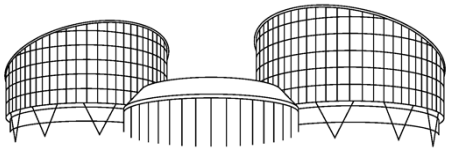

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF OSSEWAARDE v. RUSSIA

(Application no. 27227/17)

JUDGMENT

Art 9 • Freedom of religion • Administrative sanction of Baptist Christian for holding Bible meetings in his home without notifying the authorities as required by new legislation applicable to missionary activities • Existence of a "pressing social need" for new onerous restrictions constraining missionary activities not shown • Sanctioning for alleged failure to inform authorities of establishment of a religious group also not "necessary in a democratic society"
Art 14 (+ Art 9) • Discrimination • National origin • Unjustified higher minimum fines applicable to non-nationals compared to nationals for the same offence of illegal missionary work

STRASBOURG

7 March 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ossewaarde v. Russia,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Yonko Grozev,
Jolien Schukking,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 27227/17) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a national of the United States of America, Mr Donald Jay Ossewaarde ("the applicant"), on 30 March 2017;

the decision to give notice of the application to the Russian Government ("the Government");

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the European Association of Jehovah's Christian Witnesses which was granted leave to intervene by the President of the Section;

the decision of the President of the Section to appoint one of the sitting judges of the Court to act as *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of the Court (see, for the similar situation and explanation of the background, *Kutayev v. Russia*, no. 17912/15, §§ 4-8, 24 January 2023);

Having deliberated in private on 7 February 2023,

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

INTRODUCTION

1. The case concerns an administrative sanction imposed on the applicant, a Baptist Christian, for holding Bible meetings in his home without notifying the authorities.

THE FACTS

2. The applicant was born in 1960 and lives in Oryol, Russia, on the basis of a permanent residence permit. He was represented before the Court by a team of lawyers of the Memorial Human Rights Centre in Moscow led by Ms T. Glushkova, Mr D. Shedov and Mr K. Koroteyev.

3. The Government were represented by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in this office.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant and his wife are Baptist Christians. Since moving to Oryol in 2005, they had regularly gathered people at their home for prayer and Bible reading. The applicant personally invited people to those gatherings or put invitations in people's mailboxes.

6. On 14 August 2016 three police officers entered the applicant's home. The door was not locked to give access to people who wished to join the Sunday gathering to sing hymns and listen to a sermon. After the service, the officers spoke with those in attendance and collected their statements. The officers told the applicant that they needed to take him to the police station for fingerprinting.

7. At the station, an officer scanned the applicant's fingerprints and verified that he did not have any criminal history. He was then shown a letter of complaint from a Ms B. She had expressed concern about "foreign religious cultists" who had pasted evangelical tracts on the notice board at the entrance of her apartment building.

8. The police prepared an administrative offence report under Article 5.26(5) of the Code of Administrative Offence (CAO) for conducting illegal missionary work as a non-Russian national (see paragraph 20 below). The applicant was charged in particular with (a) placing invitation to religious service on notice boards which was interpreted as "disseminating information about his religion among non-members of his religious association", and (b) conducting missionary work without notification of establishment of a religious group. The applicant submitted that he was a member of Baptist International Missions, Inc., a US-based religious organisation, and that he studied the Bible at his house together with people who had responded to his invitation.

9. According to the police escorting and detention record, the applicant had remained at the police station for two and a half hours. He was taken directly from there to the Zhelezhnodorozhnyy District Court in Oryol.

10. The applicant pleaded before the court that he was not a member of any religious association in Russia and could not therefore have conducted missionary work within the meaning of the Religions Act. After a short hearing, the District Court found him guilty as charged for carrying out missionary work without having notified the authorities of establishing a religious group. The applicant was fined 40,000 Russian roubles (approximately 650 euros at the material time).

11. In his grounds of appeal, the applicant submitted that he had exercised his right to freedom of religion in his individual capacity, that he had not been member of any religious association in Russia, and that, accordingly, he could

not have conducted "missionary work" within the meaning of the Religions Act which defines it as an activity of a religious association.

