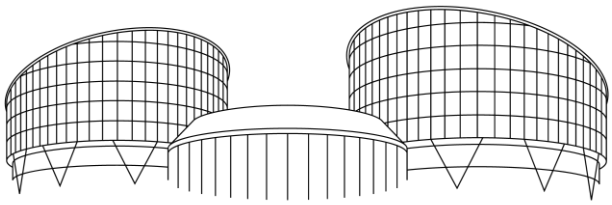

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF JEHOVAS ZEUGEN IN ÖSTERREICH v. AUSTRIA

(Application no. 27540/05)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

25/12/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Jehovas Zeugen in Österreich v. Austria,

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

Nina Vajić, *President,*
Peer Lorenzen,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 4 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 27540/05) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Jehovas Zeugen, a religious community established in Austria under the Religious Communities Act 1998 ("the applicant community"), on 20 July 2005.

2. The applicant community was represented by Mr R. Kohlhofer, a lawyer practising in Vienna. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for European and International Affairs.

3. The applicant community alleged, in particular, that it had been discriminated against in the exercise of its rights under Article 9 of the Convention and Article 1 of Protocol No. 1 to the Convention, as it had been subject to laws concerning the employment of foreigners and tax from which recognised religious societies had been exempted.

4. On 19 January 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant community was at the time of the events complained of a registered religious community established in Austria under the Religious Communities Act 1998. Since 7 May 2009 it has had the status of a religious society, a status conferred by statute.

A. Proceedings for a declaratory decision under the Employment of Aliens Act

6. In 2002 the applicant community wished to employ a couple, G.V. and V.T., who were both ministers belonging to the Religious Order of Jehovah's Witnesses (*Orden der Sondervollzeitdiener der Zeugen Jehovas*) and who were Tagalog speaking citizens of the Philippines, for the benefit of its Tagalog speaking members in Austria.

7. In order to obtain a residence permit (*Aufenthaltsgenehmigung*) or a settlement permit (*Niederlassungsbewilligung*), the couple had to have a work permit or be able to show that they were not subject to the provisions of the Employment of Aliens Act ("the EA Act"). On 16 April 2002 the applicant community therefore applied to the *Währinger Gürtel* Labour Market Service (*Arbeitsmarktservice*) in Vienna for a declaratory decision that the pastoral work the couple would exercise was exempt from the provisions of the EA Act. It submitted that, since the entry into force of the Religious Communities Act 1998, section 1(2) of the EA Act had to be understood as referring to all persons doing pastoral work for religious communities and not only as referring to ministers of recognised churches and religious societies. In any event, it submitted that the tasks which would be assigned to G.V. and V.T. would not constitute employment within the terms of the EA Act.

8. On 1 July 2002 the Labour Market Service dismissed the application and, on 21 October 2002, an appeal panel of the Labour Market Service confirmed the decision. Both authorities found that only ministers performing pastoral duties belonging to a recognised religious society were exempt from the provisions of the EA Act, but not members of a registered religious community, which was the status of the applicant community. In addition, the boards held that pastoral work had the typical features of employment within the meaning of the EA Act, as it was exercised within a hierarchical structure, subject to the instructions of a superior and involved economic dependence.

9. On 3 December 2002 the applicant community filed a complaint with the Constitutional Court, in which it argued that the decisions of the

administrative authorities had violated its rights under Article 9 read alone and in conjunction with Article 14 of the Convention.

10. On 10 October 2003 the Constitutional Court dismissed the complaint. It found that any employment contracts the applicant community concluded with aliens concerning pastoral work as ministers would be subject to the provisions of the EA Act, because the exemption in section 1(2) of the EA Act only applied to churches or religious societies recognised by law.

