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

FIRST SECTION

DECISION

Application no. 73601/14
CHRISTIAN RELIGIOUS ORGANIZATION OF JEHOVAH'S WITNESSES
against Armenia

The European Court of Human Rights (First Section), sitting on 29 September 2020 as a Chamber composed of:

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Armen Harutyunyan,
Tim Eicke,
Jovan Ilievski, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 21 November 2014,

Having regard to the decision of 1 September 2016 to give notice to the Armenian Government ("the Government") of the complaints concerning the taxation of imported religious literature donated to the applicant,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, the Christian Religious Organization of Jehovah's Witnesses, is a religious organisation registered in Armenia. It was represented by Mr S. Brady, Mr A. Carbonneau and Mr R. Khachatryan, lawyers practising in Strasbourg, Paris and Yerevan, respectively.

2. The Government were represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia to the European Court of Human Rights

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

4. The applicant was registered as a religious organisation in Armenia in 2004.

5. The relevant parts of the applicant organisation's Charter state the following:

> "1.4 This Organisation is a religious association and does not have the goal of obtaining profit for any individuals or legal entities. It has been founded and will act in accordance with the laws of the Republic of Armenia exclusively for religious purposes.
>
> ...
>
> 2.2 In order to accomplish its goals and objectives in accordance with the requirements of current legislation, the Organisation performs the following basic types (forms) of activity:
>
> ...
>
> 2.2.2 Coordination and direction of the religious activity of Jehovah's Witnesses, providing them with religious literature, literature for worship, and items for religious purposes ...
>
> 2.2.6 production, acquisition, translation, export, import, use and distribution of the Holy Scriptures (Bible), religious literature, literature for worship, printed, audio and video material and other items for religious purposes.
>
> ...
>
> 5.1. The Organisation exercises the following legal rights ...:
>
> ...
>
> 5.1.4. Alienation (sale, grant, exchange) or use by other means of property that belongs to it. Funds received as a result of alienation and use of the Organisation's property should be for the purposes provided for in this Charter.
>
> ...
>
> 5.10. The Organisation, if necessary ... may establish companies or participate in [companies] whose activities serve to meet the purpose for which the Organisation was created and correspond to the purposes of the Organisation.
>
> ..."

6. Since 2005 the applicant organisation has been receiving regular shipments to Armenia of religious publications used for worship and religious education.The number of such shipments per year ranges from five to fifteen. The religious literature is imported from Germany. It is sent free of charge from Jehovah's Witnesses in Germany (*Jehovas Zeugen in Deutschland, K.d.ö.R.* – hereinafter "Jehovas Zeugen"), a non-profit-making religious entity.

7. Between 2007 and 2015 the applicant organisation has received more than sixty shipments of religious literature. The State Revenue Service ("the SRS") has required it to pay value added tax ("VAT") for customs

clearance, while the amount of VAT due has been calculated based on custom values determined by the SRS and not those declared by the applicant organisation. As a result, the applicant organisation has sometimes been required to pay more than twice the amount it had declared.

8. Between 2008 and 2016 the applicant organisation has been involved in more than fifty sets of judicial proceedings, seeking to dispute the authorities' decision to impose VAT on its imports of religious material and the manner of calculating the tax due. None of those proceedings had a positive outcome for the applicant organisation (for the relevant details see *Christian Religious Organization of Jehovah's Witnesses v. Armenia* [Committee], no. 25103/10, 17 December 2019, and *Christian Religious Organization of Jehovah's Witnesses v. Armenia* [Committee], nos. 15124/15, 17376/15, 25050/15, 30258/15, 31359/15, 51582/15, 52035/15, 34182/16, 35093/16 and 35094/16, 17 December 2019).

9. On 1 January 2011 the applicant organisation concluded a donation agreement with Jehovas Zeugen, according to which the latter was to deliver free of charge to the applicant organisation spiritual literature in the form of Bibles, religious literature, visual aids, audio recordings, video recordings, magazines and other items which it needed in order to fulfil its purpose as set out in its Charter and its objectives. The contract stated that the donated items were solely designated for religious purposes and were part of a worldwide Bible educational programme supported by voluntary contributions; they were not to be sold or used commercially.