12. On 30 September 2016 the Oryol Regional Court upheld the District Court's conviction in a summary fashion. On 15 November 2016, 20 January and 28 February 2017 a deputy President of the Regional Court, a judge of the Supreme Court and the Constitutional Court, respectively, rejected his further requests for review of the conviction. The Constitutional Court pointed out that it was not competent to review findings of fact, such as whether the applicant had been a member of any religious association conducting missionary work on its behalf or whether he had been publicly spreading his personal religious convictions.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RUSSIA

A. General provisions of the Religions Act (Law no. 125-FZ of 26 September 1997)

13. Freedom of conscience and freedom of religion are guaranteed in Russia, including the right to worship any religion, individually or in community with others, to perform services or worship, other religious rites and ceremonies, to teach religion and provide religious education, freely to choose and change, have and spread religious and other beliefs and act in accordance with them, including by means of establishing religious associations (section 3(1)).

14. Foreign nationals and stateless persons who are lawfully present in Russia enjoy the right to freedom of conscience and religion on a par with Russian nationals and may be held responsible for violating the legislation on freedom of conscience and religion (section 3(1)). It is prohibited to establish privileges, restrictions or other forms of discrimination on account of one's religion (section 3(3)).

B. Religious associations, groups and organisations

15. "Religious association" is a general term for any voluntary association formed for the purpose of jointly professing and disseminating a faith (section 6(1) of the Religions Act). A "religious association" may have the form of a "religious group" or a "religious organisation" (section 6(2)).

16. A "religious group" operates without State registration and acquisition of legal personality. It may include Russian nationals and lawfully resident non-nationals as participants. The premises and property, which are needed for its operations, are provided for the use of the group by its participants (section 7(1) of the Religions Act). A representative or head of the religious

group informs, by means of sending a written notice, the competent registration authority about the beginning of operations of the group (section 7(2)). Religious groups may conduct services of worship, other religious rites and ceremonies, teach religion and provide religious education to their followers (section 7(3)).

17. For the difference in the legal status and scope of rights of "religious groups" and "religious organisations", see *Kimlya and Others v. Russia*, nos. 76836/01 and 32782/03, §§ 51-58 and 82-89, ECHR 2009.

18. In 2016 a draft law (no. 44734-7) proposed an amendment to the Code of Administrative Offence establishing liability for carrying out activities of a religious group without notifying its establishment to the State authorities. It was not adopted. The Legal Department of the State Duma expressed the view that, in so far as the draft law did not stipulate a point in time which should be regarded as the beginning of operations of a religious group, it did not meet the requirements of certainty and clarity.

C. Missionary work

19. The Countering Terrorism and Enhancing Public Security Act (Federal Law no. 374-FZ of 6 July 2016) created new administrative offences in the matter of freedom of conscience and religion and added new chapter III.1, "Missionary work", to the Religions Act.

20. New section 4 of Article 5.26 of the Code of Administrative Offences has established that missionary work carried out in breach of the legislation on freedom of conscience and religion may be punishable with a fine of between 5,000 and 50,000 Russian roubles (RUB).

21. New section 5 has established that the same offence, if committed by a foreign national or stateless person, is punishable with a fine of between RUB 30,000 and 50,000 and optional removal from Russia.

22. "Missionary work" is defined as an activity of a religious association aimed at spreading information about its religion among people who are not followers or members of that religious association for the purpose of inducing them to become followers or members of that religious association. Such activity is carried out directly by religious associations or by their authorised representatives, publicly, through media, the Internet or by other lawful means (section 24.1(1) of the Religions Act). Missionary work may be carried out without hindrance in the premises owned or rented by religious associations, places of pilgrimage, cemeteries (section 24.1(2)). It is prohibited to carry out missionary work in residential premises unless they are owned or rented by the religious association (section 24.1(3)) or in the premises of another religious association without the written consent of its governing body (section 24.1(4)).

