

# **ARMENIA/NAGORNO-KARABAKH REPUBLIC/EUROPEAN COURT: Jehovah's Witnesses in the NKR and Sargis Avanesyan v. Armenia**

*Application no. 41817/10*

Willy Fautré, Human Rights Without Frontiers

HRWF (14.06.2018) – The Nagorno-Karabakh Republic is a disputed territory between Azerbaijan and Armenia. An armed conflict erupted between both former Soviet Republics in the wake of the collapse of the Soviet Union and only came to an end with a cease-fire reached on 12 May 1994 through Russian negotiation. After the war, Azerbaijan lost its control over the region which, under the protection of Armenia, unilaterally proclaimed its independence under the name of Nagorno-Karabakh Republic. The NKR has a total area of about 4400 km<sup>2</sup> and a population of around 146,000 inhabitants. It is a de facto self-proclaimed independent state with Armenian ethnic majority. It is not recognized by the international community. It is consequently not a member of the Council of Europe, the OSCE and the UN. Therefore, the European Court of Human Rights faces a basic problem: which country can be involved in the procedure?

In the case of a Moldovan detainee in Transnistria (the self-

proclaimed Moldavian Republic of Transdniestria) who had to lodge a complaint against another de facto state unrecognized by the international community, the Court admitted a complaint against both Moldova and Russia (Application no 11138/10). This area was part of the former Moldavian SSR, and since the dissolution of the USSR it has been claimed by the [Republic of Moldova](#) as the Administrative-Territorial Units of the Left Bank of the Dniester but it is unable to exert its jurisdiction on this territory.

In the case of Jehovah's Witnesses in Nagorno-Karabakh, the European Court declared admissible the complaint against the sole Armenia.

The applicants are the Christian Religious Organization of Jehovah's Witnesses NKR, a religious community established in the Republic of Nagorno Karabakh in 1993 ("the applicant community") and an Armenian national, Mr. Sargis Avanesyan, who was born in 1962 and is the community elder living in Stepanakert ("the applicant"). They are represented before the Court by Mr A. Carbonneau and Mr R. Khachatryan, lawyers practising in Strasbourg and Yerevan.

In June 2009, the applicant community applied to the NKR Government for state registration. In July 2009, the NKR government staff provided an expert opinion to determine if the applicant community fulfilled the requirements of Article 5 of the NKR law. The expert opinion concluded that by their ideology, the applicant community is "far from a Christian organization." In August 2009, the State Registry Department rejected the application relying on the expert opinion. In spring of 2010, the police raided the religious meetings of the applicant community and arrested five members who were

charged with an administrative offense. The applicants complain under Articles 9 and 11 of the Convention of the continued refusal of the NKR authorities to register the applicant community as a religious organization.

See the full details of the statement of facts at <https://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=1530> but here are some excerpts of this section:

### *1. Background to the case*

*Jehovah's Witnesses have been present in the unrecognised Republic of Nagorno Karabakh (the NKR) since 1993. At the material time they had approximately five hundred members.*

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

*On 26 November 2008 the NKR Law on the Freedom of Conscience and on Religious Organisations (the Law) was enacted.*

*On 20 June 2009 the General Assembly of the applicant community held a meeting. It decided, inter alia, to apply for legal registration by submitting the required documents, including those necessary for the mandatory expert report,*

*and elected the applicant as the Chairman of its Council.*

*The first attempt to obtain state registration*

*On 22 June 2009 the applicant applied to the NKR Government for state registration by virtue of Article 14 of the Law, seeking an expert conclusion as to whether the applicant community fulfilled the requirements of Article 5 of the Law.*

*On 6 July 2009 the Chief Minister of the NKR Government Staff provided the applicant with an expert opinion of 6 July 2009 prepared by A.S., Chief of the Department for National Minorities and Religious Affairs of the NKR Government Staff (the Expert Opinion)."*

*The expert group refrained from examining purely theological issues but considered that "by their ideology Jehovah's Witnesses are far from being a Christian organisation" because the presented documents do not state that the organisation accepts the Nicene Creed, which is a prerequisite for being a Christian organisation or church." The experts also stressed that "according to Article 17 of [the Law] only the Armenian Apostolic Holy Church has the right to preach freely and spread its beliefs in the territory of Nagorno Karabakh" and that all other religious organisations having state registration can only preach within the circle of their own believers. They also accused Jehovah's Witnesses of mental manipulation and of endangering the national defence as they are objectors to military service.*

*On 9 July 2009 the applicant and two other members of the applicant community applied on its behalf to the State Registry Department of the NKR Ministry of Justice for state registration but on 3 August 2009 the State Registry Department rejected the applicant community's application, relying on the Expert Opinion.*

On 15 March 2018, the European Court sent three questions to the parties:

- 1. Does Armenia have jurisdiction over the matters complained of, within the meaning of Article 1 of the Convention (see *Muradyan v. Armenia*, no. 11275/07, §§ 126 and 127, 24 November 2016)?*
  
- 2. Does the Nagorno Karabakh authorities' refusal to register the applicant community to date constitute an interference with the applicant community's freedom of association, within the meaning of Article 11 § 1 of the Convention read in the light of Article 9 of the Convention? If so, is the interference justified in terms of Article 11 § 2 of the Convention? (see, in particular, *Jehovah's Witnesses of Moscow v. Russia*, no. 302/02, §§ 161-182, 10 June 2010)*

3. *Has the applicant community suffered discrimination in the enjoyment of its Convention rights, contrary to Article 14 of the Convention read in conjunction with either Article 9 or 11?*

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