11. The Constitutional Court held that even though the pastoral work of ministers clearly fell within the scope of protection of Article 9, which also comprised the conclusion of employment contracts by a religious group with persons engaging in such activities, and even though labour-market regulations, in particular the employment of aliens, might constitute an interference with the rights protected by Article 9, such interference was justified under paragraph 2 of Article 9. The difference between the employment of foreigners as ministers performing pastoral work by a religious society and employment by a registered religious community made by the EA Act was in conformity with the Federal Constitution. Through recognition as a religious society, that religious group acquired a legal status, more closely defined in the relevant Act, which would allow it to participate in the shaping of public life in the State (*an der Gestaltung des staatlichen öffentlichen Lebens teilzunehmen*). As this status could, and indeed had to, be granted to all churches and religious societies provided the conditions established by law were met, the distinction between recognised religious societies and other communities did not give rise to doubts as to its constitutionality.

12. On 15 December 2004 the Administrative Court dismissed the complaint, which had been transferred to it. The applicant community argued that section 1(1) of the EA Act was discriminatory. However, the Administrative Court found that this matter had been exhaustively examined by the Constitutional Court in its above decision. This decision was served on the applicant community's lawyer on 20 January 2005.

B. The proceedings for inheritance and gift tax

13. In October 1999 the applicant community received a donation.

On 2 May 2001 the Vienna Tax Office for Fees and Transaction Taxes (*Finanzamt für Gebühren und Verkehrssteuern*) ordered the applicant community to pay inheritance and gift tax in the amount of 14% on the sum received. It found that the applicant community could not rely on section 15(1)(14) of the Inheritance and Gift Tax Act 1955 ("the 1955 Act"), which provided an exemption from tax liability for certain donations to religious institutions, because this tax privilege was reserved to churches and religious societies recognised by law.

14. On 7 May 2001 the applicant community appealed. It argued that, as a result of the entry into force of the Religious Communities Act on 10 January 1998, the exemption from tax liability under section 15(1)(14) of the 1955 Act also extended to registered religious communities such as itself.

15. On 25 January 2005 the Independent Finance Panel (*Unabhängiger Finanzsenat*) dismissed the appeal. It noted that section 15(1)(14) of the 1955 Act clearly referred to religious societies and there was no doubt that this did not mean a registered religious community. Referring to the case-law of the Constitutional Court, in particular its decision of 10 October 2003 (see above), it found that the difference in treatment between religious societies and religious communities was in accordance with the Federal Constitution. Further, none of the other exemption clauses under this provision applied to the applicant community.

16. On 3 March 2005 the applicant community filed a complaint with the Constitutional Court, arguing that the impugned decision had violated its right to equal treatment, right to the peaceful enjoyment of its property and right not to be discriminated against on the basis of religion.

17. On 26 September 2005 the Constitutional Court declined to deal with the complaint for a lack of prospects of success, considering that insofar as the applicant community's complaints concerned matters of constitutional law they had been sufficiently dealt with in its previous case-law.

18. On 5 December 2005, following a request by the applicant community, it remitted the case to the Administrative Court. On 13 January 2006 the applicant community supplemented its complaint before the Administrative Court.

19. On 27 April 2006 the Administrative Court dismissed the complaint as unfounded. It found that the applicant community was not a religious society and could not, therefore, rely on a privilege reserved to such an institution. Moreover, it was also not a charitable institution (*gemeinnützige Körperschaft*) within the meaning of the 1955 Act, as charitable goals were only those which consisted of promoting the interests of the general public (*nur solche Zwecke sind durch deren Erfüllung die Allgemeinheit gefördert wird*). As the applicant community, according to its constitutional documents, essentially addressed its activities to its members alone, it addressed itself to a more restricted group than the general public.

II. RELEVANT DOMESTIC LAW

20. Section 1(2) of the Employment of Aliens Act provides, insofar as relevant, as follows:

> "The provisions of this federal act do not apply to:

...

(d) aliens in respect of pastoral work they exercise as part of a church or religious society recognised by law; ..."

21. Section 15(1) of the Inheritance and Gift Tax Act 1955, which was still in force at the relevant time, reads, insofar as relevant, as follows:

"[The following] are also exempt from taxation:

...

