

## **The Rights of the Jehovah's Witnesses in Russia and Beyond: The Role of the European Court of Human Rights**

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**ABSTRACT:** This article briefly discusses the history of the Jehovah's Witnesses, focusing on their early decisions to use legal systems to defend themselves and expand their rights to practice their faith. Their legal successes in the United States and Canada in establishing religious freedom rights are summarized before examining the role played in the expansion of religious freedom in Europe through cases won in the European Court of Human Rights. Witnesses cases have also expanded the purview and influence of the courts systems in various Western societies. ECtHR has taken on special meaning with dozens of cases filed recently against Russia. The Russian government, with the blessing of its court system, has dissolved all Witnesses organizations, confiscated millions of dollars in property, harassed innumerable Witnesses families, and incarcerated dozens of Witnesses for alleged violations of statutes dealing with extremism. How the ECtHR will deal with these recent cases will reveal much about the future of the Court, and of the Council of Europe, especially if Russia refuses to honor any decisions that are rendered against it.

**KEYWORDS:** Human Rights in Russia, Jehovah's Witnesses, European Court of Human Rights, Article 9 of European Human Rights Convention, Rule 41, Kokkinakis, Conscientious Objection, Margin of Appreciation, Disciplined Litigation, Vigilante Litigation.

### *Introduction*

The Jehovah's Witnesses began in the United States in the 1870s and have grown dramatically since then in the U.S. and around the world, now claiming about eight million members involved in preaching worldwide. This remarkable growth in members has not, however, been without contention and conflict, sometimes involving violence against the Witnesses because of some of their beliefs and practices, such as refusing to salute national flags, participate in

politics, serve in the military, participate in normally accepted Christian holidays, refusal of blood transfusions, as well as their active proselytizing.

Because of these beliefs and practices, the Witnesses have often found themselves in conflict with authorities in areas where they live and practice their faith, often leading to legal difficulties. Over the years, the Witnesses organization evolved as a result of these encounters into a quite unique religious group. The Witnesses developed considerable legal prowess and experience as they have fought to defend themselves from what they view as unnecessary and illegal encroachments on their religious freedom.

Côté and Richardson (2001) describe the earlier Witness approach to defending themselves as one of “disciplined litigation,” which later evolved into a more selective “vigilante litigation” method of dealing with legal challenges in various societies. And, as many scholars have noted, the legal efforts of the Witnesses on behalf of religious freedom in various legal forums contributed greatly to their being able to practice their religion (Manwaring 1962; McAninch 1987; Kaplan 1989; Botting 1993; Richardson 2014, 2017c; Besier 2015). Those efforts also assisted other religious groups in gaining more freedom to live their faith, while also helping various judicial systems expand their authority and influence (Richardson 2015, 2017a, 2017b).

### *Witness Cases in the United States and Canada*

In the United States, the Witnesses filed hundreds of cases starting in the 1930s and continuing to the present, with many filed during the 1940s over proselytizing practices. And since this auspicious beginning, the Witnesses have won over 50 judgments from the United States Supreme Court, which have established religious freedom for themselves and for other minority faiths. The judgments also helped establish freedom of association and freedom of expression, as well as other important rights, including conscientious objection to military service, medical treatment rights, and rights of parents to raise their children in their religion. These and other cases filed by minority religions also have served to expand the authority of the Supreme Court over state and local governments through a process called “incorporation,” whereby the Court made it clear that certain specific amendments in the Bill of Rights also applied to these nonfederal governmental entities. This situation was perhaps the first example of

court systems forming informal partnerships with willing plaintiffs to establish major goals of the court (Richardson 2017a).

Something very similar happened in Canada in the decade of the 1950s, with the Witnesses filing many cases to establish their right to exist (they were banned for two years during WWII for refusing to support the war effort), and to practice their faith. They won some key cases in the Canadian Supreme Court that allowed proselytizing and deterred police harassment, which was rampant, particularly in Quebec, a Catholic-dominated province. Indeed, a Witness plaintiff, Frank Roncarelli (1904–1981), even won a civil action against Quebec’s Premier, Maurice Duplessis (1890–1959), who had directed the revocation of a liquor license for his restaurant after Duplessis learned that Roncarelli had been paying fines for hundreds of Witnesses arrested on various charges flowing from their proselytizing practices (*Roncarelli v. Duplessis*, 1959; see Botting 1993). The cases won by the Witnesses helped establish religious freedom in Canada, and also contributed greatly in 1953 to the eventual promulgation of the Canadian Charter of Rights and Freedoms.

### *The Witnesses in Post-War Europe*

WWII demonstrated to the world the tragic consequences of racist ideologies devoid of any concern for human and civil rights. The terrible consequences of the war gave rise and impetus to a movement to protect those rights, in the hopes of deterring such tragedies in the future. The Western European nations that had experienced the war first hand joined together to establish the Council of Europe (CoE) in 1949, which then promulgated in 1950 the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), containing provisions to protect human and civil rights of all citizens in CoE member nations. Over time, the CoE expanded greatly from a dozen original members to 47 nations, with the major growth occurring after the dissolution of the Soviet Union. All CoE member nations had to pledge to promote and enforce provisions in the European Convention in order to gain membership in the CoE.

