

Human Rights Without Frontiers Int'l

Avenue d'Auderghem 61/16, 1040 Brussels

Phone/Fax: 32 2 3456145

Email: international.secretariat.brussels@hrwf.net – Website: <http://www.hrwf.net>



European Court of Human Rights

Jurisprudence on Some Sect/Cult Issues Within the Framework of Freedom of Religion or Belief

By Elisa Van Ruiten & Willy Fautré

January 2013

This paper covers jurisprudence from the European Court of Human Rights (ECtHR) on sect/cult issues within the framework of religious freedom protected by Article 9 of the European Convention, presenting contextualized quotations from the Court's decisions that explore the following areas:

Proselytizing and permissible limitations to proselytism: The European Court of Human Rights (ECtHR) has held through its case law that an individual's right to manifest his/her religion under Article 9 of the Convention may be violated when he/she is convicted for proselytism. The Court, however, has distinguished some circumstances where a person may be held liable for improper proselytism; for instance, when he/she proselytizes a person of unsound mind, lacking the mental capacity or in an unequal power relationship. This section explores the Court's position on how proselytism is linked to freedom of religion; acceptable forms of proselytism that include the right to manifest one's religion encompass both the private and public sphere; and the difference between "bearing Christian witness" and improper proselytism.

Forced change of religion: While proselytism is part of the fundamental right to freedom of religion and conscience, there are circumstances when the Court may find that an individual has been subjected to coercion and pressure to change one's religion. Through various cases, the Court has established a definition of "coercion" as the use of force or intimidation to make someone change one's religion against one's will.

Deprivation of freedom for the purpose of "de-conversion": In *Riera Blume and Others v. Spain*, where six adults had been submitted to forceful attempts to change their religion in confinement conditions, the Court analyzed whether the applicants had been arbitrarily deprived of their freedom under Article 5 of the Convention. The Court defined the criteria necessary to determine whether they had been arbitrarily detained.

Sect: Is the term acceptable? Under most circumstances the use of the term "sect" is derogatory, and the government is prohibited from classifying a minority religion as such. However, in *Leela Forderkreis E.V. and Others v. Germany* the Court held that the use of the terms "sect", "youth sects" and "psycho-sects" was legitimate when it was done so at a material time and in the public's interest.

Pluralism: The Court has clearly stated that pluralism is "inherent in a democratic society"; however, there may be restrictions that "correspond to a "pressing social need." Moreover, these restrictions must be "proportionate to the legitimate aim pursued". The Court also held that a duly elected religious leader is not a threat to democratic society and that the role of state authorities is to respect pluralism in general society and to encourage tolerance in particular situations of conflict.

Neutrality and interference of the State: The State's duty of neutrality in matters concerning religion is frequently addressed by the Court. In cases where the state's duty of neutrality has been encroached, the Court will look at whether the action was "proportionate to the legitimate aim pursued" and "necessary in a democratic society". The Court stresses that this criteria is to be used strictly and sparingly. The Court also cautions the use of "public-order" or "pressing social need" arguments in condoning actions taken by the State as well as any attempt by a state to determine the legitimacy of a particular religion.

About the “defense of consumers of beliefs” and the assessments of beliefs: Concerning cases where the State assessed the legitimacy of religious beliefs, the Court considered whether the state has the right to do so, and if so to what extent and purpose? In addition, the Court has ruled that if a State publishes information concerning a particular religious belief, it must be done in a neutral manner.

Brainwashing and mind control: As previously mentioned, the Court has clearly established that an individual’s right to proselytize is essential to one’s religious freedom. While brainwashing and mind control are not included in the acceptable limits of proselytism, the Court recognized that there is no generally accepted definition of mind control. However, its case law frames it in situations when someone has acted involuntarily, under coercion or manipulation.

Sects allegedly destroying families: Minority religions that have been classified as sects in the public sphere are sometimes accused of disrupting family relationships. However, the Court has established that the change of religion by a family member cannot be used as an argument to explain a family breakup.

Parental rights on the religious education of their children: A parent’s right to the education of their children is codified in Article 2 of Protocol no. 1 of the Convention. In several cases, the Court has addressed it in the context of other Articles of the Convention. From these holdings we can conclude that a state school must respect the religious freedom of parents as well as their right to privacy and to family life. The Court upheld that a parent may not be compelled to explain reasons to exempt their child from a class for personal or religious beliefs, as this constitutes an intrusion into that parent’s private and family life. However, there are limits to this as well. The Court holds that a curriculum is not in violation of Article 2 when it is conveyed in an “objective, critical and pluralistic manner”. In cases where the dispute is between parents, a decision cannot be made on the basis of religion alone, but again, must be viewed from an objective and reasonable standpoint that does not violate either parent’s rights.

Responsibility of the State: The states responsibility for its actors extends to actions by its “organs, agents and servants” whether authorized or not. This covers the responsibility to uphold both local and international legislation and for individual actors that may be under contract with the government.

The aforementioned areas have been addressed in the following cases: *Kokkinakis v. Greece* (judgment on 25 May 1993), *Larissis and Others v. Greece* (judgment on 24 February 1998), *Jehovah’s Witnesses of Moscow v. Russia* (judgment on 10 June 2010), *Riera Blume and Others V. Spain* (judgment on 14 October 1999), *Leela Forderkreis E.V. and Others v. Germany* (judgment on 6 November 2008), *Hasan and Chaush v. Bulgaria* (judgment 26 October 2000), *Agga v. Greece* (judgment on 17 January 2003), *The Moscow Branch of The Salvation Army V. Russia* (judgment on 5 January 2007), *Metropolitan Church of Bessarabia and Others v. Moldova* (judgment on 13 December 2001), *Manoussakis and Others v. Greece* (judgment on 29 August 1996), *Church of Scientology Moscow v. Russia* (judgment of 24 September 2007), *Hoffman v. Austria* (judgment on 26 May 1993), and *Kuznetsov and Others v. Russia* (judgment on 11 April 2007).

