August 2009 and an order for State registration.

13. On 7 September 2009 the Administrative Court declared the applicant's claim inadmissible on the grounds that it was not a registered legal entity. It also stated that the applicant had failed to pay the correct amount of court fees.

14. On 14 September 2009 S.A., the applicant's chairman, lodged an identical claim with the Administrative Court on behalf of the applicant.

15. By a decision of 15 September 2009 the Administrative Court admitted S.A.'s claim.

16. In the course of the proceedings before the Administrative Court A.S., Chief of the Department for National Minorities and Religious Affairs of the "NKR" Government, the author of the expert opinion, (see paragraph 9 above) gave evidence in relation to the findings reflected in the expert opinion. The relevant parts of the hearing transcript read as follows:

> "... the Jehovah's Witnesses organisation has been operating since 1993, that is, from the most intense moment of the war. In 1992 ... martial law was introduced and the operation of all religious organisations was banned ... Basically, Jehovah's Witnesses have breached martial law and engaged in unlawful preaching. From 1993 to 1997 they operated illegally. We should not forget that during that period there was martial law in the ["NKR"]. Under section 17 [of the Act], only the Armenian Apostolic Holy Church has the right to preach freely and spread its beliefs throughout the territory of the ["NKR"]. All other religious organisations which have obtained State registration preach within the circle of their own believers, otherwise it is regarded as soul hunting ... Since 1993 Jehovah's Witnesses have been engaged in soul hunting ... No one accepts Jehovah's Witnesses as a [religious] organisation but as a sect, fake organisation ...
>
> The fact that Jehovah's Witnesses destroy families, which also concerns my relative ... whose wife and children became members of the Jehovah's Witnesses organisation and they have now divorced since the wife wants him to become a Jehovah's Witness as well ... The State Registry Department refused to register Jehovah's Witnesses based on our conclusion, and I consider that that was right.
>
> At one time, I worked for the Armenian Apostolic Church ... My cooperation has been with the Armenian Apostolic Church ..."

17. On 28 October 2009 the Administrative Court dismissed S.A.'s claim, finding the State Registry Department's refusal to register the applicant lawful. In doing so, it stated, in particular, as follows:

> "Having considered the claimant's argument that the decision of the State Registry violates the ["NKR"] Jehovah's Witnesses' rights and freedoms of thought, conscience

> and religion, association, peaceful assembly, the prohibition of discrimination on the grounds of religion guaranteed by [the Convention], the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the "NKR" Constitution and [the Act], the Administrative Court comes to the conclusion that it is unsubstantiated, since the decision of the ["NKR"] Ministry of Justice State Registry Department refusing registration of [the applicant] as a legal entity has no connection whatsoever with the rights and freedoms of individuals or their group, including ["NKR"] citizens having as their religious conviction the 'Jehovah's Witness' faith ... therefore, the refusal to register the association formed by individuals as a legal entity ...does not yet mean that the rights and freedoms of these individuals are restricted or violated..."

18. S.A. lodged an appeal on behalf of the applicant, which was returned by the "NKR" Supreme Court ("the Supreme Court") on procedural grounds, with a time-limit to correct the errors. The corrected appeal was filed again with the same court, within the time-limit set.

19. By a decision of 12 January 2010 the Supreme Court decided to admit the appeal for examination.

20. On 28 January 2010 the Supreme Court quashed the judgment of 28 October 2009 and terminated the proceedings on the grounds that S.A. was not authorised to act on behalf of the applicant, which was not a registered organisation, and that the State Registry Department, as a structural subdivision of the "NKR" Ministry of Justice, could not act as a separate party to the proceedings. The Supreme Court also stated that in such circumstances it would not address the arguments raised in the appeal. This decision was final and not amenable to appeal.

21. In March, April and May 2010 the police raided religious meetings of Jehovah's Witnesses in the cities of Martakert, Askeran and Stepanakert. Several Jehovah's Witnesses were charged with an administrative offence for, *inter alia*, holding an unauthorised religious meeting, on account of the fact that the applicant was not a registered religious organisation. The applicant provided documents in this respect, including copies of relevant police records of an administrative offence. The Government initially contested this but did not maintain their position in their further observations in reply to those of the applicant.