10. On 11 June 2012, in anticipation of the above-mentioned shipment, the applicant organisation applied to the SRS seeking a declaration that, as a religious organisation, it was exempted from payment of VAT on the importation of donated religious literature. It relied on, *inter alia*, section 12 of the Freedom of Conscience and Religious Organisations Act and section 2 of the Value Added Tax Act ("the VAT Act").

11. On the same date the applicant organisation wrote to the SRS *Transports Internationaux Routiers* Regional Customs Office ("the TIR Customs Office"), asking it to calculate the customs value of the donated religious literature under Article 93 of the Customs Code of Armenia ("the Customs Code"). Its calculation was to be based on the values stated on the donation notice and on a certificate provided by Jehovas Zeugen setting out the costs of production and transportation of the imported items. Along with the donation notice and the above-mentioned certificate, the applicant organisation also provided the TIR Customs Office with a certificate issued by Moritz Pikl Winterlich, a German audit company, confirming the accuracy of the values reflected in the donation notice.

12. By letter of 13 June 2012, the TIR Customs Office rejected the applicant organisation's request, stating, in particular:

> "... in the case you presented of supply [under] Article 93 of the [Customs Code], the residual method for determining customs value is not applicable since under

> Article 94(1) of the [Customs Code] 'The rules for determining customs value contained in Articles 87-93 shall be applied consecutively'. Given that there are no grounds for determining the customs value using the methods provided for by Articles 87, 89 and 90 [of the Customs Code], the customs authority should determine the value of the imported literature under Article 91 of the [Customs Code]".

13. By letter of 18 June 2012, the First Deputy Chairman of the SRS rejected the applicant organisation's request for exemption from VAT. The letter stated, *inter alia*:

> "... under the [VAT Act] transactions (operations) defined by law are subject to tax (considered a taxable object). 'Monetary and other gifts or income received from citizens' are not subject to [VAT] ... therefore ... the exception stated in [the Freedom of Conscience and Religious Organisations Act] does not concern taxation under [the VAT Act] ... At the same time, on the same grounds, what is defined by [the Freedom of Conscience and Religious Organisations Act] cannot be considered as a [VAT] benefit defined by another law...
>
> You have been previously informed that, like other organisations and physical persons, regardless of whether or not your organisation is considered a [VAT] payer, when importing goods, your organisation also has to pay [VAT] at the time of importation, if imposition of [VAT] is required by law for the goods that are being imported ..."

14. On 19 June 2012 the applicant organisation received the shipment, mainly comprising religious books, periodicals, CDs and DVDs. It made a customs declaration in respect of the received shipment under the "import for free turnover" regime.

15. The TIR Customs Office refused to accept the customs value of the shipment declared by the applicant organisation (7,769,722 Armenian drams (AMD)). As books are not subject to VAT, the TIR Customs Office set the customs value of the other imported items at a total of AMD 5,582,569, requiring the applicant to pay AMD 1,190,222 (approximately 2,300 euros (EUR)) in VAT. The amount of VAT imposed was calculated by the customs authorities under Article 91 of the Customs Code, based on the sale price of similar goods on the domestic market.

16. The applicant organisation eventually paid the required amount in order to have the shipment released.

17. The applicant organisation lodged a claim with the Administrative Court against the SRS and the TIR Customs Office, challenging both the imposition of VAT and the manner in which it had been calculated.

18. On 30 July 2013 the Administrative Court rejected the applicant organisation's claim. The relevant parts of the judgment read as follows:

> "... In accordance with section 6 of [the VAT Act]
>
> The following transactions (operations) shall be subject to [VAT]:
>
> ...
>
> (4) importation of goods under the 'import for free turnover' customs regime with the exception of cases defined by law.

...