23. Individuals who conduct missionary work on behalf of a religious group must carry on them a decision by a general assembly of the religious

group granting them authorisation to carry out missionary work. That document must indicate the details of the written confirmation of receipt and registration which the State registration body issues in response to a notice of the establishment and start of operations of a religious group (section 24.2(1) of the Religions Act). Missionary work on behalf of a religious organisation may be carried out by its head, a member of the board or a member of its clergy. Other individuals may carry out missionary work on behalf of a religious organisation if they possess an authorisation to that effect issued by its head (section 24.2(2)). Special conditions apply to foreign nationals and stateless persons who conduct missionary work (section 24.2(3)). If they do so on behalf of a religious group, they must be in possession of the document specified in subsection 24.2(1) and remain within the region in which a notification of the establishment of the group has been filed. If they do so on behalf of a religious organisation, they must be in possession of the document specified in subsection 24.2(2) and remain within the territory in which that organisation operates.

II. COUNCIL OF EUROPE

24. Section VII, "Proselytizing/missionary activity", of the compilation of the Venice Commission opinions and reports concerning freedom of religion and belief (CDL-PI(2014)005, as revised in July 2014) contains the following relevant citations:

> "The issue of proselytism and missionary work is a sensitive one in many countries. However, it is important to remember that, at its core, the right to express one's views and describe one's faith can be a vital dimension of religion. The right to express one's religious convictions and to attempt to share them with others is covered by the right to freedom of religion or belief. Moreover, it is covered by the right to freedom of expression as well. At some point, however, the right to engage in religious persuasion crosses a line and becomes coercive. It is important in assessing that line to give expansive protection to the expressive and religious rights involved. Thus, it is now well-settled that traditional door-to-door proselytizing is protected (though the right of individuals to refuse to be proselytised also is protected). On the other hand, exploiting a position of authority over someone in the military or in an employment setting has been found to be inappropriate. If legislation operates to constrain missionary work, the limitation can only be justified if it involves coercion or conduct or the functional equivalent thereof in the form of fraud that would be recognized as such regardless of the religious beliefs involved. [CDL-AD(2004)028, Guidelines for legislative reviews of laws affecting religion or belief, p.13]"

> "... international law, which protects non-coercive religious expression (including proselytism, or missionary activity) by 'everyone', regardless of a person's nationality ... [CDL-AD(2012)022, Joint Opinion on the Law on Freedom of Religious Belief of the Republic of Azerbaijan by the Venice Commission and the OSCE/ODIHR, §40]"

> "In addition to witnessing and affirming beliefs, missionary work has the additional dimension of inviting others to consider those views and seeking to persuade others of their validity, thereby converting them to their religion or cause. In European Convention jurisprudence traditional non-coercive efforts to persuade others

concerning religious beliefs, whether through door-to-door proselytizing or other expressive media is protected religious and expressive activity. However, in engaging in such legitimate conduct, there are limits on what constitutes legitimate expression. But these limits, as in other areas of freedom of expression, must be carefully circumscribed. Thus, missionaries must not encroach upon the rights of others ... [CDL-AD(2010)054, Interim Joint Opinion on the law on making amendments and supplements to the law on freedom of conscience and religious organisations and on the laws on amending the criminal code; the administrative offences code and the law on charity of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, §60]"

"... peaceful conduct aiming to convince other people to adhere to a specific religion or conception of life, as well as related teachings, in the absence of any direct intent or purpose of inciting enmity or strife, [should] not [be] seen as extremist activities and therefore not unduly included in the scope of anti-extremism measures [CDL-AD(2012)016, Opinion on the Federal Law on Combatting Extremist Activity of the Russian Federation, §40]"

III. UNITED NATIONS

25. In the case of a German national who had been fined in Kazakhstan for conducting missionary work without registration, the United Nations Human Rights Committee adopted the views that the freedom to manifest one's religions and beliefs under Article 18 of the International Covenant on Civil and Political Rights protected "the right of all members of a religious congregation, not only missionaries, and not only citizens, to manifest their religion in community with others, in worship, observance, practice and teaching". In so far as "the State party [had] not advanced any argument as to why it [was] necessary, in order to engage in prayer together with his associates from the same church, in conducting meetings between them in the premises of the church and in preaching, to first register as a foreign missionary", the State party failed to show that that "sweeping limitation of the right to manifest religion [was] proportionate to any legitimate purpose that it might serve" (see *Leven v. Kazakhstan*, no. 2131/2012, § 9.4, 21 October 2014).

