



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

FIRST SECTION

**CASE OF VEREIN DER FREUNDE DER  
CHRISTENGEMEINSCHAFT AND OTHERS v. AUSTRIA**

*(Application no. 76581/01)*

JUDGMENT

STRASBOURG

26 February 2009

*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 Verein der Freunde der Christengemeinschaft and Others v. Austria,**

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 February 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 76581/01) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a religious community, Verein der Freunde der Christengemeinschaft, three Austrian nationals, Martin David, Christoph Leisegang, Erich Cibulka and one German national, Ute König (“the applicants”), on 28 September 2001.

2. The applicants were represented by Mr M. Machold, a lawyer practising in Vienna. The Austrian Government (“the Government”) were represented by their Agent, Ambassador F. Trauttmansdorff, Head of the International Law Department at the Federal Ministry for Foreign Affairs.

3. The applicants alleged in particular, that the Austrian authorities' decision to grant the first applicant legal personality of a more limited scope *vis-à-vis* other religious communities infringed their right to freedom of religion under Article 9 of the Convention read alone and in conjunction with Article 14. They further alleged that the proceedings for granting legal personality had lasted an unreasonably long time and that they had no effective remedy by which to receive a decision on their request for recognition.

4. By a decision of 23 March 2006 the Court declared the application admissible.

5. Neither of the parties made further observations on the merits (Rule 59 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant is a religious community established in Austria on 11 July 1998, and the four other applicants are members of it. The second applicant is the chair of the Vienna branch of the first applicant, and the fifth applicant is its deputy chair and is a minister in Vienna. The third and fourth applicants are also members of the first applicant's Vienna branch. The second to fourth applicants are Austrian nationals, and the fifth applicant is a German national. The second to fifth applicants live in Vienna.

#### A. First set of proceedings

7. On 14 March 1995 the applicants requested the Federal Minister for Education, Arts and Sports (*Bundesminister für Unterricht, Kunst und Sport*) to recognise the first applicant as a religious society (*Religionsgesellschaft*) under the 1874 Recognition Act (*Anerkennungsgesetz*).

8. On 4 October 1995 the Constitutional Court found that under the 1874 Recognition Act, a religious body had a subjective right to recognition as a religious society provided that the conditions laid down in that Act were met and that a decision on this matter should be subject to review by the Austrian courts (see *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, § 21, 31 July 2008).

9. On 11 March 1996 the applicants filed an application with the Administrative Court (*Verwaltungsgerichtshof*) against the Minister's failure to give a decision (*Säumnisbeschwerde*).

10. On 26 January 1998 the Administrative Court rejected the application. It noted that, upon the entry into force of the Act on the Legal Status of Registered Religious Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*, hereafter referred to as “the 1998 Religious Communities Act”) on 10 January 1998, the applicants' request for recognition under the 1874 Recognition Act had to be dealt with as a request under section 11(2) of the 1998 Religious Communities Act. Thus, the six-month time-limit for the Minister to give a decision had started again on 10 January 1998 and consequently there had been no failure to give a decision on the part of the Minister. The Administrative Court's decision was served on the applicants' lawyer on 11 March 1998.

11. On 20 July 1998 the Minister decided that the first applicant had acquired legal personality as a registered religious community within the meaning of the 1998 Religious Communities Act as from 11 July 1998. The first applicant, however, was not thereby granted legal personality as a religious society within the meaning of the 1874 Recognition Act.

12. On 9 September 1998 the applicants lodged a complaint against that decision with the Constitutional Court (*Verfassungsgerichtshof*), arguing that the refusal to confer legal personality to the first applicant under the 1874 Recognition Act was in breach of Article 9 of the Convention and Article 14 of the Basic Law.

13. On 17 December 1998 the Federal Minister submitted observations in reply, which arrived at the Constitutional Court on 23 December 1998.

## **B. Second set of proceedings**

14. Meanwhile, on 16 July 1998, the applicants had filed another request with the Federal Minister for the first applicant to be recognised as a religious society under the 1874 Recognition Act.

15. On 1 December 1998 the Federal Minister dismissed the applicants' request of 16 July 1998. It found that, pursuant to section 11(1) of the 1998 Religious Communities Act, a religious community could only be recognised as a religious society under the 1874 Recognition Act if it had already existed as a registered religious community for a minimum of ten years.

