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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 km² 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.

2. 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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25 May 1993 – 25 May 2018 : 25th anniversary of Kokkinakis case, the first religious freedom case ruled by the European Court

By Willy Fautré, Human Rights Without Frontiers

HRWF (24.05.2018) - On 25 May 1993, the European Court of Human Rights held, by six votes to three, that there had been a breach of Article 9 of the European Convention (freedom of religion or belief) in the case Kokkinakis v. Greece (*Application no. 14307/88*).

The Kokkinakis case is a landmark judgment and a pilot case of the European Court of Human Rights. In 1993, it was the first religious freedom case with which the European Court was confronted. Its decision endorsing the fundamental right to share one's beliefs with others concerned not only Greece but all the 47 member states of the Council of Europe and their populations, around 820 million people in all. However, beyond the case, there was a man…

Beyond the court case, there was a man

I had the privilege to know Minos Kokkinakis. I met him in his apartment in Crete for an interview, I publicized his case during the lengthy proceedings in Strasbourg and I organized a press conference with him in Brussels. He was interviewed by the national Belgian television for the evening TV news and despite his age (84), he captivated the interviewer with his energy and his passion for the defence of his rights. He was a charismatic fighter for justice.

Mr Minos Kokkinakis (1909-1999), a retired shopkeeper of Greek nationality, was born into an Orthodox family at Sitia (Crete) in 1909. After becoming a Jehovah's Witness in 1936, he was arrested more than 60 times for proselytism. He was also interned and imprisoned on several occasions.

The periods of internment, which were ordered by the administrative authorities on the grounds of his activities in religious matters, were spent on various islands in the Aegean Sea (Amorgos, Milos, Makronisos…).

These periods of imprisonment, to which he was sentenced by the courts, were mainly for acts of proselytism (three sentences of two and a half months in 1939 - he was the first Jehovah's Witness to be convicted under the Laws of the Metaxas Government -, four and a half months in 1949 and two months in 1962), for conscientious objection (eighteen and a half months in 1941) and for holding a religious meeting in a private house (six months in 1952).

During the German occupation in WWII, in 1941, he was arrested as a conscientious objector. He could have been executed for that but he had a deeply rooted belief that God had prevented him, and the other Christians, from killing human beings. He was ready to die for that.

In his lifetime, Mr. Kokkinakis served a cumulative total of more than six years in prison.

On 2 March 1986 he and his wife called at the home of Mrs Kyriakaki in Sitia and engaged in a discussion with her. Mrs Kyriakaki's husband, who was the cantor at a local Orthodox church, informed the police, who arrested Mr and Mrs Kokkinakis and took them to the local police station, where they spent the night of 2-3 March 1986.

He ultimately appealed his last conviction to the ECtHR. The court issued its decision on 25 May 1993 in his favor, stating that the Greek government had breached Article 9 of the ECHR (freedom of religion).

More than ever, this case is bearing fruit, especially in post-Soviet countries where the right to share one's beliefs is more and more restricted, and criminalized. His case is a beacon in the night for all the lawyers who defend the right of believers, whatever their religion, to share their beliefs with others.

The current drama is that more and more illiberal governments in the CoE space and beyond turn a blind eye to that "disturbing court decision" and combat it in law and in practice.

Greece was the only EU country to criminalize the right to share one's beliefs

Minos Kokkinakis and his wife were prosecuted under section 4 of Law no. 1363/1938 making proselytism an offence. This law, which was adopted during the dictatorship of Metaxas (1936-40), was exclusively used to protect the Orthodox Church and was in force for more than 45 years.

In 1939, that section was amended by section 2 of Law no. 1672/1939, in which the meaning of the term "proselytism" was clarified as such:

> "1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender.
>
> The term of imprisonment may not be commuted to a fine.
>
> 2. By 'proselytism' is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (eterodoxos), with the aim of undermining those beliefs, either

by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety.

3. The commission of such an offence in a school or other educational establishment or a philanthropic institution shall constitute a particularly aggravating circumstance."