II. SECOND ATTEMPT TO OBTAIN STATE REGISTRATION

22. On 29 June 2010 S.A. submitted an application to the Chief of Staff of the "NKR" Government requesting an expert opinion, as required by section 14 of the Act (see paragraph 43 below). It was requested that this be carried out by an independent expert. S.A. also submitted authority forms, signed by 100 of the applicant's members, conferring on him the right to act on their behalf in order to obtain State registration. It appears that no response followed within the twenty-day period specified in section 14 of the Act.

23. On 16 August 2010 S.A. submitted an application for State registration of the applicant to the Head of the State Registry Department,

stating, *inter alia*, that because the "NKR" Government had failed to provide a new expert opinion within the statutory time-limit, the expert opinion (see paragraph 9 above) was instead being submitted in support of the application.

24. On 3 September 2010 the State Registry Department rejected the application on the grounds that no expert opinion had been submitted.

25. On 15 September 2010 S.A. lodged a claim with the Administrative Court on behalf of the applicant, challenging the "NKR" Government's failure to provide an expert opinion.

26. On 8 November 2010 S.A. lodged another claim with the Administrative Court on behalf of the applicant, challenging the State Registry Department's decision of 3 September 2010 refusing registration.

27. On 3 December 2010 the Administrative Court refused to admit the claim challenging the refusal of registration on the grounds that, *inter alia*, S.A. had failed to submit a proper power of attorney to act on behalf of the applicant. By another decision of the same date the Administrative Court dismissed the claim concerning the "NKR" Government's failure to provide an expert opinion.

28. Appeals lodged against the above-mentioned decisions were declared inadmissible.

III. THIRD ATTEMPT TO OBTAIN STATE REGISTRATION

29. On 2 February 2012 S.A. applied to the "NKR" Government on behalf of the applicant, seeking the mandatory expert opinion required for its State registration.

30. On 9 February 2012 the Chief of Staff of the "NKR" Government replied to S.A. stating, in particular, as follows:

> "... you have not submitted any new facts or arguments. You have received answers to the same question several times. Moreover, your religious group has not eliminated the errors and omissions mentioned in the [expert opinion]. Therefore ... we deny your request to receive an expert conclusion."

31. On 29 February 2012 S.A. filed an application for State registration on behalf of the applicant.

32. On 23 March 2012 the Head of the State Registry Department informed S.A. that no new decision on the applicant's registration had been made because there was a valid decision concerning the same matter, that is, the decision of 3 August 2009 refusing State registration.

33. On 1 June 2012 S.A., acting on behalf of the applicant, and 102 of the applicant's members, as co-claimants, lodged a claim with the Administrative Court challenging the refusal of registration.

34. On 7 June 2012 the Administrative Court decided not to admit the claim, stating, in particular, as follows:

> "Having examined the decision of the ["NKR"] Supreme Court dated 28 October 2010 based on [S.A.'s] claim introduced on 14 September 2009 and [S.A.'s] claim on

> 1 June 2012, it is clear that the parties in the previous case and present case are the same, while the subject matter and the grounds of the claim are identical; the court therefore finds that the claim should not be admitted."

35. An appeal against that decision was not admitted for examination by the Court of Appeal, which was contested before the Supreme Court.

36. Eventually, by a decision of 16 August 2012 the Supreme Court declared an appeal on points of law lodged by the founding members of the applicant, including S.A., inadmissible for lack of merit. The decision stated, in particular, as follows:

> "The Supreme Court finds that the appeal on points of law does not contain any arguments concerning substantial violations or an erroneous interpretation of the provisions of substantive or procedural law and that there are no grounds for admitting the claim for examination ...
>
> This decision shall enter into force immediately upon adoption, is final and is not amenable to appeal."

RELEVANT LEGAL FRAMEWORK

37. Section 1 of the "NKR" Freedom of Conscience and Religious Organisations Act provides that citizens' freedom of conscience and expression of faith is guaranteed in the "NKR". Each citizen is free to decide his or her attitude towards religion, and has the right to profess a religion or not to profess a religion, and to engage in religious rites individually or together with other citizens.