16. On 12 January 1999 the applicants lodged a complaint against that decision with the Constitutional Court. They submitted that the transitory provisions in the 1998 Religious Communities Act, which introduced new conditions for recognition as a religious society under the 1874 Recognition Act were unconstitutional as being in breach of Article 9 of the Convention and Article 14 of the Basic Law.

17. On 16 April 1999 the Federal Minister submitted observations in reply to the Constitutional Court.

18. On 3 March 2001 the Constitutional Court dismissed the applicants' complaints of 9 September 1998 and 12 January 1999. It found that the ten-year waiting period for registered religious communities as a precondition for a successful application for recognition as a religious society under the 1874 Recognition Act was in conformity with the Federal Constitution. In particular, it served the legitimate aim of ensuring that the competent authority could verify during this period of time whether the religious community was ready to integrate into the existing legal order, for example, whether it performed unlawful activities as a consequence of which legal personality had to be withdrawn (section 9(2) and section 5(1) of the 1998 Religious Communities Act). Examples of such unlawful activities were incitement to commit criminal offences, endangering the psychological development of minors, violating the psychological integrity of persons or using psychotherapeutic methods to disseminate its religious beliefs. That decision was served on the applicants' lawyer on 4 April 2001.

## II. RELEVANT DOMESTIC LAW

### A. Constitutional provisions

#### 1. *Basic Law 1867* (Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger)

19. Under Article 14 of the Basic Law, everybody is granted freedom of conscience and belief. The enjoyment of civil and political rights is independent from religious belief; however, the manifestation of religious belief may not derogate from civic obligations.

20. Article 15 provides that recognised churches and religious communities have the right to manifest their faith collectively in public, to organise and administer their internal affairs independently, and to remain in possession of acquired institutions, foundations and funds dedicated to cultural, educational and charitable purposes; however, they are, like all other societies, subordinate to the law.

21. Article 16 entitles the supporters of non-recognised religious communities to domestic manifestation of their faith unless it is unlawful or *contra bonos mores*.

#### 2. *Treaty of St Germain of 10 September 1919 between the Allied Powers and the Republic of Austria*

22. Article 63 § 1 states that Austria undertakes to ensure full and complete protection of life and liberty to all inhabitants of Austria without distinction on the basis of birth, nationality, race or religion.

23. Article 63 § 2 guarantees to all inhabitants of Austria the right to manifest publicly and privately their thought, religion and beliefs, unless these are incompatible with the protection of public order or morals.

### B. Statutory provisions

#### 1. *Recognition of religious societies*

##### (a) **Act of 20 May 1874 concerning the Legal Recognition of Religious Societies** (*Gesetz betreffend die gesetzliche Anerkennung von Religionsgesellschaften*), RGBl (*Reichsgesetzblatt*, Official Gazette of the Austrian Empire) 1874/68

24. Section 1 of the Act provides that all religious faiths which have not yet been recognised in the legal order may be recognised as a religious society if they fulfil the conditions set out in the Act, namely that their teaching, services and internal organisation, as well as the name they choose, do not contain anything unlawful or morally offensive and that the

setting up and existence of at least one community of worship (*Cultusgemeinde*) satisfying the statutory criteria is ensured.

25. Section 2 provides that if the above conditions are met, recognition is granted by the Minister for Religious Affairs (*Cultusminister*). Recognition has the effect that a religious society obtains legal personality under public law (*juristische Person öffentlichen Rechts*) and enjoys all rights which are granted under the legal order to such societies. Sections 4 et seq. regulate the setting up of communities of worship, membership of them, delimitation of their territory, and their bodies and statutes. Sections 10 to 12 deal with the nomination of religious ministers (*Seelsorger*) of religious societies, the qualifications such persons must have and how their nomination must be communicated to the authorities. Section 15 provides that the public authorities responsible for religious matters have a duty to monitor whether religious societies comply with the provisions of the Act.

**(b) Examples of recognised religious societies**

*(i) Recognition by international treaty*

26. The legal personality of the Roman Catholic Church is, on the one hand, regarded as historically recognised, and, on the other hand, explicitly recognised in an international treaty, the Concordat between the Holy See and the Republic of Austria (Federal Law Gazette II, No. 2/1934 – *Konkordat zwischen dem Heiligen Stuhle und der Republik Österreich, BGBl. II Nr. 2/1934*).