Proselytizing

In the case *Kokkinakis v. Greece* (judgment on 25 May 1993), the applicant Mr. Kokkinakis, a Jehovah's Witness, was criminally convicted by the Greek courts for proselytism after he visited the home of a cantor at a local Orthodox church, and engaged in a conversation about religion with his wife. The ECtHR held that the conviction was a violation of Mr. Kokkinakis's rights under Article 9 as freedom to manifest one's religion includes in principle the right to try to convert one's neighbor.

31. As enshrined in Article 9 (art. 9), freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, skeptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. While religious freedom is primarily a matter of individual conscience, it also implies, inter alia, freedom to "manifest [one's] religion". Bearing witness in words and deeds is bound up with the existence of religious convictions.

According to Article 9 (art. 9), freedom to manifest one's religion is not only exercisable in community with others, "in public" and within the circle of those whose faith one shares, but can also be asserted "alone" and "in private"; furthermore, it includes in principle the right to try to convince one's neighbour, for example through "teaching", failing which, moreover, "freedom to change [one's] religion or belief", enshrined in Article 9 (art. 9), would be likely to remain a dead letter.

48. First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents corruption or deformation of it.

Judge Pettiti said in his partly concurring opinion of *Kokkinakis v. Greece*:

Proselytism is linked to freedom of religion; a believer must be able to communicate his faith and his beliefs in the religious sphere as in the philosophical sphere. Freedom of religion and conscience is a fundamental right and this freedom must be able to be exercised for the benefit of all religions and not for the benefit of a single Church, even if this has traditionally been the established Church or "dominant religion".(...)

Freedom of religion and conscience certainly entails accepting proselytism, even where it is "not respectable". Believers and agnostic philosophers have a right to expound their beliefs, to try to get other people to share them and even to try to convert those whom they are addressing.

In *Larissis and Others v. Greece* (judgment on 24 February 1998), the three applicants, Air force officers and followers of the Pentecostal Church, were convicted by the Greek court for proselytism after trying to convert to their faith a civilian and three airmen who were their subordinates. The ECtHR confirmed its jurisprudence in regard to the right of proselytism under Article 9 in holding that the proselytizing of civilians was acceptable. However, in regards to the airmen the Court found that the conviction for proselytism was valid as the airmen were of an inferior hierarchical rank in the army.

45. The Court emphasises at the outset that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to “manifest [one’s] religion”, including the right to try to convince one’s neighbour, for example through “teaching”.(*ibid.*, p. 17, § 31).

Article 9 does not, however, protect every act motivated or inspired by a religion or belief. It does not, for example, protect improper proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church (*ibid.*, p. 21, § 48).

About the permissible limitations to proselytism

In the ECtHR's decision *Kokkinakis v. Greece* (judgment on 25 May 1993), the Court said in regards to the limits of proselytism that:

33. ...[I]n democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone's beliefs are respected.

48. First of all, a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.

Judge Pettiti said in his partly concurring opinion of *Kokkinakis v. Greece*:

Proselytism is linked to freedom of religion; a believer must be able to communicate his faith and his beliefs in the religious sphere as in the philosophical sphere. Freedom of religion and conscience is a fundamental right and this freedom must be able to be exercised for the benefit of all religions and not for the benefit of a single Church, even if this has traditionally been the established Church or "dominant religion". (...)

The only limits on the exercise of this right are those dictated by respect for the rights of others where there is an attempt to coerce the person into consenting or to use manipulative techniques.

The other types of unacceptable behaviour - such as brainwashing, breaches of labour law, endangering of public health and incitement to immorality, which are found in the practices of certain pseudo-religious groups - must be punished in positive law as ordinary criminal offences. Proselytism cannot be forbidden under cover of punishing such activities.

In the holding of *Larissis and Others v. Greece* (judgment on 24 February 1998), the Court found that the applicants were within acceptable bounds for proselytizing civilians. However, the Court found that improper proselytism had occurred when done by the military superiors towards their subordinates, as it was necessary to protect the lower ranking airmen from being put under pressure by senior personnel.

45. The Court emphasises at the outset that while religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion", including the right to try to convince one's neighbour, for example through "teaching" (ibid., p. 17, § 31).

Article 9 does not, however, protect every act motivated or inspired by a religion or belief. It does not, for example, protect improper proselytism, such as the offering of material or social advantage or the application of improper pressure with a view to gaining new members for a Church (ibid., p. 21, § 48).

50. The Court observes that it is well established that the Convention applies in principle to members of the armed forces as well as to civilians. Nevertheless, when interpreting and applying its rules in cases such as the present, it is necessary to bear in mind the particular characteristics of military life and its effects on the situation of individual members of the armed forces (see the Engel and Others v. the Netherlands judgment of 8 June 1976, Series A no. 22, p. 23, § 54, and, *mutatis mutandis*, the Grigoriades v. Greece judgment of 25 November 1997, *Reports of Judgments and Decisions* 1997-VII, pp. 2589–90, § 45).

51. In this respect, the Court notes that the hierarchical structures which are a feature of life in the armed forces may colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power. It must be emphasised that not every discussion about religion or other sensitive matters between individuals of unequal rank will fall within this category. Nonetheless, where the circumstances so require, States may be justified in taking special measures to protect the rights and freedoms of subordinate members of the armed forces.