38. Section 3(1) states that no coercion or violence may be used to influence a citizen's decision whether or not to participate in masses, religious rites and ceremonies, and in religious studies.

39. Section 5(1) provides that a citizens' association is recognised as a religious organisation if it satisfies the following criteria:

(i) it is not contrary to the requirements of section 3 of the Act;

(ii) it is based on a historically recognised holy book;

(iii) its doctrines form part of the international contemporary religious-ecclesiastical communities;

(iv) it is free from materialism and is intended for purely spiritual goals;

(v) it has at least 100 members. Children under 18 cannot become members of a religious organisation, irrespective of their involvement in religious rites or other circumstances.

40. Section 6 provides that the following religious organisations operate in the "NKR":

(i) the Armenian Apostolic Holy Church (abbreviated to "the Armenian Church") with its traditional organisations;

(ii) other religious organisations, which are established and function within the circle of their respective believers in accordance with their own property and charter.

41. Section 7(1) lists the rights of religious organisations, including, *inter alia*, their right to provide religious services in places of worship and on sites owned by them, acquire objects and materials of religious significance and create religious studies groups.

Section 7(3) states that the rights of religious organisations are granted upon registration in the territory of the "NKR".

42. Section 8 states that soul hunting (religion hunting) in the territory of the "NKR" is prohibited. Actions falling within the scope of section 7 cannot be considered soul hunting (religion hunting).

43. Section 14 provides that a religious community or organisation is recognised as a legal entity upon registration in accordance with the order defined by the State Registry's central body. An expert conclusion by the State-authorised body on religious affairs regarding fulfilment of the requirements of section 5 must be presented to the State Registry for legal entities with the documents required for registration as a religious organisation. In order to obtain the expert conclusion, the religious organisation must submit documents that fulfil the requirements of section 5 of the Act. The conclusion is issued no later than twenty days following the date of application.

44. Section 25 provides that religious organisations must register or re-register within six months after the Act enters into force.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 9 READ IN THE LIGHT OF ARTICLE 11 OF THE CONVENTION

45. The applicant complained that the "NKR" authorities' refusal of its registration had been in violation of its rights under Articles 9 and 11 of the Convention. The Court considers that the complaint falls to be examined under Article 9 read in the light of Article 11 of the Convention (see, among other authorities, *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 61, 31 July 2008, and *Metodiev and Others v. Bulgaria*, no. 58088/08, § 26, 15 June 2017). The relevant parts of these provisions read as follows:

Article 9 (freedom of thought, conscience and religion)

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

Article 11 (freedom of assembly and association)

"1. Everyone has the right ... to freedom of association with others ...

2. No restrictions shall be placed on the exercise of [this right] other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. ..."

A. Admissibility

1. Jurisdiction

46. The Government submitted that Armenia had no jurisdiction over the matter of the refusal to register the applicant in the territory of the "NKR". Relying on a number of cases decided by the International Court of Justice, they argued, in particular, that States providing support to unrecognised entities could not be held responsible for specific actions undertaken by agents of the local administrations of those unrecognised entities.

47. Relying on the Court's judgments in the cases of *Chiragov and Others v. Armenia* ([GC], no. 13216/05, §§ 169-86, ECHR 2015), *Muradyan v. Armenia* (no. 11275/07, §§ 126, 24 November 2016) and *Zalyan and Others v. Armenia* (nos. 36894/04 and 3521/07, §§ 214-15, 17 March 2016), the applicant argued that the Government's submissions regarding Armenia's lack of responsibility under the Convention for the actions of the "NKR" authorities were in contradiction with the Court's case-law in the matter. It submitted that, since Armenia exercised effective control over the "NKR", it was responsible under the Convention for the violation of its Convention rights by the local administration, including by the "NKR" courts and the "NKR" authorities.