In 1953, the CoE established the European Court of Human Rights (ECtHR), which first functioned as a part time court with little power. However, over time the Court developed into a permanent and powerful institution, handling thousands of claims annually. The expansion of the Court’s purview was not

without difficulties and controversies, however, and the Court has modified its procedures and approach to the member states in an effort to respond to its growing caseload and to criticisms of some of its actions (Richardson 2017a, 2019). Over the decades since the ECtHR was established, it has become the major mechanism to enforce the provisions of the Convention.

The Convention contained several articles of importance to the development of religious freedom. Particularly Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), and Article 11 (right to assembly) have been used in numerous cases by religious groups, but many other articles and later added “protocols” have been cited as well, especially in cases involving Russia, which recently launched a major offensive to drive the JWs from the country. (See the ECtHR Web site for all Convention articles and protocols).

Although the articles mentioned were part of the Convention, it should be noted that few violations of the articles relevant to religion were found for the first four decades of the Court’s existence. Indeed, it was not until 1993 that a violation of Article 9 was found in the *Kokkinakis* case from Greece, where proselytizing was a criminal offense (Richardson 1995; Evans 2001). The CoE and the Court assumed that most of the original member states valued human and civil rights, including religious freedom, and thus the states were granted a considerable “margin of appreciation” to manage religion within their boundaries. This led to the original members taking somewhat different approaches, and it also resulted in differential treatment for minority faiths within the original CoE.

The *Kokkinakis* case involved a Jehovah’s Witness who was arrested for proselytizing, fined, and sentenced to prison. Kokkinakis had been arrested many times before, but this time the JWs had submitted his case to the ECtHR, hoping that the Court would finally enforce Article 9 within the CoE nations. The timing was propitious, as the Soviet Union was dissolving, and many former affiliate nations, which did not have a history of valuing religious freedom, were seeking membership in the CoE. The Court (on a 6–3 vote) did find a violation of Article 9 in what might be thought of as an early example of what Sadurski (2009) later refers to as a “pilot judgment,” which sent a message to former Soviet-dominated nations that Article 9 and other Convention articles would henceforth be enforced. Since that initial decision, there have been a flood of Article 9 (and related articles) cases in which violations were found, with most coming from

former Soviet-dominated nations (and Greece), and a few also from original member states such as France (Lykes and Richardson 2014; Richardson and Lee 2014).

Since *Kokkinakis*, which indicated a willingness by the ECtHR to finally deal with religion cases, the JWs have been heavily involved in such cases with the Court (Richardson 2014, 2017c). From 1964 through August of 2020, they have submitted a total of 300 cases to the Court from many different CoE countries, with the largest number from former Soviet-dominated nations, especially Russia. And, the JWs have achieved a truly remarkable record with the Court, having won 66 cases, had 25 “friendly settlements”, and two “unilateral declarations” (which means the country has admitted a violation and addressed it in a manner satisfactory to the Court; see Keller and Suter 2011), for a total of 93 wins so far with the Court. Two cases were lost (but one since overturned), nine were withdrawn, and 98 are still pending, with 57 of them from Russia. Ninety-eight cases were declared inadmissible, with most of them dealing with conscientious objection to military service before the Court finally ruled in 2011 that the Convention required member states to offer alternatives to serving in the military. Of the 98 pending cases, 60 have been “communicated” by the Court to the member nation involved, which means the Court has asked for an explanation of the nation’s position on the case.

Included among the cases in which the JWs prevailed are ones dealing with registration (and reregistration), taxation, censorship of materials, freedom of expression, child custody, deportation, confidentiality of medical records, lack of neutrality of the state, conscientious objection, and disruptions of meetings. Even France has lost an Article 9 case in 2011 because of its efforts to force dissolution of the JWs through a creative use of its tax laws.

The situation in Russia is the most troublesome presently facing the JWs, the Court, and the future of the CoE itself, and it is to those case we now turn.

### *Russian Witnesses Cases before the ECtHR*

Russia has a long history of abusing minority religious groups, although there was a brief period when minority faiths seemed welcome in the early 1990s, after the collapse of the Soviet Union. However, the situation changed dramatically in

1997, when the Russian Orthodox Church, working with Western anti-cultists, succeeded in getting a new and quite punitive law passed limiting the rights of minority faiths considerably (Shterin and Richardson 1998, 2000). Since then, Russia has lost a number of religion cases before the ECtHR, usually by unanimous votes of the Court members (Richardson, Krylova, and Shterin 2004; Lykes and Richardson 2014; Richardson and Lee 2014). Some of those prior losses have involved cases brought by the Witnesses, which had been present in Russia for over 100 years, and claimed over 120,000 members in the late 1990s (Krylova 1999). One major Witness case was submitted to the ECtHR in 2002 against the City of Moscow for refusing to reregister the Witness organization after passage of the 1997 law. This case derived from years of frustrating efforts by the Witnesses to regain their registration. When it was finally obvious that Moscow authorities would not handle the matter in a fair manner, the case was submitted to the ECtHR, which in 2010 rendered a unanimous and strongly worded decision stating that Russia was in violation of Article 11 when viewed in light of Article 9.