54. In view of the above, the Court considers that the Greek authorities were in principle justified in taking some measures to protect the lower ranking airmen from improper pressure applied to them by the applicants in their desire to promulgate their religious beliefs. It notes that the measures taken were not particularly severe and were more preventative than punitive in nature, since the penalties imposed were not enforceable if the applicants did not reoffend within the following three years (see paragraphs 16, 18, 20 and 24 above). In all the circumstances of the case, it does not find that these measures were disproportionate.

59. The Court finds it of decisive significance that the civilians whom the applicants attempted to convert were not subject to pressures and constraints of the same kind as the airmen.

With regard to the Bairamis family and their neighbours, none of the evidence indicates that they felt obliged to listen to the applicant or that his behaviour towards them was improper in any way.

As for Mrs. Zounara, it was not disputed before the domestic courts that she initially sought out the applicants in an attempt to understand the reasons behind her husband's behaviour. Whilst it is clear that during the period she was in contact with them she was in a state of distress brought on by the breakdown of her marriage, the Court does not find it established that her mental condition was such that she was in need of any special protection from the evangelical activities of the applicants or that they applied improper pressure to her, as was demonstrated by the fact that she was able eventually to take the decision to sever all links with the Pentecostal Church.

Forced change of religion

In the case *Kokkinakis v. Greece* (judgment on 25 May 1993), regarding the right to try to share one's beliefs, the ECtHR held:

48. (...), a distinction has to be made between bearing Christian witness and improper proselytism. The former corresponds to true evangelism, which a report drawn up in 1956 under the auspices of the World Council of Churches describes as an essential mission and a responsibility of every Christian and every Church. The latter represents corruption or deformation of it. It may, according to the same report, take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.

Furthermore in *Kokkinakis v. Greece*, Judge Pettiti said in his partly concurring opinion:

Proselytism is linked to freedom of religion; a believer must be able to communicate his faith and his beliefs in the religious sphere as in the philosophical sphere. Freedom of religion and conscience is a fundamental right and this freedom must be able to be exercised for the benefit of all religions and not for the benefit of a single Church, even if this has traditionally been the established Church or "dominant religion".

The only limits on the exercise of this right are those dictated by respect for the rights of others where there is an attempt to coerce the person into consenting or to use manipulative techniques.

In the case *Jehovah's Witnesses of Moscow v. Russia* (judgment on 10 June 2010), concerning the dissolution of the Moscow branch of the Jehovah's Witnesses by the Russian government, the ECtHR found violations of Articles 6, 9, and 11 of the Convention. The Court found the action against the Jehovah's Witnesses was unjustified and "disproportionate to whatever legitimate aim was pursued." In regards to coercion the Court said:

110. The Court observes at the outset that the term "coercion" in its ordinary meaning implies an action directed at making an individual do something against his or her will by using force or intimidation to achieve compliance.

Deprivation of freedom for the purpose of “de-conversion”

In the ECtHR case *Riera Blume and Others V. Spain* (judgment on 14 October 1999), the six applicants (all adults) claimed that they had been falsely imprisoned (Article 5 of the Convention) for ten days by their families and the anti-sect organization *Pro Juventud* with the help of the police and the judiciary. They also claimed that during their confinement, they had been subjected to pressure, including the intervention of a psychologist and a psychiatrist that had been hired by *Pro Juventud* to force them to recant their affiliation to *Centro Esoterico de Investigaciones*, a new spiritual movement. Considering that the applicants’ detention was at the core of the complaints under consideration and having held that it was arbitrary and hence unlawful, the Court did not consider it necessary to undertake a separate examination of the case under Article 9. Therefore, the Court did not take any position about the forced attempt to make them change their religious affiliation.

28. The Court reiterates that in proclaiming the right to liberty, paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. In order to determine whether someone has been deprived of his liberty within the meaning of Article 5, the starting-point must be his concrete situation, and account must be taken of a whole range of criteria such as the type, duration and manner of implementation of the measure in question (see the following judgments: *Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22, p. 24, §§ 58-59; *Guzzardi v. Italy*, 6 November 1980, Series A no. 39, p. 33, § 92; and *Amuur v. France*, 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 848, § 42).

30. The Court concludes that the applicants’ transfer to the hotel by the Catalan police and their subsequent confinement to the hotel for ten days amounted in fact on account of the restrictions placed on the applicants, to a deprivation of liberty.

31. It remains to be ascertained whether that deprivation was compatible with Article 5 § 1. The Court reiterates that Article 5 § 1 refers essentially to national law and lays down an obligation to comply with its substantive and procedural rules. It requires, however, that any measure depriving the individual of his liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrariness (see, for example, the *Van der Leer v. the Netherlands* judgment of 21 February 1990, Series A no. 170-A, p. 12, § 22).

Sect: Is the term acceptable?

In the case *Leela Forderkreis E.V. and Others v. Germany* (judgment on 6 November 2008), the applicants were five religious or meditation associations belonging to the Osho movement formerly known as the Shree Rajneesh or Bhagwan movement in Germany. They were the subject of public debate and criticisms in the media. In response, the German government launched a large scale “information and education” campaign in which the applicant associations were characterized as “sect”, “youth sect”, “youth religion” and “psycho-sects”. They were also described as “destructive” and “pseudo-religious”, and accused of manipulating their members. The ECtHR said the use of the term “sect” was legitimate when it was done so at a material time and in the public’s interest.