48. The Court reiterates that the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under general international law (see *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 115, ECHR 2012 (extracts)). In addition, the concept of "effective control" within the meaning of the Court's case-law is not equated to the term "effective control" for the purposes of international humanitarian law (see *Georgia v. Russia (II)* [GC], no. 38263/08, § 196, 21 January 2021). The Court notes that it has recently examined in another case the issue of Armenia's jurisdiction over the territory in question, including similar arguments on the matter, and found that, at the relevant time (that is, prior to the latest hostilities between Armenia and Azerbaijan which ended on 10 November 2020), Armenia had jurisdiction over the matters complained of, namely the detention and conviction of a Jehovah's Witness for conscientious objection in the "NKR" (see, in particular, *Avanesyan v. Armenia*, no. 12999/15, §§ 31-38, 20 July 2021, with further references).

49. The present case relates to the applicant's requests to be registered as a religious organisation in 2009, 2010 and 2012. The Court finds no particular circumstances in the instant case, all of which similarly took place prior to the recent hostilities between Armenia and Azerbaijan which ended on 10 November 2020 (see *Avanesyan*, cited above, § 37), that would require it to depart from its findings in that judgment and therefore concludes, that, at that time, Armenia had jurisdiction over the matters complained of for the purposes of Article 1 of the Convention, including the "NKR" authorities' refusal to register the applicant as a religious organisation.

2. Other grounds for inadmissibility

50. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

51. The applicant submitted that because of the refusal of registration, Jehovah's Witnesses had been deprived of the right of having a legal entity permitting them to act collectively. The immediate consequence of that refusal had been unlawful raids on religious meetings held in private homes and rented premises, as well as arbitrary searches and prosecutions by the authorities. As a result, Jehovah's Witnesses were viewed as a banned religion. Furthermore, the refusal of registration cast the applicant and individual Jehovah's Witnesses living in the "NKR" in an unfavourable light in public opinion and could amplify prejudices, fostering the mistaken assumption that they were a "dubious sect" and a second-class religion. Since the "NKR" authorities refused to register Jehovah's Witnesses, their religious activities were considered illegal and all individual members of the applicant were under constant threat of harassment and arrest by the authorities of the "NKR". The refusal to register the applicant had thus amounted to an interference with its rights under Articles 9 and 11 of the Convention.

52. The applicant went on to argue that the refusal of its registration had not been based on law but rather on religious prejudice and, for the same reason, had not been justified. Formally, the registration had been refused because the documents submitted had not met the legal requirements. However, in order to reach that conclusion, the "NKR" authorities had relied on a biased report prepared by A.S., which had recommended not registering Jehovah's Witnesses because they, *inter alia*, did not accept the Nicaean Creed and had a religious objection to participating in military service. In doing so, the "NKR" authorities had engaged in an impermissible State

evaluation of the legitimacy of the religious beliefs of Jehovah's Witnesses and contradicted the Court's case-law, which protected the right to conscientious objection to military service.

(b) The Government

53. The Government submitted that there had been no interference with the applicant's operations in the territory of the "NKR". Jehovah's Witnesses were free to carry out their activities, including by convening assemblies. They further submitted that official recognition or registration was not necessary for a religious organisation to operate effectively in the "NKR". Religious organisations and their members enjoyed their rights to freedom of thought, conscience and belief irrespective of registration, as Jehovah's Witnesses had done to the present day.

54. Nevertheless, if the Court were to find that there had been an interference with the applicant's rights under Articles 9 and 11 of the Convention, that interference had been provided for by law, had pursued a legitimate aim and had been justified.

55. The Government submitted that the refusal of the applicant's registration had been because of the incompatibility of the documents submitted with the legal requirements and had by no means pursued the aim of restricting the applicant's right to freedom of association.

56. For the Government, it was obvious from the circumstances of the present case that the alleged interference with the applicant's rights had taken place in view of public safety and the interests of the State and the population. Relying on the expert opinion, the Government submitted that the members of the applicant refused to fulfil their duty to protect their homeland, which endangered the national security of the "NKR", especially in times of war, the state in which it had been since its formation. They pointed out that the expert opinion had attached particular importance to the fact that at the time of issue, martial law had been declared in the "NKR" in view of the risk of the resumption of military operations by Azerbaijan. In those circumstances, the Government claimed that the public interest and national security had outweighed the applicant's right to registration, especially in view of the fact that its followers were able to exercise their right to freely practise their religion without any arbitrary intervention.

