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ARMENIA: Jehovah's Witnesses win a case at the European Court

European Court of Human Rights dispels anti-cult myths on Jehovah's Witnesses

On March 22, Armenia was held responsible for decisions rendered in Nagorno-Karabakh, and lost an important case.

By Massimo Introvigne

Bitter Winter(26.03.2022) – <https://bit.ly/3DlhVcG> – On March 22, 2022, the European Court of Human Rights (ECHR) in “Christian Religious Organization of the Jehovah’s Witnesses in the NKR v. Armenia” ruled against Armenia in a case concerning the Jehovah’s Witnesses in Nagorno-Karabakh. We offer a downloadable version of the full judgement.

Download the full decision.

Nagorno-Karabakh is a territory disputed between Azerbaijan and Armenia, which repeatedly went to war about its control, the last time in 2020. Regardless of its international status, the ECHR has consistently ruled that in the areas and at the time when portions of Nagorno-Karabakh were de facto controlled by Armenia, it is Armenia that should be responsible for human rights violations, and this even if the territory enacts its own laws.

Since 1993, Jehovah’s Witnesses have been active in Nagorno-Karabakh, where they had some 500 members at the time of the events examined by the ECHR. In Nagorno-Karabakh, a law of November 26, 2008, called “Freedom of Conscience and Religious Organizations Act” made registration of religious organizations mandatory. The religions that want to register should ask first that an expert opinion, confirming that they comply with the conditions listed in the law for registration, is obtained from the Department for National Minorities and Religious Affairs of the Nagorno-Karabakh government. These “expert opinions” exist in other post-Soviet countries as well. The “experts” are often anti-cult bureaucrats or activists, and the “expert opinions” easily become tools for discrimination.

One of the criteria for registration is that religious organizations do not engage in “soul hunting,” i.e., proselytization, which according to article 17 of the 2008 Act is only lawful in Nagorno-Karabakh if practiced by the Armenian Apostolic Church, the majority religion in Armenia.

The Jehovah's Witnesses, who were registered in Armenia since 2004, applied for registration in Nagorno-Karabakh for the first time in 2008, which under the local law implied seeking an expert opinion. On July 6, 2009, the Jehovah's Witnesses received copy of the expert opinion, prepared by A.S., Chief of the Department for National Minorities and Religious Affairs of the Nagorno-Karabakh government. The opinion was totally negative, and based on four main arguments.

The first was that the Jehovah's Witnesses are a "totalitarian cult" practicing mental manipulation. The ECHR decision uses the word "sect," but in fact terms such as "секта" (sekta) in Russian and similar should be translated as "cult," as I have explained elsewhere.

Echoing Russian anti-cult literature, the expert explained that "ministers (preachers) of [the Jehovah's Witnesses] use mainly psychological methods of persuasion and inspiration. When these methods are used, a person comes under the total influence, that is, his mentality, behavior, personality type are transformed." "Such influence, the expert said, 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 [sic] obedient and dependent, depriving him of his own will." Although the word is not used, this is a typical statement of the pseudo-scientific theory of brainwashing, commonly used by Russian and other critics of "cults."

The second criticism was that the Jehovah's Witnesses engage in "soul hunting," i.e., proselytization, which as mentioned earlier is forbidden in Nagorno-Karabakh to all religious organizations other than the Armenian Apostolic Church.

The third is that the Jehovah's Witnesses, according to the expert, falsely claim to be Christian, while they "cannot be

Christian, because the documents presented do not state that the organization accepts the Nicene Creed, which is a prerequisite for being a Christian organization or church.” The expert concluded that “Jehovah’s Witnesses are far from being a Christian organization.”

A fourth criticism is that the Jehovah’s Witnesses do not vote in elections, thus “weakening democracy,” and are conscientious objectors, this “weakening and disrupting the defense of the country at war.”

It was not surprising that the expert, A.S., offered a negative assessment of the Jehovah’s Witnesses. He admitted during the proceedings that, in addition to his official role, he also worked for the Armenian Apostolic Church, which has often produced vitriolic criticism of the Jehovah’s Witnesses in an attempt to protect its monopoly. He also reported that he had a personal reason of hostility against the Jehovah’s Witnesses, since he has a “relative... whose wife and children became members of the Jehovah’s Witnesses organization and they have now divorced since the wife wants him to become a Jehovah’s Witness as well.” He offered this incident as evidence that the Jehovah’s Witnesses are a “cult” (“sect”) and a “fake organization” that “disrupts families.”

Relying on this sole expert opinion, on August 3, 2009, the application for registration by the Jehovah’s Witnesses was rejected. The Jehovah’s Witnesses applied with the Nagorno Karabakh General Jurisdiction Administrative Court but lost. The motivations of the Administrative Court created a Catch-22 situation. Not having been registered, the Jehovah’s Witnesses were not a “registered legal entity.” However, the Court said, only “registered legal entities” can file appeals. The solution devised by the Jehovah’s Witnesses was to file another appeal not as an organization, but in the name of their chairperson, S.A. This one overcame the procedural obstacles, but the Court, having heard again the expert A.S., confirmed the decision not to register the Jehovah’s

Witnesses. S.A. then went to the Supreme Court, which on January 28, 2010, ruled that he was not really acting as an individual but on behalf of the Jehovah's Witnesses organization, which was not a registered organization and had no rights to file appeals, thus terminating the proceedings without addressing the merit.

As a result of the Supreme Court decision, in March, April and May 2010, the police raided assemblies of the Jehovah's Witnesses in several cities, claiming only registered religious organizations can legally hold meetings in Nagorno-Karabakh.