In accordance with section 12 of [the Freedom of Conscience and Religious Organisations Act] ... monetary and other gifts received by religious organisations are not subject to taxation.

For the above-mentioned provision to be applicable, a religious organisation is required to receive a gift.

Article 594 of the Civil Code [of the Republic of Armenia] defines the concept of a 'gift', in particular pursuant to a gift contract, as one party (the donor) transferring or undertaking to transfer gratuitously property or property rights to the other party (the donee) ...

Article 605 of the same Code in its turn defines the concept of a donation; in particular, a donation is a gift of property or a right for public interest purposes.

It is clear from the above-mentioned provisions that the notions of 'gift' and 'donation' are unequivocally different from each other and they regulate different legal relations of a different nature.

The examination of the contract referred to by the applicant shows that the religious literature has been donated to the applicant and therefore it is a donation and not a gift.

Therefore, the fact of a gift within the meaning of section 12 of [the Freedom of Conscience and Religious Organisations Act] is absent; consequently, the exception stated therein is not applicable in respect of the exceptions as stated in section 6(4) of [the VAT Act].

...

The [applicant organisation] then requested the annulment of the decision of [the TIR Customs Office] of 13 June 2012 ... and the adoption of a new decision to accept the values declared in the donation notice ... as the customs value of [the applicant's] religious literature ...

... the [Customs Code] does not make a distinction as to whether goods are imported for personal use, sale or free distribution; rather, what is essential for the application of Article 91 is whether the goods are identical or similar to imported goods which are already sold on the domestic market of [Armenia].

It is clear from paragraph 1 of Article 91 of the [Customs Code] that the method of calculation of customs value stated in Article 91 ... can be applied only when the goods being transported through the customs border of the Republic of Armenia have the same appearance as goods sold on the domestic market of [Armenia] or when identical or similar goods of the same appearance are sold on the domestic market of [Armenia].

...

In the present case, Articles 87-90 are not applicable. Therefore, consecutively Article 91 should have been applied, whereas for Article 93 to have been applicable the applicability of Article 91 should have been excluded ... However, ... the court has already concluded that the application of Article 91 by the customs authority was lawful ...

In the instant case, the [Administrative Court] finds it established that ... similar goods /religious literature/ ... were sold in the same period on the domestic market of

[Armenia] /basis – the letter from the general secretary of the Armenian Bible Society ... addressed to the Head of the [TIR Customs Office] ... dated 14 July 2011/."

19. The letter referred to by the Administrative Court in the above paragraph was that of the Armenian Bible Society, sent in response to an enquiry from the head of the TIR Customs Office as to whether it imported any religious literature from Germany, Poland and Great Britain and, if so, its retail and wholesale prices in Armenia. The General Secretary of the Armenian Bible Society replied in his letter of 14 July 2011 that the society imported religious literature from different European countries on a regular basis. He gave the retail and wholesale prices, as at the month of May 2010, of the following items: magazines, religious textbooks, dictionaries and Bibles.

20. The applicant organisation lodged an appeal.

21. By a judgment of 26 December 2013, the Administrative Court of Appeal fully upheld the judgment of the Administrative Court of 30 July 2013. The relevant parts of this judgment read:

"... In accordance with section 2 of the [VAT Act], as in force at the relevant time ...

As we can see, the legislator differentiates the notions of entrepreneurial and commercial activity and considers VAT payers not as persons who perform a specific operation but as those who in general have the right to carry out commercial activity. In the case at hand, [the applicant organisation], as stated in its Charter, is authorised to alienate (sell, donate, exchange) or otherwise use its property ... as well as create companies ... That is, [the applicant organisation] has the right to carry out independent commercial activity ..."

22. The applicant organisation lodged an appeal on points of law, which was declared inadmissible for lack of merit by a decision of the Court of Cassation of 29 May 2014.

RELEVANT LEGAL FRAMEWORK

23. Section 12 of the Freedom of Conscience and Religious Organisations Act of 17 June 1999 provides:

"Religious organisations may appeal to the faithful for voluntary gifts of a monetary or other nature, receive and administer them.