*(ii) Recognition by a special law*

27. The following are examples of special laws recognising religious societies:

(a) Act on the External Legal Status of the Israelite Religious Society, Official Gazette of the Austrian Empire, No. 57/1890 (*Gesetz über die äußeren Rechtsverhältnisse der Israelitischen Religionsgesellschaft, RGBl. 57/1890*);

(b) Act of 15 July 1912 on the recognition of followers of Islam [according to the Hanafi rite] as a religious society, Official Gazette of the Austrian Empire No. 159/1912 (*Gesetz vom 15. Juli 1912, betreffend die Anerkennung der Anhänger des Islam [nach hanefitischen Ritus] als Religionsgesellschaft, RGBl. Nr. 159/1912*);

(c) Federal Act on the External Legal Status of the Evangelical Church, Federal Law Gazette No. 182/1961 (*Bundesgesetz vom 6. Juli 1961 über die äußeren Rechtsverhältnisse der Evangelischen Kirche, BGBl. Nr. 182/1961*);

(d) Federal Act on the External Legal Status of the Greek Orthodox Church in Austria, Federal Law Gazette No. 229/1967 (*Bundesgesetz über die äußeren Rechtsverhältnisse der Griechisch-Orientalischen Kirche in Österreich, BGBl. Nr. 182/1961*);

(e) Federal Act on the External Legal Status of the Oriental Orthodox Churches in Austria, Federal Law Gazette No. 20/2003 (*Bundesgesetz über äußere Rechtsverhältnisse der Orientalisch-Orthodoxen Kirchen in Österreich, BGBl. Nr. 20/2003*).

(iii) *Recognition by a decree (Verordnung) under the 1874 Recognition Act*

28. Between 1877 and 1982 the competent ministers recognised a further six religious societies.

## 2. *Registration of religious communities*

### **Act on the Legal Status of Registered Religious Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*), Federal Law Gazette - BGBl I 1998/19**

29. The Religious Communities Act entered into force on 10 January 1998. Pursuant to section 2(3) of the Act, the Federal Minister for Education and Culture has to rule in a formal written decision (*Bescheid*) on the acquisition of legal personality by the religious community. In the same decision the Minister has to dissolve any association whose purpose was to disseminate the religious teachings of the religious community concerned (section 2(4)). The religious community has the right to call itself a “publicly registered religious community”.

30. Section 4 specifies the necessary contents of the statutes of the religious community. Among other things, they must specify the community's name, which must be clearly distinguishable from the name of any existing religious community or society. They must further set out the main principles of the religious community's faith, the aims and duties deriving from it, the rights and duties of the community's adherents, including the conditions for terminating membership (it is further specified that no fee for leaving the religious community may be charged), how its bodies are appointed, who represents the religious community externally and how the community's financial resources are raised. Lastly, the statutes must contain provisions on the liquidation of the religious community, ensuring that the assets acquired are not used for ends contrary to religious purposes.

31. Under section 5, the Federal Minister must refuse to grant legal personality to a religious community if, in view of its teachings or practice, this is necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others; this is in particular the case if its activities involve incitement to commit criminal offences, obstruction of the psychological development of adolescents or undermining of people's mental integrity, or if the statutes do not comply with section 4.

32. Under section 7, the religious community must inform the Federal Minister for Education and Cultural Affairs of the name and address of the persons belonging to its official bodies and of any change of its statutes without delay. The Minister must refuse to accept the notification if the



appointment of the official bodies contravened the statutes or if the change of the statutes would constitute a reason for refusal of registration under section 5.

33. Section 9 specifies the reasons for termination of a community's legal personality. Legal personality ceases to exist if the religious community dissolves itself or if the acknowledgment of its legal personality is revoked. Reasons for revoking legal personality are set out in subsection (2): for example, if the reasons for granting legal personality no longer subsist or if for more than one year no bodies representing the religious community externally have been appointed.

34. The Act only regulates the granting of legal personality. Once legal personality has been granted to a religious community, it may pursue the activities referred to in its statutes. There are no specific laws in Austria regulating the acquisition of assets by religious societies or communities, the establishment of places of worship or assembly, or the publication of religious material. However, provisions which contain explicit references to religious societies are spread over various statutory instruments (see below).

35. Since the entry into force of the 1998 Religious Communities Act on 10 January 1998, non-recognised religious associations may be granted legal personality upon application. A previous application for recognition under the 1874 Recognition Act is to be dealt with as an application under the 1998 Religious Communities Act pursuant to section 11(2).