100. An examination of the Government’s activity in dispute establishes further that it in no way amounted to a prohibition of the applicant associations’ freedom to manifest their religion or belief. The Court further observes that the Federal Constitutional Court, in its decision given on 26 June 2002, carefully analysed the impugned statements and prohibited the use of the adjectives “destructive” and “pseudo-religious” and the allegation that members of the movement were manipulated as infringing the principle of religious neutrality. The remaining terms, notably the naming of the applicant associations’ groups as “sects”, “youth sects” or “psycho-sects”, even if they had a pejorative note, were used at the material time quite indiscriminately for any kind of non-mainstream religion. The Court further notes that the Government undisputedly refrained from further using the term “sect” in their information campaign following the recommendation contained in the expert report on “so-called sects and psycho-cults” issued in 1998 (see paragraph 32, above). Under these circumstances, the Court considers that the Government’s statements as delimited by the Federal Constitutional Court, at least at the time they were made, did not entail overstepping the bounds of what a democratic state may regard as the public interest.

Pluralism

In the case *Hasan and Chaush v. Bulgaria* (judgment 26 October 2000), the applicant Mr Hasan, the Chief Mufti of the Bulgarian Muslim community, was replaced by the Bulgaria State authorities with a state-appointed Chief Mufti. When Mr. Hasan was re-elected by his community, the State refused to recognize him. The ECtHR held that the State's failure to remain neutral constituted a violation of his rights under Article 9. In particular, a distinction was made as to the rights of a community of worshipers and the states interference in its ability to choose its own leaders. This violates the principal of pluralism enshrined in Article 9.

62. The Court recalls that religious communities traditionally and universally exist in the form of organised structures. They abide by rules which are often seen by followers as being of a divine origin. Religious ceremonies have their meaning and sacred value for the believers if they have been conducted by ministers empowered for that purpose in compliance with these rules. The personality of the religious ministers is undoubtedly of importance to every member of the community. Participation in the life of the community is thus a manifestation of one's religion, protected by Article 9 of the Convention.

Where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11, which safeguards associative life against unjustified State interference. Seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function peacefully, free from arbitrary State intervention. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organisation of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organisational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable.

In the case of *Agga v. Greece* (judgment on 17 January 2003), the applicant Mehmet Agga, the Mufti of Xanthi as elected by his local community, was repeatedly sentenced by the Greek State to prison terms ranging between 8 and 12 months (later converted into fines). He was charged with “usurping” the title of a state official after the Greek Government implemented a new law to appoint official muftis. The ECtHR found there had been a violation of Agga's rights under Article 9 of the Convention.

56. The Court recalls that freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. The pluralism inherent in a democratic society, which has been dearly won over the centuries, depends on it. It is true that in a democratic society it may be necessary to place restrictions on freedom of religion to reconcile the interests of the various religious groups (see the Kokkinakis judgment cited above, pp. 17 and 18, §§ 31 and 33). However, any such restriction must correspond to a “pressing social need” and must be “proportionate to the legitimate aim pursued” (see, among others, the *Wingrove v. the United Kingdom* judgment of 25 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1956, § 53).

58. The Court notes in this connection that the domestic courts that convicted the applicant did not mention in their decisions any specific acts by the applicant with a view to producing

legal effects. The domestic courts convicted the applicant on the mere ground that he had issued messages of religious content and that he had signed them as the Mufti of Xanthi. Moreover, it has not been disputed that the applicant had the support of at least part of the Muslim community in Xanthi. However, in the Court's view, punishing a person for merely presenting himself as the religious leader of a group that willingly followed him can hardly be considered compatible with the demands of **religious pluralism** in a democratic society.

60. It is true that the Government argued that, in the particular circumstances of the case, the authorities had to intervene in order to avoid the creation of tension among the Muslims in Xanthi and between the Muslims and the Christians of the area as well as Greece and Turkey. Although the Court recognises that it is possible that tension is created in situations where a religious or any other community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating **pluralism**, but to ensure that the competing groups tolerate each other (see, *mutatis mutandis*, the Plattform "Arzte fur das Leben" v. Austria judgment of 21 June 1988, Series A no. 139, p. 12, § 32).

In its decision of the case, *The Moscow Branch of The Salvation Army V. Russia* (judgment on 5 January 2007), the ECtHR found that there was a violation of the applicant's rights under Article 9 and Article 11 of the Convention because the Russian government had used too much discretionary power in its decision not to re-register the Moscow Branch of The Salvation Army.

61. While in the context of Article 11 the Court has often referred to the essential role played by political parties in ensuring **pluralism** and democracy, associations formed for other purposes, including those proclaiming or teaching religion, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 92, 17 February 2004).

In the case of *Metropolitan Church of Bessarabia and Others v. Moldova* (judgment on 13 December 2001), the authorities refused to register the applicant Church and the ECtHR held that their right to freedom of religion and association had been violated.

114. The Court refers to its settled case-law to the effect that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The **pluralism** indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

Neutrality and interference of the State

In the case of *Manoussakis and Others v. Greece* (judgment on 29 August 1996), Greek courts declared Jehovah's Witnesses guilty of operating a place of worship without legal permission of the Ministry of Education and Religious Affairs. The ECtHR held there had been a violation of Article 9 of the Convention by the government.

46. The Government maintained that the power of the Minister of Education and Religious Affairs to grant or refuse the authorisation requested was not discretionary. He was under a duty to grant the authorisation if he found that the three conditions set down in Article 13 para. 2 of the Constitution were satisfied, namely that it must be in respect of a known religion, that there must be no risk of prejudicing public order or public morals and that there is no danger of proselytism.