Monetary and other gifts received by religious organisations, as well as income received from citizens shall not be subject to taxation."

24. The relevant provisions of the Civil Code provide:

"**Article 594: Gift contract**

1. Pursuant to a gift contract, one party (the donor) transfers or undertakes to transfer gratuitously property or property rights ... to the other party (the donee) ...

Article 605: Donation

1. A donation is a gift of property or a right for public interest purposes. Donations can be made to ... non-governmental and religious organisations, as well as the state and communities.

...

3. Donations ... made to ... legal entities may be designated for a certain use ..."

25. The relevant provisions of the Value Added Tax Act of 14 May 1997, as in force at the material time, are as follows:

Section 1

"Value added tax (hereafter VAT) is an indirect tax which, in accordance with the present law, is paid (levied) to the State budget at all stages of the importation, production and circulation [of goods] in the territory of the Republic of Armenia, as well as the rendering of services."

Section 2

"VAT payers are considered to be persons, legal entities and enterprises that do not have the status of a legal entity ... which carry out independent commercial (entrepreneurial) activity and perform the transactions (operations) stated in section 6 of the present law, with the exception of cases defined in this section and section 3 [which sets out specific cases and thresholds for being or not being considered a VAT payer] of this act.

Entrepreneurial activity is regularly performed commercial activity with the purpose of gaining profit (income). Commercial activity is any activity which is carried out in return for any form of payment.

..."

Section 5

"The total value (turnover) of the entirety of the transactions (operations) stated in section 6 of this law that are performed by VAT payers in the territory of the Republic of Armenia is considered to be subject to VAT."

Section 6

"Transactions (operations) to which VAT applies are:

(1) the supply of goods ...;

(2) the provision of services ...;

(3) consumption without (with partial) payment ...;

(4) importation of goods under the customs regime 'import for free turnover', with the exception of cases defined by law.

..."

Section 15

"Exemption from VAT means that VAT is not levied on a taxable transaction. The following transactions and operations mentioned in section 6(1), (2) and (3) of this Act are exempted from VAT:

...

(12) Religious ceremonies, religious items furnished to religious organisations, as well as the sale of those items by religious organisations."

Section 17

"Other laws may provide for exemption from VAT and other privileges envisaged by the tax legislation of the Republic of Armenia."

26. The relevant provisions of the Customs Code, as in force at the material time, read as follows:

Article 76: Similar goods

"Goods shall be considered similar if they have the same country of origin and, although not identical, have similar characteristics and component materials, making it possible to use them for the same purpose and [for them to] be interchangeable. Moreover, the quality [and] reputation (trademark) of goods are, along with other factors, considered in determining whether they are similar ..."

Article 91: Determination of the customs value of goods transported through the customs border of the Republic of Armenia based on the unit selling price on the domestic market of the Republic of Armenia

"1. If goods transported through the customs border of the Republic of Armenia or goods ... similar to them in accordance with ... Article 76 of the present Code are sold with the same appearance on the domestic market ..., their customs value shall be determined by their largest gross quantity based on the unit selling price of those goods or ... similar goods in the same or nearly the same period ..."

Article 93: Residual method for determining customs value

"If the customs value of goods transported through the customs border of Armenia cannot be determined under the preceding rules for determination of customs value stated in the present section, it shall be determined by other means that are coherent with the principles and general provisions of the General Agreement on Tariffs and Trade based on information available in the Republic of Armenia ..."

Article 94: Order of application of rules for determining customs value

"1. The rules for determining customs value stated in Articles 87-93 of the present code shall be applied consecutively ..."

27. Article 87 of the Customs Code sets out the default method for determining customs value, the transaction price method, which is based on the customs value as declared by the importer.

Article 88 of the Code provides for cases where the customs value is determined by the customs authorities, while Articles 89, 90 and 92 set out the distinct methods the customs authorities must use for determining customs value based on the following: the transaction price of identical goods, the transaction price of similar goods and computed value, respectively.