36. Section 11(1) of the 1998 Religious Communities Act establishes additional criteria for a successful application under the 1874 Recognition Act, such as the existence of the religious association for at least twenty years in Austria and for at least ten years as a registered religious community; a minimum number of two adherents per thousand members of the Austrian population (at the moment, this means about 16,000 persons); the use of income and other assets for religious purposes, including charity activities; a positive attitude towards society and the State; and no illegal interference as regards the community's relationship with recognised or other religious societies.

### *3. Specific references to religious societies in the Austrian legal order*

37. In various Austrian laws specific reference is made to recognised religious societies. The following list, which is not exhaustive, sets out the main instances.

Under section 8 of the Federal School Supervision Act (*Bundes-Schulaufsichtsgesetz*), representatives of recognised religious societies may sit (without the right to vote) on regional education boards.

Under the Private Schools Act (*Privatschulgesetz*), recognised religious societies, like public territorial entities, are presumed to possess the necessary qualifications to operate private schools, whereas other persons have to prove that they are qualified.

Under section 24(3) of the Military Service Act, ordained priests, persons involved in spiritual welfare or in religious teaching after graduation from theological studies, members of a religious order who have made a solemn

vow and students of theology who are preparing to assume a pastoral function and who belong to a recognised religious society are exempt from military service and, under section 13 of the Civilian Service Act, are also exempt from alternative civilian service.

Under sections 192 and 195 of the Civil Code (*ABGB*), ministers of recognised religious societies are exempt from the obligation to submit an application to be appointed as guardians, and under section 3(4) of the 1990 Act on Juries of Assizes and Lay Judges (*Geschworenen- und Schöffengesetz*) they are exempt from acting as members of a jury of an assize court or as lay judges of a criminal court.

Section 18(1)(5) of the Income Tax Act provides that contributions to recognised religious societies are deductible from income tax up to an amount of 100 euros per year.

Section 2 of the Land Tax Act (*Grundsteuergesetz*) provides that real property owned by recognised religious societies and used for religious purposes is exempt from real-estate tax.

Under section 8(3)(a) of the 1955 Inheritance and Gift Act (*Erbschafts- und Schenkungsteuergesetz*), which was still in force at the relevant time, donations to domestic institutions of recognised churches or religious societies were subject to a reduced tax rate of 2.5%.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 9

38. The applicants complained that the Austrian authorities had refused to grant the first applicant legal personality in the form of a religious society under the 1874 Recognition Act, whereby it would have acquired the status of a public-law entity, and had merely granted it legal personality as a publicly registered religious community under the 1998 Religious Communities Act, thereby conferring on it the inferior status of an entity under private law. In particular, the 1998 Religious Communities Act established criteria for granting legal personality which were not objective and were discriminatory, such as a minimum number of members (section 11(1)) amounting to two-thousandths of the population of Austria (approximately 16,000 persons), which could hardly be fulfilled by any potential candidate for recognition. Also, the criterion of a ten-year waiting period before a religious community could apply for recognition as a religious society under the 1874 Recognition Act was arbitrary as no good reason for such a waiting period existed. The applicants relied on Article 9 and 14 of the Convention.

Article 9 of the Convention provides 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.”

Article 14 of the Convention 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.”

39. The Court considers that this complaint falls to be examined under Article 14 read in conjunction with Article 9 of the Convention (see *Religionsgemeinschaft der Zeugen Jehovas and Others*). Furthermore, although the applicants did not explicitly rely on it, in interpreting these provisions due regard to Article 11 of the Convention will be had.

#### **A. Submissions by the parties**

40. The applicants maintained that the Austrian authorities' refusal to confer on the first applicant the status of a recognised religious society constituted discrimination prohibited by the Convention. They gave various examples for the alleged discriminatory treatment between religious communities and religious societies. They disputed in particular the necessity of the criterion of a ten-year waiting period before a religious community could apply for recognition as a religious society under section 11(1) of the 1874 Recognition Act as, in their view, no good reason for such a waiting period existed. There was also no valid justification for the criterion of a minimum number of adherents, namely two-thousandths of the population of Austria (approximately 16,000 persons). This criterion could hardly be fulfilled by any potential candidate for recognition and many registered religious communities and even recognised religious societies had fewer members.