More than ever, the Kokkinakis case is bearing fruit, especially in post-Soviet countries where the right to proselytize is more and more restricted, and criminalized. His case is a beacon in the night for all the lawyers who have defend the right of believers, whatever their religion, to share their beliefs with others.

The drama is that more and more illiberal governments in the CoE space and beyond turn a blind eye to that "disturbing court decision" and combat it in law and in practice.

Greek Dictator Metaxas' spirit is back

Unfortunately, the evil spirit of Dictator Metaxas is back on the European continent…

In April 2017, **Russia** banned the movement of Jehovah's Witnesses as extremist (!). Its 350 congregations and its headquarters have been declared illegal and their properties have been confiscated by the state. The 175,000 Jehovah's Witnesses in Russia may not exercise their freedom of religion anymore, and if they do they are prosecuted. Six of them have been in custody for several months, including a Danish citizen living in Russia with his wife and their children. He has been behind bars for 1 year and is currently being tried. (See the upcoming issue of Newsweek: http://www.newsweek.com/jehovahs-witnesses-939860 and HRWF Database of FORB Prisoners at http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/)

Metaxas' anti-proselytism laws have risen from the ashes in Russia under the name of the "Varovaya laws". They are applied in practice to members of non-Orthodox religions: not only to Jehovah's Witnesses are being prosecuted but also Protestants now.

More reading

Court judgment: https://bit.ly/2IMbRqw
World news Media: https://www.theworldnewsmedia.org/topic/30475-minos-kokkinakis/
Independent: https://ind.pn/2s2DGdW

Bektashi Community and Others v. FYROM

(nos. 48044/10, 75722/12, and 25176/13)

ECtHR Registrar Press Release (12.04.2017) - The applicants are the Bektashi Community, a religious association, and two of its members, Mr E. Brahimaj, an Albanian national, and Mr A. Sulejmani, a Macedonian national. They both live in 'the former Yugoslav Republic of Macedonia', in Tetovo and Gostivar. Mr E. Brahimaj holds the highest position in the hierarchy of the community.

The case concerned their complaint that, when new legislation entered into force in 2007, the domestic courts had refused to allow the association to retain its status as a religious organization and to accept its fresh application for registration.

The applicant association operated as an officially recognised religious organisation from 1993.

When new legislation on the legal status of churches, religious communities and groups entered into force in 2007, the association requested that the registration court recognise its continuing legal status. Its request was however refused on a formal ground, namely it had not been registered prior to 1998, but only listed in 2000. It then made a fresh application for registration under the new legislation, but in 2010 this request was also refused, mainly because the courts found that its name and doctrinal sources were identical to those of another already registered religious organization and that this could create confusion among believers.

Relying in particular on Article 9 (freedom of thought, conscience, and religion) and Article 11 (freedom of assembly and association) of the European Convention, the applicants complained about the domestic courts' decisions refusing to recognise the association as a religious organization or to register it anew.

Violation of Article 11 read in the light of Article 9 – in respect of the applicant association

Just satisfaction: 5,000 euros (EUR) (non-pecuniary damage) and EUR 2,000 (costs and expenses) to the applicant association.

Orthodox Ohrid Archdiocese v. FYROM: Grand Chamber Referral Request

HRWF (05.04.2018) - At its next meeting (Monday 9 April 2018), a panel of five judges will examine the following Grand Chamber referral request: "Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)" v. "the former Yugoslav Republic of Macedonia" (no. 3532/07), judgment of 16 November 2017 (https://www.strasbourgconsortium.org/common/document.view.php?docId=7459).

The applicant is a religious organization not granted official status at the national level. It appealed the refusal to register it to the Court, saying that the decision violated its rights under Articles 9 (freedom of religion) and 11 (freedom of association), and that its members were put in disadvantaged positions in relation to members of recognized churches. In its judgment of 16 November 2017 found, unanimously, that Macedonia's refusal to register the association as a religious entity violated its rights under Article 11 interpreted in the light of Aritcle 9. "It could not be said that the reasons provided by the national authorities, taken as a whole, were 'relevant and sufficient' to justify the interference and the manner in which the domestic authorities refused the recognition of the applicant association as a religious organisation could not be accepted as necessary in a democratic society."