28. The relevant provisions of the Legal Instruments Act of 3 April 2002 (*«Իրավական ակտերի մասին» ՀՀ օրենք*) are the following:

Section 24: Hierarchy of legal instruments of the Republic of Armenia

"...

3. If there is a contradiction between legal instruments having equal legal force that have been adopted by the same body, the provisions of the legal instrument that entered into force earlier shall prevail, with the exception of the case stated in the second indent of section 94(4) of this law.

Section 45: Other rules of law making

"...

10. Where conditions are enumerated, if the existence of all mentioned conditions is mandatory, the conjunction 'or' shall not be used. In such a case, the conjunction 'and' or [a synonym of the word 'and'] shall be used.

Where conditions are enumerated, if the existence of only one of the mentioned conditions is sufficient, the conjunction 'and' or [a synonym of the word 'and'] shall not be used ... In such a case, the conjunction 'or' shall be used.

...

If the application of a rule mentioned in a legal instrument depends on conditions separated by the conjunction 'and' or [a synonym of the word 'and'], the presence of all the enumerated conditions shall be mandatory for the application of that rule."

Section 94: Transitional provisions

"...

4. ...

If there is a contradiction between legal instruments having equal legal force that have been adopted by the same body and that entered into force prior to the entry into force of the present law, the provisions of the legal instrument that entered into force later shall prevail ..."

COMPLAINTS

29. The applicant organisation complained, under Article 9 of the Convention and Article 1 of Protocol No. 1 to the Convention, of the tax authorities' refusal to exempt its imports of religious materials from taxation and the alleged arbitrary manner by which the customs value of its imports had been determined.

THE LAW

A. Complaint under Article 9 of the Convention

30. The applicant organisation complained that the refusal to exempt its imports of donated religious literature from taxation, as well as the arbitrary imposition of a grossly inflated customs value on them, was in breach of Article 9 of the Convention, which 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."

1. The parties' submissions

31. The Government submitted that the taxation of the donated literature imported by the applicant organisation did not constitute an interference with its right to freedom of religion under Article 9 of the Convention. They contended that the neutral and uniform application of tax legislation to the applicant organisation could not be regarded as an interference with its rights under Article 9. With reference to section 2 of the VAT Act, as it stood at the material time, the Government claimed that the applicant organisation had met the statutory conditions for being subjected to VAT: it had conducted one of the transactions (operations) mentioned in section 6 of the same Act and had been authorised to carry out economic activity. The same rule applied to any individual or organisation that carried out independent economic activity and imported goods. The Government further submitted that VAT was applied not on the donation as a transaction, but on the import operation. Lastly, the Government contended that the amount of VAT levied in the present case could not be considered as an exorbitant tax that constituted a hindrance to the applicant organisation's orderly activity.

32. The applicant organisation submitted that it regularly imported to Armenia religious literature that was an integral part of the Christian worship and religious education, during private and collective study, of more than 11,000 Jehovah's Witnesses in Armenia and some 13,000 others who attended their religious services. The State authorities had refused to apply the tax benefit provided for in section 12 of the Freedom of Conscience and Religious Organisations Act, and had insisted that religious literature imported by the applicant organisation was subject to VAT. Moreover, the arbitrary manner in which the customs value of the imports had been determined had, in turn, forced the applicant organisation to pay an excessive amount of VAT. All of the above had had a serious negative impact on the organisation's religious practice, in breach of the requirements of Article 9 of the Convention. As a result of the impugned interference, the applicant organisation had been deprived of significant amounts of its donated funds to pay the unlawfully imposed VAT, whereas it could have used those funds instead to further its religious activities. It

had also been forced to reduce drastically the religious periodicals it imported and to bear the financial burden of domestic litigation.

2. The Court's assessment

33. The Court reiterates that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. While religious freedom is primarily a matter of individual conscience, it also implies, *inter alia*, freedom to "manifest [one's] religion" (see, among other authorities, *Metropolitan Church of Bessarabia and Others v. Moldova*, no. 45701/99, § 114, ECHR 2001-XII, and *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A).