41. The Government referred to their observations in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* ((dec.), no. 40825/98 5 July 2005). They maintained in particular that the first applicant, even before it had become a publicly registered religious community on 11 July 1998, had had legal personality as a registered association since 24 August 1945. The status conferred on the first applicant as a registered religious community under the 1998 Religious Communities Act complied with the requirements of Article 9; it only provided a legal status and in no way restricted the exercise or enjoyment of the right to freedom of religion. In conclusion, there was no interference with the applicants' rights under Article 9 of the Convention.

42. There was also no discrimination against the applicants in respect of the first applicant's status as a registered recognised community. In respect of the ten-year waiting period for registered religious communities, the Government referred to the Constitutional Court's finding of 3 March 2001 (*VfSlg. 12.102/2001*) that it served the legitimate aim of ensuring that the competent authority could verify during this period of time whether the religious community was ready to integrate into the existing legal order, in particular whether it performed unlawful activities as a consequence of which legal personality had to be withdrawn (section 9(2) and section 5(1) of the 1998 Religious Communities Act). Examples of such unlawful activities were incitement to commit criminal offences, endangering the psychological development of minors, violating the psychological integrity of persons or using psychotherapeutic methods to disseminate its religious beliefs. As regards the requirement of a certain number of adherents, the Government maintained that this criterion was not only important for the religious community's existence but also for ensuring that duties were fulfilled, such as organising and monitoring the teaching of its religion in schools.

## **B. The Court's assessment**

43. In the case of *Religionsgemeinschaft der Zeugen Jehovas and Others* (cited above) the Court found a breach of Article 14 of the Convention taken in conjunction with Article 9 on the ground that the criterion of a ten-year waiting period before a religious community could apply for recognition as a religious society (section 11(1) of the 1998 Religious Communities Act) lacked any objective and reasonable justification. It held in particular as follows:

“92. The Court observes that under Austrian law, religious societies enjoy privileged treatment in many areas. These areas include exemption from military service and civilian service, reduced tax liability or exemption from specific taxes, facilitation of the founding of schools, and membership of various boards (see 'Relevant domestic law' above). Given the number of these privileges and their nature, in particular in the field of taxation, the advantage obtained by religious societies is substantial and this special treatment undoubtedly facilitates a religious society's pursuance of its religious aims. In view of these substantive privileges accorded to religious societies, the obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral in the exercise of their powers in this domain requires therefore that if a State sets up a framework for conferring legal personality on religious groups to which a specific status is linked, all religious groups which so wish must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner.

93. The Court notes that in the present case the Federal Minister for Education and Cultural Affairs, on 1 December 1998, dismissed the request for recognition of the first applicant as a religious society, relying on section 11(1) of the Religious Communities Act, on the ground that it had not existed as a registered religious community for a minimum of ten years. Since only this element of section 11 was applied, the Court does not find it necessary to examine the other parts of this provision that were challenged by the applicants.

...

97. The Court finds that the imposition of a waiting period before a religious association that has been granted legal personality can obtain a more consolidated status as a public-law body raises delicate questions, as the State has a duty to remain neutral and impartial in exercising its regulatory power in the sphere of religious freedom and in its relations with different religions, denominations and beliefs (see *Metropolitan Church of Bessarabia and Others*, cited above, § 116). Such a waiting period therefore calls for particular scrutiny on the part of the Court.

98. The Court could accept that such a period might be necessary in exceptional circumstances such as would be in the case of newly established and unknown religious groups. But it hardly appears justified in respect of religious groups with a long-standing existence internationally which are also long established in the country and therefore familiar to the competent authorities, as is the case with the Jehovah's Witnesses. In respect of such a religious group, the authorities should be able to verify whether it fulfils the requirements of the relevant legislation within a considerably shorter period. Further, the example of another religious community cited by the applicants shows that the Austrian State did not consider the application on an equal basis of such a waiting period to be an essential instrument for pursuing its policy in that field.

99. The Court therefore finds that the difference in treatment was not based on any 'objective and reasonable justification'. Accordingly, there has been a violation of Article 14 of the Convention taken in conjunction with Article 9."

44. In the present case the Federal Minister's refusal to recognise the first applicant as a religious society was based on the same ground – non-fulfilment of the ten-year waiting period – as in the case cited above. The Court observes further that the Government, in their own submissions, acknowledged the first applicant's existence in Austria in the form of an association from 24 August 1945 onwards. Thus, it can hardly be seen as a newly established and unknown religious group but rather as one which is long established in the country and therefore familiar to the competent authorities. For such a religious group a ten-year waiting period is not justified.

