

EUROPEAN COURT OF HUMAN RIGHTS

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CHAMBER JUDGMENT CHURCH OF SCIENTOLOGY MOSCOW v. RUSSIA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Church of Scientology Moscow v. Russia* (application no. 18147/02).

The Court held unanimously:

- that there had been a **violation of Article 11** (freedom of assembly and association) of the European Convention on Human Rights read in the light of **Article 9** (freedom of thought, conscience and religion).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 15,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, the Church of Scientology of the city of Moscow, is a religious association with the status of a legal entity and was officially registered on 25 January 1994.

On 1 October 1997 a new Law on Freedom of Conscience and Religious Associations (“the Religions Act”) entered into force, obliging all religious associations previously granted the status of a legal entity to bring their articles of association into conformity with the Act and to re-apply for registration with the competent Justice Department before 31 December 2000. Failure to obtain “re-registration” before the expiry of that time-limit exposed the Church to the threat of dissolution by judicial decision.

The applicant Church applied, in total, 11 times for re-registration to the Moscow Justice Department between 11 August 1998 and 31 May 2005.

The first application was rejected on account of on-going criminal proceedings against the Church’s president at that time and, the second, due to textual discrepancies between the Church’s charter and the Religions Act.

The third to sixth applications were not processed on the ground that a complete set of documents had not been provided. Nikulinskiy District Court of Moscow later gave specific reasons for the refusal, namely that the Church had failed to produce originals of their charter and their registration certificate and a document indicating their legal address. It further held that the book submitted by the Church did not provide sufficient information on the basic tenets of Scientology’s creed and practice.

The seventh to tenth applications were left unexamined on the ground that the time-limit for re-registration had expired.

In the meantime, as a result of a complaint filed by the Church’s president and co-founder, the District Court held, on 8 December 2000, that the Justice’s Department refusal to re-register the Church was unlawful. It concluded that the Justice Department had, in essence, used subterfuge to avoid re-registration of the Church and pointed out that an association with no status as a legal entity was,

in particular, prevented from renting premises for religious ceremonies and worship, receiving and disseminating religious literature or holding a bank account. It also held that that refusal had been inconsistent with international standards of law. That decision became binding and enforceable on 19 December 2000. However, the Justice Department refused to comply with it and, on 29 March 2001, it was quashed by way of supervisory review.

On 24 April 2003 the Church filed a further complaint against the Justice Department on account of their persistent refusal to re-register them under the Religions Act. Ultimately, the courts found that the refusal to examine the Church's amended charter had no lawful basis and the Justice Department was ordered to re-register the Church. The Moscow City Court upheld that decision but found that the Justice Department had been wrongly ordered to register the amended charter and ordered it to examine the Church's application for registration in accordance with the established procedure.

Most recently, the Justice Department refused the Church's 11th application on a new ground, notably failure to produce a document proving the Church's presence in Moscow for at least 15 years.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 24 April 2002 and declared partly admissible on 28 October 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greek), *President*,
Loukis **Loucaides** (Cypriot),
Nina **Vajić** (Croatian),
Anatoli **Kovler** (Russian),
Elisabeth **Steiner** (Austrian),
Khanlar **Hajiyev** (Azerbaijani),
Dean **Spielmann** (Luxemburger), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

3. Summary of the judgment²

Complaints

Relying on Articles 9, 10 (freedom of expression) and 11, the applicant Church complained that the refusal to re-register it as a religious organisation had arbitrarily stripped it of its status as a legal entity. The Church further complained under Article 14 (prohibition of discrimination), read in conjunction with Articles 9, 10 and 11, that it had been discriminated against on account of its position as a religious minority in Russia.

Decision of the Court

The Court found that the Church's complaints had to be examined from the standpoint of Article 11 in the light of Article 9.

Article 11

The Court found that there had been interference with the Church's rights under Article 11 in that a religious association, who had not obtained the re-registration required under the Religions Act, was restricted in exercising the full range of its religious activities.

The Court went on to examine whether the Government gave “relevant and sufficient” reasons to justify that interference and whether it had been “prescribed by law” and was “proportionate to the legitimate aim pursued”.

The Court decided not to examine the reasons behind the refusal of the first and second applications, namely the criminal proceedings and textual discrepancies between the text of the Religions Act and the Church’s charter, because they had not been upheld by the domestic courts as grounds for refusal of re-registration.

The Court observed that the Moscow Justice Department refused to process at least four applications for re-registration on account of the Church’s alleged failure to submit a complete set of documents. However, the Justice Department had not indicated why it considered the applications incomplete and had, indeed, not specified what information or document had been missing, claiming that it had not been competent to do so. The Court noted that, on the one hand, the Justice Department accepted that it had been competent to declare the applications incomplete but, on the other hand, considered that it did not have the competency to point out what was missing. Not only had that approach been inconsistent; it also prevented the Church from being able to amend their application and re-submit it. Furthermore, that approach had run counter to domestic law which required any refusal to be justified. Consequently, the Court considered that the Justice Department had acted in an arbitrary manner and that their grounds for refusal of the Church’s application had not been “in accordance with the law”.

Even when the District Court did give more specific reasons for the refusal, namely the Church’s failure to produce originals of certain documents, the Court noted that those reasons had no foundation in law, the Religions Act not having contained that requirement and no other regulatory document with such a requirement having been referred to either in the domestic proceedings. Moreover, the Court considered that the requirement to enclose originals with each application would have been excessively difficult, even impossible. In any case, the Justice Department did have in its possession the originals as well as a document to prove the Church’s address which had never been returned since their inclusion in the Church’s first application for re-registration. The District Court’s decision that the Church had been responsible for not providing adequate documentation therefore had no factual or legal basis.

As concerns the District Court’s refusal to re-register the Church on account of the book submitted, the Court found that it had not been explained why that book had not contained sufficient information on the basic tenets and practices of Scientology. The Court reiterated that it had been the national courts’ task to clarify the applicable legal requirements and give the Church clear instructions on how to prepare a complete and adequate application.

Finally, as regards the rejection of the most recent application on the ground that no document had been provided proving the Church had been present for 15 years in Moscow, the Court noted that the Constitutional Court had held in 2002 that no such document should be required from organisations which had existed before the entry into force of the Religions Act in 1997. The Church had been registered as a religious organisation since 1994.

Observing that the Church had lawfully existed and operated in Moscow as an independent religious community for three years and that it had not been proven that they had breached domestic law or any regulation governing their associative life and religious activities, the Court found that the reasons given to deny re-registration of the Church by the Justice Department and endorsed by the Moscow courts had had no legal basis. It followed that the Moscow authorities had not acted in good faith and had neglected their duty to be neutral and impartial vis-à-vis the Church’s religious community. The Court therefore found that there had been a violation of Article 11 read in the light of Article 9.

Other articles of the Convention

The Court considered that the Church's alleged inequality of treatment had been sufficiently taken into account in the assessment under Article 11. It followed that there was no need for a separate examination of the same facts from the standpoint of Article 14.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² This summary by the Registry does not bind the Court.

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