34. Under the Court's case-law, an economic, financial or fiscal measure could, in certain circumstances, constitute an interference with the exercise of rights secured under Article 9 of the Convention if that measure were found to have had a real and serious impact on a religious community's ability to pursue its religious activity (see *Association Les Témoins de Jéhovah v. France*, no. 8916/05, §§ 48 and 54, 30 June 2011, and *Eglise Evangélique Missionnaire and Salaûn v. France*, no. 25502/07, § 24, 31 January 2013).

35. In the Court's view, in the present case it has not been demonstrated that the impugned measures, including the refusal to apply the tax exemption provided for in section 12 of the Freedom of Conscience and Religious Organisations Act, have had such an effect on the applicant organisation as to fundamentally undermine its ability to develop its religious activity. It has been required to pay 20% and 30% VAT on the customs value of its shipments of periodicals and CDs, and DVDs respectively, whereas the books and Bibles have not been subjected to taxation. In addition, the measures in question have not had any impact on the applicant organisation's places of worship (compare and contrast *Cumhuriyetçi Eğitim ve Kültür Merkezi Vakfi v. Turkey*, no. 32093/10, § 41, 2 December 2014).

36. In arriving at this conclusion, the Court is mindful of the cumulative financial effect of the measures in question over the years, since the applicant organisation imports religious literature regularly. The Court notes, however, that it did not submit that it could not afford to pay the customs clearance tax imposed on its imports or that it had found itself in such financial hardship that it had been prevented from guaranteeing its adherents' freedom to exercise their religious beliefs (see *Sukyo Mahikari France v. France* (dec.), 8 January 2013, § 20). Rather, the applicant organisation submitted that it could have used its funds to develop its religious activities, had it not been forced to pay a tax it should have been exempt from paying. Nor did the applicant organisation complain that as a result of the measures in question, it had been unable to import a sufficient

quantity of periodicals, CDs and DVDs, having regard to the total number of its adherents.

37. In view of the foregoing, the Court finds that in the present case there is no indication that the applicant organisation was hindered in the exercise of its right to practise its religion as a result of the authorities' refusal to exempt it from VAT on the donated literature imported by it, and the manner in which the tax had been levied.

38. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 1 of Protocol No. 1 to the Convention

39. The applicant organisation also complained that the authorities' refusal to exempt its imports of donated religious literature from taxation and the manner in which the amount of tax due had been calculated were in breach of the requirements of Article 1 of Protocol No. 1 to the Convention, which provides:

> "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."

1. The parties' submissions

40. The Government claimed that the decisions as to what kind of taxes or contributions were to be collected fell within the State's margin of appreciation, which in such context was a wide one. The interference had been necessary in order to secure the payment of contributions to the State budget, in accordance with domestic law.

The domestic courts had found that the applicant organisation had met the preconditions stated in section 2 of the VAT Act for being subjected to the payment of VAT on the donated religious literature imported by it.

As regards the tax privilege under section 12 of the Freedom of Conscience and Religious Organisations Act, it was not applicable in the present case. As found by the domestic courts, the concepts of "donation" and "gift" were different. It was clear from the applicant organisation's contract with the donor that the religious literature in question had been a donation and not a gift within the meaning of Article 594 of the Civil Code. Furthermore, the issue of the applicability of section 12 of the Freedom of Conscience and Religious Organisations Act would have arisen had the act of donation taken place in Armenia, whereas the present case concerned the

levying of tax on the operation of importing. Had the donation taken place in Armenia, it would not have been taxed. In any event, assuming that there was a contradiction between section 12 of the Freedom of Conscience and Religious Organisations Act, which had entered into force in 1991, and the VAT Act, which had entered into force in 1997, the relevant provisions of the latter law would prevail by virtue of section 94 of the Legal Instruments Act.