26. In the case of two Jehovah's Witnesses who had been arrested by the police for distributing a religious brochure to the residents of an apartment block, the Working Group on Arbitrary Detention of the United Nations Human Rights Council concurred with the Human Rights Committee in that the freedom to manifest religious beliefs "includes the freedom to [publicly] distribute religious texts or publications" and determined that the complainants had been deprived of their liberty for peacefully exercising their right to freedom of religion and belief (see *Opinion no. 42/2015 concerning Irina Zakharchenko and Valida Jabrayilova (Azerbaijan)*, §§ 40-43, 15 March 2016).

27. The United Nations Special Rapporteur on freedom of religion or belief emphasised that "a legal personality status made available for religious

or belief communities should be understood as an option, not an obligation" and that "the enjoyment of the freedom of religion or belief as such does not depend on any acts of State approval or administrative registration" (A/HRC/19/60, § 58, 22 December 2011). On the right to try to convert others by means of non-coercive persuasion, the Special Rapporteur stated:

> "26. ... The freedom to manifest one's religion or belief in external acts ... can be undertaken 'either individually or in community with others and in public or private'. It cannot be denied that this covers non-coercive attempts to persuade others, sometimes also called 'missionary work' ...
>
> 28. ...[External] manifestations of one's religion or belief ... do not enjoy absolute protection. However, the decisive point in international human rights law is that the burden of proof always falls on those who argue on behalf of restrictions, not on those who defend a right to freedom. The relationship between freedom and its possible limitation is a relationship between rule and exception. In case of doubt, the rule prevails and exceptions always imply an extra burden of argumentation, including clear empirical evidence of their necessity and appropriateness ..." (A/67/303, 13 August 2012)

On violations of the right to try to convert others by means of non-coercive persuasion, the Special Rapporteur observed:

> "44. A number of States restrict religious outreach activities under the heading of 'proselytism', a term that typically conjures up negative sentiments but rarely receives a clear conceptual or legal definition ... Often the mere existence of such legislation has a chilling effect on communicative outreach activities ... States that claim to protect people against exploitation in situations of particular vulnerability often fail to provide clear empirical evidence that certain missionary activities amount to coercion.
>
> ...
>
> 46. ... vague and overly broad definitions of 'proselytism' ... and related 'offences' may create an atmosphere of insecurity in which law enforcement agencies can restrict acts of religious communication in an arbitrary manner. Some States have started to require individuals seeking to conduct missionary activities to register, sometimes on an annual basis. However, in view of the right to try to convert others by means of non-coercive persuasion, registration should not be a precondition for practising one's religion or belief, including through missionary activities."

THE LAW

I. JURISDICTION

28. The Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a party to the Convention. The Court therefore decides that it has jurisdiction to examine the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

29. The applicant complained that he had been sanctioned in administrative proceedings for organising Bible-reading gatherings. While he relied on Articles 9 and 11 of the Convention, the Court will consider the matter under Article 9 of the Convention which enshrines the freedom to manifest religion both alone and in community with others. It reads as follows:

Article 9

"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."

A. Admissibility

30. The Government submitted that the application was inadmissible for non-exhaustion of the effective domestic remedies because the applicant had not filed an application for review with the Supreme Court of the Russian Federation (they referred to *Orlovskaya Iskra v. Russia*, no. 42911/08, § 79, 21 February 2017).

31. The applicant replied that the Court's approach set out in the *Orlovskaya Iskra* case had applied to the review procedure under the Code of Administrative Offences (CAO) as it had existed before 6 August 2014. After that date, recourse to the review procedure under the CAO was not subject to any time-limit and did not constitute a remedy to be exhausted (he referred to *Smadikov v. Russia* (dec.), no. 10810/15, 31 January 2017). In any event, the applicant had filed an appeal with the Supreme Court which had been rejected by a single judge (see paragraph 12 above).