2. The Court's assessment

(a) Whether there was an interference

57. The Court reiterates that a refusal by the domestic authorities to grant legal-entity status to an association, religious or otherwise, of individuals amounts to an interference with the exercise of the right to freedom of association (see *"Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)" v. the former Yugoslav Republic of*

Macedonia, no. 3532/07, § 78, 16 November 2017). Where the organisation of a religious community is in issue, a refusal to recognise it as a legal entity has been found to constitute an interference with the right to freedom of religion under Article 9 of the Convention (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 105, ECHR 2001-XII, concerning the denial of legal recognition where domestic law made the exercise of the right to freedom of religion subject to prior authorisation, and *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, § 62, concerning the protracted refusal to recognise the legal personality of a religious community).

58. The Government maintained that there had been no interference with the applicant's rights under Articles 9 and 11 of the Convention because Jehovah's Witnesses effectively functioned in the "NKR" without official registration (see paragraph 53 above).

59. Contrary to what the Government claimed, the Court notes that section 7 of the Act, which lists the rights of religious organisations, including, *inter alia*, their right to provide religious services in places of worship and sites owned by them, also states that those rights are conferred on religious organisations upon registration in the territory of the "NKR" (see paragraph 41 above). Pursuant to section 25 of the Act, religious organisations were placed under a legal obligation to register or re-register within six months after its entry into force (see paragraph 44 above). It follows that the applicant could not exercise its right to manifest its religion without being registered as a religious organisation.

60. Furthermore, the Court takes note of the instances of interference with the community life of the Jehovah's Witnesses on account of the fact that the applicant was not a registered religious organisation (see paragraph 21 above). The fact that no further instances of such interference have been reported is not decisive. The Court reiterates in this regard that mere tolerance by the national authorities of the activities of a non-recognised religious organisation is no substitute for recognition if recognition alone is capable of conferring rights on those concerned (see *Metropolitan Church of Bessarabia and Others*, cited above, § 129).

61. The Court therefore considers that the refusal to register the applicant as a religious organisation amounted to an interference with its right to freedom of religion, as guaranteed by Article 9 § 1 of the Convention (see *Metropolitan Church of Bessarabia and Others*, § 105, and *Religionsgemeinschaft der Zeugen Jehovas*, §§ 64-68, both cited above).

(b) Whether the interference was justified

62. In order to determine whether that interference entailed a breach of the Convention, the Court must decide whether it satisfied the requirements of Article 9 § 2, that is, whether it was "prescribed by law", pursued a

legitimate aim for the purposes of that provision and was "necessary in a democratic society".

63. The "NKR" authorities based the refusal to register the applicant on section 5 of the Act (see paragraphs 39 above), with reference to the findings contained in the expert opinion delivered in accordance with section 14 of the Act (see paragraph 43 above). In the absence of any substantive counterarguments from the applicant, the Court accepts that the interference in question was "prescribed by law".

64. The Government submitted that the refusal to allow the application for registration lodged by the applicant had been intended to protect public safety and the interests of national security, the State and the population (see paragraph 56 above).

65. The Court considers that States are entitled to verify whether a movement or association carries on, ostensibly in pursuit of religious aims, activities which are harmful to the population or to public safety (see *Religionsgemeinschaft der Zeugen Jehovas*, cited above, § 75). It can therefore be accepted that the interference in question was meant to protect public safety and the rights of others (see, *mutatis mutandis*, *Metropolitan Church of Bessarabia and Others*, cited above, § 113).

66. The central issue to be determined is whether the interference was "necessary in a democratic society".

67. The requirement that the interference must correspond to a "pressing social need" means that the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Svyato-Mykhaylivska Parafiya v. Ukraine*, no. 77703/01, § 116, 14 June 2007). The Court's task is thus to determine whether the refusal to register the applicant as a religious organisation was justified in principle and was proportionate to the legitimate aim pursued. In order to do so the Court must look at the interference complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it were "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in the Convention and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (ibid., § 138).

68. The Government claimed that the refusal of the applicant's registration had been because of the incompatibility of the documents submitted with the legal requirements (see paragraph 55 above). At the same time, they went on to argue, with reference to the expert opinion (see paragraph 9 above), that the reason for the rejection of the applicant's application for registration had been that the members of the applicant refused to perform military service (see paragraph 56 above).