(14) donations between living persons of movable objects or sums of money to

- domestic legal persons which pursue exclusively charitable, benevolent or ecclesiastical purposes;

- domestic churches or religious societies recognised by law;

- political parties."

22. For a detailed description of the legal situation concerning religious societies and religious communities in Austria, see the case of *Religions-gemeinschaft der Zeugen Jehovas and Others v. Austria*, no. 40825/98, §§ 37-55, 31 July 2008.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 9 AS REGARDS THE PROCEEDINGS UNDER THE EMPLOYMENT OF ALIENS ACT

23. The applicant community complained under Article 14 read in conjunction with Article 9 of the Convention that the domestic authorities' refusal to issue a declaratory decision under the Employment of Aliens Act ("the EA Act") that the employment of G.V. and V.T. by the applicant community was exempt from the provisions of that Act on the grounds that the applicant community was not a recognised religious society had violated its rights under these provisions.

Article 14 of the Convention reads as follows:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 9 of the Convention reads as follows:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

24. The Government contested that argument.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

26. The applicant community argued that if the relevant domestic legislation provided for an exemption from its provisions governing the employment of aliens it should do so without any discrimination. The fact that the applicant community had been subject to this regime if it wished to employ ministers who were not Austrian citizens in order to care for the specific needs of certain groups of its believers, whereas other religious communities which had the status of religious societies had not been subject to the regime, had constituted discrimination on account of religion which was prohibited by the Convention.

27. The Government submitted that the difference in treatment under the EA Act as regards the pastoral work of religious communities recognised as religious societies and other religious communities was reasonably and objectively justified as, in the light of the regulatory intention of the EA Act, an abuse of the exemption for pastoral work could not be easily excluded. The status of a recognised religious society, as a requirement for an exemption from the scope of application of the EA Act, was thus a necessary instrument for the control of the employment of foreigners and the labour market.

28. As the Court has consistently held, Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, as it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts in issue fall within the ambit of one or more of those provisions (see, among many other authorities, *Van Raalte v. the Netherlands*, 21 February 1997, § 33, *Reports of Judgments and Decisions* 1997-I, and *Camp and Bourimi v. the Netherlands*, no. 28369/95, § 34, ECHR 2000-X).

29. Further, the freedom of religion as guaranteed by Article 9 entails, *inter alia*, the freedom to hold religious beliefs and to practise a religion. While religious freedom is primarily a matter of individual conscience, it also implies the freedom to manifest one's religion, alone and in private, or in community with others, in public and within the circle of those whose faith one shares. Article 9 lists the various forms which manifestation of one's religion or belief may take, namely worship, teaching, practice and observance (see, as a recent authority, *Leyla Şahin v. Turkey* [GC], no. 44774/98, §§ 104-5, ECHR 2005-XI, with further references).

30. In the Court's view, the privilege in issue – namely the exemption granted to religious societies from the provisions of the EA Act as regards the employment of aliens in respect of pastoral activities – shows the significance which the legislature attached to the specific function these representatives of religious groups fulfil within such groups. Observing that religious communities traditionally exist in the form of organised structures, the Court has repeatedly found that 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 (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 62, ECHR 2000-XI).

31. As the privilege in issue is intended to ensure the proper functioning of religious groups as communities of individuals, and thus promotes a goal protected by Article 9 of the Convention, the exemption from the provisions governing the employment of aliens granted to specific representatives of religious societies comes within the scope of that provision. It follows that Article 14 read in conjunction with Article 9 is applicable in the instant case.

32. According to the Court's case-law, a difference in treatment is discriminatory for the purposes of Article 14 of the Convention if it "has no objective and reasonable justification": that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised". The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (see, among other authorities, *Willi v. United Kingdom*, no. 36042/97, § 39, ECHR 2002-IV).

33. In the instant case, the Court observes that the exemption from the scope of application of the EA Act was, according to section 1(2)(d) of that Act, exclusively linked to the employment of aliens for pastoral work as part of a church or religious society recognised by law. However, at the time it applied for a declaratory decision, the applicant community was a registered religious community and not a religious society, and there was thus no room for it to be granted an exemption under the aforementioned legislation.