32. The Court accepts the applicant's arguments and rejects the Government's objection of non-exhaustion. It further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

33. The applicant submitted that, in preaching Baptism, he had not been acting on behalf of any religious association formed under Russian law. He had exercised his individual right to freedom of religion in worshipping together with others within the meaning of section 3(1) of the Religions Act, without however establishing a "religious group". He had been engaged in individual evangelism, while Chapter III.1 of the Religions Act and Article 5.26 of the CAO required certain procedures to be followed by "religious associations" only, rather than by individual preachers like him. His parent organisation, Baptist International Missions, Inc., was a foreign religious organisation falling outside the scope of the Religions Act. Application of the notion of "missionary work" to individual evangelism had been a novel and unpredictable interpretation of the law which had appeared for the first time in the applicant's case. In any event, failure to notify the authorities of the establishment of a religious group did not constitute an administrative offence at the material time, which was apparent from the text of a draft law purporting to create such an offence (see paragraph 18 above). Even if the failure to notify the authorities had been unlawful, that fact alone had not justified interference with the applicant's rights to freedom of religion and assembly. His preaching had not constituted "a corruption or deformation of true evangelism" (he referred, by contrast, to *Kokkinakis v. Greece*, 25 May 1993, § 48, Series A no. 260-A) or any threat of danger to public order. His arrest and conviction had not pursued a "pressing social need" and had not been "necessary in a democratic society".

(b) The Government

34. The Government submitted that the interference had been based on Article 5.26 of the COA, as interpreted in the light of the requirements on "missionary work" in the Religions Act. The applicant had distributed tracts containing an invitation to study Bible "with us", that is to say, in a group. The tracts had been signed by "Baptist missionary" Donald Ossewaarde, thus they had not been inviting to an individual sermon by citizen Donald Ossewaarde. In his application for residence permit, the applicant submitted that he had been a missionary of Baptist International Missions, Inc. and had come to Russia to carry out missionary work. Witnesses had stated that they had been attending the Bible readings at the applicant's home for two to five years, that the group had had a steady membership of ten to fifteen people, and that the applicant had distributed invitations to its meetings. There had therefore been sufficient evidence of the applicant's engaging in missionary work without notifying the establishment of a religious group to the

competent authority. The Government distinguished the present case from *Kokkinakis*, in that the applicant had been held liable just once in the twenty years that he had conducted missionary work in Russia and had not been deprived of his liberty, unlike Mr Kokkinakis. Referring to the Court's finding in *Kokkinakis* that "a State may legitimately consider it necessary to take measures aimed at repressing certain forms of conduct judged incompatible with the respect for the freedom of thought, conscience and religion of others", the Government concluded that the interference had pursued legitimate aims and had been necessary in a democratic society for the protection of public order and the rights of others.

(c) Third-party intervener

35. The European Association of Jehovah's Christian Witnesses, a third-party intervener, submitted that the 2016 restrictions on "missionary work" had had a particularly severe effect on the religions for whom door-to-door evangelising was a fundamental tenet of religious duty. In *Kokkinakis*, the Court held that the allegation against the applicant that he had attempted to convince his neighbour by improper means had not been borne out by the facts. The separate opinions by Judges Pettiti and Martens expressed concern that the "elusive" notion of "improper proselytism" could be misused by "an authoritarian State" to punish arbitrarily proselytisers, particularly ones belonging to a minority religion. The Venice Commission, the UN Human Rights Committee and the Working Group on Arbitrary Detention had likewise upheld the right to engage in door-to-door evangelising activity (see paragraphs 24 to 26 above). If it were otherwise, the right to manifest religious beliefs would be subject to the whim or discretion of a State or religious authority, including as to the time, place and manner of expression. It would silence spontaneous speech, interfering both with the right of the believer to freely share his beliefs and the right of a listener to receive that information. Such interference would clearly be discriminatory since no similar limitation is imposed on other forms of protected speech, including political speech or journalism. In a free and democratic society, the State cannot provide any justification why it is necessary to target peaceful religious evangelising for prior licence or authorisation. In conclusion, the intervener referred to jurisprudence of the courts in the USA, Canada and other jurisdictions affirming the evangelising activity as a protected right (*Watchtower Bible & Tract Soc. of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150 (2002); *Beauchemin v. Town of Blainville*, [2003] R.J.Q. 2398).

(d) The parties' comments on the third-party intervener's submissions

36. The Government provided an overview of restrictions on evangelising activities and missionary work in the legislation of selected member States. According to them, Austria's Islam Law imposed certain professional and

personal requirements on Islamic preachers; Greece prohibited proselytism in the Constitution; Denmark barred re-entry to preachers convicted of breaching the law; Ireland, Latvia and Norway required religious workers to have special residence permits for a period of stay exceeding three months; Romania's Criminal Code sanctioned forced involvement in religious rites or worship of a cult; the French law of 12 June 2001 called for stricter measures against "sectarian movements" that engage in persuasive proselytism in the form of psychological pressure on vulnerable individuals, and Switzerland prohibited advocacy of violence and terrorism in the missionary work.