69. While indeed the conclusion of the expert opinion was that the documents submitted by the applicant in support of its application for registration did not comply with the requirements of section 5 of the Act (see

paragraph 39 above), that conclusion was based on the substantive findings reflected in the expert opinion. Therefore, the argument that the applicant was refused registration owing to purely procedural shortcomings is by no means acceptable. Furthermore, as noted above, the Government themselves relied on the fact that Jehovah's Witnesses refused to serve in the army as the main reason for the refusal.

70. The Court observes that the grounds for the refusal by the authorities of the "NKR" to register the applicant as a religious organisation were never examined in substance by the domestic courts. In particular, the courts of the "NKR" refused to examine the applicant's claims either on various, often inconsistent, procedural grounds or on account of the fact that the matter was the same as examined previously, although the only judgment which had in fact examined the applicant's claim in substance had been quashed on appeal on rather formalistic grounds (see, in particular, paragraphs 17 and 20 above concerning the first attempt at registration, but also paragraphs 27-28 and 34-36 above concerning subsequent attempts). Therefore, the exact grounds for the refusal to register the applicant remain unclear in the decisions of the "NKR" courts. Although, as noted above, the Government relied exclusively on Jehovah's Witnesses' refusal of conscription, the expert opinion, on which the administrative authorities of the "NKR" relied to continuously refuse the applicant's requests for registration, contained a number of other findings, including that the applicant's ministers used methods of psychological influence on believers, that Jehovah's Witnesses were engaged in "soul hunting" ("religion hunting") and that the applicant was not a Christian organisation. The Court will therefore examine those grounds in turn.

71. The Court notes at the outset that the expert opinion which served as a basis for the "NKR" authorities' refusal to register the applicant and on which the Government relied in their submissions (see paragraphs 9, 11, 32 and 56 above) had been prepared by A.S., Chief of the Department for National Minorities and Religious Affairs of the "NKR" Government, who openly showed his negative predisposition towards the applicant by stating, *inter alia*, that "[n]o one accepts Jehovah's Witnesses as a [religious] organisation but as a sect, fake organisation" and endorsing the refusal of its registration during the proceedings before the Administrative Court (see paragraph 16 above). The objectivity of the expert opinion and the credibility of its findings are therefore questionable.

72. The expert opinion stated that the applicant's ministers (preachers) used methods of psychological influence such as persuasion and inspiration as well as social provision and support to bring a person under their totalitarian control and keep him dependent. It also found that Jehovah's Witnesses were engaged in "soul hunting" ("religion hunting") since, under section 17 of the Act, only the Armenian Apostolic Church had the right to preach freely and spread its beliefs in the territory of the "NKR" (see paragraph 9 above).

73. The Court reiterates that, while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion", including the right to try to convince one's neighbour, for example through "teaching" (see *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A). Article 9 does not, however, protect every act motivated or inspired by a religion or belief. It does not, for example, protect improper proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church (see *Kokkinakis*, cited above, § 48, and *Larissis and Others v. Greece*, 24 February 1998, § 45, *Reports of Judgments and Decisions* 1998-I).

74. The Court observes that the expert opinion did not mention the name of a single individual who had allegedly fallen victim to the techniques of psychological manipulation indicated. Nor was there any specific evidence to support the allegation that Jehovah's Witnesses were engaged in improper proselytism within the meaning of the Court's case-law. The findings of the expert opinion were thus based on conjecture uncorroborated by fact (see, *mutatis mutandis*, *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, §§ 122 and 128-30, 10 June 2010). At the same time, the Court finds it striking that the allegation of "soul hunting" ("religion hunting") was based on the premise that acts motivated or inspired by a religion or belief other than that of the Armenian Apostolic Church were to be regarded as "soul hunting" ("religion hunting").

75. The Court finds it even more striking that the expert opinion, on the basis of its findings and on the fact that the applicant does not accept the Nicene Creed, went on to conclude that Jehovah's Witnesses were "far from being a Christian organisation".