45. This being so, the Court must arrive at the same conclusion as in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others*, namely that the difference in treatment was not based on any "objective and reasonable justification". Accordingly, there has been a violation of Article 14 of the Convention taken in conjunction with Article 9.

## II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

46. The applicants complained under Article 6 of the Convention about the length of the proceedings concerning their request for recognition of the first applicant as a religious society.

Article 6, as far as relevant, provides as follows:

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

### **A. Submissions by the parties**

47. The applicants maintained that Article 6 was applicable to the proceedings at issue as the applicants' claim for recognition was based on the 1874 Recognition Act and concerned their civil rights and obligations.

48. The applicants further argued that the proceedings had lasted an unreasonably long time and stressed that from 14 March 1995 until 1 December 1998 the Austrian authorities had not taken any procedural steps. Such inactivity during a period of nearly five years was inexplicable.

49. The Government contested that Article 6 was applicable to the case, arguing that the subject matter of the proceedings was the applicants' request to obtain legal personality and the ensuing status of a public-law corporation under the 1874 Recognition Act. However, irrespective of the fact that the first applicant had obtained legal status as an association and had been registered as such since 24 August 1945, as well as the fact that the first applicant had been granted legal status under the 1998 Religious Communities Act as of 11 July 1998, the Government found that it was not discernible to what extent a decision in recognition proceedings determined "civil rights and obligations", within the meaning of Article 6, since recognition also entailed the assumption of public tasks on the part of a religious community.

50. Assuming the applicability of Article 6, the duration of the proceedings had been reasonable and due to the complexity of the case. As regards the conduct of the administrative authorities and courts, no delays had occurred. The Administrative Court and the Constitutional Court had taken the decisions as quickly as possible. In particular, several similar cases were pending before the Constitutional Court, from which the court had selected the applicants' complaints as a "leading case" and reviewed the constitutionality of several provisions of the 1998 Religious Communities Act. In the light of the extremely complex questions of law and different constellations of cases pending at the same time, the duration of two years and one and a half months in respect of the applicants' complaint of 12 January 1999 was not excessive.

### **B. The Court's assessment**

#### *1. Applicability of Article 6 § 1 of the Convention*

51. In the case of *Religionsgemeinschaft der Zeugen Jehovas and Others* (cited above, § 108) the Court found that Article 6 § 1 was applicable to proceedings concerning a request for recognition as a religious society. It sees no reason to come to a different conclusion in the present case.

#### *2. Compliance with Article 6 § 1 of the Convention*

52. The Court notes at the outset that two different sets of proceedings need to be distinguished, namely the proceedings concerning the application

for recognition submitted on 14 March 1995 and those concerning the application submitted on 16 July 1998.

**(a) Proceedings concerning the request for recognition of 14 March 1995**

53. As regards the period to be taken into account for the purpose of Article 6 § 1 the Court reiterates that in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others* it found that the relevant period had started when the Constitutional Court, in its decision of 4 October 1995, had recognised that a religious body had a subjective right to recognition as a religious society. It was from that moment that the period to be taken into consideration under Article 6 § 1 started to run (*ibid.*, § 110). The proceedings in the instant case ended on 4 April 2001, when the Constitutional Court's decision of 3 March 2001 was served on the applicants' lawyer. Thus, the proceedings lasted approximately five years and six months.

54. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the relevant authorities, and the importance of what was at stake for the applicant in the litigation (see, for instance, *Humen v. Poland* [GC], no. 26614/95, § 60, 15 October 1999).

55. In the Court's view the proceedings were complex, as the domestic authorities decided on the applicants' case on the basis of a change in the Constitutional Court's case-law and new legislation enacted in the meantime. Moreover, at first instance the proceedings were interrupted by the applicants' application to the Administrative Court in which they complained that the Federal Minister had failed to determine their request for recognition in time. Once the Administrative Court, on 26 January 1998, had established that that application was not well-founded and that the Federal Minister was actually competent to deal with the request under a different set of rules, the Federal Minister dealt expeditiously with their request. As regards the period of approximately two years and five months during which time their complaint was pending before the Constitutional Court, that court examined the constitutionality of various provisions of the 1998 Religious Communities Act and gave a reasoned decision on the merits of the applicants' complaint. Thus, the lapse of time before the Constitutional Court may be explained by the complexity of the issue. In these circumstances, the Court does not find that the duration of the above proceedings exceeded the reasonable-time requirement under Article 6 § 1. (see, *e contrario*, *Religionsgemeinschaft der Zeugen Jehovas and Others*, cited above, §§ 116-117).