37. The applicant supported the third-party intervener's submission that making individual evangelism subject to a prior approval of a State or religious authority amounted, on its own, to a disproportionate interference with one's rights to freedom of religion and expression. Even if he had complied with the obligation to obtain such written authorisation of a "religious group" in order to preach his religion, he would have nevertheless been found liable under Article 5.26 of the CAO, as section 24.1(3) of the Religions Act prohibited "missionary work" from being carried out in any residential premises, such as his home. Such restrictions on freedom of religion were disproportionate by their very nature.

2. The Court's assessment

38. The applicant was prosecuted and convicted for posting information about religious meetings that he organised in his home without notifying the authorities of the establishment of a religious group (see paragraphs 8-12 above). The Court finds that his conviction for failing to comply with the new legal requirements applicable to missionary activities amounted to an interference with his right to freedom of religion protected by Article 9 of the Convention. Noting that the interference was based on the updated provisions of the Religions Act and the Code of Administrative Offences (see paragraphs 20-23 above), the Court will focus its analysis on whether it pursued a legitimate aim and was necessary in a democratic society.

39. The Court reiterates that freedom to manifest one's religion includes in principle the right to express one's religious views by imparting them with others and the right "to try to convince one's neighbour", for example through "teaching", failing which "freedom to change [one's] religion or belief", enshrined in Article 9, would be likely to remain a dead letter (see *Kokkinakis*, cited above, § 31). The act of imparting information about a particular set of beliefs to others who do not hold those beliefs – known as missionary work or evangelism in Christianity – is protected under Article 9 alongside with other acts of worship, such as the collective study and discussion of religious texts, which are aspects of the practice of a religion or belief in a generally recognised form (see *Kokkinakis*, cited above, § 48, and *Kuznetsov and Others v. Russia*, no. 184/02, § 57, 11 January 2007). As the Venice Commission observed, missionary work is a "vital dimension of a religion"

which involves not just affirming one's beliefs but also inviting others to consider those beliefs and seeking to persuade them of their validity, thereby converting them to one's religion or cause (see paragraph 24 above).

40. The right to engage in religious persuasion may nonetheless be legitimately restricted where it involves an element of coercion or violence, such as the exerting of pressure on people in distress or in need or the abuse of a position of authority in the military hierarchy or in an employment relationship (see *Kokkinakis*, cited above, § 48, and *Larissis and Others v. Greece*, 24 February 1998, §§ 51-59, *Reports* 1998-I). Where however no evidence of coercion or improper pressure has been adduced, the Court has affirmed the applicants' right to engage in individual evangelism and door-to-door preaching (see *Jehovah's Witnesses of Moscow and Others v. Russia*, no. 302/02, § 122, 10 June 2010).

41. Lastly, the Court reiterates that, while States are entitled under the Convention to require registration of religious denominations in a manner compatible with Articles 9 and 11, sanctioning individual members of an unregistered religious entity for praying or otherwise manifesting their religious beliefs is incompatible with the Convention. To admit the contrary would amount to the exclusion of minority religious beliefs which are not formally registered with the State and, consequently, would amount to accepting that a State can dictate what a person must believe (see *Masaev v. Moldova*, no. 6303/05, § 26, 12 May 2009). In the same vein, where the exercise of the right to freedom of religion or of one of its aspects is subject under domestic law to a system of prior authorisation, involvement in the procedure for granting authorisation of a recognised ecclesiastical authority cannot be reconciled with the requirements of paragraph 2 of Article 9 (see *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 117, ECHR 2001-XII).

42. Prior to his conviction which is at issue in the present case, the applicant had been engaged in evangelism for more than ten years. He gathered people in his home to worship and discuss the Bible in community with others. He distributed personal invitations to join the religious discussion and also posted information about religious meetings in public places such as notice boards (see paragraph 5 above).