47. The Court observes that, in reviewing the lawfulness of refusals to grant the authorisation, the Supreme Administrative Court has developed case-law limiting the Minister's power in this matter and according the local ecclesiastical authority a purely consultative role (see paragraph 26 above).

The right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate. Accordingly, the Court takes the view that the authorisation requirement under Law no. 1363/1938 and the decree of 20 May/2 June 1939 is consistent with Article 9 of the Convention (art. 9) only in so far as it is intended to allow the Minister to verify whether the formal conditions laid down in those enactments are satisfied.

51. The Court notes, nevertheless, that both the Heraklion public prosecutor's office, when it was bringing proceedings against the applicants (see paragraph 12 above), and the Heraklion Criminal Court sitting on appeal, in its judgment of 15 February 1990 (see paragraph 15 above), relied expressly on the lack of the bishop's authorisation as well as the lack of an authorization from the Minister of Education and Religious Affairs. The latter, in response to five requests made by the applicants between 25 October 1983 and 10 December 1984, replied that he was examining their file. To date, as far as the Court is aware, the applicants have not received an express decision. Moreover, at the hearing a representative of the Government himself described the Minister's conduct as unfair and attributed it to the difficulty that the latter might have had in giving legally valid reasons for an express decision refusing the authorisation or to his fear that he might provide the applicants with grounds for appealing to the Supreme Administrative Court to challenge an express administrative decision.

52. In these circumstances the Court considers that the Government cannot rely on the applicants' failure to comply with a legal formality to justify their conviction. The degree of severity of the sanction is immaterial.

53. Like the Commission, the Court is of the opinion that the impugned conviction had such a direct effect on the applicants' freedom of religion that it cannot be regarded as proportionate to the legitimate aim pursued, nor, accordingly, as necessary in a democratic society.

In the case *Hasan and Chaush v. Bulgaria* (judgment 26 October 2000) the ECtHR held that the State had failed to remain neutral in its actions and therefore constituted a violation of his rights under Article 9.

78. Nevertheless, the Court considers, like the Commission, that facts demonstrating a failure by the authorities to remain neutral in the exercise of their powers in this domain must lead to the conclusion that the State interfered with the believers' freedom to manifest their religion within the meaning of Article 9 of the Convention. It recalls that, but for very exceptional cases, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate. State action favouring one leader of a divided religious community or undertaken with the purpose of forcing the community to come together under a single leadership against its own wishes would likewise constitute an interference with freedom of religion. In democratic societies the State does not need to take measures to ensure that religious communities are brought under a unified leadership (see *Serif*, cited above, § 52).

In the case of *Metropolitan Church of Bessarabia and Others v. Moldova* (judgment on 13 December 2001), the ECtHR said:

123. (...) The Court notes first of all that the applicant church lodged a first application for recognition on 8 October 1992 to which no reply was forthcoming, and that it was only later, on 7 February 1993, that the State recognised the Metropolitan Church of Moldova. That being so, the Court finds it difficult, at least for the period preceding recognition of the Metropolitan Church of Moldova, to understand the Government's argument that the applicant church was only a schismatic group within the Metropolitan Church of Moldova, which had been recognised.

In any event, the Court observes that the State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs, and requires the State to ensure that conflicting groups tolerate each other, even where they originated in the same group. In the present case, the Court considers that by taking the view that the applicant church was not a new denomination and by making its recognition depend on the will of an ecclesiastical authority that had been recognised – the Metropolitan Church of Moldova – the Government failed to discharge their duty of neutrality and impartiality. Consequently, their argument that refusing recognition was necessary in order to uphold Moldovan law and the Moldovan Constitution must be rejected.

In its decision of the case, *The Moscow Branch of The Salvation Army v. Russia* (judgment on 5 January 2007), the ECtHR said:

59. The Court further reiterates that the right to form an association is an inherent part of the right set forth in Article 11. That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning. The way in which national legislation enshrines this freedom and its practical application by the authorities reveal the state of democracy in the country concerned. Certainly States have a right to satisfy themselves that an association's aim and activities are in conformity with the rules laid down in legislation, but they must do so in a manner compatible with their

obligations under the Convention and subject to review by the Convention institutions (see *Sidiropoulos and Others v. Greece*, judgment of 10 July 1998, *Reports of Judgments and Decisions* 1998-IV, § 40).

62. The State's power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a "pressing social need"; thus, the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Gorzelik*, cited above, §§ 94-95, with further references).

92. The Court points out that, according to its constant case-law, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush*, cited above, § 78, and *Manoussakis and Others v. Greece*, judgment of 26 September 1996, *Reports of Judgments and Decisions* 1996-IV, § 47).

In the case of *Church of Scientology Moscow v. Russia* (judgment of 24 September 2007), the applicant tried to re-register and come into compliance with "The Religions Act" eleven times over the course of six years. The applications were rejected each time with little explanation from the Justice Department. The ECtHR found a "violation of Article 11 of the convention read in light of Article 9" as the interference from the State in denying their repeated applications for registration was unjustified.

72. ...The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs.

75. The State's power to protect its institutions and citizens from associations that might jeopardize them must be used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a "pressing social need"; thus, the notion "necessary" does not have the flexibility of such expressions as "useful" or "desirable" (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, §§ 94-95, 17 February 2004, with further references).

In the decision of the case *Leela Förderkreis E.V. and Others v. Germany* (judgment on 6 November 2008), the ECtHR said:

94. The Court observes that the purpose of the Government's warning was to provide information capable of contributing to a debate in a democratic society on the matters of major public concern at the relevant time and to draw attention to the dangers emanating from groups which were commonly referred to as sects. Considering also the terms to which the decision of the Federal Constitutional court was phrased, the Court considers that the interference with the applicant associations' right was in pursuit of legitimate aims under Article 9 § 2, namely the protection of public safety and public order and the protection of the rights and freedoms of others.