As indicated, there are currently 57 cases from Russia pending before the ECtHR, some since 2014, with 22 cases from 2015. Thirty-three of the cases have been “communicated” to the Russian government, and some, particularly those dealing with the 2017 dissolution of the JW’s national organization, have been granted “Rule 41” status. This means they are to be fast-tracked given the urgency of the situation. The recent cases nearly all derive from Russia’s much criticized application of extremism laws passed post 9/11 to the JW’s, based on claims that the JW’s are an extremist organization involved in activities detrimental to Russia and its citizens (Human Rights Without Frontiers 2020). Following is a list of the cases from Russia that are pending with the Court:

Liquidation of national religious organization	2
Liquidation of local religious organization	4
Seizure of property of national headquarters	1
Censorship of religious literature and website	8
Revocation of permit to import religious literature	1
Detention or criminal conviction for practicing religion	21
Prosecution/detention for evangelizing	4

Seizure of religious literature in transport	1
Home search/ literature seizure	4
Raid on/interference with religious meeting	11

Information furnished by the JW organization indicates that, at the time Russian courts declared the JWs an extremist organization in April 2017, there were 3,500 Witnesses local organizations in Russia, each with from 50 to 250 participants. There were also about 395 local organizations, one in each major city in Russia. All of these entities were affiliated with the national JW organization headquartered in St. Petersburg. The JW owned 401 properties with an estimated value of \$70 million dollars. As of August 2020, Russian governmental entities had confiscated 236 properties valued at over \$52 million dollars. Also, 1,107 homes have been raided, with 275 of the raids occurring in 2020 during the time of the COVID-19 pandemic.

As of August 2020, there were 166 criminal cases in Russia involving 379 JW members. Forty-seven cases were pending, and 119 were in preliminary investigation stages. Ten people were already serving prison sentences of from two to six years, and 34 people were in jail awaiting trial, some for almost two years. Another 30 JW were under house arrest. (The Web site [jw-Russia.org](http://jw-Russia.org) offers periodical updates of these figures).

### *Impact of Witnesses ECtHR Cases*

As a result of this massive legal effort by the Witnesses, the group is currently registered and active in most CoE countries. Russia is, of course, a major exception, and some of its satellite countries may be following its lead. Members of JW local organizations can usually pursue their beliefs and practices, although harassment does still occur in some CoE nations. This includes such matters as medical practices and conscientious objection, among others. Other minority faiths have also gained from Witness legal efforts, and are able to practice their own religions more freely, although the pattern is somewhat mixed, particularly in former Soviet-dominated nations.

Article 9 and other articles relevant to religious freedom are now being enforced more regularly by the courts, with less deference to the “margin of appreciation,” even with original CoE member states. What at first appeared to

perhaps be a double standard, with the Court ruling much more frequently against former Soviet-dominated nations, no longer seems to be the case (Richardson and Garay 2004). As Evans (2010) has noted, the Court has been intent on making sure that religious groups can exist and function in former Soviet-dominated nations (as well as France), a result that means more decisions against those nations that would deter religious groups from functioning. However, the Court has also shown some interest in recent decades in individual religious freedom claims brought by JWs as well as other minority religion claimants, and has supported them in some instances. There continues, however, to be a lack of interest in the Court for supporting claims brought by Muslim women challenging laws dealing with their dress (Fokas and Richardson 2019).

### *Conclusions*

The Witnesses through their legal efforts have significantly influenced the meaning of religious freedom around the world, especially in Westernized nations such as the United States, Canada, and in the 47 nations that make up the Council of Europe. All these societies are governed by constitutional or statutory provisions offering protections for religious freedom. The presence of a reasonable autonomous judicial system headed by individuals who value human and civil rights, including religious freedom (Richardson 2006), means that those provisions usually can be implemented within the normative boundaries of a given society.

The many Witnesses cases from the societies discussed herein have therefore helped set the standard for the meaning of religious freedom in today's world. Those cases, along with others filed by various religious groups, also have helped establish the authority of national and regional judicial systems over various governmental entities. However, in the CoE the authority of the Court is being challenged (Richardson 2017b), especially by the recent flood of cases from Russia. Given past precedents of the Court, it seems clear that Russia may well lose most of the cases the JWs have filed against it. If this happens, it is not obvious how Russia will react.

Russia has a history of losing cases before the Court, including religion cases (Lykes and Richardson 2014; Richardson and Lee 2014), and typically it refuses to implement the decisions to the extent required by its membership in the CoE.

Instead, Russia usually pays the minimal fines and does little else. This recalcitrant posture by Russia has solidified recently, given statements by the head of the Russian Constitutional Court as well as the recent approval of a new Russian Constitution making it clear that in disputes with the ECtHR (or any other regional court) Russian law should prevail. This position represents a major challenge to the CoE and the Court. If decisions of the Court are not to be followed or enforced by the CoE, what does this mean for the future of the Court and of the CoE itself? Only time will tell on this crucial question, as we await the Court's rulings on the many JW cases with which it is now dealing.

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