43. There is no evidence that the applicant used any improper methods of proselytism or caused anyone to participate in religious meetings against his or her will. People who were not interested in those activities were free not to respond to his invitation and to ignore advertisements posted in public places. Furthermore, there is no indication whatsoever that the applicant's religious speech contained any expressions seeking to spread, incite or justify hatred, discrimination or intolerance. He was thus sanctioned not for any improper manner of seeking to persuade others of the virtues of his religious views or for "hate speech" but solely for failing to comply with new legal requirements

applicable to missionary work which were introduced in 2016 as part of an anti-terrorism package (see paragraph 19 above).

44. The new legislation made it an offence to conduct missionary work in residential premises that are not owned or rented by a religious association and also subjected missionary work to the requirement of prior authorisation from a religious association (see paragraphs 22 and 23 above). By requiring prior authorisation from a duly constituted religious association and excluding private homes from the list of places where the right to impart information about religion may be exercised, the new regulation has left no room for people in the applicant's situation who were engaged in individual evangelism. The requirement of prior authorisation also eliminated the possibility of spontaneous religious discussion among members and non-members of one's religion and burdened religious expression with restrictions greater than those applicable to other types of expression.

45. The Government did not explain the rationale behind subjecting missionary work to new formalities (see, by contrast, *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, §§ 110 et passim, ECHR 2013 (extracts)). The Court cannot speculate what the legislature's intentions may have been. It is however apparent that, so long as the new restrictions did not regulate the content of the religious expression or the manner of its delivery, they were not fit to protect society from "hate speech" or to shield vulnerable persons from improper methods of proselytism which, as the Court reiterates above, could have been legitimate aims for the regulation of missionary activities. Confronted with the Government's failure to justify new onerous restrictions constraining missionary activities, the Court finds that the need for such new restrictions, in respect of which the applicant was sanctioned for non-compliance, has not been convincingly established. Accordingly, the interference with the applicant's right to freedom of religion on account of his missionary activities has not been shown to pursue any "pressing social need".

46. In so far as the applicant was convicted for failure to notify the authorities of the establishment of a religious group, the Court notes, firstly, that the legislation on mandatory registration of religious groups had not been adopted owing to the inherent difficulties of its application (see paragraph 18 above for details). Secondly, it reiterates that the exercise of the right to freedom of religion or of one of its aspects, including freedom to manifest one's beliefs and to talk to others about them, cannot be made conditional on any acts of State approval or administrative registration because of the risk that a State would dictate what a person must believe (see *Masaev*, cited above, § 26). Accordingly, sanctioning the applicant for the alleged failure to inform the authorities of the establishment of a religious group was also not "necessary in a democratic society".

47. There has accordingly been a violation of Article 9 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 9

48. The applicant complained that establishing different sanctions for nationals and non-nationals unlawfully conducting missionary work amounted to discrimination on the grounds of nationality, contrary to Article 14 of the Convention, read in conjunction with Article 9, which provides 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."

A. Admissibility

49. The Court reiterates that matters of appropriate sentencing fall in principle outside the scope of the Convention, it not being its role to decide, for example, what is the appropriate term of detention applicable to a particular offence (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 55, 24 January 2017). However, a sentencing measure which sanctions differently the same offence on account of personal characteristics (or "status") of the offender has been found to give rise to an issue under Article 14 of the Convention (see *Paraskeva Todorova v. Bulgaria*, no. 37193/07, § 37, 25 March 2010, and *Aleksandr Aleksandrov v. Russia*, no. 14431/06, § 22, 27 March 2018, in which a violation was found because of a differential sentencing of the applicants on account of, respectively, the ethnic origin and place of residence).

50. As the sanction in the present case related to the exercise by the applicant of the right to freedom of religion, the Court is satisfied that the facts of the case fall "within the ambit" of Article 9 of the Convention. Accordingly, Article 14 is applicable in conjunction with that provision.

51. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

52. The applicant submitted that Article 5.26 of the CAO established a difference in treatment between Russian and foreign nationals in that it provided for a different amount of minimum fine and also for an additional penalty of expulsion applicable to foreign nationals only. The minimum amount of fine imposed on foreigners is six times higher than that for Russian nationals. No objective or reasonable justification for the difference in

treatment had been put forward. There was no evidence that the public danger caused by the same offence committed by a foreigner was much higher than that of the same act perpetrated by a Russian national.