96. Applying the principles established in its case-law (as summarized in *Leyla Sahin v. Turkey* ([GC], no. 44774/98), ECHR 2005-..., §§ 104-110), the Court has to weigh up the conflicting interests of the exercise of the right of the applicant associations to proper respect for their freedom of thought, conscience and religion, and the duty of the national authorities to impart to the public information on matters of general concern.

97. The Court notes in the first place that the Basic Law empowers the Government to collect and disseminate information of their own motion. In reviewing the constitutionality of this activity, the Federal Constitutional Court has developed case-law limiting the Government's power in the field. The Government in fulfilling the functions assumed by it, must take care that information is conveyed in a neutral manner when dealing with religious and philosophical convictions and is bound by the standards inherent in the proportionality principle. Even when circumscribed in this way, such information clearly cannot exclude on the part of the Government certain assessments capable of encroaching on the religious or philosophical sphere.

In the decision *Jehovah's Witnesses of Moscow v. Russia* (judgment on 10 June 2010), the European Court of Human Rights said:

99. Indeed, the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs (see *Metropolitan Church of Bessarabia*, cited above, §§ 118 and 123, and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI).

About the “defense of consumers of beliefs” and the assessments of beliefs

In the case of *Manoussakis and Others v. Greece* (judgment on 29 August 1996):

92. The Court points out that, according to its constant case-law, the right to freedom of religion as guaranteed under the Convention excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate (see *Hasan and Chaush*, cited above, § 78, and *Manoussakis and Others v. Greece*, judgment of 26 September 1996, Reports of Judgments and Decisions 1996-IV, § 47).

In its decision in the case of *Metropolitan Church of Bessarabia and Others v. Moldova* (judgment on 13 December 2001), the ECtHR held:

123. (...) The Court notes first of all that the applicant church lodged a first application for recognition on 8 October 1992 to which no reply was forthcoming, and that it was only later, on 7 February 1993, that the State recognised the Metropolitan Church of Moldova. That being so, the Court finds it difficult, at least for the period preceding recognition of the Metropolitan Church of Moldova, to understand the Government's argument that the applicant church was only a schismatic group within the Metropolitan Church of Moldova, which had been recognised.

In any event, the Court observes that the State's duty of neutrality and impartiality, as defined in its case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs, and requires the State to ensure that conflicting groups tolerate each other, even where they originated in the same group. In the present case, the Court considers that by taking the view that the applicant church was not a new denomination and by making its recognition depend on the will of an ecclesiastical authority that had been recognised – the Metropolitan Church of Moldova – the Government failed to discharge their duty of neutrality and impartiality. Consequently, their argument that refusing recognition was necessary in order to uphold Moldovan law and the Moldovan Constitution must be rejected.

In the decision of the case *Church of Scientology Moscow v. Russia* (judgment of 24 September 2007), the ECtHR took the following position:

72. ...The State's duty of neutrality and impartiality, as defined in the Court's case-law, is incompatible with any power on the State's part to assess the legitimacy of religious beliefs.

In the decision of the case *Leela Förderkreis E.V. and Others v. Germany*, the ECtHR said:

94. The Court observes that the purpose of the Government's warning was to provide information capable of contributing to a debate in a democratic society on the matters of major public concern at the relevant time and to draw attention to the dangers emanating from groups which were commonly referred to as sects. Considering also the terms to which the decision of the Federal Constitutional court was phrased, the Court considers that the interference with the applicant associations' right was in pursuit of legitimate aims under

Article 9 § 2, namely the protection of public safety and public order and the protection of the rights and freedoms of others.

97. The Court notes in the first place that the Basic Law empowers the Government to collect and disseminate information of their own motion. In reviewing the constitutionality of this activity, the Federal Constitutional Court has developed case-law limiting the Government's power in the field. The Government in fulfilling the functions assumed by it, must take care that information is conveyed in a neutral manner when dealing with religious and philosophical convictions and is bound by the standards inherent in the proportionality principal. Even when circumscribed in this way, **such information clearly cannot exclude on the part of the Government certain assessments capable of encroaching on the religious or philosophical sphere.**

Brainwashing and mind control

In the case *Jehovah's Witnesses of Moscow v. Russia* (judgment on 10 June 2010), the ECtHR took the following position:

128. The Russian courts also held that the applicant community breached the right of citizens to freedom of conscience by subjecting them to psychological pressure, "mind control" techniques and totalitarian discipline.

129. Leaving aside the fact that there is **no generally accepted and scientific definition of what constitutes "mind control"** and that no definition of that term was given in the domestic judgments, the Court finds it remarkable that the courts did not cite the name of a single individual whose right to freedom of conscience had allegedly been violated by means of those techniques. Nor is it apparent that the prosecution experts had interviewed anyone who had been coerced in that way into joining the community. On the contrary, the individual applicants and other members of the applicant community testified before the court that they had made a voluntary and conscious choice of their religion and, having accepted the faith of Jehovah's Witnesses, followed its doctrines of their own free will.

Sects allegedly destroying families?