34. The Court has to examine whether the difference in treatment between the applicant community, which was not a religious society within the meaning of the Recognition Act 1874, and a religious body which was such a society had an objective and reasonable justification.

35. In the cases of *Lang v. Austria* (no. 28648/03, 12 March 2009), *Gütl v. Austria* (no. 49686/99, 12 March 2009) and *Löffelman v. Austria* (no. 42967/98, 12 March 2009) the Court had to examine whether the authorities' refusal to exempt the applicants from alternative civilian service in lieu of compulsory military service was in breach of Article 14 of the Convention read in conjunction with Article 9. The applicants had complained that the difference in treatment between them as ministers of the Jehovas Witnesses, who therefore did not belong to a recognised religious society, and others who fulfilled a comparable function within a recognised religious society was unjustified. In the case of *Lang* (cited above, §§ 29-31) the Court held as follows:

> "29. The Court has to examine whether the difference in treatment between the applicant, who does not belong to a religious group which is a religious society within the meaning of the 1874 Recognition Act, and a person who belongs to such a group has an objective and reasonable justification.
>
> 30. In doing so the Court refers to the case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria* (no. 40825/98, 31 July 2008), in which the first applicant, the Jehovah's Witnesses in Austria, had been granted legal personality as a registered religious community, a private-law entity, but wished to become a religious society under the 1874 Recognition Act – that is, a public-law entity. The Court observed that under Austrian law, religious societies enjoyed privileged treatment in many areas, including, *inter alia*, exemption from military service and civilian service. Given the number of these privileges and their nature, the advantage obtained by religious societies was substantial. In view of these privileges accorded to religious societies, the obligation under Article 9 of the Convention incumbent on the State's authorities to remain neutral in the exercise of their powers in this domain required therefore that if a State set up a framework for conferring legal personality on religious groups to which a specific status was linked, all religious groups which so wished must have a fair opportunity to apply for this status and the criteria established must be applied in a non-discriminatory manner (ibid., § 92). The Court found, however, that in the case of the Jehovah's Witnesses one of the criteria for acceding to the privileged status of a religious society had been applied in an arbitrary manner and concluded that the difference in treatment was not based on any "objective and reasonable justification". Accordingly, it found a violation of Article 14 of the Convention taken in conjunction with Article 9 (ibid., § 99).
>
> 31. In the present case, the refusal of exemption from military and alternative civilian service was likewise based on the ground that the applicant was not a member of a religious society within the meaning of the 1874 Recognition Act. Given its above-mentioned findings in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others*, the Court considers that in the present case the very same criterion – whether or not a person applying for exemption from military service is a member of a religious group which is constituted as a religious society – cannot be understood differently and its application must inevitably result in discrimination prohibited by the Convention."

36. The Court considers that in the present case the refusal of the authorities to grant an exemption from the provisions of the EA Act was also based on the fact that the applicant community was not a recognised religious society. Given the Court's findings in the cases of *Lang* (cited above, §§ 29-31), *Gütl* (cited above, §§ 29-31) and *Löffelmann* (cited above, §§ 29-31), based on the case of *Religionsgemeinschaft der Zeugen Jehovas and Others*, the same criterion identified in those cases – whether or not the applicant community was a recognised religious society – cannot be understood differently in the present case and its application inevitably resulted in discrimination prohibited by the Convention.

37. The Court therefore concludes that section 1(2)(d) of the EA Act, which provides for exemptions from the scope of application of that Act in respect of the employment of aliens for pastoral work as part of a recognised religious society, is discriminatory and that the applicant community was discriminated against on the basis of religion as a result of the application of this provision. There has therefore been a violation of Article 14 taken in conjunction with Article 9 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION AS REGARDS THE PROCEEDINGS UNDER THE EMPLOYMENT OF ALIENS ACT

38. The applicant community also relied on Article 9 of the Convention taken alone in complaining of the refusal of the Labour Market Service to issue a declaratory decision confirming its exemption from the provisions of the EA Act, in contrast to religious communities recognised as religious societies.