With regard to the manner in which VAT had been imposed on the applicant organisation's imports, the Government submitted that the customs authority, in accordance with Article 94 of the Customs Code, had applied the rules on the determination of customs value provided for in Article 91 of the same Code, which it considered were applicable in respect of the shipment at issue. The law did not make a distinction as to whether goods were imported for personal use, sale or distribution. Having studied the domestic market, the customs authorities had established the sale prices of similar publications and had determined the customs value of the shipment accordingly.

As for the proportionality of the interference, given the relatively low amount of VAT imposed, it could not be said that the applicant organisation had had to bear an excessive burden by paying the tax due.

41. The applicant organisation submitted that the State had interfered with its right to peaceful enjoyment of its possessions in two ways: firstly, by requiring it to pay a tax it was exempt from paying under the law; and, secondly, by arbitrarily imposing a customs value on its shipment of donated literature which was roughly double the customs value it had declared. It further submitted that the donated religious literature and donated funds constituted its "existing possessions" within the meaning of Article 1 of Protocol No. 1 and that it had a "legitimate expectation" to rely on the tax benefit expressly guaranteed by section 12 of the Freedom of Conscience and Religious Organisations Act and section 2 of the VAT Act.

In the applicant organisation's submission, it had been denied the benefit of the tax privilege provided for in section 12 of the Freedom of Conscience and Religious Organisations Act, based on the assertion that the shipment of religious literature had been received as a "donation" and not as a "gift", a distinction without a difference. In any event, as it was a non-profit religious organisation which did not carry out any economic activity, it could not be considered a VAT payer. Nevertheless, the authorities had concluded that it had been liable to pay VAT on its shipment of donated religious literature. Furthermore, the interference had been neither necessary nor proportionate to any legitimate aim in the general interest.

2. The Court's assessment

42. The Court notes at the outset that there is no dispute between the parties that the taxation of the applicant organisation's imports of donated

religious literature constituted an interference with its right to the peaceful enjoyment of its possessions within the meaning of Article 1 of Protocol No. 1.

43. That said, the Court considers that the instant case falls to be examined under the second paragraph of Article 1 of Protocol No. 1 to the Convention, as the interference at stake was clearly aimed at "securing the payment of taxes" (see, in particular, *Euromak Metal Doo v. the former Yugoslav Republic of Macedonia*, no. 68039/14, § 42, 14 June 2018).

44. According to the Court's well-established case-law (see, among many other authorities, *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 23 February 1995, § 62, Series A no. 306-B, and *N.K.M. v. Hungary*, no. 66529/11, § 42, 14 May 2013), an interference, including one resulting from a measure to secure the payment of taxes, must strike a "fair balance" between the demands of the general interests of the community and the requirements of the protection of the individual's fundamental rights. The concern to achieve this balance is reflected in the structure of Article 1 as a whole, including the second paragraph: there must therefore be a reasonable relationship of proportionality between the means employed and the aims pursued. Lastly, the applicant must not bear an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 73, Series A no. 52).

45. The Court would, moreover, reiterate that, as consistently confirmed by its settled case-law, the national authorities are in principle better placed than an international court to evaluate local needs and conditions. In matters of general social and economic policy, on which opinions within a democratic society may reasonably differ widely, the domestic policy-maker should be afforded a particularly broad margin of appreciation (see, for example, *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006-VI).

46. TURNING TO THE CASE AT HAND, THE COURT NOTES THAT THE IMPOSITION OF VAT ON THE SHIPMENT OF DONATED RELIGIOUS LITERATURE WAS BASED ON SECTIONS 2 AND 6 OF THE VAT ACT (SEE PARAGRAPH 25 ABOVE), WHEREAS THE TAX EXEMPTION PROVIDED FOR IN SECTION 12 OF THE FREEDOM OF CONSCIENCE AND RELIGIOUS ORGANISATIONS ACT (SEE PARAGRAPH RELEVANT LEGAL FRAMEWORK

23 above) was found to be inapplicable to the religious literature donated to the applicant organisation. That is to say, given that the applicant organisation was found not to be eligible for the tax privilege set out in

section 12 of the Freedom of Conscience and Religious Organisations Act, its imports covered by section 6 of the VAT Act were subject to VAT since the applicant organisation was found to be a VAT payer within the meaning of section 2 of the VAT Act.