In the case *Jehovah's Witnesses of Moscow v. Russia* (judgment on 10 June 2010), the ECtHR took the following position:

111. It further appears from the testimonies by witnesses that what was taken by the Russian courts to constitute “coercion into destroying the family” was the frustration that non-Witness family members experienced as a consequence of disagreements over the manner in which their Witness relatives decided to organise their lives in accordance with the religious precepts, and their increasing isolation resulting from having been left outside the life of the community to which their Witness relatives adhered. It is a known fact that a religious way of life requires from its followers both abidance by religious rules and self-dedication to religious work that can take up a significant portion of the believer’s time and sometimes assume such extreme forms as monasticism, which is common to many Christian denominations and, to a lesser extent, also to Buddhism and Hinduism. **Nevertheless, as long as self-dedication to religious matters is the product of the believer’s independent and free decision and however unhappy his or her family members may be about that decision**, the ensuing estrangement cannot be taken to mean that the religion caused the break-up in the family. Quite often, the opposite is true: **it is the resistance and unwillingness of non-religious family members to accept and to respect their religious relative’s freedom to manifest and practise his or her religion that is the source of conflict**. It is true that friction often exists in marriages where the spouses belong to different religious denominations or one of the spouses is a non-believer. However, this situation is common to all mixed-belief marriages and Jehovah’s Witnesses are no exception. [emphasis added]

Parental rights on the religious education of their children Including in the case of divorce

In the case of *Kjeldsen, Busk Madsen and Pedersen, v. Denmark* (judgment on 5 November 1976), applicants were Christian parents who claimed that the new sex education curriculum implemented in state schools was contrary to their beliefs. While the ECtHR held that any teaching should respect parents' religious and moral convictions, it found that, in this case, sex education in itself was not a violation of Article 2 of Protocol No 1 (right to education).

49. The applicants invoke Article 2 of Protocol No. 1 (P1-2) which provides:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

51. The Government pleaded in the alternative that the second sentence of Article 2 (P1-2), assuming that it governed even the State schools where attendance is not obligatory, implies solely the right for parents to have their children exempted from classes offering "religious instruction of a denominational character".

The Court does not share this view. Article 2 (P1-2), which applies to each of the State's functions in relation to education and to teaching, does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme.

52. As is shown by its very structure, Article 2 (P1-2) constitutes a whole that is dominated by its first sentence. By binding themselves not to "deny the right to education", the Contracting States guarantee to anyone within their jurisdiction "a right of access to educational institutions existing at a given time" and "the possibility of drawing", by "official recognition of the studies which he has completed", "profit from the education received" (judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, pp. 30-32, paras. 3-5).

The right set out in the second sentence of Article 2 (P1-2) is an adjunct of this fundamental right to education (paragraph 50 above). It is in the discharge of a natural duty towards their children - parents being primarily responsible for the "education and teaching" of their children - that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education.

On the other hand, "the provisions of the Convention and Protocol must be read as a whole" (above-mentioned judgment of 23 July 1968, *ibid.*, p. 30, para. 1). Accordingly, the two sentences of Article 2 (P1-2) must be read not only in the light of each other but also, in particular, of Articles 8, 9 and 10 (art. 8, art. 9, art. 10) of the Convention which proclaim the right of everyone, including parents and children, "to respect for his private and family life", to "freedom of thought, conscience and religion", and to "freedom ... to receive and impart information and ideas".

53. It follows in the first place from the preceding paragraph that the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era. In particular, the second sentence of Article 2 of the Protocol (P1-2) does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalised teaching would run the risk of proving impracticable. In fact, it seems very difficult for many subjects taught at school not to have, to a greater or lesser extent, some philosophical complexion or implications. The same is true of religious affinities if one remembers the existence of religions forming a very broad dogmatic and moral entity which has or may have answers to every question of a philosophical, cosmological or moral nature.

The second sentence of Article 2 (P1-2) implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions. That is the limit that must not be exceeded.

Such an interpretation is consistent at one and the same time with the first sentence of Article 2 of the Protocol (P1-2), with Articles 8 to 10 (art. 8, art. 9, art. 10) of the Convention and with the general spirit of the Convention itself, an instrument designed to maintain and promote the ideals and values of a democratic society.

In the case of *Hoffman v. Austria* (judgment on 26 May 1993), the applicant, a Jehovah's Witness, and her husband, a Roman Catholic, were involved in a custody battle over their two children. The husband did not want his children to be brought in the Jehovah's Witnesses faith arguing that it would be permanently damaging to the children for various reasons. The mother appealed the Supreme Court's order that the children live with their father, claiming that there was a violation of her rights under Article 8 in conjunction with Article 14, but her appeal was rejected. The position of the ECtHR was:

“The Court

holds by five votes to four that there has been a violation of Article 8 (art. 8) of the Convention” (right to respect for family life) “in conjunction with Article 14” (discrimination on the ground of religion)

“holds unanimously that no separate issue arises under Article 9 (art. 9), either alone or in conjunction with Article 14”

“holds unanimously that it is not necessary to rule on the allegation of a violation of Article 2 of Protocol No 1” (right to ensure the education of her children in conformity with her own religious convictions).

33. This Court does not deny that, depending on the circumstances of the case, the factors relied on by the Austrian Supreme Court in support of its decision may in themselves be capable of tipping the scales in favour of one parent rather than the other. However, the

Supreme Court also introduced a new element, namely the Federal Act on the Religious Education of Children (see paragraphs 15 and 23 above). This factor was clearly decisive for the Supreme Court.

The European Court therefore accepts that there has been a difference in treatment and that that difference was on the ground of religion; this conclusion is supported by the tone and phrasing of the Supreme Court's considerations regarding the practical consequences of the applicant's religion.

Such a difference in treatment is discriminatory in the absence of an "objective and reasonable justification", that is, if it is not justified by a "legitimate aim" and if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, amongst other authorities, the *Darby v. Sweden* judgment of 23 October 1990, Series A no. 187, p. 12, para. 31).