39. In the circumstances of the present case, the Court considers that the substance of this complaint has been sufficiently taken into account in its assessment above that led to the finding of a violation of Article 14 read in conjunction with Article 9 of the Convention. It follows that, whereas the complaint must be declared admissible, there is no cause for separate examination of the same facts from the standpoint of Article 9 of the Convention alone.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 1 PROTOCOL No. 1 AS REGARDS THE PROCEEDINGS UNDER THE INHERITANCE AND GIFT TAX ACT

40. The applicant community complained that the fact that it had not been exempted from liability to inheritance and gift tax, unlike religious communities recognised as religious societies, constituted discrimination on

the basis of religion, prohibited by Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

42. The applicant community argued that there had been no reasonable justification for the difference in treatment as regards inheritance and gift tax between a recognised religious society, which had been exempt from tax, and a registered religious community, which had not. That difference in treatment had been in clear violation of Article 14 read in conjunction with Article 1 Protocol No. 1, and it was irrelevant that inheritance and gift tax had ceased to be levied from 1 August 2008, as the exemption of religious societies was still part of the law and there had been a substantial amount of public debate on the reintroduction of this tax.

43. The Government submitted that the basic provisions of the Inheritance and Gift Tax Act 1955 (the "1955 Act") had been quashed by the Constitutional Court. As a result, the difference between religious societies and other religious communities had lost its practical significance, as inheritance and gift tax had ceased to be collected after 31 July 2008. In any event, the applicant community had been recognised as a religious society on 7 May 2009 and now enjoyed all of the privileges linked to that status.

44. The Court observes that in 2001 the Vienna Tax Office ordered the applicant community to pay inheritance and gift tax in respect of a donation it had received in 1999, as the tax office had found that the applicant community could not rely on section 15(1) of the 1955 Act, which provided for an exemption from tax liability for certain donations to religious institutions, because this tax exemption was reserved for churches and

religious societies recognised by law. These findings were confirmed in subsequent appeal proceedings.

45. The Court must therefore examine whether the difference in treatment under Austrian tax law at the time between the applicant community, as a registered religious community which was not entitled to the tax exemption, and a religious society had an objective and reasonable justification.

46. As regards the applicability of Article 14 of the Convention to the inheritance and gift tax proceedings, the Court finds that Article 1 of Protocol No. 1, second paragraph, establishes that the duty to pay tax falls within its field of application. Accordingly, Article 14 is also applicable (see, *Darby v. Sweden*, 23 October 1990, § 30, Series A no. 187).

47. As regards compliance with Article 14, the Court observes that the Government has not given any reason justifying the difference in treatment regarding the liability to inheritance and gift tax between the applicant community and religious communities recognised as religious societies and merely indicated that inheritance and gift tax had ceased to be collected after 31 July 2008.

48. The Court observes further that the refusal to grant an exemption from inheritance and gift tax was based on the grounds that the applicant community was not a recognised religious society. It finds that, also in this respect, the same criterion used in the previous cases examined by the Court cited in paragraph 35 above – whether or not the applicant community was a recognised religious society – cannot be understood differently in the present case and its application inevitably resulted in discrimination prohibited by the Convention.

49. The Court therefore concludes that section 15(1) of the 1955 Act, as applicable at the time, which provided for exemptions from taxation of donations to religious societies recognised by law, was discriminatory and that the applicant community was discriminated against on the basis of religion as a result of the application of this provision. There has therefore been a violation of Article 14 taken in conjunction with Article 1 Protocol No. 1.

IV. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION TAKEN ALONE AND IN COJUNCTION WITH ARTICLE 14 AS REGARDS THE PROCEEDINGS UNDER THE INHERITANCE AND GIFT TAX ACT

50. The applicant community also relied on Article 9 of the Convention alone and in conjunction with Article 14 of the Convention in complaining of the refusal of the tax authorities to apply the exemption from inheritance and gift tax granted under section 15(1) of the 1955 Act, in contrast to religious communities recognised as religious societies.