76. The Court reiterates at this juncture that the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed (see *Manoussakis and Others v. Greece*, 26 September 1996, § 47, *Reports* 1996-IV, and *Bayatyan v. Armenia* [GC], no. 23459/03, § 120, ECHR 2011). Furthermore, in accordance with the principle of autonomy for religious communities which is established in its case-law – and which is the corollary to the State's duty of neutrality and impartiality – only the highest spiritual authorities of a religious community, and not the State (or even the national courts), may determine to which faith that community belongs (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 121, 26 April 2016).

77. Referring to the ongoing military conflict with Azerbaijan, the Government argued that the refusal of Jehovah's Witnesses to serve in the army endangered the national security of the "NKR" (see paragraph 56 above) – an argument not featuring in the expert opinion (which merely stated that the actions of certain Jehovah's Witnesses amounted to "weakening and disrupting the defence of the country at war", see paragraph 9 above).

Leaving aside that the Government's argument that Jehovah's Witnesses pose a threat to national security and their assertion that Jehovah's Witnesses have operated and continue to operate freely and without any interference from the authorities of the "NKR" are contradictory, the following should be noted.

78. The enumeration of the exceptions to the individual's freedom to manifest his or her religion or beliefs, as listed in Article 9 § 2, is exhaustive and their definition is restrictive (see, among other authorities, *Svyato-Mykhaylivska Parafiya*, cited above, § 132, and *Nolan and K. v. Russia*, no. 2512/04, § 73, 12 February 2009). At the same time, unlike the second paragraphs of Articles 8, 10, and 11, paragraph 2 of Article 9 of the Convention does not allow restrictions on the ground of national security. Far from being an accidental omission, the non-inclusion of that particular ground for limitations in Article 9 reflects the primordial importance of religious pluralism as "one of the foundations of a 'democratic society' within the meaning of the Convention" and the fact that a State cannot dictate what a person believes or take coercive steps to make him change his beliefs (ibid.).

79. Furthermore, it is now the Court's settled case-law that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9 (see *Bayatyan*, cited above, § 110). In the case of *Avanesyan* (cited above, §§ 56-59) the Court confirmed this approach by finding a violation of Article 9 of the Convention on account of a conscientious objector's conviction in the "NKR" for draft evasion without due consideration of his religious beliefs. The Court is mindful of the fact that any system of compulsory military service imposes a heavy burden on citizens and that it will be acceptable if it is shared in an equitable manner and if exemptions from this duty are based on solid and convincing grounds (see *Bayatyan*, cited above, § 125). The design of an alternative service system and the achievement of an acceptable balance, however, is in the hands of the national authorities and is in any case, not a subject of the present case.

80. In view of the foregoing, it cannot be said that the reasons provided by the national authorities were "relevant and sufficient" to justify the interference in this case. The Court therefore considers that the manner in which the domestic authorities refused to register the applicant as a religious organisation cannot be accepted as necessary in a democratic society (see, *mutatis mutandis*, *"Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)"*, cited above, § 121).

81. It follows that there has been a violation of Article 9 of the Convention read in the light of Article 11.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

82. The applicant complained that the refusal of the "NKR" authorities to register it had also been in breach of Article 14 of the Convention, which reads as follows:

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

A. The parties' submissions

83. The applicant maintained that it had been discriminated against by the State as it had been treated differently from other religions that enjoyed legal status in the "NKR".

84. The Government submitted that the refusal of the applicant's registration had been conditioned by the non-compliance of the documents submitted with the legal requirements and national security concerns and not by discriminatory treatment of the applicant or its members. They claimed that a number of other religious organisations had been registered in the "NKR" since observing the prescribed procedures.

B. The Court's assessment

85. The refusal to register the applicant has already been examined under Articles 9 and 11 of the Convention. It is not necessary to additionally do so with reference to Article 14 of the Convention (see *Metropolitan Church of Bessarabia and Others*, § 134; *Jehovah's Witnesses of Moscow and Others*, § 188, both cited above; and *Church of Scientology Moscow v. Russia*, no. 18147/02, § 101, 5 April 2007). The Court is therefore not required to rule on the admissibility or the merits of the complaint under that provision.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage, including EUR 10,000 in compensation for the non-pecuniary damage sustained by its founders and members and a further

EUR 10,000 for itself in respect of the non-pecuniary damage resulting from the prolonged interference with its Convention rights.