47. In particular, the domestic courts found that the applicant organisation was not eligible for the tax exemption since the religious literature received by it had been a "donation" within the meaning of Article 605 of the Civil Code and not a "gift" as defined in Article 594 of the same Code (see paragraph 24 above). Thus, in its decision of 30 July 2013 the Administrative Court, drawing a distinction between the notions of a "gift" and a "donation", found that the reason the applicant organisation had been unable to benefit from the tax exemption under section 12 of the Freedom of Conscience and Religious Organisations Act was that the shipment in question had constituted a "donation", whereas the provision provided for a tax exemption in respect of "gifts" (see paragraph 18 above).

48. Having reached the conclusion that the tax exemption provided for in section 12 of the Freedom of Conscience and Religious Organisations Act was not applicable to the shipment of donated religious literature, the domestic courts upheld the tax authorities' decision that VAT should be levied on the applicant organisation pursuant to the VAT Act. Although the Administrative Court did not deal with the issue, the Administrative Court of Appeal concluded that the applicant organisation should be considered a VAT payer on the grounds that since it was authorised by its charter to carry out commercial activity, it could be considered to have carried out a commercial activity and hence be regarded as a VAT payer within the meaning of section 2 of the VAT Act (see paragraph 21 above).

49. Against this background, the Court considers that the interference with the applicant's rights guaranteed under Article 1 of Protocol No. 1 to the Convention clearly had a basis in domestic law. What the applicant organisation complained about, however, was the interpretation and application of the relevant provisions of domestic law.

50. The Court sees no reason to question the domestic courts' interpretation and application of either section 12 of the Freedom of Conscience and Religious Organisations Act or section 2 of the VAT Act, considering that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012). Furthermore, in so far as the tax sphere is concerned, the Court's well-established position is that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, §§ 75 to 83, *Reports of*

Judgments and Decisions 1997–VII, and *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 559, 20 September 2011).

51. The same can be said with regard to the applicant organisation's complaint about the manner in which the impugned fiscal measure was enforced, in particular the authorities' choice of method for calculating the amount of VAT on its imports of religious literature. The Court considers that in a complex sphere such as the imposition of VAT, the respondent State should be afforded a particularly wide margin of appreciation (see, *mutatis mutandis*, *Cacciato v. Italy* (dec.), no. 60633/16, 16 January 2018).

52. It remains to be ascertained whether the impugned fiscal measure could be viewed as having imposed an unreasonable or disproportionate burden on the applicant organisation.

53. The Court observes at the outset that the applicant organisation was required to pay 20% and 30% VAT on the customs value of its shipments of periodicals and CDs, and DVDs respectively. In the Court's view, those rates, from the quantitative standpoint, could not be considered exorbitant. Furthermore, there is nothing to indicate, nor has it been suggested by the applicant organisation, that the levying of such a sum in VAT fundamentally undermined the applicant organisation's financial situation – one of the factors to which the Court has given weight when gauging whether a fair balance has been struck in a given case (see *N.K.M.*, cited above, § 42 and further references to the Court's case-law cited therein).

54. The Court further observes that the applicant organisation was able to dispute the tax authority's relevant decisions before the courts exercising jurisdiction in administrative matters and did not claim that that procedure had failed to meet the requisite procedural standards.

55. In view of the foregoing, and taking into account the wide margin of appreciation which the States have in taxation matters, the Court considers that the levying of the VAT on the applicant organisation's imports of religious literature, including the manner in which the amount of tax due was determined, did not upset the balance which must be struck between the protection of the applicant organisation's rights and the public interest in securing the payment of taxes.

56. Accordingly, this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 October 2020.

Abel Campos Registrar	Ksenija Turković President