53. The Government submitted that the Code of Administrative Offences posited the general principle of equality before law. Foreign nationals who committed administrative offences in Russia may be held liable on the same conditions as Russian nationals. The Countering Terrorism and Enhancing Public Security Act introduced sanctions for breaches of the established procedure for conducting missionary work to counter terrorist threats and challenges in modern society. The Government pointed out that the maximum amount of fine for the offence under Article 5.26 of the CAO was identical for Russian and non-Russian nationals, RUB 50,000. Establishing differentiated penalties for the same acts committed by nationals or non-nationals did not amount to discrimination because many States provided a restricted set of rights to foreign residents. A few European States blocked the sale of agricultural land to non-nationals, required them to apply for work permits or prevented them for taking part in municipal elections. As a sovereign State, Russia shall independently determine appropriate penalties for administrative offences.

2. The Court's assessment

54. Pursuant to the Code of Administrative Offences, an individual found guilty of an offence of illegal missionary work would be sanctioned differently depending on whether the offender is a Russian national or non-national. In the latter case, the minimum fine is six times higher than for a Russian national and the additional penalty of expulsion applies (see paragraphs 20 and 21 above). This provision therefore introduces a difference in treatment of persons in an analogous situation on the grounds of their nationality.

55. The Court reiterates that very weighty reasons have to be put forward before it could regard a difference in treatment based exclusively on the ground of nationality as compatible with the Convention (see *Biao v. Denmark* [GC], no. 38590/10, § 93, 24 May 2016, and *Andrejeva v. Latvia* [GC], no. 55707/00, § 87, ECHR 2009, with further references). Reliance on any ground protected under Article 14 of the Convention would require a justification that is capable of passing for an objective and reasonable one (see *Aleksandr Aleksandrov*, cited above, § 27).

56. Apart from referring to the possibility of a different treatment of nationals and non-nationals in other jurisdictions and in other legal situations, the Government failed to indicate what legitimate aim the difference in treatment established in Russian law pursued and how it was capable of being objectively and reasonably justified. While the application of the additional penalty of expulsion exclusively to non-nationals may be objectively justified by the fact that it cannot be applied to nationals, the Court finds no

justification for the considerably higher minimum fines applicable to non-nationals in respect of the same offence. The difference in treatment also appears hard to reconcile with the provisions of Russia's Religions Act which posits that non-nationals lawfully present in Russia may exercise the right to freedom of religion on the same conditions as Russian nationals (see paragraph 14 above).

57. There has accordingly been a violation of Article 14 of the Convention, taken in conjunction with Article 9.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. Lastly, the applicant complained under Article 5 of the Convention that his escorting to the police station and his detention there had not been "in accordance with a procedure prescribed by law".

59. These events occurred on 14 August 2016 and the allegedly irregular nature of the applicant's detention was not raised in the subsequent administrative proceedings. As this complaint was lodged more than six months after the events, on 30 March 2017, it must be rejected as being out of time in accordance with Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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."

61. The applicant claimed 592 euros (EUR) in respect of pecuniary damage, representing the amount of the fine he had paid. He asked the Court to determine the amount of compensation in respect of non-pecuniary damage. He also claimed EUR 5,200 for the work of three lawyers and EUR 168 for the postal expenses.

62. The Government submitted that the claims were unlawful and unsubstantiated because there had been no violations of the Convention. The legal costs were excessive and unnecessary and the applicant did not submit receipts for payment.

63. The Court awards the applicant the amount claimed in respect of pecuniary damage, EUR 10,000 in respect of non-pecuniary damage, and EUR 4,000 covering costs under all heads, plus any tax that may be chargeable to him.

64. 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. *Holds* that it has jurisdiction to deal with the applicant's complaints as they relate to facts that took place before 16 September 2022;

2. *Declares* the complaints concerning the right to freedom of religion and the protection against discrimination admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 9 of the Convention;

4. *Holds* that there has been a violation of Article 14 of the Convention, taken in conjunction with Article 9;

5. *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, the following amounts:
      (i) EUR 592 (five hundred and ninety-two euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the claims for just satisfaction.

Done in English, and notified in writing on 7 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President