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

ECtHR endorses German courts' decisions to take Twelve Tribes Church children into care because of caning

See full judgments of the European Court: https://bit.ly/2pwBo5z - https://bit.ly/2GaAu8x

CoE Registrar of the European Court (22.03.2018) - In today's Chamber judgments1 in the cases of Tlapak and Others v. Germany (nos. 11308/16 and 11344/16) and Wetjen and Others v. Germany (application nos. 68125/14 and 72204/14) the European Court of Human Rights held, unanimously, that there had been: no violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The cases concerned the partial withdrawal of parental authority and the taking into care of children belonging to the Twelve Tribes Church (Zwölf Stämme), living in two communities in Bavaria (Germany). In 2012 the press reported that church members punished their children by caning. The reports were subsequently corroborated by video footage of caning filmed with a hidden camera in one of the communities. Based on these press reports, as well as statements by former members of the church, the children living in the communities were taken into care in September 2013 by court order. The proceedings before the European Court have been brought by four families who are members of the Twelve Tribes Church. They complain about the German courts' partial withdrawal of their parental authority and the splitting up of their families.

The Court agreed with the German courts that the risk of systematic and regular caning of children justified withdrawing parts of the parents' authority and taking the children into care. Their decisions had been based on a risk of inhuman or degrading treatment, which is prohibited in absolute terms under the European Convention.

The Court pointed out, moreover, that the German courts had given detailed reasons why they had had no other option available to them to protect the children. In particular, the parents had remained convinced during the proceedings that corporal punishment was acceptable and, even if they would have agreed to no caning, there had been no way of ensuring that it would not be carried out by other members of the community.

Therefore, the German courts, in fair and reasonable proceedings in which each child's case had been looked at individually, had struck a balance between the interests of the parents and the best interests of the children.

Principal facts

Both cases concerned four families who are members of the Twelve Tribes Church (Zwölf Stämme), living in two communities in Bavaria (Germany). The applicants in the first case are the parents of the Tlapak and Pingen families, who resided previously in the Wörnitz community. The applicants in the second case are the parents and children of the Wetjen and Schott families, who used to live together in the Klosterzimmern community.

In 2012 the press reported that the Twelve Tribes Church punished their children by caning. A year later a television reporter sent video footage, filmed with a hidden

camera, to the local child welfare services and the Nördlingen Family Court, showing the caning of various children between the ages of three and 12.

At the request of the child welfare services, the family courts brought interim custody proceedings regarding all children in the Twelve Tribes communities, including the eight Tlapak, Pingen, Wetjen and Schott children. They based their decisions on the press reports as well as statements by former members of the church. The courts withdrew certain of the parents' rights, including making decisions on their children's place of residence, health and schooling, and in September 2013 the welfare services took the communities' children into care. Some of the children were placed in children's homes, others in foster families.

After the four families' children had been taken into care, the family courts initiated main proceedings concerning custody and commissioned psychologists' expert opinions.

In the proceedings before the European Court, the Wetjen and Schott families complained about the interim proceedings and the Tlapak and Pingen parents complained about the main proceedings. In both sets of proceedings, the courts concluded that caning constituted child abuse and that taking the children into care had been justified by the risk of the children being subjected to such abuse while living with their parents. The courts established this risk after having heard the parents, the children (except for two who were too young to be questioned), the children's guardians ad litem and representatives of the youth office. In the Tlapak and Pingen families' case, the courts also heard the psychologist who had been commissioned to draw up a report as well as the expert commissioned by the applicants. In the Wetjen and Schott families' case, which concerned the interim proceedings, the courts deferred the psychologist's conclusions to the main proceedings. The courts also gave detailed reasons why there was no alternative option to protecting the

children, other than taking them into care. In particular, during the proceedings the parents remained convinced that corporal punishment was a legitimate child-rearing method. Even if the parents themselves would agree to no caning, there was no way of ensuring that other members of the community would not carry out such punishment on their children. Both sets of proceedings ended in August 2015 and May 2014 with the Federal Constitutional Court's refusal to admit the applicants' complaints.