The Jehovah's Witnesses tried another two times, in June 2010 and February 2012, to obtain a new expert report and file a new application for registration. Their applications were denied, both on procedural grounds and for the substantial reason that there were no new facts justifying the request of a new expert report. The Jehovah's Witnesses appealed, up to the Supreme Court that on August 16, 2012, found against them.

The ECHR first established, confirming its previous case law, that contrary to what Armenia stated, it is responsible for human rights violations committed in the territory of Nagorno-Karabakh, on which it exerts "effective control." An Armenian judge of the ECHR, Armen Harutyunyan, voted in favor of the decision believing that the rights of the Jehovah's Witnesses had been violated, but expressed his doubts that Armenia can effectively control Nagorno-Karabakh in these matters.

Armenia's first defense was that no human rights of individuals had been violated, since even without registration the Jehovah's Witnesses remained free "to carry out their activities" in Nagorno-Karabakh, if they were otherwise permitted by the law. The ECHR found that peaceful assemblies of the Jehovah's Witnesses had been raided by the police on the only basis that they were an unregistered organization and registration is mandatory. Thus, the ECHR said, there is

substantial evidence that in Nagorno-Karabakh denying registration amounts to depriving member of the unregistered religion of their religious liberty. The ECHR also referred to its own previous case law, stating 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.”

Armenia then defended the denial of registration, arguing that it was based on an expert opinion obtained as mandated by the law, and that Article 9 of the European Convention on Human Rights, on freedom of religion or belief, allows for “limitations prescribed by law and necessary in a democratic society.” The ECHR answered that the limitations to religious liberty in Nagorno-Karabakh’s law used to limit the freedom of religion of the Jehovah’s Witnesses are indeed “prescribed by the law,” but this is not enough since they are not “necessary in a democratic society.” The ECHR reiterated that the word “necessary” used in the European Convention on Human Rights “does not have the flexibility of such expressions as ‘useful’ or ‘desirable,’” and should be narrowly interpreted.

Coming to the reasons the expert report, which the ECHR regarded as obviously biased, had listed to deny registration to Jehovah’s Witnesses, the European judges noted that the charges of mental manipulation were not based on the experience “of a single individual who had allegedly fallen victim to the techniques of psychological manipulation indicated,” which suggests that the expert simply relied on anti-Witnesses literature.

Second, the ECHR has admitted in the past that limitations can be imposed to “improper proselytism,” such as offering money in exchange on conversion, but reminded Armenia that in the landmark 1993 *Kokkinakis v. Greece* case, which concerned the Jehovah’s Witnesses, it established that proselytization per se, including of members of a majority religion, cannot be

forbidden.

Third, by claiming that Jehovah's Witnesses cannot call themselves Christians because they "do not accept the Nicene Creed," the authorities invaded the field of theology, which is not permissible. Under the European Convention on Human Rights, "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." As "a 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."

The ECHR then examined the fourth ground for denial of registration, the Jehovah's Witnesses' practice of conscientious objection. It noted that it was not the most prominent argument in the expert opinion, but became the most emphasized point in Armenia's defense before the ECHR. Armenia argued that Nagorno-Karabakh is at war and conscientious objection cannot be admitted. The ECHR reiterated that according to Article 9 of the European Convention on Human Rights, limitations to freedom of religion or belief can be imposed in some limited cases "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." The ECHR stated that, "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."

"The Convention does not allow restrictions on the ground of national security," the ECHR observed. This is not "an accidental omission." National security was omitted because the drafters of the Convention intended to protect religious pluralism, which extends to religious organizations that practice conscientious objection. "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."

The ECHR noted the special situation of war of Nagorno-Karabakh, but referred to its previous case law that in these cases conscientious objectors should be offered alternatives to support their country without being compelled to serve in the military.

The ECHR concluded that Armenia, being responsible for Nagorno-Karabakh, had violated the human rights of Jehovah's Witnesses and should indemnify them for non-pecuniary damages, also bearing the costs of the proceedings (although both were allocated in a conservative manner).

The decision is significant, as it adds to what is now a large corpus of ECHR case law on the Jehovah's Witnesses. It denounces the stereotypical narrative on "brainwashing" as biased and unscientific, and reiterates that proselytization and religion-based conscientious objection are protected by general principles of freedom of religion or belief, which prohibit State authorities from assessing the legitimacy of a religion's beliefs and practices. This judgment certainly sends a strong warning across Europe to State authorities which would like to restrict the rights of minority religious groups by merely relying on the criticisms raised by their opponents, be it secular anti-cultists, other religious groups, or "apostates."

Photo: A view of Askeran, Nagorno-Karabakh, one of the cities where the police raided gatherings of the Jehovah's Witnesses. Credits.

Massimo Introvigne (born June 14, 1955 in Rome) is an Italian sociologist of religions. He is the founder and managing director of the Center for Studies on New Religions (CESNUR), an international network of scholars who study new religious movements. Introvigne is the author of some 70 books and more than 100 articles in the field of sociology of religion. He was the main author of the *Enciclopedia delle religioni in Italia* (Encyclopedia of Religions in Italy). He is a member of the editorial board for the *Interdisciplinary Journal of Research on Religion* and of the executive board of University of California Press' *Nova Religio*. From January 5 to December 31, 2011, he has served as the "Representative on combating racism, xenophobia and discrimination, with a special focus on discrimination against Christians and members of other religions" of the Organization for Security and Co-operation in Europe (OSCE). From 2012 to 2015 he served as chairperson of the Observatory of Religious Liberty, instituted by the Italian Ministry of Foreign Affairs in order to monitor problems of religious liberty on a worldwide scale.

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