88. The Government contested these claims.

89. The Court accepts that the applicant has suffered non-pecuniary damage as a consequence of the violation found. Deciding on an equitable basis, the Court awards the applicant EUR 4,500, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

90. The applicant also claimed EUR 3,750 for the costs and expenses incurred before the domestic courts and EUR 5,000 for those incurred before the Court. In support of its claims, the applicant submitted two agreements for the provision of legal services concluded on 19 and 20 February 2019 respectively.

91. The Government contested the claims as groundless, not actually incurred and not supported by documentary evidence.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant supported its claims relating to the legal costs allegedly incurred during the domestic proceedings by a contract signed years after those proceedings had been completed (see paragraphs 36 and 90 above). It therefore rejects this part of the claim. The Court further notes that the contract submitted in support of the applicant's claims for legal costs incurred before the Court was concluded after the introduction of the application and before the submission of the applicant's observations and claims for just satisfaction on 3 May 2019. The Court therefore considers that the applicant's claims in this respect should be granted in part that is in so far as they concern the legal costs related to the preparation of the applicant's reply to the Government's observations and its claims for just satisfaction (a lump-sum amount of EUR 2,000 according to the contract). Regard being had to the documents in its possession and the above criteria, the Court considers that this claim is excessive and finds it reasonable to award the sum of EUR 1,000, covering costs incurred in the proceedings before it, plus any tax that may be chargeable to the applicant.

C. Default interest

93. 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 under Articles 9 and Article 11 of the Convention admissible;

2. *Holds* that there has been a violation of Article 9 of the Convention read in the light of Article 11;

3. *Holds* that there is no need to examine the admissibility or the merits of the complaint under Article 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 22 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Yonko Grozev President

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

Y.G.R.
I.F.

CONCURRING OPINION OF JUDGE HARUTYUNYAN

Although I voted with the majority in the present case, I must emphasise a number of remarks in this concurring opinion. First, I acknowledge the Court's conclusion, according to which 10 November 2020 constitutes an important turning point and therefore, "at the relevant time (that is, prior to the latest hostilities between Armenia and Azerbaijan which ended on 10 November 2020), Armenia had jurisdiction over the matters complained of" (see paragraph 48 of the judgment). In this context, the consequences of the trilateral declaration signed on 10 November 2020 are envisaged in a detailed analysis in my concurring opinion appended to the judgment in *Avanesyan v. Armenia* (no. 12999/15, 20 July 2021). I nevertheless think that the Court should have gone further in its conclusion and mentioned that since 10 November 2020 Armenia has not held "effective control" over Nagorno-Karabakh.

I welcome the Court's reiteration in this judgment in respect of the fact that the "test for establishing the existence of 'jurisdiction' under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under general international law" (see *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 115, ECHR 2012 (extracts)). Consequently, "the concept of 'effective control' within the meaning of the Court's case-law is not equated to the term 'effective control' for the purposes of international humanitarian law" (see *Georgia v. Russia* (II) [GC], no. 38263/08, § 196, 21 January 2021).

It is noteworthy that the lower standards accepted by the Court to establish extraterritorial jurisdiction of the member State are meant to prevent "grey areas" in the protection of Convention rights and freedoms. However, the current test may raise issues due to the fact that positive obligations are in fact limited and sometimes may not be in line with the real situation. Therefore, the application of this test may lead to a situation where a member State is required to secure Convention rights when it is not in a position to do so, thus placing the State and Council of Europe bodies in a difficult situation. The present case may serve as an example of such an outcome. Even before the ceasefire Armenian authorities did not have the power to influence the NKR authorities in order to ensure the registration of the applicant organisation.

The problem is not whether the NKR authorities were right or not. My position consists in an acknowledgment that there has been a violation in the present case. The problem is that the current test for establishing "effective control" needs to be developed in order not to put the member States and Council of Europe bodies in a problematic situation where the national authorities would be obliged to fulfil Convention obligations that fall outside their control.