36. In so far as the Austrian Supreme Court did not rely solely on the Federal Act on the Religious Education of Children, it weighed the facts differently from the courts below, whose reasoning was moreover supported by psychological expert opinion. Notwithstanding any possible arguments to the contrary, a distinction based essentially on a difference in religion alone is not acceptable.

The Court therefore cannot find that a reasonable relationship of proportionality existed between the means employed and the aim pursued; there has accordingly been a violation of Article 8 taken in conjunction with Article 14.

In the decision *Folgero and Others v. Norway* of 29 June 2007, the applicants, members of the Norwegian Humanist Association, were parents of elementary school children who objected to the new curriculum of Norwegian primary schools teaching the subjects of Christianity, religion and philosophy all in one class. The ECtHR found a violation of Article 2 of Protocol No. 1 (right to education), holding in particular that the curriculum gave preponderant weight to Christianity.

54. The Court, leaving aside the fact that the children's complaints under Article 9 of the Convention were declared inadmissible on 26 October 2004, considers that the parents' complain falls most suitably to be examined under Article 2 of Protocol No. 1, as the *lex specialis* in the area of education, which reads:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

84. (...)

(c) Article 2 of Protocol No. 1 does not permit a distinction to be drawn between religious instruction and other subjects. It enjoins the State to respect parents' convictions, be they religious or philosophical, throughout the entire State education programme (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, p.25, § 51). That duty is broad in its extent as it applies not only to the content of education and the manner of its provision but also to the performance of all the “functions” assumed by the State. The verb “respect” means

more than “acknowledge” or “take into account”. In addition to a primarily negative undertaking, it implies some positive obligation on the part of the State. The term “conviction”, taken on its own, is not synonymous with the words “opinions” and “ideas”. It denotes views that attain a certain level of cogency, seriousness, cohesion and importance (see *Valsamis*, cited above, pp. 2323-24, §§ 25 and 27, and *Campbell and Cosans*, cited above, pp.16-17, §§ 36-37).

(e) It is in the discharge of a natural duty toward their children – parents being primarily responsible for the “education and teaching” of their children – that parents may require the State to respect their religious and philosophical convictions. Their right thus corresponds to a responsibility closely linked to the enjoyment and the exercise of the right to education (ibidi).

(f) Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position (see *Valsamis*, cited above, p.23, 24, § 27).

(g) However, the setting and planning of the curriculum fall in principle within the competence of the Contracting States. This mainly involves questions of expediency on which it is not for the Court to rule and whose solution may legitimately vary according to the country and the era (see *Valsamis*, cited above, p. 2324, § 28). In particular the second sentence of Article 2 of Protocol No. 1 does not prevent States from imparting through teaching or education information or knowledge of a directly or indirectly religious or philosophical kind. It does not even permit parents to object to the integration of such teaching or education in the school curriculum, for otherwise all institutionalized teaching would run the risk of proving impracticable (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, p.26, § 53).

(h) The second sentence of Article 2 of Protocol No. 1 implies on the other hand that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents’ religious and philosophical convictions. That is the limit that must not be exceeded (ibid).

(i) ...Certainly, abuses can occur as to the manner in which the provisions in force are applied by a given school or teacher and the competent authorities have a duty to take the utmost care to see to it that parents’ religious and philosophical convictions are not disregarded at this level by carelessness, lack of judgment or misplaced proselytism (see *Kjeldsen, Busk Madsen and Pedersen*, cited above, pp.27-28, § 54).

89. ...Moreover, it should be noted that, as follows from the statement of principle in paragraph 84(g) above, the second sentence of Article 2 of Protocol No. 1 does not embody any right for parents that their children be kept ignorant about religion and philosophy in their education.

In the case *Jehovah's Witnesses of Moscow v. Russia* (judgment on 10 June 2010), the ECtHR said:

125. The Court reiterates that Article 2 of Protocol No. 1 requires the State to respect the rights of parents to ensure education and teaching in conformity with their own religious convictions and that Article 5 of Protocol No. 7 establishes that spouses enjoy equality of rights in their relations with their children. The Russian Religions Act does not make religious education of children conditional on the existence of an agreement between the parents. Both parents, even in a situation where they adhere to differing doctrines or beliefs, have the same right to raise their children in accordance with their religious or non-religious convictions and any disagreements between them in relation to the necessity and extent of the children's participation in religious practices and education are private disputes that are to be resolved according to the procedure established in domestic family law.

Responsibility of the State

In the case *Kuznetsov and Others v. Russia* (judgment on 11 April 2007), the ECtHR found there was a violation of the applicants rights under Article 9 of the Convention when their Jehovah's Witness meeting was abruptly ended by the Commissioner, along with two uniformed policemen and another plain clothed man, without just cause.

61. The Court further recalls that the responsibility of a State under the Convention may arise for acts of all its organs, agents and servants, even where their acts are performed without express authorization and even outside or against instructions (see *Wille v. Liechtenstein*, no. 28396/95, Commission decision of 27 May 1997, and *Ireland v. the United Kingdom*, Commission decision of 27 May 1997, and *Ireland v. the United Kingdom*, Commission Report of 25 January 1976, Yearbook 19, p. 512 at 758). In the present case the Government did not contest the fact that the Commissioner and the accompanying police inspectors had acted, or pretended to act, in their official capacity. The police officers wore uniforms and were perceived by the applicants as law-enforcement officials. It follows that their actions engaged the State's responsibility.

62. In sum, the Court finds that there has been interference with the applicants' right to freedom of religion in that...the State officials caused their religious assembly to be terminated ahead of time.