The Tlapak parents moved to the Czech Republic in 2015 and have been living there since, without their son, who remained in care. The court order concerning the Pingens' son was temporarily lifted in December 2014 because he was just one year and six months old, and was still being breastfed.

The Pingens other children, two daughters, remained in foster care. The Schotts' eldest daughter returned to the community in December 2013 as she was 14 years' old and no longer at risk of being caned. The Schotts' remaining two daughters and the Wetjens' son remained in care at the end of the interim proceedings.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 (right to respect for private and family life), the applicants complained about the proceedings to partly withdraw parental authority and separate the parents from their children. They also alleged that the relevant proceedings (the interim proceedings for the Wetjen and Schott families and the main proceedings for the Tlapak and Pingen families) had been unreasonably long.

The applications were lodged with the European Court of Human Rights on 24 February 2016 (Tlapak and Others) and 17 October and 14 November 2014 (Wetjen and Others).

The judgments were given by a Chamber of seven judges, composed as follows:

Erik Møse (Norway), President,
Angelika Nußberger (Germany),
André Potocki (France),
Yonko Grozev (Bulgaria),
Síofra O'Leary (Ireland),
Gabriele Kucsko-Stadlmayer (Austria),
Lətif Hüseynov (Azerbaijan),
and also Milan Blaško, Deputy Section Registrar.

Decision of the Court

Length of the proceedings

The Court rejected as inadmissible the Tlapak and Pingen parents' complaint that the main custody proceedings had been excessively long. The proceedings had taken one year and 11 months, during which time the Family Court could not be held responsible for any particular delays. On the contrary, the court had been active: it had commissioned a psychologist's opinion, heard the applicants, their children and further witnesses and led negotiations for a settlement between the applicants and the youth office.

In view of the Government's declaration recognising that there had been a violation of Article 8 concerning the length of the interim proceedings, namely from September 2013 to May 2014, in the Wetjen and Schott families' cases and proposing compensation, the Court decided to strike out of its list of cases those parts of the applications.

Withdrawal of parental authority

First the Court found that the decisions to withdraw some parental rights had constituted an interference with the applicants' right to respect for their family life. The decisions, based in national law and on the likelihood that the children would be caned, had aimed at protecting the "rights and freedoms" of the children.

Furthermore, the Court was satisfied that the decision-making process in the cases had been reasonable. The applicants, assisted by counsel, had been able to put forward all their arguments against withdrawal of parental authority. The courts had had the benefit of direct contact with all those concerned and had diligently established the facts. Even though the Tlapaks and Pingens had withdrawn their consent for the psychologists' opinion to be used as evidence in the proceedings, the Court considered that it had been justified for the German courts to use the opinion given the general interest at stake, namely the effective protection of children in family court proceedings. It also found it acceptable that the family courts had not awaited the conclusions of the psychologist concerning the Wetjens and the Schotts in the interim proceedings, given the need for particular speediness in such proceedings.

Although taking children into care and splitting up a family constituted a very serious interference with the right to respect for family life and should only be used as a last resort, the domestic courts' decisions had been based on a risk of inhuman or degrading

treatment, which is prohibited in absolute terms under the European Convention. The courts had taken an individualised approach, taking into account whether each child was of an age where they were at risk of corporal punishment. The courts had also given detailed reasons why there had been no other options available to protect the children and the Court agreed with those conclusions. Moreover, the proceedings had concerned a form of institutionalised violence against minors, considered by the applicant parents as an element of the children's upbringing. Consequently, any assistance by the youth office, such as training the parents, could not have effectively protected the children, as corporally disciplining the children had been based on their unshakeable dogma.

Therefore, based on fair proceedings, the domestic courts had struck a balance between the interests of the applicant parents and the best interests of the applicant children which did not fall outside the domestic authorities' wide room for manoeuvre ("margin of appreciation") when assessing the necessity of taking a child into care.

Just satisfaction (Article 41)

In the case of Wetjen and Others, the Court, taking note of the Government's declaration recognising that there had been a violation of Article 8 as concerned the length of the interim proceedings, directed that Germany was to pay the Wetjens 9,000 euros (EUR) and the Schotts EUR 8,000 in respect of pecuniary and non-pecuniary damage as well as costs and expenses.