56. It follows that there has been no breach of the reasonable-time requirement as regards the proceedings concerning the first application for recognition.

**(b) Proceedings concerning the request for recognition of 16 July 1998**

57. On 16 July 1998 the applicants submitted another request for recognition of the first applicant as a religious society. The relevant period under Article 6 § 1 started on 1 December 1998, when the Federal Minister dismissed the applicants' request, as it was then that the “dispute” within the meaning of Article 6 arose. It ended on 4 April 2001 with the service of the Constitutional Court's decision. The proceedings thus lasted approximately two years and four months.

58. Given that during this period the case was dealt with by two levels of jurisdiction the Court does not find that the duration of the above proceedings exceeded the reasonable-time requirement under Article 6 § 1.

59. It follows that there has been no breach of the reasonable-time requirement as regards the proceedings concerning the second application for recognition either.

**III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION**

60. The applicants complained under Article 13 of the Convention that they had no effective remedy at their disposal by which to receive a decision on their request for recognition.

Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

61. The applicants maintained that their right to an effective remedy had been violated and claimed that the Constitutional Court had not addressed all of their arguments.

62. This was disputed by the Government, who argued that the Federal Constitution provided for remedies for legal protection, in particular a complaint to the Constitutional Court, of which the applicants had made use.

63. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

64. The Court observes that after having been granted recognition as a religious community under the Act on the Legal Status of Registered Religious Communities on 20 July 1998, the applicants applied to the Constitutional Court, challenging particular provisions of that Act. It is true that the Constitutional Court dismissed that complaint on 3 March 2001, but the effectiveness of a remedy for the purposes of Article 13 does not depend on the certainty of a favourable outcome (see, among other authorities,



*Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 62, § 40). The applicants consequently had available to them a remedy satisfying the requirements of that provision and it follows that there has been no breach of Article 13 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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**

66. The applicants claimed an award in respect of non-pecuniary damage but left it to the Court to determine the appropriate sum.

67. The Government submitted that in fixing this sum the Court should bear in mind that there had to be a causal link between the violation at issue and the damage sustained.

68. Having regard to awards in comparable cases, the Court, on an equitable basis, awards 4,000 euros (EUR) to the applicants jointly, plus any tax that may be chargeable.

##### **B. Costs and expenses**

69. The applicants claimed a total of EUR 12,839.09, including VAT, for costs and expenses incurred in the domestic proceedings and before the Court. Of this amount, EUR 4,518.37 plus VAT related to the proceedings before the Court.

70. The Government submitted that only those costs incurred in domestic proceedings in an attempt to prevent or redress the violation found by the Court could be reimbursed; this was clearly not the case for costs incurred in connection with the drafting of the first applicant's statutes and in the administrative proceedings for recognition, in which representation by a lawyer was not mandatory.

71. As regards the proceedings before it, the Court finds that the sum claimed, EUR 4,518.37, appears reasonable and therefore awards it in full plus any tax that may be chargeable to the applicants on that amount. As regards the costs incurred in the domestic proceedings, the Court agrees with the Government that not all of them were incurred in an attempt to prevent the violation found. Ruling on an equitable basis, it awards EUR 3,000 plus any tax that may be chargeable to the applicants on that amount.

**C. Default interest**

72. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 9;
2. *Holds* that there has been no violation of Article 6 of the Convention;
3. *Holds* that there has been no violation of Article 13 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, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 7,518.37 (seven thousand five hundred and eighteen euros and thirty-seven cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicants on these amounts;
  - (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 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President

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

C.L.R.  
S.N.

## CONCURRING OPINION OF JUDGE STEINER

As regards the complaint under Article 14 of the Convention read in conjunction with Article 9, the present judgment follows closely the reasoning adopted by the Court in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, 31 July 2008). In that case I voted against finding a violation of Article 9 read alone and in conjunction with Article 14, and, for the reasons explained in my dissenting opinion attached to that judgment, I might have arrived at the same conclusions in the present case. However, for the sake of the uniformity and coherence of our case-law, I have voted in favour of finding a violation of Article 14 read in conjunction with Article 9 in the present case.