51. The Court considers that – although admissible – in view of its findings under Article 14 of the Convention read in conjunction with Article 1 Protocol No. 1, there is no need to also examine the complaint from the point of view of Article 9 read alone and in conjunction with Article 14 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

53. The applicant community claimed 15,000 euros (EUR) in respect of non-pecuniary damage. It submitted that any award should compensate the hardship suffered by its Tagalog speaking members, who had been deprived of a minister speaking their language. In respect of pecuniary damage it claimed the amount of EUR 1,002.16 plus statutory interest, which corresponded to the inheritance and gift tax it had had to pay.

54. The Government considered that the finding of a violation in itself would constitute sufficient and appropriate redress in the present case. They submitted that in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others* the Court had granted the applicants compensation in the amount of EUR 10,000 for damage resulting from the violation of their rights to the free exercise of their religion under Article 9 in conjunction with Article 14 of the Convention (cited above, § 129). In any event, they submitted that the amount of non-pecuniary damage claimed was excessive and the sum claimed as pecuniary damage would in any event be refunded to the applicant community following a judgment of the Constitutional Court of 2 July 2009 (B 1397/08), in which it had found, in a subsequent case brought by the applicant community, that the levying of inheritance and gift tax on the applicant community was unconstitutional.

55. As regards the applicant community's claim for pecuniary damage, the Court observes that the applicant community has not disputed the Government's contention that, following the judgment of the Constitutional Court of 2 July 2009 – albeit relations to different proceedings – it is entitled to a refund of the inheritance and gift tax paid. The Court therefore considers that no award can be made under this head.

56. As regards the claim for non-pecuniary damage, the Court observes that in the case of *Religionsgemeinschaft der Zeugen Jehovas and Others* it found as follows:

> "129. As to non-pecuniary damage, the Court considers that the violations it has found must undoubtedly have caused the applicants some prejudice under this head. In assessing the amount, the Court takes into account the fact that the applicants have not shown that at any instant they were actually hindered in pursuing their religious aims. Accordingly the Court awards, on an equitable basis, EUR 10,000 under this head."

57. Given that the present case is narrower in scope than that of the above-quoted case, which involved a broader complaint under Article 14 read in conjunction with Article 9 of the Convention about discrimination in the State's refusal to grant the status of a recognised religious society, the Court considers that in these circumstances the finding of a violation constitutes sufficient reparation in respect of any non-pecuniary damage suffered.

B. Costs and expenses

58. The applicant community also claimed EUR 7,682.40 plus value-added tax (VAT) for costs and expenses incurred before the domestic courts and EUR 5,152.05 plus VAT for those incurred before the Court. The claim for costs incurred at the domestic level related only to the proceedings before the Constitutional Court and the Administrative Court.

59. The Government considered the amount claimed by the applicant community excessive and submitted that the submissions before the Constitutional Court and the Court were largely identical, which ought to lead to a reduced award.

60. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers the amounts claimed by the applicant community reasonable and awards them in full, plus any tax that may be chargeable to the applicant community on that amount.

C. Default interest

61. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 9 of the Convention as regards the proceedings under the Employment of Aliens Act;

3. *Holds* that it is not necessary to examine the complaint about the proceedings under the Employment of Aliens Act under Article 9 taken alone;

4. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 Protocol No. 1 as regards the proceedings under the Inheritance And Gift Tax Act;

5. *Holds* that it is not necessary to examine the complaint about the proceedings under the Inheritance and Gift Tax Act under Article 9 taken alone and in conjunction with Article 14 of the Convention;

6. *Holds* that in respect of non-pecuniary damage the finding of a violation constitutes sufficient just satisfaction;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,834.45 (twelve thousand eight hundred and thirty-four Euros and forty-five cents), plus any tax that may be chargeable to the applicant community, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses* the remainder of the applicant community's claim for just satisfaction.

Done in English, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President